



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No. 21-129*

For business meeting on October 1, 2021

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<b>Title</b>	<b>Agenda Item Type</b>
Judicial Branch Administration: Revisions to <i>Judicial Branch Contracting Manual</i>	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
None	October 15, 2021
<b>Recommended by</b>	<b>Date of Report</b>
Advisory Committee on Audits and Financial Accountability for the Judicial Branch Hon. David Rosenberg, Chair	October 1, 2021
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### Executive Summary

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council adopt proposed revisions to the *Judicial Branch Contracting Manual*. The proposed revisions include edits regarding waivers of the Disabled Veteran Business Enterprise (DVBE) incentive, as well as edits regarding judicial branch entities' reporting requirements, to reflect amendments to Public Contract Code section 19209.

### Recommendation

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council, effective October 15, 2021, adopt proposed revisions to the *Judicial Branch Contracting Manual*.

The proposed revisions to the *Judicial Branch Contracting Manual* are shown in Track Changes in Attachment A.

## Relevant Previous Council Action

At the Judicial Council’s regular business meeting on August 26, 2011, the council adopted the initial version of the *Judicial Branch Contracting Manual* (referred to as the JBCM or manual), effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law (JBCL).<sup>1</sup> In December 2011, April and August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, and September 2020, the council adopted revisions to the JBCM. The version of the JBCM adopted by the council on September 25, 2020, effective October 1, 2020, remains in effect as of the date of this report.<sup>2</sup>

## Analysis/Rationale

### Statutory requirement and development of the JBCM

The JBCL was enacted on March 24, 2011, and became effective on that date. With certain exceptions,<sup>3</sup> the JBCL requires that superior and appellate courts, the Judicial Council, and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities, or JBEs) comply with provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services.<sup>4</sup> The JBCL applies to all covered contracts initially entered into or amended by JBEs on or after October 1, 2011.<sup>5</sup> 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>6</sup>

This report is being submitted by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee) pursuant to rule 10.63 of the California Rules of Court. Under rule 10.63, the duties of the Audit Committee include (1) advising and assisting the council in performing its responsibilities and exercising its authority under the JBCL, and (2) reviewing and recommending to the council proposed updates and revisions to the JBCM.<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* and the *State Contracting Manual*.”<sup>8</sup> 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 JBCM. Since the adoption of the initial JBCM, Judicial Council staff has

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

<sup>2</sup> The current version of the JBCM is at: <https://www.courts.ca.gov/documents/jbcl-manual.pdf>.

<sup>3</sup> *Id.*, §§ 19204(c), 19207, and 19208.

<sup>4</sup> *Id.*, § 19204(a).

<sup>5</sup> *Id.*, § 19203.

<sup>6</sup> *Id.*, § 19206.

<sup>7</sup> Cal. Rules of Court, rule 10.63(c)(2)–(c)(3).

<sup>8</sup> Pub. Contract Code, § 19206.

continued to receive input from the JBCM Working Group regarding proposed revisions to the JBCM, and the council has adopted 10 sets of revisions.

### **Proposed revisions to the JBCM**

Edits are proposed for Chapter 3 (pages 5–6) of the JBCM, as a result of *State Contracting Manual* (SCM) revisions regarding the Disabled Veteran Business Enterprise (DVBE) incentive. The new SCM provisions include additional guidance on factors that may be considered when determining waivers of the DVBE incentive, as well as additional procedures on DVBE waiver forms.<sup>9</sup> As mentioned above, the JBCL requires the JBCM to be substantially similar to the SCM. Therefore, additional provisions regarding DVBE waiver factors and DVBE waiver forms are proposed for the JBCM, Chapter 3, which is the main chapter on the DVBE incentive.

Assembly Bill 3364<sup>10</sup> amended Public Contract Code section 19209 (which is part of the JBCL) by changing judicial branch entities' reporting requirements.<sup>11</sup> For example, reports related to court contracts and payments that were previously required by section 19209 to be submitted twice a year to the Joint Legislative Budget Committee and the State Auditor, are now required to be submitted once a year. The amended section 19209 also contains new provisions regarding reporting through the Financial Information System for California (FI\$Cal). Edits are proposed for Chapter 12 (Reporting Requirements) of the JBCM, so that Chapter 12's descriptions of reporting requirements reflect the amended section 19209. In addition, edits are proposed for section 12.2 of Chapter 12, to facilitate judicial branch entities' notifications to the California State Auditor, as required under Public Contract Code 19204(a).<sup>12</sup> For example, proposed edits include listing the email address established by the State Auditor for judicial branch entities' notifications under section 19204(a).

