



Administrative Office of the Courts

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John D. Minton, Jr.
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June 8, 2022

Sen. Danny Carroll
Rep. Jason Nemes
Legislative Oversight & Investigations Committee, Co-Chairs
Kentucky State Capitol
Frankfort, KY 40601

Re: Response to Legislative Oversight and Investigations Committee's Judicial Contracting Study

Dear Chair Carroll and Chair Nemes:

The Administrative Office of the Courts (AOC) appreciates the opportunity to respond to the findings and recommendations of the Legislative Oversight and Investigations Committee's (the Committee) Judicial Contracting Study. The AOC agrees in part or in whole with the findings of the Committee and welcomes the Committee's perspective and recommendations. The AOC is proud of the progress it has made in implementing the 2018 recommendations of the Auditor of Public Accounts and is committed to making continued improvements to increase transparency and accountability in its fiscal operations. We appreciate the valuable feedback received during this process, which we are already using to help shape AOC policies and procedures currently under development, and particularly appreciate the professionalism with which Committee staff undertook this study.

Responses to specific recommendations of the Committee are below:

Recommendation 1: The Administrative Office of the Courts should consider implementing an additional preventive control to prevent cardholders from making excessive or unnecessary purchases. For example, approvals via emails or documented verbal approvals could be used to strengthen the overall internal control framework.

Agency Comments:

Only 35 judicial branch officials and employees are assigned Judicial Branch Procurement Cards (ProCards). Of those 35, ten are management level employees and six are employed by the Department of Financial Services (DFS) and assigned the task of purchasing

commodities and services or making travel accommodations for judicial branch officials and employees. Prior management approval documented on an AOC-3 form is required before a DFS employee makes a ProCard purchase. The AOC currently documents all other ProCard purchases in OnBase, a document management system. The OnBase workflow requires that each purchase be approved by the cardholder, the cardholder's manager, and the ProCard Administrator. If either the manager of the ProCard Administrator makes a determination that the purchase was not necessary to conduct the business of the KCOJ, was excessive, or was not made in accordance with the AOC's procurement policies, the cardholder is required to reimburse the KCOJ for the purchase and has agreed to do so in the Cardholder Agreement. Additionally, some departments require advance approval of management prior to making a purchase with a ProCard.

The AOC agrees with the Committee's recommendation that additional preventive controls could assist in preventing cardholders from making excessive or unnecessary purchases and plans to include a provision in the *Kentucky Judicial Branch Procurement Card Program Policies and Procedures Guide* (December 2020) requiring purchases of \$500 or more made by non-management employees to have prior verbal approval of the cardholder's manager, to be documented in the OnBase system after the purchase is made. Per AOC.001, *Policies and Standard Operating Procedures*, manuals such as the *Kentucky Judicial Branch Procurement Card Program Policies and Procedures Guide* must be reviewed every three years for revisions.

Recommendation 2: The Administrative Office of the Courts should consider amending AP XIX, Sec. 3 Office of Audits, (C) Division of Internal Audit, (1) to formally state that Internal Audit is the designated reporting entity for allegations of waste, fraud, and abuse.

Agency Comments:

The judicial branch's mechanism for reporting allegations of waste, fraud, and abuse is addressed in both AP Part XIX and in AP Part III *Personnel Policies for the Court of Justice*. The AOC Office of Audits, Division of Internal Audit is the entity that receives and reviews allegations of waste, fraud, and abuse through the judicial branch tipline. The failure to formally designate the Division of Internal Audit as the reporting entity was an oversight, and the AOC agrees that AP Part XIX and AP Part III should be amended to formally state that the Office of Audits is the designated reporting entity for allegations of waste, fraud, and abuse. The AOC will make those recommendations to the Supreme Court at the next review of those Rules of Administrative Procedure. Per AOC.001, *Policies and Standard Operating Procedures*, Rules of Administrative Procedure must be reviewed every three years for revisions.

Recommendation 3: If the Administrative Office of the Courts intends to allow Requests for Bids to be initiated without a request form, exceptions should be entered into policy. Otherwise, request forms should be maintained for Requests for Bids.

Agency Comments:

The AOC agrees with Recommendations 3-7 made by the Committee and believes that implementation of its new, electronic eRequisition system in OnBase, currently planned to pilot in August, 2022, will provide effective internal controls to correct the issues noted by the Committee. While the AOC generally agrees with this recommendation, the AOC would like to clarify that when the Procurement Division received a request without an associated, completed form, the Procurement Division required management of the requesting department and the Budget Director to sign the final contract, evidencing approval of the purchase.

