



Judicial Branch Procurement

Six Superior Courts Generally Complied With the Judicial Branch Contracting Law, but They Could Improve Some Policies and Practices

Report 2012-301

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March 19, 2013

2012-301

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 36, Statutes of 2011, the California State Auditor (state auditor) presents this audit report on a pilot audit assessing the compliance of six superior courts with the requirements of the California Judicial Branch Contract Law (judicial contract law), Public Contract Code, sections 19201 through 19210. We reviewed the extent to which the applicable *Judicial Branch Contracting Manual* (judicial contracting manual) was consistent with the Public Contract Code and substantially similar to the *State Administrative Manual* and the *State Contracting Manual*, as required by law. We also assessed whether the Administrative Office of the Courts' (AOC) *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* (semiannual report) to the Legislature and the state auditor complied with the requirements of the judicial contract law.

This report concludes that the judicial contracting manual lacks policies related to the State's small business preference for the procurement of information technology goods and services and noted several instances where data in AOC's semiannual report was inaccurate. Specifically, we noted that in some cases the report did not include data describing the good or service purchased. We also noted other cases where the report included inaccurate data on the amounts courts paid for goods and services.

Further, the six courts in the pilot audit—the superior courts of Napa, Orange, Sacramento, Stanislaus, Sutter, and Yolo counties—generally complied with the judicial contract law. However, we identified isolated instances where courts could improve. For example, we noted individual procurements where court managers approved transactions valued above established authorization levels. We also identified instances where courts did not justify using sole-source contracts or did not advertise for competitive bids. Moreover, none of the six courts had procedures to implement the Disabled Veteran Business Enterprise program, as required by the judicial contracting manual.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Contents

Summary	1
Introduction	5
Audit Results	
The Judicial Branch Contracting Manual Does Not Include a Small Business Preference, and the Semiannual Report for the Judicial Branch Can Be Improved	13
The Superior Courts Generally Demonstrated Good Internal Controls and Compliance With State Procurement Requirements, but Could Improve Local Policies	16
The Napa Court Could Improve Its Practices Relating to Procurement Approvals	19
The Sacramento Court Could Improve Its Practices Related to Authorization and Competition	20
The Stanislaus Court Did Not Always Follow Established Processes Regarding Advertisement of Procurements	21
The Sutter Court Did Not Always Document Its Rationale for Sole-Source Procurements	22
The Yolo Court Did Not Always Research Multiple Vendors When Using Leveraged Procurement Agreements	23
The Orange Court Generally Complied With the Judicial Branch Contract Law	23
Recommendations	24
Responses to the Audit	
Judicial Council of California, Administrative Office of the Courts	27
California State Auditor's Comments on the Response From the Administrative Office of the Courts	31
The Superior Court of Napa County	33
The Superior Court of Orange County	35
California State Auditor's Comment on the Response From the Superior Court of Orange County	39

The Superior Court of Sacramento County	41
California State Auditor's Comments on the Response From the Superior Court of Sacramento County	45
The Superior Court of Sutter County	47
The Superior Court of Yolo County	51
California State Auditor's Comments on the Response From the Superior Court of Yolo County	53

Summary

Results in Brief

In 2011 the State enacted the California Judicial Branch Contract Law (judicial contract law). This law required the California State Auditor (state auditor) to establish a pilot program to audit six trial courts and to determine these courts' compliance with the judicial contract law.¹ The judicial contract law, among other things, required the judicial branch to develop and adopt a contracting manual no later than January 2012 that all judicial branch entities—such as superior and appellate courts—must follow. The manual was to be consistent with the requirements found in the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*.

The judicial contract law further specified that the state auditor must begin a pilot program to commence audits of six trial courts by no later than December 15, 2012, and, based on the results of the pilot program audits, audit every trial court at least once every four years. This audit report discloses the results of our pilot audit for the superior courts in the following six counties: Napa, Orange, Sacramento, Stanislaus, Sutter, and Yolo. During our audit, we assessed the extent to which the *Judicial Branch Contracting Manual* (judicial contracting manual) complies with state law and whether the Administrative Office of the Courts' (AOC) *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* (semiannual report) to the Legislature and the state auditor accurately and completely reflects procurement activity at the superior courts.²

We found that the judicial contracting manual does not require that court entities give preference to small businesses bidding on information technology procurements. Because the Public Contract Code includes a small business preference for the acquisition of information technology, we expected that the judicial contracting manual would contain a similar provision. The absence of such a policy renders the judicial contracting manual inconsistent with the Public Contract Code.

In addition, the AOC's semiannual report was neither accurate nor complete with respect to data from the superior courts. The judicial contract law requires that the courts report twice annually to the Legislature and the state auditor on all procurements that

Audit Highlights . . .

Our pilot audit for the superior courts in Napa, Orange, Sacramento, Stanislaus, Sutter, and Yolo counties and our review of the Judicial Branch Contracting Manual (judicial contracting manual) highlighted the following:

- » *The judicial contracting manual does not require that court entities give preference to small businesses bidding on information technology procurements, which is inconsistent with the Public Contract Code.*
- » *The Administrative Office of the Courts' (AOC) Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012 (semiannual report), was neither accurate nor complete with respect to data from the superior courts.*
- » *Each of the six courts we visited generally demonstrated good contracting practices and complied with the judicial contract law.*
- » *Although the courts' local manuals generally comply with the judicial contracting manual and state law, they lack certain policies such as policies to implement the Disabled Veteran Business Enterprise program.*
- » *Some courts had isolated instances of noncompliance with their contracting practices such as having no justification for sole-source procurements.*

¹ The judicial contract law is codified in the Public Contract Code, sections 19201 through 19210.

² For our audit, we reviewed the portion of the *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* pertaining to the superior courts. All references here to a specific semiannual report refer to this report.

had payment activity. The six courts we reviewed all use the Phoenix accounting system, administered by the AOC, and the AOC generated the semiannual report we reviewed with input from the courts. The AOC filtered certain transactions out of the report. In some cases these exclusions were appropriate but in other cases they were not. As an example of where these exclusions were inappropriate, the AOC did not report contract activity for court security services, court reporters, and interpreters. We also noted instances where the semiannual report was missing information describing the goods or services obtained by the courts, and where the semiannual report provided inaccurate cost data. Without an accurate report of procurement transactions, the Legislature cannot make informed decisions regarding court procurements. The AOC asserted that it has corrected the problems that caused these errors and that they will not occur in future semiannual reports.

Each of the six courts we visited generally demonstrated good contracting practices and complied with the judicial contract law. In particular, we noted that the courts assured adequate separation of duties when processing payments by ensuring that multiple individuals reviewed invoices. This helps prevent fraud and error in the payment process. We also noted that the courts took advantage of *leveraged procurement agreements*—statewide and multistate procurement agreements that take advantage of the State's buying power to obtain lower pricing than an individual court could generally obtain on its own—to ensure that they obtained reasonable prices while also satisfying the State's competitive procurement requirements. Finally, three of the courts we visited—the superior courts of Napa, Yolo, and Sutter counties—recently became part of a shared procurement service administered by the Superior Court of Riverside County, designed to help the smaller courts comply with state procurement requirements.

Although the courts' local manuals generally comply with the judicial contracting manual and state law, they lack certain policies. Specifically, the judicial contracting manual requires that local courts develop policies to implement the Disabled Veteran Business Enterprise (DVBE) program, which requires entities to attempt to award at least 3 percent of their contract dollars to certified businesses owned by disabled veterans. However, although one court includes the DVBE program in its local manual, none of the courts we reviewed include procedures to implement the program.

Further, some courts had isolated instances of noncompliance with their contracting practices. For example, we found that managers approved transactions for amounts above their authority

for one procurement we reviewed at the Superior Court of Napa County (Napa court) and one procurement we reviewed at the Superior Court of Sacramento County (Sacramento court). Also, for a selection of procurements we reviewed, we noted two instances where there was no justification for a sole-source procurement—one at the Superior Court of Sutter County (Sutter court) and one at the Sacramento court. Although the judicial contracting manual allows procurements without competition in some cases, such as in an emergency or because the product is unique, it requires courts to justify the need for these exceptions. In addition, in one of the procurements we reviewed for the Superior Court of Stanislaus County (Stanislaus court), the court did not advertise the procurement as required. Finally, in one procurement we reviewed at the Superior Court of Yolo County (Yolo court), the court used a leveraged procurement agreement without documenting that it researched multiple vendors. Entities using such agreements must still—with some exceptions that did not apply in this case—research multiple vendors to ensure that they receive the best value. Each of the issues described here appears to be an isolated lapse in policy rather than a systemic failure. However, when courts do not comply with the judicial contracting manual and other state procurement requirements, they risk not receiving the best price for goods and services.

We made several recommendations to the six courts we visited and to the AOC. For example, we recommended that the courts develop policies to implement the DVBE program. Further, we recommended that the Sacramento and Napa courts ensure that managers do not sign transactions above their approved dollar limits. Also, we recommended that the Stanislaus court advertise solicitations as required by the judicial contracting manual and that the Sacramento and Sutter courts justify sole-source procurements. Finally, we recommended that the AOC include all relevant procurement transactions in its semiannual report and ensure that its processes for developing the semiannual report provide accurate information.

Agency Comments

The superior courts and the AOC generally agreed with our recommendations; however, the Yolo court disagreed with our findings and the Stanislaus court chose not to respond.

