



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-100

For business meeting on September 20, 2024

Title

Judicial Branch Administration: *Judicial Branch Contracting Manual*

Agenda Item Type

Action Required

Effective Date

October 1, 2024

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

August 20, 2024

Recommended by

Advisory Committee on Audits and Financial
Accountability for the Judicial Branch
Hon. David Rosenberg, Chair

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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 implement the recommendation from the California State Auditor to add fraud reporting requirements that are substantially similar to *State Administrative Manual* section 20080.

Recommendation

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council, effective October 1, 2024, adopt proposed revisions to the *Judicial Branch Contracting Manual*.

The proposed revisions to the manual are indicated 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* (JBCM), effective October 1, 2011,

the operative date of substantive requirements of the California Judicial Branch Contract Law.¹ In December 2011, April and August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, October 2021, September 2022, and September 2023, the council adopted revisions to the JBCM. The version of the JBCM adopted by the council on September 19, 2023, effective October 1, 2023, remains in effect as of the date of this report.²

Analysis/Rationale

Statutory requirement and development of the JBCM

The California Judicial Branch Contract Law (Judicial Branch Contract Law, or JBCL) was enacted on March 24, 2011,³ and became effective on that date. With certain exceptions,⁴ the law requires that superior and appellate courts, the Judicial Council, and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities, or JBEs, and each, a JBE) comply with provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services.⁵ The Judicial Branch Contract Law applies to all contracts initially entered into or amended by JBEs on or after October 1, 2011.⁶

The Judicial Branch Contract Law also requires the council to adopt a manual containing procurement and contracting policies and procedures that must be followed by all JBEs.⁷ 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.”⁸ Since the adoption of the initial JBCM, the council has adopted 13 sets of revisions to the JBCM.

This report is being submitted by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch under rule 10.63 of the California Rules of Court. Under this rule, the duties of the committee include (1) advising and assisting the council in performing its responsibilities and exercising its authority under the Judicial Branch Contract Law and (2) reviewing and recommending to the council proposed updates and revisions to the JBCM.⁹ In addition, under rule 10.63(a), the committee is “charged with advising and assisting the council

¹ Pub. Contract Code, §§ 19201–19210.

² The current version of the JBCM is available at www.courts.ca.gov/documents/jbcl-manual.pdf.

³ Sen. Bill 78 (Stats. 2011, ch. 10).

⁴ Pub. Contract Code, §§ 19204(c), 19207, 19208.

⁵ *Id.*, § 19204(a).

⁶ *Id.*, § 19203.

⁷ *Id.*, § 19206.

⁸ *Ibid.*

⁹ Cal. Rules of Court, rule 10.63(c)(2) & (c)(3).

in performing its responsibilities to ensure that the fiscal affairs of the judicial branch are managed efficiently, effectively, and transparently, and in performing its specific responsibilities relating to audits and contracting, as required by law and good public policy.”

State Auditor’s report and the proposed revisions to the JBCM

Under Public Contract Code section 19210, the California State Auditor’s Office conducts periodic audits of judicial branch entities to assess their implementation of the JBCL. In January 2024, the State Auditor completed its most recent audit of the Judicial Council.¹⁰ In its report, the State Auditor stated:¹¹

Our prior audits of the Judicial Council dating back to 2017 concluded that both the contracting manual [the JBCM] and the Judicial Council’s local manual [the Judicial Council’s *Local Contracting Manual*] appropriately complied with state requirements, and our review for this audit found that those manuals continue to generally comply with requirements in state law. However, including language in its contracting manual [the JBCM] that is substantially similar to the fraud reporting requirements found in the SAM will bring the Judicial Council into closer compliance with the judicial contract law [the JBCL] and ensure that all Judicial Branch entities—including the Judicial Council and courts—receive adequate guidance about how and to whom they should report fraud.

The State Auditor recommended:¹²

To ensure that it can appropriately detect and report potential instances of fraud in its contracting practices, the Judicial Council should do the following when it updates its contracting manual in 2024:

- Include language that is substantially similar to the fraud-reporting language in section 20080 of SAM that pertains to contracting and procurement.
- Require Judicial Council staff to report suspected instances of fraud to independent parties within the Judicial Council, such as the principal manager of audit services or chief administrative officer.¹³

Consistent with the State Auditor’s recommendations, the JBCM revisions recommended by the committee in Attachment A (1) include language that is substantially similar to the fraud reporting provisions in SAM section 20800 that pertain to contracting and procurement and

¹⁰ The audit report is posted at www.auditor.ca.gov/reports/2023-302/index.html.

