BEST PRACTICES FOR EMERGENCY PUBLIC PROCUREMENT
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MESSAGE FROM EXECUTIVE DIRECTOR, TRANSPARENCY MAURITIUS

Public procurement is seen by many as an endless hole whereby corruption is its main engine. People doubt governments and institutions’ credibility when it comes to public procurement as if there is a tacit or unspelt understanding that people in power would obtain a secret gratification upon each and every bid. The number of scandals over the years justifies the worries of the population, the media and civil society. Even if, over the years, many institutions, laws and regulations have been set up, corruption doesn’t seem to disappear. There are always loopholes which will provide opportunities to flout the rules.

Public procurement is a call for tangible and/or intangible products or services made by a public body and it is supposed to be based on a number of set values and rules so that the community or state would get the best product and/or service at the most competitive price. The set values include transparency, fairness, merits and equal opportunities and the rules are defined in law.

But there are situations in which public bodies are allowed to bypass the usual protocols, like: for an urgency or emergency; in a government-to-government agreement: or with regards to a strict technical specification of a given product or service.

Those situations do not imply that the rules of accountability, transparency or merits do not apply. It doesn’t mean also, that all flood gates are open to allow nepotism, conflict of interests and personal gain to thrive. Public officers are bound to explain and justify the choice they made, should there be any query.

Pandemics or calamities are viewed by the corrupt as opportunities and they will seek every flaw or loophole to get personal gratification
or to bribe public officials. Abuse of the emergency procurement protocols have sprouted in most countries. When Covid-19 fuses with corruption and environmental calamities, the impact on the economy can be fatal. Mauritius too have been hit by this man-made plague known as corruption. Several cases have been reported and there are investigations being carried on.

In normal times, already there are questions raised about rigging in procurement. This has brought governments to put up institutions and legislations to regulate the system. Would Newton's law of action and reaction apply here? But it is clear that deviants would do whatever they can to bypass rules and regulations.

The Public Private Platform against Corruption (PPPAC) identified public procurement as an area with higher corruption risks a few years back. Some of the recommendations published in the PPPAC report have been implemented. While the Procurement Policy Office (PPO) has been addressing loopholes and implementing new regulations, still there have been several cases of alleged abuse of emergency procurement procedures during the pandemic. The ICAC is currently investigating those cases.

Transparency Mauritius is faithful to its role of addressing systemic malfunctions often generated by the corrupt mind. We are thankful to all the participants starting with Ms Camilla Salazar of Open Contracting Partnership, Dr Navin Beekarry, DG of ICAC, Mr Hirendranath Rambhojun OSK, Director of the PPO and Mr Kevin Ramkaloan, CEO of Business Mauritius.

Rajen Bablee  
Executive Director  
Transparency Mauritius
WHAT IS EMERGENCY PUBLIC PROCUREMENT?

According to the Public Procurement Act of 2006, emergency procurement is allowed only in cases of “extreme urgency”. Extreme urgency is defined in the act as:

3) (a) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war or Act of God;
   
(b) life or the quality of life or environment may be seriously compromised;

(c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or amended by [Act No. 1 of 2009]

(d) a capital project may be seriously delayed for want of an item of a minor value

During the Covid-19 pandemic, the process of “emergency procurement” became a world-wide phenomenon. It also shed light on the lack of mechanism to control emergency procurement and how some people in power abused of this system to benefit themselves or their kin.

“Lessons learnt on Emergency Procurement during the Covid-19 pandemic” is a project funded by the European Union Delegation in Mauritius and Seychelles. The aim of this project is to point out to weaknesses in the emergency procurement phenomenon and to look at lessons learnt in several countries. A webinar was organised on the 15 February 2022 with public procurement officers.
“Lessons learnt on Emergency Procurement during the Covid-19 Pandemic” demonstrated that public procurement was governments’ first corruption risk even before the pandemic begun since it is one of the biggest economic activities of a country. Similar risks in the different countries were observed, namely;

1. Higher and uncertain prices for key items
2. High use of multi-purpose suppliers
3. Companies with no previous experience in the public procurement market
4. Inefficiencies in the process

Policies should be clear about when and how to use emergency procurement. There must be rapid disclosure of information with written evidence of each process. There must be a coordination system with frameworks and mechanisms set up to ensure full disclosure and accountability.

Open data has a vital role in preventing abuse and corruption. The power of civil monitoring through civil society organization should not be undermined.

Freedom of information and of the media is important to uphold disclosure and total transparency.

