

Special Review

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

December 2021



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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December 13, 2021

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Carol L. Krimm, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a special review of certain emergency procurements related to the State of Maryland's response to the ongoing COVID-19 pandemic. This review was initiated by the Office of Legislative Audits, and it represents an expansion of an earlier limited review that was undertaken based on a joint request from the chairs of the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees for a review of two COVID-related emergency procurements.

The results of our review of the procurement and related use of COVID tests from LabGenomics were included in a special report dated March 31, 2021. This current report includes the results of our review of the emergency procurement and accountability of medical supplies from Blue Flame Medical. In addition, during the course of our review, we identified 848 emergency procurements conducted during the period between March 2020 and May 2021 totaling approximately \$1.7 billion. Consequently, we expanded the scope of this review to include 14 additional emergency procurements (in addition to Blue Flame Medical) conducted by the following six agencies:

- Department of General Services
- Department of Public Safety and Correctional Services
- Department of State Police
- Maryland Department of Environment
- Maryland Department of Health
- Maryland Emergency Management Agency

The purpose of this current expanded review was to determine whether (1) the goods or services were obtained in accordance with State regulations for emergency procurements; (2) the related contracts or payments were effectively monitored to ensure the goods or services were received; (3) purchases of goods, such as personal protective equipment (PPE) and other medical equipment, had been inspected to ensure compliance with applicable criteria; and (4) inventory records were maintained for the goods purchased that properly account for and reflect the disposition of the goods (still on hand or distributed to other entities).

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. These conditions also would not mitigate the need to ensure the purchased goods or services were received and met applicable requirements and to document the disposition of items purchased. We conducted our review during the period from April 9, 2021 through August 31, 2021 and the results herein are based on information obtained from the applicable State agencies during this period.

In general, our review noted a lack of compliance with State regulations for emergency procurements and ineffective monitoring of the related payments. In addition, we frequently found that documentation was not available evidencing items purchased were inspected and inventory records were not maintained to determine the ultimate disposition of the items.

Specifically, our review disclosed that 11 of the 15 emergency procurements totaling \$189.4 million were not in compliance with all State regulations for emergency procurements. For example, there was no formal written contract for three of the procurements and the contracts for the other eight procurements did not include all of the critical provisions required by State procurement regulations. In addition, the agencies responsible for these procurements frequently could not provide critical documentation to support the basis for the purchases, including written explanations for how the vendors were identified and selected.

We also concluded that 7 emergency procurements with payments at the time of our review totaling \$133.7 million were not effectively monitored. For example, for four emergency procurements, we noted payments totaling \$25.5 million made for which the responsible agencies could not document that the services had been received and that the payments were in accordance with the contract.

Furthermore, our review disclosed a general lack of documentation to support that PPE items obtained through these procurements were inspected and the disposition of items. While we were advised that PPE items were visually inspected to ensure the items were undamaged, the agencies that received these items could not document any additional steps taken to verify their legitimacy (that is, the items received matched the technical specifications of the items ordered and paid for by the State). In our opinion, such inspections were warranted given the intended use of the items (ultimately to protect Marylanders from the COVID-19 virus), as well as the fact that several of the purchases were made from vendors whose prior primary business did not appear to involve the manufacturing or sales of medical equipment and supplies, and were not registered to conduct business in the State, both prior to the sale and at the time of payment by the State. In addition, we could not determine the disposition of certain items valued at approximately \$7.6 million that were purchased under five emergency procurements.

Finally, this report also includes our review of test results from the laboratories that used the LabGenomics tests, which we were unable to obtain access in time for inclusion in our March 31, 2021 report. We reviewed the test results from the laboratories that used the LabGenomics tests to account for the number of tests used and to assess concerns raised about the accuracy of test results reported by the University of Maryland Pathology Associates (UMPA) laboratory when using the tests obtained from LabGenomics. Our assessment disclosed that the majority of the LabGenomics tests were used to analyze patient samples and that certain individuals who received positive test results from UMPA received negative results on subsequent tests. However, we could not determine, from available sources, if the inconsistent results occurred due to deficiencies with the LabGenomics tests or other factors.

We shared our preliminary findings with all appropriate agencies in October 2021, and these agencies were given an opportunity to provide written responses. We considered those responses in finalizing this report. Although this report contains no recommendations, we provided a draft copy of the report to each State agency mentioned in the report for review and comment. The agency responses have been included as an Appendix to this report. Specifically, the Maryland Department of Health provided a combined response with the response from the Department of General Services, which did not differ from the responses to the preliminary findings. Additionally, certain other agencies (Maryland Department of Emergency Management, Maryland Department of the Environment, Department of Public Safety and Correctional Services, and Department of State Police) provided updated responses related to their specific circumstances.

In accordance with State law, we have reviewed the responses and noted general agreement to our findings and related recommendations. However, we identified certain instances in which the Department of General Services', Maryland Department of Health's, and the Department of State Police's responses indicated disagreements with certain report findings. In these instances, we reviewed and reassessed our audit documentation and reaffirmed the validity of the findings. In accordance with generally accepted auditing standards, we have included an "auditor comment" within the responses to explain our position.

We wish to acknowledge the cooperation extended to us during the review by the aforementioned entities.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive style with a prominent initial "G".

Gregory A. Hook, CPA
Legislative Auditor

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Background Information

COVID-19 Pandemic

The disease referred to as COVID-19 (Coronavirus disease 2019) was first identified in China in December 2019. It quickly spread worldwide and was characterized as a pandemic on March 11, 2020 by the World Health Organization. On March 5, 2020, the Governor of Maryland announced the State's first positive cases of COVID-19 and declared a state of emergency to mobilize all of the State's available resources. The COVID-19 pandemic created an increased demand for medical equipment and supplies (for example, personal protective equipment) and various services (for example, laboratory analysis of COVID-19 tests).

Emergency Procurements

According to State procurement regulations, agencies are authorized to procure goods and services using the emergency procurement method when faced with an emergency, which is defined 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.

The use of the emergency procurement method does not require a formal State of Emergency to have been declared by the Governor¹, nor are agencies limited to the emergency procurement method during a State of Emergency. Rather, agencies are responsible for determining when the use of the emergency procurement method is justified.

State procurement regulations include several requirements for emergency procurements including (a) a formal written contract; (b) obtaining as much competition as practicable; (c) notifying the Board of Public Works (BPW) of the procurement; (d) publicizing the award on *eMaryland Marketplace Advantage (eMMA)*; and (e) documenting the details of the procurement, including justification for the use of the emergency procurement and the basis for selecting the vendor.

The regulations require certain critical provisions be included in the written contract, such as conformance of specifications, delivery and acceptance, dispute

¹ According to the Department of Legislative Services' Office of Program Evaluation and Government Accountability's January 15, 2021 report on *Evaluation of Emergency Procurement*, most emergency procurements conducted between fiscal year 2013 through 2020 were unrelated to a Statewide emergency.

resolution, indemnification, liquidated damages, compliance with laws, cost and price certifications, political contribution disclosures, anti-bribery statements, and requirements for registration of the business with the State Department of Assessments and Taxation. The regulations also require agencies to report emergency procurements (including modifications) in excess of \$50,000 to BPW within 45 days of award and publicize the award on *eMMA* within 30 days. Emergency procurement regulations waive a key independent oversight control found in certain other State procurement processes – the submission of related contracts to BPW for formal approval prior to contract execution.

Scope, Objectives, and Methodology

Legislative Request and Scope

We conducted an initial review of certain emergency procurements related to the State of Maryland's response to the ongoing COVID-19 pandemic. This first review was initiated based on a June 2020 request from the chairs of the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees. Specifically, the Committees' chairs requested that the Office of Legislative Audits (OLA) conduct a review of the emergency procurements awarded to:

- LabGenomics for COVID tests used by laboratories to analyze samples collected from patients at testing sites, and
- Blue Flame Medical for medical supplies.

On March 31, 2021, we issued a first report on the results of our review of the procurement and accountability of the LabGenomics tests and the termination of two employees associated with the LabGenomics tests. The review disclosed that the test kits were not procured in accordance with State procurement regulations, including the lack of a formal contract, and the absence of documentation to support critical decisions regarding the procurement, cost and validity of the test kits.

During the course of our current review, we identified 848 emergency procurements totaling approximately \$1.7 billion conducted by the following 19 State agencies during the period between March 2020 and May 2021 (see Figure 1).

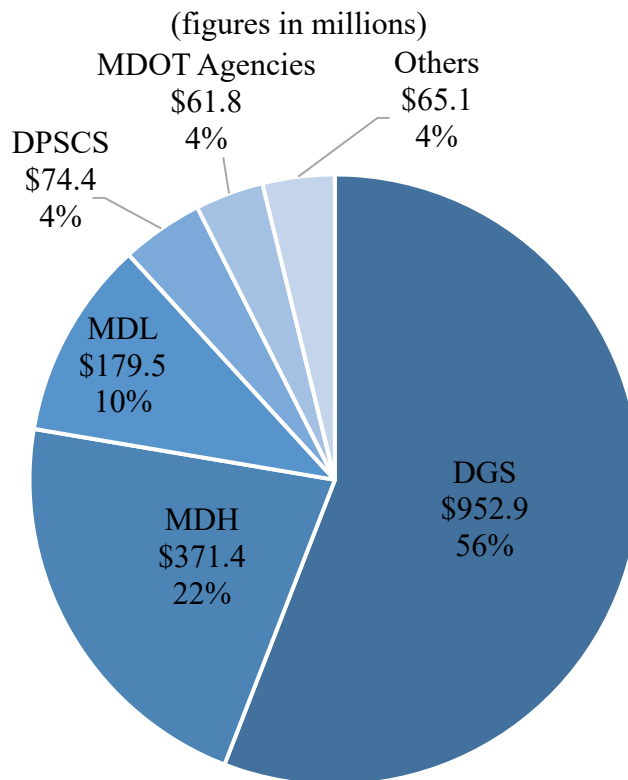
- | | |
|--|---|
| 1. Department of Agriculture (DOA) | 11. Maryland Department of Health (MDH) |
| 2. Department of Commerce (DOC) | 12. Maryland Department of Labor (MDL) |
| 3. Department of General Services (DGS) | 13. Maryland Department of Transportation Agencies (MDOT) |
| 4. Department of Human Services (DHS) | 14. Maryland Department of Veterans Affairs (MDVA) |
| 5. Department of Information Technology (DoIT) | 15. Maryland Emergency Management Agency (MEMA) ² |
| 6. Department of Juvenile Services (DJS) | 16. Maryland Institute of Emergency Medical Services Systems (MIEMSS) |
| 7. Department of Natural Resources (DNR) | 17. Morgan State University (MSU) |
| 8. Department of Public Safety and Correctional Services (DPSCS) | 18. State Board of Elections (SBE) |
| 9. Department of State Police (DSP) | 19. University of Maryland Baltimore (UMB) |
| 10. Maryland Department of Environment (MDE) | |

Consequently, OLA advised the chairs of the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees that the scope of OLA’s review would be expanded and that two reports would be issued. The first report was issued on March 31, 2021 and was limited to the LabGenomics procurement, while the second report would include the procurement and accountability of the Blue Flame Medical purchases and additional emergency procurements, as explained in more detail below. In addition, this second report resolves an open issue remaining from our earlier March 31, 2020 report, wherein we commented that we were unable to obtain access to certain data associated with the use of the test kits in time for inclusion in that report. Accordingly, our current report includes the results of our review of test results from the laboratories that used the LabGenomics tests.

² The Maryland Emergency Management Agency became the Maryland Department of Emergency Management effective October 1, 2021.

