



Judicial Council of California

It Needs to Follow Competitive Bidding Processes
More Consistently and Establish Clear Guidance for
Invoice Processing

Report 2017-302

COMMITMENT
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December 19, 2017

2017-302

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Public Contract Code (contract code) section 19210, the California State Auditor presents this audit report concerning the procurement policies and practices of the Judicial Council of California (Judicial Council). The contract code generally governs how state entities should enter into contracts and acquire goods and services. Enacted in 2011, the California Judicial Branch Contract Law (judicial contract law) requires judicial branch entities to follow procurement and contracting policies that are consistent with the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*. In addition, judicial contract law requires the Judicial Council to adopt and adhere to a *Judicial Branch Contracting Manual* (judicial contracting manual).

This report concludes that the Judicial Council generally complied with the judicial contract law but could be more consistent in how it follows competitive bidding processes. We reviewed 60 procurements from fiscal years 2015–16 and 2016–17 and identified five instances where the Judicial Council did not follow policies outlined in the judicial contracting manual. For example, Judicial Council did not always obtain the proper management approval on procurement documentation and did not adequately justify why it designated some vendors as the sole source for goods or services. We also reviewed 60 payments for fiscal years 2015–16 and 2016–17 and found three that did not comply with the judicial contracting manual. The Judicial Council processed two payments without proof it had received the goods or services, and one for services rendered prior to the creation of a corresponding purchase order. When the Judicial Council does not follow established policies, it risks that it will not receive the best value for the goods and services it purchases. Finally, the Judicial Council risks making inappropriate payments because its guidance to staff for reviewing invoices does not adequately describe the process they should follow to review invoices prior to payment.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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SUMMARY

The Judicial Council of California (Judicial Council) is the policymaking body for the Judicial Branch of California (Judicial Branch), an independent branch of state government. The Judicial Branch is subject to the California Judicial Branch Contract Law (judicial contract law), which generally requires Judicial Branch entities—including the Judicial Council—to follow procurement and contracting policies that are consistent with the Public Contract Code (contract code). The judicial contract law requires the Judicial Council to adopt and publish a contracting manual for the Judicial Branch that is consistent with the contract code and substantially similar to the *State Administrative Manual* and the *State Contracting Manual* (SCM). Finally, the judicial contract law requires that the California State Auditor's Office, subject to legislative appropriation, conduct a biennial assessment of the Judicial Council's compliance with the judicial contract law. This current biennial assessment concludes the following:

The Judicial Council Did Not Always Comply With Requirements for Competitive Bidding

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Although we found that the Judicial Council generally complied with the *Judicial Branch Contracting Manual* (judicial contracting manual) when conducting procurements, we identified some instances in which it did not follow its competitive bidding policies and thus lacked assurance that it received the best value for the goods and services it acquired. Specifically, we reviewed procurement files for a total of 60 contracts, purchases, or amendments from fiscal years 2015–16 and 2016–17, and we found one contract and four purchase orders that did not follow the judicial contracting manual's policies. For example, two of the four purchase orders did not have appropriate management authorization. According to the procurement manager, staff did not follow Judicial Branch policy in those two cases.

In another instance, a supervisor signed a \$345,000 purchase order, well above the \$50,000 limit of his authority at the time. According to the procurement manager, the supervisor's position should have had a higher approval limit, and the Judicial Council later changed its policies to give that position the authority to sign purchase orders up to \$500,000. Additionally, the Judicial Council did not document adequately its justification for a sole-source purchase of \$8,000 in office supplies that it should have procured competitively. The procurement manager agreed that staff should have procured these items competitively and stated that he has since implemented additional training and oversight about the use of sole-source justifications.

Finally, we found that the Judicial Council entered into a series of contracts with one vendor when a single agreement for the services would have better served its needs. Indeed, the Judicial Council's definition of *contract splitting* in its judicial contracting manual is not as precise as the definition in SCM; under that definition, the series of contracts may have constituted contract splitting. When the Judicial Council finally obtained a single master agreement with the vendor, it obtained an hourly rate for the services that was lower than it had paid in the series of contracts. Had that agreement been in place from the start, the Judicial Council could have saved about \$10,000.

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The Judicial Council's Lack of Clear Written Procedures for Processing Invoices Could Lead to Inappropriate Payments

The Judicial Council generally complied with the judicial contracting manual when processing invoices; however, in a small number of instances, it did not comply, and it has not provided adequate guidance for its accounting staff to ensure that they adhere to the judicial contracting manual when processing invoices. The judicial contracting manual requires accounting staff to support payments made to vendors with a properly authorized contract, a properly submitted vendor invoice, and documentation verifying that the Judicial Council received the goods or services satisfactorily. We reviewed 60 payments from fiscal years 2015–16 and 2016–17, and we identified three in which the Judicial Council did not comply with the judicial contracting manual. Two payments did not have proof that the Judicial Council received the goods or services, and the Judicial Council paid an invoice from a vendor to another Judicial Branch entity, even though that entity created the purchase order supporting that invoice a year after the services were rendered. Finally, although the Judicial Council has three documents describing its policies and procedures for providing guidance to its accounting staff, the guidance is incomplete because it does not address common exceptions to the payment process or how to process invoices for other Judicial Branch entities. This lack of clear guidance could lead staff to make inappropriate payments.

Summary of Recommendations

To help ensure that it obtains the best value for the goods or services it purchases and that its staff take the steps necessary to comply with the judicial contracting manual, the Judicial Council should continue to reinforce with its staff—through management memos, training, or other formal means—the need to obtain authorized approvers’ signatures for noncompetitive procurements and to ensure that the person with the appropriate level of authority approves purchases.

The Judicial Council should update its contracting manual’s guidance on contract splitting to reflect the more specific definition in state requirements.

To ensure that Judicial Council staff have the information they need to process invoices appropriately and to comply with the judicial contracting manual, the Judicial Council should develop one document with clear invoice-processing procedures for its accounting staff. This document should define common deviations to the typical process, including instructions for handling invoices processed on behalf of other Judicial Branch entities.

Agency Comment

In its response to the audit, the Judicial Council agrees with the recommendations in our report.

