



## Judicial Branch Procurement

Semiannual Reports to the Legislature Are of Limited Usefulness, Information Systems Have Weak Controls, and Certain Improvements in Procurement Practices Are Needed

Report 2013-302 & 2013-303



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December 19, 2013

2013-302 & 2013-303

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 California Public Contract Code, Section 19210, the California State Auditor (state auditor) presents this audit report on certain entities' implementation of the California Judicial Branch Contract Law (judicial contract law). As required by the judicial contract law, the Administrative Office of the Courts (AOC) maintains the *Judicial Branch Contracting Manual* (judicial contracting manual) and issues a semiannual report on procurement activities by the judicial branch. In February 2012, on behalf of the Judicial Council of California—the policy-making body of the California courts—the AOC began submitting the semiannual reports to the Joint Legislative Budget Committee and the state auditor using data from two information systems.

This report concludes that, based on our review of selected controls over the two information systems, pervasive deficiencies exist. The weaknesses we identified could compromise the security and availability of the AOC's and superior courts' information systems, which contain sensitive information such as court case management records and human resources data. Further, we determined that there is an unacceptably high risk that data the AOC and the superior courts use on a daily basis could lead to an incorrect or improper conclusion. In addition to these data system issues, shortcomings in the semiannual report's format have resulted in a report that is of limited usefulness to decision makers and other users. For example, the most recent report spanned 795 pages, but the AOC provided it in a format where the data cannot be readily sorted or filtered. Consequently, users cannot easily identify high-risk payment transactions, contracts, contract amendments, and other information that might be of interest. We believe that it is possible to present the report in an electronic format that allows users to quickly and effectively locate certain information. Further, we believe the AOC should include additional information in the semiannual reports, such as the history of each contract amended during the reporting period.

In addition, the report finds that the AOC, as well as eight other judicial branch entities (judicial entities), generally complied with the judicial contract law's requirements and with the provisions of the judicial contracting manual, but they need to improve certain practices and ensure that staff dealing with procurements are trained in the proper procedures and documentation process. For example, our review found that some of these entities did not consistently procure goods and services using a competitive process. Four of the judicial entities we reviewed could not demonstrate that they competitively procured goods or services totaling approximately \$154,000 in five of the 15 instances we reviewed for which competition was required. Moreover, the AOC and the judicial entities did not properly document their justifications for using sole-source procurements rather than a competitive process in nine instances totaling \$1.6 million.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

As required by the California Judicial Branch Contract Law (judicial contract law) enacted in 2011, the Administrative Office of the Courts (AOC) maintains the *Judicial Branch Contracting Manual* (judicial contracting manual), which outlines procedures for judicial branch personnel to use when procuring goods and services.<sup>1</sup> Further, the AOC has begun issuing a semiannual report on procurement activities by the judicial branch, as the judicial contract law requires. We reviewed the implementation of the judicial contract law by the AOC as well as by eight other judicial branch entities (judicial entities), and we found that although these entities are generally complying with the law's requirements and with the provisions of the judicial contracting manual, they need to improve certain practices and ensure that staff dealing with procurements are trained in the proper procedures and documentation process.

In February 2012, on behalf of the Judicial Council of California (Judicial Council)—the policy-making body of the California courts—the AOC began submitting the semiannual reports to the Joint Legislative Budget Committee and the California State Auditor, using procurement data from its Oracle Financial System and Phoenix Financial System. However, we identified pervasive deficiencies in our review of selected information system controls over these two systems. These weaknesses could compromise the security and availability of the AOC's and superior courts' information systems, which contain sensitive information such as court case management records and human resources data. Consequently, we determined that an unacceptably high risk exists that data the AOC and the superior courts use for their day-to-day operations could lead to an incorrect or improper conclusion.

Further, shortcomings in the semiannual report's format have resulted in a report with limited usefulness to decision makers and other users. For example, the most recent report spanned 795 pages, of which more than 770 pages consisted of a listing of individual payment transactions, contracts, and contract amendments. Despite the size of the report, the AOC provided it in a format where the data cannot be readily sorted or filtered. Consequently, users cannot easily identify high-risk payment transactions, contracts, contract amendments, and other information that might be of interest. For example, a user looking to identify the most costly contracts or

<sup>1</sup> The judicial contract law is codified in the California Public Contract Code, sections 19201 through 19210.

### Audit Highlights . . .

*Our review of implementation of the California Judicial Branch Contract Law highlighted the following:*

- » *Pervasive deficiencies in selected information system controls.*
  - *These weaknesses could compromise the security and availability of the systems.*
  - *The data in these systems that the Administrative Office of the Courts (AOC) and superior courts use for their day-to-day operations could lead to an incorrect or improper conclusion.*
- » *Shortcomings in the format of the semiannual report limit its usefulness.*
  - *More than 770 of the 795 pages consisted of individual payment transactions, contracts, and contract amendments.*
  - *The report is not provided in an electronic format where the data can readily be sorted or filtered to allow users to quickly and effectively locate certain information.*
  - *It does not include other important information, such as the history of each contract amended during the reporting period and whether the contract was made with a Disabled Veteran Business Enterprise.*
- » *A competitive process to procure goods and services was not used in some of the procurements made by the eight judicial branch entities (judicial entities) we reviewed.*
- » *The AOC did not correctly evaluate bids for competitive procurements in two instances.*
- » *The AOC and the judicial entities did not properly document their justifications for using sole-source procurements in nine instances totaling \$1.6 million.*

payments would need to review each entry listed in the various sections of this lengthy report to identify the relevant information. We believe that it is possible to present the report in an electronic format that allows users to quickly and effectively locate certain information. Further, we believe the AOC should include additional information in the semiannual reports, such as the history of each contract amended during the reporting period and whether the contract was made with a Disabled Veteran Business Enterprise, and should ensure that it tracks this information in its data systems.

Our review of procurements that the eight judicial entities conducted found that some did not consistently use a competitive process to procure goods and services. The judicial contracting manual generally requires the AOC and judicial entities to use a competitive process for procurements of \$5,000 or greater. Some procurements, such as those for legal services, are exempted from this requirement. However, four of the judicial entities could not demonstrate that they competitively procured goods or services in five of the 15 instances we reviewed for which competition was required; these goods and services totaled approximately \$154,000. For example, we found that two judicial entities did not acquire multiple offers when using the California Multiple Award Schedules to obtain goods, as required for those procurements. In addition, the AOC did not competitively procure information technology goods in one of 16 procurements we reviewed for which competition was required.

Moreover, we found that the AOC did not correctly evaluate bids for competitive procurements in two instances. Although the errors did not negatively affect the outcome in these instances, such errors have the potential to affect decisions regarding vendors. Moreover, the AOC and the judicial entities did not properly document their justifications for using sole-source procurements rather than a competitive process in nine instances totaling \$1.6 million. Some staff at the judicial entities stated that additional training in procurement practices would be beneficial. A manager at the AOC stated that the AOC had offered some training, but he agreed that judicial entities likely need additional training. However, the format, scope, and logistics of training to be offered in the future are yet to be determined.

Finally, state law requires the policies and procedures in the judicial contracting manual to be consistent with the California Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*, which we generally found to be the case. In addition, the AOC's and judicial entities' local contracting manuals generally include information that the judicial contracting manual states that local manuals must or should address.

## Recommendations

To improve the usefulness of the Judicial Council's semiannual reports, the Legislature should amend the Judicial Branch Contract Law to require that the Judicial Council make the semiannual reports available in an electronic format that allows users to readily sort and filter the data. Further, the Legislature should require the Judicial Council to include additional information in the semiannual reports. This additional information should include items such as the history of each contract amended during the reporting period and whether the contract was with a Disabled Veteran Business Enterprise. Until a statutory requirement is enacted, the AOC should work with the Judicial Council to pursue a cost-effective method to implement these changes. The AOC should also ensure that it tracks the additional information in its data systems.

The AOC should immediately begin implementing improvements to its controls over its information systems.

The AOC and certain judicial entities should implement procedures to ensure that they follow a competitive process for their procurements when required.

The AOC should strengthen its procedures to ensure that bid evaluations are conducted properly and calculated correctly.

The AOC and certain judicial entities should implement procedures to ensure that they properly document their justifications of sole-source procurements.

The AOC should provide additional training to its staff and the judicial entities on how to conduct procurements in compliance with the judicial contracting manual.

## Agency Comments

The judicial entities agreed with all the recommendations we directed to them, and several outlined steps they have taken or will take to implement them. Although the AOC agreed to implement some of our recommendations, it expressed concerns about the conclusions we reached regarding weaknesses in its information systems. Further, the AOC stated that it is willing to pursue a cost-effective method to provide in the semiannual report the additional information we recommended. However, the AOC noted that the additional information is not currently statutorily mandated and stated that it is uncertain, unless additional funding is provided, whether it could implement the recommendations within the time frame requested.

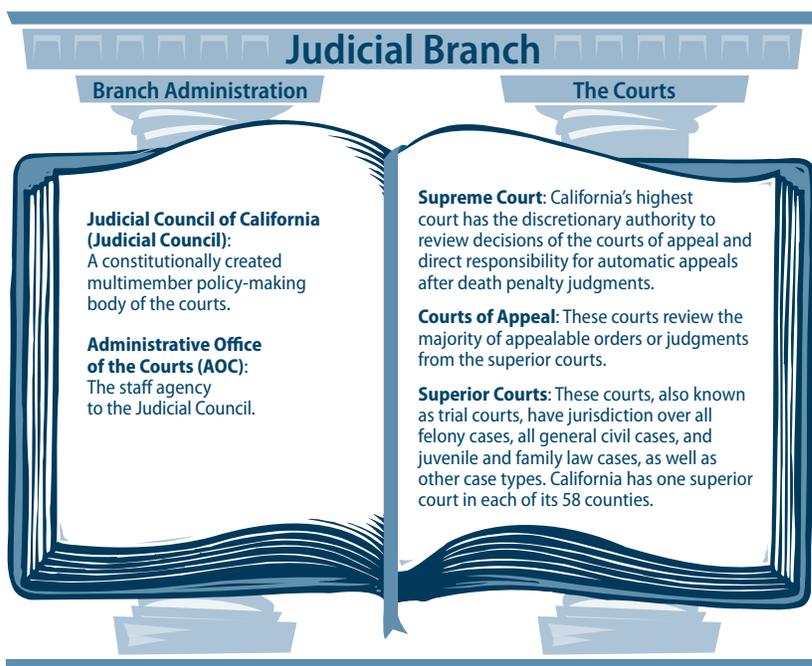
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# Introduction

## California’s Judicial Branch Structure

California’s judicial branch is a separate and independent branch of state government comprised of the Supreme Court; courts of appeal; superior—or trial—courts; and administrative and policy entities, including the Judicial Council of California (Judicial Council), the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (HCRC). 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 Judicial Council. The Judicial Council consists of the chief justice of California and one other Supreme Court justice, three justices 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. In addition to performing various administrative functions, the AOC can assist judicial branch entities (judicial entities) when they procure goods and services. Figure 1 provides an overview of the structure of California’s judicial branch.

**Figure 1**  
**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.

California's judicial power is vested in the Supreme Court, courts of appeal, and superior courts. The superior courts—located in each of the State's 58 counties—have original jurisdiction over most 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 that courts of appeal issue and has appellate jurisdiction when a superior court has pronounced a judgment of death.

The HCRC was established by state law in 1998 to accept appointments in state and federal habeas corpus proceedings and to provide training and support for private attorneys who are appointed to these cases. Figure 2 shows the location for the Supreme Court, six courts of appeal and their related districts, and the HCRC.

### **Judicial Branch Contract Law**

The California Public Contract Code generally governs how state entities enter into contracts, including contracts for the construction of state structures, and how they acquire goods and services, as well as how those entities should solicit, evaluate, and award such contracts. In 2011 the State enacted the California Judicial Branch Contract Law (judicial contract law), which, among other things, requires judicial entities—such as the Supreme Court, courts of appeal, superior courts, the AOC, and the HCRC—to follow procurement and contracting policies that are consistent with the California Public Contract Code and substantially similar to those found in the *State Administrative Manual* (SAM) and *State Contracting Manual* (SCM).<sup>2</sup> In addition, the judicial contract law requires, with limited exceptions, that judicial 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 shall be subject to the review and recommendations of the California Technology Agency.<sup>3</sup>

<sup>2</sup> The judicial contract law is codified in the California Public Contract Code, sections 19201 through 19210.

