

Judicial Branch Contracting
Confidential Draft To Committee Members
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Legislative Oversight And Investigations Committee

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Abstract

This report reviews the processes by which judicial contracts were awarded from FY 2019 to FY 2021. Judicial contracts are established through the procurement process of the Administrative Office of the Courts (AOC). AOC serves as the administrative and fiscal arm of the court and includes an internal audit function that can independently review contracting processes. A 2018 examination of AOC by the auditor of public accounts (APA) produced 16 recommendations related to judicial contracting. Following the examination, AOC developed three sets of procurement policies. A new policy will be put into place in FY 2023. Real property lease policies are separately established through court administrative procedures. AOC has satisfactorily addressed the 16 procurement-related recommendations from the APA examination but could improve procurement card controls and more clearly define responsibility for waste, fraud, and abuse. AOC generally follows its own requirements for competitively bid contracts and real property leases but could improve handling of requirements for maintaining request forms, justifying competitive exceptions, and using correct forms. AOC has paid for millions of dollars of expenditures through stand-alone accounting documents, which are meant for reimbursements, utilities, postage, and agency specific authorities. This report has 13 recommendations.

Foreword

Legislative Oversight and Investigations Committee staff appreciate all those who provided assistance with this report. Officials from the Administrative Office of the Courts provided information, data, contract documents, and feedback. Finance and Administration Cabinet staff assisted Legislative Oversight staff with accessing the statewide accounting system and financial analysis system to conduct analyses of judicial contracts and expenditures.

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Summary

At its November 13, 2020, meeting, the Legislative Oversight and Investigations Committee voted to initiate a study of the processes by which judicial contracts are awarded. The Administrative Office of the Courts (AOC) is the administrative and fiscal arm of the Kentucky Court of Justice (KCOJ). AOC is responsible for all KCOJ contracting and purchasing; it administers the judicial branch budget and personnel policies; it maintains court facilities; and it provides educational programs for judges, circuit court clerks, and support staff.

For FY 2019 to 2021, the judicial branch's largest expenditures were for personnel costs. Of the 12 judicial branch functions, administration and local facility support expenditures were the largest, making up 89 percent of spending in FY 2021.

For FY 2019 to 2021, AOC used contracts for real property leases, price agreements, professional services, and goods and nonprofessional services. Contracts often came in below the maximum amount allotted for them within the individual contract, with FY 2021 contracts having an allowable spending of \$25.3 million and a recorded spending of \$5.1 million. AOC frequently uses the General Accounting Expense (GAX) document, a form of a stand-alone payment. Stand-alone payments prevent payments from adding to the cost of contracts. GAXs are meant to be used on reimbursements, utilities, postage, or other agency-specific authorities, but AOC uses them on other types of expenditures.

AOC's contracting and purchasing are administered by the Office of Finance and Administration, in which there are three departments: the Department of Financial Services, the Department of Budget, and the Department of Court Facilities. The Policy Unit, which also reports to the Office of Finance and Administration, develops policies, processes, and standard operating procedures for AOC. Policies adopted by the Director's Office apply to AOC but not to elected court officials or their employees. AOC also has an Office of Audits, which conducts internal audits of the court and manages the fraud, waste, and abuse tipline.

Contracting requirements for the Kentucky Court of Justice are primarily set through internal policies and through Rules of Administrative Procedure (APs). The judicial branch is not compelled to follow executive branch statutes and regulations that govern contracting practices, though AOC policies refer to Kentucky's Model Procurement Code. The Purchasing and Procurement Guidelines set requirements in FY 2019 to FY 2021. Judicial buyers in the Division of Procurement work with the requested department to complete purchases and establish a new procurement vehicle if an existing one is not sufficient. Goods or nonprofessional services over \$50,000 require a request for bids (RFB), and professional services are procured with a request for proposals (RFP).

The Procurement Process Level Narrative was an additional policy in effect for FY 2019 and FY 2020. It detailed steps through which different types of purchases are made, and it identified key AOC staff, relevant forms, relevant information systems, laws and regulations, and financial statement accounts affected. An updated version, the Procurement Process Narrative, went into

effect in FY 2021. In FY 2023, AOC will implement a new policy for procurement of commodities and services, AOC Policy-005.

A separate policy, AP Part X, section V, sets requirements for real property leases. When new or additional space is requested, AOC checks for suitable government-owned buildings and, if there are none, issues a public notice in the county where space is needed. Lease responses are opened and read at a designated time, and AOC may negotiate with potential lessors. Potential facilities are inspected and owners must submit a best and final offer to be evaluated by both the head of Court Facilities and the AOC director. Those involved in the inspection and selection process, along with staff and individuals who will use the space, must certify whether they are aware of requirement violations. A 2019 policy prohibits leasing real property from court-appointed or elected officials, court employees, family members of court officials or employees, and entities in which those individuals have an ownership of 5 percent or greater.

In 2018, the auditor of public accounts (APA) released an examination of AOC that contained 16 recommendations related to procurement. The examination also stated that AOC did not have a true internal audit function and never obtained an external audit. AOC has since established the Division of Internal Audit after hiring an auditing and consulting firm, Deloitte, to implement APA recommendations and hiring an accounting firm, Dean Norton, to establish an internal audit function. AOC's internal audit function has produced 11 audits, three of which are related to procurement.

AOC has completed 15 of the procurement-related recommendations from the 2018 APA examination and has partially completed the last recommendation, which would have required purchase orders or request forms for procurement card transactions. AOC has not implemented purchase orders or request forms because it wants to maintain flexibility. It has made great strides toward an overhaul of its internal control framework. AOC has developed general procurement policies and procedures, updated its lease policies, and implemented a new policy for the procurement of commodities and services, all of which address specific recommendations in the 2018 examination. In addition, AOC has established an internal audit division, which conducts risk-based audits, and annotated its roles and responsibilities in AP Part XIX, section 3.

However, two areas covered by the APA examination could benefit from further clarification by AOC. The examination recommended that AOC update its policies related to procurement card purchasing in order to require that cardholders obtain approval before making purchases. Subsequent internal audits also found instances of procurement card transactions without approvals from the appointing authority. Additional preventive controls, such as preapproval emails or documented verbal approvals, could reduce risk of excessive or unnecessary purchases and strengthen the overall internal control framework. AOC is considering implementing documented verbal approvals for purchases at either the \$300 or \$500 threshold.

Recommendation 3.1

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.

In addition, APs establishing an internal audit function could be strengthened to explicitly state that the Division of Internal Audit is the reporting entity for allegations of waste, fraud, and abuse. The APA recommended this step, but it is not explicitly written in the subsequently adopted AP Part XIX, Internal and External Audits of the Administrative Office of the Courts.

Recommendation 3.2

The Administrative Office of the Courts should consider amending AP XIX, section 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.

A review of sampled contract files found that AOC has met many, but not all, of its procurement requirements from FY 2019 to FY 2021. Documentation for competitively bid contracts and real property leases was generally thorough and complete, but requirements for contracts in other areas were not met. Every contract type had samples in which proper request forms were not present, required information was sometimes included on a form different from the form required in AOC policy, and two contracts did not appear to have written justification for competitive exceptions at the time of procurement. Five competitive exception contracts had written statements showing that the vendors were eligible for the exception, but there was no written determination confirming the exceptions. One disclosure form indicated a reviewer had a conflict of interest, but the conflict was not documented, and it was not clear that follow-up action was taken. Documentation for one contract was lost during a physical transition of files.

Recommendation 3.3

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.

Recommendation 3.4

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.

Recommendation 3.5

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

Recommendation 3.6

The Administrative Office of the Courts should establish stronger practices to meet documentation requirements in its own policies. Specifically, 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.

Recommendation 3.7

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

Recommendation 3.8

If a selection committee member indicates 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.

AOC spent millions of dollars per year through GAXs on categories that are not meant to be paid through GAXs. These documents are meant for reimbursements, utilities, postage, or agency-specific authorities, but they were used on categories such as office supplies, professional services, IT software, and capital outlay. AOC policy permits the use of GAXs to pay against purchase orders for purchases under \$50,000 or purchases from master agreements or state price contracts. These additional uses are more permissive than the requirements set by the Finance and Administration Cabinet.

Excessive use of GAXs makes tracking contract spending more difficult because GAXs do not reference contracts and GAX expenditures do not post against contract totals. In addition, GAX documents have fewer places for commodity details to describe the product or service ordered. Using GAXs may cause an agency to spend more than the limit on a contract because GAX amounts will not be added to the contract total. AOC officials indicated that they are proactively looking for ways to eliminate GAXs for any contract or purchase order.

Recommendation 3.9

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.

Recommendation 3.10

To prevent increased use of General Accounting Expenses, 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.

Recommendation 3.11

If stand-alone payments are still needed after implementing the FY 2023 procurement policy, Administrative Office of the Courts officials should determine whether they can be replaced by stand-alone payment requests commodity documents so that General Accounting Expenses are typically used for intended processes.

Recommendation 3.12

If stand-alone General Accounting Expenses are needed for an invoice approved by the director of the Office of Finance and Administration, then the General Accounting Expenses description field should clearly indicate the purpose of the General Accounting Expense. If possible, the approval of the director of the Office of Finance and Administration should be maintained in records.

Recommendation 3.13

The Administrative Office of the Courts should review its General Accounting Expense expenditures for the past 3 years to identify areas where award documents can be established for the future. For example, a review of General Accounting 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.

Chapter 1

Judicial Branch Contracting

At its November 13, 2020, meeting, the Legislative Oversight and Investigations Committee voted to initiate a study of the processes by which judicial contracts are awarded.

At its November 13, 2020, meeting, the Legislative Oversight and Investigations Committee voted to initiate a study of the processes by which judicial contracts are awarded. Contracts for the judicial branch are established through the procurement process of the Administrative Office of the Courts (AOC). AOC also contains an internal audit function that may review procurement processes. This report focuses on AOC procurement processes from FY 2019 to FY 2021.

The Administrative Office of the Courts (AOC) administers contract procurement for the judicial branch. It produced three sets of procurement guidelines for FY 2019 to FY 2021, after an examination by the auditor of public accounts (APA).

In 2018, the auditor of public accounts (APA) released a special examination of AOC, which resulted in 16 recommendations related to procurement. Following the examination, AOC established procurement guidelines in 2018 that outlined the procedures for multiple types of contracts. It then created a procurement narrative for FY 2019 and FY 2020 that refined the guidelines and provided more details, followed by an updated narrative for FY 2021. A new procurement policy will be in place for FY 2023.

Real property lease requirements are separately established in court administrative procedures.

Requirements for real property leases are separate from those for general contracting and procurement requirements. A 2006 court order established leases as a court administrative procedure. A 2019 standard operating procedure provided conflict-of-interest requirements for the administrative procedure.

Major Objectives

This study had three major objectives.

The major objectives for this study were to

- review, summarize, and evaluate processes used by the Administrative Office of the Courts for contracting, procurement, and leases;
- review the Administrative Office of the Courts' implementation of relevant recommendations from a 2018 examination by the auditor of public accounts; and
- review audits of judicial contracting in other states to determine whether recommendations could be applicable to the Administrative Office of the Courts.

Methodology

Contracting was defined as the process by which the courts acquire goods or services. This definition includes the leasing of property.

