

Disaster Related Procurement

Disaster Related Procurement are purchases made during and after a declared disaster and deemed necessary to save lives, protect the public health and safety, protect improved property, to relieve the immediate necessity of residents due to calamity, and purchases required to eliminate or lessen an immediate threat of additional damage. The city must use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and standards. The federal government uses the most stringent policy for compliance. Purchases qualify for federal disaster assistance under the Stafford Act when there is an Emergency Declaration or Major Disaster Declaration by the President. To qualify, these purchases require additional documentation and compliance.

Criteria

Relevant Policies and Procedures

AP 4-2	The Administrative Policy outlines the process by which the City implements documentation procedures, roles and responsibilities, and financial procedures in connection with a disaster.
AP 5-11	The Administrative Policy exempts Emergency Purchases from competitive processes when necessary to protect public health and safety or when necessary to relieve calamity or unforeseen damage to public property.
EO 1-25	The Executive Order outlines the Mayor's emergency powers during a local state of disaster, including the responsibilities of the City and the authorizations of each City Department.
AP 5-6 42	The AP 5-6 may authorize P-Card holders to make purchases beyond their single or monthly transaction limits during emergency or disaster.

State Laws and Local Codes

Section 252.022	The Texas Local Government Code states that emergency purchases can be made in situations of public calamity when there is an immediate need to relieve necessity of the municipality's residents or to preserve the property of the municipality; to preserve or protect the public health or safety of the municipality's residents; and to pay for unforeseen damage to public machinery, equipment, or other property.
Section 15-49	The Houston Code of Ordinances exempts emergency purchases from competitive procurement methods only under limited circumstances (Note: To be eligible for Federal Public Assistance Grant funding all applicable Federal guidelines must be followed)

Federal Laws

[Stafford Act](#)

The Robert T. Stafford Disaster Relief and Emergency Act authorizes federal disaster assistance to individuals and government entities in the aftermath of a major emergency or disaster and outlines the types of available assistance.

[2 CFR
200.317 –
200.326](#)

The Code of Federal Regulations provides the uniform administrative requirements, cost principles, and audit requirements for federal awards, including procedures to implement the hazard mitigation planning provisions of the Stafford Act. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §200.318 General procurement standards through 200.326 Contract provisions.

[44 CFR
13.36](#)

Disasters that occurred before December 26, 2014 must follow the regulation under 44 CFR part 13. Under Federal procurement standards at 44 C.F.R. § 13.36(a) require grantees and subgrantees to use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. In addition, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations



Resources Toolbox

[City of Houston - Contingency Contracting Guide](#)

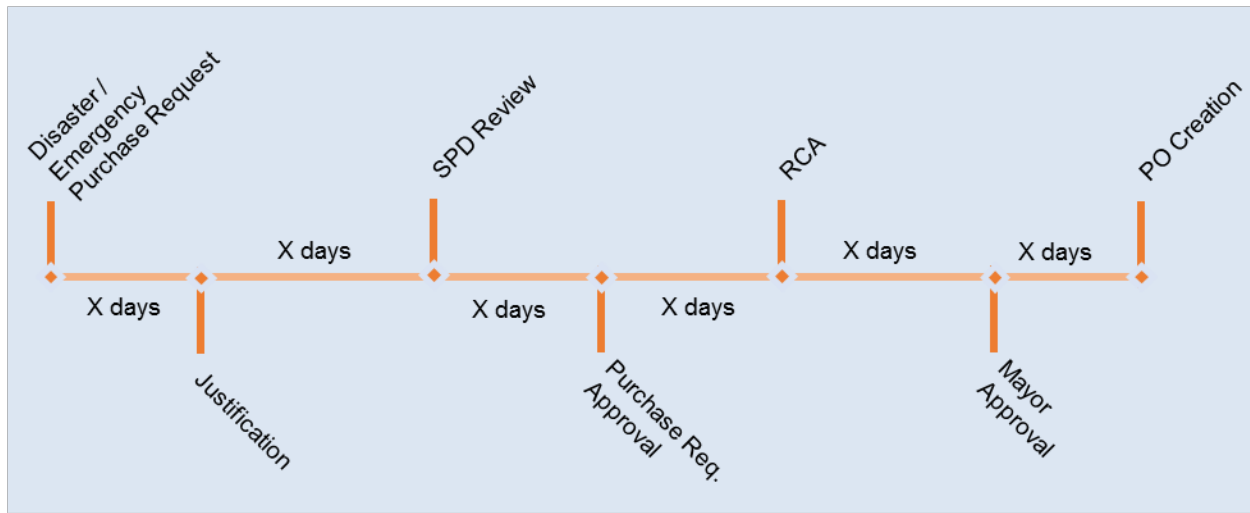
The Contingency Contracting Guide lists, alphabetically and by category, pre-approved Emergency Response Contractors with their 24/7 contact information.

