
CONTENTS

| | |
|-----------------------------------|-----|
| <i>Preface</i> | v |
| <i>List of Contributors</i> | xxi |

PART 1 INTRODUCTION

| | |
|---|----|
| 1. <i>Public Procurement Regulation in (a) Crisis? General Introduction</i> | 3 |
| Sue Arrowsmith, Luke RA Butler and Annamaria La Chimia | |
| I. The COVID-19 Pandemic and the Challenges for Public Procurement | 3 |
| II. Objectives and Scope of the Book | 6 |
| III. Outline and Approach..... | 10 |

PART 2 PUBLIC PROCUREMENT REGULATION IN EMERGENCIES: INTERNATIONAL AND GENERAL PERSPECTIVES

| | |
|---|----|
| 2. <i>The Approach to Emergency Procurement in the UNCITRAL Model Law: A Critical Appraisal in Light of the COVID-19 Pandemic</i> | 21 |
| Sue Arrowsmith | |
| I. Introduction | 21 |
| II. Introduction to the Model Law..... | 23 |
| III. Competitive Tendering with a Public Solicitation..... | 27 |
| IV. Advance Mechanisms (Framework Agreements, Supplier Lists, etc)..... | 27 |
| A. Introduction | 27 |
| B. The Rules on Framework Agreements..... | 30 |
| C. Supplier Lists | 34 |
| V. Exceptional Methods for Urgency: Competitive Negotiations and Single-Source Procurement | 36 |
| A. Competitive Negotiations..... | 36 |
| i. General..... | 36 |
| ii. Grounds for Use: General Urgency Ground | 37 |
| iii. Grounds for Use: A Catastrophic Event | 41 |
| iv. The Rules on Conducting Competitive Negotiations | 45 |

| | | |
|------|--|-----|
| B. | Single-Source Procurement..... | 49 |
| C. | Controls Over the Decision to Use Competitive Negotiations or Single-Source Procurement | 54 |
| VI. | Modifications to Existing Contracts to Procure New Requirements | 59 |
| VII. | Conclusions | 60 |
| 3. | <i>Recommendations for Urgent Procurement in the EU Directives and GPA: COVID-19 and Beyond</i> | 63 |
| | Sue Arrowsmith | |
| I. | Introduction | 63 |
| II. | The EU | 64 |
| A. | Introduction to the EU Regulatory Framework | 64 |
| B. | Competitive Tendering with a Public Solicitation, Including Accelerated Procedures for Urgency | 65 |
| C. | Advance Mechanisms: Framework Agreements, Dynamic Purchasing Systems and Qualification Systems | 68 |
| i. | Framework Agreements and Dynamic Purchasing Systems | 68 |
| ii. | Qualification Systems (Supplier Lists)..... | 71 |
| D. | Contract Modifications and New Awards to Existing Partners | 73 |
| E. | Use of the Negotiated Procedure without Prior Publication based on Extreme Urgency..... | 75 |
| i. | Introduction..... | 75 |
| ii. | Grounds for Use: General Urgency | 77 |
| iii. | Grounds for Use: Situations of Crisis | 87 |
| iv. | Grounds for Use: Emergency Approaches under TFEU Derogations..... | 88 |
| v. | Grounds for Use: Other Grounds | 89 |
| vi. | Grounds for Use: Controls Over the Decision to Use the Negotiated Procedure without a Call for Competition..... | 90 |
| vii. | Conduct of the Procedure..... | 92 |
| III. | The GPA..... | 96 |
| A. | Introduction to the GPA Regulatory Framework..... | 96 |
| B. | Award Procedures and Modifications | 97 |
| IV. | Conclusions | 102 |
| 4. | <i>Regulating Single-Source Procurement in Emergency Situations in Light of the COVID-19 Pandemic: Issues in Policy and Practice</i> | 107 |
| | Luke RA Butler | |
| I. | Introduction | 107 |
| II. | Procurement..... | 110 |
| A. | Alternative Market-Led Methods | 110 |

