



January 9, 2024

2023-302

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

Dear Governor and Legislative Leaders:

This report concludes that over the past decade, during which the California State Auditor's Office (State Auditor) has been responsible for regularly auditing the Judicial Council of California (Judicial Council), the Judicial Council has made substantial progress in improving its procurement and payment policies and practices. However, opportunities still exist to strengthen certain purchasing and reporting practices.

In 2011 the State enacted the California Judicial Branch Contract Law (judicial contract law), which, subject to certain exceptions, requires Judicial Branch entities to comply with the provisions of the Public Contract Code that apply to the procurement of goods and services for state agencies and departments. Subject to legislative appropriation, the judicial contract law also requires the State Auditor to conduct a biennial audit of the Judicial Council's compliance with the judicial contract law. We have now conducted six biennial audits of the Judicial Council and issued 24 recommendations to improve its procurement and payment policies and practices.¹ The Judicial Council has fully implemented each of those 24 recommendations from our past audits, and among those recommendations were the following: the Judicial Council should implement procedures and training for ensuring that internal controls over payments and procurements are followed; and it should include a final verification step in its procurement process to ensure that managers with appropriate signature authority approve procurements.

In the latter half of 2023, we conducted the statutorily required biennial audit of the Judicial Council's procurement policies, performing a detailed review of 40 selected procurements and their corresponding payments. We found that the Judicial Council is generally in compliance with the judicial contract law, but we noted some areas in which it can continue to improve its practices. We reached four specific conclusions relating to policies, procedures, and reporting for procurements and payment processes.

Although the Judicial Council's Contracting Manuals Comply With Legal and Administrative Requirements, It Could Strengthen Its Fraud Reporting Requirements

The judicial contract law requires the Judicial Council to adopt a Judicial Branch Contracting Manual (contracting manual) incorporating procurement and contracting policies and procedures that all Judicial Branch entities must follow. The law also requires each Judicial Branch entity, including the Judicial Council itself, to adopt a local contracting manual (local manual) for procurement and contracting for goods and services by that specific Judicial Branch entity. These manuals must be consistent with the Public Contract Code and contain provisions substantially similar to the *State*

¹ Reports 2013-302 & 2013-303, December 2013; report 2015-302, December 2015; report 2017-302, December 2017; report 2019-302, December 2019; and report 2021-302, January 2022.

Administrative Manual (SAM) and *State Contracting Manual (SCM)*. The text box describes the purpose and content of these two types of manuals. Our prior audits of the Judicial Council dating back to 2017 concluded that both the contracting manual and the Judicial Council's local manual appropriately complied with state requirements, and our review for this audit found that those manuals continue to generally comply with requirements in state law.

However, our review did find that the Judicial Council could improve the contracting manual's language regarding fraud reporting so that it more closely aligns with the language in Section 20080 of SAM. Specifically, SAM requires that state agencies report actual or suspected fraud or errors, the latter of which, in this context, means an unusual event causing impairment or inaccuracy in the procurement process or related documentation. SAM also provides examples of potentially fraudulent incidents, and it outlines mechanisms for reporting fraud. Despite these requirements, we found that the language in the contracting manual, which the Judicial Council said contemplates fraud reporting, lacks specificity. For example, the contracting manual requires that all personnel involved in the procurement process consult with the Judicial Branch entity's procurement and legal staff or the Judicial Council's Legal Services office when questions arise regarding acceptable or unacceptable behavior when dealing with bidders or vendors. However, it lacks several elements found in SAM, such as an explicit requirement for reporting actual or suspected fraud and examples of potentially fraudulent activities. Instead, the Judicial Council has personnel policies that encourage both Judicial Council and court employees to promptly raise concerns about improper governmental activities—including fraud—to independent parties, such as the Judicial Council's internal audit services. The Judicial Council provides staff with an annual reminder of these policies.

However, including language in its contracting manual that is substantially similar to the fraud reporting requirements found in the SAM will bring the Judicial Council into closer compliance with the judicial contract law and ensure that all Judicial Branch entities—including the Judicial Council and courts—receive adequate guidance about how and to whom they should report fraud. In the case of the Judicial Council, such positions include its principal manager of audit services and its chief administrative officer. Judicial Council staff acknowledged that it could improve the contracting manual's requirements on fraud reporting by bringing them into closer alignment with SAM's requirements on fraud reporting. In acknowledging this improvement, Judicial Council staff noted that the voting members of the Judicial Council must formally approve any revisions to the contracting manual. Because of the importance of establishing clear guidance for reporting suspected or actual fraud, we believe it is critical that Judicial Council staff develop proposed revisions to the contracting manual as part of the process to update the contracting manual in 2024. In doing so, Judicial Council staff should clarify the fraud reporting requirements, and the Judicial Council's voting members should formally approve revisions aimed at strengthening its contracting manual's guidance.

