

**Texas Department of Housing and Community Affairs**  
**PROCUREMENT**  
**Frequently Asked Questions**

The Texas Department of Housing and Community Affairs (Department) has compiled a collection of Subrecipient Questions with Department responses to assist its Subrecipients with Procurement Requirements. References pertinent to Procurement Requirements may be found in the following documents as listed below:

1. Review your program contract(s)
2. Reference applicable 10 TAC Section 1.404
3. Reference other applicable program rules/guidelines  
(2 Code of Federal Regulations Section 200.320,  
Uniform Grant Management Standards (UGMS) Subpart C \_\_.36 (d)
4. Review Department Procurement guidance on TDHCA Website:  
<http://www.tdhca.state.tx.us/community-affairs/procurement/index.htm>

If after reading and referencing all these materials you still have questions, you may submit a program question by completing this form: <https://tdhca.wufoo.com/forms/request-for-ca-program-assistance/>

**Procurement Q&As:**

**1. Are insurance brokers covered under the umbrella of contractors needing Department approval for procurement?**

Insurance brokers are a resource for identifying insurance providers on behalf of the Subrecipient. Procurement Requirements for Small Purchase would be followed with insurance needs not to exceed \$100,000. If it is over \$100,000, in the aggregate, Procurement Requirements for a Competitive Proposal would be required. Only a circumstance where a broker/consultant is procured for professional services, contracted and paid by the subrecipient for services rendered would a broker/consultant perform Procurement Requirements specific to your purchase needs acting on your behalf.

Reference:

Uniform Grant Management Standards (UGMS) Subpart C \_\_.36 (d)(1) Procurement by small purchase; UGMS Subpart C \_\_.36 (d)(3) Procurement by competitive proposals; 10 TAC 1.404; and 2 CFR 200.320.

**2. What is the process for procuring for an insurance broker?**

Please review the answer to #1. Insurance brokers are a resource for identifying insurance providers on behalf of the Subrecipient. Typically there is no fee charged to a subrecipient for these services and therefore procurement is not required.

**3. What is the process for procuring for board insurance?**

Board insurance with an aggregate cost not to exceed \$100,000 may be procured by Small Purchase procurement procedures. If it is over \$100,000 in the aggregate, Procurement Requirements for a Competitive Proposal would be required.

**Reference:**

Uniform Grant Management Standards (UGMS) Subpart C \_\_.36 (d)(1) Procurement by small purchase; UGMS Subpart C \_\_.36 (d)(3) Procurement by competitive proposals; 10 TAC 1.404; and 2 CFR 200.320

**4. Define what constitutes an “emergency;” even with the current federal guidelines of what an *emergency* is, are there other situations which can be considered “emergencies”?**

*(September 2018)*

UGMS and the 2 CFR 200 define emergency as: an act of nature, act of war, or a health and safety hazard.

**Emergency:** A purchase made when unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

**Emergency purchases** 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 practice is impracticable 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. Agencies may have specific rules or policies pertaining to emergency purchases, so be sure to cross-check with your internal policy.

**Reference:** See the State of Texas Procurement Manual for more information on Emergency Purchases (<http://www.cpa.state.tx.us/procurement/pub/manual/2-18.pdf>); State of Texas Contract Management Guide Handbook: Section 2.12

5. ***Please clarify the word “aggregate” in regard to recurring purchases, i.e. copy paper. Is the Department referring to aggregate unit items or an aggregate purchase, i.e. purchase of copy paper at an office supply vs. purchase of various office supplies from the same vendor?***

a. For single purchases aggregate cost means the cost of the individual purchase.

For recurring purchases made without contract, aggregate cost means the summary costs for the same product, supply, service or vendor over a 12 month period, usually the fiscal year. Consider the volume of paper you purchase in a year. Is it over \$500, \$5000, \$25,000? *For contractual purchases, aggregate cost means the total potential cost of the contract, including option years and amendments.*

6. **Is procurement needed for:**

a. **Utilities for our use (administrative and program delivery). Is it needed for utilities for direct services (payment to vendors on behalf of customers)**

b. **No to both administrative and program delivery. However, for program delivery, a vendor agreement would be required.**

c. **Cellular Services**

YES, it is a contractual service.

d. **Insurance, such as:**

- **Health – Procure broker or insurance policy**

Please review the answer to #3

- **Property and Liability – Procure broker or insurance policy**

Please review the answer to #3

e. **Rent**

YES, office space is contractual.

f. **Employee fringe benefits (Long Term Disability, Short Term Disability, Employee Life)**

NO, if the benefits coverage was already in place at the time of entry into a TDHCA contract.

YES, if new or renewal contracts are needed.

g. **Banking relationships**

No. Banking relationships do not require procurement.

**7. When do I need Department prior-approval?**

**a. Vehicle purchases**

MUST have Department prior approval per 10 TAC §1.404(f). All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include provisions for free and open *competition*. *Any vehicle purchased without approval may result in disallowed costs.*

NOTE: The use of Administrative funds to purchase a vehicle does not align with the 2 CFR 200 requirement for GAAP (which entities are to apply). Vehicles are typically used for program services and should be purchased using Program Services funds.

