

# Judicial Council of California

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## INVITATION TO COMMENT

SP22-06

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<b>Title</b> Judicial Administration: <i>Judicial Branch Contracting Manual</i>	<b>Action Requested</b> Review and submit comments by 5:00 p.m., June 15, 2022
<b>Proposed Rules, Forms, Standards, or Statutes</b> Revise the <i>Judicial Branch Contracting Manual</i>	<b>Proposed Effective Date</b> October 1, 2022
<b>Proposed by</b> Judicial Council Staff Legal Services John Prestianni, Supervising Attorney Oliver Cheng, Attorney	<b>Contact</b> Oliver Cheng, Attorney oliver.cheng@jud.ca.gov

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### Executive Summary

At the Judicial Council’s business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual* (JBCM) effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law.<sup>1</sup> The council adopted revisions to the JBCM in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, and October 2021. Additional revisions to the JBCM are proposed below in tracked changes format, and staff invites public comment regarding the proposed revisions.

### Background

With certain exceptions,<sup>2</sup> the Judicial Branch Contract Law, enacted March 24, 2011, requires that California judicial branch entities comply with the provisions of the Public Contract Code (PCC) applicable to state agencies and departments related to the procurement of goods and services.<sup>3</sup> The Judicial Branch Contract Law applies to all covered contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.<sup>4</sup> The Judicial Branch

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<sup>1</sup> PCC, §§ 19201–19210, henceforth referred to as “Judicial Branch Contract Law.”

<sup>2</sup> PCC, §§ 19204(c), 19207, and 19208.

<sup>3</sup> *Id.*, § 19204(a).

<sup>4</sup> *Id.*, § 19203.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Contract Law also requires the council to adopt a judicial branch contracting manual that: (i) contains policies and procedures applicable to judicial branch entities related to the procurement of goods and services; and (ii) is consistent with the PCC as well as substantially similar to the *State Administrative Manual* and *State Contracting Manual*.<sup>5</sup>

At the council's business meeting on August 26, 2011, the council adopted the JBCM. The council adopted revisions to the JBCM in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, and October 2021. The version of the JBCM adopted at the council's regular business meeting on October 1, 2021, remains in effect as of the date of this invitation to comment.<sup>6</sup>

The current proposed revisions to the JBCM are shown in tracked changes format below. The JBCM Working Group was given the opportunity to provide feedback regarding the proposed revisions.<sup>7</sup> Following the public comment period, staff plans to submit the proposed revisions for review by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee).<sup>8</sup> It is anticipated that the proposed revisions will be considered by the Judicial Council at its meeting scheduled for September 19-20, 2022, and if adopted by the council, the effective date of the revised JBCM would be October 1, 2022.

## **Summary of the Proposed Revisions to the JBCM**

1. Pursuant to the PCC and the California Military and Veterans Code, judicial branch entities (JBEs) are required to comply with requirements of the Disabled Veteran Business Enterprise (DVBE) program. Chapter 3 of the JBCM currently includes a description of DVBE program requirements. As a result of AB 230, AB 1365, and SB 588, there are additional DVBE requirements.<sup>9</sup> Therefore, conforming edits are proposed for Chapter 3 (pages 9-10) of the JBCM, so that the JBCM reflects the additional statutory requirements. These requirements relate to certifications that contractors must provide to JBEs regarding DVBE subcontractors, as well as withholding of payments from JBEs to contractors if the certifications are not completed.

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<sup>5</sup> *Id.*, § 19206.

<sup>6</sup> The current version of the JBCM became effective on October 15, 2021, and can be viewed at: <https://www.courts.ca.gov/documents/jbcl-manual.pdf>

<sup>7</sup> The working group includes representatives (with experience in contracting and procurement) from small, medium, and large courts throughout California.

<sup>8</sup> Under California Rule of Court 10.63(c)(3), the duties of the Audit Committee include reviewing and recommending to the Judicial Council proposed updates and revisions to the JBCM.

<sup>9</sup> For a copy of the bills' text, statutory revisions, and legislative history, please refer to the following:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB230](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB230)

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1365](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1365)

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB588](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB588)

2. To facilitate courts' access to information on encumbering funds in connection with contracting and procurement, an edit is proposed for JBCM Chapter 11 (Contract Administration), to add a simple cross reference to the *Trial Court Financial Policies and Procedures Manual* (FIN 5.01, Section 6.6), which provides information on how to encumber funds for contracts.<sup>10</sup>
3. Under Government Code section 68511.9,<sup>11</sup> all administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than \$5 million "shall be subject to the reviews and recommendations" of the California Department of Technology (CDT). The CDT has expressed to Judicial Council staff its preference for how the CDT receives the information from the courts, to facilitate the review and recommendations described in GC 68511.9. The CDT prefers to receive the information via the Judicial Council's Director of Information Technology. Conforming edits are proposed to the JBCM<sup>12</sup> to facilitate communication with the CDT regarding GC 68511.9, and so that the JBCM provides a consistent process for the courts when they have an IT project over \$5 million.