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INTRODUCTION

The Role of the Judicial Council Within California's Judicial Branch

The Judicial Branch of California (Judicial Branch) is a separate, independent branch of state government consisting of the Supreme Court of California (Supreme Court), courts of appeal, superior—or trial—courts, and the Judicial Council of California (Judicial Council). The Judicial Branch's fiscal year 2016–17 budget was about \$3.6 billion; the State's General Fund supplied nearly half of this amount, and other funding sources, such as fines and fees that the Judicial Branch collected, provided the remainder. The California Constitution requires the Judicial Council to survey judicial business practices and to make recommendations to the courts, the Governor, and the Legislature for improving judicial administration. For example, the Judicial Council cosponsored the Trial Court Facilities Act of 2002, which shifted governance of California's trial court facilities from the counties to the State. According to the Judicial Council, this act was an important part of broader structural reforms to the Judicial Branch that transformed the trial courts into an integrated, state-operated court system.

The Judicial Council consists of a policymaking body and support staff for that body. Members of the policymaking body include the chief justice of California and one other Supreme Court justice; three justices of courts of appeal; 10 superior court judges; four members of the State Bar of California; several nonvoting members, including court executive officers; and a representative from each house of the Legislature. In addition, this policymaking body may appoint an administrative director who serves as the body's secretary and performs administrative and policymaking functions as the Judicial Council's policymaking body and the law direct. In addition to performing many administrative functions, the Judicial Council's support staff can assist Judicial Branch entities, such as the State's 58 superior courts, when they procure goods or services.

State Contracting and Procurement Requirements

The Public Contract Code (contract code) generally governs how state entities enter into contracts and how they procure goods and services. It also governs how these entities should solicit, evaluate, and award contracts. In enacting the contract code, the Legislature intended to achieve certain objectives, such as ensuring that state agencies comply with competitive bidding statutes; providing all qualified bidders with a fair opportunity to enter the bidding process; and eliminating favoritism, fraud, and corruption in the awarding of public contracts.

The *State Administrative Manual* (SAM) and the *State Contracting Manual* (SCM) furnish additional guidance to state entities regarding procurement. SAM provides general fiscal and business policy guidance to state agencies, while SCM provides specific procurement and contract management policies and procedures in line with the contract code. For example, the contract code allows solicitation of a bid from a single source for transactions of less than \$5,000 and SCM adds that the state agency must determine that the pricing is fair and reasonable.

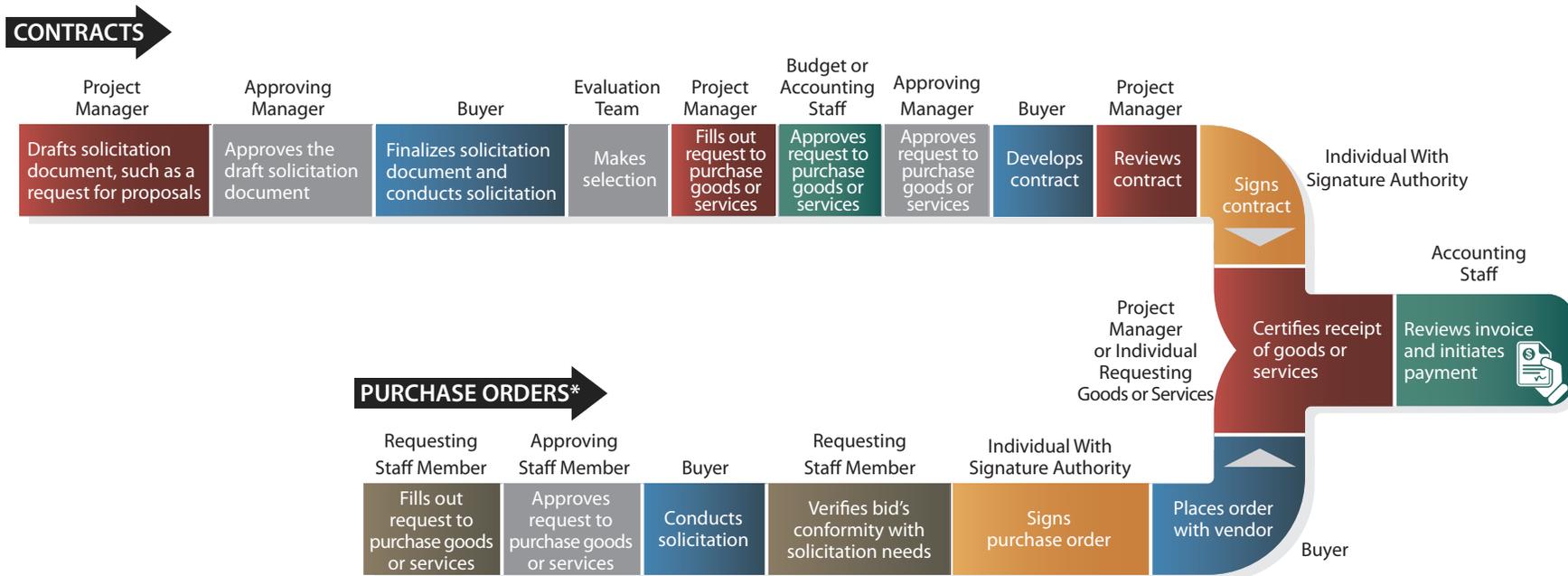
The California Judicial Branch Contract Law

In 2011 the State enacted the California Judicial Branch Contract Law (judicial contract law), which requires Judicial Branch entities to follow procurement and contracting policies that are consistent with the contract code and that are also substantially similar to those found in SAM and SCM. The judicial contract law also requires the Judicial Council to adopt and publish a contracting manual for the Judicial Branch that is consistent with those requirements. For example, similar to SCM, the *Judicial Branch Contracting Manual* (judicial contracting manual) allows purchases from a single source for transactions of less than \$5,000 when the Judicial Branch entity determines that the pricing is fair and reasonable. The law also requires that each Judicial Branch entity—such as superior courts, the courts of appeal, or the Judicial Council—adopt a local contracting manual (local manual). The judicial contracting manual requires that the local manual identify the individuals with the responsibility and authority for specific procurement activities. Further, the judicial contracting manual identifies items the local manuals may include, such as instructions on setting up and maintaining official procurement files and signature authorization.

