



Getting it right

Supporting integrity in emergency procurement

Introduction

In 2019, public organisations spent an estimated \$51.5 billion on procurement of goods and services.¹

The government procurement policy framework in New Zealand consists of a combination of principles, rules, and guidance. The Ministry of Business, Innovation and Employment (MBIE)'s Government Procurement Rules (the Rules) require public organisations to apply minimum standards to their procurement activities.²

It is important that New Zealanders get the best possible outcomes from the public money spent on procurement. Some fundamental principles govern how public organisations use public money no matter how urgent the spending is. One of these principles is integrity.³

Integrity is about more than following the rules. It is about consistently behaving within agreed or accepted ethical principles and doing what is right in any given circumstance. We outline this view in our integrity framework and guidance,⁴ and it has informed how we consider integrity in this article. Emergencies present difficult operating environments for public officials, who might experience the direct effects of an emergency while also having to respond to it. Uncertainty can be high, and officials often work long hours in difficult and unusual circumstances.

High-trust approaches, which may require less upfront processes and information requirements for public organisations, are one way of meeting need quickly. Regardless of speed, it remains critical to safeguard procurement activities and processes when faced with these kinds of pressures.

In this article, we share our findings on how effectively public organisations have ensured integrity in emergency procurements.

- 1 The amount of \$51.5 billion of "total procurement" in 2019 is an estimate that Statistics New Zealand derived using available data sources and a statistical economic methodology. It is important to recognise that this figure represents an approximation of government procurement activities during 2019 and might not reflect current or subsequent years.
- 2 See procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/.
- 3 Controller and Auditor-General (2023), *Managing public funding in an emergency response or recovery – Observations from our work*, at oag.parliament.nz.

- 4 Controller and Auditor-General (2022), *Putting integrity at the core of how public organisations operate: An integrity framework for the public sector*, at oag.parliament.nz.



To identify good practice and areas for improvement, we selected six public organisations that are subject to the Rules and that conducted emergency procurements between June 2018 and July 2022. We also surveyed all public organisations that are required to use the Rules about their emergency procurements.⁵

This work is part of our wider programme to support public sector leaders to actively promote and manage integrity in their organisations. Poor procurement practices are often the subject of comment by our office and can result in waste and poor value for money. In turn, this can erode trust and confidence in the public sector and government.

Emergency situations during the last three years meant that public organisations needed to procure a range of goods and services quickly, particularly during the Covid-19 pandemic.

We examined the effectiveness of public organisations' procurement systems and processes, their adherence to emergency procurement requirements, and the effectiveness of senior leadership in ensuring that their staff managed these procurements with integrity.

What we found

Through our work, we found many examples of good practice. All six public organisations that we looked at have policies that align with the Rules and have clear roles and responsibilities for emergency procurements.

We heard that senior leaders expected their staff to demonstrate integrity in emergency procurements. However, we saw little evidence of those expectations being communicated in a practical way.

We also found that public organisations have mechanisms for people to speak up if integrity matters arise, and, in general, staff told us that they would speak up. Many staff told us that they feel that their senior leaders support them to do the right thing.

All public organisations have policies for their staff to declare conflicts of interest. However, we found an overall lack of documentation of conflict of interest declarations. This includes where staff would record that they have no conflicts of interest.

We also found that public organisations did not always identify risks in emergency procurements and that they could not always show how they managed risks. In addition to conflict of interest information, some also had difficulty sourcing key documents we requested for our audit (such as contracts and requests to use the emergency exemption to open advertising). Generally, the quality of public organisations' documentation management could be improved.

The performance of public organisations in meeting the requirements for emergency procurements also required attention. Given the emergencies public organisations were responding to, we did not expect requirements to be met perfectly during the emergency, but we did expect attention to be given to them as soon as possible.

Requirements that some public organisations failed to follow included being clear about their reasons for using the emergency exemption to open advertising and publishing contract award notices on the Government Electronic Tender Service (GETS). Public organisations did not publish a contract award notice on GETS (as they are required to do) for about 94% of emergency procurements in the period we examined.

We consider that publishing an award notice is not onerous and can be reasonably expected in emergency situations. This lack of transparency negatively impacts the ability for the public and Parliament to scrutinise public spending.

