



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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2013

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Title	Agenda Item Type
Judicial Branch Administration: <i>Judicial Branch Contracting Manual</i>	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise <i>Judicial Branch Contracting Manual</i>	January 1, 2014
Submitted by	Date of Report
Hon. Richard D. Huffman, Chair Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch	December 2, 2013
	Contact
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### Executive Summary

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E Committee) recommends that the Judicial Council adopt proposed revisions to the *Judicial Branch Contracting Manual*. The California Judicial Branch Contract Law directs the Judicial Council to adopt and publish a manual incorporating procurement and contracting policies and procedures that must be followed by judicial branch entities. The council adopted the initial manual on August 26, 2011, and adopted revisions to the manual on three subsequent occasions. The proposed revisions address issues identified in an audit report issued by the California State Auditor, promote compliance with applicable law, and make other corrections and improvements, including those suggested by members of the Judicial Branch Contracting Manual Working Group and other judicial branch personnel. In addition, the A&E Committee recommends that the council approve a proposed change in reporting practices as recommended by the California State Auditor.

### Recommendation

The A&E Committee recommends that the Judicial Council, effective January 1, 2014:

1. Adopt revisions incorporating a small business preference in the *Judicial Branch Contracting Manual (JBCM)*;
2. Adopt other corrections and improvements to the *JBCM*, as shown in the attached revised manual; and
3. Approve the proposed change in reporting practices recommended by the California State Auditor.

### **Previous Council Action**

At the council's regular business meeting on August 26, 2011, the council: (1) adopted the initial version of the *Judicial Branch Contracting Manual* effective October 1, 2011, the operative date of substantive requirements of the Judicial Branch Contract Law<sup>1</sup> (JBCL); and (2) directed the AOC to report back in December 2011 and present to the council proposed revisions to the manual resulting from further consultation with the Judicial Branch Contracting Manual Working Group as well as feedback from judicial branch entities<sup>2</sup> (JBEs). At its business meeting on December 13, 2011, the council adopted revisions to the Introduction of the *Judicial Branch Contracting Manual* and, as recommended by the Judicial Branch Contracting Manual Working Group,<sup>3</sup> directed the AOC to report further to the council in April 2012 about additional, comprehensive revisions to the manual. At its business meeting on April 24, 2012, the council adopted comprehensive revisions to the manual. The council directed the AOC to report again to the council in August 2012 about additional proposed revisions to the manual, and the council adopted these proposed revisions at its regular business meeting in August 2012.

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<sup>1</sup> Pub. Contract Code, §§ 19201–19210.

<sup>2</sup> Public Contract Code section 19205 defines “judicial branch entity” as “any superior court, court of appeal, the California Supreme Court, the Judicial Council, the Habeas Corpus Resource Center, or the Administrative Office of the Courts.”

<sup>3</sup> The Judicial Branch Contracting Manual Working Group comprises the following judicial branch personnel: Ms. Charlene Ynson, Court Administrator, Court of Appeal, Fifth Appellate District; Ms. Kimberly Flener, Court Executive Officer, and Mr. Rich Holst, Assistant Court Executive Officer, Superior Court of Butte County; Ms. Jean Field, Assistant Director, Habeas Corpus Resource Center; Ms. Tammy L. Grimm, Court Executive Officer, Superior Court of Inyo County; Mr. Chris Anderson, Chief Procurement Officer, and Mr. D. Brett Bianco, Court Counsel, Superior Court of Los Angeles County; Ms. Sherry Clifford, Contracts Officer, Superior Court of Orange County; Mr. Michael J. Cappelli, General Counsel, Mr. Patrick Barney, Contracts Attorney, and Mr. Luke McDannel, Procurement Manager, Superior Court of Riverside County; Ms. Karen Brewer, Senior Contract Officer, and Mr. Fred Cabrera, Contract Services Manager, Superior Court of Sacramento County; Ms. Sharon Sundy, Contract Administrator, Superior Court of San Bernardino County; Mr. James Flohrschutz, Business Services Manager, Superior Court of San Joaquin County; and Ms. Rhonda Mobley, Procurement Specialist, Superior Court of Sonoma County.

## Rationale for Recommendation

### Statutory requirement and development of the manual

The JBCL was enacted on March 24, 2011, and became effective that date. With certain exceptions<sup>4</sup> the JBCL requires JBEs to comply with the provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services.<sup>5</sup> The JBCL applies to all covered contracts initially entered into or amended by JBEs on or after October 1, 2011.<sup>6</sup> As noted above, the JBCL also requires the council to adopt a manual containing procurement and contracting policies and procedures that must be followed by all JBEs.<sup>7</sup> The policies and procedures in the manual must be “consistent with” the Public Contract Code and “substantially similar” to the provisions contained in the *State Administrative Manual (SAM)* and the *State Contracting Manual (SCM)*.<sup>8</sup> It should be emphasized that the requirement that JBEs comply with applicable provisions of the Public Contract Code is independent of the requirement that JBEs follow the policies and procedures in the manual.

Although the statutory deadline for council adoption of the manual was January 1, 2012, if the council had not adopted a manual by the October 1, 2011, operative date, JBEs would have been required to follow applicable policies and procedures in the *SAM* and *SCM* until a judicial branch contracting manual was adopted.<sup>9</sup> The *SAM* and *SCM* collectively consist of four volumes and thousands of pages.<sup>10</sup> Those manuals were developed specifically for use by executive branch entities and reflect the Department of General Services’ (DGS’s) authority and role in executive branch contracting. The *SAM* and *SCM* could not, therefore, be applied wholesale to the judicial branch, but instead needed to be reviewed carefully to segregate applicable provisions from those that are not reasonably applicable to JBEs. Due to the voluminous nature of the *SAM* and *SCM*, JBEs would have been affected immediately by the need to devote significant staff resources to determine which provisions of the *SAM* and *SCM* were reasonably applicable to them, if the council had not adopted the *JBCM* effective October 1, 2011.

