



**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. _____ 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

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

a. Full name: Regents of the University of California

b. Mailing address: Office of the General Counsel, 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: Allison Woodall, Deputy General Counsel, E-mail Address: allison.woodall@ucop.edu
Telephone number: (510) 987-0412 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.*)

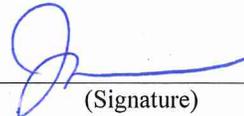
See Attachment

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: jlum@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.)
Allison Woodall, Attorney
Office of the General Counsel
UC 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)

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. INTRODUCTION

Charging Party, American Federation of State, County, and Municipal Employees, Local 3299 (“AFSCME” or “the Union”) brings this charge against Respondent Regents of the University of California (“UC” or “the University”) for refusing to bargain, in violation of Government Code § 3571(a), (b) and (c). UC is systematically refusing to bargain over three separate decisions to issue new contracts with private vendors to contract out work performed by classifications in the Service (“SX”) bargaining unit. In certain cases, the University has gone forward and awarded contracts to vendors despite AFSCME’s objections or without providing notice to AFSCME of its intent to proceed with contracting out the work.

PERB should compel the University to cease and desist from proceeding with a plan to contract out bargaining unit work, restore the status quo, and if the University proceeds over the union’s objection, to rescind the offending contracts and make the bargaining unit and all affected employees whole.

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. The most recent collective bargaining agreements between UC and AFSCME covering the SX unit expired on June 30, 2017. Any contractual waivers of the right to bargain over contracting out bargaining unit work expired with each of those MOUs.

B. Fire Mitigation – UC Berkeley

AFSCME-represented Tree Trimmers (also called Arborists) in the SX unit maintain campus trees at UC Berkeley. Over time, the number of represented Tree Trimmers has shrunk, as Tree Trimmers have left and UC Berkeley refuses or otherwise fails to fill the open positions. In 2001, UC Berkeley employed four full-time tree trimmers. In the mid-2000’s, one tree trimmer left, and UC Berkeley did not fill the position. Around 2011, another tree trimmer retired, and UC Berkeley also left that position vacant. And, around 2013, a third tree trimmer retired and the fourth one left, and once again, UC Berkeley left the two positions vacant.

Slowly but methodically, UC has shrunk the tree trimming department and outsourced the work. At present, UC Berkeley budgets for only one position to service the Campus as a directly employed Tree Trimmer, but since at least January of 2018, it has left that position vacant as well. The work has not disappeared. Instead of staffing positions for UC employees in bargaining unit positions, UC instead contracts out the work to private vendors.

On January 6, 2019, a large eucalyptus tree fell at UC Berkeley, resulting in a fatality. Shortly after that tragedy, on February 5, 2019, AFSCME observed a contractor performing tree

trimming on UC Berkeley's campus. The Union sent an RFI requesting information on Arbor Tree Products dba Expert Tree Service. (Exhibit 1.) Arbor Tree Products had previously performed a limited amount of tree removal and fire mitigation work. The RFI requested any contracts that the University had entered into with Arbor Tree Products, as well as any correspondence or other documentation related to Arbor Tree Products. (*Id.*)

In early 2019, AFSCME raised the dwindling number of tree-trimmer positions and the vacant Tree Trimmer position in a meeting with Labor Relations. The Union asked when the position would be filled. UC stated that it did not have the money to hire into the position. At the same time, however, UC informed the press that it had been trying to fill one vacant arborist (Tree Trimmer) position for one year, and attributed the difficulty in filling this position with a perceived "need" to use outside contractors. (Exhibit 2, *Berkeleyside Article.*)

On March 26, 2019, UC emailed AFSCME and stated that it was still gathering information in response to the RFI, but that it expected to provide a partial response within two weeks. It failed to do so. On June 12, 2019, UC stated it was still working on the request and would provide a substantive response by the end of the following week. (Exhibit 3.) The Union again heard nothing, and on June 27, 2019, the Union followed up regarding the status of the RFI. (*Id.*) UC did not respond.

On August 13, 2019, UC provided the Union with an RFP for fire fuel mitigation work in the Berkeley Hills Campus. (Exhibit 4.) Specifically, UC sought to contract out work to remove vegetation from trees along Centennial Drive to reduce the severity of a possible fire. (*Id.*) According to the RFP, UC scheduled bidder interviews between October 1, 2019 to October 4, 2019, and planned to award the contract on October 18, 2019.

On October 3, 2019, well before the Campus anticipating making any commitments to any potential vendor, the Union sent a demand to bargain over the outsourcing of tree trimming work. (Exhibit 5.) The University responded on October 7, 2019, stating that UC had fulfilled its obligation of providing a copy of the RFP, but refused to bargain, asserting that the demand had come too late. The University's response implies that if AFSCME had demanded to bargain immediately after receiving the RFP, the University would have complied with the request. However, in cases where AFSCME has immediately demanded to bargain over an RFP provided to it by the University, the University has flatly refused.

Moreover, AFSCME's demand was timely. According to the RFP's timeline, at the time it demanded to bargain over the decision, the University was still in the interview phase and had not yet decided on a vendor to award the contract to. Nonetheless, it refused to bargain with the Union. AFSCME is unaware if the University has awarded a contract pursuant to this RFP.

C. UCSF - Landscaping

SX-represented Gardeners perform landscaping services at UCSF. At present, UCSF employs nine full-time Gardeners represented by AFSCME who perform services at the Mission Bay and Mount Sutro campuses.

On February 26, 2019, the Union received a “courtesy notice” that UCSF Facilities Services Division of Campus Life Services had published a RFP for Landscaping Services. (Exhibit 6.) In that letter, the University claimed that it wished to outsource landscaping services to “augment its small staff at Mission Bay and Mt. Sutro.” In addition, UC provided a variety of justifications for the outsourcing of this work that all relate to cost considerations: specifically, to reduce potential liability by having the work be performed by outside contractors instead of by its own employees and to “avoid the costs associated with allocating scarce space” for storage, vehicles, landscaping equipment, and supervisors. UC’s “courtesy notice” *did not include a copy of the actual RFP itself* as Article 5 of the parties’ now-expired MOU requires, see Exhibit 14, but instead included generic template documents. Therefore, AFSCME does not know the details or scope of the work that UC intends to contract out.

On April 18, 2019, the Union demanded to bargain over the decision to outsource UCSF landscaping work. (Exhibit 7.) On April 21, the University stated that it disagreed with AFSCME’s position that it is required to meet and confer over any decision to renew the Landscaping Services contract. (Exhibit 8.) It offered to meet only to “clarify its position,” but not to actually bargain the decision.

On April 26, 2019, the Union sent the University an RFI requesting information on UC’s intent to outsource the work. (Exhibit 9.) While UC acknowledged receipt of the RFI, it has not provided a substantive response.

On or about October 22, 2019, AFSCME spoke with its members and learned that UCSF had selected Brightview Landscape Services, Inc. to supplement the work of Gardeners in the SX Unit. Brightview contract workers work side-by-side with AFSCME members on a variety of projects at the Parnassus and Mission Bay Campuses. Despite AFSCME’s RFI and demand to bargain, UC has failed and refused to respond, and unlawfully entered into this new contract without notice or negotiation.

D. Cal Dining Concessions and Catering

SX-represented Cooks and Food Service workers perform cooking, cleaning, serving, and other related tasks and workers in these positions staff the UC Berkeley’s dining halls, concession stands and catering events. Custodians and Storekeepers at UC Berkeley provide pre-event set up and cleaning, post-event breakdown and clean up, dish room duties, garbage removal, product receiving and stocking, product distributions to the service area, and other duties. These workers perform their duties throughout UC Berkeley’s campus.

On February 15, 2019, the University provided an RFP to the Union in which it seeks a vendor for Cal Dining Concessions and Catering. (Exhibit 10.) The RFP sought “well trained, experienced, and customer service focused business partner(s) who can provide temporary staffing for Cal Dining Concessions and Catering operations on or around the UC Berkeley campus.” The positions sought included cooks, banquet chefs, utility staff, and custodial/storekeepers, who would perform many of the duties performed by SX-represented workers, including pre-event set up and cleaning, post-event breakdown and clean up, dish room duties, garbage removal, and product stocking. This work would be utilized as event support for

weddings, new student welcome events, graduation events, conference guests and client meetings on-cites, concessions during athletic competitions, and catered UC department events.

The RFP indicated that the contract would be for a period of three years with an option to renew for three additional one-year periods. It estimated that in fiscal year 2018-2019, UC Berkeley spent approximately \$950,000 on these types of services. (Exhibit 10.) This reflects a massive increase in size from a prior 2016 RFP for similar services. In the 2016 RFP, UC estimated that the approximate spend value for 2015-2016 had been \$400,000. (Exhibit 11, p. 7.) This difference in spending over a three-year period demonstrates the University's ever expanding use of contract labor to perform bargaining unit work.

Four days after receiving the RFP, on February 19, 2019, the Union demanded to bargain over the it. (Exhibit 12.) On February 27, the University responded, stating it was reviewing the matter and would be in touch to set up a meeting. (Exhibit 13.) Since that communication, however, UC has failed and refused to respond to AFSCME's demand to bargain.

The week of October 13, 2019, AFSCME spotted First Choice contractors at Haas Pavilion Athletics. On October 19, 2019, AFSCME again observed First Choice contractors providing custodial services, this time for UC Berkeley's Homecoming activities at Memorial Stadium. AFSCME also observed contractors operating concessions at Memorial Stadium during Homecoming, who were hired through a "gig" contract labor app called Pared.com.

On October 23, 2019, the Union submitted an RFI regarding the RFP and any contract(s) awarded pursuant to the RFP. (Exhibit 15.) The University has not yet responded to that request.

AFSCME has reiterated its demand to bargain and explicitly objected to UC Berkeley's increased use of contract labor in concessions. Over the union's objections, AFSCME believes that the University has proceeded to contract out the work described in the blatantly inadequate "notice."

In addition to going through the RFP process, AFSCME has learned that the Campus has also begun using "gig" contract labor in the Dining Department. The Dining Department's Food Service work has increased in volume considerably during recent years, as food options have expanded. Instead of hiring a full complement of employees into bargaining unit positions, UC Berkeley has hired gig workers through Pared.com, avoiding competitive bidding, notice and bargaining altogether. During quarterly meetings with labor relations, AFSCME has assisted the University in filling several new open positions. Nonetheless, UC continues to use the app service to provide the Dining Department with less expensive food service labor.

III. ARGUMENT

HEERA, at Government Code Section 3571(c) makes it unlawful for the University to refuse or fail to meet and confer with the Union on all matters within the scope of representation and to implement changes to terms and conditions of employment unilaterally. Section 3571(a) and (b) furthermore makes it unlawful for the University to interfere with or discriminate against employees or unions exercising rights under HEERA. By failing to meet and confer with the

Union on matters within the scope of representation and by interfering with employee rights under HEERA, the University has violated these provisions of state law.

UC is unlawfully failing and refusing to provide AFSCME with an opportunity to bargain when it seeks to outsource bargaining unit work as required by law and by contract. Article 5 of the parties' expired MOU explicitly requires UC to provide a copy of "any RFP", to provide information regarding its plans and to ensure compliance with the substantive prohibition on contracting out to save money on wages and benefits and to further ensure that a proposed contract would fit within one of the narrow exceptions to the general rule that bargaining unit must be performed by unit employees. These exceptions are available to the University during the life of the MOU but as limited waivers of the right to bargain, they expired along with the contract, such that during this status quo period between MOUs, UC is obligated to provide the opportunity to bargain over each and every distinct decision to contract out bargaining unit work.¹

To the extent that UC has actually awarded any contracts to these vendors pursuant to the RFP, UC has unilaterally changed Article 5 by unlawfully entering contracts that do not comply with any Article 5(B)(2) exception and/or are solely to save money on labor costs.

UC has also failed and refused to provide AFSCME with information relevant and necessary to representing its members. Finally, UC has interfered with the rights of employees and the union.

IV. UC HAS UNLAWFULLY REFUSED TO BARGAIN WITH THE UNION

A. UC Is Required To Meet And Confer Regarding Each Decision To Contract Out Bargaining Unit Work

HEERA Section 3571(c) requires higher education employers to meet and confer in good faith with employee organizations about matters "regarding wages, hours, and other terms and conditions of employment." The duty to bargain collectively requires the employer to maintain the status quo without taking unilateral action as to wages, working conditions, or benefits until negotiations reach an impasse. (*San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813, 818-19 [citing *Producers Dairy Delivery v. Western Conference* (9th Cir. 1981) 654 F.2d 625, 627; *Peerless Roofing Co., Ltd. v. NLRB* (9th Cir. 1981) 641 F.2d 734, 736; *Clear Pine Mouldings, Inc. v. NLRB* (9th Cir. 1980) 632 F.2d 721, 729; *NLRB v. Sky Wolf Sales*

¹ AFSCME has filed additional charges related to UC's unilateral contracting out of bargaining unit work. See, e.g., SF-CE-1223H (refusal to bargain over its decision to contract out work in UC's joint venture with Kindred Hospital); SF-CE-1228H (unlawful contracting out via Aya Healthcare); SF-CE-1229H (refusal to bargain over systemwide contract to outsource SX unit work); SF-CE-1238H (unilateral change of policy by failing to provide AFSCME with RFPs to outsource bargaining unit work); SF-CE-1241H (failure to bargain over outsourcing of custodial work at UCSD); SF-CE-1245H (unilateral change with respect to renewals of contracts over ten years old without engaging in competitive bidding); SF-CE-1251H (failure to bargain over contracting out of linen services at UCI Medical Center).

(9th Cir. 1972) 470 F.2d 827, 980]; *County of Alameda* (2006) PERB Dec. No. 1824-M [citing *San Joaquin, supra*, at 819].)

B. 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 purported "management right" to use its discretion to contract out work for any of the reasons specified in Article 5, and it now argues that it should be afforded similar discretion to do so after the MOU expired. As a matter of law, however, any and all contractual waivers of the right to bargain expired with the parties SX MOU. 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.)

C. The University's Refusal Unlawfully Interferes with The Exercise of Employee Rights 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.

A prima facie case of interference is established by allegations that an employer's conduct tends to or does result in some harm to employee rights. (*Jurupa Unified School District* (2012) PERB Decision No. 2283, p. 7, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*).) If the harm to protected rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, pp. 13-14.) However, if the harm to employee rights outweighs the asserted business justification, a violation will be found. (*Id.*) Where the employer's conduct is inherently destructive of protected rights, it will be excused only on proof that it was caused by circumstances beyond the employer's control and that no alternative course of action was available. (*County of Santa Clara* (2018) PERB Decision No. 2613-M citing *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, pp. 36-37.)

An employer's failure and refusal to bargain over contracting out and to instead proceed with its plans unilaterally interfere with workers' rights to be represented and deny the exclusive representative the right to represent employees performing bargaining unit work for the employer's benefit. PERB has held that unilaterally reassigning job duties to workers outside the bargaining unit constitutes interference with employees' rights to be represented. In *Regents of the University of California (CNA)* (1998) PERB Decision No. 1255-H, the University unilaterally reassigned certain duties of UCLA registered nurses in the cardiac catheterization lab to cardiovascular technicians. PERB held that UC's conduct interfered with the RN's rights to have CNA represent them in their employment relations with their employer, a violation of section 3571(a). (*Id.*, Proposed Dec. at p. 41.)

Moreover, 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).

Here, the University has failed and refused to bargain over its decisions to contract out work. UC's insistence on proceeding, without negotiation, let alone agreement, will be reflected in a series of unilateral changes – specific decisions to contract out the work of specified positions. The University's continuous refusal to bargain and each unilateral action taken by the University to assign unit work to non-unit contract labor fundamentally interferes with employee rights in violation of HEERA Section 3571(a), and further violates AFSCME's rights to represent the SX bargaining units. in violation of section 3571(b).

V. WHERE THE UNIVERSITY HAS CONTRACTED OUT THE WORK AT ISSUE EITHER WITHOUT NOTICE TO AFSCME OR OVER AFSCME'S OBJECTION, IT HAS COMMITTED A UNILATERAL CHANGE

Because UC has not provided information responsive to the Union's RFIs (Exhibits 1, 3, 9) or agreed to bargain over any of its decisions to contract out work, the Union does not know whether UC has in fact awarded contracts pursuant to any of the above-identified RFPs. To the extent that UC has executed contracts without bargaining - and over AFSCME's objection - it has committed an unlawful unilateral change that will allow it to issue purchase orders for specific types of work to be performed under the contracts. Each discretionary decision to contract out work – whether through an over-arching contract or individual purchase orders – constituted unlawful unilateral changes.

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.)

PERB has long held that contracting work out, like other transfers of work from unit to non-unit employees constitutes a unilateral change in policy. 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).

Each distinct decision to contract out work – or to alter or expand the scope of an agreement for the subcontracting of bargaining unit work – requires that the employer provide notice and an opportunity to bargain: “each discrete decision whether to subcontract at a new facility is discretionary and therefore triggers a specific bargaining obligation, absent a clear and unmistakable waiver.” (*County of Kern* (2019) PERB Decision No. 2659-M, judicial appeal pending, citing *County of Kern* (2018) PERB Decision No. 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 Decision No. 1689-H, adopting proposed decision, at pp. 29-31 [same].)

The SX MOU contained language governing decisions to contract out work that provided the University with some amount of discretion to act within limited parameters while also providing for procedural and substantive protections. These mandatory protections, as provided in Article 5, continue with the status quo with the parties’ now-expired MOUs: when UC decides to issue an RFP, for example, it is required to provide a copy to AFSCME within ten business days, along with a demonstration that the decision to contract out work complies with Article 5’s requirements. However, with the MOUs now expired, all waivers of the right to bargain have expired, and UC cannot rely on any interpretation of the expired MOU language to justify its discretionary decision to unilaterally contract out bargaining unit work without providing an opportunity to bargain to the Union.

Here, if the University entered into contracts pursuant to the above RFPs, it made a clear change by outsourcing work without an opportunity to bargain, and in violation of Article 5's substantive requirements.

IV. FAILURE TO PROVIDE INFORMATION

UC has failed to provide virtually any information responsive to AFSCME's requests about UC contracting out of bargaining unit work. An exclusive representative is entitled to all the information that is "necessary and relevant" to the discharge of its duty of representation. (*See* Cal. Gov. Code § 3571(c); *also Stockton Unified School District* (1980) PERB Dec. No. 143 at 13.) PERB uses a liberal, discovery-type standard to determine the relevance of the requested information. (*California State University* (1987) PERB Dec. No. 613-H.) The burden rests on the University to justify nondisclosure. (*Modesto City Schools* (1985) PERB Dec. No. 479, p. 10 (citing *Minnesota Mining and Manufacturing Company* (1982) 261 NLRB No. 2; *Press Democrat Publishing Company v. NLRB* (9th Cir. 1980) 629 F.2d 1320; *Johnson v. Winter* (1982) 127 Cal.App.3d 435).)

The employer must provide information regarding matters within the scope of representation unless the employer can demonstrate that the information is irrelevant or burdensome to produce, or otherwise privileged or confidential. (*Chula Vista City School District* (1990) PERB Dec. No. 834 at 52.) An employer moreover must exercise "reasonable diligence" in gathering information and providing it in a useful form. (*Id.* at 68) (employer failed to provide union with copy of insurance contract).)

The employer's duty to provide relevant information arises when the exclusive representative makes a good faith request for the information. (*State of California (DOT)* (1997) PERB Decision No. 1227.) An employer's refusal to provide requested information evidences bad faith unless the employer can demonstrate adequate reasons why it cannot supply the information. (*Chula Vista City School District* (1990) PERB Dec. No. 834.) Once the Union makes a good faith demand for the information, the employer must provide it "promptly and in a useful form." (*Id.* at 51.) Unreasonable delays are "tantamount to a failure to provide the information." (*Id.*) PERB has held that delays of two months are unreasonable. (*Regents of the University of California* (1998) PERB Dec. No. 1255-H, p.44; *see also Chula Vista City School District, supra*, p.61 (three-month delay was unjustified).) The fact the employer ultimately provides the information does not excuse an unreasonable delay. (*Chula Vista City School District, supra*, p. 51.)

Here, in addition to the statutory obligation to provide information, Article 5 is clear that the Union is entitled to information regarding proposals to contract out work (often involving RFPs). Nonetheless, the University has failed and refused to provide the requested information in **Exhibits 1, 3, 9, and 15**. The University has failed to provide *any* responsive information to any of these RFIs. UC's refusal to provide information in response to AFSCME's requests is further evidence of its bad faith.

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V. CONCLUSION AND REMEDIES REQUESTED

AFSCME respectfully seeks an order requiring that UC and its representatives to cease and desist from:

1. contracting out SX bargaining unit work;
2. refusing to bargain over contracting out of bargaining unit work;
3. executing, renewing or amending any contract with a vendor to perform SX bargaining unit work without notice and negotiation;
4. requesting contract labor through any “app” or by way of any purchase order without notice and negotiation;

The remedy should also include an affirmative order requiring the University to:

5. rescind each contract unlawfully entered into, renewed or amended in scope, and to also rescind all purchase orders and requests for contract labor submitted through any “app”;
6. to restore the status quo by making the affected bargaining unit members whole with the value of all lost work opportunities;
7. 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.
8. 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; and
9. include interest, at the statutory rate, on each component of the monetary remedy; and
10. such other relief as PERB deems just and proper.

EXHIBIT 1

From: cdm@berkeley.edu on behalf of [Labor Relations, UC Berkeley](#)
To: [Claudia Preparata](#); [Libertad Ayala](#)
Cc: [Elise Magno](#); [Joyce HARLAN](#)
Subject: REQUEST No. C00041-2019 Re: Arbor Products DBA Expert Tree Service
Date: Tuesday, February 05, 2019 12:26:26 PM

Dear Claudia and Libertad,

This is to acknowledge that the UC Berkeley Labor Relations unit has received your request for information below, under HEERA, dated and received on today, February 5, 2019. Your request has been assigned tracking number **C00041-2019**. Please reference this number when corresponding with this office. Your request has been assigned to Elise Mango, who will be in contact with you. Should you have questions, please contact Elise at elise_magno@berkeley.edu.

Regards,

Carmen Melson on behalf of Faith LeBlue

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Labor Relations

----- Forwarded message -----

From: **Claudia Preparata** <cpreparata@afscme3299.org>
Date: Tue, Feb 5, 2019 at 11:02 AM
Subject: Arbor Products DBA Expert Tree Service
To: Labrel Departmental <labrel@berkeley.edu>
Cc: Libertad Ayala <layala@afscme3299.org>

To Whom It May Concern:

Pursuant to Article 5, Section B of the collective bargaining agreements between AFSCME Local 3299 and the University of California, as well as under the authority of HEERA and the California Public Records Act, Government Code Section 6250 et seq., we request the following information on Arbor Products DBA Expert Tree Service:

1. All contracts and/or agreements currently in effect and, any subsequent agreements, amendments, and/or extensions that have been negotiated with the vendor, but not limited to, purchase orders;
2. All contracts, purchase orders and/or agreements previously in effect prior to the contract, purchase order and/or agreement currently in effect;
3. All proposals and other documents submitted by the vendor in response to any RFP or RFQ for the outsourced work, along with a copy of the RFPs or RFQs soliciting the work;
4. If a RFP or RFQ for the outsourced work was published in or after 2014, indicate whether an AFSCME-representative was notified and the date of the notification. If no notification was provided, please provide the reason;
5. Copies of all invoices the vendor has submitted to UC Berkeley for all services rendered since the existing contract has been in effect;
6. Since January 1, 2018, all internal UC emails and/or correspondence regarding UC's contract with Arbor Products DBA Expert Tree Service; and
7. Since January 1, 2018, all emails and/or correspondence between any UC representative and any representative from Arbor Products DBA Expert Tree Service.

In your acknowledgement of this request, please let me know when we can expect to receive these documents. Additionally, forward the information as it becomes available rather than forwarding it all at once. If there are items that do not exist, please confirm that in writing. Lastly, if any documents have redactions, please explain in writing why that is the case.

If you have any questions, do not hesitate to contact me.

Thank you in advance.

Claudia Preparata
Research Director
AFSCME Local 3299
2201 Broadway Ave., Suite 315
Oakland, CA 94612

EXHIBIT 2

Berkeleyside

CRIME & SAFETY

As it investigates fatal tree fall, UC Berkeley promises transparency

By Kate Darby Rauch, Jan. 11, 2019, 10:20 a.m.



On Thursday, UC Berkeley crews were investigating a fallen eucalyptus near Gayley Road that killed a Novato man on Jan. 6. Photo: Kate Rauch

UC Berkeley is still assessing why a [large eucalyptus fell](#) on a car on Sunday, killing the driver, according to campus spokesman Dan Mogulof.

The results of the investigation will be public, he said. He doesn't know when it will be completed.

"We're looking at everything. We take this very seriously, someone lost their life here," he said.

Alexander Grant, 32, of Novato, was killed when the 250-foot-high tree crashed on his car as he traveled on a campus driveway leading onto Gayley Road, north of the Greek Theatre. The tragedy occurred at about 3:45 p.m. on Jan. 6.

Gayley Road, a thoroughfare along the eastern edge of campus, has been intermittently closed this week as Cal examines the tree and removes others damaged during its fall, Mogulof said.

Arborists and other experts are evaluating the fallen tree's condition, the condition of the surrounding ground and all factors that might have contributed to the incident, said Mogulof.

"Everything that could be relevant to the accident is now going to be very carefully reviewed and analyzed," he said. "What does it tell us about what we should do with other trees?"

This includes finding out when the toppled eucalyptus was last inspected by UC, he said.

The university regularly reviews the condition of its trees, Mogulof said. Multiple assessments have been done in the past two years. "We are, as part of the current assessment, ascertaining which of them [the assessments] looked at the tree that fell. This, too, is information we will be collecting and analyzing as part of the comprehensive review that is being done in the wake of the tree fall."

One of the ways UC gets information on its trees is [through GIS data](#), using software from ArborPro, a company that contracts with universities and other large jurisdictions on tree management. The company uses its mapping software to prepare a comprehensive visual inventory of a customer's trees and provides "the user with an immediate visual representation of any tree in the urban forest," according to the company's website.

Lee Nachtrieb, a certified arborist with Bartlett Tree Experts and a Berkeley resident, said that the sad reality is that trees don't always give clues as to their inner health. Nachtrieb is not currently a

contractor with the university. Years ago, with a different company, he did some work at University Village.

The state's recent drought was a major stressor for trees, he said. Heavy rains can also create problems.

"There are a lot of hidden factors, a lot of conditions within trees and below the ground that we just can't see," Nachtrieb said. "When it comes down to it, trees are complex organisms that respond in ways we don't fully understand."

"We try our best," he said.



Sections of the toppled eucalyptus which killed a man in his car last week on the UC Berkeley campus. Photo: Kate Rauch

News of the horrific tree fall has many questioning everything from UC Berkeley tree care to campus construction and the impact of winter storms. As with any fatal accident, people are searching for the whys and what-ifs, speculating, waiting for facts.

Hank Chapot, a retired UC gardener, a pro-union activist and an outspoken critic of UC Berkeley, left comments on Berkeleyside's article about the incident to say he thinks the impact of cuts in staff arborist positions at the university should be examined.

Mogulof didn't comment on staff cuts, but defended the university for contracting with

"highly qualified certified arborists" to do its tree work. He said the university has one certified arborist on staff, and one open staff arborist position, which it has been trying to fill for a year. A ground worker position is also open. "These vacancies are a key driver of our need for outside contractors for arboreal work," he added.

Others are wondering if the [recent renovation work](#) of the north end of the Greek Theatre, which includes the area where the tree was located, might have weakened the tree in some way. The project was completed last fall. Mogulof said the university would be looking at whether that was a factor, along with a host of other potential issues.