Public organisations need to be prepared for emergencies. We saw that public organisations did not focus on procurement enough in their emergency planning, and we consider that they have not sufficiently used opportunities to learn from their recent emergency procurement experiences to prepare for the future.

⁵ See procurement.govt.nz/about-us/mandate-and-eligibility/.

About emergency procurement in central government

Wherever possible, a public organisation should use open competitive procurement processes to give all suppliers the opportunity to compete for contracts to supply goods and services for the government.⁶ However, during an emergency, public organisations may be exempt from the Rules' requirement to openly advertise for the supply of the goods and services they need to respond to that emergency.⁷

This exemption gives public organisations flexibility when they must respond to a sudden unforeseen event.⁸ However, they must still follow other requirements when using the exemption, and it is important that they adhere to these requirements to conduct procurements with integrity⁹ and with value for money in mind.

Public organisations should only use the emergency exemption to open advertising in a legitimate emergency. Urgent situations that a public organisation creates through a lack of planning or risk mitigation, while inconvenient, do not constitute an emergency. Using this Rule requires public organisations to document the rationale for using it and to publish a contract award notice. They cannot use the Rule to avoid competition, protect domestic suppliers, or discriminate against suppliers.¹⁰

Because most public organisations did not publish contract award notices on GETS, we found it difficult to identify how many emergency procurements there had been – and for which emergencies – during the last four years.

To better understand how much emergency procurement takes place throughout the government, we requested information from six public organisations and surveyed all public organisations required to use the Rules about emergency procurement processes they undertook between June 2018 and July 2022.¹¹ This provided us with the records of 122 emergency procurements (with 246 associated contracts).

6 New Zealand Government Procurement Rule 13.

7 New Zealand Government Procurement Rule 14.

8 New Zealand Government, *Quick guide to emergency procurement*, at procurement.govt.nz/assets/procurement-property/documents/guide-emergency-procurement.pdf.

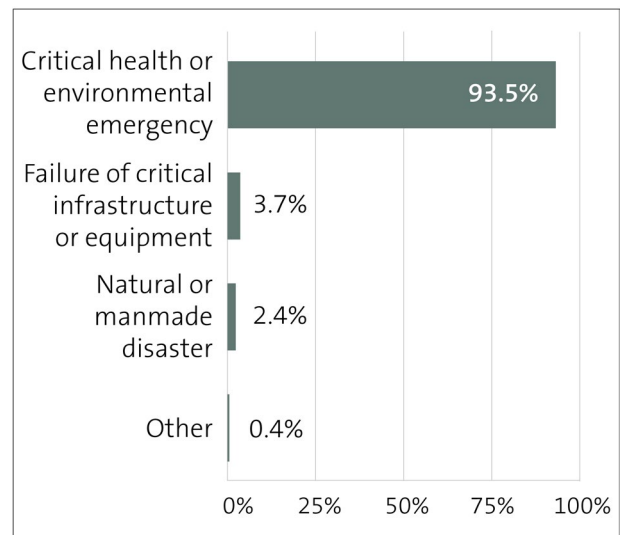
9 New Zealand Government Procurement Rule 2.

10 New Zealand Government Procurement Rule 14.

11 Of the public organisations that we invited to complete the survey, 71% responded.

We calculated that the total value of these emergency procurements was about \$460 million. We also found that almost half of the contracts were awarded in the 2019/20 financial year.¹²

Figure 1:
Reported rationale for emergency procurements



We consider it important for public organisations to publish their use of the emergency exemption to open advertising to provide better transparency to Parliament and the public.

When transparency is limited, it is harder for the public to have confidence in the integrity of the decisions public organisations make when they spend public resources. Below, we suggest some areas for improvement to increase transparency and support trust and confidence.

Public organisations should strengthen their internal procurement systems

A public organisation's processes and policies for procurement (its internal procurement system) provide the framework for officials to do the right thing. We found that the six public organisations we looked at had systems to support integrity in emergency procurements. However, we also found that they could improve those systems.

Requirements for use of the emergency procurement exemption include obtaining evidence of the facts

12 Some public organisations could not provide values or dates for the emergency procurements they had carried out.

and circumstances that justify the exemption from open advertising before starting the procurement, documenting the rationale for using the exemption, and having a senior manager endorse that rationale. Risks should also be considered in any procurement process. The Rules explain that a procurement approach should be proportional to the size, complexity, and risks involved.

