



Judicial Branch Procurement

Courts Generally Met Procurement Requirements, but Some Need to Improve Their Payment Practices

January 2021

REPORT 2020-301



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January 14, 2021

2020-301

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

Dear Governor and Legislative Leaders:

As required by state law, my office conducted an audit of certain judicial branch entities' compliance with the requirements of the California Judicial Branch Contract Law (judicial contract law), Public Contract Code sections 19201 through 19210. The judicial contract law requires the Judicial Council of California (Judicial Council) to adopt and publish a *Judicial Branch Contracting Manual* (judicial contracting manual) that is consistent with the Public Contract Code and establishes the policies and procedures for procurement and contracting that all judicial branch entities, including superior courts, must follow.

This report concludes that the five courts we reviewed for this audit—the superior courts in Alameda, Contra Costa, Lake, Orange, and San Bernardino counties—adhered to most of the required and recommended procurement and contracting practices that we evaluated, but they could improve in certain areas. Specifically, three courts did not always follow required or recommended payment practices that help to safeguard public funds. For example, the Alameda court made \$16,000 in questionable payments because it did not match invoices to appropriate supporting documentation for two payments we reviewed. In addition, four courts have failed to consistently comply with state law requiring them to notify my office when they enter into high-value contracts, which limits my office's ability to identify in a timely and accurate manner contracts that may warrant review. Finally, two courts could improve their local contracting manuals by including certain information, such as a policy on legal review of contracts, that the judicial contracting manual recommends and the courts had no compelling reason to exclude.

Respectfully submitted,

Elaine M. Howle

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California State Auditor

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SUMMARY

For this fifth biennial audit of the procurement and contracting practices of California superior courts, we reviewed the superior courts in Alameda, Contra Costa, Lake, Orange, and San Bernardino counties. We determined that these five courts adhered to most of the required and recommended procurement and contracting practices that we reviewed; however, they could make certain improvements to better ensure the responsible stewardship of public funds. We reviewed the selected courts' practices related to contracts, payments, and purchase card transactions for fiscal year 2019–20. This report concludes the following:

Three Courts Did Not Always Adhere to Payment Requirements or Recommendations

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We found that three courts did not always follow established payment procedures, increasing the risk of misusing public funds. The Alameda court made questionable payments totaling \$16,000 because it did not match invoices to appropriate supporting documentation for two of 18 payments we reviewed, and it routinely did not adhere to authorization limits for approving invoices. The Orange court also exceeded its authorization limit for one of 10 payments we reviewed, and the Lake court did not fully separate payment duties as recommended so that no one person is in a position to initiate or conceal errors or irregularities for six of 10 payments we reviewed. The courts whose purchase card transactions met our threshold for review (Contra Costa, Orange, and San Bernardino) generally used purchase cards appropriately. Many of the purchase card transactions we reviewed were emergency purchases related to the 2019 coronavirus disease pandemic and were exempt from competitive bidding requirements. The processes courts followed for these emergency transactions and the goods and services they purchased were reasonable.

Four Courts Failed to Consistently Report High-Value Contracts

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Some courts have not fully complied with state law that generally requires them to notify the California State Auditor's Office (State Auditor) within 10 business days of entering into contracts estimated to cost more than \$1 million. The Alameda court had four such contracts in fiscal year 2019–20 but did not notify us of any because it did not have sufficient policies and procedures in place for doing so. The Contra Costa, Orange, and San Bernardino courts did notify us about some high-value contracts they had in fiscal year 2019–20 but failed to notify us about others for various reasons, including

staff error, a gap in their notification procedures, or incorrect interpretation of the notification requirement. By not fully complying with the notification requirement, these courts have limited our ability to identify in a timely and accurate manner contracts that may warrant review.

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Two Courts Lack Recommended Information in Their Local Contracting Manuals

Two courts do not have information in their local contracting manuals that would help ensure that their staff members follow appropriate contracting processes. The Alameda and Lake courts each omitted from their local contracting manuals certain provisions that the *Judicial Branch Contracting Manual* (judicial contracting manual) recommends courts include. Specifically, the Alameda court did not identify requirements for legal review of contracts, and both the Alameda and Lake courts lacked a plan for administering contracts. Neither court had a compelling reason for not including the recommended information.

In addition, we reviewed a selection of contracts from each of the five courts to determine whether the courts followed required procurement and contracting practices. We found no reportable issues in this area.

Summary of Recommendations

Alameda, Lake, and Orange County Superior Courts

To ensure appropriate expenditures of public funds, the courts should follow required and recommended practices for approving invoices and separating payment duties.

Alameda, Contra Costa, Orange, and San Bernardino County Superior Courts

To comply with the requirements of state law, the courts should implement procedures to notify the State Auditor within 10 business days of entering into all contracts estimated to cost more than \$1 million and not exempt from the notification requirement.

Alameda and Lake County Superior Courts

To ensure staff members have sufficient guidance about appropriate contracting practices, the courts should include in their local contracting manuals information that the judicial contracting manual recommends.

Agency Comments

The courts generally agreed with our recommendations. The Orange and San Bernardino courts disagreed with certain aspects of our finding that they did not fully comply with the requirement to notify our office about high-value contracts.

Introduction

Background

The California Judicial Branch Contract Law (judicial contract law) went into effect in 2011. It generally requires all judicial branch entities to comply with the provisions of the Public Contract Code that are applicable to state agencies and departments and that relate to the procurement of goods and services. It also requires the Judicial Council of California (Judicial Council)—which is the policymaking body of the California court system responsible for ensuring the consistent, independent, impartial, and accessible administration of justice in the State—to create a contracting manual for all judicial branch entities, such as superior courts, and for these entities to adopt local contracting manuals.

The judicial contract law also imposes reporting requirements on judicial branch entities. Specifically, it requires that judicial branch entities notify the California State Auditor's Office (State Auditor) within 10 business days of all contracts for goods and services they enter into that involve a total cost estimated at more than \$1 million in value, with limited exceptions such as trial court construction contracts. The law further specifies that all administrative and information technology (IT) projects of the Judicial Council or the courts with a total cost estimated to exceed \$5 million are exempt from this reporting requirement and shall be subject to the review of the California Department of Technology. The law also requires the Judicial Council to submit semiannual reports to the Legislature and the State Auditor containing specified information about most of the judicial branch's contracting activities. The Judicial Council prepares the semiannual reports using information that judicial branch entities are responsible for providing to it.

In addition, and subject to legislative appropriation, the judicial contract law directs the State Auditor to audit judicial branch entities other than the Judicial Council every two years to assess their implementation of the judicial contract law. This is our fifth biennial audit report; in all, the five reports so far have covered procurement practices at 24 of the State's 58 superior courts since the judicial contract law went into effect in 2011. For this audit, we selected the superior courts in the counties of Alameda, Contra Costa, Lake, Orange, and San Bernardino. We audited two of our selected entities—the superior courts in the counties of Alameda and Orange—previously, in 2014 and 2012, respectively. As state law requires, we based our selection of the courts we examined on factors including, but not limited to, each court's size, total volume of contracts, previous audits or known deficiencies, and significant or unusual changes in management. Table 1 provides the relative size, workload data, and volume of expenditures of the five superior courts we selected for this audit.

