



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

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Title	Agenda Item Type
Judicial Administration: Change of the Duties of the Advisory Committee on Financial Accountability and Efficiency of the Judicial Branch	Action Required
	Effective Date
	October 28, 2014
Rules, Forms, Standards, or Statutes Affected	Contact
None	John A. Judnick Senior Manager, Audit Services 415-865-7450, john.judnick@jud.ca.gov
Recommended by	
Executive and Planning Committee Judicial Council Hon. Douglas P. Miller, Chair	

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### **Executive Summary**

The Executive and Planning Committee (E&P) recommends that the frequency of the reports on Judicial Council contracts prepared by the Advisory Committee on Financial Accountability and Efficiency of the Judicial Branch (A&E) be changed from semiannually to biennial. On August 23, 2013, the council adopted guidelines that require the reports on contracts to be made semiannually. Such frequent reporting is not considered necessary due to the biennial review of contracts by the California State Auditor (CSA) and therefore E&P recommends that the guidelines be modified to require the A&E Advisory Committee to review and report on contracts to the council biennially instead of semiannually (alternating years from the CSA).

### **Recommendation**

E&P recommends that the Judicial Council approve changes in the guidelines for reports by the A&E Advisory Committee on the oversight of contracts, effective immediately, to:

- Eliminate the semi-annual review requirement and establish a biennial requirement for reporting by the A&E Committee in the years during which the California State Auditor (CSA) does not conduct its audit. This biennial requirement would continue as long as CSA continues to conduct its biennial Judicial Council procurement and contract audit. (NOTE: This results in an annual review either by the CSA or the A& E Committee)
- Retain the other detailed Judicial Council procurement and contract oversight duties concerning specifically requested contract reviews, trends in contracts, review of the *Judicial Branch Contracting Manual* changes, and so forth, with modifications only to the semi-annual review and reporting.

A copy of the guidelines with the recommended changes shown is attached at pages 4–5.

### **Rationale for Recommendation**

California Rule of Court 10.63 specifies the duties of the A&E Advisory Committee.<sup>1</sup> The committee’s duties include the reporting on Judicial Council (formerly AOC)<sup>2</sup> contracts. Specifically, the rule provides that the A& E Committee must:

Report to the council on AOC contracts that meet established criteria to ensure that the contracts are in support of judicial branch policy.

(Rule 10.63(b)(3).)

On August 23, 2013, the Judicial Council adopted guidelines for the submission of reports by the A& E Committee. These guidelines include a provision: “The Judicial Council should receive a semiannual report on all AOC contracts that meet the review criteria established below to ensure that all contracts are in support of judicial branch policy as set by the Judicial Council . . . .”<sup>3</sup> Based on subsequent experience, the guidelines should be changed to provide for biennial review by the A& E Committee for the alternating years that the CSA does not conduct their review.<sup>4</sup>

In conclusion, the role of the Judicial Council concerning oversight of over the Judicial Council procurement and contracts is being significantly covered by CSA and the A&E Advisory Committee. The conduct of annual audits—one year by CSA and the next by the A&E Committee— should provide the Judicial Council with sufficient information to fully discharge its responsibilities for oversight of Judicial Council contracts. The frequency of the A&E Advisory Committee audits of contracts should therefore be reduced to being biennial.

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<sup>1</sup> This rule was adopted effective February 20, 2014.

<sup>2</sup> Rule 10.63 still refers to the contracts “AOC” contracts. As part of a comprehensive revision of the rules of court to reflect the retirement of the name “Administrative Office of the Courts” and “AOC,” this rule will be amended.

<sup>3</sup> Judicial Council of California, Minutes of Business Meeting—August 22-23, 2013, pages 20-21.

<sup>4</sup> No change in rule 10.63 is needed because it does not specify the frequency of reporting.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was not circulated for comment. The proposed change in the guidelines affects the internal operations of a council committee and will result in direct savings of staff time and resources without an impact on the oversight of Judicial Council contracts.

### **Implementation Requirements, Costs, and Operational Impacts**

The prompt approval of the proposed change in the guidelines will permit the postponement of the next semiannual contract review process, thereby saving resources and reducing costs.

