TRANSPARENCY, ACCOUNTABILITY AND INCLUSIVENESS OF THE USE OF EMERGENCY FUNDING FOR COVID-19

Procuring at speed

The context

The COVID-19 pandemic has created an unprecedented demand for urgent and, often, life-saving goods. From medical supplies, personal protective equipment (PPE) and ventilators to vaccines – the need to procure at considerable speed often dominated the public sector response to the pandemic. Governments, both at the local and national level, had to react extremely quickly to meet this demand. A need for speed can often create a heightened risk of corruption and fraud and can result in a significant lack of transparency (RECORD n.d.).

The risks

The consequences of procuring at great speed were seen around the world, ranging from the price inflation of urgent supplies and the awarding of contracts to unknown or inexperienced suppliers, to high rates of fraud and corruption (Wright and Darby 2020). This is nothing new: evidence from previous crises, such as Hurricane Katrina and the Ebola outbreak, has shown that fraud and corruption are rife during emergencies (World Justice Project n.d.). In a time where global public debt is thought to have reached 98% of gross domestic product (GDP) at the end of 2020 (Gaspar et al. 2021), mismanaged and sometimes wasted public money on public procurement contracts is both an undesirable and unaffordable outcome.

The response

As the COVID-19 pandemic took hold, governments around the world often relied on existing or new emergency frameworks to allow them to bypass regular channels of public procurement to speed up the process. While understandable given the circumstances, rapid procurement often leads to a trade-off between speed and other critical principles of public procurement, such as transparency and competitiveness. Importantly, emergency frameworks should be temporary measures – keeping them in place after a crisis increases the risks for public procurement as actors begin adapting to laxer rules that keep transparency in a backseat role.

THE CONSEQUENCES OF PROCURING AT GREAT SPEED WERE SEEN AROUND THE WORLD

Examples

Jurisdiction	Emergency Framework for Public Procurement
EUROPEAN UNION	In April 2020, the European Commission released guidance on emergency public procurement connected to the COVID-19 crisis (European Commission 2020). It allowed, for example, a reduction in 'deadlines to accelerate open or restricted procedures' and allowed for direct awards to go to a 'preselected economic operator' in certain circumstances. This is a significant divergence from the usual transparent and open procurement processes required by the EU. Importantly – the guidance states that these accelerated procedures should only 'cover the gap until more stable solutions can be found'.
UNITED KINGDOM	In March 2020, the UK government released a Procurement Policy Note to allow authorities to procure faster with fewer requirements. It allows public authorities, for example, to make direct awards for particular goods or services when 'competition is absent for technical reasons' *but only in certain circumstances*, for example when 'there is no reasonable alternative or substitute available'. The guidance also allows for reduced timescales for the open process of tendering. There are still certain safeguards in place, however, including that contracting authorities should 'keep a written justification' and while timescales can be set according to need they must still be 'reasonable and proportionate'.
INDIA	Some jurisdictions may have multiple, pre-existing sources of procurement policy or legislation as well as emergency frameworks of which supreme audit institutions (SAIs) would need to be aware as a crisis unfolds. In India, the Epidemic Diseases Act 1987 contains provisions that allow authorities to 'take special measures and prescribe regulations' to 'prevent the outbreak of such disease or the spread thereof (Government of India 1897). The Manual for Procurement of Goods 2017 allows for certain exceptions to regular procurement processes, such as allowing authorities to 'skip bidder qualification' to save time (Government of India 2017). The National Disaster Management Plan 2019 allows authorities to 'make emergency procurement of provisions' (Government of India 2019). There is also relevant local policy and legislation, such as the Government of Kerala's Stores Purchase Manual 2013, which also allows for the bypassing of certain processes while ensuring that there is still a record of 'the reason for such decision' (Government of Kerala 2013).

The safeguards

These policies and frameworks are critical to enabling SAIs to carry out ex-post, compliance audits. They often provide clear legislative and regulatory frameworks within which auditors can determine whether certain emergency procedures were followed. This process may often require judgement calls for auditors about the limits of the flexibility of each framework, such as determining whether sufficient justification was provided and whether there were any suitable alternatives to the decisions made. It's also important to note that some countries did create frameworks during the pandemic that were intended to maintain strong levels of transparency – demonstrating that the trade-off between efficiency and speed isn't necessarily inevitable or unavoidable. For example, Colombia's procurement agency created new resources to ensure that, despite the need for speed, transparency and accountability remained at the forefront of the response (Colombia Compra Eficiente 2020).

The UK's National Audit Office (NAO) conducted an investigation into government procurement during the pandemic using a number of regulations, including the framework mentioned above (Cabinet Office 2020), alongside other codes of conduct that determine, for example, requirements for ministers to declare conflicts of interest (Comptroller and Auditor General 2020). The report stated that there was inadequate documentation explaining why certain suppliers had been chosen and how risks arising from the lack of a competitive process were mitigated. This type of audit can help provide a clearer understanding of the government's adherence to policy when procuring at speed while providing some information about the effectiveness of these emergency frameworks in meeting the needs of the crisis while protecting public funds from mismanagement.

The Office of the Auditor General of the Republic of Fiji (2020) conducted a compliance audit on the various aspects of the government's response to the pandemic. The report found that the procurement of resources, such as medical equipment and PPE, was handled largely in line with the relevant processes and policies, but noted that there are still opportunities 'to enhance accountability of funds allocated'. These audits can therefore be seen as both a way of evaluating compliance with existing policies for emergency procurement and an opportunity to ensure future emergency frameworks are better suited to the crisis at hand. For example, while some aspects of procurement processes will need to be bypassed for the sake of speed, there must still be certain transparency safeguards in place to ensure that public money is protected even in the most uncertain of times (Hayman 2020).

Other useful resources

- Michael Burnett, European Institute of Public Administration (2020) – *Procurement Audit – Helping Ensure Public Money is Well Spent in the Crisis*
- Comptroller and Auditor General (UK National Audit Office) (2020) – *Investigation into Government Procurement during the COVID-19 Pandemic*
- Jasmine Kendall et al. (Open Contracting Partnership) (n.d.) – *Global Procurement Responses to COVID-19: How to do Better in an Emergency*
- Gavin Hayman (Open Contracting Partnership) (2020) – *Emergency Procurement for COVID-19: Buying Fast, Open and Smart*
- Office of the Auditor General of the Republic of Fiji (2020) – *Audit Report on Compliance Audits Relating to COVID-19 Response*
- Rachel Bleetman and Alex Metcalfe (ACCA) (2020) – *New Models of Public Procurement*

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