Determining which provisions of the *SAM* and *SCM* are reasonably applicable to JBEs is complex. Although *SAM* and *SCM* were not intended to apply to judicial branch procurement and contracting, many portions are intertwined with concepts that are made applicable to JBEs by the JBCL. JBEs would have been understandably uncertain as to which *SAM* and *SCM* provisions apply to their own contracting and procurement activities. Further confusion and inconsistency would have resulted if

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<sup>4</sup> Pub. Contract Code, §§ 19204(c), 19207, and 19208.

<sup>5</sup> *Id.*, § 19204(a).

<sup>6</sup> *Id.*, § 19203.

<sup>7</sup> *Id.*, § 19206.

<sup>8</sup> *Ibid.*

<sup>9</sup> Pub. Contract Code, § 19204(d).

<sup>10</sup> The *SCM* alone comprises over 850 pages.

each JBE attempted to determine on its own which *SAM* and *SCM* provisions should be part of its procurement and contracting processes.

To have a manual in place by the operative date of the JBCL, the time period for development of the manual—including its review by JBE personnel and the public—was extremely compressed. It was recognized that the initial version of the manual would likely suffer from shortcomings as a result of the compressed time for development, but early adoption of the manual was deemed preferable to JBEs being governed by the *SAM* and *SCM*.

Since adoption of the initial manual, staff has worked with the Judicial Branch Contracting Manual Working Group to revise the manual, and the council adopted three sets of revisions. The version of the manual that is currently in effect was adopted by the council in August 2012. There is an ongoing need to revise the manual as applicable laws evolve, and JBE personnel suggest corrections and improvements based on practical experience.<sup>11</sup>

### **Proposed revisions to the manual**

The most significant proposed revisions relate to the addition of a small business preference for the procurement of information technology goods and services. Other revisions are minor, reflecting clarifications requested by JBE personnel, corrections of errors, changes in law, updated nomenclature, reconciliation of internal inconsistencies, elimination of duplicative language, and other less substantive changes.

***Small business preference.*** The JBCL directed the California State Auditor to establish a pilot program to audit six trial courts to assess the implementation of the JBCL by the judicial branch.<sup>12</sup> The California State Auditor completed these audits and delivered a report to the Governor and legislative leaders on March 19, 2013.<sup>13</sup> As part of the audits, the California State Auditor reviewed the extent to which the manual was consistent with the Public Contract Code and substantially similar to the *SAM* and the *SCM*, as required by the JBCL. The California State Auditor noted that the manual lacks a policy related to the state’s small business preference for the procurement of information technology goods and services, and concluded that the absence of such a policy resulted in the manual being inconsistent in that respect with the Public Contract Code. The California State Auditor accordingly recommended that the council include policies in the manual regarding the state’s small business preference for information technology procurements.

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<sup>11</sup> As stated in the Introduction to the manual, “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.”

<sup>12</sup> Pub. Contract Code, § 19210(a).

<sup>13</sup> The full report is available at <http://www.bsa.ca.gov/pdfs/reports/2012-301.pdf>

The AOC Legal Services Office reviewed the relevant law and concluded that JBEs are required by the Public Contract Code to accord to qualifying small businesses the 5 percent small business preference provided for in article 1 of the Small Business Procurement and Contract Act when awarding information technology contracts.<sup>14</sup>

The small business preference requirement is contained in Public Contract Code section 12102.2(c), which provides in its entirety:

The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

Government Code section 14838(b) specifies that the amount of the preference accorded to qualifying small businesses is 5 percent.

The A&E Committee recommends that the council approve adding new language to the manual about a small business preference for information technology procurements (please see section 3.4 of chapter 3 in the attached manual). Under the proposed language, JBEs would be required to provide a 5 percent preference to entities that have been certified as a “small business” or “microbusiness” by DGS. The proposed language mirrors the applicable statutory language, and, therefore, adoption of this language would reduce the likelihood of protests or claims, alleging that a JBE’s small business preference does not comply with Public Contract Code section 12102.2(c).

***SB/DVBE Option.*** The proposed revisions include the addition of an “SB/DVBE Option.”<sup>15</sup> The SB/DVBE Option is a streamlined competitive solicitation process that allows JBEs to target small businesses or disabled veteran business enterprises (DVBEs) in certain circumstances. The statutory authority for the SB/DVBE Option is found in the Small Business Procurement and Contract Act. Because provisions of that act are applicable only to procurements of information technology goods and services by JBEs, the SB/DVBE Option is similarly available only in information technology procurements.

***Clarifications requested by users of the manual.*** Many of the proposed revisions were suggested by members of the Judicial Branch Contracting Manual Working Group and other judicial branch personnel, drawing on their day-to-day experiences using the manual. The goal of these clarifications is to make the manual more effective and workable for judicial branch entities in their procurement and contracting activities. Examples include numerous revisions to

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<sup>14</sup> Gov. Code, §§ 14835–14843.

<sup>15</sup> See *Judicial Branch Contracting Manual*, ch.4C, § D in “Selected Topics Relevant to the Solicitation of IT Goods and Services.”

the chapter dealing with protests, and clarifications on the use of requests for quotes (RFQs) in information technology procurements.<sup>16</sup>

**Corrections.** Certain revisions were made to correct errors or misstatements of law. These include a correction to the definition of a “broker” or “agent” that misstated the statutory definition.<sup>17</sup>

**Changes in law.** Certain revisions were made to reflect changes in law since the last version of the manual was adopted. These include an updated definition of “commercially useful function,” reflecting a change in statute,<sup>18</sup> and removal of the section on parts cleaning contracts, after the corresponding section of the *SCM* was deleted.<sup>19</sup>

**Nomenclature.** Many proposed revisions reflect updated nomenclature. These include updated AOC division and office names, and replacement of the term “repeat sole source authorization” with “special category non-competitively bid contract request” to reflect usage in the *SCM*.<sup>20</sup>

**Internal inconsistencies.** Certain revisions reconcile internal inconsistencies in the manual. For example, inconsistencies exist concerning whether termination for default clauses are recommended or required in contracts,<sup>21</sup> and whether purchase orders must be signed by vendors.<sup>22</sup>

**Duplicative language.** Certain revisions eliminate duplicative language regarding, for example, insurance certificates<sup>23</sup> and payee data records.<sup>24</sup>

**Other revisions.** Other revisions were made to improve formatting, clarify ambiguous wording, and conform defined terms. Most of these revisions are nonsubstantive.

