



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No. SF-CE-1238-H NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: American Federation of State, County and Municipal Employees - Local 3299

b. Mailing address: Leonard Carder LLP, 1330 Broadway, Suite 1450
Oakland, CA 94612

c. Telephone number: (510) 272-0169

d. Name and title of person filing charge: Julia Lum Attorney E-mail Address: jlum@leonardcarder.com
Telephone number: (510) 272-0169 Fax No.: (510)272-0174

e. Bargaining unit(s) involved: SX and EX

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Regents of the University of California

b. Mailing address: University of California Office of the President, 1111 Franklin St., 8th Fl.,
Oakland, CA 94607

c. Telephone number: (510) 987-9800

d. Name and title of agent to contact: Andrew Huntington, Senior Counsel, Labor, & Employment E-mail Address: andrew.huntington@ucop.edu
Telephone number: (510) 987-0930 Fax No.: (510) 987-9757

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.
PERB-61 (7/22/2014)

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)

- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
3571(a)(b) and (c)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

See Attachment

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on October 25, 2019
(Date)

at Oakland, CA
(City and State)

Julia Lum
(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: Leonard Carder, LLP, 1330 Broadway, Suite 1450, Oakland, CA 94612

Telephone Number: (510) 272-0169 E-Mail Address: jum@leonardcarder.com

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years. The name and address of my
residence or business is Leonard Carder, LLP, 1330 Broadway, Suite 1450,
Oakland, CA 94612

On October 25, 2019, I served the Unfair Practice Charge
(Date) (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

personal delivery;

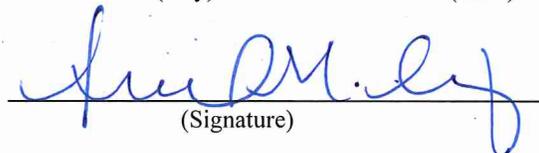
facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Andrew Huntington
Senior Counsel, Labor & Employment
Univeristy of California
Office of the President
1111 Franklin Street, 8th Floor
Oakland, CA 94607

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on October 25, 2019, at Oakland CA
(Date) (City) (State)

Ariel M. Lopez
(Type or print name)


(Signature)

FIRST AMENDED¹ UNFAIR PRACTICE CHARGE ATTACHMENT

I. INTRODUCTION

This charge concerns multiple unilateral changes committed by the Regents of the University of California in an effort to contract out bargaining unit work without providing any notice to charging party American Federation of State, County and Municipal Employees, Local 3299. UC violated HEERA, Gov. Code sections 3571(a), (b) and (c), in three distinct ways. **First**, it failed to provide AFSCME with Requests for Proposals and/or Requests for Quotes (collectively referred to as “RFPs”) before contracting out bargaining unit work, as required by the status quo under the parties’ now-expired MOU.² **Second**, UC entered into contracts to outsource bargaining unit work without providing AFSCME an opportunity to bargain – here, as many as eight acts of contracting out work. **Third**, UC has unlawfully interfered with the rights of employees and their unions under HEERA.

This charge comes on the heels of myriad and widespread disputes regarding the University’s outsourcing of bargaining unit work to private sector vendors. In response to prior unfair practice charges concerning contracting out, the University has claimed that it need not bargain with AFSCME over “any decision” to contract out work or even provide the Union notice unless the University’s procurement staff has decided, in its purported discretion, to issue an RFP. Despite UC’s self-serving declaration that it can reserve the decision over whether to issue a RFP or not – a position that is at odds with state law and UC’s own policy – one issue was, before now, undisputed: UC has repeatedly stated that when it decides to issue RFPs it will provide a copy to AFSCME pursuant to Article 5(B)(4) of the parties’ now-expired MOUs,³ and the University concedes that it must provide a copy of every RFP within 10 days of issuance.

¹ The Exhibits attached to the initial Unfair Practice Charge are not attached to this Amended Unfair Practice Charge, but are incorporated by reference herein. Underlined text indicates new text added as part of this amended charge

² During the term of the parties’ agreement, the MOU provided UC with a limited waiver of the union’s right to bargain over certain types of outsourcing so long as the University asserted, along with the advance notice, a legitimate justification for its proposal so that the union could then test the veracity of UC’s purported justification. UC committed itself to providing information and meeting with the union about each proposal. While the advance notice requirements and information sharing requirements of the expired MOU are mandatory, the permissive language allowing UC to proceed without negotiation has expired along with all other waivers of the right to bargain.

³ *See, e.g., Regents of the University of California, SF-CE-1093-H, UC’s Response to Charging Party’s Exceptions to Proposed Decision*, at p. 4 (stating “The University must provide notice of any RFP to AFSCME,” and “the University only has the obligation to provide notice of any RFP”); *id.* at p. 21 (stating “Regular construction of Article 5(B)(4) can only lead to one interpretation: the University was only obligated to provide AFSCME ‘a copy of any RFP as soon as possible,’” and “The University only promised to provide ‘a copy of any RFP as soon as feasible but no later than ten (10) business days after it is issued.’”)

AFSCME was surprised to discover, then, that the University unilaterally changed even this most basic procedure. Through its own investigation, the Union found numerous RFPs posted or referenced online – none of which were provided to AFSCME. In some instances, the Union discovered RFPs many months after the University was scheduled to have selected a vendor to perform work. This work would have and should have been performed by bargaining unit members.

UC's new policy of failing to provide AFSCME with notice of any kind, failing even to provide AFSCME with copies of or justifications for issued RFPs constitutes an unlawful unilateral change. UC has stripped AFSCME of the contractually required notice and deprived AFSCME the ability to bargain over the outsourcing of work customarily performed by the SX and EX units. In addition, each ultimate decision by UC to contract out bargaining unit work pursuant to the unnoticed RFPs constitutes an additional unilateral change, and must be reversed, with all affected workers made whole.

In this context, UC's failure to comply with the parties' agreed-upon procedures, and any related decisions to contract out bargaining unit work in secret, violate its obligations under state law. UC's actions also interfere with the rights of bargaining unit employees and deny the union its right to represent employees. (Gov. Code, § 3571(a)-(c).)

It must be noted that the University's repeated failure to provide notice or even copies of RFPs when they issue are part of a larger context in which the University has massively increased the amount of bargaining unit work that it arranges for contract labor to perform. In 2016, UC officials revealed to the State of California Legislature that the systemwide, UC's "contract spend" – i.e. the amount it pays outside vendors to perform services customarily performed by Service and Patient Care Technical employees - totaled \$345 million annually. In 2019, UC informed the Legislature that its annual contract spend has grown to \$523 million. That is, UC increased its outsourcing of AFSCME work by 52% - by almost \$200 million.

This stunning admission underscores both the breadth and extent of UC's increasingly rampant use of contractor labor to perform AFSCME work. Much of this increase has occurred during the status quo period when UC is obligated to provide notice and to bargaining with AFSCME over each and every decision to contract out work. For one reason or another, UC has quite literally never done so. With respect to the eight incidents addressed in this charge, UC rendered its oft-stated commitment to provide AFSCME with a copy of each RFP meaningless. In its reply to the original charge in this matter, UC claims that it need not provide notice or a copy of the RFP if the employer asserts - without any basis in fact - that the work should not be considered bargaining unit work. UC contends that it is also entitled to simply "forget" to provide the union with a copy of RFPs that it issues for work that is undisputedly that of the unit. Neither of the University's positions has any legitimate basis in fact or law.

Unfortunately, the specific incidents addressed in this charge represent just a tip of the iceberg of work the University is contracting out without properly noticing the Union.

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II. STATEMENT OF FACTS

A. Background

AFSCME 3299 represents approximately 26,000 employees within the University of California system. The Union represents a wide range of UC employees, including a systemwide unit of Service (“SX”) workers and a systemwide unit of Patient Care Technical (“PCT” or “EX”) workers. The most recent collective bargaining agreements between UC and AFSCME covering the SX unit expired on June 30, 2017; the EX MOU expired December 31, 2017.

B. Provisions of the Now-Expired MOU Between the Parties Provided that UC Would Provide AFSCME with a Copy of Each Request for Proposals (“RFPs”) as Part of its Commitment to Provide Advance Notice of Decisions to Contract Out

Article 5 of the now-expired SX and EX contracts provided the following⁴:

A. GENERAL PROVISIONS

...

2. The provisions of Sections A - D of this article shall apply to contracts for services that are subject to renewal.

B. CONTRACTING OUT

1. The University of California will not contract out services solely on the basis that savings will result from lower contractor pay rates and benefits for services customarily performed by bargaining unit employees or that result in the layoff of bargaining unit employees.
2. Examples of instances in which the University is permitted to contract out services include but are not limited to the following:
 - a. The need to obtain special services and equipment that are not available internally;
 - b. The need to obtain special expertise or efficiencies that are better provided through an outside contractor than by the University;
 - c. The need to provide short-term, temporary staffing in order to meet operational or business needs;
 - d. Financial necessity, where the services being provided would not be economically feasible or would result in significant additional expense if the services had to be performed by bargaining unit employees;

⁴ Underlined text was new to the Agreement and went into effect in 2014. Bolded text is particularly at issue in this Charge.

- e. Contracts at facilities that are not owned or operated by the University or where a UC owned facility, or part thereof, has been leased or otherwise transferred to a third-party, or where the University leases a facility and the services are provided by the landlord; or
- f. Contracts at remote facilities that are not within a 10 mile radius of the contracting campus, medical center, or Laboratory.⁵

...