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Introduction

Background

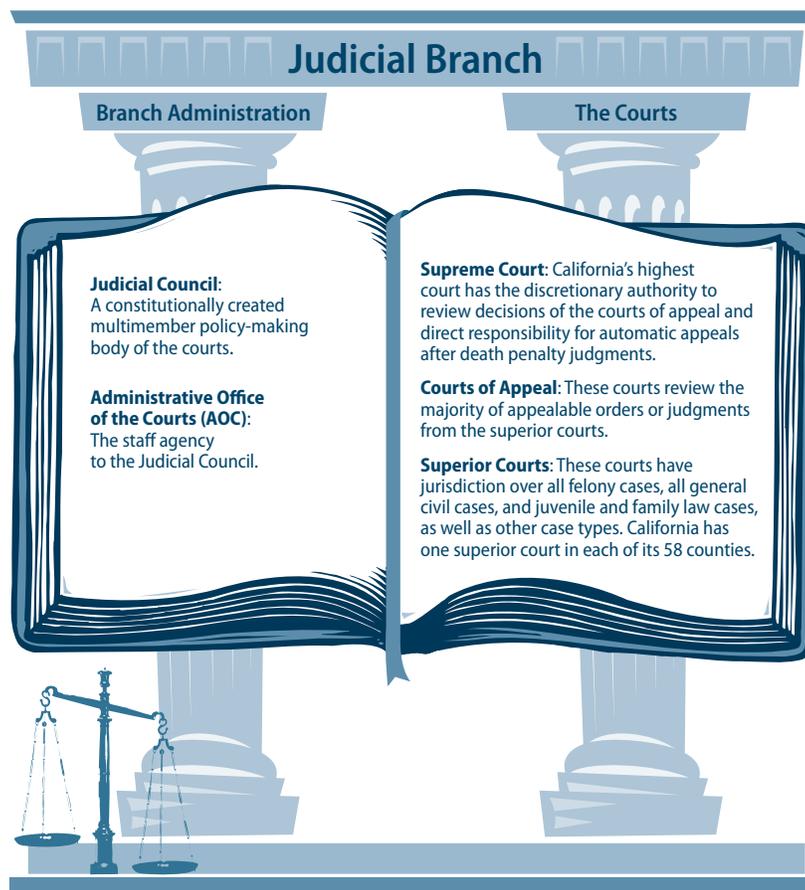
California's judicial branch is a separate and independent branch of state government comprised of the superior—or trial—courts, appellate courts, Supreme Court, and administrative and policy entities, including the Habeas Corpus Resource Center, the Judicial Council, and the Administrative Office of the Courts (AOC). The California Constitution requires the Judicial Council to survey judicial business practices and make recommendations to the courts, the governor, and the Legislature regarding improvements to judicial administration. In addition, the Judicial Council may appoint an administrative director of the courts to perform functions as delegated by the council. The Judicial Council consists of the chief justice of California and one other Supreme Court justice, three judges of the courts of appeal, 10 superior court judges, four members of the State Bar of California, several nonvoting members, and a representative from each house of the Legislature. The Judicial Council performs its constitutional and other functions with the support of its staff agency, the AOC. Figure 1 on the following page provides an overview of the structure of California's judicial branch.

California's judicial power is vested in the Supreme Court, appellate courts, and superior courts. The superior courts—located in each of the State's 58 counties—have original jurisdiction over most types of cases, including civil and criminal cases. Parties to cases heard in superior court can generally appeal judgments to a designated court of appeal. Ultimately, California's Supreme Court has the authority to review the judgments issued by appellate courts and has appellate jurisdiction when a superior court has pronounced a judgment of death.

Before 1998 California's constitution provided for municipal and superior courts. 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, improved court record management, and reduced administrative costs. According to the AOC, judges in all 58 counties had voted to unify their trial courts by February 2001.

Between 1997 and 2002, the State enacted a series of measures intending to transfer responsibility for funding the trial courts from each county to the State, establishing a new personnel system for trial court employees, and initiating the transfer of responsibility for court properties from the counties to the State.

Figure 1
The California Judicial Branch



Source: Documents provided by the AOC.

Note: An additional entity within the judicial branch, the Habeas Corpus Resource Center, provides counsel to represent indigent men and women under sentence of death in California.

The 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 those entities should solicit, evaluate, and award such contracts. However, until recently these requirements did not apply to the judicial branch. In 2011 the

State enacted the California Judicial Branch Contract Law (judicial contract law), which requires judicial branch entities—such as superior courts, courts of appeal, the Supreme Court, and others—to follow 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 *State Contracting Manual*. In addition, the judicial contract law requires, with limited exceptions, that judicial branch entities notify the California State Auditor (state auditor) of all contracts entered into that exceed \$1 million in estimated value. The law further specifies that all administrative and information technology projects exceeding \$5 million be subject to the review and recommendations of the California Technology Agency.

The judicial contract law also imposes other reporting requirements on judicial branch entities. Beginning in 2012 the judicial contract law requires the Judicial Council to submit semiannual reports to the Legislature and state auditor itemizing most of the judicial branch's contracting activities. Further, the judicial contract law directs the state auditor to establish an audit program to review every trial court's implementation of the judicial contract law at least once every four years and the Habeas Corpus Resource Center, AOC, and each appellate court once every two years.

According to the semiannual report the Judicial Council provided to the Legislature for the period January 1 through June 30, 2012,³ the superior courts executed contracts and amendments valued at nearly \$165 million during the six-month period. The report also states that the superior courts made a total of \$176 million in payments to vendors.

State Contracting Requirements

The judicial contract law requires the Judicial Council to adopt and publish a *Judicial Branch Contracting Manual* (judicial contracting manual) incorporating policies and procedures consistent with the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and *State Contracting Manual*. Further, the judicial contract law requires that each judicial branch entity develop and adopt its own local manual. The *State Administrative Manual* provides general fiscal and business policy guidance to state agencies, while the *State Contracting Manual* provides more specific procedures in the areas of procurement and contract management. For

³ For our audit, we reviewed the portion of the *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* pertaining to the superior courts. All references here to a specific semiannual report refer to this report.

example, the *State Contracting Manual* and the Public Contract Code include competitive bidding requirements and certain conflict-of-interest considerations.

In enacting the Public Contract Code, the Legislature intended to achieve certain objectives, such as ensuring that state agencies comply with competitive bidding requirements; providing all qualified bidders with a fair opportunity to enter the bidding process; and eliminating favoritism, fraud, and corruption in the awarding of public contracts. With certain exceptions, the Public Contract Code requires state agencies to secure at least three competitive bids or proposals for each contract.

The Public Contract Code also describes certain conditions under which a contract may be awarded without obtaining at least three competitive bids or proposals, and the *State Contracting Manual* provides guidelines for these circumstances. For example, the *State Contracting Manual* allows solicitation of bids from a single source for transactions of less than \$5,000 when the contracting entity determines that the pricing is fair and reasonable, either by comparing price or catalog costs or through past experience. Similarly, the judicial contracting manual exempts procurements of less than \$5,000 from competitive bidding requirements. Other circumstances in which the State's procurement rules do not require three competitive bids include when a contract is necessary for the immediate preservation of public health, when the contract is with a state agency or other local governmental entity, and other instances as defined by the Department of General Services (General Services).

Based on its authority under the Public Contract Code, General Services exempts state departments and agencies from obtaining competitive bids or proposals when the state entity uses a vendor through an approved leveraged procurement agreement. According to the *State Contracting Manual*, *leveraged procurement agreements* are statewide agreements awarded by General Services to consolidate the needs of multiple state agencies and to leverage the State's buying power. There are various types of leveraged procurement agreements, including master service agreements, California Multiple Award Schedules, and others. The judicial contracting manual also recognizes the potential use of leveraged procurement agreements by judicial branch entities and devotes a chapter to the topic. The manual includes a process for using leveraged procurement agreements that requires—with some exceptions—comparing the offerings of multiple vendors to ensure that the judicial branch entity is receiving the best value.

Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in the Public Contract Code, Section 19210. The judicial contract law requires the state auditor to establish a pilot program to audit six trial courts' implementation of the judicial contract law. For the pilot program, the judicial contract law requires the state auditor to select two courts from counties with a population of 750,000 or greater, two courts from counties with populations greater than 200,000 and less than 750,000, and two courts from counties with populations of 200,000 or less, and to use the results of the pilot to develop an audit program for reviewing each of the State's 58 superior courts once every four years. Our fieldwork included work at the superior courts of Napa, Orange, Sacramento, Stanislaus, Sutter, and Yolo counties. Table 1 provides background information on the six courts. Although state law does not require the state auditor to include the AOC in the pilot audit, we examined the judicial contracting manual and its semiannual report for the period January 1 through June 30, 2012, for compliance with state requirements. Table 2 on the following page lists the audit objectives we developed and the methods we used to fulfill those objectives.

Table 1
Relative Size and Workload Data for Six County Superior Courts

	COUNTY SUPERIOR COURT					
	NAPA	ORANGE	SACRAMENTO	STANISLAUS	SUTTER	YOLO
County population	138,255	3,055,792	1,435,153	519,940	95,065	202,133
Population size category	Small	Large	Large	Medium	Small	Medium
County area in square miles	788	791	994	1,521	607	1,021
Expenditures, fiscal year 2011–12*	\$9,900,000	\$207,500,000	\$94,300,000	\$24,400,000	\$6,500,000	\$13,300,000
Cases adjudicated	24,652	600,661	299,138	77,554	19,252	37,350
Procurement Activity†						
Reported payments, January through June 2012	\$700,000	\$16,700,000	\$5,600,000	\$1,600,000	\$400,000	\$1,100,000
Reported procurements, January through June 2012	\$100,000	\$22,200,000	\$3,700,000	\$800,000	\$600,000	\$600,000
Judges	6	122	58	20	5	11
Support staff	76	1,621	636	225	59	94

Sources: Department of Finance population projections, county Web sites, the *Judicial Branch Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* (semiannual report), and information provided by senior court staff.

Notes: The information in this table is for informational purposes to provide context for the relative size and diversity of the courts we audited. Numbers are rounded where indicated.

* Expenditure data is unaudited and was provided by each court's senior accounting or fiscal staff. Amounts are rounded to the nearest \$100,000.

† Procurement activity figures are based on the semiannual report. Amounts are rounded to the nearest \$100,000.

