



**Audit of the Superior Court of
California, County of Merced
Court Innovations Grant**

FEBRUARY 2019



JUDICIAL COUNCIL
OF CALIFORNIA

AUDIT SERVICES

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**Superior Court of California, County of Merced
Court Innovations Grant**

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EXECUTIVE SUMMARY

In June 2016, the Governor signed the Budget Act of 2016, which provided the judicial branch with \$25 million in spending authority for a Court Innovations Grant (CIG) program. The CIG program is intended to temporarily fund practices and programs in the trial and appellate courts that promote innovation, modernization, and efficiency. The legislation directed the Judicial Council to award CIG program funds on a competitive basis, and further specified \$12 million be earmarked for collaborative court programs; \$8 million for self-help, family, and juvenile programs; and \$5 million on other efficiencies across all types of courts. After implementing a competitive grant application and review process, the Judicial Council awarded more than 50 grants that cumulatively totaled around \$23 million¹. The Judicial Council began disbursing grant funds in June 2017 and grant recipients have until June 30, 2020 to fully expend their grant awards. The Legislature requires the Judicial Council to report annually on the progress made in achieving the CIG program's objectives.

The Judicial Council awarded Merced Superior Court (Court) roughly \$218,000 for its Court Innovations Grant project (Project) to purchase and install video conference equipment in four courtrooms. By installing the video conference equipment, the Court intended for judges located centrally in Merced to remotely hear criminal preliminary hearings and civil cases in the outlying Los Banos Courthouse. To demonstrate the expected efficiencies resulting from the video system, the Court identified various measurable outcomes, including but not limited to:

Criminal Preliminary Hearings:

- Total number of preliminary hearings conducted/heard each month (before and after implementation) to show an increase in the number of preliminary hearings heard each month.
- Total number of preliminary hearings continued each month (before and after), to show a decrease in continuances.
- Number and percent of preliminary hearings conducted by videoconference each month (after implementation) to demonstrate use of the equipment.

Civil Hearings:

- Total number of civil hearings heard each month (before and after) to show an increase in the total number of civil hearings heard.

¹ In March 2017, the Judicial Council awarded \$23.5 million to grantee courts - \$11.3 million for collaborative court programs; \$7.5 million for self-help, family, and juvenile court programs; and \$4.7 million for other efficiencies programs - to increase court efficiencies.

- Number and percent of the civil hearings heard each month (after implementation) conducted by videoconference, to demonstrate use of the equipment.

The Court successfully installed its video conference equipment and indicated it began using it in January 2019. Overall, the Court has demonstrated financial accountability over its CIG project award and used the assigned Work Breakdown Structure (WBS) code in the Phoenix financial system to facilitate the tracking and monitoring of CIG project expenditures. Based on our review, we did not find instances where the Court used grant funds for unallowable activities per the grant agreement. However, our audit identified two findings related to the Court's non-compliance with the Judicial Branch Contracting Manual (JBCM) as shown in Table 1. In one instance, the Court lacked records to demonstrate that it had: (1) followed a competitive solicitation process, and (2) selected the winning bidder using appropriate criteria. In the other case, we questioned the Court's sole-source justification as it generally focused on the convenience of using the same vendor from a previous project, as opposed to that vendor being the only source capable of providing the requested goods or service.

The Court should be commended for proactively submitting, as part of its quarterly progress reporting, pre-implementation baseline data to the Judicial Council and for diligently working with its case management system vendor to develop custom reports to capture the data required for its performance outcome reporting. For example, the Court submitted baseline data for 10 of the 12 measurable outcomes specific to its Project. We also noted the Court has provided quarterly progress reports to the Judicial Council in a timely manner and has been openly communicating project status and challenges, such as difficulties encountered during the procurement process and data collection. However, as shown in Table 1, we identified one reportable finding where Court should consider taking corrective action to improve the accuracy of data submitted to the Judicial Council. The Court needs to be more precise in reporting a particular outcome measure as it is currently defined in the grant agreement. The Court acknowledged the error and plans to address this issue going forward.

AUDIT AUTHORITY

Government Code, sections 77206(g) and 77009(h) provide the Judicial Council of California (Judicial Council) with the authority to inspect and review superior court records and to perform audits, reviews, and investigations of superior court operations. Each court's grant agreement under the Court Innovations Grant Program includes an audit provision, while the Judicial Council's annual audit plan for fiscal year 2018-19 includes these audits. In November 2018, audit staff visited the Court to review its progress towards implementing its grant project. The scope of the audit was generally limited to evaluating compliance in the six areas shown in *Table 1 - Audit Results at a Glance* on the following page.

