



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 25, 2013

Title

Judicial Branch Court Facilities Construction
Procurement: Legislative Analyst's Office
March 2013 Report

Agenda Item Type

Information Only

Date of Report

April 12, 2013

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Executive Summary

As required in Senate Bill 78, the Legislative Analyst's Office (LAO) prepared a comparison of the costs and timeliness of construction projects delivered by the judicial branch to those of similar projects completed by the Department of General Services (DGS). The LAO comparison report finds that the judicial branch generally delivered projects in a more timely manner, exceeded its budget less often, and incurred lower project management costs than did DGS.

Previous Council Action

At its business meeting on December 14, 2012, the Judicial Council directed the Administrative Office of the Courts (AOC) to submit the *Judicial Branch Construction Procurement Practices* report to the Joint Legislative Budget Committee (JLBC) by January 15, 2013, to meet Government Code section 70403(d) statutory reporting requirements of SB 78. The report to the JLBC discusses the six projects that the AOC completed for the judicial branch during the reporting period of January 1, 2008, to January 1, 2013.

The Judicial Council report and the SB 78 report can be viewed at the following web link:
www.courts.ca.gov/documents/jc-20121214-itemK.pdf.

Methodology and Process

The JLBC received the AOC's *Judicial Branch Construction Procurement Practices* report on January 8, 2013. SB 78 contains the following direction to the LAO.

“Within 75 days of receiving the report required under subdivision (a), the Legislative Analyst's Office shall conduct an analysis of the findings and, based on information which shall be provided by the Department of General Services, compare the costs and timeliness of methods of delivery used by the judiciary to projects of comparable size, scope, and geographic location procured under the Public Contract Code provisions applicable to state agencies.”

The LAO issued its analysis and comparison in a letter dated March 20, 2013, to the chair of the JLBC, Senator Mark Leno (Attachment A). The AOC issued an acknowledgement of the LAO analysis and comparison in a letter from Administrative Director of the Courts Steven Jahr dated March 28, 2013 (Attachment B), to the chair and vice-chair of the JLBC, Senator Mark Leno and Assembly Member Bob Blumenfield.

Concerns of Stakeholders

The requirement for the judicial branch to report to the JLBC on its construction procurement practices emerged from the negotiation between the judicial branch and the Legislature on the topic of the applicability of the Public Contract Code to the judicial branch's capital construction program. Section 21 of SB 78 amends the Public Contract Code by adding Part 2.5 to Division 2, including the following paragraph.

Notwithstanding any other provision of law, this part does not apply to procurement and contracting by judicial branch entities that are related to trial court construction, including, but not limited to, the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities. However, this part shall apply to contracts for maintenance of all judicial branch facilities that are not under the operation and management of the Department of General Services.

(Pub. Contract Code, § 19204(c).)

Policy and Cost Implications

The policy implications of the LAO report suggest that the judicial branch's construction procurement practices provide positive results.

Summary of Findings

In its analysis and comparison, the LAO made the following findings:

- DGS generally exceeded its project budget more often and by a greater amount than did the judicial branch.
- DGS generally experienced greater project delays than did the judicial branch.
- DGS incurred higher project management costs than those of the judicial branch.
- DGS received more bids on its projects than the judicial branch received—an average of 5.4 bids per project for DGS versus 4.7 bids per project for the judicial branch.
- DGS averaged lower project-per-square-foot costs than did the judicial branch; trial court facilities are significantly more complex than the building types to which they were compared. See Attachment D for a clarification of this finding and an explanation of the judicial branch’s effort through the Courthouse Cost Reduction Subcommittee of the Court Facilities Working Group to lower the costs per square foot for its projects. To date the directives of the Judicial Council and the working group have resulted in more than \$123 million in project cost reductions for 14 projects reviewed by the subcommittee.
- The judicial branch reports higher contractor costs than DGS reports as a percentage of total project costs.

In addition, the LAO recognized that a more in-depth comparison of judicial branch and DGS construction procurement practices, schedules, and costs would ideally be prepared by an independent firm with expertise in construction or project management.

Implementation Efforts

The subcommittee will continue its review of projects in design as authorized by the Judicial Council in October 2012.

Next Steps

The subcommittee is beginning a series of meetings this spring on program-level topics with the goal of continuing to provide robust oversight of the cost of judicial branch projects.