Table 2
Methods to Assess the Judicial Branch's Implementation of the California Judicial Branch Contract Law

AUDIT OBJECTIVE	METHOD
1 Determine whether the <i>Judicial Branch Contracting Manual</i> (judicial contracting manual) is consistent with the requirements set forth in the California Judicial Branch Contract Law (judicial contract law).	We reviewed and evaluated the April 2012 version of the judicial contracting manual for conformance with the judicial contract law, the <i>State Administrative Manual</i> , and the <i>State Contracting Manual</i> .
2 Determine the accuracy and completeness of data related to the superior courts from the <i>Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012</i> (semiannual report), submitted by the Administrative Office of the Courts (AOC) to the Joint Legislative Budget Committee and the California State Auditor (state auditor).	To assess accuracy, we selected 29 procurement and payment records from the semiannual report to verify against information in the courts' files. To assess completeness, we haphazardly selected 29 procurement and payment files to verify that they were included in the semiannual report, if appropriate. We conducted accuracy testing at the superior courts of Sacramento, Napa, and Yolo counties and completeness testing at the superior courts of Sacramento and Napa counties. We could not conduct completeness testing at the Yolo court because the court does not maintain consistent paper files; the court stores many records electronically. Additionally, upon completion of our fieldwork at the Sacramento, Napa, and Yolo courts, we determined that we had identified sufficient concerns with data reliability that we did not pursue testing in the remaining three courts.
3 Determine whether each court has developed its own local contracting manual, and assess its conformance to the judicial contracting manual.	We obtained each court's local contracting manual and compared the local manual to certain key and mandatory requirements in the April 2012 revision of the judicial contracting manual.
4 Assess each court's internal controls over contracting and procurement practice and determine whether the court followed those controls.	We interviewed key procurement staff members, reviewed desk procedures and local contracting manuals, and identified key internal controls. We determined whether the court followed these key controls by reviewing a selection of procurements.
5 Assess each court's compliance with key elements of the State's contracting and procurement requirements, including those related to competitive bidding, sole-source contracting, and payment and deliverable review and oversight.	Using the semiannual report, we selected certain procurement and payment records and then reviewed each court's procurement files to understand how the courts initiated procurements and authorized payments. During our review of each court's procurement files, we examined whether the court competitively bid the selected contracts and, if not, whether it had a reasonable explanation for not doing so. Finally, our review of each court's payments to its vendors involved determining whether the court ensured that it had received the goods or services and that the appropriate level of management approved payments to vendors.
6 Evaluate each court's contracts to determine whether there is risk of inappropriately splitting contracts in order to avoid necessary approvals or competitive bidding requirements.	We identified the thresholds beyond which courts must seek competitive bids and we identified the approval levels for each court. We reviewed the semiannual report to identify potential split transactions and reviewed those transactions in detail. We did not identify any split transactions.
7 Review the appropriateness of transactions made with the state credit card (CAL-Card) or other court-issued cards when those transactions exceeded a total of \$100,000 or 10 percent of all reported transactions in January through June 2012.	None of the six courts had credit card payments totaling more than \$100,000 or representing more than 10 percent of all payments, as reported in the semiannual report for the period January through June 2012.

Sources: Chapter 36, Statutes of 2011, and the California State Auditor's analysis of information and documentation identified in the table column titled *Method*.

The scope of our report is limited. Although the judicial contracting manual became effective October 1, 2011, the AOC made substantial revisions to the manual and published a new version on April 24, 2012.⁴ As a result, our audit was limited to the procurements and payments entered into in May and June 2012. We did not select transactions beyond June 2012 because the semiannual report that we used to select transactions for review included only transactions from January through June 2012. This resulted in a small population of transactions, especially at small and medium-sized courts. As such, our selections of procurements and payments to review were also small, as shown in Table 3.

Table 3
Number of Procurement and Payment Transactions Reviewed in the Pilot Audit

COUNTY SUPERIOR COURT	NUMBER OF PROCUREMENTS REVIEWED	NUMBER OF PAYMENTS REVIEWED
Napa	4	7
Orange	19	16
Sacramento	16	15
Stanislaus	9	7
Sutter	10	7
Yolo	4	7

Source: California State Auditor's analysis based on the *Judicial Branch Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012*.

Assessment of Data Reliability

During the course of our audit, we relied on the AOC's semiannual report for the period January 1 through June 30, 2012, to select procurement transactions for review. As described in Table 2, we selected various records from the semiannual report to test the accuracy and completeness of the information in that report for three county courts. We stopped testing when it became clear that the report contained a number of inaccuracies.

The AOC generates the semiannual report for the superior courts via the Phoenix financial system. The six courts we reviewed use the Phoenix system to conduct and record their procurement activity. However, because state law limits the scope of this pilot audit to the procurement practices at six local court entities, and since

⁴ The AOC published another revision to the judicial contracting manual in late August 2012. Unlike the revisions resulting in the April 2012 version of the manual, these revisions to the judicial contracting manual did not affect our work.

the AOC, and not the individual courts, administers the Phoenix system, we did not pursue a complete review of the Phoenix system, its reliability, or its controls. Nevertheless, we describe concerns that arose from our review of data reliability at the three courts where we performed this work. Further, we anticipate conducting a review of the Phoenix system concurrent with our audit of the AOC's procurement practices at a future date.

Audit Results

The Judicial Branch Contracting Manual Does Not Include a Small Business Preference, and the Semiannual Report for the Judicial Branch Can Be Improved

The *Judicial Branch Contracting Manual* (judicial contracting manual) did not include a preference for small businesses bidding on information technology procurements. Because the California Government Code, and not the Public Contract Code, establishes a general bidding preference for small businesses, the general policy would not apply to the courts. However, while the Public Contract Code includes a provision requiring this preference for information technology procurements, the judicial contracting manual does not. Additionally, we identified errors in the courts' *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 through June 30, 2012* (semiannual report),⁵ that affected the report's accuracy in describing the goods or services procured and the amounts paid for goods and services. The AOC stated it corrected these errors for future reports; however, we did not verify the corrections as they occurred after our audit period. Further, we anticipate examining the semiannual report in the future as part of our required audits of court procurement practices.

The Judicial Contracting Manual Does Not Include the State's Small Business Preference

The California Government Code and one provision of the Public Contract Code require that contracting entities give preference to certified small businesses when evaluating certain bids. Generally, a state-certified small business may claim a 5 percent reduction in its bid amount or increase in its scoring calculation during the State's process for determining which bidder should be awarded the contract. The provisions of the Public Contract Code apply only to information technology acquisitions, while the Government Code's small business preference mandate applies to acquisitions of goods, information technology, services, and construction of state facilities.

According to legal counsel at the Administrative Office of the Courts (AOC), the Judicial Council is not required to implement the small business preference because it is a Government Code program not intended to apply to the Judicial Branch. Because the Public Contract Code does not contain a small business preference

⁵ For our audit, we reviewed the portion of the *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012* pertaining to the superior courts. All references here to a specific semiannual report refer to this report.

The absence of a small business preference for information technology purchases makes the judicial contracting manual inconsistent with the plain language of the Public Contract Code.

for the acquisition of goods, services, and construction, we agree that the small business preference contained in the Government Code is largely inapplicable to the judicial branch. However, because the Public Contract Code includes a small business preference for the acquisition of information technology, we expected the judicial contracting manual to include a similar policy. The absence of a small business preference for information technology purchases makes the judicial contracting manual inconsistent with the plain language of the Public Contract Code.

The AOC Inappropriately Excluded Some Transactions From Its Semiannual Report

The AOC excluded certain classes of expenditures from the semiannual report, based on how the courts classify these transactions in the AOC's accounting system. When preparing the semiannual report, the AOC extracted financial information from each court and excluded expenditures that the courts have classified under certain general ledger codes. Some of these excluded categories make sense because they are not procurements—for example, expenses for salaries and benefits. Other categories, such as costs for court construction, were excluded because they are excluded from the California Judicial Branch Contract Law (judicial contract law).

However, in some cases, excluding an entire category of costs increased the risk that a procurement transaction would be excluded inappropriately. For example, the semiannual report's data for the Sacramento court did not include a payment of \$17,500 for the purchase of parking stickers from Sacramento County because it was recorded as a travel cost, one of the excluded categories. We recognize that this particular transaction is likely a low risk, and that only the county can provide county parking passes; however, excluding transactions other than court personnel costs and construction costs unnecessarily increases the risk that procurement transactions will accidentally be excluded from the semiannual reports.

The AOC also excluded certain contracts and procurements pertaining to court security services, court reporters, and court interpreters from the semiannual report. The AOC clearly acknowledged these exclusions in the report and explained them by indicating that these transactions are unique to the courts and fall under other, more specific, statutory schemes outside of the judicial contract law. In particular, the AOC referenced different portions of the Government Code. In these instances, we believe the AOC has a valid argument for excluding the transactions from the substantive provisions of the judicial contract law.

Nevertheless, we believe the semiannual reporting requirements described in the Public Contract Code were intended to serve as a tool to aid the Legislature's budget oversight and to provide greater transparency for the public with regard to the judicial branch's contracting and procurement activities. As such, we believe these transactions should be included in the semiannual reports to the Legislature when such services result in payment by a judicial branch entity to a vendor or contractor.

The AOC's Semiannual Report Contained Inaccurate Information

Our review of the transactions for the superior courts of the counties of Sacramento (Sacramento court), Yolo (Yolo court), and Napa (Napa court) included in the semiannual report found that the report was inaccurate. As a result, given the number of errors in the report, we did not continue our testing at the superior courts of the counties of Stanislaus (Stanislaus court), Sutter (Sutter court), and Orange (Orange court). Specifically, we noted instances in which the field in the report describing the item or service procured was blank, while in other instances the reported value or the payment totals for certain records was incorrect. We noted that 11 of the 92 records we tested from the semiannual report—or 12 percent of the records tested—contained at least one error. The AOC acknowledged some of these errors when we brought them to its attention, and in some cases indicated that the errors were the result of flaws in its data extraction process that it has since corrected.

