

## Quick guide to emergency procurement



### What is emergency procurement?

An 'emergency' is a sudden unforeseen event. It can result in injury, loss of life or critical damage to property or infrastructure. This guide outlines the procurement flexibilities that are available to agencies in an emergency situation.

#### In deciding if an event constitutes an emergency consider:

- whether the event falls into one of the categories listed or something similar?
- the nature and extent of harm if relief is delayed?

Emergency situations can include:

- **natural or manmade disasters:** such as earthquakes, cyclones, tsunamis, volcanic eruptions, flooding, fires or contamination
- **failures of critical infrastructure or equipment:** such as failure of a prison security system or critical hospital infrastructure
- **critical health or environmental emergencies:** such as a pandemic or food safety incident
- **political emergencies:** such as a war, coup, or civil insurrection in New Zealand or countries where the New Zealand government offers support
- **critical security emergencies:** such as a terrorist attack, serious crime or major cyber security emergency
- **unanticipated events that make it impossible for an agency to perform a statutory or critical function in the necessary timeframe:** for example the destruction of critical election supplies immediately prior to an election would be an emergency for the Electoral Commission

#### Urgent situations that are created by an agency through a lack of planning or risk mitigation do not constitute an emergency.

Agencies should consider contingency planning where appropriate to allow for the provision of goods and services if an emergency, supply shortage or other unforeseen event arises. The level of forward planning should reflect the strategic importance of the good or service, the risk of an emergency and the cost of any contingency measures. The approach taken by the agency should be balanced, practical and fiscally responsible and may be part of their wider risk management strategy.

### Flexibility to respond

In a genuine emergency, agencies will need to be flexible in how they procure the goods and services that are required for their response. Agencies are permitted to forgo routine procurement procedures. In adopting a more flexible procurement process agencies should consider what is reasonable and justifiable given all of the facts and circumstances they have to hand.

Agencies are permitted to purchase direct from a supplier if the delay involved in conducting a routine procurement (i.e. which involves advertising and competitive tendering) will prevent them delivering the goods or services in time to bring effective relief.

Agencies are to balance the need to act without delay (for example to save or preserve life, or safeguard buildings or repair critical infrastructure) against meeting their overarching public sector obligations (act lawfully, reasonably and with integrity).

## Key considerations

The following key considerations may help your agency respond in an emergency:

- clarify that the situation meets the criteria for treatment as an 'emergency' and that a flexible approach to procurement can be fully justified
- identify, specify and prioritise the immediate procurement activities that will bring relief
- consider the operating environment and conditions 'on the ground'
- find out what other government agencies and NGOs are doing and, where possible, collaborate
- consider your duty of care to suppliers and take appropriate measures to ensure their safety.

## Maintaining accountability

- once the situation has been stabilised and there is no immediate risk to human life, the environment or critical infrastructure, consider establishing a governance and management structure to coordinate and authorise necessary procurement activities
- in emergencies there is a higher risk inflated prices, fraud, bribery and corruption may also be a concern. Be aware of these possibilities and take action to guard against them
- be aware of the possibility of conflicts of interest and manage them appropriately
- document your emergency procurements during or as soon as possible after the event
- clearly state in your records that the purchase was an emergency procurement and record the facts and circumstances justifying this approach. Documents must be filed in accordance with the Public Records Act 2005
- whatever procurement process has been adopted it is still subject to audit
- for agencies subject to the Government Rules of Sourcing an exemption for emergencies is available under Rule 15. However, the award of a contract over the appropriate value threshold should be published later (on the Government Electronic Tenders Service), including a clear statement that it was an emergency procurement.

## Types of emergencies

Emergency responsiveness can be viewed at three different levels with regard to the immediacy of the threat or danger and the degree of harm if relief is delayed.

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

In some emergencies, agencies will need to respond at different levels over time. In other circumstances only one level of response will be required. In choosing the appropriate level of response agencies should always apply the best procurement practice possible given the circumstances and the immediacy of the need to respond. In doing so they should consider the nature and degree of the harm if relief is delayed and ensure that they can justify their procurement decisions.

## Level 1 – Immediate response: *reactive procurement*

### When to respond

This is the most reactive level of emergency response; it should be applied where:

- there is a threat to human life
- there is a critical or catastrophic threat to the natural environment or infrastructure (for example an oil spill), or
- where delayed response would be likely to deteriorate conditions on the ground or cause grievous harm to individuals, the environment or the wider community.