The judicial contract law also imposes other reporting requirements. Beginning in 2012, it requires the Judicial Council to submit semiannual reports itemizing some of the Judicial Branch's contracting activities to the Legislature and the California State Auditor (State Auditor). In addition, the judicial contract law requires the State Auditor, subject to legislative appropriation, to conduct a biennial assessment of the Judicial Council's compliance with the judicial contract law. This report presents the results of our current biennial assessment.

Finally, the judicial contracting manual outlines how judicial entities can procure goods and services using purchase orders, contracts, and contract amendments. According to the judicial contracting manual, purchase orders are agreements that may be used for the purchase of goods, and these agreements are typically for off-the-shelf goods and software or for routine, low-cost, or low-risk services. The figure outlines the process that the Judicial Council and the Judicial Branch entities use when they employ competitive bidding to enter into agreements—including purchase orders and contracts—to purchase goods or services from vendors.

Figure
The Judicial Branch's Competitive Procurement Process for Contracts and Purchase Orders



Sources: The Judicial Council's contract administration procedure manual, the judicial contracting manual, and interviews with staff of the Judicial Council.

* A purchase order is a type of agreement. According to the judicial contracting manual, Judicial Branch entities often use purchase orders for the purchase of goods and for services that are ancillary to the purchase of the goods. The Judicial Branch entities also typically use purchase orders for off-the-shelf goods and software or for routine, low-cost, or low-risk services.

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The Judicial Council Did Not Always Comply With Requirements for Competitive Bidding

Key Points

- The Judicial Council complied with requirements in the judicial contracting manual in most cases; however, of the 60 procurements we reviewed, it did not follow the policies outlined in the manual for one contract and four purchase orders.
- The judicial contracting manual could better reflect state definitions of contract splitting and certain noncompetitive bids to prevent confusion among procurement staff. The Judicial Council may have missed savings of about \$10,000 when it entered into a series of 25 contracts with the same vendor over two years instead of obtaining a master agreement with the vendor for a lower hourly rate.

In Some Cases, the Judicial Council Did Not Follow the Judicial Contracting Manual's Policies for Contracts and Purchase Orders

Our review of 60 procurements executed from July 2015 through June 2017 found five procurements in which the Judicial Council did not comply with the judicial contracting manual. Specifically, we found instances where the Judicial Council did not adequately justify why it designated some vendors as the sole source for a good or service, and did not obtain the proper management approval on procurement documentation. We reviewed 30 contracts, 20 purchase orders, and 10 amendments for compliance with the judicial contracting manual. As shown in Table 1 on the following page, the Judicial Council largely complied with key procurement policies, but we found one contract and four purchase orders that did not. When the Judicial Council does not follow established policies and procedures, it risks not obtaining the best value for the goods and services it acquires.

In one case in May 2016, a contract supervisor signed a \$345,000 purchase order for networking equipment. At the time, the Judicial Council's policy allowed the contract supervisor to sign only those purchase orders under \$50,000. According to the procurement manager, the Judicial Council intended that its policy establishing approval levels for purchase orders should grant the contract supervisor position a higher limit. Indeed, the Judicial Council increased the authority limit for that position to \$500,000 about six months later. Nevertheless, the Judicial Council should have followed the policy in place at the time that the contract supervisor signed the purchase order. Without proper management authorization of purchases, the Judicial Council cannot ensure that the most qualified personnel at the appropriate level in the organization have verified that the purchase is in the Judicial Council's best interests.

Table 1
The Judicial Council Generally Complied With Procurement Requirements but Some Procurements Lacked Certain Required Elements

PROCUREMENT REQUIREMENTS	NUMBER OF CONTRACTS THAT COMPLIED	NUMBER OF PURCHASE ORDERS THAT COMPLIED	NUMBER OF AMENDMENTS THAT COMPLIED
Competitively Bid Procurement			
Management approval	19 of 19	6 of 7	NA
Proper separation of duties	19 of 19	7 of 7	NA
Proper solicitation	19 of 19	7 of 7	NA
Proper bid evaluation	19 of 19	6 of 7	NA
Noncompetitively Bid Procurement			
Management approval	11 of 11	13 of 13	10 of 10
Proper separation of duties	11 of 11	13 of 13	10 of 10
Proper justification for not seeking competitive bids	10 of 11	12 of 13	10 of 10
Management approval of justification	11 of 11	11* of 13	10 of 10

Source: State Auditor's analysis of a selection of 30 contracts, 20 purchase orders, and 10 amendments based on the Judicial Council's hard-copy documentation of procurement files.

■ = All selections complied with key procurement policies.

■ = Some contracts or purchase orders did not comply with key procurement policies.

* The purchase order that did not include proper justification for the staff's failure to seek competitive bidding also did not include management approval of the justification.

Additionally, the Judicial Council did not document adequately its justification for a sole-source purchase of \$8,000 in office supplies that it should have procured competitively. The judicial contracting manual requires a competitive process for procuring most goods or services totaling more than \$5,000, unless an emergency exists or they are the only goods or services that meet the Judicial Council's need—thus fitting the judicial contracting manual's definition of a *sole-source procurement*. If the Judicial Council intends to use a sole-source procurement, the judicial contracting manual requires an approved justification. The Judicial Council attempted to justify the need to purchase the office supplies from a particular vendor by citing the section of the judicial contracting manual that defines *sole-source procurement*, yet the documentation included with the justification form for the purchase noted that another vendor had these supplies. By citing the sole-source section of the judicial contracting manual, the documentation indicated that the Judicial Council could not procure the supplies competitively. Further, the documentation contained no additional explanation for the sole-source purchase. The procurement manager agreed that staff should have procured these items competitively and asserted that since this purchase took place, the Judicial Council has implemented additional training and oversight about the use of sole-source justifications. However, the additional training and

oversight did not take place until after we brought this issue to the procurement manager's attention. We found a similar issue with a contract for parking, which we discuss in the next section.

Further, two purchase orders did not contain proper management authorization. Two noncompetitively bid purchase orders—\$12,000 for parking and the same \$8,000 for office supplies discussed previously—did not include the signature of an authorized approver on the noncompetitive bid documentation for these sole-source procurements. The judicial contracting manual requires that authorized personnel approve sole-source, noncompetitive procurements. According to the procurement manager, the employees did not follow policy when they processed the purchase orders as noncompetitively bid without the approval signature. He stated that the additional training and oversight on noncompetitive procurements, described previously, also covered management authorization.

