

Public Procurement

In 30 jurisdictions worldwide

Contributing editor
Hans-Joachim Prieß



2015

GETTING THE
DEAL THROUGH

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DEAL THROUGH 

Public Procurement 2015

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Legislative framework

1 What is the relevant legislation and who enforces it?

Mexico is a federation. Therefore there are 33 federal and state procurement regimes: one for each of the 31 states of Mexico, one for Mexico's capital (Mexico City) and one applicable to the federal public administration.

There are also procurement guidelines for the federal legislature and judiciary, and an independent procurement regime that regulates the activities of Petroleos Mexicanos (Pemex) and Comisión Federal de Electricidad (CFE), the productive companies of the state (state-owned companies), which are major players in the Mexican economy, as well as the Law on Public-Private Partnerships and its regulations.

Notwithstanding the above, in this chapter we shall address and explain only the rules applicable to the federal public administration, considering that it is the most important procurement authority in the country. Some minor details of the Pemex and CFE Law and the PPP regimes will be explained, for reasons of space.

The relevant federal procurement legislation in Mexico is as follows.

Article 134 of the Mexican Constitution

This provision establishes the obligation for any contracting authority or entity in Mexico (as a country) to carry out any buying of goods, leasing, provision of services, contracting of public works, and services related to public works through public bids in public events, so that the state can guarantee such contracting under the best conditions on price, quality, financing, opportunity, efficiency, equal treatment and opportunity, among other issues. This article also foresees that the special laws that regulate procurement may establish ways of procurement other than public bids (restrictive bids, direct awards, etc) when the public bids are not the most efficient procurement procedure, and foresees the correct application of public financial resources. This article is the constitutional ground for all public procurement in Mexico, and any law or action that contradicts this article is considered null and void.

Free-trade agreements

Mexico has signed several free-trade agreements and economic association agreements with different countries and regions. Most of these agreements include international public procurement chapters. In accordance with article 133 of the Mexican Constitution and the Mexican Supreme Court interpretation, international treaties are the supreme law of the nation if they are in accordance with the Mexican Constitution. Free-trade agreements that include procurement chapters are, among others: NAFTA, executed between Mexico, the US and Canada; EUFTA, executed between Mexico and the European Union; and the Economic Cooperation agreement executed between Mexico and Japan, etc. Provisions of procurement chapters in free-trade agreements apply whenever different issues considered in the same agreements are covered and satisfied (lists of buying entities; amount thresholds; lists of goods, services and construction activities).

The Procurement Laws

The Public Works and Related Services Law (PWRS) and the Buying of Goods, Leasing and Rendering of Services of the Public Sector Law (BGLRS) (the Procurement Laws) are the two main laws that will apply in most federal government procurement procedures, except in those issued by the judiciary and legislative branches, and the activities of Pemex and

CFE. These laws were issued by the Mexican Congress and are enforced, depending on the matter, by the Ministry of Public Function, the Ministry of Economy and the Ministry of Finance. In the event of a violation of legal provisions, the executive power, through bid objections, has the obligation to enforce them. As a further resource, federal courts may be competent to solve disputes and matters that arise from the application of these laws. (Note that as a consequence of a change in the Federal Public Administration Organic Law, the Ministry of Public Function was abolished, but the law has not come into effect. Therefore in future, this statement may not be valid.)

Administrative regulations of the PWRS and the BGLRS

The PWRS and BGLRS regulations are issued by the executive branch and give details for the application of the Procurement Laws at the administrative level. As a general and non-waivable principle, administrative regulations must not establish any provisions that contradict, violate or exceed the rights and obligations defined by the law that they are regulating. In the case of the Regulations of the Procurement Laws, these regulations may be enforced by the Ministry of Public Function, the Ministry of Economy and the Ministry of Finance in relation to administrative matters, and in accordance with their own powers. In the case of a violation of these regulations, diverse procedures before these authorities can be initiated and as a further resource, different federal courts, such as the Administrative and Fiscal Federal Justice Tribunal and the Federal Judicial Power will enforce them.