For this study, *contracting* was defined as the process by which the courts acquire goods or services. This definition includes the leasing of property. Goods were considered to be any physical commodity as well as intangible commodities like software. Services were considered to be any time-limited employment of individuals or organizations. Individuals hired as permanent staff were not included. For example, directors of information technology services were excluded, but technical service contractors were included.

This study covered procurement through the awarding of contracts. It did not cover the management or closing of contracts.

This study covered procurement through the award of a contract. This scope includes the initial justification for the contract, gathering quotes or responses for the procurement, and the selection of a vendor. It excludes the active phase of the contract, in which the good or service is actively provided. It also excludes the closure or renewal of a contract, including the evaluation of the vendor. Contracts for the Judicial Form Retirement System were not reviewed.

The time range for this study was FY 2019 to FY 2021.

The time range for the study was FY 2019 to FY 2021. The 2018 APA special examination reviewed contracts prior to FY 2019. At the time of the study, FY 2021 was the last completed fiscal year for AOC.

Staff reviewed nine audits of judicial procurement in five other states. The audits recommended that the judicial systems follow their procurement policies.

Staff reviewed audits of judicial procurement from other states to find potential recommendations for AOC. Staff found nine reports from five states, which are summarized in Appendix B. Generally, the reports recommended that the judicial systems follow their own procurement policies. The material from other states did not rise to the level of an information finding.

Staff conducted the following research tasks:

- Reviewed the following items:
 - Administrative Procedures of the Kentucky Court of Justice (KCOJ);
 - AOC procurement policies for FY 2019 to FY 2021;
 - AOC draft procurement policies for FY 2023;
 - AOC website, to better understand the organization of AOC;
 - AOC's most recent annual report, FY 2019, to better understand operations of AOC;
 - judiciary budgets for fiscal years 2018-2020 and 2020-2021;

- the 2018 Auditor of Public Accounts report *Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts* for recommendations related to the judicial procurement system;
- Kentucky statutes for any procurement requirements related to the Kentucky courts;
- federal grants to AOC to determine whether grants had any procurement requirements;
- minutes from the Interim Joint Committee on Judiciary, the Budget Review Subcommittee on Justice and Judiciary, and the Capital Planning Advisory Board for any discussion of AOC procurements;
- Finance and Administration Cabinet statewide accounting system training documents “3.11 eMARS 601 General Procurement” and “eMARS 1320 Accounts Payable,” to determine appropriate use of accounting system documents;
- websites of other states’ court systems to determine whether their procurement processes had been audited;
- websites of other states’ legislative audit functions to determine whether they had audited their state’s judicial procurement processes;
- audits of other states’ judicial procurement processes to determine issues found in other states and potential recommendations to consider for AOC;
- and the National Legislative Program Evaluation Society database of performance audit and program evaluation reports for additional germane audits.
- Interviewed Legislative Research Commission Budget Review staff regarding the judicial budget.
- Interviewed AOC officials regarding
 - procurement processes,
 - internal audit function,
 - and internal audits conducted.
- Requested that AOC officials provide an update on actions taken in response to recommendations related to procurement, and compared the update against other requested material to determine whether described actions were implemented.
- Requested procurement documentation for a sample of contracts from AOC officials, and compared the provided documentation against requirements from policy documents to determine whether AOC was following its policies.
- Requested that AOC officials comment on AOC’s use of General Accounting Expenses to pay for procured goods and services.

Staff conducted the following analytical tasks:

- Extracted AOC expenditures for FY 2019 to FY 2021 from the statewide accounting system.
- Determined expenditures by function and by expenditure object category.
- Extracted AOC contracts and expenditures for FY 2019 to FY 2021 from the statewide accounting system.
- Extracted Finance and Administration Cabinet expenditures for FY 2019 to FY 2021 to compare against AOC's use of specific expenditure documents.

Major Conclusions

This report has five major conclusions.

This report has five major conclusions:

- AOC has satisfactorily addressed procurement-related recommendations from the 2018 auditor of public accounts examination. It has acted upon 15 of these 16 recommendations and has justified not fully completing the remaining recommendation.
- In the course of implementing APA recommendations, AOC has strengthened its internal control framework through development of detailed procurement policies and procedures and the creation of an internal audit function and audit committee. There is still room for additional progress, particularly in enhancing procurement card (ProCard) controls and more clearly defining responsibility for waste, fraud, and abuse.
- AOC, for the most part, follows its own policies and documentation requirements in the development of competitively bid contracts and real property leases. Almost all bidding files were complete and available. Almost no problems were found with documentation of real property leases.
- AOC has not met its contracting requirements in other areas, such as maintaining request forms, using correct forms, and documenting written justifications for competitive exceptions.
- AOC has paid for millions of dollars of expenditures through General Accounting Expenses documents that are not suitable for those expenditures. Using this form has made expenditures harder to track and can provide opportunities for overspending. AOC has shown intent to reduce use of these accounting documents.

Structure Of This Report

Chapter 2 of this report details the policies and procedures associated with awarding judicial contracts. It provides an overview of AOC expenditures, contract spending, AOC departments related to contracting, procurement policies for FY 2019 through FY 2021, projected procurement policies for FY 2023, and the internal audit function at AOC.

Chapter 3 presents three major finding areas related to compliance of sampled contract documents with AOC procurement policies, AOC's implementation of APA recommendations, and AOC's use of stand-alone payments, as well as 13 recommendations related to those findings.

Chapter 2

Judicial Branch Contracting Background

Supreme Court Rule 1.050 established the Administrative Office of the Courts as the administrative and fiscal arm of the Kentucky Court of Justice.

Supreme Court Rule 1.050 established the Administrative Office of the Courts as the administrative and fiscal arm of the Kentucky Court of Justice, which is additionally composed of the Supreme Court, Court of Appeals, Circuit Court, Circuit Court Clerks, and District Court. AOC is responsible for all contracting and purchasing for KCOJ and boards and commissions of the judicial branch. It also administers the judicial branch budget, administering personnel policies, maintaining court facilities, and providing educational programs for judges, Circuit Court clerks, and support staff. It also operates several statewide programs, including Specialty Courts, Pretrial Services, and Family and Juvenile Services.

The judicial branch's largest expenditures were for personnel costs. Within operating costs, leases and rentals were the largest category.

Table 2.1 shows the judicial branch's expenditures for FY 2019 to FY 2021 divided by personnel, operating, and capital outlay expenditures. The largest expenditures for the branch are personnel costs, which include salaries and fringe benefits. The largest categories of operating expenditures include operating costs and use allowance for court facilities, other rentals and leases, office and commercial supplies, telephone charges, and in-state travel. Significant categories of capital outlay expenditures include IT hardware and motor vehicles.

**Table 2.1
Judicial Branch Expenditures By Type
FY 2019 To FY 2021**

Expenditure Type	FY 2019	FY 2020	FY 2021
Personnel	\$264,403,564	\$274,747,394	\$276,113,086
Operating	145,038,061	147,187,811	141,082,392
Capital outlay	2,095,703	2,276,573	4,703,323
Total	\$411,537,328	\$424,211,778	\$421,898,801

Source: Financial Analysis System Power BI.

The judicial branch had 12 functions during the study period. Administration and local facility support were the largest function, with 89 percent of spending in FY 2021.

Table 2.2 shows judicial branch spending divided by its functions. Functions represent budgetary accounts and are tied to appropriations and allotments in budgets. The function codes in the table are the most specific classification and are entered on accounting transactions.¹ Administration and local facility support together accounted for approximately 89 percent of cumulative judicial branch spending from FY 2019 to FY 2021. The majority

of expenditures for administration were for personnel costs, while the majority of local facility support spending was for rentals and associated costs, such as electricity, janitorial services, and furniture. Personnel costs were the largest expenditures for other court functions such as court services, circuit clerks, and master commissioner.

Table 2.2
Judicial Branch Expenditures By Function
FY 2019 To FY 2021

Functions	FY 2019	FY 2020	FY 2021
Operations/administration	\$259,805,638	\$261,309,205	\$265,481,334
Local facility support	108,548,745	111,340,696	110,503,544
Court services	13,770,736	11,937,718	15,866,334
Civil filing fee	9,654,891	15,237,112	11,936,007
Circuit clerks	6,944,016	7,967,141	5,349,233
Court technology	2,073,853	1,714,397	3,924,565
CourtNet	0	0	3,105,746
Master commissioner	5,517,333	6,220,811	2,135,415
Drug court	3,056,212	3,368,955	2,047,903
Juvenile services	1,255,452	1,143,729	1,253,269
Pretrial	263,976	278,683	166,477
Various programs	646,475	3,693,331	128,974
Total	\$411,537,328	\$424,211,778	\$421,898,801

Note: FY 2019 expenditures do not sum to the total because of rounding.

Source: Financial Analysis System Power BI.

Contract documents typically have a maximum amount that can be spent and a recorded amount spent against them. Judicial branch contracts, as a whole, had lower expended amounts than allowable amounts. However, stand-alone payments allow vendors to be paid without adding the cost to a contract.

Table 2.3 shows the number of judicial branch contracts entered into the statewide accounting system from FY 2019 to FY 2021, along with the maximum amount allowed to be spent on expenditures and expenditures recorded. The total amount allowed to be spent on a contract is entered as the “actual amount” in the statewide accounting system. Expenditures recorded against the contract as the “closed amount” may not represent all expenditures against a contract. Stand-alone payments allow vendors to be paid without reference to a contract, which allows for easier processing but prevents the expenditures from being posted against the contract. Although individual contracts had recorded expenditures equal to the total allowed spending, contracts as a whole did not approach the total allowed spending.

One of the causes of the gap between allowable and recorded expenditures is the structure of interpreter contracts. AOC had 191 interpreter contracts from FY 2019 to FY 2021, of which 185 had an allowable amount of \$100,000 or higher. The recorded expenditures on these 185 contracts were \$1.5 million out of an allowable \$18.9 million. The difference was greatest in FY 2021, when interpreter contracts in general had an allowable spending

total of \$11.6 million but only \$613,711 in expenditures recorded against them.

Contracts in FY 2021 may have been expended against in FY 2022, a practice that was outside the scope of this study. For example, there were 19 janitorial service contracts whose allowable amounts were increased in June 2021. These modifications immediately increased the allowable amount but allowed for more recorded expenditures in FY 2022.

**Table 2.3
 Judicial Branch Contract Documents, Total Allowable Contract Expenditures,
 And Expenditures Recorded Against Contracts
 FY 2019 To FY 2021**

Fiscal Year	Contract Documents*	Total Allowable Expenditures	Recorded Expenditures	Recorded Expenditures As % Of Total**
2019	203	\$19,544,089	\$10,474,946	2.5%
2020	230	16,163,179	8,918,886	2.1
2021	285	25,252,786	5,104,987	1.2
Total	718	\$60,960,054	\$24,498,820	1.9%

Note: Expenditures recorded against contracts may not represent all expenditures. Agencies may make stand-alone payments that do not add to the contract total. Contracts do not include 66 duplicate leases with an allowable total of \$2.6 million; no payments were made against duplicate leases.

*Contracts are real property leases, professional service agreements, goods and nonprofessional service agreements, and agreements to set prices for future purchases.

