

More flexible government contracting procedures

31.03.2020 2 min read

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Among the measures implemented by the government to deal with the COVID-19 crisis are more flexible contracting procedures to speed up the procurement process. These more flexible rules do, however, mean that suppliers should take added precautions, and reinforce their internal controls to avoid future problems raised by authorities responsible for the supervision and control of public accounts and government contracts.

Among the measures implemented by the government to deal with the COVID-19 crisis are more flexible contracting procedures to speed up the procurement process, especially for essential material needed to manage the risks and harm resulting from the pandemic.

The initiative can be seen in various pieces of legislation issued to support government's efforts to contain the spread of the virus. Article 4 of Federal Law 13.979/2020, which deals with emergency measures at the federal level, broadens the general waiver of competitive bidding procedures under the General Government Contracting Law (Federal Law 8666/1993) to include procurement of goods and services used to face the pandemic. Moreover, contracts can be made with suppliers which had been declared to be ineligible, or whose right to take part in government contracting process was been suspended, if they are the only supplier of the goods or services required (Law 13.979/2020, article 4§3, as amended by Provisional Measure 926). State and municipal legislation declaring a state of emergency have followed the line taken in the federal legislation.

It is important to keep in mind, however, the companies that supply goods and services to the government, whether through a competitive process or not, are subject to the principles of applicable to public administration set out in the Constitution, such as good morals, impartiality, and public access to information. Furthermore, even though a competitive contracting process has been waived, the contracting government authority must still give reasons for finding that an emergency exists, and for choosing the supplier, justify the price under the contract, and 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, as a precaution, including their policies on interaction with public agents and authorities. It is not unlikely that, once the crisis has passed, supervision and control authorities will decide to examine emergency contracts in detail, in order to determine whether any abuses have occurred. Suppliers should therefore maintain a record of all the documents related to the contract, including the documents that prove that the contracted goods or services were effectively delivered, and proof of payment. It should also be kept in mind that even when there is a waiver of competitive processes, suppliers have the obligation to charge prices that are compatible with past practice and market standards.

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