Figure 1
Emergency Procurements Conducted by 19 State Agencies

<u>State Agency</u>	<u>Number of Procurements</u>	<u>Total Value</u>
DGS	330	\$ 952,945,048
MDH	99	371,383,030
MDL	31	179,487,493
DPSCS	190	74,360,029
MDOT	90	61,753,504
MEMA	25	24,960,415
SBE	9	11,113,097
DHS	35	7,973,039
MIEMSS	3	6,723,040
MDVA	1	3,309,598
DOIT	8	3,133,707
MSU	1	3,082,522
MDE	3	1,957,680
UMB	1	1,351,411
DOC	4	630,724
DOA	2	408,625
DSP	8	291,344
DJS	1	145,360
DNR	7	32,550
Total	848	\$1,705,042,216



Source: Compiled and calculated by OLA using State procurement data, BPW agendas, and other supporting documents.

Our current review was conducted during the period from April 9, 2021 through August 31, 2021 and the results herein reflect information we were able to obtain from the applicable State agencies during this period. We conducted our review under the authority of State Government Article, Section 2-1220 of the Annotated Code of Maryland. Our review did not constitute an audit conducted in accordance with generally accepted government audit standards.

Objectives and Methodology

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 tests used and to corroborate an allegation we received on our fraud, waste, and abuse hotline in September 2020 regarding concerns with the accuracy of test results received for samples collected at Towson University.

Our review included the identification of emergency procurements associated with the State's COVID-19 response, and related tests, analyses, observations, and discussions with State personnel and individuals at the aforementioned laboratories, as we deemed necessary to accomplish our objectives. We also interviewed the employees who were identified by the State agencies as being responsible for the procurement and monitoring of the related payments. In addition, we reviewed numerous documents (such as, procurement records and invoices) and conducted physical inspections of certain personal protective equipment and medical equipment items located at State and private facilities.

Findings

Objective 1

Assess the Procurement and Accountability of Certain Emergency Procurements Associated with the State's COVID-19 Response

Objective and Methodology

Our objective was to assess the procurement and accountability of certain emergency procurements associated with the State's COVID-19 response.

For the purpose of completing this objective, we reviewed procurements recorded in the State's accounting records during the period from March 2020 through May 2021 to identify emergency procurements. We believed that with the advent of the COVID-19 crisis in March 2020, it is likely that emergency procurements during that period were associated with the State's COVID-19 response³. This review identified 848 emergency procurements totaling approximately \$1.7 billion conducted by 19 State agencies during the period between March 2020 and May 2021. To corroborate that the emergency procurements we identified were associated with the State's COVID-19 response, we obtained certain additional information about each of those 848 procurements from a variety of other sources, such as Board of Public Works (BPW) meeting documents and information recorded on *eMaryland Marketplace Advantage (eMMA)*.

We judgmentally selected 15 emergency procurements that we concluded were related to the State's COVID-19 response (including the Blue Flame procurement requested by the aforementioned Maryland General Assembly Committees) totaling approximately \$232.8 million for review. To select these procurements, we considered certain factors that may be indicative of significant violations of State procurement laws or regulations. For example, vendor names that were not consistent with the goods or services purchased or vendors that were not registered with the State Department of Assessments and Taxation (SDAT) prior to the onset of the pandemic. As detailed in Figure 2, the 15 emergency procurements we tested were procured or used by the Department of General Services (DGS), Maryland Department of Health (MDH), Maryland Emergency Management Agency (MEMA), Maryland Department of Environment (MDE),

³ While we believe the emergency procurements identified by us reflect the significant majority of emergency procurement activity during the period based on transaction coding included in the State's accounting records, additional activity may have occurred and not have been subject to our review. For example, our review did not consider transactions processed using corporate purchasing cards (CPC) since we could not readily determine which of these transactions, if any, related to an emergency procurement since there was no unique coding for this type of procurement in the CPC records.

Department of Public Safety and Correctional Services (DPSCS), or Department of State Police (DSP).

Figure 2
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.	Purchase of 1,107 ventilators	42,066,000
DGS	MDH	Two Canoes, LLC	Purchase of 5.0 million isolation gowns	41,250,000
DGS	MDH	Vizient, Inc.	Provide 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.	Purchase of 5.0 million KN95 masks	14,000,000
DGS	MDH	Blue Flame Medical, LLC	Purchase of 1,550,000 N95 masks and 37 ventilators	6,271,000
DGS	MDH	Design Co., Ltd	Purchase of 2.0 million KN95 masks	3,280,000
DGS	MDH	Economy Kanghwa Co., Ltd	Purchase of 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 the Maryland Correctional Institution – Hagerstown	181,736
DSP	DSP	White Star Sales and Promotions	Purchase of 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

For each emergency procurement selected, we performed a test to determine whether the goods or services were obtained in accordance with State regulations for emergency procurements, and whether the related contracts or payments were effectively monitored to ensure that all goods or services paid for were received. Specifically, we tested 50 payments totaling approximately \$127.6 million of the \$198.9 million we identified as having been disbursed to the aforementioned 15 vendors at the time of our review. When applicable, our test also included a determination of whether the goods were inspected to ensure compliance with applicable requirements (such as U.S. Food and Drug Administration criteria), which we considered to be of critical importance given the intended use of the goods (that is, to protect Marylanders from the COVID-19 virus)⁴. We also

⁴ Our intent was to determine what steps were taken beyond a possible review of packaging or product labeling to ensure that items received were legitimate, and not fraudulent or imposter items. For example, we inquired with MDH as to how it determined that the masks it purchased met the technical specifications of an N95 or KN95 mask.

attempted to determine the disposition of the goods paid for by the State under these procurements (specifically, whether the goods were still on-hand or distributed to other parties).

Our review included tests, analyses, observations, and discussions with State personnel, as we deemed necessary to accomplish our objectives. We reviewed numerous documents when available, such as procurement records and invoices. We also interviewed the employees who were identified by the agencies as being responsible for the procurement and monitoring of the related payments.

In addition, we conducted certain physical inspections of personal protective equipment (PPE) and medical equipment items located at State and private facilities. The primary purpose of these inspections was to verify the reasonableness of the quantities distributed and on hand reflected in MDH's inventory records for the purpose of determining the disposition of these items. As explained in greater detail below, our review disclosed a lack of documentation to support that certain items were received; in these instances, we attempted to verify whether the goods had been received during our physical inspections.

The conclusions contained in this report are based on the documentation we obtained from, and interviews with, applicable staff at the State agencies responsible for procuring and monitoring (including approval of the related payments) the emergency procurements we reviewed. Specifically, the focus of our review was to determine whether the procurement reviewed was in accordance with applicable State regulations for emergency procurements and the related payment(s) was proper. Consequently, we did not attempt to contact the vendors that provided the goods or services to obtain additional explanation or documentation for the transactions.

We also did not attempt to obtain current pricing for these purchases because we did not believe it to be a valid indicator of the reasonableness of the pricing at the time of the purchase given that our review occurred more than a year after the these purchases were made (at the onset of the COVID-19 pandemic).

Generally, the procurements tested were judgmentally selected based on our consideration of certain factors that may be indicative of significant violations of State procurement laws or regulations. As a matter of course, we do not normally use statistical nor non-statistical sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be

used to project those results to the entire population from which the test items were selected.

Conclusion

Generally, from our review, we identified a lack of compliance with State regulations for emergency procurements and effective monitoring of the related payments for the procurements selected for review. In addition, for emergency procurements of goods (such as PPE and medical supplies) reviewed, we found that documentation generally was not available to support that items purchased were inspected upon receipt to ensure that they met applicable requirements; and documentation that supported the disposition of the items was also not available (see Figure 3). A summary of the deficiencies we identified is presented below, followed by a detailed description of our test results for each emergency procurement selected for review.

**Figure 3
Results of our Test of 15 Emergency Procurements**

Test Item	Purchase Type	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?
1	Services	\$46,346,956	No	No	N/A	N/A
2	Goods	42,066,000	No	No	No	No
3	Goods	41,249,999	No	Yes	No	UTD*
4	Services	38,145,934	Yes	No	N/A	N/A
5	Services	3,681,468	No	No	N/A	N/A
6	Goods	14,000,000	No	Yes	No	No
7	Goods	6,271,000	No	Yes	No	No
8	Goods	3,280,000	No	No	No	No
9	Goods	2,350,000	No	Yes	No	Yes
10	Services	858,730	Yes	Yes	N/A	N/A
11	Services	275,660	Yes	Yes	N/A	N/A
12	Services	199,200	Yes	Yes	N/A	N/A
13	Services	82,301	No	Yes	N/A	N/A
14	Goods	117,950	No	No	No	No
15	Services	29,704	No	No	N/A	N/A
Totals		\$198,954,902	11	7	7	5

* Unable to Determine (UTD) - As explained further under Test Item 3, MDH advised that the items (isolation gowns) purchased from this vendor were commingled with similar items purchased from other vendors. As a result, we could not determine whether that the gowns on hand in MDH’s warehouse were related to this procurement.

N/A – Attribute not applicable to the procurement tested.

Emergency Procurements Did Not Comply With State Procurement Regulations

We concluded that 11 emergency procurements, valued at \$189.4 million, of the 15 emergency procurements reviewed, valued at \$232.8 million, were not procured in accordance with certain State regulations. Specifically, the agencies responsible for these procurements generally could not provide documentation of the basis for the purchases, including justification for the use of the emergency procurement method or to explain how the vendors selected were identified. Our review also disclosed that there was no formal written contract for three of the procurements and the contracts for the other eight procurements did not include all of the critical provisions required by State procurement regulations. In addition, seven procurements were made from vendors that were not registered with the State at the time of the respective procurements⁵, including six vendors that were still unregistered as of July 21, 2021. Finally, we noted that certain procurements were not reported to the Board of Public Works or publicized within the timeframes specified in State procurement regulations.

Lack of Effective Monitoring and Documentation to Support Payments

We concluded that 7 of the 15 emergency procurements reviewed, with payments at the time of our review totaling \$133.7 million, were not effectively monitored. Specifically, we identified payments totaling \$3.3 million on two emergency procurements for which documentation could not be provided to support that all of the items paid for were received, and \$1.7 million related to another procurement for ventilators that were not yet operational at the time of our review. In addition, we identified payments totaling \$25.5 million made under four emergency procurements for which the agencies responsible for monitoring the contracts could not document that the invoiced services were received and that the payments were in accordance with the contracts.

Lack of Documentation that Items Purchased Were Inspected

For most of the goods procured that we reviewed, we were not provided with documentation to support that PPE items purchased under the emergency procurements we reviewed were inspected to ensure the items provided met the applicable requirements. Specifically, staff at the agencies that received these items advised us that the items were visually inspected upon receipt to ensure the items were undamaged; however these agencies could not document any additional steps taken to verify that the items received were legitimate (for example, that face masks met the technical specifications of an N95 or KN95 mask). In addition, we noted that 12 ventilators valued at \$456,000 had not been inspected at the time of our review. As explained further under Test Item 2, we

⁵ Registration with the State helps to ensure that vendors meet all State obligations (such as paying applicable taxes) and that the owners and officers of the business are appropriately disclosed.

noted that MDH inspections of other ventilators provided by that vendor determined that 46 ventilators were not operational.

Unable to Determine Disposition of Items Purchased

We could not determine the disposition of certain items valued at approximately \$7.6 million that were purchased under five emergency procurements (see Figure 4). Specifically, the inventory records we were provided did not indicate whether the items were on hand or had been distributed to other entities, and MDH and DSP could not readily locate the items at the time of our review.

Figure 4
Summary of Items That Could Not Be Accounted For
(Based on OLA testing)

Test Item	Using Agency	Description of Unaccounted For Item	Value of Unaccounted For Item
2	MDH	27 ventilators	\$1,026,000
6	MDH	370,436 KN95 masks	1,037,221
7	MDH	475,400 N95 masks	2,149,712
8	MDH	2 million KN95 masks	3,280,000
14	DSP	11,000 N95 masks	64,223
Total			\$7,557,156

Inventory Records Were Not Sufficiently Comprehensive

While not the focus of our review, we also identified certain conditions that raised questions regarding the accuracy and reliability of MDH inventory records for the goods purchased that we selected for review. For example, as of July 2021, MDH had not completed a physical inventory of the COVID-19 related items purchased to determine the amount on hand, and to investigate missing items and update the detailed records, as required by the DGS *Inventory Control Manual*. In addition, MDH warehouse personnel advised us that due to the urgent manner in which the items were received and disbursed, the inventory records may not always have been updated to reflect goods received and distributed, and consequently, the quantities reflected in the inventory records may not be accurate.