### **Request for Specific Comments**

Comments are invited on the proposed revisions to the manual and on the following questions:

1. Are the revisions clear and understandable?
2. Do the revisions appear to work from a court operations perspective, e.g., do they conflict with any aspect of court operations or appear to make any incorrect assumptions?
3. Are the revisions user-friendly? Do the revisions appear to work for courts of different sizes and staffing capabilities?

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<sup>10</sup> The *Trial Court Financial Policies and Procedures Manual* can be viewed at:  
<https://www.courts.ca.gov/7460.htm>

<sup>11</sup> GC 68511.9 can be viewed at:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=68511.9](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=68511.9)

GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

<sup>12</sup> The proposed edits, shown below in tracked changes format, are in the JBCM's Introduction (pages 6-7), and Chapters 2 (page 13), 8 (page 14), and 12 (page 5).

- Contracts (often referred to as MOUs) between a superior court and the sheriff for court security services;
- Contracts between a court and a court reporter when the court reporter provides services as an independent contractor; and
- Contracts between a court and a court interpreter when the court interpreter provides services as an independent contractor.

The Manual is drafted also to comply with PCC 19207, which states:

Except as provided in subdivision (a) of Section 19204 or as otherwise specifically required by law applicable to any judicial branch entity, nothing in this part is intended, nor shall it be construed, to require the approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services or the Secretary of California Technology, in the procurement of any judicial branch goods or services, including information technology goods and services.

The above-referenced exception provided in subdivision (a) of PCC 19204 applies to all contracts with total cost estimated at more than \$1 million (unless exempted from the requirements of the JBCL or this Manual) and to contracts for administrative or infrastructure information technology (IT) projects of the council or the courts with total costs estimated at more than \$5 million. (GC 68511.9) These types of contracts are subject to the following requirements:

- Contracts estimated to cost more than \$1 million, *except* contracts for administrative or infrastructure IT projects estimated to cost more than \$5 million, are subject to “review and recommendations” by the State Auditor to ensure compliance with PCC Part 2.5. JBEs that enter into any such contract must notify the State Auditor, in writing, within 10 Court Days of entering the contract.
- Contracts for administrative or infrastructure IT projects of the council or the courts with total costs estimated at more than \$5 million are subject to “review and recommendations” of the California Department of Technology.<sup>7</sup> That agency must consult with and provide recommendations to the council or the court, and must submit a copy of its review and recommendations to the Joint Legislative Budget Committee. (GC 68511.9) For administrative and infrastructure information technology projects with total costs estimated at more than \$5 million, courts should notify the Director of Judicial Council Information

<sup>7</sup> GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

[Technology at: jcitsupport@jud.ca.gov](mailto:jcitsupport@jud.ca.gov) during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.

## 6. EFFECT OF THE MANUAL ON PREEXISTING JUDICIAL BRANCH POLICIES AND PROCEDURES

This Manual supersedes the following chapters of the *Trial Court Financial Policies and Procedures Manual* (TCFPPM) that would otherwise apply to the superior courts:

- FIN 6.01, Procurement;
- FIN 7.01, Contracts;<sup>8</sup>
- FIN 7.02, Memorandums of Understanding (MOUs), Interagency Agreements (IAs) and Intra-branch Agreements (IBAs); and
- FIN 7.03, Contract Administration.

The other requirements of the TCFPPM, however, including, but not limited to, those relating to invoice processing and expense reimbursement, are not superseded by this Manual. JBEs will continue to be responsible for maintaining fiscal and operational accountability by following established procedures and policies, including, for superior courts, those set out in the TCFPPM.

In addition, this Manual supersedes (a) the Judicial Council “Policy Regarding Legal Review of Procurement Matters,” and (b) the “AOC policy 7.2.1, Procurement of Goods and Services,”<sup>9</sup> for all procurement and contracting purposes *except* as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

Finally, this Manual supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council on December 7, 2007, for all facilities-related procurement and contracting purposes *except* for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

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<sup>8</sup>Chapters FIN 6.01 and FIN 7.01 of the TCFPPM are not superseded for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

<sup>9</sup>Under CRC 10.81, references to the “Administrative Office of the Courts” or “AOC” in any policy, procedure, manual, guideline, publication, or other material issued by the Judicial Council or its staff are deemed to refer to the Judicial Council, the Administrative Director, or the Judicial Council staff, as appropriate.

For detailed requirements regarding this notice, see CRC 10.620.

