

SB 1467 – Public Contracts: Conflict of Interest

Background

Senate Bill 1467 (SB 1467) significantly changes certain business practices at UCSC beginning July 1, 2003. Because amending legislation, SB 41, is currently under consideration, UCOP has not yet issued an official interpretation of SB 1467. However, due to the severe penalties for violating SB 1467, we believe it is imperative to comply with the law as we currently understand it. As UCSC receives direction from UCOP regarding SB 1467, additional advisories will be forthcoming.

BACKGROUND

Last year, the Governor signed SB 1467 which applies standard Public Contract Code conflict of interest and penalty provisions to procurement by the UC system. Prior to the passage of SB 1467, UC was exempt from those provisions.

The language of SB 1467 results in new restrictions on the following business practices at UCSC:

- Awarding successor contracts or follow-on agreements to entities providing consulting to the University.
- Purchasing, leasing, or renting goods or services from university employees or from businesses in which a university employee has a 10% or greater financial interest.
- Hiring former UC employees as independent contractors to perform work related to contracts that were planned, negotiated, executed or involving policy created by the employee before the employee's separation from UC.

SUCCESSOR CONTRACTS

SB 1467 requires that any business entity awarded a consulting services agreement by UC shall not be awarded a successor contract after July 1, 2003 to provide services related to the findings of the original consulting services agreement. In simple terms, Consultants who have performed work for the University cannot participate on subsequent projects relating to the Consultant's findings.

If you are planning to hire a consultant with the expectation that that consultant could conceivably perform work related to the consultant's findings, please contact the Business Contracts Office for direction.

EMPLOYEE CONTRACTORS

SB 1467 prohibits university employees (or entities in which the employee has a financial interest) from contracting with any university department to provide goods or services as an independent contractor. UC employees with teaching or research responsibilities are exempted from this provision of SB 1467 but are still subject to University guidelines for employee-vendors.

UC employees without teaching or research responsibilities can no longer be hired as independent contractors by university departments to provide goods or services. University departments requiring the services of an existing UC employee should work with their service centers to compensate the employee through the payroll system.

CONTRACTORS WHO ARE FORMER UC EMPLOYEES

SB 1467 prohibits UC from hiring a former employee (or entity in which the employee has a financial interest) as an independent contractor for one or two years after the date of separation to perform work related to contracts that were planned, negotiated, or executed by the employee; involve policy created by the employee; or for which the employee participated in any part of the decision making process before their separation from UC. Exceptions may be available for employees whose separation from UC was because of retirement.

- A former university employee cannot be paid as an independent contractor for two years from the date of separation to perform work related to contracts that were planned, negotiated, or executed by that employee.
- A former university employee cannot be paid as an independent contractor for one year from the date of separation to perform work on a contract if he or she was employed by that department in a policymaking position in the same general subject area as that contract.

University departments requiring the services of a former UC employee should consult with the Business Contracts Office to determine whether the former employee is subject to the prohibition.

PENALTIES

Penalties for lack of compliance with SB 1467 are serious and include personal criminal sanctions.

- Every contract or other transaction entered in violation of SB 1467 is void.
- An officer or employee of the University of California who knowingly engages in a transaction prohibited under SB 1467 may be guilty of a felony.
- A contractor to the University of California who knowingly engages in a transaction prohibited under SB 1467 may be guilty of a felony.
- Persons convicted under SB 1467 may be liable for money damages.

RESOURCES

For additional information on SB 1467, please refer to the following two web sites:

Summary of SB 1467: http://www.ucsc.edu/matman/purchasing/SB1467_Summary.pdf

Examples: http://www.ucsc.edu/matman/purchasing/SB1467_Scenarios.pdf

COMPLIANCE

We will keep you informed as we receive further guidance from UCOP. In the meantime, please submit any questions you may have regarding application of this legislation to the John Bono in the Business Contracts Office (459-4747).