



Judicial Council of California

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INVITATION TO COMMENT

SP25-02

Title

Judicial Administration: Revisions to
Judicial Branch Contracting Manual

Action Requested

Review and submit comments by 5 p.m., July
15, 2025

Proposed Rules, Forms, Standards, or Statutes

None

Proposed Effective Date

January 1, 2026

Proposed by

Advisory Committee on Audits and Financial
Accountability for the Judicial Branch
Hon. Ann C. Moorman, Chair

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Executive Summary and Origin

Under rule 10.63(c) of the California Rules of Court, the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee) proposes revising the *Judicial Branch Contracting Manual* (JBCM) to add provisions regarding generative artificial intelligence, so that the JBCM will remain substantially similar to the *State Contracting Manual* and *State Administrative Manual*, as required by the Judicial Branch Contract Law. In addition, the Audit Committee's proposal to revise the JBCM aligns with the judicial branch's efforts to address the emerging technology of generative artificial intelligence.

Background

With certain exceptions,¹ the California Judicial Branch Contract Law (Judicial Branch Contract Law or JBCL),² (Link A) enacted March 24, 2011,³ requires that California judicial branch

¹ Pub. Contract Code, §§ 19204(c), 19207, and 19208.

² *Id.*, §§ 19201–19210. The JBCL is posted at
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.5.&chapter=&article=.

³ Sen. Bill 78 (Stats. 2011, ch. 10).

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

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.⁴ The JBCL applies to all covered contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.⁵

The JBCL also requires the Judicial Council of California (Judicial Council or council) to adopt a judicial branch contracting manual that (1) contains policies and procedures applicable to judicial branch entities related to the procurement of goods and services, and (2) is consistent with the PCC as well as substantially similar to the *State Contracting Manual* (SCM) (Link B) and the *State Administrative Manual* (SAM) (Link C).⁶

At the council's business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual*, effective October 1, 2011, the operative date of substantive requirements of the JBCL. 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, October 2022, October 2023, and October 2024 (Link D).

The version of the JBCM adopted at the council's regular business meeting on September 20, 2024, remains in effect as of the date of this invitation to comment. The current version of the JBCM became effective on October 1, 2024, and can be viewed at www.courts.ca.gov/documents/jbcl-manual.pdf.

Under rule 10.63(c) of the California Rules of Court, 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.

The Proposal

Pursuant to rule 10.63(c), the Audit Committee proposes that the JBCM be revised to add provisions on generative artificial intelligence (GenAI) so that the JBCM will remain substantially similar to the SCM and SAM, as required by the Judicial Branch Contract Law. The California Department of General Services (DGS) has updated the SCM and SAM with additional procurement and contracting provisions regarding GenAI. These provisions are in chapter 23 of the SCM, volume 2; SAM section 4986; and section 7.12 of the SCM, volume 1 (Feb. 2025 updates to the SCM and SAM). The current version of the JBCM does not have provisions on GenAI.

The Audit Committee's proposal is consistent with a key priority of the California judicial branch: addressing the emerging technology of GenAI. In her 2024 State of the Judiciary address, Chief Justice Patricia Guerrero discussed the strategic judicial branch goal of

⁴ Pub. Contract Code, § 19204(a).

⁵ *Id.*, § 19203.

⁶ *Id.*, § 19206. The SCM is posted at www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual, and the SAM is posted at www.dgs.ca.gov/Resources/SAM.

modernization and management of administration, stating: “Society, government, and, therefore, our court system must address the many issues and questions presented by the developing field of artificial intelligence.” The Audit Committee’s proposed revisions will enable the JBCM to align more closely with a strategic goal of the judicial branch.

The Audit Committee plans to recommend JBCM revisions to the council, and invites public comment on the JBCM revisions proposed below.⁷ It is anticipated that the next revision of the JBCM will be considered by the council at its meeting scheduled for December 12, 2025; if adopted by the council, the effective date of the revised JBCM would be January 1, 2026.

The proposed GenAI revisions to the JBCM would add a new section 2.4 (Generative Artificial Intelligence) to the JBCM’s chapter 2 (Procurement Planning). The revisions would include new GenAI-related provisions on procurement and contracting. Key topics of chapter 2, section 2.4 would include, for example:

- During the procurement process, requiring bidders to inform the procuring judicial branch entity if the bidders’ goods or services contain or utilize GenAI;
- Risk assessments to be conducted by procuring judicial branch entities before (i) proceeding with a GenAI purchase, (ii) posting a solicitation that includes the purchase of GenAI, or (iii) entering into a contract that includes GenAI;
- Written confirmation by the judicial branch entity’s CEO or CIO that the GenAI-related procurement may proceed; and
- Monitoring and assessing GenAI contract deliverables for equitable outcomes, output inaccuracies, bias, and hallucinations to ensure that applicable laws and policies are followed.