## **B. Information Technology (IT) Procurements over \$5 Million**

All administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than \$5 million are subject to the review and recommendations of the California Department of Technology, as specified in GC 68511.9.<sup>3</sup> For administrative and infrastructure information technology projects with total costs estimated at more than \$5 million, courts should notify the Director of Judicial Council Information Technology at: [jcitsupport@jud.ca.gov](mailto:jcitsupport@jud.ca.gov) during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.

## **C. Other Procurements over \$1 Million**

The JBE must notify the State Auditor of certain contracts for purchases estimated to be more than \$1 million. See chapter 12, section 12.2 of this Manual for additional details.

## **2.3 CREATING THE PROCUREMENT FILE**

The Buyer should create a procurement file for each transaction. This section provides guidance on what should be included in the procurement file. Please note that the following list is not exhaustive. A JBE may adopt policies respecting the creation and contents of procurement files in its Local Contracting Manual.

Document decisions: Buyers should develop a strategy of how the procurement activity will be accomplished, and document the rationale for developing that strategy. In simple terms, Buyers should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process.

Provide the basis of the decisions: Buyers should also describe how competition will be sought, promoted, and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, document the basis of the decision.

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<sup>3</sup> Note that GC 68511.9 refers to the Office of the Chief Information Officer (OCIO). However, the OCIO was renamed the California Technology Agency in accordance with Chapter 404, Statutes of 2010 (AB 2408), and then became the California Department of Technology.

- Fraudulently obtaining, attempting to obtain, or helping another to obtain public monies to which there is no entitlement under the laws establishing the DVBE program; and
- Establishing or exercising control over a firm that has engaged in such activities. (See PCC 10115.10 for a complete list of violations and associated penalties.)

Contract Obligations: Every awarded contract that includes a DVBE participation incentive shall contain a provision requiring the contractor to comply with all rules, regulations, ordinances, and statutes that govern the DVBE Program, including, without limitation, MVC Section 999.5. (See PCC 10230).

Contractor post-contract certification: Upon completion of an awarded contract that contains a commitment to achieve a DVBE goal, the JBE must require the prime contractor that entered into a subcontract with a DVBE to certify to the JBE:

- The total amount of money the prime contractor received under the contract;
- The name and address of the DVBE subcontractor that participated in the performance of the contract;
- The amount of money and percentage of work each prime contractor committed to provide to each DVBE subcontractor and the amount each DVBE subcontractor received from the prime contractor; and
- That all payments under the contract have been made to the DVBE subcontractor. -Upon request by the JBE, the prime contractor shall provide proof of payment for the work.

The prime contractor must provide the post-contract certification no later than the date of submission of prime contractor's final invoice to the JBE. Pursuant to Military & Veterans Code section 999.7, the JBE shall withhold \$10,000 from the final payment, or withhold the full payment if it is less than \$10,000, until the Contractor submits a complete and accurate post-contract certification.<sup>4</sup> The JBE shall allow the prime contractor to cure the deficiency after written notice of the prime contractor's failure to complete and submit an accurate post-contract certification form.

<sup>4</sup> JBEs must withhold this payment for contracts entered into on or after January 1, 2021, where a commitment to achieve a DVBE goal was made by the prime contractor, the prime contractor used a DVBE subcontractor to meet those DVBE commitments, and the prime contractor failed to provide the JBE with a complete and accurate post-contract certification by the date of submission of the prime contractor's final invoice.

Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the prime contractor refuses to comply with these certification requirements, the JBE shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000.

The JBE must keep this certification on file for a minimum of six (6) years.

#### **4. Other Considerations**

Effect on Contracts of Failure to Meet DVBE Goals: Failure of a JBE to meet the goals established under MVC 999 et seq. and PCC 10115 et seq. does not affect the validity or enforceability of any contract (PCC 10115.6, MVC 999.8).

No Goals Reporting Requirement: There are no DVBE goals-reporting requirements in either the PCC or MVC applicable to JBEs.<sup>5</sup>

LPAs: If a JBE procures goods or services using an LPA that includes DVBE participation, some or all of the purchase may count toward the JBE's DVBE goal. See chapter 6 of this Manual for additional information regarding DVBE considerations when using LPAs.

SB/DVBE Option: The DVBE incentive is not applicable when a JBE conducts a procurement using the SB/DVBE option. See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.

Replacing DVBE Subcontractors or Suppliers: A contractor shall use the DVBE subcontractors or suppliers identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor or supplier. (See MVC 999.5(f)).

### **3.2 AMERICANS WITH DISABILITIES ACT CONSIDERATIONS**

In compliance with the Americans with Disabilities Act (ADA) and similar California statutes, JBEs must make reasonable efforts to ensure that their programs, activities,

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<sup>5</sup> MVC 999.7 and PCC 10115.5, which required state agencies to provide annual reports to the Governor and DGS with respect to meeting DVBE goals, were repealed effective January 1, 2007.



Financing agreements include equipment lease/finance agreements, installment sales contracts, and other contracts under which compensation for purchased goods or services comes due over time instead of on receipt.

