



Department of Legislative Services
Office of Legislative Audits

Review of Certain Emergency Procurements Related to the State of Maryland's COVID-19 Response

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Legislative Requests and Hotline Allegations

- In June 2020, the chairs of the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees requested that the Office of Legislative Audits conduct a review of the emergency procurements awarded to LabGenomics for COVID test kits and Blue Flame Medical, LLC for medical supplies.
- We also reviewed the termination of one employee associated with the LabGenomics tests that was identified in an allegation received through our fraud, waste, and abuse hotline and another employee noted by the Joint Audit and Evaluation Committee.
- Finally, we reviewed concerns raised in the aforementioned allegation regarding the accuracy of test results for samples collected at Towson University that were reported by the University of Maryland Pathology Associates (UMPA) laboratory when using a second set of test kits obtained from LabGenomics.



Initial Review

- We conducted our initial review from September 11, 2020 through January 29, 2021 and issued our report on March 31, 2021 which noted the following:
 - The test kits were not procured in accordance with State procurement regulations, and the absence of documentation to support critical decisions regarding the procurement, cost, and validity of the tests.
 - The justification for the termination of the employees was not supported.
 - We were unable to account for and corroborate the concerns with the reliability of test results since our requests for these records were initially denied and access was not provided with sufficient time to be included in our initial report.
- During our review we identified numerous other COVID related emergency procurements procured and monitored by various State agencies.



Current Review

Due to difficulties and delays in obtaining documentation, and the identification of numerous other COVID emergency procurements, we decided to include the review of the Blue Flame Medical, LLC procurement as part of a separate broader review of COVID emergency procurements during which we would also review the information received on the use and reliability of the test results.

Accordingly, the objectives of our current review were to:

1. Assess the procurement and accountability of certain emergency procurements associated with the State's COVID-19 response; and
2. Account for the number of LabGenomics test kits used and corroborate the allegation regarding concerns with the accuracy of test results received for samples collected at Towson University.



Current Review

- Our current review identified 848 emergency procurements totaling \$1.7 billion related to the State of Maryland's COVID-19 response. These emergency procurements were conducted by 19 State agencies during the period between March 2020 and May 2021.
- We reviewed 15 of these procurements including the Blue Flame Medical, LLC purchase and 14 other emergency procurements totaling \$232.8 million conducted by the following 6 agencies:
 - Department of General Services (DGS)
 - Department of Public Safety and Correctional Services (DPSCS)
 - Department of State Police (DSP)
 - Maryland Department of Environment (MDE)
 - Maryland Department of Health (MDH)
 - Maryland Emergency Management Agency (MEMA)



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Emergency Procurements Selected for Review

Procuring Agency	Using Agency	Vendor	Description of Good or Service	Purchase Price
MDH	MDH	CIAN Diagnostics Inc.	Laboratory testing services	\$54,795,961
DGS	MDH	Vanguard LED Display, Inc.	1,107 ventilators	42,066,000
DGS	MDH	Two Canoes, LLC	5.0 million isolation gowns	41,250,000
DGS	MDH	Vizient, Inc.	Medical supply chain and materials handling services at State supported field hospital locations	40,000,000
MDH	MDH	Ernst & Young, LLP	Consulting services related to the COVID-19 Vaccine Program	25,046,140
DGS	MDH	Coast to Coast Strategies, LLC.	5.0 million KN95 masks	14,000,000
DGS	MDH	Blue Flame Medical, LLC	1,550,000 N95 masks and 37 ventilators	6,271,000
DGS	MDH	Design Co., Ltd	2.0 million KN95 masks	3,280,000
DGS	MDH	Economy Kanghwa Co., Ltd	1.0 million KN95 masks and 1.0 million surgical masks	2,350,000
DGS	MEMA	Hagerty Consulting	Disaster response consulting services and additional staffing	1,500,000
MDE	MDE	Inspection Experts, Inc.	Sampling of wastewater for COVID-19	1,053,000
MDE	MDE	CosmosID Inc.	Analysis of wastewater for COVID-19	826,680
DPSCS	DPSCS	Ellsworth Electric, Inc.	Electrical work at a temporary hospital site located at MCI - Hagerstown	181,736
DSP	DSP	White Star Sales and Promotions	Various personal protective equipment items	117,950
DGS	DGS	John S. Connor, Inc.	Consulting and logistical services for DGS procurements from overseas suppliers	50,000
Total				\$232,788,467