4. **When the University has determined to contract for services that are customarily performed by AFSCME unit employees, subject to the restrictions contained in this article, it will provide AFSCME’s Local 3299 Director or Designee with a copy of any RFP as soon as feasible but no later than ten (10) business days after it is issued. Such notice shall demonstrate the appropriateness for the contract, in accordance with section B above.**

- a. **Upon request from AFSCME, the University will provide all existing relevant non-confidential written information pertaining to prospective third-party contract for services that involve work customarily provided by the bargaining unit, which may include the cost analysis used by the University to evaluate the need for contracting out and copies of consultant reports, if any, used by the University in making its decision regarding contracting out.**
- b. **If AFSCME asks to meet with the University about the proposed contract for services, such a meeting will occur as soon as practicable following the University’s receipt of the request. The meeting will not delay the commencement of the contract.**

(Exhibit 1, Article 5 from SX Contract, emphasis added; Exhibit 1.A, Article 5 from EX Contract, emphasis added.) Thus, Article 5 not only requires UC to provide a copy of any RFP to AFSCME within ten business days after it is issued, the notice must also demonstrate that the

⁵As discussed *infra*, to the extent the language of Article 5(B)(2) can be read to permit contracting out for the reasons specified, it serves as a “waiver of the right to bargain” during the life of the MOU. But after the MOUs expired, the waivers did too such that the University now must bargain over all decisions to contract out whether compliant with this language or not.

University is not proposing to contract out work solely on the basis of cost savings, and that it instead falls under an enumerated exception. Non-compliant contracts are not permitted and therefore may not be renewed after expiration; rather that work should return to the bargaining unit.

On June 30, 2017, the SX contract expired and on December 31, 2017 the EX contract expired. The parties have not agreed to a successor contract. As such, the mandatory, non-discretionary provisions of Article 5 and the Future Projects Side Letter continue pursuant to the status quo. However, as explained below, any contractual waivers of the right to bargain expired with the contract.

C. AFSCME's Previous Charge Regarding Eight Specific Outsourcing Arrangements

UC claims that its outsourcing decisions comply with the now-expired terms of Article 5 of the EX and SX MOUs. This is false. Since 2015, AFSCME has been litigating challenges to eight specific instances of outsourcing that took place during the term of the parties' 2014-2017 MOUs in charge SF-PE-1093-H. In its defense, the University claimed that its contractual relationships with labor providers were in line with the terms of Article 5. The ALJ rejected UC's argument, finding that UC's actions repeatedly "violated," "breached," or "arguably breached" the parties' MOUs when UC Berkeley contracted work out to ABM, Performance First, and Jensen, and that UCSF arguably did so in its protracted reliance on ZeroChaos/MGA custodians at Mission Bay. (*See Regents of the University of California*, SF-CE-1093-H, initial UPC filed on July 21, 2015, 2nd Amended Complaint, and Proposed Decision (pending review on Exceptions) at pp. 47-78 [ABM]; PD at p. 49 [Performance First]; PD at pp. 50-51 [Jensen]; *also* PD at pp. 56-57 [ZeroChaos/MGA].)

Nonetheless, the ALJ declined to find UC committed an unfair practice, erroneously concluding that its actions in contracting out several dozens of full time bargaining unit jobs to minimum wage vendors for years at a time somehow did not have a "generalized effect or continuing impact." UC gleefully accepted this misstatement of the law but argues that in any case, Article 5 should be read as containing multiple waivers of the right to bargain; UC has even asserted that Article 5 should be read as if it were a waiver of the union's right to receive advance notice of decisions to contract out bargaining unit work if the University decided – unilaterally – not to engage in competitive bidding and therefore not to issue any RFP. Needless to say, AFSCME insists that it is entitled to notice of each decision to contract out bargaining unit work, and that the right to notice, and compliance with the substantive protections of the CBA is not contingent on UC's adherence to competitive bidding procedures. These and other issues are currently pending review by the PERB Board on exceptions from the ALJ's Proposed Decision.

Until now, UC has always acknowledged that it is required to provide AFSCME with a copy of each RFP the University issues. Now, however, AFSCME has discovered that UC issues RFPs seeking contract labor to perform quintessential bargaining unit work – laundry services, food service, mail services, security guard services and a wide range of EX and SX work at UCLA Health – in secret. UC now seeks absolution claiming, absurdly, that this work should not

be considered bargaining unit work. Alternatively, UC claims that it merely made mistakes but has not “repudiated” the agreed upon policy of providing AFSCME with a copy of “any RFP” that issues, pointing to approximately 30 RFPs that it has given the union over the past several years. The University’s exhibits could not possibly cover the volume of work that UC has contracted out to vendors in recent years. Rather than demonstrating good faith, then, they demonstrate that UC has failed to provide AFSCME with notice of a huge number of decisions to contract out work – and to renew and expand the scope of contracts in secret as alleged here and in UPC SF-CE-1245-H.

D. UC Unilaterally Changed Policy By Failing to Provide AFSCME With A Copy of Any RFP or Otherwise Provide Notice of Decisions to Contract out Work Customarily Performed By Bargaining Unit Members

On or about January 10, 2019, the Union discovered a new public bidding website for UC-issued RFPs. “CalUSource,” available at <https://smart.gep.com/publicRFx/ucal?oloc=215#/>, is described by the University of California Office of the President as a “fully-integrated web-based Procurement solution for Sourcing, Contracting and Spend that is creating greater collaboration and efficiencies across the University of California and California State University systems.”⁶ The CalUSource site lists both open and closed RFP for different campuses, listing each by title. To access more detailed information, users (buyers or sellers) are required to register. However, without registering, certain RFP include publicly available details, such as the RFP number, the specific campus releasing the RFP, the and the start date and end date of the open bid. The site appears to have replaced UC’s prior website, available at <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UCOP>, that lists certain closed RFP, some of which also contain publicly available details, such as the RFP number, the campus releasing the RFP, and the start date and end date of the contract, but which is no longer being updated. AFSCME is also aware of a third site, available at <http://purchasing.uclahealth.org/bidding-on-jobs>, that lists RFPs specific to UCLA Health.

Through visiting these sites, AFSCME identified numerous open and filled RFPs covering work traditionally performed by members of the SX and EX units. The websites referenced above publish the substantive documents of certain RFPs; in other cases, the websites reference an RFP but do not include the substantive RFP documentation. Each of the RFPs described below involve actions taken by UC to contract out work customarily performed by represented AFSCME employees. UC’s failure to provide AFSCME with a copy of each RFP in order to provide notice of the underlying decision to contract out the work and the University’s rationale for doing so contravenes Article 5’s requirements that continue in effect as part and parcel of the status quo. Further, to the extent that UC has entered into contracts pursuant to any of the RFPs withheld from AFSCME, UC has stripped AFSCME of the opportunity to bargain over these outsourcing arrangements and has committed another unilateral change.

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⁶ See University of California Office of the President, “Procurement Services,” available at <https://www.ucop.edu/procurement-services/procurement-systems/calusource.html>

1. UC Berkeley RSSP Summer Linen Laundry 2018

UC admits that it intentionally withheld a copy of the RFP it issued to have a vendor perform linen services at UC Berkeley, choosing not to provide it to AFSCME based on its erroneous assumption that “UCB has never had its own employees perform laundry services for the Summer Conference Season.” (See UC’s Position Statement at p. 3.) In fact, as indicated in the charge and as the Union will be able to prove with sworn testimony, SX bargaining unit members did perform this work until the University removed the laundry machine from the site. UC’s claim that it has “always” contracted out this work is simply not true, as the facts alleged in the original charge make plain.

Customarily, AFSCME-represented workers have performed linen services at UC Berkeley, including during the summer on the Clark Kerr Campus. The Clark Kerr Campus is a housing complex that is located approximately six blocks away from UC’s Berkeley’s main campus. Prior to 2018 and over the summer, linen services were performed by at least one Senior Custodian, employed by UC and represented by AFSCME’s SX Unit. To perform the linen services, the Senior Custodian used a washer that was physically located on Clark Kerr’s campus.

AFSCME discovered an RFP for Clark Kerr laundry services on UC’s publicly available website. The RFP⁷ states:

Qualified suppliers are invited to submit proposals, based on the information provided in this RFP, with the intent to establish a business alliance with UC that will maximize the resources of both organizations to most effectively meet UC’s needs. Qualified supplier will launder UC owned linens and provide timely delivery service to five UC residential areas near the main campus during Summer Conference Season (May to August, with laundering and delivery work beginning in May). At the end of conferences, qualified supplier is required to provide laundry and delivery service of all linens back to UC housing with some delivery to storage units at UC’s University Village in Albany. During the Conferences season, the frequency of linen pickup and delivery will [be] based on demand. It’s estimated to be two to three times per week (Monday to Friday with occasional Saturday or Sunday emergency deliveries).

It is the intention of UC to make two awards, one for Unit 1, 2 and 3, and one for Foothill and Clark Kerr Campus; however, at UC’s discretion, UC may make a sole award, more than two awards, or no award.

(Exhibit 2.) The RFP further states that the anticipated term of the contract awarded shall be for a period of three years, and that UC may choose to extend or renew the contract for four additional one-year periods. According to the site, the RFP was open between January 24, 2018, and closed on February 15, 2018. (*Id.*)

⁷ The websites show an individual reference numbers assigned to each RFP. UC has assigned this RFP number RFP-FY2018-975.