Finally, in one of seven competitively bid purchase orders, Judicial Council staff excluded a current vendor from consideration because, according to the procurement file, the vendor's costs would be too high. However, staff decided to exclude this vendor before they had even obtained actual pricing from the vendor. In May 2017, the Judicial Council sought competitive bids to purchase equipment and related support from two vendors but excluded its vendor at the time. The procurement file included a note that the then-current vendor could no longer provide a product that met the Judicial Council's needs; however, one day after the deadline for submitting quotes, the Judicial Council sought pricing information from that vendor.

Although the Judicial Council's procurement was still competitive according to the judicial contracting manual, we question why the Judicial Council sought pricing information from the vendor whom it had already determined could not meet its needs. According to the procurement manager, the project manager requested pricing information from the excluded vendor, after bidding had closed, for his own edification. However, the Judicial Council used that vendor's price quote—and not the vendor's product—to support its preconceived argument that the Judicial Council excluded the vendor from the opportunity to bid because it was too expensive. We determined that the Judicial Council mistakenly concluded that its price would be \$18,000 higher than the winning bid, but in fact, the quote was roughly equal to the winning bid. Excluding vendors from consideration based on assumptions about price without allowing them to bid increases the risk that the Judicial Council will not receive the best value for its procurement. Moreover, we found no evidence in the procurement file to suggest that the excluded vendor knew that its price quote was not an official bid.

This violates one of the guiding principles of both the contract code and the judicial contracting manual: to provide all qualified bidders with a fair opportunity to enter the bidding process.

The Judicial Council Could Achieve Additional Value by Further Aligning the Judicial Contracting Manual With State Policies for Procurements

The judicial contracting manual is substantially similar to state contracting requirements, such as those in SAM and SCM. Nevertheless, we identified opportunities for the Judicial Council to update the judicial contracting manual to better ensure that the Judicial Council does not split contracts or handle its sole-source procurements inappropriately. We reviewed the Judicial Council's contracts and purchase orders from July 2015 through June 2016 that were less than \$5,000 to determine whether it split any contracts inappropriately to avoid competitive bidding requirements. We found that between August 2015 and January 2017, the Judicial Council awarded one vendor more than 20 contracts totaling about \$50,000 for captioning services at Judicial Council meetings. All but two of the contracts were exempt from competitive bidding because they were each less than \$5,000. For the two contracts that each totaled more than \$5,000, the Judicial Council noted in noncompetitive bid justifications that the vendor's prices were reasonable, based on price comparisons from prior quotes. However, by itself, this explanation does not identify why the procurement could not be competitive. We did not note any intent on the part of Judicial Council to avoid competition with these transactions; however, according to the SCM definition, this could constitute contract splitting.

The judicial contracting manual lacks sufficient guidance about *contract splitting* or combining a series of related services. The Judicial Council's definition—which reflects state law—says that it “may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.” Using only this guidance could give the Judicial Council opportunities to justify splitting that would otherwise be prohibited. For example, the Judicial Council could argue the contracts for captioning services described above were for the same services, offered at different times, and therefore were separate transactions. Thus, under this interpretation of the definition of *contract splitting*, the contracts for captioning would not count as a single transaction. In contrast, SCM provides additional guidance beyond state law and defines *splitting* as contracting for “a series of related services that would normally be combined and bid as one job” and states that a state agency cannot split such services into separate tasks, steps, phases, locations, or delivery times to avoid the need to advertise or obtain

competitive bids. The more detailed SCM definition would lead the Judicial Council to conclude that the captioning services contracts were for a series of related services and that it should not have divided the services into more than 20 contracts.

Further, the Judicial Council could have saved money by combining the services into one contract. The procurement manager said that he was aware of the multiple contracts with the same vendor and approved them because the contracts were for separate events managed by different units within the Judicial Council. Had the judicial contracting manual's definition of *contract splitting* aligned with the one in SCM, the Judicial Council's management would have seen that it should have pursued a single contract for this series of services that would normally compose one job because the contracts were for captioning services at Judicial Council meetings over two years. When the Judicial Council finally obtained a master agreement with the vendor for these services in July 2017, the Judicial Council properly justified that the vendor was a sole source because it was the only one to respond to a request for proposals.

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**Without a more precise definition of
contract splitting, the Judicial Council risks
overspending on multiple contracts.**

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Further, the hourly rate in the agreement was 20 percent less than the amount the Judicial Council had previously paid. Had this agreement been in force when the Judicial Council began using the vendor's services, the Judicial Council could have saved about \$10,000. The contracts manager agreed that a more detailed definition of *contract splitting* would give the Judicial Council more perspective and prevent the Judicial Branch from inadvertently engaging in contract splitting. The procurement manager further stated that the Judicial Council will be paying more attention to these types of transactions in the future. However, without a more precise definition of *contract splitting*, the Judicial Council risks overspending on multiple contracts that it could negotiate as one agreement with a lower total cost.

The Judicial Council could also benefit from an update to the judicial contracting manual's definition of *sole-source procurement*. According to the judicial contracting manual, Judicial Branch entities may purchase goods or services of any value without

conducting a competitive procurement if they are the *only goods or services* that meet the entity's needs. This is misleading because it refers to the goods or services rather than the availability of only one vendor to provide the required goods or services. As a best practice, the definition of *sole-source procurements* in SCM—as well as guidance from the National Association of State Procurement Officials—refers to the source rather than the good or service. In addition to the example we provide above where the Judicial Council did not adequately document its justification for a sole-source purchase of office supplies, we also found an instance where the Judicial Council procured parking services with two different vendors and used a sole-source justification for both procurements. The procurement manager stated that although the two parking garages are different vendors, they are both sole-source because they are the two least expensive out of the three options nearby that meet the Judicial Council's needs. However, whether a sole-source procurement is appropriate should not depend on assumptions about prices but rather on whether only one vendor is able to provide the services. When the Judicial Council neglects the competitive process, it risks not receiving the best value for its procurements and paying more than necessary for goods and services.

