**Straight Talk: Emergency Procurement in the COVID-19 Pandemic**

**Speakers:**

Christopher Yukins, Co-Director, Government Procurement Law Program, GW Law

Laurence Folliot Lalliot (Paris/Dakar) - on France's emergency procurement strategies

CAO Fuguo (Beijing) - on China's strategies of containment and emergency supply

Gian Luigi Albano, CONSIP (Italy’s centralized purchasing agency) - an economist's perspective on purchasing strategies  
William Kovacic, GW Law School (former chair, U.S. Federal Trade Commission) - on competition issues  
Ben Koberna, EASiBUY (USA) - buyers' perspectives on trends in a shifting market  
Simon Evenett, University of St Gallens (Switzerland) - author of [Tackling COVID-19 Together](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.globaltradealert.org_reports_51&d=DwMFaQ&c=VhZolPcoIcxBQpA0e5_BL66VJfv8ydsVc5_UWeY_GkQ&r=gFvvO1U-UolP2E7CBgc4gY1tm0sNWiQUyiuz4SpFdoU&m=Aqb5EHUBkWE3cNHDmlg9VYs5efRQPe9gwHMLEQHv_tA&s=PKdFQu4qQcFqho94labnm7nKmWt7RZq4HCLGuMzp_2s&e=) (Global Trade Alert)

With special guest:  Benedetta Audia (UNOPS) - supply for the United Nations in a chaotic international market

Every country will have its own unique legal, economic, budgetary and political challenges that will require unique solutions. To the extent possible within those parameters, these recommendations/solutions may be helpful or adaptable to those unique situations but they will certainly not be directly applicable  in every country.

1.      **Problem: Governments faced with urgent Covid-19 needs have little or no time to conduct proper due diligence of vendors, which exposes the government to fraud and price gouging.**

a.      Potential solutions and recommendations:

**i.**      **Send clear signals/warnings to the marketplace (by both procurement and competition enforcement agencies) that anti-competitive practices, fraud and bad performance will, eventually, result in suspension and/or debarment and criminal prosecution, if warranted.**

1.      Anti-competitive practices include supply manipulation, price gouging, bid rigging, cartels, etc. (affecting both commercial and gov’t marketplaces)

                                                            ii.      Since emergency declarations, in many countries, allow procurement officials to bypass online publication and competition requirements, **procurement portals should still be updated continuously with price and performance information**so that vendors can ultimately be held accountable and to inform future procurements about price and performance data.

1.      The U.S. Department of Defense has instituted a new category of products, Covid-19 related, to allow for procurement officials, the public and eventually auditors to more easily track the use of exceptional procurement procedures to procure these goods and services.

**iii.**      **Rely on established vendor relationships to reduce the risk of fraud/poor performance and be aware of new players in the market with no established track record, who could expose government to greater risk of fraud and non-performance**

1.      The Dominican Republic’s central purchasing authority has just created a new registration process for COVID-19 vendors, which help transfer some of the burden of due diligence to the central purchasing agency. (not from webinar)

2.      The new US Care Act includes provisions to “keep contractors alive,” such as increased funds to pay for paid sick leave and to pay contractors who were prevented from accessing their work sites due to the pandemic. These measures will limit the need to look for new contractors and enable existing contractors to continue to supply the government.

                                                           iv.      **Reduce or eliminate use of advance payments when possible to reduce risk of fraud and nonperformance.**Many countries have faced situations where fake or shell companies are winning emergency procurements, pocketing the advance payments and not performing. These types of fraudulent practices are less deterred by suspension/debarment since they are not interested in being long-term suppliers in the government market.

1.      Italy has suspended advance payments due to this type of fraud

                                                             v.      **Identify critical products and equipment with significant market volatility and develop efficient measures to procure these products with less emphasis on price.** Since funding/financial assistance is easier to access than some of these critical products, countries may be better off spending the funds to acquire these products and their procurement processes should be flexible enough to allow it.

1.      The market for products such as face masks, is extremely volatile due to low supply levels at the moment and countries may need to absorb significant price increases due to the lifesaving nature of these products. For example, the City of LA has taken the approach to “buy first and sort out later.”

2.      Countries that delay the purchase of these critical products due to price concerns or procurement rules, may be freezing some of this supply and ultimately losing these products to other countries or organizations  who have faster procurement mechanisms.

* + 1. Streamline procurement decision by integrating finance, medical, procurement personnel into a single team **that can take decisions quickly.**
    2. **Consider alternatives to products which are in short supply and confirm with medical/public health authorities that those alternatives can be used for COVID-19**
       1. For example, the N95 mask is in very short supply but the K95 mask may work just as well and is much easier to find and purchase. However, many countries’ public health authorities have not yet approved the K95 mask to protect against COVID-19.

2.      **Problem: Governments are not able to quickly procure and receive critical equipment and products from foreign sources due to trade barriers**

a.      Potential solutions and recommendations:

                                                              i.      Export controls: Several countries have instituted export controls to block the export of locally produced health and safety products/equipment. **Countries that need to procure from international sources should be constantly tracking the imposition of these controls and should plan their procurements accordingly.**

1.      Look to countries who are close to recovery from COVID-19 and may have surpluses that can be purchased or donated.

2.      Determine whether export controls apply only to the origin-country or if transit countries’ export controls can also affect your shipments.

3.      Be aware of countries with opaque export authorization processes for these types of products.

                                                            ii.      Import controls: **Ensure that requirements for licenses or bonds are streamlined or reduced for critical goods and that import duties/tariffs are completely suspended,** if possible, for COVID-19 related imports.

                                                          iii.      Local production: **Countries should leverage local production as much as possible to reduce the need for imports.**In the US, breweries and other beverage manufacturers are being converted to produce hand sanitizer and other products. General Motors is now producing ventilators.

1.      “Reliance on the commercial marketplace is not working right now. They will eventually catch up, but right now lagging. Countries need to evaluate the need for domestic capability, build it and maintain it and warehouse more capability than they previously anticipated.”- David Drabkin (copied from chat room)

Disclaimer: The outline above is a rough summary of the presentations in the April 2, 2020 GW Law webinar and should not be construed as a transcript or be attributable to GW Law, CLDP or individual speakers at the event.