



JUDICIAL COUNCIL OF CALIFORNIA

ADVISORY COMMITTEE ON AUDITS AND
FINANCIAL ACCOUNTABILITY FOR THE
JUDICIAL BRANCH

www.courts.ca.gov/auditcommittee.htm
auditcommittee@jud.ca.gov

AUDITS AND FINANCIAL ACCOUNTABILITY COMMITTEE

OPEN MEETING AGENDA

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

OPEN PORTION OF THIS MEETING IS BEING RECORDED

Date: July 21, 2022
Time: 12:15 – 1:15 PM
Public Videocast: jcc.granicus.com/player/event/1870

Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Opening Comments by the Chair

Presenter(s)/Facilitator(s): Hon. Judge Rosenberg—Chair

Approval of Minutes

Approve minutes of the June 29, 2022, meeting of the audit committee.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment

In accordance with California Rules of Court, Rule 10.75(k) (1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to auditcommittee@jud.ca.gov or mailed or delivered to Judicial Council of California, Audit Services, 455 Golden Gate Avenue, 5th Floor, San Francisco, California 94102 attention: Audit Services. Only written comments received by 12:15 pm on July 20th, 2022, will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

General Discussion by Members of the Committee

Open discussion by committee members regarding any topic within the scope and purview of the Advisory Committee for Audits and Financial Accountability for the Judicial Branch.

Presenter(s)/Facilitator(s): Grant Parks, Principal Manager – Judicial Council’s Audit Services

IV. DISCUSSION AND POSSIBLE ACTION ITEMS

Item 1

Revisions to the Judicial Branch Contracting Manual (Action Required)

Review and approve the proposed changes to the Judicial Branch Contracting Manual per California Rules of Court, Rule 10.63(c)(3), as well as the accompanying report to the Judicial Council.

Presenter(s)/Facilitator(s):

Oliver Cheng, Attorney – Judicial Council’s Legal Services

Jimmy Nguyen, Attorney – Judicial Council’s Legal Services

John Prestianni, Supervising Attorney – Judicial Council’s Legal Services

V. ADJOURNMENT

Adjourn to closed session.

VI. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(D))

Item 2

Draft Audit Report – Rule of Court 10.75(d)(6) (Action Required)

Non-final audit reports or proposed responses to such reports

Review and approve Audit Services’ draft audit report of Nevada Superior Court, per Rule of Court 10.63(c)(1).

Presenter(s)/Facilitator(s): Michelle O’Connor, Senior Auditor – Judicial Council’s Audit Services

VII. ADJOURNMENT

Adjourn the meeting



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ADVISORY COMMITTEE ON AUDITS AND FINANCIAL ACCOUNTABILITY FOR THE JUDICIAL BRANCH

MINUTES OF OPEN MEETING WITH CLOSED SESSION

June 29, 2022
12:15 p.m. - 1:15 p.m.
Conference Call

Advisory Body Members Present: Hon. David Rosenberg, Hon. Salvatore T. Sirna, Mr. Neal Taniguchi, Mr. Charles Johnson, Mr. Michael Powell, Mr. Phil Jelichich (non-voting advisory member);

Advisory Body Members Absent: Hon. Arthur A. Wick, Ms. Kate Bieker

Others Present: Mr. Grant Parks (Principal Manager, Judicial Council Audit Services), Ms. Dawn Tomita (Manager, Judicial Council, Audit Services), Ms. Michelle O'Connor (Senior Auditor, Judicial Council Audit Services), Mr. Joe Meyer (Senior Auditor, Judicial Council Audit Services), Mr. Christopher Lombardo (Accounting Director, Orange Superior Court), Mr. Patrick Ballard (Chief Financial Officer, Santa Barbara Superior Court), Mr. Hugh Swift (CEO, Stanislaus Superior Court), Ms. Ronna Uliana (Assistant CEO, Stanislaus Superior Court), Ms. Reena Amin (Fiscal Services Manager, Stanislaus Superior Court)

OPEN MEETING

Call to Order and Roll Call

The chair welcomed committee members and called the meeting to order at 12:15 p.m. and took roll call.

Approval of Minutes

Judge Sirna moved to approve the minutes of the February 1, 2022, meeting. Mr. Powell seconded the motion. There was no further discussion of the minutes. Motion to approve passed by unanimous voice vote of the committee members present.

No public comments were received for this meeting.