Detailed Test Results

Test Item 1 CIAN Diagnostics, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
MDH	MDH	Laboratory testing services	\$54,795,961
OLA Conclusions as of August 31, 2021			
MDH did not procure the CIAN Diagnostics, Inc. contract in accordance with certain State procurement regulations. MDH did not adequately monitor the contract, and our testing disclosed unsupported payments totaling \$1,591,832.			

Background

In April 2020, the Maryland Department of Health (MDH) awarded a \$3.9 million contract to CIAN Diagnostics, Inc. to perform laboratory diagnostic testing services related to COVID-19 testing. The contract covered the period from April 29, 2020 to July 29, 2020 and was subsequently modified three times, extending the services through June 30, 2021, for a final total contract cost of \$54.8 million. According to the vendor’s website, CIAN Diagnostics, Inc. offers a variety of laboratory testing services, including COVID-19 testing.

Procurement

Our review disclosed that the laboratory testing services contract was not procured in accordance with State procurement regulations. Specifically, MDH’s contract did not include certain critical provisions required by State procurement regulations, such as dispute resolution, modifications, and cost and price certification. MDH was able to provide documentation to support that it solicited bids from multiple vendors and documented its basis for selecting CIAN Diagnostics, Inc., as required. In addition, we noted that CIAN Diagnostics, Inc. was registered with the State Department of Assessments and Taxation (SDAT) to do business in the State, as required.

MDH did not publish the contract award in *eMaryland Marketplace Advantage (eMMA)* until 11 months after the deadline provided for in State procurement regulations for emergency procurements. We also noted that the original contract and two of the subsequent modifications were reported to the Board of Public Works (BPW) between 2 and 34 days after the deadline provided for in State regulations.

Monitoring and Payment

Based on our testing, MDH did not adequately verify the propriety of the amounts invoiced. CIAN Diagnostics periodically invoiced MDH at a fixed rate for each COVID-19 test it completed, and was to record the results of these tests in the Centers for Disease Control and Prevention’s National Electronic Disease Surveillance System (NEDSS).

Our test of five payments totaling \$13,203,541 made to CIAN Diagnostics, Inc. between May and December 2020 disclosed discrepancies between the number of tests invoiced and the total test results recorded in NEDSS for four payments totaling \$12,257,645. Specifically, the vendor billed MDH for 127,950 tests, but only recorded 111,706 test results in NEDSS for the related period. Although MDH advised us that it had identified and investigated these discrepancies, it could not provide written documentation to support that the remaining 16,244 tests (with associated billings totaling \$1,591,832) were actually conducted. MDH ultimately paid CIAN Diagnostics, Inc. the full amounts invoiced. As of June 30, 2021 (the end of the contract term), payments to CIAN Diagnostics, Inc. under this contract totaled approximately \$46.3 million.

Test Item 2			
Vanguard LED Display, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 1,107 ventilators	\$42,066,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the ventilators in accordance with State procurement regulations. In addition, although all 1,107 ventilators purchased were received, 73 ventilators valued at \$2,774,000 either could not be accounted for or were not operational at the time of our review. Finally, MDH had not inspected 12 ventilators valued at \$456,000 and therefore there was no assurance that the ventilators worked.			

Background

According to State records, the Department of General Services (DGS) procured 1,107 ventilators from Vanguard LED Display, Inc. on behalf of MDH, for a total cost of \$42,066,000. Our review of the vendor’s website on July 28, 2021 disclosed that the vendor primarily sells LED and LCD video displays and did not include any ventilators listed for sale.

DGS issued two Letters of Intent (LOI) to the vendor, dated March 28, 2020 and April 4, 2020, respectively. According to the LOIs, DGS was to purchase 1,150 ventilators for \$43,700,000 (\$38,000 per ventilator), but ultimately only purchased 1,107 ventilators for \$42,066,000. According to MDH records, the ventilators were delivered to MDH warehouses, and consequently, MDH assumed responsibility for the inspection, storage, and distribution of the ventilators and for the related recordkeeping.

Procurement

Our review disclosed that the ventilators were not procured in accordance with State procurement regulations. Specifically, DGS did not have a formal written contract with Vanguard LED Display, Inc. While the aforementioned LOIs included the quantity to be purchased and the related payment terms, the LOIs did not contain any of the critical provisions required by State procurement regulations for emergency procurements, or any specifications or requirements for the ventilators to ensure they would work as intended.

DGS provided us with an email sent by an MDH official to DGS procurement officials on March 27, 2020 that indicated that a vendor located in Virginia had ventilators available for sale. The email also indicated that the vendor had previously contacted the Maryland Emergency Management Agency (MEMA) offering to provide the ventilators but had not received a response. We were advised by MDH and DGS personnel that competition was not obtained for purchases of PPE and medical equipment. Rather, DGS advised us that it solicited or received offers from numerous vendors to provide these items and that DGS generally sought to purchase all of the items these vendors had available provided that the vendor's price was reasonable. However, DGS did not maintain a comprehensive record of these vendors. DGS also could not provide written documentation to support that it had determined the vendor's prices were reasonable; although not specifically required by State regulations for emergency procurements, we believe such a determination would be prudent given that the ventilators were effectively procured as sole source.

In addition, at the time of the procurement, Vanguard LED Display Inc. was not registered with SDAT to do business in the State as required, and as of July 21, 2021, was still unregistered. DGS did publish the award in *eMMA* as required; and, while the procurement was reported to the Board of Public Works BPW, the report was nine days after the deadline provided for in State procurement regulations.

Monitoring and Payment

Based on our review of packing slips accompanying the equipment delivered to MDH, and approved by MDH personnel, we determined that MDH received a total of 1,107 ventilators from Vanguard LED Display, Inc. However, 85 of these ventilators valued at \$3.2 million were either unaccounted for, not operational, or had not been inspected (as to condition or functionality). Specifically, we conducted a physical inventory of these ventilators on July 8, 2021 and determined that 1,074 ventilators were on hand and, according to MDH, 6 ventilators had been distributed to Allegany College of Maryland. MDH did not maintain inventory records (as would be required by DGS policies) and could not account for the remaining 27 ventilators with an associated purchase price of \$1.0 million.

Furthermore, MDH records indicated that 46 ventilators received (and included in the 1,074 on-hand count) had failed inspection and had not been repaired, as of June 15, 2021. The associated purchase price of the 46 non-operational ventilators was approximately \$1.7 million. Although MDH advised us that it had addressed the non-operational ventilators with the vendor and that it was waiting to receive the replacement parts needed to repair them, no written documentation was provided to support this assertion. We further noted that 12 other ventilators with an associated purchase price of \$456,000 were not inspected and therefore there was no assurance that they worked.

Test Item 3 Two Canoes LLC			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 5 million isolation gowns	\$41,250,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the isolation gowns in accordance with State procurement regulations. Based on our testing, MDH appeared to have received the isolation gowns associated with the purchases selected for review; however, MDH could not provide documentation that it had inspected the gowns to ensure they met applicable requirements, and we could not verify the disposition of these gowns due to certain deficiencies with MDH inventory records.			

Background

According to State records, on May 11, 2020, DGS issued a purchase order to Two Canoes LLC to procure 2.5 million level-1 and 2.5 million level-2 isolation

gowns⁶ on behalf of MDH for a total cost of \$41,250,000. The cost of each level-1 and level-2 gown was \$6.75 and \$9.75, respectively. Our review of the vendor's website on July 29, 2021 disclosed that Two Canoes LLC is a "venture development" company and the website did not list any level-1 or level-2 isolation gowns, or any other PPE for sale. According to MDH records, the isolation gowns were delivered to MDH warehouses in multiple shipments, and consequently, MDH assumed responsibility for the inspection, storage, and distribution of the gowns and for the related recordkeeping.

Procurement

Our review disclosed that the isolation gowns were not procured in accordance with State procurement regulations. Specifically, DGS advised us that isolation gowns were purchased from numerous vendors, but could not provide written documentation to explain its basis for selecting the vendor, including how it identified Two Canoes LLC to provide isolation gowns. As previously noted in this report, DGS did not obtain competition for PPE purchases made on behalf of MDH. DGS also could not provide written documentation to support that the vendor's prices were reasonable; although not required by State regulations for emergency procurements, we believe such a determination would be prudent given that the isolation gowns were effectively procured as sole source. We also noted that the aforementioned purchase order did not contain certain critical provisions required by State procurement regulations for emergency procurements, such as conformance of specifications and delivery and acceptance.

Our review also disclosed that Two Canoes LLC was not registered with SDAT to do business in the State, as required. The vendor subsequently registered with SDAT on September 8, 2020. The procurement was reported to BPW and published on *eMMA* 33 days and 34 days, respectively, after the individual deadlines provided for in State procurement regulations.

Monitoring and Payment

We reviewed five payments totaling \$21.3 million made to the vendor between May and July 2020 for 2.8 million isolation gowns. We were able to sight packing slips (that accompanied the delivered goods) approved by MDH personnel to support that MDH received all 2.8 million gowns associated with the five payments we tested. However, beyond product labeling, MDH could not provide documentation to support that the gowns were inspected to ensure they

⁶ The U.S. Food and Drug Administration (FDA) recognizes four levels of isolation gowns, which are categorized based on the level of risk associated with the gown's intended use. For example, level-1 gowns are intended for situations that present *minimal risk* (such as, basic care in a standard medical unit) and level-2 gowns are for situations that present *low risk* (such as, drawing blood from patients).

met the applicable requirements (that is, that the gowns provided were in fact level-1 or level-2 gowns as defined by the FDA).

MDH inventory records indicated that none of these gowns had been distributed as of June 2, 2021. While we did sight certain isolation gowns during our physical inventory, we could not confirm that the gowns procured from the vendor tested were on hand during our physical inventory because MDH advised us that it comingled these gowns with similar items purchased from other vendors. As commented upon elsewhere in this report, our review disclosed certain deficiencies which raise questions regarding the accuracy and reliability of MDH’s inventory records.

Test Item 4 Vizient, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Provide medical supply chain and materials handling services at the State supported field hospital locations	\$40,000,000
OLA Conclusions as of August 31, 2021			
DGS procured the contract in accordance with State procurement regulations. MDH did not effectively monitor the contract, and we could not verify that MDH received all of the services and the propriety of the related billings.			

Background

In April 2020, DGS, on behalf of MDH, awarded a \$30.0 million contract to Vizient, Inc. to provide medical supply chain and materials handling services at State supported field hospitals throughout the State (such as, the Baltimore Convention Center). The initial contract covered the period from April 10, 2020 to April 9, 2021 and was modified in November 2020 to increase the total contract cost to \$40.0 million. According to the vendor’s website, Vizient, Inc. serves more than half of the health care organizations across the United States providing clinical, operational, and supply chain services. MDH was responsible for the oversight of this contract.

Procurement

Our review disclosed that the Vizient, Inc. contract was procured in accordance with State regulations for emergency procurements. Specifically, DGS executed a formal contract with Vizient, Inc. which included all critical provisions required by State procurement regulations, and documented its basis for selecting the

vendor for award. In addition, we noted that Vizient, Inc. was registered with SDAT to do business in the State, as required. Furthermore, DGS published the contract award in *eMMA* and notified BPW within the required deadlines provided for in State regulations.