Table 1

The Five Courts We Reviewed Varied in Size, Workload, and Volume of Expenditures

COUNTY SUPERIOR COURT					
	ALAMEDA	CONTRA COSTA	LAKE	ORANGE	SAN BERNARDINO
Total expenditures, fiscal year 2019–20	\$110,398,000	\$62,951,000	\$4,800,000	\$207,031,000	\$145,752,000
Total contract payments, fiscal year 2019–20	\$19,196,000	\$16,401,000	\$1,675,000	\$35,465,000	\$25,920,000
Case filings, fiscal year 2018–19	224,000	112,000	10,000	410,000	287,000
Judges, total authorized positions as of June 30, 2019	73	38	4	127	73
Court employees, total authorized positions for fiscal year 2019–20	749	337	35	1,516	1,098

Source: The Judicial Council's *2020 Court Statistics Report*; the Judicial Council's *Semiannual Report on Contracts for the Judicial Branch* for July 1 through December 31, 2019, and for January 1 through June 30, 2020; and the superior courts' budget reports for fiscal year 2019–20.

Note: Data in this table are unaudited and rounded.

The Judicial Branch Contracting Manual

The judicial contract law requires the provisions of the *Judicial Branch Contracting Manual* (judicial contracting manual) to be substantially similar to those of the *State Administrative Manual* and the *State Contracting Manual* and to be consistent with the Public Contract Code. The *State Administrative Manual* is a reference resource for statewide management policy, and the *State Contracting Manual* provides the policies, procedures, and guidelines to promote sound business decisions and practices in securing necessary services for the State. The Public Contract Code contains, among other provisions, competitive bidding requirements for public entities. Competitive bidding requirements help to provide all qualified bidders with a fair opportunity to enter the bidding process, and to eliminate favoritism, fraud, and corruption in the awarding of public contracts. In addition to establishing procurement requirements consistent with the law, the judicial contracting manual also contains recommended procurement practices for courts. Although those provisions are not mandatory, the judicial contracting manual favors the use of recommended practices unless courts have good business reasons for deviating from those recommendations.

Consistent with the Public Contract Code, the judicial contracting manual generally requires judicial branch entities to secure competitive bids or proposals for each contract, with certain exceptions, as the text box shows. For example, state law and the judicial contracting manual exempt purchases under \$10,000 from competitive bidding requirements as long as a contracting entity determines that the price is fair and reasonable. State procurement

rules and the judicial contracting manual also do not require competitive bids on contracts for emergency purchases or contracts with governmental entities.

The judicial contracting manual also allows several types of noncompetitive procurements. Two types that judicial branch entities can use are sole-source procurements and certain leveraged procurement agreements (leveraged agreements), including state leveraged agreements. The judicial contracting manual defines a sole-source procurement as one in which an entity affords only one vendor the opportunity to provide goods or services after the entity shows appropriate justification for doing so. An entity may use a leveraged agreement to purchase goods and services from certain vendors on the same or substantially similar contract terms as those negotiated by the State or another entity without having to seek competitive bids. The Department of General Services administers some leveraged agreements for use by state agencies and local governments so that they may buy directly from suppliers through existing state contracts and agreements. The judicial contracting manual includes a process for using leveraged agreements, but it recommends that judicial branch entities consider whether they can obtain better pricing or terms by negotiating directly with vendors or soliciting competitive bids.

Judicial Purchases That Can Be Exempt From Competitive Bidding Requirements

- Purchases under \$10,000
- Emergency purchases
- Purchases from government entities
- Legal services
- Purchases through certain leveraged procurement agreements
- Purchases from business entities operating community-based rehabilitation programs
- Licensing or proficiency testing examinations
- Purchases through local assistance contracts
- Sole-source purchases
- Purchases from certified small businesses
- Purchases from disabled veteran business enterprises

Source: State law and the judicial contracting manual.

Three Courts Did Not Always Adhere to Payment Requirements or Recommendations

Key Points

- The Alameda, Lake, and Orange courts did not always follow required practices or recommended safeguards when making payments. As a result, each court increased its risk of improper payments, and the Alameda court made \$16,000 in questionable expenditures.
- The courts generally used purchase cards appropriately, and emergency purchase card transactions related to the 2019 coronavirus disease (COVID-19) also appeared to be appropriate and reasonable.

The Alameda, Lake, and Orange Courts Did Not Always Follow Payment Safeguards, Increasing the Risk of Improper Payments

Following proper procedures for processing payments, including reviewing the accuracy of invoices, establishing proper levels of approval authority (authorization limits), and separating invoice approval duties from payment duties, is critical for ensuring that courts use public funds appropriately. However, we found that three courts—Alameda, Lake, and Orange—did not always follow these safeguards, which increases the risk of improper payments. Specifically, the Alameda court made roughly \$16,000 in questionable payments in fiscal year 2019–20 because staff bypassed proper safeguards for approving invoices. According to the Judicial Council's *Trial Court Financial Policies and Procedures Manual* (procedures manual), which the judicial contracting manual instructs courts to follow when processing payments, court staff must match invoices against appropriate supporting documentation, such as a contract, to ensure that the court is paying the vendor the correct rate for the goods or services provided. However, of the 18 payments (totaling approximately \$1.5 million) we reviewed at the Alameda court, a division director approved two payments that exceeded contracted rates by \$3,330 and \$12,690, respectively.¹ The two payments were for legal representation provided by private attorneys. Although the contracts allowed for expenses in excess of the contracted rates (extraordinary expenses) if attorneys submitted requests and the court approved them, the division director approved the payments without determining whether requests had been submitted and approved, and we found that the court had no record of approval for the extraordinary expenses it paid. The division director indicated that she did not request supporting documentation for the \$3,330 overpayment because she did not notice the discrepancy between the contracted rate and the invoice rate. For the \$12,690 overpayment, she approved the payment on the basis of the attorney's declaration that he provided additional services, not documentation showing that the court approved the extraordinary expenses. Because the Alameda court did not

¹ For the five superior courts we reviewed, we began by reviewing 10 payments for each court. If we saw issues that warranted additional review of a court's payment processes, we reviewed eight additional payments.

match the amounts vendors charged to appropriate supporting documentation in these two cases, it made payments that lacked justification.

