Judicial Council of California

INTRODUCTION

Original Release Date: October 1, 2011	Revised Effective: January 1, 2026

1. STATUTORY BASIS FOR THIS JUDICIAL BRANCH CONTRACTING MANUAL

On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law (JBCL).[1] With certain exceptions,[2] the JBCL requires that superior and appellate courts, the Judicial Council of California (Judicial Council), and the Habeas Corpus Resource Center (HCRC) (referred to collectively as judicial branch entities or JBEs) comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.

Judicial Branch Contracting Manual

PCC 19206 of the JBCL requires the Judicial Council to adopt and publish a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that JBEs must follow. The policies and procedures in the Judicial Branch Contracting Manual must be "consistent with" the PCC and "substantially similar" to the provisions contained in the *State Administrative Manual* (SAM) and the *State Contracting Manual* (SCM).

Applicable Dates of JBCL Requirements

The JBCL became effective March 24, 2011, and applies to all contracts initially entered into or amended on or after October 1, 2011. PCC 19206 requires the council to adopt and publish a Judicial Branch Contracting Manual no later than January 1, 2012, but PCC 19204(d) provides that until the council adopts and publishes the required manual, JBEs "shall instead be governed by applicable policies and procedures in the State Administrative Manual and the State Contracting Manual, or policies and procedures as otherwise required by law to be adopted by the Department of General Services applicable to state agencies."

On August 26, 2011, the Judicial Council adopted this *Judicial Branch Contracting Manual* (Manual) in compliance with PCC 19206. The original effective date of this Manual is October 1, 2011, and the effective date of the last revision to each chapter of the Manual is reflected on the first page of each chapter.

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[1] SB 78 (Comm. on Budget and Fiscal Review, Stats. 2011, ch.10). The California Judicial Branch Contract Law is at PCC 19201–19210. The law was amended by SB 92 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 36), effective June 30, 2011.
[2] See PCC 19204(c), 19207, and 19208.

2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

Development of this Manual was guided by the principles reflected in the findings and declarations of the Legislature in enacting the PCC, which express the legislative intent to achieve the following objectives as set forth in PCC 100:

- To clarify the law with respect to competitive bidding requirements;
- To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds;
- To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and
- To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

In addition, the Legislature has declared that California public contract law "should be efficient and the product of the best of modern practice and research" (PCC 101) and that, "to encourage competition and to aid in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform." (PCC 102)

Development of this Manual was complicated by the inapplicability of the SAM and SCM to the organization and operations of JBEs. The SAM and SCM were written for use by executive branch agencies, with the Department of General Services (DGS) as the entity charged with administering those agencies' procurement and contracting activities. In contrast, management in the judicial branch is decentralized; for the superior courts, by way of example, the presiding judge of each court is responsible for approving procurements and contracts and the court executive officer is responsible for contract negotiations.[3] In addition, PCC 19207 acknowledges that neither DGS nor any other state entity is involved in approval or review of judicial branch procurement, except as specifically required by law. As a result, much of the material in the SAM and SCM either does not apply to JBEs or is incompatible with judicial branch organization and operations. Additionally, even when applied to the executive branch, SAM and SCM

[3]CRC 10.603(c)(6)(D) and 10.610(c)(3); GC 77009(e). Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., SCM, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). In light of the decentralized structure of the judicial branch, and the fact that each JBE possesses its own purchasing authority, certain PCC provisions granting authority to DGS or the Director of DGS have been interpreted as granting equivalent authority to each JBE, or the Approving Authority of each JBE.

procurement and contracting policies and procedures have been found by government studies to be out-dated, ineffective, and ultimately costly.[4]

Because of the fundamental differences between the underlying and often out-dated assumptions of the SAM and SCM and the organization and operations of JBEs, the drafters of this Manual balanced the conflicting requirements of incorporating "substantially similar" policies and procedures from SAM and SCM and accomplishing the legislative objectives of PCC 100–102. As a result, when the SAM or SCM did not implement a specific PCC requirement, but rather a DGS concept or process, the drafters interpreted the provision in light of PCC 100–102 and the business operations and organizational structure of the judicial branch. If a SAM or SCM provision was not compatible for literal adoption in the context of judicial branch operations, the drafters distilled that provision to its essential objective and then developed processes and procedures that achieve the same objective in a manner compatible with judicial branch organization and operations. Thus, the processes and procedures reflected in this Manual are intended to implement the objectives of both the underlying SAM or SCM provision and, most importantly, PCC 100–102.

