Judicial Council of California

DISBURSEMENTS AND PAYMENT PROGRAMS

CHAPTER 9

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INTRODUCTION

This chapter describes payment practices, including when payments should be released, what is required before making invoice payments, and what are acceptable and unacceptable payment practices. Also included in this chapter is information about the use of purchase cards.

DEFINED TERMS

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

9.1 DISBURSEMENTS

A. Payment Fundamentals

Payments should not be processed or released by a Judicial Branch Entity (JBE) to a Vendor for any goods or services unless the JBE possesses all of the following:

- A properly authorized contract;
- Documentation verifying the goods/services were satisfactorily received and/or performed; and
- An accurate, properly submitted Vendor invoice.

B. Advance Payments

Advance payments are payments made to a Vendor before the Vendor performs its obligations under the contract. Advance payments may only be made under the following:

- Contracts for basic support/maintenance services (such as uncustomized software upgrades, a pre-established set of maintenance services, or access to a customer technical support telephone line to resolve software issues, but does not include, for example, services to develop or assist in correcting customized software programs);
- Subscriptions that are typically required to be paid in advance;
- Contracts for services provided by community-based private nonprofit agencies where advance payment is essential for implementation of a

particular program, provided the contract amount does not exceed $400,000,[1] and provided that the advance payment does not exceed 25 percent[2] of the annual allocation to be made under the contract;
- Memoranda of Understanding (MOUs) with counties with a population of 150,000 or less as of January 1, 1983,[3] if requested by the Board of Supervisors, where advance payment is essential for implementation of a particular program and where payment is not more frequent than once a month and does not exceed one-twelfth of the annual allocations required for the delivery of services by the county; and
- Contracts with state agencies or federal government entities for the provision of services, materials, or equipment to the JBE.

Note:

- For superior courts, in addition to the foregoing, advance payments may also be made as authorized by FIN 8.01 (Vendor Invoice Processing), Section 6.5(1)(e) of the *Trial Court Financial Policies and Procedures Manual.*

- The following are not advance payments under this Manual: license payments, lease payments, and insurance premiums that are typically required to be paid in advance.

- In addition to the foregoing, if the JBE has conducted a reasonable risk assessment, and if the JBE's Approving Authority (or delegee) has authorized the advance payment, a JBE may also make an advance payment under a contract in the following situations: (i) in exchange for a contractual benefit from such advance payment (e.g., price discount from a Vendor); or (ii) where it is industry standard to pay in advance for goods/services.

[1] This amount may be increased by the California Department of Finance; any future increases will be posted on the Judicial Resources Network.
[2] Advance payments in excess of 25 percent may be made on such contracts financed by a federal program when the advances are not prohibited by federal guidelines.
[3] This includes the following counties: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Placer, Plumas, San Benito, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba (based on estimated populations from California Statistical Abstract).

C. Progress Payments

A Progress Payment is a partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

General recommendations regarding Progress Payments:

- Discourage Progress Payments;
- During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm that the JBE's project manager has the expertise to properly monitor the Vendor's performance of its obligations;
- Do not allow Progress Payments on agreements with a term of fewer than three months;
- If Progress Payments are to be made, they should be described in the agreement with the Vendor and made at clearly identifiable stages of progress or not more frequently than monthly in arrears, based upon written progress reports submitted with the Vendor's invoices;
- It is important that Progress Payments not be made before goods or services are provided;
- Contracts should require a withholding of at least 10 percent of each Progress Payment pending satisfactory completion of the transaction or a separate and distinct task (unless otherwise authorized by statute as further described below, PCC 12112(a) permits lower withholding percentages in certain cases for Progress Payments involving IT goods/services);
- Establish contractual procedures/criteria for release of the amount withheld; and
- A written Statement of Work should be developed to clearly define the tasks that, when completed, would permit a Progress Payment to be made.

Progress Payment Requirements for Non-IT Services:

For a Progress Payment under a contract for non-IT services:[4]

- At least 10 percent of the contract amount must be withheld pending final completion of the contract;

[4] These requirements are based on PCC 10346.

- If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task; and
- A Progress Payment must not be made unless the JBE has established procedures to ensure that the work or services are being delivered in accordance with the contract.

Note: The foregoing Progress Payment requirements do not apply to contracts: (i) for the construction, alteration, improvement, repair, or maintenance of real or personal property; (ii) less than $5,000 in amount (including contracts less than $5,000 where only travel expenses are to be paid); or (iii) between a JBE and state agency, or between a JBE and a local agency or federal agency.

Progress Payment Requirements for Non-IT Custom Goods Involving Work at Vendor's Facility:

Contracts for non-IT goods to be specially manufactured for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant, provided that:[5]

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods; and
- The Vendor provides a faithful performance bond, acceptable to the JBE, of at least one-half of the total amount payable under the contract.

Progress Payment Requirements for Custom IT Goods and Services Involving Work at Vendor's Facility:

Contracts for IT goods or services to be specially manufactured or performed for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant if:[6]

[5] These requirements are based on PCC 10314.
[6] These requirements are based on PCC 12112(a).

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods or services; provided, however, that if the JBE determines that lower withholding levels are appropriate based upon its own risk analysis, which may include consideration of financial protection items (e.g., performance bond, surety, letter of credit, additional contract terms, other forms of security or guaranty to protect against Vendor's breach), then: (i) if the contract price is $10 million or more, the JBE must withhold at least 5 percent of the contract price until final delivery and acceptance of the goods or services; and (ii) if the contract price is less than $10 million, the JBE must withhold at least 3 percent of the contract price until final delivery and acceptance of the goods or services.