Summary of Audit Results

Table 1: Audit Results at a Glance – California Superior Court, County of Merced (Court Innovations Grant – Video Conference Hearings Project)

Areas and Sub-Areas Subject to Review		Reviewed	Reportable Audit Findings		
			# of Findings	Finding Reference(s)	Court's View
Financial Accountability					
1	Grant Funds Received Are Accurately Recorded in Phoenix	Yes	✓		
2	Grant Expenditures Were in Accordance with Approved Budget Plan	Yes	✓		
Allowable Activities & Costs					
3	Personnel Costs are Attributable to Grant Work	N/A			
4	Contractors' Work is Relevant and Consistent With Grant's Scope	Yes	✓		
5	Other Costs Incurred Were for Allowable Activities per the Guidance in the Court's IBA	N/A			
6	Indirect Costs Charged Were Calculated Based on Grant Program Rules	N/A			
Procurement					
7	Competitive Bidding Rules Followed	Yes	1	2019-07-01	Agree
8	Non-Competitive Procurements Justified	Yes	1	2019-08-01	Agree
Timely Deliverables					
9	Expected Deliverables On Time Per Grant Plan	Yes	✓		
Grant Progress Reporting					
10	Quarterly Progress Reports Submitted Timely	Yes	✓		
11	Quarterly Progress Reports Disclose Progress and Risks To Success	Yes	✓		
Quality Measurable Outcomes					
12	Pre-Implementation (Baseline) Performance Measures	Yes	1	2019-12-01	Agree
13	Post-Implementation Performance Measures	N/A			

Key

✓ Court complied, no reportable audit findings in the area noted

Source: Auditor generated table based on testing results and court management's perspective.

Notes: Audit Services considered the terms and provisions of the grant award reviewed, as well as any other applicable grant requirements (such as adherence to the Judicial Branch Contracting Manual and the Trial Court Financial Policies and Procedures Manual). Audit Services' explanations for why certain compliance areas were not tested, if any, are provided in the Scope and Methodology section of the audit report.

BACKGROUND

The Court Innovations Grant (CIG) Program

The Budget Act of 2016 appropriated \$25,000,000 for the establishment, operation, administration, and staffing of the Court Innovations Grant program for trial and appellate courts and for practices that promote innovation, modernization, and efficiency. The funds are designated for a competitive grant program developed and administered by the Judicial Council. The competitive grant program focuses on high priority innovations, modernizations, and efficiencies in the courts; \$12,000,000 to be spent on collaborative courts, \$8,000,000 on Self-help, Family and Juvenile courts, and \$5,000,000 on other efficiencies across all types of courts. Grant recipients must periodically provide progress updates to the Judicial Council as their projects move towards completion, and further must provide measurable outcomes data to facilitate reporting to the Legislature regarding the efficiencies and other improvements gained. Grant recipients have until June 30, 2020 to fully expend their CIG program awards, after which any unexpended funds will revert to the General Fund.

The Superior Court of Merced And Its Video Conference Hearings Project

The Superior Court of California, County of Merced (Court) operates in the Central Valley of California, north of Fresno and southeast of San Jose, serving a county population of over 255,793. The Court operates in two major cities in Merced County: Merced, the county seat and Los Banos. There are four courthouses² located in Merced and one courthouse in Los Banos; the Los Banos courthouse is about 36 miles from the main Merced Courthouse. The Court, with its twelve judicial officers, is considered by the Judicial Council as a cluster two (i.e. small) court for the purposes of analyzing workload and allocating funding. The Court has an annual baseline budget of \$17.9 million fiscal year 2018-19 and more than 120 employees³.

The Court Hopes To Improve Access to Justice in Los Banos By Leveraging Available Judicial Resources in Other Courthouses

According to the Court, the Los Banos courthouse handles a high criminal caseload. Due to a vacancy, there is only one judge at this location to hear cases. The Court maintains that defendants in criminal cases often have their hearings continued numerous times due to the overburdened court calendar. As a result, criminal cases can take significant time to move through the system. The Court also seeks to relieve pressure on its civil court calendars at the Los Banos location. With the Los Banos courthouse having limited capacity to serve its local community, at times the public must drive to the Merced courthouse to have their legal matters resolved. However, according to the Court, many of those who live in the Los Banos have limited funds and/or lack access to reliable transportation, thus making the 72-mile round trip to Merced difficult. Video conferencing equipment allows the public in Los Banos to have their

² The Traffic Division in Merced is not included in the CIG video conference hearings project.

³ Information from Court's fiscal year 2018-19 annual baseline budget detail and Schedule 7A (Salary and Position Worksheet).

matters heard in a more convenient location. As depicted in table 2 below, the Court’s CIG project proposes to use video conference technology for criminal preliminary hearings and civil cases, connecting judges from the Court’s three other courthouses in Merced to the defendant or respondent appearing at the Los Banos courthouse.

Table 2: Merced Superior Court’s CIG Video Conference Hearings Project

Video Conference Hearings Project		
Judge and/or Courtroom Staff in Merced		Defendants/Respondents and/or Courtroom Staff in Los Banos
New/Main Merced Courthouse (Courtroom # 4)* <i>Preliminary Hearings Overflow</i>		
↕		
Old Merced Courthouse (Courtroom # 8)** <i>Civil Cases - Restraining Order</i>		Los Banos -The Robert M. Falasco Justice Center (Courtroom # 13) Preliminary Hearings Overflow and Civil Cases (Restraining Order)
↕		
Juvenile Division (Courtroom # 11)* <i>Preliminary Hearings Overflow</i>		

Source: Discussion with Court staff and Court's updated calendar effective 1/7/2019.

**For Courtroom 4 and 11 (Preliminary Hearings Overflow), judicial officers in these courtrooms will operate the video equipment themselves to connect to Courtroom 13 in Los Banos. The judicial officers will be supported by courtroom staff already based in Los Banos. This is currently planned for Wednesdays and Fridays.*

***For Courtroom 8 (Civil Cases - Restraining Order), judicial officer and courtroom staff will be in Merced and office clerk based in Los Banos will set up the video equipment to connect Courtroom 13 to Courtroom 8. This is currently planned for Tuesdays.*

(Note: The Traffic Division is not included in the video conference hearings project.)