| | | |
|------|---|-----|
| B. | Means of Selecting Suppliers and Assessing Offers..... | 114 |
| i. | Methods and Means of Direct Solicitation..... | 114 |
| a. | Supplier Lists for Use by Individual Procuring Entities..... | 115 |
| b. | Central Solicitation..... | 116 |
| ii. | Criteria for Choosing the Winner..... | 119 |
| iii. | Negotiations..... | 124 |
| C. | Publication and Justification of Reasons for Single-Source Procurement..... | 126 |
| i. | Notices..... | 126 |
| ii. | Justification..... | 128 |
| D. | External Approvals..... | 133 |
| E. | Single-Source Procurement Information Capture and Disclosure..... | 135 |
| III. | Pricing and Contract Management..... | 140 |
| A. | Risk Allocation in Contracts Awarded at the Onset of an Emergency..... | 141 |
| B. | Determination of Costs and Profits on Contracts..... | 144 |
| i. | Types of Event Giving Rise to Relief and Recovery..... | 144 |
| ii. | Which Costs are Allowable..... | 146 |
| iii. | Profit..... | 148 |
| C. | Open Book Contract Management..... | 149 |
| IV. | Conclusions..... | 151 |
| 5. | <i>The Challenges of Constructing a Supplier Review System for Urgent Procurement: An Analysis in the Context of the UNCITRAL Framework</i> | 155 |
| | Caroline Nicholas and Sue Arrowsmith | |
| I. | Introduction..... | 155 |
| II. | Supplier Review under the UNCITRAL Model Law..... | 156 |
| A. | Background and Guiding Principles..... | 156 |
| B. | The Standstill Requirement..... | 158 |
| C. | Standing and Scope of Review..... | 158 |
| D. | Forum and Procedure..... | 159 |
| E. | Effectiveness of Remedies..... | 161 |
| F. | Concluded Contracts..... | 162 |
| III. | The Specific Case of Urgent Procurement..... | 165 |
| A. | Introduction..... | 165 |
| B. | Limited Standing..... | 165 |
| C. | Exemption from <i>Ex Ante</i> Notice Requirements..... | 166 |
| D. | Impact of Urgent Public Interest Considerations on Standstill, Suspension and Corrective Action..... | 167 |
| E. | Absence of Consequences of Non-Compliance with <i>Ex Ante</i> Notice and Standstill Requirements..... | 168 |
| F. | The Rules on Concluded Contracts..... | 168 |

| | | |
|------|---|-----|
| G. | The Time Limit for Bringing Proceedings | 170 |
| H. | The Time for Completing Challenge Proceedings..... | 170 |
| I. | Factors Deterring Challenge | 170 |
| J. | Urgency and Call-offs from Framework Agreements | 171 |
| IV. | Conclusions | 171 |
| 6. | <i>The EU's Joint Procurement Agreement in Light of COVID-19: Learning the Correct Lessons from the Pandemic and Identifying Actions for Improvement.....</i> | 175 |
| | Aris Georgopoulos | |
| I. | General Introduction | 175 |
| II. | Introduction: Background of the JPA | 176 |
| III. | JPA Framework | 178 |
| A. | Nature, Membership and General Principles | 178 |
| B. | Structure and Organisation..... | 180 |
| C. | JPA Decision-Making Arrangements | 182 |
| D. | Key Features | 184 |
| E. | JPA and COVID-19..... | 185 |
| IV. | Complementary Mechanisms: rescEU, the Emergency Support Instrument and Clearing House of Medical Equipment | 187 |
| A. | rescEU Stockpile | 188 |
| B. | The Emergency Support Instrument..... | 189 |
| C. | The Clearing House for Medical Equipment | 190 |
| V. | Reflections: Lessons Learned and Recommendations | 191 |
| A. | Wider Lessons | 191 |
| B. | Specific Lessons..... | 191 |
| C. | Recommendations..... | 193 |
| VI. | In Lieu of Conclusion..... | 194 |