[City of Houston Finance Disaster Recovery Manual](#)

The Disaster Recovery Manual provides guidance on applicable policies, procedures, templates, and tools for managing disaster-related activities.

City of Houston Emergency Management Plan	<p>The City of Houston Emergency Management Plan provides strategic guidance for City departments in the event of an emergency. The plan is evaluated every 5 years on a rotating schedule</p>
Texas Department of Emergency Management (TDEM) Forms and Publications FEMA Field Manual – Public Assistance Grantee and Subgrantee Procurement Requirements	<p>The Texas Department of Emergency Management provides guidance on disaster recovery, including forms and publications that are to be utilized by the City during declared disasters</p> <p>The Field Manual provides a description and explanation of the mandatory requirements for Public Assistance grantees and subgrantees when using Public Assistance funding to finance their procurements.</p>
FEMA- Supplement to Public Assistance Field Manual	<p>The document provides supplemental guidance for using Federal financial assistance to finance procurements of property and services.</p>

Disaster Related Procurement Procedures



Total Duration: XX Days/Weeks

City Initiation

Upon declaration of a disaster by the Mayor, an order will be made to execute the City Emergency Management Plan and authorize the Office of Emergency Management to coordinate response efforts for the City with various department stakeholders.

Note: The Mayor does not have to wait for a declaration of a disaster by the President of the United States prior to initiating disaster procurement protocols. A formal declaration is often made days, weeks, or months after a disaster has occurred.

1. Department Initiation

- 1.a.** Authorized department requisitioner submits a disaster purchase request along with an [Emergency Purchase Justification Form](#).
- 1.b.** The Departmental Purchasing Unit (DPU) reviews the justification and verifies that an emergency exists and the purchase meets the criteria. The DPU prepares the justification letter to document the nature of the emergency and what caused the emergency. [Emergency Purchase Justification Form](#).
 - The form documents the nature of the emergency and what caused the emergency. The form must detail the estimated impact or damage (financial or otherwise) that may result from following standard procurement procedures. Additionally, the form should document specific rationale as to why the department could not take the time to comply with the standard procurement procedures.

Upon completion, the DPU submits to the Department Director for review and signature.
- 1.c.** Department Director reviews, signs and submits the purchase request and justification letter to SPD.
- 1.d.** Proceed to Phase 2: SPD Purchasing.

2. SPD

- 2.a.** CPO or designee reviews disaster/emergency purchase request and determines if an emergency purchase is warranted.
- 2.b.** CPO or designee verifies that a certified emergency vendor is used and routes to CPO for review.
- 2.c.** CPO or designee determines whether the Emergency Purchase Order (EPO) meets Texas Local Government Code and FEMA requirements.
- 2.d.** If approved, CPO or designee issues the EPO and files a copy for audit purposes.
- 2.e.** SPD forwards a copy of the EPO to the end user.

If the EPO is less than \$50,000, the DPU issues the purchase order.

2.f. If the EPO is equal to or greater than \$50,000 and time permits, SPD prepares a [Request for Council Action \(RCA\)](#) to obtain City Council approval prior to proceeding to the Purchase Order process.

RCA includes:

- A brief synopsis of the requested services, including emergency need
- Emergency Justification Form
- Overall cost
- Departmental funding source
- Contract term
- Procurement methodology
- M/WBE utilization, if applicable or required

If time does not permit to get City Council Approval, due to the nature of the disaster and location of City Council, approval from City Council should be received as soon as possible after the purchase is made. Documentation of the approval from City Council must be included in the procurement file.

2.g. CPO or designee reviews and approves RCA before submitting it for City Council approval.

2.h. Mayor approves the disaster / emergency purchase.

2.i. The DPU must include the approved EPO and required documents within the procurement file indefinitely.

