



# Judicial Branch Procurement

Five Superior Courts Did Not Consistently Follow  
Judicial Branch Contracting Practices

Report 2014-301



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November 18, 2014

2014-301

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 31, Statutes of 2013, the California State Auditor presents this audit report assessing five superior courts' compliance with the requirements of the California Judicial Branch Contract Law (judicial contract law), Public Contract Code, sections 19201 through 19210. The judicial contract law requires the Judicial Council of California to adopt and publish a *Judicial Branch Contracting Manual* (judicial contracting manual), which establishes the requirements for procurement and contracting that all judicial branch entities, including superior courts, must follow.

This report concludes that the five courts in the audit—the superior courts of Alameda, Butte, Fresno, San Luis Obispo, and Yuba counties—could improve their compliance with the judicial contracting manual. For example, we noted that managers at three courts approved payments for amounts that exceeded their payment approval levels, including nine payments totaling almost \$203,000 without any authorization. We also identified instances where all five courts lacked adequate justification for using a noncompetitive procurement process. Specifically, all five courts did not follow the judicial contracting manual's requirements for noncompetitive procurements for 21 of the 60 contracts we reviewed. Moreover, at the time of our review three of the five courts did not have procedures to implement the State's Disabled Veteran Business Enterprise program, and four of the five courts did not have procedures to implement the small business preference for competitive information technology procurements.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

In 2011 the State enacted the California Judicial Branch Contract Law (judicial contract law) to require all judicial branch entities to comply with the provisions of the Public Contract Code that are applicable to state agencies related to the procurements of goods and services. Among other things, the judicial contract law required the Judicial Council of California to adopt and publish the *Judicial Branch Contracting Manual* (judicial contracting manual), which establishes the requirements for procurement and contracting for all judicial branch entities. To determine if the State's judicial branch entities have complied with the requirements within the judicial contracting manual, we audited the superior courts of Alameda, Butte, Fresno, San Luis Obispo, and Yuba counties. We found that none of these five superior courts fully complied with the judicial contracting manual's guidance.

Of the five courts we visited, three—the Superior Court of Alameda County (Alameda court), the Superior Court of Fresno County (Fresno court), and the Superior Court of Yuba County (Yuba court)—made procurement payments without proper authorization. Most significantly, because of the magnitude of the Alameda court's deficiencies in its procurement practices, it did not properly authorize any of the 18 payments we tested. In fact, it did not provide any authorization for nine of these payments totaling almost \$203,000. As a result, the Alameda court overpaid one vendor \$2,500, which the court did not recover until we brought the error to its attention. In another instance, an employee of the Alameda court directed a contractor to perform additional services costing more than \$6,000 without receiving prior authorization, leaving the court no option but to pay for these services. We also found that managers at the Fresno and Yuba courts approved seven payments and two payments, respectively, for amounts that exceeded their payment approval levels.

Furthermore, all five superior courts could better follow their procedures for noncompetitive procurements. The judicial contracting manual requires courts to document their approval of noncompetitive procurements. However, all five courts did not follow the judicial contracting manual's requirements for noncompetitive procurements for 21 of the 60 contracts we reviewed. For example, the Superior Court of San Luis Obispo County (San Luis Obispo court) did not document its justification for awarding a noncompetitive contract for microfilm services worth \$92,000. Similarly, the Alameda court entered into three sole-source contracts with a combined value of over \$90,000 without properly documenting that the pricing was fair and reasonable or that competitive bidding

### Audit Highlights...

*Our review assessing five superior courts' compliance with the California Judicial Branch Contract Law highlighted the following:*

- » *None of the five superior courts we visited—Superior Court of Alameda County (Alameda court), Superior Court of Butte County (Butte court), Superior Court of Fresno County (Fresno court), Superior Court of San Luis Obispo County (San Luis Obispo court), and Superior Court of Yuba County (Yuba court)—fully complied with the Judicial Branch Contracting Manual.*
- » *Alameda court, Fresno court, and Yuba court made procurement payments without proper authorization.*
- » *All five superior courts could better follow their procedures for noncompetitive procurements.*
- » *Butte court, Fresno court, and San Luis Obispo court had not adopted procedures for the State's Disabled Veteran Business Enterprise program.*
- » *Butte court, Fresno court, San Luis Obispo court, and Alameda court did not have procedures to implement the small business preference for competitive information technology procurements.*

was not feasible. One of the five courts—the Superior Court of Butte County (Butte court)—modified its policy in October 2014 to address the problems we observed. When the courts do not comply with the judicial contracting manual’s guidance for noncompetitive procurements, they risk giving the appearance of favoritism or failing to achieve the best value for their procurements.

Most of the courts we visited also lacked certain procedures that the judicial contracting manual requires. Specifically, the judicial contracting manual requires that superior courts adopt procedures to implement the State’s contracting preferences: the State’s Disabled Veteran Business Enterprise (DVBE) program and the small business preference for competitive information technology procurements. However, three courts—the Butte court, the San Luis Obispo court, and the Fresno court—had not adopted procedures for the DVBE program, and four courts—the three previous courts and the Alameda court—had not adopted procedures for the small business preference for competitive information technology procurements. After we brought these issues to the San Luis Obispo and Butte courts’ attention, they adopted procedures to implement both programs in August and October 2014, respectively. The other courts stated that they plan to adopt procedures by the end of 2014.

### **Recommendations**

We made several recommendations to four of the five superior courts we visited to ensure that they adequately address the issues we identified. For example, we recommended that the Alameda and Fresno courts ensure that their managers do not approve payments above their authorized dollar limits. Furthermore, we recommended that the Alameda court establish clear procedures to ensure that appropriate staff authorize all payments prior to processing them. Also, we recommended that four of the courts maintain proper documentation to justify noncompetitive procurements. Finally, we recommended that those courts that have not adopted procedures for the DVBE program or the small business preference for competitive information technology procurements adopt such procedures.

### **Agency Comments**

The five superior courts agreed with our findings and recommendations.

# Introduction

## Background

A separate and independent branch of state government, California's judicial branch is composed of the State's Supreme Court, appellate courts, superior courts, Habeas Corpus Resource Center, Judicial Council of California (Judicial Council), and Administrative Office of the Courts (AOC).<sup>1</sup> Under the California Constitution, the Judicial Council has policy-making authority over the judicial branch and is responsible for recommending improvements to judicial administration to the courts, the governor, and the Legislature. The Judicial Council's composition is detailed in the text box. The Judicial Council performs various functions with the support of its staff agency, the AOC.

### Composition of the Judicial Council of California

- The chief justice of California
- One other Supreme Court justice
- Three justices of the courts of appeal
- Ten superior court judges
- Four members of the State Bar of California
- Several nonvoting members
- One member of each house of the Legislature

Source: The California Constitution, Article VI, Section 6.

Before 1998 the California Constitution provided for superior courts and municipal courts. However, in June 1998 California voters approved a constitutional amendment allowing the judges in each county to vote to consolidate their municipal and superior courts into a single superior court, which the Legislative Analyst's Office concluded could result in savings and greater efficiency by offering greater flexibility in case assignments, improve court record management, and reduce administrative costs. According to the AOC, judges in all 58 counties voted to unify their superior courts by February 2001.