DISCUSSION AND ACTION ITEMS

Info Item 1

Report from Audit Services

Audit Services successfully hired two additional auditors since the last meeting. Audit Services currently employs eight full time auditors who perform on-site audits. Auditors are currently working on five court audits: Tuolumne,

Mendocino, Monterey, El Dorado, and Marin. Audit in Nevada has been substantially completed and will be presented at July meeting.

With respect to external audits for the judicial branch, the State Controller's Office (SCO) continues its work on auditing revenues, expenditures, and fund balances of superior courts. Four completed audit reports will be reviewed at today's meeting. Audits of Calaveras, Fresno, Humboldt, San Bernardino, and San Luis Obispo courts are currently in progress. SCO worked with Audit Services to identify five additional courts that will appear on audit plan presented at this meeting.

Fine and fee revenue distribution audits performed by the SCO continue to progress. There are about 11-15 of these audits at any given time. Audit Services also worked with that group to reduce audit duplication and overlap. This way, courts are not audited at the same time by different agencies.

Finally, the State Auditor's Office will audit court compliance with the Judicial Branch Contracting Manual. It's expected this audit will be available for the committee's review in roughly six months (or January 2023).

Info Item 2

General Discussion by Audit Committee Members

No items were discussed.

Action Item 1

Annual Audit Plan – Fiscal Year 2022-23 (Action Required)

One of primary responsibilities of this committee is approving the annual audit plan. This plan includes a list of courts to be audited and the scope of those audits. In fiscal year 2021-22 this committee reviewed 10 audit reports, total of 31 audit findings. Since testing and cash handling review was significantly reduced due to the pandemic, most findings were in areas of vendor payment processing procedures and case filing reporting in JBSIS.

Significant changes for the FY 22-23 audit plan include the resumption of on-site cash handling work in all courts. This is an area that has traditionally had the most audit findings and consumed the largest part of the budget for trial court audits. The audit plan also proposes to eliminate compliance testing under the AB 1058 program. After two years of auditing the program and not finding any reportable issues, audit staff believe it is time to remove this component from the audit plan. Audit staff have consulted with the council's Center for Families, Children, and the Courts and they do not object to this change.

Finally, Mr. Parks noted that Los Angeles is scheduled to be audited in FY 22-23 (starting in September) and will require an expanded scope and budget given the court's size and resources. For example, audit staff typically visit up to 16 locations when observing cash controls at large courts. For Los Angeles, audit staff plan to visit 25 locations. The audit of Los Angeles will also include expanded sample sizes (roughly double) for other areas of work such as: data accuracy for JBSIS reporting; vendor contracting and payments. For context, most large courts require a budget of roughly 1,064 hours, and audit staff have budgeted Los Angeles' audit at roughly 1,800 hours.

Judge Rosenberg asked if it's possible to audit all 39 courthouses located in Los Angeles County. Mr. Parks replied he will check with audit staff and let committee members know.

Action: Mr. Taniguchi moved to approve audit plan for FY 2022-23 (seconded by Mr. Johnson). The motion passed by unanimous voice vote of the committee members present.

Action Item 2

External Audit Report – State Controller’s Office (Action Required)

SCO’s recent audit of Colusa Superior Court’s revenues, expenditures, and fund balance for fiscal year 2019-20 concluded that the court complied with governing statutes and regulations. There were some findings related to prior year revenue adjustments. It’s a recurring issue seen at several courts, when correct general ledger account isn’t always used. Audit Services issued audit advisory in July 2021 regrading this issue. Another issue noted by SCO during Colusa audit was not always having contract with vendors and some missing records.

Action: Judge Sirna moved to approve posting of the audit report (seconded by Mr. Powell). The motion passed by unanimous voice vote of the committee members present.

Action Item 3

External Audit Report – State Auditor’s Office (Action Required)

SCO’s recent audit of Madera Superior Court’s revenues, expenditures, and fund balance for fiscal year 2019-20 concluded that the court generally complied with governing statutes and regulations. The audit identified some reporting issues, similarly with Colusa Superior Court. Another issue was not being able to locate contracts pertaining to psychological and psychiatric evaluation charges. Even though the court substantiates the amounts paid to these in-court service providers, the SCO recommended the Court to develop more formalized contracting process. Court also had some difficulties providing benefit election forms for two of their nine employees.

Action: Mr. Powell moved to approve posting of this audit report on Judicial Council’s website (seconded by Judge Sirna). The motion passed by unanimous voice vote of the committee members present.

