



The Legal 500 Country Comparative Guides

Mexico: Public Procurement

This country-specific Q&A provides an overview to public procurement laws and regulations that may occur in Mexico.

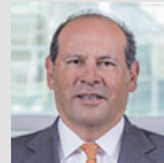
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1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)

Mexico has not entered into the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO), it is not a member of the European Union and does not follow the Model Law on Public Procurement issued by the United Nation's Commission on International Trade Law.

Nevertheless, Mexican legislation on public procurement follows the same principles of these supranational models (maximum publicity, maximum transparency, maximum competition, prohibition of undue discrimination).

Likewise, the rules governing public procurement contained in these international models eventually become applicable to Mexico, due to the fact that Mexico has entered into free trade agreements with several countries that have adopted the WTO's GPA, which include chapters regarding public procurement.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?

The Mexican State is a federal republic, organized in three levels of government (federal, state and municipal) public services are distributed by competence by the Mexican Political Constitution. Some services are concurrently provided.

For the exercise of their government functions and the provision of public services rendered by the public administration, the federal, state and municipal governments carry out public bids for the acquisition and lease of goods and assets, provision of services and construction of public works.

The main legal basis for contracting in Mexico is article 134 of the Political Constitution. This constitutional provision establishes that, as a general rule, acquisitions, leases and disposals of all types of goods, provision of services of any nature and the contracting of works shall be carried out through public bids by means of a public call for the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances.

It also establishes that, in exceptional cases, when public tenders are not suitable for ensuring conditions of price, quality, financing and opportunity, the laws will establish the criteria and procedures for accrediting economy, effectiveness, efficiency, impartiality and integrity that will ensure the best conditions for the State. At the federal level, these exceptions and contracting procedures are regulated by the Public Sector Procurement, Leasing and Services Law (LAASSP), the Public Works and Related Services Law (LOPSRM) and, the administrative guidelines on procurement and public works issued by the State

Owned Productive Companies: Comisión Federal de Electricidad (CFE) and Petróleos Mexicanos (Pemex), in accordance with the laws that regulate such utilities: Law of the Comisión Federal de Electricidad (LCFE) and Law of Petróleos Mexicanos (LPemex).

It is important to highlight that the Public-Private Partnerships Law (LAPP) provides that projects that establish a long-term contractual relationship between public and private sector entities for the provision of services and in which infrastructure provided totally or partially by the private sector is used with objectives that increase social well-being and investment levels, must be awarded through public bids in accordance with the principles of legality, free competition, objectivity and impartiality, transparency and publicity and will seek to award projects on the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances.

It is also important to note that there are other laws that do not regulate procurement regimes for the acquisition of goods, leases, services or public works, but do establish competitive procedures by applying the principles of maximum competition, maximum publicity, maximum transparency and prohibition of undue discrimination, to grant prerogatives of a private nature (i.e. concessions, assignments, etc.) to exploit some public property or mechanisms for auctions or open seasons imposed by regulators to generate conditions of competition in regulated markets. These statutes are, among others: Telecommunications and Broadcasting Law, which establishes that the Federal Telecommunications Institute must bid on the available frequency bands of the radioelectric spectrum and the orbital resources with their associated frequency bands; the Hydrocarbons Law, which regulates bidding mechanisms for a) that Pemex may choose with which persons it may enter into associations, ventures or alliances with, b) the National Commission of Hydrocarbons (CNH) may enter into contracts for the exploration and extraction of hydrocarbons, c) that the National Center of Natural Gas to assign the development of infrastructure of strategic projects for the expansion of the System of Transportation and Integrated National Storage of Natural Gas (Sistrangas); the Electric Industry Law, which regulates a) the auctions that the National Energy Center (Cenace) can call to acquire power for the reliability of the system, and b) auctions organized by the Cenace so that electricity generators and basic and qualified suppliers can enter into electricity coverage contracts.

On the other hand, the LAASSP, LOPSRM, DACFE and DAPemex, establish that public bids may be of the following nature:

- National, in which only Mexican nationals can participate.
- International under international treaty coverage, in which only Mexican and foreign bidders from countries with which Mexico has a free trade agreement with a government procurement chapter may participate.
- Open international, in which Mexican and foreign bidders may participate, regardless of their nationality.

In cases where a national public bid is declared void and provided that the procurement is

not subject to the scope of coverage under international treaties, public entities may opt, indistinctly, to carry out (i) an international bid under the coverage of treaties or (ii) an open international one.