Relevant Strategic Plan Goals and Operational Plan Objectives

The AOC's SB 78 report, the LAO's analysis and comparison, and the ongoing scrutiny of the judicial branch capital construction program emphasize the importance of Goal II, Independence and Accountability, and Goal VI, Branchwide Infrastructure for Service Excellence. The specific objectives in the council's operational plan relevant to improving delivery of judicial branch capital projects are to:

- Partner with other branches and the public to secure constitutional and statutory amendments that will strengthen the Judicial Council's authority to lead the judicial branch (objective II.B.2);
- Improve communication within the judicial branch, with other branches of government, with members of the bar, and with the public to achieve better understanding of statewide issues that impact the delivery of justice (objective II.B.3);
- Measure and regularly report branch performance—including branch progress toward infrastructure improvements to achieve benefits for the public (objective II.B.4);
- Obtain funding/financing to acquire, renovate, construct, and maintain court facilities (objective VI.A.1); and
- Facilitate the acquisition of sites for, and the construction, renovation, maintenance, and expeditious transfer of, court facilities (objective VI.A.2).

Attachments

1. Attachment A: LAO letter to chair of JLBC dated March 20, 2013
2. Attachment B: Letter from Judge Jahr dated March 28, 2013, to chair and vice-chair of JLBC

March 20, 2013

Hon. Mark Leno, Chair
Joint Legislative Budget Committee
Room 5100, State Capitol
Sacramento, California 95814

Dear Senator Leno:

Chapter 10, Statutes of 2011 (SB 78, Committee on Budget and Fiscal Review), required the judicial branch to submit a report to the Joint Legislative Budget Committee (JLBC) on the process, transparency, costs, and timeliness of courthouse construction projects completed by the judicial branch in 2008 through 2012. In accordance with this requirement, the branch provided JLBC with a report on January 8, 2013 that provided a range of information, including the number of bids received for each court construction project, project management and contractor costs, and reasons for any project delays and cost increases. Chapter 10 also required our office to complete within 75 days of JLBC's receipt of the judicial branch report a comparison of the costs and timeliness of construction projects delivered by the judicial branch to similar projects completed by the Department of General Services (DGS). This letter is in response to that requirement.

Summary. We find that the judicial branch generally delivered projects in a more timely manner and exceeded its budget less often than DGS. On the other hand, DGS generally completed projects with lower average costs per square foot and averaged a higher number of bidders on its projects. Despite these differences, it is difficult to draw definitive conclusions about how effectively the judicial branch and DGS managed these projects based on the data provided. Moving forward, if the Legislature would like a more conclusive and in-depth comparison of the judicial branch and DGS construction procurement practices, schedules, and costs, a more detailed study by a firm with extensive practical, technical, and evaluative experience in construction or project management would be needed.

BACKGROUND

The judicial branch maintains its own construction program and retains a great deal of independence and flexibility in setting its own construction standards and processes. In contrast, most state departments rely on DGS to manage their construction projects.

Judicial Branch Construction Program

Chapter 1082, Statutes of 2002 (SB 1732, Escutia)—also known as the Trial Court Facilities Act of 2002—shifted ownership of nearly all trial court facilities from the counties to the state. This legislation also gave the Judicial Council the authority to construct future court facilities,

including authority to establish priorities for court construction projects, recommend specific projects for funding, and implement all phases of the construction procurement process. The judicial branch administers its court construction program through its Judicial Branch Facility Program, which is managed by the Administrative Office of the Courts.

Chapter 1082 authorized Judicial Council to select from a range of project delivery methods in the construction procurement process. Generally, the branch relies on two delivery methods for most of its court construction projects—design-bid-build (DBB) and construction manager at risk (CMAR). We would note, however, that the judicial branch recently used a public-private partnership for the construction of a new courthouse in Long Beach.

DBB Delivery Method. The DBB project delivery method is the one most often used in state infrastructure projects. It involves splitting projects into two distinct phases: design and construction. During the design phase, a contract is awarded to an architectural and engineering firm to develop detailed project plans and specifications. Once project designs are complete, the state invites bids from construction firms and awards the construction contract to the lowest qualified bidder. The judicial branch uses a slightly modified version of the typical DBB process by prequalifying general contractors prior to the solicitation of bids for construction phases.

CMAR Delivery Method. The judicial branch is one of only a handful of state entities with authority to use the CMAR project delivery method. Unlike DBB, this delivery method involves the hiring of a single, specialized construction firm early in the construction procurement process to participate in the design phase and manage the construction phase of the project. Specifically, the CMAR firm coordinates with an architecture and engineering firm on the design, solicits bids from subcontractors and suppliers, generates a guaranteed maximum price for construction, and oversees the entire construction process. The judicial branch prefers this delivery method over DBB. According to the judicial branch, CMAR (1) allows the branch to consider both quality and price when awarding contracts, (2) allows for greater schedule and price certainty because of the involvement of a construction manager during the design phases, and (3) can result in shorter project schedules.

