



**EMERGENCY MEASURES COVID-19**  
**REGIONAL GOVERNMENT OF**  
**CATALONIA:**  
**Recent measures adopted (I)**

*Barcelona, 30 March 2020*

**SUMMARY**

- Decree-Law 8/2020 of 24 March 2020 of the Government of Catalonia introduces measures to combat Covid-19 in the different areas of public procurement, as well as in taxation, subsidies and grants.
- Decree-Law 10/2020 of 27 March 2020 of the Government of Catalonia provides for the suspension of works contracts with the Catalan Administration and public sector.

**DECREE LAW 8/2020 of 24 MARCH OF THE GOVERNMENT OF CATALONIA**

Decree Law 8/2020 of 24 March of the Government of Catalonia, published in the Catalan Official Gazette on 25 March 2020, amends and, in some areas, extends the measures adopted under Decree Law 7/2020 of 17 March of the Government of Catalonia, published in the Catalan Official Gazette 19 March 2020, and which is dealt with in our NEWS ALERT VI: EMERGENCY MEASURES COVID19.

**The amendments to the agreed measures are as follows:**

**1.- PUBLIC PROCUREMENT MEASURES**

**a) Suspension of the performance of certain contracts in educational centres in Catalonia.**

School meal contracts have been eliminated from this provision and are now subject to the specific regime that will be described in section B) below.

**The system of monetary compensation for contractors due to the suspension of contracts has been amended** in order to adjust it to the system laid down by the Spanish central government in Article 34 of Royal Decree-Law 8/2020 of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19,



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referring to measures in the area of public procurement, **the new compensation system being provided for in the following terms:**

The suspension will entail the payment to the contractor of the damage actually suffered during the suspension period, after filing an application and attesting to the actual existence, effectiveness and amount of the damage by the contractor. The damage for which the contractor may be compensated are exclusively the following:

- 1.- The salary costs actually paid by the contractor to the personnel covered on 14 March 2020 by the ordinary performance of the contract, during the suspension period.
- 2.- The expenses for maintaining the definitive guarantee, relative to the contract suspension period.
- 3.- The costs of renting or maintaining machinery, installations and equipment related to the contract suspension period, related directly to the performance of the contract, provided that the contractor can attest that these resources could not be used for other purposes during the suspension of the contract.
- 4.- The expenses relating to insurance policies envisaged in bidding specifications and linked to the subject matter of the contract arranged by the contractor and in force at the time of the suspension of the contract.

The continuity of the payment of the suspended contracts is guaranteed from the date of suspension and with the same frequency as established for each contract in the corresponding specifications or contractual documents, **although as an advance payment on account of the payment of** the aforementioned compensation for damages, with the definitive regularisation of the payments, if applicable, taking place at the end of the suspension period.

**b) Suspension of service concession contracts, such as school meals and other services affected by the closure of educational institutions.**

These contracts are now subject to the regime established in Article 34(4) of Royal Decree-Law 8/2020 of 17 March with regard to the suspension and payment of the corresponding compensation, such that if the contract is suspended, the concessionaire will be entitled to restore the economic balance of the contract by extending its initial duration by up to 15%, as appropriate in each case, or by amending the clauses concerning monetary conditions included in the contract.



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This rebalancing will compensate concessionaires for the loss of revenue and the increase in costs incurred, including any additional salary costs they may have actually paid, with respect to those envisaged in the ordinary performance of the contract over the duration of the situation created by COVID-19.

At the request of the contractor, which must be accompanied by documentary evidence for the existence, effectiveness and amount of these expenses, and by resolution of the Education Councillor or the relevant contracting body, the necessary measures will be established for the economic rebalancing of these contracts.

The continuity of the payment of the suspended contracts is guaranteed from the date of suspension and with the same frequency as established for each contract in the corresponding bidding specifications or contractual documents, **although as an advance on account of the payment of** the aforementioned compensation damages, the definitive regularisation of the payments, if applicable, taking place at the end of the suspension period.

**c) Suspension of the implementation of certain contracts relating to public buildings, facilities and equipment in Catalonia.**

The types of contracts that might be affected **include janitorial services, gardening and others, as well as cleaning, security and surveillance, maintenance, janitorial, gardening and other contracts relating to centres and establishments under the responsibility of the Department of Employment, Social Affairs and Families.**

**The rules applicable to these contracts are amended** as follows:

1.- The suspension, as indicated in Decree Law 7/2020 of March 17, is no longer automatic, but the contracting entity is authorised to declare the suspension of the contract at the time its performance becomes impossible, by means of the corresponding notarial document or at the request of the contractor. The suspension may be partial or total depending on the services that may or may not continue to be provided.