**Total expenditures are based on totals from Table 2.1. The remaining percentage is composed of traditional expenditures such as stand-alone commodity or service payments, salaries and benefits, and procurement card purchases; interagency transfers, including transfers for debt service; and corrections that modify expenditures. Source: eMARS.

From FY 2019 to FY 2021, AOC used four contract types. The largest category over the period was for professional services.

From FY 2019 to FY 2021, AOC used four contract types. Real property contracts (CTRP1s) are for real property rental agreements. Master agreements (MAs) establish pricing and terms and conditions for future purchases for a given period. Proof of necessity agreements (PON2s) procure professional services and are typically reviewed by the Government Contract Review Committee. Service contracts (SC) are used for one-time purchases of services, typically nonprofessional ones.

Amounts spent by contract type varied by year, as shown in Table 2.4. PON2s had the largest allowable spending in FY 2019 and FY 2020, and SCs had the largest allowance in FY 2021. Recorded expenditures were highest on PON2s in FY 2019 and on CTRP1s in FY 2020 and FY 2021. MAs in FY 2019 had greater expenditures than allowable spending because they are documented differently. Instead of an “actual amount” for a total, they have a calculated document total that is often zero. Instead of a “closed amount” for the recorded expenditures, they have a total

ordered amount. For example, a master agreement for audio/video equipment had \$0 for the calculated total, but approximately \$761,000 of orders was placed against it.

Table 2.4
Judicial Branch Expenditures By Contract Types (In Millions Of Dollars)
FY 2019 To FY 2021

Document	FY 2019		FY 2020		FY 2021	
	Allowable	Recorded	Allowable	Recorded	Allowable	Recorded
CTRP1	\$2.7	\$2.6	\$4.9	\$4.7	\$3.6	\$2.8
MA	0.7	0.8	0.5	0.1	3.8	<0.1
PON2	9.9	6.2	7.8	3.6	3.6	0.8
SC	6.2	0.9	3.0	0.5	14.4	1.5
Total	\$19.5	\$10.5	\$16.2	\$8.9	\$25.3	\$5.1

Note: CTRP1 = real property contract; MAs = master agreement; PON2 = proof of necessity; SC = service contract. Expenditures recorded against contracts may not represent all expenditures. Agencies may make stand-alone payments that do not add to the contract total. CTRP1s do not include 66 duplicate CTRP1s with an allowable total of \$2.6 million; no payments were made against duplicate CTRP1s. FY 2021 contracts include payments made in FY 2022 against the contracts. FY 2021 allowable and recorded expenditures do not sum to their totals because of rounding.

Source: eMARS.

Judicial contracts are divided into 17 expenditure categories. Based on allowable spending, the largest categories are a general "not otherwise classified" group and rentals.

The contract types used by AOC are used for similar categories of procurement. Table 2.5 divides eMARS contracts administered by AOC into 17 expenditure categories. "Services not otherwise classified" collects any expense that does not fall into other categories. This category, along with rentals of building and land, has the highest spending limits in the time frame, but recorded expenditures for services not otherwise classified decreased significantly in FY 2021.

FY 2021 consulting was the only category in which recorded expenditures matched the allowable amount, though the amount was relatively small compared to that of other categories. In other categories, rentals of non-state-owned building and land were the closest to the allowable amounts. Some categories had no expenditures recorded, which can indicate that they were paid through stand-alone payments or that the contract was established but not used.

Table 2.5
Judicial Branch Contract Expenditures By Expenditure Category
FY 2019 To FY 2021

Expenditures	FY 2019		FY 2020		FY 2021	
	Allowable	Recorded	Allowable	Recorded	Allowable	Recorded
Rental of nonstate building and land	\$5,076,081	\$2,593,433	\$4,936,910	\$4,665,140	\$3,581,337	\$2,840,073
Services not otherwise classified	9,071,762	5,724,941	6,558,595	3,210,947	3,524,965	451,241
Interpreters	5,737,459	817,948	1,612,400	52,946	11,579,533	613,711
Other professional services	911,918	367,996	1,267,364	557,589	430,610	123,748
Maintenance of equipment	0	760,750	0	0	0	0
Rental of equipment	132,737	51,940	844,300	0	1,099,734	565,270
Janitorial services	0	0	293,606	199,824	439,743	236,685
Legal services	258,723	111,431	70,000	40,291	140,000	63,252
Auditing	0	0	500,000	142,462	83,275	18,275
Architectural and engineering	0	0	0	0	4,075,000	120,656
Consulting	712,600	0	95,604	49,688	52,304	52,304
Telephone software	0	46,507	0	0	0	0
Maintenance of building and grounds	0	0	0	0	28,300	19,772
COVID response	0	0	0	0	200,000	0
Employee training	0	0	0	0	23,161	0
Instruments and apparatus, <\$5,000	7,850	0	0	0	0	0
Office supplies	141	0	0	0	0	0
Total	\$21,909,270	\$10,474,946	\$16,178,779	\$8,918,886	\$25,257,961	\$5,104,987

Note: Expenditures recorded against contracts may not represent all expenditures. FY 2019 allowable expenditures, FY 2020 recorded expenditures, and FY 2021 allowable expenditures do not sum to their totals because of rounding.

Source: Financial Analysis System Power BI.

The judicial branch commonly uses General Accounting Expense documents (GAXs), stand-alone payments that do not record expenditures against contracts. These are often used in categories not typically associated with GAXs.

As previously mentioned, recorded expenditures on a contract may not be accurate due to stand-alone payments. AOC commonly uses a type of stand-alone payment, the General Accounting Expense document (GAX). GAXs are typically meant to be used on reimbursements, utilities, postage, or other agency-specific authorities.² Agency staff can enter a contract number in a GAX, but the amount will not be posted against the contract or be easily accessible from the contract. Table 2.6 presents AOC GAXs used in the same categories as AOC contracts. In FY 2020 and FY 2021, GAX amounts exceeded the amount of recorded expenditures against contracts. GAX expenditures in these categories were a relatively small portion of total expenditures: 2.2 percent in FY 2019, 2.2 percent in FY 2020, 1.9 percent in FY 2021, and

2.1 percent of the 3-year total from FY 2019 to FY 2021. Chapter 3 discusses AOC's use of GAXs and the issues with using GAXs outside of reimbursements, utilities, and postage.

Table 2.6
Judicial Branch General Accounting Expense Documents By Expenditure Category
FY 2019 To FY 2021

Expenditure Code	FY 2019	FY 2020	FY 2021
Office supplies	\$3,623,032	\$3,458,695	\$3,140,124
Other professional services	1,205,879	4,810,683	3,234,290
Consulting	2,872,826	0	0
COVID response	0	99,914	832,377
Instruments and apparatus, <\$5,000	156,368	214,471	380,291
Rental of equipment	315,324	310,568	69,994
Services not otherwise classified	131,165	299,540	167,330
Architectural and engineering	201,634	145,445	58,396
Janitorial services	189,607	18,497	0
Auditing	125,000	0	0
Maintenance of building and grounds	46,227	44,159	8,963
Employee training	12,662	18,246	17,519
Rental of nonstate building and land	6,906	39,119	0
Legal services	0	0	10,000
Total	\$8,886,631	\$9,459,336	\$7,919,285

Note: General Accounting Expenses are stand-alone payments that may be used to pay vendors without processing a payment against a contract. Additional General Accounting Expenses payments were made outside these categories: \$21.2 million in FY 2019, \$21.6 million in FY 2020, and \$22.9 million in FY 2021. Expenditures do not sum to totals because of rounding.

Source: Financial Analysis System Power BI.

Administrative Office Of The Courts Structure

AOC's contracting and purchasing are administered by the Office of Finance and Administration.

AOC's contracting and purchasing are administered by the Office of Finance and Administration (OFA). The office also oversees judicial branch budget administration, accounting, grants, property accountability, capital construction, real property, and court security. The office consists of three departments: the Department of Financial Services, the Department of Budget, and the Department of Court Facilities.³ Financial Services handles accounting and procurement for the courts. Within Financial Services, the Division of Procurement manages solicitations and purchases for goods equipment, supplies, and services. It also negotiates, awards, manages, and renews all contracts.⁴

The Policy Unit develops policies, processes, and standard operating procedures.

In addition, an AOC policy officer serves directly under the Finance and Administration director.⁵ The Policy Unit develops departmental policies, processes, and standard operating procedures for AOC. Policies are adopted by the Director's Office and apply to AOC personnel but not to elected court officials or

their employees. The Supreme Court of Kentucky adopts Rules of Administrative Procedure that apply to elected officials and court employees. Upon approval by the Director's Office and authorization by the Rules of Administrative Procedure, departments can develop requirements that apply to elected officials and court employees.⁶

AOC's Office of Audits conducts internal audits of the court and manages the fraud, waste, and abuse tipline.

AOC's Office of Audits manages internal audits of the court through its Division of Internal Audit. The division "conducts risk-based audits and provides independent assurance" that AOC's internal controls operate effectively. The division director reports to an Audit Oversight Committee chaired by the Kentucky chief justice. The division director coordinates external audits.⁷ AOC's FY 2021 financial states were audited by MCM CPAs and Advisors.⁸ The Office of Audits also manages the fraud, waste, and abuse tipline.⁹

Contracting Requirements

Contracting requirements for the courts are set through Rules of Administrative Procedure (APs) and internal policies of AOC.

Contracting requirements for the Kentucky Court of Justice are established primarily through internal documents of AOC, with property leases guided by a separate policy. The Judicial Article of the Constitution of Kentucky establishes the chief justice as the executive head of the Kentucky Court of Justice with authority to make policies by adopting Rules of Administrative Procedure (APs). The APs guide procurement through Part III and Part XIX. AP Part III, section 2, outlines ethics policies for AOC employees, including requirements to avoid conflicts of interest. Part XIX establishes internal and external audits of AOC. Section 3 establishes an Office of Audits, which can oversee internal operations of AOC. Section 4 requires AOC to conduct annual external financial audits, which can reveal issues with procured goods or services.

The Purchasing and Procurement Guidelines set requirements in FY 2019 to FY 2021 but will be replaced in FY 2023.

Although the judicial branch is not compelled to follow executive branch statutes and regulations that govern contracting practices, AOC policies refer to Kentucky's Model Procurement Code, KRS Chapter 45A.¹⁰ Three documents guided AOC procurement from FY 2019 to FY 2021: the AOC Purchasing and Procurement Guidelines for FY 2019 to FY 2021, the Procurement Process Level Narrative for FY 2019 to FY 2020, and the Procurement Process Narrative for FY 2021. The Purchasing and Procurement Guidelines will be replaced with a new policy in FY 2023.¹¹

Procurement Requirements For FY 2019 To FY 2021

The Purchasing and Procurement Guidelines detail processes and requirements for all types of procurement that AOC conducts. The guidelines divide procurement into two broad sections of procuring goods and nonprofessional services and procuring professional services. Goods and nonprofessional services are divided into separate processes for purchases over \$50,000, which necessitate a request for bids, and those under \$50,000. Purchases under \$50,000 are further divided into those under \$10,000, which require one quote, and those between \$10,000 and \$49,999, which require three quotes.¹²

Procurements may use preexisting vehicles. If there are no existing vehicles, purchases under \$50,000 require one to three quotes. Selection of quotes must be documented.