It will often be applicable when a state of local or national emergency is declared.

In the event of a major catastrophe, it is critical to react instantly to the conditions on the ground. This may involve getting medical equipment to help the injured and securing water, food and shelter for other victims. It could also involve immediately mobilising staff, equipment or machinery or relocating service centres for major infrastructure provision e.g. power, gas, water and telecommunication, to new safe sites.

In this scenario, a common sense approach to procurement must be adopted. Agency staff will be under significant pressure to respond immediately and must be enabled to do whatever is necessary and within their powers to help. Agencies are not therefore required to follow routine procurement procedure, but simply demonstrate sound reasoning and good judgement when acquiring goods or services. A file note should be made after the situation has stabilised covering the approach taken.

### Guidance

- obtain the necessary goods or services direct from suppliers
- no written contract is required
- ask suppliers to invoice after the situation has stabilised
- attempt to keep a note of what has been purchased
- act within existing delegated authority, where possible
- if there is no existing delegated authority, and no time to obtain an approval, then exercise good judgement and be prepared to provide a rationale for the nature and extent of the procurement in the circumstances
- if a procurement involves a major expense it is recommended, at the very least, that verbal approval (followed up in writing) from an officer with sufficient delegated financial authority is obtained before making the commitment.

## Level 2 – Disaster relief: *emergency procurement*

### When to respond

This level of emergency response may be appropriate where:

- there is no immediate threat of loss of life
- there is no immediate threat of damage to infrastructure
- a state of

At some point the necessity to react immediately will change to an ability to respond urgently. This will usually be when there is no further threat to loss of life, damage to major infrastructure or when a state of emergency is lifted. Agencies are permitted to forgo routine procurement procedures where it is justifiable on the grounds that the usual procedures would prevent the agency delivering the goods or services in time to bring effective relief.

### Guidance

- identify, specify and prioritise the immediate procurement required to bring effective relief
- consider the operating environment and conditions 'on the ground'.
- if possible, find out what other government agencies and Non-Government Organisations are doing and, where practical, collaborate

emergency has been lifted

- there is still an urgent need to respond
- a normal procurement process would not allow for the delivery of effective relief

- purchase direct from the most convenient suppliers. Whilst price will be a factor in deciding the selection of suppliers, the overriding consideration must be the immediate provision of relief
- always obtain financial approval to proceed prior to the purchase. Where appropriate, agencies could make a blanket approval to cover this stage of the emergency response if required
- consider options for sourcing, including what contracts may already be in place (All-of-Government supplier, panel contractor or syndicated contract). Even consider using another agency's suppliers where they have been appointed through a competitive process if that supports immediate delivery
- where there are no existing contracts, identify what quotes can be achieved quickly and what suppliers are able to deliver immediately. Verbal or e-mail quotes are sufficient. Where verbal make a note of the conversation
- check what assurance suppliers can give to delivering immediately, to the right location, the right quantity and quality at the right price
- advise suppliers that the purchase is being made as an emergency procurement to provide immediate relief and that a more competitive process will be used for any medium to long term solution
- where possible, consider alternative contract solutions, for example, short term lease of equipment rather than purchasing. This may allow you time to source a more permanent solution through a more competitive process
- confirm your agreement with the supplier in writing. If you can, use the simple Government Model Contract available on [procurement.govt.nz](http://procurement.govt.nz). If time does not allow, confirmation by email is sufficient. You need include only the basics: what is being delivered, to what specification, when, where, by whom, the price and any other charges, for example freight and insurance.

### Level 3 – Post-disaster reconstruction: *accelerated procurement*

#### When to respond

- once the situation has stabilised
- if the procurement concerned is of a critical nature
- if departure from normal procurement processes can be justified by the agency

Once an emergency situation has stabilised and the response effort is directed towards post-disaster reconstruction and remediation, the purchase of most types of goods and services should return to routine procurement procedures. However, for certain types of procurement, for example, provision of critical infrastructure such as water, sewage treatment facilities and reconstruction of housing or land remediation, agencies may choose to follow an accelerated procurement process.

An accelerated procurement process is where an agency develops a process to fit the specific category of procurement and immediate needs. It will provide more flexibility and greater responsiveness, but sufficient rigour to allow for some level of competition and maintain governance and accountability for the spend. Where an agency develops an accelerated procurement procedure it must be prepared to justify any departure from routine procurement process.