AFSCME alleges on information and belief that as a result of this RFP, UC Berkeley awarded a contract to First Class Linen and is now outsourcing this bargaining unit work. The Senior Custodian who historically had cleaned linens for Clark Kerr now no longer provides these services at Clark Kerr and UC had the washing machine that had been located there removed from the that campus.

UC withheld this RFP from AFSCME and failed to demonstrate why it considered the proposed contract to fall within any of Article 5's exceptions. In addition, UC also never provided notice or the ability to bargain over its decision to enter into a contract with First Class Linen to perform bargaining unit work.

2. UC Berkeley Lettershop and Mailing Services

Mailing services for the College of Letters and Science is currently performed by AFSCME-represented Mail Processors. At the time of filing there were approximately five full-time AFSCME-represented Mail Processors providing mailing services for the entire UC Berkeley Campus, including the College of Letters and Science. The College of Letters and Science is the largest department that the Mail Processing Department serves; while other departments receive mail two times per week, Letters and Science receives mail every day of the week. AFSCME is not aware of UC Berkeley *ever* previously contracting out Lettershop or Mailing Services for the College of Letters and Science or for any other department.

UC issued an RFP for Lettershop and Mailing Services at UC Berkeley. The RFP⁸ states:

The purpose of this Request for Proposal (the "RFP") is to invite qualified bidders to prepare and submit proposals to furnish Lettershop and Mailing Services to the University of California ("UC"), in accordance with the requirements set forth in this RFP. The overall objective of this RFP is to select a supplier or suppliers to assist UC in establishing the most cost effective and efficient procurement program for Letters & Science while maintaining high standards of quality and service.

(Exhibit 3.⁹) The RFP states it opened on February 1, 2018, and closed on February 22, 2018. AFSCME discovered this through its own investigation on UC's publicly available websites. UC's website does not indicate whether or not a contract has yet been awarded, and UC has not informed AFSCME as to whether it has entered into a contract following this RFP. A contract awarded pursuant to this RFP would shift work that has customarily been performed by AFSCME-represented workers to outside contractors.

UC admits in its opposition papers that AFSCME members distribute mail on campus – work that is undisputedly covered by the RFP at issue - but contends that the

⁸ UC has assigned this RFP number RFx-FY2018-966.

⁹ Notably, UC has yet to provide AFSCME with a copy of this RFP which is only referenced, but not posted online.

printing/binding/address verification and deduplication work are tasks that are too “sophisticated” for unit members to perform. (UC Position Statement at p. 4.) Whether unit members have done these additional tasks before now or not is not the issue; it is undisputed that the distribution of the mail on campus is bargaining unit work, aka work “customarily performed” by bargaining unit members. Accordingly, UC was required to provide a copy of any RFP, and to demonstrate why, in its view, the proposed contract should be considered to fall within a contractual exception to the general rule that such work be performed by unit employees.

UC never provided AFSCME with a copy of this RFP, a demonstration of why this contract would be appropriate, or provided any notice of its intent to contract out this work. To the extent that UC has in fact entered into a contract for this bargaining unit work, UC has stripped AFSCME of the ability to bargain over its decision.

3. Catering Services for Rady School of Management at UC San Diego

Catering work at UCSD, including the Rady School of Management, has customarily been performed by UC employed workers in the classifications of Food Service Worker and Cooks, and who are members of AFSCME’s SX bargaining unit.

UC did not provide AFSCME with an RFP which seeks a vendor to provide catering services at Rady School of Management. (Exhibit 4.) AFSCME discovered the RFP¹⁰ through its own investigation. The RFP states it was issued on June 28, 2018, amended July 23, 2018, and closed July 31, 2018. The RFP provides:

The Regents of the University of California on behalf of the University of California, San Diego Rady School of Management (“UCSD” or “University” or “UC San Diego” or “Rady”), is conducting a competitive solicitation to establish a multi-year contract with a single ‘fine cuisine’ caterer located within close proximity (15 mile radius) to the University. Rady School of Management is a highly regarded MBA program that provides catered meal services to students enrolled in the Flex MBA program, which is an accelerated 2-3 year program. Catered meal services include breakfast, lunch, dinner, and snacks. Program schedules vary on a quarterly basis, but are typically daily weeknight dinner meals, and every other weekend breakfast, lunch, dinner, and snack meals. Required services shall include local production, delivery to the location, and friendly servers for the food and beverages on a year-round basis; all in accordance with the requirements defined below and elsewhere in this Request for Proposal (“RFP”). Total service is estimated at 15,145 meals per year. Any contract awarded as a result of this RFP has no guarantee or minimum purchase.

(Exhibit 4, Section 1.1.) The RFP further states that initial term of the contract is to last for three years, with the option to renew for two additional two-year periods, with service to begin September 19, 2018. (Exhibit 4, Section 1.2.)

¹⁰ UC has assigned this RFP number RFP 1810MYG.

The Union has learned through its members that catering at Rady School of Management is now being provided by contract workers employed by these companies, and that no AFSCME members are currently providing catering services to Rady. AFSCME alleges on information and belief that UCSD entered into contracts with Creative Catering and Brothers Signature Catering pursuant to this RFP.

The University, in its opposition papers, contends that while catering services are undisputedly performed by SX members, this particular School within the UCSD campus had not utilized their services before and “did not believe” that the School was required to provide AFSCME of a copy of the RFP that it issued to secure a vendor to perform the work instead. (UC Position Statement at p. 5.) The University offers no defense at all; it is responsible for ensuring that procurement personnel comply with agreed upon policies regarding the use of contract labor, and apart from the obligations of Article 5, it is also responsible for ensuring that AFSCME is given notice and an opportunity to bargain regarding discretionary actions that UC seeks to undertake during the status quo period.

UC never provided AFSCME with a copy of this RFP or justification for its decision, and never provided AFSCME with notice or an opportunity to bargain before unilaterally change policies by using one or more outside vendors to perform bargaining unit work at the Rady School of Management. A complaint should issue.

4. AFSCME has Discovered that UC Is Actively Seeking to a Vendor to Provide “Clinical, Non-Clinical, and IT staffing” at UCLA Health Without Notice or Opportunity to Bargain.

AFSCME-represented employees in the EX and SX units provide a broad range of clinical and non-clinical services at UCLA Health.

Since September 1, 2009, UCLA Health has contracted with approximately 23 vendors to facilitate the outsourcing of bargaining unit work following the competitive bidding process.¹¹ These vendors agreed to provide UCLA Health with contract workers in a wide range of titles to work “as needed” – i.e. the contracts did not fix the type or quantity of work that the vendors would perform. UC has renewed each of these contracts¹² annually for nine consecutive years;

¹¹ AFSCME learned about these contracts through information provided in response to an RFI. On February 28, 2017, AFSCME submitted an RFI requesting information on all existing registry contracts at the five UC medical centers. UC responded on June 6, 2018, with a link to copies of all the registry contracts for UCLA Medical Center. From the approximately 45 contracts, AFSCME identified that approximately 33 contracts were for services customarily performed by AFSCME-represented employees. Of these, approximately 23 contracts were negotiated on September 1, 2009.

¹² These contracts are between UCLA and the following companies: Advance Care Services, AHP Staffing, AMN Healthcare, Apex Staffing Service (Phoenix Medical Group), CHG Medical Staffing DBA CompHealth Medical Staffing, Cirrus Medical Staffing, Coast Medical Service, Cross Country Staffing, Healthcare Pros, Emerald Health Service, HRN

most recently, UC renewed these contracts through the end 2018. According to UC's systemwide policy governing its contracting policies, any department, campus or medical center wishing to contract out work to a private vendor is required to engage in competitive bidding at least once every ten years. It cannot simply renew or extend a competitively bid contract indefinitely; rather, it must make a conscious decision as to whether to contract out the work for more time and if so, who to contract with to perform the work at issue and on what terms. (*See* Exhibit 5, BUS 43, Section III, Part 1(A)(6)(a).)

With the ten-year deadline for new competitive bidding approaching on August 31, 2019, AFSCME sent UCLA an email on February 13, 2019, flagging the upcoming deadline and requesting bargaining if the University had any plan to enter into any new contract with any vendor to perform work that would otherwise return to the bargaining unit. (Exhibit 6, 2/13/2019 Demand to bargain.) The Union followed up on March 6, 2019 with a comprehensive RFI seeking information on contract renewals, extensions, or new contract awards for all of the vendors who were providing services customarily performed by AFSCME-represented titles. (Exhibit 7.)

As addressed in UPC SF-CE-1245H, the University failed and refused to substantively respond to either the demand to bargain or the RFI.

Given UC's non-response to AFSCME's demand to bargain, AFSCME was surprised to discover an RFP publicly posted seeking a "Temporary Labor Provider/Vendor Management System" for vendors capable of managing providers and providing contract workers to perform work that is described vaguely as "Clinical, Non-Clinical, and IT." (Exhibit 8, 8A, 8B.) The RFP does not identify which specific titles are implicated, but UC has utilized similarly vague contract language with other vendors to contract out massive amounts of bargaining unit work – there too, without notice or negotiation. See SF-CE-1093H (ZeroChaos contract used to contract out millions of dollars of bargaining unit work during the term of the since-expired MOU); UPC-SF-CE-1228-H (UC executed contract with Aya for up to \$150 million); UPC-SF-CE-1245-H (UCSF renewed ZeroChaos contract in secret after MOU expired, failing and refusing to provide notice or even issue an RFP as required by UC's own policy).