Further, between 1997 and 2002, the Legislature enacted a series of measures to transfer responsibility for funding the superior courts from each county to the State. These measures established a new personnel system for superior court employees and initiated the transfer of responsibility for court properties from the counties to the State.

## The California Judicial Branch Contract Law

The Public Contract Code generally governs how state entities enter into contracts, solicit contracts for construction of state structures, and acquire goods and services, as well as how the entities should solicit, evaluate, and award such contracts. However, until recently

<sup>1</sup> In July 2014 the Judicial Council voted to retire the name *Administrative Office of the Courts* for its staff agency. However, because state law continues to use this name, we use it in our report.

these requirements did not apply to the judicial branch. The State enacted the California Judicial Branch Contract Law (judicial contract law) in 2011 to require all judicial branch entities to comply with the provisions of the Public Contract Code that are applicable to state agencies related to the procurement of goods and services. The judicial contract law also required the Judicial Council to adopt and publish the *Judicial Branch Contracting Manual* (judicial contracting manual) by January 2012. The judicial contracting manual is to incorporate procurement and contracting policies that are consistent with the Public Contract Code and that are substantially similar to those found in the *State Administrative Manual* and the *State Contracting Manual*. The judicial contract law requires all judicial branch entities to comply with the judicial contracting manual, and requires each judicial branch entity to adopt a local contracting manual.

The judicial contract law also imposes reporting requirements on judicial branch entities.<sup>2</sup> Specifically, it requires that judicial branch entities notify the California State Auditor (state auditor) of all contracts they enter that exceed \$1 million in estimated value, with limited exceptions. The law further specifies that the California Department of Technology review all administrative and information technology projects exceeding \$5 million. Beginning in 2012 the law also requires the Judicial Council to submit semiannual reports to the Legislature and the state auditor itemizing most of the judicial branch's contracting activities.

Further, subsequent amendments to the judicial contract law direct the state auditor to identify five judicial branch entities other than the AOC for audit to assess the implementation of the judicial contract law every two years beginning on or before March 15, 2014. Such audits are to commence on or before July 1, subject to appropriation in the state budget act. The judicial contract law also directs the state auditor to audit the AOC every two years, beginning on or before July 1, 2015. Table 1 provides the relative size and workload data on the five courts we selected for this audit.

<sup>2</sup> According to the judicial contract law, a *judicial branch entity* means any superior court, court of appeal, the California Supreme Court, the Judicial Council, the Habeas Corpus Resource Center, and the AOC.

**Table 1**  
**Five Superior Courts' Size and Workloads**  
(Dollars in Thousands)

	COUNTY SUPERIOR COURT				
	ALAMEDA	BUTTE	FRESNO	SAN LUIS OBISPO	YUBA
County population	1,573,254	222,316	964,040	272,357	73,682
County area in square miles	739	1,636	5,958	3,299	632
Expenditures, fiscal year 2013–14	\$100,327	\$11,754	\$60,852	\$18,399	\$5,208
Procurement payments, fiscal year 2013–14	\$18,042	\$2,691	\$13,545	\$3,620	\$2,090
Case filings, fiscal year 2012–13	325,976	40,092	193,761	58,481	17,454
Judges (authorized positions)	73	11	43	12	5
Support staff (authorized positions)	752	119	40	124	47

Sources: The California Department of Finance's population estimates as of January 2014; county Web sites; the U.S. Census Bureau; the Judicial Council of California's fiscal year 2013–14 *Semiannual Report on Contracts for the Judicial Branch* and *2014 Court Statistics Report*; and the superior courts.

Note: Data in this table is unaudited.

## The Judicial Contracting Manual

As discussed previously, the judicial contract law requires the judicial contracting manual's provisions to be substantially similar to those of the *State Administrative Manual*, the *State Contracting Manual*, and consistent with the Public Contract Code, each of which serves a different purpose for state agencies. Specifically, the *State Administrative Manual* provides general fiscal and business policy guidance, while the *State Contracting Manual* provides more specific procedures in the areas of procurement and contract management. Finally, the State enacted the Public Contract Code to ensure that state agencies comply with competitive bidding requirements; to provide all qualified bidders with a fair opportunity to enter the bidding process; and to eliminate favoritism, fraud, and corruption in the awarding of public contracts. The Judicial Council also used these elements as guiding principles for the judicial contracting manual.

Like the Public Contract Code, the judicial contracting manual generally requires judicial branch entities to secure competitive bids or proposals for each contract. The judicial contracting manual allows certain exceptions, as the text box shows. The *State Contracting Manual* also describes certain conditions under which a contract may be awarded without obtaining competitive bids or proposals. For example, the *State Contracting Manual* allows a state agency to solicit a bid from

### Types of Allowable Noncompetitive Procurements

- Purchases under \$5,000
- Emergency purchases
- Purchases from other governmental entities
- Procurement of legal services
- Purchases through certain leveraged procurement agreements
- Purchases from a business entity operating a community rehabilitation program
- Purchases of licensing or proficiency testing examinations
- Subvention and local assistance contracts
- Sole-source procurement

Source: The January 2014 *Judicial Branch Contracting Manual*.

a single source for transactions of less than \$5,000 when the agency determines that the pricing is fair and reasonable. Agencies can make this determination using methods such as comparing the pricing to other sources or by relying on their past procurement experience. Similarly, the judicial contracting manual exempts procurements of less than \$5,000 from competitive bidding requirements so long as the court determines that the price is fair and reasonable. Further, the State's procurement rules do not require competitive bids when a contract is necessary for the immediate preservation of public health or when the contract is with a state agency or other local governmental entity, rules which the judicial contracting manual also includes.

Finally, the judicial contracting manual exempts judicial branch entities from obtaining competitive bids or proposals when the entities use vendors through certain leveraged procurement agreements. According to the *State Contracting Manual*, leveraged procurement agreements are statewide agreements that the California Department of General Services (General Services) awards to consolidate the needs of multiple state agencies and to leverage the State's buying power. General Services enters various types of leveraged procurement agreements, including master service agreements, California Multiple Award Schedules, and others. The judicial contracting manual includes a process for using and establishing leveraged procurement agreements, and encourages the judicial branch entity to consider whether it can obtain better pricing or other terms through vendor negotiations or soliciting competitive bids.

### Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in the judicial contract law.<sup>3</sup> Our audit focused on the superior courts of Alameda, Butte, Fresno, San Luis Obispo, and Yuba counties. Table 2 lists the audit objectives and the methods we used to fulfill those objectives.

### Assessment of Data Reliability

In performing this audit, we relied upon electronic data extracted from the AOC's information systems. Specifically, we used the Judicial Council's two *Semiannual Report on Contracts for the Judicial Branch* (semiannual reports) that it issued during fiscal year 2013–14 to select contracts for testing five superior courts'

<sup>3</sup> Public Contract Code, Section 19210.