Financial Detail of Merced’s Video Conferencing Grant (Agreement #1034101)

The Judicial Council approved the Court’s CIG video conferencing hearings project (Project) in March 2017 under the “Other Efficiencies” grant category. The Court’s Intra-Branch Agreement (IBA) became effective July 1, 2017 and expires on June 30, 2021, but Court’s ability to spend grant funds expires a year earlier on June 30, 2020. Table 3 below provides a high-level overview of the amounts awarded and distributed by the Judicial Council to the Court, as well as amounts received, expended, and unspent grant funds at the Court. The Court reported to the

Judicial Council that it successfully installed its video conference equipment, but still had additional tasks to complete. As of September 30, 2018, the Court had remaining grant funds equal to \$34,000. According to the Court and its accounting records, the remaining funds will be primarily spent on payments for balances remaining for the purchase and installations of video conference equipment and upgrades of the telephone system servers, as well as for licenses in fiscal year 2018-19 related to video conference equipment.

Table 3: Merced’s Total CIG Project Award, Amount Received, Expended, and Unspent – as of September 30, 2018

Descriptions	As of September 30, 2018
Total Award and Disbursements - Judicial Council Records	
Total Cumulative Award	\$ 218,501
Less: Amount Remaining to be Disbursed <i>(Note: FY 19/20 grant award of \$10,480 will not be distributed to the Court until July 1, 2019.)</i>	(10,480)
Total Funds Disbursed to the Court	\$ 208,021
Court Revenues, Expenditures, and Balances - Court Records	
Total Grant Funds Received	\$ 208,021
Less: Expenditures	(173,884)
Unspent Grant Funds at Court	\$ 34,137
Less: Outstanding Encumbrances - Grant	(18,883)
Unencumbered Grant Funds**	\$ 15,254
<i>**Court will use part of the current unencumbered grant funds for licenses related to video conference equipment - budgeted at \$10,180 for fiscal year 2018-19.</i>	

AUDIT SCOPE AND METHODOLOGY

Audit Services initiated the audit of the Superior Court of California, County of Merced’s (Court) Court Innovations Grant (CIG) project in order to determine whether Court complied with certain key provisions of the grant agreement, statute, and the policies and procedures adopted by the Judicial Council of California. Our audit was limited to evaluating compliance with those requirements that, in our professional judgment, were necessary to answer the audit’s objectives. The audit is limited to the time period July 1, 2017 to September 30, 2018. The specific objectives and methods we followed are described in the table below.

Table 4 – Scope and Methodology

	Objectives	Methods
1	<p>Financial Accountability:</p> <ul style="list-style-type: none"> • Determine whether Court completely and accurately accounted for the Court Innovations Grant (CIG) funds received from the Judicial Council, in the Phoenix Financial System. • Determine whether Court has spent grant funds in accordance with the approved budget plan. • Determine whether unspent grant funds need to be returned to the Judicial Council. 	<p>Audit Services compared the Judicial Council’s CIG budget distributions against the revenue recorded by the Court in the Phoenix financial system (Phoenix). We also reviewed revenues and expenditures in Phoenix to ensure the appropriate fund and Work Breakdown Structure (WBS) was used by the Court when recording grant expenditures.</p> <p>We compared the Court’s grant expenditures recorded in Phoenix (by type of expenditure) to the most recently approved CIG project budget. When significant deviations—those exceeding 5% by expenditure type—were identified by audit staff, we made inquiries with the Court to understand the nature and appropriateness of the spending variances.</p> <p>We did not review this area since the court has yet to complete its CIG project (as of September 30, 2018) and has an unencumbered grant balance of around \$15,000.</p>
2	<p>Allowable Activities and Costs:</p> <ul style="list-style-type: none"> • <i>Personnel Costs</i> – For a sample the Court’s employees whose salaries and benefits were charged to the grant, evaluate whether the Court can substantiate that these employees are working on the 	<p>The Court did not charge personnel costs to the CIG project, and thus we passed on further testing in this area.</p>

	<p>grant project instead of other Court activities.</p> <ul style="list-style-type: none"> • <u>Consultant / Contractor Costs</u> – Determine whether the Court’s contractors—who were paid with CIG project funds—had scopes of work that were consistent with the goals and objectives of the Court’s CIG project. • <u>Other Costs</u> - Determine whether costs charged to the CIG project were incurred for allowable activities per the guidance in the Court’s CIG agreement. • <u>Indirect Costs</u> – Determine whether the calculation of indirect costs is in accordance with the CIG program rules. 	<p>As of September 30, 2018, the Court had paid four contractors using CIG funds, totaling roughly \$174,000. We reviewed the scopes of work for two contractors (representing 97% of the Court’s total spending on contractors). We also reviewed six expenditures pertaining to all four of the Court’s contractors, representing 56 percent of the \$174,000 spent to understand how the contractors’ work corresponded to the particular goals and objectives of the Court’s project.</p> <p>The Court only used CIG project funds to pay contractors, thus there were no additional areas to review.</p> <p>The Court did not charge indirect costs to its CIG project thus we passed on further review in this area.</p>
<p>3</p>	<p>Procurement: Determine whether the Court’s procurement transactions—that were paid for with Court Innovations Grant funds—complied with the Judicial Branch Contracting Manual’s (JBCM) requirements, specifically:</p> <ul style="list-style-type: none"> • <u>Competitive Solicitations</u> – Determine whether the Court achieved competition as defined in the JBCM, based on the particular solicitation method followed by the Court. 	<p>The Court paid four contractors with CIG funds, representing 100% of all grant spending. Of the four contractors, three were awarded contracts without competition either because the total award was too low and thus exempted from competition (two contracts), or was a sole-source procurement (one contract.) The Court awarded the remaining contract following a competitive solicitation.</p> <p>Following a competitive solicitation process, the court issued a blanket purchase order for \$179,500 for the purchase and installation of the video conference equipment in four courtrooms. We reviewed the Court’s available solicitation documents for this contractor and determined whether the Court followed the JBCM’s rules.</p>