Skateboard tribute to Alex Grant, a Novato man killed last week when a tree fell on his car on the UC Berkeley campus. Photo: Kate Rauch



Flowers left at a memorial to Alex Grant near the Greek Theatre. Photo: Kate Rauch

Meanwhile, a makeshift shrine of fresh flowers, candles and a handmade structure that includes three skateboards offers a glimpse of who Grant was and a sense of the sorrowful reaction to his sudden passing. The tribute is on a retaining wall near the fallen tree.

“You will forever be in our hearts Alex. You will be missed and never forgotten. I will never forget when you showed me my 1st trick on a skateboard,” reads one message scrawled in black ink on a Baker brand skateboard deck.

“We love you always,” said another.

“I will be skating in your memory.”

And, “You are so loved,” signed “JoAnn.”

The Gayley Road incident occurred at a time the university was doing tree maintenance and removal on all of its properties, Mogulof said. The fallen eucalyptus wasn't part of this work.

These maintenance projects included about a dozen sites around campus, including [a controversial one at People's Park.](#)

The university had planned to remove 42 trees at the park as part of a “deferred maintenance” project but stopped amid protests, leaving five trees that had been slated to be cut down still standing.

“We hope to complete the work soon, particularly in light of the recent tragedy. I have no information as to when, exactly, that might happen,” Mogulof said.

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EXHIBIT 3

From: [Claudia Preparata](#)
To: [Elise Magno](#)
Cc: [Libertad Ayala](#); [Labor Relations, UC Berkeley](#)
Subject: Re: Information Requests C00041-2019, C00046-2019 & C00048-2019 RFPs

Hi Elise — I wanted to follow up on these requests. Please let me know when we can anticipate a response.

Thank you.

Claudia

On Jun 12, 2019, at 3:12 PM, Elise Magno <elise.magno@berkeley.edu> wrote:

Hi Claudia,

To follow up on your requests, we anticipate being able to provide a substantive response by the end of next week.

I appreciate your patience.

Elise

On Tue, Mar 26, 2019 at 12:07 PM Elise Magno <elise.magno@berkeley.edu> wrote:

Hi Claudia,

The University is still gathering the requested information for the following AFSCME requests:

1. C00041-2019 Re: Arbor Products Ltd
2. C00046-2019 Re: NorCal Moving Services
3. C00048-2019 Re: UC Berkeley RFPs

The procurement team is estimating another 45-60 days to gather the information. I will be sending partial information as it becomes available. I anticipate to be able to send partial information within the next two weeks.

Thank you,
Elise

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Elise Magno
Labor Relations Advocate
University of California, Berkeley
(510) 643-6802

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Elise Magno
Labor Relations Advocate
University of California, Berkeley
(510) 643-6802

EXHIBIT 4



HUMAN RESOURCES
POLICY AND LABOR RELATIONS
2199 ADDISON STREET, ROOM 192
BERKELEY, CALIFORNIA 94704-3540

FAX (510) 642-2888
TEL. (510) 642-4275

August 13, 2019
53-19

SENT VIA FACSIMILE (510-844-1170)

Ms. Liz Perlman
AFSCME Local 3299
2201 Broadway Ave., Suite 315
Oakland, CA 94612

Re: RFP—Centennial Drive Evacuation Support

Dear Liz:

Attached for your information is a RFP for fire fuel mitigation work in the Berkeley Hill campus. Project activities will take place within 100 feet of the edge of pavement along Stadium Rim Way and Centennial Drive. The contractor will remove high-volume vegetation to create discontinuity in the fuel so that a fire would spread more slowly and that flame lengths would be lessened. Understory vegetation will be removed, trees will be pruned, and dead or diseased trees will be removed. Machinery to be used includes, cranes, tractors, chainsaws, feller-bunchers and mechanized brush cutters.

The contracting out of this project is permissible under the following subsections of Article 5.B.2.:

- 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 contractors than by the University;
- c. The need to provide short-term, temporary staffing in order to meet operational or business needs; and,
- 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.

No bargaining unit employees will be impacted by the contracting out of this work.

Please contact me if you have any questions regarding the RFP.

Sincerely,



Joyce Harlan
Labor Relations Advocate

Attachment

- C: Director Raman
- Associate Vice Chancellor McGarrahan
- Associate Director Deleon
- Labor Relations Advocate Magno
- AFSCME Representative Ayala (w)



**University of California, Berkeley
Facilities Services
RFP# 001428-AUG2019
Centennial Drive Evacuation Support
UCB HILL CAMPUS**

RFP Timeline – The UC reserves the right to modify this timeline to best meet the needs of the University.

RFP release date	8/12/19
Mandatory Pre-bid walk through at <u>2000 Carleton St, Berkeley, CA 94720</u> at 9am-1pm PT	8/27/19
Bidder RFP questions due	9/3/19
UC answers to questions due	9/6/19
Bidder proposal due date	9/13/19
UC evaluation of proposals due	9/18/19
Bidder Interviews	10/1-10/4
UC evaluation of Bidder interviews	10/7/19
Apparent Awardee: Intent to award notice, best & final	10/9/19
Executed Contract	10/18/19

1. INTRODUCTION

The University of California, Berkeley (UCB) invites proposals for Centennial Drive Evacuation Support on behalf of Facilities Services. The University of California, Berkeley is internationally renowned for excellence and pioneering achievements across all disciplines. The University of California was chartered in 1868 with Berkeley as its flagship campus. Today the world’s premier public university and a wellspring of innovation, Berkeley occupies a 1,232-acre campus with a sylvan 178-acre central core. From this home its academic community makes key contributions to the economic and social well-being of the Bay Area, California, and the nation.

2. PURPOSE

Objectives

The objective of this project is to support safe emergency evacuation on Centennial Drive if, for example, a landslide or wildfire would occur. Currently there are numerous trees and abundant shrubby fuels near Centennial Dr. that can fall across the road and block traffic or burn with such intensity that passage is prohibited during a wildfire.

This work is part of the other fire management plan implementation activities in the Hill Campus. Facilities Services has removed numerous trees and shrubby vegetation throughout the Hill Campus to ensure access and egress. Sites where this work has occurred includes the Upper and Lower Jordan Fire Trail, Field Station for Behavioral Research, and Tightwad Hill. Because the trees are increasingly unstable, having been weakened first by the drought, and the underpinning soil made more unstable by the previous wet winter, actions to prevent road blockage because of nearby trees is warranted. In addition, shrubs under trees have grown to be a dense understory, warranting action to prevent intense roadside fire behavior.

Project Goals

In all areas, the fuel mitigation work focuses on removing fire-promoting trees, understory shrubs and small trees that could enable torching, and trees that may block access/egress should they fall. The goal is to improve life safety and reduce loss from wildfires by supporting the conversion of the existing fire-prone forest near the road to vegetation with more favorable burning characteristics.

The need to reduce fire hazards in the immediate proximity of these structures and potential evacuation routes is paramount.

Location

The proposed project is comprised of fire fuel mitigation work in the University of California, Berkeley (UCB) Hill Campus. Project activities will take place within 100 feet of the edge of pavement along Stadium Rim Way and Centennial Drive. The location of work is indicated on the attached maps. Note not all portions of Centennial Drive are included in the work. Total acres are 33.3 acres.

3. SUPPLIER BIDDING GUIDELINES

Reference the Required Supplier Information document in the UC's bid site is a mandatory prerequisites to this event.

4. MINIMUM / MANDATORY REQUIREMENTS

Bidders shall be eliminated from further consideration if Minimum / Mandatory Requirements aren't met.

Bidders must attend the Mandatory Prebid Walkthrough on August 27, 2019 from 9:00am to 1:00pm. Please contact the Buyer at charles.c@berkeley.edu no later than Friday August 23 , 2019 to confirm attendance to this Prebid Walkthrough. Suppliers will meet the Project Manager at 2000 Carleton St, Berkeley, CA 94720

Bidder must have extensive and proven experience with hazardous trees and resprout with similar size and scope as described in the statement of work.

Bidder must have expertise and ability to manage complex projects / events and working with police, EH&S, traffic control types of groups. Project Management: Bidder must be a results-oriented and work to the project schedule/ budget and meet all of the permit requirements of University of California, Berkeley.

Bidder must be located in California.

5. EVALUATION CRITERIA

The evaluation process for this RFP will be made based on University of California Policy [BUS-43](#), which is posted online. Factors that will be used to evaluate information include, but are not limited to:

- a) **Business Experience:** Projects of a similar nature, size and complexity, resources available.
- b) **Financial Stability:** Dun & Bradstreet number, revenue reports, financial references, continuity plans, etc. Department's may want to allow Suppliers (small or privately held) provide their financial information to the department by another mode of delivery rather than uploading the documents in the bid site.
- c) **Technical Qualifications:** capabilities for the specifications in the SOW
- d) **Functional Qualifications - Project Management Experience:** Expertise of personnel identified in the response.
- e) **Sustainability:** The University of California, Berkeley is committed to continuous improvement in procuring environmentally preferable products, promoting sustainable practices, managing energy consumption, ensuring human health, supporting fair labor practices, investing in supplier diversity and considering sustainability in all activities. As such, the University includes in solicitations for the procurement of services sustainability criteria applicable to the service and/or good being procured. Criteria may include, but is not limited to third party certifications, sustainable product attributes, a demonstrated commitment to sustainability in business practices, corporate social responsibility, and life cycle impacts of proposed goods or services. See the University of California Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) and the UC Berkeley Sustainable Office <https://sustainability.berkeley.edu/> information sites for more detail.

All suppliers to the University of California are required to meet all applicable sustainability standards and requirements as outlined in the UC Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>). The University prioritizes partnerships with suppliers that share our commitments to economic, social and environmental sustainability. Sustainable Procurement Resources & Guide can be found on the UCOP website:

<https://www.ucop.edu/procurement-services/for-ucstaff/sustainable-procurement/sustainable-procurement-training-resources.html>

- f) **Service Maintenance:** Emergency service response time and dedicated staff.
- g) **Customer Service:** Ability to meet the needs of the department team.
- h) **UC Terms:** Extent of proposed changes to UC's legal template documents.
- i) **References:** UC reserves the right to check references other than those provided by the Bidder, and to ask follow up questions to clarify any responses received.

6. CONTRACT AWARD

Bids will be evaluated in 2 or 3 tiers based on the need for a Bidder Interview. Evaluation will be based on Best Value and returning all required RFP responses. A complete bid response contains answering all questions in Section 9 of this RFP, proving a response to all pricing in Exhibit 1, and returning applicable Exhibits.

- a) **Tier 1 - Minimum / Mandatory Requirements:** Bidders shall be eliminated from further consideration if Section 4: Prequalification – Minimum / Mandatory Requirements aren't met.
- b) **Tier 2 - Bidder's Proposal Evaluation:** Evaluation criteria will be based on responses to the RFP requirements.
- c) **Tier 3 – Bidder's In person Presentation, of the proposals submitted:** Top Bidder's from Tier 2, up to a maximum of 4 firms, will be invited to present their firms qualifications and RFP responses. The Project Manager must attend the interview and if possible the project team. Clarifying information from the oral presentation/demonstration may be taken into account when evaluating the proposals. The UC reserves the right to eliminate the oral presentation/demonstration if it determines the written bids sufficiently address the evaluation criteria. The University may make multiple awards to multiple Bidders for particular subsets of the Statement of Work (SOW) or elect to make no award.

7. STATEMENT OF WORK

PHASE 1

Treatment Summary

Treatments will remove high-volume vegetation and create a discontinuity in the fuel so that the rate of fire spread is slowed and flame lengths meet the project goal in treed areas. In these subareas, the lower branches of all trees will be removed to a minimum height of 8 feet, and understory vegetation will be removed. Branches that droop down below 8 feet but are attached higher up the stem should be pruned on the stem. Shrubs will be removed or thinned to a minimum spacing of 6 feet. Identified "specimen" trees will be retained and shrubs under them removed if structure and health is satisfactory. Trees to be retained will be marked by UCB and protected during the treatment period.

Unhealthy, or structurally unsound trees that are likely to torch and distribute embers will be cut down. Short trees will be cut down where located beneath taller trees to be retained. Criteria for tree removal will include consideration of tree health, structure, height, potential for failure, and competition with other trees, including for water, space and light. Criteria for retention of trees will include consideration of ability to slow spreading of invasive species and surface fuels, protection of understory, encouragement of nesting and improvement of flight patterns of raptors, and prevention of erosion. Practices consistent with those used by the International Society of Arboriculture will be applied. Current California Forest Practice Rules will be followed.

Treatments will be performed with a mechanized feller-buncher, possibly a crane, as well as hand crews using chainsaws and hand-held mechanized brush cutters. Any branch over the roadbed will be trimmed to a height of 15 above ground. Dead surface fuels smaller than 6 inches in diameter will be removed. Leaf litter of less than 6 inch depth can remain. All dead trees will be removed.

Use of the feller-buncher is limited to slopes of less than approximately 45%. Tractors may be positioned on existing, stable roads adjacent to some of the steeper areas, and cut material winched for chipping and or hauling. Trees on steeper slopes will be cut down using hand-held equipment only; no heavy equipment would be used for cutting or chipping in these areas. Trees identified for removal within 50 feet of Strawberry Creek will be cut only after consultation with the University. A crane (positioned on a road) may be used to reposition tree trunks after cutting. The project will involve closure of sections of Centennial Drive to allow cutting and skidding of trees growing close to the road and for hauling and processing material.

A cable system may also be used to move logs to the landings without use of vehicles. The contractor will use landings and skid trails from previous logging instead of constructing new ones. Equipment would be staged, fueled, and maintained at existing landings while contractors are mobilized.

Shrubs under remaining trees will be cut, per defensible space standards in the 2015 UC Berkeley Fire Management Program

Material will remain the property of the University. The objective is to leave or use all downed material on site. Cut logs will be hauled to the landing site, chipped and distributed on site or stockpiled for use elsewhere. With consultation with the University, selected tree trunks may be left on the slope. The trunks of these trees will be cut into 20- to 30-foot lengths. In these cases, the downed tree would be cut such that all portions of the tree will be within 6 inches of the ground. Where possible, tree trunks will be placed and anchored to prevent movement, to help control sediment and erosion or support wildlife habitat. Other logs can be positioned on UC property as barriers to illegal vehicular access.

At landings or on the roadside, trees will be stored or chipped. Whole trees will be fed into the chipper and pulled through the blades by a conveyor belt and feed wheel. Alternatively, the tracked chipper may be driven to downed trees on slopes less than 30% steepness.

Wood chips and chips from the shrubby vegetation are expected to be between 1 and 4 inches long. Branches and other debris will be chipped and left on-site, or hauled to another on-campus location, depending on the need for surface cover to prevent erosion. The volume of cut material left on site will be kept at average depths <6" as measured across any random 1/10 acre area to prevent excessive fuel buildup.

UCB will use some of the wood chips to create sediment traps. The maximum depth of chips will be used for the sediment trap to increase both the length of time the traps function and the amount of sediment that can be retained. However, chips may not be placed on slopes >30% and within 50 feet from Strawberry Creek and crossings. This material will float and potentially plug culverts in the first winter. Chips may also be spread to the maximum depth over uneven terrain and over stumps. Chips will be spread on skid paths to reduce disturbance of soil.

Work will be conducted from December 1 through January 15. Per California Forest Practice Rules Section 895.1 operations can occur, especially in "extended dry periods", and as long as skidding is not performed after a heavy rain, and other restrictions.

Potential Issues to be Addressed in Project Scope

The proposal shall include a detailed operations plan. This operation plan would detail erosion control measures to be taken, a plan for traffic control, plan to indicate the quality of operations, and proposal to show how potential impacts to the public are avoided through signage, advance notification by radio and newspapers, access limitation, season and time-of-day of work. These measures are consistent with applicable 2020 Long Range Development Plan EIR, and the UCB 2015 Fire Management program. These documents are available at <http://lrdp.berkeley.edu/documents.html> and https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing. The campus expects that all work would be conducted in accordance with the UC Berkeley 2020 Long Range Development Plan and EIR, including incorporation of relevant mitigation measures where applicable.

Archaeological Resources

A review of the archaeological records and reports in the campus records indicated there were no historic or prehistoric resources known to be present on-site. Operators and qualified project supervisors should remain vigilant for any resources potentially exposed during operations. Landings and other areas prone to earth grading will be monitored for remains. Any potential resources will be reported to the supervisor and operations stopped until a plan of action is formulated.

Erosion Mitigations

A StormWater Pollution Prevention Plan will be prepared and implemented. Anticipated activities could include the use of hydro seed with native grasses and wildflowers, installation of jute wattles, and repair of pre-work contours.

No new roads will be constructed. Equipment will be staged on existing landings, either behind Signpost 9 on LBNL property or near signpost 7 on UCB land. The entire treatment area will be accessed from Centennial Drive – a paved, University owned roadway. Trees will be fallen to lead or sectioned, and material moved to the road where it will be hauled to the landings or completely offsite, or chipped onsite. Centennial Drive has been reviewed and deemed suitable for hauling.

Traffic and Noise Mitigations

Work will begin at 8AM and end at 6PM. Centennial Dr through traffic must be open from 8 AM till 9 AM and 3:30 PM till 5 PM. Treatments will take place on consecutive days in order to minimize the time in which Centennial Drive is closed, not including weekends and UCB recognized holidays (12/24, 12/25, 12/31 and 1/1). Priority will be given to operations plans that minimize the time in which Centennial is closed.

Vehicular traffic will consist primarily of moving equipment into and around the project area, and watering (on landing) as needed to reduce any fugitive dust. Equipment will include low-bed trucks hauling chippers, rubber-tired skidders, a yarder, loader, and haul truck, as well as water trucks (if needed) and service and employee vehicles.

Trucks and hauling could be routed down Centennial Drive to a landing site at Signpost 9, which is less than a half-mile. Skidders may also be able to drag logs to that landing provided the road surface is not damaged. Branches will be chipped and blown onto the slope and/or into trucks for hauling to the landing site or other on-campus location.

Chain saws, skidders, loaders and chippers will be the most noticeable and enduring noise effects of the project. The remote location and distance from residential areas will help mitigate this effect.

Security and Fire Safety

The contractor will comply with all the terms in the 2015 UC Berkeley Fire Management Program, which is available at https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing.

The contractor shall provide on-site people dedicated to ensure public safety and security. Temporary fencing, with necessary gates, shall be placed at strategic locations to keep the public out of the work areas. Signs will be posted throughout the project area containing legal and project information along with a contact for public questions. UC Police Department (UCPD) will assist in the development of appropriate signage. All trespassers or evidence of trespassing would be reported to UCPD.

The operator will be required to permit fire suppression vehicle access through the area - except when cranes need to be positioned for short periods. The operator will also be required to have fire caches and on-hip fire extinguishers when running saws etc. Spotters will also be required as well as end of day patrols to look for hot equipment and other ignition sources.

The contractor shall provide their own security and monitoring personnel, subject to vetting by the UCPD. All contractors and project supervisors shall coordinate with the Project Manager, Devin Woolridge, at (510) 812-0540, to establish a radio network. All on-site contractors will maintain radio communication with Facilities Services.

The UCPD will be contacted daily by the contractor when operations are to commence and when they are stopped.

A contact sheet and radio training will be provided as part of the pre-work meeting.

Yarding

Trees to be cut will be chosen based on their height and risk for falling onto Centennial Drive. This means cut trees can be fallen so that they can be reached by either a grapple or by a cable winch and pulled to the road for limbing, bucking, chipping, loading or skidding to the landing.

Some of the treatment area has slopes from 30-100% and is not yardable with tractors or rubber-tired skidders. The bidder may propose the use of mobile cranes to reach trees further up the hill. The method of yarding will be evaluated and included as a criterion for selection of the operator.

Existing internal fences may be removed to facilitate treatments but would be replaced and functional prior to the completion of operations.

Cut Stumps

All cut stumps will be <6" in height as measured from the uphill side. Stumps shall be cut flush, with no hinge wood remaining. In some approved locations, stumps may be left higher to stabilize cross-felled trees on ground deemed too steep for yarding.

Herbicide Use

To prevent resprouting of removed trees, an herbicide solution with a dye will be applied to the cambium ring of sprouting trees within three minutes of felling. The contractor will treat all cut stumps with material prepared and provided to the contractor (University will purchase, mix, label and deliver cut stump concentrate as needed). The herbicide mixture will likely consist of a combination of Garlon 4 or Garlon 3A (triclopyr) and Stalker (imazapyr) in a solution of methylated seed oil, water, and marking dye. Garlon 3A will be used within 60 feet of running or standing water. A typical tree requires 1 to 2 ounces of diluted solution. Use of herbicides will be subject to the restrictions described on the product label, specified in the recommendation by the Pesticide Control Advisor, and by the 2014 Final Hazardous Fire Risk Reduction Environmental Impact Statement East Bay Hills, California. Any eucalyptus or acacia found untreated will require re-cutting at least 6" of stump and re-application of herbicides. If 6" of stump does not remain, the stump shall be ground to 6" below grade prior to being treated.

Herbicide use on this project has been extensively analyzed, and the contractor is responsible for compliance with the practices and mitigations measures described in the LRDP. All applications must be done by or under the direct supervision of a State California Qualified Applicator. All herbicides will be supplied and prepared by the University. Pre-work meetings will ensure sufficient quantities are provided in a timely manner based on anticipated treatment rates.

Unstable Areas

"Unstable areas" are defined in the Forest Practice Rules (FPR, available at https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing) as being characterized by slide areas or unstable soils, or by some or all of the following: hummocky topography consisting of rolling bumpy ground, frequent benches and depressions; short irregular surface drainages at the beginning and end on the slope; tension cracks and head wall scarps indicating slumping are visible; slopes are irregular and may be slightly concave in upper half and convex in lower half as a result of previous slope failure; there may be evidence of impaired ground water movement resulting in local zones of saturation within the soil mass which is indicated at the surface by sag ponds with standing water, springs, or patches of wet ground. Some or all of the following may be present: hydrophytic (wet site) vegetation prevalent; leaning, jackstraws or split trees are common; pistol-butted trees with excessive sweep may occur in areas of hummocky topography.

Inspections of the entire treatment area have been made by Registered Professional Forester (RPF), and no unstable areas were found. The project will increase the potential for soil movement and the creation of new or older undetected unstable areas. For this reason, an erosion control plan is required and may include site-specific mulching, wattle installation, seeding of bare areas, and culvert maintenance.

Erosion Control Measures

All skid trails (if created) will be water-barred, and landings graded to ensure positive drainage. Chips will be applied to trails and landings after the erosion control (waterbars and grading, etc.) is done.

First winter inspections of erosion control measures will be required, and any erosion control problems are to be mitigated as soon as safely possible. Photos and log notes of this monitoring will be maintained.

Organics Diversion

Documentation metrics on waste diversion shall be provided at the end of each project to Cal Zero Waste, Facilities Services. Documentation forms will be provided by University of California Berkeley; Contractors are

required to submit backup documentation along with the form.

Contractors will be required to submit documentation regarding waste diversion on the following:

1. Estimation of weights of materials generated from each project completed on the University of California, Berkeley campus, as well as information on whether materials are reused, recycled, composted or landfill. If estimated weights are not available, estimated volumes should be provided.
2. Destination of where materials are sent to for processing if taken off site.

I. Term of SOW

Start Date December 1, 2019 through January 15, 2020.

II. Key Tasks and Activities, Deliverables and Completion Timeframe

Phase 1, Bidder Obligations:

DAMAGE TO FACILITIES

If damage to equipment or facilities is caused by the negligence of Supplier, then the Supplier shall be responsible for fixing or replacing equipment and fixing damages to the facility at no cost to the UC.

EQUIPMENT TO BE PROVIDED BY SUPPLIER

Supplier will provide all equipment to be used and dedicated to the site. The equipment will be new or in good working condition. Supplier's equipment shall be of the size and type suitable for accomplishing the various phases of the work described herein.

Equipment considered by the UC to be improper or inadequate for the purpose shall be removed from the job and replaced with satisfactory equipment. Supplier will be expected to repair, replace or rent appropriate equipment as necessary to perform the services.

SUPPLIER WORKFORCE AND WORKFORCE FLEXIBILITY

The UC considers it important that the successful awarded Supplier maintains a stable workforce with an appropriate wage/benefit package, which will encourage high quality and efficiency of services and contribute to a safe and secure campus environment.

Phase 1 project work scheduling may vary depending on university operational needs. Supplier shall work with the campus project manager on the scheduling of its workforce to best meet the needs of the university.

Supplier shall demonstrate that all staff are adequately trained in the compliance of all applicable OSHA, EPA, and other Federal, State and Local laws, rules and regulations regarding materials that may be encountered in the performance of the services.

The Supplier shall be responsible for its own labor relations with any trade or union representative among its employees and shall negotiate and be responsible for adjusting all of the disputes between itself and its employees. Whenever the Supplier has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the services, the Supplier shall immediately give written notice to the UC.

If any strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Supplier, which results in the curtailment or discontinuation of services provided herein, the UC shall have the right during said period to employ any means legally permissible to have the services provided.

In the event of a work stoppage by employees of the UC or any of the UC's other Suppliers affecting the site, the Supplier shall furnish the services required to keep the site in a condition acceptable to the UC.

SUPPLIER'S ACCESS

The UC shall give Supplier's personnel reasonable access to the areas where the services are to be performed. The UC shall arrange for access to buildings, including the provision of keys or access cards as required by Supplier to perform the services.

Access routes, entrance gates or doors, parking, and storage areas, etc. and any imposed time limitations on the Supplier shall be designated by the Project Manager. The Supplier shall conduct its operations in strict observation of the access routes and other areas established as described.

The Supplier shall ensure that under no circumstances shall any of the employees of the Supplier enter any area not authorized by the Project Manager for access.

USE OF SUBCONTRACTORS

Supplier must obtain advance written permission before using any subcontractor not listed in its RFP proposal for any work performed under an agreement with UC.

Phase 2, Bidder Obligations:

It is at the discretion of UC to engage this next phase based on the results of Phase 1.

UC may desire to request additional similar Services following the completion of the Phase 1. If desired, UC will submit a written request to Supplier describing such additional work in appropriate detail.

Supplier will in good faith provide UC with a written, high level, non-binding assessment of costs, expenses and the time required to perform the additional services ("Quote"). UC will notify Supplier in writing after receipt of the Supplier's Quote if the parties need to execute an amendment to the Master Service Agreement.

III. Project Management Tracking and Relationship

- a) Project Manager expectations to be on site 60% of the time, always at the start and end of each day
- b) Project Status Updates – weekly in person meetings.
- c) Bidder must attend meetings and site visits as needed with various departments (engineering, event services, etc.)

IV. Service Level Agreement/Acceptance

The minimum service standards set forth above recognize that occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Supplier does not take corrective action within fourteen (14) days following UC written notification, UC reserves the right to terminate the Agreement immediately.

- a) During the Term of the Agreement, and any extension(s) of the Term, Supplier will provide the following minimum service standards:

V. Milestones, Due Dates

Supplier must provide in its bid response a clear calendared outline of Milestones and Completion dates from December 1, 2019 to January 15, 2020 for Phase 1 project work. UC payments should be tied to these milestone and completion achievements through the course of the project.

VI. Provisions

- a) **Insurance** - See EXHIBIT 5
- b) **UC RFP Attachments** – See EXHIBIT 3
- c) **Project Map**-See EXHIBIT 6
- d) **Piggyback UC**

When practicable and able to do so, Successful awardee will be required to extend the terms of the agreement to all UC locations.