Pemex and CFE regime

As a consequence of the recent modification of the energy sector in Mexico, Pemex and CFE were changed to productive companies of the state (state-owned companies), in which their procedures of public procurement will be established by the new laws recently created, such as the Hydrocarbons Law, Pemex Law, CFE Law, Law of the Industry of Electricity, Law of the Income of Hydrocarbons, etc, and their respective regulations. Therefore, any public procurement procedure regarding these two companies will follow a different and independent regime. The government authorities in charge of the regulation and enforcement of the laws of the energy sector are the Ministry of Energy, Ministry of Finance, the Commission Regulatory of Energy and the National Commission of Hydrocarbons.

Jurisprudence

This is the interpretation that federal courts give to the provisions of procurement rules as a result of litigation (case law). It is important to be aware of the jurisprudence since it gives the official interpretation of a law or declares a law unconstitutional. The federal courts are increasingly issuing different decisions regarding procurement regimes, which means that bidders, suppliers and contractors have faith in the judicial system, and that many issues that might not be clear at the administrative level may be clarified and corrected in this instance.

2 In which respect does the relevant legislation supplement the EU procurement directives or the GPA?

Mexico is neither a part of the European Union nor a part of the GPA. Nevertheless, considering that Mexico has signed a free-trade agreement with the European Union and with other countries that are subscribers to the GPA, it is important to evaluate rules involved in international

procurement with the corresponding regions when participating into a procedure in the countries that are part of such integrated regions.

3 Are there proposals to change the legislation?

There are several proposals to modify the legislation. One of them is the initiative that was drafted by the National Chamber of the Construction Industry in order to submit to Congress and to improve the PWRs provisions that affect productivity and competitiveness. This initiative is being discussed in Congress and it has been approved by the House of Representatives/Chamber of Deputies. It is now being discussed in the Chamber of the Senate, which can approve the modifications to the law or amend them.

4 Is there any sector-specific procurement legislation supplementing the general regime?

The Mexican army and the Mexican navy, among other military authorities, must comply with the Procurement Laws. Nevertheless, these authorities have the power to apply articles 41 and 42 of PWRs, as well as articles 41 and 42 of BGLRS, to award directly (without a bidding process) any construction of public works, services related to public works, purchase of goods and leasing and provision of services if the goods and services are for military purposes. In addition to these laws, the military authorities have their own internal rules, according to their structure, organisation and objectives. All these rules can be found at the relevant website (army or navy) or may be requested in accordance with the transparency principles that apply to all public administration, unless this information jeopardises national security.

Also, as mentioned above, Pemex and CFE will have a totally independent public procurement regime, following the specific rules for the energy sector.

Applicability of procurement law

5 Which, or what kinds of, entities have been ruled not to constitute contracting authorities?

The PWRs and the BGLRS define the entities and authorities that must apply the procurement legislation. These are:

- the Office of the President;
- all the ministries of state, administrative departments and the legal office of the president;
- the attorney general's office;
- all government entities with their own personality and patrimony;
- all entities with major public participation as well as public trusts; and
- states of Mexico that use the federal budget for buying goods or the development of projects, even if they are destined for state purposes.

Public entities with autonomy given by the Constitution, such as the Central Bank or the Human Rights Commission, must only apply criteria and procedures under these laws when the latter do not contradict their own internal regulations. In other words, these authorities are not subject to the law, but their regulations must be guided by the principles of the law.

Any entity or authority that is not considered in the list established in any of the procurement laws is not obliged to apply these laws, nevertheless all of them must comply with the principles established in article 134 of the Mexican Constitution. This is the case for the activities of Pemex and CFE too.

6 For which, or what kinds of, entities is the status as a contracting authority in dispute?

At this time there are no known disputes relating to this issue.

7 Are there specific domestic rules relating to the calculation of the threshold value of contracts?

There are three kinds of procurement procedures recognised in Mexico: public and open tenders, invitation to at least three interested suppliers or contractors and direct awards.

In this sense, there are some regulations that establish the maximum amount of a public work contract, a service related to public works, or a purchase of goods, to procure it through an invitation to at least three interested suppliers and contractors or through direct awards.

8 Does the extension of an existing contract require a new procurement procedure?

The extension of an existing contract will not need a new procurement procedure, unless the extension does not comply with the conditions established by law. These are as follows.