According to UCLA's website, the RFP was released on June 20, 2018, and the time for vendor presentations was repeatedly pushed back through the end of 2018. At the time that the original charge was filed, the site indicated the RFP is currently "IN CONTRACTING." (Exhibit 8.C.) In its opposition papers, it claims that "there has been no subcontracting decision" resulting from the RFP because it had yet to select a vendor. That has changed, and the University now admits that it has entered into the vendor of its choice: Vizient, formerly known as "MedAssets." (*See* Exhibit 35 to UPC SF-CE-1245H.)

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Services, Mediscan Staffing, MGA Healthcare, Premier Nursing Service, ProCare One Nursing, Procel Temporary Services, Professional Respiratory Network DBA American Staffing Registry, Quality Temp Staffing, Rehabilities, Reliable Healthcare, Supplemental Health Care, Trustaff, Westways Staffing Services, Xprt Staffing, and YOH Healthcare.

UC failed to provide AFSCME with a copy of the RFP or any purported justification for the contract. It has not provided AFSCME with advance notice or the ability to bargain over the RFP or the decision to contract with Vizient.

5. UC Merced Security Guard Services for Fresno Facility

Security at the UC Merced campus has customarily been performed by members of the SX unit. UC Merced's Fresno Center houses various UC Merced programs. UC has never previously notified AFSCME of an intent to outsource the work of UC Merced Security Guards. AFSCME discovered an RFP for UC Merced Security Guard Services at UC's Fresno Facility, on or about January 10, 2019. The publicly available information on the CalUSource website indicates that this RFP¹³ was issued on June 5, 2018, with a close date of June 22, 2018. The RFP itself is not available online, nor is there any publicly available information as to whether a contract has been awarded. (Exhibit 9.)

UC never provided AFSCME with notice of this RFP and did not purport to justify contracting out the work under Article 5. According to UC's opposition papers, UC's "procurement staff responsible for issuing the RFP did not believe it was required." (UC's Opposition, p. 4). Once again, UC has no defense. It was required to provide the RFP under the continuing terms of the MOU, and as a matter of statute, it was required to provide notice and an opportunity to bargain before contracting out this quintessential bargaining unit work.¹⁴ UC failed to do so and instead, acted unilaterally to contract out bargaining unit work. Complaint should issue.

6. Security Guard Services at UC Irvine

Customarily, AFSCME-represented workers have performed security services at UC Irvine, including at the medical center and on campus, in the position of Security Guard. To AFSCME's knowledge, UC has never outsourced security work at UC Irvine.

UCI did not provide AFSCME with notice of any RFP for security guard services at UC Irvine. (See Exhibit 10.) According to UC's own website, however, it opened a secret RFP for security guard services¹⁵ on August 7, 2018 and closed it August 23, 2018. AFSCME discovered reference to this RFP posted publicly online but the RFP itself was not posted. AFSCME has yet to see any description of the scope of work that UCI sought to contract out.

AFSCME later observed security guards employed by Securitas, a private vendor, were performing the work of SX unit members at UC Irvine. AFSCME submitted an RFI dated February 4, 2019 and a cease-and-desist email dated April 27, 2019. (See Exhibits 11 and 12.) UC has failed to substantively respond to either the RFI or the cease-and-desist communications.

¹³ UC has assigned this RFP number RFP 00407.

¹⁴ UC has yet to even inform AFSCME as to whether it executed a new contract pursuant to the secret RFP.

¹⁵ UC has assigned this RFP number RFP UCI-18KCS001.

AFSCME alleges based on information and belief that after failing to notice the August 2018 RFP for security services, UC awarded a contract to the vendor Securitas to perform the bargaining unit work of Security Guards.

In its opposition papers, UC does not even address its decision to contract out security guard services at the UCI medical center to Securitas. Instead, it claims (without providing the RFP) that the RFP that expressly indicates it was for “security guard services” was instead for crowd management services on campus. (UC Position Statement at p. 4-5.) To the extent that UCI contracted with Securitas without issuing any RFP, that is, of course, a unilateral change. To the extent it did so in relation to the RFP referenced online – that AFSCME has still not seen and which UC strategically omits from its opposition papers – UC was undoubtedly required to provide AFSCME with a copy of that RFP.¹⁶ Accordingly, UC should have but did not provide AFSCME with a copy of any RFP – or notice of any kind, let alone an opportunity to bargain - before contracting out security guard services at UCI medical center or other security guard services on the UCI campus.

7. UC Irvine Withheld Notice From AFSCME and Failed to Provide Even the RFP for Parking Structure Sweeping Services Before Contracting Out the Work

The work of cleaning parking garages is customarily performed by UC Custodians and other SX bargaining unit classifications, although UC Irvine has contracted out this work pursuant to time limited agreements with private vendors. That does not change the fact that the work is bargaining unit work, however. AFSCME was surprised to discover an online reference to an RFP for this work at UC Irvine as the University did not provide the Union with a copy or other notice that it intended to contract out the work for another period of time. Nonetheless, AFSCME recently discovered that UC posted the following reference to the RFP to the CalUSource website:



RFP - Parking Structure Sweeping - UCI-19KMS001

Contact : Kent Schofield | Email : kschofie@uci.edu | Start : 4/24/2019 Pacific Standard Time | End : 5/8/2019 Pacific Standard Time

The RFP documentation is not available online, however. Although UC has yet to provide a copy of the RFP, let alone the resulting contract, it appears that UC has proceeded to renew its contract for work of sweeping the UC Irvine Medical Center Parking structures to a vendor called “Site Crew Inc.,” a nationwide janitorial services company. At least one custodian has been performing this work at UC Irvine for twelve years now, always as a contract worker. After 12 years, she makes the minimum hourly wage permitted by UC policy, \$15/hour, and receives no benefits.

¹⁶ Without having had a chance to review the RFP, AFSCME cannot accept UC’s representation that the RFP was for crowd management only; if it involved security guard services of any type, UC should have provided the RFP to the Union so that the parties could discuss the matter.

8. UC Davis Withheld Notice From AFSCME and Failed to Provide Even the RFP for Catering Services Before Contracting Out the Work

SX bargaining unit members perform catering work just as they do at UCSD. Nonetheless, on or about August 12, 2019, UC Davis issued yet another RFP and yet again, withheld it from AFSCME. The RFP sought catering services, food service workers, wait staff and others to service a large donor event involving “fine dining” for an estimated 800-1000 attendees. (Exhibit 13.)

Needless to say, this is all work that AFSCME-represented workers can and do perform. In fact, AFSCME-represented workers in both Food Service and Cook titles currently provide these types of services for both UC Davis Campus and Medical Center. The UC Davis Food and Nutrition Department normally caters the events for both the Campus and Medical Center. In addition to overseeing patient nutrition, the medical center’s cafeteria, the student café, and dietician services, UC Medical Center has a Catering Department that is also accustomed to providing these services.

The Union demanded bargaining on October 21, 2019, letting the University know that the Union had learned of the RFP independently instead of receiving a copy from UC Davis as required. AFSCME insisted that the University not withhold such notice from the union or proceed to contract out bargaining unit work.

UC Davis responded, just three days later, indicating that the Campus canceled the RFP in favor of having the work performed by AFSCME members. (Exhibit 14). UC Davis’ labor relations representative was unusually quick to respond, perhaps because in this instance, UC is likely to claim “no harm, no foul.” But this incident further demonstrates how the University has converted a clear, mandatory requirement to provide AFSCME with “any RFP”, into one that it reinterprets as if it is permitted procurement personnel discretion as to whether to provide a copy or not.

III. ARGUMENT

UC has violated HEERA in at least three distinct ways including two distinct types of unilateral changes. First, UC has unilaterally implemented a new policy of issuing a variety of RFPs without providing AFSCME with a copy or any demonstration that the proposed contract would fit within one of the exceptions to the rule that unit work be performed by unit employees as set forth in the parties’ collective bargaining agreement. These mandatory protections, as required by Article 5, continue with the status quo with the parties’ now-expired MOUs: when UC decides to issue an RFP, it must provide a copy to AFSCME within ten business days and must demonstrate that the decision to contract out work complies with Article 5’s requirements.¹⁷

¹⁷ Notably, this allegation does not require any examination of the legal issues in *Regents of the University of California*, SF-CE-1093-H (pending review on exceptions), which involved disputes related to UC’s decisions to contract out work and where - rightly, wrongly, or illegally – UC did not issue any RFP. Here, UC unquestionably *did* issue RFPs, but did not provide them to the Union.

Second, as established by well-settled precedent, each decision by UC to contract out bargaining unit work without notice or an opportunity to bargain also violates HEERA and must be reversed. With the MOUs expired, UC cannot rely on any interpretation of the expired MOU language to justify its unilateral decision to contract out bargaining unit work, as any waivers of the right to bargain expired with the contract.

Finally, through its actions, UC has interfered with the rights of employees and the union.

A. UC Unilaterally Changed Policies Regarding the Issuance of Requests for Proposals And Through Outsourcing Bargaining Unit Work Without Providing AFSCME with Notice or an Opportunity to Bargain

HEERA section 3570 requires the University to meet and confer with the employees' exclusive bargaining representative on all matters within the scope of representation, and section 3571(c) makes it unlawful for the University to fail or refuse to do so. In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "*per se*" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. *Trustees of the California State University* (2009) PERB Decision No. 1876a-H, at 8 ("*Trustees*"). Unilateral changes are inherently destructive of employee rights and considered a *per se* violation of the duty to negotiate in good faith. (*Id.* at 8-9; *California State University* (1990) PERB Decision No. 799-H, at 25.)

