



Act of 2 March 2020

on special arrangements for preventing, counteracting and combating COVID-19, other infectious diseases and the crisis situations they cause of as amended on 28 March 2020

Article 6. 1 Contracts for goods or services necessary for counteracting COVID-19 are not subject to the provisions of the Public Procurement Law of 29 January 2004 (Journal of Laws of 2019 item 1843), if there is high probability of the rapid and uncontrolled spread of the disease, or if it is required in order to protect public health.

Amendments introduced by the Act of 31 March 2020 on amending Act of 2 March 2020 on special arrangements for preventing, counteracting and combating COVID-19, other infectious diseases and the crisis situations they cause of

Article 6.2. The Public Procurement Law of 29 January 2004 will not apply to contracts awarded by Bank Gospodarstwa Krajowego, Polski Fundusz Rozwoju Spółka Akcyjna or the regional development funds, referred to in Article 13 Section 1a of the Act on Local Government at Voivodeship Level of 5 June 1998 (Journal of Laws 2019, items 512, 1571 and 1951), relating to the implementation of:

1) tasks concerning the service of funds established, entrusted or transferred on the basis of separate provisions and related to the implementation of government programmes, or other programmes implemented from public funds, or

2) tasks related to the use of funds from such funds

- concerning support instruments necessary to counteract the negative economic effects of the COVID-19 outbreak.

Article 15r. 1. Parties to a public procurement contract, within the meaning of the Public Procurement Law of 29 January 2004, will notify each other immediately about the effect of circumstances connected with COVID-19 on the proper performance of the contract, if any such effect has occurred or may occur. Parties to the contract will confirm this effect by including declarations or documents that may refer to this occurrence with the notification mentioned in the first sentence, in particular:

1) the number and positions of employees or paid contractors not in an employment relationship who participate or could participate in the performance of the contract, and who:

a) are subject to obligatory hospital treatment due to counteracting COVID-19,

b) are subject to obligatory quarantine or epidemic supervision, due to coming into contact with individuals whose health was at risk due to COVID-19,

c) are released from performing work because they must personally take care of a child, as set out in Article 32 paragraph 1 item 1 of the Act on Cash Benefits from Social Insurance in the case of Sickness and Maternity of 25 June 1999, or a child certified as having a major or mild disability to the age of 18, or a child with a disability certificate if a nursery, children's club, nursery school, school or other organisation attended by the child is closed, or if it is not possible to arrange for supervision or daytime care for the child due to spread of the COVID-19 disease;

2) decisions issued by the Chief Sanitary Inspector, or a national sanitary inspector in a certain province, acting under the authority of the Chief Sanitary Inspector, obliging the contractor to perform certain preventive or control activities in connection with counteracting COVID-19;

3) orders issued by provincial governors or decisions issued by the Prime Minister in connection with counteracting COVID-19, as described in Article 11 sections 1 and 2;

4) suspending deliveries of goods, components of goods or materials, problems with access to equipment or problems in executing transport services;

5) the circumstances described in items 1-4, to the extent applicable to a sub-contractor or further sub-contractor.

Article 15r. 2. Each party to a contract referred to in section 1 may demand to be presented with additional declarations or documents confirming the effect of circumstances connected with COVID-19 on the due performance of the contract.

Article 15r. 3. Within seven days of receiving the declarations and documents described in sections 1 and 2, a party to a contract described in section 1 presents its position to the other party, along with the justification regarding the effect of the circumstances connected with COVID-19 on the due performance of the contract. If a party to the contract receives subsequent declarations or documents, the time limit is counted from the date of receiving them.

Article 15r. 4. Upon finding that circumstances connected with COVID-19 affects or may affect the due performance of the contract described in section 1, the contracting authority may, in agreement with the contractor, amend the contract, as referred to in Article 144 paragraph 1 item 3 of the Public Procurement Law of 29 January 2004, in particular by:

1) changing the time limit for performing the contract, or its part, or temporarily suspending the performance of the contract, or its part,

2) changing the method of performing deliveries, services or construction works,

3) changing the scope of the contractor's performance and changing the contractor's remuneration corresponding to the change in the scope of performance

– as long as the increase in price caused by each subsequent change does not exceed 50% of the initial value of the contract.

Article 15r. 5. If a contract referred to in section 1 contains provisions that make the situation of the contractor more favourable than it would be under section 4, these provisions will apply after the change to the contract.

Article 15r. 6. If a contract referred to in section 1 contains provisions regarding contractual penalties or liability for damages due to the non-performance or improper performance in connection with indicated circumstances, a party to that contract in the position referred to in section 3, presents the impact of the circumstances connected with COVID-19 on its proper performance, and the impact of circumstances related to the COVID-19 outbreak on the legitimacy of establishing and enforcing those penalties or damages, or their amounts.

Article 15r. 7. Upon finding that circumstances connected with COVID-19 affects or may affect the due performance of a contract to perform a public procurement order, a contractor and subcontractor will agree on an appropriate amendment to the agreement between them. In particular, they may change the time limit for performing the contract, or its part, or temporarily suspend the performance of the contract, or its part, change the method of performing the contract, or change the scope of mutual benefits.

Article 15r. 8. Where an amendment is made to a contract referred to in section 1, and that amendment covers part of the contract entrusted to a subcontractor, the contractor and subcontractor will agree on an appropriate amendment to the agreement between them, in order to ensure that the conditions for performing that agreement by the subcontractor are no less favourable than those for performing the contract referred to in section 1, as amended in accordance with section 4.

Article 15r. 9. The provisions of sections 7 and 8 apply accordingly to an agreement between the subcontractor and a further subcontractor.

Article 15s. The following do not constitute a breach of public finance discipline, as referred to in Article 5 section 1 points 1 and 2 and Article 17 section 6 of the Act on Liability for a Breach of Public Finance Discipline of 17 December 2004 (Journal of Laws of 2019, items 1440, 1495, 2020 and 2473, and of 2020, item 284): 1) a failure to determine or not to seek from a party to a contract referred to in Article 15r section 1, receivables arising in connection with the non-performance or improper performance of a public procurement contract as a result of circumstances related to the occurrence of COVID-19, as referred to in Article 15r section 1; or 2) an amendment of the public procurement contract in accordance with Article 15r section 4.

Article 15t. The offence referred to in Article 296 § 1-4 of the Criminal Code of 6 June 1997 is not committed by anyone who fails to establish or claim from a party to a contract agreement referred to in Article 15r section 1 the amounts due resulting from the non-performance or improper performance of a public procurement contract as a result of circumstances related to the occurrence of COVID-19, as referred to in Article 15r section 1, or who amends a public procurement contract in accordance with Article 15r section 4.