The Alameda court also allowed staff to disregard their authorization limits when approving invoices. Specifically, the Alameda court's accounts payable manual identifies dollar limits up to which it authorizes court employees in certain positions to approve invoices for payment. Adhering to such authorization limits reduces the court's risk of making inappropriate payments, but the Alameda court frequently did not do so. For the 18 payments we reviewed, nine court employees approved 13 invoices that exceeded their authorization limits by amounts ranging from \$1,300 to more than \$317,000. According to the court's accounts payable manual, an executive, such as the court's executive officer, must approve any payments over \$10,000. However, 12 of the 18 payments we reviewed were for invoice amounts greater than \$10,000, and none of the 12 invoices received executive approval. Rather, managers and directors who had lower authorization limits generally approved the invoices. In one case, a nonsupervisory staff member with no authority to approve invoices did so for an invoice for more than \$317,000 from a vendor that collects debts owed to the court, without additional review from higher-level staff. The court's executive officer and the court's finance and facilities director explained that they intended the court to adhere to authorization limits when approving the contracts or other underlying agreements associated with these payments, not when approving invoices. However, the court's accounts payable manual clearly instructs staff to act within the scope of their authority when processing invoices, and both the executive officer and finance and facilities director agreed that they should do so.

Nine court employees approved 13 invoices that exceeded their authorization limits by amounts ranging from \$1,300 to more than \$317,000.

The Lake court increased its risk of making improper payments by not always fully separating payment duties. According to the procedures manual, courts must assign work in a manner that ensures that no one person is in a position to initiate or conceal errors or irregularities, and the judicial contracting manual recommends that different employees be responsible for approving invoices and preparing payments. However, for six of

the 10 payments we reviewed at the Lake court (accounting for approximately \$32,000 of the total \$133,000 in expenditures we reviewed), the court's executive officer approved invoices and also posted payments in the court's accounting system. The executive officer stated that this was because the court has limited staff and explained that a staff member other than herself initially entered payment information into the accounting system. Because two individuals were thus involved in payment duties, court staff members deemed this approach to separating those duties adequate. Yet, the executive officer still performed two payment duties, and a process that does not fully separate payment duties is inherently higher in risk than one that does. The court indicated that its risk is mitigated because a Judicial Council staff member provides quarterly review of the court's accounts. Nonetheless, it would be a good practice for the court to take mitigating actions of its own, and the court sometimes did so. For example, in two other instances we reviewed, the executive officer approved invoices and posted payments, but the court also documented secondary approval of the invoices by other staff members. We believe the court should consistently incorporate an additional safeguard such as this when it cannot fully separate payment duties.

**It would be a good practice for the
Lake court to take mitigating actions of
its own when it cannot fully separate
payment duties.**

At the Orange court, we reviewed 10 payments totaling just over \$533,000 and identified one instance in which a staff member approved an invoice of more than \$160,000 for legal services without seeking executive approval. The court's accounts payable procedures manual directs accounts payable staff members to obtain approvals for invoices from managers, using a system that requires an additional level of approval by an executive for any payments exceeding \$50,000. However, a supervisor at the Orange court informed us that staff who specialize in reviewing court documents, including validating legal invoices (specialists), handle the approvals for certain invoices, such as those for payments to lawyers who provide legal representation for low-income defendants, and they do so outside of the system that requires a second level of approval for invoices totaling more than \$50,000. The reason that the court does not process legal invoices through the normal system is because of concerns about confidentiality, according to the court's chief financial and administrative officer.

Although the \$160,000 payment we reviewed was appropriate per the terms of the court's contract, the court bypassed a key safeguard and increased the risk of improper payments for this invoice and others that specialists handled. The chief financial and administrative officer agreed that the court should incorporate additional approvals for these types of invoices when they are for payments above a certain dollar limit, and he said he would have staff members look into finding a balance between confidentiality and appropriate safeguards.

The Courts Generally Conducted Purchase Card Transactions Appropriately

The courts whose purchase card transactions we reviewed generally used their purchase cards appropriately. The state-administered procurement card program, CAL-Card, is available to all superior courts, although they are also allowed to use other purchase cards. The Alameda, Contra Costa, Orange, and San Bernardino courts used CAL-Cards and other purchase cards, primarily for travel-related expenses; the Lake court did not use a purchase card. Proper safeguards over purchase cards help ensure that courts use public funds appropriately. When courts make payments that exceed approved transaction limits on purchase cards or do not follow judicial contracting manual policies, they may put public funds at risk. Because courts provide purchase cards so individuals can make purchases directly from vendors, the cards are subject to abuse if the courts do not strictly oversee their use.

We reviewed purchase card transactions at three courts—Contra Costa, Orange, and San Bernardino—because their total value of purchase card payments during fiscal year 2019–20 met our threshold for reviewing individual transactions. The total value of the Alameda court's purchase card payments did not meet our threshold for reviewing individual transactions. The purchases we reviewed generally complied with applicable requirements. We reviewed six transactions at each of the three courts, focusing on purchases that exceeded the \$1,500 transaction limit established in the judicial contracting manual. The judicial contracting manual allows courts to deviate from that limit but recommends that they document alternative procedures, such as setting different transaction limits, in their local contracting manuals. The Contra Costa and San Bernardino courts adopted the judicial contracting manual's limit of \$1,500, although they had procedures allowing approval of higher purchase limits in certain cases. The Orange court's local contracting manual set higher transaction limits ranging from \$5,000 to \$25,000 for certain staff members, which the court's chief financial and administrative officer deemed reasonable given the court's size and its business needs.

All transactions we reviewed appeared to be reasonable and had appropriate supporting documentation, such as purchase request approvals and receipts for goods.

The purchases we reviewed generally complied with applicable requirements.

Emergency Purchase Card Transactions Related to COVID-19 and Exempt From Competitive Processes Appeared to Be Reasonable

In March 2020, the Governor proclaimed a state of emergency in California to address the global COVID-19 outbreak. Because the state of emergency began during our audit period of fiscal year 2019–20, many of the purchase card transactions we reviewed were for goods such as hand sanitizer or protective equipment. Most of these purchases were under \$10,000 in value, which is the threshold at which state law and the judicial contracting manual's competitive bidding requirements typically apply. Regardless of the value of a good or service, state law and the judicial contracting manual also exempt contracting entities from competitive bidding requirements when they make emergency purchases that are necessary for the immediate protection of life, health, property, or essential public services. The urgency of the courts' COVID-19 related purchases, the possibility of increased prices for high-demand goods, and the potential deviation from certain standard purchasing requirements together introduced additional risk for the misuse of public funds.

Despite the increased risk, the COVID-19 related purchases we reviewed appeared to be appropriate. We identified 12 purchases related to COVID-19 among the 18 purchase card transactions we reviewed for the Contra Costa, Orange, and San Bernardino courts. These 12 purchases totaled approximately \$65,000. The courts made the purchases from March through June 2020 to obtain goods including hand sanitizing supplies, face masks, and electronic equipment for a virtual courtroom. In each case we reviewed, the courts had documentation showing the approval of the purchase request and the receipt of a good for which the court had a reasonable need due to the public health emergency.

Recommendations

Alameda County Superior Court

To ensure that it expends public funds appropriately, the court should immediately require staff to match invoices to appropriate supporting documentation and to adhere to the established authorization limits when approving invoices.

Lake County Superior Court

To reduce the risk of improper payments, by July 1, 2021, the court should revise its payment process to incorporate an alternative safeguard in any instance when it is not practical to fully separate payment duties.

