Judicial Council of California

PURCHASING AUTHORITY

CHAPTER 1

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INTRODUCTION

This chapter identifies the sources of purchasing authority of Judicial Branch Entities (JBEs). This chapter also describes the roles of JBE personnel involved in the purchasing process, discusses ethical considerations, and provides guidance for developing a Local Contracting Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

1.1 PURCHASING AUTHORITY OF JUDICIAL BRANCH ENTITIES

A. Purchasing Authority Basics

Each JBE possesses its own authority to purchase goods and services (both IT and non-IT). The source of authority is reflected in the table below:

JBE	Legal Basis
Supreme Court	Established by article VI, section 2 of the California Constitution. See also Government Code (GC) sections 68803 and 68807.
Courts of Appeal	Established by article VI, section 3 of the California Constitution. See also GC 69141. Pursuant to CRC 10.1004(c)(6), authority is vested in the Administrative Presiding Justice, who may in turn delegate this authority to the clerk/administrator pursuant to CRC 10.1020(c).
Superior Courts	Established by article VI, section 4 of the California Constitution. Pursuant to CRC 10.603(c)(6)(D), authority is vested in the Presiding Judge, who may in turn delegate this authority to the Court Executive Officer.

JBE	Legal Basis
Habeas Corpus Resource Center (HCRC)	Established by GC 68661. Pursuant to GC 68664(a), responsibility for the HCRC's "day-to-day operations" is assigned to the Executive Director.
Judicial Council	Established by article VI, section 6 of the California Constitution. See also GC 68506 and CRC 10.80.

JBEs must ensure that any delegation of purchasing authority is properly documented.

B. Scope of Authority

1. Limitations on Purchasing Authority

Most facilities-related expenditures are outside the scope of purchasing authority for appellate and superior courts.

The Judicial Council is responsible for the construction, acquisition, and operation of appellate court facilities (GC 69204(b)) and superior court facilities (GC 70391(b)). In addition to any responsibilities delegated by the Judicial Council, GC 69206 and 70392 assign certain court facilities-related responsibilities to the AOC.[1]

Under GC 70392(e), however, the AOC[1] is authorized to delegate its responsibilities for ongoing operation and management to a court for some or all of the existing court facilities used by that court.

2. Authority to Enter into Intergovernmental Contracts (IGCs)

JBEs may enter into Intra-branch Agreements (IBAs) with other JBEs for goods or services, including IT goods and services. JBEs may enter into Memoranda of Understanding (MOUs) with other governmental entities for goods or services, including IT goods and services.

[1] Under CRC 10.81(b)(2) and (3), the references to the AOC in GC 69206 and 70392 are now deemed to refer to the Judicial Council staff.

Note: The terms “IBA” and “MOU” are used to refer to types of Intergovernmental Contracts (IGCs), not to limit a JBE’s ability to enter into IGCs. JBEs may enter into IGCs even if the agreements are labeled or named something other than IBA or MOU (see chapter 8 of this Manual for additional information regarding IGCs).

IGCs do not need to be competitively bid (but the JBE may opt to do so in its sole discretion). Other types of procurements are also exempt from certain competitive bidding requirements. These include emergency purchases, purchases under certain dollar amounts, and purchases made under certain Leveraged Procurement Agreements (for additional information regarding noncompetitively bid procurements, see chapter 5 of this Manual).

C. Purchasing Roles and Responsibilities

1. Roles and Responsibilities

The following table defines the roles and responsibilities of individuals involved in a JBE's procurement activities. In some JBEs, especially smaller superior courts, one individual may perform several of these roles. The same employee may initiate the requisition and receive the goods or services, although receipt by a second person strengthens internal controls. Different employees must be responsible for procurement activities and payment approval. Different employees should be responsible for approving invoices and preparing payments.

Assignment	Roles and Responsibilities
Procurement and Contracting Officer (PCO)	• Is responsible for all procurement and contracting within the JBE • Ensures that all procurement and contracting activities within the JBE comply with applicable procurement laws • Provides the necessary resources to ensure that all staff are properly qualified and trained in all aspects of the procurement process

Assignment	Roles and Responsibilities
	• Oversees development of the Local Contracting Manual
Buyer **Note:** A JBE may elect not to designate a Buyer. If the JBE does not do so, then the Buyer role reverts to the PCO.	• Performs day-to-day purchasing and contracting activities • Is knowledgeable about applicable procurement laws and best practices • Ensures that the needs of the JBE are met within applicable procurement laws • Maintains the procurement file and related documentation
ADA Coordinator **Note:** A JBE may elect not to designate an ADA Coordinator. If the JBE does not do so, then the ADA Coordinator role reverts to the PCO.	• Assists and responds to questions or concerns regarding procurement-related reasonable accommodation needs
DVBE Advocate **Note:** If no DVBE Advocate is designated, the DVBE Advocate role reverts to the PCO.	• Identifies potential DVBE prime contractors or subcontractors and potential contracting opportunities • Makes information regarding pending solicitations available to certified DVBE firms capable of meeting the JBE's business needs (MVC 999.12)

Assignment	Roles and Responsibilities
Procurement-Card Coordinator **Note:** A JBE may elect not to designate a Procurement-Card Coordinator. If the JBE does not do so, then the Procurement-Card Coordinator role reverts to the PCO.	• Ensures compliance with relevant procurement card procedures and contract terms • Adds, deletes, and alters card restrictions/limits • Reviews billing reports to monitor payments and disputes
Protest Hearing Officer **Note:** If a protest hearing officer is not designated by a JBE, the Buyer's supervisor will act as the protest hearing officer.	• Evaluates protests • Issues written determinations regarding protests
Protest Appeals Officer **Note:** If a protest appeals officer is not designated by a JBE, the protest hearing officer's supervisor will act as the protest appeals officer.	• Evaluates protest-related appeals • Issues written determinations regarding appeals of protests
Payment Officer	• Ensures timely payment of invoices • Ensures that proper internal approvals have been secured before processing payment

2. Ethics

a. Ethics training

JBEs should ensure that personnel involved in procurement activities receive ethics training, and they should regularly remind personnel of the importance of maintaining professional and ethical standards when conducting procurements.

b. Ethics and Conflicts

All personnel involved in the procurement process must adhere to and conduct business by maintaining high ethical standards.