D. Periodic Payments

Periodic payments are payments made on a regular, recurring basis under installment purchase or lease-purchase agreements. Installment purchase and lease-purchase agreements may present complex legal issues, so JBEs are encouraged to consult with the Judicial Council's Legal Services office. JBEs are also encouraged to consult with the Judicial Council's Branch Accounting and Procurement office on nonlegal, business-related issues.

E. Payee Data Record

Note: Superior courts should refer to FIN 8.01 (Vendor Invoice Processing) of the *Trial Court Financial Policies and Procedures Manual* regarding Payee Data Records in lieu of the information below.

Before executing any contract (if the Vendor is not a government entity) and before any payment is released, a JBE should confirm that a completed Payee Data Record has been obtained from the Vendor. The Payee Data Record provides, among other data, a Vendor's taxpayer identification number and is needed in order to process payments of invoices.

The Payee Data Record should be retained in the JBE's business services or accounting office, as determined by each JBE's policy, and in the procurement file. Because each Vendor's Payee Data Record is maintained at the JBE's business services or accounting office, a Vendor only needs to submit one Payee Data Record to the JBE. If any information changes, the Payee Data Record should be updated.

F. Payment of Invoices

Note: Superior courts should refer to the *Trial Court Financial Policies and Procedures Manual,* FIN 8.01 (Vendor Invoice Processing) regarding payment of invoices and to FIN 8.03 (Travel Expense Reimbursement for Trial Court Judges and Employees) regarding travel expenses in lieu of the information below.

Accurate, properly submitted invoices: JBEs should instruct Vendors to submit accurate and correct invoices to ensure timely payment for goods or services received. JBEs should not pay for anything that is not set forth in the contract (pallets, shipping, travel costs, etc.).

An accurate, properly submitted invoice includes the following:

- Detailed identification of the goods/services provided, quantities, unit price, extension, description, etc.;
- Applicable sales tax and/or use tax as a separate line item from goods;
- Service period (e.g., monthly, quarterly, yearly) and quantity applicable to the service;
- Accurate billing address as stated in the contract;
- Invoice number;
- Invoice date;
- Vendor name and remittance address; and
- Submission of the invoice to the JBE address as identified in the contract as “billed to” or “invoice submitted to” for payment.

Invoice tracking: To accurately track invoices so they are paid in a timely manner, all invoices:

- Should be promptly made available to accounts payable (or other appropriate department or personnel); and
- Should be date stamped or have the receipt date noted when first received by accounts payable (or other appropriate department or personnel).

Invoice dispute notification: If there is a dispute about a submitted invoice, the JBE should promptly notify the Vendor. Buyers and project managers should consult with their JBE’s accounting office (or other unit as determined by JBE policy and procedures) to develop a plan of action for resolving the dispute in a timely manner. See chapter 10 of this Manual for information on acceptance/rejection of goods and services. See chapter 11 of this Manual for information on resolving contract disputes.

Prompt payment discounts: Some Vendors may offer discounts for prompt payment. A JBE may elect to accept these payment terms when it is in the best interests of the JBE, after considering all financial and Vendor performance factors.

Separation of duties: JBEs should have policies and procedures in place to ensure a clear separation of duties in order to reduce the risk of error or fraud in the JBE's contracting and procurement programs. See chapter 1 of this Manual on purchasing roles and responsibilities for more information.

Travel provisions: All travel expenses should be related to official JBE business. Reimbursement for such expenses should only be permitted if provided for in the contract. If the JBE will be reimbursing the Vendor for travel expenses, the contract should include appropriate travel-related provisions, including travel expense reimbursement limits that are in accordance with the judicial branch travel guidelines.

9.2 PURCHASE CARD PROGRAMS

A. Use of Purchase Cards Generally

Purchase cards are a method of payment that works similar to personal credit cards. JBEs should establish internal controls to monitor their use of purchase cards.

Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card should be initiated by an approved purchase requisition. Purchase cards may be used only for official JBE business; personal use is prohibited.

B. Use of Purchase Cards by the Superior Courts

1. The state-administered procurement card program, CAL-Card, is available to all superior courts, and has usage limitations defined by the program. The Judicial Council's Business Services unit is available to assist with answering questions about this program.

2. Purchase cards typically are used only for the procurement of goods. Examples of items that may be purchased using purchase cards include library purchases, subscriptions, office supplies, and minor equipment. Although purchase cards should not be used to procure services, if a superior court purchases goods that have ancillary services associated with them, the entire transaction may be

charged to a purchase card. For example, a court vehicle gets a flat while on a business trip and a full-size replacement tire is required to complete the trip. The tire and the associated ancillary services (i.e., mounting, balancing) may be charged to a purchase card.

3. Purchase cards may only be used for purchases with a maximum of $1,500 per transaction. A suggested daily limit of $5,000 should also be set for purchase card use. Alternative procedures should be documented, incorporated into the court's Local Contracting Manual, and distributed to court personnel.

4. Purchase cardholders are responsible for providing documentation in the form of requisitions and receipts for purchases made using the purchase card (this includes providing such documentation upon receiving a monthly statement of card activity). The receipts and the statement should be forwarded to accounts payable for verification and payment.

5. If the superior court receives a monthly master statement of purchase card activity, either accounts payable or the cardholder(s) is responsible for assembling the documentation (requisitions, receipts) necessary to verify purchases before issuing payment to the purchase card company.

6. If there is no receipt issued for a purchase card charge, the employee making the purchase should provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase should be provided.

7. Travel expenses may be paid by a court credit card that is used only for travel expenses, or centrally purchased using a court travel account.

C. Use of Purchase Cards by Other JBEs

Currently, the only purchase cards authorized for use by JBEs other than the superior courts are the CAL-Cards. It is important that CAL-Cards be used by these JBEs in accordance with the Judicial Council's CAL-Card, State of California VISA Purchasing Card procedures.