

Judicial Council of California

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INVITATION TO COMMENT

SP23-04

Title	Action Requested
Judicial Administration: <i>Judicial Branch Contracting Manual</i>	Review and submit comments by 5:00 p.m., May 22, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise the <i>Judicial Branch Contracting Manual</i>	October 1, 2023
Proposed by	Contact
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Executive Summary

At the Judicial Council’s business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual* (JBCM) effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law.¹ The council adopted revisions to the JBCM in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, October 2021, and October 2022. Additional revisions to the JBCM are proposed below in tracked changes format, and staff invites public comment regarding the proposed revisions.

Background

With certain exceptions,² the Judicial Branch Contract Law, enacted March 24, 2011, requires that California judicial branch entities comply with the provisions of the Public Contract Code (PCC) applicable to state agencies and departments related to the procurement of goods and services.³ The Judicial Branch Contract Law applies to all covered contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.⁴ The Judicial Branch

¹ Pub. Contract Code, §§ 19201–19210 (henceforth referred to as “Judicial Branch Contract Law”).

² Pub. Contract Code, §§ 19204(c), 19207, and 19208.

³ *Id.*, § 19204(a).

⁴ *Id.*, § 19203.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Contract Law also requires the council to adopt a judicial branch contracting manual that: (i) contains policies and procedures applicable to judicial branch entities related to the procurement of goods and services; and (ii) is consistent with the PCC as well as substantially similar to the *State Administrative Manual* and *State Contracting Manual*.⁵

At the council's business meeting on August 26, 2011, the council adopted the JBCM. The council adopted revisions to the JBCM in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, October 2021, and October 2022. The version of the JBCM adopted at the council's regular business meeting on September 20, 2022, remains in effect as of the date of this invitation to comment.⁶

The proposed revisions to the JBCM are shown in tracked changes format below. The JBCM Working Group was given the opportunity to provide feedback regarding the proposed revisions.⁷ Following the public comment period, staff plans to submit the proposed revisions for review by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee).⁸ It is anticipated that the proposed revisions will be considered by the Judicial Council at its meeting scheduled for September 18-19, 2023, and if adopted by the council, the effective date of the revised JBCM would be October 1, 2023.

Summary of the Proposed Revisions to the JBCM

1. AB 661

Assembly Bill 661 (Stats. 2022, ch. 517) adds new recycling requirements to the PCC, pursuant to California's State Agency Buy Recycled Campaign (SABRC).⁹ AB 661 adds new requirements regarding the purchasing of recycled products, including new recycled product categories and minimum recycled content percentages. As a result of AB 661, revisions are proposed to JBCM Chapter 3, section 3.3.

2. SB 34

Senate Bill 34 (Stats. 2022, ch. 297) provides for the voidability of certain contracts entered into through acts of bribery of a public official.¹⁰ SB 34 added section 6102 to the Public Contract

⁵ *Id.*, § 19206.

⁶ The current version of the JBCM became effective on October 1, 2022, and can be viewed at: <https://www.courts.ca.gov/documents/jbcl-manual.pdf>

⁷ The working group includes representatives (with experience in contracting and procurement) from small, medium, and large courts throughout California.

⁸ Under California Rule of Court 10.63(c)(3), the duties of the Audit Committee include reviewing and recommending to the Judicial Council proposed updates and revisions to the JBCM.

⁹ For a copy of AB 661's text, statutory revisions, and legislative history, please refer to: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB661&firstNav=tracking

¹⁰ For a copy of SB 34's text, statutory revisions, and legislative history, please refer to: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB34

Code, which provides that a contract executed on or after January 1, 2023 (including contracts negotiated prior to January 1, 2023) is voidable if it was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Section 68 or 86 of the Penal Code. As a result of SB 34, revisions are proposed to JBCM Chapter 1, section 1.1(C)(2)(c).

3. Advertising of procurements in the California State Contracts Register

JBCM Chapter 4 provides guidance on the advertising of procurements in the California State Contracts Register (CSCR). Updates are proposed to Chapter 4 to reflect current procedures for the CSCR.

Request for Specific Comments

Comments are invited on the proposed revisions to the manual and on the following questions:

1. Are the revisions clear and understandable?
2. Do the revisions appear to work from a court operations perspective, e.g., do they conflict with any aspect of court operations or appear to make any incorrect assumptions?
3. Are the revisions user-friendly? Do the revisions appear to work for courts of different sizes and staffing capabilities?

c. Gifts and Gratuities

This section discusses certain restrictions regarding the acceptance of gifts and gratuities. These restrictions are minimum requirements. JBEs may adopt more stringent restrictions in their Local Contracting Manuals.

Accepting gifts and gratuities: No person involved in the procurement process of a JBE may accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with that JBE. Doing so could be construed as intent to influence JBE personnel in their official duties or as a reward for an official action performed by the JBE personnel. Favors must be declined. Under PCC 6102, a contract is voidable if it was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Section 68 or 86 of the Penal Code.

Financial Interest in Contract: GC 1090 is applicable to members of Evaluation Teams, as they are responsible for evaluating Bids. GC 1090 requires that state officers and others not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Any person who is found to have willfully violated GC 1090 may be punished by a fine of not more than \$1,000 or by imprisonment in state prison, and will be forever disqualified from holding any office in this state.

Avoid making a gift of public funds: Article 16, section 6 of the California Constitution strictly prohibits any gift of public funds. To not be considered a gift of public funds, an expenditure must support the JBE's mission (function and purpose) and benefit the judicial branch.

