



Tonga

**PUBLIC PROCUREMENT (AMENDMENT)
REGULATIONS 2020**



PUBLIC PROCUREMENT (AMENDMENT) REGULATIONS 2020

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PUBLIC PROCUREMENT (AMENDMENT) REGULATIONS 2020

PUBLIC FINANCE MANAGEMENT ACT 2002

IN EXERCISE of the powers conferred by section 44 of the Public Finance Management Act 2002, the Minister of Finance with the consent of Cabinet, makes the following Regulations -

1 Short Title and Interpretation

- (1) These Regulations may be cited as the Public Procurement (Amendment) Regulations 2020.
- (2) In these Regulations, the Public Procurement Regulations 2015, as amended, shall be referred to as the “Principal Regulations”.

2 Regulation 2 amended

Regulation 2 of the Principal Regulations is amended by inserting the following new definitions in the appropriate place –

“**emergency**” means an event, actual or imminent, which endangers or threatens to endanger life, property or the environment and which requires a significant and co-ordinated response;” and

“**event**” means any of the following –

- (a) a cyclone, earthquake, storm, storm surge, tornado, tsunami, volcanic eruption or other natural happening;

- (b) an explosion or fire, a chemical, fuel or oil spill, or a gas leak;
- (c) an infestation, plague or epidemic;
- (d) a failure of an essential service or infrastructure;
- (e) a terrorist attack against the Kingdom; or
- (f) any other even similar to an event referred to in paragraphs (a) to (e).”.

3 New Regulations 45A

The Principal Regulations is amended by inserting the following new Regulation 45A immediately after Regulation 45 –

“45A Emergency Procurement

- (1) Emergency procurement shall only be considered where there is an extreme urgency brought about by an unforeseeable emergency or event.
- (2) A procuring contracting entity can engage in emergency procurement only in the following circumstances –
 - (a) in the event of an emergency;
 - (b) in the event of a Declaration of a State of Emergency under the Emergency Management Act or a declaration of an emergency under any other Act;
 - (c) in a life or death situation; or
 - (d) where there is an urgent need for goods, services or civil works and engaging in tender proceedings would be impractical due to time constraints or cost factors.
- (3) In relation to section 45A(2), procuring contracting entities shall seek the approval of the Minister using the Form in Schedule 3 before undertaking any emergency procurement.
- (4) The Procurement Division shall process the Form received under sub-section (3) immediately upon receipt.
- (5) At the end of the state of emergency or relevant response period, the procuring contracting entities shall submit a report to the Minister stating the amount of funds that have been used on the immediate relief assistance.

4 New Schedule 3

The Principal Regulations is amended by inserting the new Schedule 3 immediately after Schedule 2 -

**“SCHEDULE 3
EMERGENCY PROCUREMENT REQUEST FORM”**

(Regulation 45A)

1	Contracting Entity	
2	Emergency Event	
3	Goods/ Services/ Works for Emergency Procurement	
4	Justification	
5	Estimated Costs	
6	Proposed Supplier	
7	Availability of funds from Contracting Entity Budget	
8	Duration (time period)	
9	Approval of NEMC/ Cabinet (if relevant¹)	
10	Date of Submission	

¹ Refer to any Declaration of a State of Emergency under any relevant Act.

11	Chief Executive Officer						
12	Checked by Procurement Division						
13	Recommendation		Yes		No		Need further information
		Comments:					
14	Approval by Minister		Approved		Not Approved		Discuss
		Comments:					

Made at Nuku'alofa this **15th** day of **January** 2021.

Hon. Tevita Lavemaau
Minister responsible for Finance