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The Arts and Humanities Contribution
to Covid Research and Recovery

An Urgent Review of Single Source Procurement During the Pandemic: Recommendations for Best Practice and Reform

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Summary

This research investigates the prevalence of “single-source” i.e. non-competitive contract awards by public bodies when procuring urgently needed goods and services in response to the COVID-19 pandemic. Such contracts risk high prices and low transparency in the absence of open competition.

This project examines the extent to which existing international and national legal frameworks effectively facilitate such awards and whether additional controls could improve procurement and safeguard transparency, value for money, and public trust. The project also develops a standard operating model on single-source awards in emergencies for use by a Government Department and explores ways in which open contracting systems could provide better access to, and disclosure of, single-source contract information.

Policy recommendations

Existing international legal frameworks (UNCITRAL, WTO Government Procurement Agreement and EU Directives) and the UK legal frameworks generally function effectively but could be “tweaked” or better calibrated with additional controls to improve procurement as well as better ensure transparency, value for money and public trust. Just some recommendations featuring in a recent book include:

- Clarifying existing laws to provide certainty for public bodies when procuring in emergencies e.g. regarding the extent of any obligation to consult the market/conduct competitions and modifying certain procedural controls to permit expeditious procurement in truly critical circumstances, thereby reducing the legal risk of challenge;
- Improve legal requirements for recording and reporting justifications and other information in single-source procurement in better alignment with open contracting principles;
- Significantly improve the quality of policy guidance on processes for conducting single-source procurement in emergencies and generally both centrally (within government Departments), nationally, and internationally e.g. on approaches to selection and award criteria and approvals.

Notwithstanding, legal and policy reform cannot be a substitute for improving the planning, execution and commercial decision-making in respect of public contracting in emergencies.

Key findings



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Existing legal frameworks which enable single-source procurement have generally functioned effectively in response to the pandemic. Recent procurement failures are not generally a reflection of fundamental regulatory failures. However, the pandemic has exposed a range of regulatory issues which now require attention. These include:

- Lack of clarity as to the legal grounds for authorising non-competitive awards in an emergency – the grounds for use must be clarified;
- Procedural controls which “hold up” procurements or lead to single-source could be reduced – e.g. controls which suspend contracts should be revised;
- Legal uncertainty regarding any obligation to hold a competition and consult the market in emergencies as well as the extent of general principles such as “proportionality” when conducting emergency procurements – these obligations should be clarified;
- The “skeletal” nature of record keeping and reporting obligations which do not provide sufficient information – more and better information should be provided in alignment with open contracting principles;
- There is insufficient policy guidance and infrastructure on how to conduct single-source procurement effectively – there needs to be more central and local policy guidance.

Further information

<https://www.nottingham.ac.uk/pprg/research/projects/index.aspx>

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<https://www.nottingham.ac.uk/news/expertiseguide/law/dr-luke-butler.aspx>