**Table 2**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	We reviewed the relevant laws, regulations, administrative policies, and other background materials applicable to procurement and contracting by judicial branch entities, including the <i>Judicial Branch Contracting Manual</i> (judicial contracting manual).
2 Based on risk factors specified in the California Judicial Branch Contract Law (judicial contract law), identify five judicial branch entities, excluding the Administrative Office of the Courts (AOC), for audit to assess their implementation of the judicial contract law.	We selected five judicial branch entities—the superior courts of Alameda, Butte, Fresno, San Luis Obispo, and Yuba counties—for audit based on our assessment of the level of risk across a range of factors, including those contained in the judicial contract law.
3 For the five superior courts selected for audit, perform the following:	
a. Determine whether each superior court has developed its own local contracting manual and assess its conformance to the judicial contracting manual.	We obtained each superior court’s local contracting manual and compared it to certain key requirements in the January 2014 judicial contracting manual. We found that each superior court’s local contracting manual materially conformed with key provisions of the judicial contracting manual.
b. Assess each superior court’s internal controls over contracting and procurement and determine whether the court followed those controls.	<ul style="list-style-type: none"> <li>• We interviewed key superior court staff, and reviewed desk procedures and local contracting manuals, to identify key internal controls over contracting and procurements.</li> <li>• We determined whether each superior court followed these key controls by testing a selection of active contracts and payments made during fiscal year 2013–14.</li> </ul>
c. Assess each superior court’s compliance with key elements of the judicial contracting manual and its local contracting manual and procedures, including those related to competitive bidding, sole-source contracting, and payment and deliverable review and oversight.	<ul style="list-style-type: none"> <li>• At each location, we selected 12 contracts that were active during fiscal year 2013–14 using the contract lists available: the Judicial Council of California’s fiscal year 2013–14 <i>Semiannual Report on Contracts for the Judicial Branch</i> (semiannual report) and ad hoc reports provided by the superior courts because the AOC had not yet published the semiannual report for January 2014 through June 2014 when we began our fieldwork. According to the judicial contracting manual, the word <i>contracts</i> generally refers to several types of formal agreements for procuring goods and services, such as a formal contract or a purchase order. We determined whether each contract selected was subjected to competitive bidding and, if not, we determined whether the contract had approval and adequate justification for being a noncompetitive procurement.</li> <li>• In addition, to obtain assurance that contracts were not missing from the semiannual reports and the superior courts’ ad hoc reports, we verified that six contracts from each superior court’s contract files were included in these reports.</li> <li>• We selected one payment related to each of the 12 contracts we tested. We determined whether each superior court ensured that it had received the goods or services related to these purchases and whether an authorized court employee approved the payments for the purchases. In addition, we selected another six procurement payments that each superior court made during the same period that were not related to one of the 12 contracts we tested and performed the same testing.</li> </ul>
d. Evaluate each superior court’s contracts to determine whether it may have inappropriately split contracts to avoid obtaining necessary approvals or complying with competitive bidding requirements.	We identified the thresholds beyond which the superior court must seek competitive bids and we identified the approval levels for each superior court. Using these thresholds, we did not identify any split contracts in our review of the contract lists.
e. Review the appropriateness of each superior court’s state credit card (Cal-Card) or other court-issued credit card transactions when those transactions total \$100,000 or 10 percent of all reported procurement payments for a one-year period.	<ul style="list-style-type: none"> <li>• We reviewed whether any purchases exceeded the \$1,500 per transaction limit that the judicial branch contracting manual allows for Cal-Cards.</li> <li>• We did not perform any further testing because none of the five superior courts we visited had credit card payments totaling more than \$100,000 or representing more than 10 percent of all procurement payments for fiscal year 2013–14.</li> </ul>

Sources: California State Auditor’s analysis of the judicial contract law and of the information and documentation identified in the table column titled *Method*.

compliance with procurement procedures. Because we began our fieldwork at the superior courts in Alameda, Butte, and Yuba counties prior to the AOC publishing the Judicial Council's fiscal year 2013–14 *Semiannual Report on Contracts for the Judicial Branch* (semiannual report) for the period January 2014 through June 2014, we requested that these three superior courts generate ad hoc contract reports (ad hoc reports) for this period using the same data the AOC relies upon to produce the Judicial Council's semiannual report.

The U.S. Government Accountability Office standards, which we follow, require us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, and recommendations. In our December 2013 report titled *Judicial Branch Procurement: Semiannual Reports to the Legislature Are of Limited Usefulness, Information Systems Have Weak Controls, and Certain Improvements in Procurement Practices Are Needed* (2013-302 and 2013-303), we reported that there is an unacceptably high risk that data from the applications the AOC and superior courts currently use to perform their day-to-day operations could lead to an incorrect or improper conclusion, regardless of the purpose for which the data are used. This includes, but is not limited to, the AOC's use of these data in compiling the semiannual reports. We concluded that until the AOC and superior courts implement adequate general controls over their information systems, the completeness, accuracy, validity, and confidentiality of their data will continue to be at risk.

We plan to follow-up on the AOC's and the superior courts' efforts toward addressing the information system control findings from our December 2013 report during our audit of the AOC in 2015. To gain assurance that the population of contracts from which we performed our compliance testing was complete, we selected six contracts from each of the five superior courts—for a total of 30 contracts—and traced them to the semiannual reports and ad hoc reports. We found that two of the 30 contracts were inappropriately excluded from these reports. Therefore, we determined that the semiannual reports and ad hoc reports are incomplete but we used them to select contracts and payments for testing. However, we are not using the data from the reports to support findings, conclusions, and recommendations.

## Audit Results

### Weaknesses in Procurement Practices Existed at All Five Superior Courts We Visited

Our audit found that all five superior courts need to improve their contracting and procurement payment practices. In particular, all five courts did not follow requirements for noncompetitive procurements for 21 of the 60 contracts we reviewed. In addition, three of the five courts made procurement payments without proper authorization. Finally, at the time of our review, three courts lacked procedures for implementing the State’s Disabled Veteran Business Enterprise (DVBE) program and four courts lacked procedures for the small business preference for competitive information technology procurements. Table 3 summarizes our key audit findings at the five superior courts.

**Table 3**  
Summary of Key Findings at Five Superior Courts

COUNTY SUPERIOR COURT	PROCUREMENT PROCEDURES		CONTRACTS	PAYMENTS
	COURT’S LOCAL CONTRACTING MANUAL MATERIALLY CONFORMS WITH THE JUDICIAL BRANCH CONTRACTING MANUAL?	COURT ADOPTED REQUIRED CONTRACT PREFERENCE PROCEDURES?*	NUMBER OF 12 CONTRACTS NOT ADEQUATELY FOLLOWING THE NONCOMPETITIVE PROCUREMENT PROCESS	NUMBER OF 18 PROCUREMENT PAYMENTS ISSUED WITHOUT PROPER AUTHORIZATION
Alameda	Yes	No <sup>†</sup>	9	18
Butte	Yes	No <sup>‡</sup>	3 <sup>‡</sup>	None
Fresno	Yes	No	4	7
San Luis Obispo	Yes	No <sup>‡</sup>	4	None
Yuba	Yes	Yes	1	2
<b>Totals</b>			<b>21</b>	<b>27</b>

Source: California State Auditor’s analysis of procurement procedures and records at the five superior courts we visited.

\* Specifically, the procedures for the State’s Disabled Veteran Business Enterprise program and small business preference for competitive information technology procurements.

