



# Judicial Branch Contracting

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**Legislative Oversight and Investigations**

**June 16, 2022**



## Report Methodology

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- Reviewed policies and practices
- Reviewed requirements for procurement
- Analyzed expenditures and contracts
- Sampled contract files
- Reviewed other states



## **Administrative Office of the Courts (AOC)**

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- Kentucky Court of Justice (KCOJ): Supreme Court, Court of Appeals, Circuit Court, Circuit Court clerks, and District Court
- Supreme Court Rule 1.050 establishes AOC as the legal and fiscal arm of KCOJ
  - Office of Finance and Administration oversees contracting and purchasing

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## **Background**

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### **Overall Expenditures And Contract Expenditures**

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## KCOJ Expenditures

<b>Expenditure Type</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
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
<b>Total</b>	<b>\$411,537,328</b>	<b>\$424,211,778</b>	<b>\$421,898,801</b>

Note: Expenditures are for Supreme Court, Court of Appeals, Circuit Court, Circuit Court clerks, District Court, and AOC.  
Source: Financial Analysis System Power BI.

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## KCOJ Expenditures By Contract Types (In Millions of Dollars)

	<b>FY 2019</b>		<b>FY 2020</b>		<b>FY 2021</b>	
	<b>Allowable</b>	<b>Recorded</b>	<b>Allowable</b>	<b>Recorded</b>	<b>Allowable</b>	<b>Recorded</b>
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
<b>Total</b>	<b>\$19.5</b>	<b>\$10.5</b>	<b>\$16.2</b>	<b>\$8.9</b>	<b>\$25.3</b>	<b>\$5.1</b>

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.

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# Background

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## Contract Requirements

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## Contracting Requirements

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- Set through internal documents and Rules of Administrative Procedure (APs)
- Three internal documents guided contracting practices from FY 2019 to FY 2021
- New policy begins in FY 2023

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## Competitive Goods And Services

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- Goods and non-professional services
  - Under \$50,000: One to three quotes required
  - \$50,000 or more: Request for Bids (RFB) required
- Professional services require Request for Proposals (RFP)
- Competitive exceptions
  - MA purchases, governmental or nonprofit vendors, emergencies, sole source, not feasible or practicable

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## RFB Process For Goods And Non-Professional Services

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- Requestor submits form, including scope and cost
- Procurement officer develops award criteria
- Vendors in system are notified
- Vendors asked to mail or email bids
- Bids are tabulated in a template
- Low bid or best value is calculated

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## RFP Process For Professional Services

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- Requestor submits a form, including statement of work and estimated cost
- Procurement officer develops award criteria
- Vendors in system are notified
- Evaluation committee completes grading sheets

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## Real Property Leases

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- AP Part X, Section 5 (2006)
  - Request space
  - Give public notice
  - Review offers, negotiate
  - Inspect and evaluate property
  - Request best and final offers
  - AOC director selects proposal
  - Inspect property to ensure changes have been made
- SOP 200.001 (2019) establishes conflicts of interest

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## **Finding Area 1**

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### **AOC Satisfactorily Addressed Auditor Of Public Accounts Recommendations**

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### **APA Recommendations Have Been Implemented**

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- 2018 Auditor of Public Accounts' examination produced 16 procurement recommendations
  - 15 recommendations completed
  - 1 recommendation partially completed
    - APA recommended purchase orders or request forms for procurement card (ProCard) purchases

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## Improvements From APA Recommendations

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- AOC's implementation of APA recommendations has led to overhaul of internal control framework
  - Improved general procurement policies and procedures
  - Creation of an internal audit function and audit committee

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## Additional Clarity For Two APA Recommendations

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- AOC has only partially implemented controls suggested by the APA related to ProCard transactions, and internal ProCard controls could be stronger
- Additionally, LOIC staff found that new AP language does not clearly establish the Internal Audit function as the reporting entity for allegations of waste, fraud, and abuse

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## **LOIC Recommendation 3.1 (Page 25)**

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**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.**

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## **LOIC Recommendation 3.2 (Page 26)**

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

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## **Finding Area 2**

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### **Contract Documents Met Many, But Not All, Requirements**

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### **Requirements Met By Contract Documentation**

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- Documentation of competitively bid contracts is generally thorough and complete
- Almost no problems with documentation for real property leases
- However, requirements are not being met in other areas

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## Issues With Request Forms And Competitive Exceptions

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- Twelve of 32 sampled contracts did not include the required request form
- Five of 32 samples included required information, but on a form different than what was required
- Two of 10 sampled competitive exception contracts did not give justification
  - Five other contracts had justification but no determination

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## Issues With Disclosure Form And Missing Files

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- One RFP Conflict of Interest form indicated a potential conflict, but had no details
- Three requested files for one RFP were not present because they were lost

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## **LOIC Recommendation 3.3 (Page 31)**

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**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.**

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## **LOIC Recommendation 3.4 (Page 31)**

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**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.**

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## **LOIC Recommendation 3.5 (Page 31)**

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

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## **LOIC Recommendation 3.6 (Page 31)**

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**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.**

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## **LOIC Recommendation 3.7 (Page 31)**

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

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## **LOIC Recommendation 3.8 (Page 31)**

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

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## **Finding Area 3**

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### **AOC Used General Accounting Expenditures For Unsuitable Payments**

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### **Millions Spent Through General Accounting Expenditures (GAXs)**

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- AOC spent millions of dollars per year through GAXs on categories not meant to be paid through GAXs
- GAXs are meant to pay reimbursements, utilities, postage, and agency specific authorities

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## GAX Expenditures Outside Of Intended Categories

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.

Source: Financial Analysis System Power BI.



## Overuse of GAXs Cause Control Weaknesses

- GAX control weaknesses
  - Make expenditure tracking more difficult
  - Have fewer areas to detail commodities
  - May cause an agency to overspend
- AOC is looking for ways to eliminate GAXs





## **LOIC Recommendation 3.9 (Page 34)**

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**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.**

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## **LOIC Recommendation 3.10 (Page 35)**

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**To prevent increased General Accounting Expense use, Administrative Office of the Courts officials should create criteria or general categories for invoices that may be approved by the director of the Office of Finance and Administration for payment by General Accounting Expenses.**

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## **LOIC Recommendation 3.11 (Page 35)**

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

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## **LOIC Recommendation 3.12 (Page 35)**

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

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## LOIC Recommendation 3.13 (Page 35)

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The Administrative Office of the Courts should review its GAXs for the past three years to identify areas where award documents can be established for the future. For example, a review of GAXs 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.

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## Conclusion

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- Major internal control improvements since 2018
  - Still room for improvement
- Sampled contracts did not meet some requirements
- Extensive use of GAXs
- AOC plans to continue improvements

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# Questions

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