Monitoring and Payment

Based on our testing, MDH did not effectively monitor the contract. The contract provided for Vizient, Inc. to manage the medical supply inventory, disposable medical supply distribution, and medical supply procurement processes at each of the field hospital locations, and to invoice MDH monthly for these services. Our test of six payments totaling \$20,247,661 made to Vizient between September 2020 and February 2021 disclosed that the rates billed were in accordance with the contract terms; however, the contract did not require, nor could MDH provide, documentation of the specific services received (such as, the specific medical supplies procured for each field hospital). Therefore, we could not verify that MDH received all of the required services and the propriety of the related billings. As of July 31, 2021, payments to Vizient, Inc. under this contract totaled approximately \$38.1 million.

Test Item 5 Ernst & Young, LLP			
Procuring Agency	Using Agency	Description	Purchase Price
MDH	MDH	Consulting services related to the COVID-19 Vaccine Program	\$25,046,140 ⁷
OLA Conclusions as of August 31, 2021			
<p>MDH did not procure the Ernst & Young, LLP (EY) contract in accordance with State procurement regulations. For example, as part of this contract, MDH processed a contract modification totaling \$21.3 million, but the contract modification only increased the cost and did not include a description of what additional staff or services were to be provided to justify the increase.</p> <p>MDH also did not adequately monitor the contract; we found a lack of task orders identifying the specific work to be performed. This condition was significant because MDH was unaware of the extent of the services to be provided at the time the contract was awarded. Rather, MDH relied on EY to subsequently determine the services it would provide which, based on the records provided us by MDH, was not done with any specificity, and the billings for these undefined services accounted for virtually all of the contract cost. We also could not determine the propriety of two invoices totaling \$3.7 million selected for review, and identified overpayments totaling \$53,415.</p>			

Background

On January 21, 2021, MDH awarded a contract to EY valued at \$3,794,600 that covered the period from January 21, 2021 to April 21, 2021, with two 90-day options totaling \$8,131,200 to extend the contract through October 18, 2021. Under the contract's terms, EY was to assess the State's COVID-19 Vaccination Program and 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.

As further described below, MDH subsequently modified the contract in April 2021, increasing the total cost to \$25,046,140. Specifically, the modification added \$21,251,540 to the original contract amount and voided the two contract options. Our review of EY's website on August 19, 2021 noted that it provides an array of consulting services related to COVID-19.

⁷ Subsequent to our field work, MDH processed a \$22.0 million modification to the contract, increasing the total cost to \$47,046,000 and extending the term through June 30, 2022. The modification was approved by the Board of Public Works on September 15, 2021.

Procurement

Our review disclosed that the consulting services were not procured in accordance with State regulations for emergency procurements and, in our opinion, the contract was awarded in a manner that reduced competition and precluded effective evaluation of the vendors.

- The use of the emergency procurement method for this contract did not appear to be justified because the procurement was not a “sudden or unexpected occurrence or condition which agency management could not foresee”, as required under State regulations. MDH directly solicited proposals from four vendors, allowing 36 hours for the submission of a proposal. MDH could not document a formal process used to identify the four vendors it selected, although we noted that one of the four had previously provided consulting services to a MDH administration for a number of years. Ultimately, MDH received proposals from EY and a second potential vendor. However, we were advised by the Director of the MDH Healthcare System that MDH first became aware it needed the services that were the subject of this procurement in October 2020, three months before MDH procured the services using the emergency procurement method. MDH could not explain why it did not initiate a competitive procurement under non-emergency procurement regulations at that time, but waited until January 18, 2021 (the date indicated on MDH’s written justification for using the emergency procurement method). This several month delay is significant because it resulted in MDH awarding the contract following a 36 hour response time from certain potential vendors rather than through a competitive procurement process (for which the standard minimum response period is 20 days). Although MDH generally documented its basis for awarding the contract to EY (specifically, that it awarded the contract to EY after considering the technical and price proposals), in light of the abridged procurement and the emergency procurement process used, we could not conclude that the vendor selected provided the best value to the State.
- The contract did not include a maximum contract value, as required under State procurement regulations. Specifically, the contract included the hourly rates to be billed for each EY employee, but did not specify the total hours to be worked by these individuals. Rather, MDH provided us with an internal estimate it prepared, which indicated that billings from EY under the original contract could total \$11,925,800. While MDH reported this amount to the BPW, no maximum value was incorporated into the contract terms.
- MDH could not justify the \$21.3 million contract modification processed in April 2021. The written contract modification only increased the cost and did

not include or otherwise specifically identify the additional staff or services to be provided to justify the increase beyond a broad statement that additional personnel were needed to effectively and efficiently implement the Vaccination Program. MDH could not explain the basis for the dollar amount of the modification. Although we noted the number of staff provided by EY under the contract increased from 7 to 93 between January and April 2021 (an increase of 1,200 percent), MDH could not document the need for these individuals nor the specific tasks they were to perform.⁸

- Although the original contract award was published on *eMMA* four days after the deadline provided for in State procurement regulations, as of August 19, 2021, MDH had not published the contract modification on *eMMA*. MDH did report both the original contract and the modification to BPW within the required timeframes, and EY was registered with SDAT to do business in the State, as required.

Monitoring and Payment

MDH did not adequately monitor the contract resulting in the failure to receive certain deliverables and certain payments that were not in accordance with the contract terms. The contract language described the service to be provided by EY in general terms. Specifically, EY was to conduct a comprehensive assessment of MDH's Vaccination Program to identify any additional support, processes, and actions necessary for MDH to effectively administer the COVID-19 Vaccine Program. The contract also required EY to provide seven staff to support the Program, with the provision that additional staff would be provided on an as needed basis (as determined by MDH) to implement the recommendations contained in the comprehensive assessment. We reviewed the comprehensive assessment provided by EY and tested the two invoices that had been paid by MDH at the time of our review for services provided by 81 billed EY staff totaling \$3.7 million.

- The completed comprehensive assessment given to us by MDH did not provide specific actions or identify the staff needed to conduct the work, as required by the contract. The EY assessment contained a total of 22 recommendations to address various issues identified with the MDH Vaccination Program. However, the assessment did not identify the specific actions from EY necessary to implement these recommendations. The assessment also did not identify the additional EY staff that were needed to conduct the work. Although the invoices we reviewed did not include specific

⁸ The findings under "Monitoring and Payment" will highlight the critical nature of this particular contract language issue.

charges for this assessment, we noted that the contract provided that MDH was to pay the vendor \$85,000 for this deliverable.

- MDH did not use a task order system⁹ to review and direct or otherwise approve of the number of EY staff to be provided and the specific work to be performed. Although a task order system was not required by the contract terms, given the broad and general scope of the contract, such a system could have established accountability and provided MDH with a formal process to supervise the work to be performed. As a result, we could not readily determine the extent to which MDH defined the scope of the work EY was to perform, and the related staffing levels. In addition, MDH had no formal method to challenge or otherwise question the resultant billings.¹⁰ Specifically, MDH did not know the extent of the services to be provided at the time the contract was awarded (instead, it was relying on the aforementioned EY assessment), and billings for these services accounted for virtually all of the contract cost. Consequently, we believe that without a task order system, or some similar process, to establish accountability, MDH had no assurance that the services billed for were reasonable in relation to the product provided.
- Our test of the two invoices disclosed that MDH could not document that it formally approved the 74 additional employees billed on these invoices, and did not obtain documentation of the work completed by each employee, as required by the contract. Accordingly, we could not verify the propriety of these billings. Furthermore, the hourly rates billed for three employees exceeded the rates specified in the contract by \$30 to \$90. As a result, MDH overpaid \$53,415 for these three individuals' services for the two invoices we tested. MDH was not aware of the overpayment until we brought the matter to its attention.

⁹ Under a task order system, MDH would have issued formal orders to the vendor that identified the specific work to be performed and the related costs.

¹⁰ Although the contract provided that EY would seek MDH approval for individual staff assigned to the contract, without a link to the task(s) to be performed by those staff there appears no documented basis supporting any such approval process.

Test Item 6			
Coast to Coast Strategies, LLC			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 5 million KN95 masks	\$14,000,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the KN95 masks in accordance with State procurement regulations. Based on our testing, MDH appeared to have received the KN95 masks it purchased from the vendor; however, MDH could not provide documentation that it had inspected the masks to ensure they met applicable requirements. Further, MDH could not account for the disposition of 370,436 of these masks valued at \$1,037,221.			

Background

According to State records, in April 2020, DGS procured 5 million KN95¹¹ masks from Coast to Coast Strategies, LLC, on behalf of MDH, for a total cost of \$14 million (\$2.80 per mask). Our review of the vendor’s website on July 28, 2021 disclosed that it provides various consulting services including political analysis and access, strategic planning, business development, and public relations and did not list any KN95 masks or other PPE for sale.

Our review of the documentation provided by DGS disclosed that Coast to Coast Strategies, LLC obtained these masks from a biotechnological and pharmaceutical marketing company based in Florida. According to MDH records, the KN95 masks were delivered to MDH warehouses, and consequently, MDH assumed responsibility for the inspection, storage, and distribution of the masks and for the related recordkeeping.

Procurement

Our review disclosed that the KN95 masks were not procured in accordance with State procurement regulations for emergency procurements. Specifically, DGS could not provide documentation to explain its basis for selecting the vendor, including how it identified Coast to Coast Strategies, LLC to provide KN95 masks. In this regard, we noted that the Governor of Maryland’s Communications Director stated to local news media that a former Lieutenant Governor of Maryland, had reached out to the State about this purchase. This individual was listed as a principal of Coast to Coast Strategies, LLC on its

¹¹ KN95 masks are respiratory protective devices (similar to N95 masks) that are regulated by the Chinese government. During the COVID-19 pandemic, the FDA issued an Emergency Use Authorization (EUA) authorizing the use of certain KN95 masks as an alternative to N95 masks.

website. DGS did not provide us with any record of this correspondence (such as, emails). As previously noted in this report, DGS did not obtain competition for PPE purchases made on behalf of MDH. DGS also could not provide written documentation to support that the vendor's prices were reasonable; although not specifically required by State regulations for emergency procurements, we believe such a determination would be prudent given that the masks were effectively procured as sole source.

DGS did not have a formal written contract with Coast to Coast Strategies, LLC, as required. Rather, the only written documentation DGS provided us related to this purchase were the invoices from the Florida company that sourced the masks to Coast to Coast Strategies, LLC. Our review also disclosed that at the time of the procurement, Coast to Coast Strategies, LLC was not registered with SDAT to do business in the State, as required and as of July 21, 2021, was still unregistered. The procurement was reported to the BPW and published on *eMMA* 3 days and 23 days after the respective individual deadlines provided for in State procurement regulations.

Monitoring and Payment

Based on our review of packing slips, accompanying the delivery of the masks and approved by MDH personnel, we determined that MDH received a total of 5 million KN95 labeled masks. However, beyond product labeling, MDH could not provide documentation to support that these masks were inspected to ensure they met the applicable requirements (that is, they were indeed KN95 masks or N95¹² equivalents), and could not readily explain the disposition of certain of these masks. Specifically, MDH inventory records indicated that as of June 6, 2021, 4,224,984 of the masks were on hand and 404,580 had been distributed. Based on our physical inventory of these masks conducted in July 2021, we determined that the amount reflected as on hand in MDH inventory records (4,224,984) was reasonably accurate; but, MDH could not readily explain the disposition of the remaining 370,436 masks with an associated price of \$1,037,221. As commented upon elsewhere in this report, our review also disclosed certain deficiencies which raise questions regarding the accuracy and reliability of MDH's inventory records.

¹² The FDA defines N95 masks as a respiratory protective device designed to achieve a very close facial fit and very efficient filtration of airborne particles. The National Institute for Occupational Safety and Health (NIOSH) is responsible for regulating N95 masks.

Test Item 7			
Blue Flame Medical, LLC			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 1,550,000 N95 masks and 37 ventilators	\$6,271,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the masks and ventilators in accordance with all requirements of State procurement regulations. Based on our testing, MDH appeared to have received all of the masks and ventilators it purchased from the vendor; however, MDH could not document that the masks were inspected or account for the disposition of at least 475,400 N95 masks purchased from Blue Flame Medical, LLC with an associated purchase price of \$2,149,712.			