All personnel involved in the procurement process 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;
- Avoid wasteful and impractical purchasing practices;
- Not make any commitment or promise regarding the selection of a Bidder or award of a contract;
- Be aware that perceptions can override reality; and
- Involve the JBE's procurement and legal staff or, alternatively, the Judicial Council's Legal Services office, when questions arise regarding acceptable or unacceptable behavior when dealing with Bidders or Vendors.

Other ethical issues include the following:

- Personnel involved in the procurement process must not make purchases of materials or services from any business entity in which they have a financial interest (see GC 1090 et seq.);
- Personnel involved in the procurement process are prohibited from using their position in state government to bestow any preferential benefit on anyone connected to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the personnel involved and the judicial branch.

Note: For restrictions on contracting with current and former JBE employees, see CRC 10.103 and 10.104.

c. Gifts and Gratuities

This section discusses certain restrictions regarding the acceptance of gifts and gratuities. These restrictions are minimum requirements. JBEs may adopt more stringent restrictions in their Local Contracting Manuals.

Accepting gifts and gratuities: No person involved in the procurement process of a JBE may accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with that JBE. Doing so could be construed as intent to influence JBE personnel in their official duties or as a reward for an official action performed by the JBE personnel. Favors must be declined. Under PCC 6102, a contract is voidable if it was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Section 68 or 86 of the Penal Code.

Financial Interest in Contract: GC 1090 is applicable to members of Evaluation Teams, as they are responsible for evaluating Bids. GC 1090 requires that state officers and others not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Any person who is found to have willfully violated GC 1090 may be punished by a fine of not more than $1,000 or by imprisonment in state prison, and will be forever disqualified from holding any office in this state.

Avoid making a gift of public funds: Article 16, section 6 of the California Constitution strictly prohibits any gift of public funds. To not be considered a gift of public funds, an expenditure must support the JBE's mission (function and purpose) and benefit the judicial branch.

Accepting free or loaner equipment from suppliers: JBEs should not accept an offer of goods or services without cost or obligation to the JBE that is made by a Prospective Bidder, Bidder, or Vendor. If a Buyer's decision is contrary to this best practice, the JBE should execute a contract to memorialize the agreement.

Before accepting any goods and services offered at no cost or obligation to the JBE, the JBE should consider the perception of the acceptance to other suppliers. How does the JBE remain fair and impartial if a decision is eventually made to solicit the goods or services?

d. Reporting Actual or Suspected Incidents of Fraud

JBE employees must report actual or suspected incidents of fraud that occur during the procurement and contracting process that relate to the following:

- Inappropriate activity involving the purchase of or contracting for goods and services.[2] For example, engaging in kickbacks (i.e., a sum of money that is paid to someone illegally in exchange for some type of preferential treatment).
- Willful, improper employee behavior affecting state interests (e.g., employee using their position to make unauthorized purchases for their own personal gain).

This reporting requirement applies regardless of whether the incident is:

- alleged against JBE employees or other individuals, or
- discovered internally or by referral.

How to Report:

Judicial Council employees must report the incidents listed above, in this Section 1.1(C)(2)(d), to the Judicial Council's Principal Manager of Audit Services and the Judicial Council's Chief Administrative Officer. Employees of all other JBEs must report any incidents listed above, in this Section 1.1(C)(2)(d), to their respective JBE's Procurement and Contracting Officer (PCO)[3] (or the individual who handles the responsibilities of PCO for the JBE, or the individual who has primary audit responsibilities for the JBE) and their Chief Executive Officer (or equivalent).

1.2 LOCAL CONTRACTING MANUAL

This section provides broad guidance to JBE staff involved in developing their Local Contracting Manuals. This section is not intended to dictate the techniques that should be used, because the details of the process should suit the individual JBE, the stakeholders affected, and the JBE's business needs.

[2] This includes inappropriate activity involving grant programs or subvention programs (for more information on subvention contracts, please see chapter 5, section 5.8 of this Manual).

[3] For more information on PCOs, please see chapter 1, section 1.1(C)(1) of this Manual.

Statutory requirement: Please see the Introduction to this Manual for a discussion of the statutory requirement for Local Contracting Manuals.

Purpose: The purpose of a Local Contracting Manual is to familiarize JBE employees with the JBE's specific purchasing and contracting practices. The Local Contracting Manual expands on and supplements this Manual.

Contents: The Local Contracting Manual must include the JBE's organizational structure; for example, who fills the roles identified in section 1.1.C.1 of this chapter.

The remaining contents of the Local Contracting Manual are determined by the individual JBE as necessary to describe its particular processes and personnel. The Local Contracting Manual must be consistent with all applicable law, as well as with this Manual. Each JBE may address topics such as:

- Normal lead times for different types of purchases;
- Required approvals, both internal and external;
- Certification of availability of funds;
- Setting up and maintaining official procurement files; and
- Signature authorization (who can sign what).

The JBE may include in its Local Contracting Manual a signature authorization listing chart, such as the one below:

Value of Contract	Person(s) or Position(s) Authorized to Sign
Up to $5,000	*[name or position]*
Up to $100,000	*[name or position]*
Above $100,000	*[name or position]*

Other topics that may be addressed in the Local Contracting Manual are referenced in the following chapters of this Manual.