X

Key Considerations

- All disaster related procurements **MUST** be thoroughly documented (i.e. copies of emails, cost/price analysis etc.)
- Disaster related procurements are only allowed once the Mayor has identified a disaster and initiates the City Emergency Management Plan. If procurement is needed for an emergency purchase and there is no declared disaster, please follow the emergency purchase process identified in section 4.1.
- Disaster related procurements do not eliminate the requirements for obtaining competitive purchases. The purchasers should obtain three plus quotes when the requested item are under \$50,000 and utilize competitive bidding requirements when the requested items are over \$50,000.
- The Mayor and the Office of Emergency Management are responsible for executing the City's Emergency Plan and will coordinate with department stakeholders to determine procurement needs.
- After 72 hours of the occurrence of the disaster, normal competitive bidding rules apply, unless FEMA extends the exigency period.
- Cost plus + percentage cost contracts are **not** allowed to be used for disaster procurements

- Time and Material (T&M) contracts should be used sparingly and are subject to review and approval by SPD, which is done on a case by case basis. For time and materials contracts, the City must: (1) document a determination that no other contract type is/was suitable, (2) provide adequate monitoring of the work and costs; and (3) implement a Not-to-Exceed amount
- All departments must keep supporting documents for disaster related procurements indefinitely. The normal City of Houston record retention schedule does not apply.

Specialty Procurement Process Considerations and Requirements

Documentation

- Documentation of procurement methodology prior, during, and post disaster is critical as all expenditures will be scrutinized.
 - The following should be included in the procurement file:
 - ☑ Procurement process used- i.e. Publically advertised request for bids, copy of contractors who viewed and downloaded bid, copy of contractor proposals, and contractor selection or rejection, including rationale for ultimate selections and rejections.
 - ☑ Selection process and bid analysis, including amendments
 - ☑ Evidence of federal debarred list of contractors being evaluated (<http://www.sam.gov>)
- To request FEMA reimbursement, departments are required to maintain a complete and accurate set of records for each eligible project in accordance with [AP 4-2](#). Below is a list of the required documents for contract work:
 - ☑ Proof of Public Notice / Newspaper Advertisement (copy of actual advertisement)
 - ☑ Notice to Bidders (City/Dept./SPD website)
 - ☑ Bid Tabulation and Summary
 - ☑ Bids/Quotes/Proposals received from all contractors and vendors
 - ☑ Bid Approval (Documentation of Evaluation Committee Decision. Include an explanation if the lowest Bid is not accepted)

Cost/Price Analysis

- ☑ EPLS Debarment Check of vendor/contractor (www.sam.gov)
- ☑ RCA showing City Council Approval
- ☑ Notice of Award
- ☑ Notice to Proceed
- ☑ Contract signed by all parties
- ☑ Contract Renewals
- ☑ Change Orders
- ☑ Purchase Orders
- ☑ Invoice with **extensive** supporting documentation, including
 - Receipts
 - Timesheets

- Invoices
- Etc.

Procurement

- Ensure that there are no overlaps with pre-positioned contracts which activate subsequent to an event. Link to list of [pre-positioned contracts](#)
 - Examples of pre-positioned contracts include:
 - Disaster Debris Removal Services
 - Disaster Management Consulting Services
 - Mobilization, Collection, Characterization and Packaging of Household Hazardous Waste
 - Emergency Medical Transportation Services
 - Base Camp Services

- Ensure that every purchase order or contract includes the clauses required by Federal statutes and executive orders to ensure effective implementation of the regulations. For more information, please see [“2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses”](#). A list of the following required provisions are listed below:
 - Remedies
 - Termination for Cause and Convenience
 - Equal Employment Opportunity.
 - Contract Work Hours and Safety Standards Act
 - Clean Air Act and the Federal Water Pollution Control Act.
 - Debarment and Suspension
 - Byrd Anti-Lobbying Amendment
 - Procurement of Recovered Materials
 - Additional FEMA Requirements
 - Usage of DHS Seal, Logo, and Flags in Contracts.
 - Compliance with Federal Law, Regulations, and Executive Orders
 - No Obligation by Federal Government
 - Program Fraud and False or Fraudulent Statements or Related Acts

- Ensure Disaster Procurement is completed during the emergency period. Typically, procurement rules applicable to competition are less stringent for the first 72 hours after a disaster. After 72 hours, normal competitive bidding rules will apply.