### **Policy implications**

As mentioned above, the JBCL requires the JBCM to be consistent with the Public Contract Code and substantially similar to the SCM. Adopting the proposed revisions regarding AB 3364's amendments to section 19209 will enable the JBCM to remain consistent with the Public Contract Code. The proposed edits regarding DVBE waivers will provide judicial branch entities

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<sup>9</sup> For example, see Chapter 3, Section 3.3.1 of the *State Contracting Manual* (Vols. 2–3, rev. Dec. 2020) at: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual>.

<sup>10</sup> Stats. 2020, ch. 36.

<sup>11</sup> More information about AB 3364 is available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB3364](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3364).

<sup>12</sup> Under Public Contract Code section 19204(a), all contracts with total cost estimated at more than \$1 million (except contracts covered by section 68511.9 of the Government Code) are subject to the review and recommendations of the California State Auditor to ensure compliance with the JBCL. Public Contract Code 19204(a) requires judicial branch entities to notify the State Auditor, in writing, of the existence of such contracts within 10 business days of entering into the contract.

with additional guidance on DVBE waivers, and also enable the JBCM to remain substantially similar to the SCM.

### **Comments**

Following review by the JBCM Working Group, the proposed revisions to the JBCM were submitted for public comment from May 25 through June 9, 2021. The invitation to comment specifically sought input on whether the revisions were clear and understandable, appeared to work from a court operations perspective, and were user-friendly. No public comments were received.

### **Alternatives considered**

None.

### **Fiscal and Operational Impacts**

No significant costs or operational impacts will result from implementing the recommendations in this report.

### **Attachments**

1. Attachment A: *Judicial Branch Contracting Manual*, with proposed revisions in Track Changes format

- Upon completion of the contract term, requiring each prime contractor with DVBE subcontractors to submit to the JBE certain certifications under MVC 999.5(d).

#### **D. Adoption of Rules and Procedures for a DVBE Program**

Each JBE must develop or adopt a set of rules and procedures for the implementation of a DVBE program. DGS has established a system of rules and regulations for managing the DVBE program that includes forms that may be adopted and modified by JBEs that wish to establish their own program. The Judicial Council's Business Services unit and the Legal Services office are available to assist courts in establishing a program.

Rules and procedures for the following must be established:

- A method for monitoring adherence to DVBE goals;
- Use of existing state government resources to assist in implementing the DVBE program; and
- Incentive amounts and a formula for incentive calculation for procurements that are subject to DVBE incentives.

Solicitation Documents should be drafted to include reference to DVBE procedures and contracts must include appropriate DVBE provisions.

#### **E. Appointing a DVBE Advocate**

Each JBE must designate a DVBE advocate whose duties include, but are not limited to:

- Identifying potential DVBE prime contractors or subcontractors and potential contracting opportunities; and
- Making information regarding pending solicitations available to and considering offers from certified DVBE firms capable of meeting the JBE's business needs. (MVC 999.12)

#### **F. Waiver of a DVBE Incentive**

Although all competitive procurements are subject to the DVBE incentive, a JBE, through its Procurement and Contracting Officer (PCO) or designee, has the discretion to waive inclusion of the DVBE incentive in an individual solicitation or a number of solicitations, including but not limited to where the following determining factors exist: (i)

few or no DVBE subcontracting opportunities exist, (ii) subcontracting a portion of the work is not normal for the industry, (iii) the work is so specialized that there are few or no DVBEs that can perform the work themselves without subcontracting it, or (iv) the work is a procurement pursuant to Government Code §§ 14838.5(a).<sup>2</sup> Note, however, that the overall DVBE participation goal of 3 percent of annual total contract value still applies. The JBE's PCO or designee must document the procurement file whenever the DVBE requirement has been waived, using a DVBE form that will include a signature from the PCO (or designee) authorizing the DVBE waiver, along with the reason(s) for waiving the DVBE incentive for the individual solicitation.