<sup>3</sup> On July 1, 2013, the California Technology Agency became the California Department of Technology.

**Figure 2**  
**California Appellate Districts**



Source: California Judicial Branch Web site.

\* The California Supreme Court and Habeas Corpus Resource Center are located in San Francisco.

The judicial contract law also imposes other reporting requirements. 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. In addition, as most recently amended, the judicial contract law requires the state auditor to commence various audits, including the following:

- An audit to review the implementation of the judicial contract law by the AOC and eight judicial entities: the Supreme Court, the courts of appeal, and the HCRC. This report reflects the results of that audit.
- On or before July 1, 2014, and subject to an appropriation to the entities involved, a biennial assessment of the implementation of, and compliance with, the judicial contract law by at least five judicial entities, including superior courts, chosen based on risk factors such as the complexity and size of the judicial entity.
- On or before July 1, 2015, and subject to an appropriation, a biennial assessment of the AOC's implementation of, and compliance with, the judicial contract law.

As shown in Table 1, our review of procurements and payments occurring from May 1, 2012, through April 30, 2013, identified more than 2,200 procurements and about \$293 million in payments on procurements.

### ***Judicial Branch Contracting Manual and State Procurement 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 California Public Contract Code and substantially similar to the provisions contained in the SAM and SCM. The SAM provides general fiscal and business policy guidance to state agencies, while the SCM provides more specific procedures in the areas of procurement and contract management. For example, the SCM and the California Public Contract Code include competitive bidding requirements and certain conflict-of-interest considerations. In addition to requiring adherence to the judicial contracting manual, the judicial contract law requires that the AOC and each judicial entity adopt a local contracting manual (local manual) consistent with the same requirements as the judicial contracting manual. The judicial contracting manual requires these local manuals to identify individuals with responsibility and authority for specific procurement and contracting activities. Additionally, the judicial

contracting manual identifies certain items that local manuals should include, such as processes and levels of approval authority that are consistent with applicable law.

**Table 1**  
**Procurement Payments and Number of Procurements for the Administrative Office of the Courts and Eight Judicial Branch Entities**  
**May 1, 2012, Through April 30, 2013**

JUDICIAL BRANCH ENTITY	PROCUREMENT PAYMENT TOTAL*	NUMBER OF PROCUREMENTS
Administrative Office of the Courts (AOC)	\$259,522,144	1,443
Supreme Court	6,521,522	75
First District Court of Appeal	2,283,819	21
Second District Court of Appeal	6,496,241	223
Third District Court of Appeal	5,400,491	98
Fourth District Court of Appeal	6,656,120	139
Fifth District Court of Appeal	2,428,655	59
Sixth District Court of Appeal	2,881,312	29
Habeas Corpus Resource Center	1,266,463	148
<b>Totals</b>	<b>\$293,456,767</b>	<b>2,235</b>

Sources: California State Auditor's analysis of data from the AOC's Oracle Financial System and rental data provided by the AOC. See the "Assessment of Data Reliability" beginning on page 13 regarding the data used in this table.

Note: The data in this table include contracts, contract amendments, and purchase orders but does not include grants and intergovernmental transactions.

\* The totals include payments on contracts executed in prior years, not just the procurements entered into during our audit period (May 1, 2012, through April 30, 2013). The AOC procurement payment total does not include payments for construction-related procurements, as most of these were made for trial court construction, which is not subject to the California Judicial Branch Contract Law and thus not part of our audit. Construction-related payments totaled more than \$234 million.

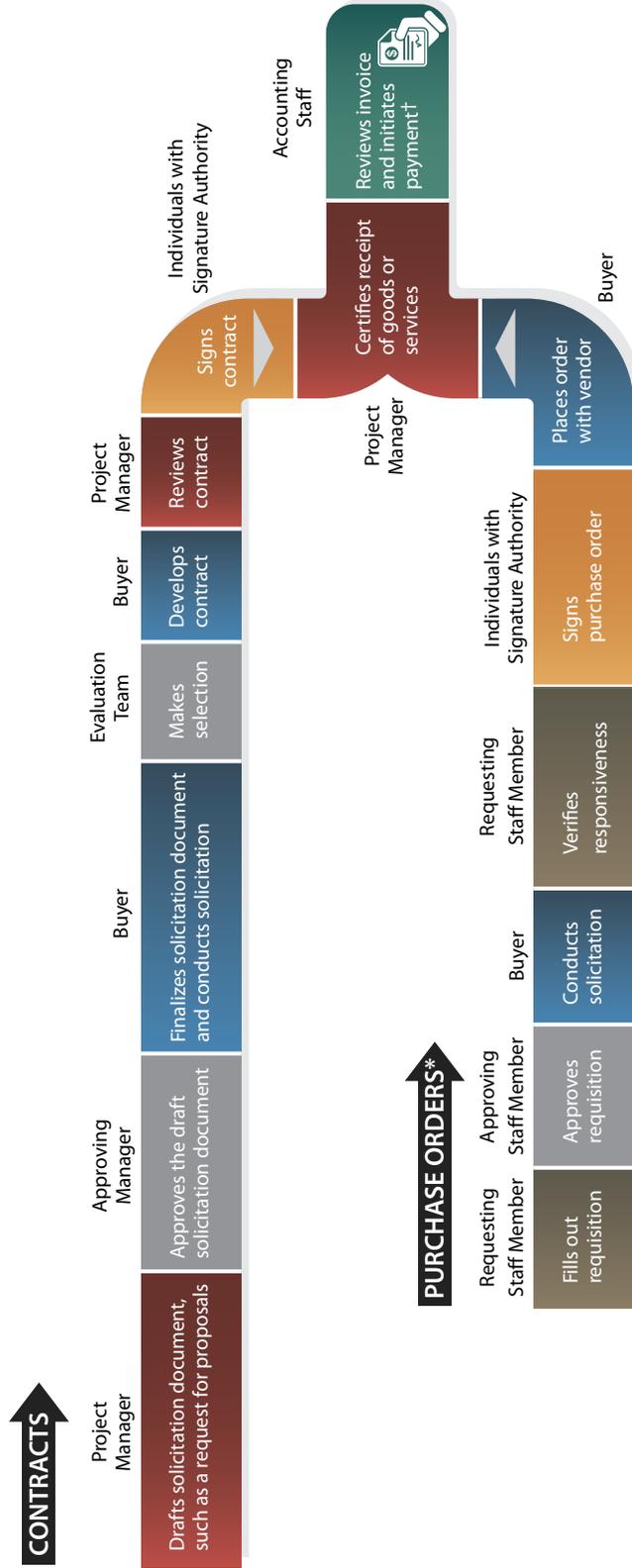
In enacting the California Public Contract Code, the Legislature intended to achieve certain objectives, such as ensuring that state agencies comply with competitive bidding statutes; providing all qualified bidders with a fair opportunity to enter the bidding process; and eliminating favoritism, fraud, and corruption in the awarding of public contracts. The California Public Contract Code generally requires state agencies to secure at least three competitive bids or proposals for each contract and also describes certain conditions under which a contract may be awarded without obtaining at least three competitive bids or proposals. The SCM provides guidelines for these circumstances. For example, the SCM allows solicitation of bids from a single source for transactions of less than \$5,000 when the state agency determines that the pricing is fair and reasonable. The judicial contracting manual similarly 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 situations when a contract is for legal services, when the contract is for services with a state agency or local governmental entity, and other instances as defined by the California Department of General Services.

Using its authority under the California 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 (LPA). LPAs are statewide agreements to consolidate the needs of multiple state agencies and to leverage the State's buying power. There are various types of LPAs, including master agreements, California Multiple Award Schedules, and others. The judicial contracting manual also recognizes the potential use of LPAs by judicial entities and devotes a chapter to the topic. The judicial contracting manual does not call for judicial entities to compare multiple LPAs or offers from vendors if the LPA was entered into by a California governmental entity and was competitively bid.

In addition, the judicial contracting manual outlines how a judicial entity can procure goods and services using purchase orders, contracts, and contract amendments. According to the judicial contracting manual, purchase orders are agreements that may be used for the purchase of goods from nongovernmental entities and are typically for "off the shelf" goods and software or for routine, low-cost, or low-risk services. Figure 3 outlines the process that the AOC and the judicial entities use to enter into agreements with vendors to purchase goods or services, including purchase orders and contracts, when they use a competitive process.

**Figure 3**  
Judicial Branch Competitive Procurement Process for Purchase Orders and Contracts



Sources: The *Judicial Branch Contracting Manual* (judicial contracting manual), California State Auditor's observations, and interviews with staff of the Administrative Office of the Courts (AOC) and Judicial branch entities (judicial entities).

\* Purchase orders are a type of agreement. According to the judicial contracting manual, they are also often used for the purchase of goods and for services that are ancillary to the purchase of the goods and are typically used for "off the shelf" goods and software or for routine, low-cost, or low-risk services.

† The AOC performs this function for all payments, including those of the judicial entities we reviewed.

## Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in the California Public Contract Code, Section 19210, which is part of the judicial contract law. The judicial contract law requires the state auditor to perform an audit of the Supreme Court, the courts of appeal, the HCRC, and the AOC. Table 2 lists the audit objectives we developed and the methods we used to fulfill those objectives.

**Table 2**  
**Scope and Methodology**

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 the April 2012 version of the judicial contracting manual in our prior report issued in March 2013 (2012-301). During this audit, we evaluated the August 2012 revision of the judicial contracting manual—the latest revision as of the time of our review—to determine whether it had maintained consistency with state standards. We focused on relevant changes to the California Public Contract Code between April 2012 and October 2013 and the <i>State Administrative Manual</i> and the <i>State Contracting Manual</i> between April 2012 and January 2013.
2 Determine the accuracy and completeness of data related to the Administrative Office of the Courts (AOC) and eight judicial branch entities (judicial entities) from the <i>Semiannual Report on Contracts for the Judicial Branch for the Reporting Period July 1, 2012, through December 31, 2012</i> , submitted by the AOC to the Joint Legislative Budget Committee and the California State Auditor (state auditor).	We reviewed selected system controls over the AOC's Oracle Financial System and Phoenix Financial System. The AOC uses information from these two systems in compiling the semiannual reports it submits to the Legislature and state auditor. The Oracle Financial System contains procurement data specific to the AOC and eight judicial entities we reviewed, whereas the Phoenix Financial System contains procurement information related to the superior courts. We included the Phoenix Financial System in our review because we will be auditing procurement practices of selected superior courts in subsequent audits. Finally, we determined how the AOC could increase the usefulness of the semiannual reports.
3 Determine whether the AOC and judicial entities have developed their own local contracting manuals (local manuals), and assess these manuals' conformance to the judicial contracting manual.	We obtained the local manuals from the AOC and judicial entities we reviewed and compared them to relevant provisions in the August 2012 revision to the judicial contracting manual.
4 Assess the AOC's and each judicial entity's internal controls over contracting and procurement practices and determine whether the entity followed those controls.	We interviewed staff and reviewed local manuals and other documentation to identify key internal controls. We determined whether the AOC and the judicial entities we reviewed followed these key controls by reviewing a selection of procurements and payments at each entity.
5 Assess the AOC's and each judicial entity's compliance with key contracting and procurement requirements, including those related to competitive bidding, sole-source contracting, and payment review and oversight.	We reviewed 45 AOC procurements and 60 AOC payments for the period May 1, 2012, through April 30, 2013. We also selected 10 procurements from each of the eight judicial entities reviewed—a total of 80—and 50 judicial entity payments. We focused on May 1, 2012, through April 30, 2013, because this period was subsequent to significant revisions to the judicial contracting manual made in April 2012. We interviewed AOC and judicial entity staff to understand how they initiated procurements and authorized payments. During our review of AOC and judicial entity procurement files, we examined whether they followed a competitive process for the selected procurements and, if not, whether they had an approved justification for not doing so. We found that the AOC and judicial entities generally used the correct solicitation documents for competitive procurements and the appropriate level of staff authorized procurements. Finally, our review of the AOC's payments to vendors involved determining whether the AOC and judicial entities we reviewed documented that they had received the goods or services and that the appropriate level of staff-approved payments to vendors.