The field of artificial intelligence is constantly evolving, and therefore, the JBCM should provide sufficient flexibility to adapt to new GenAI-related developments. The revised JBCM would provide core guidance, but detailed information on risk assessments as well as sample GenAI-related contract provisions would be provided in separate reference materials or links. For example, the revised JBCM would include a link to sample GenAI-related contract provisions to be drafted by Judicial Council Legal Services and updated from time to time as necessary.

The attached draft of proposed JBCM revisions includes a reference to the proposed rule of court 10.430 on GenAI. To the extent that a California court permits the use of GenAI by court staff or judicial officers, rule 10.430 would require the court to adopt a GenAI use policy. The proposed rule 10.430 was posted for public comment earlier this year, and it has an anticipated effective date of September 1, 2025.⁸

⁷ The Court Executives Advisory Committee and the JBCM Working Group provided input during the development of the proposed JBCM revisions.

⁸ https://courts.ca.gov/system/files/itc/sp25-01_0.pdf.

The JBCL requires the Judicial Council to adopt a JBCM that is “substantially similar” to the SCM and SAM. The attached draft of proposed JBCM revisions is intended to incorporate policies and procedures that are “substantially similar” to the SCM and SAM while also taking into account the fundamental differences between the underlying assumptions of SCM/SAM, and the organization and operations of judicial branch entities (JBEs). As explained in the JBCM’s Introduction, section 2 (Guiding Principles in the Development of this Manual):

“Development of this Manual was complicated by the inapplicability of the SAM and SCM to the organization and operations of JBEs. The SAM and SCM were written for use by executive branch agencies, with the Department of General Services (DGS) as the entity charged with administering those agencies’ procurement and contracting activities. In contrast, management in the judicial branch is decentralized; for the superior courts, by way of example, the presiding judge of each court is responsible for approving procurements and contracts and the court executive officer is responsible for contract negotiations.⁹ In addition, PCC 19207 acknowledges that neither DGS nor any other state entity is involved in approval or review of judicial branch procurement, except as specifically required by law.”

Alternatives Considered

No alternatives were considered because the JBCM needs to be revised so that it remains substantially similar to the SCM and SAM, as required by the JBCL. GenAI provisions have been added to the SCM and SAM; the current JBCM does not have provisions on GenAI.

Fiscal and Operational Impacts

The proposed JBCM revisions will add new GenAI-related procurement and contracting provisions to the JBCM. The Audit Committee anticipates that judicial branch entities may incur some costs in connection with implementation, such as conducting staff training on the new procedures, or implementing additional procurement procedures to handle bidders’ disclosure of GenAI to be included in goods or services (as well as conducting related risk assessments). However, it should be noted that regardless of the proposed JBCM revisions, judicial branch entities will most likely be incurring additional costs as they take additional measures to assess the impacts, benefits, and risks of GenAI and its evolving technology. Therefore, no significant additional costs or operational impacts are anticipated from implementing the recommendations in this report.

⁹ Cal. Rules of Court, rules 10.603(c)(6)(D) and 10.610(c)(3); Gov. Code, § 77009(e).

Request for Specific Comments

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

1. Are the revisions clear and understandable?
2. Do the revisions appear to work from a judicial branch operations perspective, e.g., do they conflict with any aspect of a judicial branch entity's 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?

Attachments and Links

1. Attachment A: Proposed revisions to JBCM, adding (1) new section 2.4 to chapter 2 (Procurement Planning), and (2) cross-references in chapters 4, 5, 8, and 11 to the new section 2.4 of chapter 2
2. Link A: Judicial Branch Contract Law,
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.5.&chapter=&article=
3. Link B: *State Contracting Manual*, www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual
4. Link C: *State Administrative Manual*, www.dgs.ca.gov/Resources/SAM
5. Link D: Current version of *Judicial Branch Contracting Manual* (eff. Oct. 1, 2024), www.courts.ca.gov/documents/jbcl-manual.pdf

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2.4 GENERATIVE ARTIFICIAL INTELLIGENCE (GenAI)

“Artificial intelligence” or **“AI”** means technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence.

“Generative Artificial Intelligence” or **“GenAI”** means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the system’s training data.

A. GenAI Disclosures

All written solicitations by JBEs regardless of acquisition type (e.g., IT, non-IT, goods or services) should include language regarding the following:¹

- In its Bid or offer, the Bidder or offeror must notify the JBE if the Bidder’s/offeror’s goods or services contain or utilize GenAI (or will contain or utilize GenAI), or if GenAI is or will be included in any services, goods, or deliverables that materially impact:
 - (i) *functionality of a JBE system* (i.e., the work using GenAI could have a significant, substantial effect on the system’s data integrity, availability, confidentiality, or security, and failure to perform such work in accordance with the contract could cause major disruptions to JBE operations);
 - (ii) *risk to the JBE* (i.e., the work using GenAI could have a significant, substantial effect on the JBE’s operations, finances, security, or reputation, and failure to perform such work in accordance with the contract would constitute a high likelihood of damage to the JBE); or
 - (iii) *contract performance* (i.e., when failure to conduct work which uses GenAI in accordance with the contract would constitute a material breach of contract).
- A Bidder’s/offeror’s failure to disclose GenAI to the JBE may result in disqualification, and the JBE reserves the right to seek any and all relief it may be entitled to as a result of such non-disclosure.
- The JBE reserves the right to incorporate GenAI-related provisions into the final contract or to reject bids/offers that present an unacceptable level of risk to the JBE, as determined by the JBE in its sole discretion.