SUGGESTIONS

CAMILA SALAZAR
During the emergency we saw how open contracting strategies helped governments better tackle the Covid-19 response and set a clear roadmap for better procurement practices looking at the recovery stage. These approaches included having clear policy coordination mechanisms and clear rules in place to ensure accountability, publishing open data and embedding effective participation, monitoring, oversight and feedback mechanisms.

Camila Salazar,
Lead Analyst at Open Contracting Partnership
Emergency procurement during the Covid-19 pandemic was necessary for economic and physical survival. Procurement systems are the most important channels that breed corruption and money-laundering. It is an area where the biggest amount of money is siphoned.

A holistic approach is needed to address this issue. Enhancing both the system’s integrity, but also people’s integrity is a must to curb corruption in procurement processes.
All corruption acts in the context of procurement feed into money laundering practices, which in turn strengthen existing corrupt systems and institutions. It's a circle (...) In order to address the problem, we need to adopt a holistic approach. We need to look at not only investigation, but also education and prevention side (...) It's not only a question of strengthening systems, but also people's integrity

Navin Beekarry, 
Director of the Independent Commission Against Corruption
Public Procurement Act (PPA) 2006 provides for basic principles and procedures to be applied in public procurement of goods, works and services.

Amendments are made to the Act almost every year based on findings in the procurement compliance audits by the PPO, the report of the Director of Audit, feedback from Public Bodies and grievances from bidders.

PPA (2006) Version Nov 2018: A public body may purchase goods, services or works from a single supplier without competition in cases of extreme urgency.

PPA Version Dec 2021: A public body may, in cases of extreme urgency, purchase goods and procedures works, consultancy services and other services by such procurement method as may be prescribed.

Accordingly, Regulation 5C and Directive 60 have been issued. The law urges institutions to maintain appropriate records of procurement and publish notice of award. It is the responsibility of public officers to report any emergency procurement exercise to the PPO office for scrutiny.

Directive 60 provides a framework for chief executive officers to operate in transparency. It ensures that the public officers use emergency procurement efficiently and effectively.

Directive 44 was set up to cater for emergency procurement during the Covid-19 pandemic with the objective to “safeguard life, quality of life or environment”. 
There is growing awareness that accelerated Public Procurement Procedures raise the risk of waste, fraud and corruption

Hirendranath Rambhojun, OSK
Director of the Procurement Policy Office
Emergency procurement must only be used in emergency situations.

A clear set of criteria (product, supplier, price, quantity...) needs to be set when conducting an emergency procurement.

It remains important to embrace new technologies to improve transparency and avoid abuse.

Feedback mechanisms can improve the system.

There should be an online publication which provides summary of all procurements: public and emergency procurements.
“Transparency in the procurement process is a critical success factor for business confidence and the investment climate.”

Kevin Ramkaloan,
CEO of Business Mauritius
It is important to allocate budgets to emergency procurements based on principles of efficiency, effectiveness, transparency, and impartiality.

Governments should report the reasons of the allocation of resources at the end of all procedures to ensure transparency and accountability.

The use of emergency procurement must be regulated to avoid abuse.

To enhance regulations, additional mechanisms and control bodies are needed to monitor the quality of goods and services contracted during emergencies.
Abuse of emergency procedures for goods and services took place on a rather large scale (...) and it became a challenge to uphold transparency and maintain accountability in such a difficult period of time

Lovania Pertab,
Chairperson of Transparency Mauritius
INTEGRITY PACT: A TOOL TO PREVENT CORRUPTION IN PUBLIC CONTRACTING

The Integrity Pact, developed by Transparency International, has been implemented in around 15 countries and in more than 300 different situations since the 1990s.

It is essentially a document signed between a contracting authority, bidders, and an independent monitor not to indulge in any corrupt practice. Legally binding, it commits all parties to comply with anti-corruption best practice.

The role of Independent Monitors:

The independent monitors follow the whole procurement process – from design to implementation. They commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis.

In this way the tool is constantly evolving based on lessons learned and best practice around the world as well as up-to-date analysis regarding the country and sector's corruption risk profile.

The Integrity Pact avoids being a one-size fits all approach but rather a living tool that adapts to local opportunities and challenges.

The Integrity Pact acts as social accountability mechanisms, necessary for building trust in the public procurement process and ensuring that these big projects reflect the public interest, particularly the interest of those communities and groups most affected by the project.

That means engaging communities in monitoring the procurement along as many phases of the project (from pre-tender to implementation and evaluation) as possible.
What are the benefits of the Integrity Pact?

While Integrity Pacts help ensure clean operations on the part of contractors and public officials during the execution of a project, they also yield other benefits. Integrity Pacts provide enhanced access to information, increasing the level of transparency in public contracts. This, in turn, leads to greater confidence and trust in public decision-making, less litigation over procurement processes and more bidders competing for contracts.

