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The 2019 Saudi Government Tendering & Procurement Regulations (Procurement Law)¹ apply a form of *force majeure* to government agreements by defining circumstances where contractors are exempt from delay fines, and entitled to extension, as follows.

“The contract shall be extended and fines waived in the following cases:

1. If the contractor is assigned additional works, provided that the extension period is commensurate with the volume, nature and assignment date.
2. If annual financial appropriations for the project do not permit timely completion.
3. If the delay is caused by the government entity **or emergency circumstances.**
4. If delays are beyond the contractor's control.
5. **If the government entity orders suspension of works in whole or in part for reasons not caused by the contractor.”²**

Contractors are thus entitled to relief similar to *force majeure* principles, where delay has been caused by emergency circumstances or for reasons beyond their control.³

The contractor would presumably need to prove that the delay has been caused by “emergency circumstances” or “reasons beyond his control”, and extensions would presumably only be allowed to for a period proportional to the delay caused by the unforeseen event.

Contractors impacted by COVID 19 could also seek a variation:

“Prices of contracts or framework agreements may not be increased or decreased, except in the following cases:

1. Changing the prices of the main materials or services included in the tender items, and which are specified by the regulations.
2. Amending the customs tariff, fees or taxes.

¹ [Add citation.]

² Id., Art. 74.

³ Id., Arts 74.3 and 74.4.

3. In the event of unforeseeable material difficulties in the course of performance.”⁴

Variations may be requested in the following instances.⁵

Contractors seeking reimbursement for any of the reasons set forth in Art. 68 of the Procurement Regulations may apply for financial reimbursement/variation to the government customer or authorized consultant within 60 days of the event. The government entity must decide within 54 – 75 days, depending on the nature of the government entity and project. The government entity may increase the contract price by no more than 20%, though the contractor may apply to an administrative court for additional compensation.⁶

The Regulations also allow price variations for increase in government tariffs, taxes or other costs after the offer date. If the contractor can prove payment of the increase, that it predated the completion date and that it does not constitute an excuse for delay (except occurrences beyond its control), the contractor may claim the difference. Should government costs fall, the government entity is entitled to reclaim the difference.

Increase in cost of essential supplies⁷ will be reimbursed to the contractor, provided that

- the increase occurred after the contractor submitted its offer, and
- was not caused by a delay caused by the contractor;
- the cost of each essential item rose by 10+% from the offer amount; and
- the increase in total contract price has risen by 3+%.

Government entities may terminate the contract in the public interest:

“The government entity may terminate the contract if the public interest so requires, or if the termination is agreed upon with the contractor, after the approval of the Ministry and in accordance with the conditions and procedures specified in the regulations.”⁸

The government may not terminate to appoint another contractor, or to complete the project on its own, and must provide at least 30 days’ notice of its intention to terminate in the public interest.⁹

The government agency may seek to terminate the contract by agreement with the contractor, as follows:

- if the government entity has failed to deliver the site to the contractor after expiry of 30 days from contractor’s notice of such failure;

⁴ Procurement Law, Royal Decree M/128, 1440 H, Royal Decree M58, 4.9.1427, Royal Decree M/5, 23/8/1426H.

⁵ Procurement Regulations Implementing Rules, [citation].

⁶ Id., Art. 113.

⁷ E.g. cement, iron, asphalt, concrete, wood, pipes, cables or any other essential items.

⁸ Id., Art. 77.

⁹ Id., Art. 132.

- if the government entity has prevented the contractor from performing for 180+ days from commencement for reasons unrelated to the contractor, after expiry of 30 days from the contractor's notice of readiness to resume performance, and the government entity's failure to take reasonable steps to allow such resumption; and
- if performance becomes impossible due to force majeure.¹⁰

Termination in "the public interest" would thus appear to require reasons distinct, and presumably more onerous, than typical *force majeure*. The government must agree on termination with the contractor where performance becomes impossible based on *force majeure*, but may do so unilaterally if public interest so requires. Termination under Procurement Upon termination by the government agency the contractor must completely and immediately cease work, consistent with health and safety concerns, and handover of all project documents, materials, equipment and information.¹¹ The government, on its side, must pay the contractor for works performed and supplies and fees incurred before the notice, and release any remaining guarantees.¹²

¹⁰ *quwa qahira*.

¹¹ Procurement Regulations Art. 77, Implementing Rules Art. 134.

¹² Implementing Rules Art. 135.