

Section 2.12

Emergency Purchases PCC D, E, F, Q, S and T

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practices is impractical or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file in accordance with this section.

Under most circumstances, purchases are based on competitive bids. Negotiations are not authorized when utilizing an Invitation for Bid (IFB) procurement method; however, if only one response is received, negotiations are allowed and encouraged. Negotiations of contracts are encouraged for emergency purchases when soliciting is not practical

Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

Agency Responsibility

TPASS has delegated to all state agencies the authority to make emergency purchases. The decision to declare an emergency purchase is the sole responsibility of the agency.

Notwithstanding this delegation, emergency procurements are subject to TPASS's rules and procedures. TPASS authority does not extend to purchases made under the Texas Disaster Act of 1975.

Upon request, TPASS will assist in advising agencies on the proper procedures for emergency purchases, but will not certify the existence of an emergency.

Solicitation Procedures

- At least three informal bids are encouraged whenever possible on all emergency purchases. An award should be made based on best value, considering the type of emergency. An agency is responsible for handling any complaints or protests that result from emergency procurements. See Section 2.10 Delegated Purchase Procedure and Strategic Sourcing Principles.
- Emergency purchases over \$25,000.00 must be posted in the Electronic State Business Daily (ESBD) but the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. These posting requirements are in addition to existing TPASS procedures governing emergency procurement requirements (34 Texas Administrative Code 20.208, relating to Delegated Purchases).

Justification Requirements

Emergency purchases require a letter of justification signed by the purchasing director or an authorized representative as provided in the agency Procurement Plan, documenting the emergency and at a minimum addressing the following:

- The nature of the emergency such as hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state, and what caused the emergency situation; and
- The estimated impact or damage, financial or otherwise, that will occur by following normal procurement practices (general statements of loss or nominal damage are not acceptable).

Audit Requirements

Emergency purchases of goods and services over \$25,000 may be audited by TPASS and should be coded as **document type 3, Purchase Category Code (PCC) T**.

TPASS strongly suggests that all agencies use the TPASS terms and conditions, including bidder affirmations, for emergency procurements regardless of the dollar amount. If the informal bid process is utilized, the terms and conditions may be included by reference as part of the purchase order.

TPASS Authority does not extend to purchases made under the Texas Disaster Act of 1975; Texas Government Code 418.

For additional information, see Sections 3.0 *General Audit Procedures*, 3.1 *Purchase/Procurement Audits*, and 3.2 *Post- Payment Audits*.

Legal Authority:

Texas Government Code Chapter 418 and §2155.137
34 Texas Administrative Code §20.41