Action Item 4

External Audit Report – State Auditor’s Office (Action Required)

SCO’s recent audit of Tulare Superior Court’s revenues, expenditures, and fund balance for fiscal year 2019-20 concluded that the court complied with governing statutes and regulations. The audit team was not able to find any findings at this court and the court is very well-managed.

Action: Judge Sirna moved to approve posting of this audit report on Judicial Council’s website (seconded by Mr. Taniguchi). The motion passed by unanimous voice vote of the committee members present.

Action Item 5

External Audit Report – State Auditor’s Office (Action Required)

SCO's recent audit of Ventura Superior Court's revenues, expenditures, and fund balance for fiscal year 2019-20 concluded that the court complied with governing statutes and regulations. One finding was related to current year vs. prior year reported revenues and expenditures.

Action: Mr. Johnson moved to approve posting of this audit report on Judicial Council's website (seconded by Mr. Taniguchi). The motion passed by unanimous voice vote of the committee members present.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned to closed session at 12:50 p.m.

C L O S E D S E S S I O N

Item 6

Draft Audit Report – Rule of Court 10.75(d) (6) (Action Required)

Non-final audit reports or proposed responses to such reports

Committee members discussed the draft audit report for Orange Superior Court, per Rule of Court 10.63(c)(1).

Action: Judge Sirna moved to approve this report for posting (seconded by Mr. Johnson). The motion passed by unanimous voice vote of the committee members present.

Item 7

Draft Audit Report – Rule of Court 10.75(d) (6) (Action Required)

Non-final audit reports or proposed responses to such reports

Committee members discussed the draft audit report for Santa Barbara Superior Court, per Rule of Court 10.63(c)(1).

Action: Judge Sirna moved to approve this report for posting (seconded by Mr. Powell). The motion passed by unanimous voice vote of the committee members present.

Item 8

Draft Audit Report – Rule of Court 10.75(d) (6) (Action Required)

Non-final audit reports or proposed responses to such reports

Committee members discussed the draft audit report for Stanislaus Superior Court, per Rule of Court 10.63(c)(1).

Action: Judge Sirna moved to approve this report for posting (seconded by Mr. Taniguchi). The motion passed by unanimous voice vote of the committee members present.

Adjourned closed session at 1:15pm.



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ADVISORY COMMITTEE ON AUDITS AND
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Meeting Date: 7/21/2022

Action Item #1 – (Action Required)

Public Session

Proposed Changes to the Judicial Branch Contracting Manual

Requested Actions:

Action Item #1 - Discuss and approve proposed revisions to the *Judicial Branch Contracting Manual* (Attachment A) and the draft report to the Judicial Council (Attachment B).

Supporting Documents:

- **Attachment A** – Revisions to the *Judicial Branch Contracting Manual* (tracked-changes version)
- **Attachment B** – Draft report to the Judicial Council from the audit committee
- **Attachment C** – Public comments
- **Attachment D** – Additional comment from Placer Superior Court

Summary:

Rule 10.63(c)(3) of the California Rules of Court requires the audit committee to review and recommend to the council proposed updates and revisions the *Judicial Branch Contracting Manual* (JBCM).

Disabled Veterans Business Enterprise (DVBE) Program

So that the JBCM reflects new statutory requirements for the Disabled Veteran Business Enterprise (DVBE) program, Judicial Council Legal Services proposes JBCM edits (as described in further detail in attachments A and B) due to recent amendments to section 999.7 of the Military and Veterans Code. Regarding the certifications that are required from prime contractors who use DVBE subcontractors to satisfy DVBE participation goals, the JBCM would require judicial branch entities (JBEs) to withhold up to \$10,000 from the final payment to a prime contractor until such certification is provided to the

JBE. Prime contractors must certify (among other information) the name(s) of the DVBE subcontractors participating in the contract's work and the amounts paid to each DVBE subcontractor.

Information on Encumbering Funds

To facilitate courts' access to consistent information on encumbering funds in connection with contracting and procurement, staff proposes that the JBCM include a cross-reference to the Trial Court Financial Policies and Procedures Manual (FIN Manual), as further described in attachments A and B. FIN 5.01, Sec. 6.6 provides JBEs with guidance on how to encumber funds, including for multi-year contracts.