Purchase of goods, leasing and rendering of services

Extensions have to be made in accordance with the following requirements: that the modification is made within a period no longer than 12 months from the conclusion of the original agreement; that the amount to be extended does not exceed globally 20 per cent of the amount or quantities of the concepts and volumes that were established originally; and that the price of the goods, leasing or services is not modified.

Public works and related services

There are three kinds of public works contracts: by unit prices; on a lump sum basis; and mixed (part made on a unit price basis and part made on a lump sum basis). Mexican law only allows extensions to the unit prices contracts or the mixed contracts on the unit price part if the extensions do not exceed more than 25 per cent of the price or of the schedule of the original contract, the extensions do not constitute substantial variations to the original project or where the extensions are made to avoid the application of international treaties. If the required modifications exceed the said percentage, but do not vary the indicated percentage, amendments to the contract can be made following some administrative formalities.

If an extension is needed for a lump sum public works contract, the PWRs provides a solution with certain defined rules.

9 Does the amendment of an existing contract require a new procurement procedure?

The amendment of an existing contract does not require a new procurement procedure if it is done in accordance with the rules explained in question 8. The extension of a contract is a type of amendment, thus these rules apply.

10 May an existing contract be transferred to another supplier or provider without a new procurement procedure?

The rights and obligations of a supplier, service provider or contractor under a contract derived from a procurement procedure cannot be transferred or assigned. An exception is made for the assignment of collection rights, which can be transferred to third parties in accordance with the civil and commercial rules for that purpose.

11 In which circumstances do privatisations require a procurement procedure?

The rules that were applied in privatisation cases were not related nor derived from the Procurement Laws, but specific rules designed for that purpose, which require compliance with the law, regulations and transparency.

12 In which circumstances does the setting up of a public-private partnership (PPP) require a procurement procedure?

In general, any PPP project must be carried out through a procurement process applying the Law on Public-Private Partnerships and its regulations. Procurement procedures include public tender, invitation to at least three persons or direct award. Such provisions establish the general principles, and details for a procurement procedure of these particular contracts. Even if there is a non-solicited proposal, a public tender must be carried out in order to award a PPP project.

13 What are the rules and requirements for the award of works or services concessions?

There are specific laws that apply to services concessions taking into consideration the nature of the service (ie, telecommunications, toll roads, water, etc). Although concession awards follow the same principles as the Procurement Laws, there is a clear distinction between the provision of services or public works and concessions, so the Procurement Laws are not directly applied.

14 To which forms of cooperation between public bodies and undertakings does public procurement law not apply and what are the respective requirements?

In general, contracts and agreements that are celebrated between two government entities are not considered as public procurement and therefore none of the public procurement laws will apply. This provision has been challenged before the federal constitutional courts, which have decided that the provisions included in public procurement contracts that state that contracts between public bodies are not contrary to article 134 of the Mexican Constitution.

Corporations in which the Mexican state has a share greater than 51 per cent (called companies with majority state participation) are subject to the public procurement laws without any restriction.

The procurement procedures

15 Does the relevant legislation specifically state or restate the fundamental principles for tender procedures: equal treatment, transparency, competition?

Yes. Article 134 of the Mexican Federal Constitution establishes the obligation of public entities to consider price, quality, financing, opportunity, economy, efficiency, equal treatment and competition in the procurement process. In connection with transparency, there are special provisions and mechanisms in all the processes of the Mexican state to guarantee it, so these fundamental principles expressly apply to the Mexican procurement system and can be requested and actions contrary to them challenged. In addition, the judiciary has confirmed the existence of these principles through its jurisprudence.

16 Does the relevant legislation or the case law require the contracting authority to be independent and impartial?

Yes. All the legal structures tend to formally enforce this situation. In addition, there are certain rules to avoid any problems occurring in practice: any supplier, provider or contractor that has a direct relationship or interest with any person from the contracting authority or entity is considered 'not able' or 'not capable' of signing a contract with the contracting entity. The Anti-corruption in Public Procurement Procedures Law and the Federal Law of Responsibilities of Public Officers establishes the sanctions and liabilities of contractors and public officers, respectively, if their actions throughout public procurement procedures are not according to the law.

