

## Public procurement in response to the pandemic: conclusions of the Hellenic Court of Audit's pre-contractual audit

Pre-contractual audit

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[FULL REPORT \(EL\)](#)



[SUMMARY \(EN\)](#)



### What we assessed and why

Between 1 March 2020 and 10 November 2021, we carried out a pre-contractual audit of 246 public contracts related to the COVID-19 pandemic, totalling €441 680 176.

These contracts mainly concerned the procurement of the following: personal protective equipment (PPE); medical products and equipment (e.g. protective masks/clothing, antiseptic, biological sampling kits, molecular, rapid-antigen and self-tests, vaccine syringes and needles, equipment for intensive care units (ICUs)); ICU construction/refurbishment; IT systems for distance learning and teleworking in the public sector; urban buses/bus services allowing for social distancing of passengers.

The estimated value of each of the contracts audited exceeded €1 000 000, excluding VAT. We examined the legality of both the award procedures and draft contracts under EU and national public procurement law, and their compliance with the financial rules. However, we did not look into the contracting authorities' assessment of the appropriateness of awarding the individual supplies and services contracts.

### What we found

Due to the unforeseen and urgent need to respond to the pandemic, contracts were generally awarded following exceptional negotiated procedures without prior publication of a notice in the Official Journal of the EU. These exceptional procedures were usually introduced by special legislative acts derogating from national public procurement provisions.

We audited these contracts in accordance with the above-mentioned legislative acts supplementing Public Procurement Law No 4412/2016, which incorporates Directives 2014/24/EU and 2014/25/EU and lays down the procurement requirements where, in cases of unforeseen and urgent need that allow deviation from regular award procedures, the exceptional negotiated procedure without prior publication of a notice applies.

We found that the contracting authorities had published national calls both inviting any potential tenderers interested to take part in the procedures without having to meet disproportionate financial and technical criteria, and allowing preliminary rulings to be sought of the national





independent authority responsible. The authorities also operated a system of centralised approval of the quantities, financing, technical specifications and contract prices of PPE and medical devices.

At the same time, and in spite of the notices requiring that the products to be procured meet the relevant harmonised European technical standards (ENs), technical specifications either did not explicitly define the documentation required to certify that products met the EN standards, or did not even meet the actual standards themselves. Moreover, in several cases they were unclear as to the quality standard a manufacturer's products were required to meet.

## What we concluded

Thirteen of the contracts audited, totalling €3 392 361.70, were found to be affected by substantial legal shortcomings with regard to EU and/or national law and therefore were not signed.

We also concluded that there was no legal need for additional exceptional negotiated award procedures because the Public Procurement Law already provides for such an exceptional procedure in the event of unforeseen and urgent need. Nevertheless, this legal framework, together with centralised approval of the quantities, financing, technical specifications and contract prices of PPE and medical devices, and the possibility of implementing exceptional procedures derogating from the relevant national legislation, not only resulted in better planning and faster launch, but also allowed flexibility in the award procedures and ensured competition and better (more reasonable) prices.

However, it was not possible to derogate from the higher-ranking provisions of EU law regarding the right to seek judicial review of decisions reached under the exceptional award procedures. This led to the delay in finalising the award of many goods and/or services contracts.