Judicial buyers in the Division of Accounting and Purchasing work with the requesting department to complete purchases and establish a new procurement vehicle if an existing vehicle, such as a preestablished contract, is not sufficient. They determine whether a new procurement vehicle is needed, obtain necessary documentation and budget approval, issue purchase orders for goods, submit an interdepartmental request for services form called an AOC 19.1, and ensure contracts have been sent to the legal department for review. If multiple quotes are required for a purchase, the judicial buyer documents reasons for a selection in the procurement file.¹³

Goods or nonprofessional services over \$50,000 require a request for bids (RFB). RFBs ask vendors to submit bids for the procurement, then AOC selects either the lowest bid or the best-value bid.

Goods or nonprofessional services over \$50,000 require a request for bids (RFBs). The department publicly requests bids from vendors. The requesting department's operations contact submits an AOC 19.1 to the Division of Operations and Procurement to initiate the process, while the procurement officer or attorney from the Division of Operations and Procurement drafts a scope of work, conducts market research, documents communications with vendors, documents bid exceptions, drafts the RFB, manages the solicitation process, and drafts the resulting contract. The procurement officer or attorney may determine that bidding is not necessary when only one entity provides a good or service, when there is an emergency, or when the contract is not feasible to bid. The solicitation process includes conducting a responsiveness review of bids, determining the low bid or best-value bidder, and developing an award determination. In addition, the contract coordinator in the Division of Procurement ensures that budget approval and all necessary documentation have been obtained.¹⁴

Professional services are procured with a request for proposals (RFP). RFPs are similar to RFBs but use a selection committee that evaluates the response on multiple factors.

Professional services are procured with a request for proposals (RFP). RFPs are similar to RFBs, with the same staff roles but with more steps in the solicitation process. A selection committee completes grading sheets to judge the proposals, develops a composite score sheet, and awards the contract to the proposal with the highest score. Other types of contracts, such as those for leases, hotels, terms and conditions, user agreements, and memoranda of understanding, are combined into a single policy. Requests for drafting or reviewing a contract are submitted to the contract coordinator via an AOC 19.1, must be recommended by a manager or executive officer, must be reviewed by the Division of Operations and Procurement and the Office of General Counsel, and must be approved by the budget director if there is a cost.¹⁵

The Procurement Process Level Narrative additionally served as guidance in FY 2019 and FY 2020. It covered similar topics but in greater detail.

FY 2019 And FY 2020 Procurement Requirements. The Procurement Process Level Narrative was in effect for FY 2019 and FY 2020. Similar to the Purchasing and Procurement Guidelines, it details steps through which different types of purchases are made and identifies key AOC staff, relevant forms, relevant information systems, laws and regulations, financial statement accounts affected, and commonly used acronyms. Dollar thresholds for required quotes and bids are identical to those in the guidelines, and the process for small purchases and RFBs are the same. The procedures for purchasing are made more explicit, and steps are numbered.

The RFP section of the Procurement Process Level Narrative provides more detail on the selection committee and its function. It also requires confidentiality statements and conflict of interest forms from the committee members.

The section on the procurement of professional services details steps by which an RFP is made, how submissions are collected and evaluated, how a decision of award is made, and how a contract is subsequently created. The process is the same as in the guidelines, though there is more detail in the section detailing the composition and function of the selection committee. The committee is staffed by three to seven personnel and includes procurement personnel, personnel from the requesting department, IT personnel if the RFP involves technology, and another member of management. In addition to information on the composition of the committee, this section states that confidentiality statements and conflict of interest forms shall be returned to the associate legal counsel for the procurement file and that oral presentations may be requested of proposal offerors.¹⁶

The Procurement Process Narrative, an updated version of the level narrative, served as guidance in FY 2021. It provides more details on RFPs instead of stating that they are similar to RFBs.

FY 2021 Procurement Requirements. The Procurement Process Narrative, which went into effect in FY 2021, is an updated version of the Procurement Process Level Narrative. Although the two versions are broadly similar, there are notable differences. In the section on procuring goods and nonprofessional services,

language on submitting a request for IT goods changes from specifying the requested goods as “information technology related goods” to the broader term “technical equipment,” broadening the scope of goods that can be requested.¹⁷

For RFBs, the number of Procurement personnel who can access AOC’s solicitation emails increased from three to four, allowing for better coverage if staff are out. In the first narrative, contracts resulting from RFBs are drafted and circulated after a 2-week protest period, but the second narrative version allows Procurement staff to negotiate with the second highest ranked offeror if terms cannot be agreed upon with the highest ranked offeror. Finally, the RFP section is more detailed in the newer narrative. The earlier version states that the RFP process is the same as the RFB process and subsequently lists exceptions, but the later version explicitly states all the steps of both the RFB and RFP processes.¹⁸

FY 2023 Procurement Policy

AOC will implement a new policy in FY 2023 covering procurement and other financial processes.

AOC will implement a new policy for procurement of commodities and services, AOC Policy-005, on July 1, 2022. Unlike the narratives or guidelines, this document is a unified policy combining requirements for commodity and service procurement, credit cards, procurement cards, judges’ administrative expenses, membership dues, and travel reimbursement. Real property leasing policies are not included in this policy.¹⁹

The new policy will provide more details on commodity specifications, exemptions, awarding of RFPs and RFBs, and evaluating vendor responsibility. RFP evaluations now require justification notes and clearly require using cost components.

Related to procurement, the new policy provides more details on specification requirements for commodities, such as stating that specifications may be outlined in terms of function, performance, or design requirements. The policy now has a list of purchases exempt from requisition, such as telephone or internet services and utilities. RFBs and RFPs now require a Determination and Finding document to award a contract. RFP and RFB responses are still date stamped when received but are no longer initialed. Both sections provide suggestions for evaluating vendor responsibility, and the RFB section discusses determinations of best value among bidders.²⁰

RFP evaluations now require notes providing justification to support scores. Cost could be an evaluation criterion under the narrative, but the new standards clearly state that cost components must be evaluated and incorporated into the scoring sheet. Professional services from a governmental entity or nonprofit

now have their own section that clearly separates them from RFPs, including additional requirements to verify that nonprofits are registered as vendors.²¹

AP Part X, section 5, sets requirements for real property. When new or additional space is requested, AOC checks for suitable government-owned buildings. If there are none, a public notice is issued in the county where space is sought.

Real Property Leases. Leasing of property is guided by a separate policy. AP Part X, section 5, was entered into in September 2006. It states that after a court official or AOC manager requests new or additional space in writing, the Department of Court Facilities determines whether there is a suitable government-owned building. If not, then the department draws up general requirements for the space. It then gives public notice to individuals within the county where space is sought. The notice must provide the general requirements and the time, date, and place that responses are to be received. Property owners must respond in writing.

Lease responses are opened and read at a designated time. AOC may negotiate with potential lessors.

All responses are opened and read at the designated time and place and are kept on file. The department may negotiate with individuals who submit responses within the deadline. However, if a property owner proposes terms and conditions different from the standard lease and the court accepts without indicating in the notice that the difference is acceptable, the court must inform all other timely responders about the newly allowed terms and conditions.

Potential facilities are inspected. Owners of suitable facilities are asked to submit a best-and-final offer.

The department inspects each space that reasonably meets the requirements of the notice. A site evaluation report for each inspection must be kept on file. Evaluations must consider factors such as location, accessibility, condition, conformity with health and safety and fire regulations, rental rates, and proximity to other court spaces. The department invites each owner of suitable property to submit a written proposal, which represents a best-and-final offer. Once these offers are opened on a set date, the department may no longer negotiate or change terms.

Offers are evaluated by both the head of the Department of Court Facilities and the AOC director.

The head of Court Facilities assesses each proposal. The AOC director then uses the assessment to select the best proposal. The director may negotiate with the lessor if it provided the only responsive proposal. The proposal is then submitted to the Office of Budget and Policy for concurrence. Other applicants are informed of the award, and the department inspects the property prior to finalization of the lease to ensure that required changes have been made.

Those who will use the space or are involved in selecting it must certify whether they are aware of requirement violations.

During the leasing process, the Court Facilities manager, employees who evaluated sites or negotiated leases, and individuals who will occupy the space must certify to the

best of their knowledge whether they are aware of circumstances that violate these requirements. When a potential lessor is a corporation, partnership, business trust, or organization, a disclosure statement providing all owners of 5 percent or more of shares must be furnished to AOC. Any person or group that receives income from the lease to the court and then transfers income to anyone else must file a disclosure statement identifying the recipient.

A 2019 policy prohibited the leasing of real property from court-appointed or elected officials, court employees, family members of officials or employees, and entities in which those individuals have an ownership of 5 percent or greater.

On August 19, 2019, AOC established policy SOP 200.001 prohibiting the leasing of real property from court-appointed or elected officials and employees, or their family members. The policy states that AOC must not enter into a lease for real property with any of these groups or an entity in which those individuals have an ownership interest equal to 5 percent or more. Property owners who respond to an advertisement for space must complete a disclosure of ownership form. AOC staff review these forms and disqualify any owned by a barred individual or entity. Disqualified offerors are notified in writing. If a violation is discovered after the lease is established, the lease is canceled. AOC may still enter into a zero-dollar lease for real property with these barred groups.²²

Internal Audit Function

A major finding area of the 2018 APA special examination was that AOC did not have a true internal audit function and that AOC had not obtained an external audit.

One of the major finding areas from the 2018 Kentucky auditor of public accounts special examination of AOC was that AOC did not have a true internal audit function. Additionally, it had never obtained a substantial external audit at any time since its founding.^a Though AOC did have a Division of Auditing Services prior to the examination, its position within AOC did not give it true independence until July 13, 2017, because it reported to the Department of Administrative Services. APA also concluded that AOC did not form an internal audit plan and primarily focused on monitoring local county offices and performing accounting/bookkeeping services. The division did not serve as the reporting mechanism for allegations of waste, fraud, and abuse.²³

Since the examination, AOC has established an Office of Audits. Its Division of Internal Audits conducts risk-based internal audits.

Since the APA's examination, AOC has taken multiple actions to address the findings related to its internal audit function. AOC has

^a In May 2017, the Chief Justice and the AOC director requested that APA conduct an examination of AOC to evaluate its policies and procedures related to financial activities and other operations to determine whether those processes minimized the risk of waste, fraud, and abuse to an acceptably low level. The report had seven findings and 16 recommendations related to AOC's contracting and procurement policies and practices. Chapter 3 discusses whether these recommendations were implemented.

established an Office of Audits constituted of a Division of Audit Services, which audits the financial activities of local court officials, and a Division of Internal Audit, which conducts risk-based internal audits in addition to coordinating external audits of AOC.²⁴ The roles and responsibilities of the Office of Audits are set in Administrative Procedure XIX, section 3, which went into effect September 20, 2021. The AP reflects the APA’s recommendations by explicitly charging the Office of Audits with independence from “all conditions that threaten the ability of the Office to carry out its responsibilities in an unbiased manner” and directing the office to submit an annual internal audit plan. Other APA recommendations are addressed in AP XIX, including in section 4, which requires AOC to issue RFPs to conduct an annual external audit of its financial information, and to make public any resulting report.

Deloitte was hired to implement APA recommendations. Dean Dorton was hired to establish an internal audit function at AOC.