AUDIT OBJECTIVE	METHOD
<p>6 Evaluate the AOC's and each judicial entity's contracts to determine whether there is risk of inappropriately splitting contracts in order to avoid necessary approvals or competitive bidding requirements.</p>	<p>We identified the thresholds beyond which the AOC and the judicial entities must use a competitive process and approval levels. We then reviewed AOC contract and purchase order data to identify potential split transactions and reviewed those transactions in detail. We also reviewed contracts entered into during our audit period by the judicial entities and the purchase orders we selected for procurement testing to identify instances when transactions were split to avoid competitive requirements. We did not identify any such instances.</p>
<p>7 Review the appropriateness of transactions made with the state credit card or other court-issued cards when those transactions exceeded a total of \$100,000 or 10 percent of all reported payments during the audit period.</p>	<p>The AOC did not have credit card payments totaling more than \$100,000 or representing more than 10 percent of all payments, according to our review of payments made from May 1, 2012, through April 30, 2013. We did not identify any credit card payments made on behalf of the judicial entities.</p>

Sources: Judicial contract law, as well as the state auditor's planning documents and analysis of information and documentation identified in the column titled *Method*.

### Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the AOC's Oracle Financial System and Phoenix Financial System. The AOC and the eight other judicial entities we reviewed in this report use the Oracle Financial System, and the superior courts use the Phoenix Financial System. Both systems aid their respective users in issuing purchase orders and recording certain procurement activity, in addition to other activities. Further, the AOC uses the data from these systems to compile the semiannual reports it submits to the Legislature and the state auditor on behalf of the Judicial Council. The U.S. Government Accountability Office (GAO), whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations.

To assess the reliability of the Oracle and Phoenix financial systems, we reviewed selected system controls the AOC and superior courts have implemented, which included general and business process application controls. General controls are the policies and procedures that apply to all or a large segment of the AOC's and superior courts' information systems and help ensure their proper operation. Business process application controls are directly related to a specific computerized application—the Oracle and Phoenix financial systems, in this case—and help to ensure that transactions are complete, accurate, secure, and available. In conducting our review, we relied in part upon a judgmental selection of audit reports the AOC's Internal Audit Services previously published concerning the weaknesses it identified in the general and business process application controls at six superior courts. To identify which control deficiencies remained outstanding

during our audit period of May 1, 2012, through April 30, 2013, we worked with certain courts and the AOC to follow up on the six superior courts' progress toward implementing corrective action to address the AOC's findings.

Because of an absence of formal criteria against which we could evaluate the information system controls over the Oracle and Phoenix financial systems, we relied upon the GAO's *Federal Information System Controls Audit Manual* (FISCAM) to guide our review. FISCAM presents a methodology for performing information system control audits of federal and other governmental entities in accordance with professional standards, including the generally accepted government auditing standards the state auditor is required to follow. Accordingly, we used the industry best practices contained in FISCAM as the benchmark against which we evaluated the information system controls over the AOC's Oracle and Phoenix financial systems data. We present the details of our review in the Audit Results.

## Audit Results

### THE ADMINISTRATIVE OFFICE OF THE COURTS SHOULD INCREASE THE USEFULNESS OF THE SEMIANNUAL REPORTS

The Administrative Office of the Courts (AOC) should increase the usefulness of the semiannual reports that it provides to the Joint Legislative Budget Committee and the California State Auditor (state auditor) on behalf of the Judicial Council of California (Judicial Council).<sup>4</sup> For example, as stated in our March 2013 report, *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), we believe the semiannual reports are 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. However, we believe that the AOC should improve the current presentation of the report to increase its transparency and effectiveness as an oversight tool.

The California Judicial Branch Contract Law (judicial contract law) requires the Judicial Council to provide a report to the Joint Legislative Budget Committee and the state auditor twice each year that details information related to procurement and contract activities for the judicial branch for the previous six-month reporting period.<sup>5</sup> Specifically, the law requires that, among other things, the report contain a list of vendors or contractors receiving payments from any judicial branch entity (judicial entity), as well as the amount of payment issued to the contractor or vendor, the type of service or good the contractor or vendor provided, and the judicial entity or entities that hired the vendor or contractor to provide that service or good.<sup>6</sup> In addition, the law requires that the report include a list of all contract amendments that occurred during the reporting period, including the nature of the amendment, the duration of the amendment, and the cost of the amendment.

On behalf of the Judicial Council, the AOC began submitting the semiannual reports to the Joint Legislative Budget Committee and the state auditor in February 2012. However, shortcomings in the report's format have resulted in a report that has limited usefulness to decision makers and other users. For example, the AOC published its most recent report in August 2013. This report spanned 795 pages, of which more than 770 pages contained a listing of individual payment

<sup>4</sup> The AOC is the staff agency of the Judicial Council.

<sup>5</sup> The judicial contract law is codified in the California Public Contract Code, sections 19201 through 19210.

<sup>6</sup> Judicial contract law provides for specific exemptions, such as procurement and contracting related to superior court construction.

transactions, contracts, and contract amendments. Despite the size of the report, the AOC provided it in such a format that the data cannot be readily sorted or filtered. Consequently, users are unable to easily identify high-risk payment transactions, contracts, contract amendments, and other information of interest. For example, a user looking to identify the most costly contracts or payments would need to review each such item listed in the various sections of this lengthy report to identify the relevant information.

However, we believe that it is possible to format the report so that users can quickly and effectively locate certain information. Specifically, the AOC should submit the semiannual report in an electronic format that can be read by common database and spreadsheet software products; this would allow users to easily sort information and identify specific areas of interest, such as particularly lengthy contracts or costly transactions and multiple amendments. Users could also filter the electronic report to focus solely on the information that pertains to their specific interests. If the AOC were to submit the semiannual reports in this format, it would provide decision makers with a much more transparent and effective oversight tool.

In addition to improving the format of the semiannual reports, the AOC should improve their functionality by including additional information about contracts and contract amendments. For example, the semiannual report currently includes contract amendments entered into during the applicable six-month reporting period. However, it is not required to show the original contract that was amended or any other amendments related to the same contract that occurred outside the six-month period. Further, the semiannual report only includes new contracts related to the superior courts. Thus, users are not able to use a single report to determine how many times a particular contract has been amended or evaluate the cost and duration of each amendment relative to the original terms of the contract. Users are also unable to identify all new contracts for the six-month reporting period. To allow users to perform these types of analyses, the AOC should modify the semiannual report to include all new contracts and the contract history for each amendment, including the dates, amounts, and durations of the contract and all of its amendments. While the AOC is not currently tracking the original contract amount in one of the two data systems it uses to create the semiannual report, the data system does have that capability.

Further, we believe the AOC should start tracking additional information in its data systems and include it in the semiannual reports. Specifically, the AOC would improve the transparency of the judicial branch's competitive bidding processes by including information on whether each contract was competitively bid,

***The semiannual report currently includes contract amendments entered into during the applicable six-month reporting period but state law does not require it to include the original contract or other amendments that occurred outside of the six-month period.***

the justification for contracts that were not competitively bid, and whether the contract was with a Disabled Veteran Business Enterprise. For information technology contracts, the AOC should identify whether the contract was with a small business.

When we asked the AOC for its perspective on the semiannual report improvements, it indicated that the judicial contract law does not currently require our recommended enhancements. Further, the AOC expressed concern with the additional financial and operational burdens that enacting these improvements would place on judicial entities. However, because these enhancements would improve the quality of the semiannual report, thereby creating a much more transparent and effective tool, we believe the AOC should pursue a cost-effective method of implementing them.

### **The AOC and Superior Courts Have Weak Controls Over Their Information Systems**

In reviewing selected information system controls that the AOC and the superior courts have implemented over their information systems, we identified pervasive weaknesses.<sup>7</sup> We expected that the AOC and superior courts would have well-developed plans, policies, and procedures related to information systems controls. However, we found that some of the AOC's plans were either nonexistent, or in one case, the plan had not been updated since 1997. Further, in its reviews of the superior courts, the AOC repeatedly identified the same concerns with the superior courts' plans, policies, and procedures, some dating back to 2003. The results of our review indicate that there is an unacceptably high risk that data from the applications the AOC and superior courts currently use to perform their day-to-day operations could lead to an incorrect or improper conclusion. Therefore, we determined the data were not sufficiently reliable, regardless of the purpose for which the data are used. Moreover, the weaknesses we identified, including practices we do not divulge because of their sensitive nature, could compromise the security and availability of these information systems, which contain confidential or sensitive information, such as court case management records, human resources data, and financial data.

The AOC and the eight other judicial entities we reviewed use the Oracle Financial System to issue purchase orders and record certain procurement activity. Further, the AOC uses procurement data from the Oracle Financial System to generate the semiannual reports it

*We found that some of the AOC's plans related to information systems controls were either nonexistent, or in one case, the plan had not been updated since 1997.*

<sup>7</sup> We determined that the weaknesses were pervasive because many of them affect all or a large part of the AOC's and superior courts' information systems.

***We identified issues in several key general control categories such as security management and access controls, which are logical and physical controls that limit or detect access to computer resources.***

provides to the Legislature and state auditor. To assess its reliability, we reviewed selected information system general controls the AOC implemented over the Oracle Financial System. As previously discussed, general controls are the policies and procedures that apply to all or a large segment of the AOC's information systems and help ensure their proper operation. We identified issues in several key general control categories such as security management, which provides a framework for assessing and managing risk and developing security policies, and access controls, which are logical and physical controls that limit or detect access to computer resources such as data, programs, equipment, and facilities.

Business process application controls are directly related to a specific computerized application—the Oracle Financial System, in this case—and help to ensure that transactions are complete, accurate, and available. The results of our review indicate that the AOC has weaknesses in the general controls associated with a large segment of its information systems. The strength of general controls is a significant factor in determining the effectiveness of business process application controls. Therefore, because we identified such pervasive weaknesses in the general controls the AOC implemented over its information systems, we did not perform any testing of the Oracle Financial System's business process application controls.

We also reviewed the general and business process application controls over the AOC's Phoenix Financial System. The superior courts generally use the Phoenix Financial System to issue purchase orders and record certain procurement activity. We reported on the procurement practices of six superior courts in our March 2013 report and, as mentioned in the Introduction, we will be auditing the procurement practices of selected superior courts in the future. The AOC contracts with a third-party service provider to support its Phoenix Financial System. Therefore, following U.S. Government Accountability Office guidelines, we evaluated the general and business process application controls that the service provider, the AOC, and the superior courts collectively implemented over the Phoenix Financial System and again identified pervasive weaknesses.

In accordance with generally accepted government auditing standards, we are communicating the detailed results of our general control review of the Oracle Financial System and our general and business process application control review of the Phoenix Financial System to the AOC and the superior courts in separate, confidential management letters, rather than in a publicly available report, because of the potential damage that could be caused by the misuse of this confidential and sensitive information.

### The AOC and Judicial Entities Did Not Consistently Use a Competitive Process in Their Procurements

Four of the eight judicial entities we reviewed did not competitively procure goods or services totaling approximately \$154,000 in five of the 15 instances we tested. In addition, of the 45 AOC procurements we reviewed, competition was required in 16 instances. We found one instance of the 16 in which the AOC failed to competitively procure information technology services as required. As shown in Table 3, the *Judicial Branch Contracting Manual* (judicial contracting manual) generally requires the AOC and judicial entities to use a competitive process for procurements of \$5,000 or greater. Some procurements, such as those using certain leveraged procurement agreements (LPAs) or those for legal services, are exempted from this requirement. LPAs typically consolidate the procurement needs of multiple entities, leveraging the entities' combined buying power to reduce prices, improve terms and conditions, or improve procurement efficiency. An LPA is established by a third-party entity with a vendor, and it enables judicial entities to procure goods or services on the same or substantially similar terms as those in the LPA.<sup>8</sup> The judicial contracting manual also does not require competitive procurement for purchases under \$5,000, but it does state that the buyer must determine that pricing is fair and reasonable.

