

Procedure

Emergency Procurements

NSWHP_PR_047



Health
Pathology

1. Purpose

This Procedure details the process to be followed within NSW Health Pathology (NSWHP) for the expedited procurement of goods and services to meet an emergency need.

2. Background

Emergency procurement is permitted in extenuating circumstances where it is necessary to:

- protect life (such as the attainment of immediately available critically required supplies)
- protect the interruption of essential health services, or
- prevent substantial economic loss.

Emergency procurements are permitted under the Public Works and Procurement Regulation 2019 ('Regulations') in limited extenuating circumstances, with approval from the:

- Secretary, NSW Health
- Chief Procurement Officer

Emergency procurements are limited to a value sufficient to meet the emergency.

It is not necessary to comply with the Policy, the Procedures or NSW Procurement Board policies or directions, including the Enforceable Procurement Provisions Direction (PBD 2019-05) in relation to emergency procurements. However reasonable efforts should still be made to achieve value for money and comply with NSW Procurement Board policies and directions, to the extent possible.

3. Scope

This Procedure applies across all NSWHP services and portfolios, to the procurement of goods and/or services to meet the emergency procurement.

If the procurement:

- is not unforeseen and sudden
- does not require an urgent response (i.e., in under 3 working days); or
- is more than what is necessary to meet the immediate needs of the emergency

this Procedure does not apply, and the usual procurement processes must be followed.

4. Procedure

4.1. NSW Government requirements

NSWHP staff must follow the '*Emergency procurement guidelines*' published on the NSW Government buy.nsw website (available [here](#)). The Guidelines require that:

- Procurements up to a value that is sufficient to meet the immediate needs of the emergency may be authorised by the NSWHP Chief Executive under cl 4 of the PWP Regulation;
- A situation must be unforeseen and sudden, and require an urgent response, in order to qualify as an emergency;

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- c) The goods and services being procured must not exceed what is needed in order to meet the immediate needs of the emergency;
- d) Separate from the authorisation of the Chief Executive under cl 4 of the PWP Regulation, the relevant portfolio will still need to confirm there are funds available and comply with financial delegations when authorising emergency procurements (refer to the [NSWHP Delegations Manual](#));
- e) Emergency procurements don't have to demonstrate value for money, but must always demonstrate that public money is being spent efficiently, effectively and economically and in accordance with the law;
- f) NSWHP staff involved in the procurement must manage real or perceived conflicts of interest (and ensure that NSWHP's suppliers do the same) and always comply with the NSW Health Code of Conduct, NSWHP's RITE values and the law;
- g) Adequate records must be kept of all decisions and approvals including the justification for the emergency procurement;
- h) Every emergency procurement authorisation must be reported to the Procurement Board and contracts over \$150,000 inclusive of GST must be disclosed on eTendering.

4.2. Urgent and unforeseen

To rely on the emergency procurement exemption, the relevant portfolio will need to confirm that:

- it is reacting to a current situation that is a genuine emergency, not planning for one;
- the circumstances are so unusual that it could not have predicted current events;
- it has not done anything to cause or contribute to the need for extreme urgency, such as delaying or failing to do something in time; and
- the need requires an urgent response (i.e. less than 3 working days).

Each procurement will need to be assessed on a case-by-case basis to determine whether there is a genuine, unforeseen need for immediate and urgent action.

4.3. Immediate needs of emergency

The relevant portfolio will need to undertake a case by case analysis of each proposed emergency procurement to determine whether the procurement is of a value sufficient to meet the immediate needs of the emergency. This may include, but is not limited to, assessment of the following factors:

- the type, quantity and value of the goods and/or services to be procured and their general availability in the market;
- NSWHP's functions and operations;
- other relevant factors around immediate needs of the emergency.

If the proposed procurement is assessed as being in excess of what's necessary to meet the immediate needs of the emergency, NSWHP will not be able to rely on cl 4 of the PWP Regulation to conduct an emergency procurement.

4.4. Authorisation

An email to the Chief Executive seeking authorisation under cl 4 of the PWP Regulation must be completed using the approved template at [Appendix A](#).

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4.5. Procurement method

Where the Chief Executive and Director of Finance authorises an emergency procurement, the relevant portfolio may use any procurement method taking into consideration:

- how quickly it needs the goods or services;
- the type and quantity of goods or services it needs;
- where it needs the goods or services;
- the number of potential and viable suppliers; and
- the ability of potential suppliers to supply the goods or services, where and when it needs them.

The portfolio should consider the need for, and appropriateness of, direct purchasing from a supplier and make decisions based on balancing the need to act without delay, against meeting procedural processes for probity and integrity and managing potential work health and safety, quality, environmental and fraud and corruption risks. Where possible, whole of government or whole of health arrangements should be used.

Supplier due diligence should be conducted at a level commensurate with the value and risk of the procurement. Suppliers who are unknown to NSWHP or not a member of a NSW government or NSW Health scheme require a higher level of due diligence. As a minimum, the relevant portfolio should check credentials, licences and mandatory accreditations and verify all business details, including insurance, before adding new suppliers to the master vendor file. Referee and financial capability checks should be conducted if there are critical risks. Care should also be taken to safeguard the health and safety of end-users of the goods or services by ensuring any goods or services meet minimum standards or other regulatory requirements.

The portfolio must specify that it is undertaking an emergency procurement pursuant to cl 4 of the PWP Regulation in the invitation to the supplier and the procurement documentation.

4.6. Contract terms

Purchases of goods or services require a written contract. The use of the standard NSW Health/HealthShare Purchase Order Terms and Conditions (available [here](#)) is preferred. The relevant portfolio should ensure that the following conditions are included in the relevant procurement contract:

- a defined contract period that does not exceed NSWHP's need to respond to the emergency; and
- rights for NSWHP to stop procuring the goods or services once the emergency ends.

4.7. Reporting

The NSWHP Procurement Manager is responsible for reporting emergency procurement authorisations to the NSW Health Chief Procurement Officer and ensuring that contracts over \$150,000 inclusive of GST are disclosed on eTendering.

5. Legal and Procedure Framework

- *Public Works and Procurement Act 1912* (NSW)
- *Public Works and Procurement Regulation 2019* (NSW)
- NSW Health Procurement (Goods and Services) Policy – PD2023_028
- NSWHP Delegations Manual

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The current version is only available online in the [NSW Health Pathology Policy Library](#)

www.pathology.health.nsw.gov.au

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6. Review

This procedure will be reviewed by 30/06/2025.

7. Risk

Risk Statement	If procurements related to emergencies are not made in compliance with regulatory and policy requirements, NSWHP will be in breach of the law, unable to demonstrate that it is using public resources efficiently, effectively and economically, and suffer reputational harm.
Risk Category	Leadership and Management

8. Further Information

For further information, please contact:

Procedure Contact Officer	Position: Procurement Manager
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9. Version History

The approval and amendment history for this document must be listed in the following table.

Version No	Effective Date	Approved By	Approval Date	Procedure Author	Risk Rating	Sections Modified
1.0	13/09/2021	SLT	07/09/2021	Director, Corporate Governance	Medium	New Procedure
2.0	21/09/2023	Director, Finance and Corporate Services	14/09/2023	Procurement Manager	Medium	Updated Procedure

10. Appendix A: Emergency Procurement Email Template – NSWHP SD 047