Senior managers and governors should have visibility of the use of exemptions to open advertising to ensure that they are aware of integrity risks and can respond to them.

Most of the six public organisations' use of the emergency exemption to open advertising was appropriate

We found that most public organisations' use of the emergency exemption to open advertising was appropriate.

However, we found that in some instances public organisations used a lack of planning or a sense of urgency unrelated to an actual emergency to justify an "emergency procurement". In other instances, it appears that public organisations misunderstood the exemption and used it in parallel with other procurement approaches.

When deciding whether to use the emergency exemption to open advertising, we encourage public organisations to consider:

- whether the procurement responds to a legitimate emergency situation;
- how long ago the emergency occurred and whether they could be reasonably expected to plan for the emergency response, given the time that has lapsed; and
- whether they could be reasonably expected to carry out an open competitive process.

Policies are aligned with the Government Procurement Rules and associated guidance

In general, we saw that public organisations' policies are well-aligned with the Rules and associated emergency procurement guidance. Some public organisations have their own emergency procurement guidelines.

We found that some public organisations' procurement policies required staff to adhere to the Rules with no exceptions and that, to enable

better procurement processes, public organisations provided links to other relevant internal policies and documents in their main procurement policies. We also found that public organisations' policies required staff to consider conflicts of interest as part of the procurement process.

Most public organisations' policy documents mentioned the emergency procurement exemption, although the clarity of these references varied.

Because there are specific requirements when using an emergency exemption to open advertising, we encourage public organisations to provide specific emergency procurement guidance to assist their staff in meeting their obligations.

For instance, a public organisation could provide advice on what situations might constitute emergencies for that organisation and set out the exemption's requirements, such as to publish a contract award notice on GETS and the requirement of a senior manager to endorse the rationale for using the exemption.

Public organisations did not focus on procurement enough in their emergency planning

In most instances, we found that public organisations' planning documents did not clearly prescribe how they would treat procurements in emergencies. There is an important role that procurement teams play in responding to emergencies and the additional risks that can arise with emergency procurements.

We found that emergency procurements can be particularly demanding on procurement staff and that, in most instances, public organisations appeared to have not paid enough attention to planning for the additional procurement resources that they are likely to need in an emergency.

Roles and responsibilities for emergency procurements are clear

We found that roles and responsibilities for emergency procurements are generally clear. Public organisations are particularly clear about the roles and responsibilities for approving emergency procurement processes, including in delegation schedules and policies.

In the emergency procurements we examined, public organisations put in place either specific

governance structures for emergencies (for example, the Coordinated Incident Management System (CIMS)), or the public organisation's usual team and management structures prioritised the emergency procurement work.

Staff generally told us that they understand the role that they have to play in an emergency procurement and that they know how to execute it.

The quality of document management is mixed

Of the public organisations that responded to our survey, 69% indicated that they use a centralised register to record procurements and store information associated with those procurements. The remaining 31% of public organisations indicated that they do not use a centralised register to do this.

While we did not expect perfect record keeping, organisations could not always source key documentation and the quality of the documentation that they could provide varied. For instance, some public organisations' documentation did not include the necessary details that the Rules require (such as the specific exemption or details of the facts and circumstances that justify the exemption).

We heard that in some cases this was because they could not easily identify their emergency procurements, and because some staff had poor record-keeping practices.

Rather than seeing it as an administrative burden, public organisations should consider that recording the reasons for a decision, why it was taken quickly, or why it was taken contrary to advice can help to support the quality of the decisions it makes and the public's confidence in them.¹³

Maintaining records is critical for public organisations' obligations under the *Public Records Act 2005* and the *Government Procurement Rules*. An emergency situation might mean that public organisations cannot document their procurement as it happens, but they should document it as soon as possible after the event.

We encourage public organisations to file and store their procurement documentation for ready access in the future.¹⁴ We also consider that highlighting exemptions to open advertising on an internal system assists with document retrieval.