<sup>†</sup> The court lacked procedures only for the small business preference for competitive information technology procurements.

<sup>‡</sup> After we brought this issue to the court’s attention, it adopted a procedure to address the issue before we issued this report.

### The Superior Court of Alameda County Has Deficient Payment and Procurement Practices

The Superior Court of Alameda County (Alameda court) has significant weaknesses over its payment and procurement practices. Specifically, it did not properly authorize any of the 18 payments we tested from fiscal year 2013–14, which ranged in values from more than \$1,000 to almost \$103,000. Moreover, for nine of the 18 payments, totaling almost \$203,000, there was no evidence that managers had approved the payments. Although managers

***The Alameda court's procurement manager was unaware of a \$2,500 overpayment to one vendor until we brought it to her attention, and she did not know why it occurred.***

had approved another four of these payments, they did not have the authority to approve them because each payment was greater than \$1,000. A director who had no payment approval authority approved the final five payments.

As a result of the Alameda court's deficient controls, it made three improper payments. In one example, the Alameda court overpaid \$2,500 for mental health assessments for participants in the Parolee Reentry Court Program. The court was invoiced for \$4,375, yet it paid the vendor \$6,875. The procurement manager was unaware of this overpayment until we brought it to her attention and she did not know why it occurred. After learning of the overpayment, the court recovered the funds from the vendor in September 2014.

Additionally, the Alameda court improperly made an advance payment of \$1,900 for a purchase of audio-visual equipment. Although the *Judicial Branch Contracting Manual* (judicial contracting manual) allows for advance payments under certain circumstances, this advance payment did not meet any of those circumstances. In the third instance of an improper payment, the Alameda court purchased bottled water for court staff and jurors at a cost of over \$4,000 a month for the payment we tested. Although the judicial contracting manual does not specify whether bottled water is allowable, the California Judicial Branch Contract Law (judicial contract law) requires the manual's policies and procedures to be substantially similar to provisions in the *State Administrative Manual* and the *State Contracting Manual*. These manuals generally prohibit the purchase of bottled water for staff, except in limited circumstances, such as when the building water does not meet health standards. The procurement manager stated that the Alameda court discontinued the bottled water service around March 2004 as a cost savings measure but reinstated it a year later because of staff opposition and because judges were adamant about providing water to those serving jury duty. However, these are not compelling reasons for purchasing bottled water.

Along with these three improper payments, the Alameda court acknowledged that the former information technology director directed a remodeling contractor to install a partition in a conference room costing more than \$6,000 without receiving the required prior authorization. According to the court's procedures, the former information technology director should have sent a requisition to the procurement manager before directing the contractor to perform the work. The procurement manager would have then forwarded the requisition to the court executive officer for approval. Instead, the finance department and the procurement division only learned of the purchase when the vendor billed the court for the additional services. Because the vendor had already provided the service, the Alameda court paid the invoice.

The Alameda court also made six purchases with its state credit card (Cal-Card) that exceeded the Cal-Card limit of \$1,500 per transaction that the judicial contracting manual allows.<sup>4</sup> These purchases ranged in value from \$1,563 to \$2,500. The procurement manager indicated that sometimes when the court staff urgently need purchases or identify reduced prices available for a limited amount of time, they use the Cal-Card to make purchases quickly. However, the judicial contracting manual does not allow any exceptions to the \$1,500 per transaction limit.

Further, the Alameda court also had significant weaknesses in its procurement practices. Specifically, we identified concerns with nine of the 12 contracts we tested. The Alameda court renewed two of these contracts with existing vendors without either seeking competitive bids or documenting that a noncompetitive procurement was appropriate. As we discuss in the Introduction, the judicial contracting manual requires courts to use competitive procurement except in certain circumstances. Nevertheless, for one of these contracts, the Alameda court noncompetitively renewed its traffic school contract, valued at \$185,000, even though the original contract did not have an option to renew. According to the court's procurement manager, the court renewed this contract without competition because court staff was busy with other activities at the time.

In the second instance, the Alameda court renewed a contract for \$300,000 to staff its children's waiting rooms for a term of 21 months even though the original contract only allowed for a one-year renewal term. According to the court's procurement manager, the additional nine months were necessary because the project manager was new and needed to become familiar with the operation of the children's waiting rooms before soliciting for the competitive rebidding of the contract. Nonetheless, the court's reasons do not justify its action.

The Alameda court had either insufficient or missing documentation for another seven of the 12 contracts we tested. Each of these seven contracts was categorized as one of the noncompetitive procurement types described in the text box. With a combined value of

### Common Types of Noncompetitive Procurements

**Sole-Source Procurement**—A procurement in which either a specific vendor's goods or services are the only goods or services that will meet a court's needs or a grant application submittal deadline does not allow the time necessary for a competitive procurement.

**Leveraged Procurement Agreement**—A procurement through an agreement that allows multiple entities to make purchases in order to take advantage of their combined buying power to reduce prices, improve terms and conditions, or improve procurement efficiency.

**Procurement From an Entity Operating a Community Rehabilitation Program**—A procurement from a program operated by a nonprofit California corporation serving persons with disabilities that the California Department of Rehabilitation has certified. Courts can make purchases from such programs without advertising or calling for bids provided that they purchase the goods or services at a fair market price.

Sources: *The January 2014 Judicial Branch Contracting Manual* and the California Welfare and Institutions Code, Section 19404.

<sup>4</sup> The Cal-Card program is a cooperative agreement between the California Department of General Services and a bank that provides participating agencies with credit card services for the acquisition of goods and services.

### Best Practices for Determining Whether a Price Is Fair and Reasonable for Procurements

- Price comparison
- Prices from an established catalog or market pricing media
- Prices set by law or regulation
- Historical pricing
- Demonstrated buyer knowledge that the price is low

Source: The California Department of General Services' *State Contracting Manual*.

over \$90,000, three of the contracts were sole-source procurements for which the court either lacked justification that it could not procure the goods or services competitively, or did not include sufficient support that the prices it paid were fair and reasonable, as the judicial contracting manual recommends.<sup>5</sup> The text box describes best practices courts could use to demonstrate that a price is fair and reasonable. The Alameda court also did not have adequate support for not obtaining competitive bids on the remaining four contracts, which had a combined value of over \$718,000. Specifically, according to the procurement manager, two of these four contracts were for purchases through

leveraged procurement agreements. However, both contracts lacked evidence that the purchases were made through such agreements as recommended by the judicial contracting manual. The remaining two contracts were with entities the procurement manager claimed were operating certified community rehabilitation programs, which would make the contracts exempt from competitive bidding. However, the Alameda court could not provide evidence beyond the manager's assertion that the vendors were certified.

Finally, the Alameda court did not have a procedure related to the State's small business preference for competitive information technology procurements as the judicial contracting manual requires, but the court plans to implement such a procedure by the end of 2014.

