

# Public procurement and COVID-19 pandemic

## Time is of the essence

Taylor Wessing Czech Republic is providing our clients with legal support in many areas in connection with the current situation caused by the COVID-19 pandemic. One of the areas is public procurement. We have prepared an overview of possible effects of the current situation on public procurement.

## New public tenders

It is to be assumed under the current circumstances that the supply of certain goods will require hasty execution, and formal proceedings in accordance with the Act on Public Procurement could cause irreparable harm. The main issue in question is especially the fast delivery of face masks, respirators and disinfection supplies to the units of the integrated emergency system (police, healthcare emergency or fire brigade). The following exceptions may be used according to a statement of the Office for Competition as well as the Ministry for regional development.

**Negotiated procedure without prior publication.** Negotiated procedure without prior publication (jednací řízení bez uveřejnění or JŘBU, in Czech) may be applied where necessary because of an extreme urgency that was unforeseeable by and not attributable to the contracting authority and other forms of simplified procedure cannot be used. In accordance with the statement of the Office for Competition this urgency occurs in case of purchase of goods necessary for management of the COVID-19 threat. This concerns public tenders of face masks and respirators, but this might also concern services connected to the state of emergency or other legal measures (such as social services). It should be noted that some requirements of the Act on Public Procurement still apply in case of JŘBÚ. To these requirements belong for example evidencing basic qualifications or the beneficial owner(s).

## Supply without procurement procedure – basic security interests of the Czech Republic and security measures

In consequence of the extraordinary security measures, it is not in many cases possible to conduct a standard public procurement procedure. If there is an urgent need of the supply for managing the current situation (typically face masks, medicinal products or medical devices), it is possible to execute the supply without the public procurement procedure. Other contracts for the protection of health and safety of the general public, doctors and patients also might be considered as contracts aiming to eliminate or minimise the causes that lead to the declaration of a state of emergency.

It is essential that the contracting authority differentiates between these extraordinary supplies from common purchases unconnected to the state of emergency (e.g. office supplies or planned construction works).



## Existing public contracts

**Change of circumstances.** The current situation might qualify as a change of circumstances that could not have been predicted by the contracting authority. Such a change might allow a significant change of the public contract. If necessary, it should be possible to increase the volume of supply or change delivery deadlines.

**Termination of contracts.** We recommend a review of contracts to assess possibilities of contract termination in case of eventual delays, impossibility to perform or other disruption of supply that might occur.

**If you are dealing with any of the above stated issues or have any other questions connected to the current situation, please do not hesitate to contact us. We remain at your disposal.**



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