

## **ARTICLE 5 CONTRACTING OUT**

### **A. GENERAL CONDITIONS**

1. There shall be a general prohibition on contracting for services and functions that can be performed by University staff.
2. The University will utilize its employees to perform Covered Services (as defined in subparagraph 6 below) to the greatest extent possible before resorting to the use of contractors to provide such services.
3. Contracting for covered services is only permissible under the limited circumstances described in Section C. of this Article or under other circumstances where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders.
4. Nothing in this Article prohibits an individual employee working for a contractor from applying for open University positions for which the University is recruiting.
5. Where this Article requires that contracted work (currently performed as of ratification date) be brought in house, the deadline for insourcing the work shall be as soon as possible, but in any event no later than one year from the date of ratification.
6. Covered Services: Covered Services, as used in paragraph 1. above refers to work customarily performed by bargaining unit employees, whether in whole or in part, including but not necessarily limited to the following services: cleaning, custodial, janitorial, or housekeeping services; security services; billing and coding services, sterile processing, hospital and nursing assistant services and medical imaging services.

### **B. EMPLOYMENT STANDARDS:**

1. Those contracts that include Covered Services shall require the contractor to provide its service employees, and any contracted individuals, who work at University locations, including on properties that the University has leased from or to a third party and public private partnerships, with wages and benefits of equivalent value to those provided to bargaining unit employees performing the same or similar work at the location where the work is being performed, or nearest University location if there are not bargaining unit employees performing the same or similar work at the location. Covered services do not include existing

contracts for lease agreements for commercial tenants who provide direct to the public sales and services.

2. In determining equivalent value, the University shall determine the pay rate and a composite benefits rate. The pay rate shall be step one of the entry-level classification performing comparable work. The University will use the location composite benefit rate (including retirement, social security, and medical, dental, vision, life, and disability insurance).
3. The University shall terminate its agreement with a contractor that fails to comply with the provisions in this Section B, or that fails to remedy its noncompliance within a reasonable timeframe, and shall make every effort to make sure that all affected workers are made whole by the contractor.

### C. GENERAL PROHIBITION ON CONTRACTING OUT

The following provisions set forth the only circumstances in which services customarily performed by bargaining unit employees may be contracted out. 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 contractors.

1. The services are needed to address an actual emergency. An emergency may include, but is not limited to, the need to prevent the stoppage of University operations or to ensure continuous operations at the 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. This provision shall be interpreted narrowly and shall not be relied upon to avoid reasonable efforts to hire and train sufficient numbers of University employees.
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. This does not include arrangements where the University maintains operational control.
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. This provision shall be interpreted narrowly and shall not be relied upon to justify the ongoing use of temporary workers.

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. Services at remote facilities, which are those not within a 10-mile radius of a University campus, medical center, or Laboratory, may fall within this exception.
6. The services are performed by registry personnel in its clinical operations to address short-term staffing needs, including circumstances where the University's reasonable recruitment efforts to hire are unable to satisfy ongoing staffing needs.

#### D. NOTICE PROVISIONS

1. The University shall provide notice to AFSCME 3299 prior to entering into, extending or renewing a contract that includes Covered Services valued at over \$100,000. Such notice shall specify the duration, scope of work, the wage/benefit parity information required in Section B. 2. for the work that will be performed, dollar value, and work location(s), if known.

In an effort to supply the union with adequate information to evaluate a proposed contract:

- a. Where a Request for Proposal will be issued, the University will provide a copy of the RFP at the time of issuance.
  - b. Where no RFP will be issued, the University will provide relevant non-privileged information that is reasonably available pertaining to the contract at least thirty (30) calendar days prior to entering into, extending or renewing the contract.
  - c. A copy of each notice required under this section shall be provided to both the local AFSCME office and to the AFSCME 3299 Executive Director.
2. The Notice shall set forth the provision in Section C. of this Article that the University is relying upon as a justification for its contracting decision.
  3. Following receipt of the Notice, AFSCME 3299 shall have no more than fourteen (14) calendar days from the date of the Notice to request a meeting to provide alternatives to mitigate or avoid the need for the contract while satisfying the University's needs to provide the services at issue, or present such alternatives in writing.

4. The University shall consider any alternatives proposed by AFSCME within the fourteen (14) calendar day period and adopt them where feasible.
5. If the University has complied with the Notice provisions of Section 3 above and AFSCME does not request to meet or submit a written request in response to a Notice, as outlined in 3 above, or file an Article 5.C. grievance, the University may proceed with the contract.
6. The University will hold the meeting if requested, and/or respond to any written request from AFSCME within forty-five (45) days of receiving written request from AFSCME for items located in Section 3. The University shall release AFSCME employees in a without-loss-of-straight-time-pay status for the meeting in accordance with Article 15 - Labor/Management Relations. If AFSCME disagrees with the University's position, it may file an Article 5.C. grievance pursuant to Section H. below.
7. The University at the Systemwide level shall produce an annual report of all contracts for covered services, regardless of amount or duration, and shall provide the report to AFSCME no later than February 15th of each year.
  - a. The Report shall include information for each contract pertaining to compliance with Section B.
  - b. The JLMC on Workforce Inclusion shall agree on information to be contained in the report beyond the information enumerated in Section D.1. above.