¹ Please note: If prior to commencing a solicitation, JBE staff is aware that the solicitation will include the purchase of GenAI or that GenAI will be used in the performance of a contract, then the solicitation should be conducted in writing.

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Non-competitively bid (NCB) procurements should also require disclosure of GenAI, consistent with the guidance above.

B. Assessment of GenAI

Before proceeding with a GenAI purchase, releasing a solicitation that includes the purchase of GenAI, or approving a contract that includes GenAI (or if during the contract term, additional GenAI components are included or proposed to be included in the goods, services, or deliverables), a JBE should engage its CEO or Chief Information Officer (or equivalent, or their designee) (collectively, “AI Officer”) to conduct a risk assessment. If the CIO or their department is both requesting the purchase and responsible for the GenAI procurement, the JBE must avoid even the appearance of impropriety by: (i) ensuring the risk assessment is conducted or independently validated by a neutral party such as the JBE’s Approving Authority, CEO, or Chief Risk/Compliance Officer and (ii) documenting the foregoing procedures in the procurement/contract file.

After conducting a risk assessment, the AI Officer should confirm in writing that the GenAI-related procurement may proceed. The confirmation should be kept in the procurement/contract file and it can be an email, or a form created by the JBE. For GenAI procurements that involve significant potential risks, the JBE may consider consulting with the Judicial Council’s Information Technology Office (JCIT) before proceeding. For more information on risk assessments, please see: **[JCIT’s Risk Assessment document (*specific document title to be determined*)]**.

For all GenAI procurements, a JBE should conduct a privacy assessment, to assess GenAI-related potential impacts and risks regarding privacy. The JBE must implement measures to ensure that the JBE’s use or procurement of GenAI complies with applicable laws, rules, and ethics guidelines. JBEs should maintain an inventory of high-risk uses of GenAI.

Please note: under CRC 10.430, if a superior court, Court of Appeal, or the Supreme Court permits the use of GenAI by court staff or judicial officers, that court must adopt a GenAI use policy in accordance with CRC 10.430. For Judicial Council staff, please see the Judicial Council’s GenAI use policy.

JBEs should establish internal procedures for the JBE’s evaluation of GenAI during the competitive bidding process, so that the evaluation complies with procurement policy and procedures, including confidentiality compliance.

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C. GenAI Contract Provisions

For JBE contracts (and amendments), regardless of acquisition types (IT, non-IT goods, non-IT services, etc.) or solicitation method, the JBE should include GenAI contract language when appropriate and feasible. Please see the following link regarding GenAI-related contract provisions: ***[Sample contract language to be drafted by Judicial Council Legal Services]***

D. Purchases Exempt from GenAI Risk Assessment

The following purchases are exempt from the GenAI risk assessment procedures in section 2.4(B) above:

- Mandatory IT services provided by the Judicial Council or the California Department of Technology.
- Intrabranch agreements (agreements between JBEs) that do not include third-party contracts.
- Procurement of commodity types that do not include a technology or service component. Examples include: (i) office, medical, and cleaning supplies; (ii) office furniture; and (iii) non-IT hardware.
- Licenses/subscriptions to access online content including news, training, or digital publications that do not include the ability to independently create content.

E. Contract Management

JBEs must monitor, assess, and validate GenAI contract deliverables for equitable outcomes, output inaccuracies, fabricated content, hallucinations, biases, and the need for human action for all decision-making processes to ensure applicable laws and policies are followed. JBEs should work closely with their GenAI subject matter expert (or other JBE designee) to assess and validate contract deliverables.

JBEs should enforce GenAI contract language by monitoring for any previously unreported GenAI, including any additions to or modifications of previously reported GenAI. Upon discovery and/or when contractors disclose previously unreported GenAI or an intent to provide or use new GenAI in the performance of the contract, JBEs should engage the AI Officer to determine how to proceed.

F. GenAI Training

JBEs should consider requiring GenAI training for their procurement staff and staff involved with using or deploying GenAI.

Cross references to be added to JBCM chapters 4, 5, 8, and 11 regarding the new GenAI provisions in chapter 2, section 2.4.

The text below to be added as a:

- new section 4.2(A)(3) in JBCM Chapter 4 (Competitive Solicitation Overview);
- new section 5.15 to JBCM Chapter 5 (Non-Competitively Bid Procurements);
- new section 8.3(D) to JBCM Chapter 8 (Contracts); and
- new section 11.14 to JBCM Chapter 11 (Contract Administration).

“Generative Artificial Intelligence: Please refer to chapter 2, section 2.4 of this Manual regarding additional procurement and contracting policies and procedures relating to generative artificial intelligence.”