PART 3

RELATED REGULATORY PERSPECTIVES

| | | |
|------|--|-----|
| 7. | <i>Competition Policy in Relation to Public Procurement: An Essential Element of the Policy Framework for Addressing COVID-19.....</i> | 199 |
| | Robert D Anderson, William E Kovacic and Antonella Salgueiro | |
| I. | Introduction | 199 |
| II. | Changing Market Conditions and the Role of Competition Agencies vis-à-vis Public Procurement | 201 |
| III. | Specific Adaptations of Relevant Jurisdictions' Competition Policies in Response to the Crisis | 203 |
| A. | Toleration, in Some Cases, of Appropriately Limited Horizontal Cooperation Agreements | 204 |

| | | |
|------|--|------------|
| B. | Merger Review and COVID-19: Expedited Review Procedures, Failing Firm Defence and Post-Clearance Challenges | 206 |
| C. | Unilateral Conduct: Excessive Prices and Price-Gouging Concerns..... | 209 |
| D. | State Aids to Industry: The Relevance of EU Competition Rules to Mitigate Possible Adverse Consequences of Government Measures to Alleviate the Economic Crisis | 211 |
| E. | The Opening of New Channels of Communication with Affected Businesses and Other Stakeholders..... | 213 |
| IV. | Long-Run Challenges for Competition Authorities Flowing from the Broader Policy Environment..... | 214 |
| A. | Governments' Increasing Emphasis on the Role of Industrial Policy | 214 |
| B. | Realising Synergies with International Trade Policy | 216 |
| V. | The Pandemic as a Catalyst for Reform | 217 |
| VI. | Conclusion..... | 218 |
| 8. | <i>The Trade and Government Procurement Policy Nexus: Before and After the COVID-19 Pandemic.....</i> | <i>219</i> |
| | Simon J Evenett | |
| I. | Introduction | 219 |
| II. | The Trade and Procurement Policy Nexus before the Pandemic..... | 220 |
| III. | The Trade Policy Response to the Pandemic..... | 222 |
| IV. | Emergent Policy Trends Affecting the Trade and Government Procurement Nexus..... | 225 |
| V. | Concluding Remarks: What is Really Going on Here?..... | 229 |
| 9. | <i>The Rise of Resilience in Addressing COVID-19 Procurement Challenges and the Impact of International Trade-related Instruments on Countries' Freedom of Action.....</i> | <i>233</i> |
| | Peter Trepte | |
| I. | Introduction | 233 |
| II. | Export Controls..... | 234 |
| A. | Treaty on the Functioning of the European Union..... | 235 |
| B. | The World Trade Organization..... | 236 |
| III. | Favouring Domestic Supply Markets | 240 |
| A. | The European Union..... | 241 |
| B. | The Government Procurement Agreement | 244 |
| i. | Scope and Coverage | 244 |
| ii. | The WTO and the GPA | 246 |
| IV. | Concluding Remarks..... | 248 |

PART 4
DEVELOPMENT PERSPECTIVES ON PROCUREMENT
IN THE PANDEMIC

| | | |
|-----|--|-----|
| 10. | <i>Legal Aspects of the Procurement and Distribution of Critical COVID-19 Supplies by International Organisations: UNOPS</i> | 253 |
| | Benedetta Audia and Ary Bobrow | |
| | I. General Introduction..... | 253 |
| | II. UNOPS: History and Legal Status | 253 |
| | III. Legal, Regulatory and Policy Framework for UNOPS Procurement..... | 255 |
| | A. Regulatory Framework | 255 |
| | B. Emergency Procedures | 256 |
| | IV. Description of Programme and Legal Procurement Issues..... | 257 |
| | A. Programme Issues | 257 |
| | B. Legal Issues..... | 263 |
| | V. Coordination within the UN System and vis-a-vis Suppliers..... | 264 |
| | VI. Recommendations | 268 |
| 11. | <i>Procurement and Distribution of Critical COVID-19 Supplies by International Organisations: The World Bank</i> | 271 |
| | Shaun Moss | |
| | I. Introduction..... | 271 |
| | II. The Mandate of the World Bank..... | 273 |
| | III. The World Bank’s Response to the Pandemic | 273 |
| | IV. The Global Procurement Challenge Posed by the COVID-19 Pandemic..... | 275 |
| | V. Evolution of the World Bank’s Procurement Guidelines, Policy and Regulations | 276 |
| | VI. Emergency Procurement Procedures in the World Bank’s Pre-2016 Procurement Guidelines | 277 |
| | VII. The 2016 Procurement Reform: A Flexible Procurement Policy Framework for Responding to Emergencies | 278 |
| | VIII. Alternative Procurement Arrangements | 279 |
| | IX. Hands-on Expanded Implementation Support and Bank-Facilitated Procurement | 280 |
| | X. Procurement Policy Questions raised by BFP | 284 |
| | XI. Operational Adjustments to World Bank Procurement to Accommodate Market Disruptions | 285 |
| | A. Use of Incoterms..... | 285 |
| | B. Governing Contract Law and Dispute Resolution Clauses in BFP Contracts..... | 286 |
| | C. Payment Terms | 287 |