3. INTERPRETATION AND APPLICATION OF THIS MANUAL

In interpreting the requirements of this Manual and applying those requirements in the context of their own local operations and specific procurements, JBEs should seek to achieve the objectives of PCC 100, including ensuring full compliance 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. Under the decentralized management system of the judicial branch, each Judicial Branch Entity is vested with individual purchasing authority.[5] In the case of a superior court, the purchasing authority is vested in the presiding judge.[6] To meet the unique needs of the court and ultimately achieve the goals set forth in PCC 100–102, each presiding judge has the authority to vary the court's application of any nonmandatory business or accounting practice set forth in this Manual. Any variances should be documented in the court's Local Contracting Manual.

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[4]See California Performance Review, *The Report of the California Performance Review,* Vol. 4, Chapter 7, Statewide Operations-Procurement (2007).
[5]See section 1.1.A of chapter 1 of this Manual for the source and designation for each JBE's purchasing authority.
[6]CRC 10.603(c)(6)(D).

In this Manual, when the verb “include” is used to preface a list, the list is not exhaustive. The Judicial Council’s Legal Services office is available to assist JBEs in answering questions or providing clarification regarding this Manual.

4. LOCAL CONTRACTING MANUAL

PCC 19206 requires the Judicial Council to include in this Manual a requirement that each JBE shall adopt a Local Contracting Manual for procurement and contracting for goods and services by that JBE. The content of each Local Contracting Manual must be “consistent with” the PCC and “substantially similar” to the provisions contained in the SAM and the SCM.

- Each JBE must adopt a manual consistent with the requirements of PCC 19206.
- Each JBE must identify individual(s) with responsibility and authority for procurement and contracting activities as required by this Manual.
- Each JBE may include in its Local Contracting Manual policies and procedures governing its procurement and contracting activities, and those policies and procedures must not be inconsistent with this Manual or with applicable law.

5. CONTENT AND EXCLUSIONS

The Manual addresses Judicial Branch Entities’ procurement of goods and services, including information technology goods and services, contracting, and contract management. The Manual does *not* address:

- Procurement and contracting for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities, as those activities are expressly excluded from coverage under Part 2.5 by PCC 19204(c);
- Procurement and contracting specific to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of facilities *other than* trial court facilities and maintenance of facilities, as those activities are the responsibility of the Judicial Council; and
- Any provision of the PCC that does not apply to contracting or procurement by state agencies and departments as such provision is inapplicable to Judicial Branch Entities. (PCC 19208)

The Manual does *not* address procurement and contracting for the following contracts that are unique to the judicial branch and are not subject to the JBCL or this Manual:

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

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

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

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

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

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

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

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

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

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

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

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

[8]Chapters FIN 6.01 and FIN 7.01 of the TCFPPM are not superseded for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.
[9]Under CRC 10.81, references to the "Administrative Office of the Courts" or "AOC" in any policy, procedure, manual, guideline, publication, or other material issued by the Judicial Council or its staff are deemed to refer to the Judicial Council, the Administrative Director, or the Judicial Council staff, as appropriate.

County and other Local Agency Procurement Policies

PCC 19204 requires JBEs to comply with the provisions of the JBCL. This requirement supersedes any county or other local agency policies and procedures that a JBE may have followed prior to October 1, 2011.

7. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at *www.courts.ca.gov/finance.htm*.

8. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

Words used in this Manual to signify requirements or discretion have the meaning and intent specified in the table below.

Use of Words Signifying Requirements or Discretion			
Words→	Words signifying a mandatory duty or prohibition are: "must," "shall," "mandatory," "required," "must not," and "may not"	Words signifying reasonable discretion: "should" and "should not"	Words signifying full discretion: "may" and "encouraged"
When used→	To reflect obligations or prohibitions under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of favored but not mandated business or accounting practices	To provide guidance

Use of Words Signifying Requirements or Discretion			
Compliance→	Mandatory unless there is an applicable exemption	Not mandatory, but favored unless there is a good business reason for variance	Optional
Documentation	Documentation of noncompliance required	Documentation of variance recommended for the appropriate file[10]	None required

9. UPDATES TO THIS MANUAL

This Manual is not meant to be static and should change as processes and procedures better tailored for judicial branch operations are developed or recognized. It is anticipated that this Manual will be reviewed periodically and updated as necessary to ensure effective and efficient contracting and procurement policies across the judicial branch.

[10] If specific to a particular procurement, the procurement file is the appropriate file. If the variation affects many procurements, the JBE may note the variation and include reasons in its Local Contracting Manual.