Background

In June 2020, the chairs of the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees requested that we conduct a review of this procurement, which was the subject of extensive media coverage. According to State records, on April 1, 2020, DGS issued a purchase order to Blue Flame Medical, LLC to purchase 1,550,000 N95 masks and 110 ventilators on behalf of MDH. The total cost was \$12,542,000, of which \$6,271,000 was required as an initial deposit. The cost of each N95 mask was \$4.52 and the cost of each ventilator was \$41,000. Our review of the vendor’s website on August 9, 2021 disclosed that Blue Flame Medical, LLC sells medical supplies to help limit the spread of COVID-19. As of August 2, 2021, although the vendor’s website listed N95 masks and other medical equipment there were no ventilators advertised for sale.

On May 4, 2020, DGS canceled the purchase and attempted to recover its deposit from Blue Flame Medical, LLC due to the vendor’s failure to deliver any items within the expected time frame. In October 2020, DGS entered into a settlement agreement with the vendor which allowed Blue Flame Medical, LLC to keep the initial deposit of \$6,271,000 as payment for the 1,550,000 N95 masks and 37 ventilators, which were ultimately provided. According to MDH records, the masks and ventilators were delivered to MDH warehouses, and consequently, MDH was responsible for the inspection, storage, and distribution of the masks and ventilators and for the related recordkeeping.

Procurement

Our review disclosed that the masks and ventilators were not procured in accordance with State procurement regulations for emergency procurements.

While the aforementioned purchase order included the quantity to be purchased and the related payment terms, it did not contain certain critical provisions required by State procurement regulations, such as dispute resolution, delays and extensions, conformance of specifications, and delivery and acceptance.

DGS provided us with an email sent by the Secretary of DGS to senior DGS procurement officials on March 29, 2020 which indicated that Blue Flame Medical, LLC had been identified as a potential vendor by the Director of Federal Regulations for the Governor's Office. According to this email, Blue Flame Medical, LLC had a direct link to a manufacturer in China that could provide various medical supplies within 8 to 10 days. As previously noted in this report, DGS did not obtain competition for purchases of PPE and medical equipment made on behalf of MDH. DGS also could not provide written documentation to support that it had determined the vendor's prices were reasonable; although not specifically required by State regulations for emergency procurements, we believe such a determination would be prudent given that the masks and ventilators were effectively procured as sole source.

At the time of the procurement, Blue Flame Medical, LLC was not registered with SDAT to do business in the State, as required, and as of July 21, 2021 was still unregistered. The procurement was reported to the BPW and published on *eMMA* 5 days and 25 days after the respective deadlines provided for in State procurement regulations.

Monitoring and Payment

During the aforementioned Review of Procurement of Certain COVID Tests, we conducted a physical inventory on November 17, 2020 and determined that MDH received 1,550,000 N95 labeled masks and 37 ventilators from Blue Flame Medical, LLC in accordance with the terms of the settlement agreement. MDH provided evidence that the ventilators had been inspected, were operational, and met all applicable requirements. However, beyond product labeling, MDH could not provide documentation to support that the masks purchased from the vendor were inspected to ensure they met the applicable requirements (that is, they were indeed N95 masks).

MDH also could not explain the disposition of at least 475,400 of the N95 masks with an associated purchase price of \$2,149,712. Specifically, during our current review, we conducted a second physical inventory on July 8, 2021 and determined that only 928,000 of the masks were still on hand. While MDH inventory records indicated that 146,600 had been distributed, there was no record of the disposition of the other 475,400. MDH warehouse personnel advised us that the unaccounted for masks had been distributed, but that MDH's inventory records had not been

updated to reflect these distributions. As commented upon elsewhere in this report, our review disclosed certain deficiencies which raise questions regarding the accuracy and reliability of MDH’s inventory records.

Test Item 8 Design Co., Ltd.			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 2 million KN95 face masks	\$3,280,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the KN95 masks in accordance with State procurement regulations. Based on our testing, we could not verify that MDH received any of the 2 million masks purchased from the vendor.			

Background

According to State records, on May 5, 2020, DGS issued a purchase order to Design Co., LTD, a South Korean company, to purchase 2 million KN95 face masks on behalf of MDH for a total cost of \$3,280,000 million (\$1.64 per mask). Per our review of the vendor’s website on July 27, 2021, Design CO., LTD primarily specializes in research and development of rechargeable batteries. Although the vendor’s website indicated that it began exporting KN95 masks to the United States in 2020, no KN95 masks were listed for sale at the time of our review.

Procurement

Our review disclosed that the KN95 masks were not procured in accordance with State procurement regulations. Specifically, DGS could not document its basis for selecting the vendor as required by State procurement regulations, including how it identified Design Co., LTD to provide KN95 masks. As previously noted in this report, DGS did not obtain competition for PPE purchases made on behalf of MDH. DGS also could not provide documentation to support that the vendor’s prices were reasonable; although not specifically required by State procurement regulations for emergency procurements, we believe such a determination would be prudent given that the masks were effectively procured as sole source. In addition, the aforementioned purchase order did not contain certain critical provisions required by State procurement regulations, such as dispute resolution, delays and extensions, conformance of specifications, and delivery and acceptance.

Our review also disclosed that at the time of the procurement Design Co., LTD was not registered with SDAT to do business in the State, as required and as of July 21, 2021, was still unregistered. DGS did publish the award in *eMMA* as required; and, the procurement was reported to the BPW, although it was done 39 days after the deadline provided for in State procurement regulations.

Monitoring and Payment

Based on our review of available documentation, we could not verify that MDH had actually received the KN95 face masks purchased from the vendor. MDH advised us that all of the masks were delivered to its warehouse on May 27, 2020 and provided us with four freight slips from a vendor (that MDH asserted had delivered the masks), which did not appear related to Design Co., LTD. However, we could not verify that this delivery was associated with the masks purchased from Design Co., LTD because these documents only identified the weight of the items delivered (which did not agree to the weight of the masks shipped by Design Co., LTD according to the bill of lading MDH provided us), and did not contain any specific identifying information such as a description of the goods delivered (that is KN95 masks) or a bill of lading number.

Further, the shipping documents provided by MDH indicated that the masks were placed aboard a container ship in a Korean port on May 24, 2020; accordingly, it did not appear reasonable that the masks could have arrived at MDH's warehouse three days later. In addition, the MDH inventory records provided to us were only a summary of the quantity of masks on hand and did not indicate whether any masks were received on or around the May 27, 2020 date. MDH also could not provide documentation to support that the masks were inspected to ensure they met the applicable requirements; this documentation could have been used as evidence that the masks were received.

While MDH inventory records indicated that certain KN95 masks were on hand, we were unable to verify that any of the 2 million KN95 masks identified by MDH as having been provided by Design Co. LTD were indeed the masks purchased from the vendor. Specifically, we conducted a physical inventory on July 1, 2021, during which MDH personnel identified certain unopened boxes containing KN95 masks as having been provided by Design Co. LTD. However, there was no evidence to support that these masks were associated with the purchase from Design Co. LTD. For example, the purchasing documentation provided did not indicate a specific manufacturer for the masks, and we noted that the purchase order numbers on the masks located in the warehouse did not agree to the purchase order number for Design Co. LTD or the vendor that MDH advised had delivered the masks. As commented upon elsewhere in this report,

our review disclosed certain deficiencies which raise questions regarding the accuracy and reliability of MDH’s inventory records.

Test Item 9			
Economy Kanghwa Co. Ltd.			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MDH	Purchase of 1 million KN95 masks and 1 million surgical masks	\$2,350,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the KN95 and surgical masks in accordance with State procurement regulations. Based on our testing, MDH appeared to have received all of the masks it purchased from the vendor and these masks were still on hand at the time of our review. However, MDH had not inspected the masks to ensure they met applicable requirements.			

Background

According to State records, on April 17, 2020, DGS issued an LOI to Economy Kanghwa Co. Ltd., a South Korean company, to purchase 1.0 million KN95 masks and 1.0 million surgical masks on behalf of MDH, for a total cost of \$2,350,000. The cost of each KN95 was \$2.00 and the cost of each surgical mask was \$0.35. We were unable to identify a current public website for this vendor; however, we found an online business-to-business website that indicated that Economy Kanghwa Co. Ltd offered various face masks as of August 19, 2021. We could not readily obtain current pricing information for the vendor’s offerings. According to MDH records, the masks were delivered to MDH warehouses, and consequently, MDH was responsible for the inspection, storage, and distribution of the masks and for the related recordkeeping.

Procurement

Our review disclosed that the KN95 masks were not procured in accordance with State procurement regulations. Specifically, DGS could not provide documentation to explain its basis for selecting the vendor, including how it identified Economy Kanghwa Co. LTD to provide KN95 masks. As previously noted in this report, DGS did not obtain competition for PPE purchases made on behalf of MDH. DGS also could not provide written documentation to support that the vendor’s prices were reasonable; although not specifically required by State regulations for emergency procurements, we believe such a determination would be prudent given that the masks were effectively procured as sole source.

In addition, DGS did not have a formal written contract with Economy Kanghwa Co. Ltd, as required. While the aforementioned LOI included the quantity to be purchased and the related payment terms, the LOI did not contain any of the critical provisions required by State procurement regulations, or any specifications or requirements for the masks to ensure they would function as intended. At the time of the procurement, Economy Kanghwa Co. Ltd. was not registered with SDAT to do business in the State as required, and as of July 21, 2021, the vendor was still unregistered. The procurement was reported to the BPW and published on *eMMA* 57 days and 58 days after the respective deadlines provided for in State procurement regulations.

Monitoring and Payment

Although there was a lack of documentation (such as, receiving reports) available to support that the masks were received, during our physical inventory conducted on July 1, 2021, we determined that MDH appeared to have received all 2.0 million masks from Economy Kanghwa and that these masks appeared to still be on hand. However, beyond product labeling, MDH could not provide documentation to support that these masks were inspected to ensure they met the applicable requirements (for example, that the masks provided were in fact KN95 masks or N95 equivalents).

Test Item 10 Hagerty Consulting			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	MEMA	Disaster response consulting services and additional staffing	\$1,500,000
OLA Conclusions as of August 31, 2021			
DGS procured the contract in accordance with State procurement regulations. Based on our testing, MEMA appeared to have been effectively monitoring the contract and the invoice payments tested were properly supported and in accordance with the contract terms.			

Background

In March 2020, DGS awarded a contract valued at \$1.5 million to Hagerty Consulting on behalf of the Maryland Emergency Management Agency (MEMA). The contract provided for the vendor to provide staffing to assist in the State Emergency Operations Center and to assist with the Federal Emergency Management Agency reimbursement process. As of July 27, 2021, payments to Hagerty Consulting under this contract totaled \$858,730.

Test Item 11 Inspection Experts, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
MDE	MDE	Sampling of wastewater for COVID-19	\$1,053,000
OLA Conclusions as of August 31, 2021			
MDE procured the contract in accordance with State procurement regulations. Our review of one payment totaling \$54,000 made to the vendor in April 2021 disclosed that the payment was properly supported and in accordance with the contract terms.			

Background

In December 2020, the Maryland Department of Environment (MDE) awarded a contract valued at \$1,053,000 (including options) to Inspection Experts, Inc. The contract provided that the vendor was to take composite samples of wastewater at various locations throughout Maryland to be tested for the presence of the COVID-19 virus and to bill MDE periodically. As of April 13, 2021, payments to Inspection Experts, Inc. under this contract totaled \$275,660.

Test Item 12 CosmosID, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
MDE	MDE	Analysis of wastewater for COVID-19	\$826,680
OLA Conclusions as of August 31, 2021			
MDE procured the original contract and the subsequent modification in accordance with State procurement regulations. Our test of two payments totaling \$66,671 made to the vendor in April 2021 disclosed that the payments were properly supported and in accordance with the contract terms.			