17 How are conflicts of interest dealt with?

There are specific provisions dealing with the situation where officials of a contracting entity have direct or indirect interest in the procurement process or in connection with the contractors and suppliers interested in the procurement processes. In this case, the Procurement Laws prohibit the contracting entity from receiving any bids from the contractors and suppliers in which officers are related, involved or have an interest.

Also, the new Anti-corruption in Public Procurement Procedures Law establishes the sanctions for this type of conduct in the case of contractors, and the Federal Law of Responsibilities of Public Officers establishes the liabilities for public officers.

18 How is the involvement of a bidder in the preparation of a tender procedure dealt with?

The involvement of a bidder in the preparation of a tender procedure is conduct that is expressly forbidden by the Anti-corruption in Public Procurement Procedures Law and such conduct can lead to debarment and economic sanctions.

19 What is the prevailing type of procurement procedure used by contracting authorities?

As established by article 134 of the Constitution, public open tendering is the prevailing type of procurement procedure. In the case of justified exceptions, emergencies, force majeure, acts of God, public health and national security reasons, among others, other methods of procurement (eg, invitation to at least three persons or direct award) can be used.

20 Can related bidders submit separate bids in one procurement procedure? If yes, what requirements must be fulfilled?

The law uses the terms 'associated partner' or 'common associate' in order to explain that they are not allowed to participate in the same public

procurement procedure. In this sense an associated partner or common associate is a person that has an equity participation in more than one company, and that has powers of direction and representation on those companies.

This conduct can lead to disqualification or debarment and sanction of the companies that breach this principle.

21 Are there special rules or requirements determining the conduct of a negotiated procedure?

Mexican legislation strictly forbids any negotiation between a contractor or supplier and the contracting entity during a procurement procedure, before the award of a public contract and during the execution of the contract. It is even forbidden for a bidder to communicate with the entity during the procurement procedure, if such communication is intended to influence the contracting entity's decision on the award of the contract. Breach of this obligation will mean that the procedure is null and void.

In the case of the new Pemex and CFE Laws, it is established that these contracting entities can have limited negotiations during the procurement procedure, as well as the negotiation of contracts below certain limits.

Finally, regarding PPPs, although it is not strictly a negotiated procedure, the PPP Law allows the parties to redefine some aspects that modify the balance of the contract as it was signed in order not to harm the interests of the parties.

22 When and how may the competitive dialogue be used? Is it used in practice in your jurisdiction?

Competitive dialogue, as understood under the EU directives and US regulations, is not considered, applied or accepted in the Procurement Laws. Therefore it is forbidden in Mexico.

23 What are the requirements for the conclusion of a framework agreement?

Framework agreements are relatively new in public procurement in Mexico. There are certain rules for implementing and executing a framework agreement under the BGLRS and its regulations. Basically, the promoter of the framework agreement is the Ministry of Public Function, and to date several framework agreements have been implemented. Public information has shown the benefits of this procedure, but as yet the public cannot ascertain its absolute benefit or the conflicts that may arise.

24 May a framework agreement with several suppliers be concluded? If yes, does the award of a contract under the framework agreement require an additional competitive procedure?

A framework agreement with several suppliers can be concluded. In any event, the award of a contract under the framework agreement requires a direct award. This means that the framework agreement itself is not a public procurement procedure but that subsequent actions are.

25 Under which conditions may the members of a bidding consortium be changed in the course of a procurement procedure?

The Procurement Laws do not allow a consortium to be changed in the course of a procurement procedure once the bid has been presented to the contracting entity. Nevertheless, in practice, there are some legal ways to make such a change, to try to avoid putting the contract at risk and to comply with the law at the same time.

26 Are unduly burdensome or risky requirements in tender specifications prohibited?

Yes. It is established that contracting authorities must not take into consideration (for the purpose of evaluation) any aspects of the bid that do not affect its solvency. Among these requirements are, for example, any considerations that do not affect the content of the proposal, not observing the formats requested if the information to be included in the formats is clearly established, among others. Also, the free-trade agreements establish the prohibition on making direct reference to brands unless there is no other way to specify the required goods, among other similar situations.

27 What are the legal limitations on the discretion of contracting authorities in assessing the qualifications of tenderers?

