



## Judicial Council of California . Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 26, 2013

---

Title	Agenda Item Type
Judicial Branch Administration: Audit Report for Judicial Council Acceptance	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	April 26, 2013
Recommended by	Date of Report
Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch	April 17, 2013
Hon. Richard D. Huffman, Chair	Contact
	John A. Judnick, 415-865-7450 <a href="mailto:john.judnick@jud.ca.gov">john.judnick@jud.ca.gov</a>

Administrative Office of the Courts  
John A. Judnick, Senior Manager  
Internal Audit Services  
Fiscal Services Office

---

### Executive Summary

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E) and the Administrative Office of the Courts (AOC) recommend that the Judicial Council accept the audit report entitled *Audit of the OCCM, Facilities Management Unit - Compliance Audit of Management and Maintenance Services Contracts (2006 through 2011)*. The Facilities Management Unit of the former Office of Court Construction and Management (OCCM) is now part of the Office of Real Estate & Facilities Management. This acceptance complies with the policy approved by the Judicial Council on August 27, 2010, which specifies Judicial Council acceptance of audit reports as the last step to finalization of the reports before their placement on the California Courts public website to facilitate public access. Acceptance and publication of these reports will enhance accountability and provide the courts with information to minimize financial, compliance, and operational risk.

## **Recommendation**

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch and the Administrative Office of the Courts recommend that the Judicial Council, effective April 26, 2013, accept the following “pending” audit report:

1. Audit report dated September 2012 entitled: *Audit of the OCCM, Facilities Management Unit - Compliance Audit of Management and Maintenance Services Contracts (2006 through 2011)*.

This acceptance will result in the removal of the “pending” watermark, and the audit reports will then be placed on the California Courts public website.

## **Previous Council Action**

The Judicial Council at its August 27, 2010, business meeting approved the following two recommendations, which established a new process for review and acceptance of audit reports:

1. Audit reports will be submitted through the Executive and Planning Committee to the Judicial Council. Audit reports will not be considered “final audit reports” until formally accepted by the council.
2. All final audit reports will be placed on the California Courts public website to facilitate public access. This procedure will apply to all audit reports accepted by the Judicial Council after approval of this recommendation.

## **Rationale for Recommendation**

Council acceptance of audit reports submitted by A&E through the Executive and Planning Committee is consistent with the council’s policy for such matters (described under “Previous Council Action”) and with its responsibility under Government Code section 77009(h), which states that “[t]he Judicial Council or its representatives may perform audits, reviews, and investigations of superior court operations and records wherever they may be located.”

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments and policy implications**

The process established for finalizing an audit report, a process that has been thoroughly discussed with judicial branch leadership, involves extensive reviews and discussions with the entity being audited. It also allows, at any point in the process, for the entity (trial courts generally) to request an additional review of the draft audit report by the Chief of Staff before the audit report is placed in a pending status and presented to A&E for review and discussion. At that point, additional comments from A&E could result in further discussions with the entity being audited before the committee recommends submission of the report to the council for acceptance.

A&E in its review of audit reports generally has comments and questions that, in some cases, require additional analysis or discussion with the audit entities whose audit reports are presented to it. Internal Audit Services will ensure that any analysis, comments and questions are addressed with the results provided to A&E.

Additionally, the Judicial Council, in December 2009, adopted rule 10.500 of the California Rules of Court, effective January 1, 2010, which provides for public access to nondeliberative or nonadjudicative court records. Final audit reports are among the judicial administrative records that are subject to public access unless an exemption from disclosure is applicable. The exemptions under rule 10.500(f) include records whose disclosure would compromise the security of a judicial branch entity or the safety of judicial branch personnel. As a result, confidential or sensitive information that would compromise the security of the court or the safety of judicial branch personnel is omitted from audit reports. In accordance with auditing standards, disclosure of the omissions is included in the applicable reports.

### **A&E Committee Comments**

The A&E Committee believes that the Judicial Council should be apprised of the discussion and comments it had concerning Issue 9.2 of Chapter 9. Issue 9.2 is “Contract Cost Model for the Firm Fixed Price Tier Does Not Provide for Accurate Determination of Whether Fair Value Was Received.” Below are the comments of the A&E Committee and those received by A&E from the Trial Court Facilities Modification Working Group (TCFMWG) concerning Issue 9.2.

