# **Develop an emergency procurement plan – Goods and services procurement guide**

## **Why do an emergency procurement plan?**

It is a mandatory policy requirement for Agencies to develop a plan to comply with the Emergency Procurement section in [Governance – Goods and service policy](https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy).

## **Who needs to complete an emergency procurement plan?**

It is developed centrally at Agency level for the Accountable Officer.

## **When to prepare an emergency procurement plan?**

Agencies are required to develop a plan by 1 December 2022.

## **When to review an emergency procurement plan?**

An Agency’s emergency procurement plan should be:

* updated as part of the annual procurement planning cycle, and
* reviewed after responding to an emergency to identify improvements.

## **Requirements to include in an emergency procurement plan**

This section provides guidance on the mandatory requirements for an emergency procurement plan.

### **Clear and simple, streamlined, flexible, and proportionate**

Clear and effective governance arrangements will help staff to understand their roles and responsibilities in managing different aspects of the emergency procurement response.

Governance and procedures should be:

* streamlined to allow for relevant procurement activities to happen urgently in line with the criticality of the procurement activity
* proportionate to the urgency and criticality of each emergency procurement activity
* flexible to respond to the impacts of emergencies on agencies which could vary widely and be unforeseen

Centralised assessment of the urgency and criticality of procurement activities is one way to ensure consistency.

### **Integrate with Agency emergency response and business continuity plans**

When an emergency impacts an Agency, the Agency’s emergency response and business continuity plans may be activated. The emergency procurement plan should support and align with those procedures and plans.

The emergency procurement plan may be a standalone document attached to the Agency’s [procurement strategy](https://www.buyingfor.vic.gov.au/developing-procurement-strategy-goods-and-services-procurement-guide) or incorporated into other relevant Agency documents in part or whole. The emergency procurement plan should provide an overview of the relationship with other relevant documents, with links.

In developing an emergency procurement plan, it may be useful to consider and align with the phases of response to an emergency:

* immediate reaction
* urgent response
* a recovery phase

Some phases may overlap. It is possible that some responses to an emergency will cycle though a phase more than once if an emergency event continues to develop.

### **Immediate reaction phase**

When an emergency occurs, lives, property, environment, and services are at risk, and people may get stressed, even panicked. In emergency procedures, immediate reaction, such as evacuation from a building to a designated assembly area, is a drill – everyone knows what to do immediately, both individually and collectively. Similarly, the procurement response should allow immediate reaction within predetermined constraints as necessary.

At this point in an emergency, procurement activity is reactive, and likely to be of limited scale. Procurement activities need to follow an urgent, reasonable and defensible procurement process.

### **Urgent response phase**

The urgent response phase commences once the impact of the emergency is assessed. An Agency will determine how to direct and control its emergency response and when to activate its business continuity plan. The procurement response becomes less reactive and progressively more controlled.

Procurement risk in this phase is amplified due to the urgency, and increased scale and complexity of procurement.

Control of procurement in this stage is critical to timely and effective procurement support, whether the Agency’s procurement function is centralised or decentralised.

Consider how the emergency event may affect the operating environment. There may be a need to collaborate with other government agencies, non-government agencies, and local communities. For example, when arranging delivery of goods and services the Agency, the response should not compete with affected communities for limited local resources such as fuel, food and water.

### **Recovery phase**

The recovery phase occurs when life, property, environment, essential services or key Agency services are no longer endangered or threatened. The focus shifts from urgent response to rebuilding and restoring business-as-usual.

In the recovery phase, routine procurement policy and processes should resume for all procurement. Some procurement activities may be accelerated under routine procurement policy and processes that comply with all mandatory [Supply Policies’](https://www.buyingfor.vic.gov.au/goods-services-supply-policies) requirements.

Contracts awarded earlier in the response to an emergency should be reviewed. It may be appropriate to terminate or renegotiate these contracts.

### **Prepare for foreseeable types of emergencies**

Prior preparation prevents poor performance: analyse the Agency’s emergency response and business continuity plans and prepare to provide procurement support accordingly.

The emergency procurement plan should include the procurement support needed for foreseeable emergencies. Preparation should be proportionate to the risk of foreseeable emergencies.

Prepare for procurement support activities prior to an emergency event by:

* considering likely activities in [category planning](https://www.buyingfor.vic.gov.au/identifying-procurement-categories-goods-and-services-procurement-guide)
* conducting [market analysis](https://www.buyingfor.vic.gov.au/market-analysis-and-review-goods-and-services-procurement-guide) and [preparing the market approach](https://www.buyingfor.vic.gov.au/market-approach-goods-and-services-procurement-guide) for new goods and services that may be needed
* varying relevant existing contracts to ensure they can be leveraged in an emergency
* establishing new contracts specifically for emergencies

Response to previous emergencies could identify some urgent goods and services likely to be needed in similar emergencies in the future.

Conduct a [complexity](https://www.buyingfor.vic.gov.au/complexity-goods-and-services-procurement-guide) and [capability assessment](https://www.buyingfor.vic.gov.au/capability-goods-and-services-procurement-guide) in preparation for likely procurement support activities to be undertaken during an emergency. The urgency of these procurement activities is likely to increase risk and may require more capability than they would as routine procurement. If more capability may be needed, this should be reflected in the Agency’s capability development plan.

