COVID-19: impacts on government contracts and contracting

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Authors

Ana Cândida de Mello Carvalho

Anna Carolina Malta Spilborghs

José Guilherme Berman

Shrinking global commerce and the closing of land and air borders to avoid the spread of COVID-19 have had impacts not only on the public health sector, but on government contracts and contracting, administrative proceedings, and the supervision and control of government acts, profoundly affecting relations between the private and public sectors. **Click on the titles to read the whole article.**

- **Cancellation or postponement of government contracting processes**

Federal Law 8666/1993 (the Government Contracting Law) allows government contracting processes currently underway to be cancelled or postponed for reasons of public interest in view of the COVID-19 pandemic, without liability to the companies participating in the bid.

- **Validity of bids submitted in suspended contracting processes**

If because of COVID-19 a contracting process is not concluded before submitted bids expire, and the government later requests an extension, participating companies are not required to maintain the terms of their bids, but they can do so if it is in their interest.

- **Termination of government contracts for supply of goods and services and contracts for public works**

When it is no longer viable to maintain a contract for supply of goods or services, whether because of the COVID-19 public health emergency, or for another reason set out in article 78 (XII) to (XVII) of the Government Contracting Law (Law 8666/1993), the government entity can terminate the contract.

- **Emergency contracts**

Federal Law 13.979/2020, which establishes measures related to COVID-19, provides that competitive bidding procedures can be waived for the

acquisition of health-related goods, services and inputs that will be used to deal with the public health emergency.

- **More flexible rules for government contracting**

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.

- ***Force majeure* and re-establishing economic and financial balance**

Unforeseen events related to COVID-19 that upset the economic and financial balance between the parties, and consequently performance of government contracts, are triggers for requests to re-establish the balance under the contract, as provided for in article 65(II)(d) of Law 8666/1993.

- ***Factum Principis* – the effect of emergency measures on contracts with the government**

The measures adopted by government in connection with the COVID-19 emergency can made it difficult or even impossible to perform contracts with the government.

- **Occupation of private property by reason of imminent public danger**

Among the other measures introduced by Federal Law 13.979/2020 to deal with the COVID-19 crisis is the requisition of goods and services from individuals and legal entities, against payment of fair compensation in the future (article 3(VII)).

- **Requests for access to information**

On 23 March 2020, the Federal Government published Provisional Measure 928, suspending the deadlines for responses to requests for information made under the Access to Information Law to public authorities that are in quarantine or working from home and that depend on (i) physical access to records by public agents, or (ii) public agents who are involved on a priority basis to combating COVID-19.

- **Suspension of deadlines and limitation periods in administrative proceedings**

In addition to temporarily changing the rules on requests for information under the Access to Information Law, Provisional Measure 928 of 23 March 2020 ("MP 928" – Medida Provisória 928) suspends filing deadlines that run against respondents and private entities in administrative proceedings, while the state of emergency brought on by COVID-19 exists

- **Digital compliance and cybersecurity in crisis management in the public and private sectors**

In the current crisis, public authorities in the judicial, executive and legislative branches of government will be focused on fighting COVID-19 and its impacts, through various measures such as decisions and new legislation and regulations. Here in BMA's Compliance, Investigations and Enforcement practice area, we believe that the same spirit should drive compliance personnel in the private sector. Our team has put together some tips on how companies can strengthen compliance in connection with the use of technology in home-based work, which has become widespread in the COVID-19 pandemic.

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Ana Cândida de Mello Carvalho



Anna Carolina Malta Spilborghs



José Guilherme Berman