The following are considered public services to be provided exclusively by the government: potable water, sewage and drainage, roads, transmission and distribution of power, hydrocarbon refining and postal service.

There are other services which may be rendered by the government and by private parties through concessions, licenses and permits. These services are: municipal public transport, federal toll roads, ports, airports and exploitation of the radioelectric spectrum.

Released services that the state only regulates: federal public transportation, data telecommunications and telephony, power generation, commercialization and supply, transportation, storage, sale, marketing and distribution of hydrocarbons.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?

Article 42 of the LAASSP and article 43 of the LOPSRM provide that agencies and entities may enter into contracts without being subject to the public bidding procedure, through invitations to at least three persons or direct awards, when the amount of each operation does not exceed the maximum amounts that will be established in the Federal Expenditure Budget.

In the case of Petroleos Mexicanos and the Comisión Federal de Electricidad, their respective regulations do not establish any distinction between the causes of exceptions regulated by article 80 of the LCFE and article 78 of the LPemex, to define when a contract can be awarded through restricted invitation or by direct award. Thus, in these particular case, there are no specific thresholds.

Maximum amounts to be awarded by direct award procedure and invitation to at least three persons, established in thousands of USD at an exchange rate of \$18.86 pesos per dollar), and without considering VAT.

Acquisitions, Leases and Services

Authorized budget for each public entity.		Maximum total amount for each operation that can be directly awarded.	Maximum total amount per operation which may be awarded by invitation to at least three persons
Higher than	Up to		
	795	11.024	37.789

795	1,590	12.561	54.431
1,590	2,650	14.151	70.861
2,650	5,300	15.794	87.45
5,300	7,950	17.278	104.251
7,950	13,250	19.663	125.875
18,550	18,550	21.253	141.775
18,550	23,850	228396	150.467
23,850	31,800	54.38	166.844
31,800	39,750	25.175	175.589
39,750	53,000	27.613	192.072
53,000		29.097	200.711

Public Works and Related Services

Budget approved per entity		Maximum amount for each public work. Direct award.	Maximum amount for each service related with public works. Direct award.	Maximum amount for each public work. Invitation to at least three persons.	Maximum amount for each public service related with public works. Invitation to at least three persons.
Higher than	Up to				
	795	17.543	8.692	156.456	119.886
795	1,590	21.73	11.024	173.575	130.168
1,590	2,650	26.129	13.038	199.757	156.456
2,650	5,300	30.263	15.052	243.164	182.161
5,300	7,950	34.768	17.543	286.518	217.035
7,950	13,250	39.22	19.61	330.031	260.336
13,250	18,550	47.753	23.797	382.342	286.518
18,550	23,850	51.94	26.129	416.792	311.693
23,850	31,800	61.003	30.263	495.444	373.279
31,800	39,750	69.536	34.768	564.079	425.643
39,750	53,000	77.857	39.22	633.721	477.371
53,000		82.627	43.46	711.366	537.897

In turn, the decision as to which procurement procedures should be carried out through an international basis under treaty coverage is made through the following thresholds (in force

as from January 1st to June 30th, 2019, the values are updated every six months):

FEDERAL PUBLIC ADMINISTRATION AGENCIES LISTED IN THE CHAPTERS OR TITLES OF PUBLIC SECTOR ACQUISITIONS

TYPE OF PROCUREMENT	AMOUNT OF THRESHOLD PER TREATY IN USD
	NAFTA, FTA Mexico - Israel, FTA Mexico - European Free Trade Association, FTA Mexico - European Union, FTA Mexico Japan, FTA Mexico - Chile and the Pacific Alliance
Procurement contracts, leases of movable goods and services, including with public works	\$ 86,134.65 USD
Public work contracts	\$ 11,197,512.94 USD

PARASTATAL ENTITIES OF THE FEDERAL PUBLIC ADMINISTRATION LISTED IN THE CHAPTERS OR TITLES OF PUBLIC SECTOR PURCHASES

TYPE OF PROCUREMENT	AMOUNT OF THRESHOLD PER TREATY
	NAFTA, FTA Mexico - Israel, FTA Mexico - European Free Trade Association, FTA Mexico - European Union, FTA Mexico-Japan, FTA Mexico - Chile and the Pacific Alliance
Procurement contracts, leases of movable goods and services, including with public works	\$430,672.28 USD
Public work contracts	\$ 13,782,197.43 USD

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

As mentioned above, the general rule, according to article 134 of the Constitution, is that public contracts are carried out through public bids; nonetheless, the LAASSP (article 28), the LOPSRM (article 30), the LCFE (article 80) and the LPemex (article 78) expressly point out exceptions to the general rule.