| | | |
|------|---|-----|
| | D. Payment Methods | 287 |
| | E. Application of <i>Force Majeure</i> Clauses | 288 |
| XII. | Lessons Learned and Future Impact on World Bank Procurement..... | 288 |
| 12. | <i>Procurement and Distribution of Critical COVID-19 Supplies: The Experience of USAID</i> | 291 |
| | Jun Jin and Mary McLaughlin | |
| | I. General Introduction | 291 |
| | II. The Regulatory Framework..... | 293 |
| | A. Legal, Regulatory and Policy Framework for USAID Procurement | 293 |
| | B. Emergency Procurement Authorities..... | 294 |
| III. | Description of the Programmes in Place and Issues that Arise | 295 |
| | A. USAID's COVID-19 Strategy | 295 |
| | B. Use of Procurement to Supply Needed Goods and Services..... | 297 |
| | C. Existence and Use of Recurring Purchasing Methods through Framework Agreements..... | 299 |
| | D. Use of Regular or Accelerated Tendering Procedures..... | 300 |
| | E. Use of Multilateral Partners to Support COVID-19 Response | 302 |
| IV. | Monitoring and Oversight Measures to Manage Fraud Risks in Procurement | 303 |
| V. | Use of Procurement for Industrial or Social Objectives..... | 304 |
| | A. Personal Protective Equipment..... | 304 |
| | B. Ventilators | 306 |
| VI. | The Pandemic as a Catalyst for Procurement Reforms | 307 |
| | A. Using Procurement Policy to Increase Domestic Manufacturing Capacity of Critical Medical Supplies and Provide Business Opportunities for US Providers..... | 307 |
| | B. Incorporating 'Flexibility' to Respond to Changed Circumstances | 308 |
| VII. | Reflections | 309 |
| 13. | <i>The Procurement of a COVID-19 Vaccine in Developing Countries: Lessons from the 2009 H1N1 Pandemic</i> | 311 |
| | Mark Eccleston-Turner and Harry Upton | |
| | I. Introduction | 311 |
| | II. The Importance of a COVID-19 Vaccine and International Efforts | 312 |
| | A. The ACT Accelerator and the COVAX Facility | 313 |
| | B. The Inclusive Vaccines Alliance | 316 |
| | C. The European Commission | 317 |
| | D. A Summary of COVID Vaccine Procurement..... | 317 |

| | | |
|------|---|-----|
| III. | Vaccine Procurement During 2009 H1N1 | 318 |
| A. | Procurement During 2009 H1N1 – General Observations..... | 318 |
| B. | Use of Advanced Purchase Agreements in Pandemic Influenza Vaccine Procurement | 319 |
| C. | The WHO Vaccine Deployment Initiative..... | 321 |
| D. | Developing Country Prerequisites and the VDI: A Barrier to Successful Procurement? | 323 |
| E. | 2009 H1N1 Vaccine Procurement Summary | 324 |
| IV. | COVID-19 Vaccine Nationalism and Procurement | 325 |
| V. | Reflections..... | 326 |

PART 5

EMERGENCY PROCUREMENT AND RESPONSES TO COVID-19: COUNTRY STUDIES

| | | |
|------|---|-----|
| 14. | <i>Emergency Procurement and Responses to COVID-19: The Case of Italy</i> | 331 |
| | Gian Luigi Albano and Annamaria La Chimia | |
| I. | General Introduction | 331 |
| II. | Introduction to the Regulatory Framework..... | 332 |
| III. | Reforms and Requirements of Procurement During COVID-19 | 334 |
| A. | The General Emergency Procedures under the Italian Civil Code..... | 334 |
| B. | Emergency Procedures During the First Phase: Lockdown..... | 336 |
| C. | Emergency Procedures Post-lockdown: The Need for a Simpler System | 341 |
| D. | Price-Gouging | 348 |
| IV. | Modification and Execution of Contracts to Adapt to the Pandemic..... | 350 |
| V. | Conclusions | 353 |
| 15. | <i>Emergency Procurement and Regulatory Responses to COVID-19: The Case of the United Kingdom</i> | 355 |
| | Sue Arrowsmith and Luke RA Butler | |
| I. | General Introduction | 355 |
| II. | Introduction to the Regulatory Framework..... | 358 |
| III. | Procurement of New Requirements..... | 360 |
| A. | General | 360 |
| B. | Advance Planning and Advance Mechanisms | 362 |
| C. | Regular Competitive Methods, Including Accelerated Procedures..... | 365 |
| D. | Procedures with a Direct Solicitation: The Negotiated Procedure without Prior Publication..... | 365 |
| i. | Introduction | 365 |
| ii. | Grounds for Using Direct Solicitations | 366 |