DGS Construction Program

The DGS is responsible for providing various real estate services to most state departments. These responsibilities include the operation, maintenance, and construction of state facilities. Unless otherwise authorized by law, DGS is required to complete construction projects using the DBB project delivery method. In recent years, however, several laws have allowed DGS to use an alternative construction delivery method called design-build (DB) on a limited number of projects.

DB Delivery Method. Under the DB project delivery method, DGS contracts with a single entity for both project design and construction. The DGS prepares a description of the basic concept of the project and then requests qualifications from interested DB entities—which can be a single firm, a consortium of firms, or a joint venture. Based on their qualifications, DGS invites three entities to submit bids. The DGS then evaluates bids on a best-value basis, incorporating factors such as qualifications, design quality, and price. The winning DB entity is responsible for completing the design and all construction at the contract's fixed price. This method provides

similar benefits as CMAR as compared to DBB. Under the DB delivery method, however, DGS input in the design process generally is more limited because the contract price is set before the design phase.

COMPLETED JUDICIAL BRANCH AND DGS PROJECTS

Below, we provide an overview of the construction projects completed by the judicial branch between 2008 and 2012, as well as several DGS projects we chose in order to complete the comparison required by Chapter 10. Figure 1 summarizes the location, design method, project size, and total project cost of each of these projects, which we discuss in more detail below.

Figure 1 Projects Included in Comparison				
(Dollars in Millions)				
Project	Location	Project Delivery Method	Project Size (In BGSF)	Total Project Costs
Judicial Branch Construction Projects				
B.F. Sisk Courthouse (renovation)	Fresno	CMAR	192,000	\$66.6
Richard E. Arnason Justice Center	Pittsburg	CMAR	73,500	49.4
Court of Appeal, Fourth Appellate District, Division Three	Santa Ana	CMAR	52,000	27.5
Lassen Superior Court Hall of Justice	Susanville	DBB	42,300	35.2
Mammoth Lakes Courthouse	Mammoth Lakes	CMAR	20,000	19.3
Plumas/Sierra Regional Courthouse	Portola	DBB	7,312	6.2
DGS Construction Projects				
Caltrans Office Building	Marysville	DB	230,000	\$74.2
Health Laboratory	Richmond	DBB	208,000	51.0
Veteran's Home	Redding	DB	163,000	80.3
Court of Appeal, Fifth Appellate District	Fresno	DBB	61,000	24.6
Traffic Management Center	Fontana	DBB	42,500	35.1
Forensic Laboratory	Santa Rosa	DBB	14,600	10.6
Forest Fire Station	Warner Springs	DBB	4,229	3.9
BGSF = building gross square feet; CMAR = construction manager at risk; DBB = design-bld-build; DB = design-build; and DGS = Department of General Services.				

Judicial Branch Projects. From 2008 through 2012, the judicial branch completed six courthouse construction projects, including the renovation of an existing facility and the construction of five new facilities. These six projects are:

- **B.F. Sisk Courthouse.** The remodeled B.F. Sisk Courthouse in Fresno was completed in July 2010 at a total cost of \$66.6 million. Located in Fresno, this courthouse encompasses 192,000 square feet and consists of 15 civil and family law courtrooms. In addition, the building has central and courtroom level in-custody holding space as well as dedicated jury assembly space.
- **Richard E. Arnason Justice Center.** The new Richard E. Arnason Justice Center in Pittsburg was completed in November 2010 at a total cost of \$49.4 million. This new courthouse encompasses 73,500 square feet and consists of seven multipurpose and

criminal courtrooms. In addition, the building has central and courtroom level in-custody holding space as well as dedicated jury assembly space.