The Judicial Council's Contracting Manuals

Contracting Manual: State law requires the Judicial Council to adopt a contracting manual that applies to all Judicial Branch entities. The contracting manual establishes requirements related to procurements, bidding, and payments that all Judicial Branch entities, including the Judicial Council, must follow. The Judicial Council is responsible for maintaining and updating the contracting manual to ensure that it meets requirements in state law.

Local Manual: Additionally, state law requires each Judicial Branch entity, including the Judicial Council, to adopt a local contracting manual. The local manual must include the Judicial Branch entity's organizational structure and be consistent with the contracting manual. The local manual may also contain any requirements specific to a given Judicial Branch entity's procurements. For example, the Judicial Council's local manual outlines those positions at the Judicial Council that are authorized to make purchases of more than certain dollar amounts.

Source: State law and the Judicial Council's contracting manuals.

The Judicial Council Has Not Consistently Adhered to Certain Procurement Requirements

Although the Judicial Council has generally adhered to the requirements set forth in the contracting manual, it has not always followed solicitation requirements that would ensure that it awards contracts for goods and services to appropriate bidders. The contracting manual establishes several requirements that Judicial Branch entities, including the Judicial Council, must follow to ensure that goods and services are procured appropriately. These requirements include the following:

- The establishment of positions responsible for the approval of procurements. The Judicial Council's local manual designates approval authority for procurements to specific supervisor and manager positions based on dollar thresholds.
- A separation of duties between the purchaser and the approving supervisor or manager.
- The use of certain solicitation processes for competitively bid procurements.
- Documented approval of certain non-competitively bid procurements by authorized approvers.

The contracting manual also prohibits what is known as *contract splitting*. In particular, the contracting manual states that a series of related goods or services that would normally be combined and bid as one job cannot be split into, for example, separate, smaller-value contracts to avoid adhering to competitive solicitation requirements.²

We found that these requirements, if followed, generally establish strong controls over Judicial Council procurements. To evaluate adherence to these controls, we reviewed a selection of procurements that the Judicial Council made from July 2021 through June 2023 and found that it complied with the contracting manual's requirements for 36 of the 40 procurements we reviewed. We did not identify any instances of contract splitting. However, for four of the procurements we reviewed, we found that the Judicial Council did not follow all of the contracting manual's requirements.

For one of these four procurements, the Judicial Council did not award an Information Technology (IT) service contract to a California-certified small business because staff did not apply to the vendor's bid a *small business preference* that state law requires. Both state law and the contracting manual require the Judicial Council, when evaluating bids for IT services or goods, to apply a 5 percent small business preference to the bids of qualifying vendors certified as small businesses by the Department of General Services. Had the staff member responsible for evaluating the bids applied this small business preference to the certified vendor during the evaluation process for this IT service contract valued at nearly \$500,000, the vendor would have been awarded the contract. Instead, the Judicial Council improperly awarded the contract to an international IT services company. When we spoke with Judicial Council management about this procurement, they acknowledged that the staff member should have applied the small business preference to the bid and that the approving supervisor should have discovered this error when approving the procurement.

² The contracting manual does not require a competitive procurement for purchases that cost less than \$10,000. As a result, the contracting manual prohibits Judicial Branch entities from splitting transactions costing more than \$10,000 into multiple transactions costing less than \$10,000 to avoid competitive bidding requirements.

Additionally, we found that the Judicial Council used an incorrect solicitation process for three procurements for IT services, including the procurement we described in the previous paragraph. The contracting manual generally requires that competitively bid procurements for IT goods and services be solicited through one of three solicitation processes: a request for quote (RFQ), an invitation for bid (IFB), or a request for proposal (RFP). As the text box shows, the contracting manual requires that the Judicial Council choose the appropriate solicitation process, which it determines by the value or complexity of the procurement. Of the three procurements that the Judicial Council did not solicit properly, one IT service contract valued at roughly \$230,000 was solicited using an RFQ and two IT service contracts valued at about \$286,000 and nearly \$500,000, respectively, were solicited using an IFB. According to the contracting manual, a procurement for IT services valued at \$100,000 or more must be solicited using an RFP, which requires proof of bidder qualifications and a more detailed review of submitted bids by an evaluation team. Although the Judicial Council solicited for these procurements using competitive processes, because the procurements were for IT services valued at more than \$100,000, the Judicial Council should have solicited them using an RFP. When the Judicial Council does not follow the appropriate solicitation process for a procurement, it misses the opportunity to use procurement controls that better ensure the award of contracts to qualified, competent bidders. Further, when procurements are not subject to the correct solicitation process, the Judicial Council increases the likelihood of procuring goods and services that do not provide the best possible value for the State.

