



COVID-19: Competition and emergency procurement

Health concerns, confinement measures and border closures adopted in the wake of the Covid-19 crisis have caused severe disruption in the supply and distribution chain of goods, works and services that the public sector needs. At the same time, public buyers around the world need some goods urgently and at dramatically increased volumes. In particular, the demand for health care material (face masks, protective gloves, ventilators, beds, medicines, intensive care material, Covid-19 tests, lab supplies and hospital infrastructure) has massively surged in the last weeks.

The consequence is that, in many cases, a public buyer may find that there is only one supplier able to deliver the material it requires. In the best of cases, there may be a limited pool of suppliers with delivery capacity, but no time for the buyer to run a competitive procurement process due to the urgency of the needs to be covered. In these cases, buyers may need to directly negotiate and buy from supplier(s) that have capacity (hence “direct awards”).

Limiting the use and decreasing the risks of direct awards

Whilst direct awards are normally strongly discouraged by procurement rules across OECD members, they may be considered necessary in cases of emergency and *force majeure*. In normal circumstances, public procurement bodies should opt for competitive tendering, which enables them to obtain the most adequate goods, services and works at the optimal price versus quality ratio (i.e., value for money). For example, the OECD estimated that competitive tenders by the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social, IMSS*) resulted in a price 11.2% to 11.9% lower than the price achieved through direct awards or tenders restricted to few suppliers¹.

The Covid-19 pandemic is such a major global public health emergency that when certain conditions are met it may justify direct awards. Procurements to address potential future needs or cover needs not related to, or affected by, the pandemic do not justify a direct award, unless there is, in each case, a demonstrable justification linked to emergency reasons.

There are genuine reasons to procure specific goods, services and works through direct awards when the following conditions are met:

1 A number of potential suppliers exist, but time constraints mean that traditional competitive tenders or fast-track simplified competitive procedures cannot be run.

2 Alternatively, there is only one supplier that has capacity to deliver.

¹ OECD (2018) Fighting Bid Rigging in IMSS Procurement: Impact of OECD Recommendations, <https://oe.cd/imss18>

3

Direct awards should aim to address current urgent needs that were not foreseeable before the crisis, i.e. procure indispensable material that needs to be used immediately, or replace an urgently needed existing supply source that has ceased to deliver, as a result of pandemic-related disruption. To assess the immediacy, types and volumes of such urgent needs, procurers should be in continuous communication with the units that will use the procured material, e.g. hospitals.

4

Existing public contract arrangements cannot be renewed, extended or otherwise used, for any reason, which may include the fact that the contractor does not have the capacity to deliver additional volumes. These arrangements are likely to have been agreed on terms that meet usual procurement and competition standards and should be preferred, if the contractor has capacity to deliver and agrees to do so.

Renewal or extension of existing contracts should be limited in time and scope to what is strictly necessary to respond to the emergency situation.

Guidance on direct awards in the United Kingdom

In March 2020, in the context of the Covid-19 crisis, the United Kingdom adopted a [policy note](#) to provide guidance on the procurement procedures that can be used to purchase goods, services and works in situations of emergency.

Direct awards can be used should the following conditions all be met:

- There are genuine reasons for extreme urgency, i.e. need to respond immediately to a current situation of real emergency.
- The events that have led to the need for extreme urgency were unforeseeable.
- It is impossible to comply with the usual timescales, and no time to run an accelerated procurement, or use an existing commercial agreement.
- The situation is not attributable to the contracting authority, i.e. the authority has not done anything to cause or contribute to the need for extreme urgency.

Contracting authorities should, in all cases:

- assess whether these conditions are still met before conducting subsequent or additional procurements;
- keep a written justification of the need for a direct award, to use in ex post legal challenges or audit;
- limit purchases to only what is absolutely necessary in terms of volumes and length of contract;
- use good commercial judgement during any direct award. If prices are higher than in a regular market, ensure that they can secure pricing reductions later on;
- publish the contract award notice within 30 days from the award.

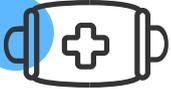
See also [Guidance from the European Commission on using the public procurement framework](#) and [French guidance on the award and execution of public contracts in the health crisis](#).

The duration of the Covid-19 crisis is still uncertain. While the first impact of the pandemic was unexpected, public purchase needs in the medium and longer term may be easier to predict. Direct awards should, thus, be gradually abandoned in favour of more competitive procurement solutions.

Public procurement entities should:



Follow national and international rules and guidelines on emergency and Covid-19 related procurement.



Use direct awards only to respond to current, urgent and unforeseeable needs.



Check first whether they can renew or extend existing contracts before a direct award.



Ensure that the supplier with whom they intend to contract is the only one able to provide the required goods, services and/or works on time; If there are a number of possible alternative suppliers consider whether there is time to conduct a fast-track competitive procedure. If there is no time, a direct award to one or more of the available suppliers can be justified.



Use, to the extent possible, existing market intelligence to inform decisions on emergency purchases. Existing procurement data on observed prices, suppliers, capacities, etc. could be useful to get an overall picture of market conditions before the pandemic, and negotiate prices and delivery terms during the crisis.



Pool forces and conduct joint procurements to attract suppliers, achieve economies of process and limit price spikes through economies of scale and exercise of purchasing power.



Phase out direct award procedures and contracts as needs become foreseeable and start planning competitive tendering for the medium and long-term needs resulting from the crisis.

Joint procurement in the European Union

The European Commission launched four different calls for tender for medical equipment and supplies on 28 February (gloves and surgical gowns), 17 March (personal protective equipment for eye and respiratory protection, as well as medical ventilators and respiratory equipment), and 19 March (laboratory equipment, including testing kits), with participation of up to 25 Member States (see [press release](#)). These initiatives are proving successful as the Commission announced that offers covered and in some cases exceeded the quantities requested. The European Commission has a coordinating role, while the Member States purchase the goods.

Competition authorities should:



Intensify their competition advocacy initiatives vis-à-vis procurement entities to alert them to the risks and conditions that should be met for emergency direct awards to be considered.



Be vigilant and monitor suspicious selling patterns (i.e. high prices) in Covid-19 emergency procurements.

Related OECD work

[OECD Recommendation on Fighting Bid Rigging in Public Procurement](#) (2012) & [Relevant OECD in-country work](#)

[OECD Recommendation of the Council on Public Procurement](#) (2015) & [Procurement Toolbox](#)

[OECD website on Covid-19](#)

This note is prepared based on the work of OECD Competition Committee, which formulates and promotes best practices in the area of competition law and policy.

Find out more about OECD work on competition at
www.oecd.org/competition

OECD Directorate for Financial and Enterprise Affairs
www.oecd.org/daf | DAF.contact@oecd.org | [@OECD_BizFin](#) | [LinkedIn](#)

This paper is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and the arguments employed herein do not necessarily reflect the official views of OECD member countries.

The OECD is compiling data, information, analysis and recommendations regarding the health, economic, financial and societal challenges posed by the impact of Coronavirus (COVID-19). Please visit our dedicated page for a full suite of coronavirus-related information – www.oecd.org/coronavirus.