To prevail on a unilateral change allegation, the charging party must prove that: (1) the employer took action to change policy or made a firm decision to do so; (2) the change in policy concerns a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; (4) the action had a generalized effect or continuing impact on terms and conditions of employment. (*See, e.g., Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 11 (*Pasadena Area CCD*); *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 13; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13.)

Here, UC has unilaterally changed agreed-upon terms by abandoning the commitment it made in Article 5 to provide AFSCME with a copy of "any RFP" within 10 days of issuance in favor of a new strategy of *not* providing AFSCME with numerous RFPs that initiate outsourcing contract. By not providing AFSCME with the above-described RFPs for UC Berkeley Linen Services, UC Berkeley Lettershop and Mailing Services, UC San Diego Rady School of Management Catering Services, UCLA Health services, UC Merced Security Services, UC Irvine security services, UC Irvine parking structure sweeping services, or UC Davis catering services, nor providing AFSCME with any other notice of its intent to contract out this work, UC is entirely evading its commitment to demonstrate its rationale for outsourcing the work and has committed a unilateral change of policy. Indeed, UC has changed the agreed upon mandatory requirement to provide "any RFP" involving work customarily performed by AFSCME members into a policy that is effectively discretionary, one in which UC's procurement staff has discretion to withhold RFPs as they see fit.

In addition, AFSCME, as alleged *supra*, believes that UC has entered into contracts to outsource work pursuant to each of these RFPs. In each of those instances, UC has implemented a second unilateral change: one of outsourcing bargaining unit work without providing notice or meeting and conferring with AFSCME.

1. The University Made a Clear Change of Policy by Failing and Refusing to Provide Notice to AFSCME of Multiple RFPs to Contract Out Bargaining Unit Work and in its Ultimate Unilateral Decisions to Outsource Bargaining Unit Work

Pursuant to the parties' now expired MOUs, UC is obligated to give AFSCME notice of any decision to contract out bargaining unit work by providing AFSCME with a copy of each RFP, "as soon as feasible but no later than ten (10) business days after it is issued." (See Exhibit 1, Article 5.B.4.) These requirements are explicit in each of the MOUs. Because notice – and explicitly, the provision of a copy of "any RFP" – is a mandatory, non-discretionary duty, UC's obligation continues as a matter of law after the MOUs expired.

Article 5.B.4 also requires that when UC provides AFSCME with a copy of an RFP to contract out bargaining unit work, it must also "demonstrate the appropriateness of the contract," and show that it complies with Article 5.B.1 and B.2, which prohibit UC from contracting out services solely on the basis that savings will result, and provides an enumerated list of examples where the University is permitted to contract out services.

In *at least eight* instances, UC has not provided AFSCME with a copy of any RFP as required in the parties' MOUs and has failed to demonstrate what rationale it had, if any, for outsourcing bargaining unit work. Specifically, and as described in detail *supra*, UC never provided copies of the following RFPs for bargaining unit work and/or positions:

1. UC Berkeley RSSP Summer Linen Laundry 2018 (Exhibit 2);
2. Lettershop and Mailing Services (UC Berkeley) (Exhibit 3);
3. Catering Services for Rady School of Management (UC San Diego) (Exhibit 4);
4. Temporary Staff Labor Provider/Vendor Management System (UCLA Health) (Exhibit 8);
5. UC Merced Security Guard Services for Fresno Facility (Exhibit 9);
6. UC Irvine Security Guard Services (Exhibit 10);
7. UC Irvine parking structure sweeping services;
8. UC Davis catering services (Exhibit 13)

In addition to repudiating Article 5 in favor of its new discretionary policies to allow UC to solicit bids from private vendors to perform AFSCME work in secret, UC's ultimate decision(s) to outsource swaths of work without providing AFSCME notice or an opportunity to bargain constitutes an additional unilateral change. PERB has long held that the unilateral outsourcing of bargaining unit work, like other transfers of work from unit to non-unit employees, constitutes a unilateral change in policy in and of itself. When an employer decides to replace bargaining unit employees with employees of a private entity while ensuring that there is little change in the services provided to the public, that decision is subject to bargaining.

(*Lucia Mar Unified School District* (2001) PERB Dec. 1440E (employer simply replaced its employees with those of a contractor to perform the same services under similar circumstances, thus no need to apply any further test about labor costs as decision is subject to statutory duty to bargain); *Oakland Unified School District* (2005) PERB Dec. 1770 (contracting out services that could have been performed by in-house employees subject to bargaining); *State of Cal. (Dept. of Veterans Affairs)* (2010) PERB Dec. 2110-S at p. 6 (same). In a recent contracting-out case, the PERB ALJ concluded that the loss of work opportunities for even a *single* bargaining unit member on a single shift constituted a change in policy. (*County of Santa Clara, Proposed Decision* (May 21, 2018) SF-CE-1428-M at p. 10-11.)

Any subsequent contract that UC entered into to outsource bargaining unit work pursuant to the unnoticed RFPs, then, constitutes an additional unilateral change. As described *supra*, although UC has never provided notice that it has in fact entered into contracts pursuant to any of these RFPs, AFSCME has observed contracted employees performing the duties sought in the RFPs, and alleges on information and belief that: UC Berkeley entered into a contract with First Class Linen pursuant to the Sumer Linen Laundry RFP (Exhibit 2); UCSD entered into contract(s) with Creative Catering and Brothers Signature Catering pursuant to the Catering Services RFP (Exhibit 4); UCI entered into a contract with Securitas pursuant to the UCI Security RFP (Exhibit 10); UCLA Health entered into a contract with Vizient (See Exhibit 35 to UPC SF-CE-1245H); and it appears that UC Davis entered into or renewed a contract with Site Crew Inc to clean parking garages. AFSCME also believes that UC has entered into additional contracts to outsource bargaining unit work pursuant to the other RFPs identified herein. UC's overarching decision to proceed with contracting out work where it has not provided AFSCME with notice of any kind, not even a copy of the RFP, has effectuated multiple changes on the ground, where minimum wage contract labor performs AFSCME work without any of the wages or benefits that attach to the work at issue. These unilateral decisions to contract out bargaining unit work must be reversed and the status quo restored, returning to the bargaining unit any work that was transferred out of the unit pursuant to a contract that resulted from any RFP issued in secret.

2. Contracting Out Work Is Within the Scope of Representation

Decisions to outsource bargaining unit work and related notice procedures fall well within the scope of representation. In *Lucia Mar Unified School District* (2001) PERB Dec. 1440 (“*Lucia Mar*”), PERB found that the employer’s decision to unilaterally contract out student transportation services was a negotiable subject, because the employer continued to provide transportation services but performed the work by simply substituting contract workers for its employees. Contracting out is negotiable “(1) where the employer simply replaces its employees with those of a contractor to perform the same services under similar circumstances; or (2) where the decision was motivated substantially by potential savings in labor costs.” (*State of Cal. (Dept. of Veterans Affairs)* (2010) PERB Dec. 2110-S at p. 6, citing *Lucia Mar*; *Oakland Unified School District* (2005) PERB Dec. 1770 (contracting out services that could have been performed by in-house employees subject to bargaining).)

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To the extent that a particular location may have gotten away with contracting out bargaining unit work before today, that does not – even if proven – remove the work from the bargaining unit for all time. For example, UCLA Health may have previously contracted out so-called “supplemental” work to various vendors before transferring this bargaining unit work to Vizient, but that does not excuse UCLA from the obligation to provide notice or the opportunity to bargain. Similarly, even if a contractor has swept the UC Davis garages or a vendor has laundered linens before now, that work is still of the sort performed by the bargaining unit such that the policy requiring UC to provide RFPs to the Union is part and parcel of the status quo and any action to enter into new contracts covering this work for new or longer periods of time would need to be negotiated.

First, a contract with a new vendor would inevitably involve a new term, i.e. the University is deciding to contract out bargaining unit work for a longer period into the future than had been represented by the prior vendor’s expiring contract. Second, UCLA’s actions, like UC Davis’ and UC Berkeley’s, are not protected as if they were part of the dynamic status quo. Rather, as PERB makes clear, each discrete decision whether to subcontract is discretionary and therefore triggers a specific bargaining obligation, absent a clear and unmistakable waiver. (County of Kern (2018) PERB Dec. 2615-M, pp. 6-9 [employer could not assert a past practice or dynamic status quo defense given that its changes were discretionary]; Regents, supra, PERB Dec. 1689-H, adopting proposed decision, at pp. 29-31 [same].)

Similarly, a change in in the volume of work going to a contractor is negotiable. County of Kern (2019) PERB Dec. 2659, (citing, e.g., O.G.S. Technologies Inc. (2011) 356 NLRB 642, 645 [where employer had previously subcontracted most die-cutting work, change in status quo found when employer subcontracted more.] Moreover, contrary to UC’s assertion, Eureka’s “shared work” doctrine does not apply to contracting decisions. See County of Kern, PERB Dec. 2659, fn 8, citing Beverly Hills Unified School District (1990) PERB Dec. 789 and correctly noting that the Eureka City School District (1985) PERB Dec. 481, p. 15 line of decisions does not apply to subcontracting cases.”