Although the Public Contract Code requires that the semiannual report identify the type of good or service provided for each distinct contract, we found that for three of the 33 records we reviewed at the Sacramento court, and three of the 30 records reviewed at the Napa court, the field describing the item or service procured did not contain any data. After we discussed this issue with the AOC, it found 229 instances, of a total of 6,343 records for all superior courts, in which a record lacked a description of the goods or services purchased. According to the AOC, the program used to extract the courts' data contained a programming error that has since been corrected, and it expects that future reports will contain information on the item or service provided.

The semiannual report also contained errors in a field that reports the value of contracts. Specifically, we found that for two of the 33 records we reviewed related to the Sacramento court, the field describing the value of the contract contained an inaccurate amount. In these two instances, the AOC stated that a programming error caused this problem. The AOC claimed that its process for generating the report now identifies these circumstances and that the issue has been fixed.

Based on our review of the transactions at three courts, we found the AOC's report was incomplete in describing some of the goods or services procured and inaccurate in reporting some of the amounts paid for them.

In addition, the AOC's semiannual report included incorrect payment information. At the Napa court, we observed three instances, of the 30 records we reviewed, in which the amount the court paid for goods or services was lower than the amount listed on the semiannual report. Two instances were due to the court paying lower than expected sales tax. In the third instance, the court received a lower price on some computer monitors and amended the purchase order. The semiannual report listed a payment amount of almost \$3,000. However, this amount reflects the value of the original purchase order, and not the nearly \$2,400 that the Napa court actually paid. As a result, the amount included in the semiannual report was overstated by roughly \$600. According to a senior manager at the AOC, a programming error caused this problem. He stated that this error has been fixed and that future reports will contain correct payment information. Errors of this nature create the risk that policy makers using the report to inform decisions will base those decisions on inaccurate data.

The Superior Courts Generally Demonstrated Good Internal Controls and Compliance With State Procurement Requirements, but Could Improve Local Policies

Each of the six courts we reviewed demonstrated adequate to strong internal controls over procurement transactions and generally complied with state law. Table 4 summarizes the six courts' performance in four key areas. However, we found that the courts we visited did not have procedures in place to implement the Disabled Veteran Business Enterprise (DVBE) program.

The courts we visited practiced strong separation of duties when processing payments. At each court, one individual reviewed invoices to acknowledge that goods or services were received and indicate that the invoices were ready for payment. A different individual then reviewed invoices and released them for payment in the court's accounting system. For example, for a payment for computer monitors at the Sacramento court, an officer in the information technology department approved the invoice for payment, while an accounting supervisor reviewed and posted the invoice for payment in the court's accounting system. Requiring that multiple individuals be involved with a payment reduces the risk of error or fraud and is a sound management practice.

Additionally, some of the courts we visited made use of leveraged procurement agreements that can, according to the *State Contracting Manual*, potentially streamline the procurement process and result in lower prices. These agreements are described in the Introduction. According to the Public Contract Code and the

The courts we visited required that multiple individuals be involved when processing payments, which reduces the risk of error or fraud and is a sound management practice.

State Contracting Manual, entities using a leveraged procurement agreement do not have to undertake a competitive bidding process, potentially saving time and expense. Further, state requirements allow entities to make purchases without competitive bidding in various other instances, such as when purchases are under \$5,000 or when the good or service is unique in some way. These are called *noncompetitive procurements*.

Table 4
Status of Key Procurement Practices in Six Superior Courts

 COUNTY SUPERIOR COURT	PROCUREMENT PRACTICES			
	COURT'S LOCAL PROCUREMENT MANUAL IS CONSISTENT WITH APPLICABLE STATE LAW	COURT DEMONSTRATED EFFECTIVE CONTROL OVER PURCHASING APPROVAL	COURT PROMOTED COMPETITION AMONG BIDDERS OR HAD ADEQUATE JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENTS	COURT DEMONSTRATED EFFECTIVE CONTROL OVER THE RECEIPT OF GOODS OR SERVICES AND THE ISSUANCE OF PAYMENT
Napa	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★
Orange	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★
Sacramento	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★
Stanislaus	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★
Sutter	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★
Yolo	★ ★ ★	★ ★ ★	★ ★ ★	★ ★ ★

Source: California State Auditor's analysis of procurement and payment records at each superior court.

★ ★ ★ = **Strong Practices**

The court's practices were consistent with the *Judicial Branch Contracting Manual* and its own policies, and were substantially consistent with applicable state standards. We noted no errors or deviations in our testing of selected procurements.

★ ★ ★ = **Adequate Practices**

Our review of selected procurements demonstrated isolated instances of deficient practices that warrant corrective action.

★ ★ ★ = **Weak Practices**

Our review of selected procurements revealed systemic problems that warrant corrective action in order to comply with state law.

Further, the Napa, Sutter, and Yolo courts are part of a group of 18 courts sharing procurement services coordinated by the Superior Court of Riverside County (Riverside court). The purpose of the shared procurement service is to provide full-time professional procurement services to each participating court in a concerted effort to obtain the best possible products and services for the best value, in accordance with the judicial contracting manual and each court's local contracting manual. According to the agreements between these three courts and the Riverside court, the Riverside court will provide the services of a procurement specialist, conduct competitive procurements, assist the courts in finalizing procurement documents, facilitate finalizing contracts

and purchase orders, and provide the Riverside court's local manual and forms as templates for the participating courts to use if they so desire. The participating courts retain full and final responsibility for all procurements, including decision-making authority and responsibility for procurement-related activities. The shared procurement service agreements run from July 2012 through June 2013, and the Riverside court is providing the services at no cost during that year.

Also, each of the six courts have developed a local manual that generally meets the requirements in the judicial contracting manual. State law requires that each judicial branch entity, such as superior courts, develop a local procurement manual. These local manuals must be consistent with the Public Contract Code and be substantially similar to the *State Administrative Manual* and the *State Contracting Manual*. The judicial contracting manual further requires that the local manuals include the entity's organizational structure and established levels of approval authority for entering into agreements. Although the length and detail of the local manuals varies considerably—from 162 pages at the Orange court to five pages at the Yolo court—the local manuals for each of the six courts contain the mandatory elements outlined in the judicial contracting manual or make reference to that document.

Further, in some cases the courts have included additional policies and procedures in their local manuals. For example, the Sacramento court's local manual provides a table of lead times, such as 48 hours for standard office supplies and four to six weeks for service contracts not requiring a formal solicitation process. Such a table assists court staff in minimizing unnecessary delays in receiving needed goods. The Sacramento court's manual also includes examples of forms the court uses for procurement and several flowcharts showing the court's procurement processes, which facilitate understanding of the court's practices among its staff. In addition, all of the local manuals we reviewed describe the circumstances under which procurements require a legal review; the judicial contracting manual recommends but does not require such a policy. By ensuring that contracts receive a legal review when necessary, the courts reduce the risk that they will legally bind themselves in an inappropriate manner or fail to comply with the judicial contracting manual.

Although the local manuals we reviewed generally comply with state requirements, they all lack policies related to state programs targeting specific types of businesses.

Finally, although the local manuals we reviewed generally comply with state requirements, they all lack policies related to state programs targeting specific types of businesses. As we discussed earlier, none of the six courts had procedures to implement the State's small business preference for information technology procurements. Additionally, only the Orange court's manual includes policies related to the DVBE program. The State's

DVBE program generally requires that entities attempt to award at least 3 percent of their annual contract dollars to certified businesses owned by disabled veterans. According to the judicial contracting manual, each judicial branch entity must develop or adopt a set of rules and procedures for implementing the DVBE program. The Orange court's local manual essentially copies the text and guidance from the judicial contracting manual and lacks specific procedures describing the court's implementation of the program. According to the Orange court's chief financial officer, the court will implement the DVBE program prior to the end of fiscal year 2012–13. The Stanislaus court intends to adopt a policy in the near future, according to the court's senior accountant. She stated that, as existing contracts are renewed or the court solicits a request for price or information, the court will include DVBE-related language in the contracts or solicitation documents. The Napa, Sutter, and Yolo courts expect that their participation in the shared procurement service with the Riverside court will help to address DVBE requirements. Finally, the Sacramento court's local manual includes a placeholder indicating where it expects to include DVBE policies in the future. Unless local courts adopt policies related to the DVBE program, as required by the judicial contracting manual, they cannot demonstrate their intention to target some procurement funds to businesses owned by disabled veterans.

The Napa Court Could Improve Its Practices Relating to Procurement Approvals

Although the Napa court generally demonstrated adequate internal controls and procurement practices—as discussed earlier—one of the four procurements we reviewed was approved by the court's executive officer for an amount exceeding his authority. According to the court's local contracting manual, the executive officer may authorize general procurements of less than \$20,000, and the Court Executive Committee (executive committee)—which consists of the executive officer, presiding judge, and assistant presiding judge—must authorize general procurements greater than or equal to \$20,000. We noted that the executive officer signed an information technology services agreement for \$30,000; however, there was no evidence that the executive committee approved the agreement. According to the executive officer, he did not obtain executive committee approval before signing this contract. He further stated that \$30,000 is the maximum that would be paid under this contract; the court does not necessarily envision expending the maximum amount unless there are extenuating circumstances. Nevertheless, when individuals approve purchase transactions beyond their delegated authority, there is a risk that the presiding judge will be unaware of significant purchases or transactions.

We noted that the executive officer at the Napa court signed an information technology services agreement for \$30,000; however, there was no evidence that the executive committee approved the agreement, as required by the court's policy.

While this was an isolated incident in our testing, our sample size was small, and thus the presiding judge or court management should take corrective action.

