

PROCUREMENT under URGENCY: Lessons from the forgotten Commonwealth Games (CWG) 2010

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It is an undeniable fact that every organisation encounters situations involving urgency/emergency/catastrophe/disaster management. However, it is also a matter of fact that such situations happen to be exceptions rather than rule, except in organisations exclusively dealing with emergency services/disaster management, etc. Under such emergent situations, it is obvious that following normal rules may prove counter-productive to meet organisational needs. On the other hand, citing situations of urgency (or even creating them at times) to resort to procurement short-cuts and sacrificing due diligence may adversely affect the organisation itself - in terms of transparency, institutional faith and even revenue in the long run. The instant topic deals with such kind of procurement under situation of urgency/emergency/catastrophe/disaster management in an organisation and whether urgency can be treated as the one-word-justification to circumvent normal tendering process [Open Tender Enquiry (OTE)] and propriety of public buying.

The Government has duly recognised that there may well be urgent/emergent/catastrophic/disaster management situations, when an organisation needs to handle procurement of goods and/or services in a somewhat different manner (from normal tendering activities) to cater to such situations.

For instance, **Clause No. 8.2** of the **Manual for Procurement of Goods 2017** of **Department of Expenditure, Ministry of Finance** provides for the following:

8.2 Handling procurement in urgencies/emergencies and Disaster Management

There are sufficient fast track procurement modalities to tackle procurements in urgent/emergent and Disaster Management situations. Enhanced delegations of procurement powers in SoPP may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed (under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department):

- i) Direct Procurement Without Quotation
- ii) Direct Procurement by Purchase Committee
- iii) SLTE/Limited/Single Tender Enquiry, with reduced time for submission of Bids

Similarly, several Rules of the **General Financial Rules 2017** of **Department of Expenditure, Ministry of Finance** provide as follows:

Rule 162 Limited Tender Enquiry.

“(iii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty-five Lakhs, in the following circumstances. (a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.”

Rule 166 Single Tender Enquiry.

Procurement from a single source may be resorted to in the following circumstances:

“(ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.”

Rule 194 Single Source Selection/Consultancy by nomination.

The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

“(ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance.”

It emanates from the above that although provisions have been kept for Limited Tender Enquiry (LTE), Single Tender Enquiry (STE), Nomination, etc., for handling procurement in urgencies, it is essential that the same may only be resorted to, where adequate justification is available for such LTE/STE/Nomination. It is also necessary that full justification for such LTE/STE/Nomination should be recorded in the file and approval of the competent authority obtained before resorting to such modalities of procurement.

Unfortunately, more often than not, it has been observed that procuring entity circumvents normal tendering process [Open Tender Enquiry (OTE)] and propriety of public buying of goods and/or services, citing overwhelming urgency/emergency as the justification to take recourse to LTE/STE/Nomination. For instance, delays in ascertaining the need of procurement of goods/services delays generation of the Indent for procurement and can precipitate a situation of urgency itself. This situation may adversely affect the organisation in several ways, including, but not limited to, the following:

- i) Adoption of shortcut procurement procedures that dilute transparency, thereby paving the way for unscrupulous practices.
- ii) Delays in delivery of the intended goods and / or services, resulting in hampering of the functioning of the organisation.
- iii) Goods/services procured through LTE/STE/Nomination mode, citing extreme urgency/emergency, may end up not being utilised for months, even years altogether, thus defeating the very purpose of resorting to shortcut procurement modalities.
- iv) Lack of reasonableness/workability of rates and justified simply on the ground of urgency, leading to revenue loss (in case of high rates) and contract failure (in case of unworkable rates).
- v) An overall chaos and irrationality in decision making, when many such "urgent procurements" take place within a project.

Case Study 1 :: Self-created Urgency : One of the worst examples of the above situations came to wider public awareness during the Commonwealth Games (CWG) of 2010. Although it was known way back in 2004 that India was going to host the game in 2010, there was tremendous delay in pre-tender preparations, leading to self-created urgency. The **CAG Audit Report on XIXth CWG 2010 [Report No. 6 of 2011-12]** is replete with observations pertaining to irregularities brought about by short-cut procurement practices followed, citing the argument of urgency. A few illustrative ones are reproduced hereunder:

*"There was enormous bunching of high value contracts in 2010, particularly in the second and third quarters. **The argument of urgency was used to obviate the regular process of tendering for award of contracts.** We found numerous instances of single tendering, award on "nomination basis", award of contracts to ineligible vendors, inconsistent use of restrictive Pre-Qualification (PQ) conditions to limit competition to favour particular vendors, inadequate time for bidding, cancellation and re-tendering of contracts, and inexplicable delays in contract finalization, **all of which seriously compromised transparency and economy.** Further, there were numerous deficiencies in the appointment of external consultants and advisors and management of the multiplicity of contracts thereof."* [Ref.: Page No. 9 of the CAG Report]

"While healthcare for the athletes and the Games Family was ensured, we found that the delayed finalization of the HAP, compounded by further delays during tendering/ award, was used to facilitate deviations from stipulated procurement procedures for ensuring transparency and competition on purported grounds of urgency." [Ref.: Page No. 32 of the CAG Report]

The extent of chaos that may result from such procurement short-cuts, undertaken on grounds of purported urgency, is mind-boggling. A small compilation of procurements that took place with different rates across vendors and across clusters located in the same city, even for well-known off-the-shelf items, paints the chaotic nature of resulting decision making:

Items	Lowest Rate contracted by the Organizing Committee of CWG (Rs.)	Highest Rate contracted (Rs.)
Tissue Paper Towels	62	3,751
Tissue Rolls	22	3,751
Garbage Solid Waste Bags	4	3,068
Water Jug	152	1,944
Disposable Glasses	1	37

Outcomes like the above compelled the CAG to make terse observations as follows:

*"The modus operandi observed over the entire gamut of activities leading to the conduct of the Games was: inexplicable delays in decision making, which put pressure on timelines and thereby led to the **creation of an artificial or consciously created sense of urgency**. Since the target date was immovable, such delays could only be overcome by seeking, and liberally granting, waivers in laid down governmental procedures. **In doing so, contracting procedures became a very obvious casualty**. Many contracts were then entertained based on single bids, and in fact, some of them were even awarded on nomination basis. Taking liberties with governmental procedures of the aforementioned kind led to elimination of competition. **A conclusion from such action which seems obvious is that this could indeed have even been an intended objective! Eliminating competition led to huge avoidable extra burden on the exchequer**. It can most confidently be concluded that due to the perceived sense of urgency and resultant lack of competition, the country had to pay a higher price for the same activities, equipment and infrastructure. Further, it is yet to be conclusively established that the end product was of the desired quality."*

The hapless procedure for procurement adopted in the CWG 2010, putting up justification of purported urgency, led the CAG to adopt an even more acerbic tone as follows:

"A basic canon of financial propriety is that the expenditure should not prima facie be more than what the occasion demands, and officials charged with stewardship of Government funds must exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money. Further, not only should transparency and fair play be exercised, the public at large should perceive that Government monies have been expended in a fair and transparent manner and officials will be held accountable for lapses. Government needs to take appropriate measures to live up to the high expectations in this regard."

Case Study 2 :: Genuine Urgency : However, not everything is bad about resorting to LTE/STE/Nomination mode in genuinely urgent/emergent/catastrophic situations, since the same can result in effective and intended outcomes. For instance, not so long ago, a dry bulk material handling equipment had accidentally been derailed, thereby adversely affecting Iron Ore handling through a particular Conveyor route. Keeping in view that productivity of the plant was at stake and the Port lacked adequate infrastructure for the remedial work, it was administratively decided to engage a renowned EPC company, which had been engaged in a separate project inside the same Port, to undertake necessary work to commission the equipment. The work was executed by the EPC company, within a very short time (a few days), at a cost of a few Lakhs. This not only restored the optimal productivity of the plant in a very short span, but avoided exporters from diverting the cargo elsewhere, thereby ensuring valuable revenue for the Port, running into Crores.

Now, coming to the conclusion, what is the way out? The answer lies in the various Government guidelines, rules and regulations already discussed earlier. The following are only a few illustrative pointers:

1. Need assessment should be done sufficiently in advance of the time when goods/services are required. This is likely to eliminate "man made urgency/emergency".
2. In case of urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
3. In case of genuine urgency/emergency/catastrophe/disaster management, it needs to be carefully weighed whether OTE (or at least LTE) mode, maybe with reasonably reduced deadlines related to submission of bids, can be adopted for the procurement process necessary to address the situation. However, in this regard, the overall interest of the organisation should also be given appropriate weightage.

To conclude, it is worthwhile to keep in mind that there is no one-size-fits-all solution to procurement under urgency. Rather, individual cases are to be dealt on merit, for the overall organization interest. However, actions executed with transparency and appropriate justification, with due approval from the competent authority, need not raise Vigilance concern on the part of the executive.