| | | |
|-------|--|-----|
| | iii. Controls Over Direct Solicitations..... | 369 |
| | iv. Conducting the Procedure..... | 372 |
| | E. Modification of Existing Contracts to Obtain New Requirements..... | 378 |
| | F. Information Transparency..... | 380 |
| | G. Challenges and Remedies..... | 382 |
| IV. | Modification of Contracts to Adapt them to the Pandemic..... | 384 |
| V. | Security of Supply and Supplier Fraud..... | 386 |
| VI. | Use of Procurement for Industrial or Social Objectives, Including Building Resilience..... | 387 |
| VII. | The Pandemic as a Catalyst for Procurement Reforms..... | 389 |
| VIII. | Reflections..... | 389 |
| 16. | <i>Emergency Procurement and Responses to COVID-19: The Case of the US.....</i> | 393 |
| | Christopher R Yukins | |
| | I. General Introduction..... | 393 |
| | II. Introduction to the US Procurement System and Regulatory Framework..... | 394 |
| | III. Procurement of New Requirements..... | 397 |
| | A. Emergency Procurement Provisions..... | 397 |
| | B. Ensuring Security of Supply under the Defence Production Act..... | 400 |
| | IV. Modification of Contracts to Respond to the Pandemic (Contract Administration)..... | 401 |
| | V. Supply Chain Risks Peculiar to Public Procurement..... | 403 |
| | VI. Security of Supply and Contractor Fraud..... | 409 |
| | VII. Industrial and Social Objectives, Including Use of Procurement to Advance the Trump Administration's 'Buy American' Agenda..... | 410 |
| | VIII. Reflections..... | 412 |
| 17. | <i>Emergency Procurement and Responses to COVID-19: The Case of Brazil.....</i> | 415 |
| | Marçal Justen Filho and Cesar Pereira | |
| | I. General Introduction..... | 415 |
| | II. Introduction to the Regulatory Framework..... | 417 |
| | III. Procurement of New Requirements..... | 421 |
| | A. The Enactment of Special Legislation in Law 13.979..... | 421 |
| | B. The Special Provisions on Direct Awards..... | 422 |
| | C. Waiver of Preliminary Studies and More Flexible Rules on Specifications and Price Estimates..... | 425 |
| | D. Waiver of Qualification Requirements and Flexibility in Debarment Policy..... | 426 |
| | E. Reverse Auctions..... | 426 |

| | | |
|-------|---|-----|
| F. | Framework Agreements | 427 |
| G. | Used Goods..... | 429 |
| H. | Modification of Contracts Concluded under Law 13.979 | 430 |
| I. | Transparency..... | 430 |
| J. | Foreseeability of Accountability Initiatives..... | 430 |
| K. | Challenges or Protests | 431 |
| L. | Antitrust Issues..... | 431 |
| M. | Modification of Pre-pandemic Contracts for Pandemic-related Purchases..... | 432 |
| IV. | Modification of Contracts to Adapt to their Performance to the Pandemic | 433 |
| V. | Security of Supply and Supplier Fraud..... | 436 |
| VI. | Use of Procurement for Industrial or Social Objectives | 437 |
| VII. | The Pandemic as a Catalyst for Procurement Reforms | 438 |
| VIII. | Reflections | 439 |
| 18. | <i>Emergency Procurement and Responses to COVID-19: The Case of Colombia</i> | 441 |
| | Sebastián Barreto Cifuentes | |
| I. | General Introduction | 441 |
| II. | Introduction to the Regulatory Framework..... | 442 |
| III. | Procurement of New Requirements, Including the New Emergency Procurement Law..... | 444 |
| A. | Urgent Procurement under Ordinary Public Procurement Law | 445 |
| B. | The New Rules Addressing the COVID-19 Pandemic..... | 446 |
| i. | Use of Electronic Means for Procurement Procedures and Other Administrative Measures | 446 |
| ii. | The Mandatory and Recommended Use of Framework Agreements | 447 |
| iii. | Direct Contracting and Department Store Buying..... | 448 |
| iv. | Ordinary Modifications Rules and Expanded Grounds for Modifications..... | 448 |
| v. | The Creation of a Legal Regime Governed by Private Law..... | 451 |
| C. | Export Controls and Distribution Priority..... | 452 |
| D. | Joint Procurement..... | 453 |
| E. | Supplier Remedies..... | 453 |
| IV. | Security of Supply and Contractor Fraud..... | 454 |
| V. | Use of Procurement for Industrial or Social Objectives | 455 |
| VI. | Reflections | 455 |

