



**The procurement system established by the Ministry of Defence
and the procurements made during the emergency to limit the
spread of COVID-19**

Audit interim report

Rīga, 2020



Latvijas Republikas
Valsts kontrole

Audit interim report

The procurement system established by the Ministry of Defence and the procurements made during the emergency to limit the spread of COVID-19

30 July 2020

Financial audit “On the accuracy of the 2020 annual report of the Ministry of Defence”

The audit was performed on audit schedule No 2.4.1-10/2020 of the Second Audit Department of the State Audit Office of 27 April 2020 and Sub-paragraph c), Paragraph 3, Section 3 of the State Audit Office Law.

The cover design includes a photo from the website <http://depositphotos.com>, *Challenge success concept*, Author *georgejmlittle*, ID 58065143

Why have we drafted this Interim report?

Since International Standard on Auditing (ISA) 701, Communicating key audit matters in the independent auditor's report¹, the State Audit Office is required to assess the need to include key audit matters in the audit opinion on the financial statements.

For the purposes of those standards, key audit matters are matters that, in the auditor's professional judgment, are significant in the context of the audit of the financial statements of the reported period that one reports to the management of an audited entity and that have been the focus of the auditor's attention. There is no separate opinion on the key audit matters issued.

The information provided on key audit matters serves as additional information for potential users of the financial statements. It helps apprehend both matters that the auditor has identified as significant in the professional judgment and the audited entity and the areas where the management of the audited entity has made significant judgments while drafting the audited financial statements. This information may also serve as a basis for potential users to communicate further with the management of the audited entity about specific aspects of governance, audited financial statements, or audits performed.

The solidity and actual spending of the requests for additional funds allocated to address the consequences of COVID-19 are the key audit matter, which is crucial in all financial audits on the accuracy of the drafting of the annual consolidated financial statements for 2020 of the ministries and central governmental agencies.

In 2020, COVID-19 pandemic affected Latvia like the rest of the world. The Cabinet of Ministers adopted a decision on declaring a state of emergency on 12 March 2020, and the state of emergency continued until 9 June 2020². The extraordinary circumstances caused by COVID-19 affected the daily lives of the government, the public, and everyone both during and after the emergency. The new conditions required the ability to react and adapt quickly, as well as caused deviating from the usual order. Under the new conditions, the institutions should have been able to coordinate their activities more intensely and to co-operate with each other by avoiding legal formalism and the departmentalism to ensure the functioning of the state and the protection of each individual in emergency conditions³.

Overcoming the COVID-19 pandemic and dealing with its consequences have required significant funds from the state budget. Since the declaration of the state of emergency, the Cabinet of Ministers has made decisions in connection with overcoming the crisis caused by COVID-19 and eliminating its consequences on the allocation and reallocation of state budget funds for the implementation of basic functions for 806,907,224 EUR in total and has examined proposals for reallocation of funds for the implementation of projects and measures co-financed by European Union policy instruments and other foreign financial assistance for 496,000,000 EUR⁴. The State Audit Office pays special attention to assessing the spending of state budget funds allocated for overcoming the COVID-19 pandemic, preventing, and mitigating its consequences.

On 2 April 2020, the Cabinet of Ministers ordered the Ministry of Defence to take over the management of crisis-related state material reserves and perform procurements centrally in

accordance with the amount of goods specified in the list of priority institutions and needs⁵ further on. In order to ensure the purchase of goods intended for this purpose, the Cabinet of Ministers decided on the allocation of the financing of 45 million euros to the Ministry of Defence (National Defence Military Facilities and Procurement Centre) (hereinafter referred to as the Centre) on 21 April 2020 and that the Ministry of Defence should prepare a report on the use of the allocated funding within three months after the end of the emergency⁶.

In order to provide information on the key audit issue raised in the financial audit “On the accuracy of the 2020 annual report of the Ministry of Defence”, *id est*, the actual spending of the additional funds allocated to eliminate the consequences of COVID-19, the State Audit Office performed an audit and drafted this interim report.

In order to assess the adequacy of the allocated funding spent, it is first necessary to understand and assess the system within which those purchases have been made, *i.e.*, the procurement procedures in the Ministry of Defence and whether they complied with legal regulations, good practices, and emergency circumstances. This is crucial because those purchases were initiated at a time when a state of emergency was declared in the country and deviations from the usual practice in organising procurement might be allowed. Besides, centralised procurement for non-defence institutions and their supply are a new function of the Ministry of Defence and the Centre and co-operation with the institutions of the Ministry of Economics, the Ministry of Health, and the Ministry of the Interior takes place in this process. It is significant to point out that the procedure for organising centralised procurement established by the Ministry of Defence⁷ up to now for the needs of the sector has not been applied in those circumstances while procuring to eliminate the consequences of COVID-19.

There is an interim report drafted during the audit on the procedure for organising procurements for the centralised purchase of reserves of personal protective equipment and disinfectants established in the Ministry of Defence. This interim report covers the activities carried out in the period from 2 April 2020 to 9 June 2020, that is, the takeover of the management of crisis-related state material reserves and centralised procurement from the Ministry of Health, the definition of emergency procurement procedures, and procuring itself. Following this interim report, the State Audit Office will also report on how the management of crisis-related state material reserves is ensured, including identification of types and quantities of material and technical resources required, and whether a reserve of personal protective equipment and disinfectants has been established for at least three months in accordance with the order of the Cabinet of Ministers⁸.