Background

In December 2020, MDE awarded a contract valued at \$647,400 (including options) to CosmosID, Inc. The contract provided that the vendor was to analyze the wastewater samples (obtained by Inspection Experts, Inc., see Test Item 11) to estimate the amount of COVID-19 virus present. In February 2021, MDE executed an emergency modification valued at \$179,280 to include testing for emerging variants of the COVID-19 virus. As of April 19, 2021, payments to CosmosID, Inc. under this contract totaled \$199,200.

Test Item 13 Ellsworth Electric, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
DPSCS	DPSCS	Electrical work at a temporary hospital site located at the Maryland Correctional Institution - Hagerstown	\$181,736
OLA Conclusions as of August 31, 2021			
DPSCS did not procure the electrical work in accordance with State procurement regulations. Based on our testing, DPSCS appeared to have been effectively monitoring the contract and the invoice payment tested was generally supported and accurate.			

Background

According to State records, between April and June 2020, the Department of Public Safety and Correctional Services (DPSCS) issued four purchase orders totaling \$181,736 to Ellsworth Electric, Inc. to perform electrical work at a temporary hospital site located at the Maryland Correctional Institution - Hagerstown. Specifically, DPSCS awarded one purchase order valued at \$98,869 in April 2020, one purchase order valued at \$8,996 in May 2020, and two purchase orders in June 2020 valued at \$69,279 and \$4,592, respectively. Our review of the vendor's website on August 17, 2021 disclosed that Ellsworth Electric, Inc. provides a complete range of electrical contracting and insulation services, including those provided to DPSCS.

Procurement

Our review of two purchase orders issued to Ellsworth Electric, Inc. (valued at \$98,869 and \$69,279, respectively) disclosed that the electrical services generally were not procured in accordance with State procurement regulations. Specifically, the purchase orders did not contain certain critical provisions required by State procurement regulations, such as modifications, delays and extensions, and conformance of specifications.

While DPSCS documented its basis for selecting Ellsworth Electric, Inc. for the initial purchase, DPSCS could not provide written documentation to explain its basis for the second purchase. Specifically, DPSCS procured the second purchase as an emergency modification to the first purchase, but did not document its determination that the additional services were within the scope of the original agreement, as required by State procurement regulations. In addition, DPSCS could not provide written documentation for either purchase to support that the vendor's prices were reasonable; although not specifically required by State

regulations for emergency procurements, we believe such a determination would be prudent given that the services were effectively procured as sole source.

DPSCS also had not reported the second purchase we reviewed (made in June 2020) to BPW as of May 3, 2021, and the initial purchase was reported to BPW three days after the deadline provided for in State regulations. In addition, as of August 17, 2021, DPSCS had not published either award on *eMMA*, as required. We noted that Ellsworth Electric, Inc. was registered with SDAT to do business in the State, as required.

Monitoring and Payment

Based on our review of the one invoice received for the two purchase orders at the time of our work, totaling \$68,713 paid in June 2020, it appeared that DPSCS received the required services from Ellsworth Electric, Inc. However, we noted that this invoice included \$2,868 in State sales taxes even though State agencies are exempt from these taxes. As of May 4, 2021, payments to Ellsworth Electric, Inc. related to the two purchase orders we reviewed (which were valued at \$168,148) totaled \$68,713.

Test Item 14			
White Star Sales and Promotions			
Procuring Agency	Using Agency	Description	Purchase Price
DSP	DSP	Various PPE Items	\$117,950
OLA Conclusions as of August 31, 2021			
DSP did not procure the PPE items in accordance with State procurement regulations. DSP could not provide documentation to support that certain items valued at \$53,727 had been received. In addition, DSP could not provide documentation that it had inspected 11,000 N95 masks purchased from the vendor valued at \$64,223 to ensure they met applicable requirements, and we could not verify the disposition of these masks due to certain deficiencies with DSP inventory records.			

Background

According to State records, between March and June 2020, the Department of State Police (DSP) issued four purchase orders to White Star Sales and Promotions to obtain various PPE items (such as, N95 masks and protective coveralls) for a total cost of \$117,950. Specifically, DSP awarded one purchase order valued at \$11,807 in March 2020, two purchase orders valued at \$26,532 and \$41,920 in April 2020, and one purchase order valued at \$37,691 in June

2020. Our review of the vendor's website on August 6, 2021 disclosed that White Star Sales and Promotions sells promotional products for events, meetings, trade shows, and product branding. The various PPE items DSP purchased from White Star Sales and Promotions were listed for sale on the vendor's website at the time of our review.

Procurement

Our review disclosed that the PPE items purchased from the vendor generally were not procured in accordance with State procurement regulations. Specifically, the purchase orders did not contain certain of the critical provisions required by State procurement regulations, such as modifications and delays and extensions.

At the time of the procurements, White Star Sales and Promotions was not registered with SDAT to do business in the State, as required and as of July 21, 2021, was still unregistered.¹³ Since the individual four procurements did not exceed \$50,000, DSP was not required to report the purchases to the BPW or publish the awards on *eMMA*.

Monitoring and Payment

Based on our review of available documentation, we could not determine if DSP had received certain PPE items purchased from the vendor. Specifically, DSP could not provide documentation to support that it received the 9,985 hand sanitizer packets or 5,000 hooded coveralls associated with two purchase orders for which DSP paid \$53,727. DSP also could not provide documentation to support that the PPE items purchased from the vendor were inspected to ensure they met the applicable requirements (for example, that the masks provided were in fact N95 masks as defined by the FDA).

We could not verify DSP's assertion that the 11,000 N95 masks DSP received from the vendor with an associated purchase price of \$64,223 were distributed to DSP barracks or other State agencies, because DSP's inventory records for COVID-19 purchases were not designed to track the disposition of items purchased from individual vendors. Because DSP advised us that they comingled these masks with similar items purchased from other vendors, we did not conduct a physical inventory to attempt to locate the masks.

¹³ Although the company itself as a legal entity was not registered as required by State procurement regulations, DSP advised that it verified the individual who owned the company was registered with SDAT prior to the purchase.

Test Item 15 John S. Connor, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
DGS	DGS	Consulting and logistical services for DGS procurements from overseas suppliers	\$50,000
OLA Conclusions as of August 31, 2021			
DGS did not procure the consulting and logistical services in accordance with all State procurement regulations. DGS did not adequately monitor the contract, and we could not determine the propriety of two invoices for consulting services totaling \$8,790 selected for review.			

Background

According to State records, on April 14, 2020, DGS issued a purchase order to John S. Connor, Inc. to provide assistance, support, and consulting services related to the procurement and delivery of medical supplies and equipment, test kits¹⁴, and PPE from overseas suppliers for a total cost of \$50,000. Our review of the vendor’s website on August 2, 2021, disclosed that John S. Connor Inc. provides various shipping and logistical services.

Procurement

Our review disclosed that the vendor’s services were not procured in accordance with State procurement regulations. Specifically, DGS could not document its basis for selecting the vendor, including how it identified John S. Connor, Inc. and why other vendors were not considered to provide the services. In addition, the aforementioned purchase order did not contain certain critical provisions required by State procurement regulations, such as disputes and delays and extensions. DGS also could not provide documentation to support its determination that the prices offered were reasonable; although not specifically required by State procurement regulations for emergency procurements, we believe such a determination would be prudent given that the services were effectively procured as sole source.

Since the procurement did not exceed \$50,000, DGS was not required to report the procurement to the BPW or publish the award on *eMMA*. We noted that John S. Connor, Inc. was registered with SDAT to do business in the State, as required.

¹⁴ For example, John S. Connor acted as the customs broker for the COVID-19 test kits purchased from LabGenomics which was the subject of our Review of Procurement of Certain COVID Tests, for which the related report was issued on March 31, 2021.

Monitoring and Payment

Based on our testing, DGS did not effectively monitor the contract. Specifically, the purchase order provided that the vendor would invoice DGS for consulting services provided at an hourly rate of \$100, and for freight forwarding and customs clearance based on actual costs. Our test of four invoices totaling \$13,971 paid between April and July 2020 disclosed that two invoices for consulting services totaling \$8,790 did not include any description of the specific services performed. Therefore, we could not verify the propriety of these billings. As of July 31, 2021, payments to John S. Connor, Inc. under this purchase order totaled \$29,704.

Objective 2

Disposition and Reliability of LabGenomics Tests

Objective and Methodology

Our objective was to account for the number of LabGenomics tests used, and to corroborate an allegation we received on our fraud, waste, and abuse hotline in September 2020 regarding concerns with the accuracy of test results received for samples collected at Towson University (TU).

For the purpose of completing this objective, we obtained documentation of test results from the laboratories (specifically from the University of Maryland, Baltimore's Institute of Genome Sciences and University of Maryland Pathology Associates (UMPA), the Maryland Department of Health's Maryland Public Health Laboratory, and CIAN Diagnostics) 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, for which OLA issued the report on March 31, 2021. As previously noted, we were unable to obtain access to these results in time for inclusion in that report. We performed various tests of the data obtained from these laboratories and determined that the data were reliable for the purposes for which the data were used by us.

Conclusion

Our analysis of the documentation provided disclosed that 460,596 (92 percent) of the 500,000 LabGenomics tests were used to analyze patient samples. The laboratories advised us that the remaining 39,404 tests were likely used for other purposes, such as for validation studies and test controls.

Our analysis also generally corroborated the concerns raised in the aforementioned allegation to our fraud, waste, and abuse hotline. Specifically, the individual who submitted the allegation advised us that the test results for samples collected by TU in August 2020 and sent to UMPA for analysis were positive for 66 individuals, but that certain of these individuals challenged the validity of their test results for a variety of reasons and immediately retested and received negative test results. In this regard, we determined that 42 of the 66 individuals were retested from 2 to 6 days after the initial tests were completed and that 26 of these individuals received a negative result for their subsequent test. However, we could not determine from available sources if the inconsistent results were due to inherent performance issues with the LabGenomics tests or other factors that could impact the validity of the test results.

APPENDIX



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

December 3, 2021

Mr. Gregory A. Hook, CPA
Legislative Auditor
Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Hook:

Thank you for the opportunity to review the revised Review of Certain Emergency Procurements Related to the State of Maryland's COVID-19 Response; the Maryland Department of Health has no additional comment to the October 22nd joint agency response (attached).

If you have any questions, please contact Frederick D. Doggett at 410-767-0885 or email at frederick.doggett@maryland.gov.

Sincerely,

A handwritten signature in black ink that reads "Dennis R. Schrader".

Dennis R. Schrader
Secretary

Enclosure



DEPARTMENT OF HEALTH
Dennis R. Schrader, Secretary

DEPARTMENT OF GENERAL SERVICES
Ellington E. Churchill, Jr., Secretary

Auditor's Comments on Agencies' Responses

Although the written responses provided by the agencies subject to this review indicated general agreement with our findings, the responses included certain disagreements with the content of our report. After reviewing the areas of disagreement, we re-examined our work and reaffirmed that our published findings are appropriate, clearly presented, and properly supported by the results of interviews and our examination of the documentation provided to us by the respective agencies.

Thus, we continue to believe that OLA's statements and conclusions in the report are valid and were not disproved by any of the unsupported assertions included in the responses. Although we reviewed each response in its entirety, we did not deem it necessary to provide a point-by-point rebuttal, but rather provided the Auditor's Comments below to certain significant disagreements in the agencies' responses.

October 22, 2021

Gregory A. Hook, CPA
Legislative Auditor
Office of Legislative Audits
Department of Legislative Services
301 West Preston Street, Room 1202
Baltimore, Maryland 21201

Submitted electronically to response@ola.state.md.us

Dear Mr. Hook:

The Maryland Departments of General Services (DGS) and Health (MDH), along with our partner state agencies below, appreciate the opportunity to respond to the Office of Legislative Audits' (OLA) Special Review of Emergency Procurements (October 2021), as conducted from April 9, 2021 through August 31, 2021.