Orange County Superior Court

To ensure appropriate approval of all payments, by July 1, 2021, the court should revise its payment process to consistently require two levels of approval for all invoices above a certain dollar limit.

Four Courts Failed to Consistently Report High-Value Contracts

Key Points

- Although state law generally requires that a court notify the State Auditor of a contract with a total estimated cost of more than \$1 million, the Alameda court failed to comply with this requirement and did not report four such contracts that it entered into during fiscal year 2019–20 worth approximately \$20 million combined.
- During fiscal year 2019–20, the Contra Costa, Orange, and San Bernardino courts all failed to report five required contracts worth nearly \$19 million combined.

The Alameda Court Failed to Report Contracts Worth Approximately \$20 Million

The Alameda court did not comply with the legal requirement to report certain contracts. As we discuss in the Introduction, the judicial contract law requires courts to notify the State Auditor in writing within 10 business days of entering into a contract with a total cost estimated at more than \$1 million; the law excludes only IT projects valued at more than \$5 million that are subject to review and recommendations by the California Department of Technology and certain contracts related to trial court construction. The Alameda court had four contracts in fiscal year 2019–20 that it should have reported to us, but failed to do so. The contracts, which were for services such as janitorial services, ranged in value from \$2 million to approximately \$12.3 million and together were worth approximately \$20 million. In addition to not complying with the law, the court’s failure to notify our office about its high-value contracts as required limits our ability to assess in an accurate and timely manner whether the court’s contracts warrant review.

The Alameda court’s director of finance and facilities, who oversees its contracting activities, acknowledged that the court did not notify our office about contracts over \$1 million in estimated value because it did not have procedures in place to do so and because of a lack of knowledge and training for individuals responsible for handling the notifications. The judicial contracting manual details the notification requirement, and the Alameda court also included information about it in a version of its local contracting manual that was effective through January 2020. However, the director of finance and facilities explained that the court later revised its local contracting manual and inadvertently omitted that information from its current local contracting manual. After we discussed this finding with the Alameda court, the court began adding procedures for identifying and reporting contracts over \$1 million to its process for reviewing contracts, consistent with state law and the judicial contracting manual.

The Contra Costa, Orange, and San Bernardino Courts Did Not Consistently Report All High-Value Contracts

Although the other three courts that had contracts valued at over \$1 million during fiscal year 2019–20 were aware of the notification requirement and reported certain high-value contracts to our office, the Contra Costa, Orange, and San Bernardino courts did not do so in all cases where the law required it. The Contra Costa court notified us about one high-value contract, the Orange court notified us about two, and the San Bernardino court notified us about three such contracts. However, the Contra Costa court failed to inform us about one contract worth \$1.2 million, and the Orange and San Bernardino courts each failed to inform us about two contracts that were worth \$5.5 million for the Orange court and nearly \$12 million for the San Bernardino court.

The Contra Costa court failed to report a contract for IT services provided by the county of Contra Costa that was worth \$1.2 million in fiscal year 2019–20. According to the analyst responsible for notifying our office of such contracts, the court did not notify us in this circumstance because the court’s contractual agreement with the county was originally established in 1998, and the notification requirement in state law became effective in 2011. However, the law applies to contracts entered into or amended from October 1, 2011 on. The court entered into a new contract with the county in 2016 that replaced the 1998 contract. This contract was therefore subject to the legal requirement, and by failing to notify our office, the court did not comply with the law.

Similarly, the Orange court failed to comply with state law when it did not report one IT contract valued at \$1.2 million that it entered into during fiscal year 2019–20 and one legal services contract that was worth \$4.3 million in fiscal year 2019–20. The court’s chief financial and administrative officer stated that the court uses an automated reporting process to notify our office of contracts that qualify for reporting, and the lack of reporting for the IT contract was due to a gap in the automated process. He stated that because the court entered into the IT contract based on an existing state contract, it did not process this contract in the typical way and therefore did not enter the contract into a system that automatically issues notifications to our office. In addition, the court’s contracts and procurement manager explained that the court did not notify us about the legal services contract because a staff member made an error entering contract information into the system. The court’s chief financial and administrative officer explained that the court will refine and implement appropriate processes and systems to ensure that our office is notified about any contracts valued above \$1 million.

Additionally, the San Bernardino court incorrectly exempted two high-value contracts from the notification requirement in state law. Specifically, the court failed to report two contracts for medical benefits plans worth \$7 million and \$4.9 million that it entered into during fiscal year 2019–20. The contracts and procurement manager at the court explained that the court had relied on direction that it received in response to a question a court staff member asked a Judicial Council staff member in 2013, which the court misinterpreted as excluding contracts for services such as medical benefits plans from the notification requirement in the judicial contract law. The manager indicated that the court now properly understands the requirement and stated that it will immediately begin notifying our office of these types of contracts when their estimated value is more than \$1 million.

Recommendation

Alameda, Contra Costa, Orange, and San Bernardino County Superior Courts

To comply with the requirements of state law, each court should immediately implement policies and procedures for notifying the State Auditor within 10 business days of entering into all contracts with estimated values over \$1 million, except those contracts exempted from the notification requirement in state law.

Two Courts Lack Recommended Information in Their Local Contracting Manuals

Key Points

- The Alameda court's local contracting manual lacked certain information recommended by the judicial contracting manual. Specifically, the court failed to include a legal review policy and contract administration plan in its local contracting manual.
- The Lake court also did not include the recommended contract administration plan in its local contracting manual.

The Alameda Court Did Not Include a Legal Review Policy in Its Local Contracting Manual

Although all five courts met the requirements for local contracting manuals, two courts did not include some information recommended by the judicial contracting manual. Local contracting manuals serve to supplement the judicial contracting manual. They provide specific details on procurement policies and procedures for each court in order to familiarize court employees with the court's specific purchasing and contracting practices. The judicial contracting manual requires that the court's local contracting manual contain certain information, such as the court's organizational structure, including the individuals with responsibility and authority for procurement activities. In addition to the required information, the judicial contracting manual recommends that a local contracting manual should contain some additional information unless a court has a good business reason for excluding it. However, two courts did not follow certain recommendations or provide a compelling reason for disregarding the judicial contracting manual's guidance.

The Alameda court's local contracting manual did not establish clear guidelines for when staff should submit contracts for legal review (legal review policy). The judicial contracting manual recommends that courts adopt a legal review policy, and it provides circumstances in which courts should require legal review of contracts. For example, courts should require legal review of contracts that provide for the performance of high-risk activities, such as operating heavy equipment. However, the current version of the Alameda court's local contracting manual does not include a legal review policy. The court's executive officer explained that this is because the court may not be able to obtain legal review promptly. The judicial contracting manual provides that courts can arrange for legal review of their contracts through in-house legal staff, retained counsel, or the Judicial Council's Legal Services office. The court's executive officer explained that the court sometimes seeks legal review from one of its staff attorneys but prefers to rely on the Judicial Council. He expressed concern that the Judicial Council can have a backlog of legal review requests from multiple entities and that legal review can sometimes be delayed as a result, so formally documenting requirements for legal review of contracts could potentially hold the court to standards that would be difficult to uphold in practice. However, the executive officer was unable to demonstrate that

such a backlog had prevented the court from obtaining legal review in a timely manner. Therefore, we believe the court's reason for not having a recommended legal review policy is inadequate, and the executive officer indicated that the court is open to adding a legal review policy in its local contracting manual.