Public Comments

During the public comment period, the Superior Court of Los Angeles County provided comments to certain proposed changes that have since been withdrawn from today's materials. The court's comments are included in Attachment C, while the Superior Court of Placer County provided similar comments (after the public comment period) in Attachment D. The withdrawn changes pertained to the California Department of Technology's review of information technology projects over \$5 million, pursuant to section 68511.9 of the Government Code. Staff would like more time to consider the JBE's feedback as well as feedback from the California Department of Technology.

Judicial Branch Contracting Manual	Socioeconomic and Environmental Programs	Chapter 3 Page: 9 of 13
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- 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.⁴ 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.

⁴ 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.

Judicial Branch Contracting Manual	Socioeconomic and Environmental Programs	Chapter 3 Page: 10 of 13
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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.⁵

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,

⁵ 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.

Judicial Branch Contracting Manual	Contract Administration	Chapter 11 Page: 5 of 20
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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



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REPORT TO THE JUDICIAL COUNCIL

Item No. 22-126

For business meeting on September 19–20, 2022

Title

Judicial Branch Administration: *Judicial Branch Contracting Manual*

Agenda Item Type

Action Required

Effective Date

October 1, 2022

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

July 21, 2022

Recommended by

Advisory Committee on Audits and Financial Accountability for the Judicial Branch
Hon. David Rosenberg, Chair

Contact

Oliver Cheng, Attorney
415-865-4616

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Executive Summary

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council adopt proposed revisions to the *Judicial Branch Contracting Manual*. The proposed revisions include new requirements for the Disabled Veteran Business Enterprise program and the addition of a cross-reference to the financial policies manual to facilitate courts' access to information on encumbering funds in connection with contracting and procurement.

Recommendation

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council, effective October 1, 2022, adopt proposed revisions to the *Judicial Branch Contracting Manual*.

The proposed revisions to the manual are indicated in Attachment A.

Relevant Previous Council Action

At the Judicial Council’s regular business meeting on August 26, 2011, the council adopted the initial version of the *Judicial Branch Contracting Manual* (referred to as the JBCM or manual), effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law.¹ In December 2011, April and August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, and October 2021, the council adopted revisions to the JBCM. The version of the JBCM adopted by the council on October 1, 2021, effective October 15, 2021, remains in effect as of the date of this report.²

Analysis/Rationale

Statutory requirement and development of the JBCM

The Judicial Branch Contract Law was enacted on March 24, 2011, and became effective on that date. With certain exceptions,³ the law requires that superior and appellate courts, the Judicial Council, and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities, or JBEs) comply with provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services.⁴ The Judicial Branch Contract Law applies to all covered contracts initially entered into or amended by JBEs on or after October 1, 2011.⁵

The Judicial Branch Contract Law also requires the council to adopt a manual containing procurement and contracting policies and procedures that must be followed by all JBEs.⁶ The policies and procedures in the manual must be “consistent with [the Public Contract Code] and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*.”⁷ Since the adoption of the initial JBCM, Judicial Council staff has continued to receive input from the JBCM Working Group regarding proposed revisions to the JBCM, and the council has adopted 11 sets of revisions.

This report is being submitted by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch under rule 10.63 of the California Rules of Court. Under the rule, the duties of the committee include (1) advising and assisting the council in performing

¹ Pub. Contract Code, §§ 19201–19210.

² The current version of the JBCM is available at <https://www.courts.ca.gov/documents/jbcl-manual.pdf>.

³ Pub. Contract Code, §§ 19204(c), 19207, and 19208.

⁴ *Id.*, § 19204(a).

⁵ *Id.*, § 19203.

⁶ *Id.*, § 19206.

⁷ *Ibid.*

its responsibilities and exercising its authority under the Judicial Branch Contract Law and (2) reviewing and recommending to the council proposed updates and revisions to the JBCM.⁸

Proposed revisions to the JBCM

Disabled Veteran Business Enterprise program

Under the Public Contract Code and the Military and Veterans Code, judicial branch entities must 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 Assembly Bill 230 (Stats. 2019, ch. 676), Assembly Bill 1365 (Stats. 2019, ch. 689), and Senate Bill 588 (Stats. 2020, ch. 80), there are additional DVBE requirements for California public entities, including JBEs. 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. Therefore, conforming edits are proposed for chapter 3 (pages 9–10) of the JBCM so that it reflects the additional statutory requirements and remains substantially similar to the provisions of the *State Contracting Manual*.