**Table 3**  
**Judicial Branch Contracting Manual Procurement Requirements**

PROCUREMENT TYPE	COMPETITIVE PROCUREMENT REQUIRED?*	WHICH SOLICITATION TYPES CAN BE USED?
Non-Information Technology (IT) goods	Yes, if \$5,000 or greater	<ul style="list-style-type: none"> <li>• Requests for Quote (RFQs): up to \$50,000, or</li> <li>• Invitations for Bid (IFBs)</li> </ul>
Non-IT services	Yes, if \$5,000 or greater	<ul style="list-style-type: none"> <li>• IFBs, or</li> <li>• Requests for Proposal (RFPs)</li> </ul>
IT goods	Yes, if \$5,000 or greater	<ul style="list-style-type: none"> <li>• RFQs: up to \$100,000 or</li> <li>• IFBs</li> <li>• RFPs</li> </ul>
IT services	Yes, if \$5,000 or greater	<ul style="list-style-type: none"> <li>• RFQs: up to \$100,000 or</li> <li>• RFPs</li> </ul>

Source: *The Judicial Branch Contracting Manual*.

\* Certain types of procurements are not required to be competitively bid regardless of the purchase amount. Examples include sole-source procurements and those using certain leveraged procurement agreements.

<sup>8</sup> The judicial contracting manual does not require judicial entities to compare multiple LPAs or offers from vendors to determine best value if the LPA selected was established by a California governmental entity and competitively bid. Similarly, such comparisons are not required if judicial entities use an LPA established by certain multistate, established LPA programs.

We found that four of the judicial entities could not demonstrate that they competitively procured goods and services in all required instances, as shown in Table 4. Of the 80 procurements we reviewed, competition was required in 15. We found that four judicial entities failed to competitively procure goods and services in five of these 15 instances. For 17 of the 80 procurements, further competition was not required, because the judicial entities used an LPA that had been previously established using competitive bidding. The remaining 48 procurements, which did not require competition, include those for less than \$5,000, legal services, and sole-source procurements, among others.

**Table 4**  
**Competitive Procurement Issues Identified During Our Review**

THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC) AND THE JUDICIAL BRANCH ENTITIES (JUDICIAL ENTITIES)	PROCUREMENTS WE REVIEWED IN WHICH COMPETITION WAS REQUIRED		INSTANCES IN WHICH ENTITY FAILED TO COMPETITIVELY PROCURE*	
	NUMBER	AMOUNT	NUMBER	AMOUNT
<b>AOC</b>	16	\$2,353,699	1	\$92,950
<b>Judicial Entities:</b>				
Supreme Court	1	10,010	1	10,010
First District Court of Appeal	1	15,714	1	15,714
Second District Court of Appeal	3	205,318	1	108,750
Third District Court of Appeal	2	27,962	0	–
Fourth District Court of Appeal	4	84,416	2	19,418
Fifth District Court of Appeal	2	12,592	0	–
Sixth District Court of Appeal	0	–	0	–
Habeas Corpus Resource Center	2	26,322	0	–
<b>Subtotals for Judicial Entities</b>	<b>15</b>	<b>382,334</b>	<b>5</b>	<b>153,892</b>
<b>Totals</b>	<b>31</b>	<b>\$2,736,033</b>	<b>6</b>	<b>\$246,842</b>

Source: California State Auditor's analysis of procurement records at the AOC and the judicial entities.

\* Includes two instances where entities used California Multiple Award Schedules without obtaining or documenting multiple price quotes.

Some judicial entities should have performed competitive processes for a subset of their procurements. For two items, totaling more than \$124,000, of the five that should have been competitively procured but were not, the judicial entities used a vendor selected from the California Department of General Services' (General Services) California Multiple Award Schedules. For each of these two procurements, the judicial entity was required to obtain at least three offers from vendors to ensure that it received the best value. In one instance, the First District Court of Appeal (first district) told us it could not provide documentation to support its consultation with multiple vendors to ensure fair and reasonable pricing because it did not maintain such documentation. In the other instance, the

Second District Court of Appeal (second district) did not obtain multiple offers to ensure that it received fair and reasonable pricing for storage services, as required. The second district staff stated that they did not follow the required process because the prior contract for storage had expired, and the fiscal year end was so close that it was not possible to comply with the solicitation requirements. However, it is the staff's responsibility to plan for procurements so that they can initiate them in sufficient time to follow any required competitive processes. In addition, the purchase was not necessary to protect the public health, welfare, or safety and therefore did not qualify for an emergency exception to the judicial contracting manual's requirement for competition.

In another of the five instances, Supreme Court staff approved a purchase order totaling \$10,000, using what they thought was an LPA that the AOC had awarded. However, the agreement did not include language that would expressly allow the Supreme Court to purchase goods using the same terms. In the absence of such language, the Supreme Court should have competitively procured the goods. Further, the judicial contracting manual indicates that LPAs the AOC establishes are listed in a particular location of the AOC's Web site, which was not the case for this agreement. Although the vendor was not obligated to do so, it did provide the Supreme Court the same pricing as the AOC. However, this may not be the case in the future. When judicial entities do not procure using a competitive process when appropriate, they cannot know whether the prices they pay are fair and reasonable. Further, when the AOC does not include language that expressly allows judicial entities, such as the Supreme Court, to purchase goods using the same terms, it limits the usefulness of the agreement.

Some staff members at the judicial entities stated that additional training in procurement practices would be beneficial. For example, one official noted that a weeklong training program, similar to what General Services provides, would be much more beneficial than the online training provided by the AOC. An official at another judicial entity also desired additional training, noting that a full-day training that breaks down the content of the judicial contracting manual and describes how to respond to various procurement issues would be beneficial. The AOC's senior manager of business services told us that every judicial entity is independent and, as such, judicial entity staff are not required to attend any training. He stated that to help the judicial entities, the AOC provided a four-and-a-half-hour training on the judicial contracting manual's requirements in February 2012 attended by a representative from the Supreme Court and each of the courts of appeal. Further, the senior manager of business services stated that the AOC provides a four-hour online training course on how to use Oracle for procurements. Additionally, he noted that there is "question and answer" time

***When judicial entities do not procure using a competitive process when appropriate, they cannot know whether the prices they pay are fair and reasonable.***

***We found one instance in which the AOC did not solicit competitive bids for a \$93,000 software purchase in 2012 because it misinterpreted a letter a vendor provided.***

during quarterly clerks' meetings, and that during these meetings, the clerks are given the opportunity to raise any questions or issues they may have regarding procurement. He stated that AOC procurement staff provide answers and guidance to the judicial entities. Nevertheless, the senior manager of business services acknowledged that the AOC agrees that the judicial entities likely need additional training. However, the AOC is still in the preliminary stages of planning this training and has not yet determined the format, scope, and logistics. The senior manager of business services noted that the AOC does not know when it will deliver the training.

Further, we found one instance in which the AOC did not solicit competitive bids for a \$93,000 software purchase in 2012 because it misinterpreted a letter a vendor provided. The judicial contracting manual allows judicial entities to make sole-source purchases without conducting a competitive procurement under certain circumstances, such as when only one entity has the intellectual property rights necessary to alter and license software. For one of the purchases we reviewed, the AOC provided a 2009 sole-source letter from the vendor to explain why it did not competitively procure the purchase. We noted, however, that the terms referenced in this letter expired in May 2010, more than two years before the procurement was approved. The AOC stated that it thought the vendor's letter meant that it was the only reseller available to government entities for those products. In fact, the letter simply stated that the vendor was the only vendor under contract with the federal General Services Administration to provide the software. The letter does not support the conclusion that the vendor was the only source from which the AOC could obtain the software. When the AOC fails to competitively procure goods and services, it cannot know whether the prices it pays are fair and reasonable.

For the procurements under \$5,000 that we reviewed, the judicial entities did not maintain documentation that the price they paid was fair and reasonable. Although the judicial contracting manual does not require a competitive process for procurements under \$5,000, it does state that the buyer must determine that the pricing is fair and reasonable. It does not, however, require judicial entities to include documentation of fair and reasonable pricing in the procurement file. The judicial contracting manual says buyers *should* do so rather than *must* do so.<sup>9</sup> For example, we were unable to determine whether the Sixth District Court of Appeal (sixth district) obtained a fair and reasonable price for the six procurements under \$5,000 we reviewed, because it did not retain documentation of other quotes received from vendors. For five of these small

<sup>9</sup> The introduction to the judicial contracting manual notes that when the word *should* is used, compliance is "not mandatory, but favored unless there is a good business reason for variance."

procurements, staff at the sixth district stated that they called other vendors and obtained price quotes, but no written documentation for this research exists. We also noted that the first district did not maintain such documentation for two procurements under \$5,000 we reviewed, and the Fifth District Court of Appeal (fifth district) did not maintain documentation for one procurement. Until the judicial contracting manual requires this documentation, the judicial branch risks being unable to demonstrate whether entities are obtaining a fair and reasonable price on procurements under \$5,000.

### **The AOC Did Not Correctly Evaluate Some Bids It Received From Vendors**

Our review of competitive procurements found that the AOC did not always follow judicial contracting manual requirements when evaluating bids it received from vendors. The judicial contracting manual requires that the judicial entities and the AOC evaluate bids received on competitive procurements using the criteria specified in the solicitation document. The judicial contracting manual also states that entities should document the evaluation and selection process for every procurement effort, but it does not require them to do so.

We found one instance in which the AOC did not evaluate the bids it received in the manner specified in the procurement's request for proposal (RFP). The judicial contracting manual specifically states that the evaluation criteria used in judging bids made on competitive procurements may not be changed after the bid closing time. The AOC complied with this requirement in all but one of the eight bid evaluations we reviewed. In that case, the AOC stated in the RFP that it would evaluate proposals by assigning weights to various scoring categories, such as cost and location. However, during the scoring process, AOC staff evaluated the categories using different weights than they had specified in the RFP. We noted that this error did not negatively affect vendor selection in this instance, but it had the potential to affect the outcome of a selection process that ultimately resulted in a contract of more than \$157,000. An AOC faculty and conference services unit manager with responsibility over the evaluation process attributed this change in evaluation criteria to an oversight by staff and said that she has implemented new protocols to prevent similar errors in the future. When the AOC changes its evaluation criteria after bids have been submitted, it risks disputes over its contract awarding process and may not select the best bid based on the published RFP.

In another instance, we found that the AOC did not correctly calculate the scores of the responsive bidders for a procurement valued at more than \$665,000. The judicial contracting manual

*The AOC complied with the requirement—not changing the evaluation criteria used in judging bids made on competitive procurements after the bid closing time—in all but one of the eight bid evaluations we reviewed.*

***We found that documentation of the evaluation and selection process for procurement efforts was sometimes missing, and thus the judicial entities were unable to demonstrate whether they obtained the best value for the procurement.***

requires evaluation teams to score responsive bids using the scoring methods specified in the procurement's RFP. We found that the AOC used the correct scoring methods in seven of the eight bid evaluations we reviewed. However, in one instance, mathematical errors incorrectly weighted the scores and resulted in the reversal of the top two bids. In the second phase of scoring and evaluations, the AOC inadvertently corrected its earlier error, which ultimately led it to select the highest-scoring bidder. AOC's senior manager of business services attributed this error to an oversight by a project manager. Although the error did not negatively affect the outcome in this instance, when the AOC incorrectly calculates scores for responsive bids on its RFPs, it risks inappropriately awarding contracts to vendors that did not have the highest score or the best proposal.

Finally, the judicial entities did not always document evaluations of responses. The judicial contracting manual states that judicial entities should document the evaluation and selection process for every procurement effort, but it does not require them to do so. We found that these evaluation documents were sometimes missing, and thus the judicial entities were unable to demonstrate whether they obtained best value for the procurement. We found two procurements at the fifth district where no evaluation documents were available. For both procurements, court staff indicated they compared prices and selected the lowest price, even though they did not prepare formal evaluations. Additionally, we found one instance at the first district where no evaluation documentation was available. First district court staff stated that they selected the vendor with the lowest price. When they do not maintain documentation of their evaluation and selection process, judicial entities cannot demonstrate that they obtained best value. Modifying the judicial contracting manual to make such documentation a required practice is an important part of ensuring that the judicial entities can demonstrate that they have obtained best value.

### **The AOC and Judicial Entities Did Not Consistently Document Their Justification of Sole-Source Procurements**

The AOC and judicial entities did not consistently meet judicial contracting manual requirements when using a noncompetitive process to procure goods or services. Some of these noncompetitive procurements are also referred to as *sole-source* procurements. The judicial contracting manual requires that the AOC and judicial entities justify all sole-source procurements and have authorized personnel approve them.<sup>10</sup> As shown in Table 5, we reviewed

<sup>10</sup> The judicial contracting manual does not require individual approved justifications for other procurements that are exempt from competitive requirements, such as legal services.

nine AOC sole-source procurements that required justification and a signature by an individual responsible for approving noncompetitive procurements. We found two procurements, totaling more than \$1.38 million, for which no justification was documented. In addition, we reviewed 22 judicial entity procurements that were procured using a sole-source process and identified seven, totaling approximately \$223,000, that were not properly documented.