As a result of the examination findings, AOC has contracted with multiple firms either to conduct audits of the office or to serve as consultants in developing internal policies and processes. After the APA report, auditing and consulting firm Deloitte was hired in FY 2019 to assist in the implementation of the APA recommendations.²⁵ The accounting firm Dean Dorton was hired to establish an internal audit function, and MCM CPAs and Advisors was hired to conduct an external audit of AOC, pursuant to AP XIX, section 4.²⁶ AOC staff noted that, as requested by APA in its recommendations, APA was informed of the procurement of an external auditor, though it was not given a right of first refusal to conduct the audit. In addition to consulting and audits by external entities, the Division of Internal Audit worked with the Office of Finance and Administration to compile auditable financial statements for the first time.²⁷

The internal audit function has produced 11 audits. Three were related to procurement.

Since its inception, the Division of Internal Audit has completed 11 audits of various functions. Three of these audits were related to procurement: “Procurement And Credit Cards,” “Specialty Court Treatment Provider (CMHC) Contracts And Billing,” and “Language Access Interpreter Contracts And Billing.”²⁸ Notable findings from these include that some procurement card transactions did not have receipts and had incorrect object codes, that AOC was not enforcing contract terms regarding invoices, and that AOC was not appropriately maintaining interpreter contract listings. AOC staff agreed to correct each issue.

Chapter 3

Findings And Recommendations

This review produced three major finding areas and 13 recommendations.

The review of judicial branch contracting produced three major finding areas and 13 recommendations.

Auditor Of Public Accounts Recommendations Have Been Implemented

The Administrative Office of the Courts has satisfactorily addressed the procurement-related recommendations in the 2018 special examination conducted by the APA.

The Administrative Office of the Courts has satisfactorily addressed the procurement-related recommendations in the 2018 special examination conducted by the auditor of public accounts. Appendix C contains a summary of the recommendations, actions that AOC stated it would take in response to the recommendations, and AOC's comments regarding the implementation of the recommendations. AOC officials stated that it had completed or would be on track to complete 15 of the recommendations and justified not completing the last recommendation. In Appendix C, responses where AOC stated the recommendation was "complete" were verified through requests and interviews.

By using the APA recommendations as its road map, AOC has made great strides toward an overhaul of its internal control framework. Two areas in particular deserve special mention, as both will continue to be pivotal for AOC as it continues to strengthen that framework.

AOC has updated its general procurement policies and procedures in response to the 2018 special examination.

The first area relates to the development of general procurement policies and procedures, which address APA recommendations 2.2, 2.3, 5.2, 5.4, and 5.5, as well as an update to lease policies, which address APA recommendations 14.1 through 14.4. AOC will implement a new policy for procurement of commodities and services, AOC Policy-005, on July 1, 2022. On August 19, 2019, AOC updated its real property leasing policies to prohibit the leasing of real property from court-appointed or elected officials and employees, or their family members.

AOC has developed an internal audit function and audit committee.

The second area relates to creation of an internal audit function and audit committee, which addresses APA recommendations 3.1, 3.2, 3.4, and 3.5. AOC worked with contracted firms to establish an internal audit division, which conducts risk-based internal audits. Rules of Administrative Procedures Part XIX, *Internal And*

External Audits Of The Administrative Office Of The Courts, became effective October 23, 2019 and was revised on September 20, 2021. AP Part XIX, section 3, annotates the internal audit division's roles and responsibilities. Also, section 2 creates the audit oversight committee, which oversees the audit function and approves annual audit plans. Since its inception, the division has completed 11 audits, three of which relate to procurement.

Additional clarity related to the implementation of two APA recommendations, however, could be beneficial.

In response to an APA recommendation, AOC stated it would update procurement card (ProCard) holder agreements to require managerial approval before purchases.

ProCard Controls. Recommendation 13.1 from the APA report suggested the use of purchase orders or the AOC-3 Commodity/Service Request form for all procurement card purchases made by cardholders. In its formal response, AOC stated, "The AOC will update the cardholder agreement to specify that the cardholder must obtain prior approval from his or her manager before making purchases with the ProCard."²⁹

An internal audit of procurement and credit card transactions found 23 transactions without proper approvals. It is reasonable to expect that AOC establish approval mechanisms for all ProCard users.

In its internal audit of procurement and credit cards, AOC identified 23 transactions without approvals from the appointing authority.³⁰ It stated, "Each participating agency is responsible for ensuring all procurement cardholders are informed of allowable purchases according to FAP 111-58-00 and the agency guidelines, as well as supervisory approval needed for various purchases."³¹ The audit went on to recommend that the "Department of Financial Services should provide training on using the procurement Mastercard activity form if the Department of Financial Services decides to continue to use this form and should reiterate to the cardholders how important completing this form is, including supervisory approval."³² According to AOC officials, the internal audit established AOC's intent for approval mechanisms only for judicial buyer cardholders. However, it seems reasonable that all ProCard users would be expected to seek preapproval for purchases.

According to AOC, the original APA recommendation is partially complete and will not be fully implemented, since the "purpose of the ProCard program is to offer departments flexibility to purchase items needed during the routine course of their work without the issuance of a PO or AOC-3."³³ AOC also discussed the benefits of enhanced internal controls, such as the OnBase document approval system used for the approval of receipts, and the point-of-sale requests for purchase authorization, which occur immediately at the point of sale based on preset criteria.³⁴

The point-of-sale system that AOC uses does not minimize the risk that cardholders could make excessive or unnecessary purchases.

Although the point-of-sale system is a preventive control to measure against preset criteria (for example, single-purchase, spending limit, and merchant restrictions), it does not minimize the risk that cardholders could inappropriately make excessive or unnecessary purchases, which also happen to be legitimate. Similarly, the OnBase document approval system is a valid control to identify inappropriate purchases after the fact, but it does not prevent a cardholder from making excessive or unnecessary purchases.

Using an additional preventive control (such as preapproval emails or documented verbal approvals) could help increase the overall internal control framework. AOC is considering implementing documented verbal approvals for purchases at either the \$300 or \$500 threshold.³⁵

Recommendation 3.1

Recommendation 3.1

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.

AOC indicated that it has implemented the APA recommendation that the internal audit function be designated the reporting entity for allegations of waste, fraud, and abuse.

Internal Audit Function. Recommendation 3.4 from the APA report suggested that “AOC designate its internal audit division or internal audit committee as a reporting entity for allegations of waste, fraud, and abuse.” In its formal response, AOC agreed with the recommendation, stating “a function of the internal auditing group would be to investigate and respond to allegations of waste, fraud and abuse, which is currently being handled by the Human Resources Department.”³⁶ AOC also stated that compliance with the recommendation is complete.³⁷

AP Part XIX (Internal and External Audits of the Administrative Office of the Courts) specifically addresses fraud waste and abuse:

- Section 1(8) defines special investigation as “any matter that the Division of Internal Audit reviews that is not included in the annual audit plan, including matters brought to the attention of the Office of Audits through the fraud, waste, and abuse tip line.”
- Section 2(2)(c) requires the audit oversight committee to provide advice on topics “including procedures for detecting fraud, waste, and abuse.”

- Section 3(C)(8)(c)(iii) requires the director of audits to meet quarterly with the audit committee to report as needed related to “[s]ignificant risk exposures and control issues, including fraud risks.”

Current administrative procedures of the Court of Justice do not explicitly designate the internal audit division as the reporting entity for allegations of waste, fraud, and abuse.

However, AP Part XIX, section 3(C)(1), does not clearly state that the Division of Internal Audit (IA) is designated as the reporting entity for allegations of waste, fraud, and abuse. Instead, the language states that IA will “provide independent assurance that the AOC’s risk management, governance, and internal control processes are operating effectively.” Adding a fourth responsibility related to waste, fraud, and abuse allegations would more formally recognize IA as the reporting entity.

Recommendation 3.2

Recommendation 3.2

The Administrative Office of the Courts should consider amending AP XIX, section 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.

Contract Documents Met Many, But Not All, Requirements

A review of sampled contract files found that AOC met many, but not all, procurement documentation requirements from FY 2019 to FY 2021.

A review of sampled contract files found that AOC met many of its procurement documentation requirements from FY 2019 to FY 2021. In general, documentation of competitively bid contracts is thorough and complete. Bid templates sent to potential vendors, individual bid files, criteria and score sheets, and executed contract files are almost all complete and available. In addition, almost no problems were found with documentation related to real property leases.

However, requirements for contracts are not being met in some areas. Every contract type had samples in which the proper request form was not present. Two service contracts (SCs) did not appear to have written justification for competitive exceptions at the time of procurement. Multiple samples included required information, but included it on a form other than what the relevant procurement policy required. Some issues may be tied to adjustments to new policies. The sample was from years following the 2018 auditor of public accounts examination, when AOC was implementing new procurement policies. In addition, the files were selected by judgmental sampling and may not represent AOC contracting in general.

Documents Sampled

Two sampled requests for bids did not have request forms, two RFBs did not use a correct bid tabulation form, and one RFB did not have two review forms. One bid envelope was not initialed by staff.

Requests For Bids. Documentation requirements for requests for bids (RFBs) are based on dedicated sections in both the “Procurement Process Level Narrative” and the “Procurement Process Narrative.” These requirements include a form AOC 19.1, Inter-Departmental Request for Services, which should include a scope of services and estimated cost. It should also include an RFB template tailored to the specific request, any email correspondence with potential vendors, any bid documentation submitted by vendors, dated and initialed envelopes for mailed bids, emails for emailed bids, documentation establishing criteria for the bids, tabulated bids on an Excel template, a review of responsiveness and responsibility, and an executed contract with approval from the appointing authority and/or departmental reviewer.³⁸ Two RFBs did not have request forms or cost estimates, one bid envelope for an RFB was not initialed by staff, two RFBs tabulated bids on a form that appeared to be a printout with written text rather than an Excel template, and one RFB did not have responsiveness or responsibility forms.

Requests For Proposals. Requirements for requests for proposals (RFPs) are also based on sections in the “Procurement Process Level Narrative” and the “Procurement Process Narrative.” These include an AOC 19.1 form that includes a scope of services and estimated cost; any email correspondence with potential vendors; bid specifications; documentation of individual proposals; Confidentiality, Conflict of Interest, and Communication Disclosure forms signed by selection committee members; an Excel document or spreadsheet tracking responsiveness and reliability reviews performed on the proposals; an overall summary sheet of proposal grades, and an executed contract signed by the appointing authority, legal/general counsel, and Director’s Office.³⁹

Two RFPs did not include request forms, and the third used an old request form. One RFP was missing files that were lost. All three RFPs had review files in the wrong format. One RFP did not indicate whether a possible conflict of interest was reviewed.

Of the three RFPs sampled, two did not include request forms and one included a request form but on an older version of the required form. One RFP did not include a Statement of Confidentiality, Conflict of Interest form, or Communication Disclosure form because the files were lost. All three of the RFPs included Responsiveness and Reliability reviews but they did not appear to be in an Excel format. In addition, the Conflict of Interest form for one RFP indicated that one selection committee member checked “yes” on the form under the question “Do you or does a member of your family receive any financial benefit from any of the offerors?” and under the question, no explanation was given

where requested. It is not clear whether this was a mistake, but reviewers should have caught a potential error or asked for details on the conflict of interest.

Two service contracts (SCs) did not have competitive exception documentation. Two SCs did not have approval forms.