	<ul style="list-style-type: none"> • <i>Non-Competitive Bid (NCB) Solicitations</i> – evaluate whether the Court’s decision to engage in a NCB procurement was consistent with the JBCM’s requirements. 	The Court awarded a \$12,000 contract to a vendor using a sole-source justification. We reviewed the Court’s justification and available documents to evaluate the Court’s justification for avoiding a competitive procurement.
4	<p>Timely Deliverables:</p> <ul style="list-style-type: none"> • Evaluate whether Court is meeting key milestones (and is receiving key deliverables on time) in accordance with its Project Implementation Plan (PIP). 	From the most recent Project Implementation Plan (PIP) submitted by the Court in fiscal year 2018-19 (first quarter), we selected four tasks for review using auditor judgement based on their relative importance to the overall goals and objectives of the grant, as well as the Court’s assertion that the deliverables are complete, soon to be completed, or Court is continuing to work on the task. One of the four tasks selected was the installation and testing of the video conference equipment. Audit staff was able to observe the installed video equipment and verified that it successfully connected to the other courthouses as expected.
5	<p>Grant Progress Reporting:</p> <ul style="list-style-type: none"> • Determine whether Court submitted its Quarterly Progress Reports (QPRs) on time. • Evaluate whether Court is reporting measurable outcomes and disclosing project risks in its Quarterly Progress Reports. 	<p>We reviewed the Court’s five Quarterly Progress Reports (QPRs) submitted in fiscal year 2017-18 and the first quarter of fiscal year 2018-19.</p> <p>We reviewed the Court’s transmittal of its QPRs to the Judicial Council, noting whether the Court was reporting project status information in a timely manner as required by the grant award.</p> <p>Based on audit staff’s understanding of the project’s risks and challenges, we reviewed the information provided by the Court within its progress reports to determine whether the Court was reporting measurable outcomes and disclosing significant risks, if any, which could adversely affect the timely completion of the grant.</p>
6	<p>Quality Measurable Outcomes:</p>	In addition to the three standard performance outcome metrics required by the Judicial Council, the Court has developed 12 additional measurable outcomes. These 12 measurable outcomes pertain

<ul style="list-style-type: none">• <u>Baseline Performance Data</u> - Determine whether Court is collecting baseline (pre-implementation) performance data to eventually contrast with post-implementation data. Determine the source(s) of this data and evaluate whether the Court is compiling this information accurately. • <u>Post Implementation Performance Outcome Data</u> - Evaluate whether the measurable outcomes reported to the Judicial Council, after implementation of the CIG project, can be traced to supporting court records.	<p>to criminal preliminary hearings, civil hearings, and other outcome measures based on data provided by the local sheriff. Audit Services judgmentally selected three of these metrics for further review based on: (1) the availability of data at the Court as opposed to external non-Court sources; and (2) the metric's likely relevance and significance to those who would evaluate the Court's performance.</p> <p>Through inquiry and observation, we reviewed whether the Court was collecting baseline performance data for 10 of the 12 measurable outcomes. For 3 of these 12 measures, we further traced the collected data for June 2018 to supporting court records to assess whether the Court was accurately compiling the performance data. Our testing was intended to evaluate the Court's ability to collect and report data relevant to the grant, and not to evaluate the underlying accuracy and completeness of the source documentation itself.</p> <p>At the time of our review in November 2018, the Court had yet to fully implement the Project and thus had no post-implementation data available for review. Nevertheless, audit staff interviewed the Court's management to understand their planned approach for collecting post-implementation data.</p>
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**SCHEDULE OF AUDIT FINDINGS AND PLANNED CORRECTIVE
ACTION**

FINANCIAL ACCOUNTABILITY

Background

The courts are responsible for separately accounting for their receipt and spending of grant funds in accordance with the terms listed in their respective grant agreements. The Court's Intra-Branch Agreement (IBA) with the Judicial Council for its Court Innovations Grant – Video Conference Hearings Project (Project), specified the following conditions:

- The Court agrees to track, account for, and report on all expenditures related to the Project separately from all other expenditures by using the WBS code in the Phoenix system (superior courts). If the Court does not use the specified WBS codes and cannot otherwise demonstrate how it spent grant funds, the Judicial Council may—in its sole discretion—seek to recover previous disbursements up to and including the entire award amount.
- The WBS codes specifically designated by the Judicial Council in the Phoenix financial system for the specific purpose of tracking the Court's CIG activity are:

WBS Code	Fiscal Year
G-241080-1-17: Innovations Grant - Merced	17/18
G-241080-1-18: Innovations Grant - Merced	18/19
G-241080-1-19: Innovations Grant - Merced	19/20
<i>Source: IBA, Exhibit B, Section 4(B)</i>	

- The Court's grant funding is available for encumbrance and expenditure until June 30, 2020.
- Within sixty (60) days after the expiration or termination of the agreement, the Court will return to the Judicial Council the portion of the Award Amount that has not been expended for the Project. If the Court does not return such funds, the Judicial Council will withhold a like amount from the Court's annual court funding distribution.

