

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 1st Meeting of the 2022 Interim

June 16, 2022

Call to Order and Roll Call

The 1st meeting of the Legislative Oversight & Investigations Committee was held on Thursday, June 16, 2022, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jason Nemes, Co-Chair; Senator Danny Carroll, Co-Chair; Representatives Lynn Bechler, John Blanton, Ken Fleming, Joni L. Jenkins, and Steve Riley; Senators Morgan McGarvey and Brandon J. Storm.

Guests: Jenny Lafferty, Director, Finance and Administration; Alice Wilson, Director, Audits; and Tammy Brown, Executive Officer, Financial Services; Administrative Office of the Courts.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Jacob Blevins, Joel Thomas, Jeremy Skinner, Shane Stevens, Chris Hall, Ryan Brown, Taylor Johnston, McKenzie Ballard; and Ashley Taylor, Committee Assistant.

Minutes for December 16, 2021

Upon motion by Representative Blanton and second by Representative Riley, the minutes for the December 16, 2021, meeting were approved without objection.

Representative Nemes held a moment of silence for the passing of Sarah Elizabeth Chastain, who was a graduate fellow for the Legislative Oversight and Investigations Committee.

Staff Report: Judicial Branch Contracting

Legislative Oversight staff members William Spears and Ryan Brown presented a summary of the Judicial Branch contracting report. The report reviews contracting policies and practices of the Judicial Branch. Staff reviewed requirements for procurement, including policies, training documents, and internal and external audits. Staff analyzed expenditures and contracts from fiscal year (FY) 2019 to FY 2021, sampled contract files

to compare against requirements, and reviewed audits of judicial systems from other states. Staff provided three finding areas and thirteen recommendations.

The draft report and presentation slides are available on the Legislative Oversight and Investigations Committee webpage.

In response to a question from Representative Nemes, Mr. Spears explained that Kentucky Court of Justice (KCOJ) expended \$5.1 million against various contract types for FY 2021, but was authorized to expend \$25.3 million. He also stated that base funds are appropriated, but not for expenditures against specific contracts. There is nothing in an appropriation that states exactly to which contracts the funds apply. Mr. Spears noted after speaking with the agency it was established that the allowable amounts are not good representations of what they expect to spend on the contracts. An example is for language interpreters, where the agency typically allots a larger amount than what they expect to spend so that they do not inadvertently reach a spending limit on contracts where they do not have an expected limit. Representative Nemes also inquired about the changes in capital outlay expenditures, but stated he would ask the agency.

In response to questions from Representative Fleming about best value, Mr. Spears briefly explained that best value does not necessarily mean the lowest bid, but also includes other factors to determine a best offer. Mr. Brown stated the files that were requested made it possible for them to see how bids are scored and how score sheets are developed. Typically there were three to four categories which could include anything from professionalism to presentation. The categories were then scored and weighted so it was dependent on the individual bid they were reviewing.

Representative Fleming asked Mr. Spears and Mr. Brown if they thought AOC felt comfortable using different procurements based on volume. Mr. Brown and Mr. Spears said they did not look into that specific area, but that AOC has been making many policy revisions and has been thinking about the procurement processes they use. Representative Nemes asked AOC to provide this information to the committee.

In response to a question from Representative Blanton, Mr. Spears stated that of the contacts reviewed there was not any evidence of widespread overspending related to General Accounting Expenditures (GAXs). It is more of an issue related to the general use of GAXs outside of their stated purpose, so issues do not arise.

Representative Blanton voiced concern regarding government as a whole having a tendency to punish agencies if any money is left over from their budgets at the end of a fiscal year. He explained government in general needs to move away from that and instead encourage savings. If not, offices will go out and make purchases solely to spend leftover money. He stated that is a waste and would rather they hold on to it and save it over into the next budget. Mr. Spears did not recall seeing any evidence of extra spending at the end

of a fiscal year, but staff's analysis was not focused in this area. Instead, staff focused on spending throughout the entire year.

Representative Nemes noted there is an anti-lapsing provision in the judicial budget, if money is not spent it no longer lapses back to the general fund.

Jenny Lafferty, Director of Finance and Administration for AOC introduced herself as well as Tammy Brown, Executive Officer of Financial Services, and Alice Wilson, Director of Audits. Ms. Lafferty opened by explaining that the 12 actions AOC has taken since the 2018 report of the Auditor of Public Accounts (APA), which is part of the public record. AOC's presentation slides are available on the Legislative Oversight and Investigations Committee webpage.

Ms. Lafferty stated AOC agrees with the first finding of the committee and the two recommendations related to the APA examination. AOC also agrees with the two recommendations of the committee and plans to implement them. The first finding area references ProCards and states that AOC will incorporate a statement in the OnBase form and associated workflow for managers of ProCard holders to verify prior verbal approval of any purchases in excess of \$500. The second recommendation states AOC should recommend that the Supreme Court more formally designate the internal audit division as the judicial branch's reporting entity for fraud, waste, and abuse in AP Part III and AP Part XIX.

Ms. Lafferty said AOC agrees with the second finding of the committee which states contract documents met many, but not all, requirements. She explained her concern about one of staff's common findings regarding the lack of request forms, which could indicate lack of management approvals. She explained that AOC is leveraging OnBase so that all requisitions will have to be submitted into the OnBase workflow. So, requisitions cannot be submitted to procurement to make a purchase until all required information has been submitted. The requisition will be routed through a workflow that will go through management and the budget office before it gets to procurement. It will all be documented and maintained in the OnBase e-requisition system. Ms. Lafferty noted competitive exceptions will also be documented in the e-requisition system.