¹¹ California State Auditor’s Office, *Judicial Branch Procurement: Judicial Council of California*, Report #2023-302 (Jan. 9, 2024), p. 2.

¹² *Id.* at p. 7.

¹³ SAM section 20080 can be viewed at www.dgs.ca.gov/Resources/SAM/TOC/20000/20080. The SAM is posted at www.dgs.ca.gov/Resources/SAM.

(2) provide instructions regarding the reporting of incidents of fraud. The recommended JBCM revisions would add a new section 1.1(C)(2)(d) to chapter 1 of the JBCM.

Policy implications

The revisions to the JBCM are recommended by the committee to implement the State Auditor's recommendations. There are no policy implications.

Comments

At its meeting on April 15, 2024, the committee reviewed proposed JBCM revisions to implement the State Auditor's recommendations and approved the posting of its proposed JBCM revisions for public comment.¹⁴ The public comment period began on April 16 and ended on May 2, 2024. 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. The public comments that were received during the public comment period are stated in the comments chart in this report.

In a public comment, Brian Borys, director of Research and Data Management, representing that he wrote on behalf of the Superior Court of Los Angeles County, suggested making three changes to the proposed JBCM revisions in the committee's invitation to comment. The committee's responses to Mr. Borys's comments are set forth below. The committee's subsequent updates (to the version of the proposed JBCM revisions originally posted for public comment) are shown in Attachment B.

- Mr. Borys suggested that the wording in the proposed JBCM revisions regarding the reporting of "suspected incidents of fraud" be replaced with "incidents in which there is a reasonable suspicion of fraud." The committee disagrees with the commenter's suggested revision. It is unclear exactly what a reasonable suspicion of fraud would be, and SAM section 20080 does not include a "reasonable suspicion" qualifier. If a reasonable suspicion qualifier is added to the JBCM revisions, the State Auditor might conclude that the revisions are not substantially similar to section 20080, and therefore do not sufficiently implement the State Auditor's recommendation.¹⁵
- Mr. Borys recommended deleting some of the committee's proposed JBCM language describing potential incidents of fraud (i.e., the references to "intentional use of JBE assets for an improper purpose or taking JBE assets without consent (e.g., theft)" as well as "intentional acts impairing the value, usefulness, or function of JBE (e.g.,

¹⁴ The proposed revisions to the JBCM were developed in collaboration with Judicial Council staff and the JBCM Working Group. The working group includes representatives from courts throughout California.

¹⁵ The commenter expressed concern about "over-reporting" by *the courts*. The committee notes that the reporting requirements recommended by the State Auditor are intended to cover reporting by JBE employees, not by JBEs themselves as entities. To clarify that the proposed JBCM revisions pertain to fraud reporting requirements for JBE employees (not JBEs as entities), the committee has updated the proposed JBE revisions to add "employees" in the first sentence of the proposed JBCM revisions (changing "JBEs" to "JBE employees").

vandalism)”). He stated that the foregoing language pertained to instances of fraud that would not occur during the procurement and contracting process, but instead pertained to the asset and inventory management processes of JBEs, and therefore exceeded the scope of the State Auditor’s recommendations. The committee agrees that the foregoing language could be overly broad and inadvertently include incidents beyond the JBE contracting and procurement process. In response to the public comment, and on further consideration, the committee has decided to delete the foregoing language from the recommended JBCM revisions.

- In the proposed JBCM revisions that the committee circulated for public comment on April 16, the committee proposed that (1) Judicial Council employees report incidents of fraud to the Judicial Council’s principal manager of Audit Services and the Judicial Council’s chief administrative officer and (2) employees of all other JBEs report incidents of fraud to their procurement and contracting officer (or the individual who handles the responsibilities of procurement and contracting officer for the JBE) and their chief executive officer (or equivalent). In his public comment, Mr. Borys proposed rewording the JBCM revisions so that employees of JBEs (other than the Judicial Council) could report incidents of fraud to their “principal manager of audit services.” The committee’s view is that JBEs (other than the Judicial Council) will not necessarily have an individual specifically serving in the position of “principal manager of audit services.” However, permitting JBE employees to report incidents of fraud to the individual at the JBE with primary audit responsibilities would be consistent with the State Auditor’s recommendations. Therefore, the committee has updated the proposed JBCM revisions so that employees of JBEs (other than the Judicial Council) can report incidents of fraud to the “individual who has primary audit responsibilities for the JBE” in addition to the JBE’s procurement and contracting officer and the chief executive officer (or equivalent).¹⁶

Alternatives considered

None.