Supplier agrees to extend the pricing basis, terms and conditions of the Agreement to all UC locations Supplier will make available to any UC location its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple UC locations. All contractual administration issues (e.g. terms and conditions, extensions, and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual UC locations will be addressed, administered, and resolved by each UC location. Any delay in payment or other operational issue involving one UC location will not adversely affect any other UC location.

e) **Prevailing Wage**

Contract Awardee is subject to UC Terms and Conditions of Purchase, Article 24 Prevailing Wage. The successful awardee will be required to pay prevailing wages. The work described in the RFP is a public work subject to California Labor Code section 1771. No contractor or subcontractor may be listed on a bid for the work unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. The successful awardee will be required to post the applicable prevailing wage rate determination and any job site notices as prescribed by the DIR. The work is subject to compliance monitoring and enforcement by the DIR.

f) **No Mandatory Use**

Because there is no mandatory use policy at UC, nothing in this Request for Proposal/Statement of Work will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

g) **Indemnity**

Supplier will defend, protect, indemnify and hold harmless UC, its officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for damages, damage to any property, injury or death to any person or persons, arising out of or in any way connected with this Agreement, including the performance hereunder of, without limitation, caused by or arise from the negligent acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control.

h) **Background checks**

Supplier warrants that staff will have had a full background check initiated by Supplier and that the staff Will have no known criminal records or criminal charges within the last 7 years, which would in any way Affect the ability of staff to perform work in accordance with this agreement. All staff reporting to UC with felony and misdemeanor convictions (except marijuana related offenses greater than two years old) must be reported to UC and may result in the Supplier staff being prohibited from performing work

At UC.

i) Additional Warranty

Supplier warrants that it will bear complete responsibility for its staff's personal safety and that it will operate all equipment in a safe and professional manner in accordance with the equipment operating instructions while on UC property and that its knowledge of these requested services is adequate to permit the safe work in conjunction with this project.

VII. Service Level Agreement

The minimum service standards set forth above recognize occasional errors are likely; however, Bidder further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Bidder does not take corrective action within fifteen (15) days following UC written notification, UC reserves the right to terminate the Agreement immediately.

8. RFP QUESTIONS

Bidders must answer all of the questions in the following order, include the question and answers as a response to the proposal, and include all required attachments listing the corresponding question number and your Supplier name on the attachment and file name.

Proposals must not contain price information in the technical proposal, Section 8 RFP Questions. See EXHIBIT 1 for pricing.

BUSINESS PROFILE

1. Provide any relevant information about your company:
 - a) Background
 - b) Overview of firm's experience (sufficiently detailed to be evaluated) including the number of years in business
 - c) Brief description of your firm, including the breadth and depth of services offered (even if outside the scope of this RFP)
 - d) Firm's mission statement or corporate vision/values statement
 - e) Business model
 - f) Size of firm, including number of staff
 - g) Organizational chart
 - h) Areas of expertise
 - i) Local, regional, national or international

PROJECT MANAGEMENT

2. Please provide a CV sufficiently detailed to be evaluated of the proposed Project Manager, including experience with similar projects. The proposed project manager must be available for the duration of the engagement. Specifically discuss the individual's experience in managing a program of similar size and scope of the program described in this RFP.
3. If Bidder proposes any additional team members to support this project, list those personnel and their qualifications in sufficient detail to be evaluated.
4. UC reserves the right to approve all key personnel changes for work on an executed contract. Supplier will provide UC with the names of all key personnel and such personnel may not be replaced without written agreement of UC. Confirm agreement: yes or no.
5. Include information on any affiliates, subsidiaries or sub-suppliers who will be providing the Goods and/or Services and where they are located.
6. Provide at least five years of demonstrated experience (with examples) of similar projects with the same scope and size.

FINANCIALS

7. Please provide a copy of your company's audited financial statements or equivalent data for the past two (2) years in order to establish its financial stability and capability to perform the work specified in this RFX.

IMPLEMENTATION

8. **Project Approach and Detailed Plan:** Please describe your company's project approach and explain the methodology to this project based on the information provided in the RFP. Proposers must provide a detailed project plan including work breakdown by major milestones and tasks as well as timing and the expected involvement of the project management consultant and University team members.
9. **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 Berkeley personnel, or technological issues that were not specifically mentioned in the RFP document should be listed.

CUSTOMER SERVICE

10. Confirm your company will have dedicated staff assigned to project.
11. Describe your customer service structure including hours of operation, off hours emergency procedure, response time, service levels.

SUSTAINABLE, ECONOMIC AND SOCIAL RESPONSIBILITY - SOLICITATION GUIDANCE & RFX QUESTIONS"

12. UC is committed to responsible stewardship of resources and to demonstrating leadership in sustainable business practices. How do you incorporate Corporate Social Responsibility (CSR) into your business practices and policies (i.e. benefits, training, childcare)? Please provide information concerning company philosophy, efforts, and programs in the following areas:
 - a) Policies incorporating environmental and/or social sustainability and stewardship
 - b) Energy efficiency within administrative offices (e.g. LEED buildings)
 - c) Company vehicles/transportation and shipping (EPA SmartWay Partner or Affiliate, fuel efficient/alternatively fueled vehicles used in transport and delivery)
 - d) Reduction of waste, water, chemical use
 - e) Environmental Management Standards (ISO 14001).
13. If your company will use subcontractors in fulfilling the Goods and/or Services, please note if you or your sub-suppliers are certified with the State of California or the Federal Government (GSA) as a diverse, small or disabled veteran owned business (i.e. SB/DVBE, SBE, SDVOSB, DVE MBE etc.). If you answered "Yes" to the use of subcontractors, please state criteria used to qualify a subcontractor for your company.
14. Does your company provide a program encouraging and enabling carpooling and/or telecommuting? Please explain how it is structured and utilized by employees.
15. Supplier(s) awarded a system-wide IT agreement as a result of this RFP will be required to register and participate in an assessment of their sustainability practices and procedures through the EcoVadis Corporate Social Responsibility (CSR) monitoring platform. For more information on the EcoVadis platform and costs associated with an assessment, please see the EcoVadis Supplier Solutions Website here: <https://www.ecovadis.com/us/supplier-solutions-2/>. Please acknowledge that you have read, understand and accept compliance to this requirement.

PAYMENTS & INVOICING

21. Invoicing must be itemized based on the statement of work detailing the individual cost components of the Goods and/or Services. Please itemize any additional charges or non-recurring expenses.
22. Provide the name(s) and contact information for accounts payable clarifications.

DONATIONS & DISCOUNTS

23. Is your company willing to support UC for special events or make any other contributions or donations to UC in conjunction with this agreement?

PREVAILING WAGE

24. Provide your Contractors State License Board (CSLB) number and Public Works Contractor Registration (PWCR) number in addition to license numbers of proposed subcontractors.
25. Disclose any claims or lawsuits that have occurred in the last 5 years.

OFFSHORING OF SERVICES

26. Supplier must do one of the following in the bid:
 - a) Certify under penalty of perjury that the services will be performed solely with workers within the United States, including any services that Supplier would provide using a subsupplier; or
 - b) Describe in its bid any part of the services that will be performed by workers outside of the United States.
27. Confirm that your company fully understands and agrees to the UC's Offshoring of Services requirements as described in UC Terms and Conditions.

LEGAL ACTIONS & SAFETY VIOLATIONS

28. Disclose any claims or lawsuits that have occurred in the last 5 years against your company. Specifically, describe any actions related to failure to perform, breach of contract, satisfaction of warranty claims or license violations or right to use. If there are none, please state.
29. Disclose any claims or safety violation(s) that have occurred in the last 5 years against your company. Specifically, describe the violation(s) any actions taken to correct the violations or claim. If there are none, please state.

LICENSES

30. Provide copies of all trade, professional, or business licenses of staff that are assigned to work on this project.

REFERENCES

31. Provide three references and contact information to verify bidder direct experience in a solution development of a similar size and complexity to the University of California. Complete and submit EXHIBIT 2 (References). Bidders should provide at least 3 references of clients in California. One of the references should be from a client you are no longer on contract with.

TERMS AND CONDITIONS

32. **Terms and Conditions:** Proposers must acknowledge acceptance of the University Terms and Conditions of Purchase. Requests for changes in language must include a citation of the specific article or clause with proposed alternative language or an explanation of the cause for concern. Failure to note any requests for changes to the terms and conditions with the submission of the proposal are grounds for dismissal. Suppliers that submit excessive or onerous requests for changes to the UC Terms and Conditions of Purchase will be scored less favorable or may be deemed as non-responsive. See EXHIBIT 5 (Acceptance of UC Agreement and Terms)

ADDITIONAL INFORMATION

33. What information, other than provided in this RFx, would you need for implementation?
34. Identify any restrictions that would preclude the Supplier from providing any of the Goods and/or Services requested in this RFx in a cost-effective offering.
35. Please provide any additional information considered essential to the proposal and not specifically requested in other sections. If there is no additional information to present, please state in this section: "There is no additional information we wish to present."

EXHIBIT 1 – FINANCIAL PROPOSAL, ITEMIZED PRICING

Supplier must submit their "Base Bid" – Suppliers total costs including any non-recurring expenses, in the item tab in the UC's bid site. The Base Bid will be the contract award amount. The proposal must include any and all travel and reimbursable expenses and comply with the University's Travel Policy. Any offered "Additional Services" not included in the Statement of Work will be described under the Heading "Additional Services". These costs will not be included as part of the Base Bid. The University reserves the right to include these costs in the agreement if an award is made. Supplier is responsible for ensuring that the submitted Base Bid matches the sum of all costs submitted. If the number(s) on the Financial Proposal Form do not match the Base Bid amount submitted in CalUSource the number(s) on the Financial Proposal Form shall prevail.

Attachments can be used to itemize the pricing as long as Bidder includes responses to all Sections listed below. If Bidder declines to submit a proposal, it must be clearly stated "no Bid."

NOTE: The Price Proposal must be submitted as a separate file/electronic document from the proposal.

I. Base Bid Price Proposal – including but not limited to all necessary goods and services

- | | |
|--|----------|
| a) Services | \$ _____ |
| b) Goods | \$ _____ |
| c) Additional services and/or goods not identified | \$ _____ |

Total Base Bid \$ _____

II. Optional Pricing - The costs in items a) and b), will not be included as part of the Base Bid. The University reserves the right to include these costs in the agreement if the UC elects to award with this RFP.

- | | |
|--------------|----------|
| a) Option 1: | \$ _____ |
|--------------|----------|

III. Discounts

- | | |
|--|----------|
| a) Discount offered. | \$ _____ |
| b) Incentives, Prompt Payment Discount | \$ _____ |

IV. Payment Schedule

Payment schedule will be negotiated upon acceptance of award: Fixed Price Services, Time and Materials, or Payment Schedule.

:

EXHIBIT 2 – REFERENCES

Bidder Name: **Name of organization**

Bidders should provide at least three references of clients with similar services (budgets), including main contact, length of relationship and briefly how your campaign management was successful for each client. One of the references should be from a client you are no longer on contract with. Provide a description of the Goods and/or Services provided (budgets), length of relationship and briefly how your services were successful for each client.

NOTE: Please complete ALL information listed below. University will not accept references that cannot be directly contacted by email. Use separate sheet as necessary.

1. Reference One:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

2. Reference Two:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

3. Reference Three:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

EXHIBIT 3 – DRAFT AGREEMENTS - UC TERMS & CONDITIONS, CONFLICT OF INTEREST, NON-DISCLOSURE AGREEMENT, SUPPLIER ON-BOARDING FORM, ETC.

EXHIBIT 4 – SUPPLIER ACCEPTANCE OF UC TERMS

- 1. Bidder accepts terms listed in the EXHIBIT 4 and/or attached within the RFX on the "CalUSource.net" bid site without exception.

OR

- 2. Bidder proposes exceptions or modifications to the UC Agreement, Terms and Conditions of Purchase.

Requests for changes in language must include a citation of the specific article or clause with proposed alternative language or an explanation of the cause for concern.

The exceptions need to clearly identify the "top 5" modifications. Bidder understands more than (5) exceptions will reduce the overall quality score of the proposal and that excessive or superfluous requests for changes may deem the proposal as non-responsive to this RFX event.

Failure to note any requests for changes to the terms and conditions with the submission of the proposal are grounds for dismissal if requests are made after that during the contract award phase.

EXHIBIT 5 – UC BERKELEY INSURANCE REQUIREMENTS

The Supplier must, at its own expense, obtain and keep in force during the entire term of an awarded Agreement and issue a blanket certificate to the Regents to cover any work done for the University. Certificate of insurance evidencing said insurance must be on file with UC Berkeley Supply Chain Management before commencing and services. The insurance policy covered by the certificate of insurance cannot be cancelled or reduced without fifteen (15) days prior written notice to the University. Depending on the activity involved in the contract, additional coverage may be necessary (see below)

I. Insurance Requirements

Minimum Coverage / Commercial General Liability	
Each Occurrence	\$5,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$5,000,000
Vehicle - Transportation	
Additional Coverage	
Fire Damage	\$100,000
Medical Expense	\$5,000
Workers Compensation	\$1,000,000
Automobile Liability (combined single limit)	\$1,000,000
Professional Liability	\$2,000,000

Errors & Omissions/Professional Liability Coverage provides coverage for financial damages caused by a company's errors or omissions in providing professional services. In the case of a staffing firm making Information Technology placements, the policy should be structured to respond to errors or omissions made both in providing staffing and IT services to their client.

II. Additional Insured

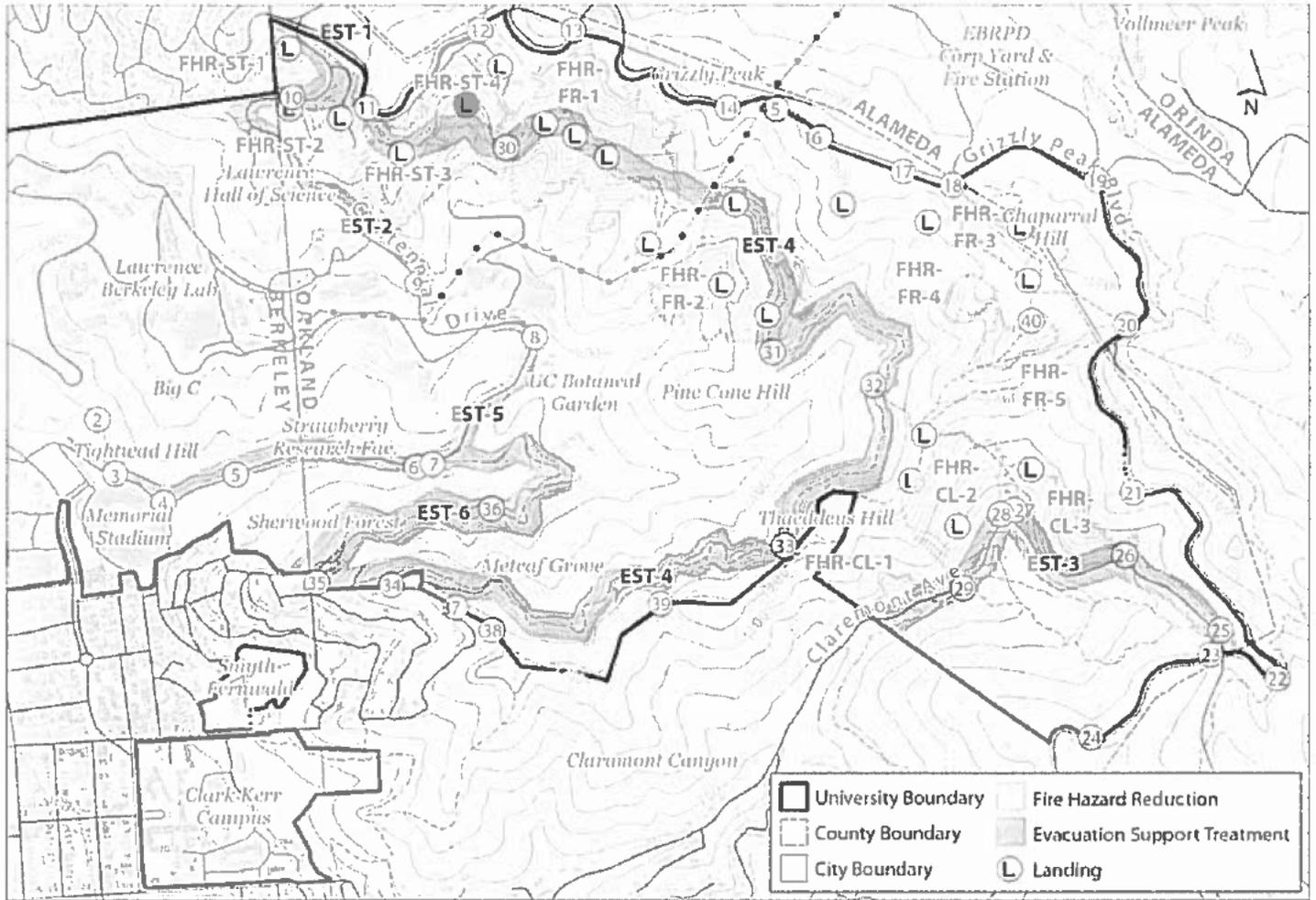
The Supplier will provide a Certificate of Insurance showing evidence of compliance with the established minimum insurance requirements and list The Regents of the University of California as an additional insured at the following address:

The Regents of the University of California
Supply Chain Management - Insurance Desk
1608 4th Street, Suite 228
Berkeley, CA 94710-7600

III. UC Insurance Programs

Suppliers who don't already have coverage may apply for Insurance through Mercer for a one-time event or a one-year blanket policy: For more information, see Supplier Insurance Programs.

EXHIBIT 6 - PROJECT MAP

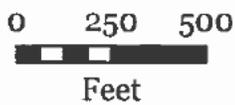


Projects Funded by CCI/ CAL FIRE

UC Berkeley Hill Campus Wildland Fire Management Plan



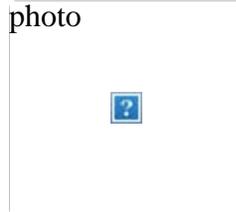
Berkeley
UNIVERSITY OF CALIFORNIA



 Utilities

EXHIBIT 5

From: [Libertad Ayala](#)
To: [Preparata Claudia](#)
Subject: Fwd: : Fire Fuel Mitigation
Date: Monday, October 07, 2019 11:11:12 AM
Attachments: [53A L Perlman re RFP w attachments.pdf](#)



Libertad Ayala

Lead Organizer at AFSCME 3299

A [2519 Telegraph Ave Suite B. Berkeley](#)

M [\(818\) 814-6054](#)

E Layala@afscme3299.org

W www.afscme3299.org



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Setup Meeting w/ Libertad [Click here](#)

From: Mara Otero <mara.otero@berkeley.edu>
Date: October 7, 2019 at 10:56:01 AM
To: Libertad Ayala <layala@afscme3299.org>
CC: JD Eugene Whitlock <ewhitlock@berkeley.edu>, Felix Deleon <fdeleon8@berkeley.edu>, M Manzanarez Maricruz <mmanzanarez@afscme3299.org>
Subject: Re: Fire Fuel Mitigation

Good Morning Libertad,

The University sent the RFP for the Centennial Drive Evacuation Support on August 13, 2019 via Fax to AFSCME (see attachment). This notice, which was sent fifty-five (55) days ago, meets the obligation to notify AFSCME of the decision to contract out the specified work. The union did not demand to bargain within a reasonable amount of time from the date of notice, therefore, the University will continue with the timeline identified in the RFP for the proposed project.

If AFSCME objects to the facts presented above, please provide your explanation

and justification for demanding to bargain at this time and the University may consider to hear any concerns you have about the project. This consideration will not delay the project and is not considered as acceding to AFSCME's demand.

Sincerely,

Mara M. Otero
Labor Relations Advocate
[2199 Addison St, Suite 192](#)
[Berkeley, CA 94720](#)
Tel: [510-643-9420](#)

On Thu, Oct 3, 2019 at 6:51 PM Libertad Ayala <layala@afscme3299.org> wrote:

Dear Mara,

AFSCME is in receipt of UC Berkeley's RFP for fire fuel mitigation work in the Berkeley Hill campus. i.e. "RFP—Centennial Drive Evacuation Support." 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, AFSCME will be requesting additional information.

Sincerely,

--



Libertad Ayala

Lead Organizer at AFSCME 3299



A 2519 Telegraph Ave Suite B. Berkeley CA 94704

M (818) 814-6054 **E** Layala@afscme3299.org

W www.afscme3299.org



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HUMAN RESOURCES
POLICY AND LABOR RELATIONS
2199 ADDISON STREET, ROOM 192
BERKELEY, CALIFORNIA 94704-3540

FAX (510) 642-2888
TEL. (510) 642-4275

August 13, 2019
53-19

SENT VIA FACSIMILE (510-844-1170)

Ms. Liz Perlman
AFSCME Local 3299
2201 Broadway Ave., Suite 315
Oakland, CA 94612

Re: RFP—Centennial Drive Evacuation Support

Dear Liz:

Attached for your information is a RFP for fire fuel mitigation work in the Berkeley Hill campus. Project activities will take place within 100 feet of the edge of pavement along Stadium Rim Way and Centennial Drive. The contractor will remove high-volume vegetation to create discontinuity in the fuel so that a fire would spread more slowly and that flame lengths would be lessened. Understory vegetation will be removed, trees will be pruned, and dead or diseased trees will be removed. Machinery to be used includes, cranes, tractors, chainsaws, feller-bunchers and mechanized brush cutters.

The contracting out of this project is permissible under the following subsections of Article 5.B.2.:

- 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 contractors than by the University;
- c. The need to provide short-term, temporary staffing in order to meet operational or business needs; and,
- 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.

No bargaining unit employees will be impacted by the contracting out of this work.

Please contact me if you have any questions regarding the RFP.

Sincerely,



Joyce Harlan
Labor Relations Advocate

Attachment

- C: Director Raman
- Associate Vice Chancellor McGarrahan
- Associate Director Deleon
- Labor Relations Advocate Magno
- AFSCME Representative Ayala (w)



**University of California, Berkeley
Facilities Services
RFP# 001428-AUG2019
Centennial Drive Evacuation Support
UCB HILL CAMPUS**

RFP Timeline – The UC reserves the right to modify this timeline to best meet the needs of the University.

RFP release date	8/12/19
Mandatory Pre-bid walk through at <u>2000 Carleton St, Berkeley, CA 94720</u> at 9am-1pm PT	8/27/19
Bidder RFP questions due	9/3/19
UC answers to questions due	9/6/19
Bidder proposal due date	9/13/19
UC evaluation of proposals due	9/18/19
Bidder Interviews	10/1-10/4
UC evaluation of Bidder interviews	10/7/19
Apparent Awardee: Intent to award notice, best & final	10/9/19
Executed Contract	10/18/19

1. INTRODUCTION

The University of California, Berkeley (UCB) invites proposals for Centennial Drive Evacuation Support on behalf of Facilities Services. The University of California, Berkeley is internationally renowned for excellence and pioneering achievements across all disciplines. The University of California was chartered in 1868 with Berkeley as its flagship campus. Today the world’s premier public university and a wellspring of innovation, Berkeley occupies a 1,232-acre campus with a sylvan 178-acre central core. From this home its academic community makes key contributions to the economic and social well-being of the Bay Area, California, and the nation.

2. PURPOSE

Objectives

The objective of this project is to support safe emergency evacuation on Centennial Drive if, for example, a landslide or wildfire would occur. Currently there are numerous trees and abundant shrubby fuels near Centennial Dr. that can fall across the road and block traffic or burn with such intensity that passage is prohibited during a wildfire.

This work is part of the other fire management plan implementation activities in the Hill Campus. Facilities Services has removed numerous trees and shrubby vegetation throughout the Hill Campus to ensure access and egress. Sites where this work has occurred includes the Upper and Lower Jordan Fire Trail, Field Station for Behavioral Research, and Tightwad Hill. Because the trees are increasingly unstable, having been weakened first by the drought, and the underpinning soil made more unstable by the previous wet winter, actions to prevent road blockage because of nearby trees is warranted. In addition, shrubs under trees have grown to be a dense understory, warranting action to prevent intense roadside fire behavior.

Project Goals

In all areas, the fuel mitigation work focuses on removing fire-promoting trees, understory shrubs and small trees that could enable torching, and trees that may block access/egress should they fall. The goal is to improve life safety and reduce loss from wildfires by supporting the conversion of the existing fire-prone forest near the road to vegetation with more favorable burning characteristics.

The need to reduce fire hazards in the immediate proximity of these structures and potential evacuation routes is paramount.

Location

The proposed project is comprised of fire fuel mitigation work in the University of California, Berkeley (UCB) Hill Campus. Project activities will take place within 100 feet of the edge of pavement along Stadium Rim Way and Centennial Drive. The location of work is indicated on the attached maps. Note not all portions of Centennial Drive are included in the work. Total acres are 33.3 acres.

3. SUPPLIER BIDDING GUIDELINES

Reference the Required Supplier Information document in the UC's bid site is a mandatory prerequisites to this event.

4. MINIMUM / MANDATORY REQUIREMENTS

Bidders shall be eliminated from further consideration if Minimum / Mandatory Requirements aren't met.

Bidders must attend the Mandatory Prebid Walkthrough on August 27, 2019 from 9:00am to 1:00pm. Please contact the Buyer at charles.c@berkeley.edu no later than Friday August 23, 2019 to confirm attendance to this Prebid Walkthrough. Suppliers will meet the Project Manager at 2000 Carleton St, Berkeley, CA 94720

Bidder must have extensive and proven experience with hazardous trees and resprout with similar size and scope as described in the statement of work.

Bidder must have expertise and ability to manage complex projects / events and working with police, EH&S, traffic control types of groups. Project Management: Bidder must be a results-oriented and work to the project schedule/budget and meet all of the permit requirements of University of California, Berkeley.

Bidder must be located in California.

5. EVALUATION CRITERIA

The evaluation process for this RFP will be made based on University of California Policy [BUS-43](#), which is posted online. Factors that will be used to evaluate information include, but are not limited to:

- a) **Business Experience:** Projects of a similar nature, size and complexity, resources available.
- b) **Financial Stability:** Dun & Bradstreet number, revenue reports, financial references, continuity plans, etc. Department's may want to allow Suppliers (small or privately held) provide their financial information to the department by another mode of delivery rather than uploading the documents in the bid site.
- c) **Technical Qualifications:** capabilities for the specifications in the SOW
- d) **Functional Qualifications - Project Management Experience:** Expertise of personnel identified in the response.
- e) **Sustainability:** The University of California, Berkeley is committed to continuous improvement in procuring environmentally preferable products, promoting sustainable practices, managing energy consumption, ensuring human health, supporting fair labor practices, investing in supplier diversity and considering sustainability in all activities. As such, the University includes in solicitations for the procurement of services sustainability criteria applicable to the service and/or good being procured. Criteria may include, but is not limited to third party certifications, sustainable product attributes, a demonstrated commitment to sustainability in business practices, corporate social responsibility, and life cycle impacts of proposed goods or services. See the University of California Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) and the UC Berkeley Sustainable Office <https://sustainability.berkeley.edu/> information sites for more detail.

All suppliers to the University of California are required to meet all applicable sustainability standards and requirements as outlined in the UC Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>). The University prioritizes partnerships with suppliers that share our commitments to economic, social and environmental sustainability. Sustainable Procurement Resources & Guide can be found on the UCOP website:

<https://www.ucop.edu/procurement-services/for-ucstaff/sustainable-procurement/sustainable-procurement-training-resources.html>

- f) **Service Maintenance:** Emergency service response time and dedicated staff.
- g) **Customer Service:** Ability to meet the needs of the department team.
- h) **UC Terms:** Extent of proposed changes to UC's legal template documents.
- i) **References:** UC reserves the right to check references other than those provided by the Bidder, and to ask follow up questions to clarify any responses received.