### The Superior Court of Butte County Did Not Properly Document Its Justifications for Noncompetitive Procurements

The Superior Court of Butte County (Butte court) did not properly or fully document its justifications for not using competitive processes for three of the 12 contracts we reviewed. The Butte court could not provide us with the approval and supporting rationale for two sole-source procurements—one for software support services valued at \$52,000 and another for electronic library services valued at \$19,000. In the

<sup>5</sup> Where procurement practices are recommended, the judicial contracting manual indicates that compliance is not mandatory, but favored unless there is a good business reason for variance. Thus, these recommendations represent best practices for the courts, and we would expect the courts to follow these or similar practices to ensure procurements are appropriate.

text box we describe the sole-source information that the judicial contracting manual recommends. Butte's contract administrator said that the Butte court's sole-source justification is often documented in e-mail discussions; however, he could not provide the e-mail justifications for these two contracts.

For a third sole-source contract—a purchase of information technology servers valued at \$36,000—there was a brief statement that justified why the court could not obtain the procurement competitively but nothing in the file to indicate that the Butte court had determined the pricing was fair and reasonable or that the court executive officer approved the decision to use a sole-source procurement. Although the Butte court has a template for sole-source approvals that could help it document the justification and approval of these procurements more consistently, it did not use the template for this contract or for the two sole-source contracts previously mentioned. In response to our concern, and to ensure that its staff consistently use its sole-source form, Butte court modified its policy in October 2014 to require that staff use this form for all sole-source contracts and to retain the approved form in the procurement file.

Finally, the Butte court lacked procedures to implement the DVBE program and the small business preference for competitive information technology procurements as the judicial contracting manual requires. However, in response to our audit, the court adopted procedures to implement both in October 2014.

### **The Superior Court of Fresno County Did Not Always Use Appropriate Sole-Source Justification and Solicitation Methods**

The Superior Court of Fresno County (Fresno court) either did not properly document its justification for sole-source procurements or failed to use the appropriate form of vendor solicitation for four of the 12 contracts we reviewed. For example, the Fresno court did not follow the judicial contracting manual's procedures for documenting the justification and approval for a sole-source procurement for a contract to operate its children's waiting room. Instead, the Fresno court offered the existing vendor a new sole-source contract, valued at over \$467,000 for a three-and-a-half-year period, after issuing a request for information to see if any other potential bidders could provide the service. Although no other potential bidders responded to the request

#### **Information Courts Should Include in Their Sole-Source Requests**

- A description of the goods or services the court intends to procure.
- An explanation of why the court cannot procure the goods or services competitively.
- A description of any effort the court made to solicit competitive bids.
- Documentation that the price of the goods or services is fair and reasonable.
- An explanation of any special factors affecting the cost or other aspects of the procurement.

Source: *The January 2014 Judicial Branch Contracting Manual.*

for information, the Fresno court did not complete a sole-source request and approval form, as the judicial contracting manual requires, after it determined there were no other interested bidders.

For another sole-source contract to purchase software licenses, with a three-year term valued at nearly \$8,000, the Fresno court only noted in the procurement file that it considered the contract cost reasonable because it would obtain significant cost savings by taking advantage of a multi-year discount. However, we question whether this is a reasonable basis for concluding that the price it paid is fair and reasonable. The judicial contracting manual recommends that courts determine whether pricing is fair and reasonable. As potential best practices, the *State Contracting Manual* describes five methods for determining whether prices are fair and reasonable as previously described in the text box on page 12, such as performing a price comparison among vendors. However, Fresno court's method is not consistent with any of these practices.

In the case of a third sole-source contract for the purchase of file folders valued at over \$64,000, the Fresno court did not use the recommended solicitation method, which would have involved receiving sealed bids and opening them publicly. Instead, for this purchase, the Fresno court contacted seven vendors by e-mail to request price quotes and selected the lowest price among the three vendors that responded, which is a less rigorous solicitation method that the judicial contracting manual recommends only for procurements of goods that are not information technology related and that are valued at \$50,000 or less.

The Fresno court failed to use a competitive process for a fourth contract, a blanket purchase order with a value up to \$470,000, for information technology hardware and software.

Specifically, it made three purchases totaling more than \$350,000 under this contract. A blanket purchase order is described in the text box. According to the court's procurement and contracting officer, the court has generally been unsure whether a blanket purchase order requires a competitive process. However, the type of high dollar value purchases the Fresno court made does not meet the AOC's definition of the types of purchases that can be made using blanket purchase orders. Regardless, it should have complied with the judicial contracting manual, which requires the use of a competitive process for procurements greater than \$5,000 under most

circumstances. Had the Fresno court used a competitive process, it might have received a better value for these purchases.

### Blanket Purchase Order

A type of contract that is generally used for repetitive or high volume, low dollar value purchases and low-risk services. The contract establishes a set period of time for its use, typically a fiscal year, and a specified maximum dollar amount.

Source: The Materials Management Module Job Aid from the judicial branch's Phoenix Financial System.

In addition, the Fresno court did not properly authorize seven of the 18 procurement payments we tested. Specifically, the assistant court executive officer approved these payments, which ranged in value from nearly \$4,000 to more than \$64,000, even though the Fresno court's policy only allows her to approve invoices valued at less than \$2,500. According to the principal accountant, the Fresno court intended for the assistant court executive officer to have authority to approve invoices of any amount when an authorized purchase order was in place. The director of fiscal operations indicated the court intends to revise the assistant court executive officer's payment approval level. Nevertheless, until such revision is made, the assistant court executive officer should approve only payments of less than \$2,500.

Finally, the Fresno court has not formally adopted procedures for the State's DVBE program or the small business preference for competitive information technology procurements, as the judicial contracting manual requires. The Fresno court plans to formally adopt these procedures by the end of 2014.

### **The Superior Court of San Luis Obispo County Did Not Follow Certain Procurement Requirements, Including Those for Noncompetitive Procurements**

The Superior Court of San Luis Obispo County (San Luis Obispo court) did not always follow the judicial contracting manual's requirements for noncompetitive purchases for four of the 12 contracts we reviewed. For example, the San Luis Obispo court did not obtain competitive bids for a blanket purchase order for computers and related equipment valued at over \$32,000. The court's fiscal director indicated that staff compared the vendor's prices for each purchase under the blanket purchase order with several other vendors to determine if the vendor's pricing was fair and reasonable. Although comparing prices decreases the likelihood of the court significantly overpaying for items, in this circumstance the judicial contracting manual required competitive bidding, a requirement the San Luis Obispo court failed to follow.

Similarly, the San Luis Obispo court did not obtain competitive bids for two other contracts. In one instance, it did not obtain competitive bids for the purchase of 16 desktop computers totaling \$24,000. The reason, according to the fiscal director, was that the court's new case management system required a specific model of desktop computer, and due to the stress of implementing the new system, court staff did not follow a competitive process. In the other instance, the court did not obtain competitive bids for alternative dispute resolution services valued at \$100,000 over a two-year period—2014 and 2015. The fiscal director told us that

*The assistant court executive officer at the Fresno court approved payments, ranging from nearly \$4,000 to more than \$64,000, even though its policy only allows her to approve invoices valued at less than \$2,500.*

the court did not obtain competitive bids for the contract in this case because staff was busy with higher priority work, including the implementation of the new case management system.