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2.- The monetary compensation regime for the suspension of these contracts is now the same as indicated in point A) above for contracts with educational centres, except for cleaning and security and surveillance contracts to which the compensation scheme provided for in Article 208 of Law 9/2017 of 8 November, on Public Sector Contracts, will be applied, taking into account all the damage actually suffered and the duly evidenced expenses incurred, whereby:

1. Unless otherwise provided in the bidding specifications of the contract, said payment shall comprise only the following items, provided that the existence, effectiveness and amount thereof in accordance with points (a) to (d) is attested to:
2. Expenses for maintaining the final guarantee.
3. Compensation for the termination or suspension of employment contracts that the contractor had concluded for the implementation of the contract at the time the suspension began.
4. Salary costs of personnel who must necessarily continue under the contract during the period of suspension.
5. The costs of renting or maintaining machinery, installations and equipment, provided that the contractor can attest that these resources could not be used for other purposes during the suspension of the contract.
6. Three percent of the price of the services that should have been carried out by the contractor during the suspension period, as provided for in the work schedule or in the contract itself.
7. Costs relating to the insurance policies taken out by the contractor as provided for in the administrative specifications relating to the contract.

The continuity of the payment of the suspended contracts is guaranteed from the date of suspension and with the same frequency as established for each contract in the corresponding bidding specifications or contractual documents, **although as an advance on account of the payment of** the aforementioned compensation damages, the definitive regularisation of the payments, if applicable, taking place at the end of the suspension period.



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**d) Authorisation for local authorities in Catalonia to suspend the performance of other contracts**

The term "local authority" is amended to "local entities", whose competent bodies are therefore empowered to issue regulations or administrative acts suspending the performance of other contracts, under the same terms and with the same effects as those set out in points A, B and C above.

**e) Suspension of contracts for work and related services or assistance entered into by the Catalan Regional Government or the Catalan public sector**

**Construction contracts** in force on the date of entry into force of Royal Decree-Law 8/2020 of 17 March, which became effective on 18 March 2020, are now subject to the scheme laid down in Article 34.3 of said Royal Decree-Law, and consequently, with respect to these construction contracts, provided that the purpose thereof is no longer relevant due to the situation created by COVID-19 or the measures adopted by central government, and when this situation makes it impossible to continue implementing the contract, the contractor may request the suspension of the contract from the moment the situation that impedes its performance arises and until such time as performance can be resumed. For these purposes, it will be understood that the service may be resumed when the circumstances or measures that were preventing it no longer apply and the contracting authority notifies the contractor of the end of the suspension.

For those construction contracts where, in accordance with the "project development programme or works plan", the completion of the execution period was scheduled for after 14 March, the date on which the state of emergency commenced, and over the duration thereof, and as a result of the situation created by COVID-19 or the measures adopted by central government, the contractor may request an extension of the final completion date, provided that it offers to meet its outstanding commitments if the initial deadline is extended.

The suspension of the contract or, where appropriate, the extension of the term will require the express termination of the concession by the contracting authority.

Once the suspension or extension of the term has been agreed, only the following items will be compensated:



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- **1.-** The salary expenses actually paid by the contractor to the personnel assigned to the ordinary performance of the contract, over the suspension period, in the terms set out in the Royal Decree-Law.
- **2.-** The expenses for maintaining the definitive guarantee, relative to the contract suspension period.
- **3.-** The costs of renting or maintaining machinery, installations and equipment provided that the contractor can attest that these resources could not be used for other purposes during the suspension of the contract and the amount thereof is less than the cost of terminating the relevant rental or maintenance contracts for machinery, installations or equipment.
- **4.-** The expenses relating to insurance policies envisaged in bidding specifications and linked to the subject matter of the contract arranged by the contractor and in force at the time of the suspension of the contract.

The right to compensation and damages provided for in this article shall be recognised only when the principal contract awardee provides evidence that the following conditions have been met:

- The main contractor, subcontractors, suppliers and providers contracted for the implementation of the contract are up to date with the fulfilment of their labour and social obligations at 14 March 2020.
- The main contractor is up to date with its payment obligations to its subcontractors and suppliers under the terms of Articles 216 and 217 of Law 9/2017 on Public Sector Contracts, at 14 March 2020.

The **service or assistance contracts linked to the construction work** in force on the date of entry into force of Royal Decree-Law 8/2020 of 17 March, which became effective on 18 March 2020, are now subject to the scheme laid down in Article 34.2 of the aforementioned Royal Decree-Law and therefore these service or assistance contracts are subject to the condition that they have not lost their relevance as a result of the situation created by COVID-19, when the contractor fails to meet the deadlines stipulated in the contract as a result of COVID-19 or the measures taken by the central government, regional governments or local administrations to combat it, and the contractor offers to meet its commitments if the initial deadline or an existing extension is extended, the contracting authority will grant the same, allowing a period that will be at least equal to



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the time lost for the aforementioned reason, unless the contractor requests a shorter period.

In these cases, no penalties will be imposed on the contractor and the contract will not be terminated; in addition, contractors will be entitled to the payment of any additional salary expenses they may have actually incurred as a result of the time lost as a result of COVID-19, up to a maximum of 10% of the initial contract price. This payment will only be made upon request and evidence of the existence, effectiveness and amount of these expenses provided by the contractor.