6. CONTRACT AWARD

Bids will be evaluated in 2 or 3 tiers based on the need for a Bidder Interview. Evaluation will be based on Best Value and returning all required RFP responses. A complete bid response contains answering all questions in Section 9 of this RFP, proving a response to all pricing in Exhibit 1, and returning applicable Exhibits.

- a) **Tier 1 - Minimum / Mandatory Requirements:** Bidders shall be eliminated from further consideration if Section 4: Prequalification – Minimum / Mandatory Requirements aren't met.
- b) **Tier 2 - Bidder's Proposal Evaluation:** Evaluation criteria will be based on responses to the RFP requirements.
- c) **Tier 3 – Bidder's In person Presentation, of the proposals submitted:** Top Bidder's from Tier 2, up to a maximum of 4 firms, will be invited to present their firms qualifications and RFP responses. The Project Manager must attend the interview and if possible the project team. Clarifying information from the oral presentation/demonstration may be taken into account when evaluating the proposals. The UC reserves the right to eliminate the oral presentation/demonstration if it determines the written bids sufficiently address the evaluation criteria. The University may make multiple awards to multiple Bidders for particular subsets of the Statement of Work (SOW) or elect to make no award.

7. STATEMENT OF WORK

PHASE 1

Treatment Summary

Treatments will remove high-volume vegetation and create a discontinuity in the fuel so that the rate of fire spread is slowed and flame lengths meet the project goal in treed areas. In these subareas, the lower branches of all trees will be removed to a minimum height of 8 feet, and understory vegetation will be removed. Branches that droop down below 8 feet but are attached higher up the stem should be pruned on the stem. Shrubs will be removed or thinned to a minimum spacing of 6 feet. Identified "specimen" trees will be retained and shrubs under them removed if structure and health is satisfactory. Trees to be retained will be marked by UCB and protected during the treatment period.

Unhealthy, or structurally unsound trees that are likely to torch and distribute embers will be cut down. Short trees will be cut down where located beneath taller trees to be retained. Criteria for tree removal will include consideration of tree health, structure, height, potential for failure, and competition with other trees, including for water, space and light. Criteria for retention of trees will include consideration of ability to slow spreading of invasive species and surface fuels, protection of understory, encouragement of nesting and improvement of flight patterns of raptors, and prevention of erosion. Practices consistent with those used by the International Society of Arboriculture will be applied. Current California Forest Practice Rules will be followed.

Treatments will be performed with a mechanized feller-buncher, possibly a crane, as well as hand crews using chainsaws and hand-held mechanized brush cutters. Any branch over the roadbed will be trimmed to a height of 15 above ground. Dead surface fuels smaller than 6 inches in diameter will be removed. Leaf litter of less than 6 inch depth can remain. All dead trees will be removed.

Use of the feller-buncher is limited to slopes of less than approximately 45%. Tractors may be positioned on existing, stable roads adjacent to some of the steeper areas, and cut material winched for chipping and or hauling. Trees on steeper slopes will be cut down using hand-held equipment only; no heavy equipment would be used for cutting or chipping in these areas. Trees identified for removal within 50 feet of Strawberry Creek will be cut only after consultation with the University. A crane (positioned on a road) may be used to reposition tree trunks after cutting. The project will involve closure of sections of Centennial Drive to allow cutting and skidding of trees growing close to the road and for hauling and processing material.

A cable system may also be used to move logs to the landings without use of vehicles. The contractor will use landings and skid trails from previous logging instead of constructing new ones. Equipment would be staged, fueled, and maintained at existing landings while contractors are mobilized.

Shrubs under remaining trees will be cut, per defensible space standards in the 2015 UC Berkeley Fire Management Program

Material will remain the property of the University. The objective is to leave or use all downed material on site. Cut logs will be hauled to the landing site, chipped and distributed on site or stockpiled for use elsewhere. With consultation with the University, selected tree trunks may be left on the slope. The trunks of these trees will be cut into 20- to 30-foot lengths. In these cases, the downed tree would be cut such that all portions of the tree will be within 6 inches of the ground. Where possible, tree trunks will be placed and anchored to prevent movement, to help control sediment and erosion or support wildlife habitat. Other logs can be positioned on UC property as barriers to illegal vehicular access.

At landings or on the roadside, trees will be stored or chipped. Whole trees will be fed into the chipper and pulled through the blades by a conveyor belt and feed wheel. Alternatively, the tracked chipper may be driven to downed trees on slopes less than 30% steepness.

Wood chips and chips from the shrubby vegetation are expected to be between 1 and 4 inches long. Branches and other debris will be chipped and left on-site, or hauled to another on-campus location, depending on the need for surface cover to prevent erosion. The volume of cut material left on site will be kept at average depths <6" as measured across any random 1/10 acre area to prevent excessive fuel buildup.

UCB will use some of the wood chips to create sediment traps. The maximum depth of chips will be used for the sediment trap to increase both the length of time the traps function and the amount of sediment that can be retained. However, chips may not be placed on slopes >30% and within 50 feet from Strawberry Creek and crossings. This material will float and potentially plug culverts in the first winter. Chips may also be spread to the maximum depth over uneven terrain and over stumps. Chips will be spread on skid paths to reduce disturbance of soil.

Work will be conducted from December 1 through January 15. Per California Forest Practice Rules Section 895.1 operations can occur, especially in "extended dry periods", and as long as skidding is not performed after a heavy rain, and other restrictions.

Potential Issues to be Addressed in Project Scope

The proposal shall include a detailed operations plan. This operation plan would detail erosion control measures to be taken, a plan for traffic control, plan to indicate the quality of operations, and proposal to show how potential impacts to the public are avoided through signage, advance notification by radio and newspapers, access limitation, season and time-of-day of work. These measures are consistent with applicable 2020 Long Range Development Plan EIR, and the UCB 2015 Fire Management program. These documents are available at <http://lrdp.berkeley.edu/documents.html> and https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing. The campus expects that all work would be conducted in accordance with the UC Berkeley 2020 Long Range Development Plan and EIR, including incorporation of relevant mitigation measures where applicable.

Archaeological Resources

A review of the archaeological records and reports in the campus records indicated there were no historic or prehistoric resources known to be present on-site. Operators and qualified project supervisors should remain vigilant for any resources potentially exposed during operations. Landings and other areas prone to earth grading will be monitored for remains. Any potential resources will be reported to the supervisor and operations stopped until a plan of action is formulated.

Erosion Mitigations

A StormWater Pollution Prevention Plan will be prepared and implemented. Anticipated activities could include the use of hydro seed with native grasses and wildflowers, installation of jute wattles, and repair of pre-work contours.

No new roads will be constructed. Equipment will be staged on existing landings, either behind Signpost 9 on LBNL property or near signpost 7 on UCB land. The entire treatment area will be accessed from Centennial Drive – a paved, University owned roadway. Trees will be fallen to lead or sectioned, and material moved to the road where it will be hauled to the landings or completely offsite, or chipped onsite. Centennial Drive has been reviewed and deemed suitable for hauling.

Traffic and Noise Mitigations

Work will begin at 8AM and end at 6PM. Centennial Dr through traffic must be open from 8 AM till 9 AM and 3:30 PM till 5 PM. Treatments will take place on consecutive days in order to minimize the time in which Centennial Drive is closed, not including weekends and UCB recognized holidays (12/24, 12/25, 12/31 and 1/1). Priority will be given to operations plans that minimize the time in which Centennial is closed.

Vehicular traffic will consist primarily of moving equipment into and around the project area, and watering (on landing) as needed to reduce any fugitive dust. Equipment will include low-bed trucks hauling chippers, rubber-tired skidders, a yarder, loader, and haul truck, as well as water trucks (if needed) and service and employee vehicles.

Trucks and hauling could be routed down Centennial Drive to a landing site at Signpost 9, which is less than a half-mile. Skidders may also be able to drag logs to that landing provided the road surface is not damaged. Branches will be chipped and blown onto the slope and/or into trucks for hauling to the landing site or other on-campus location.

Chain saws, skidders, loaders and chippers will be the most noticeable and enduring noise effects of the project. The remote location and distance from residential areas will help mitigate this effect.

Security and Fire Safety

The contractor will comply with all the terms in the 2015 UC Berkeley Fire Management Program, which is available at https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing.

The contractor shall provide on-site people dedicated to ensure public safety and security. Temporary fencing, with necessary gates, shall be placed at strategic locations to keep the public out of the work areas. Signs will be posted throughout the project area containing legal and project information along with a contact for public questions. UC Police Department (UCPD) will assist in the development of appropriate signage. All trespassers or evidence of trespassing would be reported to UCPD.

The operator will be required to permit fire suppression vehicle access through the area - except when cranes need to be positioned for short periods. The operator will also be required to have fire caches and on-hip fire extinguishers when running saws etc. Spotters will also be required as well as end of day patrols to look for hot equipment and other ignition sources.

The contractor shall provide their own security and monitoring personnel, subject to vetting by the UCPD. All contractors and project supervisors shall coordinate with the Project Manager, Devin Woolridge, at (510) 812-0540, to establish a radio network. All on-site contractors will maintain radio communication with Facilities Services.

The UCPD will be contacted daily by the contractor when operations are to commence and when they are stopped.

A contact sheet and radio training will be provided as part of the pre-work meeting.

Yarding

Trees to be cut will be chosen based on their height and risk for falling onto Centennial Drive. This means cut trees can be fallen so that they can be reached by either a grapple or by a cable winch and pulled to the road for limbing, bucking, chipping, loading or skidding to the landing.

Some of the treatment area has slopes from 30-100% and is not yardable with tractors or rubber-tired skidders. The bidder may propose the use of mobile cranes to reach trees further up the hill. The method of yarding will be evaluated and included as a criterion for selection of the operator.

Existing internal fences may be removed to facilitate treatments but would be replaced and functional prior to the completion of operations.

Cut Stumps

All cut stumps will be <6" in height as measured from the uphill side. Stumps shall be cut flush, with no hinge wood remaining. In some approved locations, stumps may be left higher to stabilize cross-felled trees on ground deemed too steep for yarding.

Herbicide Use

To prevent resprouting of removed trees, an herbicide solution with a dye will be applied to the cambium ring of sprouting trees within three minutes of felling. The contractor will treat all cut stumps with material prepared and provided to the contractor (University will purchase, mix, label and deliver cut stump concentrate as needed). The herbicide mixture will likely consist of a combination of Garlon 4 or Garlon 3A (triclopyr) and Stalker (imazapyr) in a solution of methylated seed oil, water, and marking dye. Garlon 3A will be used within 60 feet of running or standing water. A typical tree requires 1 to 2 ounces of diluted solution. Use of herbicides will be subject to the restrictions described on the product label, specified in the recommendation by the Pesticide Control Advisor, and by the 2014 Final Hazardous Fire Risk Reduction Environmental Impact Statement East Bay Hills, California. Any eucalyptus or acacia found untreated will require re-cutting at least 6" of stump and re-application of herbicides. If 6" of stump does not remain, the stump shall be ground to 6" below grade prior to being treated.

Herbicide use on this project has been extensively analyzed, and the contractor is responsible for compliance with the practices and mitigations measures described in the LRDP. All applications must be done by or under the direct supervision of a State California Qualified Applicator. All herbicides will be supplied and prepared by the University. Pre-work meetings will ensure sufficient quantities are provided in a timely manner based on anticipated treatment rates.

Unstable Areas

"Unstable areas" are defined in the Forest Practice Rules (FPR, available at https://drive.google.com/drive/folders/0B7QP03sQo_VxQ2FRTHRSbHNBek0?usp=sharing) as being characterized by slide areas or unstable soils, or by some or all of the following: hummocky topography consisting of rolling bumpy ground, frequent benches and depressions; short irregular surface drainages at the beginning and end on the slope; tension cracks and head wall scarps indicating slumping are visible; slopes are irregular and may be slightly concave in upper half and convex in lower half as a result of previous slope failure; there may be evidence of impaired ground water movement resulting in local zones of saturation within the soil mass which is indicated at the surface by sag ponds with standing water, springs, or patches of wet ground. Some or all of the following may be present: hydrophytic (wet site) vegetation prevalent; leaning, jackstraws or split trees are common; pistol-butted trees with excessive sweep may occur in areas of hummocky topography.

Inspections of the entire treatment area have been made by Registered Professional Forester (RPF), and no unstable areas were found. The project will increase the potential for soil movement and the creation of new or older undetected unstable areas. For this reason, an erosion control plan is required and may include site-specific mulching, wattle installation, seeding of bare areas, and culvert maintenance.

Erosion Control Measures

All skid trails (if created) will be water-barred, and landings graded to ensure positive drainage. Chips will be applied to trails and landings after the erosion control (waterbars and grading, etc.) is done.

First winter inspections of erosion control measures will be required, and any erosion control problems are to be mitigated as soon as safely possible. Photos and log notes of this monitoring will be maintained.

Organics Diversion

Documentation metrics on waste diversion shall be provided at the end of each project to Cal Zero Waste, Facilities Services. Documentation forms will be provided by University of California Berkeley; Contractors are

required to submit backup documentation along with the form.

Contractors will be required to submit documentation regarding waste diversion on the following:

1. Estimation of weights of materials generated from each project completed on the University of California, Berkeley campus, as well as information on whether materials are reused, recycled, composted or landfill. If estimated weights are not available, estimated volumes should be provided.
2. Destination of where materials are sent to for processing if taken off site.

I. Term of SOW

Start Date December 1, 2019 through January 15, 2020.

II. Key Tasks and Activities, Deliverables and Completion Timeframe

Phase 1, Bidder Obligations:

DAMAGE TO FACILITIES

If damage to equipment or facilities is caused by the negligence of Supplier, then the Supplier shall be responsible for fixing or replacing equipment and fixing damages to the facility at no cost to the UC.

EQUIPMENT TO BE PROVIDED BY SUPPLIER

Supplier will provide all equipment to be used and dedicated to the site. The equipment will be new or in good working condition. Supplier's equipment shall be of the size and type suitable for accomplishing the various phases of the work described herein.

Equipment considered by the UC to be improper or inadequate for the purpose shall be removed from the job and replaced with satisfactory equipment. Supplier will be expected to repair, replace or rent appropriate equipment as necessary to perform the services.

SUPPLIER WORKFORCE AND WORKFORCE FLEXIBILITY

The UC considers it important that the successful awarded Supplier maintains a stable workforce with an appropriate wage/benefit package, which will encourage high quality and efficiency of services and contribute to a safe and secure campus environment.

Phase 1 project work scheduling may vary depending on university operational needs. Supplier shall work with the campus project manager on the scheduling of its workforce to best meet the needs of the university.

Supplier shall demonstrate that all staff are adequately trained in the compliance of all applicable OSHA, EPA, and other Federal, State and Local laws, rules and regulations regarding materials that may be encountered in the performance of the services.

The Supplier shall be responsible for its own labor relations with any trade or union representative among its employees and shall negotiate and be responsible for adjusting all of the disputes between itself and its employees. Whenever the Supplier has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the services, the Supplier shall immediately give written notice to the UC.

If any strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Supplier, which results in the curtailment or discontinuation of services provided herein, the UC shall have the right during said period to employ any means legally permissible to have the services provided.

In the event of a work stoppage by employees of the UC or any of the UC's other Suppliers affecting the site, the Supplier shall furnish the services required to keep the site in a condition acceptable to the UC.

SUPPLIER'S ACCESS

The UC shall give Supplier's personnel reasonable access to the areas where the services are to be performed. The UC shall arrange for access to buildings, including the provision of keys or access cards as required by Supplier to perform the services.

Access routes, entrance gates or doors, parking, and storage areas, etc. and any imposed time limitations on the Supplier shall be designated by the Project Manager. The Supplier shall conduct its operations in strict observation of the access routes and other areas established as described.

The Supplier shall ensure that under no circumstances shall any of the employees of the Supplier enter any area not authorized by the Project Manager for access.

USE OF SUBCONTRACTORS

Supplier must obtain advance written permission before using any subcontractor not listed in its RFP proposal for any work performed under an agreement with UC.

Phase 2, Bidder Obligations:

It is at the discretion of UC to engage this next phase based on the results of Phase 1.

UC may desire to request additional similar Services following the completion of the Phase 1. If desired, UC will submit a written request to Supplier describing such additional work in appropriate detail.

Supplier will in good faith provide UC with a written, high level, non-binding assessment of costs, expenses and the time required to perform the additional services ("Quote"). UC will notify Supplier in writing after receipt of the Supplier's Quote if the parties need to execute an amendment to the Master Service Agreement.

III. Project Management Tracking and Relationship

- a) Project Manager expectations to be on site 60% of the time, always at the start and end of each day
- b) Project Status Updates – weekly in person meetings.
- c) Bidder must attend meetings and site visits as needed with various departments (engineering, event services, etc.)

IV. Service Level Agreement/Acceptance

The minimum service standards set forth above recognize that occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Supplier does not take corrective action within fourteen (14) days following UC written notification, UC reserves the right to terminate the Agreement immediately.

- a) During the Term of the Agreement, and any extension(s) of the Term, Supplier will provide the following minimum service standards:

V. Milestones, Due Dates

Supplier must provide in its bid response a clear calendared outline of Milestones and Completion dates from December 1, 2019 to January 15, 2020 for Phase 1 project work. UC payments should be tied to these milestone and completion achievements through the course of the project.

VI. Provisions

- a) **Insurance** - See EXHIBIT 5
- b) **UC RFP Attachments** – See EXHIBIT 3
- c) **Project Map**-See EXHIBIT 6
- d) **Piggyback UC**

When practicable and able to do so, Successful awardee will be required to extend the terms of the agreement to all UC locations.

Supplier agrees to extend the pricing basis, terms and conditions of the Agreement to all UC locations Supplier will make available to any UC location its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple UC locations. All contractual administration issues (e.g. terms and conditions, extensions, and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual UC locations will be addressed, administered, and resolved by each UC location. Any delay in payment or other operational issue involving one UC location will not adversely affect any other UC location.

e) **Prevailing Wage**

Contract Awardee is subject to UC Terms and Conditions of Purchase, Article 24 Prevailing Wage. The successful awardee will be required to pay prevailing wages. The work described in the RFP is a public work subject to California Labor Code section 1771. No contractor or subcontractor may be listed on a bid for the work unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. The successful awardee will be required to post the applicable prevailing wage rate determination and any job site notices as prescribed by the DIR. The work is subject to compliance monitoring and enforcement by the DIR.

f) **No Mandatory Use**

Because there is no mandatory use policy at UC, nothing in this Request for Proposal/Statement of Work will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

g) **Indemnity**

Supplier will defend, protect, indemnify and hold harmless UC, its officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for damages, damage to any property, injury or death to any person or persons, arising out of or in any way connected with this Agreement, including the performance hereunder of, without limitation, caused by or arise from the negligent acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control.

h) **Background checks**

Supplier warrants that staff will have had a full background check initiated by Supplier and that the staff Will have no known criminal records or criminal charges within the last 7 years, which would in any way Affect the ability of staff to perform work in accordance with this agreement. All staff reporting to UC with felony and misdemeanor convictions (except marijuana related offenses greater than two years old) must be reported to UC and may result in the Supplier staff being prohibited from performing work

At UC.

i) Additional Warranty

Supplier warrants that it will bear complete responsibility for its staff's personal safety and that it will operate all equipment in a safe and professional manner in accordance with the equipment operating instructions while on UC property and that its knowledge of these requested services is adequate to permit the safe work in conjunction with this project.

VII. Service Level Agreement

The minimum service standards set forth above recognize occasional errors are likely; however, Bidder further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Bidder does not take corrective action within fifteen (15) days following UC written notification, UC reserves the right to terminate the Agreement immediately.

8. RFP QUESTIONS

Bidders must answer all of the questions in the following order, include the question and answers as a response to the proposal, and include all required attachments listing the corresponding question number and your Supplier name on the attachment and file name.

Proposals must not contain price information in the technical proposal, Section 8 RFP Questions. See EXHIBIT 1 for pricing.

BUSINESS PROFILE

1. Provide any relevant information about your company:
 - a) Background
 - b) Overview of firm's experience (sufficiently detailed to be evaluated) including the number of years in business
 - c) Brief description of your firm, including the breadth and depth of services offered (even if outside the scope of this RFP)
 - d) Firm's mission statement or corporate vision/values statement
 - e) Business model
 - f) Size of firm, including number of staff
 - g) Organizational chart
 - h) Areas of expertise
 - i) Local, regional, national or international

PROJECT MANAGEMENT

2. Please provide a CV sufficiently detailed to be evaluated of the proposed Project Manager, including experience with similar projects. The proposed project manager must be available for the duration of the engagement. Specifically discuss the individual's experience in managing a program of similar size and scope of the program described in this RFP.
3. If Bidder proposes any additional team members to support this project, list those personnel and their qualifications in sufficient detail to be evaluated.
4. UC reserves the right to approve all key personnel changes for work on an executed contract. Supplier will provide UC with the names of all key personnel and such personnel may not be replaced without written agreement of UC. Confirm agreement: yes or no.
5. Include information on any affiliates, subsidiaries or sub-suppliers who will be providing the Goods and/or Services and where they are located.
6. Provide at least five years of demonstrated experience (with examples) of similar projects with the same scope and size.

FINANCIALS

7. Please provide a copy of your company's audited financial statements or equivalent data for the past two (2) years in order to establish its financial stability and capability to perform the work specified in this RFX.

IMPLEMENTATION

8. **Project Approach and Detailed Plan:** Please describe your company's project approach and explain the methodology to this project based on the information provided in the RFP. Proposers must provide a detailed project plan including work breakdown by major milestones and tasks as well as timing and the expected involvement of the project management consultant and University team members.
9. **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 Berkeley personnel, or technological issues that were not specifically mentioned in the RFP document should be listed.

CUSTOMER SERVICE

10. Confirm your company will have dedicated staff assigned to project.
11. Describe your customer service structure including hours of operation, off hours emergency procedure, response time, service levels.

SUSTAINABLE, ECONOMIC AND SOCIAL RESPONSIBILITY - SOLICITATION GUIDANCE & RFX QUESTIONS"

12. UC is committed to responsible stewardship of resources and to demonstrating leadership in sustainable business practices. How do you incorporate Corporate Social Responsibility (CSR) into your business practices and policies (i.e. benefits, training, childcare)? Please provide information concerning company philosophy, efforts, and programs in the following areas:
 - a) Policies incorporating environmental and/or social sustainability and stewardship
 - b) Energy efficiency within administrative offices (e.g. LEED buildings)
 - c) Company vehicles/transportation and shipping (EPA SmartWay Partner or Affiliate, fuel efficient/alternatively fueled vehicles used in transport and delivery)
 - d) Reduction of waste, water, chemical use
 - e) Environmental Management Standards (ISO 14001).
13. If your company will use subcontractors in fulfilling the Goods and/or Services, please note if you or your sub-suppliers are certified with the State of California or the Federal Government (GSA) as a diverse, small or disabled veteran owned business (i.e. SB/DVBE, SBE, SDVOSB, DVE MBE etc.). If you answered "Yes" to the use of subcontractors, please state criteria used to qualify a subcontractor for your company.
14. Does your company provide a program encouraging and enabling carpooling and/or telecommuting? Please explain how it is structured and utilized by employees.
15. Supplier(s) awarded a system-wide IT agreement as a result of this RFP will be required to register and participate in an assessment of their sustainability practices and procedures through the EcoVadis Corporate Social Responsibility (CSR) monitoring platform. For more information on the EcoVadis platform and costs associated with an assessment, please see the EcoVadis Supplier Solutions Website here: <https://www.ecovadis.com/us/supplier-solutions-2/>. Please acknowledge that you have read, understand and accept compliance to this requirement.

PAYMENTS & INVOICING

21. Invoicing must be itemized based on the statement of work detailing the individual cost components of the Goods and/or Services. Please itemize any additional charges or non-recurring expenses.
22. Provide the name(s) and contact information for accounts payable clarifications.

DONATIONS & DISCOUNTS

23. Is your company willing to support UC for special events or make any other contributions or donations to UC in conjunction with this agreement?

PREVAILING WAGE

24. Provide your Contractors State License Board (CSLB) number and Public Works Contractor Registration (PWCR) number in addition to license numbers of proposed subcontractors.
25. Disclose any claims or lawsuits that have occurred in the last 5 years.

OFFSHORING OF SERVICES

26. Supplier must do one of the following in the bid:
 - a) Certify under penalty of perjury that the services will be performed solely with workers within the United States, including any services that Supplier would provide using a subsupplier; or
 - b) Describe in its bid any part of the services that will be performed by workers outside of the United States.
27. Confirm that your company fully understands and agrees to the UC's Offshoring of Services requirements as described in UC Terms and Conditions.

LEGAL ACTIONS & SAFETY VIOLATIONS

28. Disclose any claims or lawsuits that have occurred in the last 5 years against your company. Specifically, describe any actions related to failure to perform, breach of contract, satisfaction of warranty claims or license violations or right to use. If there are none, please state.
29. Disclose any claims or safety violation(s) that have occurred in the last 5 years against your company. Specifically, describe the violation(s) any actions taken to correct the violations or claim. If there are none, please state.

LICENSES

30. Provide copies of all trade, professional, or business licenses of staff that are assigned to work on this project.

REFERENCES

31. Provide three references and contact information to verify bidder direct experience in a solution development of a similar size and complexity to the University of California. Complete and submit EXHIBIT 2 (References). Bidders should provide at least 3 references of clients in California. One of the references should be from a client you are no longer on contract with.

TERMS AND CONDITIONS

32. **Terms and Conditions:** Proposers must acknowledge acceptance of the University Terms and Conditions of Purchase. Requests for changes in language must include a citation of the specific article or clause with proposed alternative language or an explanation of the cause for concern. Failure to note any requests for changes to the terms and conditions with the submission of the proposal are grounds for dismissal. Suppliers that submit excessive or onerous requests for changes to the UC Terms and Conditions of Purchase will be scored less favorable or may be deemed as non-responsive. See EXHIBIT 5 (Acceptance of UC Agreement and Terms)

ADDITIONAL INFORMATION

33. What information, other than provided in this RFx, would you need for implementation?
34. Identify any restrictions that would preclude the Supplier from providing any of the Goods and/or Services requested in this RFx in a cost-effective offering.
35. Please provide any additional information considered essential to the proposal and not specifically requested in other sections. If there is no additional information to present, please state in this section: "There is no additional information we wish to present."

EXHIBIT 1 – FINANCIAL PROPOSAL, ITEMIZED PRICING

Supplier must submit their "Base Bid" – Suppliers total costs including any non-recurring expenses, in the item tab in the UC's bid site. The Base Bid will be the contract award amount. The proposal must include any and all travel and reimbursable expenses and comply with the University's Travel Policy. Any offered "Additional Services" not included in the Statement of Work will be described under the Heading "Additional Services". These costs will not be included as part of the Base Bid. The University reserves the right to include these costs in the agreement if an award is made. Supplier is responsible for ensuring that the submitted Base Bid matches the sum of all costs submitted. If the number(s) on the Financial Proposal Form do not match the Base Bid amount submitted in CalUSource the number(s) on the Financial Proposal Form shall prevail.

Attachments can be used to itemize the pricing as long as Bidder includes responses to all Sections listed below. If Bidder declines to submit a proposal, it must be clearly stated "no Bid."

NOTE: The Price Proposal must be submitted as a separate file/electronic document from the proposal.

I. Base Bid Price Proposal – including but not limited to all necessary goods and services

- | | |
|--|----------|
| a) Services | \$ _____ |
| b) Goods | \$ _____ |
| c) Additional services and/or goods not identified | \$ _____ |

Total Base Bid \$ _____

II. Optional Pricing - The costs in items a) and b), will not be included as part of the Base Bid. The University reserves the right to include these costs in the agreement if the UC elects to award with this RFP.