Finally, the Judicial Council executed a purchase order of approximately \$69,000 without proper authorization. Judicial Council management acknowledged that the unauthorized purchase order was an oversight and affirmed that the purchase order should have received the signature of an authorized approver. Although the purchase appeared reasonable, because the Judicial Council did not adhere to procurement controls established by the contracting manual, it risked purchasing a service that was not in the best interest of the State.

When we spoke with Judicial Council management about these four procurements, they acknowledged that these procurements did not adhere to the contracting manual's requirements. For the three procurements that did not undergo the appropriate solicitation processes, Judicial Council management explained that the supervisor responsible for reviewing and approving these procurements should have discovered these errors when approving the procurements. Further, Judicial Council management has developed a training action plan in response to this audit's findings that, if implemented as planned, would train staff involved in the procurement process about when appropriate approval is required and when certain solicitation processes are needed. Because it is important that

The Judicial Council's Solicitation Processes for IT Goods and Services Depending on Value or Complexity

RFQ (Request for Quote):

- Low-risk and less-complex IT procurements valued under \$100,000.
- Includes bidder instructions, such as how and when bids must be submitted, and general provisions associated with the purchase.

IFB (Invitation for Bid):

- IT hardware of any dollar value, used when procurements are well-defined, common, or routine.
- Requires greater detail about the procurement, including hardware product specifications and support and maintenance requirements.

RFP (Request for Proposal):

- Complex or unique IT goods and services of any dollar value.
- Requires bidders to submit documentation of their qualifications as reliable contractors, which can include business licenses, proof of financial solvency, and professional certifications.
- Includes required elements of bids, such as a list of references, résumés of major contract participants, and a detailed breakdown of the total cost of the services that must be provided by bidders.
- The Judicial Council uses an evaluation team to conduct a five-step process for evaluating bids, including steps that evaluate the cost and non-cost portions of each bid.

Source: Judicial Branch Contracting Manual.

competitively bid procurements adhere to contracting requirements that help small businesses and allow the Judicial Council to procure goods at the best value for the State, the Judicial Council must ensure that staff receive the necessary training to understand and adhere to these controls.

The Judicial Council Could Improve Its Financial Reporting by Revising Its FI\$Cal Processes

Although the procurement information that we reviewed in the Judicial Council's financial management system—the Financial Information System for California (FI\$Cal)—was complete, we found that the Judicial Council did not always record contract dates accurately. FI\$Cal is an online system that state departments use to manage accounting, procurement, budget, and cash management information. One of the main purposes of implementing FI\$Cal across multiple state departments is to allow the public a transparent view of state finances and the use of public funds. Therefore, it is important that the Judicial Council enters accurate data into the system.

To evaluate the accuracy of the procurement information that the Judicial Council recorded in FI\$Cal, we reviewed the contracts of 29 procurements that it entered into the system from July 2021 through June 2023. These procurements were separate from the 40 procurements that we tested for adherence to procurement internal controls. For these 29 procurements, we compared information on each contract to their respective fields in FI\$Cal. We found that the Judicial Council accurately recorded in FI\$Cal the vendor and total dollar amount for all 29 procurements.

However, the Judicial Council did not always record in FI\$Cal the accurate start or end dates of contracts for these 29 procurements. Specifically, we identified that the start dates for 22 of the 29 procurements did not reflect the date when the Judicial Council executed the associated contract. Of these 22 procurements that we identified as having inaccurate start dates, seven were off by 30 or more days from the start date of the actual contract. According to the contracts manager, there are two different reasons why the start dates were not recorded accurately. He explained that when the Judicial Council initiates a contract in FI\$Cal, it creates a requisition to initiate the contract process that includes the date on which the requisition was created. To link the requisition to the contract in FI\$Cal, the Judicial Council sometimes has to create an earlier start date for the contract to encompass the date on which the requisition was created. As such, the start dates recorded for many contracts in FI\$Cal are earlier than the dates on which the Judicial Council executed the contracts. The contracts manager further explained that sometimes FI\$Cal generates start dates for contracts that are later than the actual start date for the contract, and staff may not revise the dates to reflect the dates on which the Judicial Council executed the contracts. When the Judicial Council does not record start dates accurately in FI\$Cal, it risks providing the public with an incomplete accounting of the number of contracts that it entered into during a particular fiscal year.