Summary

From April 2, the management of the state material reserves of personal protective equipment and disinfectants related to the COVID-19 crisis is the task of the Centre subordinate to the Ministry of Defence. The Centre must procure centrally in accordance with the quantities of goods specified in the list of priority needs of the institutions, as well as ensure the storage and write-off of the purchased goods after their delivery. For procuring related to the COVID-19 crisis centrally, the

Cabinet of Ministers decided on the allocation of the financing totalling to 45 million euros to the Ministry of Defence (the Centre) on 21 April 2020.

In order to fulfil the task specified in Cabinet Order No 103⁹ on centralised procurement of personal protective equipment and disinfectants, the Centre has concluded 29 contracts for the total amount of 38.9 million euros and has paid 5.3 million euros for the goods delivered during the emergency from 2 April to 9 June 2020. As of the date of this interim report on June 30, the centre has paid 15.1 million euros or approximately one third of the available funding of 45 million euros for the delivered goods.

When drafting the interim report during the audit, the following was assessed:

- (1) Whether the centralised procurement procedure established in the Ministry of Defence for application in the emergency situation complies with the legal framework and the practice recommended by the designated authorities;
- (2) Whether the centrally procured personal protective equipment and disinfectants by the Ministry of Defence comply with the centralised procurement procedure and legal framework established in the emergency.

The procedure for centralised procurement established in the Ministry of Defence during the emergency without applying the Public Procurement Law comply with the interinstitutional cooperation algorithm specified in the order¹⁰ of the Cabinet of Ministers of April 2 for organising the purchases of personal protective equipment and disinfectants, as well as recommendations¹¹ of the European Union and competent national institutions for the actions of extreme urgency and emergency in all essential respects.

At the same time, the auditors have not obtained sufficient confidence that the procedures originally established were applicable without change throughout the period of the emergency, i.e., still in May and June 2020, when the situation in terms of epidemiological safety stabilised in Latvia and the supply of at least part of the required goods on the market increased.

The auditors believe that the procurement process introduced by the procedure¹² approved by the Ministry of Defence on 17 April 2020 is substantially similar to the negotiation procedure provided for in the Public Procurement Law, where the contracting authority consults with the suppliers of its choice and negotiates the terms and conditions of the procurement contract¹³ with one or more of them, and defines the minimum requirements for the submission of tenders (they are not regulated by law) which usually include several rounds. The qualification of tenderers is selected initially, and then the selection of tenders is carried out under the requirements specified by the contracting authority.

The audit findings show that at the beginning of the emergency, when the local, regional, and global markets experienced a decline in the supply of personal protective equipment and disinfectants, the procurement process was accelerated by achieving results in a short time by receiving information on suppliers from the National Health Service on April 6 and concluding contracts on the purchase

of face masks and respirators on April 9. However, the actions taken and the decisions made in organising those procurements were not documented and therefore the auditors could not trace them. In its turn, from April 17, in accordance with the procedure¹⁴ approved by the Ministry of Defence, centralised procurement of personal protective equipment and disinfectants was performed, maintaining the procedures typical of the Public Procurement Law, such as formation of procurement commissions, process documentation, drafting of procurement-specific documentation like an application, a description of technical and financial offer, the form of the said offers, a technical specification, a draft contract, etc. As a result, procurement processes after 17 April can no longer be considered 'preferential', they turned to be difficult to administer and relatively long lasting, as evidenced by the fact that contracts for the supply of goods were concluded within 15 to 30 or even more days since initial selection of tenderers.

Not in all the cases of assessed procurements, the auditors have obtained sufficient confidence that the actions of designated authorities while handling the state budget funds have complied with the principles of economy and effectiveness¹⁵. Deviating from the most economically advantageous tender (taking into account price or cost, and quality criteria related to the subject of the procurement contract) due to non-application of the Public Procurement Law could have been permissible in a situation where the supply of personal protective equipment and disinfectants was limited on the market and the factors associated with the security of supply were paramount. At the end of the emergency in May, the range of goods submitted to the Ministry of Defence increased significantly in at least some of the product categories. However, even with the significant expansion of the range of suppliers, the Ministry of Defence did not change the procurement procedure, although it continued to receive new offers in parallel with one procurement, which was already moving towards contracting, including *prima facie* bids that are more advantageous. As in some cases¹⁶ (e.g., disposable masks, medical gloves), not all tenders submitted at the time of the contracting were subject to a detailed assessment, one cannot be assured that the contract was awarded to a tenderer who was able to offer the lowest price at the time for the same quantity and quality of goods and identical delivery conditions. In addition, as the procurement lingered, the price initially offered by the tenderer selected for further cooperation at the end of the procurement could change significantly (for example, the price of medical, disposable, sterile, non-powdered gloves initially offered at 0.31 euro per piece (pair) on May 5 increased to 0.89 euro on May 14), which was also a considerable factor to ascertain whether other tenderers could offer the goods in question in the required quantity at the time of contracting. In the opinion of the auditors, the Ministry of Defence had to react and change its approach as the situation stabilised by returning to the most economically advantageous offer, taking into account price or costs and quality criteria related to the subject of the procurement contract already in the selection of tenderers.