- ***Court of Appeal, Fourth Appellate District, Division Three.*** The new Court of Appeals courthouse in Santa Ana was completed in July 2009 at a total cost of \$27.5 million. This new courthouse encompasses 52,000 square feet and includes one courtroom, office suites for nine justices, a settlement conference center, law library, and staff workspaces.
- ***Lassen Superior Court Hall of Justice.*** The new Lassen Superior Court Hall of Justice in Susanville was completed in April 2012 at a total cost of \$35.2 million. This new courthouse encompasses 42,300 square feet and consists of three multipurpose courtrooms. In addition, the building has central and courtroom level in-custody holding space and dedicated jury assembly space.
- ***Mammoth Lakes Courthouse.*** The new Mammoth Lakes Courthouse was completed in July 2011 at a total cost of \$19.3 million. This courthouse encompasses 20,000 square feet and consists of two multipurpose courtrooms with an additional small multipurpose hearing room. In addition, the building has courtroom level in-custody holding space.
- ***Plumas/Sierra Regional Courthouse.*** The new Plumas/Sierra Regional Courthouse in Portola was completed in October 2009 at a total cost of \$6.2 million. The courthouse encompasses 7,312 square feet and includes one multipurpose courtroom. Unlike most of the above projects, this new courthouse does not include in-custody holding capacity or a dedicated jury assembly space.

DGS Projects. From 2008 through 2012, DGS completed approximately 100 capital outlay projects of varying sizes, scopes, and costs. However, most of these projects did not involve new construction or were too small in size to be included in our comparison analysis with those projects completed by the judicial branch during the same time period. Of the remaining DGS projects, we selected seven. These projects include one courthouse, as well as six additional projects of varying sizes, complexities, scopes, and geographic locations. These seven projects are:

- ***California Department of Transportation (Caltrans) Office Building.*** A new multistory office building in Marysville was completed in June 2011 for Caltrans at a total cost of \$74.2 million. This new building encompasses 230,000 square feet and includes an auditorium, cafeteria, and child care space.
- ***Health Laboratory.*** A new three-story laboratory and office building in Richmond was completed in 2005 for the Department of Health Services at a total cost of \$51 million. This new building encompasses 208,000 square feet and includes parking for approximately 600 vehicles.
- ***Veteran's Home.*** A new veteran's home in Redding was completed in May 2012 for the California Department of Veterans Affairs at a total cost of \$80.3 million. This

new facility encompasses 163,000 square feet and provides 150 beds for residential care, memory care, and skilled nursing.

- ***Court of Appeal, Fifth Appellate District.*** A new state Court of Appeals courthouse in Fresno was completed in August 2007 at a total cost of \$24.6 million. This courthouse encompasses 61,000 square feet over three stories.
- ***Traffic Management Center.*** A new two-story Traffic Management Center in Fontana was completed in June 2011 for Caltrans at a total cost of \$35.1 million. The building encompasses 42,500 square feet and includes a fuel station and communications tower.
- ***Forensic Laboratory.*** A new forensic laboratory in Santa Rosa was completed in March 2008 for the Department of Justice at a total project cost of \$10.6 million. This laboratory encompasses 14,600 square feet.
- ***Forest Fire Station.*** A new forest fire station for the Department of Forestry and Fire Protection was completed in April 2012 at a total cost of \$3.9 million. The new station, which is located in Warner Springs (San Diego County), encompasses 4,299 square feet and consists of a two-bay apparatus building, 12-bed barracks, mess hall, and flammable storage building.

COMPARISON OF JUDICIAL BRANCH AND DGS PROJECTS

As required by Chapter 10, we provide below a comparison of differences in the timeliness of project delivery and costs of the above projects completed by the judicial branch and DGS from 2008 through 2012. In addition, we compare other related issues that were included in the report that the judicial branch provided the JLBC. Specifically, we examined (1) the number of construction bids received, (2) overall project delays, (3) the project per square foot costs, (4) overall project budgets, (5) project management costs, and (6) contractor costs. For each of the comparisons, we discuss the potential reasons for differences between the judicial branch and DGS projects including the role of the delivery methods used where applicable.

DGS Generally Received More Bids

In general, DGS received more bids on its projects than the judicial branch. Despite limiting its DB bids to three bidders (as noted above), DGS averaged 5.4 bids per project. By comparison, the judicial branch averaged 4.7 bids per project.

Many factors can affect the number of bidders on a project including its size and complexity, the construction market, and the delivery method. For example, large and complex projects typically receive fewer bidders because there is a smaller pool of contractors with the financing, skill, and experience required for these projects. This was generally the case in the sample of projects we reviewed. For example, projects over 50,000 square feet averaged fewer bidders than the projects less than 50,000 square feet—3.7 bidders compared to 5.7 bidders for the judicial branch and 3.3 bidders compared to 8.3 bidders for DGS. On average, DGS projects that we examined were somewhat larger than the judicial branch projects. Despite having larger projects, overall DGS averaged more bids than the judicial branch.