We also identified that the end dates in FI\$Cal for 10 of the 29 procurements did not reflect the date on which the associated contract actually expired. Of these 10 procurements that we identified as having inaccurate end dates, at least eight were off by 30 or more days from the end date of the actual contract.³ However, when Judicial Council management explained the reasons for why these inaccuracies occurred, we found that their explanations were generally reasonable and that it may not have been possible to accurately record the end dates in question at the time. According to Judicial

³ Of these 10 procurements, one had a contract that did not have an end date and instead specified that the contract would end upon final payment by the Judicial Council. For this reason, we could not identify by how many days the end date recorded in FI\$Cal may differ from the date upon which final payment is actually made by the Judicial Council.

Council management, FI\$Cal requires the Judicial Council to assign an end date to all contracts in the system. As a result, management explained that, in some instances, staff had to input an estimated date of when the contract might expire. In other instances, the Judicial Council indicated that it had to extend the end date in FI\$Cal for a short-term contract to allow the system enough time to process the contract before its end date in the system. As such, the end dates for some contracts in FI\$Cal are later than their actual date of expiration. Although the reasons for why these end dates are inaccurate appear reasonable, it is good practice to record all information into FI\$Cal accurately. Therefore, it is important that the Judicial Council record accurate end dates into the system when possible.

The Judicial Council acknowledged that these dates were inaccurate and informed us in November 2023 that it recently discovered that it could record dates in FI\$Cal accurately, explaining that it has revised its processes for doing so. Further, the Judicial Council stated that it can manually revise the inaccurate dates that currently exist in FI\$Cal to reflect the actual dates on the contracts. When we asked Judicial Council management how they are now able to accurately record the dates, they stated that they believe recent changes to FI\$Cal functionality allow them to do so. Given that the Judicial Council is now able to record accurate contract dates and manually revise inaccurate dates in FI\$Cal, the Judicial Council should take the actions needed to ensure its contract information in FI\$Cal is accurate.

The Judicial Council Follows Its Processes for Ensuring That It Makes Appropriate Payments

The Judicial Council has established appropriate procedures to govern how it processes payments, and it follows those procedures when paying vendors. Our review found that the Judicial Council has established appropriate controls for payments to ensure that, among other things, it is paying for goods and services it contracted for and received in satisfactory condition. For example, the Judicial Council specifies that vendors' invoices should include detailed descriptions of the goods or services they provided and that staff should verify before authorizing payment that the Judicial Council received satisfactory goods or services. The Judicial Council also relies on requirements established in FI\$Cal that help ensure that it properly authorizes purchases and payments and that an appropriate separation of duties exists to mitigate the risk of errors or fraudulent payments. For example, the Judicial Council requires certain staff to review and approve in FI\$Cal receipt of goods and services when the Judicial Council receives them. The Judicial Council also authorizes separate staff members to process and approve payment for those goods and services and to verify that the payment and processing approvals are similarly recorded in FI\$Cal. The controls established in FI\$Cal appropriately enforce this segregation: the system does not allow staff authorized to approve the requisition for a good or service to also approve payment for that good or service. We evaluated the Judicial Council's adherence to these controls by reviewing 40 payments made from July 2021 through June 2023, and we found that the Judicial Council followed its procedures outlined in the contracting manual governing payments and that it made those payments appropriately.

Recommendations

To ensure that it can appropriately detect and report potential instances of fraud in its contracting practices, the Judicial Council should do the following when it updates its contracting manual in 2024:

- Include language that is substantially similar to the fraud-reporting language in section 20080 of SAM that pertains to contracting and procurement.
- Require Judicial Council staff to report suspected instances of fraud to independent parties within the Judicial Council, such as the principal manager of audit services or chief administrative officer.

By June 2024, the Judicial Council should ensure that procurement staff receive the revised training it develops to clarify the following:

- The circumstances under which staff must apply the certified small business preference when evaluating bids.
- The correct type of solicitation process to use when procuring IT goods and services.