In accordance with the decisions adopted by the Crisis Management Council on 4 February 2020¹⁷, by the Government on March 3 and March 14, and by the Parliament on March 16¹⁸, state and municipal institutions implementing the measures for epidemiological security and other emergency measures had the right to apply the exception specified in Paragraph 8, Section 3 of the Public Procurement Law in the event of extreme necessity, which means that the Public Procurement Law is not applied. Non-application of the Public Procurement Law means that there is no need to apply the procedures, deadlines, rules, etc. specified in this Law and that one can base procurement process on rapid and urgent action by subordinating the action to the circumstances of the emergency.

One should note that in a crisis situation, when the local, regional, and global markets experienced a decline in the supply of personal protective equipment and disinfectants, the principles set out in the Public Procurement Law¹⁹: 1) openness of procurement; 2) free competition of suppliers and equal and fair treatment of them; 3) the efficient use of the funds of a contracting authority by minimizing its risk, as well as the application of the most economically advantageous tender criterion (taking into account price or costs and quality criteria related to the subject of the procurement contract) might not be implemented, as provision of the goods required for preventing the spread of the virus infection as fast and possible was of crucial importance.

However, the non-application of the Public Procurement Law does not release or abolish the scope of rights and obligations of the public sector for the handling of budget funds and property²⁰. Officials must still comply with all applicable laws and regulations, including the Law on the Prevention of Waste of the Funds and Property of a Public Entity, the Law on the Prevention of Conflicts of Interest in the Activities of Public Officials, the Law on International and National Sanctions of the Republic of Latvia, and other laws and regulations.

Thus, without applying the Public Procurement Law, the contracting authority had to establish a system that would prevent risks related to the potential conflicts of interest, inefficient handling of state budget funds, and other undesirable and inappropriate actions of the public sector. It means that one may not lack documented and traceable assessment and understanding that the best tender or the most suitable tender for the essential interests of the state and public in this case must be selected even in the processes of “preferential procurement”.

Based on the audit findings, the auditors conclude that the procurement procedure introduced by the Ministry of Defence on 17 April 2020 complies with the algorithm²¹ established by the Cabinet of Ministers on April 2 for the institutions involved in the measures of epidemiological safety cooperate pursuant to their terms of reference while organising the purchases of personal protective equipment and disinfectants, that is, planning, acquisition, storage, and delivery, as well as complies with the recommendations²² of the designated authorities of the European Union and national level in all material respects. The European Commission has allowed Member States to apply a flexible approach to the purchases required in emergency and cases of extreme urgency by shortening procedural time limits, using restricted procedures, without imposing procedural restrictions, and even using hitherto unusual techniques such as communication by phone, e-mail or in person, etc. At the same time, the European Commission has indicated that one shall use derogations from

procurement procedures only based of urgency and causation with the extraordinary situation, as well as to address supply shortfalls until more stable solutions are found for the supply of the goods required for elimination of COVID-19 spread. In Latvia, the leading institutions in public procurement policy also envisaged preferential procuring²³ when publishing their guidelines.

The auditors consider that the emergency procurement procedure²⁴ established by the Ministry of Defence regarding process documentation keeps the procedures typical of the Public Procurement Law, such as formation of procurement commissions, process documentation, drafting of procurement-specific documentation like an application, a description of technical and financial offer, a tender form, a technical specification, a draft contract, etc. One also has planned to eliminate possible interest in the organisation of procurement for the involved individuals, including the experts²⁵ of the Consumer Rights Protection Centre and the Health Inspectorate, by signing a certification. In its turn, the circulation of information on the specially created website (www.mod.gov.lv/lv/COVID-19-iepirkumi) could replace the operation of the Procurement Monitoring Bureau and the Electronic Procurement System during the crisis, as topical information was regularly disseminated to economic operators. A representative of the Association “Society for Transparency Delna” participated in the meetings of the working groups, who had access to all documentation and information, starting with the tenders submitted by the tenderers.

With the escalation of the COVID-19 crisis, the demand for personal protective equipment grew rapidly in Latvia, similarly to other countries. In the early stages of the emergency, supply was hampered by the disruptions of supply chain and price spikes. The tenderer selection criteria developed by the Ministry of Defence corresponded to the current market situation, as the most important thing was to provide the goods of the classification determined for the critical needs of the state as soon as possible. In accordance with the procedure established by the Ministry of Defence, there were the following criteria determined in centralised procurement processes: the quantity of delivery, delivery time, product quality, delivery plan, and conditions (place of origin, type of delivery, supply chain, etc.) were assessed in the selection of the offer.

In the circumstances when one did not apply the Public Procurement Law, the auditors considered that all the necessary preconditions existed for the Ministry of Defence to adapt the established procedure flexibly to the changing situation, for instance, by reviewing tenderer selection criteria or the procedure for applying them as the situation stabilised in order to select the most appropriate offer in the major national and public interest in a specific case.