### **Change in reporting**

The JBCL directs the council to provide a semiannual report to the Joint Legislative Budget Committee and the California State Auditor containing information related to procurement of

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<sup>16</sup> *Judicial Branch Contracting Manual*, ch. 4C, step 6.A.

<sup>17</sup> *Id.*, ch. 3, § 3.1.G.1.

<sup>18</sup> *Id.*, ch. 3, § 3.1.G.2.

<sup>19</sup> *Id.*, ch. 8, app. C.

<sup>20</sup> *Id.*, ch. 5, § 5.10.

<sup>21</sup> *Id.*, ch. 8, app. B and ch. 11, § 11.10.C.

<sup>22</sup> *Id.*, ch. 8, § 8.2.A; ch. 4A, step 13; ch. 4B, step 15; and ch. 4C, step 16.

<sup>23</sup> *Id.*, ch. 8, § 8.3.A.3 and ch. 11, § 11.6.

<sup>24</sup> *Id.*, ch. 8, § 8.5.C and ch. 9, § 9.1.E.

contracts for the judicial branch.<sup>25</sup> As noted in the Introduction to the manual, certain contracts are unique to the judicial branch and are not subject to the JBCL or the manual. These excluded contracts are contracts (often referred to as MOUs) between a superior court and the sheriff for court security services, contracts with independent contractor court reporters, and contracts with independent contractor court interpreters.<sup>26</sup> Because these types of service transactions are not subject to the JBCL or the manual, the AOC has not previously included payments related to these transactions in the semiannual report.

As noted above, the California State Auditor completed an initial audit pursuant to the JBCL and delivered a report to the Governor and legislative leaders on March 19, 2013. In this report, the California State Auditor recommended that the AOC include in the semiannual report payments to county sheriffs for court security, as well as payments to independent contractor court reporters and court interpreters. The California State Auditor acknowledged that a valid argument exists for excluding these transactions from the substantive provisions of the JBCL. The California State Auditor's view, however, is that the semiannual reporting required by the JBCL is intended to serve as a tool to aid the Legislature's budget oversight and to provide greater transparency for the public with regard to judicial branch contracting and procurement activities, and accordingly these transactions should be included in the semiannual reports.

Staff recommends including payments to county sheriffs for court security, as well as payments to independent contractor court reporters and court interpreters in the semiannual report. This change in reporting practice, if approved by the council, would not involve revisions to the manual.

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

### **Comments received**

Proposed revisions to the manual were submitted for public comment for two weeks, from September 27 through October 11, 2013. The invitation to comment specifically sought input on whether the revisions are clear and understandable, whether the revisions appear to work from a court operations perspective, and whether the revisions are user-friendly. Three formal comments were received in response to the invitation to comment.<sup>27</sup>

### **Alternatives considered and policy implications**

***Alternative amount of the small business preference.*** As noted above, it is recommended that the council approve adding the proposed language to the manual (as set forth in section 3.4 of chapter 3 in the attached revised manual), which would require JBEs to provide a 5 percent preference for information technology procurements to entities that have been certified as a "small business" or "microbusiness" by DGS.

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<sup>25</sup> Pub. Contract Code, § 19209(a).

<sup>26</sup> *Judicial Branch Contracting Manual*, Introduction, § 5.

<sup>27</sup> A chart providing the full text of the comments and responses is attached at pages 10–29.

An alternative to the foregoing language was proposed by two members of the Judicial Branch Contracting Manual Working Group representing the Superior Court of Riverside County. Under this alternative, the council would instead approve adding language to chapter 3 of the manual requiring JBEs to provide a preference of *up to 5 percent* to entities that have been certified as a “small business” or “microbusiness” by DGS. These members point out that the JBCL requires that the manual be “consistent with” the Public Contract Code,<sup>28</sup> not that the manual identically follow the code. As these members also point out, the Legislature could have used words such as “strictly follow,” “exact compliance,” or “shall not deviate from” instead of the less-demanding “consistent with.” These members urge that if the manual implements a meaningful small business preference program, meeting the overall goals and policies of the program, then a preference of up to 5 percent would be consistent with the Public Contract Code. Finally, the members suggest that fear of protests or lawsuits may be unfounded, because the “administrative construction of a statute or ordinance by the administrative agency charged with its enforcement is entitled to great weight and will be followed unless clearly erroneous.”<sup>29</sup>

If this alternative were adopted, the financial impact of the small business preference would be less, providing less of an incentive for small businesses to seek the preference.<sup>30</sup> As noted above, however, JBEs are required under Public Contract Code section 19204(a) to comply with applicable provisions of the code, and this obligation is distinct from the obligation to follow the policies and procedures in the manual. JBEs must comply with applicable Public Contract Code provisions even if the manual is silent with regard to those provisions. Section 12102.2(c) of that code states that the amount of the small business preference is 5 percent, and this amount is repeated in Government Code section 14838(b). If a JBE adopts a small business preference of less than 5 percent, a reviewing court could determine that the JBE is not in compliance with Public Contract Code sections 12102.2(c) and 19204(a), even if the JBE is in compliance with the manual. As a result, the risk of protest or possibly litigation is higher under this alternative. We do not recommend that the council adopt this alternative.