In response to a question from Representative Nemes, Ms. Lafferty explained competitive exceptions include emergency exceptions under the statute. This could be anything along the lines of fire, flood, or tornado. Competitive exceptions take place when there is only one entity that can provide the service or product, or when it is not feasible or practicable to bid. Ms. Lafferty stated since 2008 a Request for Bids (RFB) has not been issued on best value basis, RFB's have only been issued on a low bid basis. She explained when a Request for Proposals (RFP) is issued it is based on subjective criteria. However, when an RFB has been issued for goods it has been based on a low bid basis.

In response to a question from Representative Nemes, Ms. Lafferty said AOC's policy already states a best value interpretation would have to be something that is communicated into the RFB. It has to be something that is objective, not subjective otherwise it is not a best value criteria.

Ms. Lafferty explained the third finding of the committee, regarding the use of GAX documents being used for unsuitable payments. AOC has never issued purchase or delivery orders through the eMARS system. Instead, they have been issued through an in-house purchase order database created years ago, but then paid through GAX documents in eMARS. Ms. Lafferty also said that the in-house information is not available in eMARS, but is included in the in-house purchase order database. She expressed that AOC finds it important to be accountable, have information in eMARS that everyone can access, and follow the same guidelines that other branches are following. The AOC's new procurement policy, effective July 1, will require purchase orders (POs) to be paid using stand-alone PRCs and allows GAXs documents to be used only to pay reimbursements, utilities, telephone and internet, and mail. No exceptions are permitted.

Ms. Lafferty said AOC is working on making continuous improvements throughout the office of Finance and Administration. There have been multiple eMARS trainings, as well as trainings on new policies and procedures. They have been seeking additional opportunities to leverage OnBase, by using standalone PRCs to pay POs and delivery orders (DOs) instead of GAX documents, and updating cited authority lists in eMARS applicable to the judicial branch. Beginning in FY 2023 POs and DOs will be created in eMARS. There are also multiple policies currently under development.

Ms. Lafferty noted several updates that AOC would like to recommend to the Supreme Court for administrative procedures including Judicial Branch grants, procurement, accounting, capital construction program, operation and maintenance of court facilities, leasing, and security. In regards to the Department of Procurement, AOC has been working to improve vendor management and contract evaluation and administration.

In response to a question from Senator Carroll about agency use of eMARS, Mr. Hoppmann noted that Finance and Administration Cabinet policies are used by executive branch agencies; however, legislative and judicial branch agencies are not required to adhere to them. Ms. Lafferty also explained that AOC is required to use eMARS as part of annual financial reporting, but they do not have to use it the same way as the executive branch agencies do. She also noted they have not been provided training or been included on training email updates that may go out about eMARS, since AOC is an agency within a different branch of government. She said they are working with The Office of Procurement Services and the Office of the Controller to have a better information line so that processes can be established to make it easier for others to see that procurement is

handled in a way that is transparent and accountable, as well as consistent with other agencies.

Senator Carroll asked if AOC feels comfortable with the changes it is making, in regard to the future, he asked whether everything will be accounted for both numerically and with documentation and explanation. Ms. Lafferty said she does feel confident with how accounting for procurement is currently being handled, but she will feel more confident with how procurement will be handled in the future. She noted that, in the past, AOC has not been entering the contracts into the eMARS system in the best way, which would allow them to account properly. Rather, eMARS has essentially been used as the mechanism by which AOC pays people.

Representative Nemes asked for an explanation of changes in expenditures at KCOJ from FY 2020 to FY 2021. Ms. Lafferty stated that information would have to come from the budget office but that they will get the information to the committee.

In response to a question from Representative Nemes regarding real property leases and conflicts of interest, Ms. Lafferty said vendors must complete a disclosure of ownership form so that AOC is aware of anyone with a 5 percent or greater ownership interest in the company.

In response to Representative Nemes' question, Ms. Lafferty stated contracts are housed electronically, although all of the documentation for solicitations and contract requests are not. Once e-requisition is in place, solicitations and contract requests will then be electronically housed. The three requested files for one of the sampled RFPs could not be provided because they were lost when files were physically moved from department to department.

In response to a question from Representative Nemes, Mr. Spears explained AOC agreed with the report's recommendations and gave good feedback regarding the recommendations. AOC did not fully follow one of the APA recommendations, which states AOC should use purchase orders or request forms for ProCard purchases. AOC noted the reasoning behind this is to preserve flexibility. Mr. Spears stated committee staff did not making that specific recommendation, however, it would like for AOC to have some type of relatively informal communication with their manager so that someone is made aware that purchases are being made on the ProCard.

Representative Nemes commended the Chief of Justice and Director Givens for immediately addressing the problems found in the audit of AOC's expenditures, credit card usages, and leasing practices performed by Auditor Mike Harmon. He also thanked AOC staff for the major internal control improvements that have been made since 2018, as communicated by committee staff in its findings.

In response to a question from Senator Carroll, Ms. Lafferty stated AOC does report any money left over from the previous year into the Kentucky Budgeting System. In regard to the budget funds and monies left over, the judicial branch has been structurally imbalanced for a number of years and she has been told AOC does not have any excess in appropriations. There is only excess in the restricted funds. She said she would provide more detailed information to the committee.

In response to Representative Nemes question, Ms. Lafferty said she is 100% confident that the issues in the 2018 audit have been covered by the new policies that have been put into place.

Upon motion by Representative Blanton and second by Representative Riley the Judicial Branch Contracting staff report was adopted with a roll call of 9 votes and 0 no votes.

Co-Chair Nemes adjourned the meeting.