Fiscal and Operational Impacts

The proposed JBCM revisions will add new reporting requirements relating to the judicial branch’s procurement and contracting process. The committee anticipates that JBEs may incur

¹⁶ Staffing among small, medium, and large courts can vary, so it is reasonable to provide employees of JBEs (other than the Judicial Council) with greater flexibility regarding to whom the incidents of fraud can be reported. Therefore, employees of JBEs (other than the Judicial Council) should also have the option of reporting to the JBE’s respective procurement and contracting officer (or the individual who handles the responsibilities of procurement and contracting officer for the JBE). Mr. Borys appears to be concerned that the proposed JBCM revisions (regarding which individuals at the JBE should receive the reports about incidents of fraud) “reinterpret” the State Auditor’s recommendations. The proposed JBCM revisions do not reinterpret the State Auditor’s recommendations; instead, they are based on and consistent with the State Auditor’s recommendations as stated in its January 2024 audit report as well as Judicial Council staff’s discussions with State Auditor staff.

some costs in connection with implementing the requirements, such as conducting staff training on the reporting procedures. No significant costs or operational impacts are anticipated from implementing the recommendations in this report.

Attachments and Links

1. Chart of comments, at pages 7–8
2. Attachment A: *Judicial Branch Contracting Manual*, with all proposed revisions in track changes format
3. Attachment B: *Judicial Branch Contracting Manual*, with updates (in track changes format) made by the committee to the version that was posted for public comment

COMMENT CHART

SP24-03

Judicial Administration: *Judicial Branch Contracting Manual*

Commenter	Position	Comment	Committee Response
<p>Superior Court of Los Angeles County (comment submitted on behalf of the Court by Mr. Bryan Borys, Director of Research and Data Management)</p>	<p>Agree if modified</p>	<p>The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.</p> <p>Regarding SPR24-03 “Judicial Administration: Judicial Branch Contracting Manual,” the Court agrees with the proposal if modified in three main areas.</p> <p>For one, it is suggested that the first sentence in Section 2.d of the Judicial Branch Contracting Manual (JBCM) read “JBEs must report actual incidents of fraud, or those incidents in which there is a reasonable suspicion of fraud...” This language will help the courts avoid over-reporting of incidents where there may be little basis to suspect fraud.</p> <p>Secondly, the State Auditor recommended including language in the JBCM substantially similar to the fraud-reporting language in SAM 20080 “that pertains to contracting and procurement” to ensure that JBEs can appropriately detect and report potential instances of fraud in its “contracting practices.” However, the proposed revisions to the JBCM exceed that scope. The second and third bullets describe instances of fraud pertaining to assets that would not occur during the procurement and contracting process, but rather the asset and inventory management processes of the JBEs. These provisions do not belong in the JBCM.</p> <p>Lastly, we need not reinterpret the State Auditor’s recommendation. The section on “How to Report” should read, in part: “Employees of all other JBEs must report any incidents listed above, in this Section 2.d., to their principal manager of audit services, or chief administrative officer, or equivalent.”</p>	<p>Please see the “Comments” section above regarding the Committee’s response to this public comment.</p>
<p>Michael M Ward, Retired Disabled Veteran</p>	<p>Agree if modified</p>	<p>i agree with the proposed bill, In child support cases when non-custodial parents request audits be done on the custodial parents, we have child support solely focusing on the non0-custodial parent when they are to be focusing on the custodial parent for fraud in income reporting, when those reports of fraud are deemed to be sustained there are measures that need to be taken to assure non-custodial parents are not going to get duped in the end, there has been cases of proven, and documented fraud upon the court in audits, but the courts once again violate the constitution affecting due process because when fraud is detected, they tend to give a "slap on the wrist" , but divert their attention back onto the noncustodial parent which is a violation of due process, nor do they turn over all records, but they want all of the non-custodial parents records, totally sweeping the fraud under the rug only if it benefits them, or shield them from civil recourse. there needs to be laws in california set in place for thorough audits of fraud, and</p>	<p>This public comment pertains to child support payments governed by the Family Code and related common law, whereas the proposed JBCM revisions pertain to contracting and procurement by judicial branch entities governed by the California Judicial Branch Contract Law (Public Contract Code sections 19201 – 19210) and other Public Contract Code sections. Therefore, this public comment does</p>