**Table 5**  
**Sole-Source Procurement Issues Identified During Our Review**

THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC) AND THE JUDICIAL BRANCH ENTITIES (JUDICIAL ENTITIES)	SOLE-SOURCE PROCUREMENTS WE REVIEWED		INSTANCES IN WHICH ENTITY FAILED TO DOCUMENT SOLE-SOURCE PROCUREMENTS PROPERLY	
	NUMBER	AMOUNT	NUMBER	AMOUNT
AOC	9	\$1,822,360	2	\$1,384,437
<b>Judicial Entities:</b>				
Supreme Court	6	139,376	1	10,850
First District Court of Appeal	1	8,700	0	–
Second District Court of Appeal	3	74,113	0	–
Third District Court of Appeal	2	79,108	0	–
Fourth District Court of Appeal	3	167,077	3	167,077
Fifth District Court of Appeal	5	83,927	2	33,706
Sixth District Court of Appeal	0	–	0	–
Habeas Corpus Resource Center	2	22,240	1	11,240
<b>Subtotals for Judicial Entities</b>	<b>22</b>	<b>574,541</b>	<b>7</b>	<b>222,873</b>
<b>Totals</b>	<b>31</b>	<b>\$2,396,901</b>	<b>9</b>	<b>\$1,607,310</b>

Source: California State Auditor’s analysis of procurement records at the AOC and the judicial entities.

Two of the AOC sole-source procurements we reviewed were missing the justification for why competitive bidding was not conducted. In one case, the AOC made a sole-source procurement from Oracle America Inc. (Oracle) for almost \$1.37 million for database licenses, but it did not create and approve a noncompetitive bid form. The AOC indicates it did not do so because it considered a previously negotiated license agreement with Oracle to be an LPA. The AOC’s senior manager of business services explained that this agreement from November 2005 was the basis for the November 2012 purchase we reviewed. The judicial contracting manual provides guidance on the establishment of LPAs within the judicial branch but indicates that a competitive process should be used for doing so. The senior manager of business services admitted that the license agreement was not competitively established but was negotiated with the vendor. Consequently, although the AOC may consider this license agreement to be

***During our review of the judicial entities, we found that seven of the 22 sole-source procurements we tested were not properly documented.***

similar to an LPA, the continued purchase of Oracle licenses appears to be a sole-source procurement that requires an approved noncompetitive bid form.

During our review of the judicial entities, we found that seven of the 22 sole-source procurements we tested were not properly documented. For example, the assistant director of the Habeas Corpus Resource Center (HCRC) stated that the HCRC found only one database search provider that offered a service to meet its specific need, but it could not provide the required justification for the roughly \$11,200 sole-source procurement. According to the assistant director, it is generally the HCRC's practice to document the justification for these types of procurements. The assistant director was able to show that a follow-up procurement from the same vendor did include a documented justification. In other instances, the Fourth District Court of Appeal (fourth district) failed to submit a written request for authorization to use a sole-source process for all three procurements reviewed. For example, the fourth district procured \$103,000 in library materials using a sole-source procurement process. According to district staff, authorization for this procurement was made verbally. Although that may be the case, without proper documentation the fourth district cannot demonstrate whether the sole-source procurement was appropriately authorized. We did note that the district included a brief comment in the procurement file as a justification of the sole-source procurement process. However, in addition to not being an approved request, the comment did not address fair and reasonable pricing, one of the elements the judicial contracting manual indicates should be included in sole-source procurement requests. Until the AOC and judicial entities consistently justify and approve sole-source procurements, they cannot demonstrate that they have appropriately used the sole-source procurement process and complied with applicable contracting requirements.

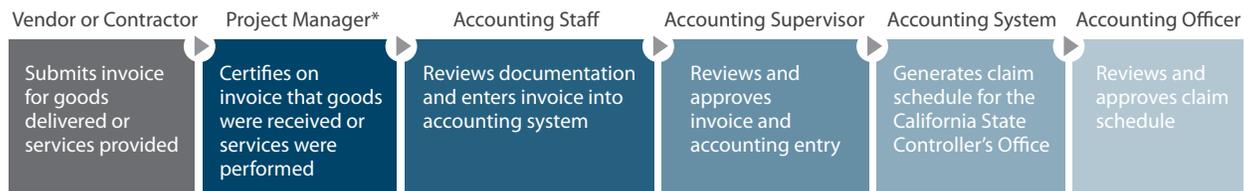
The judicial contracting manual also requires judicial entities to subject certain contract amendments to a noncompetitive bid process that includes submitting a request for sole-source approval. The manual further requires the request to include a justification, such as why the amendment is in the best interest of the judicial entity and documentation that the pricing is fair and reasonable. The manual requires these actions when, for instance, an amendment to a competitively solicited contract includes a change that was not evaluated in the original competitive process. The AOC adhered to this requirement in seven of the nine applicable AOC contract amendments we reviewed. In two instances, however, the AOC did not prepare or approve a noncompetitive bid request as required. In one of the two instances, the request was present but had no approval signature, and in the second instance, the AOC added to a contract new security

services totaling \$8,000 that were not contemplated in the original competitive process. According to the assistant director of AOC’s office of accounting and business services, staff considered competitive bidding but, due to logistics and time constraints, they decided that the only viable alternative was to use an existing guard service contract. She noted that although the decision not to competitively bid these additional services was discussed, staff inadvertently did not submit the required noncompetitive bid request. In addition, one of the seven contract amendments we reviewed at the judicial entities was required to go through the noncompetitive bid process. In this instance, the Supreme Court provided us with documentation demonstrating that it approved the required noncompetitive bid request.

**The AOC Generally Followed Internal Controls Related to Procurement Payments**

The AOC generally followed internal controls when processing procurement payments. The payment process is outlined in Figure 4. Not only does the AOC process payments for itself, but it also processes payments for procurements the eight judicial entities make. We reviewed 60 payments for AOC procurements and 50 payments for procurements by the eight judicial entities.

**Figure 4**  
**Administrative Office of the Courts’ Payment Process**



Sources: *The Judicial Branch Contracting Manual* and written descriptions provided by the supervising accountant in the Administrative Office of the Court’s (AOC) Fiscal Services Office.

\* An AOC project manager or judicial entity staff member completes this step depending on which entity procured the goods or services.

We noted a concern during our payment testing. According to its supervising procurement specialist, the AOC procurement office must approve purchase orders before another office within the AOC may order goods. The judicial contracting manual describes purchase orders as agreements that may be used to purchase goods from nongovernmental entities, regardless of the purchase amount; they are typically used for “off the shelf” goods and software or for routine, low-cost, or low-risk services. However,

***When the AOC does not follow its policies on procurement approvals, it undermines its procurement controls.***

one invoice that we reviewed included a delivery date before the underlying purchase order was approved, indicating that the goods and services were ordered and received before authorization. Specifically, the AOC executive staff ordered \$500 in engraved awards in November 2012 yet the purchase order was not approved until December 2012, after the items had been delivered. Despite the departure from accepted policy, according to AOC purchasing staff, they retroactively approved the purchase order because of the small amount and the nature of the goods and services. However, when the AOC does not follow its policies on procurement approvals, it undermines its procurement controls.

### **The Judicial Contracting Manual Needs Updating in a Few Areas**

State law requires the policies and procedures in the judicial contracting manual to be consistent with the California Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* (SAM) and the *State Contracting Manual* (SCM), which we generally found to be the case. However, the manual needs an update to address a concern we raised in our previous audit as well as to address some recent revisions to the SCM. The judicial contract law requires the Judicial Council to adopt and publish a judicial contracting manual incorporating procurement and contracting policies and procedures that all judicial entities must follow. We reported on our review of the April 2012 version of the judicial contracting manual in our March 2013 audit report and found that it was inconsistent with the California Public Contract Code with regard to a particular small business preference.<sup>11</sup>

For this report, we reviewed the AOC's August 2012 update to the judicial contracting manual for consistency with the California Public Contract Code, the SAM, and the SCM. We found the judicial contracting manual to be consistent with these criteria as of August 2012, with the exception of the small business preference for information technology contracts that we identified in our prior report. In response to that finding, we observed that the AOC was in the process of incorporating that issue into its upcoming update to the judicial contracting manual. In some instances, the State updated the SCM in areas that affect the judicial contracting manual, but these updates occurred after the Judicial Council adopted the most recent version of the judicial contracting manual in August 2012. Many of the updates to the SCM do not require changes to the judicial contracting manual. However, some of

<sup>11</sup> *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, March 2013).

the updates, which make adjustments to the Small Business and Disabled Veteran Business Enterprise programs, will affect the judicial contracting manual. As of November 2013, AOC staff expect to present their proposed manual updates, which address both the SCM updates and our prior audit finding, to the Judicial Council in December 2013.

According to an attorney in the AOC's legal services office, the AOC intends to review the most current version of the judicial contracting manual at least annually. The attorney explained that this review would identify any amendments to the California Public Contract Code and substantive changes in the SAM and SCM that are relevant to the judicial branch. The attorney stated that potential updates or revisions to the judicial contracting manual would be based on this annual review.

#### **The AOC's and Judicial Entities' Local Contracting Manuals Generally Comply With Applicable Requirements**

Generally, the AOC's and judicial entities' local contracting manuals (local manuals) include information that the judicial contracting manual states that local manuals must or should address. The judicial contract law requires that the AOC and each judicial entity adopt a local manual consistent with the same requirements as the judicial contracting manual. The judicial contracting manual requires, among other things, that local manuals identify individuals with the responsibility and authority for procurement and contracting activities. Additionally, the judicial contracting manual identifies certain items that local manuals should include, such as a contract administration plan detailing the conduct of contract administration within the entity.

The AOC's local manual did not include a discussion of construction activities for non-trial court facilities, such as appellate courthouses. Although the judicial contracting manual indicates that the AOC's local manual will include information on design, construction, acquisition, or other activities for non-trial court facilities, the local manual did not include this information. The senior manager of business services stated that this information was not included in its local manual because of an oversight, but that existing policies govern these types of procurements. The AOC proposed a judicial contracting manual update for the Judicial Council's December 2013 meeting that eliminates the text that states the information will be included in the local manual. The AOC considers it unnecessary to include the text in the local manual because it is information unrelated to an external requirement, such as one in the California Public Contract Code.

*Although required, the AOC's local manual did not include a discussion of construction activities for non-trial court facilities, such as appellate courthouses.*

## Recommendations

To improve the usefulness of the Judicial Council's semiannual reports, the Legislature should amend the Judicial Branch Contract Law to require the Judicial Council to:

- Make the semiannual reports available in an electronic format that can be read by common database and spreadsheet software products that allow users to readily sort and filter the data.
- Include new contracts and the complete history of contracts amended during the reporting period in its semiannual reports, including the date of the original contract; the original contract amount and duration; all subsequent contract amendments; and the date, amount, and duration of each such amendment.
- Include information on whether a contract was competitively bid, the justification if it was not competitively bid, and whether the contract was with a Disabled Veteran Business Enterprise. For information technology contracts, the Judicial Council should identify whether the contract was with a small business.

To improve the usefulness of the Judicial Council's semiannual reports until a statutory requirement is enacted, the AOC should work with the Judicial Council to pursue a cost-effective method to do the following:

- Provide the semiannual reports in an electronic format that can be read by common database and spreadsheet software products that allow users to readily sort and filter the data, beginning with the semiannual report covering the July 1, 2013, through December 31, 2013, reporting period.
- Include new contracts and the complete history of contracts amended during the reporting period in the semiannual reports, including the date of the original contract; the original contract amount and duration; all subsequent contract amendments; and the date, amount, and duration of each such amendment. The AOC should present this information beginning with the semiannual report covering the July 1, 2014, through December 31, 2014, reporting period.
- Begin tracking additional information in its data systems for inclusion in the semiannual reports. This information should include whether a contract was competitively bid, the justification if it was not competitively bid, and whether the contract was with a Disabled Veteran Business Enterprise. For information technology contracts, the AOC should identify whether the contract was with a small business. The AOC should present this information beginning with the semiannual report covering the July 1, 2014, through December 31, 2014, reporting period.