However, all public procurement procedures, without exception, are subject to regulation. No public entity is allowed to enter into contracts which do not comply with the rules established

under applicable laws.

5. For the procurement of complex contracts*, how are contracts publicised? What publication or journal is used for these purposes?

For purposes of the publicity of its proceedings, Mexican law provides no distinction of administrative proceedings for their complexity or volume. However, for the entity that wishes to contract to be able to receive comments that enhance the efficiency of the contracting procedure, in public works matters it is established that for contracting amounts over ten thousand times the minimum monthly salary (\$1,361,305 USD as of January 2020), the draft notice must be published at least during the ten working days prior to the publication of the call.

In all other cases, as in the case of procurement, leasing and services, the prior publication of the project is optional for the contracting entity.

All federal public bids, without exception, must be published on *CompraNet*, which is the official website of the Federal Government through which all public procurement procedures are made public, including the corresponding model of contract.

In addition, a summary of the call for bids is published simultaneously in the Official Gazette of the Federation (*Diario Oficial de la Federación*, the official mean for the diffusion of certain governmental acts in Mexico).

The minimum term to submit bids under bidding procedures for public works and for acquisitions, leasing and services are: a) for international bids, 20 calendar days and, b) for national bids, at least 15 calendar days.

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?

As stated above, the general rule is that all procurement procedures are carried out through competitive bidding procedures. This type of procedure seeks to maximize competition and avoid limiting the free participation of bidders.

However, the LAASSP, the LOPSRM, LCFE and the LPemex provide two types of exceptions to bidding procedures:

A) Exceptions due to grounded justification:

- **Specialized technical requirements:** technical or specific nature of certain goods or services may require that they must be procured from a specific supplier ; or in the case

- of works of art; the execution of the work that can only be performed by certain persons because the goods or process are protected by an intellectual property right (patent).
- **Specialized Research Services:** When a very specific study or research is required from a particular supplier. .
 - **Unsuccessful bidding due to lack of proposals:** If a public bidding process is declared void, procurement officers may continue the procedure by way of an exception. In this case, the original requirements set out in the public bid remain unchanged.
 - **National security issues:** Public bidding may be exempted when it is conducted exclusively for military purposes, or when the bidding would jeopardize national security or public safety.
 - **Emergencies and Urgent Issues:** When there is an unexpected or urgent situation that forces the public entity to act in a timely manner to avoid altering social order, economy, public services, health, security or environment of any area or region due to an act of god or a force majeure event that makes it necessary to expedite the procurement process or execution of work.
 - **Favorable purchase conditions:** When the cost of opportunity of carrying out a public bid is greater than the cost of opportunity by using a direct award. In addition, an exception may be allowed if a supplier is selling at low prices due to bankruptcy, or if there is a framework contract for a specific good or service.
 - **Awarding of the second best offer due to termination or lack of formalization:** If a contract derived from a public bidding is early terminated, the contract can be awarded directly to the second best offer, as long as the price does not exceed 10% of the contract that originally won the bidding.
 - **Perishable products repaired or second-hand goods:** Article 41, section IX of the LAASSP allows these goods to be acquired without a bidding process.
 - **Acquisition of goods and services and execution of work that directly benefits peasants or marginalized groups:** The purchase of goods and services from these groups is exempt from public bidding process when peasant or marginalized population labor is required and the inhabitants of the locality where the work will be executed are hired.
 - **Goods and services for direct commercialization or as part of productive processes:** According to section XII of article 41 of the LAASSP, public bidding process may be exempted when the purchase of goods is made by agencies and entities for its direct commercialization or for their use as part of their productive processes.
 - **Undetermined scope of work.** This refers to maintenance, restoration, repair and demolition work of buildings, in which it is not possible to determine the scope, establish the catalogue of concepts, quantities of work, determine the corresponding specifications or draw up the execution program.

B) Exceptions which are justified only on the basis of the economic amount of the contract and which are only covered by the LAASSP and the LOPSRM.

As mentioned in point 3 above, applicable law establishes that the PEF will determine the maximum amounts of the award by direct award procedure and invitation to at least three persons.