The San Luis Obispo court's contract for alternative dispute resolution services also did not follow the judicial contracting manual's limitations on advance payments. Under certain circumstances, the judicial contracting manual allows courts to make payments to vendors in advance of receiving services, provided that the advance payments do not exceed 25 percent of the contract's annual value. However, this two-year contract required San Luis Obispo to make advance payments of 50 percent of the annual contract amount of \$50,000. After we brought this issue to the attention of the fiscal director, she adjusted the contract's payment schedule to comply with the requirements of the judicial contracting manual.

Further, San Luis Obispo did not document the required sole-source request and approval for a noncompetitive procurement for microfilm services valued at over \$92,000. Specifically, the court initially entered into a two-year sole-source contract with the same vendor after no other vendors responded to its competitive solicitation. At the end of the two-year contract, the court expected to have its new case management system in place, which would no longer require the use of microfilm services. However, the fiscal director explained that the implementation of the court's new case management system took longer than expected, so the court entered into a new contract with the same vendor because it believed no other local vendors offered microfilm services. Even so, San Luis Obispo court should have documented its justification for using a sole-source vendor.

***The San Luis Obispo court did not determine that it received fair and reasonable pricing under a leveraged procurement agreement for debt collection services valued at \$250,000.***

Additionally, the San Luis Obispo court did not determine that it received fair and reasonable pricing under a leveraged procurement agreement for debt collection services valued at \$250,000. When considering to use a leveraged procurement agreement, the judicial contracting manual recommends determining whether pricing is fair and reasonable because it might not reflect available volume discounts and, therefore, the court could potentially obtain better pricing by negotiating with the vendor or by conducting a competitive procurement. According to the fiscal director, staff was too busy with the implementation of the court's new case management system to determine whether the court received the best value when using this leveraged procurement agreement.

Finally, the San Luis Obispo court lacked procedures to implement the State's DVBE program and the small business preference for competitive information technology procurements as the judicial contracting manual requires. However, in response to our audit, the court adopted procedures to implement both in August 2014.

### **The Superior Court of Yuba County Had Areas of Weaknesses in Its Procurement and Payment Practices**

Although the Superior Court of Yuba County's (Yuba court) procurement controls and practices were generally adequate, we noted areas for improvement. For example, the Yuba court did not adequately document its justification for not obtaining competitive bids for one of the 12 contracts we reviewed. In this particular instance, the court struggled to hire a qualified replacement after one of its mediators resigned from her position. According to the human resources manager, the court contracted with the former employee to continue providing mediation services because it was unable to hire another mediator and there was a pressing need for these services. Under the terms of the contract, the court paid the former employee an hourly rate that was slightly higher than her previous compensation, but it did not provide her with benefits. The court eventually paid nearly \$19,000 to the contractor during fiscal year 2013–14 for these mediation services. Given this explanation, the Yuba court should have documented its sole-source justification, as the judicial contracting manual recommends. However, it did not provide such documentation. In response to our concerns, the Yuba court completed a sole-source justification to explain its need to contract with the former employee in August 2014—nearly a year after it entered into the initial contract.

We noted additional problems with this contract as well. Specifically, the contract did not include a maximum dollar value or an end date, which are intended to limit the payments and time period of a contract. Prior to the release of our report, the court began efforts to fill the vacant position and provided us notification that it had terminated its agreement with the contractor.

Finally, when we reviewed 18 of the Yuba court's contract payments, we found that the fiscal officer approved payments for two that exceeded her authorized approval level of \$25,000. One payment was for \$33,000 for debt collection services, and another was for \$38,000 for information technology services. The fiscal officer approved these payments in June 2014, shortly after the Yuba court reduced her payment approval authority from \$500,000 to \$25,000. After this change, only the court executive officer or the presiding judge could approve payments above \$25,000. To address this issue,

*For one contract, we noted that Yuba court did not adequately document its justification for not obtaining competitive bids, and the contract did not include a maximum dollar value or an end date.*

in July 2014 the fiscal officer reminded staff to forward invoices greater than \$25,000 to the court executive officer or presiding judge for payment approval.

### Recommendations

To improve its payment practices and comply with the judicial contracting manual, the Alameda court should do the following:

- Establish clear procedures for ensuring that appropriate staff sign and authorize all payments prior to processing. It should ensure that staff follows these procedures and that managers do not approve payments above their authorized dollar limits.
- Prohibit staff from purchasing unauthorized goods or services.
- Only make advance payments under the conditions that the judicial contracting manual allows.
- Ensure that all purchases are for allowable purposes.
- Ensure that it adheres to the \$1,500 single transaction limit for all Cal-Card purchases.

To improve its procurement practices and comply with the judicial contracting manual, the Alameda court should do the following:

- Ensure that it either anticipates contracts expiring and competitively rebids them timely or establishes proper noncompetitive amendments to the contracts as the judicial contracting manual specifies.
- Ensure that it maintains proper documentation in its procurement files to justify its decisions to enter into noncompetitive procurements.
- Adopt procedures to implement the small business preference for competitive information technology procurements by December 31, 2014.

To improve its procurement practices and comply with the judicial contracting manual, the Fresno court should do the following:

- Ensure that it maintains proper documentation in its procurement files to justify its decisions to enter into sole-source contracts and to demonstrate that it received fair and reasonable prices.

- Use the appropriate solicitation method for the dollar value of the procurements it seeks.
- Ensure that it conducts competitive procurements when it establishes blanket purchase orders of \$5,000 or more.
- Ensure that staff does not approve payments for amounts greater than their authorized limits.
- Adopt procedures to implement the State's DVBE program and the small business preference for competitive information technology procurements by December 31, 2014.

To improve its procurement practices and comply with the judicial contracting manual, the San Luis Obispo court should do the following:

- Solicit competitive bids for procurements of \$5,000 or more when required to do so.
- Ensure that it maintains proper documentation in its procurement files to justify its decisions to enter into noncompetitive procurements, including sole-source contracts.
- Take steps to ensure that pricing it receives is fair and reasonable when it uses leveraged procurement agreements and document these steps in its procurement files.

To improve its procurement practices and comply with the judicial contracting manual, the Yuba court should ensure that it maintains proper documentation in its procurement files to justify its decisions to enter into sole-source contracts.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: November 18, 2014

Staff: John Baier, CPA, Audit Principal  
Jerry A. Lewis, CICA  
Tram Thao Truong  
Oswin Chan, MPP  
Brenton Clark, MPA, CIA  
Brett D. Noble, MPA  
Lisa J. Sophie, MPH

Legal Counsel: Joe L. Porche, Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.



Superior Court  
State of California

COUNTY OF ALAMEDA

CHAMBERS OF  
WINIFRED YOUNGE SMITH  
PRESIDING JUDGE

RENÉ C. DAVIDSON COURTHOUSE  
1225 FALLON STREET, DEPT. 1  
OAKLAND, CA 94612  
TEL: (510) 891-6040

October 30, 2014

Ms. Elaine Howle, CPA  
State Auditor  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Howle:

The Alameda Superior Court appreciates the State Auditor's identification of deficiencies in Court payment and procurement practices. The Court acknowledges that enhanced controls and new procedures are needed to address these deficiencies, and fully intends to implement all recommendations within suggested timeframes. Specific responses to each recommendation are provided below.