The Alameda and Lake Courts Did Not Include a Contract Administration Plan in Their Local Contracting Manuals

Neither the Alameda nor the Lake courts included a recommended plan for administering contracts (contract administration plan) in their local contracting manuals. The purpose of such a plan is to detail the court's contract administration practices and establish clear lines of authority for the management and conduct of contract administration functions—information that should help staff members perform their duties appropriately. For example, the San Bernardino court's local contracting manual refers to the judicial contracting manual's guidance on contract administration; it then supplements that guidance with additional information, such as clarifying that the staff member who fulfills the role of contract administrator is responsible for notifying the State Auditor of high-value contracts. The director of finance and facilities at the Alameda court stated that the contract administration plan was inadvertently omitted from the current local contracting manual during revision and, as we described above, she attributed the court's failure to notify our office of high-value contracts in part to a lack of knowledge on behalf of the responsible individuals. A contract administration plan that addressed contract administration practices and management could have prevented this lack of knowledge. The director of finance and facilities agreed that it is a good practice to include the contract administration plan in the local contracting manual, as the judicial contracting manual recommends, and said the court will do so.

An administrative services manager at the Lake court explained that the court did not include a contract administration plan in its local contracting manual because the court has a very limited number of staff members involved with contract administration activities and including such a plan is not a mandatory provision. However, having a contract administration plan as recommended by the judicial contracting manual could help the court ensure that knowledge of those activities transfers effectively when staff members transition in or out of key roles, particularly if a transition should occur unexpectedly. The Lake court's executive officer stated that the court would review the judicial contracting manual and consider updating the local contracting manual to incorporate the recommended contract administration plan.

Recommendations

Alameda County Superior Court

To ensure appropriate administration and review of its contracts, by July 1, 2021, the court should revise its local contracting manual to include a contract administration plan and legal review policy, as recommended by the judicial contracting manual.

Lake County Superior Court

To ensure appropriate administration of its contracts, by July 1, 2021, the court should revise its local contracting manual to include a contract administration plan, as recommended by the judicial contracting manual.

OTHER AREA WE REVIEWED

To address the audit requirements contained in the judicial contract law, we also reviewed a selection of each court's contracts to assess whether each court complied with applicable requirements. Table 2 shows the results of our review.

Table 2

Other Area We Reviewed as Part of This Audit

The Courts We Reviewed Generally Complied With Other Procurement and Contracting Requirements

We reviewed a selection of contracts for each court to determine whether the courts adhered to requirements for awarding contracts. We examined 50 contracts (10 from each court) that were active during fiscal year 2019–20 and were worth approximately \$84 million in total value. We determined that all five courts met procurement and contracting requirements set forth in the judicial contracting manual and each court's local contracting manual. Courts competitively awarded 48 percent of the contracts we reviewed, totaling \$45 million in value. For all such contracts, the courts either achieved competition by securing multiple bids or made a reasonable effort to achieve competition by advertising the contracting opportunities. The remaining contracts we reviewed, worth \$39 million, were noncompetitive. For those contracts, the courts met applicable requirements from the judicial contracting manual, such as documenting the justification for using a sole-source procurement to obtain goods or services from only one vendor.

We conducted this audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code 8543 et seq. 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 the audit objectives. 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
California State Auditor

January 14, 2021

APPENDIX

Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in the judicial contract law. Our audit focused on the superior courts in Alameda, Contra Costa, Lake, Orange, and San Bernardino counties. The Table below lists the audit objectives and the methods we used to address them.

Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state law and the judicial contracting manual, as well as each court's policies and procedures.
2 Based on risk factors specified in the judicial contract law, identify five judicial branch entities, excluding the Judicial Council, for audit to assess their implementation of the judicial contract law.	Evaluated all 58 California superior courts and ranked them based on the following: significant changes that have occurred since 2018 that may impact compliance with the judicial contract law; the amount of time since they were last audited by our office or the Judicial Council and previous audit results or known deficiencies; significant changes in management or employee turnover; the complexity and size of the courts and their existing contracting practices and procedures; the volume and type of procurements made by the courts relative to total judicial branch procurements and to county populations; and substantial changes to the number and amount of total procurements from fiscal years 2018–19 to 2019–20.
3 For the five superior courts selected for this audit, perform the following: <ol style="list-style-type: none"> a. Determine whether each court has developed its own local contracting manual and assess its conformance to the judicial contracting manual. b. Assess each court's compliance with key safeguards related to procurement and contracting in the judicial contracting manual and its local contracting manual, including those related to competitive bidding, sole-source contracting, and payment and deliverable review and oversight. c. Evaluate each court's contracts to determine whether it may have inappropriately split contracts to avoid obtaining necessary approvals or compliance with competitive bidding requirements. d. Review the appropriateness of each court's CAL-Card or other court-issued purchase card transactions when the value of those transactions meets a certain threshold. 	<ul style="list-style-type: none"> • Obtained versions of each court's local contracting manual that were applicable during fiscal year 2019–20 and assessed whether the local contracting manuals conformed to the judicial contracting manual's requirements and recommendations. • Based on factors including contract value and type of goods or services procured, judgmentally selected 12 contracts for each court that were active in fiscal year 2019–20 using the Judicial Council's <i>Semiannual Report on Contracts for the Judicial Branch</i> (semiannual report) for fiscal year 2019–20 or, for the Lake court, the court's ad hoc report of contracts active during that period. • Based on factors including payment value, judgmentally selected 18 payments for each court (12 payments associated with the contracts we selected and six not associated with those contracts) using a fiscal year 2019–20 payment report provided by each court. • To gain assurance that data used to select contracts and payments were complete, traced source documents to the reports we used for selection. Determined the payment reports were generally complete, although we could not trace source documents to the Orange court's payment report because the Orange court does not maintain paper payment records. Determined the semiannual reports were generally complete for the Alameda, Contra Costa, Orange, and San Bernardino courts but incomplete for the Lake court. Obtained an alternative data source, the Lake court's ad hoc report of contracts, to mitigate the risk of selecting contracts from incomplete data.

continued on next page...