During the emergency, the central procurements of personal protective equipment and disinfectants were executed pursuant to the procurement procedure²⁶ established for this purpose in the Ministry of Defence. At the same time, the auditors have not obtained sufficient assurance that the initially established procurement procedure was applicable without any changes throughout the emergency, also in May and June, when the situation in Latvia stabilised and supply of at least some of the required goods increased in the market.

Not in all the cases of assessed procurements, the auditors have obtained sufficient confidence that the actions of designated authorities while handling the state budget funds have complied with the principles of economy and effectiveness²⁷. Deviating from the most economically advantageous tender (taking into account price or cost, and quality criteria related to the subject of the

procurement contract) could have been permissible in a situation where the factors associated with the security of supply were paramount and there was a limited supply of personal protective equipment and disinfectants on the market. However, the auditors believe that one could not ignore the fact anymore that the range of tenderers, which could offer the required goods, has significantly expanded as the situation stabilised and the arrangements should have been changed. For example, when assessing the contracts concluded on 27 May 2020 for the purchase of surgical masks and disposable medical gloves (sterile, non-powdered) in the final stage of the emergency, the auditors did not obtain confidence that they were concluded with a supplier who could offer the best price for the same quantity and quality of goods and equivalent delivery conditions at the moment. Between the selection of tenderers for the purchase of surgical masks²⁸ on May 6 and the conclusion of the contract on May 27, there were other 21 tenders submitted, which were not subject to assessment. Similarly, in the procurement of disposable medical gloves (sterile, non-powdered)²⁹ in the period from the selection of tenderers on April 9 to the conclusion of the contract on May 27, there were cooperation offers received from 14 other economic operators, who indicated the fact that they could supply disposable gloves together with other product categories. In this case, the tenderer selected for further cooperation offered a price of 0.31 euros per piece (pair) initially on 5 May 2020, which had increased to 0.89 euros at the time of contracting, but within the framework of a parallel procurement³⁰, there was even a specific offer of other tenderer received for an identical product of 0.36 euros per piece (pair) on May 14. Nevertheless, the obvious competition between the two tenderers did not affect the decision-making process and the conclusion of the contract for 0.89 euros per piece on May 27. One must note that the second tenderer was selected in a parallel procurement and the negotiations on the quantity and price of deliveries started on May 28. The offered price changed during the negotiations and the contract for the supply of medical disposable gloves (sterile, non-powdered) with the second tenderer for 0.54 euros per piece was concluded on 9 June 2020.

In the procurement process, the Ministry of Defence and the Centre faced problems common to most countries affected by the pandemic, such as problems in assessing the conformity and quality of goods when certified goods were not available on the market with the rapidly growing demand for goods and the terms and conditions dictated by a limited market in the early stages of an emergency. At the same time, local problems came to the fore: the continuing uncertainty over the needs of personal protective equipment throughout the emergency, uncertainty caused by the application of the procedure set by the Ministry of Defence, for example, in cooperation with the tenderers in a situation when the regulation of the Public Procurement Law was not applied.

Assessing the conformity and quality of goods

It was permitted to purchase goods to prevent further spread of COVID-19 that have not the conformity assessment procedure initiated or not fully completed and that do not bear the CE marking given that the goods are manufactured in accordance with applicable European standards or the technical specifications recognised by the World Health Organization, which provide corresponding level of safety as the applicable European standards. However, there were difficulties in applying the derogations set by the Cabinet of Ministers (and also the European Commission) in

assessing the conformity of goods in practice. When only the evidence provided by the suppliers proved to be insufficient for the conformity assessment, sending samples of the goods for testing to certified laboratories turned to be necessary. Although there are opportunities to test the air permeability of materials in Latvia, such tests are not comparable and cannot replace the tests of accredited laboratories for testing protective face masks and respirators. One should look for a solution outside Latvia, but laboratories were not immediately available there either.

The State Audit Office finds that when there are reasonable doubts about the conformity of goods with the set safety level, the lack of testing facilities at the national level could cause irreversible consequences, for example, if the crisis had developed according to the scenario foreseen on 16 March 2020 in Latvia, morbidity of the population would have been 0.25 % and 20% of all patients would have been hospitalised. Therefore, the State Audit Office appreciates the decision made by the Cabinet of Ministers in response to the problems identified in the Informative Report³¹ of the Ministry of Defence, which instructed the Ministry of Economics to assess the possibility of establishing an accredited testing laboratory in Latvia for testing medical devices and personal protective equipment. Due to the public prediction of a possible re-outbreak of COVID-19 in autumn and/or simultaneously with the beginning of the influenza season, both the assessment and the decision on the necessary action should follow as soon as possible.

Unclearly defined and constantly changing needs

The emergency caused by COVID-19 also highlighted the shortcomings of the Latvian decentralized civil protection system regarding the planning of the necessary state material reserves. At the time of drafting this report, the State Audit Office was not able to assess whether material reserves for at least three months had been established using the available funding. At the time of the emergency, there was no unambiguous clarity as to the amount of material reserves to be acquired by the institutions of the Ministry of Defence, nor as to which categories of goods were current priorities and in what order they should be procured. Therefore, the State Audit Office continues to assess the issue of planning of material reserves and the establishment of a three-month reserve and intends to draft a separate report on the findings thereof.

