

# Public Procurement under COVID-19 Pandemic

POE POE THAR

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**Author:**

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Poe Poe Thar

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Poe Poe Thar is an intern at the Promoting Good Governance Program, one of the programs of Inya Economics. She crafted this brief during the internship. The views expressed in this brief are solely those of the author(s) and do not necessarily reflect those of Inya Economics or its Affiliated Organization.

## Inya Economics

A/6 Waggi Yeik Thar Street, Kamayut Township, Yangon, Myanmar.

Ph- (95) 9- 420107454, 420523107

✉ [contact.inyaeconomics.com](mailto:contact.inyaeconomics.com)

🌐 [www.inyaeconomics.com](http://www.inyaeconomics.com)

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## Brief Overview

Public procurement, one of the strategic pillars for promoting good governance, refers to the purchase by governments and state-owned enterprises of goods, services and works from the substantial portion of tax (OECD, 2019). In developing countries, public procurement accounts for 15-20% of GDP on average which is a sheer volume of spending to ensure high quality and efficient service delivery in public sector.

The evolution of the public procurement system has changed the way the government delivers the provision of goods and services from the private sector. Coming from a largely isolated economy, Myanmar was deficient in the procurement system until 2011. Previously, the system was quite opaque due to the outdated Public Financial Management (PFM) and inadequate capacity within the public sector (Abunyewa, 2020).

In 2011, the initial reform was the changes from closed tender to open tender, resulting in the participation of the private sector through open competition. In addition, implementation of procurement became decentralized to individual line ministries. Further reform was made by issuing presidential tender directives based on an open tender system in 2013, revised in 2016 and 2017 respectively. Currently, presidential directive 1/2017 is still used for tender procedures; at the same time, the bill for public procurement and disposal of assets has been submitted to Hluttaw for ratification to strengthen the existing directives (Abunyewa, 2020).

The government of Myanmar has implemented some actions to have a modern national public procurement system. For example, it has been partnering with the World Bank in the Modernization of Public Finance Management Project to ensure efficient use of public funds for greater value for money, as one of the five components of the objective of the project (LIU, 2015). In fact, the Ministry of Planning, Finance and Industry has recently opened a PFM Academy in Nay Pyi Taw to provide capacity building for government officials (Abunyewa, 2020). Moreover, Project Bank, a publicly accessible online portal, has been established to enhance transparency and competitiveness in the open tender system when implementing the projects under Myanmar Sustainable Development Plan (MSDP 2018-2030) (Yadanar, 2020).

However, with the ongoing crisis of Coronavirus disease (COVID-19) happening globally, emergency procurement would bring unprecedented challenges to government which would have direct impacts on the healthcare system and indirect impacts on the economy and society. The objective of this briefing paper is to discover the international guidelines, practices and the challenges encountered on public procurement during the crisis along with the public procurement system in Myanmar and the insight of how the government of Myanmar is exercising the procurement process in the fight against the COVID-19 pandemic.

## Legal and Regulatory Framework

There is no effective public procurement law or legal framework that exists in Myanmar yet. Currently, the public procurement is based on Presidential Directive No 1/2017 for tender procedures to be followed by government departments and organizations in construction, purchase, procurement of services, lease and sale. Meanwhile, public procurement and disposal of public asset bill, which was submitted by MoPFI (Ministry of Planning, Finance & Industry) to Hluttaw in December 2019, is approved as 'amendment bill' at Amyotha Hluttaw in May 2020 (Kyaw, 2020).

The procedure is issued for a tender process taken by government departments to prevent waste for public budget, corruption and to have a fair competition in public procurement. In fact, the Union, Regional and State government department shall notify the Union government to avoid any doubts that they are in any relationship with the companies which win the tender to ensure the tender process is conducted fairly with no abuse of authority (Aung, 2017).

The bill suggests that public procurement can be performed through one of the following methods; open tender, request for quotation, close tender, direct award and electronic tender. The new bill states that direct award is allowed in the event of emergency procurement. Furthermore, it can be used when there is only one supplier who meets the delivery capacity of the goods (Ministry of Planning, Finance and Industry, 2019).

According to the President's directive, tenders are published according to its nature and size. No publication or tender is required if the procurement value is less than 10 million MMK. In this case, the tender committee may purchase the service which offers the lowest price among at least from 3 trusted companies. When the value of the services of open tender is between 10 million MMK and 100 million MMK, announcing this at least 2 weeks before the specified tender opening date is necessary. Similarly, when the value is more than 100million MMK, it is announced at least twice in the state-owned media one month before the tender opening date.