Information on encumbering funds

To facilitate courts' access to information on encumbering funds in connection with contracting and procurement, an edit is proposed for chapter 11 (Contract Administration), to add a 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.⁹

Policy implications

The revisions are proposed to enable the JBCM to conform to statutory requirements, and to facilitate access to information in connection with contracting and procurement. There are no policy implications.

Comments

Following review by the JBCM Working Group, the proposed revisions to the JBCM were submitted for public comment from May 31 through June 15, 2022. The invitation to comment specifically sought input on whether the revisions were clear and understandable, appeared to work from a court operations perspective, and were user-friendly. The public comments that were received during the public comment period and the committee's responses are set forth in the comment chart in this report.

Under Government Code section 68511.9, all administrative and infrastructure IT projects of the Judicial Council or the courts with total costs estimated at more than \$5 million "shall be subject

⁸ Cal. Rules of Court, rule 10.63(c)(2) & (c)(3).

⁹ The *Trial Court Financial Policies and Procedures Manual* is available at <https://www.courts.ca.gov/7460.htm>.

to the reviews and recommendations” of the California Department of Technology (CDT).¹⁰ To conform to current Judicial Council Information Technology division practice and the stated preference of the CDT, a proposed revision to the JBCM would have clarified that courts “should” notify the Director of Judicial Council Information Technology during the early stages of IT projects that are estimated at more than \$5 million.¹¹ The committee understands that staff would like to have additional time to consider feedback received regarding this revision and to seek additional input. Therefore, the committee has decided to exclude this revision from the current recommended JBCM revisions.

Alternatives considered

None.

Fiscal and Operational Impacts

No significant costs or operational impacts will result from implementing the recommendations in this report.

Attachments and Links

1. Attachment A: *Judicial Branch Contracting Manual*
2. Chart of comments, at pages 8-9.

¹⁰ Section 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 The use of the word “should” is defined in the JBCM as a word signifying reasonable discretion. Use of “should” indicates the action is recommended, and is not mandatory, but favored unless there is a good business reason for variance. See the JBCM’s Introduction, pages 8–9.

COMMENT CHART

**Invitation to Comment SP22-06
Judicial Administration: *Judicial Branch Contracting Manual***

Positions: A = Agree; AM = Agree if modified; N = Do not agree

Commentator	Position	Comment	Committee Response
<p>Sherri R. Carter</p> <p>Court Executive Officer/Clerk of Court</p> <p>Superior Court of California, County of Los Angeles</p>	AM	<p>In several places in the proposed text of the Manual, the following language appears:</p> <p>“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 GC68511.9.3 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 during the early stages of the project, before vendor contract execution.”</p> <p>Consistent with the comments submitted by the Los Angeles Superior Court, I suggest that the following language be removed and replaced as follows:</p> <p>Remove: “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 during the early stages of the project, before vendor contract execution.”</p> <p>Replace with: “Courts may request the JCC to facilitate this communication by notifying the Director of Judicial Council Information Technology at: jcitsupport@jud.ca.gov during the early stages of the project before vendor contract execution.”</p> <p>Thank you for your consideration.</p>	<p>Pursuant to Government Code section 68511.9, a revision had been proposed to the JBCM to facilitate communication with the California Department of Technology (CDT) and provide a consistent communication process for the courts when they have IT projects over \$5 million. The committee understands that staff would like to have additional time to consider feedback received regarding this revision and to seek additional input. Therefore, the committee has decided to exclude this revision from the current recommended JBCM revisions.</p>
<p>Bryan Borys, Ph.D.</p> <p>Director of Research and Data Management</p> <p>Superior Court of California, County of Los Angeles</p>		<p>In response to the Judicial Council of California’s (JCC) “Invitation to Comment SP22-06 Judicial Administration: <i>Judicial Branch Contracting Manual</i>” (JBCM), the Superior Court of California, County of Los Angeles, objects to using wording that may be construed as establishing as a best practice a non-statutory notice to the JCC regarding information technology projects subject to state review under GC 68511.9.</p> <p>GC 68511.9 mandates review by the State Chief Information Officer of courts’ IT projects with cost estimates exceeding \$5 million. The proposed revision</p>	<p>Pursuant to Government Code section 68511.9, a revision had been proposed to the JBCM to facilitate communication with the California Department of Technology (CDT) and provide a consistent communication process for the courts when they have IT projects over \$5 million. The committee understands that staff would like to have additional time to consider feedback received regarding this revision and to seek additional input. Therefore, the committee has decided to exclude this</p>