The AOC should implement all of the best practices related to general and business process application controls as outlined in the U.S. Government Accountability Office's *Federal Information System Controls Audit Manual* no later than December 31, 2014, thereby strengthening and continuously monitoring the effectiveness of the controls over its information systems. In addition, the AOC should immediately begin implementing improvements to its controls over access to its information systems and place these improvements into effect by February 2014. Finally, the AOC should provide guidance and routinely follow up with the superior courts—requiring updates every six months until all identified issues are corrected—to ensure that they make the necessary improvements to their general and business process application controls.

The AOC, the Supreme Court, and the first, second, and fourth districts should implement procedures to ensure that they follow a competitive process for their procurements when required.

The AOC should implement procedures to ensure that agreements it considers LPAs include in their terms and conditions language that expressly allows other judicial entities to use them.

The AOC should provide additional training to its staff and the judicial entities on how to conduct procurements in compliance with the judicial contracting manual.

The AOC should revise the judicial contracting manual to require judicial entities to maintain documentation on their determinations of fair and reasonable pricing for purchases under \$5,000. The first, fifth, and sixth districts should develop procedures to ensure that they consistently maintain documentation of their determinations that the pricing obtained is fair and reasonable for procurements under \$5,000.

The AOC should revise the judicial contracting manual to require that judicial entities maintain documentation for their evaluation and selection process used for competitive procurements. The AOC should also strengthen its procedures to ensure that bid evaluations are conducted properly and calculated correctly. The first and fifth districts should implement procedures to ensure that they consistently document their evaluation and selection process for procurements.

The AOC, HCRC, Supreme Court, and fourth and fifth districts should implement procedures to ensure that required noncompetitive procurement processes, such as preparing justifications and obtaining approval for sole-source procurements, are properly documented. Additionally, the AOC should ensure that it prepares the appropriate documentation when it amends a contract that it has competitively solicited and the amendment includes a change that was not evaluated in the original competitive process.

The AOC should implement procedures to ensure that its internal controls over payments are followed and that procurements are approved before ordering and receiving goods and services.

The AOC should implement its plan to review sections of the California Public Contract Code, SAM, and SCM applicable to the judicial branch annually, and more often if there are significant changes, and update the judicial contracting manual as needed. Unless the judicial contracting manual removes the requirement, the AOC should also update its local manual to address construction activities for facilities other than trial courts.

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: December 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.



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

STEVEN JAHR  
*Administrative Director of the Courts*

December 5, 2013

Ms. Elaine M. Howle\*  
State Auditor  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, California 95814

Re: California Public Contract Code, Section 19210—Procurement Practices of the  
Administrative Office of the Courts, Audit 2013-302 & 2013-303

Dear Ms. Howle:

I have received the California State Auditor report on the above referenced audit and the associated cover letter. I appreciate the opportunity to respond to the issues and recommendations listed in the report and provide the perspective of the Administrative Office of the Courts (AOC).

As the audit reference above indicates, the audit was performed as required by California Public Contract Code section 19210, which requires the Auditor to perform an audit of the AOC to assess the implementation of the Judicial Branch Contract Law (Pub. Contract Code, §§ 19201–19210).<sup>1</sup> As noted in discussions with the State Auditor, some of the recommendations (1) concern significant resource requirements that involve in excess of a million dollars, not including the cost of additional time required of staff at each judicial entity, at a time when the Judicial Branch has undergone unprecedented budgetary reductions, and (2) require statutory changes to address.

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<sup>1</sup> All subsequent citations are to the Public Contract Code (PCC), unless otherwise indicated.

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② I agree that the details concerning the general systems controls review are sensitive and must be in a separate, confidential management letter, rather than a publicly available report. The review was performed to determine the reliability of data provided from the information systems of the AOC and has issues and recommendations primarily discussing the need for formal information systems policies and procedures to be approved by the Judicial Council, and the lack of timely removal of personnel from systems access. The Executive Office and I understand the importance of formal policies and procedures, such as having disaster recovery plans and off-site backup policies and procedures documented, current, and reviewed and approved by management. As discussed with the Auditor's staff, there is a distinction between not having the policies and procedures and not properly executing ongoing tasks such as appropriate off-site backup of data and periodic testing of disaster recovery.

③ Formal policies and procedures allow for consistency in performing operational tasks regardless of the experience and training of staff. We agree that formal policies and procedures are necessary, but we believe that proper execution of operational tasks is occurring. To reiterate, the execution of these activities is being done properly and on a regular and routine basis even though formal policies and procedures may not exist, and multiple levels of security access would have to be breached to jeopardize the security of any systems (physical building and floor access, network access, application access, and application functional access, to name a few). These points did not seem to be considered in the concluding statement that pervasive deficiencies exist with access controls and that the severity of the security control weaknesses can cause the "potential damage" and misuse that the Auditor is suggesting.

③ The issues and exceptions that were identified are certainly important and for that reason we have over the years submitted requests for funding to the Legislature to address what the Auditor has identified as deficiencies. These requests have not been approved. Although we take issue with the Auditor's characterization of the deficiencies and we believe that proper execution of operational tasks is occurring, we nevertheless agree that any information in the confidential management letter is sensitive and must remain nonpublic. We do not believe that the deficiencies rise to the level of probable misuse occurring or that the security of the data on, or access to, the AOC's information systems is compromised to the extent the Auditor has said, considering the fact that there have been no occurrences that we, or the Auditor, are aware of.

③ We do believe that our information systems and related data are generally secure and that their security is not jeopardized by either the lack of certain formal information systems policies and procedures or by not removing personnel from access to the systems on a "timely" basis.

The Auditor's recommendations are grouped into the following seven categories and will be responded to by category.

- Semiannual reporting under PCC section 19209
- Controls over information systems
- Judicial Branch Contracting Manual
- Competitive procurements

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- Contract proposal evaluations
- Sole source procurements
- Payments

#### **Semiannual reporting under PCC section 19209**

The Auditor is reporting that the semiannual reports required under section 19209 provided to the Joint Legislative Budget Committee and the Auditor are not “useful.” These semiannual reports have been prepared and sent out regularly since the first report required by statute was sent out on February 1, 2012, covering the period September 1 through December 31, 2011. The AOC received no feedback from the Legislature until informed of its apparent concerns by the Auditor through this report. The AOC has proactively discussed the reports with the Auditor seeking input as to the format and data necessary to make the reports useful and the AOC made all of the changes the Auditor requested before the first report’s issuance. The Auditor’s issuance of these concerns given various former communications is disconcerting since previous feedback was not forthcoming.

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#### *Statutory Recommendations*

The Auditor’s three recommendations to the Legislature and AOC responses concerning amendment to the Judicial Branch Contract Law to improve the usefulness of the semiannual reports follow:

1. *Make the semiannual reports available in an electronic format that can be read by common database and spreadsheet software products that allow users to sort and filter the data.*

Section 19209 does not currently require an electronic format that can be read by common database and spreadsheet software products that allow users to sort and filter the data. Should the Legislature desire to amend Section 19209 as proposed by the Auditor, the AOC requests the Legislature to ensure that the statutory language, as amended, eliminates any opportunities for manipulation of data in a manner that could cause erroneous or misleading information to be provided to or otherwise accessed by the public, limits the definition of “users” to include only the Joint Legislative Budget Committee and the Auditor, and provides the funding to implement this and the other recommendations concerning the semiannual reporting through the budget process.

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2. *Include new contracts and the complete history of contracts amended during the reporting period in its semiannual reports, including the date of the original contract; the original contract amount and duration; all subsequent contract amendments; and the date, amount, and duration of each such amendment.*

Section 19209 requires the Judicial Council to provide semiannual reports to the Joint Legislative Budget Committee and the Auditor that contain detailed contracting information, including (a) lists of all vendors or contractors that receive any payment from any judicial entity during the statutorily defined reporting period and, for every listed vendor or contractor receiving more than one payment during the period, the amount of payment, the type of service or good

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provided, and the judicial entity or entities with which the vendor or contractor was contracted to provide that service or good; and (b) lists of all contract amendments made during the reporting period and, for each amendment, the identity of the vendor or contractor, the type of service or good provided under the contract, and the nature, duration, and cost of the amendment.

Consistent with these requirements, the Judicial Council has submitted four semiannual reports since enactment of the Judicial Branch Contract Law, each consisting of hundreds of pages of detailed information. Much of the information recommended by the Auditor for inclusion, by further legislative action, in the semiannual reports resides in files maintained by individual judicial entities—files that are not accessible electronically without modifications to systems and processes and procurement of software licenses at a cost estimated to be in excess of a million dollars, not counting the cost of additional time required of staff at each judicial entity. Before additional reporting requirements are imposed on judicial entities through further legislation, analyses of the costs and benefits of such additional requirements should be conducted, especially in light of the significant ongoing budget reductions to judicial entities that have negatively impacted the public services and access to justice they provide. If the Legislature concludes that the benefits of such additional reporting requirements outweigh the costs, sufficient funds should be appropriated to offset the additional costs incurred by each of the judicial entities in fulfilling these new reporting requirements so that the public's access to justice is not further impaired.

3. *Include information on whether or not a contract was competitively bid, the justification if it was not competitively bid, and whether the contract was with a Disabled Veteran Business Enterprise. For information technology contracts, the Judicial Council should identify whether the contract was with a small business.*

Much of the information related to competitive bidding, contracts with Disabled Veteran Business Enterprises, and small business participation in information technology contracts, which the Auditor recommends that the Legislature require be included in the mandatory semiannual reports submitted by the Judicial Council, resides in files maintained by individual judicial entities. And, as with recommendation 2 above, those files are not accessible electronically without modifications to systems and processes and procurement of software licenses at a cost estimated to be in excess of a million dollars, not counting the cost of additional time required of staff at each judicial entity. As previously noted, before additional reporting requirements are imposed on judicial entities through further legislation, analyses of the costs and benefits of such additional requirements should be conducted, especially in light of the significant ongoing budget reductions to judicial entities that have negatively impacted the public services provided by judicial entities. If the Legislature concludes that the benefits of such additional reporting requirements outweigh the costs, sufficient funds should be appropriated to offset the additional costs incurred by each of the judicial entities in fulfilling these new reporting requirements so that the public's access to justice is not further impaired.

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*Interim Recommendations*

The Auditor also has recommendations to improve the usefulness of the semiannual reports until statutory requirements may be enacted, including three recommendations indicating that the AOC should work with the Judicial Council to pursue a cost-effective method to improve the usefulness of the reports. The three recommendations and responses follow.

1. *Provide the semiannual reports in an electronic format that can be read by common database and spreadsheet software products that allow users to sort and filter the data, beginning with the semiannual report covering the July 1, 2013, through December 31, 2013, reporting period.*

Section 19209 does not currently require an electronic format that can be read by common database and spreadsheet software products that allow users to sort and filter the data. Although the AOC is certainly willing to pursue cost-effective methods of providing data that is not statutorily mandated to the Joint Legislative Budget Committee and the Auditor, eliminating any opportunities for manipulation of the data in a manner that could cause erroneous or misleading information to be provided to or otherwise accessed by the public is a priority. There will be additional costs associated with the implementation of this recommendation.

2. *Include new contracts and the complete history of contracts amended during the reporting period in its semiannual reports, including the date of the original contract; the original contract amount and duration; all subsequent contract amendments; and the date, amount, and duration of each such amendment. The AOC should present this information beginning with the semiannual report covering the July 1, 2014, through December 31, 2014, reporting period.*

As previously noted in response to a prior recommendation, section 19209 requires the Judicial Council to provide semiannual reports to the Joint Legislative Budget Committee and the Auditor—reports that contain detailed contracting information, including (a) lists of all vendors or contractors that receive any payment from any judicial entity during the statutorily defined reporting period and, for every listed vendor or contractor receiving more than one payment during the period, the amount of payment, the type of service or good provided, and the judicial entity or entities with which the vendor or contractor was contracted to provide that service or good; and (b) lists of all contract amendments made during the reporting period and, for each amendment, the identity of the vendor or contractor, the type of service or good provided under the contract, and the nature, duration, and cost of the amendment.