***Alternative threshold for the small business preference.*** The version of the manual posted for public comment contained a fixed \$5,000 threshold for application of the small business preference.<sup>31</sup> The Superior Court of Orange County submitted a comment requesting that JBEs

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<sup>28</sup> Pub. Contract Code, § 19206.

<sup>29</sup> The members cite *Baldwin v. City of Los Angeles* (1999) 70 Cal.App.4th 819, 838; citing *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 648.

<sup>30</sup> As a hypothetical example, a JBE issues an invitation for bid for IT goods; the resulting contract will be awarded to the lowest responsible bidder. The JBE receives two responsive bids: (i) a bid from AAA Corp, a small business, for \$104,500, and (ii) a bid from BBB Corp, not a small business, for \$100,000. If the value of the small business preference is 5 percent, the contract would be awarded to AAA Corp at the cost of \$104,500. If the value of the small business preference is 3 percent, the contract would be awarded to BBB Corp at the cost of \$100,000. In instances such as these, offering a lower value small business preference would lessen the financial impact of the preference.

<sup>31</sup> *Judicial Branch Contracting Manual*, ch. 4C, step 6.



be provided discretion in determining the threshold for the application of the small business preference.

The \$5,000 threshold is the same as the threshold stated in the *SCM*,<sup>32</sup> which in turn was based on Government Code section 14838.5(c). That statute, however, allows the Director of DGS to establish a higher threshold.

The August 31, 2012, Judicial Council report on the manual noted that the Public Contract Code is often incompatible with judicial branch organization and operations. These incompatibilities include the unique role that DGS plays in executive branch procurement and the authority and discretion that the Public Contract Code grants to DGS. That report acknowledged that JBEs may in certain areas exercise the same authority and discretion granted to DGS. The council adopted numerous revisions to the manual implementing this approach.<sup>33</sup>

Allowing JBEs to alter the threshold for application of the small business preference is consistent with this approach and with the prior revisions adopted by the council. Accordingly, staff implemented the change requested by the Superior Court of Orange County in a footnote proposed in Chapter 4C of the manual, where the threshold is identified.

***Additional edits to proposed small business preference provisions.*** The version of the manual that was posted for public comment included a requirement that JBEs offer a preference to: (1) small businesses, and (2) non-small businesses that subcontract a certain portion of the contract work to small businesses. Upon additional review of the Public Contract Code and Government Code, however, staff determined that JBEs are not required to provide a preference to non-small businesses that subcontract a certain portion of the contract work to small businesses. Public Contract Code section 12102.2(c) requires that JBEs provide a preference to “all qualifying small businesses”; it does not require JBEs to provide a preference to *non-small* businesses that subcontract work to small businesses. Because this preference is not legally required, staff removed the affected language from the proposed revision to chapter 3 of the manual.

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

The small business preference for information technology procurements will place an additional administrative burden on judicial branch procurement staff and is likely to result in increased costs.

### **Attachments**

1. Revised *Judicial Branch Contracting Manual* at: <http://www.courts.ca.gov/documents/JBCM-Draft-to-E-P-120213.pdf>
2. Comment chart at pages 10–29.

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<sup>32</sup> *State Contracting Manual*, vol. 3, ch. 3, § 3.6.0.

<sup>33</sup> See, for example, *Judicial Branch Contracting Manual*, ch. 2, § 2.1.H.1 and ch. 4C, step 11.A.

**ITC Number SP13-08**

**Judicial Administration: *Judicial Branch Contracting Manual***

All comments are verbatim.

*COMMENT CHART*

<b>List of All Commentators</b>		
	<b>Commentator</b>	<b>Comment</b>
1.	Superior Court of Orange County	See comments on specific provisions below.
2.	Hon. Runston Maino, Judge of the Superior Court of San Diego County	See comments on specific provisions below.
3.	Superior Court of San Diego County By Michael Roddy Court Executive Officer	See comments on specific provisions below.

Note: The chart does not indicate the position taken by the commentators (i.e., “Agree,” “Agree if modified,” “Do not agree,” “Not indicated”) because the submitted comments are not amenable to such characterization. Instead, the full text of all comments is stated in the chart that follows, arranged by chapter for ease of reference.

<b>General</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>With regard to non-substantive changes, formatting updates and clarification of internal inconsistencies, OCSC has participated in the technical working group and supports these types of changes as improving the quality, usefulness and intent of the JBCM. As required by the Judicial Branch Contract Law<sup>1</sup>, each judicial branch entity (JBE) must develop a Local Contract Manual (LCM)<sup>2</sup> based upon the JBCM or utilize the JBCM as its compliance manual.</p> <p><sup>1</sup> 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, henceforth referred to as “Judicial Branch Contract Law.”</p> <p><sup>2</sup> PCC, §§ 19206</p>	No response required.

**Socioeconomic and Environmental Programs—Chapter 3**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>Chapter 3 – Clarification of DVBE Incentive – Commercially Useful Function Definition</p> <p>a. This revision further defines that <i>in addition to</i> other requirements in the JBCM, a DVBE provides a “Commercially Useful Function” if the business – “<i>Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment;</i>”</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.
Superior Court of Orange County (OCSC)	<p>Chapter 3 – Clarification of DVBE Incentive – Other Considerations</p> <p>a. DVBE in LPAs: “<i>If a JBE procures goods or services using an LPA that includes DVBE participation, some or all of the purchase may count toward the JBE’s DVBE goal. See Chapter 6 of this Manual for additional information regarding DVBE considerations when using LPAs.</i>”</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.
Superior Court of Orange County (OCSC)	<p>b. The SB/ DVBE Option (covered in more detail in Chapter 4C): “<i>The DVBE incentive is not applicable when a JBE conducts a procurement using the SB/DVBE option</i>”</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.
Superior Court of Orange County (OCSC)	<p>Chapter 3 – Addition of Small Business (SB) Preference<sup>3</sup></p> <p>a. This revision of the JBCM has added a Small Business<sup>4</sup> Preference requirement towards the purchase of <b>IT goods</b></p>	