When the state of emergency was declared, there was not an approved State Civil Protection Plan in the country, as the previous plan expired on 1 August 2017. The classification of state material reserves also became invalid on 31 March 2020. The Ministry of Health, which was responsible for managing disasters related to human infectious disease epidemics, focused only on the personal protective equipment needs of the health sector initially and did not possess information on the overall needs in the country. It shows that the institutions responsible for disaster management might not have developed a sufficient understanding of the principles of planning state material reserves, while defining such principles and forming a common understanding would be the task of the State Fire and Rescue Service (SFRS), according to the auditors.

Although the SFRS has started to maintain a list of priority institutions and needs for limiting the spread of COVID-19 starting from 27 March 2020, the information submitted to the Ministry of Defence on the priority needs of institutions has been constantly changing until the end of the emergency. The types of goods and the quantities of purchases were not clearly defined, which generally complicated the planning and implementation of procurements. There were cases when

the Centre had to recalculate the total volume of the goods and contact the economic operators even at the contracting stage to make sure that tenderers would be able to provide a higher volume than initially set in the regulations of a specific procurement. The auditors could not trace the validity of changes in the volume of purchased goods in several cases, as this could not be deduced from the procurement documentation assessed during the audit. For example, why the quantity of FFP3 respirators to be purchased during the procurement (C19/IEG/2020-3) increased from 98,000 approved in the procurement regulations to 132,716 units or why the quantity of goods to be purchased in the category of medical disposable gloves (sterile, non-powdered) in one procurement (C19/IEG/2020-2) was 408,092 pairs, whereas it was already 2,354,000 pairs in the parallel procurement (C19/IEG/2020-3). Perhaps the amount of goods indicated in the procurement passports changed due to the changes in the amount of goods specified in the priority needs list of the SFRS, for instance, one needed 33,650 pairs of sterile gloves per week on 27 April 2020, 196,119 pairs per week on 6 May 2020, and 38,924 pairs per week on 18 May 2020.

The Cabinet Regulation³² has defined the categories and quantities of personal protective equipment and medical devices to be purchased on 13 June 2020. However, the SFRS and the Centre are still coordinating the agreement in July 2020 to be able to start procuring³³ reserves for the next three months and no new procurements will be made. At the same time, while analysing the inventory information of the centre's warehouse during the audit, one can conclude that a stockpile has been formed in the warehouse as of 18 June 2020 (for example, 9,842,180 face masks and 629,990 respirators). The auditors find that understanding other issues related to inventory management when planning purchases such as the impact of the regular turnover of inventories on the quantities to be purchased and how the restocking should take place is also crucial. The State Audit Office will inform about those matters in a separate report.

Uncertainties caused by the application of the procurement procedure established by the Ministry of Defence in the emergency

During the emergency until June 9, one can differentiate two phases in the procurement system established in the Ministry of Defence, where is a different situation regarding the requirements set for the procurement process and documentation.

Between 2 April 2020 and 16 April 2020

During this period, one had not defined any expected action for the exchange of information and documents both in the defence sector and for co-operation with other involved institutions, as well as for communication with economic operators on co-operation offers, on contracting with selected economic operators. On 9 April 2020, the Ministry of Defence concluded contracts with ADDI Trading PTE Ltd. for the purchase of disposable medical masks and with SIA Titled for the purchase of respirators by using the information provided by the National Health Service regarding suppliers, description of goods, quantity, and price offer. Decisions made by the Ministry of Defence in connection with the contracts concluded on April 9 cannot be traced because they are not documented. As explained by the Ministry of Defence, the purchase had to take place as quickly and urgently as possible, so negotiations with suppliers and coordination of delivery conditions took place by phone. The fact that contracts for the supply of goods have been concluded within a few days (April 9) since receiving the information from the National Health Service (April 6)

characterises urgency in decision-making. Although the decision-making process and negotiations with economic operators have not been documented until the day of contracting, the Legal Department of the Ministry of Defence has prepared reports to the Deputy State Secretary of the Ministry of Defence on security issues on the day of concluding the contract with SIA Titled on 9 April 2020 and after the conclusion of the contract with ADDI Trading PTE Ltd. on 14 April 2020, which include information on activities done during the procurement process, such as information on inspection of economic operators regarding tax debts and sanctions lists, solutions for value added tax and customs procedures, delivery time of goods, etc.

Between 17 April 2020 and 9 June 2020

The procedure set by the Ministry of Defence took effect on 17 April 2020. The auditors consider that the procurement process implemented based on the approved procedure is essentially similar to the negotiation procedure provided for in the Public Procurement Law, where the contracting authority consults with suppliers of its choice and negotiates the terms of the procurement contract with one or more of them³⁴. The stipulated procedure³⁵ is used in exceptional circumstances unforeseen for the contracting authority, when applying an open tender, a closed tender, or a negotiated procedure is impossible due to urgency and the contracting authority sets the minimum requirements for submitting tenders itself (not regulated by law) and usually involves several rounds. The qualification of tenderers is selected initially, and then the selection of tenders is carried out under the requirements specified by the contracting authority.