Recommendation

Establish clear procedures for ensuring that appropriate staff sign and authorize all payments prior to processing. Ensure that staff follow these procedures and that managers do not approve payments above their authorized dollar limits.

Response

Agree. The Alameda Court is currently in the process of developing and revising a host of procedures as part of a comprehensive review of organizational infrastructure needs. Procedures addressing this particular recommendation will be completed and implemented within 60 days.

The Court does note that several of the unauthorized payments identified in the audit were approved by the Court's Finance Director; the omission of the Finance Director from the payment approval matrix was an administrative oversight.

Recommendation

Prohibit staff from purchasing unauthorized goods or services.

Response

Agree.

Recommendation

Only make advance payments under the conditions that the judicial contracting manual allows.

Response

Agree.

Ms. Elaine Howle  
October 30, 2014  
Page 2Recommendation

Ensure that all purchases are for allowable purposes.

Response

Agree.

Recommendation

Ensure that it adheres to the \$1,500 single transaction limit for ALL Cal-Card purchases.

Response

Agree.

Recommendation

Anticipate contracts expiring and competitively rebids them as soon as possible or establish proper noncompetitive amendments to contracts as the judicial contracting manual specifies.

Response

Agree. The Court will review the process for tracking and maintaining contract expirations, and will engage in competitive bidding or noncompetitively amend contracts pursuant to judicial branch contracting guidelines.

Recommendation

Ensure that proper documentation is maintained in procurement files to justify decisions to enter into noncompetitive contracts.

Agree. The Alameda Court will ensure that the procurement files are updated and maintained to contain any and all information related to any noncompetitive procurement processes that may take place.

Recommendation

Formally adopt a procedure for the small business preference for competitive information technology procurements by December 31, 2014.

Response

Agree.

Sincerely,



Winifred Y. Smith, Presiding Judge

cc: Ms. Leah T. Wilson, Court Executive Officer  
Mr. Matthew McDonald, Director, Finance & Facilities Division



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF BUTTE

October 28, 2014

STEPHEN E. BENSON, JUDGE  
MICHAEL P. CANDELA, JUDGE  
MICHAEL R. DEEMS, JUDGE  
DENNY R. FORLAND, JUDGE  
ROBERT A. GLUSMAN, JUDGE  
CLARE KEITHLEY, JUDGE  
KRISTEN A. LUCENA, JUDGE  
SANDRA L. MCLEAN, JUDGE  
TAMARA L. MOSBARGER, JUDGE  
JAMES F. REILLEY, JUDGE  
BARBARA L. ROBERTS, JUDGE

California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Response to Judicial Branch Procurement Audit – November 2014 Report

The Butte County Superior Court would like to thank the staff of the California State Auditor's Office for the time spent inspecting, analyzing, and making findings and recommendations for improvements in judicial branch procurement practices.

LEONARD D. GOLDKIND,  
COURT COMMISSIONER

DAVID E. GUNN,  
COURT COMMISSIONER

KIMBERLY FLENER,  
COURT EXECUTIVE OFFICER

RICHARD L. HOLST,  
ASSISTANT COURT EXECUTIVE  
OFFICER

The Judicial Branch Procurement Audit performed by the California State Auditor's Office included no specific recommendations for Butte County Superior Court, and as such, no response is required. However, I would like to take this opportunity to respond to the California State Auditor's (CSA) Results and Findings. Since the Audit, Butte County Superior Court formally adopted Local Contracting Manual, 7<sup>th</sup> Adopted Version. This 7<sup>th</sup> Version incorporates and adopts three new sections: the Court's Disabled Veteran's Business Enterprise Program Rules and Procedures, Small Business Preference Program Rules and Procedures, and Butte County Superior Court Sole Source Template for use in Sole Source procurements.

PLEASE REPLY TO:

■ Butte County Courthouse  
One Court Street  
Oroville, CA 95965  
Tel: (530) 532-7013  
Fax: (530) 538-8567

□ Chico Courthouse  
655 Oleander Avenue  
Chico, CA 95926  
Tel: (530) 532-7013  
Fax: (530) 892-8516

I would also like to highlight the information in Table 3-Summary of Key Findings at Five County Superior Courts. The information obtained by the CSA's office and summarized in Table 3 confirmed that Butte Court's Local Contracting Manual materially conforms with the Judicial Branch Contracting Manual, that the Court officially adopted required contract preference procedures before the report was issued (as articulated in the paragraph above), and that of the 18 procurement payments reviewed, none were issued without proper authorization. The section regarding 'Contracts' states that of the 12 contracts reviewed, 3 did not adequately follow the noncompetitive procurement process. To further clarify and as confirmed by CSA, all three of those contracts were materially compliant; however, the finding was the absence of the sole source documentation in the file, which was a technical omission.

The Superior Court of California, County of Butte will continue to comply with the rules and guidelines within the Judicial Branch Contracting Manual and maintained in the Local Contracting Manual. The Butte County Superior Court has a credible procurement process and we are pleased that the California State Auditor's (CSA) findings supported this overall assessment. This positive affirmation was also confirmed by comments received by the Court from the CSA staff such as "Butte has a very clean procurement process."

Very Truly Yours,

Honorable Kristen A. Lucena  
Presiding Judge

KAL/km

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CHAMBERS OF  
JONATHAN B. CONKLIN  
Presiding Judge

## Superior Court of California County of Fresno

1100 VAN NESS AVENUE  
FRESNO, CALIFORNIA 93724-0002  
(559) 457-6355  
FAX (559) 457-1709

October 29, 2014

Ms. Elaine M. Howle, California State Auditor  
California State Auditor  
621 Capitol Mall, Ste. 1200  
Sacramento, CA 95814

Re: California State Auditor's Draft Report

Dear Ms. Howle:

The Superior Court of California, County of Fresno (Court) has received and reviewed the California State Auditor's draft report of our contracting and procurement practices, policies, and procedures in compliance with the Judicial Branch Contracting Manual.

Pursuant to your report the Court has listed your recommendations and our responses in the attached document.

If you have any further questions, or require further information, please do not hesitate to contact Queenie Hill at (559) 457-2151.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan B. Conklin".

Jonathan B. Conklin  
Presiding Judge

JBC:cl

Enclosure

## Recommendations

To improve its procurement practices and comply with the judicial contracting manual, the Fresno court should do the following:

**Recommendation 1: Ensure that it maintains proper documentation in its procurement files to justify its decisions to enter into sole-source contracts and to demonstrate that it received fair and reasonable prices.**

**Response:** The Court relied upon the statement in the JBCM, *"If no form is specified in the Local Contracting Manual, the sole source request may take the form of a memorandum"* when it chose not to adopt a sole source form. (See JBCM, Chapter 5, Section 5.9) At the time, the Court believed that the memorandum documentation that was included in the file was sufficient justification and complied with the JBCM. As part of an ongoing effort to improve procurement methods, the Court established and implemented the use of a sole source form. This establishment and implementation occurred subsequent to the instance highlighted in the audit findings and prior to the audit. The form is mandatory for each sole source request. The form requires specific reasoning and support for the decision to enter into the sole source contract. Also, specific tests are used to determine whether a price is "fair and reasonable" when the procurement value is over \$5,000. Documentation regarding the implementation of the specific test is included in the form. Moving forward the Court will ensure proper use of the form any time a sole source contract is contemplated and will maintain the properly completed form which includes the supporting documentation in the procurement file. It is the intent that the complete and proper use of the form will satisfy this recommendation.

