

Emergency Procurement in Lebanon 27 November 2024

**Strategies and Techniques
in Fragile, Conflict-Affected and Emergency Situations**

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What is 'emergency procurement'?

Emergency situations

“Cases of imminent danger and disasters declared as such by the law” (definition 31, Law 244)

NOT urgent procurement because of e.g. poor planning

Types of emergencies

- Level 1 – Immediate response: **reactive** procurement
- Level 2 – Disaster relief: **emergency** procurement
- Level 3 – Post-disaster reconstruction: **accelerated** procurement

Article 42, Law 244: “the procuring entity shall seek to raise competition to the maximum extent practicable” when not using open tendering

Useful resources:

<https://www.procurement.govt.nz/assets/procurement-property/documents/guide-emergency-procurement.pdf>

UNCITRAL Model Law and Guide to Enactment

Level 1 – reactive procurement



Immediate threat to life/environment/deteriorating situation, e.g. when state of emergency is declared (within definition 31, Law 244)

Article 46 of Law 244 provides for direct contracting “In emergency and relief cases following an unexpected catastrophic event, **where engaging in any other method of procurement would be impractical**”

Allows negotiations with single bidder

No written contract?

Level 2 – emergency procurement



Disaster relief – the next stage, where there is still a need to respond urgently but no immediate threat to life, etc

Article 47 – shopping for contracts under £500,000,000
Article 60 – at least 2 offers, no negotiations
No written contract?

Level 3 - accelerated procurement



Post-disaster
reconstruction

Tendering, proposals
(articles 43, 45,
Sections 2 and 3)

Mitigating risks of Levels 1 and 2 procurement

- Need for flexible response
- How are needs communicated? Example from Ukraine
- Declarations, e.g. of state of emergency
 - Make it clear that level 1 &/or 2 procurement can be followed
 - For what procurement (water, food, shelter, medical supplies?)
 - For how long (moving from Level 1 to Level 2)
 - Up to how much in value (immediate needs)?
 - 'Sunset' clause
- Mitigating high prices, fraud and corruption, conflicts of interest
 - Justifications in procurement record
 - Exchange written terms if no formal contract
- Clarity on when written contracts are needed

Key role of oversight bodies

Challenges from suppliers impractical

Lessons learned

Reliance on documents from the time of the emergency

CSO participation

'Just culture'

Planning for emergencies: contingency planning

Framework agreements

Electronic systems – catalogues for shopping and direct contracting?

Warehousing/stockpiling of commonly-needed goods

Where will goods and services be sourced from?

Proactive mapping of existing suppliers/suppliers' lists

Transparent criteria for new supplier evaluation in emergencies

Have clear procedures in advance of emergencies (New Zealand examples)

Have clear ethics guidelines

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Some statistics from the Covid-19 pandemic

*(Source:
Transparency
International,
UK)*

- Almost two-thirds of all high-value COVID-19 contracts by value, worth UK£30.7 billion, were not awarded through competition
- The UK Government continued with direct awards in over 50% of contracts by value even after EU Governments had moved to competitive awards
- Approx 30% of contracts by value had three or more red flags for corruption
- Almost 10% by value went to those with political connections
- Transparency safeguards were not followed (eg advertising)
- Approx 1/3 by value of goods delivered were written off/not fit for purpose
- Eroding trust in political/government institutions

Transparency
International

Recommendations

Learning lessons

- Investigate major contracts with problems (e.g. those unjustifiably using direct awards)
- Consider impact on contract beneficiaries (performance issues) as well as costs

For the future

- Pursue good data
- Clarify when non-competitive awards can be used
- Transparency: tackle delayed publication/advertisement (missing documents, stonewalling requests for information)
- Mandate pre-contract public disclosure
- Require conflict-of-interest assessments from procuring entities
- Ensure appropriate oversight
- Ensure citizens have Freedom of Information
- Make sure thresholds are appropriate