- Contracts funded in whole or in part by federal funding (e.g. FEMA Public Assistance Grants) are also subject to the requirement to solicit minority businesses, women’s business enterprises, and labor area surplus firms are used when possible, located at 2 C.F.R. § 200.321. The list of Labor surplus firms are provided at the Department of Labor’s website at <https://doleta.gov/programs/lisa.cfm>.

Regulation 2 C.F.R. § 200.321 requires, where subcontracting is permitted, contractors to take the following affirmative steps:

- Solicitation Lists. The Contractor must place small and minority businesses and women's business enterprises on solicitation lists.
- Solicitations. The Contractor must assure that it solicits small and minority businesses and women's business enterprises whenever they are potential sources.
- Dividing Requirements. The Contractor must divide total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
- Delivery Schedules. The Contractor must establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises.
- Obtaining Assistance. The Contractor must use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- The following are the different types of purchases/contracts that should be **monitored** closely to ensure compliance with Disaster Procurement requirements.
 - **Small Purchases** that secure services or supplies that do not cost more than \$50,000 and require obtaining at least 3 quotes from different sources.

 - **Sealed Bids** where the bids are publicly advertised, solicited, read aloud and is awarded based on the lowest price that meets the scope of the project.
Preferred method for construction contracts.

 - **Competitive Proposals** where formally bidding is conducted but the contract is awarded based on contractor qualifications, not solely on price. **Use for procuring architectural and engineering professional services only.**

 - **Lump Sum Contracts** include work within a prescribed boundary with clearly defined scope and a total price.

 - **Unit Price Contracts** are used when work is done on an item-by-item basis with cost determined per unit.

 - **Time and materials (T&M)** contracts can only be used under certain conditions, however, they **should be avoided** whenever possible due to strict FEMA guidelines. A T&M contract must
 - ☑ Not exceed 72 hours of contract work
 - ☑ Include a maximum price ceiling monitored by the City
 - ☑ Include a clear scope of work to avoid excessive fees

- ☑ Be strictly monitored by a project manager to ensure compliance
- **Cost plus percentage** of cost contracts are **NOT** permitted. For additional information, please see pg. 13 of the [Disaster Recovery Manual](#). Note: **Cost Plus Fixed Fee Contracts is allowable**, which is either a lump sum or unit price contract with a fixed contractor fee added in to the price
- **Piggyback contracts** are **NOT** deemed allowable by FEMA.
- **Noncompetitive Proposals** are discouraged by FEMA and should **NOT** be conducted where possible.
Lease vs Buy option: Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- Supporting documentation for the Disaster Related procurement must be maintained indefinitely by the DPU or until notified otherwise by the Finance Department.
- Disaster related procurements are commonly audited by FEMA and other federal agencies and requests can be made anytime for supporting documentation. Avoid **common audit findings** issues such as:
 - Changes in the contract rate/price, including change orders and amendments that affect competition
 - Cost incurred are out of scope compared to the original scope on the Project Worksheet (PW)
 - Lack of documentation of the RFP publication
 - Minority and Women Owned Enterprises are not included
 - Cost or Price analysis is not documented
 - Lack of award determination
 - Use of prohibited contracting methods
 - Failure to follow applicant's own procurement procedures
- The use of a P-Card for making disaster related purchases is allowable if the P-Card holder has the Emergency Purchases Profile. The requirements for documenting disaster related purchases does not change, but the following should be included within the P-Card supporting documentation:
 - Copy of all receipts, including the P-Card user and last 4 digits of the P-Card used
 - Detailed justification/explanation of why the item was purchased, the location where it was used, and any other relevant details
 - P-Card User name and employee ID number in the procurement file
 - P-Card statement indicating all charges for the month, including those for the disaster related purchase

Reimbursement

Each department is responsible for submitting a claim for resources deployed to FEMA via the Finance Disaster Cost Recovery Group.

For guidance on the required documents, please refer to the [Disaster Cost Recovery Manual](#).

- Please see the Disaster-related Procurement Documents Checklist for a full list of documents required for reimbursement, such as:
 - ☑ COH Disaster Timesheet ([Link](#))
 - ☑ Force Account Equipment Summary ([Link](#))
 - ☑ Force Account Materials Summary ([Link](#))
 - ☑ Rented Equipment Summary Record ([Link](#))