Public organisations sometimes identified risks in emergency procurements

Unfortunately, sometimes emergencies can be an opportunity for criminal activity. For example, the risks of fraud and corruption increase in emergencies. Prices of goods and services might also be inflated. The six public organisations generally had risk management frameworks, procedures, and processes, but it was not always clear how staff were expected to proceed with a risk assessment or when to apply risk management tools.

Some public organisations identified and managed risks for their emergency procurements. In general, we more commonly saw documentation of risk assessment when templates provided sections about risk.

We found insufficient evidence of public organisations carrying out enough risk management – including considerations about value for money and financial risks, especially for high-value emergency procurements.

In their emergency procurement planning, public organisations should identify specific risks that can arise with emergency procurements, such as inflated prices, supply chain issues, and fraud, and put in place actions to mitigate these.

¹³ Controller and Auditor-General (2023), *Managing public funding in an emergency response or recovery – Observations from our work*, at oag.parliament.nz.

¹⁴ New Zealand Government Procurement Rule 52.

Public organisations did not generally use opportunities to learn from their emergency procurement experience

We have reported previously on the need for the public sector to better prepare for future crises.¹⁵ Procurement is a crucial part of an emergency response. Identifying lessons learned means that public organisations need to reflect on a process, collect insights, validate them, and act on them.

Although we saw examples where public organisations had carried out some ad hoc learning process or had applied lessons they had learned from previous procurement experiences, we saw little evidence of systematic processes to monitor and report on emergency procurements despite some organisations having guidance for how they should be undertaking lessons learned processes.

We encourage public organisations to document lessons learned from emergency procurements and use those lessons to be better prepared for future emergencies.

Transparency and conflict of interest practices need to improve

Public organisations are required to follow government requirements when they conduct emergency procurements. These requirements assist public organisations to uphold integrity and support their staff to do the right thing. The requirements include declaring conflicts of interest and publishing contract award notices.

Not complying with the Rules, guidance, and policies creates risk that a procurement is perceived as lacking integrity.

There was not enough evidence that public organisations checked conflicts of interest

If you work in the public sector there is a good chance you will have a conflict of interest at some point in your working life. It is important that public organisations identify and manage situations where their staff may have interests that conflict with the work they are doing.

Identifying interests and managing conflicts is important so that the public can be confident that

the people spending public funds on their behalf are doing so with integrity. We especially want the public to be confident in decisions made during emergencies, when processes to procure goods and services are carried out quickly and substantial contracts are often entered into.

We were not provided with evidence of conflict of interest checks for most of the emergency procurements we examined, even though in some instances staff told us that they think they were completed and it was the organisations' policy to carry out checks. We are left to conclude that, in those instances, either the public organisation had poor record-keeping or that conflict of interest declarations were never carried out, even if it is the public organisation's policy to do so.

The effect of these omissions is that decision-makers might not be able to provide enough assurance to the public and Parliament that they acted impartially in these procurements.

We encourage public organisations, when considering conflicts of interest in emergency situations, to:

- ensure that people declare any conflicts in a timely manner (the person concerned is primarily responsible for identifying and disclosing conflicts of interest to the relevant people, but a public organisation should facilitate this process, especially in an emergency when things are happening quickly and when procurements involve staff from other public organisations);
- document how the organisation has managed conflicts of interest (the emergency might mean that it is not possible to do this immediately, but the organisation can document it later); and
- consider whether the organisation needs to do anything more after a potential conflict of interest has been disclosed to adequately avoid or mitigate the effects of each conflict (it is not safe to assume that a disclosure without any further action is always adequate).¹⁶

¹⁵ Controller and Auditor-General (2022), *Co-ordination of the all-of-government response to Covid-19*, at oag.parliament.nz.

¹⁶ Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, at oag.parliament.nz.

For most emergency procurements, public organisations did not publish contract award notices on the Government Electronic Tender Service

A contract award notice includes important information about which supplier a public organisation has selected to supply goods and services to them. Public organisations must publish a contract award notice for emergency procurements publicly, using GETS.¹⁷ In our view, publishing contract award notices on GETS supports a procurement's transparency.

Using a survey and other information we collected, we could only find contract award notices on GETS for 14 of the 246 contracts for which we received records. This means that public organisations did not publish a contract award notice on GETS for about 94% (232) of emergency procurements from June 2018 to July 2022, contrary to the requirements of the Rules.

