



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2011

Title

Judicial Branch Administration: *Judicial Branch Contracting Manual*

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise *Judicial Branch Contracting Manual*

Effective Date

December 13, 2011

Date of Report

November 29, 2011

Recommended by

Administrative Office of the Courts
Mary M. Roberts, General Counsel
Office of the General Counsel

Contact

Evan M. Garber, 415-865-4287
evan.garber@jud.ca.gov

Executive Summary

With the concurrence of the Judicial Branch Contracting Manual Working Group, the Administrative Office of the Courts (AOC) recommends that the Judicial Council revise the provisions in the Introduction chapter of the *Judicial Branch Contracting Manual* concerning the use of words signifying mandatory and discretionary actions, and, as recommended by the working group, direct the AOC to report further to the council in April 2012 about additional, comprehensive revisions to the manual. This bifurcated process will allow for a lengthier comment period regarding proposed changes, as requested by the trial courts. The proposed revisions to the Introduction chapter would make the manual more effective and workable for judicial branch entities' procurement and contracting by eliminating internal inconsistencies between actions that are required and actions that are discretionary.

Recommendation

The AOC recommends that the Judicial Council, effective December 13, 2011:

1. Revise the provisions in the Introduction chapter of the *Judicial Branch Contracting Manual* concerning the use of words signifying mandatory and discretionary actions; and
2. Direct the AOC to report further to the council at its regular business meeting in April 2012 about additional, comprehensive revisions to the manual.

The text of the revised Introduction chapter is included as an attachment.

Previous Council Action

At the council's regular 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 California Judicial Branch Contract Law. The council also directed the AOC to report back in December 2011 and present to the council proposed revisions to the manual resulting from further consultation with the Judicial Branch Contracting Manual Working Group as well as feedback from judicial branch entities.¹

Rationale for Recommendation

With certain exceptions² the California Judicial Branch Contract Law (Judicial Branch Contract Law), enacted March 24, 2011, requires that judicial branch entities comply with the provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services. 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, referred to in this report as the "operative date."³ The Judicial Branch Contract Law also requires the council to adopt a judicial branch contracting manual containing policies and procedures applicable to judicial branch entities related to the procurement of goods and services.⁴

Currently proposed revisions to the manual

To have a manual in place by the operative date of the Judicial Branch Contract Law, the time period for development of the manual—including its review by judicial branch entity personnel and the public—was extremely compressed. Review of the manual since its adoption has revealed the need to revise the manual's Introduction concerning the use of words signifying mandatory and discretionary actions. Specifically, the Introduction does not make clear which terms signify mandatory action and which ones signify discretionary action. The proposed revisions clarify how certain terms are used throughout the manual. Additionally, the proposed revisions clarify the extent to which the *Trial Court Financial Policies and Procedures Manual*

¹ Public Contract Code section 19205 defines "judicial branch entity" as "any superior court, court of appeal, the California Supreme Court, the Judicial Council, the Habeas Corpus Resource Center, or the Administrative Office of the Courts."

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

³ *Id.*, § 19203.

⁴ *Id.*, § 19206.

is superseded by the manual. Adoption of the proposed revisions will make the manual more effective and workable for judicial branch entities in their procurement and contracting activities.

Future revisions to the manual

Since the adoption of the manual, the AOC has convened several meetings of the Judicial Branch Contracting Manual Working Group to discuss the members' questions and experience in implementing the requirements of the new law and following the policies and procedures in the manual.⁵ These discussions have revealed the need for many and substantial revisions to the manual, which is approximately 275 pages. Because of the compressed development and review period for the initial adoption of the manual, members of the working group have requested at least one month to review the anticipated comprehensive revisions. Because of the magnitude of the anticipated revisions and the need and request for input from trial courts, the AOC recommends reporting back to the council at its regular business meeting in April 2012 to present further, comprehensive revisions to the manual. Approval of this recommendation will allow the AOC and the working group a lengthier period to develop proposed revisions and will allow all judicial branch entities a lengthier period to review and comment on the proposed revisions, ultimately making the manual more effective and workable for judicial branch entities in their procurement and contracting activities.

Comments and Alternatives Considered

The proposed revisions to the manual were not circulated for public comment but have been circulated to the members of the Judicial Branch Contracting Manual Working Group, who concur with them.

The AOC did not consider any other alternatives because the manual is required by law and the proposed revisions will make the manual more effective and workable for the trial courts and other judicial branch entities.