### **Attachment**

Guidelines for A&E Oversight of Judicial Council Contracts



## REVISED

### **GUIDELINES FOR A&E OVERSIGHT OF AOC JUDICIAL COUNCIL CONTRACTS**

#### **Review and Reporting**

1. The Judicial Council should biennially receive a ~~semiannual~~ report on the review of all AOC Judicial Council contracts that meet the review criteria established below to ensure that such contracts are in support of judicial branch policy as set by the Judicial Council. The report shall:
  - a. Report on the results of the reviews.
  - b. List all of the reviewed contracts by subject and amount encumbered.
2. The review of specified contracts should be performed by the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E) or by a committee designated by the Chief Justice after consultation with the Executive & Planning Committee.
3. As appropriate and necessary on a case by case basis, with the approval of the E&P Committee, the designated committee may obtain independent technical advisory assistance in its review of contracts as the budget allows.
4. The reviewing committee shall be available for special urgent reviews whenever requested by the Judicial Council or the E&P Committee.
5. The reviewing committee shall include in ~~the semiannual~~ its reports its current oversight practices and any significant changes, trends, or issues identified in the contracting practices of the AOC Judicial Council, as reported to the committee by ~~AOC~~ the management of the Judicial Council staff.
6. Because the review of contracts and contracting practices involves a review of programs and their funding, certain policy issues may result from a review of the contracts. The reviews of contracts and the contract process should include an evaluation of the best or most effective and efficient manner of funding, operational efficiencies, or cost effectiveness that could be achieved by the programs.
7. The Judicial Branch Contract Law requires the Judicial Council to adopt and publish a *Judicial Branch Contracting Manual* (JBCM) which will be updated and revised periodically for Judicial Council approval. Review of the updates and revisions review should be performed by the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E) or by a committee designated by the Chief Justice after consultation with the Executive and Planning Committee.
8. Annually, the reviewing committee shall receive and review a report of all AOC Judicial Council contracts.
  - a. The report shall summarize pertinent information on each contract and be summarized by type of contract.
  - b. The information contained in the report should include, at a minimum: initial contract date, contract expiration date, vendor name, contract number, amount encumbered, amounts paid, amount of time remaining on the contract, and number of amendments.
  - c. The committee should identify any contracts that should be reviewed.

## **Review Criteria**

### **General**

1. All new contracts with a total contractual value in excess of \$1,000,000 not specifically excluded as noted below.
  - a. New contracts will be considered to be those that are not regular and reoccurring historically.
  - b. A list of regular and reoccurring contracts shall be compiled and presented for the committee's review and concurrence. The listing shall be updated for each committee meeting.
2. A sampling from the listing of all ~~AOC~~ Judicial Council contracts, which will be judgmentally selected by the committee.
3. All existing contracts which have a significant change or amendment in amount, term, purpose, or nature, as determined by staff. Specific 'triggers' will be established as guidelines and may be adjusted periodically or as appropriate. This process should be similar to, or tailored after, procedures used by the Appellate Indigent Defense Oversight Advisory Committee.

### **Specific**

4. Grants that are not for the benefit of the trial courts.
5. Lease agreements for real property, equipment, and vehicles, as appropriate, upon committee request.

## **Exclusions from the Committee's Review**

1. All contracts addressed by the duties of the Court Facilities Advisory Committee and the Trial Court Facility Modification Advisory Committee.
2. Contracts for litigation support provided by outside counsel.
3. Grants that are for the benefit of the trial courts.
4. Intra-branch agreements (IBAs) between the ~~AOC~~ Judicial Council and the trial courts.
5. A review for compliance with the *Judicial Branch Contracting Manual* as that function is performed by the Legal Services Office and the ~~Fiscal Services~~ Finance Office.

## **Audits**

1. The council recognizes the California State Auditor's responsibility for conducting audits of ~~AOC~~ Judicial Council contracts under Public Contract Code section 19210. These reports should be provided for informational purposes to the committee reviewing contracts for review and evaluation.
2. Audit issues related to the contract process and contracts included in audits conducted by the ~~AOC-Internal~~ Audit Services Office should also be reviewed and evaluated by the committee. The review of contracts by the committee shall not duplicate the function or reviews conducted by the ~~AOC's-Internal~~ Audit Services Office.