We are deeply appreciative of the work from our OLA colleagues. While there was less of a collaborative business process discussion than traditionally occurs in a regularly scheduled audit cycle, we thank the Special Review for identifying issues that we

continue to work on remedying or that we have already instituted new business processes to remedy.

The State of Maryland's COVID-19 response has been organized around one core mission: to prevent as many deaths and hospitalizations as possible while ensuring that Marylanders can go about their normal business in a reopened economy safely.

Maryland has been nationally recognized as having one of the best COVID-19 responses in the nation. (A [report](#) by SYKES ranked Maryland as having the 2nd most effective response to the COVID-19 pandemic. According to a [report](#) issued by UC Berkeley, Maryland has the 9th best response to the COVID-19 pandemic.) Under the leadership of Governor Larry Hogan, Maryland moved aggressively early in the pandemic to undertake steps to ensure a robust response addressing the five pillars of our COVID-19 response:

- (A) Ensure sufficient hospital capacity throughout the state
- (B) Acquire adequate personal protective equipment (PPE) and other medical equipment
- (C) Set up the framework for access to COVID-19 tests
- (D) Building a robust contact tracing infrastructure
- (E) Creating a wide set of COVID-19 vaccine distribution channels to sustain one of the most successful vaccination initiatives in the nation.

Generally speaking, all involved state agencies conducted procurement(s) and their contract management processes as part of the statewide COVID-19 pandemic response based on the following guiding principles:

1. Adherence to existing procurement law, regulations, and policies to the maximum extent possible - as demonstrated by review for legal sufficiency, competitive bids, and reporting to the Board of Public Works (BPW);
2. Contract management to ensure that services contracts were overseen on a weekly basis with defined objectives; and
3. A focus on improving our business processes as shortcomings were identified.

Regarding principle three above, as opposed to regular or traditional business processes of state government, the COVID-19 pandemic required actions that have not been undertaken in over a century, or never in state history.

Below, please see agency specific remarks about the Special Review:

DGS Response:

DGS and its Office of State Procurement (DGS OSP) appreciates the opportunity to offer this response to the OLA Special Review of Emergency Procurements (October 2021), as conducted from April 9, 2021 through August 31, 2021.

The nine contracts procured by DGS OSP that were reviewed resulted in several common themes regarding the conclusions drawn. DGS' responses are as follows:

1. DGS did not have a formal written contract.

Agency Response: One of the Office of the Attorney General's Assistant Attorneys General assigned to DGS reviewed and approved the chosen contract vehicle, in this instance a Letter of Intent, for legal form and sufficiency and DGS asserts this constitutes a valid contract.

Auditor's Comment: It is troubling to us that DGS continues to consider letters of intent sufficient to document multi-million dollar emergency procurements from vendors that had not previously conducted business with the State. Our report acknowledged that there were letters of intent for two of the emergency procurements tested (test items 2 and 9), but indicated that they did not include all of the required contract provisions, including language to address key elements intended to protect the State, including conformance of specifications, indemnification, cost and price certifications, and requirements for registration of the business in the State. As indicated in response 2. directly below, DGS concedes that the letters of intent did not contain all of the required contract provisions. Furthermore, we were advised by the Board of Public Works staff that, while a letter of intent may be evidence of an agreement between the State and a vendor, without further documentation incorporating the State's required contract provisions, these agreements may be "void" under State law. Finally, we noted that there was no letter of intent for test item 6, and the only documentation of the procurement provided to us by DGS was the vendor's invoice.

2. The Letter of Intent (LOI) did not contain critical provisions required by regulations for emergency procurement contracts.

Agency Response: DGS concedes that the LOI did not contain all of the mandatory clauses required under COMAR 21.07.01; however, it should be noted that under COMAR 21.05.06.02(D)(2) the guidance provided in regulation is "[a] record of each emergency procurement shall be made as soon as practicable and shall set forth...". The entirety of the Maryland State government was being asked to rise to meet the challenges posed by a world-wide health crisis, the likes of which had not been witnessed in over a hundred years. With supply chains completely gridlocked or collapsed, demand far exceeding the supply, and no contingency planning for these types of global events, the "as soon as practicable" part of the regulation certainly provided the reasoning behind the strategies employed to acquire these critical supplies and services. The LOIs represented a streamlined and expedited way for Maryland to order and receive critical supplies that otherwise we would not have been able to obtain, and were deemed legally sufficient by the Office of the Attorney General.

3. Competition was not obtained.

Agency Response: COMAR 21.05.06.02(C), which reads “[t]he procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.” As it relates to the procurements being made in response to the global pandemic, where quite literally every country, and every state/province/county/city government in the world was competing for the same limited supply of critically needed items (PPE and ventilators), if a company approached the State of Maryland with a sales proposal, was found to be legitimate and the items proved to be genuine, of course we were going to do our best to acquire those items for the citizens of Maryland. When PPE and ventilators were found, it was a race to put them under contract. Essentially, the choice made in that moment - given the facts and circumstances at that point in time - was that due to the overwhelming demand for the limited supply of these critical supplies, the normal concept of competition was not of paramount importance. Keeping our first responders, our doctors and nurses, our senior citizens, and each and every person living and working in Maryland at the time safe and having the equipment necessary to help sustain their lives if they became infected was what was foremost on the list of priorities.

4. The report of emergency to the BPW was late.

Agency Response: Never before had commodity contracts been reported to the BPW. There was much discussion about this change in policy and procedure during a pandemic. DGS OSP conceded to reporting the commodities contracts in the spirit of transparency. Due to the volume of commodities procurements to be reported, DGS OSP worked with the BPW staff to create a format for presenting the procurements. This effort to create a new process to accommodate this new reporting component was lengthy and time consuming, and meanwhile DGS OSP was still expected to continue to acquire critically needed supplies and services. Sourcing and acquiring were higher priorities than reporting commodities purchases to the BPW, when prior to the pandemic, that was never a requirement. The important aspect that should be noted is that they were reported.

5. Could not provide documentation for the selection of the vendor.

Agency Response: In many cases DGS was buying from any and all qualified vendors for PPE and ventilators as the supply chain basically did not exist. If a qualified vendor was found, and the products deemed genuine and appropriate for the needs of MDH or whoever the requesting agency was, DGS OSP purchased as much of the products as the vendor could reasonably supply. There was a critical shortage of PPE and ventilators and therefore the rationale for purchasing was because we could get the products needed at a reasonable price from a qualified vendor.

6. Could not provide documentation to support that the vendors prices were reasonable.

Agency Response: This is not required for emergency procurements. Further, price reasonableness in a time of a pandemic for critical items is very subjective. Demand far exceeded supply. Prices were indeed escalated when compared to pricing for the same supplies prior to the pandemic. However, comparing the prices for specific PPE, i.e. face masks, between Vendor “A” and Vendor “B” both of whom approached us with offers to sell, but neither with sufficient quantities to meet our demand, if the difference in prices between the vendors was not substantial, the price would be deemed reasonable for both, and both would be contracted with to acquire those masks.

Auditor’s Comment: Our report specifically acknowledges that determining the reasonableness of vendor pricing is not a requirement under State regulations for emergency procurements. Nevertheless, we believe that such determinations would be prudent given the conditions under which these procurements occurred, as described in DGS’ response.

7. Vendors were not registered with SDAT.

Agency Response: Not being registered with SDAT and not being in good standing does not necessarily foreclose the State from doing business with a vendor. A company could submit the paperwork to SDAT for becoming registered to do business in Maryland, but that process might not be completed in time to meet the needs precipitated by the current emergency.

Additionally, contractors commonly fall out of good standing during the life of a contract for various reasons, such as not filing their taxes on a timely basis. The State doesn’t cancel the contract; rather payments to the contractor are withheld or garnished until their good standing status is re-established.

Auditor’s Comment: Contrary to the response, State procurement regulations mandate that purchase orders in excess of \$50,000 include a requirement for the vendor to register with SDAT (no exception of this requirement for Emergency Procurements exists). Moreover, as we noted in our report, only one vendor had subsequently registered with the State as of July 2021.

8. Purchase Orders did not contain certain critical conditions.

Agency Response: Purchase orders generally have required terms and conditions attached/ included. DGS and our Assistant Attorneys General would need to see which purchase orders were reviewed and then compare them with purchase orders completed prior to the pandemic, as well go through COMAR to determine which critical conditions were required, if any, that were not included.

Auditor's Comment: Our report includes examples of the omitted terms and conditions under each applicable test item. Furthermore, DGS was provided an opportunity to review the tested purchase orders during and subsequent to our review.

9. Vendor's website provides goods or services other than what was contracted for, or does not provide information on what was contracted for.

Agency Response: This conclusion is not a violation of statute or regulation, nor is it relevant as to whether DGS acted within its legal authority by contracting with a vendor for goods or services that were not listed on their website. Purchases were made from companies who essentially acted as brokers or middlemen, and from businesses that previously had not provided certain goods, but were able to quickly adjust their business model to help fulfill the demand in the marketplace for certain goods or services, and help maintain their company's viability in the face of unknown consequences resulting from a worldwide pandemic.

Auditor's Comment: Our report does not conclude nor state that this is a violation of statute or regulation, or an instance of DGS acting beyond its legal authority to procure goods or services from vendors. However, we believe this information provides critical context for other conclusions in our report, including that DGS could not document how certain vendors were identified and the reasonableness of the related pricing.

10. Finally, regarding the procurement for John S. Conner, this procurement was conducted as a small procurement (COMAR 21.05.07) not as an emergency procurement. Emergency procurement regulations would not apply.

Agency Response: Many lessons were learned as a result of the procurement activity resulting from the pandemic as well as through this exercise of responding to the auditor's reviews of those procurements. DGS OSP has already begun to make process improvements in areas related to vetting vendors, the creation of checklists to ensure regulatory requirements are met in the future, and discussions have begun around creating a contract template for emergency procurements that includes the applicable mandatory clauses. In addition, DGS OSP has been working on proactively establishing contracts that can be accessed in emergency situations that would allow agencies to respond immediately to needs arising from an emergency without needing to conduct a standalone procurement.

Auditor's Comment: Contrary to DGS' assertion, this purchase order included plain language that indicated that the procurement was awarded as an emergency contract pursuant to State regulations for emergency procurements. Thus, we deemed it appropriate to include the results of our review of this emergency procurement in this report. Our report acknowledges that certain provisions (specifically, reporting to BPW and publishing on *eMMA*) were not applicable due to the dollar amount of the transaction.

MDH Response:

Looking forward, MDH has taken the lessons learned from our ongoing communications with OLA, including the March 2021 Special Review, and conversations with DGS, BPW, and Maryland General Assembly members and staff to make business processes improvements regarding contract management and procurement within the Department. We thank all of our colleagues from these state entities for their advice and recommendations on improvements.

One key process improvement that began in early 2021 has been the formation of the MDH Office of Contract Management and Procurement (OCMP) to build on the procurement lessons that emerged in 2020. OCMP's mission is to implement lifecycle contract management and procurement initiatives into all aspects of MDH operations. An important collaborative effort that occurred during the period of this Special Review, which was completed in late June 2021, was an Agency Procurement Review of MDH by OSP. This Agency Procurement Review focused on providing sound, practical opportunities to improve the purchasing process to correct the deficiencies found during their oversight of MDH's delegated procurement activity. MDH has been focused on building the staffing foundation to implement the various findings over the past 90 days. A summary copy of the APR exit conference is available upon request.

A secondary aspect put into place based on the APR and the Special Review is that MDH conducts regular (at the time of writing, three days a week) COVID-19 contract management meetings. The scope of these meetings focuses on the operational and fiscal aspects of our over 40 COVID-19 contracts to ensure that operational objectives, fiscal expenditures, and other oversight measures are in effect. This mechanism, along with a close partnership and coordination with staff at BPW, has ensured a regular procurement cadence for COVID-19 contracts.

