

Regents Policy Generally Prohibiting Contracting for Services

POLICY SUMMARY / GUIDING VALUES AND PRINCIPLES

There shall be a general prohibition on contracting out for services and functions that can be performed by University staff. Under exigent and limited circumstances when an outside contract is a solution of last resort, the following shall apply:

- ⇒ **UC MUST VALUE AND PROTECT ITS EMPLOYEES** The University shall prioritize the use of its employees to perform functions and services whenever possible and the use of outside contractors will not cause or facilitate the displacement of university employees.
- ⇒ **EQUAL PAY FOR EQUAL WORK** The labor conditions of contract workers shall be protected by ensuring they receive wages and benefits equivalent to what the University provides to its employees, and providing those who have performed services to the University on a long-term and continuous basis the opportunity to become University employees.
- ⇒ **UC MUST BE A MODEL EMPLOYER** Requirements governing state agencies and departments under California Government Code Section 19130 shall serve as minimum standards and, whenever reasonable, shall be exceeded.

Since its founding, the University's public mission has always been to unlock the doors of economic opportunity, uplift the human condition, and serve as an antidote to poverty. This begins from within.

UC's employment and contracting practices for all individuals working on its campuses, medical centers, and laboratories must model what it demands of other employers. In particular, this means the University must remain vigilant in ensuring its use of contract workers does not contribute to the rise of poverty-level jobs, thereby exacerbating growing economic inequality and reliance on taxpayer-funded "safety-net" services. Contracting out should be used sparingly and treated as an option of last resort to address temporary needs, not as a means to replace employees with lower-wage contractors.

As a public trust and one of the largest employers in California, the University is committed to protecting and valuing the lives of those it serves, educates, and employs.

POLICY TEXT

Consistent with the values and principles outlined above, this policy establishes standards for contracts for services for cleaning, custodial, janitorial or housekeeping services; food services; laundry services; groundskeeping; building maintenance; transportation and parking services; security services; billing and coding services; sterile processing; hospital or nursing assistant services; and medical imaging or other medical technician services. These shall be referred to as “covered services” for purposes of this policy.

The University will utilize its employees to perform covered services that have been customarily performed by University employees to the greatest extent possible before resorting to the use of private contractors to provide such services. Contracting for covered services only is permissible under the limited circumstances described in this policy or under other circumstances where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders.

A. In-sourcing Contracted Workers

The University is committed to using University employees to perform covered services, and to providing employment opportunities to workers who have been providing covered services to the University. No later than February 15, 2020, the University shall identify covered services that have been provided on a continuous basis for 12 months or more through service contracts and shall, to the fullest extent possible, in-source that work to be provided by University employees. Individuals employed by service contractors who have provided those services to the University on a continuous basis for 12 months or more may request to be converted to University employment. Requests should be submitted to the location’s Employee/Labor Relations Manager. The University shall establish implementation guidelines by no later than January 31, 2020.

B. General Prohibition on Contracting Out

Under this policy, contracting for covered services only is permitted where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders, or under the following limited, exigent circumstances that comply with the State’s requirements in Government Code section 19130:

1. The services are needed to address an emergency. An emergency may include, but is not limited to, the need to prevent the stoppage of University operations or to ensure the continuous operations of University medical centers.
2. The employees capable of providing the required services are not available at the University location in sufficient quantity or do not possess the necessary level of expertise, or the services cannot be performed satisfactorily by University employees, or

the services are of a specialized or technical nature and the expertise, knowledge, ability and /or equipment required is not available internally.

3. The services are incidental to a contract for the purchase or lease of real or personal property. This includes services that are to be provided on property that the University has leased to or from a third party or through public private partnerships.
4. The services are of such an urgent, temporary, or occasional nature that the delay resulting from their performance by University employees hired under the University's regular or ordinary hiring process, or the inefficiencies or difficulties in utilizing University employees, would frustrate the University's goals giving rise to the need for the services.
5. The contractor will provide equipment, materials, facilities, or support services that could not be provided feasibly in the location where the services are to be performed. All services at remote facilities, which are those not within a 10-mile radius of a University campus, medical center, or Laboratory, fall within this exception.
6. The services are performed by registry personnel in clinical operations to address short-term staffing needs, including circumstances where the University's reasonable recruitment efforts to hire employees are unable to satisfy ongoing staffing needs.

C. Employment Standards

1. Wage and Benefits Parity

Contracts for covered services exceeding \$100,000 and 90 days' duration shall include provisions requiring the contractor to provide its employees working at University locations wages and benefits that are equivalent to the University wages and benefits provided to University employees performing the same work. "Benefits" includes health, dental, vision, and retirement as well as vacation, sick leave, and holiday pay. The Office of the President shall establish annually the wage and benefit costs for these workers and contractors. The University may, in its sole discretion, terminate its agreement with a contractor that fails to comply with these provisions or provide the contractor with an opportunity to remedy its noncompliance.

2. No Displacement of University Employees

Contracts for covered services shall not displace University employees. Where displacement is unavoidable, the University shall make available another position for which the employee is qualified. The position will be in the same bargaining unit and at the same campus, medical center, or Laboratory from which the employee was displaced and shall not result in either a reduction in pay and benefits or a change of work location that is greater than ten (10) miles.

“Displacement” means demotion, layoff or involuntary reduction in time due to entering into a contract for services.

3. Equal Employment Opportunity

Contracts for covered services shall not adversely affect the University’s equal employment opportunity efforts.

D. Notice to Employee Organizations

The University will provide advance notice to affected employee organizations prior to entering into, extending, or renewing a contract for covered services over \$100,000.

- Where a Request for Proposal will be issued, the University will provide a copy of the RFP at the time of issuance.
- Where no RFP will be issued, the University will provide notice of at least 30 calendar days prior to entering into, extending or renewing the contract.

The notice also shall provide information about the provisions of this policy that justify the contract.

During the notice period, upon the employee organization’s request, the University will provide relevant non-privileged information that is reasonably available pertaining to the contract and the employee organization may present alternatives to mitigate or avoid the need for the contract while still satisfying the University’s needs to provide services. The University must consider those alternatives and adopt them when feasible provided that the employee organization provides those alternatives within 14 days of the notice.

The University shall produce an annual report of all contracts for covered services, regardless of amount or duration, and shall provide the report to affected employee organizations and the Regents.

E. Enforcement

Upon receiving the notice described in section D. above, an employee organization may request review of a proposed contract for covered services within ten (10) days of the notice to determine whether the contract complies with the provisions of section B. of this policy. The University shall appoint a neutral hearing officer to conduct the review from a panel mutually agreed upon by the University and the employee organization.

The hearing officer shall review the matter and determine whether there is good cause for a hearing. If so, the hearing officer shall schedule the disputed contract for a hearing for the

purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract under the provisions of section B, above.

The reasons for the hearing officer's decision regarding whether the contract complies with the provisions of section B., above, shall be in writing and shared with the parties. The hearing should be completed and the decision issued within sixty (60) days of the employee organization's request for review, or as soon as is practicable, whichever occurs first. The hearing officer's decision shall be final.

If an employee organization's collective bargaining agreement prescribes a different enforcement mechanism for disputes over contracts for services, then that procedure will take precedence.

COMPLIANCE/DELEGATION

The University shall implement the requirements of this policy by adopting guidelines, administrative policies, and procedures.

The President, in concurrence with the Board Chair, must approve any exceptions to this policy. The President shall report any approved exceptions to the Governance Committee within ten (10) business days of granting the exception. The full Board shall retain the authority to amend or reject any exceptions granted within sixty (60) days of receiving a report of exceptions approved by the President.