- | | |
|--------------|----------|
| a) Option 1: | \$ _____ |
|--------------|----------|

III. Discounts

- | | |
|--|----------|
| a) Discount offered. | \$ _____ |
| b) Incentives, Prompt Payment Discount | \$ _____ |

IV. Payment Schedule

Payment schedule will be negotiated upon acceptance of award: Fixed Price Services, Time and Materials, or Payment Schedule.

:

EXHIBIT 2 – REFERENCES

Bidder Name: **Name of organization**

Bidders should provide at least three references of clients with similar services (budgets), including main contact, length of relationship and briefly how your campaign management was successful for each client. One of the references should be from a client you are no longer on contract with. Provide a description of the Goods and/or Services provided (budgets), length of relationship and briefly how your services were successful for each client.

NOTE: Please complete ALL information listed below. University will not accept references that cannot be directly contacted by email. Use separate sheet as necessary.

1. Reference One:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

2. Reference Two:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

3. Reference Three:

Name of organization:	Address:
Telephone:	Contact person:
Name of project:	Contact person's title:
Length of relationship:	Email address:
Goods and/or Services provided:	

EXHIBIT 3 – DRAFT AGREEMENTS - UC TERMS & CONDITIONS, CONFLICT OF INTEREST, NON-DISCLOSURE AGREEMENT, SUPPLIER ON-BOARDING FORM, ETC.

EXHIBIT 4 – SUPPLIER ACCEPTANCE OF UC TERMS

- 1. Bidder accepts terms listed in the EXHIBIT 4 and/or attached within the RFX on the "CalUSource.net" bid site without exception.

OR

- 2. Bidder proposes exceptions or modifications to the UC Agreement, Terms and Conditions of Purchase.

Requests for changes in language must include a citation of the specific article or clause with proposed alternative language or an explanation of the cause for concern.

The exceptions need to clearly identify the "top 5" modifications. Bidder understands more than (5) exceptions will reduce the overall quality score of the proposal and that excessive or superfluous requests for changes may deem the proposal as non-responsive to this RFX event.

Failure to note any requests for changes to the terms and conditions with the submission of the proposal are grounds for dismissal if requests are made after that during the contract award phase.

EXHIBIT 5 – UC BERKELEY INSURANCE REQUIREMENTS

The Supplier must, at its own expense, obtain and keep in force during the entire term of an awarded Agreement and issue a blanket certificate to the Regents to cover any work done for the University. Certificate of insurance evidencing said insurance must be on file with UC Berkeley Supply Chain Management before commencing and services. The insurance policy covered by the certificate of insurance cannot be cancelled or reduced without fifteen (15) days prior written notice to the University. Depending on the activity involved in the contract, additional coverage may be necessary (see below)

I. Insurance Requirements

Minimum Coverage / Commercial General Liability	
Each Occurrence	\$5,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$5,000,000
Vehicle - Transportation	
Additional Coverage	
Fire Damage	\$100,000
Medical Expense	\$5,000
Workers Compensation	\$1,000,000
Automobile Liability (combined single limit)	\$1,000,000
Professional Liability	\$2,000,000

Errors & Omissions/Professional Liability Coverage provides coverage for financial damages caused by a company's errors or omissions in providing professional services. In the case of a staffing firm making Information Technology placements, the policy should be structured to respond to errors or omissions made both in providing staffing and IT services to their client.

II. Additional Insured

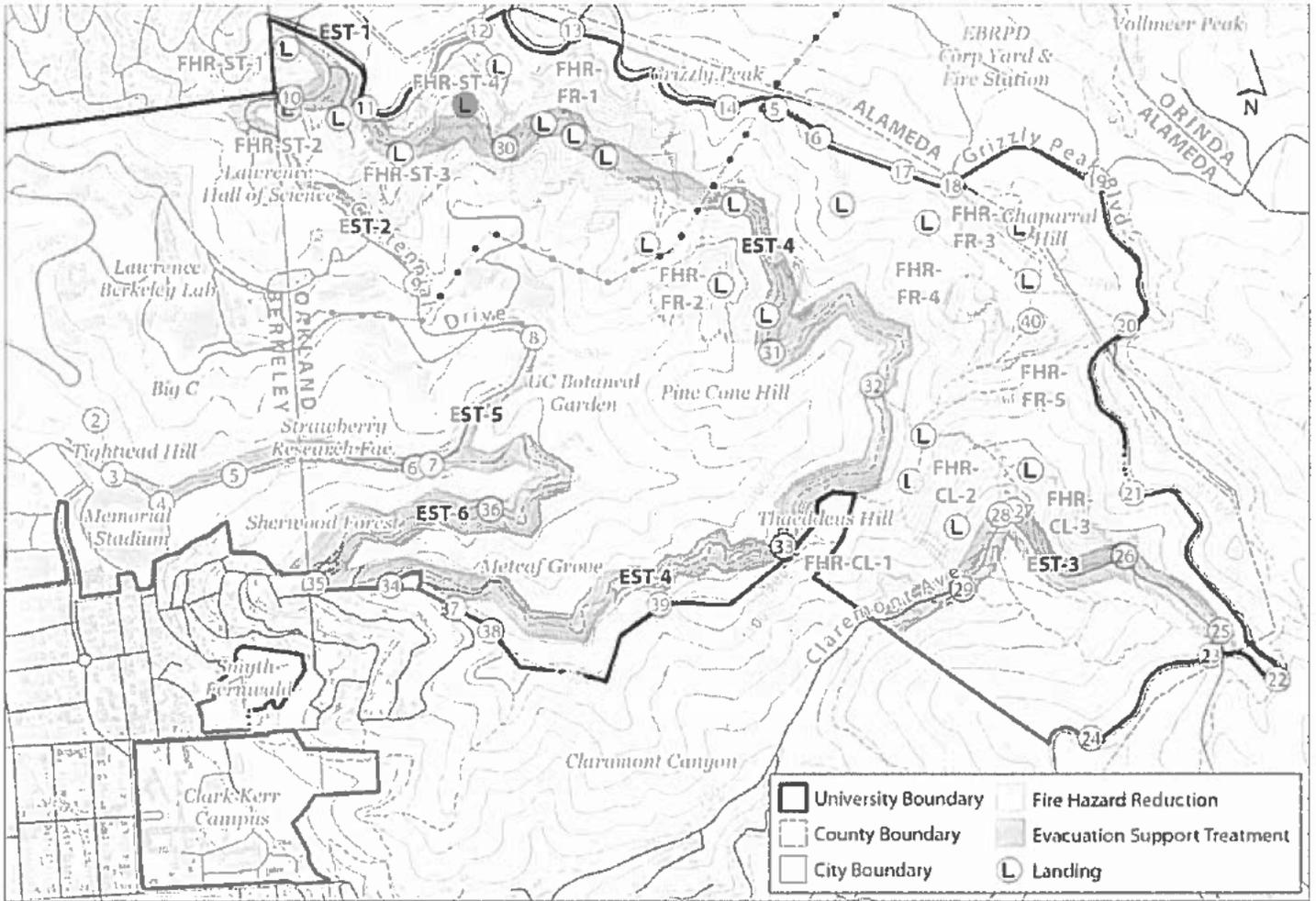
The Supplier will provide a Certificate of Insurance showing evidence of compliance with the established minimum insurance requirements and list The Regents of the University of California as an additional insured at the following address:

The Regents of the University of California
Supply Chain Management - Insurance Desk
1608 4th Street, Suite 228
Berkeley, CA 94710-7600

III. UC Insurance Programs

Suppliers who don't already have coverage may apply for Insurance through Mercer for a one-time event or a one-year blanket policy: For more information, see Supplier Insurance Programs.

EXHIBIT 6 - PROJECT MAP

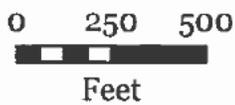


Projects Funded by CCI/ CAL FIRE

UC Berkeley Hill Campus Wildland Fire Management Plan



Berkeley
UNIVERSITY OF CALIFORNIA



 Utilities

EXHIBIT 6

From: Teresa Avendano <tavendano@afscme3299.org>
Sent: Tuesday, February 26, 2019 4:28 PM
To: Claudia Preparata; Seth Patel
Subject: Fwd: Courtesy Notice - Request for Proposal-Contracting Out for Landscaping Services
Attachments: image001.png; Union Notice AFSCME Contracting Out Landscaping Services February 2019.pdf

----- Forwarded message -----

From: **Yeung, Joya** <Joya.Yeung@ucsf.edu>
Date: Tue, Feb 26, 2019, 4:13 PM
Subject: Courtesy Notice - Request for Proposal-Contracting Out for Landscaping Services
To: tavendano@afscme3299.org <tavendano@afscme3299.org>
Cc: Abrams, Gina <Gina.Abrams@ucsf.edu>, Sheridan, Kelly P <Kelly.Sheridan@ucsf.edu>, Morache, Christina <Christina.Morache@ucsf.edu>, Ian.Smith@ucop.edu <Ian.Smith@ucop.edu>

Dear Teresa:

Attached please find a copy of the Courtesy Notice - Request for Proposal-Contracting Out for Landscaping Services.

Thanks

Joya Yeung

Labor and Employee Relations Coordinator

University of California San Francisco

3360 Geary Blvd., Suite 301

San Francisco, CA 94118-3324

Tel: (415) 353-4107

Fax: (415) 353-4029



Find HR answers and review HR resources at **UCSF PeopleConnect**.

Login at <https://ucsf.connectmehr.com/>, then select the Training Tile to learn more.

=====

CONFIDENTIALITY NOTICE

This e-mail and any files or previous e-mail messages transmitted with it, may contain confidential information that is privileged or otherwise exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone the information contained in or attached to this message. If you received this message in error, please immediately advise by reply email and delete this message, its attachments and any copies. Thank you.



University of California
San Francisco

February 26, 2019

Via Electronic Mail

Teresa Avendano, Lead Organizer
AFSCME-Local 3299
1360 Ninth Ave. #240
San Francisco, CA 94122
tavendano@afscme3299.org

Re: Courtesy Notice - Request for Proposal-Contracting Out for
Landscaping Services

Dear Teresa:

This is a courtesy notice to advise you that the UCSF Facilities Services Division of Campus Life Services has send a Request for Proposal (RFP) regarding Landscaping Services on February 26, 2019, pursuant to Article 5-Section B.2.f Contracting Out.

From a historical prospective, UCSF uses a third party landscaping service to provide landscape maintenance services at several geographically dispersed locations. This work has been outsourced to a contracted party since 1993, over 25 years. The current contract ended on June 30, 2018 and UCSF is publishing a Request for Proposals to select the best vendor to continue an outsourced arrangement.

This is not a new outsourcing proposal; this is a continuation of work that has traditionally been handled by a third party landscape contractor. The rationale for this work to be handled by a contractor is stated below according to provisions set forth in the UC-AFSCME Labor Agreement that recognize that, in some unique circumstances, contracting out is in the best interests of the University.

The third party service provider offers specialists as part of their service contract. This includes a certified arborist, irrigation technicians, landscape designers, and plant health care specialist, enabling UCSF to augment its small staff at Mission Bay and Mt Sutro.

The third party service provider reduces risk for UCSF as follows:

Human Resources
Labor/ Employee Relations
3360 Geary Blvd., Suite 301
San Francisco, CA 94118
Gina.Abrams@ucsf.edu
Tel: 415.353.4422

- a) Contractor employees drive from site to site across the city, thereby reducing UCSF's exposure for business auto liability;
- b) Contractor owns and maintains all equipment and vehicles thus reducing UCSF exposure for loss of property;
- c) Contractor performs all potentially dangerous or hazardous outdoor work and assumes responsibility/liability for any related injuries or losses; and,
- d) Contractor procures insurance coverage and indemnifies UCSF for any losses related to contracted work.

In addition to these operational considerations, by using a third party service provider UCSF avoids the costs associated with allocating scarce space for equipment storage, procuring vehicles, procuring landscaping equipment that is only used occasionally, employing supervisors to manage the landscaping employees, and otherwise operating an entire enterprise that is neither necessary nor efficient as a UCSF core business activity.

If you have any questions, please do not hesitate to contact me at 415-353-4422.

Sincerely,

Gina Abrams

Gina Abrams
Labor and Employee Relations Consultant

Attachment:

Attachment 1: Request for Proposal bid release dated February 26, 2019

Proof of Service

cc: Kelly Sheridan, Manager, Labor and Employee Relations
Christina Morache, Purchasing Supervisor, Supply Chain Management
Ian Smith, Manager, Labor Relations, Office of the President

PROOF OF SERVICE

I, Joya Yeung, declare that I am over the age of eighteen years, not a party to this action, and I am employed in the county of San Francisco, State of California. My business address is 3360 Geary Blvd. Suite 301, San Francisco, CA 94118-3324.

On February 26, 2019, I served the attached letter regarding
Courtesy Notice - Request for Proposal-Contracting Out for Landscaping Services

to the parties listed below by the checked applicable method or methods:

- placing a true copy thereof enclosed and delivery by the **United States Postal Service** following ordinary business practice with postage or other costs prepaid
- placing a true copy thereof enclosed and delivery by **Next Business Day Delivery** following ordinary business practice with postage or other costs prepaid
- personal delivery (hand delivery)
- electronic mail delivery (e-mail)

Name and Address of the parties served:

Teresa Avendano, Lead Organizer
tavendano@afscme3299.org

AFSCME - Local 3299
American Federation of State, County, Municipal Employees
1360 Ninth Avenue, #240
San Francisco, CA 94122

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 26, 2019, at San Francisco, California.

Joya Yeung

Name (Printed or Typed)

Joya Yeung

(Signature)

Digitally signed by Joya
Yeung
Date: 2019.02.26
16:01:11 -08'00'

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into as of the last date signed below (the "Effective Date") by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("UC") and the supplier named below ("Supplier").

WHEREAS UC and Supplier (each, a "Party" and together, the "Parties") have an interest in participating in discussions wherein either Party might share information with the other that the disclosing Party considers to be proprietary and confidential to itself;

NOW, THEREFORE, the Parties agree as follows:

1. Confidential information of a Party may include but is not limited to a Party's (a) business plans, methods, and practices; (b) personnel, customers, and suppliers; (c) inventions, processes, methods, products, patent applications, and other proprietary rights; or (d) specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information.
2. When the other Party informs the receiving Party ("Recipient") in writing that information disclosed is confidential ("Confidential Information"), the Recipient shall, for a period of three (3) years from the date of disclosure, refrain from disclosing the Confidential Information to any third party without prior, written approval from the disclosing Party and shall protect the Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, but in no case less than reasonable care. The Recipient shall ensure that each of its employees, officers, directors, or agents who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement.
3. All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other Party. The Recipient shall honor any request from the disclosing Party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to the Confidential Information. The Parties agree that the disclosing Party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise used or disclosed in breach of this Agreement and that the disclosing Party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach without the necessity of posting a bond or any other security and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.
4. The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The disclosing party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the Recipient from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.
5. Notwithstanding the above, the Parties agree that information shall not be deemed Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:
 - (a) Is already known to the Recipient, having been disclosed to the Recipient by a third party without such third party having an obligation of confidentiality to the disclosing Party; or

- (b) Is or becomes publicly known through no wrongful act of the Recipient, its employees, officers, directors, or agents; or
- (c) Is independently developed by the Recipient without reference to any Confidential Information disclosed hereunder; or
- (d) Is approved for release (and only to the extent so approved) by the disclosing Party; or
- (e) Is disclosed pursuant to the lawful requirement of a court or governmental agency or where required by law.

6. To the extent permitted by law, the Recipient shall promptly notify the disclosing Party of any disclosure of the Confidential Information in violation of this Agreement or in response to any subpoena or other legal process requiring production or disclosure of the Confidential Information.

7. Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture, or other similar relationship between the Parties.

8. Neither Party will, without prior approval of the other Party, make any public announcement of or otherwise disclose the existence or the terms of this Agreement.

9. This Agreement contains the entire agreement between the Parties and in no way creates an obligation for either Party to disclose information to the other Party or to enter into any other agreement.

10. This Agreement shall remain in effect for a period of two (2) years from the Effective Date unless otherwise terminated by either Party giving notice to the other of its desire to terminate this Agreement. The requirement to protect Confidential Information disclosed pursuant to this Agreement shall survive termination of this Agreement.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

SUPPLIER

Signature

Name of Supplier

Signature

Printed Name

Printed Name

Title

Title

Address

Address

Date

Date



The Agreement to furnish certain goods and services described herein and in the documents referenced herein ("Goods and/or Services") is made by and between The Regents of the University of California, a California public corporation ("UC") on behalf of the University of California, and the supplier named below ("Supplier"). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

1. Statement of Work

Supplier agrees to perform the Services listed in the statement of work attached as Attachment A ("Statement of Work") and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier.

Changes to the Goods and/or Services

UC may desire to change the Goods and/or Services following execution of the Purchasing Agreement. If so, UC will submit a written Amendment to Supplier describing such changes in appropriate detail. If an Amendment does not require Supplier to incur any additional material costs or expenses, then Supplier will make such modification within ten (10) business days of Supplier's receipt of UC's Amendment.

If an Amendment does require that Supplier incur additional material costs or expenses, then Supplier in good faith will provide UC with a written, high level, non-binding assessment of such costs and expenses and the time required to perform the modifications required by the Amendment, within ten (10) business days of Supplier's receipt of UC's Amendment. UC will notify Supplier in writing after receipt of the Supplier's response to the Amendment as to whether UC wishes Supplier to implement such Amendment based on the response. UC will compensate Supplier for implementation of an Amendment in accordance with the terms and conditions of the relevant Amendment and Supplier's response to the Amendment, if any. Supplier's implementation of an Amendment will not delay the performance of Goods and/or Services and/or the delivery of deliverables not reasonably affected by an Amendment.

2. Term of Agreement/Termination

The term of the Purchasing Agreement will be five (5) years, and either party may terminate, upon 90 days advance written notice.

Service Level Agreement

The minimum service standards set forth above recognize occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Supplier does not take corrective action within fifteen (15) days following UC written notification, UC reserves the right to terminate the Agreement immediately.

3. Purchase Order; Advance Payments

Unless otherwise provided in the Agreement, Supplier may not begin providing Goods and/or Services until UC approves a Purchase Order for the Goods and/or Services.

4. Pricing, Invoicing Method, and Settlement Method and Terms

For non-systemwide agreements, the Invoicing Method, and Settlement Method and Terms are addressed below.

Invoicing Method

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, Supplier will be required to use the following Invoicing Method: Invoices to be submitted via Transcepta.

<http://connect.transcepta.com/ucsf>

All invoices must clearly indicate the following information:

- California sales tax as a separate line item;
- Shipping costs as a separate line item;
- UC Purchase Order or Release Number;
- Description, quantity, catalog number and manufacturer number of the item ordered;
- Net cost of each item;
- Any pay/earned/dynamic discount;
- Reference to original order number for all credit memos issued;
*****Reimbursables must be in accordance with all UC policies.

Supplier will submit invoices following the designated invoice method directly to UC Accounts Payable Departments at each UC Location, unless UC notifies the Supplier otherwise by amendment to the Agreement.

Settlement Method and Terms

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, the Settlement Method and Terms will be as follows: Payment terms 2%/10 net 30 days.

5. Notices

As provided in the UC Terms and Conditions of Purchase, notices may be given by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE

To UC, regarding contract issues not addressed above:

Name	Sandra Rahman
Phone	415-476 9479
Email	Sandra.rahman@ucsf.edu
Address	654 Minnesota, San Francisco, CA 94143

To Supplier:

Name	
Phone	
Email	
Address	

6. Intellectual Property, Copyright and Patents

The Goods and/or Services involve Work Made for Hire

The Goods and/or Services **do not** involve Work Made for Hire

7. Patient Protection and Affordable Care Act (PPACA)

Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&Cs.

The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the T&Cs.

8. Prevailing Wages

Supplier is not required to pay prevailing wages when providing the Services.

9. Fair Wage/Fair Work

Supplier is not required to pay the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) when providing the Services.

10. Federally Funded Contracts; Grants and Cooperative Agreements

N/A

11. Restriction Relating to Consulting Services or Similar Contracts – Follow-on Contracts

Please note a Supplier that is awarded a consulting services or similar contract cannot later submit a bid or be considered for any work “required, suggested, or otherwise deemed appropriate” as the end product of the Services (see Public Contract Code Section 10515).

12. Insurance

Deliver the PDF version of the Certificate of Insurance to UC’s Buyer, by email with the following text in the Subject field:
CERTIFICATE OF INSURANCE

13. Service-Specific and/or Goods-Specific Provisions

See proposal/ scope of work dated XX/XX/XXXX

14. Records about Individuals

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between UC and Supplier, records will normally become UC's property, and subject to state law and UC policies governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in the Statement of Work.

15. Amendments to UC Terms and Conditions of Purchase

N/A

16. Amendments to Appendix – Data Security

N/A

17. Amendments to Appendix – Business Associate

N/A

18. Incorporated Documents

The following documents are incorporated and made a part of the Agreement by reference as if fully set forth herein, listed in the order of precedence following the Agreement:

- a) UC Terms and Conditions of Purchase, dated 9/4/2018
- b) Statement of Work dated XX/XX/XXXX

19. Entire Agreement

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein.

The Agreement is signed below by the parties' duly authorized representatives.

This Agreement can only be signed by an authorized representative with the proper delegation of authority.

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

[SUPPLIER NAME]

(Signature)

(Signature)

(Printed Name, Title)

(Printed Name, Title)

(Date)

(Date)



CONFLICT OF INTEREST CERTIFICATION – Part A

1. Are you currently an employee of any entity of the University of California (including but not limited to any campus, medical center, lab or the Office of the President)? YES NO
2. Are you a former employee, within the last two years, of any campus, medical center, and/or lab of the University of California? YES NO
3. Are you a near relative of an employee of any campus, medical center, and/or lab of the University of California? YES NO
4. If you answer “Yes” to any of the 3 questions above: you must complete Part B. (Prepare a separate Part B for each individual identified above)
5. If you answer “No” to all 3 questions: sign and date the certification statement below. (Do not use Part B.)

I certify that the above information is true and that I am the person whose name is signed below:

Print Name

Sign Name

Date

DEFINITIONS

Employee - any individual who is presently employed by the University.

Employee with Teaching or Research Responsibilities – an academic appointee who is engaged in teaching and/or research activities, and certain staff employees (e.g., Staff Research Associates) who may participate in teaching or research activities.

Former employee – an individual who has retired or separated from the University, was dismissed, or was otherwise formerly employed by the University

Near Relative – the spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a University employee, and step-relatives in the same relationship.

- *Near relative* also includes the domestic partner of a University employee and a relative of the domestic partner in one of the foregoing relationships.



CONFLICT OF INTEREST CERTIFICATION – Part B

Complete this page if you answered yes to any of the three questions in Part A. Prepare a separate Part B for each individual as needed (for example, you would prepare two of Part B if you were an employee within the last two years and you also have a near relative who is currently employed by the University)

1. Please list current and/or former positions held by you or your near relative:

Name	UC Location	Department	Position	Date of Separation

2. Please describe your financial interest in the transaction (or the financial interest of near-relative):

3. Please describe your financial interest (or the financial interest of your near relative) in any business entity involved in the transaction:

4. Do you (or your near relative) have any past, current, or future responsibility for, involvement in, or direct influence on any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract?

NO YES, please explain:

5. Do you certify that no University time, material, equipment, or facilities have been or will be used in connection with any resulting purchase order or contract? YES NO

I certify that the above information is true.

Potential Vendor: Print name

Signature

Date

Approved: YES NO

Director of Business Services (Material Manager)

Date

**BIDDER RESPONSE
MINIMUM MANDATORY REQUIREMENTS**

	QUESTION	RESPONSE	RESPONSE	RESPONSE
1	Bidders may not collude.		I DID NOT COLLUDE	I CANNOT AGREE
2	Bidders must accept the California Terms and Conditions of Purchase.		AGREE	DISAGREE
3	Bidders must operate within the guidance of all applicable federal and state codes.		AGREE	DISAGREE
4	Bidders must agree to provide University earned incentives for prompt payment, 2% 10 Net 30 or an additional 2%, as listed under Section III.A.9, or an additional 2% incentive paid quarterly.		AGREE	DISAGREE
5	Bidders must agree to University's E-Commerce requirements.		AGREE	DISAGREE
6	Vendor shall be regularly and continuously engaged in the business of providing landscaping and open space maintenance services for at least the past five (5) years.		AGREE	DISAGREE
7	Licensing and Certifications – Supplier shall have and maintain licenses, permits and professional credentials necessary to perform services as specified in the Scope of Work (SOW-Attachment A; Section 1.2 Licensing). Please provide proof of certification as required by the State of California to provide the services listed above. It is expected that the selected supplier for this agreement will maintain all required State of California certifications and licenses for the duration of the agreement. Failure to maintain State of California certifications and licenses is grounds for termination of the Purchasing Agreement.		AGREE	DISAGREE
8	Vendor must have access to a certified arborist either on company staff or through a valid subcontracting agreement.		AGREE	DISAGREE
9	Vendor must have all other permits, licenses and professional credentials necessary to perform services as specified in this RFP.		AGREE	DISAGREE

10	Supplier shall thoroughly complete each task in a professional, skillful manner. To this end, the Supplier will use quality equipment and materials that comply with current UC regulations.		AGREE		DISAGREE
11	Supplier shall provide labor, materials and equipment necessary for the provision of landscape services. Tasks shall be performed with nothing but the highest standards at no less than the frequencies set forth herein where specified.		AGREE		DISAGREE
12	Supplier is required to render and provide landscape maintenance services including, but not limited to, turf mowing, edging, trimming, over seeding, reseeding, fertilization, aeration, irrigation, hand watering and bleeding of valves (only when required), pruning and renovation of turf and shrub areas as well as provide weed control, disease control, tree maintenance, irrigation system maintenance and irrigation controls.		AGREE		DISAGREE
13	Supplier shall not work or perform any operations, particularly during periods of inclement weather, which may destroy or damage groundcover, hardscape or turf areas.		AGREE		DISAGREE
14	Will your company provide an on-site supervisor to oversee the work?		AGREE		DISAGREE
15	Supplier will use EZ-Max to track and report all work hours and all project completion to UCSF. The information entered in EZ-Max will be utilized to determine payment validity.		AGREE		DISAGREE

16	<p>Replacing Supplier Staff. The University of California, San Francisco or the Supplier may propose a change to Supplier staffing. To initiate a change, the Supplier submits a request to the University of California, San Francisco with a copy of any new staff résumés. The University of California, San Francisco will review the request, rationale and any new résumés and determine if the proposed changes are warranted and if any new staff meets the minimum qualifications for the proposed position. Proposed new or replacement staff must meet or exceed the qualifications of the person that he or she will be replacing in addition to the minimum staff classification and position requirements. In some cases, this may mean that multiple resources are required to replace the original person (due to differences in skill sets). If it is not demonstrated to the University of California, San Francisco that the new staff has equivalent experience, the University of California, San Francisco may reject the proposed person or negotiate a lower billing rate to reflect the difference. The University of California, San Francisco reserves the right to interview proposed staff. If the changes are not approved, the Supplier may submit additional résumés for consideration. If appropriate personnel cannot be agreed upon, the University of California, San Francisco has the option of terminating the agreement.</p>		AGREE		DISAGREE
17	<p>Does your company meet all the Minimum Mandatory Requirements above?</p>		AGREE		DISAGREE
18	<p>Any agreement resulting from this RFP will be performance based. Please confirm you understand the requirements of this RFP and state how you will perform by addressing each requirement, point-by-point.</p>		AGREE		DISAGREE

NOTE: *If you answer no/disagree to any of the questions in this section your bid will be considered nonresponsive and your company will not move forward in the Bidding process

Required Supplier Information

A. Communications & Amendments Regarding the RFX

All communications, including any requests for clarification, concerning this Request for Proposal ("RFP") or Request for Quote ("RFQ") (collectively, referred to as "RFX") must be submitted via the Q&A section of this RFX within the University of California Public Bid Site.

