

KNOWLEDGE CENTRE

Emergency Procurement

EM:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. The PE issued a tender on the GOJEP platform for the supply of air-conditioning units for its departments. This procurement was conducted as a goods procurement, as no installation services are required. Three suppliers were invited to participate, as the estimated contract value falls within the threshold for restricted bidding.
- II. Subsequent to the issuance of this tender, the PE encountered an emergency situation at its Head Office. The central air-conditioning system that cools the various departments and offices failed and is currently non-operational. Discussions with the landlord indicates that the system cannot be repaired in the short term, as the replacement components would need to be imported, resulting in a delay of several months.
- III. In light of this development, the PE is now considering the supply and installation of ten (10) split air-conditioning units for the Head Office. This procurement would be treated as a works procurement and justified under Section 25(1)(d) of the Public Procurement Act, 2015, due to urgent health and safety concerns. Staff members have reported adverse health effects, including asthma attacks and headaches, arising from prolonged exposure to poor air quality.
- IV. The PE's primary concern is whether proceeding with this emergency procurement would be considered as splitting, given that a separate tender for air-conditioning units is currently active. If this is so, the PE sought guidance on the appropriate course of action.

- V. Further clarity was also provided by PE that the Head Office's air-conditioning has malfunctioned in the past.

Advice

Distinction between the two procurements

1. This Ministry notes that the existing procurement on the GOJEP platform relates to the supply of air-conditioning units for the PE's department offices and was structured as a goods procurement, with no installation component. Three suppliers were invited to participate, consistent with the applicable threshold for restricted competition. By contrast, the proposed procurement concerns the supply and installation of split air-conditioning units at the Head Office.
2. Therefore, though both proceedings involve the procurement of air-conditioning units/equipment, the two procurement proceedings cannot be considered identical in scope.

Splitting concerns

3. Splitting arises where a procuring entity deliberately divides a single procurement requirement into multiple procurements in order to avoid the application of the appropriate procurement method, level of competition, or approval thresholds.
4. In this instance, based on the facts presented, this Ministry is of the opinion that the two (2) procurement proceedings scopes are distinct and could not have been reasonably merged. This is further supported by the following:
 - the requirement at the Head Office arose after the issuance of the earlier tender;
 - the triggering event, the failure of the central air-conditioning system was not reasonably foreseeable at the time the earlier procurement was initiated; and
 - the Head Office requirement is driven by urgent operational and health-and-safety considerations, distinct from the planned procurement for court facilities.
5. In this regard, proceeding with a separate procurement to address the Head Office requirement would not, in itself, constitute splitting. Moreover, the existence of an

active tender for a similar requirement does not, of itself, preclude the PE from initiating an urgent procurement to address the Head Office situation.

6. However, care should be taken to ensure that:

- the scopes of the two procurements are not merged or substituted in a manner that would undermine competition; and
- the approach adopted does not result in preferential treatment or circumvention of procurement rules.

Prior malfunctions

7. The Ministry further notes the procuring entity's indication that the central air-conditioning system has malfunctioned on previous occasions. Based on the information provided, those prior incidents did not result in prolonged system failure or sustained operational disruption.

8. However, the current failure represents a material change in circumstances, in that the system is non-operational and cannot be restored within a reasonable timeframe. In these circumstances, the severity and duration of the present failure could not reasonably have been anticipated based on prior incidents.

9. Therefore, while the existence of prior malfunctions is acknowledged, this Ministry is of the view that the present situation reflects an escalation in impact and urgency, rather than the continuation of a routine or foreseeable maintenance issue.

Emergency procurement

10. Please note that Section 25 of the Public Procurement Act was amended by the Public Procurement (Amendment) Act, 2025. As a result, Section 25(1)(d) now reads, "the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement". This provision is not applicable based on your stated circumstances. Please note that pursuant to the 2025 amendments, emergency procurements are now dealt with in paragraph 1(u) of the First Schedule of the Public Procurement Act. Please see Guidance Note 2/2025 – The Acquisition of Goods, Services and Works in situations of emergency or extreme urgency for further guidance.

11. Based on the information provided, particularly the sudden and sustained non-operation of the system, the inability to restore functionality within a reasonable timeframe, and the reported adverse health effects on staff, the proposed procurement may properly be treated as emergency and dealt as outlined in the aforementioned Guidance Note.

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