The eRequisition system, which will replace the AOC-3 and 19.1 forms and the eRequest OnBase system, will require the following workflow and prevent a requisition from being submitted to the Procurement Division without the required information and approvals:

1. End users will enter requisitions into the system, but the system will not allow the request to be submitted until a scope of work or specifications and an estimated cost are entered.
2. All requisitions must be approved by a judicial branch official or employee with documented Requisition Authority.
3. Approved requisitions are sent to a request fulfillment team and reviewed to determine whether they can be filled with existing inventory and whether they meet standards.
4. All requisitions requiring new purchases of technical equipment / software / services and all other requisitions resulting in purchases over \$1,000 will be directed to the Budget Director for approval.
5. The requisition is then submitted to the Department of Financial Services for processing. The judicial buyer or procurement officer documents whether the purchase is:
 - Made pursuant to an existing state price contract, GSA contract, or approved cooperative purchasing agreement; or
 - From a 501(c)(3) nonprofit entity or government agency; or
 - A small purchase; or
 - A competitive bidding exception.
6. Competitive bidding exceptions are routed for approval of the Executive Officer of Financial Services or the Director of Finance and Administration in OnBase.
7. If a new competitive solicitation must be issued, the manager of the Procurement Division will assign the requisition to a procurement officer to issue a solicitation.

Updated forms and templates are also being developed to be used by the Department of Financial Services in connection with the new AOC.005 *Procurement of Commodities and Services*, including a bid tabulation template, determination and findings templates, and responsiveness and responsibility review templates. Training will be provided to employees in June/July 2022.

All requisition documentation will be stored in the OnBase document management system. Final contracts and all solicitation documents are digitized and stored in SharePoint.

Recommendation 4: If the Administrative Office of the Courts intends for Requests for Proposals to be initiated after the closing of a prior contract or through verbal request, those exceptions should be entered into policy. Otherwise, Requests for Proposals should be required to initiate a new contract following an expired contract or to document a verbal request.

Agency Comments:

See agency comments in response to Recommendation 3.

Recommendation 5: The Administrative Office of the Courts should ensure correct forms are used for submitting contract information.

Agency Comments:

See agency comments in response to Recommendation 3.

Recommendation 6: The Administrative Office of the Courts should establish stronger practices to meet documentation requirements in its own policies. Specially, request forms should be maintained unless using a competitive exception or existing procurement vehicle. Competitive bidding exception documentation should be maintained from the time of the request.

Agency Comments:

See agency comments in response to Recommendation 3.

Recommendation 7: The Administrative Office of the Courts should ensure that all files are digitized in a timely manner to avoid losing files.

Agency Comments:

See agency comments in response to Recommendation 3.

Recommendation 8: If a selection committee member indicates there is a conflict of interest, Administrative Office of the Courts staff should ensure the conflict is documented and should also document whether the committee member was allowed to serve.

Agency Comments:

The AOC agrees with this Recommendation. Although the particular Conflict of Interest form discussed in the finding was completed in error and there was no actual conflict of interest in that case, the procurement officer should have noticed the error and followed up to

have it corrected. The AOC will include in AOC.005 *Procurement of Commodities and Services* a requirement that procurement officers document whether a committee member who reports a conflict was allowed to serve, and will provide additional training to staff.

Recommendation 9: The Administrative Office of the Courts should move forward with minimizing the use of general accounting expenses outside of telephone, internet, utility, and mail services.

Based on the FY 2023 procurement policy, AOC intends to use GAXs for “invoices as approved by the OFA Director.” This exception allows for additional uses of GAXs outside the standard categories and may burden the director with approval requests. To reduce the possibility of increase GAX use issues, AOC should consider which GAX purchases would be suitable for director approval.

Agency Comments:

The AOC agrees with this recommendation and has revised the draft AOC.005 *Procurement of Commodities and Services* to require that all POs and DOs be paid by PRC documents. Section 23.5 of the draft policy currently provides: “GAX documents may only be created to pay invoices associated with reimbursements, telephones, internet, utilities, or mail services.” No exceptions are included.

While the AOC shares the Committee’s opinion that reducing GAX payments provides better reporting capabilities and transparency, the AOC appreciates this opportunity to clarify the current practices of the AOC and the AOC’s vision for the future of GAXs within the judicial branch.

The AOC’s historical practice of using GAXs to pay for expenditures other than reimbursements, telephones, internet, utilities, and mail services derives from the AOC’s use of a stand-alone Purchase Order Database (“PO Database”), an in-house application developed by the AOC Office of Information and Technology Services to create and issue Purchase Orders (POs). The AOC historically has not differentiated POs from Delivery Orders (DO), and instead has issued POs for small purchases, purchases from existing AOC master agreements, purchases from state price contracts, and purchases from GSA agreements. All of those POs are created in the PO Database, which contains fields for quote number, description, item number, quantities, units of measurement, prices, type of purchase (cited authority), date received, invoice date, and eMARS pay document number, among other fields. AOC users can run reports showing purchases made against an existing contract vehicle or small purchases, which can be used to track small purchase amounts per vendor. (Which has historically been important because the AOC’s small purchase authority of \$50,000 has historically been based on a maximum spending of \$50,000 per vendor per year and *not* per purchase.) The AOC Property Accountability Unit also uses the PO Database to run reports identifying taggable commodities.

Because the AOC uses a separate, stand-alone database, there would be redundancies created with entering the same information into eMARS to create separate award documents such as POs/DOs in eMARS. AOC staff, who were unable to receive eMARS training through “My Purpose” until the last year, were unaware that stand-alone PRCs could be used to pay POs originating outside of eMARS.