Further, the Napa court did not maintain evidence of executive committee approval when it was required to do so. According to the presiding judge's delegation letter dated July 20, 2011, the executive officer may approve purchases at the request of the executive committee. However, according to the executive officer, the court did not formally document these requests. Instead, the executive committee members work in the same building and see one another on a daily basis, and the approval process was informal. Without evidence of executive committee approval, the court cannot demonstrate that it is implementing its policy requiring different levels of approval for larger procurements. Such approval restrictions promote responsible stewardship of public funds by ensuring multiple levels of review. Subsequent to our audit, the court developed a form for documenting executive committee approval.

The Sacramento Court Could Improve Its Practices Related to Authorization and Competition

A manager at the Sacramento court approved a purchase above her authorized dollar amount. Each year the court's presiding judge designates individuals to approve transactions based on certain dollar thresholds ranging from \$50,000 to \$250,000, with higher-value transactions requiring increasingly higher levels of management approval. For one of the 16 procurements we reviewed—an order initiated in July 2011—the chief technology officer signed a purchase request for over \$100,000, well above the \$50,000 amount delegated by the court's presiding judge for the type of transaction involved. The court's contract services manager stated that this was an anomaly and not indicative of the court's normal practice, and explained that it likely occurred because of the court's familiarity with the vendor and because the court renews the contract annually. Further, this particular transaction involved the procurement of telecommunications services under a leveraged procurement agreement. Nevertheless, when individuals approve purchase transactions beyond their delegated authority, the presiding judge runs the risk that senior managers are unaware of the court's significant purchases or transactions. Although this was an isolated incident in our testing, our sample size was small, and thus the presiding judge or court management should take corrective action. One such action might include requiring the court's contracting and purchasing unit to verify that the appropriate individual has authorized the purchase before actually buying the goods or services.

For one of the 16 procurements we reviewed, the chief technology officer signed a purchase request that was well above the amount delegated by the court's presiding judge for that type of transaction.

Our review also noted one instance in which the Sacramento court did not document its justification for a noncompetitive procurement. In June 2012 the court began the process of obtaining internal approvals for an upgrade to its existing Interactive Voice Response Jury System. The upgrades, anticipated to cost approximately \$13,000, would expand the functionality of the existing system to allow jurors to self-process disqualifications from service, among other actions. According to internal e-mails, the court's executive management wanted the funds encumbered by the end of the fiscal year. The court's contract services manager responded that it was possible to encumber the funds as long as there was a completed contract request form and documentation of competitive bidding or approval from the court's management for not doing so. However, the procurement file did not include evidence of competitive bidding or evidence that court executives had approved a noncompetitive procurement. According to the Sacramento court's chief technology officer, the procurement needed to be from that particular vendor because the software was proprietary to that vendor. Although the Sacramento court may have had valid justification for not competitively bidding the contract, the court's policies nevertheless require that the court document its justification for using a sole-source vendor selection and receive approval from senior staff prior to the procurement.

The Stanislaus Court Did Not Always Follow Established Processes Regarding Advertisement of Procurements

Although the Stanislaus court's procurement controls and practices were generally adequate—as we discussed earlier—in one of nine procurements reviewed, the Stanislaus court did not advertise a solicitation for information technology services valued at nearly \$14,000. According to the judicial contracting manual, courts must advertise solicitations for information technology services if the total procurement value is \$5,000 or more. According to the court executive officer, the court's need was urgent. The buyer indicated that purchasing had 25 days to locate vendors, gather quotes, and execute this purchase. The court's executive officer further stated that, although the buyer felt he did not have time to advertise, the buyer did search the Internet and reach out to multiple vendors. Nevertheless, the judicial contracting manual requires courts to advertise procurements of this size to help ensure the courts receive the best possible value.

According to the judicial contracting manual, courts must advertise solicitations for information technology services if the total procurement value is \$5,000 or more.

The Sutter Court Did Not Always Document Its Rationale for Sole-Source Procurements

Although the Sutter court's procurement controls and practices were generally adequate, our review found Sutter did not competitively bid in one instance of the 10 procurements we reviewed. However, the Sutter court subsequently corrected this oversight. According to the court's fiscal manager, the court was reviewing its prior-year contracts and was aware that it would be using the Riverside court's shared procurement service to prepare a competitive bid for printing services for the coming year. In order to continue business without interruption, the court issued a purchase order based on the prior year's expenditures with its then-current vendor until the competitive process was completed. The Riverside court's shared procurement service subsequently conducted a competitive procurement of printing services for the Sutter court, and the court selected a new vendor. The court had expended less than \$500 of the funds encumbered by the first purchase order and canceled the remaining balance. However, the court's decision to conduct the first procurement without competition was not noted in the procurement file, nor was there documentation demonstrating approval by the appropriate decision maker. Without such approval and documentation, the court cannot demonstrate that it considered whether there was an opportunity to competitively bid the procurement, even temporarily.

Our review also found that the Sutter court did not document its justification for a sole-source procurement, a type of noncompetitive procurement, for one of 10 procurements we reviewed. According to the judicial contracting manual, the appropriate court manager must approve a sole-source request and the sole-source request should include, among other things, a description of the goods and services to be procured, an explanation of why the goods and services cannot be procured competitively, and documentation that the pricing offered is fair and reasonable. According to the court's fiscal manager, this sole-source procurement was for maintenance of the court's interactive voice response system, and because the system's vendor owns the software code, only the vendor can support the system. The fiscal manager also stated that the court did not prepare a sole-source justification because, at the time the court was still in the process of developing procedures and internal forms. She further indicated that the current process includes a signed purchase requisition followed by the sole-source procurement form that goes to her for review. Given this explanation, the court's decision to sole-source this procurement appears to be reasonable. However, without appropriate justification and approval for a sole-source purchase, the court cannot demonstrate that it considered whether there was an opportunity for competition.

Without appropriate justification and approval for a sole-source purchase, the Sutter court cannot demonstrate that it considered whether there was an opportunity for competition.

The Yolo Court Did Not Always Research Multiple Vendors When Using Leveraged Procurement Agreements

The Yolo court had one leveraged procurement agreement for which it had not documented that the court received the best value. The judicial contracting manual allows courts to use a variety of types of leveraged procurement agreements. When a court uses a leveraged procurement agreement, the judicial contracting manual generally requires the court to identify at least three vendors and list them for comparison against one another to determine which vendor provides the best value. In one procurement we reviewed at the Yolo court, the court purchased specialized furnishings and audiovisual equipment for \$58,900 through a vendor listed on the federal General Services Administration's award schedule. We asked the court whether it had researched additional vendors to demonstrate that the selected agreement provided the best value. According to the court's chief financial officer, the court was not aware of a requirement to compare prices of multiple vendors when purchasing from a General Services Administration contract. She stated there were no instructions in the judicial contracting manual or the *State Contracting Manual* specific to leveraged purchase agreements through the General Services Administration, which requires the court to compare multiple vendors. Further, she stated that this was a specialized purchase and the court did look to see if other vendors offered the product and found none; however, the court did not document this research. The court is correct that the judicial contracting manual does not contain specific guidance related to comparing vendors for purchases via a General Services Administration agreement. Despite the lack of specific guidance in the judicial contracting manual, and given the manual's general guidance to seek best value, we believe the Yolo court could have been more prudent with its limited funds had it documented its review of multiple vendors, considering the size of the contract.

According to the court's chief financial officer, there were no instructions in the judicial contracting manual or the State Contracting Manual specific to leveraged purchase agreements through the General Services Administration, which requires the court to compare multiple vendors.

The Orange Court Generally Complied With the Judicial Branch Contract Law

As we noted earlier, the Orange court generally had adequate practices and controls related to procurements. Except for the issue related to the DVBE program previously discussed, we did not observe any issues with the transactions we reviewed at the Orange court.

Recommendations

To comply with state requirements, the Judicial Council should include policies in the judicial contracting manual regarding the State's small business preference for information technology procurements.

To ensure complete reports to the Legislature, the AOC should review and modify its methodology for excluding certain transactions from the semiannual report to ensure that the AOC is not inadvertently excluding legitimate procurements. Further, the AOC's methodology should ensure that all procurements or contracts—such as those related to court security, court reporters, and interpreters when such services result in payment by a judicial branch entity to a vendor or contractor—are included in the semiannual report unless specifically excluded by state law.

To ensure accurate reports to the Legislature, the AOC should ensure that its process for extracting data from the courts' common accounting system provides accurate information—including, but not limited to, data describing the item or service procured and data reflecting the amount courts actually paid to vendors—for use in the semiannual report.

To ensure that transactions reflect the State's priorities regarding businesses owned by disabled veterans, and to comply with requirements in the judicial contracting manual, the courts we reviewed should develop formal policies to implement the DVBE program.

To ensure that court executive management is aware of and approves large purchases, the Napa court's staff should restrict approvals to established dollar levels. Further, to demonstrate adherence to its approval policies, the court should implement its new procedure to record executive committee approvals in the procurement file.

The Sacramento court should ensure that managers restrict their approvals to established dollar levels so that managers with sufficient knowledge of the court's resources approve purchases.

To ensure that the Sacramento court receives the best value for the goods and services it procures, the court should justify all sole-source or noncompetitively bid purchases according to its policies.

To ensure that the Stanislaus court receives the best value for the goods and services it procures, the court should advertise its solicitations of goods and services when required by the judicial contracting manual.

To ensure that the Sutter court receives the best value for the goods and services it procures, the court should justify decisions to make sole-source purchases and document that justification in the procurement files.

To ensure it receives the best value, the Yolo court should document that it compared the offerings of multiple vendors when using leveraged procurement agreements unless the judicial contracting manual or guidance on the particular leveraged procurement agreement does not require such comparison.

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: March 19, 2013

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

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(Agency comments provided as text only.)