To be an eligible bidder, the local bidder of the companies must be officially registered and paid the specified tax in the Union. Given the quality of the goods is indifferent, the bill suggests to choose local bidders over foreign bidders to support the local suppliers. Meanwhile, an international competitive tender can be called if there is no authorized representative to provide goods and services in the Union (Ministry of Planning, Finance and Industry, 2019).

In the current Directive 1/2017, the purchasing department has to record tender procedures for at least 3 years (Aung, 2017). However, the new bill proposes it to be maintained for 7 years which enables the successive government to reexamine the process to strengthen responsibility and accountability (Ministry of Planning, Finance and Industry, 2019).

Tenders can be rejected when there is no bidder or the minimum price of the bid is higher than the permitted budget. In addition, there are restrictions involved if bribery and corruption are found in the procurement process. For example, the tender and contract shall be cancelled and actions shall be taken against the employees from the purchasing department according to the existing rules. Moreover, bidders shall be banned from other tenders.

For the complaint and settlement of disputes, the complaint resolution team is established when the bidder is not satisfied with the decision of tender selection process made by the tender committee. In case of any evidence of force majeure such as natural disaster, strike and temporary business shut down, the contract shall be amended with permission from the competent ministries.

## **Institutional Framework**

Procurement reforms in Myanmar are being implemented under the leadership of Procurement Rules and Regulations Supervision Committee (PPRRSC) chaired by Deputy Minister of Planning and Finance (Finance, 2018).

A tender committee consists of "Committee for Calculating the Floor Price" for lease and sale of the state-owned property, "Tender Acceptance and Evaluation Committee" to evaluate the tenders and "Tender Quality Assurance and Acceptance Committee" to do screening to make sure there is permitted budget and specify quality of the goods to be purchased for the project (Aung, 2017).

The tender committee of union, regional and state-level department composes of the heads of the related ministries, which are chaired by the relevant ministers respectively. However, in the bill, the head of procuring department will be leading the tender committee with the representatives from the relevant purchasing ministries (Aung, 2017). Likewise, the new bill only requires the approval of the procurement plan from the tender committee while the 1/2017 directive needs submission to the relevant ministries for the approval.

Regarding the ethics of the government staff in the procurement system, the bill suggests them to keep confidential information of the business of tender submitters before the tender process. Once the tender process starts, it is best for the whole process to be fully transparent in order to prevent corruption (Ministry of Planning, Finance and Industry, 2019).

Therefore, except for personal information, business-related information is necessary to be transparent for the process to be more accountable resulting in public having a good quality of service.

## **International Public Procurement during the Pandemic**

### **(1) Guidance on Emergency Procurement**

This section reveals an international guideline for the procurement during this pandemic, it introduces the effectiveness and efficiency of public resources to combat the pandemic. With the disruption caused by COVID -19 pandemic, the way government responds to the crisis plays an important role in emergency procurement. In fact, it is crucial for procurement entities to allocate available resources well to ensure the efficient delivery of goods and services with little waste. As seen from the previous global health emergencies such as Ebola virus and Swine flu, emergency situations provide good opportunities for corruption in public procurement (Open Contracting Partnership, 2020). Therefore, here are the recommendations made by Transparency International and Open Government Partnership to ensure Integrity and transparency in emergency procurement.

As transparency and open data are important to mitigate corruption in public procurement, information on contracts should be published in an open data format and made accessible on the official website (Transparency International, 2020). In fact, having open data on the price paid during emergency procurement can prevent price gouging since the watchdog can easily access the market and identify the irregularities with the transparent procurement process. Hence, unethical suppliers are less likely to charge unreasonable prices to government with the presence of open data. Likewise, open data can help the government to improve supply chain management and strengthen due diligence on new suppliers (Open Contracting Partnership, 2020).

Besides, it is necessary to monitor the public expenditure during an emergency to ensure efficiency and integrity in the use of resources. Regarding the budget allocated to cover emergencies and crises, it is essential for the government to report and administer to meet the objectives of the needs. For instance, audit and control bodies should have access to the records of procurement procedures to maintain constant coordination with contracting entities to have effective control of the budget (Transparency International, 2020).

To ensure economic competition in emergency procurement, government should take appropriate measures for small and medium enterprises to participate in the provision of goods and services. In addition, they have to avoid payments of goods at inflated prices and eliminate potential companies with an advantage over rivals to promote competitiveness.

In fact, sanctions for those who enter fraudulent activity should be widely publicized to reduce the temptation for either public officials or private companies to take advantage of the crisis (Open Contracting Partnership, 2020).

Furthermore, in the crisis where monitoring and oversight are weak, government should build an innovative partnership with business and civil society to help them with detecting corruption in the emergency procurement. This can be done by implementing a mechanism where whistleblowers can report the irregularities while ensuring their anonymity and security (Open Contracting Partnership, 2020).