| | |
|--|-----|
| 19. <i>Emergency Procurement and Responses to COVID-19: The Case of India</i> | 459 |
| Sandeep Verma | |
| I. General Introduction | 459 |
| II. Introduction to the Regulatory Framework..... | 461 |
| III. Procurement of New Requirements..... | 466 |
| A. Standardisation and Centralised Procurement | 466 |
| B. Suspension of Procurement Laws | 469 |
| C. Simplified and Accelerated Procurement Procedures..... | 471 |
| D. Special Budgetary and Financing Allocations..... | 473 |
| E. Temporary Acquisition of Private Facilities | 474 |
| F. Export Controls on Medical Supplies and Equipment..... | 475 |
| IV. Modification of Contracts to Adapt to the Pandemic..... | 477 |
| V. Security of Supply and Supplier Fraud..... | 479 |
| VI. Use of Procurement for Industrial or Social Objectives..... | 481 |
| VII. The Pandemic as a Catalyst for Procurement Reforms | 482 |
| VIII. Reflections | 484 |
| 20. <i>Emergency Procurement and Responses to COVID-19: The Case of Singapore</i> | 485 |
| Henry Gao | |
| I. General Introduction | 485 |
| II. Introduction to the Regulatory Framework..... | 486 |
| III. Procurement of New Requirements..... | 489 |
| IV. Modification of Contracts to Adapt to the Pandemic..... | 492 |
| V. Security of Supply and Contractor Fraud..... | 495 |
| A. Security of Supply..... | 495 |
| B. Contractor Fraud..... | 498 |
| VI. Use of Procurement for Industrial or Social Objectives..... | 499 |
| VII. The Pandemic as a Catalyst for Procurement Reforms | 500 |
| VIII. Reflections | 501 |
| 21. <i>Emergency Procurement and Responses to COVID-19: The Case of China</i> | 503 |
| Ping Wang and Ke Ren | |
| I. General Introduction | 503 |
| II. Introduction to the Regulatory Framework..... | 505 |
| III. Current Provisions on Emergency Procurement of New Requirements | 507 |
| A. Emergency Procurement Exclusion in the Tendering Law and Government Procurement Law | 508 |

| | | |
|-------|--|------------|
| B. | Meeting Emergency Needs under Laws and Regulations on Handling of Emergencies and Infectious Disease Control..... | 510 |
| i. | Emergency Response Law..... | 511 |
| ii. | State Council Regulation on the Handling of Public Health Emergencies | 512 |
| iii. | Law on the Prevention and Treatment of Infectious Diseases | 512 |
| iv. | National Public Emergency General Response Plan and National Response Plan for Public Health Emergencies | 513 |
| C. | Ministry of Finance Secretariat Notice on Facilitating Procurement Related to COVID-19 Prevention and Control..... | 513 |
| D. | Local Measures on Emergency Procurement..... | 515 |
| i. | Gansu Province: Interim Measure on Administration of Emergency Government Procurement 2010 | 515 |
| ii. | Shandong Province: Interim Measure on the Administration of Emergency Government Procurement 2009, Repealed in 2018..... | 517 |
| iii. | Sub-Provincial Level Rules..... | 517 |
| E. | Logistical Support Related to COVID-19..... | 518 |
| F. | Modification of Existing Contracts to Meet New Requirements..... | 518 |
| IV. | Modification of Contract Award Procedures and Existing Contracts to Adapt to the Pandemic..... | 519 |
| V. | Security of Supply and Contractor Fraud..... | 520 |
| VI. | Use of Procurement for Industrial or Social Objectives ('Horizontal' or 'Collateral' Policies)..... | 521 |
| VII. | The Pandemic as a Catalyst for Procurement Reform..... | 521 |
| VIII. | Reflections | 523 |
| 22. | <i>Emergency Procurement and Responses to COVID-19 in Africa: The Contrasting Cases of South Africa and Nigeria.....</i> | <i>525</i> |
| | Geo Quinot, Sope Williams-Elegbe and Kingsley Tochi Udeh | |
| I. | General Introduction | 525 |
| II. | Procuring for COVID-19 in South Africa | 527 |
| A. | Introduction to the Regulatory Framework in South Africa..... | 527 |
| B. | Procurement of New Requirements | 528 |
| i. | Frameworks..... | 529 |
| ii. | Emergency Procurement Rules and Centralisation..... | 530 |