We also would expect fewer bidders during busy construction periods—such as during the period preceding the recent recession—because contractors can be more selective on which projects they choose to bid. This was true for the projects we reviewed. Specifically, those projects that went to bid prior to 2009 received an average of just over 3 bidders, while those bid in 2009 or later—after the number of construction projects declined considerably—averaged over 7 bids. In both periods, DGS averaged more bidders per project than the judicial branch.

The delivery method also could limit the number of bidders. In general, we would expect that the pool of firms able to perform DB and CMAR may be smaller than the number that can bid on DBB projects. This is because DB and CMAR firms must have both design and construction management experience. We note, however, that there was no clear pattern of fewer bids for DB and CMAR projects among the projects we reviewed. This may, in part, be because of the small number of projects completed by the judicial branch during the four-year period. As we indicate below, the number of bids on a project could impact both the cost and delivery of the project. For example, a higher number of bids could lead to a lower total project cost or the selection of a more qualified project manager who can deliver projects in a more timely manner.

DGS Generally Experienced Greater Project Delays

Figure 2 (next page) shows the total number of days each judicial branch and DGS project was originally estimated to take, as well as the duration of project delays. As indicated in the figure, overall, judicial branch projects took an average of 26 percent longer to complete than originally proposed. By comparison, DGS projects took an average of 88 percent longer to complete than originally proposed. In the most direct comparison we have—the appellate courthouses completed by the judicial branch and DGS—the judicial branch experienced an overall project delay of 37 percent, while DGS experienced an overall project delay of 85 percent. We note, however, that these projects were completed using different delivery methods in different geographic locations and bidding environments.

We cannot definitively conclude why the judicial branch averaged shorter project delays than DGS. Four judicial branch and four DGS projects experienced delays related to site acquisition, which subsequently delayed the design and construction phases for each project. For both the judicial branch and DGS, many of these delays seemed to be project specific. For example, the B.F. Sisk Courthouse involved a lengthy and difficult transfer of the existing federal courthouse to the county and then to the state. We also note that DGS needed to complete a second site search after originally failing to acquire property for the new Caltrans office building. Similarly, both the judicial branch and DGS experienced delays in the design and construction phases for some projects. Specifically, half of the judicial branch projects experienced delays related to the need to complete architectural redesigns to meet costs during periods of unexpectedly high construction escalation, as well as project scope changes. In comparison, all DGS projects experienced project delays in the design and construction phases. According to DGS, reasons for these delays included obtaining California Environmental Quality Act (CEQA) or Division of State Architect approval, project scope changes, unforeseen site or weather conditions, and failures by contractors and subcontractor to meet construction timelines.

Figure 2

Summary of Project Delays

Project	Original Project Duration (In Days)	Project Delay Change From Original Timeline	
		Days	Percent
Judicial Branch Construction Projects			
B.F. Sisk Courthouse (renovation)	884	544	62%
Richard E. Arnason Justice Center	1,338	405	30
Court of Appeal, Fourth Appellate District, Division Three	1,058	387	37
Lassen Superior Court Hall of Justice	1,098	194	18
Mammoth Lakes Courthouse	1,501	305	20
Plumas/Sierra Regional Courthouse	1,127	—	—
Averages	1,168	306	26%
DGS Construction Projects			
Caltrans Office Building	1,417	1,763	124%
Health Laboratory	1,448	428	30
Veteran's Home	1,190	580	49
Court of Appeal, Fifth Appellate District	1,249	1,064	85
Traffic Management Center	1,280	879	69
Forensic Laboratory	1,584	1,708	108
Forest Fire Station	1,327	1,904	143
Averages	1,356	1,189	88%

DGS = Department of General Services.

One potential reason for the judicial branch's shorter project delays involves the acceleration of certain project phases to complete projects more quickly, thereby minimizing overall project delay. This occurred in three of the six judicial branch projects—the Plumas/Sierra Regional Courthouse, Mammoth Lakes Courthouse, and the Arnason Justice Center. For example, while acquisition for the Mammoth Lakes Courthouse took over a year longer to complete than originally planned, the branch was able to accelerate the design phase by about six months, contributing to a shorter delay in the overall completion of the project. Such accelerations can occur through the completion of more tasks concurrently as well as the shifting of staff time or tasks to take advantage of favorable economic or construction conditions. The judicial branch and their contractors may agree to these actions for a variety of reasons including to meet internal deadlines or to achieve outside incentives (such as maintaining a good relationship with the judicial branch for the future).