Here, UC has unilaterally changed the procedures for contracting out that were negotiated by the parties by rendering the requirement to provide a copy of any RFP into one that permits UC procurement staff to exercise their discretion as to whether to alert AFSCME to the existence of an RFP or not. Article 5’s requirements are clear: the University must provide AFSCME with copies of RFPs it issues within ten business days, along with a demonstration of why the contract would be appropriate. The intent behind this policy was so that AFSCME could evaluate whether UC’s decisions to outsource fell under an exception under Article 5(B)(2) and, as such, not solely on a cost-saving basis. UC cannot simply choose to abandon the agreed-upon policy in favor of a new one that defers to local decisions to cut the union out of the process. This is particularly true during the status quo period, when all waivers of the right to bargain have expired and the employer is required to provide notice and an opportunity to bargain over every decision to contract out work.

In addition, because UC has refused to comply with the requirements of Article 5 and has failed to provide copies of contracts it has entered into, AFSCME does not have access to the contracts that UC may have executed pursuant to its RFPs. As described above, however,

AFSCME’s investigation of these RFPs provides it with a good faith basis to submit that UC has entered into contracts subsequent to the above-listed RFPs, and that both *Lucia Mar*’s circumstances exist here. The University will provide its patients, students, and customers with identical services *after* any contract it enters into for outsourced labor. Furthermore, as reflected in its prior decisions to contract out work, as described in the already-pending charges¹⁸ over UC’s unilateral decisions to contract out AFSCME unit work, UC’s clear motivation is to save on labor costs. By choosing contract workers instead of filling vacancies, or assigning overtime work, the University is curtailing work opportunities for bargaining unit members and improving its bottom line.

3. UC Did Not Provide Notice or an Opportunity to Bargain

UC did not give AFSCME notice of any proposal to convert the policy requiring it to provide “any RFP” into one requiring it only to provide “those RFPs that procurement staff believe should be provided”. Nor did UC give AFSCME any opportunity to bargain over the changes to the RFP requirement. An employer must provide “reasonable” notice to make such a change, which must be “clear and unequivocal” and “clearly inform[s] the employee organization of the nature and scope of the proposed change.” (*Lost Hills Union Elementary School District* (2004) PERB Decision No. 1652, Proposed Decision at p. 6; *Santee Elementary School District* (2006) PERB Decision No. 1822 (*Santee*); *Victor Valley Union High School District* (1986) PERB Decision No. 565 (*Victor Valley*)). Here, UC did not give AFSCME notice that it would convert Article 5’s mandatory notice requirements into an aspirational policy that defers to procurement staff’s discretion as to whether to provide AFSCME with each RFP, or not. It never informed AFSCME that it would no longer provide a timely copy of an untold number of RFPs or that it would refuse to show how proposed contracts might, in UC’s view, comply with Article 5’s requirements.

UC similarly failed to provide notice or an opportunity to bargain over its actual decisions to contract out work to vendors.

4. Unilaterally Contracting Out Bargaining Unit Work in Secret Has a Generalized and Continuing Effect

Each decision to contract out bargaining unit work has a generalized effect and/or continuing impact on terms and conditions of employment. (*Lucia Mar, supra*, PERB Decision. No, 1440E, p. 26.) Indeed, PERB recognizes that transferring bargaining unit work to a contract employee has the potential to significantly erode the bargaining unit, thereby affecting its viability. (*Rialto Unified School District* (1982) PERB Dec. No. 209, p. 6-7.)

PERB recognizes that the loss of work opportunities for even a single bargaining unit member on a single shift constitutes a change in policy with a generalized and continuing impact. (*County of Santa Clara*, Proposed Decision (May 21, 2018) SF-CE-1428-M at p. 10-11 [“The installation of a deputy sheriff at VHCD (in lieu of a bargaining unit security officer) constituted

¹⁸ The allegations and exhibits in Charge Nos. SF-CE-1223-H, SF-CE-1228-H, SF-CE-1229-H are incorporated herein.

a change in policy with a generalized and continuing impact on the bargaining unit due to the loss of work opportunities there.”].) There, the ALJ also recognized that stunting the growth of a bargaining unit as the work extends to new locations has a cognizable impact on the unit as a whole:

The County’s contention that there was no diminution in the level of PSO staffing as a result of the change is without merit. The new work would normally have been assigned to the bargaining unit rather than to a contract employee. (*Rialto Unified School District* (1982) PERB Dec. No. 209, p. 6.) Such transfers have the potential to significantly erode the bargaining unit thereby affecting its viability. (*Id.* at p. 7.) Even, as here, if only one position is at stake, the union’s silence in the face of such action can lead to unilateral transfers in the future based on the waiver doctrine.

County of Santa Clara, supra, SF-CE-1428-M at p. 12. In another recent case, the PERB Board emphasized that:

Even temporary employer conduct having an immediate effect on one employee can meet this standard. (*City of Davis, supra*, at pp. 24-25.) Thus, regardless of how narrowly the District attempts to define its conduct in this case, we agree with the ALJ that the District implemented a change in policy with a generalized effect or continuing impact.

(*San Bernardino CCD* (2018) PERB Dec. No. 2556M; *see also Hacienda La Puente* (1997) PERB Dec. No. 1186, p. 3 [PERB rejected the employer’s argument that changing an employee’s shift was merely an isolated contract breach and not a change in policy having any generalized effect or continuing impact upon bargaining members’ terms and conditions of employment.]).

Indeed, even if the work could be considered “new”, or if no jobs were lost, **if the work at issue falls within the scope of work traditionally, historically done by unit members elsewhere, then it is bargaining unit work and cannot be contracted out without bargaining.** PERB has expressly adopted the private sector rule described in *Overnight Transportation Co.* As PERB stated, in *Mi Pueblo Foods*, the NLRB summarized its holding in *Overnite Transportation Co.* as follows:

In *Overnite Transportation Co.*, the [NLRB] found that an employer had an obligation to bargain over its decision to use subcontractors, rather than unit employees, to handle an influx of new work that unit employees could not handle. Noting that unit employees did not lose work as a result of the subcontracting, it held that its decision in *Torrington [Industries* (1992) 307 NLRB 809] requiring bargaining over subcontracting is not limited to situations in which it has been affirmatively shown that the employer has taken work away from current bargaining unit employees. In so finding, [*Overnite Transportation Co.*] reasoned: [¶] “. . . We think it plain that the bargaining unit work is adversely affected whenever bargaining unit work is given away to nonunit employees, regardless of

whether the work would otherwise have been performed by employees already in the unit or by new employees who would have been hired into the unit.” (Mi Pueblo Foods, supra, 360 NLRB 1097, 1099, citing Overnite Transportation Co., supra, 330 NLRB at p. 1276.)

County of Kern (2019) PERB Dec. 2659 at p.20-21.

Moreover,

[T]he generalized effect or continuing impact element of the prima facie case is satisfied when the employer’s action is based on its belief that it had a contractual or other right to take the action with negotiating with the union.

(*Oroville UHSD, supra*, PERB Dec. No. 2627, pp. 25-26 [citing *City of Montebello* (2016) PERB Decision No. 2491-M, p. 15; *County of Riverside* (2003) PERB Dec. No. 1577-M.]) In *Oroville UHSD*, the employer’s witness testified that the employer’s conduct in announcing a unilateral change “was consistent with the terms of the CBA.” (*Id.* at p. 26.) The Board found that because the employer had taken the action based on its belief that it had a contractual right to do so, it constituted an unlawful unilateral change with generalized or continuing impact on the unit. (*Id.* at 4 [citing *Moreno Valley Unified School District* (1995) PERB Dec. No. 1106].)

Here, UC chose to permit procurement staff to use their discretion as to whether or not to provide a copy of each RFP involving quintessential bargaining unit work. UC thereby converted a mandatory requirement into a discretionary one, such that UC ultimately failed to provide RFPs even where the work at issue is, of course, customarily performed by unit employees. The RFPs at issue cover catering, linen services, a wide range of patient care technical work, custodial work, and security guard services, etc, all core bargaining unit functions. By deferring to procurement staff’s discretion and withholding RFPs, UC stripped AFSCME of its right to notice and its opportunity to bargain over significant decisions to contract out bargaining unit work. UC’s failure to provide AFSCME with RFPs for contracting out the work of UC Merced Security Guards, UC Berkeley linen services, UC San Diego food service, UCLA Health work, UC Davis Catering, and UC Irvine custodial work and additional unknown bargaining unit work, causing a loss of work opportunities in the form of overtime work (as catering and other duties described here are often performed on an overtime basis) and long-delaying the hiring of an adequate staff to fill needed positions. UC’s project, in contracting out this work, is to save money on wages and benefits and in the process, deplete the power of the bargaining units by maintaining a hole in the sides. There is no question, then, that UC’s failure to comply with the notice provisions of Article 5 has a generalized effect and continuing impact on terms and conditions of employment.

In addition, any decision to use contracted workers to perform work of members of the SX and EX units, which would normally be assigned to the bargaining units, has an immediate effect on more than just one employee. (*See City of Davis, supra*, at pp. 24-25.) The unilateral transfer of work causes a loss of work opportunities and erodes the bargaining unit, both of which have a generalized impact on terms and conditions of employment. (*See County of Santa Clara, supra*, SF-CE-1428-M at p. 12.)

