



LEGISLATIVE BUDGET BOARD

Hurricane Harvey Contract Reporting and Oversight

**PRESENTED TO HOUSE GENERAL INVESTIGATING AND ETHICS COMMITTEE
LEGISLATIVE BUDGET BOARD STAFF**

JANUARY 18, 2018

Presentation Overview

- Hurricane Harvey Expenditures
 - State Oversight
 - Federal Fraud Prevention and Mitigation
- Contract Reporting to the LBB
- Hurricane Harvey Contracts
- Contract Oversight

Actual Agency Expenditures (as of December 5, 2017)

Hurricane Harvey expenditures as reported by state agencies and institutions of higher education through the end of November 2017 for fiscal year 2017 and the 2018–19 biennium total approximately **\$1,782.4 million in All Funds**. (Amounts shown exclude projected/estimated costs.)

- \$167.3 million in General Revenue Funds
- \$3.9 million in General Revenue–Dedicated Funds
- \$181.3 million in Other Funds (including institutional funds and the Economic Stabilization Fund)
- \$1,429.0 million in Federal Funds

Of the \$1,782.4 million, more than **\$1,387.2 million** is reported to have been **passed through to local entities and individuals** through various federal programs for Public Assistance, Direct Housing Assistance, Other Needs Assistance, Disaster Supplemental Nutrition Assistance, and Dislocated Worker Grants.

Actual Agency Expenditures (continued)

Of the **\$1,782.4 million** in expenditures reported as of November 2017, **99% of the costs** were attributed to the following **12 agencies**:

- Health and Human Services Commission – \$1,130,366,664
- Department of Public Safety – \$370,382,599
- Trusteed Programs within the Office of the Governor – \$112,863,664
- Texas Department of Transportation – \$78,081,122
- Department of State Health Services – \$23,673,996
- Texas Workforce Commission – \$20,628,547
- Texas Military Department – \$6,377,270
- General Land Office – \$4,598,662
- University of Texas Medical Branch at Galveston – \$4,328,853
- University of Houston – Downtown – \$3,717,532
- Department of Criminal Justice – \$3,149,009
- Texas Engineering Extension Service – \$3,000,000

Projected Agency Expenditures (as of December 5, 2017)

The following agencies account for 99% of the **\$5,481.4 million** in **agency-projected total costs in All Funds for fiscal year 2018**. The agencies estimate that they will expend these amounts in addition to their actual expenditures. Of these projected costs, \$4,653.4 million are Federal Funds and \$487.9 million are General Revenue Funds.

- Department of Public Safety – \$3,720,927,179
- General Land Office – \$827,971,730
- Texas Department of Transportation – \$225,433,382
- Health and Human Services Commission – \$189,962,097
- Texas Education Agency – \$188,696,831
- The University of Texas at Austin – \$104,274,946
- University of Houston – \$71,790,172
- Texas Parks and Wildlife Department – \$45,785,095
- Texas Military Department – \$20,815,355
- University of Texas M.D. Anderson Cancer Center – \$13,009,844
- Texas Workforce Commission – \$12,264,391
- Department of State Health Services – \$7,122,790

State Oversight

- State agencies are responsible for executing rules and controls to properly manage and monitor funds, including those passed through to local entities and other grantees.
- The Legislative Budget Board (LBB) monitors appropriations:
 - LBB is surveying state agencies and institutions of higher education monthly to report costs and revenues associated with Hurricane Harvey, the results of which are posted on the LBB website
- The Comptroller of Public Accounts (CPA), Division of Fiscal Management, controls appropriations:
 - CPA has issued guidance requiring state agencies and institutions of higher education to use Uniform Statewide Accounting System (USAS) coding requirements to track expenditures and revenues related to Hurricane Harvey
- The State Auditor's Office performs audits, reviews, and investigations of state agencies and entities receiving state funds

Fraud Prevention and Mitigation

States' primary defense against fraud and misappropriation of federal grant awards begins with proper implementation of federal program guidelines. These guidelines vary by federal program and sometimes by individual appropriation. Each federal agency provides specific guidelines for the distribution of grant funds and instructions for recovering improper payments. The following are three examples of these types of federal notifications and guidance:

- **FEMA Public Assistance program**

Recovery of Improper Payments Standard Operating Procedures

https://www.fema.gov/media-library-data/1393864755726-c09ffbecce78210bd3a3d49a27c21aed/SOP_9570.16_Improper_Payment_Recoupment_Plan.pdf

- **FEMA Individuals and Households Program**

Recovery of Individuals and Households Assistance Funds (Pages 115 to 121)

https://www.fema.gov/media-library-data/1483567080828-1201b6eebf9fbbd7c8a070fddb308971/FEMAIHPUG_CoverEdit_December2016.pdf

- **HUD Community Development Block Grants – Disaster Relief**

Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees

<https://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29634.pdf>

Fraud Prevention and Mitigation (continued)

Federal agencies are required to take action to identify and recover improper payments, whether made in error or obtained by **fraud**, pursuant to the following federal laws:

- Debt Collection Improvement Act of 1996
- Improper Payments and Information Act of 2002
- Improper Payments Elimination and Recovery Act of 2010
- Improper Payments Elimination and Recovery Improvement Act of 2012

The Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007 (the Disaster Fraud Act) was enacted in direct response to concerns that the current U.S. Code did not adequately address or deter fraud in connection with emergency and disaster assistance.