Communicate the emergency procurement plan to those who need to know before an emergency so that they can prepare, which may include some suppliers.

In the event of an unforeseen emergency or impact, it is likely that the preparation for foreseeable situations will be of use, with or without modifications.

### **Apply the Victorian Government Purchasing Board procurement principles**

### **Value for money**

Value for money involves a balanced judgment of financial and non-financial factors and takes into account the total cost of procurement from initiation to end of contract or disposal. Further guidance can be found in the [Achieving value for money – Goods and service procurement guide](https://www.buyingfor.vic.gov.au/achieving-value-money-goods-and-services-procurement-guide).

Value for money may be more challenging to determine in a response to an emergency. There may be:

* urgency that requires streamlining invitation, offer and evaluation processes
* increased risks (for example risk to fitness for purpose, quantities, timeliness, probity, due diligence, contractual terms, waste)
* significant changes in demand (for example performance, quantities, delivery timings or locations)
* significant market disruptions (for example raw materials and production, transport and distribution, new goods or services, start-ups or pivoting suppliers)
* unfamiliar goods and services, and their markets, with limited time for buyers to conduct market analysis and due diligence
* a lack of standards or testing available for new goods and services

When determining value for money in an emergency response, urgency places a heightened emphasis on timeliness and reliability of delivery relative to the value of other factors. This is not a reduction in value for money, but rather a rebalancing of factors – urgent and reliable supply has value too.

### **Accountability**

Accountable Officers remain accountable for their Agency’s procurement decisions during an emergency. The Agency should consider if its existing accountability framework meets its needs in an emergency or if changes to accountabilities and governance structures are required. For accountability to be effective, the plan needs to be clear about who is authorised to make what decisions and in what circumstances. When decisions are made, record who made the decisions, state the decisions, and why.

Agencies should consider how procurement support will be provided and governed during an emergency. This will be influenced by how the Agency commands its response. For example, will the Agency response be centralised or decentralised?

The emergency procurement plan should identify responsible officers and applicable reporting and communication lines. It should also determine appropriate levels of financial, sourcing and contract approvals delegations for responsible officers.

### **Probity**

When doing urgent procurement there is an increased risk in relation to maintaining integrity, non-corruptibility, and impartiality of procurement decisions. Normal probity considerations apply, with a heightened emphasis on managing conflicts of interest to mitigate this risk.

The urgency of a procurement in an emergency may preclude competitive market approaches or restrict competition. Consequently, some suppliers may perceive that the market was not given fair opportunity. Recording the basis for procurement decisions is important to address such concerns.

### **Scalability**

Scalability is about adapting the procurement processes to the risk, complexity, and urgency of a procurement.

In routine procurement, processes can be simplified for procurement activities of low risk and complexity or accelerated to respond to urgent business needs. In response to an emergency, scalability can be used to abbreviate processes for procurement activities of higher risk and complexity to achieve the necessary urgency.

Consider which processes in the procurement lifecycle can be abbreviated and detail how they will be applied in the emergency procurement plan.

### **Flexibly apply mandatory requirements of the Victorian Government Purchasing Board policies**

The emergency procurement policy requires that flexibility in applying the Victorian Government Purchasing Board [Supply Policies](https://www.buyingfor.vic.gov.au/goods-services-supply-policies)’ requirements is applied only when necessary, to the extent necessary, and for the time necessary.

‘When necessary’ means when scalability is insufficient to meet the urgency of a procurement activity and some flexibility in applying the Victorian Government Purchasing Board Supply Policies’ requirements in that procurement activity is necessary.

‘To the extent necessary’ means that flexibility must only be applied to those policy requirements necessary to meet the urgency of a procurement activity. It does not mean all policy requirements, and flexibility is not to be applied to the mandatory requirements of the emergency procurement policy.

‘For the time necessary’ means flexibility is only applied for the time it is necessary to meet the urgency of a procurement activity. It means that if a requirement could not be met at a point in time during a procurement activity but could be met later, then it is required to be met later. Flexibly applying a requirement(s) in a procurement does not continue for the life of that procurement unless it is necessary throughout.

Flexibility in applying the goods and services supply policies does not extend to:

* the Financial Management Act 1994 and the [Standing Directions 2018,](https://www.dtf.vic.gov.au/financial-management-government/standing-directions-2018-under-financial-management-act-1994) including financial delegate approvals for procurement; or
* procurement-related Victorian Government policies

### **Manage procurement risk**

An increase in procurement risk should only be considered if it reduces risk to life, property, environment, and services.

Identify and manage risk to [information asset security](https://www.buyingfor.vic.gov.au/information-security-goods-and-services-procurement-guide) since any vulnerabilities arising in an emergency could be exploited, and vulnerabilities may continue beyond the emergency event.