We note the following with respect to the Test Items raised in the Special Review:

- All contracts are reviewed and approved for legal sufficiency by the Office of the Attorney General. This ensures that all of our contracts include OSP's mandatory terms and conditions as mandated by the standard state agency contract documents, which all Contractors were required to accept. Should OLA have questions about this standard contract document, we welcome, and encourage, further conversations with the relevant procurement oversight authorities.
- Whenever possible, we made every attempt to conduct competitive bid solicitations for our emergency procurements, especially in the area of services contracts, within the operational windows permitted and required by the urgency of the COVID-19 response. Proposals are reviewed to ensure they meet solicited requirements and the vendor(s) most advantageous to the state are selected based on technical response and price, as required under state procurement regulations.

- MDH made emergency procurement reporting processes improvements which included seeking clarification from BPW staff about when, and in what manner, emergency procurements are required to be reported to BPW.
- We have conducted an in-depth investigation about the test item comments regarding ventilators. All 1,107 ventilators are accounted for and located either at our warehouse or with our bioengineering firm. MDH can provide updated documentation upon request.
- Regarding personal protective equipment (PPE) receipt and inspection - upon arrival, MDH conducted a physical inspection of items received to count and verify the items against any included delivery paperwork (packing slips, bills of lading, etc.), and inspected that the packing and products were in good condition. Information collected was then sent back to DGS, which verified that the products received were the products ordered. The MDH warehouses utilized clinicians to spot check any items that did not appear to be in good condition, had suspicious labeling, or where the product did not match the given product description. Our inspection process evolved throughout the COVID-19 pandemic as lessons were learned, especially in ensuring that delivery paperwork included more detailed information about delivered goods.

Due to the volume of PPE items purchased, MDH was not able to inspect every item. Once items were inspected upon arrival and put into inventory, they were sorted into like items (e.g. gowns with gowns, gloves with gloves). MDH's focus was on efficient receipt, storage, and transportation of PPE to ensure that life-saving personal protective equipment was distributed to healthcare providers, first responders, and other front-line workers in a timely manner.

- For KN95 and N95 masks, MDH cross-checked these items against list of respirators covered under the [Umbrella EUA for Non-NIOSH-Approved Disposable Filtering Facepiece Respirators](#) maintained by the US Food and Drug Administration as well as the [NIOSH-approved N95 Particulate Filtering Facepiece Respirators](#) list maintained by the US Centers for Disease Control and Prevention. MDH continues to check both websites to ensure we are tracking updates made to both lists as the response continues.

Auditor's Comment: While MDH's response indicates that PPE items (including N95 and KN95 masks) were inspected to ensure compliance with applicable requirements, as noted in our report, MDH did not provide documentation that these inspections were performed for any of the PPE purchases we tested.

We thank OLA for their work in conducting this Special Review and look forward to having further conversations about process improvements here and in other audits.

MDEM Response:

An updated response was provided by MDEM which is included elsewhere in the Appendix.

MDE Response: No agency response needed.

An updated response was provided by MDE which is included elsewhere in the Appendix.

DPSCS Response:

An updated response was provided by DPSCS which is included elsewhere in the Appendix.

MSP Response:

An updated response was provided by DSP which is included elsewhere in the Appendix.

Sincerely,



Eric T. Lomboy
Chief of Staff
Department of General Services



Webster Ye
Assistant Secretary, Health Policy
Maryland Department of Health

Cc: Ellington E. Churchill, Jr., Secretary, Department of General Services
Dennis R. Schrader, Secretary, Maryland Department of Health
Robert L. Green, Secretary, Department of Public Safety & Correctional Services
Ben H. Grumbles, Secretary, Department of the Environment
Col. Woodrow W. Jones, III, Secretary, Department of State Police
Russell J. Strickland, Acting Secretary, Department of Emergency Management



Larry Hogan | Governor
Boyd K. Rutherford | Lt. Governor
Russell J. Strickland | Acting Secretary

December 7, 2021

Mr. Gregory A. Hook, CPA
301 West Preston Street
Room 1202
Baltimore, Maryland 21201

Re: Office of Legislative Audit Special Review of Certain Emergency Procurements Related to the State of Maryland's COVID-19 Response

The Maryland Department of Emergency Management is in receipt of the Office of Legislative Audit Special Review of Certain Emergency Procurements Related to the State of Maryland's COVID-19 Response. The report tested one MDEM-related contract: Test Item 10, Hagerty Consulting.

We acknowledge the report's finding that MDEM (formerly Maryland Emergency Management Agency, MEMA) procured the Hagerty Consulting contract in accordance with State procurement regulations, and that MDEM has been effectively monitoring the contract and the invoice payments tested were properly supported in accordance with contract terms.

Sincerely,

Russell J. Strickland
Digitally signed by
Russell J. Strickland
Date: 2021.12.07
09:02:10 -05'00'

Russell J. Strickland
Secretary,
Maryland Department of Emergency
Management



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

December 3, 2021

Gregory A. Hook, CPA
Legislative Auditor
Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Hook:

The Maryland Department of the Environment (MDE) has reviewed your office's special audit of Certain Emergency Procurements Related to the State of Maryland's COVID-19. We would like to thank the Office of Legislative Audits for their diligence in this most favorable review. We have no additional response to your assessment. MDE confirms that the disclosures are complete and that they address activities that occurred from March 2020 through May 2021.

Sincerely,

A handwritten signature in black ink that reads "Ben Grumbles". The signature is written in a cursive, flowing style.

Ben Grumbles
Secretary

cc: Horacio Tablada, Deputy Secretary
Cierra Neville, Internal Auditor
June Dwyer, Deputy Director, Office of Operational Services



Department of Public Safety and Correctional Services

Office of the Secretary

6852 4TH Street, Sykesville, Maryland 21784

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STATE OF MARYLAND

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CAROLYN J. SCRUGGS
ASSISTANT SECRETARY

GARY W. McLHINNEY
ASSISTANT SECRETARY

December 7, 2021

Gregory A. Hook, CPA
Legislative Auditor
Office of Legislative Audits
301 West Preston Street, Room 1202
Baltimore, Maryland 21201

Dear Mr. Hook,

The Department of Public Safety and Correctional Services (DPSCS) acknowledges and appreciates the Office of Legislative Audits' (OLA) November 2021 Special Review of Emergency Procurements related to Maryland's COVID-19 response. The Department has attempted to do everything in full compliance with State procurement regulations, but we also note that these emergency procurements were completed during the worst pandemic in the last 100 years, and the public safety of our offenders and staff had to be, and was, our Department's highest and first priority.

Nevertheless, going forward, the Department will ensure, to the extent possible, that all emergency procurements are completed in accordance with all State procurement regulations, including the issues cited in the Special Review. Please find attached the Department's response to the one DPSCS finding identified in the Special Review.

If you have any questions regarding this response, please contact me.

Sincerely,

Robert L. Green
Secretary

Attachment

Cc: Walter P. Landon, Deputy Chief of Staff

**Office of Legislative Audits' Special Review
of Emergency Procurements
Department of Public Safety and Correctional Services**

Test Item 13 Ellsworth Electric, Inc.			
Procuring Agency	Using Agency	Description	Purchase Price
DPSCS	DPSCS	Electrical work at a temporary hospital site located at the Maryland Correctional Institution - Hagerstown	\$181,736
OLA Conclusions as of August 31, 2021			
<p>DPSCS did not procure the electrical work in accordance with State procurement regulations. Based on our testing, DPSCS appeared to have been effectively monitoring the contract and the invoice payment tested was generally supported and accurate.</p>			

Department Response:

In order to address the finding identified above in the OLA's Special Review, the Department will ensure that:

- purchase orders contain certain critical provisions required by State procurement regulations, such as modifications, delays and extensions, and conformance of specifications;
- the basis for selecting vendors is clear and documented;
- purchases are reported to the BPW in a timely manner; and
- all awards are published on eMMA.



LARRY HOGAN
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

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COLONEL
WOODROW W. JONES III
SUPERINTENDENT

December 7, 2021

Mr. Gregory A. Hook, CPA
State of Maryland
Office of Legislative Audits
301 West Preston Street
Room 1202
Baltimore, MD 21201

Dear Mr. Hook:

Please accept this correspondence as a response to the issues identified by the Office of Legislative Audits (OLA) in the *OLA Special Review of Emergency Procurements Report*, specifically Test Item 14. I would like to thank the Office of Legislative Audits for their professionalism and their time in meeting with my staff to resolve any outstanding issues.

While the report does not contain "findings," the Maryland Department of State Police (MDSP) has identified the specific conclusions within Test Item 14 and provided our responses to each conclusion attached to this correspondence. Should you or any member of your staff have any additional questions or concerns, please do not hesitate to contact me directly.

Sincerely,

Woodrow W. Jones III
Superintendent

WWJ:tmw

"Maryland's Finest"



**Maryland Department of State Police
Response to OLA Test Item 14**

Conclusion #1: At the time of the procurements, White Star Sales and Promotions was not registered with SDAT to do business in the State, as required and as of July 21, 2021 was still unregistered.

Agency Response: The MDSP does note that White Star Sales and Promotions does not have a certificate on file as required under COMAR. However, as stated in the footnote, the MDSP verified the owner of the company was registered with SDAT. The owner shares a common Federal Tax ID with White Star Sales and Promotions. As of April 27, 2020, White Star Sales & Promotions was registered as Burch III, Louis Claude, Department ID: L204460705. The Company is in FMIS as White Star and Louis C Burch.

Conclusion #2: The MDSP could not provide documentation to support that it received the 9,985 hand sanitizer packets or 5,000 hooded coveralls associated with two purchase orders, for which the MDSP paid \$53,727.

Agency Response: The MDSP does not object to the conclusion relating to the hand sanitizer packets. As to the hooded coveralls, the MDSP did provide dissemination documentation to support that 5,000 hooded coveralls were received and either disseminated across the MDSP or stored in the MDSP Warehouse, where they remain as of the last inventory count dated 10/29/21.

Auditor's Comment: The documentation provided by DSP at the time of our review indicated that DSP distributed 1,656 hooded coveralls on June 25, 2020 and that 809 remained on hand at that date. However, DSP did not provide documentation to support that these items were associated with the purchase from White Star Sales and Promotions, or to account for the remaining 2,535 hooded coveralls that were to be provided by the vendor.

Conclusion #3: The MDSP also could not provide documentation to support that the PPE items purchased from the vendor were inspected to ensure they met the applicable requirements.

Agency Response: Prior to procurement, the MDSP Quartermaster consulted with the Agency Risk Manager and the Agency Physician and obtained required PPE specifications for all purchases to ensure consistency with CDC guidelines. The MDSP does not provide medical or lab related training to warehouse staff, nor does it maintain specialized equipment necessary to test PPE materials upon receipt. The MDSP warehouse receiving staff inspect every item received by the MDSP warehouse to affirm order accuracy. This inspection was noted in the Department records and was described during this inquiry.

Mr. Gregory A. Hook, CPA
December 7, 2021
Page Three

Conclusion #4: We could not verify the MDSP's assertion that the 11,000 N95 masks the MDSP received from the vendor, with an associated purchase price of \$64,223, were distributed to the MDSP barracks or other State agencies because the MDSP's inventory records for COVID-19 purchases were not designed to track the disposition of items purchased from individual vendors.

Agency Response: The MDSP utilized a combination of tracking tools through a shared, cloud-based solution that included COVID Supply Warehouse Inventory counts, COVID Supply Distribution schedules, and COVID Supply Burn Rate sheets. The MDSP did not design inventory tracking to isolate COVID-19 purchases by a vendor. Instead, the MDSP inventory tracking was designed to monitor the acquisition, usage, and replenishment by item type. All entries and/or revisions to COVID-19 inventory were time and date stamped with the unique user's email address associated with each entry. Twenty three (23) MDSP commanders were involved in the receiving of N95 masks through this established and documented process.