Recommendations

To help ensure that it obtains the best value for the goods and services it purchases and that its staff take the steps necessary to comply with the judicial contracting manual, the Judicial Council should continue to reinforce with staff through management memos, training, or other formal means the need to:

- Ensure that the person with the appropriate level of authority approves purchases.
- Obtain authorized approvers' signatures for noncompetitive procurements.
- Properly document justification for noncompetitive procurements.
- Not exclude potential vendors from bidding based on assumptions about their prices.

To better align the judicial contracting manual with state requirements and to make certain that it receives the best value for services, the Judicial Council should update by March 2018

the judicial contracting manual's guidance on contract splitting and sole-source procurements to reflect the more specific definitions in SCM.

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The Judicial Council's Lack of Clear Written Procedures for Processing Invoices Could Lead to Inappropriate Payments

Key Points

- We reviewed 60 payments from fiscal years 2015–16 and 2016–17 and found three that did not comply with the judicial contracting manual: two did not have proof that the Judicial Council received the goods or services, and the Judicial Council paid an invoice dated a year before the corresponding purchase order was created.
- The Judicial Council's guidance to staff for reviewing invoices does not adequately describe the process staff should be following. For example, the guidance does not describe processing steps for certain types of transactions or how to address the exceptions that can occur in the standard process for paying invoices.

Although the Judicial Council generally issued payments with appropriate authorization, it did not do so consistently. The judicial contracting manual requires Judicial Council staff to support each payment made to a vendor with a properly authorized contract, a properly submitted vendor invoice, and documentation verifying that the Judicial Branch entity received the goods and services satisfactorily. According to the accounting supervisor, accounting staff are expected to reconcile invoices against the terms and conditions of the contract or purchase order before processing an invoice for payment. We selected for review 60 payments from July 2015 through June 2017, and we found three payments for which the Judicial Council did not comply with the judicial contracting manual.

In two instances, the Judicial Council paid invoices without verifying that it had received the product or service. According to the accounting supervisor, this verification takes the form of an approval signature from the project manager responsible for the procurement. The Judicial Council paid a \$3,500 invoice for telephone services and a \$4,000 invoice for office supplies without the required approval signatures. The accounting manager indicated that the absence of a signature in these cases was due to oversight and agreed that both invoices should have displayed proper approval signatures. Without verification that the Judicial Council has received the goods or services, staff risk processing payments inappropriately.

In another instance, the Judicial Council made a payment without reviewing the corresponding purchase order to determine whether the payment was appropriate. The judicial contracting manual specifies that Judicial Branch entities should not process payments without a properly authorized contract or purchase order and an accurate invoice. In June 2017, the Judicial Council paid an invoice for services rendered three years earlier, in 2014. Further, the corresponding purchase order was created in 2015, a year after the vendor provided the services. According to the

accounting supervisor, her staff were making the payment on behalf of another Judicial Branch entity and they relied on information in the accounting system to process the invoice, which she said showed a valid purchase order at the time of payment. In addition, she noted that staff were not aware that the other Judicial Branch entity had created the purchase order late. We expected that the Judicial Council would have noted the discrepancy and taken steps to ensure that it received proper documentation at the time of payment; however, we observed no evidence of such a notation in the payment file. The Judicial Council risks making inappropriate payments when its staff do not ensure that other Judicial Branch entities for whom it is making payments comply with all procurement policies, including the creation of purchase orders before acquiring goods or services.

The Judicial Council risks making inappropriate payments when its staff do not ensure that other Judicial Branch entities for whom it is making payments comply with all procurement policies.

Although the accounting department has created some informal documents to describe its invoice-processing procedures, these documents do not include adequate details. The accounting department has three separate types of documents—a checklist, spreadsheets, and flowcharts—that each document various parts of the process for approving invoices for payment and that provide guidance to staff. However, according to the accounting manager, these documents provide only a high-level description of the process. Further, we observed that these documents are incomplete. For example, the spreadsheets note different processing steps for business travel, utility, and facility maintenance expenses, but they do not provide any information about these transaction categories. Additionally, the flowcharts describe various processes such as creating claim schedules or performing manual data entry, but they do not explain how these processes fit together. Complete documentation will help the Judicial Council ensure that staff process invoices correctly and that they minimize the risk of errors, especially if new staff are participating in the process.

Finally, the Judicial Council's documents do not describe common exceptions to the Judicial Council's expectation that accounting staff reconcile invoices against the terms and conditions of applicable contracts. We found that in some cases, staff from other departments reconcile each invoice against the contract before forwarding it to the accounting department. For example, one invoice for facilities maintenance referenced more than 20 job order contracts. In this case, a facilities analyst performed the reconciliation before forwarding the invoice to accounting staff. In other situations, each invoice for data services requires three information technology staff to perform the reconciliation before they forward a summary of the charges along with the invoice to accounting staff.

While we agree that these reconciliations are a prudent practice for processing invoices related to complicated purchase agreements, without adequate documentation of these processes, the Judicial Council increases the risk that its staff will not be aware of how to process these more complex invoices properly. According to the accounting supervisor, the Judicial Council does not document deviations from its regular process because they can be very specific and they depend on the individual contract; thus, there could be many types of deviations. She stated that staff could come to her for assistance. While some deviations may be simple to handle, others, such as the facilities maintenance contract mentioned earlier, are for large contracts involving frequent transactions, and staff could benefit from guidance. Without adequate guidance, Judicial Council staff may miss important steps for processing invoices—for example, they may not notice that a purchase order does not match an invoice—and increase the risk that the Judicial Council makes payments inappropriately.

Recommendation

To ensure that Judicial Council staff have the information they need to process invoices appropriately and to comply with the judicial contracting manual, the Judicial Council should develop by June 2018 one document with clear invoice-processing procedures for its accounting staff. This document should define the steps for processing invoices related to different types of purchase agreements and common exceptions to the typical process, including instructions for handling invoices processed on behalf of other Judicial Branch entities.

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OTHER AREAS WE REVIEWED

To further address the audit objectives described in Table 2 on page 25, we reviewed the subject areas described below. The text that follows indicates the results of our review and any associated recommendations not already discussed in the other sections of this report.