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

March 7, 2013

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

Re: Response to Draft Audit Report on Judicial Branch Procurement, Audit #2012-301

Dear Ms. Howle:

Thank you for the opportunity to respond to portions of the draft audit report the Bureau of State Audits (Bureau) prepared under Public Contract Code section 19210, which requires the Bureau to establish a pilot program to audit six trial courts and to assess the implementation of the California Judicial Branch Contract Law¹ (judicial contract law). As part of its compliance assessment, the Bureau considered whether (1) the *Judicial Branch Contracting Manual* (judicial contracting manual) complies with state law, and (2) the semiannual report that the Judicial Council provided to the Legislature and State Auditor for the period January 1 through June 30, 2012, accurately and completely reflected procurement activity at the six trial courts that were audited as part of the pilot program. Because the portions of the draft audit report the Bureau provided to the Administrative Office of the Courts (AOC), the staff agency to the Judicial Council of California, for review were limited to the Bureau's audit of the AOC's activities to implement the judicial contract law, this response is accordingly limited to the AOC and does not address the Bureau's audit of the six trial courts that participated in the pilot program.

The Judicial Council had a compressed time frame to adopt and publish the judicial contracting manual by January 1, 2012, as required by Public Contract Code section 19206. The task was completed in six months, with the judicial contracting manual taking effect on October 1, 2011—the operative date of the substantive requirements of the judicial contract law—so that judicial branch entities covered by the law would have the benefit of the guidance reflected in the manual as early as possible. The judicial contracting manual was to be consistent with the requirements found in the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*. Given the compressed time frame for adopting and publishing the judicial contracting manual, I am pleased that the Bureau has had an overall favorable impression of the judicial contracting manual and has determined it to be consistent with the requirements found in the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*, except as noted in the Bureau's three recommendations directed to the AOC as the staff agency for the Judicial Council. Each of these recommendations is set forth below verbatim, followed by the response on behalf of the AOC.

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* California State Auditor's comments appear on page 31.

¹ Senate Bill 78 (Comm. on Budget and Fiscal Review; Stats. 2011, ch. 10), which took effect on March 24, 2011. The California Judicial Branch Contract Law is at Public Contract Code sections 19201–19210. The law was amended by Senate Bill 92 (Comm. on Budget and Fiscal Review; Stats. 2011, ch. 36), effective June 30, 2011.

Ms. Elaine Howle
March 7, 2013
Page 2

Recommendation 1: “To comply with state requirements, the Judicial Council should include policies in the judicial contracting manual regarding the State’s small business preference for information technology procurements.”

② **Response 1:** Because the California Technology Agency (CTA) is the entity authorized to review and recommend on information technology projects of the judicial branch as provided in Public Contract Code section 19204 and Government Code section 68511.9, the AOC will consult with CTA regarding the Bureau’s recommendation to include policies in the judicial contracting manual about the state’s small business preference for information technology procurements. The AOC will thereafter present the Bureau’s recommendation and the results of the AOC’s consultation with CTA to the Judicial Council for its consideration. The Judicial Council will decide what action, if any, is appropriate with respect to revisions to the judicial contracting manual, given the council’s authority and responsibility under Public Contract Code section 19206 to adopt and publish the manual.

Recommendation 2: “To ensure complete reports to the Legislature, the AOC should review and modify its methodology for excluding certain transactions from the semiannual report to ensure that the AOC is not inadvertently excluding legitimate procurements. Further, the AOC’s methodology should ensure that all procurements or contracts—such as those related to court security, court reporters, and interpreters when such services result in payment by a judicial branch entity to a vendor or contractor—are included in the semiannual report unless specifically excluded by state law.”

Response 2: The AOC will review its methodology for excluding certain transactions from the semiannual reports with the goal of ensuring that the AOC is not now inadvertently excluding legitimate procurements and will not in the future inadvertently exclude legitimate procurements.

I am pleased that the Bureau agrees that the AOC has a valid argument for excluding certain court reporter, court interpreter, and court security services from the substantive provisions of the judicial contract law given the existence of more specific statutory provisions applicable to those services. With respect to the Bureau’s specific recommendation to include procurements or contracts related to court security, court reporters, and interpreters that result in payment by a judicial branch entity to a vendor or contractor in the semiannual report, I note that court reporters who are court employees are paid as employees for the activity of recording a proceeding and, thus, such payments to a court reporter employee would not appear in the semiannual report. In contrast, for purposes of producing a written transcript from the courtroom recording, the court reporters are independent contractors with the result—if the Bureau’s recommendation is implemented—that payments for transcripts would appear in the payment report even though the court reporter is an employee for purposes of recording the proceeding. Moreover, with respect to court interpreters, provision 3 of Item 0250-101-0932 of the Annual Budget Act (see, e.g., Assem. Bill 1464; Stats. 2012, ch. 21) already requires the Judicial Council to report annually on expenditures on court interpreters, including amounts spent on independent contractor interpreters in each county. As a result of the passage of the Superior Court Security Act of 2012 (Gov. Code, § 69920 et seq.), the trial courts are by statute generally no longer responsible for paying the sheriff for court security service delivery. Even in the circumstance where a trial court might be paying the sheriff for some limited services or equipment under Government Code section 69923(b), the Legislature presumably intended the provisions of the

Ms. Elaine Howle
March 7, 2013
Page 3

Superior Court Security Act to apply to such agreements. The AOC will, nonetheless, present the Bureau's recommendation to the Judicial Council for its consideration as to whether to include in the semiannual report payments related to those transactions with court reporters, court interpreters, and sheriffs that are currently excluded from the semiannual report.

Recommendation 3: "To ensure accurate reports to the Legislature, the AOC should ensure that its process for extracting data from the courts' common accounting system provides accurate information—including but not limited to data describing the item or service procured and data reflecting the amounts courts actually paid to its vendors—for use in the semiannual report."

Response 3: The semiannual report that the Bureau reviewed was the *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012*. This semiannual report was the first report that covered a complete six-month period following enactment of the judicial contract law. Since the time that this particular semiannual report was prepared, the AOC has addressed the programming issues that resulted in the errors in certain fields in the semiannual report that were highlighted by the Bureau in its draft audit report. Semiannual reports to be prepared in the future should contain data describing the item or service procured and data reflecting the amounts courts actually paid to vendors. In addition, the AOC, together with the trial courts, will continue to review the methodology for developing the semiannual report and strive to minimize the possibility of inaccuracies in the preparation of future semiannual reports to be presented by the Judicial Council to the Joint Legislative Budget Committee and the State Auditor.

Thank you for the time and effort of your office in reviewing the judicial contracting manual for compliance with state law and identifying ways to improve the semiannual report so that it can be a more effective tool in providing transparency with regard to the judicial branch's contracting and procurement activities.

Very truly yours,

(Signed by: Steven Jahr)

Steven Jahr
Administrative Director of the Courts

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE ADMINISTRATIVE OFFICE OF THE COURTS

To provide clarity and perspective, we are commenting on the Administrative Office of the Court's (AOC) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the AOC's response.

The AOC's statement that the *Judicial Branch Contracting Manual* (judicial contracting manual) took effect on October 1, 2011, fails to mention that the judicial contracting manual underwent a major revision in 2012. As we discuss on page 11 in the Scope and Methodology, although the judicial contracting manual took effect in October 2011, the Judicial Council approved and published a major revision to the manual in April 2012. As such, we used the April 2012 revised manual to measure the courts' compliance against and, therefore, we limited our review period to May and June 2012.

Regardless of the results of its consultation with the California Technology Agency, the AOC should develop policies to implement the small business preference for information technology purchases. Because the California Judicial Branch Contract Law requires judicial branch entities to follow procurement and contracting policies that are consistent with the Public Contract Code, and the Public Contract Code requires contracting entities to give preference to certified small businesses for information technology acquisition, the judicial contracting manual should include a similar requirement.

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(Agency comments provided as text only.)

Superior Court of California
County of Napa
825 Brown Street
Napa, CA 94559-3031

March 7, 2013

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

VIA E-mail and U.S. Mail

Dear Ms. Howle,

The Napa Superior Court has received and reviewed the BSA's audit report of our court's procurement policies, practices and procedures. In response, we have just a few comments that we have summarized in the attached document. In this document, we have re-stated BSA's two recommendations for the Napa Superior Court and provided our response to each of those recommendations. Please be aware that the Court has already taken action on both recommendations to comply with the Judicial Branch Contract Law. We have also added some clarifying information regarding one of your findings.

I would like to recognize the professional approach of your audit staff, in particular John Lewis. Mr. Lewis was always responsive to our questions and requests, and we greatly appreciate the effective manner by which he coordinated the audit activities with our staff.

If you have questions or need any additional information regarding our responses, please contact Chief Financial Officer, Lisa Skinner, at 707-299-1248.

Sincerely,

(Signed by: Richard D. Feldstein)

Richard D. Feldstein
Court Executive Officer

Encl.

Responses to Recommendations to the Napa Superior Court from The Bureau of State Audits

BSA Recommendation #1: To ensure transactions reflect the state's priorities regarding businesses owned by disabled veterans, and to comply with requirements in the judicial contracting manual, the courts we reviewed should develop formal policies to implement the DVBE program.

Court Response to Recommendation #1: The Court has entered into a shared services procurement arrangements, along with several other small and medium courts, with the Riverside Superior Court. Riverside provides a dedicated procurement professional to all of the courts participating in this agreement. Using the Bid Sync system to conduct the procurements, the DVBE information is collected for all vendors.

Court Comment on the BSA's Finding and Recommendations Regarding Napa's Procurement Approval Process: The BSA correctly states that the Court Executive Officer exceeded his approval policy with regard to one contract with a maximum limit of \$30,000. However, further clarification of the contract is necessary. Specifically, this contract was intended to act as a blanket agreement for specific projects and services requested on a periodic and as-needed basis during the year. The court requires the vendor to provide an individual estimate for each project or service before it is initiated. This estimate is approved at appropriate levels in the organization, in accordance with approval limitations, before the vendor begins any work. Should any such estimate exceed \$20,000, it would be approved by the court's Executive Committee, although this has not yet been necessary. This is because expenditures from this contract have historically been minimal. For example, in FY 11-12, the total amount paid to the vendor was only \$6,225. For the current year, only \$4,388 was expended for the first half the fiscal year. As noted in the report, however, the court has already implemented approval procedures and safeguards that are consistent with the BSA's recommendations on this matter.