Emergency Procurement Overview

- State procurement regulations authorize agencies to procure goods and services using the emergency procurement method when faced with an emergency. An emergency is defined in regulation as *“a sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or to mitigate serious damage to public health, safety, or welfare.”*
- State procurement regulations include several requirements for emergency procurements, including:
 - a formal written contract;
 - obtaining as much competition as practicable;
 - notifying the Board of Public Works (BPW) of the procurement;
 - publicizing the award on *eMaryland Marketplace Advantage (eMMA)*; and
 - documenting the details of the procurement, including justification for the use of the emergency procurement and the basis for selecting the vendor.



Objective 1 – Summary of Results

In general, our review noted a lack of compliance with State regulations for emergency procurements and ineffective monitoring of the related payments. In addition, documentation was frequently not available to support that items purchased were inspected and the items' disposition.

- Eleven emergency procurements (valued at \$189.4 million) were not in compliance with one or more State procurement regulations. For example, three procurements lacked formal contracts and the contracts for eight procurements did not include all required provisions.
- Seven emergency procurements with payments at the time of our review totaling \$133.7 million were not effectively monitored. For example, the responsible agencies could not document that the services were received and that the payments were in accordance with the contracts for four procurements with \$25.5 million in payments.



Objective 1 – Summary of Results (continued)

- In general, documentation was not provided to support that personal protective equipment (PPE) items purchased were inspected to ensure the items provided met applicable requirements. Although the agencies that received the items advised that the items were visually inspected to ensure the items were undamaged, the agencies could not document any additional steps taken to verify that the items were legitimate (for example, that face masks met the technical specifications of an N95 or KN95 mask).
- We could not determine the disposition of certain items valued at approximately \$7.6 million purchased under five emergency procurements. For example, MDH lacked documentation that it received 2 million KN95 face masks for which it paid \$3,280,000.



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Objective 1 - Summary of Results (Continued)

Vendor Name	Payments to Vendor at time of OLA Review	Available Agency Documentation Supports:			
		Procurement Compliance with State Regulations?	Contract or Payment Effectively Monitored?	Items Inspected?	All Items Accounted For?
CIAN Diagnostics Inc.	\$46,346,956	No	No	N/A	N/A
Vanguard LED Display, Inc.	42,066,000	No	No	No	No
Two Canoes, LLC	41,249,999	No	Yes	No	Unable to Determine
Vizient, Inc.	38,145,934	Yes	No	N/A	N/A
Ernst & Young, LLP	3,681,468	No	No	N/A	N/A
Coast to Coast Strategies, LLC.	14,000,000	No	Yes	No	No
Blue Flame Medical, LLC	6,271,000	No	Yes	No	No
Design Co., Ltd	3,280,000	No	No	No	No
Economy Kanghwa Co., Ltd	2,350,000	No	Yes	No	Yes
Hagerty Consulting	858,730	Yes	Yes	N/A	N/A
Inspection Experts, Inc.	275,660	Yes	Yes	N/A	N/A
CosmosID Inc.	199,200	Yes	Yes	N/A	N/A
Ellsworth Electric, Inc.	82,301	No	Yes	N/A	N/A
White Star Sales and Promotions	117,950	No	No	No	No
John S. Connor, Inc.	29,704	No	No	N/A	N/A
Totals	\$198,954,902	11	7	7	5



Objective 1 – Selected Findings: Blue Flame Medical, LLC

Background

- **April 2020** - DGS issued a purchase order, on behalf of MDH, to Blue Flame Medical, LLC for 1.55 million N95 masks and 110 ventilators. The total cost was \$12.5 million, of which DGS paid \$6.3 million as an initial deposit.
- **May 2020** - DGS cancelled the purchase and attempted to recover the deposit due to the vendor's failure to deliver any items within the expected time frame.
- **October 2020** – DGS entered into a settlement with the vendor which allowed Blue Flame Medical, LLC to keep the initial deposit as payment for the 1.55 million N95 masks and 37 ventilators that it ultimately provided to MDH.