The University of California ("UC") will make any changes, additions, or deletions to the RFX in the form of amendments electronically sent via the UC Public Bid Site. UC will not be responsible for failure of any prospective Supplier to receive such amendments. All amendments will become part of the RFX.

It is Supplier's responsibility to read the entire RFX document, including any attachments, references and amendments, and to comply with all requirements listed herein.

For instruction on how to bid, refer to the Supplier Bidding Guide under the Prerequisite section of the UC Public Bid Site.

B. Proposal Submittal and Evaluation

1. This solicitation, the evaluation of proposals, and the award of any resulting contract will be made in conformance with applicable UC policies and California law. UC reserves the right to withdraw this RFX at any time. All documents submitted to UC in response to this RFX will become the exclusive property of UC and will not be returned.
2. Supplier is strongly encouraged to complete and submit its proposal ("Proposal") in the UC Public Bid Site well before the RFX's closing date and time. A late Proposal will not be accepted after the RFX's closing date and time.
3. Bids must follow the format specified in the RFX. The submission of a Proposal confirms that it has been issued and reviewed by an individual authorized to enter into contracts on behalf of Supplier.
4. Supplier must not provide superfluous materials such as marketing materials or website links in response to or in lieu of the Questions Section, and may be disqualified for providing superfluous materials. Supplier may, however, use attachments or website links to respond to Cost Questions if Cost is directly referenced in the question and such materials respond specifically to the question without extraneous information.
5. Any contract(s) resulting from this RFX will be awarded to the responsive and responsible Supplier whose Proposal, in UC's opinion, offers the greatest benefit to UC. Proposals will be evaluated by the UC evaluation team using the methodology set forth in the RFX Proposal Instructions.
6. UC may waive irregularities in a Proposal provided that, in UC's judgment, such action will not negate fair competition and will permit proper comparative evaluation of proposals. UC's waiver of an immaterial deviation or defect will not modify the RFX documents or excuse Supplier from full compliance with the RFX specifications in the event a contract is awarded to Supplier.
7. UC reserves the right to reject all proposals, make more than one award, or make no award. Based on the results of this RFX process, UC reserves the right to request one or more separate proposals for selected items, with a select group of suppliers, including direct manufacturers of these products. Based on the results of such requests, UC or its locations may enter into

contracts with other suppliers to provide those products, while remaining UC locations may buy those products through this RFX. Any contract awarded pursuant to this RFX will incorporate the RFX requirements and specifications, as well the contents of the Proposal as accepted by UC, and will be in writing.

8. Supplier must operate within the guidelines of all federal, state, and local labor laws and codes. Supplier must possess all trade, professional or business licenses as may be required by the work contemplated by this RFX.
9. Supplier will bear all costs incurred in the preparation and submission of the Proposal and related documentation, including Supplier's presentations to UC. If Supplier is the apparent awardee, Supplier will bear its own costs in negotiating and finalizing an agreement with UC.
10. Several UC campuses have enabled e-commerce using hosted catalogs and punchouts. Supplier may be asked to comply with campus e-commerce requirements on a campus by campus basis, but must adhere to UC system-wide policy for consistency in catalog loading and pricing.
11. UC may visit Supplier's site to verify that Supplier will meet the RFX specifications set forth in the Statement of Work ("RFX Specifications"). Additionally, in assessing Supplier's ability to perform, UC may consider factors including but not limited to Supplier's financial resources, past performance with UC, references from other customers, experience, organization, personnel, technical skills, operational controls, equipment, and quality control.

C. California Public Records Act

All proposals, supporting materials and related documentation are subject to the California Public Records Act. Marking a document "confidential" or "proprietary" may not prevent its release.

D. Insurance Requirements

If awarded a contract, Supplier must name UC as an additional insured and furnish a certificate of insurance acceptable to UC as outlined in the Terms and Conditions set forth in the RFX.

E. Errors & Omissions

Supplier should immediately notify UC of any apparent discrepancy, error, omission, ambiguity or lack of clarity in this RFX, any attachments, references and amendments. Supplier will not be entitled to compensation for any error or discrepancy that appears in this RFX.

F. Federal and State Water and Air Pollution Laws

UC will not contract with entities in violation of Federal or State water or air pollution laws. To determine if the State of California has a record that Supplier is in violation of California pollution laws, Supplier may contact the California Air Resources Board and California Water Resources Control Board. Supplier must disclose on an addendum to its Proposal any open violations of water or air pollution laws, along with Supplier's action plans to remedy the violations.

G. Collusion among Suppliers

Collusion among Suppliers is not allowed. If there is proof of collusion among Suppliers, UC will reject all proposals involved in the collusive action.

H. Exclusions

Supplier is advised that some goods and/or services may be subject to pre-existing agreements with other Suppliers, or may be outside the scope of this RFX and may not be included in any awarded contract or may be included on a limited basis.

I. Disqualification

UC may disqualify any Supplier that does not adhere to the provisions in this Required Supplier Information.

J. Multiple Proposals

Supplier may not submit or be interested in more than one proposal for the same RFX; provided, however, that a person or firm that submitted a sub-proposal to a Supplier or who has quoted prices for goods and/or services to a Supplier is not thereby disqualified from submitting a sub-proposal quoting prices to other Suppliers.

K. Specifications and Exceptions

1. Unless documented as an Exception, the submission of a Proposal will confirm Supplier's acceptance of all RFX Specifications. In documenting an Exception to the RFX Specifications, Supplier must provide a detailed itemization and explanation for each deviation from the RFX Specifications, clearly describing any alternate goods and/or services that could be provided to satisfy those requirements. Supplier should list any items it wishes to exclude from its standard catalog. Absence of an itemization and explanation will mean that Supplier is willing and able to meet all RFX Specifications. If Supplier does not document an Exception regarding the RFX Specifications and it is found that goods and/or services delivered do not meet the RFX Specifications, Supplier will be required to correct same at Supplier's expense.
2. Unless documented as an Exception, Supplier's submission of a Proposal confirms acceptance of UC's Prerequisites and Contract Documents. In documenting an Exception to the Prerequisites or Contract Documents, Supplier must itemize in detail any exceptions taken to the Prerequisites or Contract Documents and provide alternative language or provisions for UC to review. UC will not consider the submission of Supplier's terms and conditions to be documentation of an Exception. UC reserves the right to modify the Prerequisites and Contract Documents as it deems necessary either before or during any negotiations with Supplier until mutual agreement is achieved.
3. Supplier is cautioned that if UC does not approve Supplier's request for Exception to the RFX Specifications and/or Prerequisites and Contract Documents, and Supplier does not withdraw the request, the Proposal may be deemed non-responsive and ineligible for contract award.

L. Complaints and Protests

Controversies over the solicitation or award of a contract are covered by University of California Policy [BUS-43](#), which is posted online. The policy requests that a party with a complaint regarding the solicitation or award of a contract first attempt to resolve the complaint with the University contracting officer involved in the transaction.

If the complaint cannot be resolved informally, the complainant may file a formal written protest with the University contracting officer, who will escalate this protest to the proper authority. Complainants should use the phrase "Formal Bid Protest" in the communication's subject line to indicate the intent to escalate the complaint. Under UC policy, formal written protests must be filed promptly (and in any event within two calendar weeks after the complainant knows or should have known the facts giving rise to the protest).

M. Offshoring of Services

Supplier must do one of the following in its bid:

1. Certify *under penalty of perjury* that the services will be performed solely with workers within the United States, including any services that Supplier would provide using a subsupplier; or
2. Describe in its bid any parts of the services that will be performed by workers outside of the United States.

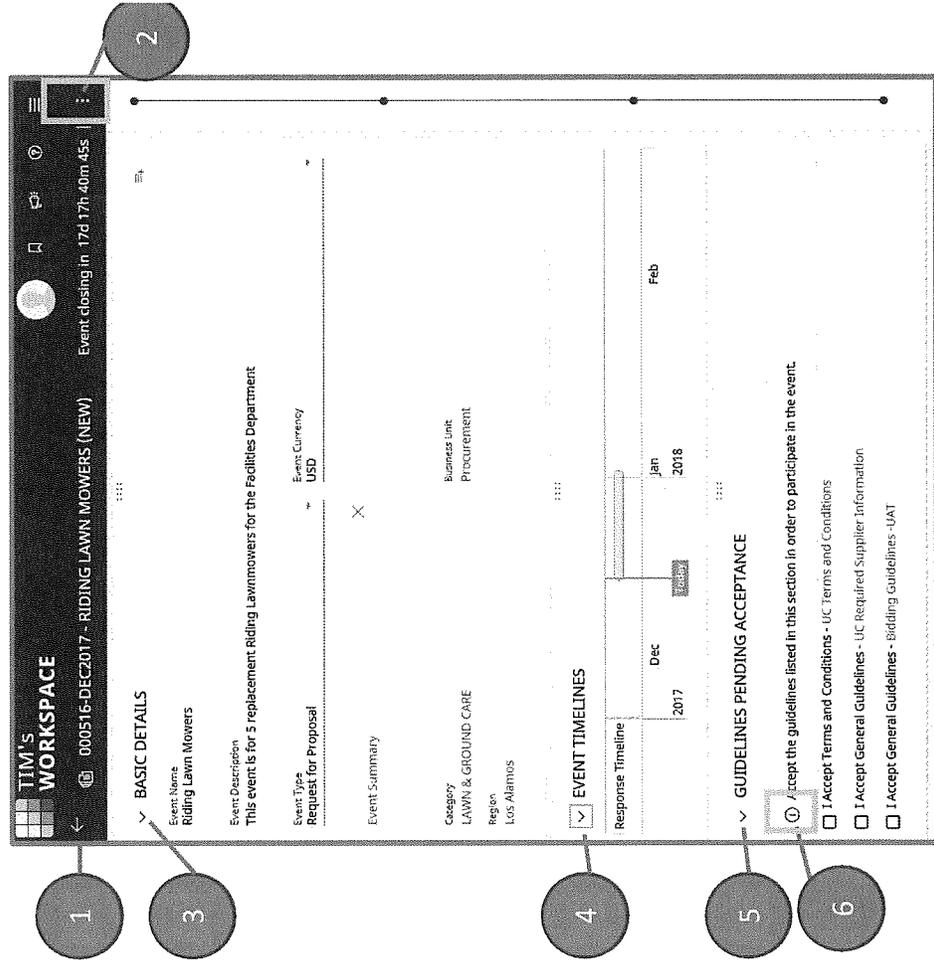
Additionally, UC will not, as a part of the contract that will displace UC employees, pay to train workers located in foreign countries or who plan to relocate to a foreign country. Please note that a condition of awarding a contract will be that Supplier agree to the warranties in Article 6(I) of UC's Terms & Conditions of Purchase.

Supplier Bid Response

Suppliers can access the bid response page from the Public Bid Site, and click on the event on which they wish to respond. Alternately, if the Supplier has received an email invitation to participate in an event, they should follow the instructions in the email.

Instructions Bid Response key fields

1. The top menu bar provides the name of the event as well as the date when the event closes.
2. If you wish to decline participation in the event, click the **Actions** icon and select **Decline Invitation**.
3. The **Basic Details** section contains the basic details of the event (event name, description, summary etc.).
4. The **Event Timelines** section shows a graphical representation of the start and end date/times for the event.
5. The **Guidelines Pending Acceptance** section is very important as you cannot access additional details of the event, submit a response or take any other actions until you have reviewed and accepted the Guidelines attached to the event.
6. Check the box(es) next to the Guidelines you are prepared to accept, and click the **Accept Guidelines** button in the lower right corner of the screen (not shown).



- The event name displays **GUIDELINES ACKNOWLEDGED** in the top menu bar after the boxes mentioned in Steps 5 and 6 above have been checked.
- Click the **Discussion Forum** icon to communicate with the Buyer to ask questions, etc.
- To reply to the questions within this section, click the **Respond** icon.
- To provide pricing, click the **Respond** icon.
- Click on **BUYER** to review any attachments that have been uploaded by the buyer to this event. Click Supplier to upload any attachments.
- When you have completed all sections, click the **Submit Responses** button in the lower right corner of your screen (not shown).

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Supplier Bid Response

Tips

- Please use the Discussion Forum  icon for all of your communications with the buyer to ensure the most efficient response to your questions.
- Should you encounter any technical problems, click on the Help Center  icon in the top right of your screen for technical support contact information.

Warnings

- You will not be able to respond to an event without first accepting any attached guidelines.



ARTICLE 1 – GENERAL

The equipment, materials, or supplies ("Goods") and/or services ("Services") furnished by Supplier (together, the "Goods and Services") and covered by the UC Purchase Order ("PO") and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the "Agreement") are governed by the terms and conditions set forth herein. As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier. As used herein, "UC" refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC Location(s) identified in the Agreement and/or the PO. UC and Supplier individually will be referred to as "Party" and collectively as "Parties." Any defined terms not defined in these Terms and Conditions of Purchase will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. No other terms or conditions will be binding upon the Parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, covered by the Agreement, will constitute Supplier's unqualified acceptance of all of the Agreement's terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

ARTICLE 2 – TERM AND TERMINATION

- A. As applicable, the term of the Agreement ("Initial Term") will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
- B. UC's obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC ("Funding"). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
- C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time with not less than the number of days' notice stated elsewhere in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier's provision of Goods and/or Services will terminate.
- D. UC may by written notice terminate the Agreement for Supplier's breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS. Pricing is set forth in the Agreement or Purchase Order Number. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC's Supplier Invoicing, Terms & Settlement Matrix. UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier's expenses that UC agrees to reimburse will be reimbursed under UC's Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>. Where applicable, Supplier will pay all taxes imposed on Supplier. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

ARTICLE 4 – INSPECTION. The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, workmanship and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them without charge, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without UC's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions.

ARTICLE 6 – WARRANTIES

In addition to the warranties set forth in Articles 11, 12, 17, 23, 24, 25 and 26 herein, Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

- A. General Warranties. Supplier agrees that the Goods and Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
- C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
- D. Accessibility Requirements. Supplier warrants that:
 1. It complies with California and federal disabilities laws and regulations; and
 2. The Goods and Services will conform to the accessibility requirements of WCAG 2.0AA.Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services.
- E. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right to use all intellectual property that will be needed to provide the Goods and/or Services.
- F. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
- G. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- H. UC Code of Conduct for Trademark Licensees. If the Goods will bear UC's name (including UC campus names, abbreviations of these names, UC logos, UC mascots, or UC seals) or other trademarks owned by UC, Supplier warrants that it holds a valid license from UC and complies with the Trademark Licensing Code of Conduct policy, available at <http://policy.ucop.edu/doc/3000130/TrademarkLicensing>.
- I. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier's bid. If Supplier or its subsupplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that a) UC may terminate the Agreement without further obligation for noncompliance, and b) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier's bid.

ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS

- A. Goods and/or Services Involving Work Made for Hire.
 1. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the

"work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.

2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
 3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
 4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- B. Goods and/or Services Not Involving Work Made for Hire.
1. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
 2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.
 3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
 4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- C. General. Should the Goods and/or Services become, or in Supplier's opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will either (at Supplier's sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods' and/or Services' functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

ARTICLE 8 – INDEMNITY

Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

ARTICLE 9 – INSURANCE

Supplier, at its sole cost and expense, will insure its activities in connection with providing the Goods and/or Services and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless UC specifies otherwise:

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
- | | |
|--|--------------|
| 1. Each Occurrence | \$ 1,000,000 |
| 2. Products/Completed Operations Aggregate | \$ 2,000,000 |
| 3. Personal and Advertising Injury | \$ 1,000,000 |
| 4. General Aggregate | \$ 2,000,000 |
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- E. If applicable, Supplier Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of one million dollars (\$1,000,000). Supplier will endorse such policy to include a "Regents of the University of California Coverage" or "Joint Payee Coverage" endorsement. UC and, if so requested, UC's officers, employees, agents and sub-suppliers will be named as "Loss Payee, as Their Interest May Appear" in such Fidelity Bond.
- F. Additional other insurance in such amounts as may be reasonably required by UC against other insurable risks relating to performance. If the above insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement. If the above insurance coverage is modified, changed or cancelled, Supplier will provide UC with not less than fifteen (15) days' advance written notice of such modification, change, or cancellation, and will promptly obtain replacement coverage that complies with this Article.
- G. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:
1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
 2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

Supplier will not use the UC name, abbreviation of the UC name, trade names and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the UC name, abbreviations, trade names and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without UC's prior written approval. Supplier agrees to comply at all times with California Education Code Section 92000.

ARTICLE 11 – FEDERAL ACQUISITION REGULATIONS – COMMERCIAL GOODS AND SERVICES

Supplier who supplies commercial Goods and/or Services certifies and represents its compliance with the following clauses, as applicable. Supplier shall promptly notify UC of any change of status with regard to these certifications and representations. These certifications and representations are material statements upon which UC will rely:

- A. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
- B. FAR 52.219-8, Utilization of Small Business Concerns;
- C. FAR 52.222-4, Contract Work Hours and Safety Standards Act;
- D. FAR 52.222-17, Nondisplacement of Qualified Workers;

- E. FAR 52.222-21, Prohibition of Segregated Facilities;
- F. FAR 52.222-26, Equal Opportunity;
- G. FAR 52.222-35, Equal Opportunity for Veterans;
- H. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
- I. FAR 52.222-37, Employment Reports on Veterans;
- J. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
- K. FAR 52.222-41, Service Contract Labor Standards;
- L. FAR 52.222-50, Combating Trafficking in Persons;
- M. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
- N. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
- O. FAR 52.222-54, Employment Eligibility Verification;
- P. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
- Q. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations; and
- R. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission:

1. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
2. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
3. Any Supplier representations to UC about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete.

ARTICLE 12 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION

Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **"This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability."** With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

ARTICLE 13 – LIENS

Supplier agrees that upon UC's request, Supplier will submit a sworn statement setting forth the work performed or material furnished by sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC's request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to UC to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to UC all monies that UC may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED

- A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.
- B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC students, staff, faculty, visitors, and members of the public to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.
- C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY

Supplier assumes complete liability for any materials UC furnishes to Supplier in connection with the Agreement and Supplier agrees to pay for any UC materials Supplier damages or otherwise is not able to account for to UC's satisfaction. UC furnishing to Supplier any materials in connection with the Agreement will not, unless otherwise expressly provided in writing by UC, be construed to vest title thereto in Supplier.

ARTICLE 16 – COOPERATION

Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will so provide the Goods and/or Services that other cooperating suppliers will not be hindered, delayed or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its kind.

ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS

The terms in this Article have special application to the furnishing of Goods:

- A. Price Decreases. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases.
- B. Declared Valuation of Shipments. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC's account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note.
- C. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection.
- D. Changes. Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Goods by

giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC's written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.

- E. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11.
- F. Export Control. If any of the Goods is export-controlled under the International Traffic in Arms Regulations (22 CFR §§ 120-130), the United States Munitions List (22 CFR § 121.1), or Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list, Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification.

ARTICLE 18 – CONFLICT OF INTEREST

Supplier affirms that, to the best of Supplier's knowledge, no UC employee who has participated in UC's decision-making concerning the Agreement has an "economic interest" in the Agreement or Supplier. A UC employee's "economic interest" means:

- A. An investment worth \$2,000 or more in Supplier or its affiliate;
- B. A position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate;
- C. Receipt during the past 12 months of \$500 in income or \$440 in gifts from Supplier or its affiliate; or
- D. A personal financial benefit from the Agreement in the amount of \$250 or more.

In the event of a change in these economic interests, Supplier will provide written notice to UC within thirty (30) days after such change, noting such changes. Supplier will not be in a reporting relationship to a UC employee who is a near relative, nor will a near relative be in a decision making position with respect to Supplier.

ARTICLE 19 – AUDIT REQUIREMENTS

The Agreement is subject to the examination and audit of the California State Auditor or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Agreement. UC, and if the underlying grant or cooperative agreement so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.

ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION

Supplier agrees to hold UC's Confidential Information, and any information derived therefrom, in strict confidence. Confidential Information shall be defined as any information disclosed by UC to Supplier for the purposes of providing the Good and/or Services which is (i) marked as "Confidential" at the time of disclosure; (ii) disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as "Confidential" within thirty (30) days of such oral disclosure; and (iii) if not marked as "Confidential," information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not include information that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. Supplier will not access, use or disclose Confidential Information other than to carry out the purposes for which UC disclosed the Confidential Information to Supplier, except as permitted or required by applicable law, or as otherwise authorized in writing by UC. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Confidential Information and any information derived therefrom. If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to

oppose or otherwise respond to such disclosure. Supplier's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except with prior written authorization by UC. UC's Appendix – Data Security and Privacy and/or Appendix – HIPAA Business Associate will control in the event that one or both appendices is incorporated into the Agreement and conflicts with the provisions of this Article.

ARTICLE 21 – UC WHISTLEBLOWER POLICY

UC is committed to conducting its affairs in compliance with the law, and has established a process for reporting and investigating suspected improper governmental activities. Please visit <http://www.ucop.edu/uc-whistleblower/> for more information.

ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES

Supplier will conduct business using environmentally, socially, and economically sustainable products and services (defined as products and services with a lesser or reduced effect on human health and the environment, and which generate benefits to the University as well as to society and the economy, while remaining within the carrying capacity of the environment), to the maximum possible extent consistent with the Agreement, and with the University of California Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) and the University of California Sustainable Procurement Guidelines:

(<https://www.ucop.edu/procurement-services/files/sustainableprocurementguidelines.pdf>).

In accordance with the University of California Sustainable Practices Policy, Supplier will adhere to the following requirements and standards, as applicable. Supplier acknowledges that failure to comply with any of the sustainability standards and requirements in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

- A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet University of California recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission's (FTC) Green Guides.
- B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the University, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to University staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.
- C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, the University requires that all packaging meet at least one of the criteria listed below:
 - a. Uses bulk packaging;
 - b. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
 - c. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
 - d. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines;
 - e. Uses locally recyclable or certified compostable material.
- D. Expanded Polystyrene (EPS) Ban. No EPS shall be used in foodservice facilities for takeaway containers. By 2020, the University will be prohibited from procuring Goods containing, or that are provided in packaging containing, Expanded Polystyrene (EPS) other than that utilized for laboratory supply or medical packaging and products where no functional alternatives exist.
- E. E-Waste Recycling Requirements. All recyclers of University of California electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
- F. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punchout catalog e-procurement environments.

ARTICLE 23 – PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) EMPLOYER SHARED RESPONSIBILITY

If the Services involve Supplier furnishing UC with temporary or supplementary staffing, Supplier warrants that:

- A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
 - 1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
 - 2. Supplier's cost of enrolling such employees in Supplier's health plan is factored into the fees for the Services; and

3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.
- B. If Supplier is not an Applicable Large Employer (as defined above):
1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
 2. Supplier's full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

Supplier acknowledges that UC is relying on these warranties to ensure UC's compliance with the PPACA Employer Shared Responsibility provision.

ARTICLE 24 - PREVAILING WAGES

Unless UC notifies Supplier that the Services are not subject to prevailing wage requirements, Supplier will comply, and will ensure that all sub-suppliers comply, with California prevailing wage provisions, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6. For purposes of the Agreement, the term "sub-supplier" means a person or firm, of all tiers, that has a contract with Supplier or with a sub-supplier to provide a portion of the Services. The term sub-supplier will not include suppliers, manufacturers, or distributors. Specifically, and not by way of limitation, if apprenticeship occupations are involved in providing the Services, Supplier will be responsible for ensuring that Supplier and any sub-suppliers comply with Labor Code Section 1777.5. Supplier and sub-supplier may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 and 1771.1. Notwithstanding the foregoing provisions, Supplier will be solely responsible for tracking and ensuring proper payment of prevailing wages regardless if Services are partially or wholly subject to prevailing wage requirements. In every instance, Supplier will pay not less than the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC).

The California Department of Industrial Relations (DIR) has ascertained the general prevailing per diem wage rates in the locality in which the Services are to be provided for each craft, classification, or type of worker required to provide the Services. A copy of the general prevailing per diem wage rates will be on file at each UC Location's procurement office, and will be made available to any interested party upon request. Supplier will post at any job site:

- A. Notice of the general prevailing per diem wage rates, and
- B. Any other notices required by DIR rule or regulation.

By this reference, such notices are made part of the Agreement. Supplier will pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Supplier in providing the Services. Supplier will cause all subcontracts to include the provision that all sub-suppliers will pay not less than the prevailing rates to all workers employed by such sub-suppliers in providing the Services. The Services are subject to compliance monitoring and enforcement by the DIR. Supplier will forfeit, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any portion of the Services provided by Supplier or any sub-supplier. The amount of this penalty will be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the amounts due under the Agreement. If there are insufficient funds remaining in the amounts due under the Agreement, Supplier will be liable for any outstanding amount remaining due. Supplier will also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Services, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment will be made pursuant to California Labor Code section 1742.

ARTICLE 25 – FAIR WAGE/FAIR WORK

If the Services will be performed at one or more UC Locations, do not solely involve furnishing Goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in Articles 11, 12 and 14 herein, and that Supplier pays its employees performing the Services no less than the UC Fair Wage. Supplier agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC's sole discretion. Supplier agrees to post UC Fair Wage/Fair

Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services.

For Services that exceed \$100,000 annually and are not subject to prevailing wage requirements, Supplier will, a) at Supplier's expense, provide an annual independent audit performed by Supplier's independent auditor or independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required audit standards and procedures (http://www.ucop.edu/procurement-services/_files/fw-fw-annual-audit-standards-procedures.pdf), concerning Supplier's compliance with this provision, and b) ensure that in the case of a UC interim audit, its auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recently audited time period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work certification annually, in a form acceptable to UC, no later than ninety days after each one year anniversary of the agreement's effective date, for the twelve months immediately preceding the anniversary date.

ARTICLE 26 – MEDICAL DEVICES

This Article applies when the Goods and/or Services involve UC purchasing or leasing one or more medical devices from Supplier, or when Supplier uses one or more medical devices in providing Goods and/or Services to UC.

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (iii) intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

Supplier warrants that prior to UC's purchase or lease of any Goods and/or Services or Supplier's use of any product in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or product, as applicable; (ii) perform a security scan by an anti-virus scanner, with up-to-date signatures, on any software embedded within any Goods and/or Services or products, as applicable, in order to verify that the software does not contain any known viruses or malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that all security testing performed by Supplier covers all issues noted in the "SANS WE TOP 25" and/or "OWASP Top 10" documentation.

Throughout Supplier's performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for all Goods and/or Services provided to UC, and other products used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier's sub-supplier, whichever is earlier.

Supplier warrants that all software and installation media not specifically required for any products used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods or products following installation, and that all hardware ports and drives not required for use or operation of such Goods and/or Services or products will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplier-approved applications will run.

Supplier agrees that UC may take any and all actions that it, in its sole discretion, deems necessary to address, mitigate and/or rectify any real or potential security threat, and that no such action, to the extent such action does not compromise device certification, will impact, limit, reduce or negate Supplier's warranties or any of Supplier's other obligations hereunder.

Supplier warrants that all of the Goods and/or Services provided to UC, and other products used in the course of providing such Goods and/or Services, meet and comply with all cyber-security guidance and similar standards promulgated by the U.S. Food and Drug Administration and any other applicable regulatory body.