BSA Recommendation #2 – Revised language (based on e-mail received from John Lewis on March 1, 2013 stating that the recommendation will be changed to the following): To ensure court executive management is aware of and approves large purchases, the Napa court's staff should restrict approvals to established dollar levels. Further, to demonstrate adherence to its approval policies, *the court should implement its new procedure to* record executive committee approvals in the procurement file.

Court Response to Recommendation #2: The Court agrees with the recommendation and has already implemented a new process and corresponding form to document the approval of all large purchases by the Executive Committee. The new procedure was effective January 31, 2013 and will ensure that each large purchase has Executive Committee approval and that approval is properly documented. Each purchase order for \$20,000 or more will have an associated "Executive Committee Authorization to Purchase" form. The signed original form will be kept in the contract file or the procurement file if there is no contract. The Accounting Division will also have a copy of the form attached to the Accounting copy of the Purchase Order. This will allow the Chief Financial Officer to ensure that the appropriate approval documentation is present and notify executive management if that is not the case.

(Agency comments provided as text only.)

Superior Court of California
County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701-4045

March 7, 2013

Elaine M. Howle*
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

On behalf of the Superior Court of California, County of Orange, I am pleased to submit our written response to the draft Judicial Branch Procurement audit report. The attached document addresses the items noted in your audit concerning both the Disabled Veterans Business Enterprise and the Small Business Preference programs.

Our court is pleased that your audit found the remaining elements of our Local Contracting Manual and our contract and procurement practices in compliance with judicial branch contracting requirements.

We look forward to the finalization of the audit report.

Sincerely,

(Signed by: Thomas J. Borris)

Thomas J. Borris
Presiding Judge

* California State Auditor's comment appears on page 39.

Superior Court of California, County of Orange
Judicial Branch Procurement Audit
Response to Draft Audit Report

March 7, 2013

In response to the findings and recommendations resulting from the BSA Audit, the Superior Court of California, County of Orange, (Court) provides the following response:

1. BSA Recommendation: Disabled Veterans Business Enterprise (DVBE) preference and implementation.

Response:

The Court reviewed the Judicial Branch Contract Manual (JBCM) and established a policy similar to the JBCM in its Local Contract Manual. Due to the extensive work involved in creating the local contracting manual and in implementing the JBCM requirements, the DVBE program has not been implemented. The Court is currently planning the program and has established a target implementation date of January 2014.

Steps Towards Compliance:

Modification of Templates & Implementation of a Waiver Form

The DVBE program is a labor intensive program to implement. In these tough economic times, the Court has had to balance the cost of implementation to the cost of establishing a procedurally fair practice. The JBCM indicates that the courts are to use available resources to implement the DVBE program. As the judicial branch has taken unprecedented cuts to its budget, the Court's focus in implementing the DVBE program will be to meet the requirements while minimizing any additional costs associated with the program.

In accordance with the procedures in the JBCM and our Local Contract Manual (LCM), the Court modified its contract and bidding templates to include language for a DVBE program once established. Additionally, in accordance with the JBCM, the Court initiated the DVBE waiver form for each procurement.

Use of State of California, Department of General Services (DGS) online bidding service provider, BidSync.

Additionally, the Court has an established contract utilizing the same online bidding service provider as used by the DGS. This allows the DGS DVBE vendors that have been qualified as DVBE contractors to be notified of bidding opportunities at the Court. Although the Court has not fully implemented a DVBE program, this DVBE vendor community is receiving notification from our Court for bidding opportunities regardless of an established program. Once the complete program is implemented, this contract will enable the Court to utilize the vendors that are certified to DGS standards.

2. BSA Recommendation: State's small business preference for information technology procurements

Response: The PCC provision that addresses small business preference is PCC 12102(d).

Judicial Branch Procurement Audit
Response to Draft Audit Report

March 7, 2013

"(d)The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses."

The Judicial Branch Contracting Manual did not include a small business preference requirement. The Court did not interpret the small business preference as being applicable to the judicial branch since it was not include in the Judicial Branch Contract Manual. Therefore, our Court did not include a small business preference in our LCM.

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Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE SUPERIOR COURT OF ORANGE COUNTY

To provide clarity and perspective, we are commenting on the Superior Court of Orange County's (Orange court) response to our audit. The number below corresponds to the number we have placed in the margin of the Orange court's response.

The Orange court is responding to a recommendation that we did not direct to it. As we state on page 24, we made this recommendation to the Judicial Council, as it is the entity who adopts the *Judicial Branch Contracting Manual* (judicial contracting manual). Because the California Judicial Branch Contract Law requires judicial branch entities to follow procurement and contracting policies that are consistent with the Public Contract Code, and the Public Contract Code requires contracting entities to give preference to certified small businesses for information technology acquisition, the judicial contracting manual should include a similar requirement. As a result, we recommended that the Judicial Council include policies in the judicial contracting manual regarding the State's small business preference for information technology procurements.

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(Agency comments provided as text only.)

Superior Court of California
County of Sacramento
720 Ninth Street, Room 611
Sacramento, CA 95814

March 7, 2013

John Lewis, MPA
Senior Auditor/Evaluator II
California State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Mr. Lewis,

Per your request, the Sacramento court has reviewed the draft report of the audits performed to assess compliance with the Judicial Branch Contract Manual by the six selected pilot courts. The Sacramento court has noted the areas directly related to our court and has provided a brief description of the item/issue and the court's response to each on the attached document.

If you have additional questions or require additional information concerning this audit or the report as it pertains to the Sacramento court, please contact our Chief Financial Officer, Rick Beard at 874-8133.

Sincerely,

(Signed by: Christina M. Volkers)

Christina M. Volkers
Court Executive Officer
Sacramento Superior Court

Attachment

* California State Auditor's comments appear on page 45.

March 7, 2013

Bureau of State Audits

Audit Report of Six Courts on Judicial Branch Contract Manual Compliance

Superior Court of California, County of Sacramento Audit Report RESPONSES

① **Audit Comment:** The Sacramento Court Could Improve its Practices Related to Authorization and Competition. (Page 23 & 31 of BSA Report)

② **Court Comment:** It is important to note that this purchase was outside the scope of this audit as it was prior to the evaluation period. However, the Sacramento court is beginning the development of policies addressing the use of DVBE vendors. Currently a placeholder is included in the local manual while this area is being addressed. The court agrees that this is an important statewide targeted group of certified businesses and expects to have a policy included in the local manual in the near future.

Audit Issue: A manager at the Sacramento court approved a purchase above her authorized dollar amount. (Page 25 of BSA Report)

Court Response: The Sacramento court concurs with the assessment that a single purchase approval for a telecommunications transaction was made above the approver's monetary limit. Since notification of this matter, the court's contract staff reviewed other approvals to ensure that this was an isolated incident, which was found to be the case, in addition to being acknowledged in the audit report. The transaction which was erroneously approved involved the use of a vendor under a leveraged procurement agreement. The various levels of authorized approvals for such purchases were confined within the court's Information Technology (IT) unit. The final purchase approval was routed back to the IT Manager, as is the case with many purchases in this area, but in this case the approval should have been noted as above the authority level of the IT Manager and moved on to an authorized court approver with sufficient approval authority. This one-time error in approval over one person's authority has been discussed with the staff involved. Further, the court agrees with the recommendation that contract staff add the step of verifying the individual's authorized approval level prior to proceeding with the actual purchase. In addition, contract staff will provide annual updates to those court staff with approval authority as a reminder of their authorized approval limit, a process that is currently performed every other year. Finally, with the recent addition of a new court Executive Officer in Sacramento Superior Court, all current approval limits are being reviewed and some significantly decreased with the approval of the Presiding Judge.

① **Audit Issue:** The Sacramento Court did not Document its Justification for a Noncompetitive Procurement. (Page 26 of BSA Report)

Court Response: As noted in the write-up the court did not provide documentation for a non-competitive procurement. The purchase involved an existing vendor that is responsible for the maintenance and support of their proprietary software. The court's existing agreement with the vendor requires that vendor to fix issues within the system, and failure of the court to utilize the vendor would violate copyrighted software. Thus, as noted in the finding, the purchase appears to have valid justification on its own. In fact,

an amendment should have been done to the existing contract. However, in this instance, the court's own procurement guidelines required the use of sole source documentation prior to procurement. This circumstance concerning software enhancements to an existing program and other potential refinements to the procurement of IT related products are being address with the development of an internal IT Procurement and Purchasing Policy guidelines document. As they prove relative, some of the IT related policies that are developed will be incorporated into the court's local manual. The IT specific procurement document will follow the parameters set forth in the JBCM with local modifications in areas specific to the court's needs.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SUPERIOR COURT OF SACRAMENTO COUNTY

To provide clarity and perspective, we are commenting on the Superior Court of Sacramento County's (Sacramento court) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the Sacramento court's response.

When preparing our audit report for publication, page numbers shifted. Therefore, the page numbers that the Sacramento court cites in its response do not correspond to the page numbers in our final report.

The Sacramento court claims that one of our findings pertains to a transaction outside of our review period. However, the transaction we initially chose to review was within our review period. Specifically, we chose an amendment executed in June 2012 for review from the *Semiannual Report on Contracts for the Judicial Branch for the Reporting Period January 1 Through June 30, 2012*. We then chose to examine the original purchase from July 2011. Nevertheless, Sacramento's response is confusing because it does not take issue with our finding.

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(Agency comments provided as text only.)