DGS Averaged Lower Project Per Square Foot Costs

As shown in Figure 3 (next page), DGS averaged lower project per square foot costs than the judicial branch. Adjusted in 2011 dollars, the judicial branch projects (excluding the judicial branch's B.F. Sisk courthouse, which was a renovation project) averaged \$827 per square foot, while DGS projects averaged \$631 per square foot. (For all project cost calculations, we have excluded acquisition costs because several projects did not have to pay for land.) Interestingly, in the most direct comparison we have, the cost per square foot of the appellate court constructed

by DGS was \$117 less than the per square foot cost of the appellate court constructed by the judicial branch.

Figure 3
Summary of Total Per Square Foot Costs

Project	Project Size (In BGSF)	Total Per Square Foot Costs (In 2011 Dollars) ^a
Judicial Branch Construction Projects		
B.F. Sisk Courthouse (renovation)	192,000	\$388
Richard E. Arnason Justice Center	73,500	708
Court of Appeal, Fourth Appellate District, Division Three	52,000	610
Lassen Superior Court Hall of Justice	42,300	865
Mammoth Lakes Courthouse	20,000	1,026
Plumas/Sierra Regional Courthouse	7,312	927
Average		\$827^b
DGS Construction Projects		
Caltrans Office Building	230,000	\$369
Health Laboratory	208,000	344
Veteran's Home	163,000	524
Court of Appeal, Fifth Appellate District	61,000	493
Traffic Management Center	42,500	873
Forensic Laboratory	14,600	882
Forest Fire Station	4,229	932
Average		\$631

^a Excludes acquisition costs.
^b The B.F. Sisk Courthouse is excluded from the average calculation because it is a renovation.
 BGSF = building gross square feet and DGS = Department of General Services.

It is difficult to fully explain the significant difference in per square foot costs for the above projects. We would note, however, that there are several factors that contribute to the difference. For example, the judicial branch projects we looked at are on average smaller in size than the DGS projects. Smaller projects typically have higher per square foot costs because certain fixed costs (such as for project management, environmental assessments, and procurement) exist regardless of a building's size. Another factor could involve the geographic location of a construction project. It may be more expensive to obtain or transport materials to more remote locations. In addition, the design standards for a project could also impact its square foot costs. For example, the judicial branch may incorporate larger offices or higher quality (and, hence, more expensive) materials for its courthouse projects compared to DGS buildings. It also could be related to the construction process if, for example, the judicial branch expects its contractors to construct facilities on a tighter schedule but at a potentially higher cost. In fact, we found that after controlling for project size, the schedules for judicial branch projects were somewhat shorter on average than DGS projects.

Finally, the higher per square foot costs could be related to the complexity of court facilities. For example, the judicial branch has argued that unique requirements of courthouses (such as the holding cells for inmates awaiting proceedings and separate circulation spaces for the public,

judges and staff, and those in custody) adds material costs and space requirements, thereby making these projects more expensive than other state construction projects (such as office buildings). While courthouses are somewhat more complex than office buildings, the sample of DGS projects that we reviewed includes several projects (such as laboratories and a veteran's home) that also contain complicated features.

DGS Generally Exceeded Project Budgets

As shown in Figure 4, after excluding acquisition costs, DGS generally exceeded its project budget more often and by a greater amount than the judicial branch. The total cost of two of the judicial branch's six projects exceeded their original estimate, though only one exceeded by more than 10 percent. In contrast, five of the seven DGS projects exceeded the department's original budget estimate with four of the five exceeding by more than 10 percent.

Figure 4				
Summary of Project Costs^a				
<i>(Dollars in Millions)</i>				
Project	Original Budget Estimate	Actual Expenditures	Project Costs Change From Original Budget	
			Amount	Percent
Judicial Branch Construction Projects				
B.F. Sisk Courthouse (renovation)	\$61.3	\$65.2	\$3.8	6%
Richard E. Aronson Justice Center	56.5	48.3	-8.2	-14
Court of Appeal, Fourth Appellate District, Division Three	14.8	26.4	11.6	79
Lassen Superior Court Hall of Justice	37.5	33.6	-3.9	-10
Mammoth Lakes Courthouse	20.0	18.9	-1.1	-5
Plumas/Sierra Regional Courthouse	6.1	6.0	-0.1	-1
Averages	\$32.7	\$33.1	\$0.4	1%
DGS Construction Projects				
Caltrans Office Building	\$58.1	\$74.2	\$16.2	28%
Health Laboratory	51.6	51.0	-0.6	-1
Veteran's Home	77.2	80.3	3.1	4
Court of Appeal, Fifth Appellate District	14.0	24.6	10.6	76
Traffic Management Center	38.0	35.1	-2.9	-8
Forensic Laboratory	5.9	10.6	4.6	78
Forest Fire Station	2.2	3.9	1.7	78
Averages	\$35.3	\$40.0	\$4.7	13%

^a Excludes acquisition costs.
DGS = Department of General Services.