Audit Results

Overall, the Court demonstrated financial accountability over its CIG project award. For example, we noted the Court accurately recorded the grant disbursements it received from the Judicial Council. We also observed the Court used the assigned WBS code in Phoenix to facilitate the tracking and monitoring of CIG project expenditures by both the Court's employees and the Judicial Council's staff. We did not have any reportable audit findings in the area of financial accountability.

ALLOWABLE ACTIVITIES AND COSTS

Background

Grant awards—such as the Judicial Council’s Court Innovations Grant program may specify certain allowable and/or unallowable activities that may or may not be funded with grant proceeds. These grant conditions may further specify certain types of costs that are categorically unallowable pursuant to the grant’s rules. The CIG program is no different and the Court’s grant agreement with the Judicial Council defines certain allowable and unallowable activities and costs. Exhibit B of the Court’s grant agreement with the Judicial Council lists certain unallowable activities/costs that include, but are not limited to, the following:

- For any expenditures not directly related to the project.
- To contract with a current employee of any judicial branch entity (or with a former employee per California Rules of Court, Rules 10.103 and 10.104).
- For the construction of facilities.
- For the routine replacement of office equipment, furnishings or technology.
- To pay for automated court systems that are not recommended by the Judicial Council.
- For any technology maintenance costs that extend beyond the end of the grant award period (i.e. June 30, 2020).

Audit Results

As of September 30, 2018, the Court spent roughly \$174,000 (or roughly 84% of its total grant award received) on four vendors. Audit Services reviewed their scope of work, selected samples of payments and related invoices from each to determine whether they were for expenditures directly related to the Project. Our sample of 6 expenditures cumulatively totaling \$97,000 (56% of spending as of September 30th) found the purpose of the expenditures were allowable and consistent with the purpose of the grant. For example, the majority of these expenditures pertained to the purchase and installation of video conference equipment in two of the four courtrooms, the cost of speakers in one courtroom, the upgrade of the phone system to include video services, and the installation of electrical outlets for cameras in three courtrooms. We did not find any instances where the Court used grant funds for the unallowable activities. As a result, we had no audit findings in this area.

PROCUREMENT

Background

Trial courts are expected to procure goods and services in a manner that promotes competition to ensure best value. The Judicial Branch Contracting Manual (JBCM) and the Trial Court Financial Policies and Procedures Manual (FIN Manual) provide uniform guidelines for trial courts to follow when procuring goods and services. A court's adherence to these guidelines is still appropriate regardless of whether it is spending grant funds or operating funds allocated by the Judicial Council. The Court's grant agreement requires that it follow the provisions found in the JBCM and the FIN Manual.

Audit Results

As noted in the scope and methodology section of our report, our audit focused on whether the Court appropriately followed competitive solicitation rules established in the JBCM, or alternatively had valid reasons for engaging in non-competitive procurement solicitations when executing its CIG project award. We selected two of the Court's procurements collectively valued at \$191,500 (or roughly 87% of the Court's entire CIG award of \$218,501) to evaluate the Court's procurement approach. The Court's two other vendors had contracts that were each under \$5,000 and thus categorically exempt from competition.

We respectfully question the Court's decision to engage in a sole-source (non-competitive) procurement for one of the two vendors we reviewed. The Court's sole-source justification generally focused on the convenience of using the same vendor from a previous project as opposed to that vendor being the only source for the requested goods or service. For the other procurement we reviewed where the total contract value equaled \$179,500, the Court lacked records to demonstrate that it had: (1) followed the appropriate solicitation process, and (2) selected the winning bidder using appropriate criteria. According to the Court, the original solicitation documents were misplaced when the Court's former IT director left employment with the Court.

Finding Reference	Subject Area
2019-07-01	Missing documents to demonstrate competitive procurement rules were followed, rationale for vendor selection unclear
2019-08-01	Inadequate Sole-Source Justification

FINDING REFERENCE: 2019-07-01

CRITERIA

JUDICIAL BRANCH CONTRACTING MANUAL (JBCM), CHAPTER 4, COMPETITIVE SOLICITATION OVERVIEW:

4.7 SUMMARY DOCUMENT

The evaluation and selection process for every procurement effort should be documented and referenced in a procurement summary. The purpose of the procurement summary is to create a single document that provides the history of a particular procurement transaction and explains the significant facts, events, and decisions leading up to the contract execution. The procurement summary should be included in the procurement file.

Procurement summaries should be written clearly and concisely to support the soundness of the purchasing decision.