Consistent with these requirements, the Judicial Council has submitted four semiannual reports since enactment of the Judicial Branch Contract Law, each consisting of hundreds of pages of detailed information. Much of the information recommended by the Auditor for inclusion in the semiannual report covering the July 1 through December 31, 2014, reporting period resides in files maintained by individual judicial entities—files that are not accessible electronically without modifications to systems and processes and procurement of software licenses at a cost

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estimated to be in excess of a million dollars, not counting the cost of additional time required of staff at each judicial entity. The AOC is certainly willing to pursue a cost-effective method to provide in the semiannual report the additional information recommended by the Auditor that is not currently statutorily mandated. However, in light of the significant ongoing budget reductions to judicial entities that have negatively impacted the public services they provide, whether this recommendation can be fulfilled in the timeframe requested without further impairment of the public's access to justice is unclear, unless additional funding is provided.

3. *Begin tracking additional information in its data systems for inclusion in the semiannual reports. The information should include whether a contract was competitively bid, the justification if it was not competitively bid, and whether the contract was with a Disabled Veteran Business Enterprise. For information technology contracts, the AOC should identify whether the contract was with a small business. The AOC should present this information covering the July 1, 2014, through December 31, 2014, reporting period.*

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As previously noted in response to recommendations above, much of the information that the Auditor recommends be tracked for inclusion in the mandated semiannual reports resides in files maintained by individual judicial entities—files that are not accessible electronically without modifications to systems and processes and procurement of software licenses at a cost estimated to be in excess of a million dollars, not counting the cost of additional time required of staff at each judicial entity. Although the AOC is certainly willing to pursue a cost-effective method to provide in the semiannual report the additional information recommended by the Auditor that is not currently statutorily mandated, in light of the significant ongoing budget reductions to judicial entities that have negatively impacted the public services they provide, whether this recommendation can be fulfilled in the timeframe requested without further impairment of the public's access to justice is uncertain, unless additional funding is provided.

#### **Controls over information systems**

The Auditor is recommending that the AOC and the superior courts should implement all of the best practices related to general and business process application controls as outlined in the Federal Information Systems Control Audit Manual (FISCAM) no later than December 31, 2014, thereby strengthening and continuously monitoring the effectiveness of the controls over the AOC's and superior court's information systems. In addition, the Auditor is recommending that the AOC should begin implementing improvements to its controls over access to its information systems and put these improvements into place by February 2014.

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The AOC will review the FISCAM recommended general and business process application controls and prepare a plan to implement, on a risk-based approach, all that are appropriate and applicable. Additionally, the AOC will review access controls to its information systems and implement all necessary controls. Because these recommendations also affect the superior courts, the AOC will work with the superior courts and provide guidance. As previously stated, whether these recommendations can be fulfilled in the timeframe requested without further impairment of the public's access to justice is uncertain, unless additional funding is provided.

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Finally the Auditor is also recommending that the AOC should provide guidance and routinely follow up with the superior courts (every six months until all identified issues are corrected) to ensure that the superior courts make the necessary improvements to their general and business process application controls. The AOC will extend efforts to provide guidance, as it does now, and routinely follow up with the superior courts on corrections to issues identified in general and business application controls. Again, whether these recommendations can be fulfilled without further impairment of the public's access to justice is uncertain, unless additional funding is provided, considering the current resource constraints on the judicial branch. ①

***Judicial Branch Contracting Manual (JBCM)***

The Auditor's recommendation concerning the JBCM is that the AOC should implement its plan to review sections of the Public Contract Code, the *State Administrative Manual* (SAM), and the *State Contracting Manual* (SCM) applicable to the judicial branch annually—and more often if there are significant changes—and update the JBCM as needed. Additionally, the Auditor recommends that unless the JBCM removes the requirement, the AOC should also update its local manual to address construction activities for facilities other than trial courts.

In enacting section 19206, the Legislature assigned authority and responsibility to the Judicial Council to adopt and publish the JBCM. The Judicial Council in turn assigned responsibility to its Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch responsibility to review and present proposed updates and revisions of the manual to the council for approval. The Auditor's recommendation that the AOC update the JBCM will accordingly be referred to the chair of the referenced advisory committee to the Judicial Council.

With regard to the recommendation that the AOC implement its plan to review sections of the PCC, SAM, and SCM applicable to the judicial branch annually, and more often if there are significant applicable changes, the AOC has implemented its plan. With regard to the recommendation that the AOC update its local manual to address construction activities for non-trial court facilities unless the JBCM removes that requirement, the proposed revisions to the JBCM that will be considered by the Judicial Council at its December 13, 2013, business meeting include a proposal to remove (by deletion) that requirement. ⑧

***Competitive procurements***

The recommendations and responses made in this area follow.

- Implement procedures to ensure that the AOC follows a competitive process for procurement when required.
- Implement procedures to ensure agreements that the AOC considers Leveraged Purchasing Agreements include in their terms-and-conditions language that expressly allows other judicial entities to use them.
- Provide additional training to staff and judicial entities on how to conduct procurements in compliance with the JBCM.

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- Revise the JBCM to require judicial entities to maintain documentation on their determination of fair and reasonable pricing for purchases under \$5,000. It is also recommended that the AOC revise the JBCM to require that judicial entities maintain documentation for their evaluation and selection process used for competitive procurements.

The Auditor reviewed 45 AOC procurements and competitive procurement processes were required in 16 instances. The Auditor in the report stated that there was only one instance in the 16 where the AOC did not competitively procure information technology services for \$92,950, as is required.

The AOC had already begun to more carefully review requests for noncompetitive bids and to ensure that any referenced documents are current and appropriate to the procurement. The AOC has developed a template for requests for proposals for Leveraged Purchasing Agreements. In the future the template will include a list of authorized user entities.

The AOC has asked appellate court personnel to review the original training material provided by the AOC and to inform the agency of what sections of the JBCM they would like the training to focus on. In addition, a contract specialist position, which will be dedicated to appellate court procurements, has been approved and is in the process of being recruited. The person hired for this position will report to the business services manager to ensure consistent compliance with the JBCM.

The AOC has already implemented changes to its procurement process to ensure that each procurement/contract file has either a competitive bid summary or a non-competitive bid form; any amendments that add money to the procurement would require a non-competitive bid form. The non-competitive bid form is being revised to address the fair and reasonable pricing when required by the JBCM, regardless of the value of the procurement. These requirements will be reflected in a modification to the AOC's Local Contracting Manual.

With respect to the recommendations concerning amending the JBCM, in enacting section 19206, the Legislature assigned authority and responsibility to the Judicial Council to adopt and publish the JBCM. The Judicial Council in turn assigned to its Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch responsibility to review and present proposed updates and revisions of the JBCM to the Judicial Council for approval. The Auditor's recommendation that the AOC revise the JBCM to impose additional requirements on judicial entities will, accordingly, be referred to the chair of the referenced advisory committee to the Judicial Council.

With regard to the substance of this recommendation on revising the JBCM, the manual provides that judicial entities may purchase goods and services that cost less than \$5,000, without conducting a competitive procurement "so long as the Buyer determines that the pricing is fair and reasonable. The Buyer should include documentation on fair and reasonable pricing in the procurement file. Unless otherwise required by the [judicial entity's] Local Contracting Manual,

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no other documentation or approval is required.” In addition, the JBCM states: “The evaluation and selection process for every procurement effort should be documented and referenced in a procurement summary. . . . The procurement summary should be included in the procurement file.” As a practical and operational matter, procurement files for non-competitive procurements under \$5,000 would generally contain substantiation of “fair and reasonable pricing” and the Evaluation Team would document the evaluation and selection process for competitive procurements. The AOC will nonetheless and most certainly address the Auditor’s recommendation with other judicial entities and the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch, before a revision of JBCM is submitted to the Judicial Council for approval.

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#### ***Contract Proposal Evaluations***

The only recommendation in this area is for the AOC to strengthen the procedures to ensure that bid evaluations are conducted properly and calculated correctly.

The testing exceptions identified concerned two situations containing calculation errors (mathematical errors) in the bid scoring out of the 16 contracts tested. Importantly, the errors did not affect the selection of the ultimate vendor. The AOC will remind all project managers and selection participants to be more attentive to the mathematical calculations in the future and will review them more closely. The AOC believes that the procedures as discussed in the JBCM are sufficient to provide direction to the selection committees to exercise due care.

#### ***Sole Source Procurements***

The only recommendations in this area are that the AOC should:

- Implement procedures to ensure that required noncompetitive procurement processes, such as preparing justifications and obtaining approval for sole-source procurements, are properly documented; and
- Ensure that it prepares the appropriate documentation when it amends a contract that was competitively solicited and the amendment includes a change that was not evaluated in the original competitive process.

The testing exceptions identified involve two situations out of nine where no documentation supports or justifies the sole-source procurement. Although the procedures in the JBCM are sufficient to provide direction in this area, in the two exceptions discussed, circumstances were misunderstood resulting in the noncompliance with the JBCM. In addition, in two contract amendments tested out of nine, the AOC did not have documentation prepared (one case) or did not properly approve a noncompetitive bid (one case).

The AOC believes that these are minor compliance exceptions but that policies and procedures exist to cover the situations. The AOC will remind all personnel concerning this compliance requirement and will include the compliance requirement in future training programs and monthly procurement calls.

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***Payments***

⑩ The Auditor recommends that the AOC should implement procedures to ensure that its internal controls over payments are followed to ensure that procurements are approved before the goods and services can be ordered and received. As cited in the report, the Auditor tested 60 payments for AOC procurements and found 1 isolated case for approximately \$500. The AOC believes that its policies and procedures are adequate in this area and that this compliance issue should not reoccur.

Thank you for your continued assistance and your staff's continued communications. Please feel free to contact Mr. John Judnick, Senior Manager of AOC Internal Audit Services, if you have any questions, concerns, or the need for additional information.

Very truly yours,



Steven Jahr  
Administrative Director of the Courts

SJ/JJ

cc: Jody Patel, AOC Chief of Staff  
Curtis L. Child, AOC Chief Operating Officer  
Curt Soderlund, AOC Chief Administrative Officer  
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John Judnick, AOC Senior Manager, Internal Audit Services  
Grant Walker, AOC Senior Manager, Fiscal Services Office

## 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 response to our audit report from the Administrative Office of the Courts (AOC). The numbers below correspond to the numbers we placed in the margin of the AOC's response.

We have not seen any analysis supporting this amount. Therefore, we are unable to comment on its reasonableness. Further, throughout the response the AOC stated that it is uncertain, unless additional funding is provided, whether it could implement the recommendations within the time frame requested. However, we believe several of the recommendations we made, such as developing policies and procedures, should neither take a lot of time nor cost a lot of money.

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The AOC is understating the substance of our recommendation. As we indicate on page 31, the AOC needs to immediately begin strengthening and continuously monitoring the effectiveness of general and application controls over its information systems. Our recommendation also urges the AOC to follow industry best practices outlined in the U.S. Government Accountability Office's *Federal Information System Controls Audit Manual*. Finally, the recommendation suggests that the AOC provide guidance to and routinely follow up with superior courts to ensure all identified issues are corrected. Clearly, this recommendation entails more than developing formal policies and procedures.

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The AOC is downplaying the importance of formal policies and procedures. As the AOC stated in its response, formal policies and procedures allow for consistency in performing operational tasks regardless of the experience and training of staff. Without these policies and procedures, the AOC has not effectively communicated its expectations to its staff, and thus cannot hold them accountable. Further, the AOC contends that operational tasks are properly executed. However, our testing showed weaknesses in the performance of certain tasks.

③

The AOC is incorrect in its assertion that we did not consider "multiple levels of security access." Although other information system controls may exist that we did not test, the weaknesses we identified expose the AOC's and superior courts' systems to an unacceptably high level of risk. In fact, as we state on page 17, we do not publicly divulge the specific details of the weaknesses

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we identified because the sensitive nature of these findings could compromise the security and availability of the AOC's and superior courts' information systems.