In accordance with the procedure established by the Ministry of Defence, the selection of tenderers from 17 April to 9 June (i.e., until the end of the emergency) took place in two rounds by focusing on whether the supplier would be able to meet the criteria set in relation with the quantity of goods, safety of delivery/ quantity of the goods available, and the submission of the required documents (for example, whether an economic operator has submitted information that could certify the conformity of goods with the certification requirements, has indicated information regarding costs) during the initial selection of the tenderers. The prices offered by tenderers were assessed in the second assessment round by inviting the selected tenderers to submit specific financial and technical tenders.

The information assessed during the audit leads to the conclusion that the purchase of personal protective equipment and disinfectants in the defence sector takes place within the framework of one large and continuous procurement, which has several runs, and takes place almost simultaneously in addition. Such a process is difficult to administer. By June 9, the Ministry of Defence had received 711 cooperation offers from 324 economic operators. The Ministry of Defence considered all cooperation offers received from economic operators valid for the entire period of the procurement. It devoted considerable administrative resources to the processing of the submitted tenders to meet the set documentation requirements and to assess the tenderers and tenders. At the beginning of the respective run (in order to purchase specific goods), one compiled the cooperation offers of economic operators received on a certain date, which were evaluated in the manner described above (in two stages). For example, they selected tenderers who had submitted

cooperation tenders by April 8 for the first procurement of disinfectants, whereas they selected tenderers who had submitted cooperation tenders by May 6 for the procurement of surgical masks.

As the Ministry of Defence maintains the procedures typical of the Public Procurement Law regarding the documentation of the process, the procurement procedures cannot be considered as fast and “preferential”. For example, the first selection round of procurement C19/IEG/2020-1 of disinfectants was completed on 9 April 2020, the procurement passport was prepared on April 15 and sent to the Centre to start the second selection round, while contracts with economic operators were concluded on April 24. In other cases, the procurement process has been even longer, for instance, SIA Brief sent a tender offer for personal protective equipment to the Ministry of Defence on April 2, the working group of the Ministry of Defence selected the tenderers on April 9, the procurement passport was prepared on April 23 and sent to the Centre to start the second selection round. The Centre sent an invitation to SIA Brief to submit a tender in procurement C19/IEG/2020-2 on April 29, which submitted a tender to the Centre on May 5, and they signed a contract for the supply of medical gloves on May 27.

It is possible that the condition of a causal link between the unforeseen event and extreme urgency remained unchanged as the situation stabilised, which was the main reason for deviations from usual procurement practices in the exceptional circumstances caused by COVID-19 resulting in the fact that procuring with the exception provided for in the Public Procurement Law on its non-application was not proportionate to the actual situation anymore.

One must take into account that the actions of public sector with state budget funds are still subject to the applicable laws and regulations during the emergency, which determine the compliance of actions with state budget funds with the principles of effectiveness and economy, namely, the Law on Budget and Financial Management, the Law on the Prevention of Waste of the Funds and Property of a Public Entity, etc.

The auditors find that it was necessary to react and change the approach as the situation stabilised by returning to the most economically advantageous tender (taking into account price or cost and quality criteria related to the subject of the procurement contract). The procedures of the Ministry of Defence could have been adapted to the situation, for example, by continuing the application the current procedure to goods where supply was still limited, while applying the Public Procurement Law to goods where supply already exceeded demand to achieve the goal of economical and efficient use of funds while procuring. However, it did not happen.

In the final stage of the emergency in May and early June, the supply of goods submitted to the Ministry of Defence increased significantly in at least some of the product categories. Nevertheless, the Ministry of Defence did not change the procurement procedure even with the significant expansion of the range of tenderers and *prima facie* more advantageous price bids received in parallel with the procurement at the stage of contracting. Due to the fact that not all tenders submitted at the time of the contract were subject to a detailed assessment in specific cases³⁶ such as disposable face masks and medical gloves (sterile, non-powdered), there is no confidence that the contract was awarded to a tenderer offering the lowest price for the same quantity and quality of goods at that time and equivalent supply conditions. According to the auditors, as the situation stabilised, one required to react and change the approach by returning to the most economically

advantageous tender and taking into account the price or cost and the quality criteria related to the subject of the procurement contract.

The website of the Ministry of Defence (www.mod.gov.lv/covid-19-iepirkumi) was created and launched on April 3 to ensure the openness and accessibility of the procurement system established during the emergency to all interested parties. It updated the amount and content of information dynamically on a daily basis and published the information on the assessment criteria for tenderers. However, no information was available on the selection procedure initially, that is, how those criteria would be applied, that there were several selection rounds, and what would happen in each of the rounds, etc. As it had been publicly stated that the Public Procurement Law would not be applied to speed up the procurement process, it was probably difficult for the economic operators, which submitted cooperation tenders, to imagine that the procurement process was just as complicated and lengthy due to administrative procedures. Uncertainty about the course of the process could give the impression of dishonesty on the part of the institutions.