7. **Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are those grounds of mandatory exclusion?**

Yes. Mexican law establishes that public entities shall refrain from receiving offers and awarding contracts to persons (individuals or entities) who have any type of legal, emotional or business relationship with the agents of the contracting entity that may affect impartiality at any stage of the procedure or may imply any type of undue advantage in access to information.

Likewise, those persons who are in breach of their contractual obligations under any public contract which are in force or who have previously been responsible for any rescission of other contracts are not allowed to participate. Also, in cases where they have been debarred by the Ministry of Public Administration for acts of collusion, corruption or misrepresentations.

Those persons that from a judicial resolution have been declared insolvent, bankrupt or are in some kind of commercial insolvency proceeding.

Mexican law strictly prohibits discretionary reasons for the exclusion of participants in public bidding procedures.

Likewise, the Mexican audit body authorities have the obligation to permanently monitor the activity of public entities in contracting procedures. To this end, the General Law of the National Anti-Corruption System grant them the authority to carry out investigations into the activities of public officials, legal entities or individuals who directly or indirectly participate in contracting procedures to combat acts of corruption.

8. **Please described a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.**

Procurement procedure for specialized equipment.

Stage 1. Start of the procedure. The procedure begins with the publication of the terms and conditions of the public bid. At this stage the contracting entity must have all legal elements and authorizations needed to publish the call for public bidding bid for the acquisition of a specific good or service.

Before the call for bids is published in its final version, the contracting area is authorized to publish the draft of the call for tender on *CompraNet* for 10 days in advance. The purpose of this publication is to be able to receive and incorporate all relevant comments from interested parties. The tendering entity is also mandated to take into account the comments of the Federal Economic Competition Commission. The call to bid must include at least the

following requisites:

- The name of the procuring entity.
- A detailed description of the goods or services required.
- The nature of the tender (national, international under treaty or open international).
- The specification of the bidding process (electronic, face-to-face or mixed bidding).
- The requirements that suppliers must meet in order to participate in the bidding process, as long as these characteristics do not limit competition.
- The documents that suppliers must provide in order to confirm their legal existence and capacity to contract.
- A clause that states that any interested bidder must include in its bid a statement under protest that it is not under the impediments established in the applicable law (that is to say that they do not have a negative record and there is no conflict of interest).

Stage 2. Clarifications meetings and modification of calls for public bids. The bidders will have the right to ask the requesting and contracting areas for information on technical elements and to request clarifications to the call for bids during the clarification meetings.

Stage 3: Submission and opening of proposals. Once the call for bids has been published on the *CompraNet* electronic system, bidders must submit their proposals as indicated in the call for bids.

The deadlines for the submission and opening of proposals may vary. In national bids, the term for the submission and opening of proposals shall be at least 15 calendar days from the date of the publication of the call for bids. In international bids, regardless of whether they are under a treaty or not, the minimum term shall be 20 calendar days.

Stage 4: Evaluation of tenders and award of contract. The evaluation of the bids must comply with the criteria set out in the bidding guidelines. Procurement officers must clearly communicate to unsuccessful bidders the reasons why the contract was not awarded to them, even when the deliberative mechanisms are not face-to-face.

Stage 5: Formalization and entering into the contract. Once the award of the contract is issued, the contract must be formalized with its signature on the date, time and place provided in the ruling, in the call for bids, or in its absence, no later than 15 calendar days after the ruling is issued.

Critical Route Complex bidding procedure for the acquisition of highly specialized technical equipment.

ACTIVITY	REQUIRED TIME	ACUMMULATED
Publication of the Call in <i>CompraNet</i> and the Official Gazette of the Federation.	0	0
Deadline to receive questions for the 1st Meeting.	5	5
Answers to questions of the 1st Meeting.	7	12
Deadline to receive questions for the 2nd Meeting.	5	17
Answers to questions of the 2nd Meeting.	7	24
Presentation of Bids and Opening of Technical Proposals.	15	39
Technical Evaluation, issuance of the Technical Report and Opening of Economic Proposals.	20	59
Economic Evaluation and Issuance of the Contract Award.	14	73
Entering into the Contract.	20	93

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?

As indicated in point 3 above, both the LAASSP and the LOPSRM establish that public entities may contract without being subject to the public bidding procedure, through procedures of invitation to at least three persons or direct awarding, when the amount of each operation does not exceed the maximum amounts that will be established in the Federal Expenditure Budget for that purpose.