Objective 1 – Selected Findings: Blue Flame Medical, LLC (cont.)

OLA Findings

- DGS did not procure the Blue Flame Medical, LLC contract in accordance with State procurement regulations. For example, the purchase order did not contain certain critical provisions such as dispute resolution, delays and extensions, conformance of specifications, and delivery and acceptance. The omission of these provisions was significant given that litigation was ultimately required to obtain certain items purchased from the vendor.
- Although MDH inspected the ventilators, it could not provide documentation to support that the N95 masks were inspected to ensure they met applicable requirements.
- During our physical inventory of its warehouse in July 2021, MDH could not locate 475,400 N95 masks with an associated purchase price of \$2.1 million. MDH advised that the unaccounted for masks had been distributed, but that MDH's inventory records had not been updated to reflect these distributions.



Objective 1 – Selected Findings: Ernst & Young, LLC

Background

- In January 2021, MDH awarded \$3.8 million contract to Ernst & Young, LLC (EY) for consulting services related to the State's COVID-19 Vaccination Program. EY was to conduct a comprehensive assessment of the Program to identify any additional support, processes, and actions necessary for MDH to effectively administer the program. EY was also to provide seven staff to support the Program, with the provision that additional staff would be provided on an as needed basis to implement the recommendations contained in the comprehensive assessment.
- MDH processed a contract modification in April 2021 that increased the contract cost to \$25.0 million. Subsequent to our field work, MDH processed a second modification (valued at \$22.0 million), increasing the total contract cost to \$47.0 million and extending the contract term through June 30, 2022.



Objective 1 – Selected Findings: Ernst & Young, LLC (cont.)

OLA Findings

MDH did not procure the contract in accordance with State regulations. For example:

- The use of the emergency procurement method did not appear justified because MDH was aware it needed the services three months before it procured the services.
- The comprehensive assessment provided by EY did not identify specific actions necessary to implement the recommendations and the additional EY staff needed to conduct the work, as required by the contract.
- MDH could not explain the rationale for a \$21.3 million contract modification processed in April 2021, which did not identify the additional services to be provided.
- MDH could not document that it approved the EY employees billed, and did not obtain documentation of the work completed by each employee, as required by the contract. We could not verify the propriety of the billings, which totaled \$3.7 million at the time of our review.



Objective 2 – Disposition and Reliability of LabGenomics Tests

We obtained and analyzed documentation of test results from the laboratories that used the second set of 500,000 COVID-19 tests purchased from LabGenomics that were the subject of our Review of Procurement of Certain COVID Tests report (dated March 31, 2021).

- Our analysis disclosed that 460,596 (92 percent) of the 500,000 LabGenomics tests were used to analyze patient samples.
- We generally corroborated the concerns raised in an allegation made to our fraud, waste, and abuse hotline in September 2020 regarding the accuracy of certain test results received for samples collected. We determined that 42 of the 66 individuals identified in the allegation who initially tested positive, were retested from 2 to 6 days after the initial tests were completed and that 26 of these individuals received a negative result on their subsequent test. However, we could not determine the cause of the different results.



Conclusions

While we recognize the urgent and unique circumstances under which these procurements were made, such conditions would not mitigate the need to:

- Properly document and comply with State regulations specifically tailored to or required of emergency procurements;
- Ensure that purchased goods and services were received and met applicable requirements; and
- Document the disposition of items purchased.