Implementation Requirements, Costs, and Operational Impacts

By clarifying which actions are mandatory and which are discretionary, the proposed revisions will alleviate some of the significant implementation costs that the Judicial Branch Contract Law has

⁵ The Judicial Branch Contracting Manual Working Group consists of the following judicial branch personnel: Presiding Judge Lee Smalley Edmon, Superior Court of Los Angeles County; Presiding Judge Steven J. Howell, Superior Court of Butte County; Mr. D. Brett Bianco, Court Counsel, Superior Court of Los Angeles County; Mr. Geoff Brandt, Assistant Court Executive Officer, Superior Court of Placer County; Ms. Karen Brewer, Senior Contract Officer, Superior Court of Sacramento County; Mr. Fred Cabrera, Contract Services Manager, Superior Court of Sacramento County; Mr. Michael J. Cappelli, General Counsel, Superior Court of Riverside County; Ms. Sherry Clifford, Procurement Specialist, Superior Court of Orange County; Ms. Jean Field, Assistant Director, Habeas Corpus Resource Center; Mr. James Flohrschutz, Business Services Manager, Superior Court of San Joaquin County; Ms. Tammy L. Grimm, Court Executive Officer, Superior Court of Inyo County; Ms. Rhonda Mobley, Procurement Specialist, Superior Court of Sonoma County; Ms. Susan Patrick, Principal Management Analyst, Contracts and Purchasing, Superior Court of San Francisco County; and Ms. Charlene Ynson, Court Administrator, Court of Appeal, Fifth Appellate District.

imposed on all judicial branch entities by making the manual more understandable and easier to follow.

Attachment

1. Introduction chapter to Judicial Branch Contracting Manual



Judicial Council of California

Judicial Branch Contracting Manual

Introduction
Page 1 of 7

INTRODUCTION

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

1. STATUTORY BASIS FOR THIS JUDICIAL BRANCH CONTRACTING MANUAL

On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law (JBCL).¹ With certain exceptions,² the JBCL requires that superior and appellate courts, the Judicial Council, the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities or JBEs) comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.

Judicial Branch Contracting Manual

PCC 19206 of the JBCL requires the Judicial Council to adopt and publish a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that JBEs must follow. The policies and procedures in the Judicial Branch Contracting Manual must be “consistent with” the PCC and “substantially similar” to the provisions contained in the *State Administrative Manual (SAM)* and the *State Contracting Manual (SCM)*.

Applicable Dates of JBCL Requirements

The JBCL became effective March 24, 2011, and applies to all contracts initially entered into or amended on or after October 1, 2011. PCC 19206 requires the council to adopt and publish a Judicial Branch Contracting Manual no later than January 1, 2012, but PCC 19204(d) provides that until the council adopts and publishes the required manual, JBEs “shall instead be governed by applicable policies and procedures in the State Administrative Manual and the State Contracting Manual, or policies and procedures as otherwise required by law to be adopted by the Department of General Services applicable to state agencies.”

On August 26, 2011, the Judicial Council adopted this *Judicial Branch Contracting Manual (Manual)* in compliance with PCC 19206. This effective date of this Manual is October 1, 2011.

¹ SB 78 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 10). The California Judicial Branch Contract Law is at PCC 19201–9210. The law was amended by SB 92 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 36), effective June 30, 2011.

² See PCC 19204(c), 19207, and 19208.

2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

Development of this Manual was guided by the principles reflected in the findings and declarations of the Legislature in enacting the PCC, which express the legislative intent to achieve the following objectives as set forth in PCC 100:

- To clarify the law with respect to competitive bidding requirements;
- To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds;
- To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and
- To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

In addition, the Legislature has declared that California public contract law “should be efficient and the product of the best of modern practice and research” (PCC 101) and that, to encourage competition and to aid in the efficient administration of public contracting, “to the maximum extent possible, for similar work performed for similar agencies, California’s public contract law should be uniform.” (PCC 102)

3. LOCAL CONTRACTING MANUAL

PCC 19206 requires the Judicial Council to include in this Manual a requirement that each JBE shall adopt a Local Contracting Manual for procurement and contracting for goods and services by that JBE. The content of each Local Contracting Manual must be “consistent with” the PCC and “substantially similar” to the provisions contained in the SAM and the SCM.

- Each JBE must adopt a manual consistent with the requirements of PCC 19206.
- Each JBE must identify individual(s) with responsibility and authority for procurement and contracting activities as required by this Manual.
- Each JBE may include in its Local Contracting Manual policies and procedures governing its procurement and contracting activities, and those policies and procedures must not be inconsistent with this Manual or with applicable law.

4. CONTENT AND EXCLUSIONS

The Manual addresses judicial branch entities’ procurement of goods and services, including information technology goods and services, contracting, and contract management. The Manual does *not* address:

- Procurement and contracting for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities, as those activities are expressly excluded from coverage under Part 2.5 by PCC 19204(c);
- Procurement and contracting specific to planning, design, construction, rehabilitation, renovation, replacement, lease, acquisition, of facilities *other than* trial court facilities and maintenance of facilities, as those activities are the responsibility of the AOC and will be addressed in the AOC's Local Contracting Manual; and
- Any provision of the PCC that does not apply to contracting or procurement by state agencies and departments as such provision is inapplicable to judicial branch entities. (PCC 19208)

The Manual is drafted also to comply with PCC 19207, which states:

Except as provided in subdivision (a) of Section 19204 or as otherwise specifically required by law applicable to any judicial branch entity, nothing in this part is intended, nor shall it be construed, to require the approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services or the Secretary of California Technology, in the procurement of any judicial branch goods or services, including information technology goods and services.