Commenter	Position	Comment	Committee Response
		<p>swift punishment after it is discovered by the non-custodial parent, in my case i requested the Department Of Child Support Services, and family court to perform an Audit on my child support accounts, the court and child support case worker concealed for 10 straight years that my ex wife made an income of \$13,000.00 per month, compared to my \$3500.00-\$4k in disability compensation, they refused to disclose it, instead they decided to take me to court for more support after I filed a petition to have the order reduced due to her income exceeding mines by 3x's . the court instead decided to retro-actively award both cases thousands of dollars of my money totaling to over \$50,000.00 that is with interest. now every time i try to fight it, the courts refused to turn over the audit, transcripts, evidence, designation of record to the appellate districts in an effort to conceal their constitutional violations under color of law, causing both of my cases to be dismissed, and audits trashed. this bill is greatly needed to eliminate the courts personal interference with court cases because they have a financial stake in the case. I am not the only victim, there are thousands of others who would benefit from this bill being passed.</p>	<p>not substantively address the proposed JBCM revisions.</p>

d. Reporting Actual or Suspected Incidents of Fraud

JBE employees must report actual or suspected incidents of fraud that occur during the procurement and contracting process that relate to the following:

- Inappropriate activity involving the purchase of or contracting for goods and services.² For example, engaging in kickbacks (i.e., a sum of money that is paid to someone illegally in exchange for some type of preferential treatment).
- Willful, improper employee behavior affecting state interests (e.g., employee using their position to make unauthorized purchases for their own personal gain).

This reporting requirement applies regardless of whether the incident is:

- alleged against JBE employees or other individuals, or
- discovered internally or by referral.

How to Report:

Judicial Council employees must report the incidents listed above, in this Section 1.1(C)(2)(d), to the Judicial Council's Principal Manager of Audit Services and the Judicial Council's Chief Administrative Officer. Employees of all other JBEs must report any incidents listed above, in this Section 1.1(C)(2)(d), to their respective JBE's Procurement and Contracting Officer (PCO)³ (or the individual who handles the responsibilities of PCO for the JBE, or the individual who has primary audit responsibilities for the JBE) and their Chief Executive Officer (or equivalent).

1.2 LOCAL CONTRACTING MANUAL

This section provides broad guidance to JBE staff involved in developing their Local Contracting Manuals. This section is not intended to dictate the techniques that should be used, because the details of the process should suit the individual JBE, the stakeholders affected, and the JBE's business needs.

² This includes inappropriate activity involving grant programs or subvention programs (for more information on subvention contracts, please see chapter 5, section 5.8 of this Manual).

³ For more information on PCOs, please see chapter 1, section 1.1(C)(1) of this Manual.

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- Inappropriate activity involving the purchase of or contracting for goods and services.² For example, engaging in kickbacks (i.e., a sum of money that is paid to someone illegally in exchange for some type of preferential treatment).
- ~~Intentional use of JBE assets for an improper purpose or taking JBE assets without consent (e.g., theft).~~
- ~~Intentional acts impairing the value, usefulness, or function of JBE assets (e.g., vandalism).~~
- Willful, improper employee behavior affecting state interests (e.g., employee using their position to make unauthorized purchases for their own personal gain).

This reporting requirement applies regardless of whether the incident is:

- alleged against JBE employees or other individuals, or
- discovered internally or by referral.

How to Report:

Judicial Council employees must report the incidents listed above, in this Section ~~1.1(C)(2)-(d-)~~, to the Judicial Council's Principal Manager of Audit Services and the Judicial Council's Chief Administrative Officer. Employees of all other JBEs must report any incidents listed above, in this Section ~~1.1(C)(2)-(d-)~~, to their respective JBE's Procurement and Contracting Officer (PCO)³ (or the individual who handles the responsibilities of PCO for the JBE, or the individual who has primary audit responsibilities for the JBE) and their Chief Executive Officer (or equivalent).

² This includes inappropriate activity involving grant programs or subvention programs (for more information on subvention contracts, please see ~~JBCM Ch. chapter~~ 5, section 5.8 of this Manual).

³ For more information on PCOs, please see ~~JBCM Ch. chapter~~ 1, section 1.1(C)(1-~~)~~ of this Manual.