## G. General Requirements for DVBE Procurements

### 1. Verifying Bidder Status as a DVBE

Verifying certification status: For competitive solicitations that include the DVBE incentive, JBEs must verify California DVBE certification status before a contract award regardless of the procurement approach. Status can be verified by accessing the DVBE services certified firm inquiry database, currently available at <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

If this database is used in support of DVBE certification, a printout can simply be placed in the procurement file.

Business utilization plan alternative: There is an additional method for a Bidder to qualify as a DVBE for contracts for non-IT goods and for IT goods and services. For those procurements, a JBE must accept from a Bidder a DVBE business utilization plan (plan) in lieu of DGS certification (PCC 10115.15(a)). The use of a plan does not extend to non-IT service contracts.

A plan is a Bidder's written commitment to contract with certified DVBEs for at least 3 percent of its business's total contract dollars expended in California during the next year (i.e., the year after the year in which the contract is awarded). This 3-percent commitment applies to all business done by the Bidder in California, not just contracts with the State of California. The DGS procurement division provides plan approval. A plan is considered approved by the DGS on the date of submission

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<sup>2</sup> A JBE may determine that a fiscal emergency exists necessitating the temporary suspension of the JBE's DVBE program. If a JBE suspends its program due to a fiscal emergency, the JBE should have the Approving Authority, or his/her appointee, document the extent of and reasons for the suspension.

## INTRODUCTION

This chapter describes the Judicial Council's obligations under PCC 19209 to provide reports to the Joint Legislative Budget Committee and the State Auditor relating to ~~the "procurement of contracts" by any Judicial Branch Entity (JBE). In connection with these reports~~ superior court contracts and payments, and the obligation of JBEs using the Financial Information System for California (FI\$Cal) to make their contract and payment information available for the state's transparency websites. In connection with this reporting and FI\$Cal-related obligation, this chapter describes the role of each JBE in providing information related to the JBE's contracts with Vendors ~~to be included in the reports.~~

This chapter also describes the obligations under PCC 19204(a) of all JBEs to notify the State Auditor of certain contracts with total costs estimated at more than \$1 million.

## DEFINED TERMS

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

### 12.1 JUDICIAL COUNCIL REPORTS UNDER PCC 19209

#### A. Reporting ~~Periods~~Period

The Judicial Council will annually provide ~~two semiannual reports each year~~ a report to the Joint Legislative Budget Committee and the State Auditor as required by PCC 19209. ~~One report will cover no later than September 30 of each year, covering the period from January 1 through state fiscal year ending June 30, and will be provided by August 1. The other report will cover the period from July 1 through December 31, and will be provided by February 1 of the following year. of that year.~~

#### B. Content of ~~Reports~~Report

The Judicial Council report will include a list of all Vendors that receive a payment from a ~~JBE~~ superior court during the reporting period. ~~PCC 19209 also requires the Judicial Council to submit additional information on each distinct contract between a Vendor and a JBE, but only if more than one payment was made under the distinct contract during the reporting period.~~ For each ~~distinct contract~~ Vendor, the report will include the following information ~~by Vendor~~:

- The ~~JBE~~ superior court(s) that contracted for the good or service;

- The amount of payment; and
- The type of service or good provided.

The report will also include a list of all JBE superior court contracts that were made or amended during the reporting period. The report will contain the following information by Vendor for each distinct contract that was amended:

- The name of the Vendor;
- The type of service or good provided;
- The nature of the any amendment;
- The duration of the any amendment; and  
The cost of the any amendment.

### **C. Responsibility of JBEs to Provide Information for Reports**

~~**D.C. SUPREME COURT:** the Judicial Council's Branch Accounting and Procurement office maintains information relating to payments to and contracts with the Supreme Court's Vendors. The Supreme Court is responsible for coordinating with the Judicial Council's Branch Accounting and Procurement office, as appropriate, to ensure the information relating to payments to, and contracts with, the Supreme Court's Vendors is accurate, consistent, and complete.~~ **Council Report**

~~**Courts of Appeal:** The Judicial Council's Branch Accounting and Procurement office maintains information relating to payments to and contracts with Vendors of each Court of Appeal. Each Court of Appeal is responsible for coordinating with the Judicial Council's Branch Accounting and Procurement office, as appropriate, to ensure the information relating to payments to, and contracts with, Vendors is accurate, consistent, and complete.~~

**Superior Courts:** The Phoenix Statewide Financial System (Phoenix) is the source of information for compiling reports relating to payments during a reporting period by each superior court to Vendors and relating to contracts between Vendors and each superior court. Each superior court is responsible for ensuring that the information in Phoenix relating to payments to, and contracts with, that superior court's Vendors is accurate, consistent, and complete.