5. The Parties' MOU and All Purported Contractual Waivers of the Right to Bargain Have Expired

UC appears to believe that during the life of the MOU, it had a “management right” to use its discretion to contract out work, and that it should be afforded similar discretion to do so after the MOU expired. While during the term of the agreement, Article 5 may be read to have permitted UC to act over certain decisions to contract out work, once the MOUs expired, so did all waivers of the right to bargain. Therefore, UC cannot rely on any argument that the now-expired MOU somehow permitted it to unilaterally contract out the work of the SX and EX bargaining units. In *Regents of the University of California* (2004) PERB Decision No. 1689-H, at 24-26 (“*UC-AFT*”), the Board recognized that waivers of the right to bargain or a contractual reservation of management rights expire with the end of the collective bargaining agreement. (*Id.*, citing with approval *Blue Circle Cement Company* (1995) 319 NLRB 954.) UC is not free, during the hiatus between MOUs, to rely on purported contractual waivers of the right to bargain to implement changes unilaterally or to contract out work while refusing to bargain. (*See, e.g., Trustees of the California State University* (1997) PERB Decision No. 1231-H at 13; *Regents of the University of California* (2004) PERB Decision No. 1689-H, (“*UC-AFT*”) at 24-26.)

Nor is there any reason to think that UC’s history of *abusing* the expired MOU language should now permit it to outsource work to “supplement” bargaining unit employees by creating a contingent workforce of so-called “temporary” employees. AFSCME has *never* agreed to the creation of a contingent workforce of second-class contract employees. In *Regents of the University of California* (2019) Charge No. SF-CE-1093-H, the ALJ did not accept UC’s assertion that the (since expired) MOU should be read to permit the use of contract labor as a “supplemental workforce” to perform regular, routine work, including regular fluctuations in patient census. Rather, in his view, a “supplemental workforce” could only be used to “respond to the ramp-up and stabilization phase” at a new facility and thereafter, the contract workers would need to be “in-sourced” (i.e. converted to UC employment.).

B. The University’s Decisions to Contract Out Bargaining Unit Work To Private Sector Vendors Unlawfully Interferes With Rights of Employees and Their Union Under HEERA

AFSCME has spent years fighting to improve minimum labor standards at UC, to lift wages for the lowest paid University employees, to compel UC to provide career opportunities, job security, family healthcare benefits, and a secure retirement. UC’s decisions to contract out work seek an end-run around the hard-won terms and conditions of employment negotiated by AFSCME and UC over decades as contract workers generally lack union representation and work for significantly lower wages, without paid vacation time, family health care or any pension. Bypassing the Union to contract out AFSCME’s work threatens all of these standards and fundamentally interferes with employees’ rights as well as the rights of the Union itself.

HEERA section 3571, subdivision (a) makes it unlawful for a higher education employer to “[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by [HEERA].” Additionally, HEERA section

3571, subdivision (b), makes it unlawful for a higher education employer to deny organizational rights guaranteed by HEERA. Unilateral changes by the employer during status quo periods interfere with the exclusive representative's right to represent its members, and interfere with the right of bargaining unit members to be represented. In *UC-AFT, supra*, PERB Decision No. 1689-H, at 24-26, PERB held that UC's unilateral changes to healthcare benefits during the status quo period interfered with UC-AFT's right to represent its members, in violation of section 3571(b) and interfered with the right of the bargaining unit to be represented by UC-AFT, in violation of section 3571(a).

As established above, the University has made unilateral changes during the status quo period by unlawfully failing to provide notice of its intent to contract out bargaining unit work, and by unilaterally contracting out work. These unlawful decisions interfere with employees' rights to be represented by the Union and AFSCME's rights to represent its members.

VI. CONCLUSION AND REMEDIES REQUESTED

UC has unilaterally reinterpreted agreement that commits UC to provide AFSCME with a copy of each RFP involving bargaining unit work within 10 days of issuance into an aspirational goal that permits procurement staff discretion to not send RFPs to the Union. At the same time, UC is poised to execute a series of contracts with vendors—if it has not already—to remove bargaining unit work without having provided any notice or opportunity to bargain. Because these are clear unfair practices, AFSCME seeks an order requiring that UC and its representatives cease and desist from:

1. failing and refusing to provide AFSCME with RFPs it issues or a demonstration of how the University purports to justify its proposal to contract out bargaining unit work, within ten days of issuance;
2. contracting out work customarily performed by the SX or EX bargaining units without providing AFSCME with notice or an opportunity to bargain;
3. refusing to bargain over contracting out of bargaining unit work.

The remedy should also include the following affirmative orders:

4. to rescind any RFPs not provided to the Union as well as any resulting contracts entered into without notice or negotiation with AFSCME;
5. to restore the status quo by making the affected bargaining unit members whole with the value of all lost work opportunities;
6. to immediately restore the work to the appropriate bargaining unit and insource the workers who have performed that work while wrongly denied the contractual wages, benefits, rights and privileges of union representation; all workers wrongly denied these negotiated terms must be provided the differential between contractual wages and benefits and those actually paid by vendors, and each must

be afforded credit towards career status for all hours worked at any University location.

7. restore the status quo by compensating the Union for its time and expenses in pursuing the instant UPC, including attorneys' fees and costs, and for lost dues for all periods of time that non-unit personnel performed work that should have been performed by AFSCME-represented employees;
8. include interest, at the statutory rate, on each component of the monetary remedy; and
9. such other relief as PERB deems just and proper.

EXHIBIT 13



SUPPLY CHAIN MANAGEMENT
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616
Tel (530) 752-0370
Fax (530) 757-8720

RFx# UCD-001419-KG
FINE CUISINE CATERING SERVICES

ABOUT UC DAVIS

Opened in 1908, UC Davis is the most academically comprehensive university on the West Coast. We're known for working across our many disciplines to solve the world's most pressing problems in multiple academic areas, and for our commitment to artistic and cultural expression. UC Davis was collaborative from its start, with faculty across multiple disciplines addressing agricultural issues of concern to California, the nation and the world. The university has since built upon its pragmatic, interdisciplinary heritage to be a leader in academic fields from art to medicine, and is now ranked as one of the Top 50 universities in the world by multiple independent reports. The university is not only the country's preeminent agricultural campus, but also the world's top school for veterinary medicine, and in the nation's Top 10 for primary medical care education. Today, one in every 230 Californians is a UC Davis graduate.

UC Davis is located in the heart of the Central Valley, close to the state capital and the San Francisco Bay Area. Its location adjacent to Davis, one of the nation's few remaining "college towns," fosters intellectual development, healthy living and community engagement. UC Davis also has unique institutional relationships with locations such as the California wine country, where many alumni are employed; Lake Tahoe, where UC Davis is the primary source of information on the health of the lake and its surrounding basin; and Bodega Bay, where UC Davis researchers work to understand and protect coastal and marine environments.

UC Davis receives more than \$200 million in philanthropic support from approximately 35,000 donors each year. Philanthropic support provides critical funding to help UC Davis fulfill its mission and to help it remain affordable to students. Recent philanthropic funding has provided valuable scholarship and fellowship support to students, is furthering research in farming and water resources that will advance both California and the world, is helping develop teaching and research in energy efficiency, and has helped establish foundational funding for an art museum and concert hall, among many other examples.

PURPOSE OF RFx

In fiscal year 2017, UC Davis entered into the quiet phase of its second comprehensive campaign, with a working goal of raising \$2 billion over the eight-year campaign. As of June 5, 2019 approximately \$841 million has been raised toward this goal. We intend to host a large event to publically launch the campaign and seek a catering company to serve our guests. The event is scheduled for October 10, 2020. The event location will be at the UC Davis Quad, located between the Campus Memorial Union and the Shields Library.

PROJECT GOALS

The office of Development and Alumni Relations seeks a “fine cuisine” caterer to create an inspired evening with exceptional food and beverage offerings. Required services shall include local or on-site production, delivery to the location, and exceptional food and beverage service on Saturday, October 10, 2020; all in accordance with the requirements defined below and elsewhere in this RFx. Total service is estimated at 800-1000 meals.

SCOPE OF WORK AND KEY DELIVERABLES

The following provides an outline of the anticipated scope of work and key deliverables. However, given the nature of this event, the scope may be modified as the event approaches.

Scope of Services/Specifications

All meals must adhere to the following requirements:

Service Requirements

- a) Meal service will include appetizers (passed and stationary) and dinner service to include dessert.
- b) All meals are served by wait-staff
- c) Supplier shall provide all appropriate items for meal service, including but not limited to, adequate server(s), chafers, coffee urns, and all necessary items for dining including but not limited to, plates, utensils, napkins, cups, etc.
- d) Supplier shall provide trash can(s) and bags for meal.
- e) Supplier shall provide on-site kitchen facilities and equipment needed to prepare and serve.
- f) Supplier is required to provide food options as described below for program participants with dietary restrictions. Supplier will be informed of program participants with known dietary restrictions before the event. Dietary restrictions may include but are not limited to vegetarian, vegan, gluten-free, peanut-free, any stated allergy or restriction, and also religious observances.
- g) All work performed shall be first-class in every respect and shall conform to the highest standards of the industry. Cleanliness is paramount and is the responsibility of the Supplier.

Meal and Menu Requirements

- a) Supplier must create an inspired menu with locally sourced food and ingredients (even from UC Davis campus farms).
- b) All food production and shipping must meet all applicable federal, state, and local food safety and sanitation regulations. Supplier must have a County Health Permit.
- c) Proper temperature is required for all food that is natural or synthetic that is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the growth and toxin production of *Clostridium botulinum*. Potentially hazardous food includes, but is not limited to, animal products that are raw or heat-treated, shell eggs, foods of plant origin that are heat-treated or consist of raw seed sprouts, cut melons, and/or garlic-in-oil mixtures that are modified in a way that supports growth as specified in this definition.
- d) All hot foods must be maintained as per food safety requirements. All refrigerated or frozen products must be delivered under proper temperatures. All products must arrive in a proper refrigerated or frozen state.