Superior Court of California
County of Sutter
446 Second Street
Yuba City, California 95991

March 6, 2013

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

Dear Ms. Howle:

The Superior Court of California, County of Sutter (Sutter) has read and reviewed the redacted draft report titled "Judicial Branch Procurement: Six Superior Courts Generally Complied with the Judicial Branch Contracting Law, but They could Improve Some Policies and Procedures" and provides the following comments:

Sutter is a small five-judge court. In January 2012, we had a staff of 58 employees. The court does not have any staff dedicated solely to the procurement of goods and services. These tasks are performed by the Fiscal Manager, Administrative Assistant, Operations Manager, Research Attorney and Court Executive Officer. No funding was allocated for the implementation of the Judicial Branch Contract Law.

Notwithstanding the lack of funding for implementation, Sutter implemented the Judicial Branch Contract Law with existing resources, however, the court lacked the resources and specialized knowledge to adequately develop, circulate and evaluate competitive procurements. In July 2012, Sutter entered into a Memorandum of Understanding with the Superior Court of California, County of Riverside to participate in their Shared Procurement Services Program, which services include but are not limited to: the services of a Trial Court Procurement Specialist; conduct of competitive procurements; assistance in the preparation of contract documents and evaluation of bids and proposals; and access to Judicial Branch Contract Manual compliant contract templates, terms and conditions, and solicitation forms. A total of 19 courts participate in the Shared Procurement Services Program.

SUTTER FINDINGS:

Of the ten procurements reviewed, the audit found Sutter did not competitively bid in one instance, but also noted Sutter subsequently corrected this oversight. Our Court Executive Officer has reviewed the process used and agrees that the issuance of the purchase order was not appropriate and has determined that this was an isolated incident. As noted, corrective action was taken on the court's own initiative and the services were subsequently competitively procured.

*Elaine M. Howle
Bureau of State Audits
March 6, 2013 Page 2*

The audit found that Sutter failed to justify a sole-source procurement. This procurement occurred in Jul 2012. Our Court Executive Officer has reviewed the procurement and verified that there was appropriate justification for the sole-source procurement as noted on the purchase requisition form, however, the justification was not fully documented as required by the Judicial Branch Contract Manual. Procedures are now in place to ensure the appropriate court manager prepares a sole-source procurement request that includes a description of the goods and/or services to be procured, an explanation of why the goods and/or services cannot be procured competitively, and documentation that the price offered is fair and reasonable. A form developed for this purpose is attached.

The audit found the Sutter local contract manual lacks a policy related to state programs targeting specific types of businesses, specifically the State's Disabled Veterans Business Enterprise (DVBE) program. We agree that this policy is not included in the local contracting manual and are in the process of updating our manual to include this policy. Notwithstanding the lack of a written policy, under the Shared Procurement Services Program, utilizing BidSync, we are able to publicize our bidding opportunities to a larger vendor community including DVBE companies. On each bid, we are able to track how many notifications/invitations went out to DVBE companies, the number of DVBE companies that viewed the bid and the number of DVBE companies that responded to the bid. Also through BidSync, we have access to California Department of General Services DVBE certifications.

We appreciate the opportunity to comment. Should you have any questions regarding these comments you may contact our Court Executive Officer, Mary Beth Todd, at (530) 822-3309.

Sincerely,

(Signed by: Susan E. Green)

Susan E. Green
Presiding Judge

Superior Court of California
County of Sutter

Request for Sole Source Procurement

Date:
From:
To: Contract File
CC:
Subject: Request for Approval of Sole Source Procurement

The information below is provided in support of approval for sole source procurement. It is understood that outside a duly declared emergency as defined in Public Contract Code §1102, the limited time available to develop a statement of work or specifications is not in itself justification for sole source.

The fact that goods or services are "proprietary" also is not in itself justification for sole source. Specific reasons should be given or steps should be taken and documented below to ensure that no other suppliers can provide the requested goods or services (e.g., suppliers with licenses to provide the proprietary goods or services).

Example: The Court needs to purchase a replacement fuse. The Court's electrical systems are quite old, and only one entity currently manufactures the type of fuse that is needed. Court JBE may purchase the fuse from that entity as a sole source.

Example: The Court needs a piece of software customized. Only one entity has the intellectual property rights necessary to alter the software and license the resulting modifications to the Court. The Court may contract with that entity as a sole source.

- 1. Goods/Services to be procured:**
- 2. Supplier being requested:**
- 3. Goods/Services**
 - a. Explanation of why goods/services cannot be procured competitively:**
 - b. If applicable, the unique features of the goods/service being requested from this supplier, which no alternative supplier can provide:**
 - c. If applicable, the reasons why the Court requires these unique features and what benefit will accrue to the Court:**

d. **Efforts made to solicit competitive bids and/or market research conducted:**

4. Cost

a. **Expected cost for fiscal year is:**

b. **Explanation of or documentation evidencing why the pricing offered by the requested supplier is fair and reasonable:**

5. Special factors affecting cost or other aspects of this procurement:

6. Does moving forward on this product or service further obligate the Court to future similar contractual arrangements?

The undersigned has determined that the Court's best interests are serviced by allowing this sole source procurement and that the Court's Buyer may conduct the procurement as proposed.

Approved

Approved with Condition(s) Below

Disapproved

Name, Title

Date

(Agency comments provided as text only.)

Superior Court of California
County of Yolo
725 Court Street, Room 308
Woodland, CA 95695

March 07, 2013

Elaine M. Howle*
State Auditor
555 Capitol Mall, Suite 300
Sacramento, California 95814

RE: Yolo Superior Court's Response to Findings of the Bureau of State Audits

Dear Ms. Howle:

Please find enclosed copy of Yolo Superior Court's written response to your report, as well as Microsoft Word and PDF copies on the CD provided by your office.

Please contact me should you have any questions or concerns.

Sincerely,

(Signed by: James B. Perry)

James B. Perry
Court Executive Officer

Enclosures

* California State Auditor's comments appear on page 53.

Yolo Superior Court's Response to Findings of the Bureau of State Audits

Yolo Superior Court ("Yolo") is a medium-sized court, with ten judges, one commissioner, and one referee. Like the majority of superior courts, Yolo has faced an unprecedented financial crisis over the past five years. The Judicial Branch Contract Law ("JBCL") is an unfunded legislative mandate, which the Court had to implement immediately. This Court's operating budget for FY 2012/2013 is presently \$8.4 million, representing a 28% reduction in the Court's baseline budget from FY 2008/2009. Yolo has been forced to reduce total staff by 28%. Like many courts, Yolo does not have sufficient resources to employ a staff member wholly dedicated to managing the procurement of goods and services. These tasks are collectively performed by the Court Executive Officer, Assistant Court Executive Officer, Chief Financial Officer, Senior Analyst, and Supervising Research Attorney.

Despite the lack of resources for implementation, Yolo has proactively implemented the JBCL by developing a Local Contracting Manual, formally adopting by reference the Judicial Branch Contracting Manual ("JBCM"), and entering into a Memorandum of Understanding with the Riverside Superior Court to share procurement services. Yolo has been required to rely solely on its limited reserves to fund the implementation of the new law and the cost of the audit.

Below are Yolo's responses to the BSA's specific findings:

1. That none of the pilot courts have adopted procedures to implement the Disabled Veteran Business Enterprise ("DVBE") program.

Response: Yolo has incorporated the portions of the JBCM that govern the DVBE program by reference in its Local Contracting Manual. The Court has taken the following steps in this regard: (1) Yolo recently updated its Local Contracting Manual to include a section on the DVBE program, and establishing a goal of 3%, and procedures to attain the goal; and (2) as noted in the report, Yolo expects that participation in the shared procurement service with the Riverside Court will help to address DVBE requirements. Specifically, Riverside's BidSync process for obtaining bids exposes the Yolo procurements to a greater number of potential vendors, and requires that all bidding vendors disclose whether or not they are a DVBE.

2. That Yolo used a leveraged procurement agreement without documenting that it researched multiple vendors, and states that "Yolo Court could have been more prudent with its limited funds had it documented its review of multiple vendors, given the size of the contract."

- ① **Response:** Yolo disagrees that the JBCM contained specific enough guidance for trial courts "to require" the described price comparison for the procurement in question. As the Auditor concedes, the JBCM does not contain any specific guidance relating to comparing vendors for purchases via a General Services Administration ("GSA") agreement. The Court interpreted the lack of specific guidance in the JBCM relating to GSA contracts to mean that GSA contracts are similar in nature to Western States Contracting Alliance (WSCA) contracts, for which additional price comparison documentation is not required. As the Auditor has conceded during its review process with the Court, a sole source justification would have been appropriate and supportable based on the products procured since there were no other offerings of competitive products during the research period. The JBCM should be amended to provide more specific guidance so that the legal requirements governing GSA procurements are clearer to trial courts.
- ②

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SUPERIOR COURT OF YOLO COUNTY

To provide clarity and perspective, we are commenting on the Superior Court of Yolo County's (Yolo court) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the Yolo court's response.

The Yolo court attempts to justify why it did not perform a price comparison for a procurement approaching \$59,000. Despite the lack of clear guidance in the *Judicial Branch Contracting Manual* (judicial contracting manual) regarding procurements through the federal General Services Administration, we believe that prudence should have caused the court's management to research and compare prices to obtain the best possible value. Further, we noted that the vendor offered the Yolo court certain prices on a document referencing the California Multiple Award Schedule (CMAS). As the Yolo court is aware, the judicial contracting manual requires the court to compare the prices of multiple CMAS vendors to ensure it obtains the best value.

①

The Yolo court is incorrect when it states, in part, "the auditor conceded that a sole-source justification would have been appropriate and supportable . . ." Our report makes no such statement. If the Yolo court believed that only one vendor could have provided the goods or service, then it should have documented this conclusion and related research in its procurement file. As we state on page 23 of the report, the Yolo court did not document this research.

②

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press