	<p><b>or services (only)</b> contracts. The requirement is for a five percent (5%) preference.</p> <p>i. A company qualifies as small/micro-business if it “subcontracts a specified portion of the total contract amount to DGS-certified small businesses or microbusinesses”.</p> <p><b>OCSC Recommendation 1:</b> It is unclear how much of the proposer’s response value (“specified portion”) must equal in order to qualify for the preference. Sample documents prepared by the Administrative Office of the Court, Legal Services Office seem to indicate that at least 25% of the contract value must be performed by the proposer itself and must constitute a commercially useful function. OCSC recommends that the JBCL revision be modified to clarify whether JBEs may determine “specified portion” in their LCM or based on a per bid/request for proposal basis. (e.g. Proposers utilizing a subcontractor to claim a small business preference must equal no less than X% of their proposal submittal value.)</p> <p><b>OCSC Recommendation 2:</b> Additionally, since Government Code section 14837(d) provides guidance as to the requirements a business must meet to be certified as a small business or microbusiness, OCSC recommends further clarification as to JBEs discretion in determining the definitions or state that Government Code section 14837(d) definitions must be utilized by the JBEs in their LCM, procedures and forms. Although OCSC concurs with the analysis that JBEs must comply with the provisions of the Public Contract Code (PCC) that are applicable to state agencies related to the procurement of goods and services, it does not concur that all Government</p>	<p>As noted in the preceding report, staff has determined that JBEs are not required to provide a preference to nonsmall businesses that subcontract a certain portion of the contract work to small businesses. Accordingly, the manual has been revised to remove the clause referenced in the comment.</p> <p>PCC section 12102.2(c) provides that “The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.” The term “qualifying small business” in PCC section 12102.2(c) refers to a business certified as a “small business” by the Department of General Services (DGS). DGS has sole responsibility for certifying and determining the</p>
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	<p>Code sections referenced are inherently, specifically and identically applicable to JBEs. Chapter 6.5, Government Code section 11000, does not include JBEs. OCSC does acknowledge that the threshold is “<i>substantially similar</i>” but does not require “specifically identical.” Additionally, since pending legislation (CA AB 172), if enacted and currently held in suspension, may impose a modification of Government Code section 1438 whereby a “microbusiness” would receive a 7% preference under the same Small Business Procurement and Contract Act, OCSC recommends that a clarification be included as to JBEs discretion of interpreting these definitions. A sample of the definitions in Government Code section 14837 is provided for reference below.</p> <p>Definition from Government Code section 14837(d) (1)  <i>“Small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.</i></p> <p>(2) <i>“Microbusiness” is a small business which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.</i></p> <p><sup>3</sup> PCC 12102.2(c) Note: This state law requires Judicial Branch Entities to provide a small business preference in</p>	<p>eligibility of small businesses and microbusinesses (Gov. Code, § 14839.1), and DGS uses the definitions in section 14837(d) of that code as the basis for its certification process. Because these definitions are used by DGS, not JBEs, no clarification regarding the definitions is necessary. If legislation is passed increasing the preference for microbusinesses to 7%, additional legal analysis will be required to ascertain the effect on JBE procurement.</p>
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	<p>the award of IT goods or services contracts.  <sup>4</sup> See Government Code section 14837(d) for requirements a business must meet to be certified as a small or a microbusiness.</p>	
Superior Court of Orange County (OCSC)	<p>ii. The five percent preference procedure – (e.g. similar to DVBE where the preference is related to price – 5% artificial discount/reduction or is it a 5% added to the proposer’s entire score).</p> <p><b>OCSC supports the decision that procedural guidelines are not specifically mandated in this JBCM and allow JBEs flexibility in developing local procedures and forms. AOC/LSO has provided samples as guidance and those should be useful for each JBE to develop procedures in accordance with the policy as written.</b></p>	<p>The manual has been drafted to provide JBEs with maximum flexibility. As stated in Chapter 3, section 3.4, however, the procedures adopted by the JBE must implement the requirements of applicable provisions of article 1 of the Small Business Procurement and Contract Act (Gov. Code, §§ 14835–14843).</p>
Superior Court of Orange County (OCSC)	<p>iii. There is an “encouragement” to utilize LPAs that include Small Business Participation (as opposed to performing new solicitations).</p> <p><b>OCSC recommends that the phrase “<i>JBEs are encouraged to procure IT goods and services using LPAs that include Small Business participation</i>” be removed. OCSC contends that JBEs should be encouraged to comply with all requirements of the PCC, laws, rules and regulations and as such to make sound financial decisions, ensuring fairness and good stewardship of public funds.</b></p>	<p>The manual has been revised to replace the language referenced in the comment with the following sentence: “JBEs may procure IT goods or services using LPAs that include Small Business participation.”</p>

<b>Step-by-Step Guide for the Procurement of Non-IT Goods—Chapter 4A</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>Chapter 4A – Step 13 - Create the Contract</p> <p>a. A clarification was added to the description of memorializing a purchase (for Non-IT Goods) by using a contract, which stated that a mutually executed contract was not necessary if a Purchase Order is issued.</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.

<b>Step-by-Step Guide for the Procurement of Non-IT Services—Chapter 4B</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>Chapter 4B – Step 15 – Create the Contract</p> <p>a. A clarification was added to the description of memorializing a purchase (for Non-IT Services) by using a contract, which stated that a mutually executed contract was not necessary if a Purchase Order is issued.</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.