Service Contracts. Service contracts that are competitively negotiated are based on RFBs and would have the same documentation requirements as other RFBs. However, four out of six sampled SCs were exempt from competitive bidding: two created from master agreements, one exempt because it was for interpreters, and one filed as emergency procurement. Procurements based on master agreements require an AOC-3 form or eRequest with the master agreement number and a quote.⁴⁰ One SC had this information, but the other SC did not appear to have the request form. Interpreters are a noted competitive exception, but exceptions must be documented by the requester and approved by the director of Finance and Administration.⁴¹ The SC related to interpreters did not appear to have this documentation and approval. The emergency procurement contained an emergency Determination and Finding signed by the procurement manager instead of the director of Finance and Administration. The two competitive SCs did not appear to have AOC 19.1 forms with a scope of service, estimated cost, and signatures.

Three sampled Proof of Necessity forms (PON2s) did not include a required request form. The five sampled competitive exception PON2s had documentation showing the vendors were exempt from competitive procurement.

Proof Of Necessity Agreements. Competitively negotiated Proof of Necessity forms (PON2s) are based on RFPs and have the same requirements as RFPs. In the case of a competitive bidding exception, the exception must be documented in writing.⁴² Of the six PON2s sampled, five were competitive exceptions. These did not have written determinations confirming the exceptions, but the procurement files did contain written statements showing that the vendors were 501(c)(3) entities or government agencies, which are exceptions from competitive procurement. In addition, three PON2s did not include an AOC 19.1 form.

The one unique sampled Master Agreement did not have the required request form.

Master Agreements. Of the three master agreements (MAs) sampled, two were created from RFPs that were previously sampled. The unique MA was for architectural and engineering services; AOC has an exemption from the Government Contract Review Committee to enter into MAs rather than PON2s for these services. The MA was created from an RFP and would have the same requirements as RFPs. Therefore, documentation requirements include an Inter-Departmental Services form that includes a scope of services and estimated cost, bid specifications, any bid documentation, documentation establishing criteria for the bids and any spreadsheets or tabulations of bid evaluations, and documentation of approval by the appointing authority and/or

departmental reviewer.⁴³ The unique MA sampled did not have the required request form.

Of the sampled real property contracts, only one did not contain an original justification or request for space, but the contract predated AOC's procurement rules that required it.

Real Property Contracts. Documentation requirements for real property contracts (CTRP1s) are based on AP Part X, section 5, *Real Property Leases*. These requirements include an original request form documenting the need for space, documentation of leasing offers, criteria documentation used to assess offers, documentation of the determination that selected an offer, and the signed and approved lease agreement.⁴⁴ Of the five CTRP1s sampled, one did not contain an original justification or request for space. However, the process for this contract began in 2016, so AOC's procurement rules would not have been in effect at that time.

None of the sampled General Accounting Expenses included a required justification for using a GAX. Two did not have a request form, and another two had correct information on incorrect forms.

General Accounting Expenses. Requirements for General Accounting Expenses (GAXs) depend on whether they originate from a master agreement, a sole-source procurement, or some other procurement type. Of the nine GAXs sampled, eight originated from an MA and one originated from a sole-source procurement. When purchasing from an MA, procurements must provide the MA and a quote with an AOC-3 request form or an eRequest.⁴⁵ Of the eight originating from a MA, none had justification for using a GAX for that purchase. Of those eight, two GAXs did not have AOC-3 request forms and another two had the correct information but on task forms instead of AOC-3 forms. The one GAX created from a sole-source procurement did not have a justification for using a GAX.

Issues Tied To Missing Documents

Missing documentation makes the tracking of approvals and expenditures more difficult.

Multiple issues result from the lack of documents. A lack of request forms means there is no evidence that management approved the transactions. In addition, request forms provide important information about the procurement that could be useful to procurement staff. Two sampled SCs did not give proper written justification for a competitive bidding exception, so there is no proof the exceptions were reviewed at the time of procurement. No GAXs had documentation justifying the use of a GAX. GAXs do not reference contracts, so approving unnecessary GAXs leads to more difficulty in tracking expenditures

Not using correct documents creates inconsistency in procurement processes and undermines standards already in place.

Multiple samples included the required information, but included it on a form different from what was required or stipulated in the relevant procurement policy. This method creates inconsistency in procurement practice and can undermine standards already in place

as well as create confusion as to what proper practice is. One RFB lacked a Responsiveness or Reliability form in its procurement file, so there is no evidence that only bids meeting the minimum requirements were evaluated. In addition, an RFP did not include a Statement of Confidentiality, Conflict of Interest form, or Communication Disclosure form because the files were lost. Without these forms, there is no evidence that selection committee members are following proper practice in the evaluation of proposals or that they do not have a conflict of interest that would disqualify them from participating.

In addition, one Conflict of Interest form indicated that a selection committee member had a financial interest in the submitted proposals, though no explanation was given. If an actual conflict of interest was ignored, the effect would be to undermine the legitimacy and appearance of fairness in the competitive bidding process. If it was a mistake that was not caught or followed up on, the effect would be that similar issues might pass the review process in the future.

Failing to back up or digitize files could cause more files to be lost in the future.

RFPs were produced without request forms to replace current contracts nearing expiration. Another RFP did not have a request form because it was verbally requested. For multiple documents, AOC did not have forms that were required by their own policies or had incorrect versions of required forms. AOC reported not having a Confidentiality and Conflict of Interest form for an RFP because it had been lost during a physical transition of files. A failure to back up or digitize files could cause similar issues in the future.

Recommendation 3.3

Recommendation 3.3

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.

Recommendation 3.4

Recommendation 3.4

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.

Recommendation 3.5

Recommendation 3.5

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

Recommendation 3.6

Recommendation 3.6

The Administrative Office of the Courts should establish stronger practices to meet documentation requirements in its own policies. Specifically, 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.

Recommendation 3.7

Recommendation 3.7

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

Recommendation 3.8

Recommendation 3.8

If a selection committee member indicates 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.

General Accounting Expenditures Were Used For Unsuitable Payments

AOC spent millions of dollars per year through GAXs on categories not meant to be paid through GAXs.

AOC spent millions of dollars per year through GAXs on categories not meant to be paid through GAXs. This type of financial document is typically used “to pay allowable expenditures such as reimbursements, utilities, postage and agency specific authorities.”⁴⁶

Table 3.1 shows the top five categories of GAXs from FY 2019 to FY 2021 after eliminating reimbursements, utilities, and postage. More specifically, the 3-year total of \$70.7 million accounts for 77.0 percent of GAX expenditures in this period, while the remaining 23.0 percent accounts for more typical expenditures related to reimbursement, utilities, postage, and agency-specific authorities.

Table 3.1
Administrative Office Of The Courts General Accounting Expenditures
Outside Intended Categories
FY 2019 To FY 2021

Expenditure Type	FY 2019	FY 2020	FY 2021	Total
Office supplies	\$3,614,360	\$3,449,370	\$3,132,929	\$10,196,658
Other professional services	1,205,879	4,810,683	3,234,060	9,250,623
Other	3,613,820	3,296,068	1,851,956	8,761,844
Other IT software	2,503,557	1,932,510	2,980,595	7,416,662
Other capital outlay	1,534,950	1,013,601	1,552,831	4,101,382
All other categories	10,603,046	10,338,624	10,026,050	30,967,720
All categories	\$23,075,612	\$24,840,857	\$22,778,421	\$70,694,889

Note: There were 6,686 general accounting expenditures from FY 2019 to FY 2021: 2,687 in FY 2019, 2,342 in FY 2020, and 1,657 in FY 2021. Due to rounding, some figures do not sum to the total shown.

Source: Financial Analysis System Power BI.

The categories in Table 3.1 are typically paid for in eMARS through other financial documents such as a Payment Request Commodity.

The “all other categories” combines 50 additional categories in which GAXs were used. This combined category includes seven categories with more than \$1 million in expenditures across 3 years: other IT hardware less than \$5,000 (\$3.7 million), other IT hardware greater than \$5,000 (\$3.5 million), maintenance of equipment (\$3.5 million), books for department use (\$3.2 million), consulting services (\$2.9 million), furniture/fixture/office equipment less than \$5,000 (\$2.6 million), and other telephone system hardware less than \$5,000 (\$1.4 million).

Typically, other types of financial documents in eMARS, such as the Payment Request Commodity (PRC), are used for making the expenditures shown in Table 3.1. Expenditures related to motor vehicles (\$426,018), architectural and engineering services (\$405,475), and furniture/fixtures/equipment over \$5,000 (\$204,307) are routine examples of expenditures that are typically made using PRC documents.

Other examples in the “other professional services category,” included payments for professional technology services and teen court coordinator stipends. Also, the “other” category included payments for supermarkets, drug court testing services, and lab fees. The “other IT software” and “other capital outlay” categories often used references to purchase orders and inventory numbers, making identification of the purchases more difficult.

Overuse Of GAXs Causes Control Weaknesses

Requirements for GAXs are established by the Finance and Administration Cabinet.

Requirements for GAXs are established by the Finance and Administration Cabinet (FAC). A FAC training document, “eMARS 1320 Accounts Payable,” states that GAXs are “used

to pay allowable authorities such as reimbursements, utilities, postage and agency specific authorities.”⁴⁷ Although AOC is not required to follow FAC policies or use the statewide accounting system, FAC provides authoritative policies to reduce the risk related to the use of certain types of financial documents that are processed through eMARS. However, AOC policy permits the use of GAXs to pay against purchase orders for purchases under \$50,000 or purchases from master agreements or state price contracts.⁴⁸

An overuse of GAXs makes the tracking of spending against contracts more difficult.

As a result of AOC allowing additional uses of GAXs, tracking contract spending and individual purchases is more difficult. Although AOC staff can enter contract numbers into GAX fields, GAXs do not reference contracts and GAX expenditures do not post against contract totals. Document referencing also allows statewide accounting system users to track payments issued from other documents. GAXs prevent this feature from working.

GAXs have fewer places for details about commodities, which makes tracking the type and purpose of purchases more difficult.

GAXs also have fewer places for commodity details to better describe the product or service ordered. Table 3.1 includes 443 payments whose descriptions were purchase order and inventory numbers. These order and inventory number descriptions made determining the purpose of the payment more difficult. By comparison, PRCs include areas for descriptions, commodity numbers, quantities, units of measurement, prices, dates when services were received, and vendor invoice numbers.

An overreliance on the use of GAXs may cause overspending in certain areas due to a lack of a contractual framework.

In general, an overreliance on the use of GAX documents to pay for commodities and services may cause an agency to overspend in certain areas due to the lack of a contractual framework, where expenditures can be tracked. As mentioned previously, using PRCs to make expenditures against existing contracts offers more accountability. For example, establishing various award documents such as PON2s, MAs, SCs, delivery orders, purchase orders, and contracts from which to expend funds allows for better tracking of expenditures.

AOC has indicated it is proactively looking for ways to reduce the use of GAXs.