**Recommendation 2: Use the appropriate solicitation method for the dollar value of each procurement it seeks.**

**Response:** Per the JBCM, *"A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs."* (JBCM, Chapter 4A, Footnote 2) It was the Court's intent to adopt a higher threshold for RFQs for routine, uncomplicated, and low risk procurements of a value higher than the JBCM recommended value of \$50,000, such as the case of file folders or envelopes printing. The Court concedes that at the time of the audit it had not formally adopted a higher threshold for the use of RFQs. The current revised Local Contracting Manual includes this adoption along with a procedure to ensure proper oversight for the use of larger-value RFQs. The revised Local Contracting Manual is scheduled to be approved at the end of this calendar year.

**Recommendation 3: Ensure that it conducts competitive procurements when it uses blanket purchases orders of \$5,000 or more.**

**Response:** The Court had a procedure in place that complies with this recommendation at the time of the occurrence noted in the audit findings. The procedure was not complied with. It is an exception, rather than the rule, when an IT purchase is not competitively bid. In the future the Court will ensure that its procedure is strictly adhered to so as to prevent any exceptions. This will include mandatory training regarding blanket purchase orders for all staff with purchasing authority.

**Recommendation 4: Ensure that staff do not approve payments for amounts greater than their authorized limits according to its local contracting manual.**

**Response:** The Court recognizes that the FY 13/14 Authorization Matrix did not clearly reflect the authorization limits for certain staff. The Authorization Matrix has been corrected and revised. In the future the Court will ensure that its Authorization Matrix accurately reflects the authorization limits as set out in the Local Contracting Manual and approved by Court Executive Committee and that the limits are strictly adhered to. This will include mandatory training regarding the Authorization Matrix for all staff set out in the matrix.

**Recommendation 5: Adopt procedures to implement the DVBE program and the small business preference for competitive information technology procurements by December 31, 2014.**

**Response:** The Court acknowledges that at the time of the audit it did not have a formal DVBE program or small business enterprise preference. The Court has since rectified by adopting and implementing both. The program and preference will also become part of the Local Contracting Manual which is currently in the process of being adopted by the Court.

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Superior Court of California  
County of San Luis Obispo

Susan Matherly  
Court Executive Officer  
(805) 781 5421  
(805) 781-1159 (FAX)



Courthouse Annex  
1035 Palm Street, Room 385  
San Luis Obispo, CA 93408  
[www.sanluisobispocourts.ca.gov](http://www.sanluisobispocourts.ca.gov)

October 27, 2014

Elaine M. Howle, CPA  
State Auditor  
BUREAU OF STATE AUDITS  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

[www.auditor.ca.gov](http://www.auditor.ca.gov)

Dear Ms. Howle:

San Luis Obispo Superior Court has evaluated the areas of concern identified in the Audit Review Letter received on October 24, 2014. We reviewed the Judicial Branch Contracting Manual (JBCM) regarding improvements to our procurement practices. Based on the judicial branch contracting manual, we have developed and implemented additional policies and procedures to assist in the procurement of computer equipment and vendor service agreements.

First, the Report recommends that the Court obtain competitive bids for procurements of \$5,000.00 or more. To comply with this recommendation, the Fiscal Director met with the procurement staff and court department directors to reiterate these requirements. Additionally, the Court's procurement procedures were updated and distributed to procurement staff to ensure that all future purchases comply with the competitive bid requirements.

Second, documentation for procurement files is now a priority. This is especially true in the incidence of sole-source procurement, as the Court is requiring up-front documentation and a sole-source procurement request form for each applicable contract.

Third, the BSA noted in the Report that the Court had one leveraged procurement agreement ("LPA") for which it had not documented that it received the best value. The Report recommended that the Court document that it compared the offerings of multiple vendors when using LPAs unless the Judicial Branch Contracting Manual ("JBCM") or guidance on the particular LPA did not require such comparison. The Court has developed a form to document its comparison of multiple vendors when using LPAs.

The Court sincerely appreciates the input from the Bureau of State Audits regarding these procurement issues, and is confident that future audits will find our Court in compliance with the JBCM.

Sincerely,

A handwritten signature in cursive script that reads "Susan Matherly".

Susan Matherly  
Court Executive Officer

SM:jn

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**SUPERIOR COURT OF CALIFORNIA**  
**YUBA COUNTY COURTHOUSE**  
**215 Fifth Street • Suite 200**  
Marysville, California 95901

*Chambers of*  
**Debra L. Givens**  
*Presiding Judge*

Telephone: (530) 749-7600

October 27, 2014

Elaine M. Howle, CPA  
California State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for the opportunity to respond to the redacted draft audit report the Bureau of State Audits prepared under Public Contract Code section 19210. The Superior Court of California, County of Yuba (Yuba) has reviewed the redacted draft audit report titled "Judicial Branch Procurement: Five Superior Courts Did Not Consistently Follow Judicial Branch Contracting Practices" and provides the following response:

Yuba is a small court with five judges and a staff of 47 employees. As such, we have no dedicated staff for procurement or contracting. In today's budget crisis, handling procurement and contracting within the Judicial Branch Contract Law is a challenge. With the inability to hire dedicated staff to oversee the procurement and contracting roles, we have had to assign those tasks to staff whose primary duties are elsewhere. Procurement duties are primarily handled by one of our two IT analysts, while contracting is a collaboration between our IT analyst and our Administrative Fiscal Officer. Our team is assisted by the Judicial Council's Virtual Buyer Program in which Judicial Council staff assists with certain procurement and contracting activities.

The audit report included one recommendation for Yuba. That recommendation and the court's response is listed below.

**Recommendation 1:** "Ensure that [the court] maintains proper documentation in its procurement files to justify its decisions to enter into sole-source contracts".

**Response 1:** The audit noted that Yuba did not adequately document its justification for not obtaining competitive bids for one of its contracts. To prevent this problem in the

Elaine M. Howle, CPA  
Page 2  
October 27, 2014

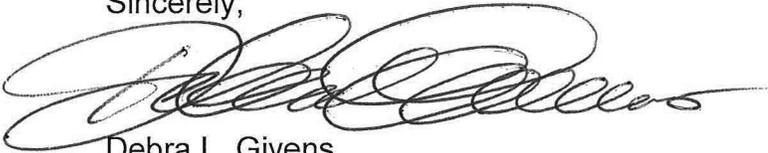
future, the court has implemented a Procurement Checklist that is now placed in each new procurement file. Included on that checklist is the sole-source justification form.

Additionally, the court has implemented a Fair and Reasonable Checklist to make sure the "fair and reasonable" provision of the sole-source justification form is met.

We would like to point out the professionalism exhibited by your staff. They went out of their way to make sure the audit was fair and impartial.

If you have any questions or need additional information regarding our response, please contact our Court Executive Officer, Steve Konishi, at (530) 749-7610.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Givens", written in a cursive style.

Debra L. Givens  
Presiding Judge

Enclosures