- e) Beverage service will include wine, beer and perhaps a signature cocktail. In addition nonalcoholic beverages will be served including coffee, tea, water, etc.
- f) All meals shall be delivered, prepared and served on-site at UC Davis
- g) Supplier will be required to setup a commercial kitchen with all equipment needed to prepare and serve UC Davis guests.
- h) Supplier's vehicles used to deliver products shall be enclosed, clean, and in good repair. The proper temperatures must be maintained for the products.
- i) There will be no charge incurred by the University for product that has been lost due to the Supplier's equipment failure.
- j) The Supplier shall not assign, transfer, or subcontract any portion of the contract without the express written consent from the University.

QUALIFICATIONS

Bidders must:

- Provide examples of recent events they have completed for large fine dining events. Provide a minimum of two case studies including menu, logistics, etc.
- Have experience with large-scale events—serving up to 1000 guests.
- Provide examples that demonstrate a best in class approach. We are looking for bidders to take a best in class approach and be a valuable partner to UC Davis through all phases of this project

PROPOSAL FORMAT (Maximum length: 30 pages)

Executive Summary

Bidders should briefly summarize relevant experience and expertise as it relates to large scale events.

Company Profile

Bidders should provide relevant information about their organization, including an organizational chart, the company's business model (breadth and depth of services offered, even if outside the scope of this RFX), the number of staff, and an overview (sufficiently detailed to be evaluated) of experience in largescale events. Please include the company's mission statement or corporate vision/values statement.

Assumptions

Please state any assumptions that your company has made that may significantly affect this proposal. These assumptions may relate to anything that is not specifically mentioned. For example, any assumptions related to the timing of implementation, involvement of UC Davis personnel, or technological issues that were not specifically mentioned in the RFX document should be listed.

Project Approach and Detailed Project Plan

Please describe your company's approach and explain the methodology to this project based on the information provided in the RFX. Bidders must provide a detailed project plan including work breakdown by major milestones and tasks as well as timing and the expected involvement of the consultant and university team members.

Case Studies

Bidders should include at least two case studies (sufficiently detailed as to be evaluated) highlighting previous relevant experience. Case studies should include menus, logistics, set up, transportation, service and other outcomes delivered.

Proposed Team

Please provide an overview (sufficiently detailed to be evaluated) of proposed team member(s), including their experience with similar events. University reserves the right to make any changes to the contract should the caterer change the event team structure once the contract has been signed. The proposed team must be available for the event from concept to tasting to execution of event. The strength and experience of the event team is considered a critical element of the project. Include information on any subcontractor/partner relationships that will be part of the approach to the project.

Professional Fees

Please provide a budget and overall cost for the event. Food, beverage, taxes, service fees, staff and labor and gratuity may not exceed \$81 pp. In addition, please include any rentals, optional or expected costs to be incurred during the event as a separate line item.

References and Qualifications

Please provide the names and contact information of three references with whom you have worked on similar events and who are willing to provide a reference for your company and/or team members.

Contract Term: It is anticipated that the initial term of any contract awarded pursuant to this RFX will be for a period of 1 event.

Validity Period: "Validity Period" as used in this provision, means the number of calendar days available to UC for awarding a contract. All proposals will remain available for UC acceptance for a minimum of 120 days following the RFX closing date.

Bid & Award Timeline: Suppliers interested in bidding, should reference the following schedule. A supplier may be disqualified for failing to adhere to the performance dates and times specified below:

Electronic Request for Proposal Issued:	August 12, 2019 5PM PT
Deadline for Submission of Questions:	August 26, 2019 5PM PT
Questions Consolidated and Answered:	August 30, 2019 5PM PT
Deadline for Submission of Electronic Bid:	September 16, 2019 7 PM PT
Finalist Presentations:	To be Scheduled the week of Sept. 30 th , 2019
Award:	Estimated Early October 2019
Event:	October 10, 2020

Instructions for Submitting Proposals: Proposals must follow the process specified in SUPPLIER BIDDING GUIDE and within this RFX with further detail provided below. Bids must be signed by a company officer authorized to enter into agreements on behalf of the Bidder. The submission of a signed proposal will confirm understanding and acceptance of all requirements, terms and conditions

of the RFX unless specific exceptions are taken and alternative language or provisions are offered and approved by the University. Bidders should proceed as follows.

1. Read and accept/acknowledge/complete and upload, as instructed within the Prerequisite section of the CalUSource Bid, or as included on the below documents:
 - a. Required Supplier Information (Download and read)
 - b. Supplier Bidding Guide (Download and read)
 - c. UC Terms and Conditions (Download, read and acknowledge)
2. Read RFX –Description. Determine your ability and willingness to comply with ALL requirements.
3. Declare your Intent to Bid within the system
4. Attach/upload the Bidder Certification Form with your proposal.

Resources for Help –CalUSource System: Bidder is strongly encouraged to complete and submit its Proposal at least 24 hours prior to the deadline to allow for technical difficulties. Any extensions of time, will be at the sole discretion of UC Davis. If a supplier is experiencing issues with the CalUSource System, they may acquire assistance by emailing support@gep.com

Questions Received Prior to the Deadline for Receipt of Proposals: All questions must be directed in writing using the CalUSource system to University RFX Administrator, Kay Gallinger as per the instructions, last day to enter questions is August 26, 5pm PT. Any written responses conveying material information shall be provided to all recipients of the original solicitation and those answers will be posted to the CalUSource system. Bidders who seek or receive information regarding this solicitation from any University official other than that listed below, may be declared non-responsive and removed from further consideration for award. Bidders' questions and any University answers will become public records.

UNIVERSITY RIGHT TO ACCEPT OR REJECT QUOTES OR WAIVE AMBIGUITIES

The University reserves the right to negotiate each and every aspect of any proposal received in response to this RFX. In addition, the University may require additional cost and pricing data or documentation prior to award of any Contract in whole or in part which may result from this RFX. It also reserves the right to negotiate with the apparent Successful Bidder(s) (i.e., lowest cost) all terms and conditions of a final Contract whether or not such terms and conditions are specified by this RFX. Such terms and conditions may include the proposed financial structure, quality standards, delivery, invoicing/billing administration and other administrative business issues. The University reserves the right to negotiate any elements of cost before awarding a Contract in response to this RFX. If the University and the apparent Successful Bidder(s) are unable to reach an agreement, the University may go to the bidder with the next lowest cost, but is not required to do so.

All proposals shall be rejected when, in the opinion of University, an award would not be in the best interest of University. Any proposal which, in the opinion of University, is determined to be non-responsive or is made by a Bidder who is non-responsive shall be rejected. University reserves, at its sole discretion, the right to accept or reject any proposal, in whole or in part, without comment; providing, no Bidders have been notified of University's intent to negotiate for the purpose of establishing an agreement; or, no award has been made.

University reserves the right to waive any irregularity in any offer providing such waiver does not afford an unfair advantage to one bidder over the others or providing the waiver of such irregularity does not materially alter the results of the standings. University reserves the right to award all, part, or none of the goods or services when, in University's sole opinion, it is in its best interest to do so.

EXHIBIT 14

From: Julia M Johnson <jmjohnson@UCDAVIS.EDU>
Subject: RE: Demand to Bargain: UCD Catering RFP
Date: October 24, 2019 at 9:13:18 AM PDT
To: Zachary Freels <zfreels@afscme3299.org>
Cc: Claudia Preparata <cpreparata@afscme3299.org>, Seth Patel <spatel@afscme3299.org>, Stephen Green <smgreen@ucdavis.edu>

Hi Zach,

Thank you for bringing this to our attention. Attached please find the RFP that was released 8/12/19. The Department decided to utilize campus resources to support this event and therefore the RFP was cancelled before any award was made. As such, there was no resulting contract or correspondence with a successful vendor.

Best,

Julia

Julia Johnson, J.D.

Employee & Labor Relations Manager

UCD Campus

jmjohnson@ucdavis.edu

O: (530) 752-1951

UCDAVIS
Human Resources



From: Zachary Freels <zfreels@afscme3299.org>
Sent: Monday, October 21, 2019 1:59 PM
To: Stephen Green <smgreen@ucdavis.edu>; Julia M Johnson <jmjohnson@UCDAVIS.EDU>
Cc: Claudia Preparata <cpreparata@afscme3299.org>; Seth Patel <spatel@afscme3299.org>
Subject: Demand to Bargain: UCD Catering RFP

AFSCME has recently become independently aware that UC Davis published on August 12, 2019, a request for a bid [“RFx# UCD-001419-KG, Fine Cuisine Catering Services] seeking catering services customarily performed by AFSCME-represented bargaining unit work. The Union has not been notified directly by any University representative.

UC has a statutory obligation to bargain over each and every decision to contract out bargaining unit work. All waivers of the Union’s right to bargain expired with the contract, including the limited “exceptions” or “justifications” for contracting out after proper notice and other procedures specified in Article 5.

The University should not proceed with assigning any bargaining unit work — i.e. work comprised of duties customarily assigned to the bargaining unit — to a contractor by executing any contract, “order, “purchase order,” “change order” or any other contractual instrument without meeting and conferring with AFSCME.

In order to engage in meaningful negotiations, we insist that you restore the status quo and provide information including a copy of the RFP, the resulting contract, and all correspondence with the successful vendor.

--

Zach Freels

Lead Organizer

AFSCME 3299

(415) 580-1683

zfreels@afscme3299.org