AUDIT OBJECTIVE	METHOD
	<ul style="list-style-type: none">• For each court, reviewed 10 contracts and 10 payments (six associated with contracts we selected and four not associated with those contracts) against key requirements and safeguards identified in our review of the judicial contracting manual, local contracting manual, and other relevant policies and procedures. Followed up with court staff to determine the cause of any exceptions.• If exceptions in the first 10 items warranted further review of a court's contract or payment processes, reviewed additional items. Reviewed 10 contracts for each of the five courts; 10 payments for the Contra Costa, Lake, Orange, and San Bernardino courts; and 18 payments for the Alameda court.• For each court, used the semiannual reports and the court's list of active contracts to identify contracts newly valued over \$1 million in fiscal year 2019–20. For any such contracts, reviewed the contracts and courts' documentation of notifications sent to our office. In cases where the courts did not notify us of the contracts as required, interviewed court staff to obtain information about why we were not notified.• Used the semiannual reports and the Lake court's ad hoc contract report to identify instances when courts may have split contracts. For the identified instances, we evaluated additional information, such as payment reports and contract documents, to identify whether a court entered into contracts with the same vendor for similar goods or services during the same time frame for the purposes of avoiding competitive bidding. Determined there was no evidence indicating that any of the five courts split contracts.• Determined whether each court used purchase cards and reviewed monthly purchase card statements for transactions that appeared questionable based on the amount or vendor. Based on factors including transaction value, reviewed a judgmental selection of six transactions at each of the three courts whose total value of fiscal year 2019–20 purchase card transactions met our threshold for review. For the selected transactions, reviewed purchase requisitions and receipts, and interviewed court staff to further assess any transactions that appeared questionable.

Source: Analysis of state law and information and documentation identified in the column titled Method.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Executive Office

René C. Davidson Courthouse • 1225 Fallon Street, Oakland, CA 94612
(510) 891-6012

TARA M. DESAUTELS
Presiding Judge

CHAD FINKE
Executive Officer

ELIZABETH ERICKSON
Assistant Executive Officer

December 16, 2020

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

Dear Ms. Howle,

The Superior Court of California, County of Alameda (Court) has reviewed the findings and recommendations included in the California State Auditors draft report titled “Judicial Branch Procurement: Courts Generally Met Procurement Requirements, But Some Need to Improve Their Payment Practices.”. The Court agrees with the recommendations contained in the report and has provided our response to the recommendations, as detailed below.

Recommendation:

To ensure that it expends public funds appropriately, the court should immediately require staff to match invoices to appropriate supporting documentation and to adhere to the established authorization limits when approving invoices.

Alameda Court Response:

The Court intends to revise its invoice approval authorization limit matrix and update to our invoice approval signature cards, accounts payable staff desk manual, and the local contracting manual, as appropriate.

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Additionally, a revision will be made to invoice code strips to include accounts payable staff verification and acknowledgement of invoice and supporting documentation matching prior to payment processing.

* California State Auditor's comment appears on page 29.

Elaine M. Howle
December 16, 2020
Page 2

Recommendation:

To comply with the requirements of state law, each court should immediately implement policies and procedures for notifying the State Auditor within 10 business days of entering into all contracts with estimated values over \$1 million, except those contracts exempted from the notification requirement in state law.

Alameda Court Response:

The Court has amended its contract review form to identify contracts valued over \$1 million and has begun to notify the State Auditor of contracts meeting the threshold in compliance with state law. The local contract manual will also be revised to include information about the notification requirement, as this was inadvertently omitted from the most recent version of the local contract manual.

Recommendation:

To ensure appropriate administration and review of its contracts, by July 1, 2021, the court should revise its local contracting manual to include a contract administration plan and legal review policy, as recommended by the judicial contracting manual.

Alameda Court Response:

The Court will revise its local contract manual to include a contract administration plan and legal review policy.

We would also like to thank your staff for the professional, respectful, and courtesy manner in which they conducted themselves when working with our staff, during the audit process.

Sincerely,



Chad Finke,
Court Executive Officer

cc: Hon. Tara M. Desautels, Presiding Judge
Elizabeth Erickson, Assistant Executive Officer
Melanie Lewis, Finance & Facilities Director

COMMENT

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

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

The Alameda court's intention to revise and update its authorization limits does not address our concern that it has not required staff to adhere to authorization limits when approving invoices. As noted on page 10, we found that despite having established authorization limits in place for approving invoices, the court allowed staff to disregard these authorization limits when approving invoices. Such actions undercut the court's management controls designed to reduce its risk of making inappropriate payments. Instead, the court should take steps to ensure that court staff adhere to authorization limits when approving invoices.

(1)

Superior Court of California

COUNTY OF CONTRA COSTA
725 COURT STREET
P.O. BOX 911
MARTINEZ, CA 94553-0091



December 14, 2020

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

Dear Ms. Howle,

Thank you for the opportunity to review and respond to the draft audit report titled *Judicial Branch Procurement: Courts Generally Met Procurement Requirements, But Some Need to Improve Their Payment Practices*. The Contra Costa Superior Court (Court) is responding to the following recommendation:

To comply with the requirements of state law, each court should immediately implement policies and procedures for notifying the State Auditor within 10 business days of entering into all contracts with estimated values over \$1 million, except those contracts exempted from the notification requirement in state law.

We agree with the above recommendation. The Court already has a process in place to track the value of its contracts in order to notify the State Auditor whenever a contract exceeds \$1 million, or the total value of a contract and subsequent amendments reaches \$1 million. The report identified one Memorandum of Understanding (MOU) with the County of Contra Costa (County) for over \$1 million that was not notified. We entered into this MOU in 2016 to detail out the terms and conditions for information technology services that the County has continued to provide after the Court separated from the County as a result of the Lockyer-Isenberg Trial Court Funding Act of 1997. The Court will update its tracking process to include the tracking of MOUs to ensure notification to the State Auditor when the total value of purchase orders issued or to be issued against MOUs exceeds \$1 million or is estimated to exceed \$1 million. We plan to complete this process update by February 28, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Bieker".

Kate Bieker, Court Executive Officer
Superior Court of California, County of Contra Costa

cc.

Hon. Barry Baskin, Presiding Judge
Superior Court of California, County of Contra Costa



Superior Court

MICHAEL S. LUNAS

State of California

County of Lake

255 N. Forbes Street

KRISTA D. LEVIER

December 16, 2020

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

Re: Response to Draft Audit Report

The Superior Court of California for the County of Lake (Court) has reviewed your draft audit report pertaining to our procurement and contracting practices. The audit is required by the Public Contract Code and the Court greatly appreciates the professionalism and work of the audit team. The Court is pleased with the draft report's overall positive conclusion that the Court generally met procurement requirements, as evidenced by the limited number of audit findings. The State Auditor's draft report provides the Court with two recommendations, which are addressed below.

Recommendation #1 – Segregation of Duties

During its fieldwork, the audit team reviewed a sample of invoices and resulting payments to vendors for various contracts and purchase orders. The draft report takes issue with the Court's segregation of duties when processing and ultimately approving these payments. Specifically, the audit team notes that the individual who approves an invoice for payment also approves the equivalent entry in our Phoenix accounting system through the "posting" of the transaction. The Court will carefully consider the audit team's recommendation to further segregate these functions and will consult with the Judicial Council's accounting and procurement staff when deciding on any corrective action that is necessary.

For context and clarity, the Court has already segregated the duties for many of its key purchasing and accounting activities prior to the audit. For example, the Court has different

* California State Auditor's comment appears on page 35.