~~**Habeas Corpus Resource Center (HCRC):** The Judicial Council's Branch Accounting and Procurement office maintains information relating to payments to and contracts with Vendors of the HCRC. The HCRC is responsible for coordinating with the Judicial~~



~~Council's Branch Accounting and Procurement office, as appropriate, to ensure the information relating to payments to, and contracts with, the HGRG's Vendors is accurate, consistent, and complete.~~

Judicial Council: The Judicial Council's Branch Accounting and Procurement office is responsible for maintaining and providing accurate, consistent, and complete information relating to payments to, and contracts with, Vendors of the Judicial Council.

All JBE personnel involved in maintaining and providing the necessary information for reports should have the appropriate training, experience, level of responsibility, and accountability as is necessary to ensure the accuracy, completeness, and consistency of the information in the reports provided by the Judicial Council.

#### **E.D. Responsibility to Prepare ~~Reports for Judicial Council~~ Report**

The Judicial Council's Branch Accounting and Procurement office is responsible for preparing the ~~portion of the~~ Judicial Council ~~reports that relates to the Supreme Court, Courts of Appeal, Judicial Council, and HGRG~~ report.

~~The Judicial Council's Trial Court Administrative Services office (TCAS) is responsible for preparing the portion of the Judicial Council reports that relates to the superior courts.~~

~~The Judicial Council's Branch Accounting and Procurement office and TCAS are responsible for coordinating with each other to ensure that all information to be included in the Judicial Council reports is reported timely, accurately, and in a consistent form and format.~~

The Judicial Council's Branch Accounting and Procurement office has lead responsibility for ~~presenting the reports to the Judicial Council for approval for submission to the Joint Legislative Budget Committee~~ compiling the superior courts' contracting and vendor payment data and reporting it to the Legislature and the State Auditor.

#### **E. FI\$Cal-related Responsibility**

As required by PCC 19209, JBEs using FI\$Cal shall participate with the state's transparency effort by making their contract and payment information available for the

state's transparency websites on a rolling basis. Each JBE shall ensure their contract and payment information is entered in FI\$Cal for the state transparency websites and for state department audit purposes. The Judicial Council's Branch Accounting and Procurement office is available to assist JBEs in their responsibilities for entering this information.

## 12.2 NOTIFICATIONS BY JBEs TO THE STATE AUDITOR UNDER PCC 19204

Under PCC 19204(a), any JBE contract with a total cost estimated at more than \$1 million is subject to the review and recommendations of the State Auditor<sup>1</sup> to ensure compliance with the California Judicial Branch Contract Law. Each JBE must notify the State Auditor, in writing, of the existence of any such contract within 10 Court Days of entering into the contract. The date of "entering into the contract" is the date on which the contract is fully executed by all parties. The State Auditor has established the following email account for receiving the foregoing notifications:

[judicial.branch.contracts@auditor.ca.gov](mailto:judicial.branch.contracts@auditor.ca.gov)

**Notes:** Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than \$5 million. (Under GC 68511.9, these contracts are subject to the review and recommendations of the California Department of Technology.<sup>2</sup>)

A JBE is not required to notify the State Auditor of amendments to an existing contract if the JBE previously notified the State Auditor of the existence of such contract pursuant to PCC 19204(a).

If a contract that initially had total costs estimated at \$1 million or less, is subsequently amended such that total estimated costs now exceed \$1 million, the contract must be reported in accordance with PCC 19204(a), within 10 Court Days of the amendment.

<sup>1</sup> PCC 19204(a) refers to the Bureau of State Audits; the Bureau of State Audits, however, now refers to itself as the California State Auditor's Office. This Manual uses the term State Auditor.

<sup>2</sup> GC 68511.9 refers to the office of the State Chief Information Officer, which subsequently became the California Technology Agency, and then the California Department of Technology.