Integrity pacts can also encourage institutional changes, such as increased commitment to making data available in a truly open format, simplified administrative procedures and improved regulatory action.

Everyone can help ensure taxpayers’ money is well spent. Government must guarantee to provide good quality services, bought at a fair price. This means strong public procurement system is needed.

Moreover, this means everyone can see what’s going on and can hold government, bidders and contractors accountable for their actions. A good Public Procurement system can also be shaped by clear regulations that meet international standards and which can be overseen by strong institutions that enforce those rules. It can also provide access to information and effective complaints mechanisms and thus allow us report suspected corruption confidentially and without threat.

Specific measures can help ensure honest procurement processes. They lead to commitment to honesty by bidders and the procuring government agency. There is no doubt that the Integrity Pact of Transparency International can be implemented in Mauritius. Such initiative, though, depends a lot on the political will from the top. It may also be adopted by the private sector.
RECOMMENDATIONS OF THE PPPAC

The short term recommendations:

Public Procurement Office

- To develop guidelines/procedures for low value procurement
- To raise awareness of suppliers/contractors on requirements of bidding documents, their rights for appeal and criteria for challenging decisions to the Independent Review Panel
- To reinforce capacity of officers involved in procurement and contract management
- To organize an anti-corruption event to trigger reflection among officers involved in procurement and contract management
- To introduce a ‘Covenant of Integrity’ or ‘Integrity Pact’ for bidders so as to ensure level playing fields for all contractors and suppliers
- To set up a Compliance Unit to ensure supervisory control on staff involved in procurement and contract management
- To improve guidelines on the contract management and procedures for ‘certification of payment’, the shortlisting procedure of suppliers for direct procurement and restricted bidding, the negotiation procedures for specific supplies and low tendering by contractors and suppliers
- To reinforce provisions for emergency procurement by public bodies
Public Bodies

- To be more transparent in the direct procurement process, in terms of publication of tenders, listing of companies securing and not securing contracts and the reasons thereof.
- To provide information on contracts awarded through press releases and centralized procurement website in ‘emergency situations’ so as to dissipate perception of corruption.
- To ensure that bid evaluation and contract management teams are independent.
- To ensure that contract management and ‘certification of payment’ procedures are followed, documented and conducted in all transparency.
- To post anti-corruption messages on respective websites.
- To encourage whistle blowing of corruption and malpractices to the relevant authorities.
- To ensure compliance to code of conducts in order to promote ethical behavior.
- To implement the Public Sector Anti-Corruption Framework spearheaded by the ICAC.
Private Businesses

- To join the Private Sector Anti-Corruption Task Force (PACT) where malpractices, if any can be reported
- To adhere to an ‘Integrity Pact’ to promote integrity and ensure level playing field
- To adopt procurement procedures of international standards
- To refrain from corrupting public officials
- To post anti-corruption messages on respective websites
- To encourage whistle blowing of malpractices (internal structure or ICAC)
- To commit for the implementation of an ‘Integrity pledge’ as proposed by the PACT
- To develop and implement anti-corruption programs
- To move for an ‘Anti-Corruption Charter’ through the Mauritius Employers Federation and the Mauritius Chamber of Commerce and Industry
Medium term recommendations:

(i) Amendments to the regulations for the disclosure of information on all the contracts by all public bodies and access for all the parties to enhance transparency. Information here would include: contracts, specifications and value of contracts, recipients of contracts, mode of contract funding, post completion evaluation report and any other relevant information. Means of dissemination: press releases and on centralized website

(ii) Effective and regular review of progress on investment projects by the Project Plan Committee of the Ministry of Public Infrastructure, NDU, Land Transport and Shipping.

(iii) Appointment of Independent professionals for supervision of large projects during all phases. This would act as an oversight mechanism to ensure proper project implementation.


(v) Setting up of a formal platform comprising representatives of private and public sectors that meet on a regular basis to discuss public procurement issues and make recommendations.

(vi) Inclusion of a representative of the civil society in the procurement and contract management process.

Long term recommendations:

(i) The Procurement Policy Office be given an independent status as the Regulatory Authority for procurement.

(ii) A research survey on procurement be conducted so as to have a holistic view of the current situation. This study could be conducted by either the MRC or the UoM in collaboration with institutions dealing with corruption (PPO, ICAC and TM).

(iii) A new Public Procurement Act be introduced instead of making amendments.

(iv) A Procurement Academy be established as a joint initiative of the Public and Private Sector to professionalise procurement.

(v) Declaration of Assets for public officials involved in decision making.
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