If the Goods and/or Services entail provision or use of medical devices, Supplier will provide UC with a completed Manufacturer Disclosure Statement for Medical Device Security (MDS2) form for each such medical device before UC is obligated to purchase or lease such medical device or prior to Supplier's use of such device(s) in its performance of Services. If Supplier provides MDS2 form(s) to UC concurrently with

its provision of Goods and/or Services, UC will have a reasonable period of time to review such MDS2 form(s), and if the MDS2 form(s) is unacceptable to UC, then UC in its sole discretion may return the Goods or terminate the Agreement with no further obligation to Supplier.

ARTICLE 27 – FORCE MAJEURE

Neither Party will be liable for delays due to causes beyond the Party's control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING

Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC's written approval. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

ARTICLE 29 – NO THIRD-PARTY RIGHTS

Nothing in the Agreement is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

ARTICLE 30 – OTHER APPLICABLE LAWS

Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations will be deemed to be incorporated herein.

ARTICLE 31 – NOTICES

A Party must send any notice required to be given under the Agreement by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California]. If a physical format is required, it must be sent by overnight delivery or by certified mail with return receipt requested, to the other Party's representative at the address specified by such Party.

ARTICLE 32 – SEVERABILITY

If a provision of the Agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision of the Agreement or of any portion of the invalidated provision that remains legal, valid, or enforceable.

ARTICLE 33 – WAIVER

Waiver or non-enforcement by either Party of a provision of the Agreement will not constitute a waiver or non-enforcement of any other provision or of any subsequent breach of the same or similar provision.

ARTICLE 34 – AMENDMENTS

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties' authorized representatives.

ARTICLE 35 – GOVERNING LAW AND VENUE

California law will control the Agreement and any document to which it is appended. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in the county in the State of California in which the UC Location is located or, where the procurement covers more than one UC Location, the exclusive venue is Alameda County, California.

ARTICLE 36 – SUPPLIER TERMS

Any additional terms that Supplier includes in an order form or similar document will be of no force and effect, unless UC expressly agrees in writing to such terms.

ARTICLE 37 – SURVIVAL CLAUSE

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS; INDEMNITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; TERMS APPLICABLE TO THE FURNISHING OF GOODS; AUDIT REQUIREMENTS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; GOVERNING LAW AND VENUE, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY and/or APPENDIX–BUSINESS ASSOCIATES.

EXHIBIT 7

From: Nicolas Monteiro <nmonteiro@afscme3299.org>
Sent: Thursday, April 18, 2019 6:15 AM
To: Abrams, Gina
Cc: Claudia Preparata; Seth Newton Patel; Teresa Avendano; elr@ucsfmedctr.org
Subject: Demand to Bargain - Contracting Out Landscaping Services

Dear Gina,

AFSCME is in receipt of UCSF's notice to contract out Landscaping Services work. 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, AFSCME will be requesting additional information.

Sincerely,

--

Nicolas Monteiro
Internal Organizer
AFSCME Local 3299
[1360 9th Ave #240](#)
[San Francisco, CA 94122](#)
office: [415.566.6477](#)
fax: [415.566.6846](#)

[Patient Care Contract \(EX\)](#)
[Service Contract \(SX\)](#)

EXHIBIT 8

From: Abrams, Gina <Gina.Abrams@ucsf.edu>
Sent: Sunday, April 21, 2019 10:00 PM
To: Nicolas Monteiro
Cc: Claudia Preparata; Seth Newton Patel; Teresa Avendano; ELR
Subject: RE: Demand to Bargain - Contracting Out Landscaping Services

Importance: High

Hi Nicolas,

Thank you for your inquiry regarding the Landscaping Services Contract at UCSF.

The University disagrees with AFSCME's position that it is now required to meet and confer over any decision to renew the Landscaping Services Contract. The University, however, is willing to meet with AFSCME in order to clarify our position. Please provide dates and times beginning the week of May 1, 2019 when AFSCME is available to meet.

All the best,

Gina L. Abrams, MPA
Labor & Employee Relations Consultant
UCSF Labor & Employee Relations
3360 Geary Blvd., Ste. 301
San Francisco, CA 94118-3324
p. [415.353-4422](tel:415.353-4422)
f. [415.353-4029](tel:415.353-4029)
gina.abrams@ucsf.edu

UCSF PeopleConnect

Find HR answers and review HR resources at **UCSF PeopleConnect**.
Login at <https://ucsf.connectmehr.com/>, then select the [Training Tile](#) to learn more.

From: Nicolas Monteiro <nmonteiro@afscme3299.org>
Sent: Thursday, April 18, 2019 6:15 AM
To: Abrams, Gina <Gina.Abrams@ucsf.edu>
Cc: Claudia Preparata <cpreparata@afscme3299.org>; Seth Newton Patel <spatel@afscme3299.org>; Teresa Avendano <tavendano@afscme3299.org>; ELR <ELR@ucsf.edu>
Subject: Demand to Bargain - Contracting Out Landscaping Services

Dear Gina,

AFSCME is in receipt of UCSF's notice to contract out Landscaping Services work. 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, AFSCME will be requesting additional information.

Sincerely,

--

Nicolas Monteiro

Internal Organizer

AFSCME Local 3299

[1360 9th Ave #240](#)

[San Francisco, CA 94122](#)

office: [415.566.6477](#)

fax: [415.566.6846](#)

[Patient Care Contract \(EX\)](#)

[Service Contract \(SX\)](#)

EXHIBIT 9

From: Claudia Preparata <cpreparata@afscme3299.org>
Sent: Friday, April 26, 2019 3:06 PM
To: elr@ucsfmedctr.org; Abrams, Gina
Cc: Seth Newton Patel; Teresa Avendano; Nicolas Monteiro
Subject: Re: Demand to Bargain - Contracting Out Landscaping Services
Attachments: 2019.4.26_UCSF Landscaping Services RFI.pdf

Ms. Abrams:

Please see the attached RFI in response to the Union's demand to bargain communication re: UCSF's "Contracting Out Landscaping Services" RFP.

Let me know if you have any questions.

Sincerely,

Claudia

On Apr 18, 2019, at 6:14 AM, Nicolas Monteiro <nmonteiro@afscme3299.org> wrote:

Dear Gina,

AFSCME is in receipt of UCSF's notice to contract out Landscaping Services work. 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, AFSCME will be requesting additional information.

Sincerely,

--

Nicolas Monteiro
Internal Organizer
AFSCME Local 3299
[1360 9th Ave #240](#)
[San Francisco, CA 94122](#)
office: [415.566.6477](tel:415.566.6477)
fax: [415.566.6846](tel:415.566.6846)

[Patient Care Contract \(EX\)](#)
[Service Contract \(SX\)](#)

EXHIBIT 10

From: Libertad Ayala <layala@afscme3299.org>
Sent: Thursday, February 7, 2019 4:26 PM
To: Claudia Preparata
Subject: Fwd: RFP - Cal Dining Concessions & Catering Temporary Labor
Attachments: Ltr to L Ayala re RFP Cal Dining CC 012919.pdf

----- Forwarded message -----

From: Elise Magno <elise.magno@berkeley.edu>
Date: Jan 29, 2019, 3:25 PM
Subject: RFP - Cal Dining Concessions & Catering Temporary Labor
To: Libertad Ayala <layala@afscme3299.org>, Maricruz M Manzanarez <mmanzanarez@afscme3299.org>
Cc: Joyce HARLAN <jharlan@berkeley.edu>, Faith LEBLUE <fleblue@berkeley.edu>

Hi Libertad,

Please find attached a copy of the letter that was faxed to the union today.

Thank you,
Elise

--

Elise Magno
Labor Relations Advocate
University of California, Berkeley
(510) 643-6802



Libertad Ayala
Lead Organizer at AFSCME 3299

A 2519 Telegraph Ave Suite B. Berkeley CA 94704
M (818) 814-6054 **E** Layala@afscme3299.org
W www.afscme3299.org



IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you have received this email by mistake, please notify the sender immediately and do not disclose the contents to anyone or make copies thereof.

Setup Meeting w/ Libertad [Click here](#)

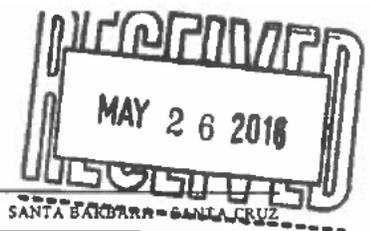
Need to contact me immediately? Text me here!

Send SMS

EXHIBIT 11

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



HUMAN RESOURCES
LABOR RELATIONS
2199 ADDISON STREET, ROOM 192
BERKELEY, CALIFORNIA 94704-3540

FAX (510) 642-2888
TEL. (510) 642-0382

May 23, 2016

SENT VIA U.S. MAIL & FACSIMILE

Claudia Preparata
Libertad Ayala
AFSCME Local 3299
2201 Broadway Street, Suite 315
Oakland, CA 94612
Facsimile: (510) 844-1170
Facsimile: (510) 486-0111

Re: RFP - UC Berkeley Cal Dining Concessions & Catering Temporary Labor

Dear Ms. Preparata and Ms. Ayala:

For your information, please find attached the RFP regarding UC Berkeley Cal Dining Concessions & Catering Temporary Labor. It is the University's position that the services discussed in the RFP are not "customarily provided by AFSCME unit employees." Indeed, concessions and catering have been typically performed by contractors on our campus because of the sporadic, seasonal, inconsistent, and temporary nature of the work. For example, some of the events where this temporary labor is needed are the six to seven football games per year, weddings, new student welcome events, graduation events, conference guests and external client meetings on-site, concessions at athletic competitions, VIP and/or donor events, and catered UC department events, *etc.* Moreover, some of the services needed require special expertise or efficiencies that are better provided through an outside contractor than by the University. For example, we do not have banquet servers. Further, there are operational efficiencies because it would not be "economically feasible or would result in significant additional expense if the services had to be performed by bargaining unit employees." A pool staff is not feasible and does not work in this circumstance because the nature of the work is entirely sporadic, seasonal, inconsistent, and temporary, such that a pool cannot be effectively maintained. Accordingly, it is the University's position that this RFP is permitted under Article 5, section B. For additional specifics, please review the RFP.

Best regards,

Julie Hoxie
Labor Relations Advocate

Claudia Preparata
Libertad Ayala
May 23, 2016
Page 2

Enclosure: RFP

cc: Nadine Fishel, UCOP
Anita Raman, Labor Relations
Joyce Harlan, Labor Relations

REQUEST FOR PROPOSAL

#RFP-FY2016-#71

UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

Purpose & Objectives of the RFP

The purpose of this Request for Proposal (the "RFP") is to invite qualified bidders to prepare and submit proposals to furnish temporary catering and concessions staffing to the University of California ("UC", "University"), in accordance with the requirements set forth in this RFP. Qualified Suppliers are invited to submit proposals, based on the information provided in this RFP.

Communications Regarding this RFP

All communications, including any requests for clarification should be submitted via the Q&A section on this event within the uBuy (Sourcing Director) tool. With the exception of the designated contact as provided in this RFP document, suppliers are not permitted to communicate with UC staff regarding this solicitation. Any changes, additions, or deletions to the RFP will be in the form of amendments electronically sent via the uBuy tool. UC will not be responsible for failure of any prospective Supplier to receive such amendments. All amendments will become part of the RFP. It is Supplier's responsibility to read the entire document, including any attachments, references and amendments, and to comply with all requirements listed herein. For instruction on how to bid in the uBuy tool, refer to the Supplier Bidding Guide under the Prerequisite section of the uBuy tool.

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 180 days following the RFP closing date.

Contract Term

It is anticipated that the initial term of any contract awarded pursuant to this RFP will be for a period of three (3) years, starting on or about July 1, 2016 through June 30, 2019. UC may, at its option, extend the contract for three (3) additional one (1) year periods on the same terms and conditions. UC reserves the right, at the end of each Term, to extend for an additional 120 days at the prevailing terms, conditions and revenue sharing.

UC's preference is to make one award; however, UC reserves the option to make one award, multiple awards, or no award.

Response Submittal and Evaluation

UC reserves the right to withdraw this RFP at any time. All documents submitted to UC in response to this RFP will become the exclusive property of UC and will not be returned. All documents are subject to the California Public Records Act. Marking a document "confidential" or "proprietary" may not prevent its release.

Supplier is strongly encouraged to complete and submit its response in the uBuy tool well before the RFP's closing date and time. Late responses will not be accepted after the RFP's closing date and time.

Responses must follow the format specified in the RFP. The submission of a response confirms that it has been issued and reviewed by an individual authorized to respond on behalf of Supplier.

REQUEST FOR PROPOSAL

#RFP-FY2016-#71

UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

Supplier will bear all costs incurred in the preparation and submission of responses and related documentation, including Supplier presentations to UC.

As part of the contract implementation, a mandatory walkthrough will be required of all contract awardees.

Prerequisites

- Download & read "Supplier – Bidding Guide.pdf"
- Download & read "Required Supplier Information.pdf"
- Complete, sign, and attach the UC Berkeley Substitute W-9 Form, Conflict of Interest, EFT Form
- Successful supplier will be required to submit a valid certificate of insurance listing "The Regents of the University of California" as additional insured according to the limits listed in the UC Terms and Conditions of Purchase within 10 days of bid award.
- Review and indicate acceptance of the Fair Wage / Fair Work requirement
- UC Piggyback (optional)
Supplier agrees to extend the pricing basis, terms and conditions of the Agreement to all UC locations. Supplier will make available to any UC location its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple UC locations. All contractual administration issues (e.g. terms and conditions, extensions), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual UC locations will be addressed, administered, and resolved by each UC location. Any delay in payment or other operational issue involving one UC location will not adversely affect any other UC location.
- CSU Piggyback (optional)
Supplier agrees to extend pricing and services to the California State University institutions (CSU) under the terms of the Agreement. All contractual administration issues (e.g. terms and conditions, extensions) will remain UC's responsibility. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU campuses will be addressed, administered, and resolved by each CSU campus.

Documents

- UC Terms and Conditions of Purchase
- UC Data Security & Privacy Appendix
- UC Standards of Ethical Conduct
- RSSP Respect and Civility Statement
- STARS Customer Service Statement
- RFP Additional Mandatory Requirements

Supplier to Upload

- Resume' of Proposed Account Manager
- Copy of Supplier's Current Training Program and documentation that staff have completed this program. Include information addressing how often staff go through this training program and how often the training program is updated.
- Copy of Supplier's Current Safety Program and documentation that staff have completed this program. Include information addressing how often staff go through this training program and how often the training program is updated.

REQUEST FOR PROPOSAL

#RFP-FY2016-#71

UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

- List of at least 3 previous or current projects of similar size and scope preferably within a university or campus environment within the last 3-4 years. Information for each project shall include the client's name, dollar value of the project, brief description of the services provided and duration of the project agreement (1-time, 1-year, on-going agreement, etc...)
- Pricing
 - All-Inclusive Per Hour (non-holiday) Cost to Cal Dining for:
 - Cooks (line, grill, prep)
 - Banquet chefs
 - Banquet servers
 - Captains
 - Utility staff
 - Custodial/storekeepers. Custodial/store keepers duties include pre-event set up and cleaning, post-event breakdown and clean up, dish room duties, garbage removal, product receiving and stocking, re stocking, product distributions to the service area, etc.
 - Cost Adjustment for Holiday Pay

RFP Schedule

Release of Request for Proposal	Monday, May 23, 2016, 8:30 AM
Last Day for Questions	Tuesday, June 7, 2016, 10:00AM
Proposal Submission Deadline	Tuesday, June 7, 2016, 10:00AM

REQUEST FOR PROPOSAL
#RFP-FY2016-#71
UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

RFP Additional Mandatory Requirements

1. Overview:

UC Berkeley Cal Dining is seeking well trained, experienced, and customer service focused business partner(s) who can provide Temporary staffing for Cal Dining Concessions and Catering operations on and around the UC Berkeley campus. These services will be required on an as needed basis lasting anywhere from a few hours to days randomly throughout the year. Upon less than a days' notice of such need successful supplier shall be capable of mobilizing a workforce to meet the scope of work as defined at the time. Services may be required for weekend, early morning and evening events, as well as events during regular business hours.

Service provider is responsible for recruitment, background checks, training, scheduling, payroll, benefits, etc. in order to ensure sufficient support in performance of each scope assignment as defined by campus representatives.

Examples of when the need for temporary services lasting between 4 to 24 hours include: event support for weddings, new student welcome events, graduation events, conference guests and external client meetings on-site, concessions at athletic competitions, VIP and/or donor events, catered UC department events, etc.

Due to the nature of the services and the clientele served, Concessions and Catering sometimes require specialized skills to perform the needed service. Supplier shall become familiar with the primary service areas and Cal Dining requirements in advance of deploying labor to ensure no preventable damages or disruptions occur during scheduled need for service delivery.

- 2. Types of Skills Needed:** Cooks (line, grill, prep), banquet chefs, banquet servers, captains, utility staff, and custodial/storekeepers. Custodial/store keepers duties include pre-event set up and cleaning, post-event breakdown and clean up, dish room duties, garbage removal, product receiving and stocking, restocking, product distributions to the service area, etc.
- 3. Locations of Services:** Alumni House, California Memorial Stadium, Clark Kerr, Haas Pavilion, and other areas in and around the UC Berkeley Campus as needed.

4. Historical & Anticipated Volumes & Locations

Cal Catering

FY14-15: a total of 2,938 events

FY13-14: a total of 2,926 events

Approximately 60% of events are for groups less than 100 people

25-30% of events are for groups between 100-200 people

10-15% of events are for groups of 200 or more

Primary Cal Catering Locations:

Clark Kerr, 2601 Warring Street, Berkeley

Alumni House, 1 Alumni House, Berkeley

REQUEST FOR PROPOSAL
#RFP-FY2016-#71
UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

Concessions Events: 150+ annually

Primary Concessions Locations:

California Memorial Stadium is a 63,000 seat outdoor stadium which hosts 6-7 college football games plus one additional large event each year. Renovated in 2012, CMS features three exclusive clubs and high quality spectator amenities.

Haas Pavilion is an indoor multipurpose arena with 12,000 seats. There are typically 50 events (Men's and Women's Basketball, Volleyball, Gymnastics and other sports) in Haas Pavilion with the events generally occurring on nights and weekends.

Approximate anticipated spend on temporary labor for FY15-16: \$400k

5. Anticipated Peaks & Valleys

Cal Catering is particularly busy in the months of September through November and March through May, and the department anticipates fewer events during the last two weeks of December and the first two weeks of January.

Concessions is busiest the second week of July through the first week of December for football season, with the month of October being particularly heavy with events. December through March are also busy with men's and women's basketball, rugby, and soccer. April is slightly less impacted, and May, June, and the first two weeks of July are quieter.

6. Ordering, Pricing, Purchase Orders, Invoicing

a. Ordering & Purchase Orders:

- i. Cal Dining will create blanket purchase orders for Catering and Concessions approximately annually around June/July of each fiscal year, and supplier will need to include the appropriate PO number on invoices for work provided. Anticipated number of POs annually is 3-5.
- ii. Rather than initiating a PO each time Cal Dining has a need for Temporary Staff, Supplier shall have a web site and client access where Cal Dining management will be able to log on to place orders. Personnel approved to place orders include: Cal Dining Executive Director, Commodities Coordinator, Associate Director of Administration, Director of Residential Dining / Catering, Director of Retail / Concessions or their designee, if indicated in writing.
- iii. When requesting services, UC will specify the service classification(s) required; the applicable rate for each specified service classification; the location services are required; and the time and duration of services applicable to the request, including beginning date(s) and time(s) and ending date(s) and time(s). UC will have sole discretion to establish the qualifications necessary for the performance of any service to be rendered under this Agreement. Should UC become dissatisfied with the performance of any Temporary Staff assigned by Supplier to UC under this Agreement, UC will notify Supplier with details of the unsatisfactory performance and Supplier will use its best efforts to replace that individual as soon as reasonably practical within a mutually agreeable time period.

REQUEST FOR PROPOSAL
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UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

- iv. Upon receipt of an order from UC, Supplier will email a confirmation of receipt of the order, typically within 4 hours or less, and will indicate the number of Temporary Staff available to meet the need.
 - v. Typically, UC will request coverage with at least one day notice. However, for UC requests for coverage on the same day, Temporary Staff is required to be onsite within one (1) hour of the confirmation. Supplier agrees to provide UC rush staffing orders within one (1) hour after receipt of order at no additional charge to UC.
 - vi. Supplier is advised that because there is no mandatory use policy at UC, Supplier may still see some competition at any given UC location for this service.
 - vii. Supplier understands and agrees that the Services to be provided to UC under a resulting Agreement will be provided on a day-to-day, as-needed, basis and that UC in its sole discretion will determine its need, if any, for Services or the continuation of such services.
- b. Pricing:
- i. There will be no reimbursement for out-of-pocket expenses.
 - ii. Approval of Temporary Staff overtime work will be at the full discretion of Supplier; however, Supplier can only charge Cal Dining the flat hourly rate for Temporary Staff hours, no overtime adjustments will be approved.
 - iii. **Price Adjustments:** Any pricing provided in response to this RFP will be considered all inclusive and no additional charges or surcharges or taxes of any kind will be implemented without prior written approval of UC. Prices will be fixed for at least the first year of the Agreement. Price adjustments for future years must be due to general market conditions for the items involved and may not exceed an increase of 3% or the CPI, whichever is lower. Any request of a price increase must be received by the Procurement unit at Student Affairs at least sixty (60) days prior to each contract extension. Supplier shall demonstrate proof for the necessity to increase prices with cost analysis or other documentation to support a price increase. Price increases will not be made at any other time during the contract period. UC is to receive the benefit of any price/rate decreases. Requests for price adjustments will not be considered without a written documented explanation. UC retains the sole right to decide whether such increases are acceptable based on the documentation submitted by the supplier.
 - iv. **Inclusive Pricing:** Prices are all inclusive of all costs including: payroll taxes, worker's compensation, benefits, liability insurance, recruitment, HR/administrative, screening, background checks, staff training, and travel. No supplemental charges of any kind, including but not limited to, taxes, travel, or fuel surcharges, will be invoiced or authorized for payment.
 - 1. Supplier shall demonstrate that all staff are adequately trained in the compliance of all applicable OSHA and other Federal, State and Local laws, rules and regulations regarding the services and any materials that may be encountered in the performance of the services.
 - 2. Any reports requested by UC must be intelligible and written clearly, at no charge to UC.
 - v. In the event of non-performance of Temporary Staff, UC shall have the right to exercise one of the following options:

REQUEST FOR PROPOSAL
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UC BERKELEY CAL DINING CONCESSIONS & CATERING TEMPORARY LABOR

1. UC shall correct the item of non-performance by using another Supplier, or by any means it deems necessary and reasonable. Direct cost incurred by UC for correction of the item of non-performance including a reasonable amount for the cost of the time of the employees of UC involved in such correction shall be deducted from payments made to the Supplier.
 2. UC shall allow the non-performance to remain uncorrected and shall make a deduction from payments to the Supplier.
 3. For instances where a Temporary Staff person does not complete an assigned shift, UC will owe no fees for that shift.
 4. UC will receive a 2 hour credit for no-shows.
- c. Invoicing:
- i. In order for Temporary Staff work hours to be billable, all Temporary Staff shall check in with the Cal Dining manager on duty at the work location before starting the shift, before taking break(s) and at the end of the shift.
 - ii. UC will be billed electronically per the instructions provided by the UC Berkeley Controller's Office: <http://controller.berkeley.edu/departments/accounts-payable/helpful-hints-our-vendors>
 - iii. All invoices must clearly indicate the following information:
 - ✓ Reference the UC Purchase Order Number;
 - ✓ Valid invoice number and invoice date;
 - ✓ Ensure that invoice matches the Purchase Order;
 - ✓ Supplier contact and remittance information;
 - ✓ Description of the service provided including the event name, types of work performed, total Temporary Staff person(s) and hours of work performed;
 - ✓ Location of the event worked;
 - ✓ Date of the event worked;
 - ✓ Net cost of service;
 - ✓ Any applicable discount;
 - ✓ California sales tax as a separate line item, if applicable;
 - ✓ UC vendor number if known;
 - ✓ Credits: Reference the original purchase order number for all credit invoices issued. Clearly identify as a "CREDIT" and provide reason for credit. Reference original invoice number if applicable.
 - iv. Payment Terms: UC will normally pay invoices within thirty (30) days of satisfactory product delivery or receipt of correct invoice as agreed to in the Vendor record.
- 7. Designated Account Manager**
The successful supplier is required to assign a designated account manager for Cal Dining to address orders, delivery, price, compliance, and/or customer service issues. The account manager shall be available to attend chef/manager meetings and meetings with purchasing managers and directors from time to time upon UC request.
- 8. Intellectual Property, Copyright and Patents**
The Services do not involve Work Made for Hire.

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9. Patient Protection and Affordable Care Act (PPACA)

Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&Cs.

10. Prevailing Wages

Supplier is not required to pay prevailing wages when providing the Services.

11. UC Fair Wage / Fair Work

Bidders will be required to agree to the UC Fair Wage/Fair Work provision in UC Terms and Conditions of Purchase. This provision requires Bidder to pay no less than the UC Fair Wage to employees who perform the Services (\$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17); to be subject to interim audits by UC in this regard; and in the case of services that exceed \$100,000 per year, annually to certify completion of an independent audit of compliance with the UC Fair Wage/Fair Work provision. Annual audits may be performed by Bidder's independent auditor or independent internal audit department in compliance with UC's required audit standards and procedures. By way of illustration, UC would consider firms listed in Inside Public Accounting's most recent annual ranking of the 200 largest accounting firms to be acceptable independent auditors (<http://insidepublicaccounting.com/newsletters/ipa-100-and-ipa-200/>).

12. Workforce Turnover

UC considers it important that the successful Supplier maintain a stable workforce with an appropriate wage/benefit package which will encourage high quality and efficiency of services and contribute to a safe and secure campus environment.

13. Insurance

Insurance amounts are located in the UC Terms and Conditions of Purchase. Successful Supplier(s) will be required to deliver the Certificate of Insurance to UC's Buyer, by mail or overnight delivery. This requirement will be considered satisfied if a PDF version of the Certificate of Insurance is sent by Email and includes the following text in the Subject field: CERTIFICATE OF INSURANCE – Supplier Name.

Certificate of insurance evidencing said insurance must be received by the Buyer in the Supply Chain Management Department 10 days after bid award and before commencing work.

The Supplier must, at its own expense, obtain and keep in force during the entire term of this contract or issue a blanket certificate naming "The Regents of the University of California" as additional insured to cover any work done for UC for the next year.

