**Public procurement and execution in a health crisis**

I - The health crisis is causing exceptional difficulties for companies in performing contracts which may constitute force majeure that public purchasers must take into account

Following the general containment measures decided on Monday March 16, 2020 to curb the epidemic of Coronavirus, many companies holding public contracts [or even purchasing administrations] will be unable to respect all or part of their contractual commitments . Without presuming provisions that could be adopted within the framework of the emergency bill to deal with the epidemic of COVID -19, these difficulties can fall under the regime of force majeure, which exempts the parties to the contract from any fault contractual. In these situations, companies must therefore not, in the silence of the force majeure contract, be subject to penalties, or any other contractual penalty whatsoever.

Subject to contractual stipulations adjusting cases of force majeure, these are noted on a case-by-case basis as soon as the following three cumulative conditions are met:

a) The event was unpredictable. This condition is satisfied in the present case.

b) This event is external to the parties. This condition is also fulfilled

c) The service provider or public purchaser is absolutely unable to continue, temporarily or definitively, the performance of all or part of the public contract (deadlines, quantities, compliance with certain specifications of the services to be provided, etc.) .

It should be checked whether the situation resulting from the current health crisis, in particular confinement, no longer effectively enables the provider to fulfill his contractual obligations.

As requested by the Government, it is recommended that public buyers, in view of the exceptional nature of the crisis, not to hesitate to recognize that the difficulties encountered by their co-contractors are attributable to a case of force majeure.

II - The possibility of implementing accelerated procurement procedures to meet urgent needs

Buyers may, when a company holding a public contract is prevented from performing the services to which it is committed, have these services performed by other companies without this constituting a contractual fault.

**If necessary, if the satisfaction of this need is urgent, public buyers can then apply the reduced advertising deadlines (3 ° of article R. 2161-8 of the public order code) as part of a stake in competition.**

**They can also implement the procedure without publicity or prior competition provided for in the event of a pressing emergency (article R. 2122-1 of the public procurement code) if the urgency is such that the satisfaction of their need is incompatible with these reduced deadlines.**

**Where applicable, such purchases should only be made for the amounts and duration strictly necessary to meet urgent needs. They can be renewed if the deadlock situation continues.**

**Contact: Daj-Marches-Publics @**[**finances.gouv.fr**](https://translate.google.com/translate?hl=en&prev=_t&sl=fr&tl=en&u=http://finances.gouv.fr)