JBCM, CHAPTER 4C, STEP BY STEP GUIDE FOR THE PROCUREMENT OF IT GOODS AND SERVICES:

STEP 7— PREPARE ADVERTISING – A JBE must advertise solicitations as shown in the following table:

Procurement for	Advertising required:*
IT Goods	If total procurement value is \$100,000 or more
IT Services	If total procurement value is \$10,000 or more
IT Goods and Services	If the total procurement value is \$100,000 or more or the services portion of the procurement is \$10,000 or more

**All IT solicitations must be advertised as set forth in this table, even if the JBE adopts a threshold for use of RFQs that is higher than \$100,000.*

JBCM, CHAPTER 11.5 (B) -RECORDKEEPING AND FILES

Files must be established and maintained for every procurement action. This requirement applies to the Vendor selection process (pre-award) and to post award contract administration, maintenance, and contract closeout. The requirement to maintain contract files is based on three standards of sound contract administration:

Standard Three: Documentation of a fair and competitive procurement is maintained.

CONDITION

The Court's recordkeeping for the most significant procurement associated with its CIG project—\$179,500 awarded to one contractor/vendor—was insufficient to allow us to independently evaluate the Court's vendor selection process and conclude whether it followed the JBCM's competitive procurement rules. The Court explained the documentation challenges associated with this procurement resulted from the Court's former IT Director misplacing the related procurement documents upon his departure. Notwithstanding these difficulties, the Court's procurement processes should standardize the creation and safe storage of its procurement files, such that the departure of key personnel involved with the procurement does not prevent or hinder external review.

Based on the records the Court was able to provide, the procurement process leading up to vendor selection had multiple deficiencies, including:

- The Court was unable to provide solicitation documents. The Court asserted that it used a Request for Quote (RFQ) solicitation instead of an Invitation For Bid (IFB) or Request for Proposal (RFP). However, according to the JBCM, the RFQ process is intended for low-value, low-risk contracts that are generally less than \$100,000. The resulting contract award was \$179,500. Further, use of the RFQ process does not require the Court to issue a Notice of Intent to Award upon vendor selection. Without such a notice, other bidders may be unaware of who won the contract and may lose a reasonable opportunity to protest the Court's decision.
- The Court could not demonstrate that its RFQ solicitation was advertised. The JBCM requires advertisement when a contracting opportunity for IT goods and services exceeds \$100,000. Advertising helps to ensure competition is ultimately achieved.
- The Court could not demonstrate how it intended to select the winning bidder. Although the Court provided copies of the bids it received from two bidders, both bids proposed different equipment and configuration approaches, making it difficult to determine how the Court assessed which proposal was the most effective when selecting the winning bidder. The JBCM generally requires that IT procurements may be awarded on the basis of "value effectiveness" within a competitive framework. This reflects state policy (and the JBCM) that IT purchases are to be evaluated based on factors beyond just cost.

Regardless, without evidence of advertisement and a clear vendor selection process, it remains uncertain as to whether the Court followed the JBCM's vendor selection requirements and ultimately obtained best value using CIG project funds.

RECOMMENDATION

To ensure it can always retrieve critical procurement documents that explain the Court's vendor selection decisions, the Court should consider developing a standardized process for creating and storing its procurement files. Further, the Court's procurement staff should review Chapter 4C of the JBCM and take steps to ensure its RFQ solicitations are the appropriate method given the dollar amounts involved and other guidance found in the JBCM.

COURT'S VIEW AND CORRECTIVE ACTION PLAN

The Court agrees with this finding. The Court will ensure to follow the JBCM guidance as recommended.

Response provided on 02/20/2019 by: Keri Brasil, CFO

Date of Corrective Action: 2/20/19

Responsible Person(s): Linda Romero-Soles, CEO; Keri Brasil, CFO

FINDING REFERENCE: 2019-08-01

CRITERIA

JUDICIAL BRANCH CONTRACTING MANUAL (JBCM), CHAPTER 5, NON-COMPETITIVELY BID PROCUREMENTS (NCB) - Effective August 1, 2017:
5.1 PURCHASES UNDER \$5,000

For very small purchases, NCB procurements are permitted because the cost of conducting a competitive procurement may exceed the savings expected from the competitive process. JBEs may purchase non-IT goods, non-IT services, or IT goods and services that cost less than \$5,000 without conducting a competitive procurement so long as the Buyer determines that the pricing is fair and reasonable.

5.9 - SOLE SOURCE

- JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value without conducting a competitive procurement if (i) the goods, services, or goods and services are the only non-IT goods, non-IT services, or IT goods and services that meet the JBE's need, or (ii) a grant application submittal deadline does not permit the time needed for a competitive procurement of services.

- A sole source request must be provided to the sole source approver.

- The sole source request should include the following information:
 - Description of the non-IT goods, non-IT services, or IT goods and services to be procured;
 - Explanation of why the non-IT goods, non-IT services, or IT goods and services cannot be procured competitively;
 - The effort made to solicit competitive Bids, if any;
 - Documentation that the pricing offered is fair and reasonable; and
 - Special factors affecting the cost or other aspect of the procurement, if any.

CONDITION

The Court awarded a contract valued at \$12,000 to a vendor to upgrade the Court's telephone servers to allow video conferencing in its courtrooms per its CIG project. At the time of award, procurements valued at more than \$5,000 had to be competitively bid, which has since increased to \$10,000 with the recent update to the JBCM. The JBCM also permits courts to still move forward with high-valued procurements without a competitive solicitation if the Court has a sound basis for doing so, such as when it determines only one vendor is capable of providing the needed goods or service (i.e. a sole-source justification).

