

Brazil's Federal Public Prosecution Service issues guidance on relaxed government contracting rules during the COVID-19 pandemic: suppliers should adopt robust internal controls

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This week the division of Brazil's Federal Public Prosecution Service ("MPF" – *Ministério Público Federal*) responsible for matters involving corruption and administrative misconduct, issued a **booklet** (Portuguese only) containing guidance on the main changes made by Federal Law 13.979/2020, which relaxed the rules on government contracting to facilitate measures to fight the COVID-19 pandemic.

This newsletter provides a summary of the main changes introduced by Law 13.979/2020, along with recommended compliance practices for private-sector businesses which, in response to relaxed government contracting rules, should reinforce their internal controls to avoid possible future challenges by supervision and control authorities – including the MPF. And according to the MPF, one of the most important steps to be taken is careful compliance with the provisions contained in its booklet.

Below you will find the main guidance given in the MPF's booklet, followed by our comments on the precautions that should be taken by businesses that provide goods and services to the government during the COVID-19 pandemic.

Waiver of competitive bidding procedures

Competitive bidding procedures will not be required for the acquisition of goods, services and inputs related to the pandemic. In such cases, the following prerequisites are presumed: **(a)** the existence of an emergency situation, **(b)** the need to deal promptly with the emergency situation, **(c)** risk to the safety of persons, works, provision of service, equipment, or other public or private property, and **(d)** the goods or services contracted will be limited to those needed to deal with the emergency situation.

Simplified preparatory phase

In the pandemic scenario, preliminary studies will not be required, and risk management will be required only during the contract, not in advance. Even price estimates can be waived, for good reason given by the contracting authority.

Supplier qualification

If there are limited suppliers of needed goods and services, proof of compliance with tax and labor legislation can be waived for good reason, and in extreme situations, even proof that the supplier meets qualification requirements can be dispensed with. Nonetheless, certain requirements cannot be waived, specifically **(a)** good standing under social security legislation and regulations, **(b)** the prohibition against nighttime work and work in hazardous conditions for persons under 18 years of age, and **(c)** the prohibition against work by those under 16 years of age, except for those who are apprentices.

Simplified procurement systems, including on-line bidding

All time periods are cut in half, and appeals no longer suspend the contracting procedure until a decision is issued on the appeal. The requirement for public hearings prior to high-value contracts is also waived.

Government contracts

Contracts made under Law 13.979/2020 have a term of up to six months, which can be extended for as long as efforts to combat the pandemic continue. Suppliers are required to accept increases and decreases in contracted services or goods of up to 50% of the initial value of the contract, double the 25% under ordinary legislation.

Comments on compliance and regulatory issues

Companies that supply goods and services to the government, whether through a competitive procedure or not, are subject to the principles applicable to public administration set out in the Constitution, such as good morals, impartiality, and public access to information.

Furthermore, even when a competitive contracting procedure is waived, the contracting authority must still (i) state the grounds for determining that an emergency exists, (ii) set out reasons for choosing the supplier, (iii) justify the price under the contract, and (iv) publish an extract of the contract in the Official Gazette (*Diário Oficial*).

With relaxed contracting rules, it becomes even more important for companies to strengthen their internal controls, especially their policies on interaction with public agents and authorities. Once the crisis has passed, it is not unlikely that supervision and control authorities will examine emergency contracts in detail, in order to determine whether abuses have occurred. Suppliers who have solid compliance procedures in place and maintain careful records of documents related to their government contracts will find it much easier to show they are in compliance with the law and the contract, if they are called upon to do so.

Although it may seem counterintuitive, the relaxed rules introduced by Law 13.979/2020 do not invite relaxed compliance practices on the part of suppliers. Indeed, just the opposite is true: now is the time to redouble efforts to ensure conformity with legal requirements and best practices in interactions with public agents.

BMA's specialists in the areas of Compliance, Investigations and Enforcement, and Infrastructure and Regulatory and Governmental Affairs are available to answer your questions about Law 13.979/2020 and to assist you with Brazilian government contracting procedures.

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