- ⑤ The AOC is misquoting our audit report. Our audit report does not conclude that the semiannual report is not useful. Instead, as discussed on pages 15 and 16 of our audit report, the semiannual report is of limited usefulness in its current format. We concluded that the AOC should do more to improve the current presentation of the report to increase its transparency and effectiveness as an oversight tool.
- ⑥ The AOC is apparently referring to discussions that occurred before the first semiannual report was issued. However, as we discussed with the AOC when it raised this concern, its staff's recollections of these discussions differed from ours. Further, it has never been our practice to interact with an entity in a manner that could compromise our independence when conducting future audit work.
- ⑦ We believe that limiting the definition of users to include only the Joint Legislative Budget Committee and the California State Auditor overly restricts the public's access to government financial transactions, particularly when other state agencies regularly make reports containing financial information publicly available in electronic formats. For example, the California Department of General Services provides a centralized database of information on state contracts and purchases over \$5,000 on its Web site. This database allows the public to download reports in an electronic format that can be filtered and sorted.
- ⑧ The AOC asserts that it has implemented its plan to review, and update where necessary, sections of the California Public Contract Code, the *State Administrative Manual*, and the *State Contracting Manual* (SCM) applicable to the judicial branch. However, as we indicate in the report on page 29, updates from SCM applicable to the judicial branch are still in the process of being made to the *Judicial Branch Contracting Manual*.
- ⑨ The AOC contends that as a practical and operational matter, procurement files for procurements under \$5,000 would generally contain substantiation of fair and reasonable pricing and the evaluation team would document the evaluation and selection process. However, as we state on pages 22 and 23, none of the procurements under \$5,000 we reviewed from judicial entities had this documentation. Further, as we state on page 24, evaluation documents at judicial entities were sometimes missing.

The AOC believes that its policies and procedures in this area are adequate and that the issue we found should not reoccur. However, the presence of this issue indicates that the AOC's internal controls could be strengthened to ensure procurements are approved before ordering and receiving goods and services.

⑩

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December 2013

JORGE NAVARRETE  
ASSISTANT CLERK/  
ADMINISTRATOR

MARY JAMESON  
AUTOMATIC APPEALS  
SUPERVISOR



HARL WARREN BUILDING  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102  
(415) 865-7000

## Supreme Court of California

FRANK A. MCGUIRE  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

December 5, 2013

**VIA FACSIMILE  
ORIGINAL TO FOLLOW VIA REGULAR MAIL**

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

Re: December 2, 2013 Letter and Excerpts from Draft Audit Report

Dear Ms. Howle:

The Supreme Court of California is in receipt of your December 2, 2013 letter, which enclosed two copies of excerpts from a draft audit report on Judicial Branch procurement. The draft report makes the following two recommendations as to the Supreme Court:

- (1) "The Supreme Court should implement procedures to ensure that it follows a competitive process for its procurements when required."
- (2) "The Supreme Court should implement procedures to ensure that required noncompetitive procurement processes, such as preparing justifications and obtaining approval for sole-source procurements are properly documented."

The Supreme Court thanks you and your staff for these recommendations and will implement both of them. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Frank A. McGuire".

FRANK A. MCGUIRE  
Court Administrator and  
Clerk of the Supreme Court

FAM

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DIANA J. HERBERT  
CLERK/Administrator

STATE OF CALIFORNIA  
**Court of Appeal**  
FIRST APPELLATE DISTRICT  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-3600

TELEPHONE  
(415) 865-7264  
E-MAIL  
diana.herbert@jud.ca.gov

December 6, 2013

VIA FEDERAL EXPRESS & FAX (916-445-0255)

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

Re: Response to Draft Audit Report of December 2, 2013

Dear Ms. Howle:

We acknowledge the recommendations contained in the Draft Audit Report dated December 2, 2013. We have amended our procedures so that henceforth we will obtain offers from at least three vendors even when we use a vendor selected from the Department of General Services' California Multiple Award Schedules, and that such offers are documented. For procurements under \$5,000, we will ensure that when we determine that the pricing is fair and reasonable, documentation for such determination is maintained in the appropriate procurement file. We have amended our procedures so that in the future we will maintain documentation of our evaluation and selection process. To aid us in accomplishing these goals, we have devised a checklist to be used by court staff in making purchases and by the court officer approving purchases. We are also revising our forms used to evaluate and select a vendor in any procurement effort.

Should you need further information, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Diana Herbert".

Diana Herbert  
Clerk/Administrator

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**Court of Appeal**  
**STATE OF CALIFORNIA**  
SECOND APPELLATE DISTRICT  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

December 4, 2013

California State Auditor  
Elaine M. Howle, CPA  
621 Capitol Mall, Suite 1200  
Sacramento, Ca. 95814

*Re: Response to Audit*

Dear Ms. Howle:

We concur with the findings and have implemented changes to our Local JBCM and checklist to ensure compliance in the future.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Lane".

Joseph A. Lane  
Clerk/Executive Officer  
Court of Appeal  
Second Appellate District  
(213) 830-7112

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## Court of Appeal

FOURTH APPELLATE DISTRICT  
750 B STREET, SUITE 300  
SAN DIEGO, CA 92101-8196

California State Auditor's Office  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Re: 4DCOA Audit Findings for the period covering May 1, 2012 through April 30, 2013

Dear Ms. Howle:

This letter is in response to the audit results presented to us December 2, 2013. The State Auditor made two findings regarding the Fourth District that we will address. Along with that we are including our corrective action plan.

To address these recommendations we have implemented our corrective action plan. This includes training, utilizing the Administrative Office of the Court's contract specialist and using a new checklist to ensure adherence to all JCBM requirements. Training in the complexities and details of the procurement process will ensure that we comply with all aspects of the JCBM. We have identified a week-long DGS "Basic Acquisition Certification Program," that will provide a solid foundation for our procurement personnel. The Administrative Office of the Courts (AOC) is also providing assistance by recruiting for a full time contract specialist to support the Courts of Appeal with complex and time consuming procurements whose expertise we intend to use. We are now using a checklist that will be included in all procurement files and help guarantee that the competitive process for procurements is followed. Further, we have ensured that only written authorizations will be accepted for procurements from this point forward and that justifications include all of the elements of the JCBM for sole-source procurements. This document will be modified as additional requirements and documentation are deemed necessary through our continued experience with the elements of the JCBM.

We believe that between the training, support from the AOC contract specialist, and the procurement checklist, we will fully adhere to the requirements of the JCBM.

Sincerely,

A handwritten signature in cursive script that reads "Kevin J. Lane".

Kevin J. Lane, Clerk Administrator  
California Court of Appeal, Fourth Appellate District

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December 2013



COURT OF APPEAL  
FIFTH APPELLATE DISTRICT

STATE OF CALIFORNIA  
2424 VENTURA STREET  
FRESNO, CALIFORNIA 93721-2227

CHARLENE YNSON  
CLERK / ADMINISTRATOR

JULIE N. BAGOYE  
ASSISTANT CLERK / ADMINISTRATOR

PHONE (559) 445-5491  
FAX (559) 445-5769

December 4, 2013

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

Dear Ms. Howle:

Our court would like to thank you for your audit services and subsequent recommendations. We have reviewed the excerpts from your draft report. As a result, we have developed and implemented a comprehensive check-list to address the issues presented in the report:

- 1) Documentation of fair and reasonable pricing;
- 2) Documentation of evaluation and selection process; and
- 3) Documentation of justifications and approvals for sole-source purchases.

We appreciate the opportunity to respond. Please let me know if you have any questions or need any additional information.

Very truly yours,

Charlene Ynson  
Court Administrator/Clerk

cc: Administrative Presiding Justice Brad R. Hill

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December 2013



OFFICE OF THE CLERK  
**Court of Appeal**  
**State of California**  
SIXTH APPELLATE DISTRICT

333 WEST SANTA CLARA STREET #1060  
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MICHAEL J. YERLY, CLERK  
December 4, 2013

Elaine M. Howle, State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Re: Audit Sixth District Court of Appeal

Dear Ms Howle:

Attached please find the response to the State Auditor's recommendations for the Sixth District Court of Appeal.

Yours Very Truly,

*Michael J. Yerly*

Michael J. Yerly  
Clerk/Administrator  
Sixth District Court of Appeal

MJY/jvf

## **Sixth District Court of Appeal response to the State Auditor Recommendations**

Thank you for the opportunity to respond to the audit and recommendations outlined for the Sixth District Court of Appeal. In response to the State Auditor's recommendations we have set up a log for all purchases to maintain documentation that all procurements are the best price available. Documentation will include that pricing is fair and reasonable and any deviation from the best price will include an explanation of the circumstances for the best price deviation.

Thank you again for the opportunity.

Michael J. Yerly  
Clerk/Administrator  
Sixth District Court of Appeal.



**HABEAS CORPUS RESOURCE CENTER**

303 Second Street, Suite 400 South  
San Francisco, CA 94107  
Tel 415-348-3800 • Fax 415-348-3873  
www.hcrc.ca.gov

**Board of Directors**

*MR. CHARLES A. BIRD, Chair*  
*PROF. DRUCILLA STENDER RAMEY*  
*HON. ARLEIGH WOODS*  
*MR. JOSEPH SCHLESINGER*

*MICHAEL LAURENCE, Executive Director*  
*JEAN FIELD, Assistant Director*

December 4, 2013

Elaine M. Howle  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Re: HCRC Response to Draft Report by California State Auditor

Dear Ms. Howle:

Thank you for the opportunity to respond to the California State Auditor's findings regarding its audit of procurement practices at the Habeas Corpus Resource Center. As explained to the audit team, the HCRC is a small entity with limited procurement activities and resources, and has no staff members dedicated solely to procurement. As a result, we rely extensively on Administrative Office of the Court's staff members to advise us on procurement matters and correct any oversights in documentation or other paperwork.

The report noted that the HCRC used appropriate procedures in identifying and obtaining procurements for which competition was required. However, the auditors identified one sole-source purchase that was submitted to the AOC without an accompanying sole-source purchase justification form. This was clearly an omission of documentation rather than a violation of procurement policies, as the procurement for the following year's services from the same vendor was accompanied by the proper sole-source justification form.

We will continue to work closely with the AOC to help ensure compliance with the Judicial Branch Contracting Manual, and have taken several independent steps in response to the issue identified by the audit. These steps conform to the recommendation made in the audit report. First, we have retrained our staff on the JBCM rules and provided them with checklists taken from the JBCM and other procurement materials developed by the AOC. Second, in order to prevent the particular oversight identified by the audit, each staff member responsible for purchasing or invoice approval was provided with a checklist on approval and documentation requirements for non-competitive procurements taken from JBCM Chapter 5 (see attached).

①

\* California State Auditor's comment appears on page 63.

*Elaine M. Howle*  
*December 4, 2013*  
*Page 2 of 2*

We are confident that these steps will prevent any future oversights or omissions in our procurement practices or documentation files, especially when dealing with the documentation of sole-source-procurement justification and approval.

We appreciated the opportunity afforded by the audit to examine and improve our procurement practices. Thank you very much for your professionalism and courtesy during the audit process.

Sincerely,



Michael Laurence  
Executive Director

**JBCM CHAPTER 5 - NON-COMPETITIVELY BID PROCUREMENTS  
APPROVAL AND DOCUMENTATION REQUIREMENTS**

Unless the court's *Local Contracting Manual* requires additional documentation, the chart below reflects the *Judicial Branch Contracting Manual* documentation and approvals required for non-competitively bid procurements.

NCB Type and JBCM Chapter 5 Section Reference	Signed Approval Required	Note in Procurement File	Document Fair and Reasonable Pricing	Maintain Documentation in Procurement File
Purchases under \$5,000 (5.1)			X	X
Emergency Purchases (5.2)	X			X
Purchases from Governmental Entities (5.3)		X		X
Legal Services (5.4)		X		X
Certain LPAs (5.5)		X		X
Community Rehabilitation Programs (5.6)		X	X	X
Licensing or Proficiency Testing Examinations (5.7)		X		X
Subvention and Local Assistance Contracts (5.8)		X		X
Sole Source Purchase (5.9.A) – <i>only goods or services that meets court's needs OR grant application submittal deadline does not permit time for competitive procurement</i>	X		X	X
Repeat Sole Source (5.9.B)	X			X
Amendments (5.10)	X		X	X

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## Comment

### **CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE HABEAS CORPUS RESOURCE CENTER**

To provide clarity and perspective, we are commenting on the response to our audit report from the Habeas Corpus Resource Center (HCRC). The number below corresponds to the number we placed in the margin of the HCRC's response.

The HCRC contends that the instance we noted was not a violation of procurement policies. However, as we state on page 24, the *Judicial Branch Contracting Manual* requires that judicial entities justify all sole-source procurements and have them approved by authorized personnel. Therefore, the lack of a justification in this instance is not just an omission of documentation, but rather an inability to demonstrate that HCRC has appropriately used the sole-source procurement process and complied with applicable contracting requirements.

①

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