Supplier shall use the following address in the Certificate Holder location to identify the Additional Insured:

The Regents of the University of California
University of California, Berkeley
Supply Chain Management – Insurance Desk
1608 4th Street, Suite 217
Berkeley, CA 94710-7600

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14. UC Requirements

- a. Supplier warrants that it will comply with all applicable UC policies and requirements which include, but are not limited to, verifying that all Temporary Staff that will be performing services pursuant to this Agreement have completed, signed, and understand the appropriate documentation and requirements (i.e., background clearance, orientation, education, permits and related training requirements) prior to commencing an assignment at UC. Supplier warrants that Temporary Staff will have had a full background check initiated by Supplier and that the Temporary Staff will have no known criminal records or criminal charges which would in any way affect the ability of Temporary Staff, to discharge their responsibilities according to the highest ethical standards which exist in regards to the services provided, associated data and the systems that process such information. Background checks will include, but are not limited to, fingerprinting, reference checks and criminal checks.
- b. Supplier will arrange for background checks, verifications, references, and other investigations as part of the overall assessment of candidates scheduled, prior to their arrival on the job site.
- c. Additionally, the Supplier shall show that a background check to the extent allowed by law has been conducted on each employee.
- d. If requested by UC, Supplier shall perform random background checks on any or all Supplier's employees, at Supplier's expense, and provide UC with certifications.
- e. Documentation: Supplier will maintain background check documentation in its file for all Temporary Staff. This documentation must be current at all times. This documentation is subject to audit at any time by UC for compliance purposes. Upon request, Supplier will provide to UC written certification of the items contained in the above paragraphs as well as any other information developed in the course of the Supplier's investigation of each employee. This certification shall include the full name, present telephone number, place of residence and previous employment if available.
- f. UC reserves the right to perform additional background checks on Temporary Staff providing Services, and to require Temporary Staff to be fingerprinted for such purpose.
- g. Compliance with UC Policies: In the performance of Services under a resulting Agreement, Supplier agrees and will establish, implement, and maintain procedures and controls to ensure that its Temporary Staff abide by all applicable UC policies and procedures and with all applicable provisions of awarded Purchase Order and all site rules and practices of UC, including but not limited to those relating to Data Security. Supplier further agrees that the performance of Services hereunder will be subject to UC Appendix – Data Security & Privacy.
- h. The Supplier shall take all measures necessary to comply and to ensure the employees of the Supplier comply with the security rules and regulations of UC and all applicable Federal, State and local rules, laws and regulations.
- i. Supplier's employees shall not use controlled substances not prescribed for them, nor illegal substances, and shall not use alcohol on UC's premises nor preceding their work under the influence.
- j. The Supplier shall ensure that lost, or apparently lost, articles that are found by Supplier's employees to be turned in immediately to the designated lost and found areas or to Cal Dining's designated representative.
- k. The Supplier shall prevent any of its employees from opening, tampering with, using or moving

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any item of equipment, telephones, storage containers, desks, etc. or entering into any area unless required in the performance of the services.

- i. The Supplier shall remove from service on the premises of UC any employee of the Supplier who, in the opinion of UC, is not performing the services in a proper manner, or who is incompetent, disorderly, abusive, dangerous, or disruptive or does not comply with rules and regulations of UC. Such removal shall in no way be interpreted to require dismissal or other disciplinary action of the employee by the Supplier.
- m. Litigation Disclosure Obligations: Supplier represents and warrants that, to the best of its knowledge neither Supplier nor any Temporary Staff are engaged in, or a party to, or threatened with any suit, action, proceeding, inquiry, investigation or claim that could have a material adverse effect on Supplier's ability to perform under this Agreement. Supplier agrees to promptly disclose to UC any material change in status of the foregoing throughout the term of this Agreement.

15. Vehicle Usage

UC and Supplier agree that Temporary Staff will not utilize UC vehicles in the performance of this Agreement.

16. Customer Service Expectations

Supplier and all of Supplier's subcontractors and affiliates are expected at all times to abide, at minimum, by the customer service principles outlined in the UC Standards of Ethical Conduct, RSSP's Respect and Civility Statement and STARS Customer Service Statement, and all will be incorporated into a resulting Agreement. Supplier is expected to have only business related contact for the purpose of the performance of this Agreement with internal and external customers of UC and will treat UC staff with the utmost respect. A positive customer service experience by our students, staff, parents, donors, and other guests, is vital to Cal Dining's mission and operation. Unruly, disrespectful or rude behavior by suppliers will not be tolerated and may be grounds for immediate termination of this Agreement. Judgment regarding whether customer service expectations have been met will be at the full discretion of UC staff.

17. Supplier's Access

- a. Access routes, entrance gates or doors, parking and storage areas, etc. and any imposed time limitations on the Supplier shall be designated by Cal Dining. The Supplier shall conduct its operations in strict observation of the access routes and other areas established as described above.
- b. The Supplier shall ensure that under no circumstances shall any of the employees of the Supplier enter any area not authorized by Cal Dining for access.
- c. UC shall give Supplier's personnel reasonable access to the areas where the services are to be performed. UC shall arrange for access to buildings, including the provision of keys or access cards if required for Supplier to perform the services.

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18. Disclosure of Information

- a. **General:** Supplier and/or Temporary Staff will comply with UC policies and procedures and federal, state and local laws, regulations and interpretations governing confidentiality and access to, use and disclosure of confidential information. It is anticipated that Supplier and/or Temporary Staff will have minimal, if any, contact with confidential information; however, all records, statistical, financial and personnel information and any and all other information or data relating to the business of UC will be kept in strictest confidence by Supplier and/or Temporary Staff, and will not be disclosed in any way without the prior written consent of UC. Supplier will hold in strict confidence all information obtained in connection with this Agreement and will convey only so much of such information to its individual employees, subcontractors and agents as such persons must know to fulfill the purposes of this Agreement.
- b. **No Copying or Removal of Records:** All reports, references, student, staff or guest records, and other materials supplied to Supplier, both hardcopy and electronic, are and will remain the property of UC and are not to be copied, copied to computer files, or removed from the premises, and will be surrendered to UC upon expiration or earlier termination of this Agreement.
- c. **No Distribution; Return of Materials:** Supplier and/or Temporary Staff will not provide to a third party copies of materials collected or produced as part of this engagement without UC's prior written approval. Upon termination of this Agreement for any reason, Supplier will promptly return to UC all copies of any data, records, or materials of whatever nature or kind, including all materials incorporating proprietary information of UC. Supplier will also furnish to UC all work in progress or portions thereof, including all incomplete work.
- d. **The Supplier shall not issue or release for publication any articles or advertising or publicity matter relating to the services or mentioning or implying the name of the UC, its subsidiaries or affiliated companies or their respective personnel, without the prior written consent of the University Business Contracts Brand Protection Office.**

19. Energy Conservation

Supplier shall comply with all energy conservation practices of UC.

20. Holidays

UC observes thirteen (13) annual holidays. UC shall have the right to require the performance of the services on holidays observed by UC and/or the Supplier. Should UC require the Supplier to perform the services on any of these annual holidays observed by UC and observed by the Supplier's employees, UC will pay the Supplier a reasonable, predetermined, fixed additional fee for the performance of the services on such holidays. University holidays are as listed below:

- New Year Holiday (New Year's Day, and day before or after New Year's Day)
- Martin Luther King Holiday
- Presidents' Day Holiday
- Spring Holiday (normally the last Friday in March or first Friday in April)
- Memorial Day Holiday
- Independence Day Holiday
- Labor Day Holiday
- Veterans Day Holiday

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- Thanksgiving Holiday (Thanksgiving Day, and Friday after Thanksgiving Day)
- Winter Holiday (December 25, and day before or after December 25)

21. Labor Activity

- a. The Supplier shall be responsible for its own labor relations with any trade or union representative among its employees and shall negotiate and be responsible for adjusting all of the disputes between itself and its employees. Whenever the Supplier has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the services, the Supplier shall immediately give written notice thereof to UC.
- b. If any strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Supplier which results in the curtailment or discontinuation of services provided hereunder, UC shall have the right during said period to employ any means legally permissible to have the services provided.
- c. In the event of a work stoppage by employees of UC or any of UC's other Suppliers affecting the site, the Supplier shall furnish the services required to keep Cal Dining (Concessions and Catering) operations running at a level of service acceptable to UC.

22. Needed Repairs

The Supplier shall promptly notify the Cal Dining Catering Director, the Cal Dining Concessions Director, or their designated representatives in a written format acceptable to them, of needed repairs and/or damage to fixtures or buildings observed during the performance of the services. Any item of a critical, priority, or emergency nature will be verbally reported immediately upon discovery with written notification to follow prior to the end of the work shift.

23. Scavenging

The Supplier shall develop, implement and maintain adequate procedures and checks to ensure that no employee of the Supplier scavenges.

24. Parking

A permit is required for all Supplier's employees parking on campus. UC will not be responsible for any costs of the permits.

25. Employee Food Service

The Supplier shall not be allowed to bring on to UC's property any food or beverage catering trucks, vending machines, or other serving facilities without prior written authorization from UC.

26. Service Workers and Working Leaders

- a. The Supplier shall provide trained, qualified service workers and work leaders capable of performing the services in accordance with the RFP.
- b. It is understood and agreed by UC and the Supplier that the Supplier will perform the services as an independent contractor and in no event shall any employee hired by the Supplier be considered an employee of UC.

27. Soliciting

The Supplier shall not provide and shall not solicit any services in the facilities or on the properties of UC other than that which is defined in this RFP. The Supplier shall establish, implement, and

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maintain procedures and controls adequate to prevent its employees from providing any services other than which is defined in the RFP or soliciting or accepting any gratuities in the facilities of UC.

28. Training

The Supplier shall provide each employee used in the performance of services with adequate training to competently and safely perform the services at the Supplier's expense. The Supplier has responsibility for training its employees in the proper methods and use of any equipment, tools, supplies, chemicals if applicable, and/or any other skills or knowledge needed by the employees of the Supplier to safely and adequately perform the services under a resulting Agreement.

29. Uniforms

- a. The Supplier shall ensure all of its employees are clean, neat, with uniform shirt or blouse and Red-Wing or equivalent non-slip work shoes at all times during the performance of the services. If equivalent shoes are being recommended by the Supplier, Supplier shall submit to the Cal Dining Director of Residential Dining/Catering and Cal Dining Director of Retail/Concessions, documentation of equivalency for their approval. Shirt should be completely buttoned with top button left open, pants clean, wrinkle free and worn at waist level with belts as required. Shirts should be tucked into pants for service staff and chef coats left untucked. Cap should be worn bill forward or Chef Hat. Proper undergarments are required and should not be visible through clothing.
- b. The uniforms must meet the approval of the Cal Dining Director of Residential Dining/Catering and Cal Dining Director of Retail/Concessions.
- c. Temporary Staff working sporting events will be required to show valid government issued ID.
- d. Hair: must be kept clean and well-groomed at all times. Hair longer than shoulder length must be tied back. Temporary Staff must wear a non logoed navy blue or black cap or a hairnet at all time in all dining service areas whether on duty or not.
- e. Beard and Mustaches: must be neatly trimmed.
- f. Finger Nail Polish: finger nails must be clean and neatly trimmed. Fingernail polish must not be worn.
- g. Hygiene and Professional Practice: Temporary Staff must wash hands and arms with soap and warm water before starting work and after visiting the restroom, smoking, taking a break or touching hair or face. Chewing gum and toothpicks are not allowed while on duty.
- h. Jewelry: Temporary Staff may only wear a small ring, a watch, and small post type earrings.

30. Warranty

- a. The parties acknowledge that UC, in selecting the Supplier to perform the services hereunder, is relying upon the Supplier's reputation for excellence in the performance of the services required. The Supplier will perform the services in the manner of one who is a recognized specialist in the types of services to be performed.
- b. Supplier warrants that (i) it, and each of the Temporary Staff it uses to provide and perform the Services under a resulting Agreement, will have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Services in accordance with this RFP; and (ii) the Services will be performed in a diligent, professional manner which meets or exceeds industry standards applicable to the performance of such Services.

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- c. Supplier warrants that it will at all times and at its own expense (i) comply with all applicable laws, rules, regulations, and governmental orders and applicable codes of practice, now or hereafter in effect relating to its performance of the Services provided under a resulting Agreement; (ii) pay all fees and other charges required by such laws, rules and regulations, codes and orders and (iii) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications necessary to perform its obligations under an Agreement resulting from this RFP.

TRANSMISSION VERIFICATION REPORT

TIME : 05/23/2016 10:40
NAME : UC BERKELEY
FAX : 5105421682
TEL :
SER. # : BROG0J179597

DATE, TIME	05/23 10:34
FAX NO./NAME	98441170
DURATION	00:05:42
PAGE(S)	16
RESULT	OK
MODE	STANDARD ECM

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SANTA BARBARA • SANTA CRUZ

HUMAN RESOURCES
LABOR RELATIONS
2199 ADDISON STREET, ROOM 192
BERKELEY, CALIFORNIA 94704-3540

FAX (510) 542-2588
TEL (510) 542-0582

May 23, 2016

SENT VIA U.S. MAIL & FACSIMILE

Claudia Preparata
Libertad Ayala
AFSCME Local 3299
2201 Broadway Street, Suite 315
Oakland, CA 94612
Facsimile: (510) 844-1170
Facsimile: (510) 486-0111

Re: RFP - UC Berkeley Cal Dining Concessions & Catering Temporary Labor

Dear Ms. Preparata and Ms. Ayala:

For your information, please find attached the RFP regarding UC Berkeley Cal Dining Concessions & Catering Temporary Labor. It is the University's position that the services discussed in the RFP are not "customarily provided by AFSCME unit employees." Indeed, concessions and catering have been typically performed by contractors on our campus because of the sporadic, seasonal, inconsistent, and temporary nature of the work. For example, some of the events where this temporary labor is needed are the six to seven football games per year, weddings, new student welcome events, graduation events, conference guests and external client meetings on-site, concessions at athletic competitions, VIP and/or

TRANSMISSION VERIFICATION REPORT

TIME : 05/23/2016 10:56
NAME : UC BERKELEY
FAX : 5106421882
TEL :
SER. # : BRO60J178597

DATE, TIME	05/23 10:56
FAX NO. /NAME	94860111
DURATION	00:00:00
PAGE(S)	00
RESULT	BUSY
MODE	STANDARD

BUSY: BUSY/NO RESPONSE

UNIVERSITY OF CALIFORNIA, BERKELEY

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HUMAN RESOURCES
LABOR RELATIONS
2199 ADDISON STREET, ROOM 192
BERKELEY, CALIFORNIA 94704-3540

FAX (510) 643-2986
TEL (510) 542-1382

May 23, 2016

SENT VIA U.S. MAIL & FACSIMILE

Claudia Preparata
Libertad Ayala
AFSCME Local 3299
2201 Broadway Street, Suite 315
Oakland, CA 94612
Facsimile: (510) 844-1170
Facsimile: (510) 486-0111

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PROOF OF SERVICE

DELIVERY BY U.S. MAIL. I declare that I am over the age of eighteen years and not a party to the action. My address is: 2199 Addison Street, Suite 192, Berkeley, California, 94720-3540.

On May 23, 2016, I served the enclosed letter with enclosure,

Re: **RFP – UC Berkeley Cal Dining Concessions & Catering Temporary Labor**

by placing a true copy enclosed in a sealed envelope with postage fully pre-paid in the United States mail, addressed as follows:

Libertad Ayala
AFSCME Local 3299
2201 Broadway Street, Suite 315
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 23, 2016 at Berkeley, California.

Carmen Melson
(Name)


(Signature)

PROOF OF SERVICE

DELIVERY BY U.S. MAIL. I declare that I am over the age of eighteen years and not a party to the action. My address is: 2199 Addison Street, Suite 192, Berkeley, California, 94720-3540.

On May 23, 2016, I served the enclosed letter with enclosure,

Re: **RFP – UC Berkeley Cal Dining Concessions & Catering Temporary Labor**

by placing a true copy enclosed in a sealed envelope with postage fully pre-paid in the United States mail, addressed as follows:

Claudia Preparata
AFSCME Local 3299
2201 Broadway Street, Suite 315
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 23, 2016 at Berkeley, California.

Carmen Melson
(Name)

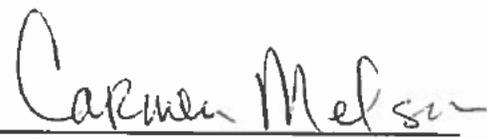

(Signature)

EXHIBIT 12

From: Libertad Ayala <layala@afscme3299.org>
Sent: Tuesday, February 19, 2019 1:04 PM
To: Magno Elise
Cc: Patel Seth Newton Patel; Preparata Claudia
Subject: Demand To Bargain - Cal Dining
Attachments: AFSCME3299_DTD Cal Dining.pdf

Elise

Please see attached.



Libertad Ayala
Lead Organizer at AFSCME 3299

A [2519 Telegraph Ave Suite B. Berkeley](https://www.afscme3299.org)
M [\(818\) 814-6054](tel:8188146054) **E** Layala@afscme3299.org
W www.afscme3299.org



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Setup Meeting w/ Libertad [Click here](#)



EXHIBIT 13

From: Elise Magno <elise.magno@berkeley.edu>
Sent: Wednesday, February 27, 2019 4:38 PM
To: Libertad Ayala
Cc: Patel Seth Newton Patel; Preparata Claudia; Joyce HARLAN
Subject: Re: Demand To Bargain - Cal Dining

Hi Libertad,

I apologize for the delay. I am confirming receipt of your letter regarding AFSCME's demand to bargain the RFP for Catering & Concessions. We are currently reviewing and looking at the matter and will get back to you as soon as possible for a meeting.

Thank you,
Elise

On Tue, Feb 19, 2019 at 1:05 PM Libertad Ayala <layala@afscme3299.org> wrote:
Elise

Please see attached.



Libertad Ayala
Lead Organizer at AFSCME 3299

A 2519 Telegraph Ave Suite B, Berkeley
M (818) 814-6054 E Layala@afscme3299.org
W www.afscme3299.org



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--
Elise Magno
Labor Relations Advocate
University of California, Berkeley
(510) 643-6802

EXHIBIT 14

ARTICLE 5 CONTRACTING OUT

A. GENERAL PROVISIONS

1. Nothing in this article shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, contract or grant - including the contract requirements contained in the agreement between the University and the Department of Energy- where ineligibility would result in a loss of federal funds to the University of California.
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;
 - 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.

3. Where financial necessity is the reason for the exception, before contracting for work which is fully or partially supported from State funds, including those at the teaching hospitals, the University shall first seek funding from the legislature to address the financial necessity.
4. When the University has determined to contract for services that are customarily provided 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 contracts for services that involve work customarily provided by the SX 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.
 - c. If AFSCME believes that the University failed to comply with the provisions of Section B above, it can file a formal complaint with the Office of the President, Office of Labor Relations. The Office of the President shall make the final determination as to whether the contract meets the conditions in Section B. The Office of the President decision shall not be grievable or arbitrable.

C. EFFECT OF CONTRACTING OUT ON EMPLOYEES

When a bargaining unit employee who is notified of layoff or released because the University entered into a contract for services that s/he performed, the University will make available another bargaining unit position for which the employee is qualified. The position will be at the same campus/medical center/Laboratory from which the employee was laid off or released. Where the provisions in this article are inconsistent with the provisions of Article 16, Layoff and Reduction in Time, the provisions of this Article and Section shall control.

1. The available position shall be offered at the same duration, percent time, and appointment type held by the employee when s/he was displaced (probationary, limited, per diem, or career).
2. The available position shall be offered at the same base rate of pay earned by the employee when s/he was laid off or released.
3. The right to be offered a position pursuant to this section shall begin on the date an employee is notified of her/his layoff or release.
4. The right of an employee to be offered a position pursuant to this section shall terminate upon acceptance or refusal of the offered position at the same base rate of pay.
5. A non-probationary career employee who refuses an offered position at the same base rate of pay shall be placed in layoff status. Probationary, limited, or per diem employees who refuse an offered position at the same base rate of pay shall be released.
6. This Section C is subject to the grievance and arbitration provision of this Agreement.

D. NEW FUNDING TO BRING CONTRACTED WORK BACK TO UC

1. In the event the State of California provides the University of California with sufficient additional new 19900 funding specifically identified to cover the cost of establishing contracted custodial positions, the University will establish such positions. Such funding must cover all salaries, benefits, capital equipment, supervision, and capital/real estate costs, at the same staffing levels as were provided under the contract. On a case by case basis, the University may agree with AFSCME to create UC positions for work contracted out even where the new 19900 funding does not fully cover all costs referred to above.
2. AFSCME and the University will work together to secure the sufficient additional funding.

E. SYSTEMWIDE REPORTS AND SYSTEMWIDE MEETINGS

1. The University shall provide AFSCME with the Contracting Out for Services at Newly Developed Facilities report submitted to the State Legislature each year no later than February 1st of each year. For 2014, the University shall provide report no later than April 1st.

2. Upon request, the University shall provide AFSCME with relevant non-confidential written information and/or supporting data including but not limited to the original RFP.
3. The above-referenced data shall be provided no later than April 15th, provided it is requested within thirty (30) days from AFSCME's receipt of the report.
4. The University and AFSCME shall convene two (2) systemwide Labor Management Meetings per year, the first no later than June 1st of each year to discuss contracts at University locations listed in the report, provided the union submits a timely request by May 1st, including its agenda for discussion.
5. The University and AFSCME may schedule further Labor Management Meetings as needed.
6. The University shall release AFSCME employees in a without-loss-of-straight-time-pay status for systemwide meetings in accordance with Article 15 – Labor Management Meetings Section A.2.
7. Any agreements reached by the parties will be reduced to writing as side letter agreements.
8. The timelines may be mutually extended by the parties.
9. This Section E is subject to the grievance and arbitration provisions of this Agreement.

EXHIBIT 15

A F S C M E

American Federation of State, County and Municipal Employees, AFL-CIO

LOCAL 3299

Main Office
2201 Broadway Avenue,
Suite 315
Oakland, CA 94612
Ph: 510.844.1160
Fax: 510.844.1170

October 23, 2019

UC Berkeley
2519 Telegraph Avenue,
Suite B
Berkeley, CA 94704
Ph: 510.486.0100
Fax: 510.486.0111

To Whom It May Concern:

UC Davis Office
2400 O Street
Sacramento, CA 95816
Ph: 916.491.1426
Fax: 916.443.1747

Pursuant to HEERA and the California Public Records Act, Government Code Section 6250 et seq., we request the information listed below for UC Berkeley's Request for Proposal (RFP) for Cal Dining Concession & Catering Temporary Labor, which seeks an outside vendor for work customarily performed by AFSCME-represented bargaining unit employees. Please provide the following information and/or documentation:

UC Irvine Office
1740 West Katella Ave.
Suite I
Orange, CA 92867
Ph: 714.634.1449
Fax: 714.634.0705

A. Expiring Contract Prior to UCB Entering into an Agreement with Vendor in Response to RFP

UC Los Angeles Office
5601 W. Slauson Ave.,
Suite 243
Culver City, CA 90230
Ph: 310.338.1299
Fax: 310.338.1574

1. Provide a copy of each contract and/or agreement in effect, including all amendments, renewals and/or extensions negotiated with any vendors since January 1, 2016, including, but not limited to, all purchase orders and change orders.

UC Riverside Office
1280 Palmlyra Avenue
Suite F
Riverside, CA 92507
Ph: 951.781.0679
Fax: 951.781.7034

2. Provide all written descriptions of the services provided by the vendor(s) during the term of the expiring contract, including but not limited to a "Statement of Work" (also called "Scope of Work");

UC San Diego Office
4241 Jutland Drive,
Suite 105
San Diego, CA 92117
Ph: 619.296.0342
Fax: 619.702.8311

3. Identify the estimated annual monetary value of the contract(s), and within that authorized expenditure, the estimated annual monetary value of AFSCME-represented work for 2016 through 2019. This should include documentation to support UC Berkeley's "approximate spend on temporary labor for FY18-19: \$950k," per the RFP;

**UC San Francisco/
UC Hastings
College of the Law Office**
1360 9th Avenue,
Suite 240
San Francisco, CA 94122
Ph: 415.566.6477
Fax: 415.566.6846

4. Since January 1, 2016, provide copies of all invoices the vendor has submitted to the University for all services rendered under the terms of the contract. If the University has this information in electronic form, please provide it in Excel or another electronic format;

UC Santa Barbara Office
900 Embarcadero Del Mar,
Suite E
Goleta, CA 93117
Ph: 805.685.3760
Fax: 805.685.3270

5. Provide a list of all physical locations where the vendor, or any other entity on its behalf, has provided services on or off campus under the existing contract;

**UC Santa Cruz/
UC Merced Office**
201 Mission St, Suite 4
Santa Cruz, CA 95060
Ph: 831.425.4822
Fax: 831.316.0049

6. At each location where the vendor(s) has provided services, for each month since January 1, 2016, identify the number of contractor FTEs in each classification and the total hours worked by all contractor employees providing services customarily performed by AFSCME;

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Fax: 510.844.1170

UC Berkeley

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Berkeley, CA 94704
Ph: 510.486.0100
Fax: 510.486.0111

UC Davis Office

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Sacramento, CA 95816
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900 Embarcadero Del Mar,
Suite E
Goleta, CA 93117
Ph: 805.685.3760
Fax: 805.685.3270

UC Santa Cruz/ UC Merced Office

201 Mission St, Suite 4
Santa Cruz, CA 95060
Ph: 831.425.4822
Fax: 831.316.0049

7. Since January 1, 2016, the number of budgeted FTEs in each AFSCME-represented classification in each department where the contractors performed work;

8. For the past 24 months, indicate whether there have been any job openings for AFSCME-represented titles at any location where the vendor(s), or any entity on its behalf, has been performing work customarily performed by AFSCME-represented titles. For each opening, indicate the classification, the date the job was posted, the date the job was filled, if applicable;

9. For FY 2017-18 and FY 2018-19, in relation to compliance or non-compliance with UC's Fair Wage Fair Work (FW/FW) policy, a copy of all exceptions to policy, complaints, internal audits, external audits, audit workpapers, certifications, findings of non-compliance (including notifications to the vendor), or other assessments or correspondence related to FW/FW compliance;

B. Since UC Berkeley Has Published its RFP for Cal Dining Concession & Catering Temporary Labor

1. Provide all proposals and other documents submitted by the vendor in response to the RFP, along with any amendments and/or clarifications published during the bid process. If the RFP process is still open, provide these documents once the University receives them from the bidder;

2. Provide all written descriptions of the services to be provided by the selected vendor(s) during the term of the new, renewed or extended contract, including but not limited to a "Statement of Work" (also called "Scope of Work"). Please specify how the scope of work will change from the scope of work performed under the prior contract(s) – and specify what job categories and/or classifications will be affected and how many FTEs in each of those categories and classifications will or may be provided by the vendor to perform work at UC;

3. Provide a copy of all written justifications provided by department personnel to support its request to contract out the work, and/or to renew or extend a pre-existing contract and identify which provision of Article 5 UC believes would be applicable;

4. Identify the duration of the new, renewed or extended contract term, and state whether the contract is subject to renewal or extension, and include a description of each date on which UC may exercise an option to renew or extend the contract term;

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**UC Santa Cruz/
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201 Mission St, Suite 4
Santa Cruz, CA 95060
Ph: 831.425.4822
Fax: 831.316.0049

5. Identify the estimated annual monetary value of any new, renewed or extended contract, and within that authorized expenditure, the estimated annual monetary value of AFSCME-represented work during each year of the contract and also during the entire time period for which the expenditure is authorized or for which authorization is sought;

6. A copy of the documentation approving the expenditure of funds to pay the vendor, and a copy of the Basis of Award, each Purchase Order, Blanket Purchase Order and Change Order created in relation to the new, renewed or extended contract; and,

7. Provide an explanation for why "Article 5: Contracting Out" of the collective bargaining agreement permits this work to be contracted out, along with all documentation supporting this explanation.

When providing documents or other information, please identify the letter and number of the item to which each document or information corresponds.

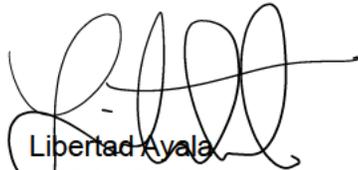
For items that request information over a specified period of time (e.g. over 24 months or for FY 2018-19), data from the "most recent" month should be within one month from the date the University fulfills this request.

Please provide the information as it becomes available, rather than waiting to send all of it together. In your acknowledgement of this request, please include a time estimate for production of information and documents. If there are items that do not exist, please confirm that in writing. If there are items that exist, but that you are refusing to provide, please provide the basis for your refusal.

Please let me know if you have any questions.

Thank you in advance.

Sincerely,



Libertad Ayala
AFSCME 3299

Lead Organizer

cc: Claudia Preparata, Seth Newton Patel