AOC officials have indicated they are proactively looking for ways to eliminate GAXs for any contract or purchase order. In the FY 2023 procurement policy, GAXs will be used only to pay invoices associated with telephones, internet, utilities, mail services, and other invoices as approved by the director of AOC’s Office of Finance and Administration. If purchase orders and delivery orders can both be delivered through the statewide accounting system, then PRCs will be used to pay rather than GAXs. If purchase orders or delivery orders cannot be issued,

purchase orders will be entered as service contract documents and paid against using PRCs. AOC is also exploring ways to pay against in-house delivery orders using stand-alone PRC documents.⁴⁹

The changes in the FY 2023 policy significantly improve AOC's use of GAXs and more closely align AOC's policy with the intended use of GAXs. As AOC implements its new policy, there are additional areas related to GAXs that AOC should consider.

Recommendation 3.9

Recommendation 3.9

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 increased issues with the use of GAXs, AOC should consider which GAX purchases would be suitable for director approval.

Recommendation 3.10

Recommendation 3.10

To prevent increased use of General Accounting Expenses, 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.

Recommendation 3.11

Recommendation 3.11

If stand-alone payments are still needed after implementing the FY 2023 procurement policy, Administrative Office of the Courts officials should determine whether they can be replaced by stand-alone payment requests commodity documents so

that General Accounting Expenses are typically used for intended processes.

Recommendation 3.12

Recommendation 3.12

If stand-alone General Accounting Expenses are needed for an invoice approved by the director of the Office of Finance and Administration, then the General Accounting Expenses description field should clearly indicate the purpose of the General Accounting Expense. If possible, the approval of the director of the Office of Finance and Administration should be maintained in records.

Recommendation 3.13

Recommendation 3.13

The Administrative Office of the Courts should review its General Accounting Expense expenditures for the past 3 years to identify areas where award documents can be established for the future. For example, a review of General Accounting 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.

Appendix A

**[Reserved For
Administrative Office Of The Courts Response To The Report]**

Appendix B

Findings And Recommendations From Audits Of Other State Judicial Systems

Table B.1 summarizes the findings of judicial audits performed in other states. To find these audits, staff searched for the legislative or state auditor of each state. Once the pertinent auditor’s office was found, staff searched the office’s website. Website structure varied from state to state, but almost all allowed keyword or topic searching that allowed staff to find applicable audits more efficiently.

Table B.1 does not include the 2018 *Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts* produced by the Kentucky Auditor of Public Accounts. The procurement recommendations from the examination are discussed in Chapter 3 and Appendix C.

**Table B.1
 State Judicial Audits Findings and Recommendations**

State	Audit Findings	Audit Recommendations
California	The audit found issues with inadequate justification for sole-source contracts, lack of proper approval and/or documentation for contracts, and exclusion of current vendors based on assumptions regarding their pricing.	The audit recommended ensuring that those with the appropriate level of authority approve purchases, obtaining authorized approvers’ signatures for noncompetitive procurements, properly documenting justification for noncompetitive procurements, and not excluding potential vendors from bidding based on assumptions about their prices.
Colorado	The audit found issues with contracting with employees who had only recently left the Judicial Council and contracting issues surrounding justification for using sole-source procurement such as lack of written justification, missing statements to explain why only one provider was considered, lack of appropriate signatures, and lack of negotiations with vendors on terms of the contract. The audit found issues with individuals approving their own purchases and issues with purchases having no signature from budget authority.	The audit recommended that the State Court Administrator’s Office update procurement rules to prohibit former employees from contracting with the department within a specified period after resignation; that internal reviews and approvals be established for all phases of sole-source contracting, including identifying all parties required to review the contract documentation; that information required to support the written justification and negotiations for the sole-source procurement and contract terms be identified; and that the office require posting of public sole-source notifications prior to awarding sole-source contracts. The audit recommended that the office improve controls over procurement cards by establishing written policies specifying which positions can serve as a budget authority and can approve procurement card purchases, taking into consideration the appropriate segregation of duties and how and where approvals should be documented.

State	Audit Findings	Audit Recommendations
Connecticut	<p>The audit found issues with services extending past contract terms.</p> <p>The audit found issues with services beginning before a contract had been signed and with competitive procurement processes being waived with long-term vendors.</p>	<p>The audit recommended that the judicial branch improve its monitoring of contract expiration dates.</p> <p>The audit recommended that the judicial branch not authorize contractors to begin work prior to the execution of a contract, that competitive procurement processes be used, and that the judicial branch not conduct sole-source purchases when alternatives exist.</p>
Maryland	<p>The audit found that the judiciary lacked documentation to support contract award decisions and did not maintain the proposal documents.</p> <p>The audit found that too many individuals had improper access to the system used for purchasing and/or disbursement functions. There were individuals with improper access and others whose access would allow them to process both purchases and the related payments without supervisory review and approval.</p> <p>The audit found that the judiciary did not adequately secure and/or retain critical procurement documents and did not publish certain contracts on eMaryland Marketplace as required by its policies.</p> <p>The audit found that the judiciary did not consider the use of available statewide contracts.</p> <p>The audit found that the judiciary did not maintain complete and accurate records and lacked sufficient procedures</p>	<p>The audit recommended that the judiciary analyze and thoroughly document its procurement decisions, including sole-source justifications; that it adequately document the verification of vendor invoices, including assurances that rates were paid and discounts were applied in accordance with contract provisions; and that it retain bidding documentation for all procurements, including documentation of evaluations conducted by selection committee members and all technical and financial proposals received, as required by state law.</p> <p>The audit recommended that the judiciary restrict access to its financial management systems so that critical procurement and disbursement functions cannot be unilaterally performed; that it ensure that a security form is completed, approved by the appropriate supervisor, and maintained for each user granted system access; and that it periodically conduct reviews of employee access and remove system access on a timely basis from individuals who do not require it.</p> <p>The audit recommended that the judiciary ensure contract bids and proposals are adequately secured prior to being opened; that it retain bidding documentation for all procurements, including documentation of evaluations conducted by selection committee members and all technical and financial proposals received; that it sufficiently analyze and thoroughly document its procurement decisions; and that it publish contract solicitations and awards in accordance with the requirements contained in its Procedures Manual.</p> <p>The audit recommended that the judiciary consider the use of statewide contracts to maximize competition and help ensure the most advantageous contract terms; that sole-source contracts be used only in accordance with policy, along with making sure that the basis for not competitively procuring services is documented; and that it ensure that expired contracts are not continued to be used.</p> <p>The audit recommended that the judiciary maintain complete and accurate records of costs on contracts and ensure total costs do not exceed the value of the related</p>

State	Audit Findings	Audit Recommendations
	<p>over task orders, resulting in the failure to identify that it overspent on contracts. The judiciary was failing to document extensions for bid due dates, failing to notify vendors approved under a master contract of changes in the scope of work, and failing to ensure that vendors submitted all the required information in proposals.</p>	<p>contracts without accompanying formal contract modifications that justify the increased costs, ensure task orders are awarded only to vendors that submit bids prior to the bid due dates, ensure all vendors approved on the master contract are provided an opportunity to bid on revised solicitations, ensure vendor proposals contain sufficient detail to determine whether costs are reasonable, and ensure change orders are documented and assessed for propriety.</p>
<p>Texas</p>	<p>The audit found that the Office of Court Administration did not maintain adequate documentation supporting its determination that total contract costs were reasonable. The office also did not develop or perform any monitoring processes to verify whether vendors would be in compliance with the Texas Administrative Code, nor did it have sufficient reports from contractors to verify that contractor incident ticket response times met contract requirements.</p>	<p>To determine whether contractors are providing contracted services sufficiently to perform support contract payments, the audit recommended that the Office of Court Administration develop and implement documented monitoring processes over contractors, covering the payment portal processor, the collection and transfer of filing fees to verify that fees paid are collected and transferred to the courts as required, and key contract provisions such as information security and performance goals. The office should track the interest owed to contractors on overdue payments and ensure compliance with Texas Government Code. The office should analyze the estimated cost of contracts to determine whether contract costs are reasonable and analyze the financial impact of contract amendments and maintain documentation supporting those analyses.</p>

Sources: California State Auditor. *Judicial Council Of California Report 2017-302*, Dec. 2017, Web; Elaine M. Howle. California State Auditor. Letter to the Governor of California, President Pro Tempore of the Senate, and the Speaker of the Assembly, Dec. 19, 2020; Colorado Office of the State Auditor. *Judicial Department State Court Administrator’s Office Performance Audit*, Nov. 2020, Web; Connecticut. Auditors of Public Accounts. *Auditors’ Report: Judicial Branch Fiscal Years Ended June 30, 2017 And 2018*, April 2021, Web; Connecticut. Auditors of Public Accounts. *Auditors’ Report: Judicial Branch Fiscal Years Ended June 30, 2019 And 2020*, Nov. 2021, Web; Maryland. Office of Legislative Audits. *Audit Report: Judiciary*, May 2017, Web; Maryland. Office of Legislative Audits. *Audit Report: Judiciary*, May 2021, Web; Texas. State Auditor. *An Audit Report On Financial Processes At The Office Of Court Administration Report No. 17-048*, Aug. 2017, Web.

Appendix C

Administrative Office Of The Courts Actions On Auditor Of Public Accounts Recommendations

The 2018 auditor of public accounts (APA) examination of the Administrative Office of the Courts (AOC) produced a series of recommendations and responses by AOC officials. Sixteen recommendations were related to procurement practices. AOC officials responded with actionable plans for 12 recommendations. Table C.1 provides summaries of the recommendations, summaries of the AOC responses, and the implementation status of the recommendation as provided by AOC. Recommendations were not numbered in the original APA report. Recommendation numbering on the tables is based on the finding area and then the order of recommendations, so Recommendation 2.3 is the third recommendation from the second finding area.

Table C.1
Auditor Of Public Accounts 2018 Recommendations
On Which The Administrative Office Of The Courts Indicated It Would Take Action

Recommendation	AOC Response	Implementation Status
1.1 (p. 100): APA recommends that AOC require all levels of management to comply with administrative rules consistently. Failure to adhere to policies should result in loss of privileges.	AOC developed and submitted recommendations to the Supreme Court, taking into account the APA findings and recommendations.	Complete. AOC requires all levels of management to comply with administrative rules consistently.
2.2 (p. 103): All existing AOC policies, other than APs and AOs, should be inventoried, assessed, and reenacted pursuant to the new process.	AOC anticipated that the written procedure regarding the process for operational procedures and guidance would be completed by September 1, 2018. The internal electronic database for procedures and guidance would be operational by October 31, 2018. A position was created to be responsible for maintaining operational procedures, among other duties.	Complete.
2.3 (p. 104): AOC should create and maintain a central location for policies that is accessible to its employees and other applicable parties.	(See 2.2) The internal electronic database for procedures and guidance would be operational by October 31, 2018.	Complete.