<https://www.congress.gov/110/plaws/publ179/PLAW-110publ179.pdf>

Contract Reporting

Statute and the General Appropriations Act (GAA) require agencies and institutions of higher education to report to the Contracts Database:

TYPE OF CONTRACT	VALUE THRESHOLD	REPORTING TIMEFRAME	LOCATION
Professional or Consulting Services	> \$14,000	10 days after award	<i>The Texas Government Code, §§2254.006 and 2254.0301</i>
Construction	> \$14,000	10 days after award	<i>The Texas Government Code, §2166.2551</i>
Major Information Systems	> \$100,000	10 days after award	<i>The Texas Government Code, §2054.008</i>
All	> \$50,000	<u>30 days after award</u>	GAA, Article IX, §7.04
Noncompetitive/ Sole Source	> \$1,000,000	<u>Prior to first payment, but no later than 30 days after award</u>	GAA, Article IX, §7.12
Emergency	> \$1,000,000	48 hours after payment	GAA, Article IX, §7.12
All	> \$10,000,000	<u>Prior to first payment, but no later than 30 days after award</u>	GAA, Article IX, §7.12

NOTES:

- (1) Changes made by the Eighty-fifth Legislature, 2017, are underlined and are effective September 1, 2017.
- (2) The Texas Government Code requirements are subject to numerous exceptions and exemptions. However, the GAA provisions apply to all entities receiving appropriations, regardless of method of finance or source of funds used for the contract.

SOURCE: Legislative Budget Board.

Hurricane Harvey Contracts

On August 28, 2017, LBB staff issued guidance to state agencies on how to report emergency contracts related to Hurricane Harvey.

- This guidance was in response to the Governor's Proclamation 41-3548, issued August 23, 2017, pursuant to the Texas Government Code, Section 418.016
- LBB staff guidance only related to contracts awarded in accordance with that proclamation, and those emergency contracts subject to existing contract reporting requirements

LEGISLATIVE BUDGET BOARD
CONTRACTS OVERSIGHT
AND TECHNOLOGY TEAM

THE STATE OF TEXAS

ID: 4483 AUGUST 28, 2017

Dear Procurement Staff,

The Legislative Budget Board (LBB) is providing brief guidance on reporting emergency contracts and procurements related to Hurricane Harvey. We know many of you are involved in direct response activities and have other responsibilities to ensure your continued operation; we ask that you provide this reporting as promptly as you responsibly can under the circumstances.

As you know, the Governor has authorized the use of all available state resources to respond to Hurricane Harvey. This includes the temporary suspension of state statutes and rules related to contracting or procurement if the rule impedes your agency's emergency response capabilities to protect life or property.

All emergency procurements over \$50,000 (GAA, Article IX, Section 7.04) should be reported to the LBB Contracts Database within 30 days of execution. In addition, any emergency procurement valued over \$1 million (GAA, Article IX, Section 7.12) should be reported either before the first payment is issued or within 30 days of execution.

When reporting an emergency procurement issued because of Hurricane Harvey, we ask that you please:

1. Select the "No, Emergency Procurement" option when asked if the contract was competitively procured.
Was the contract competitively procured pursuant to the provisions of the State Procurement Manual?
 Yes
 No, non-emergency sole source procurement
 No, emergency procurement
 No, inter-agency agreement
 No, provider enrollment
2. Check the "Not applicable" box when prompted for the Solicitation Posting Date, and provide an explanation in the resulting text box.
Solicitation Posting Date: Information Unavailable Not Applicable
Hurricane Harvey emergency procurement. Section 418.016, Government Code. Please briefly explain why you do not have a Solicitation Date.
3. When providing an explanation in the resulting text box, please reference Hurricane Harvey and/or the Governor's declaration.

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Hurricane Harvey Contracts

As of December 2017, the following state agencies reported Hurricane Harvey emergency contracts in accordance with LBB staff guidance:

CODE	AGENCY	COUNT	TOTAL VALUE
305	General Land Office	1	\$87,000
405	Department of Public Safety	24	\$3,883,238
696	Department of Criminal Justice	2	\$187,797
730	University of Houston	1	\$53,000
802	Parks and Wildlife Department	24	\$2,085,946
	TOTAL	52	\$6,296,981

- Average Value: \$121,096
- Average Term: 61 Days
- Highest Value: \$994,507 – Six Incinerators for storm debris
- Longest Term: 364 Days – Staging ground in Jefferson County

Hurricane Harvey Contracts

On January 5, 2018, LBB staff issued expanded guidance on reporting all other contracts related to Hurricane Harvey.

- The updated guidance was expanded to include any contract related to Hurricane Harvey and will be applied retroactively.
- This inclusion will include contracts outside the normal course of business, issued in either direct or indirect response to Harvey or as part of recovery efforts.
- Only contracts subject to existing reporting requirements are covered.

Contract Oversight

LBB Staff Contract Reviews 2018–19 GAA, Article IX, Sections 7.04(f) and 7.12(f)

- LBB staff are authorized to conduct reviews of contracts to ensure compliance with best practices from:
 - the State of Texas Contract Management Guide
 - the State of Texas Procurement Manual
 - any applicable statutes, rules, policies, and procedures
- The Director of LBB may provide confidential written notification to the Comptroller, the Governor, and/or the Legislative Budget Board of any unresolved violations identified.
- The written notification may include enforcement mechanisms based on existing legislative authorities, including:
 - enhanced monitoring by LBB staff
 - SAO audit
 - required consultation with the Quality Assurance Team or the Contract Advisory Team
 - recommendation to cancel the contract

Contract Oversight

Quality Assurance Team Contract Reviews 2018–19 GAA, Article IX, Section 9.01 (d)

- Agencies will be required to submit Major Information Resource Project contracts valued at more than \$10.0 million to QAT for review and approval.
- Submitted contracts must be the final draft version, and must be signed by the vendor but not the agency.
- Contracts will not be valid without QAT's written approval.
- This submission will help to fill the oversight gap in information technology contract formation.



LEGISLATIVE BUDGET BOARD

Contact the LBB

Legislative Budget Board

www.lbb.state.tx.us

512.463.1200