#### E. INSOURCING OF WORK

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. When the University brings Covered Services functions in-house, consistent with Regent Policy 5402, it shall follow the process below:

1. The University shall provide written notice to AFSCME 3299 which shall include the covered services, work location(s), estimated number of bargaining unit FTE, title(s), and the anticipated implementation date.
2. Workers who have worked for the contractor performing work at a University location for 1000 hours over a rolling twelve (12) month period or 35% time over a rolling thirty-six (36) month period, shall be offered UC career employment in the same classification at the same location or at a location within ten miles of the campus/medical center/lab where they performed the work under the contractor, provided they have the skills, certifications and licenses required.

3. The University shall use a streamlined version of its standard hiring practices to ensure barriers to UC employment are not imposed. Provided workers meet these requirements, including satisfactory UC background checks, there shall be no other basis for disqualifying workers to transition to UC employment. If a worker is disqualified for the initial position, they may be considered for another position at the same location.
4. A worker, who qualifies in paragraph two above, shall receive three (3) months credit toward satisfaction of the standard probationary period if they are hired into a position performing the same duties they have performed as a contract worker. The University may only extend an employee's probationary period by mutual agreement.
5. No employment time with the outside contractor will be credited to UC service.

F. UC EMPLOYMENT CONVERSION PROCESS FOR QUALIFIED INDIVIDUALS

1. The University will exercise its best efforts to determine employees who meet the criteria to become qualified individuals. At any time, an employee who believes they meet the requirements to become a qualified individual as defined below may request that they be converted to a UC employee.
2. When an individual worker who works for an outside contractor performing the same services in the same classification at the same UC location works for 1000 hours in a rolling at least twelve (12) consecutive months month period, or 35% time over a rolling thirty-six (36) month period, the worker will be deemed a "qualified individual" (QI) for conversion to UC employment, provided they have skills, certifications and licenses required.
3. The QI must submit a written request (Appendix \_\_) to Human Resources contacts listed in said Appendix.
4. The University shall offer the QI a career UC position that the individual is qualified for, though it may not be in the same title and/or the same department as the contracted position the QI worked in. The UC career position shall be at the same location or within ten (10) miles of that location.
5. The QI shall be placed in a career UC position no later than one hundred twenty (120) days six months from the time the application was received.
6. The University shall use a streamlined version of its standard hiring practices to ensure barriers to UC employment are not imposed. Provided the QI meets these

requirements, including satisfactory UC background checks, there shall be no other basis for disqualifying the QI to transition to UC employment. If a QI is disqualified for the initial position, they may be considered for another position at the same location.

7. The QI shall receive three (3) months credit toward satisfaction of the standard probationary period if they are hired into a position performing the same duties they have performed as a contract worker for twelve (12) continuous months. The University may only extend an employee's probationary period by mutual agreement.
8. No employment time with the outside contractor shall be credited to UC service.

G. NO DISPLACEMENT OF UNIVERSITY EMPLOYEES

Contracts for Covered Services shall not displace University employees. "Displacement" means demotion, layoff or involuntary reduction in time due to entering into a contract for services.

H. SPECIAL ENFORCEMENT PROVISIONS REGARDING INAPPROPRIATE SERVICE CONTRACTS

1. These special enforcement provisions shall apply to an Article 5.C. grievance filed by AFSCME that an RFP or a pending contract does not comply with the provisions of Section C. above.
2. Such an Article 5. C. grievance shall be filed directly with the Executive Director-Labor Relations at the Office of the President no later than 14 calendar days after AFSCME has received the RFP or, where no RFP will issue, notice of a pending contract, or within 14 calendar days of the meeting provided for in Section D.6 above.
3. The Office of the President shall issue a written response to an Article 5.C. grievance within ten (10) calendar days of receipt.
4. If the Office of the President denies the Article 5. C. grievance and AFSCME wishes to file an appeal to arbitration, it shall file such a written appeal to arbitration no later than ten (10) calendar days after receipt of the University's response to the Executive Director-Labor Relations at the Office of the President.
5. The arbitration involving such an Article 5.C. grievance shall be conducted on an expedited basis in accordance with the provisions set forth below.

6. The parties agree to select the arbitrator from a mutually agreed-upon list of five (5) arbitrators who have indicated a willingness to hear such cases on an expedited basis (where possible, within thirty (30) calendar days of selection).
7. The arbitrator shall determine whether Article 5. C. has been/would be violated.
  - a. If the arbitrator concurs with the University's determination, an existing contract for services shall remain in place or if the Article 5.C. grievance was filed prior to the formation of a contract, the University may proceed with the contracting process.
  - b. If the arbitrator determines that the contract is inappropriate the contract shall be terminated. If the grievance was filed prior to the formation of a contract, the University shall not proceed with the contracting process.
8. The arbitrator's decision shall not include any type of monetary award, or provisions for fees.
9. The arbitrator's decision must be in writing and submitted simultaneously to both parties within thirty (30) calendar days of the completion of the hearing. The arbitrator's decision shall be final and binding upon all parties.