When reviewing the Court's sole source justification for this procurement, the Court noted the vendor had previously installed the Court's phone system in 2014 and the Court thought it would save time and money by using a vendor familiar with the system. The Court believes its use of the sole source was appropriate for this solicitation. Nevertheless, the Court did not explain why the selected vendor was the only one capable of upgrading the Court's telephone network, and a

competitive solicitation would have better ensured the selected vendor was in fact the lowest cost option as the Court had predicted.

RECOMMENDATION

To ensure the Court is taking every opportunity to maximize its use of competitive procurements, its procurement staff should limit its use of sole-source justifications to only those cases where it can clearly demonstrate that only one vendor is capable of providing the needed goods or service.

COURT'S VIEW AND CORRECTIVE ACTION PLAN

The Court agrees with this finding. The Court believes it acted prudently and in its best interest when selecting Team SOS, who was instrumental in the successful deployment of our grant project. Nevertheless, the Court acknowledges that it can do a better job of documenting and explaining its rationale for identifying sole-source vendors. The Court's procurement staff plan to work with the Judicial Council's procurement officials to further review and refine our existing procurement practices.

Response provided on 02/20/2019 by: Keri Brasil, CFO

Date of Corrective Action: 2/20/19

Responsible Person(s): Linda Romero-Soles, CEO; Keri Brasil, CFO

TIMELY DELIVERABLES AND GRANT PROGRESS REPORTING

Background

When the Court accepted the Judicial Council’s CIG funds, it agreed to complete certain tasks / deliverables identified in its *Project and Implementation Plan*. This plan further specified target completion dates, which allowed the Judicial Council’s staff to monitor the project’s incremental progress towards completion based on the Court’s quarterly progress reports. By defining key tasks and project deliverables in its plan—along with the Judicial Council’s approval of these items—the Court demonstrates accountability for the full and timely completion of its CIG-funded project. The Court’s agreement with the Judicial Council also required it to timely submit quarterly progress reports that summarize grant-related activities including project risks and measurable outcomes.

Audit Results

Table 5 – The Court’s Project Milestones, Deliverables and Status – as of September 30, 2018

Task #	Description	Target Completion Date	Court-Reported Status	Reviewed During Audit
1	Hold project orientation / kickoff meeting	8/31/2017	Complete	
2	Created detailed project workplan with timelines	8/31/2017	Complete	Yes
3	Confirm evaluation plan, needed data collection identified	ongoing		Yes
4	Update policies and procedures for video technology in courtroom	12/1/2018		
5	Research product compatibility with court and county's IT network and AV system	11/30/2017	Complete	
6	Meet with justice partners every 3-5 months	ongoing		
7	Purchase video conferencing equipment	12/30/2017	Complete	Yes
8	Install and test equipment**	11/23/2018		Yes
9	Maintain / update court calendars and protocol for video hearings	ongoing		
10	Implement video hearings	12/1/2018		
11	Evaluate need for adjustments, post implementation	ongoing		
12	Project end date	6/30/2020		

***Note: Auditors observed the successful installation and operation of the video conferencing equipment (item #8) during their site visit to the Court in November 2018.*

Audit Services judgmentally selected four items (tasks # 2, 3, 7 and 8) based on their relative importance to the overall goals and objectives of the grant. Through inquiry and observation, Audit Services verified the status of these deliverables and notes that Court has made significant progress towards implementing its grant project. Most importantly, Audit Services observed the Court’s successful installation of its new video conference equipment through a demonstration and verified its ability to connect to other courthouses. With roughly 17 months remaining before the end of the Court’s grant, Audit Services believes the Court is making sufficient progress and has no reportable audit findings to report with respect to timely deliverables. We also noted the Court has provided quarterly progress reports to the Judicial Council in a timely manner, reported baseline measurable outcomes, and has been openly communicating project status as well as challenges such as difficulties encountered during the procurement process and data collection.

QUALITY MEASURABLE OUTCOMES

Background

The Court’s grant agreement with the Judicial Council requires the Court to provide measurable outcomes realized through the implementation of the video hearings conference project, including any potential savings. The IBA specifies, “[t]he measurable outcomes information detailed in this section is vital to the success of the Court Innovations Grant Program.”

The Judicial Council requires the Court to report on three standard performance areas, and then any additional performance metrics developed by the Court and approved by the Judicial Council. The three standard performance areas focus on: monetary savings; data demonstrating the sustainability of the project post grant award; and data demonstrating the replicability of the same project at other courts. In addition to these three standard performance measures, the Court developed 12 additional measurable outcomes specifically for its grant project, as summarized in the table below.

Table 6: The Twelve Measurable Outcomes Developed by the Court and Data Collection Status

Criminal Preliminary Hearings		Civil Hearings		Jail Crowding Information and Estimated Savings (Sheriff)	
#		#		#	
1	<i>Number of hearings conducted/heard (monthly)</i>	6	<i>Number of hearings heard (monthly)</i>	10	Non-sentenced averaged daily population (monthly)
2	Number and percent of hearings using video equipment (monthly)	7	Number and percent of hearings using video equipment (monthly)	11	Average length of stay for pre-trial releases (quarterly)
3	<i>Number of hearings continued (monthly)</i>			12	Estimated savings to Sheriff resulting from the reduction in transportation costs to transport defendants to Merced's courthouses (monthly)
4	Average days elapsing between the scheduling of a hearing and actual hearing date (monthly)	8	Average days elapsing between the scheduling of the hearing and actual hearing date (monthly)		
5	Average days to completion of preliminary hearings (monthly)	9	Average days to disposition (monthly)		
As of September 30, 2018, the Court has yet to fully implement the Project, so post implementation data was not available.					
Nevertheless, the Court has begun capturing baseline (pre-implementation) data for the ten green-shaded measurement outcomes shown in the table. Audit Services reviewed the supporting documentation behind the three reported bold and italicized metrics (items #1, 3, and 6).					