The Judicial Council's Information System Controls

Although the Judicial Council has made progress, it has not yet fully implemented a recommendation to improve its information system controls. In December 2013, we recommended that the Judicial Council implement by February 2014 best practices related to general and business process application controls, improve its controls over access to its information systems, and provide guidance to the superior courts to ensure that they make the necessary control improvements. The results of our 2015 review indicated that the Judicial Council has an unacceptably high risk that data from the applications it uses to perform its day-to-day operations could lead to incorrect or inappropriate conclusions. Further, the weaknesses we identified continued to compromise the security and availability of these information systems, which contain confidential or sensitive information. In 2015 we asked the Judicial Council to develop a corrective action plan to address the prior recommendation. In July 2017, the Judicial Council stated that work to perform a periodic review and update of the framework of information security controls was underway and would be completed by January 2018. As of October 2017, the principal manager of information technology stated that the work will continue into 2018 and that June is a better estimate for completion. Further, it was continuing its recruiting efforts to fill previously approved information technology positions. We appreciate that the Judicial Council has made progress, but we are concerned that it has been nearly four years since our initial recommendation and that the weaknesses in the Judicial Council's system remain, jeopardizing the security of confidential or sensitive information.

Recommendation

By June 2018, the Judicial Council should fully implement the State Auditor's recommendation from 2013 related to controls over its information systems.

The Judicial Council's Local Manual

The Judicial Council's local manual complies with the requirements of the judicial contracting manual, but the Judicial Council should update and reissue its local manual to prevent confusion. The judicial contract law requires each Judicial Branch entity to adopt a local manual, and the judicial contracting manual specifies what should be in them. For example, the local manual must identify the individuals with responsibility and authority for procurement and contracting activities. The Judicial Council adopted its seven-page local manual in 2011. Rather than reissuing a new manual, it released two memos—one in October 2016 and one in June 2017—to update the manual. As a result, staff must refer to both update memos as well as the local manual to obtain a complete understanding of procurement policies and specifically of limits to staff authority to approve purchases or contracts. As indicated on page 12, confusion already existed before the additional memos; we found an instance in which a contracts supervisor signed a purchase order far above his authority limit. The existence of multiple, different sources for policies covering the same areas further increases the risk of such a misinterpretation.

Recommendation

To prevent misinterpretation of policies governing its procurement practices, the Judicial Council should reissue its local manual by June 2018, incorporating all updates made since the 2011 version of the manual.

Annual Statement of Economic Interests

We found one decision maker who had not filed the required statement of economic interests until we prompted additional follow-up effort by the Judicial Council. State law requires every agency to adopt a conflict-of-interest code that identifies those employees required to file annual statements disclosing investments, business interests, gifts received, and sources of income. When someone fails to file all or part of the statement or refuses to file after receiving reasonable notice, state law requires the public entity to report this violation of conflict-of-interest law to the appropriate authority. As part of our review of 60 procurements, we reviewed the statements of economic interests for key decision makers. We identified one project manager who had not filed a statement of economic interests for 2015 or 2016. The Judicial Council's human resources department had followed up with the project manager twice but had not received the two statements. After we spoke to the Judicial Council

concerning the project manager's outstanding statements, the Judicial Council sent another reminder with a copy to the project manager's supervisor and received the project manager's statements of economic interests shortly thereafter. The supervising human resources analyst noted that he followed up with seven other employees who had also not filed the required statements. As of late October 2017, he stated he had received all of the delinquent statements.

According to the supervising human resources analyst, the Judicial Council sends multiple reminders, with the last going to the employee and the employee's supervisor. To his knowledge, the Judicial Council has not encountered any instances in which it had to report to the appropriate authority apparent violations of state law. Further, he stated that the Judicial Council is developing new procedures to improve the collection of statements of economic interests. If relevant employees do not file their statements in a timely fashion, the Judicial Council deprives itself and the public of a key tool to help ensure that its employees make decisions that are in the best interest of the public and not to enhance their personal finances.

Recommendation

To help ensure that the Judicial Council complies with state reporting requirements related to conflicts of interest, it should report to the appropriate authority any staff who do not file statements of economic interests after reasonable attempts to prompt them to file, as described in guidance from the Fair Political Practices Commission. Further, the Judicial Council should complete its procedures to improve compliance and implement them beginning in January 2018.

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SCOPE AND METHODOLOGY

We conducted this audit according to the audit requirements contained in the contract code section 19210, which is part of the judicial contract law. The judicial contract law requires the State Auditor, upon legislative appropriation, to perform biennial audits of the Judicial Council. Table 2 lists the audit objectives we developed and the methods we used to fulfill those objectives.

Table 2
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Determine whether the judicial contracting manual is consistent with the requirements set forth in the judicial contract law.</p>	<ul style="list-style-type: none"> • Compiled an inventory of revisions to the contract code, SAM, and SCM that occurred from July 2015 through June 2017. • Obtained revisions of the judicial contracting manual that occurred from July 2015 through June 2017. • Compared 115 changes in the contract code, SAM, and SCM to changes in the judicial contracting manual. We determined that the manual complies with requirements set forth in the judicial contract law.
<p>2 Determine whether the Judicial Council’s local manual conforms to the judicial contracting manual.</p>	<p>Reviewed judicial contracting manual revisions from July 2015 through June 2017 to identify provisions relevant to the local manual.</p>
<p>3 Determine to what extent the Judicial Council has implemented recommendations from our prior procurement audits.</p>	<p>Reviewed the recommendations from previous State Auditor procurement audits and determined the status of the recommendations the Judicial Council had not fully implemented as of June 2017.</p>
<p>4 Assess the Judicial Council’s internal controls over contracting and procurement practices and determine whether the entity complied with those controls and with key contracting and procurement requirements, including those related to competitive bidding and sole-source contracting.</p>	<ul style="list-style-type: none"> • Reviewed the Judicial Council’s key procurement requirements by interviewing staff and reviewing the local manual, the judicial contracting manual, and other documentation. • Obtained a list of new procurements executed from July 2015 through June 2017. • Judgmentally selected 60 procurements, which included 30 contracts, 20 purchase orders, and 10 contract amendments and reviewed them for compliance with the judicial contracting manual and with local contracting manual procurement requirements for approval, solicitation, competition, bid evaluation, and other key controls. • Obtained and reviewed statements of economic interests for key decision makers related to the 60 procurements we reviewed. We did not identify conflicts of interest based on those statements.
<p>5 Assess the Judicial Council’s internal controls over payment practices and determine whether the entity complied with those controls.</p>	<ul style="list-style-type: none"> • Reviewed the Judicial Council’s key payment controls by interviewing staff and reviewing the local manual, the judicial contracting manual, and other documentation. • Obtained data on payments made from July 2015 through June 2017. • Judgmentally selected 60 payments to ensure that we selected payments of varying sizes and for different goods and services across the two-year audit period. • Tested payments for compliance with key controls and requirements, including invoice approval, proper authorization, and segregation of duties.
<p>6 Evaluate the Judicial Council’s contracts to determine whether the Judicial Council inappropriately split any contracts to avoid necessary approvals or competitive bidding requirements.</p>	<p>Obtained a list of new procurements executed from July 2015, through June 2017, and reviewed procurements under \$5,000 to identify and review vendors with multiple contracts for the same goods or services to determine if there was evidence of contract splitting.</p>