When applying the procedure established by the Ministry of Defence, in parallel with one procurement run, which was already moving towards contracting, the next run for the purchase of the same goods took place, as well as economic operators continued to send offers for the same goods. A tenderer who was not included in one procurement run could be included in the next run. The Ministry of Defence had not intended to compare the bids of the tenderers received in each of the procurement runs occurring in parallel (current bids, the second selection round), so the finding that the contract was concluded with a tenderer at a higher price than other tenderer offered at the time of concluding the contract could confuse anybody. The auditors have not obtained sufficient assurance either that a tenderer has been selected in such a process in all cases, who was able to offer the goods in question in the required quantity and quality at the most favourable price at the time (at the time of contracting). Although the procurement process is described in detail and is essentially similar to the procedure set out in the Public Procurement Law for documentation from April 17, the auditors had difficulties in understanding and tracking what was happening, as they had to assess all the procurement runs happening simultaneous, which included the same categories of goods, the same tenderers, whose tender changed depending on the date of submission of the tender and the quantities of goods requested.

Recommendations and proposals of the State Audit Office

The audit provides a recommendation whose implementation shall improve the centralised procurement procedure in the Ministry of Defence so that the criterion of the most economically advantageous tender will be used (taking into account price or cost and quality criteria related to the subject of the procurement contract) as much as possible to select tenders and the procedure for cooperation and exchange of information with tenderers will be reviewed by keeping the exception to the Public Procurement Law in accordance with the Law on the COVID-19 Infection Spread Management.

At the same time, the State Audit Office considers that the possibility of returning to the application of the Public Procurement Law in the procurement of personal protective equipment and medical

devices intended to limit the spread of COVID-19 infection should be assessed if the supply of goods in the market increases and exceeds demand by assessing the risks of epidemiological safety and the urgency of the related purchases. Upon concluding the inspection of the procurements performed during the emergency, the State Audit Office shall submit its proposals to the Cabinet of Ministers.

References

- ¹ The International Organisation of Supreme Audit Institutions (INTOSAI) also uses International Standards on Auditing for the financial audits, hence the latter are binding on the State Audit Office, which conducts audits in accordance with international standards on public sector auditing.
- ² Cabinet Order No 103 “On Declaring a State of Emergency” of 12 March 2020.
- ³ Communication of the President of Latvia No 8 “Basic Principles of Activities of State Constitutional Bodies in an Emergency Situation” of 23 March 2020.
- ⁴ Informative report of the Ministry of Finance on reallocation of the financing from the EU Structural Funds and the Cohesion Fund and solutions for mitigating the consequences of COVID-19, reviewed by the Cabinet Meeting on 19 May 2020.
- ⁵ Cabinet Order No 157 of 2 April 2020 “Amendments to the Cabinet Order No 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020).
- ⁶ Cabinet Order No 220 of 27 April 2020 “On the Allocation of Financial Funds from the State Budget Program “Contingency Funds”” (Minutes No 26, § 40).
- ⁷ Rules No 19-NOT of the Ministry of Defence of 21 June 2019 “Procurement Organisation Procedure of the Ministry of Defence”, Rules No 19-NOT of 13 September 2017 “Procedures for Development of Procurement Plans and Organisation of Procurement”.
- ⁸ Cabinet Order No 157 of 2 April 2020 “Amendments to the Cabinet Order No 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020) and Cabinet Regulation No 380 of 9 June 2020 “Regulations regarding the resources necessary for ensuring epidemiological safety for the institutions included in the list of priority institutions and needs” (valid from 13 June 2020).
- ⁹ Sub-paragraph 4.54³ of Cabinet Order No 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020) in the wording in force from 2 April 2020.
- ¹⁰ Cabinet Order No 157 of 2 April 2020 “Amendments to the Cabinet Order No 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020).
- ¹¹ European Commission Communication of 1 April 2020 “European Commission’s guidance on how to use public procurement regulation in the event of a COVID-19 crisis emergency (2020/C 108 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401(05)), viewed on 21 April 2020; the Guidelines for Procurement during an Emergency drafted by the Ministry of Finance and the Procurement Monitoring Bureau on 29 April 2020 (https://www.iub.gov.lv/sites/default/files/upload/Vadlinijas_arkartas_apst_202004292.pdf), viewed on 6 May 2020.
- ¹² Order of the Minister of Defence No 70-P of 17 April 2020 “On Procurement Procedures in an Emergency Situation” (valid until 9 June 2020).
- ¹³ Paragraph 30, Section 1 of the Public Procurement Law.
- ¹⁴ Order of the Minister of Defence No 70-P of 17 April 2020 “On Procurement Procedures in an Emergency Situation” (valid until 9 June 2020), Order of the Minister of Defence No 60-P of 3 April 2020 “On the Establishment of the Working Group for the Centralised Procurement of State Reserves” (valid until 9 June 2020).
- ¹⁵ Section 46.1 of the Law on the Budget and Financial Management, Section 3 of the Law on the Prevention of Waste of Funds and Property of a Public Entity.
- ¹⁶ Contract of 28 May 2020 No COVID/Pr/2020-10. Surgical mask Type I (NE 14683), 7,430,000 pcs. and Surgical mask Type IIR (EN 14683), 386,000 pcs., contract of 5 June 2020 No COVID/Pr/2020-18 for the supply of face masks and respirators in an emergency (COVID).
- ¹⁷ Item 5 of the minutes of the sitting of the Crisis Management Council of 4 February 2020 (minutes No 1, § 1).
- ¹⁸ Cabinet Order No 79 of 3 March 2020 “On Allocation of the Financial Funds from the State Budget Program “Contingency Funds””, Cabinet Order No 105 of 14 March 2020 “Amendments to Cabinet Order No. 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020); the extraordinary sitting of the Saeima on 16 March 2020 approved the decision of the Cabinet of Ministers to impose additional measures to prevent the prevalence of COVID-19 during the validity of the emergency situation, (https://titania.saeima.lv/LIVS13/saeimalivs_lmp.nsf/0/D9A41A9ADC804682C225852D0033679C?OpenDocument), viewed on 4 June 2020.
- ¹⁹ Section 2 of the Public Procurement Law.
- ²⁰ In support of the Government’s decision, the Corruption Prevention and Combating Bureau and the Procurement Monitoring Bureau call on the authorities to apply both laws as far as possible in an emergency by changing only aspects of certain procedures as necessary, such as shortening the deadlines for the submission of tenders. For supporting institutions in preventing the risks of corruption and conflict of interest, the Corruption Prevention and Combating Bureau has developed recommendations for procurement during an emergency situation in cooperation with the Procurement