According to the judicial branch and DGS, one major reason why projects exceeded their original authorized budget was that the escalation in construction costs was in fact greater than assumed at the inception of the projects. This was particularly true for projects in which preliminary plans were finished between 2004 and 2007, as these projects generally went to bid during a period of high cost escalation. During this period, both judicial branch projects and three of four DGS projects with completed preliminary plans ended up exceeding their original

budget estimates. In contrast, only one of the five judicial branch and DGS projects with preliminary plans finished after 2007—and likely put out to bid in a much softer construction climate—exceeded its original budget. (The other two DGS projects in our comparison completed preliminary plans prior to 2004.)

Another factor that can cause construction projects to deviate from original budgets is scope changes, which are often the result of project-specific issues. However, based on the information provided, none of the judicial branch or DGS projects had scope changes that contributed to projects exceeding original budgets by more than 10 percent.

In summary, we cannot definitively conclude why the judicial branch was more likely to meet project budgets for the projects in our comparison. For example, based on the data available, it is unclear whether the judicial branch is more accurate than DGS at developing budget estimates or perhaps more effective at managing costs. Similarly, we are unable to assess whether the judicial branch is more likely to overestimate its original cost estimates, allowing it to accommodate potential cost increases without exceeding the original budget.

DGS Generally Incurred Higher Project Management Costs

Generally, DGS incurred higher project management costs than the judicial branch. (Project management costs represent the cost of the day-to-day management of a project, including completing site acquisition, CEQA approval, project feasibility reports, procurement of contractors, and risk hazard assessments.) While the judicial branch reported that project management costs accounted for an average of about 3 percent of total project costs, DGS reported that project management accounted for about 6 percent of total project costs. We would note, however, that much of this difference appears to reflect the fact that the judicial branch and DGS tend to define project management costs differently depending on the type of construction delivery method. For example, under the CMAR approach, the judicial branch reports project management costs incurred by the construction manager as part of the contractor costs for a given project. In contrast, DGS reported most work performed by its construction management contractors as project management costs. As a result, it is difficult to accurately compare the differences in project management costs.

Judicial Branch Reports Higher Contractor Costs

As part of our analysis, we found that the judicial branch reports higher contractor costs than DGS. (In state construction projects, it is typical for private contractors to complete most of the design and construction work.) Specifically, the judicial branch reported that all contractor costs accounted for an average of 96 percent of total project costs, while contractor costs only averaged 89 percent of total project costs for DGS. (The percent of total project costs that was for construction contracts for the judicial branch and DGS were similar, averaging 78 percent and 81 percent, respectively.) The judicial branch relied on contractors to a greater extent than DGS, which in part reflects the branch's use of CMAR for most of its projects. Under CMAR, the contracted firm does much of the design and construction management work, whereas DGS staff do some of this work on its projects.

TECHNICAL STUDY NEEDED TO DRAW MORE DEFINITIVE CONCLUSIONS

As described above, the judicial branch delivered projects in a more timely manner and exceeded its budget less often than DGS. On the other hand, DGS averaged a higher number of bidders on its projects and completed projects with lower average costs per square foot. While these differences were clearly significant, drawing definitive conclusions about how judicial branch and DGS construction projects are developed and implemented is difficult for a couple of reasons. First, although we attempted to identify reasonably comparable DGS projects, they were still different types of facilities with different requirements, sizes, delivery methods, locations, and timing of construction, all of which can affect costs and schedules significantly. Second, the small number of projects completed by the judicial branch during this time period makes it difficult to draw reliable conclusions from the limited information available.

Despite the challenges of comparing unlike projects, we were able to identify some potential factors that may explain the differences in costs and timeliness of projects delivered by the judicial branch and DGS. However, if the Legislature would like to draw more definitive conclusions about the effectiveness of the construction procurement processes employed by the judicial branch and DGS, a study comparing the technical details of specific projects by a firm with extensive practical and evaluative experience in construction program or project management would be required. Such a study could specifically identify how effectively the judicial branch and DGS take advantage of the relative benefits of each of the delivery methods they use. The study could also evaluate whether the judicial branch's greater cost per square foot—and thus higher project costs for a comparable DGS building—results in facilities of better quality than those provided by DGS or perhaps reflect the use of different design standards. This type of information could help the Legislature make future policy and fiscal decisions. For example, the Legislature could consider whether changes to design standards or construction materials should be incorporated for future projects.