ATTACHMENT C

Commentator	Position	Comment	Committee Response
		<p>to the JBCM would add a nonmandated notice to the JCC regarding such projects. In several places the proposed JBCM revision would add the following:</p> <p><i>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 during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.</i></p> <p>This notice to the Director of Judicial Council Department of Technology is not mandated by GC 68511.9. In addition, it is a local court responsibility – not a JCC responsibility – to notify the state CIO of such local court procurements.</p> <p>The JBCM gives guidance on the interpretation of the word “<i>should</i>,” specifically, that “<i>should</i>” signifies a court may use reasonable discretion in whether to take the action, or not. However, auditors conducting JBCM/Procurement audits have indicated they feel the word “<i>should</i>” indicates a Procurement Best Practice, and failure to do a “<i>should</i>” is to fall short of Procurement Best Practices. Therefore, it is important to be very thoughtful about “<i>should</i>” vs. “<i>may</i>” on new tasks and responsibilities included in the JBCM. Notice to JCC IT is not a best practice: If a court feels there is no need for the JCC to “facilitate communication” with the state CIO, then that is the appropriate course of action for that court and it is not a violation of Procurement Best Practices.</p> <p>The word “<i>should</i>” be replaced by the word “<i>may</i>” wherever the section quoted above occurs, specifically in the JBCM Introduction, pp. 6-7; Chapter 2, p. 13; Chapter 8, p. 14; and the proposed Note on Chapter 12, p. 5.</p>	<p>revision from the current recommended JBCM revisions.</p>



Superior Court of the State of California
In and For The County of Placer
Roseville, California

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June 17, 2022

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Judicial Council of California

Re: Invitation to Comment SP22-06 Judicial Administration: *Judicial Branch Contracting Manual*

Dear Mr. Oyung and Mr. Cheng,

On behalf of the Superior Court of Placer County, I would like to thank the Judicial Council and its advisory committees for the opportunity to comment on pending policy within the Judicial Branch.

The Superior Court of Placer County is concerned about wording proposed in the latest invitation to comment on the *Judicial Branch Contracting Manual* (JBCM). Specifically, we call your attention to wording that may be construed as establishing as a best practice a non-statutory notice to the Judicial Council staff (JCC) regarding information technology projects subject to state review under GC 68511.9. The proposed JBCM revision would add the following:

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 during the early stages of the project, before vendor contract execution, in order to facilitate communication with the Department of Technology.

We join the Superior Court of Los Angeles in noting that Government Code section 68511.9 mandates review by the State Chief Information Officer of courts' IT projects with cost estimates exceeding \$5 million. The proposed revision to the JBCM would add a non-mandated notice to the JCC regarding

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Mr. Robert Oyung and Mr. Oliver Cheng

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such projects. This notice to the Director of Judicial Council Department of Technology is not mandated by GC 68511.9. In addition, it is a local court responsibility – not a JCC responsibility – to notify the state CIO of such local court procurements.

The JBCM gives guidance on the interpretation of the word “*should*.” Specifically, that “*should*” signifies a court may use reasonable discretion in whether to take the action, or not. However, auditors conducting JBCM/Procurement audits have indicated they feel the word “*should*” indicates a Procurement Best Practice, and failure to do a “*should*” is to fall short of Procurement Best Practices. Therefore, it is important to be very thoughtful about “*should*” vs. “*may*” on new tasks and responsibilities included in the JBCM. Notice to JCC IT is not a best practice; if a court feels there is no need for the JCC to “facilitate communication” on its behalf with the state CIO, then that is the appropriate course of action for that court and it is not a violation of Procurement Best Practices.

We request that the word “*should*” be replaced by the word “*may*” wherever the section quoted above occurs, specifically in the JBCM Introduction, pp. 6-7; Chapter 2, p. 13; Chapter 8, p. 14; and the proposed Note on Chapter 12, p. 5.

We recognize that the formal invitation to comment on this topic closed on June 15, 2022. And as such we acknowledge and understand that there is no requirement or obligation to review its contents. We do, however, hope that you will share it with the authors of the proposed amendment so that they may consider whether it is helpful.

Thank you again for the opportunity to comment,

/s/ Jake Chatters

Jake Chatters
Court Executive Officer