Audit Results

At the time of our review in November 2018, the Court had yet to fully implement the Project and thus there was no post-implementation data available for review. However, the Court deserves credit for beginning to collect baseline (pre-implementation) data for 10 of the 12 measurable outcomes, which are shaded green in the table above. Audit Services selected three of these performance measures (# 1, 3, and 6), based on our judgement as to the most valid of the performance outcomes relative to the Project's stated goals and objectives, as well as the availability of data for review. For these three metrics, we traced the reported baseline data to the Court's case management system (CMS) reports and *Register of Actions* to assess whether the Court was compiling the performance data in accordance with the grant's rules.

Our review identified one reportable finding regarding the Court reported baseline counts of its preliminary hearings heard/conducted (measure # 1). Specifically, the Court included both hearings heard and continued in this performance metric. However, the grant agreement requires the reporting of the number of hearings heard separately from hearings continued/continuances (in measure # 1 and # 3 as shown in the table). The Court acknowledged the error and will take steps to report hearings heard net of continuances going forward.

Although Audit Services did not identify any other issues rising to the level of a reportable audit findings, we did identify other matters that, in our judgement, still warranted communication to the Court's management. The general nature of this communication focused on the validity and monitoring costs associated with some of the Court's approved performance measures, ultimately recommending the Court work with the Judicial Council to consider revising some of these measurable outcomes.

Finding Reference	Subject
2019-12-01	Outcome #1 – Preliminary Hearings: Comingling continuances with total hearings heard

FINDING REFERENCE: 2019-12-01

CRITERIA

COURT'S INTRA-BRANCH AGREEMENT FOR THE COURT INNOVATIONS GRANT – VIDEO CONFERENCE PROJECT, EXHIBIT A, SECTION 6 (A)(i), QUARTERLY PROGRESS REPORT

- Quarterly Progress Report: Includes progress toward goals and objectives, program achievements and challenges, and changes to key staff or procedures. Also includes measurable outcomes, as identified in Section 7 of this Exhibit A.

COURT'S INTRA-BRANCH AGREEMENT FOR THE COURT INNOVATIONS GRANT –
VIDEO CONFERENCE PROJECT, EXHIBIT A, SECTION 7(A), MEASURABLE OUTCOMES

- iv. For preliminary hearings, provide (quarterly):
 - a. Total number of preliminary hearings conducted/heard each month pre and post-implementation to show an increase in the number of preliminary hearings heard each month.
 - b. Number and percent of the preliminary hearing conducted by videoconference each month post-implementation to demonstrate use.
 - c. Total number of preliminary hearings continued each month pre and post implementation to show a decrease in continuances for preliminary hearings.

COURT'S INTRA-BRANCH AGREEMENT FOR THE COURT INNOVATIONS GRANT –
VIDEO CONFERENCE PROJECT, EXHIBIT A, SECTION 7 (B), MEASURABLE OUTCOMES

- **Failure to Provide Information:** The measurable outcomes information detailed in this section is vital to the success of the Court Innovations Grant Program. Therefore, failure to provide any and all of this information that is acceptable to the Judicial Council may result, at the Judicial Council's discretion, in a delay of payment under this Agreement or termination of this Agreement.

CONDITION

The Court reported to the Judicial Council over two years' worth of baseline performance data for: (1) criminal preliminary hearings conducted/heard, and (2) hearings continued each month. We judgmentally selected the month of June 2018 to trace this data to supporting CMS reports and for sample cases, to the Court's underlying Register of Actions. The Court was able to provide us with records that totaled to the 169 preliminary hearings conducted/heard and the 30 continuances reported for the month of June 2018.

However, upon closer review Audit Services noted the 169 preliminary hearings reported as heard/conducted also included 30 continuances, which the Court agreed to report separately per the grant agreement. As a result, the Court reported its count of 30 continuances twice (once in its count of preliminary hearings heard / conducted and again when separately reporting only on continuances). According to the Court, its standard CMS reports initially could not filter or separate continuances from preliminary hearings heard /conducted; however, the Court worked with its CMS vendor to develop custom reports and believes it can now properly segregate and report the different data sets as required by the grant agreement.

RECOMMENDATION

Based on its new custom report, the Court should revise the baseline data previously reported to the Judicial Council to exclude the number of continuances from the total number of preliminary hearings conducted/heard reported.

COURT'S VIEW AND CORRECTIVE ACTION PLAN

The Court agrees with this finding and is currently working with the CMS vendor to modify the custom report.

Response provided on 02/20/2019 by: Keri Brasil, CFO

Date of Corrective Action: 2/20/19

Responsible Person(s): Linda Romero-Soles, CEO; Keri Brasil, CFO, Marlin Escalante, Mgmt. Analyst