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

In order to ensure that a bidder in a bidding process meets its requirements, it must be diligent at each and every stage of the procedure. Particular care must be taken with the formalities required for each of the documents, information and capabilities required by the contracting entity (Mexican Procurement laws generally are extremely formalistic).

At all times, participants must be in compliance and adhere to applicable law.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

The rules for evaluation of offers should be defined prior to the publication of the public bids' terms and conditions and must be included in the bidding guidelines. Their design should seek to maximize competition by establishing clear requirements and criteria for the award of

contracts. Not considering clear requirements and objectives can jeopardize the bidding process by restricting access to potential bidders.

LAASSP (article 36) states that public tenders or restricted invitations must be evaluated based on point and percentage and cost-benefit criteria. The only exception is the use of the binary evaluation, which requires the contracting areas to justify why they did not select one of the other two methods.

LOPSRM (article 38) determines the binary evaluation system as a rule and grants the contracting entity the power to decide the application of an evaluation procedure based on points and percentages when the characteristics of each work justify it.

I. Under the evaluation criteria based on points and percentages, the different bidding components are subject to different ponderation parameters. These parameters must be carefully specified in the public tender's terms and conditions. A 50-line baseline is established in the Guidelines for application of the point and percentage evaluation criteria in public procurement. The supplier's experience can earn between 5 and 7.5 total points. In other words, the supplier's experience can represent between 10% and 15% of the final score.

II. The cost-benefit evaluation criteria is very similar to the points and percentages criteria. The difference is that the benefits from each different component must be valued in terms of money, in order to allow a cost analysis / benefit between the different bids.

III. Under the binary evaluation criteria, the winning bid is the one that meets the tender's technical requirements and the one that presents a lower cost. This price must be within the accepted range, which is determined by convenient and not acceptable reference prices.

For the evaluation in a binary system, if there are equal conditions, preference will be given to persons who are part of the national micro, small and medium business sector.

12. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder.

All bidders that submit proposals in a public procurement process will be notified of the evaluation results and the award. This may be in a public meeting in cases where the bid is face to face or mixed. The contents of the results will be published through *CompraNet* on the day it is issued and a notice will be sent to the bidders who did not attend the public meeting informing them that the results are available on *CompraNet*. The results and awards shall contain the following:

- A list of all the bidders whose proposals were dismissed, stating the legal, technical or

economic reasons that justify such determination, as well as indicating which of the tender's terms or conditions are not met.

- A list of bidders whose proposals were considered solvent.
- In case the cost of a proposal is found as not acceptable or inconvenient, a copy of a cost research or corresponding calculation shall be exhibited.
- Name of the bidder(s) to whom the contract is awarded, indicating the reasons that motivated such award, according to the criteria established in the tender. Concepts and amounts shall be assigned to each awarded bidder shall be disclosed.
- In the event that the tender or any item is declared void, the reasons for this shall be stated in the ruling.

Pursuant to the bidding procedure. The evaluation, ruling and award will be carried out through one legal instrument. If the bid is face-to-face or mixed, the decision's grounds and reasons will be publicly announced, nevertheless, it is not a condition to stop or suspend the contract award.

13. What remedies are available to unsuccessful bidders in your jurisdiction?

Mexican law establishes the following bidding procedural acts as susceptible of being challenged through non-conformity appeals (which are carried out administratively and not jurisdictionally):

- Call to tender and meetings for clarification.
- Invitation to at least three people.
- Presentation act, proposal opening and award.
- Bid cancellation, if applicable.

Within the same procedure and at the non-conformed party's request, the authority can suspend contracting procedure's acts. The provisional suspension can be declared as a precautionary measure at the same moment as the admission of the non-conformity appeal is submitted. After the contracting entity renders its report in connection with the non-conformity appeal, a definitive suspension can be declared or not. The suspension's is of a precautionary nature, which means that it has the objective of preserving the status of the matter that is going to be resolved.

The non-conformity appeal's resolution can determine the total annulment of the public procurement procedure or of the challenged stage

The non-conformity appeal's resolution can be jurisdictionally challenged through administrative courts.

For the case of the state owned productive companies, such as the Comisión Federal de

Electricidad and Petróleos Mexicanos, their particular regulation establishes that all acts developed in the bidding process, including the award, will be of an administrative nature. However, once the contract is signed, these and all the legal actions and events that derive from it, considering the enforceability of the fulfillment and satisfaction of all the obligations contracted by the parties, shall be of a private nature and will be regulated by commercial law.

