

## Public Contracts During the French State of Health Emergency

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The following provisions apply to contracts subject to the Public Procurement Code, administrative contracts and contracts concluded by public entities operating a network activity. However, in New Caledonia and Polynesia, these provisions apply only to public procurement contracts concluded by the French State and its public bodies.

In general, these provisions are implemented only if they are necessary to cope with the covid-19 epidemic. This discretion will be subject to the judge's control.

### Consequences on the conduct of procedure concerning contracts under the Public Procurement Code

- **Deadlines for receipt of applications and offers** are prolonged by a "sufficient" period, unless the contract cannot be prolonged because of its object.

Caution: The provision does not specify the meaning of "sufficient", nor the type of contract for which any extension is excluded.

- If the **competition requirements defined cannot be met**, the contracting authority can adjust them in accordance with the principle of equality.

### Consequences on public contracts expiring between March 12th and July 25th

- **In general**, the extension of public procurement and concession contract durations can be stipulated by an additional contract, when the competitive tendering procedure cannot be held.
- **Concerning concession contracts with limited duration**, extensions are exempted from prior examination by the French State authority.  
Examples: concessions related to drinking water, sanitation, and garbage and other wastes.
- The extension is limited to the duration of the French state of Health emergency + the time needed to compete again.

### Consequences on the payment of advances for public procurement contracts

- Contractors are able to modify the amount of advances which may be **higher than 60%** of the public procurement contract amount.
- There is no more obligation to provide a **first-demand guarantee** for advances exceeding 30 % of the contract amount.

Caution: The economics ministry seems to extend this provision to all forms of public contracts.

### Consequences on the execution of public contracts

- **Performance obligation deadlines not met** = extension of the deadline equal to the duration of the French State of Health Emergency + 12 days.
- **Impossibility to perform all or part of a contract** = no penalty for the contractor + the contracting authority is able to conclude substitution contracts.
- **Cancellation of the contract as a consequence of a French State of Health Emergency** = compensation by the contracting authority for expenses directly related to its performance.

- **Suspension of ongoing contracts at fixed prices** = payment in compliance with the terms of the contract + additional contract at the end of the suspension to govern the remaining performance.

These provisions shall apply, despite any contrary clause, excluding more favorable clauses to the contractor.

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