By March 2024, the Judicial Council should do the following:

- Formalize the processes by which contract dates are recorded in FI\$Cal to ensure that the dates for any contracts it enters into in the future are accurate.
- Include in its procedures and training the steps required to record accurate dates when the Judicial Council executes a contract.

By January 2025, the Judicial Council should correct in its FI\$Cal data the inaccurate contract dates for procurements dating back to July 1, 2021.

Respectfully submitted,



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January 9, 2024

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APPENDIX

Scope and Methodology

We conducted this audit according to the audit requirements contained in the Public Contract Code section 19210, which is part of the judicial contract law. We also conducted this audit in accordance with standards of the U.S. Government Accountability Office, which we are statutorily required to follow. The judicial contract law requires the State Auditor, upon legislative appropriation, to perform biennial audits of the Judicial Council. The table lists the audit objectives we developed and the methods we used to fulfill those objectives. Unless otherwise stated in the table or elsewhere in the report, all statements and conclusions about selections of items reviewed cannot be projected to the population.

Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Determine whether the judicial contracting manual is consistent with the requirements set forth in the judicial contract law.</p>	<ul style="list-style-type: none"> Reviewed changes to the Public Contract Code, SAM, and SCM that occurred from July 2021 through June 2023 and identified significant changes that affect the Judicial Council. Compared the significant changes we identified in the Public Contract Code, SAM, and SCM to the contracting manual and determined whether the contracting manual is consistent with requirements set forth in the judicial contract law.
<p>2 Determine whether the Judicial Council's local manual conforms to the contracting manual.</p>	<ul style="list-style-type: none"> Reviewed revisions to the Judicial Council's local manual that occurred from July 2021 through June 2023 to determine whether these revisions conflict with requirements in the contracting manual. Reviewed these same revisions to the local manual to verify whether applicable updates to the contracting manual that occurred from July 2021 through June 2023 were incorporated into the local manual.
<p>3 Assess the Judicial Council's internal controls over procurement practices and determine whether it complied with those controls and other key requirements—including requirements related to competitive bidding and sole-source contracting—when completing its procurements.</p>	<ul style="list-style-type: none"> Reviewed the contracting manual, the Judicial Council's local manual, and the Judicial Council's procedures and interviewed staff to assess the Judicial Council's internal controls for contracting and procurement. Using data from FISCal, identified procurements from July 2021 through June 2023, selected 40 of those procurements—15 contracts, 20 purchase orders, and five contract amendments—and tested them for compliance with requirements of the judicial contracting manual and the Judicial Council's local manual. These requirements included those relating to procurement approval, segregation of duties, competitive bidding, and other key controls.
<p>4 Assess the Judicial Council's internal controls over payment practices and determine whether the entity complied with those controls.</p>	<ul style="list-style-type: none"> Reviewed the contracting manual, the Judicial Council's local manual, and the Judicial Council's procedures and interviewed staff to assess the Judicial Council's internal controls for payments. Selected one invoice payment from each of the 40 procurements we selected to address Objective 3, and tested for compliance with the requirements about invoice approval, proper authorizations, and segregation of duties.
<p>5 Evaluate the Judicial Council's contracts to determine whether the Judicial Council inappropriately split any contracts to avoid necessary approval or competitive bidding requirements.</p>	<ul style="list-style-type: none"> Identified a provision in the contracting manual that prohibits Judicial Branch entities from splitting transactions costing more than \$10,000 into multiple transactions costing less than \$10,000 to avoid competitive bidding requirements. Reviewed the contracting manual and the Judicial Council's plans for training staff to identify the controls used—or that it plans to use—to prevent contract splitting. Using data from FISCal, identified vendors from which the Judicial Council made multiple procurements of less than \$10,000 from July 2021 through June 2023. Reviewed procurement documentation to determine whether any of those multiple procurements should have been a single competitively bid procurement.

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AUDIT OBJECTIVE	METHOD
6 Assess the reliability of the Judicial Council's contract and payment data recorded in FISCAL to ensure the accuracy and completeness of the data and to establish testing selections.	<ul style="list-style-type: none">• Obtained FISCAL data from the Judicial Council for July 2021 through June 2023.• Selected hard copy procurement files and searched for those procurements in FISCAL to determine whether the procurements existed in the system and were accurate.• Compared information from the payment invoices selected as part of Objective 4 to the FISCAL data to determine whether the invoices existed in the system and were accurate.

Source: Audit workpapers.