**b. Consulting or Professional Services**

See contract Section on Subcontracts A. Subrecipient may not subcontract the primary performance of this Contract, including but not limited to expenditure and performance reporting and drawing funds through the Community Affairs Contract System, and only may enter into properly procured contractual agreements for consulting and other professional services, if Subrecipient has received Department's prior written approval. Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval. Any subcontract for the delivery of client assistance will be subject to monitoring by the Department as per Section

**c. Purchase of a single piece of equipment that is \$5000 or over.**

**8. What if the portion paid by TDHCA is less than \$100,000, but the total paid by the entire agency exceeds \$100,000? Is this in the aggregate for the agency or for TDHCA programs?**

Aggregate costs are incurred by the agency and are not specific to TDHCA programs. Procurement Requirements for a Competitive Proposal would be required regardless of the portion paid by TDHCA, as long as state/federal funds pay a portion of the outlay.

**9. What is the Department's procedure for getting approval? What is the expected turnaround for the approval of these procurements? Who do we send requests for approval?**

Requests for Department approval of professional services or vehicles are to be submitted through Wufoo, and are usually responded to within 24-48 hours. The assigned trainer will request documentation of at least 3 vendors/bids, and criteria or scoring form for selection of the awarded vendor. For a request that is clear, and not in need of additional research, there will be a letter issued to the Subrecipient to proceed with procurement (final approval of any procurement is conducted during monitoring). In most cases, the trainer assigned to the requesting agency will issue the letter on behalf of the Department.

**10. What about current contracts in place, which do not currently have TDHCA approval? Do we have to retroactively obtain approval or do we just do this going forward. TDHCA cannot retroactively approve costs already expended. Review your procurements to assure that it was properly performed. If there are other steps that were not performed correctly (such as scoring of bidders, cost analysis, notifications, etc), the Agency should go out for procurement again. This will ensure that all of the necessary documentation will be available during monitoring. Those that were properly procured, but lack pre-approval, may be kept. The lack of prior approval will not result in disallowed cost, but will trigger a compliance comment for improvement. Leases, if procured utilizing a competitive procurement method should be re-procured every 3-5 years; if past 5 years---you need to re-procure. Check the contractual dates for the procurement and allow time for renewals or re-procurement, as needed. A cost analysis and verification of debarment must be performed prior to the execution of any renewal contracts.**

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**11. What about contracts through the State of Texas Co-op or the DIR, do these have to be pre-approved by the Department or by using the Co-op the procurement is considered compliant with the Department's rule?**

Pre-Approval by the Department is required for a vehicle purchase referenced in 10 TAC 1.404(f). Once approved, you would follow Procurement Requirements as described below:

The Co-Op provides PRE-APPROVED vendors. You are to use TXSmartbuy information for your cost/price analysis. Once you determine the most responsive, reasonable vehicle, the vendor will issue an invoice for purchase. Payment is made directly to the vendor. Department pre-approval for vehicles is required.

DIR—provides you with a list of qualified bidders/vendors. DIR typically provides 3-10 vendors who meet the requirements. However, from that list, you must perform full procurement. Always seek best quality and price. Department pre-approval for contractors and/or vehicles is still required.

**12. If a contract is approved for one year with an option to renew for up to 4 years, is approval from TDHCA required each year of the renewal or can it be approved once when the contract is awarded?**

Pre-Approval by the Department is required for a vehicle purchase only referenced in 10 TAC 1.404(f). Department approval is not required.

**13. How does Cost Allocation apply to the requirement for procurement approval?**

Procurement Requirements must be following regardless of an allocation of costs.

**14. What if the grant award has not been made, but costs which will require approval are already in place? Will we have to terminate all old contracts and obtain new ones with approval, such as rent, utilities, salaries, fringe benefits?**

Pre-Approval by the Department is required for a vehicle purchase only referenced in 10 TAC 1.404(f). The Subrecipient is not required to re-procure at award; but procurement assessment should take place prior to the end of the lease agreement.

*Regarding lease agreements.* These may result in questioned costs for lack of procurement:

- Non-procured lease agreements (i.e.-those that have been historically in place)
- A lease agreement that does not define the term or services
- Leases that have been in place in excess of 3 years or are outside of the original lease term

**15. When getting TDHCA approval, do we have to identify every TDHCA grant award which will be affected by the procurement?**

YES, only if you are procuring for a vehicle as referenced in 10 TAC 1.404(f).

**16. In regard to re-procuring every 5 years and every year if non-competitive, we're wondering where software agreements for licensing and maintenance fit. Is that considered a service? For instance our accounting software and our client tracking software – we've spent a great deal of time and effort implementing something that works. We'd like to see those services be excluded from the re-procure or redefined so they are not considered supplies or services.**

Typically, a procured product requiring an annual contract (with the option to renew annually not to exceed four additional years) would be inclusive of maintenance, licensing, modifications and/or upgrades to the existing purchased product. However, if the contracted provider offers a new software system described as an "upgrade", you would re-procure.

17. **Does UGMS supersede the OMB's procurement rules for Private Nonprofit Subrecipients of CSBG, LIHEAP and Weatherization? This seems odd considering UGMS was last updated in 2004 by the Governor's Office of Budget & Planning.**

Considering CSBG, LIHEAP and Weatherization are federal pass-through programs that have OMB regulations in them that state if there's a difference between the state and federal regulations the federal regulations govern unless approval is given for the modifications by the federal authorizing agency (OCS / DOE).

The state can require rules that are more restrictive than the OMB. The state falls under the guidelines of UGMS which can be more restrictive than OMB, and thus UGMS will supersede where more restrictive. For CSBG, CEAP, and LIHEAP WAP Subrecipients must follow UGMS for DOE WAP 2 CFR 200 supersedes UGMS. See 10 TAC 1.404

18. **How do costs covered under an indirect cost agreement figure into these procurement standards for shared costs?**

Procurement Standards must be followed regardless of an allocation of costs.