According to the Mexican procurement rules:

- any bid that complies with the tender documents from a technical and economic point of view must qualify;
- a contracting authority must not ask for requirements or disqualify the bidders for requirements that do not affect the technical or economical solvency of the proposals;
- any unjustified assessment of the bids that may result in a disqualification is subject to an objection or a challenge under the procurement rules; and
- any unjustified qualification or disqualification of a proposal may even be a matter of administrative, civil and criminal liability of the public officials, depending on the nature of their unlawful actions.

28 Are there specific mechanisms to further the participation of small and medium-sized enterprises in the procurement procedure? Are there any rules on the division of a contract into lots? Are there rules or is there case law limiting the number of lots single bidders can be awarded?

In recent times, the financial crisis has created some benefits for small and medium-sized companies. This allows the possibility of partitioning awards into lots.

The Public Procurement Laws establish that the Ministry of Economy and Ministry of Public Function will be in charge of creating the rules in order to promote participation of micro, small and medium-sized companies. Also, the laws establish that if two bidders comply with the requirement and bid a similar price, the micro, small and medium-sized companies will have preference. In practice, the contracting entity issues the invitation to bid, indicating certain flexibility of requirements and benefits for these types of companies. There are no specific rules on the division of a contract into lots. The Public Procurement Laws only specify that if some companies participate as 'associate partners' the contract will determine the parts or activities corresponding to each company. In practice, the contracting entity issues one public call to bid for different services or products, but it divides every product or service subject to bid, establishing one contract for each service or product instead of one contract for all products or services. Therefore, it works more as separate bids rather than separating one awarded contract. There is no restriction on the number of lots single bidders can be awarded.

29 What are the requirements for the admissibility of alternative bids?

Alternative bids may only be considered if the contracting authority has requested them. Nevertheless, the laws do not consider this possibility and therefore it is never used at a federal level, since they have an implied risk related to the evaluation of the bids.

30 Must a contracting authority take alternative bids into account?

If such alternative bids were not requested on the bidding instructions, there is no obligation, and the bidder can be disqualified for not respecting the bidding rules.

31 What are the consequences if bidders change the tender specifications or submit their own standard terms of business?

If a bidder changes or amends the tender specifications established by the contracting authorities in the tender documents or submits its own standard terms of business contrary to the specifications requested by the contracting authorities, the bidder would be disqualified (unless the contracting authority gives in the tender documents the bidder the liberty to offer any specifications that it considers appropriate).

32 What are the award criteria provided for in the relevant legislation?

The Procurement Laws consider three main evaluation methods:

- binary: subject to compliance with the requirements of the bid documents. In this case, the lowest bid in price shall prevail;
- points and percentages: the contracting entity will establish certain requirements, give points to such complied requirements and percentages, and the bid with the best evaluation based on points and percentages shall be awarded; and
- cost-benefit procedure.

33 What constitutes an 'abnormally low' bid?

There is no express concept or definition of an 'abnormally low' bid in the Mexican procurement system. Nevertheless, some rules define that the contracting authorities must verify that the offered resources and prices are in accordance with market costs, and other related matters. In the procurement chapters of the free-trade agreements, there is a provision that states that if a contracting entity or authority has a suspicion that the offered price is not adequate for the contract to be carried out, it may contact the bidder to be sure that such price is adequate.

It can be said also, that an abnormally low bid, according to the Mexican procurement system and practice, is the one that is under the authorised budget for the intended construction project or purchase of goods. This can be a problematic situation, since during the bidding process the contracting entities and authorities have no obligation to say what the budget limit is.

34 What is the required process for dealing with abnormally low bids?

In theory, a contracting entity must not award a contract if the offered price does not guarantee the correct execution of the contract. Nevertheless, on many occasions, the bidder that offers the lowest price will be awarded the contract, considering that certain projects establish the obligation of awarding the contractor or supplier that offers the lowest price once the technical, financial and economic requirements have been satisfied. The situation is different in the Public Works Law, which has been modified so that any bidder complying with the technical and economic requirements and offering the best economic conditions, under the terms of price, financing, compliance with contracts, etc, must receive the award.