## (2) International Procurement Practices in response to Pandemic

Covid-19 pandemic brings unprecedented challenges to the stakeholders in the public procurement sector. In fact, different stages of the crisis demand different strategies to tackle this ongoing issue. In the first phase of the crisis, the objective is to provide an immediate response to the pandemic which needs reactive procurement to have fast relief on public safety. In the second phase, the situation can be re-assessed to have a better understanding of the consequences of the crisis to adjust procurement strategies to address new challenges. Finally, in the third phase, recovery policies can be established to rebuild the societies and economies since there is no urgent measure to be taken (MAGINA, 2020).

Since the pandemic causes the disruption of the supply chain and distribution of the essential goods, public procurement professionals encounter uncertainties in the constantly-changing purchasing environment (COVID-19: Competition and emergency, 2020). Therefore, flexibilities on procedural and contracting rules are applied across Organisation for Economic Co-operation and Development (OECD) countries according to their established frameworks. In fact, governments have taken different measures on procurement to respond to the pandemic as follow:

- **Negotiated procedures without prior publication** are authorized for emergency contracting which means the public buyer can directly negotiate to the potential supplier where direct award occurs, even though it is discouraged in standard procurement. In this way, suppliers can have speedy awards with no lengthy procedures to meet immediate demand. In Peru, virtual training such as capacity building on emergency contracting is introduced to help contracting authorities familiar with the direct award (MAGINA, 2020).
- **A Shortened deadline of the tender process** is allowed to accelerate the restricted procedure for contracting authorities to execute it immediately due to urgency. For instance, this regulation is adopted in Italy to tackle the pandemic (MAGINA, 2020).



- **Provision of force majeure clause** is applied as it alleviates the burdens that suppliers face to meet the contractual obligations such as quality of goods and payment terms. It has been practiced by countries such as France and Spain to rebalance the agreement in case of losses suffered by suppliers (MAGINA, 2020).
- **Centralized purchasing** has been carried out especially in buying health supplies due to economy of scale and lower transaction cost; at the same time, to avoid direct award since it does not need to interact with suppliers. For example, Korean government authorized the centralized purchasing of face masks to ensure a secure and timely distribution for the public.
- **Electronic procurement** has never become more compelling than during this pandemic as it keeps the procurement process moving forward while maintaining physical distance to reduce the spread of the virus. Functionalities of the e-procurement platform have been expanded to record transactions and bidding patterns on procurement of emergency items. Data-driven procurement practices promote transparency hence it ensures integrity and accountability.

## Challenges in Public Procurement Procedures

Public Procurement is one of the crucial areas where the government has to manage when responding to this global health crisis. According to the OECD recommendation on public procurement, there are 12 integrated principles to ensure strategic and holistic use of public procurement (OECD, 2016). However, not all the principles can be well-maintained since emergency procurement in the crisis is not consistent to standard procurement procedures. For instance, competitive tendering is less likely to happen especially in the need for urgent goods and services due to time constraints and limited pool of suppliers with delivery capacity. In this case, direct awards happen which leads to single-source procurement. Therefore, competitive outcomes resulting in optimal prices are not guaranteed. Hence, access, one of the key principles in public procurement, to have equal opportunities for potential competitors, is violated.

Furthermore, emergency procurement creates integrity violations for public procurement. In the early phase of the crisis, the production of essential goods is disrupted or stopped due to the restrictive measures. In addition, countries around the world have imposed export prohibition and restriction to mitigate potential shortages of critical medical supplies. Meanwhile, taking advantage of the crisis to gain private benefit is commonly found in crisis resulting in price gouging, corruption and fraud. Therefore, it would weaken the effectiveness of the procurement cycle.

## Case Study

Since the first confirmed COVID-19 case on 23 March 2020 in Myanmar, the government has been implementing different measures to control the spread of the virus and to mitigate the economic and social impacts. In terms of public procurement response to the pandemic, the Ministry of Investment and Foreign Economic Relation established a procurement committee to purchase medical supplies timely and efficiently with effective utilization of International COVID-19 assistance (Ministry of Investment and Foreign Economic Relation, 2020). According to Dr. Myint Htwe, the Union Minister of Health and Sports, procurement and the logistic sub-department has to review remaining medicines daily to ensure there are no shortages (Oo, 2020).