- ① individuals who: (1) initiate purchase requisitions and confirm the receipt of goods, (2) match vendor invoices to the pricing and terms of the relevant contract or purchase order, and (3) ultimately approve payments to vendors. Importantly, the individual approving payment—the focus of this audit finding—does not maintain the master vendor file in the accounting system and thus cannot create fictitious vendors. Further, the payment approver can only approve accounting transactions entered by someone else and cannot both self-initiate (i.e. “park”) a transaction and then approve (“post”) it on her own. The Court believes its current internal control structure significantly limits the risk of any single individual creating or concealing payment errors. Nevertheless, the Court welcomes the audit team’s observations as an opportunity to further review and potentially enhance its internal controls.

Recommendation #2 – Local Contracting Manual

Section 19206 of the Public Contract Code requires the Judicial Council to adopt a *Judicial Branch Contracting Manual* and for the Court to similarly develop a local contracting manual that is consistent with state law and is substantially similar to the provisions contained in the *State Administrative Manual* and *State Contracting Manual*. The audit team recommends that the Court update its local contracting manual to include a contract administration plan in order to ensure staff have sufficient guidance on duties related to the management and administration of contracts. The Court agrees with the recommendation and intends to update its local manual on or before July 1, 2021.

Again, the Court and its management team appreciates the work of the State Auditor’s staff and views the audit as an important tool for transparency and for promoting continual improvement in our procurement practices. Please feel free to contact me at (707) 263-2575 should you have any questions regarding the Court’s response.

Sincerely,



Krista D. Levier
Court Executive Officer

COMMENT

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

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

The Lake court's response indicates that the court believes it has significantly limited its risk through its current approach to segregation of payment duties, but as we indicate beginning on page 10 in the report, the executive officer still performed two payment duties, and a process that does not fully separate payment duties is inherently higher in risk than one that does. Further, although the court did include additional safeguards in some instances, it did not consistently do so. Therefore, to further reduce the risk of making improper payments, the court should consistently incorporate an additional safeguard when it cannot fully separate payment duties.

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Superior Court of California County of Orange

DAVID YAMASAKI
COURT EXECUTIVE OFFICER
CLERK OF THE COURT
JURY COMMISSIONER

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CALIFORNIA 92701
PHONE: 657-622-7017

December 16, 2020

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

Re: Orange County Superior Court's Written Response to "Judicial Branch Procurement: Courts Generally Met Procurement Requirements, But Some Need to Improve Their Payment Practices" Report 2020-301

Dear Ms. Howle:

This letter is the Orange County Superior Court's written response to the "Judicial Branch Procurement: Courts Generally Met Procurement Requirements, But Some Need to Improve Their Payment Practices" Report 2020-301 received from you on December 10, 2020.

The Orange County Superior Court ("Orange Court") values strategic planning, careful execution, and regular monitoring and adjustments through extensive use of data analytics. Our comprehensive approach has many checks and balances and internal controls that help to not only minimize the risk of inappropriate use of funds, but more importantly, ensure optimal use of funds that are well aligned with the Orange Court's strategic goals and mission.

The Orange Court's strategic goals include enhancing access and use of data-driven decision making for continuous improvement. The audit conducted by the California State Auditor's office of our procurement practices was helpful in reviewing our existing processes and internal controls, consistent with our goal of continuous improvement. It is important to note that the areas audited is a subset of a continuum of end-to-end internal controls and monitoring process utilized by the Orange Court that includes strategic planning, budget development, expenditure monitoring, project ideation and prioritization, resource allocation, procurement, automated work flow purchase approvals, and extensive use of interactive dashboards:

- 1) The Orange Court has an extensive strategic planning process that is the foundation for the annual budget and expenditure plan, which is developed with input from approximately 65 cost center managers with review and approval from the Orange Court's executive management team, finance committee, executive committee, and the Presiding Judge.
- 2) The annual expenditure plan is routinely monitored by cost center managers through interactive Power BI dashboards that integrate near real time information from the State's SAP Financial System.
- 3) These expenditures are also monitored by a dedicated team of budget analysts who work closely with the cost center managers.

* California State Auditor's comments appear on page 41.

Superior Court of California
County of Orange

December 16, 2020

Page 2

- 4) In addition, a monthly dashboard of the budget, actuals to date, variances, and revised budget projection is shared by the Chief Financial and Administrative Officer with the executive management team and the Presiding Judge (PJ) and Assistant Presiding Judge (APJ).
- 5) These interactive dashboards are available on the Orange Court's intranet site to all cost center managers, executive management team, and PJ / APJ.
- 6) Coupled with this process, the Orange Court has developed an in-house invoice approval workflow process that has been in place since 2017. This workflow system ensures a stringent approval process and documents the entire invoice approval process.
- 7) The Orange Court also implemented a 3rd party portfolio management tool to capture project ideas and to track medium to large scale projects that typically involves a public bid process administered by our procurement team. This is in addition to the existing contract management system utilized by the Orange Court that automatically notifies the CA State Auditor's office of contracts above \$1 million when statutorily required.

I. The Orange Court Did Not Always Follow Payment Safeguards, Increasing the Risk of Improper Payments

The Orange Court concurs with the recommendation in the Report and will revise our payment process to consistently require two levels of approval for all invoices above a certain dollar limit. Generally, invoices greater than \$50,000 are approved by both a cost center manager and a department chief. The Orange Court developed and implemented an extensive accounts payable approval workflow process that has been in place for several years. This workflow system ensures a stringent approval process and documents the entire invoice approval process. The \$160,000 payment highlighted in the Report was an exception to our process that was put in place with Presiding Judge and executive management approval to balance confidentiality and timely payments for attorneys providing representation for children and families (juvenile dependency counsel). The Orange Court is committed to continuous improvement and will explore options to incorporate alternate defense billing invoices into our accounts payable approval process to ensure we have at least two approvals for any invoice above a certain dollar threshold.

II. Court Failed to Consistently Report High-Value Contracts

- ① The Orange Court concurs in part and rejects in part the State Auditor's conclusions and recommendations that the Orange Court failed to consistently report high-value contracts.
- ② The Orange Court acknowledges that it did not achieve 100% compliance in reporting all high-value contracts per state law as shown in the instance of 2 of the 10 contracts reviewed by the State Auditor, and that it should implement enhancements to its existing policies and procedures for notifying the State Auditor within 10 business days of entering all contracts with estimated values over \$1 million, except for those contracts exempted per state law.
- ③ However, the Orange Court rejects as inaccurate and unfair the characterization that it failed to consistently report high-value contracts per state law and should immediately implement policies and procedures for notifying the State Auditor within 10 business days of entering all contracts with estimated values over \$1 million when statutorily required. This description portrays the Orange Court as not complying time after time with the state law requirement to notify the State Auditor within 10 business days of entering all contracts with estimated values over \$1 million and operating without any policies or procedures for such compliance.