Pursuant to the LCFE and the LPemex, in the event of any irregularity on every administrative act issued during the bidding procedure, without considering the award, no ordinary challenge will proceed or be admitted. Any irregularity that would be discovered during the procedure can only be challenged through a reconsideration appeal.

The only proceeding remedy against resolutions issued by state owned productive companies is the jurisdictional action before the Federal Court of Tax and Administrative Justice.

14. Are public procurement law challenges common in your jurisdiction?

Non-conformity appeals are not very common. Derived from strict regulations in Mexican public procurement, public officials permanently tend to adhere to the rules established in law and have special care to correctly integrate the award in order to minimize inconformity risks.

Additionally, the law establishes several sanctions and fines for the bidders who use the non-conformity appeal to obstruct or delay the procurement.

The law regulates the non-conformity appeal's procedure in public procurement thoroughly. It requires every procedure to be carried out within 51 days at the most, in addition to the time necessary to guarantee that notifications comply with the formal elements required by law.

It is impossible to define the costs of any procedure, due to the fact that it varies depending on how complex the matter is and the proof that is presented. Administrative and judicial bodies cannot charge anything for the litigation or procedure carried out before them. The only costs incurred in by companies are the fees they pay their counsel, their expert witnesses and proof integration, etc. and cost of a bond that guarantees the potential damages to the State.

From a factual standpoint, the image and situation of a bidder that challenges decisions from bidders, can of course be harmed, the fulfillment of other existing or ongoing contractual obligation more stressful

15. Typically, assuming a dispute concerns a complex contract, how long would it take

for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

Non-conformity appeal filing. They are filed before the Ministry of Public Administration or through *CompraNet's* website. The term to file the non-conformity appeal is of 6 working days, counted from the day on which the ruling was issued.

If the appellant omitted any of the legal requirements needed for the appeal's admissibility, the administrative authority shall forewarn the appellant, in order to facilitate the correction of said omissions, 3 working days shall be granted.

Admission of the appeal. The authority will determine if the appeal meets the formalities and requirements set forth by applicable, as well as declaring the provisional suspension of the public procurement acts, at the appellants request or shall deny the same. Additionally, in the admission minute, the authority shall require the entity that issued the call for bids, in order for it to file a detailed report on the procedure within 6 working days. Furthermore, the revising authority will have to notify interested third parties, in order for them to come forward in the procedure and appear in order to state what they deem is within their rights. For that effect, interested third parties will be granted 6 working days.

Once the detailed report is filed by the entity that called for bids, the authority must determine whether to grant the definitive suspension or not. Furthermore, the authority shall run transfer of the detailed report to the appellant and interested third parties.

The appellant has the right to include more motives to the challenge when, after reviewing, the detailed report finds facts or elements it did not know. For that, the appellant will have a term of 3 working days, counted from the one in which it was the detailed was report notified.

In the event the authority considers the appeal as admissible, it will require the entity that called for bids to broaden its detailed report within 3 working days and it will also call upon the interested third parties, in order for them to also broaden their manifestations within the next 3 working days.

Evidentiary stage and closing statements. Once the evidence has been rendered, the proceedings in the file will be made available to the appellant and interested third parties, in order for them to formulate a final written statement within 3 working days.

Closure of proceedings and resolution. When the proceedings are closed, the authority shall dictate its resolution within 15 working days.

The correlative regulations and laws for CFE and Pemex elaborate on each of the

reconsideration appeal's phases. The reconsideration appeal must be filed before the collegiate body constituted in accordance with the act of incorporation of each State Owned Productive Company. The reconsideration appeal must be filed within 5 working days after the holding of the public meeting in which the ruling was announced or when the participant is notified on the award minute.

The appeal's admission provisionally suspends the public procurement proceeding and the signing of the corresponding contract until the appeal is solved. For the suspension to be granted the appellant must expressly request so. The writ by means of which the suspension is requested must comply with all the formal requirements indicated in the regulations and it must demonstrate that no damage will be caused to the social interest or that it does not contravene public order provisions.

Additionally, the appellant must express the reasons due to which it is considered that the execution of the ruling may cause harm to it. The suspension may be requested at any moment until the resolution which puts an end to the appeal.