AUDIT OBJECTIVE	METHOD
7 Assess the reliability of the Judicial Council data used in the Semiannual Report on Contracts for the Judicial Branch for the Reporting Period July 1 through December 31, 2016, submitted by the Judicial Council to the Joint Legislative Budget Committee and the State Auditor.	Interviewed Judicial Council staff regarding the status of implementing information system controls as recommended by the State Auditor in 2013 and reiterated in 2015 that this could affect the reliability of the Judicial Council's data.
8 Review and assess any other issues that are significant to the audit.	<ul style="list-style-type: none"> • Reviewed the Judicial Council's key payment card controls by interviewing staff and reviewing policy and procedure documents. • Reviewed the number of individuals with assigned cards and their assigned purchasing limits. • Included four payment card transactions as part of the procurement testing described in Objective 4 and the payment testing described in Objective 5. We identified no issues with the Judicial Council's use of payment cards.

Sources: California State Auditor's analysis of the judicial contract law, the State Auditor's planning document, and information and documentation in the column titled *Method*.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. In our prior audit report on the Judicial Council's procurement—*Judicial Branch Procurement: Although the Judicial Council Needs to Strengthen Controls Over Its Information Systems, Its Procurement Practices Generally Comply With Applicable Requirements*, Report 2015-302, December 2015—we assessed the reliability of the Oracle Financial System and Phoenix Financial System data that the Judicial Council used to compile its semiannual reports on contracts. Further, we obtained electronic data files extracted from the Judicial Council's Oracle Financial System related to procurement and payment data. We obtained similar data for this audit.

In the December 2015 audit, we determined that the Oracle Financial System and the Phoenix Financial System data were not sufficiently reliable for the purposes of evaluating procurement activity or reporting procurement activities to the Legislature or to the State Auditor. As we note in the *Other Areas We Reviewed* section of this report, the Judicial Council still has not fully addressed our recommendation related to information system controls. Consequently, there remains an unacceptably high risk that data from these systems could lead to an incorrect or improper conclusion. For this reason, we determined that the systems continue to be not sufficiently reliable for these same audit purposes. Although our determination may affect

the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations in this report.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: December 19, 2017

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

November 15, 2017

Ms. Elaine Howle, CPA
State Auditor
California State Auditor's Office
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle:

I am in receipt of your draft audit report, dated November 13, 2017, regarding your office's statutory audit of the Judicial Council of California's (Judicial Council) procurement and contracting practices. The audit is required under the California Judicial Branch Contract Law, as specifically codified in Public Contract Code, Section 19210(c). I would like to thank your auditors for their professionalism and for their work in providing additional accountability over the Judicial Council's contracting and procurement practices.

Overall, I am pleased with your draft audit report's two primary conclusions: the *Judicial Branch Contracting Manual* is substantially similar to the State's contracting requirements, and the Judicial Council's staff generally complied with these requirements. As your auditors noted in Table 1 of the draft report, the vast majority of the contracts and purchase orders reviewed during the audit complied with key procurement policies. Further, I am also pleased that 57 of the 60 payments you tested also complied with applicable contracting and payment requirements. Despite the limited number of errors noted during the audit, the Judicial Council is committed to continual improvement and will re-evaluate its existing practices based on your draft report's recommendations, which my staff have specifically addressed in the comments below.

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DRAFT RECOMMENDATIONS

1. To help ensure that it obtains the best value for the goods and services it purchases and that its staff take the necessary steps to comply with the judicial contracting manual, the Judicial Council should continue to reinforce with staff through management memos, training, or other formal means the need to:
 - Ensure that the person with the appropriate level of authority approves purchases.
 - Obtain authorized approvers' signatures for noncompetitive procurements.
 - Properly document justification for noncompetitive procurements.
 - Not exclude potential vendors from bidding based on assumptions about their prices.

Response:

The Judicial Council's staff agree with the recommendation and will reinforce existing policies through a variety of means, such as through additional training for procurement staff. Striving to consistently achieve 100% compliance on all procurement transactions is a laudable goal; nevertheless, the Judicial Council's staff believe the limited errors identified by the auditors—as noted in Table 1—represent rare instances when policies were not strictly followed and is otherwise indicative of a generally strong and well-functioning procurement process.

For additional context on the auditors' findings in support of this recommendation, some of the errors identified—while legitimate and worthy of closer review—present limited risk to the Judicial Council's procurement activities. For example, as the auditors note in the draft report, one contract supervisor exceeded his authority when approving a purchase for networking equipment; however, the Local Contracting Manual (LCM) was clarified in early June 2017 to clarify his signature authority for both purchase orders and contracts at \$500,000, which would have covered the referenced transaction. Judicial Council staff notes that this change to the LCM was implemented before and not in response to the audit. This increase was pre-planned and reflected the Judicial Council's business needs and perceptions of the contract supervisor's qualifications to make such procurement decisions. The auditors do not challenge the contract supervisor's qualifications in the draft report.