Superior Court of California

County of Orange

December 16, 2020

Page 3

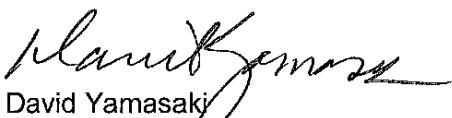
The Orange Court added its automated K2 BSA notification workflow to its existing Contract Management Data System (CMDS) in 2012 to reduce its risk of noncompliance with the state law requirement that each court notify the State Auditor within 10 business days of entering a contract with an estimated value over \$1 million unless exempt per state law. The Orange Court's automated K2 BSA notification workflow requires Procurement Staff to enter the same contract information for all signed, written contracts into CMDS from SAP for the automated K2 BSA statutory notification to be sent to the State Auditor.

In the first instance where the State Auditor found that the Orange Court failed to report an IT purchase order contract valued at \$1.2 million entered in fiscal year 2019-20, this failure was due to an unintentional error in not entering the purchase order contract information into CMDS for the automated K2 BSA statutory notification to be sent to the State Auditor. The Orange Court had issued a purchase order on its form for this procurement per California Cooperative Agreement No. 7-14-70-04. As the Cooperative Agreement itself was the existing written contract, Procurement Staff did not draft and have a separate written contract signed. Since a separately signed, written contract did not exist for this purchase order, Procurement Staff did not process the purchase order information into CMDS in the typical way a separately signed, written contract would have been, and consequently, the K2 BSA system did not have the information to generate and send a statutory notification to the State Auditor. To reduce the risk of recurrence of such an instance, Orange Court Procurement has added the following narrative to its existing CMDS workflow process: "Enter all approved POs with an Overall Contract Value of more than \$1 million into CMDS, regardless of whether the Court signed a written contract for the PO so that the Court's automated system can send the requisite BSA Notice to the State Auditor."

In the second instance where the State Auditor found that the Orange Court failed to report a legal services contract worth \$4.3 million in fiscal year 2019-20, this failure was due to human error when entering the contract information into CMDS. The Orange Court is currently researching the implementation of appropriate process enhancements to further reduce the risk of human error that could result in noncompliance with the state law requirement to notify the State Auditor within 10 business days of entering a contract with an estimated value over \$1 million when statutorily required. This research includes the accessibility of exportable contract data from SAP and CMDS for review and comparison at regular intervals to verify compliance with the state law requirement.

Thank you for your time and consideration.

Sincerely,



David Yamasaki
Court Executive Officer

COMMENTS

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

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

The court's partial rejection of our conclusions and recommendations is inconsistent with both its acknowledgment that it did not notify us about all contracts as required by state law, and its indication that it will take additional action to ensure future compliance with the requirement. We stand by our conclusions and recommendations and provide further comments on the Orange court's response below.

The court's response that it did not achieve 100 percent compliance as shown in the instance of two of 10 contracts we reviewed indicates a misunderstanding of our work in this area. On page 16, we explain that the court notified of us about two high-value contracts that were subject to the requirement but did not notify us about another two. We reviewed the court's compliance with the legal requirement to notify us about high-value contracts by identifying such contracts in fiscal year 2019–20 contract reports we obtained from the Judicial Council and the court. This was in addition to and distinct from our review of a selection of 10 of the court's fiscal year 2019–20 contracts to determine whether the court adhered to requirements for awarding contracts, the results of which we summarize on page 23.

Our conclusion that the court failed to consistently report high-value contracts per state law is accurate and fair. We explain on page 16 that the court notified us about two such contracts but did not notify us about two others, which the court acknowledges in its response. Also, we do not state that the court was operating without any policies or procedures for complying with the notification requirement. Rather, as we describe on page 16, although the court was aware of the notification requirement and reported certain high-value contracts to our office, it did not do so in all cases for the reasons we note. Although the court does have policies and procedures in place for complying with the notification requirement, it needs to update its procedures to address the deficiencies we describe and ensure it notifies us about all contracts as required by law. We stand by our recommendation that it should do so.

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Superior Court of California County of San Bernardino

NANCY CS EBERHARDT
Court Executive Officer and Clerk
Jury Commissioner

247 West Third Street, Eleventh Floor
San Bernardino, CA 92415-0302

(909) 708-8747

December 16, 2020

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

Dear Ms. Howle:

Thank you very much for the opportunity to review the draft audit report performed in accordance with Public Contracting Code (PCC) sections 19201 through 19210. The audit team was extremely professional, responsive, and courteous and the audit process went smoothly, despite the varied challenges presented by the COVID-19 (coronavirus) pandemic.

In response to the draft report, the Superior Court of California, County of San Bernardino (Court) respectfully submits some additional clarification regarding the reporting of two benefit contracts and disagrees with the finding. As stated in the draft report, the Court was working under prior direction and interpretation that benefit contracts did not need to be reported pursuant to section PCC 19204, as the code specifically references "goods and services." This interpretation was premised upon both the Judicial Council of California's staff guidance and a local understanding related to other requirements regarding benefits.

①

Benefit contracts are unique from other "services" provided under contract in that they are required as a condition of employment and subject to the terms of negotiated contracts with local labor unions. In the instance of both benefit contracts, the Court adhered to all local policies, procedures, and agreements with local labor unions. Also of note, the table presented as background information regarding the audit excludes these contract amounts as they are not included in the portion of the general ledger coding string for operating expenditures and equipment ("goods and services"); rather, they are included as part of employee benefit costs. The interpretation issue was related to "service", as benefits are required both locally per existing bargaining agreements and personnel policies and under California law.

②

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

December 16, 2020
Page 2 of 2
CSA Audit Response

- ① Additionally, the Court would like to note that immediately upon being advised that the benefit contracts were included as part of PCC 19204 reporting requirements, they were reported to the California State Auditor, and the court adjusted its internal policies accordingly to ensure future compliance.

Respectfully,


Nancy CS Eberhardt
Court Executive Officer

NCSE:ks

COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

To provide clarity and perspective, we are commenting on the San Bernardino court's response to our audit. The numbers below correspond to the numbers we have placed in the margin of the San Bernardino court's response.

It is unclear why the San Bernardino court states that it disagrees with our finding since it acknowledges that it has now notified our office about the medical benefit plans contracts in question, and has revised its policies to ensure future compliance with the notification requirement in state law. Moreover, as we describe on page 17, the court's contracts and procurement manager explained that the court had misinterpreted direction from a Judicial Council staff member about whether contracts for services such as medical benefit plans were subject to the notification requirement in state law, and she indicated the court now properly understands the requirement. The clarification the court provides in its response regarding its earlier misinterpretation does not alter our conclusion that it failed to consistently report high-value contracts as required by state law.

State law establishes which contracts are subject to the notification requirement. As we describe on page 5, the law generally requires courts to notify our office of high-value contracts for goods and services and excludes only certain contracts from that requirement, such as trial court construction contracts. Of the exclusions provided in the law, there is no exception to the notification requirement related to contracts for medical benefit plans or for employment-related contracts that are required by state law. Further, the court did not cite any authority excluding these types of service contracts in its response. The table to which the court refers is unaudited background information obtained from reports provided by the Judicial Council. That information is not relevant to our finding that the court incorrectly exempted two contracts from the notification requirement set forth in state law.

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(2)