<b>Step-by-Step Guide for the Procurement of IT Goods and Services—Chapter 4C</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>Chapter 4C (IT Goods and Services) – Step 6 – Draft Solicitation Document—Clarifications added</p> <p>a. <i>“Bidders may claim a small business preference in any competitive solicitation of IT goods and services of \$5,000 or more. Applicable Solicitation Documents must contain language regarding the small business preference. For additional information regarding the small business preference, see chapter 3, section 3.4.”</i></p> <p>b. <i>“Before soliciting Bids in response to an RFQ, the JBE</i></p>	



**Step-by-Step Guide for the Procurement of IT Goods and Services—Chapter 4C**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>should determine whether the contract resulting from the RFQ will be awarded on a “lowest responsible bidder” basis or on a “highest scored bid” basis. If the RFQ is being used to procure hardware independently of a system integration project, the JBE may award the contract on a “lowest responsible bidder” basis or on a “highest scored bid” basis. Otherwise, the JBE must award the contract on a “highest scored bid” basis.”</i></p> <p><b>OCSC Recommendation: These changes are supported by OCSC with the exception that JBEs be provided discretion in determining the threshold for the application of the Small Business preference, as recommended above.</b></p>	<p>The manual has been revised to include the following footnote: “\$5,000 is the threshold used in the executive branch; see <i>State Contracting Manual</i>, volume 3, section 3.6.0. A JBE may adopt a higher or lower threshold for the application of the small business preference in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that the higher threshold is reasonable and appropriate.”</p>
<p>Superior Court of Orange County (OCSC)</p>	<p>Chapter 4C (IT Goods and Services) – Step 14 – Evaluate Bids</p> <p>a. Non-cost evaluation publication should EXCLUDE small business preference and DVBE incentive (as these cannot be properly applied until both non-cost and cost portions of the Bids have been scored).</p> <p><b>OCSC Recommendation: These changes are supported by OCSC.</b></p>	<p>No response required.</p>
<p>Superior Court of Orange County (OCSC)</p>	<p>Chapter 4C (IT Goods and Services) – Step 16 – Create the Contract</p> <p>a. A clarification was added to the description of memorializing a purchase (for IT Goods or Services) by</p>	

**Step-by-Step Guide for the Procurement of IT Goods and Services—Chapter 4C**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>using a contract, which stated that a mutually executed contract was not necessary if a Purchase Order is issued.</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	<p>No response required.</p>
<p>Superior Court of Orange County (OCSC)</p>	<p>Chapter 4C (IT Goods and Services) – SB/DVBE Option Addition</p> <p>a. This addition summarizes a unique competitive solicitation for IT Goods and Services procurements between \$5,000 and \$250,000. In order to utilize this option, the Court must target EITHER Small Businesses or DVBEs and the Court MUST receive responsive bids from at least TWO (2) Small Businesses or TWO (2) DVBEs.</p> <p>b. This procurement has many unique steps and benefits (no protests are allowed, no public bid opening requirement, allows for “<i>loss leader</i>” language omission, no additional small business/DVBE incentive, no fixed bid closing date requirement, no advertising requirement– as the bid is submitted directly, no public posting requirement, confidential until contract is executed, bid is “competitive” if it meets the two qualifying bidder requirement, no intent to award posting is required).</p> <p><b>OCSC Recommendation: These changes are supported by OCSC with the exception that JBEs be provided discretion in determining the threshold for the application of the Small Business preference.</b></p>	<p>See response above describing the new footnote regarding the threshold for application of small business preference generally. Government Code section 14838.5 limits use of the SB/DVBE option to procurements with values between \$5,000 and \$250,000. Government Code section 14838.5 does not allow those dollar amounts to be altered.</p>

**Non-Competitively Bid (NCB) Procurements—Chapter 5**

Commentator	Comment	Committee Response
Superior Court of Orange County (OCSC)	<p>Chapter 5 (Non-Competitively Bid Procurements) – Footnote – Emergencies</p> <p>a. A new footnote was added that allows for an approving authority or delegate to authorize the purchase of non-IT services if necessary for the protection of state property.</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.

**Leveraged Procurement—Chapter 6**

Commentator	Comment	Committee Response
Superior Court of Orange County (OCSC)	<p>Chapter 6 (Leveraged Procurements) – Applicability to DVBE Requirements</p> <p>a. If an LPA meets DVBE threshold requirements then some or all of the procurement could count towards the Court’s DVBE goals. This provision was added to the JBCM.</p> <p><b>OCSC Recommendation: This change is supported by OCSC.</b></p>	No response required.
Superior Court of Orange County (OCSC)	<p>Chapter 6 (Leveraged Procurements) – Step 2 – LPA Planning</p> <p>a. This revision added a fourth bullet under “<i>Determine the structure of the LPA, including, for example, the following:</i>” “<i>If the LPA involves DVBE or small business participation, include provisions (for example, in the LPA user instructions) regarding to what extent entities procuring under the LPA may be able to claim DVBE or small business participation.</i>”</p>	

**Leveraged Procurement—Chapter 6**

Commentator	Comment	Committee Response
	<b>OCSC Recommendation: This change is supported by OCSC.</b>	No response required.

**Protests—Chapter 7**

Commentator	Comment	Committee Response
Superior Court of Orange County (OCSC)	<p>Chapter 7 (Protests)</p> <p>a. Deadline for Receipt of Protest. This revision added the clarification that if no deadline was indicated in the solicitation document for a “<i>specification</i>” protest, then the deadline for a “<i>specification</i>” protest would be at the time of Bid Closing.</p> <p>b. This revision also clarified that failure of a Bidder to submit a timely award protest constitutes a waiver of the Bidder’s right to protest the award.</p> <p>c. A footnote was added that JBEs may in its sole discretion extend any deadline in the table for protest procedures for the receipt of the “Required Information” as defined in section C.</p> <p>d. Additionally, this revision provided directions for protest appeals officers to consider when determining appropriate remedial action (and what remedial actions “may” include).</p> <p><b>OCSC Recommendation: These changes are supported by OCSC, with the exception that OCSC suggests that the phrase “but are not limited to” be added to the following:</b></p> <p>“Remedial actions may include, <b>but are not limited</b></p>	<p>The committee agrees with the comment. Because this issue affects the entire manual, however, the following statement has been added to the Introduction: “In this Manual, when the verb ‘include’ is used to preface a list, the list is not exhaustive.”</p>

