

Judicial Council of California

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INVITATION TO COMMENT

SP24-03

Title Judicial Administration: <i>Judicial Branch Contracting Manual</i>	Action Requested Review and submit comments by 5:00 p.m., May 2, 2024
Proposed Rules, Forms, Standards, or Statutes Revise the <i>Judicial Branch Contracting Manual</i>	Proposed Effective Date October 1, 2024
Proposed by Advisory Committee on Audits and Financial Accountability for the Judicial Branch Hon. David Rosenberg, Chair	Contact Oliver Cheng oliver.cheng@jud.ca.gov

Executive Summary

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee) proposes revising the *Judicial Branch Contracting Manual* (JBCM), in response to recommendations from the California State Auditor’s Office to add fraud reporting requirements that are substantially similar to *State Administrative Manual* section 20080. The proposed revisions to the JBCM are attached below in tracked changes format, and the Audit Committee invites public comment regarding these proposed revisions.

Background

With certain exceptions,¹ the California Judicial Branch Contract Law (Judicial Branch Contract Law or JBCL),² enacted March 24, 2011,³ 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.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: (i) contains policies and procedures applicable to judicial branch

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

² *Id.*, §§ 19201-19210.

³ Senate Bill 78 (Stats. 2011, ch. 10).

⁴ Pub. Contract Code, § 19204(a).

⁵ *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 These proposals are circulated for comment purposes only.

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* (SAM) and *State Contracting Manual*.⁶

At the council’s business meeting on August 26, 2011, the council adopted the JBCM, 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, and October 2023. The version of the JBCM adopted at the council’s regular business meeting on September 19, 2023, remains in effect as of the date of this invitation to comment.⁷

Under rule 10.63(c) of the California Rules of Court, the duties of the Audit Committee include: (i) advising and assisting the council in performing its responsibilities and exercising its authority under the JBCL; and (ii) reviewing and recommending to the council proposed updates and revisions to the JBCM. In addition, under rule 10.63(a), the Audit Committee is “charged with advising and assisting the council 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.” It is anticipated that the next revision of the JBCM will be considered by the council at its meeting scheduled for September 20, 2024, and if adopted by the council, the effective date of the revised JBCM would be October 1, 2024.

State Auditor’s Report and the Proposed JBCM Revisions

Under Public Contract Code section 19210, the California State Auditor’s Office (State Auditor) must conduct 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.⁸ In its report, the State Auditor stated:⁹

“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.”

⁶ *Id.*, § 19206. The State Administrative Manual is posted at: <https://www.dgs.ca.gov/Resources/SAM>.

⁷ The current version of the JBCM became effective on October 1, 2023, and can be viewed at: <https://www.courts.ca.gov/documents/jbcl-manual.pdf>.

⁸ The audit report is posted at: <https://www.auditor.ca.gov/reports/2023-302/index.html>.

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

The State Auditor recommended:¹⁰

“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.”¹¹

In response to these recommendations, the Audit Committee plans to recommend JBCM revisions to the council, and invites public comment on the JBCM revisions proposed below.¹² The proposed revisions: (i) include language that is substantially similar to the fraud reporting provisions in SAM section 20800 that pertains to contracting and procurement; and (ii) provide instructions to judicial branch entities on to whom incidents of fraud should be reported.

Fiscal and Operational Impacts

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

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 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?

Attachment

Proposed revisions to Chapter 1 of the JBCM, in tracked changes.

¹⁰ *Ibid.*, page 7.

¹¹ SAM section 20080 can be viewed at: <https://www.dgs.ca.gov/Resources/SAM/TOC/20000/20080>.

¹² The proposed revisions to the JBCM have been developed in collaboration with Judicial Council staff and the JBCM Working Group. The working group includes representatives from courts throughout California.

d. Reporting Actual or Suspected Incidents of Fraud

JBEs 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).
- 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 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 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) 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. 5, section 5.8).

³ For more information on PCOs, please see JBCM Ch. 1, section 1.1(C)(1).