We consider that publishing an award notice is not onerous and can be reasonably expected in emergency situations, especially given that the Rules allow for the publication up to 30 days after all parties sign a contract. It is a simple way of supporting the transparency of procurements which are not openly advertised.

Circumstances might mean that publishing the notice immediately is not realistic, but public organisations can prioritise this later.

Senior leaders need to set clearer expectations

Senior leadership is crucial in emergency procurements. Senior leaders are highly influential in shaping behaviour in an organisation and in guiding people through the stress and challenges of emergencies.

Leaders need to build a reputation for ethical leadership through role modelling. Leaders communicate explicitly (what they say) and implicitly (in what they do). A failure to actively set the right tone can undermine all attempts to form a workplace culture of integrity.¹⁸

¹⁷ New Zealand Government Procurement Rule 48.

¹⁸ Controller and Auditor-General (2022), *Putting integrity at the core of how public organisations operate: An integrity framework for the public sector*, at oag.parliament.nz.

Emergencies are stressful

We heard about the long hours and tough conditions that people involved in emergency procurements sometimes experienced.

The environment of an emergency can be very stressful for staff working on emergency procurements. We heard that this can especially be the case because staff might have a heightened sense of duty and genuine care about the difference an emergency procurement can make – these goods and services can literally save lives.

We heard from staff about a few instances where senior leaders were highly engaged in emergency procurements and that staff had adequate and early access to their leaders. These staff told us that although it was a stressful time because of the emergency situation, they felt aligned with their leadership and trusted them.

This demonstrates to us the important role senior leaders play in navigating people through the uncertainty that emergencies bring.

We heard that additional pressure, especially from leaders, sometimes adds to the pressure staff already feel and can lead to a less optimal process. For instance, a few staff told us about the pressure that they had felt from senior leaders who did not involve their staff in a procurement early, and about “get it done” attitudes that led staff to feeling that they had to expedite processes and potentially compromise the integrity of the procurement process.

Senior leaders expect integrity in emergency procurements

On the other hand, we heard about the expectations senior leaders in public organisations have for staff to do the right thing. Many staff also told us that leaders supported them or would support them to do the right thing if an issue arose. We saw evidence that a few senior leaders explicitly communicated the importance of integrity when carrying out emergency procurements.

Senior leaders have many demands on them in an emergency situation. Senior leaders told us that they rely on their staff to do the right thing so the organisation is kept safe.

To ensure that integrity expectations between staff and leaders are clear, we encourage senior leaders to set clear expectations of how their staff should operate in an emergency, including before an emergency occurs.

Speak-up mechanisms are in place and, in general, people feel they can speak up

All public organisations had structures and processes for staff to speak up on integrity matters. They also all had codes of conduct.

The staff we spoke to generally told us that they could, and sometimes had, spoken up when integrity issues arose. However, a few staff felt that they had not been listened to when they spoke up and that matters had not been dealt with appropriately.

Some people also told us that it could be more difficult for staff to speak up if they were not in management or leadership positions, or if they lacked experience.

We suggest that leaders ensure that those involved in procuring goods and services in an emergency can speak up about integrity matters should they arise. Senior leaders should be active in supporting less-experienced staff to raise concerns.

The ability to speak up is important for maintaining a culture of integrity and can be particularly important in emergency procurements when there is a heightened risk of inappropriate practices. We encourage senior leaders to:

- listen up – senior leaders should actively create opportunities to listen to their staff's concerns;
- promote formal and informal ways to raise integrity matters;
- be transparent: share how integrity matters would be acted upon; and
- when staff do speak up, tailor support for them.

Resources

The Office of the Auditor-General produces resources to assist public organisations in procurements, and in emergencies. These include:

- [*Managing public funding in an emergency response or recovery: Observations from our work*](#) (2023)
- [*Putting integrity at the core of how public organisations operate: An integrity framework for the public sector*](#) (2022)
- [*Getting it right: Managing conflicts of interest in procurement*](#) (2022)
- [*What good looks like: Procurement*](#) (2021)
- [*Managing conflicts of interest: A guide for the public sector*](#) (2020)
- [*Procurement guidance for public entities*](#) (2008)