Monitoring Bureau. Both authorities encourage the application of the Public Procurement Law as much as possible, as well as the inclusion of officials of various institutions of the public entity in the composition of the procurement commission, (<https://skaties.lv/zinas/latvija/knab-vaditajs-gribetu-skaidraku-regulejumu-publiko-iepirkumu-rikos-anai-arkartejas-situacijas/>), viewed on 10 April 2020.

²¹ Sub-paragraph 1.5 of Cabinet Order No 157 of 2 April 2020 “Amendments to the Cabinet Order No 103 of 12 March 2020 “On Declaring a State of Emergency” (valid until 9 June 2020).

²² European Commission Communication of 1 April 2020 “European Commission’s guidance on how to use public procurement regulation in the event of a COVID-19 crisis emergency (2020/C 108 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401(05)), viewed on 21 April 2020; the Guidelines for Procurement during an Emergency drafted by the Ministry of Finance and the Procurement Monitoring Bureau on 29 April 2020 (https://www.iub.gov.lv/sites/default/files/upload/Vadlinijas_arkartas_apst_202004292.pdf), viewed on 6 May 2020.

²³ European Commission Communication of 1 April 2020 “European Commission’s guidance on how to use public procurement regulation in the event of a COVID-19 crisis emergency (2020/C 108 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589535358624&uri=CELEX:52020XC0401(05)), viewed on 21 April 2020; the Guidelines for Procurement during an Emergency drafted by the Ministry of Finance and the Procurement Monitoring Bureau on 29 April 2020 (https://www.iub.gov.lv/sites/default/files/upload/Vadlinijas_arkartas_apst_202004292.pdf), viewed on 6 May 2020.

²⁴ Order of the Minister of Defence No 70-P of 17 April 2020 “On Procurement Procedures in an Emergency Situation” (valid until 9 June 2020), Order of the Minister of Defence No 60-P of 3 April 2020 “On the Establishment of the Working Group for the Centralised Procurement of State Reserves” (valid until 9 June 2020).

²⁵ Interdepartmental Agreement No 64/AM/2020 of 14 April 2020 “On Cooperation in the Process of Document and Cargo Conformity Assessment in the Central Procurement of State Reserves during an Emergency Situation” and Interdepartmental Agreement No 62/AM/2020 of 17 April 2020 “On Cooperation in the Process of Document and Cargo Conformity Assessment in the Central Procurement of State Reserves during an Emergency Situation”.

²⁶ Order of the Minister of Defence No 70-P of 17 April 2020 “On Procurement Procedures in an Emergency Situation” (valid until 9 June 2020), Order of the Minister of Defence No 60-P of 3 April 2020 “On the Establishment of the Working Group for the Centralised Procurement of State Reserves” (valid until 9 June 2020).

²⁷ Section 46.1 of the Law on the Budget and Financial Management, Section 3 of the Law on the Prevention of Waste of Funds and Property of a Public Entity.

²⁸ Procurement C19/IEG/2020-3.

²⁹ Procurement C19/IEG/2020-2.

³⁰ Procurement C19/IEG/2020-3.

³¹ Informative Report of the Ministry of Defence “On the Existing Challenges of Quality Testing of Personal Protective Equipment in Centralised Purchases of Personal Protective Equipment”, reviewed by the meeting of the Cabinet of Ministers on 12 May 2020, minutes of the meeting No 32, 39.§.

³² Section 13 of Cabinet Regulation No 380 of 9 June 2020 “Regulations regarding the resources necessary for ensuring epidemiological safety for the institutions included in the list of priority institutions and needs” (valid from 13 June 2020).

³³ Information provided by the Provision and Defence Investment Policy Department of the Ministry of Defence on 3 July 2020.

³⁴ Section 30.1 of the Public Procurement Law.

³⁵ Section 8.7.3 of the Public Procurement Law.

³⁶ Contract of 28 May 2020 No COVID/Pr/2020-10. Surgical mask Type I (NE 14683), 7,430,000 pcs. and Surgical mask Type IIR (EN 14683), 386,000 pcs., contract of 5 June 2020 No COVID/Pr/2020-18 for the supply of face masks and respirators in an emergency (COVID).