While the judicial branch is not required to use eMARS in the same manner as the executive branch, the AOC agrees that using eMARS in a manner that is more consistent with the way it was intended to be used would allow for greater transparency and for more robust reporting capabilities. As such, the AOC has been proactively looking at ways to eliminate GAX documents in eMARS. With the exception of payments for POs, there are currently very few items being paid by GAX that are not associated with reimbursements, telephones, internet, utilities, or mail services. Steps recently taken and steps planned to reduce GAX payments include:

- AOC has sought eMARS training through “My Purpose” and directly from the Controller’s office;
- For the last six months, the AOC Director of Finance and Administration has conducted weekly meetings with Department of Financial Services management to discuss resolution for invoices presented that week for payment that were not associated with reimbursements, telephones, internet, utilities, mail services, or active contracts or POs. Through this process, the Department of Financial Services has been able to educate end user departments about alternative ways of purchasing items (i.e. by using a ProCard or requesting a PO).
- The Accounting Services Manager is also responsible for providing quarterly GAX reports to the Director of Finance and Administration to document all GAXs created for the previous quarter.
- Effective July 1, 2022, the AOC will begin differentiating between POs and DOs in the PO Database.
- All POs and DOs will be paid with stand-alone PRCs in eMARS in FY2023.
- Beginning in FY2024, the AOC will stop using the PO Database and will begin creating POs and DOs in eMARS.
- Effective 7/1/2022, GAXs will only be used to pay invoices associated with reimbursements, telephones, internet, utilities, and mail services.

Recommendation 10: To prevent increased general accounting expense use, Administrative Office of the Courts officials should create criteria or general categories for invoices that may be approved by the director of the Office of Finance and Administration for payment by general accounting expenses.

After implementing the FY 2023 policy, the director of the Office of Finance and Administration may still find circumstances where a stand-alone payment is necessary. When this occurs, AOC should strive to use a more appropriate PRC so there is not habitual use of GAXs. In the rare cases where GAXs are needed, the GAX should clearly indicate its purpose and there should be clear director approval.

Agency Comments:

The AOC agrees with this recommendation and has revised the draft AOC.005 *Procurement of Commodities and Services* to require that all POs and DOs be paid by PRC documents. Section 23.5 of the draft policy currently provides: “GAX documents may only be created to pay invoices associated with reimbursements, telephones, internet, utilities, or mail services.” No exceptions are included.

Recommendation 11: If stand-alone payments are still needed after implementing the FY 2023 procurement policy, Administrative Office of the Courts officials should determine if they can be replaced by stand-alone payment requests-commodity based documents so that general accounting expenses are typically used for intended processes.

Agency Comments:

The AOC agrees with this recommendation and has revised the draft AOC.005 *Procurement of Commodities and Services* to require that all POs and DOs be paid by PRC documents. Section 23.5 of the draft policy currently provides: “GAX documents may only be created to pay invoices associated with reimbursements, telephones, internet, utilities, or mail services.” No exceptions are included.

Recommendation 12: If stand-alone general accounting expenses are needed for an Office of Finance and Administration Director approved invoice, then the general accounting expenses description field should clearly indicate the purpose of the general accounting expense. If possible, the Office of Finance and Administration Director approval should be maintained in records.

Agency Comments:

The AOC agrees with this recommendation and has revised the draft AOC.005 *Procurement of Commodities and Services* to require that all POs and DOs be paid by PRC documents. Section 23.5 of the draft policy currently provides: “GAX documents may only be created to pay invoices associated with reimbursements, telephones, internet, utilities, or mail services.” No exceptions are included.

Recommendation 13: The Administrative Office of the Courts should review its general accounting expense expenditures for the past three years to identify areas where award documents can be established for the future. For example, a review of general accounting

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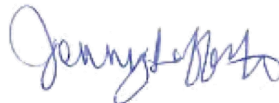
expense documents to identify repeated payments to certain vendors for professional services and commodities, could be used to consider whether using award documents could provide better competition and cost efficiencies. Also, using the Finance and Administration Cabinet's list of all state master agreements to identify appropriate awards could eliminate the time needed to research companies and receive quotes.

Agency Comments:

The AOC agrees with the Committee's opinion that award documents should be established prior to paying vendor invoices, except for appropriate GAX expenditures, but believes that steps have already been taken to ensure that award documents are in place for AOC. The AOC currently reviews invoices to ensure that an award document is established prior to issuing payment. (See response to Recommendation 9.) In addition to these weekly reviews, the AOC will also undertake a review of its general accounting expense expenditures for the past three years to determine whether additional areas exist where award documents can be established for the future. The AOC regularly uses the Finance and Administration Cabinet's list of all state master agreements to identify appropriate procurement vehicles.

Again, the AOC appreciates the time and efforts the Committee has dedicated to this study.

Sincerely,



Jenny Lafferty
Director of Finance and Administration, AOC

Cc: Laurie Givens, Director, AOC
Gerald Hoppmann, Committee Staff Administrator, LRC
William Spears, Committee Analyst, LRC