Accepting free or loaner equipment from suppliers: JBEs should not accept an offer of goods or services without cost or obligation to the JBE that is made by a Prospective Bidder, Bidder, or Vendor. If a Buyer's decision is contrary to this best practice, the JBE should execute a contract to memorialize the agreement.

Before accepting any goods and services offered at no cost or obligation to the JBE, the JBE should consider the perception of the acceptance to other suppliers. How does the JBE remain fair and impartial if a decision is eventually made to solicit the goods or services?

and services are accessible to persons with disabilities. Contracting and procurement are activities covered by these laws.

JBEs must provide reasonable accommodation to persons with disabilities that enable them to participate in the procurement process. JBEs must also be prepared to respond to questions about reasonable accommodation by persons with disabilities. The term “reasonable accommodation” does not include actions that would fundamentally alter the nature of the procurement process or that would impose an undue financial or administrative burden upon a JBE.

JBEs should designate an individual (ADA Coordinator) who is available to respond to questions or concerns regarding reasonable accommodation of disabilities in the procurement process. Solicitation Documents should advise Prospective Bidders that the JBE complies with the ADA and similar California statutes and that requests for accommodation of disabilities should be directed to the ADA Coordinator.

3.3 STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC) PROGRAM

The SABRC is a joint effort between the California Department of Resources Recycling and Recovery (CalRecycle) and DGS to implement state law requiring state agencies and the Legislature to purchase recycled-content products (RCPs). It complements the efforts of the Integrated Waste Management Act (Pub. Resources Code, § 4000 et seq.), which was enacted to reduce the amount of waste going to California’s landfills.

A. Utilizing Recycled Content Products

Please see PCC 12200(f) and 12207 for a complete listing of recycled product categories. PCC 12203 requires JBEs to ensure that at least 50 percent of reportable purchases are recycled products. This requirement applies to purchases in each of the targeted categories identified in PCC 12207, which includes categories covering paper products, office supplies, office products, and a wide range of other products. The required postconsumer recycled content varies by category (e.g., recycled paper products must consist of at least 30 percent postconsumer fiber). PCC 12209 provides a listing of products and the minimum recycled content percentages needed to qualify as a recycled product. PCC 12209 also provides that CalRecycle shall consider updating this list of products and the minimum recycled content percentages, beginning on January 1, 2026 and every three years thereafter. For a full description and listing of recycled products and the required minimum recycled content percentages, as well as a full description of how CalRecycle will determine whether the minimum recycled content percentages should be updated, please see PCC 12209. On and after January 1, 2020,

JBEs must ensure that at least 75 percent of reportable purchases are recycled products, except for paint, antifreeze, and tires, which remain at the 50 percent requirement. See PCC 12203(a).

Example: A JBE is purchasing \$20,000 worth of paper for its copy machines. At least \$10,000 of the paper must have 30 percent recycled content by weight. The other \$10,000 may be any mix of recycled or nonrecycled products. For additional information, search on CalRecycle or www.calrecycle.ca.gov.

B. Recycled Preference and Competitive Solicitations

Under PCC 12201, a JBE shall purchase recycled products instead of nonrecycled products, if all of the following requirements are met:

- Fitness and quality of the products are equal;
- Recycled products are available at no more than 10 percent greater total cost than nonrecycled products; and
- One of the following situations applies:
 1. A JBE uses a leveraged procurement agreement through which both recycled and nonrecycled products are available.
 2. A JBE is awarding a contract using the SB/DVBE option (pursuant to Government Code section 14838.5, as further discussed in Chapter 4C of the JBCM) and receives offers for both recycled and nonrecycled products.
 3. A JBE awards a contract without soliciting multiple offers based on a determination that the price is fair and reasonable.

To the maximum extent economically feasible in performance of the contract work, each JBE must require Vendors to use recycled content products (PCC 12203(d)). Contact the SABRC at 916-341-6199 or SABRC@CalRecycle.ca.gov for information on qualifying SABRC reusable and recycled content products.

C. Supplier Certification

Unless otherwise waived as noted below, JBEs must require all Vendors to certify in writing, under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the JBE (PCC 12205). This requirement

4. Record of advertisement: A copy of the published advertisement should be included in the procurement file.

5. Resolicitations: A JBE conducting a resolicitation does not need to readvertise the solicitation if:

- The resolicitation occurs within three months of the publication of the original advertisement;
- Notice of resolicitation is provided to Prospective Bidders that requested and/or were sent the original Solicitation Document; and
- There is no material change to the solicitation.

6. Contract advertising exemption: JBEs can be granted an exemption from advertising by the Approving Authority or delegee when there is a compelling reason to do so. An exemption may be warranted if, for example, only one Prospective Bidder can supply the required goods or services and advertising would not produce more Prospective Bidders.

7. Advertising in the CSCR: The CSCR is a centralized listing of state procurements that DGS is required to publish by Government Code (GC) section 14825. The CSCR currently takes the form of an online database, accessed through DGS's Cal eProcure systems. Prospective Bidders are likely to see advertisements in the CSCR.

~~After registering with FI\$Cal, a JBE may submit post an advertisement to the CSCR (without fees) via the FI\$Cal website, by using DGS Procurement Division's Internet web page (dgs.ca.gov/pd), or by submitting Form STD-815 to DGS/Business Development Unit. DGS charges a fee for each advertisement that appears in the CSCR. There is an additional fee for advertisements that are not submitted electronically.~~

E. Samples

The practice of obtaining samples from Prospective Bidders before contract award is not recommended. If sample goods are needed for review before award for demonstration or prepurchase testing, the Solicitation Document should:

- Explain that sample goods are required for demonstration or prepurchase testing;
- State that the JBE is not obligated for the cost of the sample goods or for their return; and