Reduce risk in emergency procurement activities while increasing speed by:

* leveraging existing contracts
* dealing with proven suppliers
* referring to the Agency’s past market research and evaluations
* collaborating across agencies to gain information about the market, particular suppliers or unfamiliar goods or services

Plan to purchase from the Agency’s existing contracts wherever possible. If contracts are due to expire during the urgent response stage, the Agency may consider extending them until both the Agency and prospective suppliers are able to undertake a routine procurement process.

The emergency procurement plan should give guidance on how to identify and manage procurement risk in emergencies.

Where unfamiliar emergency needs are common across several agencies, expertise in one or more agencies could be utilised or developed to provide a whole of government response.

### **Declare and manage conflicts of interest**

Conflicts of interest (actual, potential or perceived) must be declared for emergency procurements as soon as possible. This is usually at the start of the procurement and whenever additional people become involved in the procurement.

Follow the Agency’ processes to manage and record conflicts of interest.

### **Consider using State Purchase Contracts**

It is a policy requirement that the emergency procurement plan considers using [state purchase contracts](https://www.buyingfor.vic.gov.au/browse-government-contracts) for each emergency procurement activity.

If the urgent goods or services are covered by state purchase contracts, the Agency may benefit from the work already completed to establish the state purchase contract.

If state purchase contracts do not cover the goods and services needed for an emergency procurement activity, it is possible that prospective suppliers are represented on state purchase contracts. In this case, the Agency may still leverage elements of the work done to establish state purchase contracts.

Where a prospective supplier has been engaged by another agency, the Agency should check that the supplier’s performance has been satisfactory.

### **Consider the impacts of emergencies on suppliers and supply chains**

Markets may be more dynamic than usual in emergencies, so it may be prudent to buy the minimum necessary for short periods. Balance this against other considerations such as the capacity of procurement resources, scale efficiencies, and sufficient value in a procurement to attract a supply response.

In emergencies, suppliers may urgently establish new supply chains. Due diligence may be challenging for the Agency and its suppliers around risks of modern slavery and unlawful or unethical labour and environmental practices.

Suppliers may require (partial or full) payment upfront to secure supply for the Agency, especially when there is strong competition among buyers for limited supplies.

Suppliers impacted by an emergency may also experience cash flow challenges. The Agency should pay suppliers in a timely manner, and within any timelines required by policy.

### **Keep adequate records**

Record emergency procurement activities during or as soon as practicable after the event. Mark the record as an emergency procurement and outline the facts and circumstances justifying this approach.

Records should include:

* the procurer(s), financial delegate
* conflict of interest declarations
* the business needs
* justification for conducting an emergency procurement
* the market analysis
* the market approach and why (including consideration of state purchase contracts)
* supplier(s) and key offer(s) details
* evaluation outcome and value for money of selected offer(s)
* financial approval amount (including options to extend and contingency funds)
* details required by procurement-related policies
* copy of the contract or key contract details:
  + supplier(s)
  + scope (type and quantity of goods or services)
  + delivery date for one-off supply or term
  + value (initial term)

### **Disclose contracts**

Disclose emergency procurement contracts in accordance with the [Contract management and disclosure – Goods and services policy](https://www.buyingfor.vic.gov.au/contract-management-and-contract-disclosure-goods-and-services-policy#2-contract-disclosure).

To comply with this requirement, the Agency will need to maintain its contracts register during its response to an emergency and include all relevant emergency procurement contracts.

## **Activate, review, and cease emergency procurement**

Detail in the emergency procurement plan how emergency procurement is activated, reviewed, and ceased, and how this will be communicated.

An Agency’s emergency procurement plan is not automatically activated by a declaration of a state of emergency. Not all agencies may be impacted or require urgent procurement to respond to the emergency.

When activating the Agency’s emergency procurement plan, the Accountable Officer or delegate must set a date for review or cessation not exceeding 90 calendar days from the date of activation. The review or cessation date should be a date rather than a duration.

On the review date the Accountable Officer or delegate may set a further date for review or cessation not exceeding 90 calendar days from the date of review.

When a cessation date is set, emergency procurement ends on that date. If further emergency procurement is needed to respond to the same emergency, the Accountable Officer or delegate will need to undertake a new activation process.

Communicate any extension or cessation of emergency procurement.

## **Post-emergency**

After the emergency response is complete, review performance under emergency procurement to identify improvements. This may be part of, or in addition to, an annual review of the emergency procurement plan as part of the annual procurement planning cycle.

Consider also applying learnings from conducting emergency procurement that may be relevant to improving routine procurement process and plans. For example, if processes were abbreviated without increasing risk, that may indicate that those abbreviated processes are suitable for use by the Agency in routine procurement.

## **Using this guide**

This guide accompanies the [goods and services supply policies](https://buyingfor.vic.gov.au/goods-services-supply-policies). There are 5 supply policies:

* Governance policy
* Complexity and capability assessment policy
* Market analysis and review policy
* Market approach policy
* Contract management and disclosure policy

This guide supports the emergency procurement section of the [Governance policy](https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy).

A template emergency procurement plan is available in the [Goods and services tools and templates](https://www.buyingfor.vic.gov.au/goods-and-services-tools-and-templates) to support this guide.

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