Protests—Chapter 7		
Commentator	Comment	Committee Response
	<p>to:”</p> <p>“In determining the appropriate remedial action, the protest appeals officer should consider all circumstances surrounding the procurement, <b>including, but not limited to:</b>”</p> <p><b>OCSC makes this recommendation in acknowledgement of the fact that the PCC is a set of constantly changing volume of law with intricacies and overlays of other codes and requirements. Other options may be available or become available to which the JBEs should not be limited simply because the phrase was not included in the JBCM.</b></p>	

Contracts—Chapter 8		
Commentator	Comment	Committee Response
Superior Court of Orange County (OCSC)	<p>Chapter 8 (Contracts)</p> <p>a. The requirement that Insurance Certificates be received prior to work beginning was removed.</p> <p>b. This revision indicates the domestic partners, spouses, gender language requirement may be omitted under certain limited circumstances</p> <p>i. <i>“(i) there is only one prospective contractor willing to enter into a specific contract with the JBE; (ii) the contract is necessary to respond to an emergency, as determined by the JBE, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this CCC capable of responding to the emergency is immediately available; or (iii) the requirements of this</i></p>	

	<p><i>CCC violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the JBE to change the terms or conditions of any grant, subvention, or agreement to authorize application of this CCC.”</i></p> <p>c. This revision added Small business preference commitment language as mandatory if a Vendor received a SB preference in connection with the agreement (only for IT Goods &amp; Services procurements).</p> <p>d. This revision added suspension of work language as recommended – if temporary delay is a possibility, particularly in large-scale or complex service agreements.</p> <p>e. This revision added language regarding GC 77212(a) – a court may include the following in its court-county MOU</p> <p>i. “Costs. Costs charged to the court may not exceed the costs of providing similar services to county departments or special districts (GC 77212(a)).”</p> <p><b>OCSC Recommendation: These changes are supported by OCSC as they provide JBEs additional flexibility in determining business risk vs. compliance with JBCL requirements.</b></p>	<p>No response required.</p>
<p>Mr. Michael Roddy Court Executive Officer of the Superior Court of San Diego County</p>	<p>Our court generally supports this proposal. However, we have substantial concerns about the language set forth at Chapter, 8, p. 17 of 30 (Appendix A), Note 3. While we appreciate that the goal of this provision is to give the courts some flexibility on this requirement, we are very concerned that it will lead to unintended results. For example, what if a court issues an RFP and receives 5</p>	<p>The language referenced in this comment is quoted from PCC section 10295.3(c), which states:</p> <p>After taking all reasonable measures to find a contractor that complies with this section, as determined by the state agency, the requirements of this section may be waived</p>

	<p>responsive bids and the only bidder that will agree to accept this provision is the least qualified and is twice as expensive as the other 4? Would the court in that instance be required to award the bid to that vendor? Whether the vendor will agree to the provision should not be the determining factor in deciding to whom the contract should be awarded. Ideally we would like to have a note that states something to the effect that we may enter into a contract with a vendor without the clause if we have negotiated in good faith to include the clause but the vendor refuses. If that is not possible, we believe it would be better not to include the note at all because it is too limiting. Otherwise, if it is to be included, we suggest the following edits:</p> <p>This CCC may be omitted if, after the JBE has taken all reasonable measures to find a contractor that complies with this CCC, the JBE determines that: (i) there is only one prospective <u>and qualified</u> contractor willing to enter into a specific contract with the JBE; (ii) the contract is necessary to respond to an emergency, as determined by the JBE, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this CCC capable of responding to the emergency <u>or providing the essential service</u> is <del>immediately</del> <u>available in the necessary timeframe</u>; or (iii) the requirements of this CCC violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the JBE to change the terms or conditions of any grant, subvention, or agreement to authorize</p>	<p>under any of the following circumstances:</p> <p>(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.</p> <p>(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.</p> <p>(3) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.</p> <p>(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures, and further</p>
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	<p>application of this CCC.</p>	<p>provided that this exemption does not apply to contractors providing direct retail services to end users.</p> <p>(Note: Subsection (4) was omitted from the JBCM because it is very unlikely that a JBE will purchase wholesale or bulk water, power or natural gas from a non-direct retail provider.)</p> <p>PCC section 19204(a) states that “All judicial branch entities shall comply with the provisions of [the PCC] that are applicable to state agencies and departments related to the procurement of goods and services, including information technology goods and services.” Accordingly, JBEs are subject to the language contained in PCC section 10295.3(c) whether or not the language is quoted in the JBCM. Because the language is statutory in nature, the suggested edits were not made.</p>
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<b>Receiving, Inspection, and Acceptance or Rejection of Goods and Services—Chapter 10</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>Superior Court of Orange County (OCSC)</p>	<p>Chapter 10 (Receiving, Inspection and Acceptance or Rejection of Goods and Services)</p> <p>a. A footnote was added indicating that JBEs may also need to retain copies of contracts in accordance with record retention requirements and not just until a Vendor has met all of its obligations.</p> <p><b>OCSC Recommendation: This change is supported by OCSC as providing clarity.</b></p>	<p>No response required.</p>