- iii. Expansion of Existing Contracts.....533
 - iv. Remedies.....534
 - C. Modification of Contracts to Adapt to the Pandemic535
 - D. Security of Supply and Contractor Fraud536
 - i. Protecting Domestic Supply536
 - ii. Contractor Fraud536
 - E. Use of Procurement for Industrial or Social Objectives.....537
 - F. The Pandemic as a Catalyst for Procurement Reforms538
 - III. Procuring for COVID-19 in Nigeria540
 - A. Introduction to the Regulatory Framework in Nigeria.....540
 - B. Procurement of New Requirements.....541
 - i. Foreign and Corporate Involvement in the Pandemic542
 - ii. Procurement for the Pandemic under Local Laws543
 - iii. Remedies548
 - C. Modification of Contracts to Adapt to the Pandemic551
 - D. Security of Supply and Contractor Fraud551
 - i. Promoting and Protecting Domestic Supply.....551
 - ii. Contractor Fraud552
 - E. Use of Procurement for Industrial or Social Objectives.....553
 - F. The Pandemic as a Catalyst for Procurement Reforms553
 - IV. Reflections.....554

PART 6
BEYOND THE PANDEMIC

- 23. *Emergency Procurement: The Role of Big Open Data*.....559
Mihaly Fazekas and Alfredo Hernández Sánchez
 - I. Introduction.....559
 - II. Transparency, Big Data and Public Procurement Outcomes.....561
 - III. The COVID-19 Challenge and Changes to Transparency Regimes565
 - IV. The COVID-19 Challenge and Weaknesses of Data Systems.....570
 - V. Lessons573
- 24. *The Experiences and Lessons of the COVID-19 Pandemic: Public Procurement Regulation in (a) Crisis?*.....575
Sue Arrowsmith and Luke RA Butler
 - I. Exploring the Experiences and Lessons of the Pandemic575
 - II. Application of Traditional Regulatory Frameworks to Emergency Situations.....576
 - III. Regulatory Responses to Address the Pandemic.....583

| | | |
|-------|---|-----|
| IV. | Current Frameworks: Reflection and Evaluation | 590 |
| A. | General Observations | 590 |
| B. | Specific Issues | 592 |
| i. | Advance Planning | 592 |
| ii. | Specific Grounds for Direct Solicitation Methods in Times of Crisis..... | 593 |
| iii. | Use of (Direct) Competitive Approaches for Urgency..... | 594 |
| iv. | Supplier Lists..... | 595 |
| v. | Shortened Procedures and Other Adaptations..... | 596 |
| vi. | Contract Modifications to Obtain New Urgent Requirements | 596 |
| vii. | Information Transparency | 597 |
| viii. | Other Issues for Single-source Procurement..... | 599 |
| ix. | Remedies..... | 600 |
| x. | Cooperative Arrangements..... | 600 |
| V. | Building Resilience | 600 |
| VI. | Modifications to Existing Contracts to Adapt them to Emergencies | 603 |
| VII. | The Development Aid Perspective | 604 |
| VIII. | Public Procurement Reform: Impact and Lessons from the Pandemic..... | 608 |
| IX. | Public Procurement Regulation in (a) Crisis? | 614 |