#### TCFMWG Committee

- On an overall basis the committee expressed concerns that “the time and effort put into the current (data collection) effort will not lead to the most useful information for effective oversight.”
- The committee would like to consider alternative methods of data collection and analysis and metrics to measure the adequacy and value of the service provided under the firm fixed price for O&M.

#### A&E Committee

- The competitive bidding process had multiple bidders in each region which is a primary market industry norm for setting value. The audit report does discuss the flaw in the process based on past data.
  - The conclusion refers to the data gathering as the only valid means of determining whether best value was obtained. This reference is to the means by which an evaluation of the competitive bids can be evaluated based on the GAO report reference.
  - There will be other quantitative and qualitative metrics and analysis proposed to evaluate performance of the vendors including satisfaction surveys, completion and closeout timing on work orders, etc.
- The contract with the vendors does appear to allow for the gathering of data on the firm fixed priced but it does have a cost that was not expected by the vendors.

- The vendors have incurred additional unexpected costs but now after six months the monthly cost is de minimus.
- The vendors should not redirect work efforts based on this additional cost and it does not appear that they have.
- As data has been gathered for six months now, the report's conclusion for this issue is to continue gathering the data for six more months. This will result in a full period of time to use in an analysis.
  - The analysis will result in a recommendation that can be used for future planning and contract renewals.
  - Only a significant variation in cost versus payment may lead to a possible action that currently cannot be determined.
- As indicated above there is a cost benefit to doing this gathering of data. Based upon industry reports it appears prudent to do it acknowledging prior contract data could not be used as a basis for the new contracts.
- The accuracy and completeness of submitted data was a concern as the vendors are not incentivized to provide it. Data that is submitted is being accepted as complete.
  - Data as submitted is used with some indirect cost imputation to determine the approximate costs.
  - The CAFM system is the only system available and is not a cost accounting system but is sufficient for the analysis to be accurate and as complete as desired. One vendor is not using CAFM for this but that is not determined to be a problem.
- Other firm fixed price contracts might be reviewed and data gathering requested. This comment is valid but currently there are only a few small (monetarily) contracts of this type that have other means of controls and assessment for value.

On an overall basis, the committee felt that the gathering of data for a reasonable period of time in order to make informed future decisions on future contract renewals is business prudent, practical, and an accountable action. The decision to move from a primary cost plus model on the old contracts to a primary firm fixed price model on the new contracts is in the past and why it was done is not being critiqued as an approval or indictment.

### **Alternatives**

No alternatives were considered because the recommendation is consistent with approved council policy and with the provisions of Government Code section 77009(h).

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed recommendation imposes no specific implementation requirements or costs, other than the requirement to disclose the attached audit reports through online publication.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The recommendation contained in this report pertains to the activities of IAS and the role it plays in the judicial branch as an independent appraisal entity. IAS's role as an evaluator is important for both the strategic plan and the operational plan of the judicial branch. Specifically, IAS plays an important role as evaluator under Goal II, Independence and Accountability—in particular

Goal II.B.4—by helping to “[e]stablish fiscal and operational accountability standards for the judicial branch to ensure the achievement of and adherence to these standards.” Additionally, IAS has an important role in fulfilling several of the objectives of the operational plan related to Goal II because its work pertains to the requirement that the branch “maintain the highest standards of accountability for its use of public resources and adherence to its statutory and constitutional mandates.” Part of the role and responsibility of IAS also relates to Objective II.B.4 because the audit reports it produces help to “[m]easure and regularly report branch performance.”

### **Attachments**

There are no attachments to this report. The following audit report will be placed on the California Courts public website ( <http://www.courts.ca.gov/12050.htm> ) after the Judicial Council has accepted it:

1. Audit report dated September 2012 entitled: *Audit of the OCCM, Facilities Management Unit - Compliance Audit of Management and Maintenance Services Contracts (2006 through 2011)*.