Recommendation	AOC Response	Implementation Status
3.1 (p. 105): APA recommends that AOC develop a division with a true internal audit function. It should have a charter, report to the director or above, have interaction with the chief justice, and be given independence.	AOC did not state it would take additional action.	Complete.
3.2 (p. 105): APA recommends that AOC consider creating an audit committee that separates management from the internal audit activities that provide oversight of management.	AOC did not state it would take additional action.	Complete.
3.4 (p. 106): APA recommends that, after the audit function was more fully developed, AOC designate its internal audit division or committee as a reporting entity for allegations of waste, fraud, and abuse.	AOC did not state it would take additional action.	Complete.
3.5 (p. 106): APA recommends that the General Assembly require an annual external audit of AOC, permitting the APA right of first refusal.	AOC did not state it would take additional action.	Complete.*
5.2 (p. 109): APA recommends that all procurement policies be formalized, documented, and distributed to staff.	The Division of Accounting and Purchasing worked with the Office of General Counsel to develop and submit comprehensive recommendations to the Supreme Court.	Complete. The AOC Procurement Policy (AOC.005) will become effective on 7/1/2022 and will be available on the AOC website. Training will be provided. Until then, the Purchasing and Procurement Guidelines, dated March 15, 2018, which have been distributed to staff, apply.
5.4 (p. 110): APA recommends that AOC adopt definite criteria and require written justification for sole-source purchasing or other bidding exceptions.	The recommendation was to be included in recommendations provided to the Supreme Court.	In progress. Definite criteria for sole source purchasing and other bidding exceptions are included in AOC Procurement Policy (AOC.005) that will become effective on 7/1/22. Determinations and Findings are currently written, including justification for the bidding exception, and signed by the Executive Officer of Financial Services or the AOC Director of Finance and Administration.

Recommendation	AOC Response	Implementation Status
5.5 (p. 111): APA recommends that AOC conduct a comprehensive review of all ethics policies, including procurement guidelines, to address APA concerns.	Pursuant to KRS 27A.020(6), AOC made appropriate recommendations to the Supreme Court for inclusion in Rules of Administrative Procedure for procurement.	Complete. Additional ethical responsibilities have been included in AP Part III, <i>Personnel Policies for the Kentucky Court of Justice</i> . Ethical policies specifically related to procurement are included in AOC.005, <i>AOC Procurement Policy</i> , to become effective 7/1/22. Ethical policies regarding leases have also been updated.
11.1 (p. 119): APA recommends that AOC develop, at a minimum, a cardholder agreement to be signed by all individuals issued a credit card. Cardholders should not use cards to make personal purchases. Cardholders should submit supporting documentation for all purchases made using their card. Supporting documentation should include detailed receipts or invoices identifying the name of the vendor, the date of the charge, and items purchased. Purchases of food unrelated to travel should be prohibited. All transactions deemed necessary should include a written description of purpose and list of recipients of food. AOC should provide a list of unallowable items.	AOC developed a cardholder agreement to be executed by any individual assigned an American Express card.	Complete.

Recommendation	AOC Response	Implementation Status
13.1 (p. 121): Either purchase orders or AOC-3 Commodity/Service Request forms should be required for all purchases using a ProCard, except in emergencies. APA recommends that AOC amend policy and practices to apply consistently to all departments.	AOC was to update the cardholder agreement to specify that cardholders must obtain prior approval from their manager before making purchases with the ProCard. The Division of Accounting and Purchasing was to promulgate operational procedures requiring submission of receipts prior to payment of ProCard bills and requiring two layers of review prior to payment.	Partially complete. This recommendation will not be fully implemented, because the purpose of the ProCard program is to offer departments flexibility to purchase items needed during the routine course of their work without the issuance of a [purchase order] or AOC-3. However, internal controls are built into the ProCard program, including purchase limits and limitations on vendor type. Each ProCard holder agrees to comply with the AOC Procurement policies and receives training. An OnBase document approval system has been created for approval of receipts. Receipts must be approved by the cardholder's manager and by Accounting prior to payment. The cardholder must reimburse AOC for any noncompliant purchases.
14.1 (p. 122): AOC should develop standard forms that reflect policy requirements for leases.	AOC is reviewing AP Part V and, per KRS 27A.020(6), making recommendations to the Supreme Court to update the policy.	In progress. 24 forms have been drafted and the project is anticipated to be completed 4/1/22.
14.2 (p. 123): APA recommends that AOC policies require that individuals with relationships to AOC or AOC staff disclose relationships during procurement.	The Disclosure of Ownership form was updated consistent with these findings and recommendations.	Complete.
14.3 (p. 123): APA recommends that AOC policies address conflicts of interest during procurement to avoid the appearance of favoritism or provision of financial benefits to related parties. Known conflicts should be properly documented as to the reason(s) the relationship was considered acceptable. Any individual who abstains from the process due to the conflict should be documented.	AOC reviewed AP Part V and, pursuant to KRS 271.020(6), made recommendations to the Supreme Court consistent with these findings and recommendations.	Complete, through development of an AOC procedure that prohibits the leasing of property from a KCOJ official or employee or their family.

Recommendation	AOC Response	Implementation Status
14.4 (p. 123): APA recommends that AOC create a bid file and maintain all reports and evidence to support selection of winning bidders in the bid file. Reasons for the selection should be created and maintained. Analysis should support the result based on the criteria identified in the bid solicitation.	The manager of facilities will require that a checklist be included in every private sector lease file to document necessary reports and evidence to support the selection of winning bidders. The manager will require that staff document their analysis of the criteria identified in the bid solicitation and reasons for the selection of the winning bidder in each private sector lease file. The manager will review the file and verify that each item on the checklist is completed and in the file.	In progress. Responsiveness reviews, suitability assessments, and Best and Final Summary forms that include ranking of properties are in development, to be effective 4/1/22.

Note: The columns labeled “Recommendation” and “AOC Response” contain summaries of the original documents; the column labeled “Implementation Status” contains direct quotes. AOC = Administrative Office of the Courts; AP = administrative policy; AO = administrative order; KCOJ = Kentucky Court of Justice.

* In a February 28, 2022, email to William Spears, Jenny Lafferty, AOC director of finance and administration, explained that AOC’s interpretation of KRS 45.149(2) was that the judicial and legislative branches were not required to offer APA the right of first refusal. AOC did inform APA that AOC had issued a request for proposals for a FY 2021 financial audit, but APA did not submit a proposal.

Sources: Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, March 4, 2022; staff analysis of Kentucky, Auditor of Public Accounts. *Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts*, 2018.

Endnotes

- ¹ Kentucky. Finance and Administration Cabinet, Customer Resource Center. “eMARS Reporting Chart Of Accounts Overview.” Dec. 3, 2018, pp. 12, 15.
- ² Kentucky. Finance and Administration, Cabinet Customer Resource Center. “eMARS 1320 Accounts Payable.” April 5, 2019, pp. 7-8.
- ³ Kentucky. Administrative Office of the Courts. “Finance And Administration.” Web.
- ⁴ Kentucky. Administrative Office of the Courts. “Financial Services.” Web.
- ⁵ Kentucky. Administrative Office of the Courts. “AOC Org Chart Names.” March 16, 2022. Web.
- ⁶ Kentucky. Administrative Office of the Courts. “Finance And Administration.” Web.
- ⁷ Kentucky. Administrative Office of the Courts. “Office Of Audits.” Web.
- ⁸ Jamie Neal. “Judicial Branch Announces Results Of External Audit For FY 2021 Financial Statements.” Kentucky Administrative Office of the Courts. Jan. 27, 2022. Web.
- ⁹ Kentucky. Administrative Office of the Courts. “Office Of Audits.” Web.
- ¹⁰ Tressa Milburn. “Procurement Process Narrative.” Administrative Office of the Courts. June 28, 2021, p. 3; Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, Feb. 28, 2022; Laurie Dudgeon, director, Jenny Lafferty, director, Office of Finance and Administration, and Alice Wilson, director, Office of Audits, Administrative Office of the Courts. Sept. 28, 2021. Interview.
- ¹¹ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, Feb. 28, 2022.
- ¹² Jenny Lafferty, director of finance and administration. “Purchasing And Procurement Guidelines.” Administrative Office of the Courts, March 15, 2018, pp. 1-2, 4.
- ¹³ *Ibid.*, pp. 1-2.
- ¹⁴ *Ibid.*, pp. 2-3.
- ¹⁵ *Ibid.*, pp. 4-5.
- ¹⁶ Jenny Lafferty, director of finance and administration. “Procurement Process Level Narrative.” Administrative Office of the Courts, n.d., pp. 12-13.
- ¹⁷ Tressa Milburn, policy officer. “Procurement Process Narrative.” Administrative Office of the Courts, June 28, 2021, p. 7.
- ¹⁸ *Ibid.*, pp. 8-12.
- ¹⁹ Jenny Lafferty, director of finance and administration. “AOC Policy-005 Procurement Of Commodities and Services.” Administrative Office of the Courts, Feb. 1, 2022, p. 1.
- ²⁰ *Ibid.*, pp. 23, 24, 31, 34, 36, 37, 39.
- ²¹ *Ibid.*, pp. 34, 35, 39.
- ²² Danny Rhoades, executive officer. “SOP 200.001 Procedure Prohibiting The Leasing Of Real Property From KCOJ Appointed Or Elected Officials, Employees, Or Their Family Members.” Administrative Office of the Courts. Aug. 19, 2019.
- ²³ Kentucky. Auditor of Public Accounts. “Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts.” July 12, 2018, pp. 17-20. Web.
- ²⁴ Kentucky. Administrative Office of the Courts. “Office Of Audits.” Web.
- ²⁵ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, Feb. 28, 2022.
- ²⁶ *Ibid.*; Laurie Dudgeon, director, Jenny Lafferty, director, Office of Finance and Administration, and Alice Wilson, director, Office of Audits, Administrative Office of the Courts. Sept. 28, 2021. Interview.
- ²⁷ Alice Wilson, director of internal auditing, Administrative Office of the Courts. Email to William Spears, May 16, 2022.
- ²⁸ Jenny Lafferty, Director of Finance and Administration, Administrative Office of the Courts. Email to William Spears, March 4, 2022.
- ²⁹ Kentucky. Auditor of Public Accounts. *Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts*, 2018, p. 121.
- ³⁰ Kentucky. Administrative Office of the Courts. *Procurement Cards And Credit Cards, July 1, 2019 Through April 30, 2020*, p. 10.
- ³¹ *Ibid.*, p. 4.
- ³² *Ibid.*, p. 19.

³³ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, March 4, 2022.

³⁴ Ibid.; Kentucky. Administrative Office of the Courts. *Procurement Cards And Credit Cards, July 1, 2019 Through April 30, 2020*, p. 4.

³⁵ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. May 19, 2022. Interview.

³⁶ Kentucky. Auditor of Public Accounts. *Examination Of Certain Operations, Internal Controls, And Policies Of The Administrative Office Of The Courts, 2018*, p. 106.

³⁷ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, March 4, 2022.

³⁸ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., pp. 10-12; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, pp. 8-10.

³⁹ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., pp. 12-13; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, pp. 10-13.

⁴⁰ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., p. 9; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, p. 6.

⁴¹ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., p. 4; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, p. 4.

⁴² Ibid.

⁴³ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., pp. 10-13; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, pp. 8-13.

⁴⁴ Court Administrative Procedure Part X, secs. 3-6.

⁴⁵ Jenny Lafferty, director of finance and administration. "Procurement Process Level Narrative." Administrative Office of the Courts, n.d., p. 9; Tressa Milburn, policy officer. "Procurement Process Narrative." Administrative Office of the Courts, June 28, 2021, p. 6.

⁴⁶ Kentucky. Finance and Administration, Cabinet Customer Resource Center. "eMARS 1320 Accounts Payable." April 5, 2019, pp. 7-8.

⁴⁷ Ibid.

⁴⁸ Jenny Lafferty, director of finance and administration, Administrative Office of the Courts. Email to William Spears, March 25, 2022.

⁴⁹ Ibid.