**Contract Administration—Chapter 11**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County (OCSC)	<p>Chapter 11 (Contract Administration)</p> <p>a. Clarifications were added related to various Vendor information JBEs <i>should</i> maintain.</p> <p><b>OCSC Recommendation: This change is supported by OCSC as providing clarity with the exception that OCSC recommends that a footnote be added that “Lists” not be defined, intended or construed to mean that this data or information be maintained in one singular system but that it may be available in system(s) or record keeping maintained by the JBE.</b></p>	<p>A footnote has been added to the proposed revisions, clarifying that the list may be maintained in multiple record-keeping systems. In addition, JBEs may include information in their local contracting manuals about how they maintain vendor information, if desired.</p>
	<p>b. A clarification was added regarding the definition of an “Amendment.” The language clarifies that an amendment is a contract modification authorized by the parties (not including options or change orders for example when change orders are not permitted by the original contract or when the modification exceeds the scope of changes that may be made by change order.</p> <p><b>OCSC Recommendation: This change is supported by OCSC as providing clarity.</b></p>	<p>No response required.</p>
Superior Court of Orange County (OCSC)	<p>c. Language was deleted regarding release of Vendor obligations with respect to the cancelled portion of the contract when terminating due to non-availability of funds.</p> <p><b>OCSC Recommendation: This change is supported by OCSC as providing clarity. The previous language could be interpreted to imply that Vendors were released from <i>all</i> obligations as a result of termination</b></p>	<p>No response required.</p>

**Contract Administration—Chapter 11**

Commentator	Comment	Committee Response
	<b>under this circumstance which is not the case. Performance of certain portions of the Work may cease but obligations may continue.</b>	
Superior Court of Orange County (OCSC)	<p>d. Language was modified to recognize that Termination for Cause <i>should</i> be included vs. <i>must</i> be included to protect the JBE in the event of a Vendor default and in absence of a Termination for Convenience clause.</p> <p><b>OCSC Recommendation: This change is supported by OCSC as providing additional flexibility to the JBEs in their business risk analysis vs. JBCL compliance requirements.</b></p>	No response required.

**Reporting Requirements—Chapter 12**

Commentator	Comment	Committee Response
Hon. Runston Maino Judge of the Superior Court of San Diego County	<p>The Jan–June 2013 Semi Annual Report on Judicial Branch Contracts as required by Public Contracts Code 19209 was sent to Senator Leno and to the State Auditor by the AOC.</p> <p>The entire document is about 800 pages long. I concentrated on Attachment 1a which is 306 pages long. This attachment lists contracts various courts have made. When there was an "Inc" or a "Corp" or a "LLC or a LLP" I looked these entities up on the Secretary of State web site to see if they were authorized to do business in California. I found about 300 contracts that did not come back as being authorized to do business in California according the web site maintained by the Secretary of State.</p>	An entity that does not transact intrastate business in California is not required to qualify to do business in California. (See Cal. Corp. Code, §§ 2105, 17451, and 15909.01 et seq.) It is possible that some of the 300 entities identified by the commentator are not required to qualify to do business in California.

**Reporting Requirements—Chapter 12**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Here are some contracts that my court, the San Diego Superior Court, entered into for which I can find no listing by the Secretary of State. In view of the fact that spelling is critical in this investigation and that errors could have been made by the vendor, the local court, the AOC or by me I cannot guarantee complete accuracy.</p> <p>Page 79: Wiley Price Radulovich LLP: This is a law firm that did \$20,000.00 worth of legal work for our court. They claim to be listed as an LLP by the State Bar but they are not listed by the Secretary of State as an LLP. I note that according to the State Bar one cannot get a listing with them unless there is a Secretary of State listing.</p> <p>Page 79: Quayle Consulting. This is a contract for \$3450.00 for IT maintenance.</p> <p>Page 294: Digidert. \$1786.00 for IT supplies/repairs/license.</p> <p>Page 300: 6210725 Can Incorporated for \$3000.00 for dues and memberships.</p> <p>Page 302: Sigma Internet. \$35,027.20 for minor equipment.</p> <p>Page 302: RAI or RAC, I forgot which, for \$5913.01 for minor equipment.*<sup>34</sup></p>	<p>The California Secretary of State web site contains a “business search” function accessible at <i>kepler.sos.ca.gov</i>. As noted on that page, the business search function “provides access to domestic stock, domestic nonprofit and qualified foreign corporations, limited liability company and limited partnership information of record with the California Secretary of State.” The business search function does not include LLPs.</p>

<sup>34</sup> Please note: Judge Maino subsequently stated (through public comment): “It is RAL Investment on page 302.”

**Reporting Requirements—Chapter 12**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Page 304: RFP Depot LLC: \$28,470.00 for library purchases.</p> <p>Page 304: Virtua. \$15,000.00 for training.</p> <p>My suggestion is that the training manual be written to leave no doubt in the minds of our local PJs and CEOs that it is their responsibility to make sure that every contract that they enter into is with a valid business entity.</p> <p>I also think that there should be a directive in the training manual that the AOC is to double check the work of the local courts and before the AOC sends out something this</p>	<p>The <i>Judicial Branch Contracting Manual</i> contains procurement and contracting policies and procedures as required by PCC section 19206; it is not a training manual. California Rules of Court, rule 10.603(c)(6)(D) assigns responsibility for contracting to the Presiding Judge, who may in turn delegate this authority to the Court Executive Officer. With regard to qualification to do business in California specifically, the manual requires that contracts with corporations, LLCs, and LPs contain a certification that the vendor or contractor is qualified to do business in California if the contract will be performed in California. Applicable law does not require JBEs to search the Secretary of State web site to confirm that a vendor or contractor is qualified to do business in California prior to entering a contract with that vendor or contractor, although as a matter of due diligence a JBE may desire to do so. If a JBE wishes to require such a search, it can adopt a requirement in its local contracting manual.</p> <p>The semi-annual report to which the comment refers is provided to the Joint Legislative Budget Committee and California State Auditor in</p>

**Reporting Requirements—Chapter 12**

<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>important to a State Senator or the Director of Finance that it is accurate.</p> <p>Needless to say, contracting with entities that are not authorized to do business in California is a very poor practice.</p>	<p>accordance with PCC section 19209. That statute requires each report to “include a list of <b>all</b> vendors or contractors receiving payments from any judicial branch entities.” (Bolding added.) Information about the business status of a vendor or contractor is irrelevant to the question of whether it received payments from a JBE, as information about all payments must be reported in order to comply with PCC section 19209.</p>