In order to ensure the maintenance of the jobs existing under the abovementioned service or assistance contracts, and with the aim of not generally affecting the business activity and the stability of jobs in the event of the suspension of the contract, the competent bodies are authorised to pay, as an advance on account of the payment of compensation for damage arising from the suspension of construction contracts or the extension of the term of services or assistance relating to the work concerned, an amount equal to that of the latest interim billing or invoice for the service or assistance contract. This payment must guarantee the salary expenses for personnel assigned under the contract and may not exceed the final price of the contract. The amount of this advance payment that exceeds the quantification of the damage evidenced by the contractor will be deducted, once the suspension of the contract is lifted, from subsequent payments, on a pro-rata basis in proportion to the time remaining until the completion of the contract.

**The limitation that the acceptance by contractors** in both construction contracts and service and assistance contracts of the payments granted in their favour will entail their waiver of any other amount as compensation derived from the suspension of the contract under this Decree Law has been eliminated.

**f) Maintaining jobs**

The regime provided for in Article 3 of Decree-Law 7/2020 of 17 March which established that the suspension of the performance of contracts under this Decree-Law may in no event be considered as grounds for the application of lay-off proceedings has been changed, and the regime now applicable to all cases is the following:



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- **The suspension of the full or partial performance of contracts** and the application of the scheme to guarantee continuity in contract payments as an advance against the payment of compensation damages may not under any circumstances be considered a reason to apply for lay-off proceedings in relation to the jobs existing under the suspended contracts, except in the case of contracts for the concession of services, such as school meals and others affected by the closure of educational institutions, where such suspension may be considered as grounds for lay-off proceedings.
- In the event that the company or entity affected by the suspension requests the application of lay-off proceedings relating to jobs existing under the suspended contracts, it **must immediately inform the contracting body, which will agree to suspend payment as an advance on account as referred to above.**

## 2.- TAX MEASURES

The measures are extended by allowing, for the period from 1 April to 31 May 2020, a reduction in water charges in the following terms:

- Λ Taxpayers who are domestic users and who benefit from the social tariff for their water supply will be charged a rate of **0 euros for all consumption**.
- Λ Taxpayers who are domestic users and who do not benefit from the social tariff for their water supply will be charged the **rate resulting from the application of a coefficient of 0.5 to the rates provided for in Article 69 (1) and (2) of Legislative Decree 3/2003**.
- Λ For taxpayers who use water for industrial and similar purposes, a **reduction coefficient of 0.5** will be applied to the general and specific tax rate provided for in Articles 71 and 72 of Legislative Decree 3/2003. The same reduction applies to the pollution parameters used for determining the water rate charge by means of the system for direct measurement of pollution under the special scheme provided for in Article 72a(4) of the same Decree, and to the figures provided for in Article 74.4 for the objective calculation of rates corresponding to water used in electricity generation.
- Λ For taxpayers that use water for livestock farming, a **reduction coefficient of 0.5** on the values set out in Appendix 6 to Legislative Decree 3/2003, for the objective determination of the rate applicable to them will be applied.





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### 3.- EXCEPTIONAL MEASURES CONCERNING SUBSIDIES AND GRANTS

The bodies awarding subsidies and grants are authorised, particularly in cases involving the cultural, social, occupational and sports areas, where the object and purpose thereof have not been fulfilled as a result of COVID-19 or the measures taken to combat it, based on the circumstances in case, to take the following measures:

- ▲ Postpone the deadline for compliance with the object and purpose of the subsidy or grant and support for the same, which in no event may be considered a reason to apply for lay-off proceedings in relation to the jobs linked to the subsidised actions.
- ▲ Reimburse the expenses incurred by the beneficiaries, even if the object and purpose of the subsidy or grant has not been achieved, in whole or in part.
- ▲ Establish other actions to prevent harm to the beneficiaries derived from the fulfilment of their obligations.

### DECREE LAW 10/2020. RESOLUTION BY THE GOVERNMENT OF CATALONIA OF 27 MARCH 2020 FOR THE SUSPENSION OF CONSTRUCTION CONTRACTS

Decree Law 10/2929 of 27 March of the Government of Catalonia lays down, among other matters, the procedure whereby it will **suspend, with effect from 29 March 2020 and without the need to notify the contractor, the execution of construction contracts with the Catalan Government and public sector** during the state of emergency.

This suspension resolution is not applicable to the suspension of contracts for the performance of work requested prior to 29 March 2020, which will be governed by the provisions of Decree-Law 7/2020 of 17 March of the Government of Catalonia on urgent measures in the areas of public procurement, health and sanitary waste management, transparency, public transport and tax and economic matters, as amended by Decree-Law 8/2020 of 24 March of the Government of Catalonia.

**Excluded from this suspension** are construction contracts declared by the contracting body to be of an emergency, essential, strategic or other similar nature, the performance of which is considered necessary to maintain the safety conditions for persons, materials and public spaces or to assure and guarantee the measures taken to combat the COVID-19 pandemic.



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Accordingly, the suspension may be imposed **ex officio or at the request of the contractor**, and the reasoning for the same must make express reference to this Resolution and contain the provisions described therein.

**We will continue to inform you of any new measures and/or changes in legislation that may arise as a result of the COVID-19 pandemic.**

The professionals that regularly work with your company are at your disposal for any clarification or additional information you may require in relation to the content of this Circular Letter. Please contact us by telephone at **934 677 414**.

Yours sincerely,

**AUDICONSULTORES**

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