If the tender is below the estimated budget for the project or price, it is considered not only as 'abnormally low' but not acceptable, and the contracting entity or authority has the power not to accept the proposal.

35 How can a bidder that would have to be excluded from a tender procedure because of past irregularities regain the status of a suitable and reliable bidder? Is the concept of 'self-cleaning' an established and recognised way of regaining suitability and reliability?

According to the Mexican procurement laws, a bidder can be excluded from a tender procedure when it falls into the categories established by law (conflict of interest, breaching of contract and rescission, etc), or whenever such bidder has been debarred after a debarment procedure has been successful.

In the first case, as a general principle, the bidder is excluded on a case-by-case basis, so the status of suitable and reliable bidder depends on not falling into the respective categories.

In the second case, the debarment means that such bidder shall not participate in any bid of the federal government until the sanction imposed by the Ministry of Public Function has elapsed. According to the Procurement Laws, the period for which a person or company can be debarred shall not be less than three months and not more than five years. A fine shall also be imposed, and until such fine is paid, even if the time of debarment has passed, debarment shall not finish.

Review proceedings and judicial proceedings

36 Which authorities may rule on review applications? Is it possible to appeal against review decisions and, if so, how?

The authority that rules on a bid objection or an award challenge is the Ministry of Public Function, through special offices within the contracting entities or authorities called 'internal comptroller bodies'. The Ministry of Public Function also has a special department called the 'bid objections general office', which rules on the most important bid objections or bid objections by certain entities whose internal comptroller bodies do not have the power to resolve bid objections or if the bid objection raises a matter of importance.

Both reviewing bodies have the same competence and apply the same laws, but may have different criteria for the cases, which is a problem that suppliers, contractors and litigators have to face on a daily basis. (Note that as a consequence of a change in the Federal Public Administration Organic Law, the Ministry of Public Function was abolished, but the law has not come into effect. Therefore in future this statement may not be valid.)

Update and trends

In recent years, many public procurement procedures have been significantly affected by lack of transparency and corruption scandals. Cases such as the Mexico-Queretaro train project, the Mexico City Line 12 Metro and several state projects have shown that there is a lack of transparency in major public procurement procedures. This is of great concern for companies that intend to participate in public procurement.

This situation may change with the creation in April 2015 of the new Anti-corruption National System (ANS), which is a coordinated effort of existing and new authorities in charge of preventing, auditing and sanctioning corruption. These authorities are mainly the Auditor of the Congress, a new administrative tribunal that will replace the existing

one; the strengthened Attorney General's Office Against Corruption; and the existing Ministry of Public Function.

Although at the time of writing the ANS still requires the approval of the majority of Mexican state congresses and its publication in the Official Gazette, there is no doubt that it will become a reality.

A further step will be the amendment of the whole system (over 70 regulations), in order to establish a comprehensive legal framework, hoping that public procurement procedures will be more transparent and less attractive to corruption, including cases that do not deserve sanctioning because they are politically motivated, such as a recent pharmaceutical case that was clearly revenge rather than an objective corruption case.

37 How long does an administrative review proceeding or judicial proceeding for review take?

The period that an affected party has to file a bid objection is six days in national bids and 10 days in international bids under free trade agreements. The period for review of a case that was initiated due to a bid objection or an award challenge is 20 working days. After that term, the authority has 20 working days to review the decision (therefore the total time for the authority to issue a decision after the case is filed is 40 working days). Nevertheless, in recent times, the authorities delay too long in resolving matters, affecting bidders and users. In the case of a judicial proceeding, it is impossible to determine the minimum or maximum time that the process would take, considering its nature and complexity, but a reasonable standard time would be two years.

38 What are the admissibility requirements?

According to the PWRS and the BGLRS a review proceeding (bid objection or award challenge) can be filed against:

- the invitation to bid, whenever such invitation is not in accordance with the Procurement Laws and regulations;
- the answers in the clarification period, whenever such answers are not in accordance with the Procurement Laws and regulations; and
- the lack of signature on the contract by the contracting entity or authority, whenever the contracting entity or authority does not sign the contract during the time established in the law or the bid documents.