If you have any questions regarding the above information, please contact Anita Lee of my office at (916) 319-8321 or Anita.Lee@lao.ca.gov.

Sincerely,



Mac Taylor
Legislative Analyst

cc: Members of the Joint Legislative Budget Committee



Attachment B

3 Pages

Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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

STEVEN JAHR
Administrative Director of the Courts

March 28, 2013

Hon. Mark Leno
Chair, Joint Legislative Budget Committee
California State Senate
State Capitol, Room 5100
Sacramento, California 95814

Hon. Bob Blumenfield
Vice Chair, Joint Legislative Budget Committee
California State Assembly
State Capitol, Room 6026
Sacramento, California 95814

Re: Judicial Branch Construction Procurement Practices as required under Senate Bill 78
(Committee on Budget and Fiscal Review), Statutes of 2011, Chapter 10

Dear Senator Leno and Assembly Member Blumenfield:

We have reviewed the letter from the Legislative Analyst's Office (LAO) dated March 20, 2013, to Senator Leno. The LAO has accurately summarized the data presented in our report. We appreciate their analysis of our report and the required comparisons that they completed.

We note that in their discussion of total costs per square foot displayed in Figure 3, the LAO appropriately mentions that project size, geographic location, design standards, and complexity of the building type impact costs. Three of the six judicial branch projects were small projects in remote locations (Lassen, Mammoth Lakes, and Plumas/Sierra). Five of the six judicial branch projects were designed and built under design and technical criteria set forth in the *California Trial Court Facilities Standards* adopted by the Judicial Council in 2006. Most importantly, the complexity of trial court facilities—with their courtrooms, security screening, three separate

Hon. Mark Leno
Hon. Bob Blumenfield
March 28, 2013
Page 2

circulation pathways, in-custody holding, multifunction public lobbies, clerk's counters, public access to records, and jury assembly and deliberation rooms—are significantly more complex than the building types to which they were compared.

Since the time those projects were completed, under the direction of the Judicial Council and the Courthouse Cost Reduction Subcommittee of the Court Facilities Working Group, we have actively reduced the construction budgets of courthouse projects now in the design and site acquisition phases. To date, the directives from the Judicial Council and the working group have resulted in over \$123 million in cost reductions on 14 projects reviewed by the Courthouse Cost Reduction Subcommittee. Thus, we fully expect that, depending on future construction cost escalation, projects now in site acquisition and design will have lower costs per square foot.

As you know, the judicial branch courthouse construction program continues to be impacted by the nearly \$1.5 billion of court user fees originally designated by the Legislature for court construction that have been borrowed, transferred to the General Fund, or redirected to court operations since 2009. To address this funding instability, the Judicial Council has canceled 2 projects and indefinitely delayed 7 others. In addition, if the Governor's proposed FY 2013–2014 budget is enacted, design for another 11 projects will be delayed for a year and another 4 projects will be indefinitely delayed. Adopting the Governor's proposed budget would bring the total amount of court construction funds that have been redirected or borrowed to \$1.7 billion in the last four years.

We appreciate your support of the need for new courthouse construction to replace aging, dilapidated, and unsafe courthouses across the state. If you have any questions related to this letter, please feel free to contact me or Curt Child, Chief Operating Officer at 916-643-7030, Curtis.Child@jud.ca.gov.

Very truly yours,



Steven Jahr
Administrative Director of the Courts

Hon. Mark Leno
Hon. Bob Blumenfield
March 28, 2013
Page 3

SJ/CC/KQ/PM

cc: Members of the Judicial Council

Hon. Brad Hill, Chair, Court Facilities Working Group

Hon. Jeffrey Johnson, Chair, Courthouse Cost Reduction Subcommittee

Ms. Diane F. Boyer-Vine, Legislative Counsel

Mr. Gregory P. Schmidt, Secretary of the Senate

Mr. E. Dotson Wilson, Chief Clerk of the Assembly

Ms. Peggy Collins, Principal Consultant, Joint Legislative Budget Committee

Ms. Jody Patel, Chief of Staff, Administrative Office of the Courts (AOC)

Mr. Curtis L. Child, AOC Chief Operating Officer

Mr. Cory Jaspersen, Director, AOC Office of Governmental Affairs

Mr. Lee Willoughby, Director, AOC Judicial Branch Capital Program Office

Ms. Kelly Quinn, Assistant Director for Business and Planning, AOC Judicial
Branch Capital Program Office

Ms. Teresa Ruano, AOC Office of Communications