

Audit report on emergency contracts managed by municipalities with populations greater than 300 000 to meet needs arising from measures to tackle the COVID-19 pandemic in 2020

Compliance and performance audit

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FULL REPORT (ES) 

What we assessed and why

The audit covers the 400 emergency contracts managed by municipalities with populations greater than 300 000 to meet needs arising from measures to tackle the COVID-19 pandemic in 2020.

The emergency procedure allowed contracting authorities to take any necessary action to respond to an emergency situation, address related needs, or freely conclude full or partial contracts within this context, without being bound by the formal requirements laid down in public procurement law or the requirement to keep a contract file. This is an absolutely exceptional procedure that limits the application of public procurement law in the COVID-19 context.

We considered auditing such emergency contracts to be a priority, given the inherent risks of these exceptional procedures with regard to the proper management of public funds.

What we found

1. Justification of the emergency procedure

We found contracts where the necessary justification for choosing the emergency procedure over the standard procedure was lacking, inadequate or insufficient, and other contracts where the procedure was legally justified, but flawed by weaknesses in contract management planning.

2. Preparation, award, formal conclusion and public announcement of contracts

For a few of the contracts we examined, there was no proof that sufficient credit was available, nor was there any evidence that the necessary action had been taken to make it available.

Many emergency contract awards were not announced publicly. Similarly, no notice of formal conclusion of some contracts with a value exceeding the legal threshold was published in the Official Journal of the European Union.





3. Performance and fulfilment of contracts

We found that the implementation of a significant number of contracts had started later than the legal limit of one month after the emergency contract conclusion.

For several contracts, there was no documentation of any formal act of acceptance or approval to certify that the contractor had provided all services in accordance with the terms of the contract, and to the contracting authority's satisfaction.

For most contracts, the contracting authority did not appoint a contract manager to oversee contract execution, and did not issue the necessary decisions and instructions to ensure proper delivery of the agreed service.

Many invoices were paid after the statutory 30-day time limit.

4. Adherence to the principles of good management

The contracting authority only verified that the successful bidder had the legal capacity to contract in 30 % of the examined contracts. Financial/economic standing, and professional/technical ability were only verified in 22 % of the examined contracts.

Competitive tender processes were conducted for only 19 % of the contracts examined.

What we concluded

All emergency contracts should state the reasons for resorting to the emergency procedure, rigorously demonstrating the existence of the specific circumstances required by law. Likewise, as good management practice, they should demonstrate that other procedures that limit competition would not be adequate to meet the unforeseen needs immediately.

Although there is no legal requirement to prepare procurement files for emergency contracts, measures laid down in law for the preparation, award and formal conclusion of contracts should be waived only where they are incompatible with immediately addressing the emergency. In particular, this relates to measures aimed at verifying that the successful bidder is capable of carrying out the work, and has the requisite financial/economic standing and professional/technical ability. If measures are to be waived, this should be duly justified by the contracting authority.

Without detriment to whatever immediate action may be necessary to remedy an emergency or address related needs, the terms of emergency contracts should be formalised in writing.

Except where the emergency is so great that formalising the emergency contract in writing could jeopardise its purpose, contracting authorities should request and obtain offers from different bidders and, where appropriate, negotiate the contract terms. Where possible, they should also obtain market reference prices for the goods or services being procured.