Having complied with the above, the document in which proceedings are filed must comply with the requirements that are requested by the Administrative Procedures Law, which are to be in writing and to include:

- the name of authority;
- the name of person that requests the proposal;
- the address to be notified;
- the basis of the case; and
- the evidence.

39 What are the deadlines for a review application and an appeal?

The deadline for a review application is six days in the case of a national public bid and 10 days in the case of an international public bid after:

- the last clarification round, where the interested person has requested a review related to the invitation to bid, the tender documents, or the clarification rounds;
- the presentation of bids or the contract award; or
- any acts or omissions of the contracting entity or authority that impede the conclusion of the contract in the terms of the tender documents or the law.

The deadline for an administrative appeal is 15 working days after the review decision has been notified to the interested party.

40 Does an application for review have an automatic suspensive effect blocking the continuation of the procurement procedure or the conclusion of the contract?

An application for review does not have an automatic suspensive effect, nor block the continuation of the procurement procedure, unless such suspension is declared by the authority without a request where it considers that it is convenient to suspend the procurement procedure for public interest reasons, or declared where the objector requests a suspension and presents a guarantee that ensures that it will be liable for any damages and loss of profits if the review has no legal grounds and was presented for the purpose of hindering the procurement process. (Nevertheless it must be said that in many cases the revision authorities do not require the guarantee.)

41 Must unsuccessful bidders be notified before the contract with the successful bidder is concluded and, if so, when?

Unsuccessful bidders are notified during the award event of the reasons why the contracting entities and authorities did not select their bid. In the same event, such entities and authorities state that the successful bidder complied with all the requirements established by the bid instructions.

The PWRS and the BGLRS include a very transparent award procedure that describes all the characteristics of the winner and the bidders that did not win the contract.

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42 Is access to the procurement file granted to an applicant?

Access to the procurement file is always granted to an applicant during a bid objection, unless the procurement file contains confidential information or any other copyrights that may not be divulged to the public.

A bidder can also access the procurement file using the Transparency Law, which allows any person to request any information that is not confidential relating to the procurement procedure.

43 Is it customary for disadvantaged bidders to file review applications?

Yes. Nevertheless, it is a duty of procurement lawyers to advise their clients if a review has grounds or not, and of the sanctions to which the bidder may be subject if the review is only made with the intention of delaying the procurement procedure.

44 May a concluded contract be cancelled or terminated following a review application of an unsuccessful bidder if the procurement procedure that led to its conclusion violated procurement law?

Yes. In fact, review processes in Mexico have the effect of declaring null and void any act after the one that was considered unlawful as a result of the review or objection.

45 Is legal protection available to parties interested in the contract in case of an award without any procurement procedure?

Considering that any award that does not comply with the law can be subject to a review, any de facto award can be subject to a review where the objector demonstrates that it has a legal interest in the case. Nevertheless, according to the current rules, bid objections only proceed in some specific cases.

46 If a violation of procurement law is established in an administrative or judicial review proceeding, can disadvantaged bidders claim damages? If yes, please specify the requirements for such claims.

Yes. Our opinion is that under the Liability of the State Law bidders that are affected by the illegal decision of a contracting entity in an administrative or judicial review can claim damages and losses.

Getting the Deal Through

Acquisition Finance	Distribution & Agency	Life Sciences	Restructuring & Insolvency
Advertising & Marketing	Domains & Domain Names	Mediation	Right of Publicity
Air Transport	Dominance	Merger Control	Securities Finance
Anti-Corruption Regulation	e-Commerce	Mergers & Acquisitions	Securities Litigation
Anti-Money Laundering	Electricity Regulation	Mining	Ship Finance
Arbitration	Enforcement of Foreign Judgments	Oil Regulation	Shipbuilding
Asset Recovery	Environment	Outsourcing	Shipping
Aviation Finance & Leasing	Foreign Investment Review	Patents	State Aid
Banking Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Cartel Regulation	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Climate Regulation	Gas Regulation	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Government Investigations	Private Client	Telecoms & Media
Copyright	Insurance & Reinsurance	Private Equity	Trade & Customs
Corporate Governance	Insurance Litigation	Product Liability	Trademarks
Corporate Immigration	Intellectual Property & Antitrust	Product Recall	Transfer Pricing
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