In April 2020, the government has developed COVID-19 Economic Relief Plan (CERP) to mitigate the economic impacts and meet the current exigencies Myanmar faces from the ongoing global crisis. Among the goals it has crafted, it includes a call for investments via a simplified procurement process to manufacture key COVID-19 and/or medical-related products using currently vacant state-owned factories before the end of 2020 under the Ministry of Planning, Finance and Industry. Moreover, to strengthen the health system, immediate importation of key medical products for prevention, control and treatment of COVID-19 is to be carried out without going through a lengthy procurement process (Government of the Republic of the Union of Myanmar, 2020).

As a brief study, there was a controversial tender issued on 18 May 2020 for Myanmar's biggest solar project which is the construction of 30 ground-mounted solar plants capable of generating a total of 1060MW power under a build-operate-own basis (Chua, 2020). There were 155 bids submitted for 30 sites, where more than half of the bids came from Chinese companies and the rest were from Myanmar, Thailand, Japan, Europe and the United States. It was not surprising to see Chinese bidders getting predominance over rival foreign bidders since Chinese nationals with urgent business are allowed to enter via relief flight, bypassing the COVID-19 travel restriction (Chua & Liu, 2020). Meanwhile, other foreign bidders cannot enter to conduct due diligence, site visits and negotiate land deals due to the flight ban. At the same time, they were not allowed to submit tender documents online according to the Ministry of Electricity and Energy's Electric Power Generation Enterprise (Chua, 2020).

In fact, the requirement for the investors to bid the solar tender is an annual income of US\$20 million for three consecutive years with the experience of carrying out 3 independent power plants in the past ten years (Htwe, 2020). Unfortunately, this ruled out most of the domestic investors since it is outside of the capability of local firms. In addition, the concern is the ministry demanding fixed tariff inclusive of taxes over a concession period of 20 years with land speculation (Liu, 2020). As a result, it was hard and unfavorable for bidders to meet the 2 months deadline to prepare for bids and 6 months to commence the full operations given

the rigid terms and conditions. But still, solar developers were insisting the tender schedules be revised to have a thorough, competitive and fair bidding process.

Eventually, Chinese companies won all but one of the bids to build solar plants at US\$0.0422/unit compared to the average bidding price of US\$0.0508 (Liu, 2020). They happened to be qualified bidders after passing technical criteria, offering the lowest price although the tender committee is aware of the fact that Chinese companies are inexperienced in operating power projects. According to the secretary of the Ministry of Energy and Electricity, the tender was a success, getting fair price despite the large criticism over tender rules (Kyaw Ye Lin & Kean, 2020). However, industry experts are skeptical about the implementation of the project within the given time frame (Liu, 2020).

## **Conclusion and Recommendation**

To sum up, the ongoing COVID-19 pandemic has a significant impact on public procurement since it disrupts the tender process and supply chain of goods and services delivered by government. As standard procurement procedures cannot be practiced, governments from OECD countries have taken different measures such as direct awarding to secure the supplies and accelerate the procurement process as fast as possible. In addition, force majeure is allowed especially in this time of the crisis to ease the contractual obligations which have to be met by suppliers. At the same time, integrity violations such as corruption, as the high at-risk in public procurement, could weaken the efficiency of the system if it is not well monitored. On the bright side, COVID-19 can be seen as a catalyst in reforming the public procurement system. Therefore, Myanmar can learn lessons from a failed procurement system during the pandemic to prepare well for the future on having a national robust procurement system.

The most interesting finding is the controversial solar tender in Myanmar where the pandemic brings uncertainties and unprecedented challenges to both local and foreign bidders as they faced COVID-19 travel restrictions and a tight deadline to prepare for bids, along with unreasonable conditions such as land speculation and fixed tariff inclusion of tax for 20 years. As Chinese bidders were getting predominance over rival foreign bidders on bypassing the travel restriction and eventually winning the majority bids, the tender can be seen as biased and uncompetitive.

Overall, Myanmar still needs a well-governed procurement system with transparency and accountability to foster strategic governance, compared to international public procurement guidelines. Through this brief, the following key points are described to consider for a way forward;

- The bill of public procurement and disposal of the asset needs to be approved from Hluttaw as fast as possible since it might be the first important step needed to enforce the first public procurement law and structured legal framework in Myanmar.
- In the medium and long term of the crisis, direct awards should not be awarded since it discourages competition in public procurement. It should be awarded only for unforeseeable needs.
- Seeing from the solar tender that electronic tender submissions are banned, electronic procurement should be used widely especially in the period of the crisis to reduce labor intensive paperwork, corruption and in deed to have more transparent and fair competition.
- More capacity building training for procurement officials is needed to prepare the quality and responsive bid for a smoother and efficient procurement process.
- For open data, the government (ministries) should provide public and procurement information through online based and other channels to have more transparent and simplified approaches.

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