Appeal's Admission. The collegiate body must revise if the appeal complies with the formalities and requirements set forth in the corresponding Regulations. With this act of admission, the authority shall require the entity that called for bids to file a detailed report of the proceeding within 5 working days. The collegiate body has to declare the definitive suspension within the next 3 working days following the reception of the detailed report and, in case it is not solved within the foreseen term, the suspension will be taken as granted.

Furthermore, the collegiate body shall notify interested third parties for them to come forth within the next 5 working days to express whatever is in their interest.

Once the evidence was rendered, the proceedings will be considered closed and each party will have 3 working days to formulate their closing statements. When this term has elapsed, the collegiate body shall dictate its resolution within 10 working days.

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

Mexican law does not provide any distinction of the procedural rights of appeals on the basis of the origin or nationality of the participants. All disputes arising from the issuance of administrative acts within the administrative procedure for contracting, regardless of whether they are national contracts, international contracts under the coverage of treaties or open international contracts, shall be resolved in accordance with the procedures described in the previous point.

17. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given

guaranteed access to bid for the contract?

In the case of national bids , they may only submit their proposals through their subsidiary as long as they prove with a public deed that it was incorporated under Mexican law and that it has its principal place of business within Mexican territory. For all purposes, since it is a Mexican legal entity, it shall receive the same treatment as nationals.

18. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?

With regard to the means of legal challenge that can be implemented against the procurement procedure, the competent court is the Federal Court of Administrative Justice. It is competent to resolve challenges to the decisions issued by the Ministry of Public Administration or by the Internal Control Bodies of the contracting entity, within the framework of appeals of non-conformity or reconsideration.

In order for the complaint to be admissible, the bidder must have previously exhausted the remedy of non-conformity or reconsideration, as the case may be.

A special distinction is made between non-compliance or the enforceability of any right derived from the contract and its validity. In the case of contracts derived from the LAASSP or the LOPSRM, the contract has a dual nature. On the one hand, they are public contracts of an administrative nature. In these cases, the relationship between the contracting entities and the private ones is not one of symmetry. The contracting entity continues with its investiture as an administrative authority. Under these premises, the contracting entity must subject all its decisions to the principle of legality and observe at all times the rights of private parties in accordance with the principles of due process of law.

Unilateral decisions to impose fines, contractual penalties and termination of the contract can be challenged before the Federal Court of Administrative Justice, a court specialized in administrative law.

If the breach of contract is due to causes attributable to the contracting entity, then the contract is of an administrative nature and the private party is entitled to demand the performance of the contract and the obligations arising therefrom before a federal civil court.

In the case of contractual relations involving the CFE or Pemex, the contract and the obligations arising therefrom are invariably of a commercial law nature and the enforceability of claims or satisfaction of contractual rights must be asserted before federal courts of a commercial nature or before a private arbitration panel.

19. Are post-award contract amendments/variations to publically procured, regulation

contracts subject to regulation in your jurisdiction?

Mexican law strictly prohibits government agents from modifying contracts in terms of prices, advances, progressive payments, specifications and, in general, any change that implies granting more advantageous conditions to a supplier compared to those originally established.

However, applicable law establishes that they may, for justified and explicit reasons, agree to increase the amount of the contract or the quantity of goods, leases or services requested by means of modifications to their current contracts. In these cases, the modifications must not exceed, in the aggregate, twenty percent of the amount or quantity of the concepts or volumes originally agreed and it must be guaranteed that the price of the goods, leases or services is equal to that originally contracted.

Any modification to the contracts must be formalized in writing by the agencies and entities.

In the first instance, the agencies do not allow changes in the replacement of the supplier (by assignment, purchase and sale, merger or other similar figure). The argument is that the requirements of the call that gave rise to the contract was based on certain qualifications and characteristics of the bidder (technical capacity, solvency, experience, compliance with previous obligations, among others), were elements that at the time served as grounds for the award. In theory, changing the identity of the supplier would imply granting advantages to the new supplier in view of the participants of the bidding process who did not win in the bidding procedure. In practice, however, there have been few occasions when the supplier has been able to be replaced.

20. How common are direct awards for complex contracts (contract awards without any prior publication or competition)?

It is possible for complex contracts to be awarded directly. However, it is not very common. In particular, complex contracts are not easily justifiable for direct awards.

Decisions for direct award are subject to scrutiny in the sense that contracting entities must justify and support the reasons for the direct award. If there is no such justification, or if the reasons given are not sufficiently reasonable or do not properly support the normative cases invoked, the decision could be declared null and void.