In another example, the auditors raise concerns over whether a former vendor had a fair opportunity to enter the bidding process and whether the Judicial Council's staff obtained

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“best value” on a particular procurement. For context, it is important to recognize that Judicial Council staff had already obtained a sufficient number of bids and the auditors agreed in the report that the procurement “was still competitive according to the [*Judicial Branch Contracting Manual*].” Furthermore, Judicial Council staff did not formally request a bid from the referenced vendor as the Program Manager determined prior to the bidding phase that the contractor had changed its service model from a “purchase hardware once and software is free” to a “cloud based system,” which requires an ongoing yearly subscription and additional fees per user if you exceed the base usage. The Program Manager wanted to continue with a non-cloud based solution (and one-time purchase of hardware/software). All of the vendors that were included in the bidding process for this solution provided products that were one-time purchases (non-cloud-based) with no yearly subscription fees. The Judicial Council’s staff provided this perspective and related documents to the auditors in early October 2017. Judicial Council staff believe the circumstances described above reasonably minimize any potential concern over not obtaining best value. Notwithstanding this additional context, the Judicial Council’s staff agree in principal with the audit recommendation, particularly with respect to enhancing our existing policies over non-competitive procurements.

2. To better align the judicial contracting manual with state requirements and to make certain that it receives the best value for services, the Judicial Council should update by March 2018 the judicial contracting manual’s guidance on *contract splitting* and *sole-source procurements* to reflect the more specific definitions in the SCM [*State Contracting Manual*].

Response:

The Judicial Council’s staff sees merit in further considering the auditor’s recommendation to further clarify our existing prohibitions on *contract splitting* and our definition of *sole-source procurements*.

As noted in the draft report, the Judicial Branch Contracting Manual’s definition of contract splitting currently “reflects state law,” but does not incorporate certain clarifying guidance contained in the *State Contracting Manual (SCM)*. The Judicial Branch Contract Law only requires the judicial branch to develop procurement policies that are substantially similar to the SCM and other guidance; regardless, the Judicial Council’s staff will develop potential revisions for stakeholder input. It is important to recognize that the Judicial Council’s staff cannot unilaterally change the *Judicial Branch Contracting Manual* to implement this recommendation. Instead, the concurrence of

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stakeholders from different judicial branch entities—all of which follow the manual—would be required, followed by a vote of the entire Judicial Council to formally adopt any changes.

3. To ensure that Judicial Council staff have the information they need to process invoices appropriately and to comply with the judicial contracting manual, the Judicial Council should develop, by June 2018, one document with clear invoice-processing procedures for its accounting staff. This document should define the steps for processing invoices related to different types of purchase agreements and common exceptions to the typical process, including instructions for handling invoices processed on behalf of other Judicial Branch entities.

Response:

The Judicial Council's staff agrees with the recommendation to centralize invoice-processing procedures into a single document. Accounting staff plan to centralize existing procedures by April 2018. Branch Accounting and Procurement staff process over 165,000 financial transactions each year and it is not feasible to create a single document that completely covers each and every type of transaction. However, the auditor's point is well-taken and accounting staff will identify common transactions (such as travel, utilities, and facility maintenance expenses) for inclusion in a new consolidated document. Accounting staff will also consult with other stakeholders regarding joint and individual responsibilities when Judicial Council staff process payment requests initiated by other judicial branch entities.

4. By June 2018, the Judicial Council should fully implement the State Auditor's recommendation from 2013 related to controls over information systems.

Response:

The Judicial Council's staff agrees with the recommendation and expects to have fully implemented the State Auditor's recommendations by June 2018. Substantial effort has been made towards this end, with the establishment of a standardized framework of information systems controls for the judicial branch, and the establishment of a standardized set of information security policies that serve to enact this framework. Further, mechanisms for the periodic review and update of these documents have been put in place, with current revisions to the original documents nearing completion. While

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we are cognizant of the extended duration of this effort, for compliance to be both meaningful and effective, it was important that our efforts in this area be part of a larger focus within the Judicial Branch to establish overarching strategic and tactical plans for technology that were inclusive of information security. In this fashion, our work would not just be a short-term objective to achieve compliance, but rather, an ongoing focus provided within the context of IT operations as a whole. In support of the State Auditor's recommendation, Information Technology staff plans to address action items from the Judicial Council's current IT risk assessment and to finalize updates to the current security framework and information technology policy manual by June 30, 2018.

5. To prevent misinterpretation of policies governing its procurement practices, the Judicial Council should reissue its local manual by June 2018, incorporating all updates made since the 2011 version of the manual.

Response:

The Judicial Council's staff agrees with this recommendation and expects to have an updated local manual in place by June 2018. Judicial Council staff primarily rely on the 264-page *Judicial Branch Contracting Manual*, which is periodically updated. However, the State Auditor correctly points out that the Judicial Council previously issued its seven-page local procurement manual in 2011 and released two subsequent memos in 2016 and 2017. Judicial Council staff will make consolidating the local manual and the two subsequent memos a priority.

6. To help ensure that the Judicial Council complies with state reporting requirements related to conflicts of interest, it should report to the appropriate authority any staff who do not file statements of economic interests after reasonable attempts to prompt them to file, as described in guidance from the Fair Political Practices Commission. Further, the Judicial Council should complete its procedures to improve compliance and implementation beginning in January 2018.

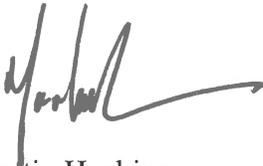
Response:

Judicial Council staff agree with this recommendation and Human Resources is in the process of documenting its procedures for addressing situations when required filers do not submit their *Form 700 – Statements of Economic Interest* in a timely manner (estimated completion by February 2018).

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Thank you again for your effort and assistance in helping the Judicial Council improve upon its existing practices. Should you have any additional questions or require further information regarding this response, please contact Grant Parks – Principal Manager, Audit Services at (916) 263-1321.

Sincerely,



Martin Hoshino
Administrative Director
Judicial Council

MH/GP

cc: Jody Patel, Chief of Staff, Judicial Council

John Wordlaw, Chief Administrative Officer, Judicial Council

Doug Kauffroath, Director, Branch Accounting and Procurement, Judicial Council

Aurora Rezapour, Director, Human Resources, Judicial Council

Robert Oyung, Director, Information Technology, Judicial Council

Grant Parks, Principal Manager, Audit Services, Judicial Council