

# Quick-Guide: Emergency Procurement



## What is emergency procurement?

An 'emergency' is a sudden unforeseen catastrophe. 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.

*The situation following the Canterbury earthquake necessitates emergency procurement and rapid response.*

An emergency situation may arise in the following circumstances:

- **natural disasters:** such as earthquakes, cyclones, tsunamis, volcanic eruptions or flooding
- **failures of critical infrastructure:** such as a major power outage affecting the whole of New Zealand
- **critical health emergencies:** such as a pandemic
- **political emergencies:** such as a coup or civil insurrection
- **critical security emergencies:** such as a terrorist attack.

In deciding if an event constitutes an emergency consider:

- Whether the incident falls into one of the categories above?
- The nature of harm if relief is delayed?
- The degree of harm if relief is delayed?

## Flexibility to respond

In a genuine emergency, such as the Canterbury earthquake, agencies will need to be flexible in how they procure the goods and services that are necessary to 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.

Agencies are permitted to purchase direct from a supplier if the delay involved in conducting a routine procurement (e.g. 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 (to save or preserve life, or safeguard buildings or repair critical infrastructure), against meeting their overarching public sector obligations (to be accountable, open, fair, achieve value for money, act lawfully and with integrity).

## Types of emergencies

### Sudden on-set emergencies

This is where the emergency is unforeseen, or the magnitude of the disaster is greater than the pre-planning anticipated or results in the destruction of the response resources or infrastructure (e.g. the Canterbury earthquake). In these cases the initial intervention can be much more reactive.

Example: a catastrophic earthquake which destroys emergency response resources (e.g. the civil defence facilities or supplies) or infrastructure to deliver emergency relief (airports, roads or port facilities).

### Slow on-set emergencies

This is where the possibility of a specific event is anticipated and planned for. In these cases relevant agencies will normally have put in place measures to mitigate the effects of the disaster and be better prepared to respond if it occurs. This normally involves pre-procurement and stock piling supplies.

Example: annual cyclone season preparation in the Pacific results in agencies involved in humanitarian assistance being prepared to provide immediate relief supplies through pre-purchased, pre-positioned stocks and an established coordination mechanism.

## Emergency phases

Emergency responsiveness can be viewed at three different levels with regard to the immediacy of the threat or danger. The degree of flexibility in procurement process will be determined, to some extent, by the phase that the emergency has reached.

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

In the event of a major catastrophe, such as the Christchurch earthquake in February 2011 (which resulted in a state of National Emergency), 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.

#### **Guidance**

- Obtain the necessary goods or services direct from suppliers.
- No written contract 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 justify 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 a verbal approval (followed up in writing) from an officer with sufficient delegated financial authority is obtained before making the commitment.

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

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 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 possible, collaborate.
- 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 – an 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.

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

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.

### **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**

- When the emergency moves to Phase 2, consider establishing a governance and management structure to coordinate necessary procurement activities.
- In emergencies there is a higher risk of fraud, bribery, corruption and inflated prices. 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 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 Mandatory Rules for Procurement an exemption for emergencies is available under Appendix 1. However, the award of a contract over the appropriate value threshold should be published later (on GETS), including the fact that it was an emergency procurement.