The above-referenced exception provided in subdivision (a) of PCC 19204 applies to all contracts with total cost estimated at more than \$1 million and to contracts for administrative or infrastructure information technology (IT) projects of the council or the courts with total costs estimated at more than \$5 million. (GC 68511.9) These types of contracts are subject to the following requirements:

- Contracts estimated to cost more than \$1 million, *except* contracts for administrative or infrastructure IT projects estimated to cost more than \$5 million, are subject to "review and recommendations" by the Bureau of State Audits to ensure compliance with PCC Part 2.5. JBEs that enter into any such contract must notify the State Auditor, in writing, within 10 business days of entering the contract.
- Contracts for administrative or infrastructure IT projects of the council or the courts with total costs estimated at more than \$5 million are subject to "review and recommendations" of the California Technology Agency. That agency must consult with and provide recommendations to the council or the court, and must

submit a copy of its review and recommendations to the Joint Legislative Budget Committee. (GC 68511.9)

5. EFFECT OF THE MANUAL ON PREEXISTING JUDICIAL BRANCH POLICIES AND PROCEDURES

This Manual supersedes the following chapters of the *Trial Court Financial Policies and Procedures Manual* (TCFPPM) that would otherwise apply to the superior courts:

- 6.01, Procurement;
- 7.01, Contracts;
- 7.02, Memorandums of Understanding (MOUs), Interagency Agreements (IAs) and Intra-Branch Agreements (IBAs); and
- 7.03, Contract Administration.

The Manual also supersedes the remainder of the TCFPPM to the extent sections of the TCFPPM are inconsistent with the requirements set out in this Manual. The other requirements of the TCFPPM, however, including but not limited to those relating to invoice processing and expense reimbursement, are not superseded by this Manual. JBEs will continue to be responsible for maintaining fiscal and operational accountability by following established procedures and policies, including, for trial courts, those set out in the TCFPPM.

In addition, this Manual supersedes (a) the AOC “Policy Regarding Legal Review of Procurement Matters,” and (b) AOC policy “7.2.1, Procurement of Goods and Services,” for all procurement and contracting purposes *except* as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

Finally, this Manual supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council December 7, 2007, for all facilities-related procurement and contracting purposes *except* for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

County and other Local Agency Procurement Policies

PCC 19204 requires JBEs to comply with the provisions of the JBCL. This requirement supersedes any county or other local agency policies and procedures that a JBE may have followed prior to October 1, 2011.

6. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at www.courts.ca.gov/7465.htm.

7. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

Words used in this Manual to signify requirements or discretion have the meaning and intent specified in the table below.

Use of Words Signifying Requirements or Discretion			
Words→	Words signifying a mandatory duty <u>or prohibition</u> are: “must,” “shall,” “mandatory,” “required,” “must not,” and “may not”	Words signifying <u>where a JBE has</u> reasonable discretion: “should” and “should not”	Words signifying full discretion: “may,” “ <u>guidelines,</u> ” “ <u>recommended,</u> ” “ <u>examples,</u> ” and “encouraged,” and “ <u>will</u> ” ³
When used→	To reflect obligations <u>or prohibitions</u> under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of <u>highly</u> favored but not mandated business or accounting practices	To provide <u>helpful</u> guidance
Compliance→	Mandatory unless there is an applicable	Not mandatory, but <u>required-favored</u>	Optional

³ “Will” signifies a future contingency or predicts action by a JBE or person in the ordinary course of events. It does not signify a recommendation or requirement.

	legal exemption	unless there is a good business reason for variance	
Documenting Noncompliance→	Documentation required	Include justification for variance in the appropriate file ⁴	None required

If and to the extent a provision of this Manual expressly authorizes a JBE to waive a mandatory duty, the actual waiver must be necessary or appropriate, in the best interests of the JBE and the public, and, in the opinion of the JBE's legal counsel, consistent with applicable law.⁵ Any other waiver is void. Documentation of waivers must be kept on file in accordance with the records retention requirements set forth in chapter 11, section 11.5 of this Manual.⁶

8. INTERPRETATION OF THE MANUAL

The AOC/OGC is available to assist JBEs in answering questions or providing clarification regarding this Manual.

⁴ If specific to a particular procurement, the procurement file is the appropriate file.

⁵ Trial courts may arrange for legal review by their in-house legal staff or retained counsel, or through AOC/OGC. Other JBEs should arrange for legal review through AOC/OGC.

⁶ FIN 12.01, *Record Retention*, of the *Trial Court Financial Policies and Procedures Manual* addresses the period of time that trial court contract records are retained.