### C. Review of Certain IT Contracts

All administrative and infrastructure information technology (IT) projects of the Judicial Council or the courts with total costs estimated at more than \$5 million are subject to review and recommendations of the California Department of Technology, as specified in GC 68511.9<sup>11</sup> (PCC 19204(a)). For administrative and infrastructure information technology projects with total costs estimated at more than \$5 million, courts should notify the Director of Judicial Council Information Technology at: [jcitsupport@jud.ca.gov](mailto:jcitsupport@jud.ca.gov) during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.

## 8.5 EXECUTION OF CONTRACTS

### A. Authority

Contracts may not be executed by persons without authority to do so according to established levels of authority.

### B. Process

- Contracts may be fully executed either with original handwritten signatures or electronic signatures:
  - If the parties choose to fully execute the contract with original handwritten signatures, the JBE should create at least two originally signed counterparts of each contract—one for the JBE and one for the contractor. Other than purchase orders, contracts should first be provided to the contractor for signature and then delivered back to the JBE, who will countersign the document and return an original to the contractor. Contracts may be executed in multiple counterparts if the contract so provides.
  - If the parties choose to fully execute the contract with electronic signatures, the JBE must ensure the electronic signatures comply with California Civil Code, title 2.5, sections 1633.1-1633.17 (Uniform

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<sup>11</sup> GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.

### 11.3 ROLE OF CONTRACT ADMINISTRATORS

Contract Administrators are those JBE staff who perform contract administration functions. Each Contract Administrator must understand all aspects of the contract.

Contract Administrators must ensure that:

- The procurement of goods and services is appropriately documented;
- Vendors comply with the terms of their contracts as well as applicable laws, rules, and regulations;
- Contract performance progresses satisfactorily;
- Problems that may threaten performance are promptly identified; and
- Contractual disputes are addressed and resolved appropriately, applying sound administrative practice and business judgment.

Contract Administrators are responsible for the following:

- Acting only within the limits of their authority;
- Authorizing contractual actions that are within authorized budgets or available funding;
- Ensuring Vendor and JBE compliance with the terms of the contract;
- Safeguarding the JBE's interests in its contractual relationships; and
- Ensuring that Vendors receive impartial, fair, and equitable treatment.

[For superior courts, see the \*Trial Court Financial Policies and Procedures Manual\*, FIN 5.01, Section 6.6 \(at <https://www.courts.ca.gov/7460.htm>\) for information on encumbering funds for contracts.](https://www.courts.ca.gov/7460.htm)

### 11.4 ETHICAL DECISIONMAKING AND CONTRACT ADMINISTRATION

Contract Administrators must adhere to and conduct business by maintaining high ethical standards.

Contract Administrators must:

- Conduct themselves in a professional manner, refrain from mixing outside relationships with business, and not engage in incompatible activities, conflicts of interest, or unethical behavior;
- Accurately account for expenditures and goods and services received;
- Be aware that perceptions can override reality; and

for state department audit purposes. The Judicial Council's Branch Accounting and Procurement office is available to assist JBEs in their responsibilities for entering this information.

## 12.2 NOTIFICATIONS BY JBEs TO THE STATE AUDITOR UNDER PCC 19204

Under PCC 19204(a), any JBE contract with a total cost estimated at more than \$1 million is subject to the review and recommendations of the State Auditor<sup>1</sup> to ensure compliance with the California Judicial Branch Contract Law. Each JBE must notify the State Auditor, in writing, of the existence of any such contract within 10 Court Days of entering into the contract. The date of "entering into the contract" is the date on which the contract is fully executed by all parties. *The State Auditor has established the following email account for receiving the foregoing notifications:*

[judicial.branch.contracts@auditor.ca.gov](mailto:judicial.branch.contracts@auditor.ca.gov)

**Notes:** Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than \$5 million. (Under GC 68511.9, these contracts are subject to the review and recommendations of the California Department of Technology.<sup>2</sup>) For administrative and infrastructure information technology projects with total costs estimated at more than \$5 million, courts should notify the Director of Judicial Council Information Technology at: [jcitsupport@jud.ca.gov](mailto:jcitsupport@jud.ca.gov) during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.

A JBE is not required to notify the State Auditor of amendments to an existing contract if the JBE previously notified the State Auditor of the existence of such contract pursuant to PCC 19204(a).

If a contract that initially had total costs estimated at \$1 million or less, is subsequently amended such that total estimated costs now exceed \$1 million, the contract must be reported in accordance with PCC 19204(a), within 10 Court Days of the amendment.

<sup>1</sup> PCC 19204(a) refers to the Bureau of State Audits; the Bureau of State Audits, however, now refers to itself as the California State Auditor's Office. This Manual uses the term State Auditor.

<sup>2</sup> GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.