



The Legal 500 Country Comparative Guides

Mexico

PUBLIC PROCUREMENT

Contributing firm

Galicia Abogados S.C.

Galicia

Bernardo Martínez-Negrete E.

Partner (Life Sciences/Infrastructure) | bmartineznegrete@galicia.com.mx

Antonio Borja

Partner (Infrastructure/Energy) | aborja@galicia.com.mx

Alejandro de la Borbolla

Partner (Infrastructure) | aborbolla@galicia.com.mx

Alan Rogel

Associate (Infrastructure) |

Juan Manuel Camarena

Associate (Energy) |

Diego Manzano

Associate (Administrative Litigation) |

This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Mexico.

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MEXICO

PUBLIC PROCUREMENT



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)

As a rule, procurement contracting is regulated only by Mexican applicable laws without interference from any supra-national body or its regulation. Mexico is not part nor observer of the Agreement on Government Procurement of the World Trade Organization and has not implemented the UNCITRAL Model Law on Public Procurement.

Notwithstanding the foregoing, last year, Mexican federal government executed an agreement with the United Nations Office for Project Services (UNOPS) for the acquisition of medicines.

Additionally, please note that application of Mexican laws are without prejudice of relevant provisions of international treaties to which Mexico is a party to and which contain a chapter regarding public procurement. In this sense, any public procurement process carried out by Mexican federal government shall, in first instance, be performed under the coverage of such treaties (international bids under the coverage of international treaties as described below) and, by exception, a national tender or an open tender shall take place.

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

On a federal level, acquisition of goods (other than materials to be used in the construction, maintenance, remodeling and/or installation of public works), leases of assets and services are regulated under Federal

Acquisition and Public Services Law (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*), whereas contracting of public works and related services are regulated under Public Works and Related Services Law (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*) (both laws will be referred hereinafter generally as the “Federal Procurement Law”, as applicable). Furthermore, projects that involve construction of infrastructure and provision of services in which the infrastructure is provided, in whole or in part, by the private sector are regulated under the Public Private Partnerships Act (*Ley de Asociaciones Público Privadas*) (the “PPP Law”).

Mexico is organized as a federal republic with three levels of government: federal, state and municipal (Mexico’s Federal Constitution —*Constitución Política de los Estados Unidos Mexicanos* — sets forth the competence of each one of them). Therefore, each jurisdiction has its own regulations regarding public procurement, though municipalities are normally subject to state laws. In this sense, depending on which public entity requires the procurement of goods, the provision of services or the execution of works, a federal, state or municipal law may result applicable. Additionally, federal or state laws may result applicable to jurisdictions different to those they regulate in the event the acquisition or services will be paid with federal or state funds.

Notwithstanding that, as mentioned above and due to Mexico’s political regime, there are several local regulations on public procurement, please note that this questionnaire has been prepared with special focus on federal laws.

Article 134 of Mexico’s Federal Constitution sets forth that acquisitions, leases and sales of any kind of assets, the provision of services and the contracting of works shall be awarded, as a general rule, through a public bid procedure to ensure the Mexican State the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances.

In accordance with Mexico’s Federal Constitution,

Federal Procurement Law provides that acquisitions, leases and services shall be awarded, generally, by means of a public bidding process. However, such law establishes also two exceptions to the public bidding process: invitation made to at least three persons or entities (so-called restricted invitation) and direct award. The Federal Procurement Law lists situations or cases in which a restricted invitation or direct award can be justified including, among other scenarios, when (i) no alternative or substitute assets exist, or there is only one possible seller in the market, or the product's patent or license is held exclusively by one person; (ii) social order, economy, public services, sanitation, security or the environment of any area or region of the country are endangered or altered as a result of acts of God or force majeure; (iii) circumstances exist that may cause significant additional losses or costs, quantified and justified; (iv) the direct award is granted exclusively for military purposes or is necessary to preserve national security; and (v) due to force majeure events, it is not possible to obtain in time the goods or services through a public bidding process in order to take care of the urgency in question. In such event, the amount or concepts shall be limited to what is strictly necessary to take care of such urgency.

The different types of bidding procedures depend on the nationality of the potential bidders to which the tender is addressed to and the characteristics of the goods or services being requested:

1. National public biddings: They are public bidding procedures to acquire goods which are addressed only to Mexican individuals or companies, and which goods need to be produced in Mexico and have at least 65% of national content, considering labor costs, raw materials and other aspects to be determined by the Ministry of Economy. National public tenders may be called upon (i) when the amount to be awarded is less than the applicable threshold provided for in the free trade agreements to which Mexico is a party or (ii) even when such threshold is exceeded, the specific product is subject to a reserve under the applicable treaties.
2. International public biddings under international treaty coverage: They are public bidding procedures addressed to Mexican and foreign participants, where the latter must reside in a country with which Mexico has entered into a free trade agreement with a public procurement chapter. International public tenders under international treaty coverage need to be called upon when it is required under a free trade agreement to

which Mexico is a party; and

3. Open international public biddings: They are public bidding procedures addressed to individuals and companies of all nationalities for the procurement of products or services of any origin. These procedures may be initiated provided that (a) a previously called national public bidding has been cancelled (i.e., no bidders submitted proposals or the participants or products did not qualify under the bidding rules), or (b) it is stipulated under a contract to be financed by foreign loans granted to the federal government (typically multilateral organizations such as the World Bank).

Please note that Federal Procurement Law is not applicable to:

1. acquisitions, leases and services contracted by autonomous organisms by constitutional mandate, such as the Central Bank (*Banco de México*) or the National Electoral Institute (*Instituto Nacional Electoral*). Those procurement contracts are regulated by the Federal Procurement Law only in what is not foreseen in the regulations that govern such organisms and as long as they do not result contradictory;
2. acquisitions, leases, services and works contracted by productive state-enterprises and their productive subsidiaries such as: PEMEX and CFE. These contracts are regulated by the Pemex Law and the CFE Law, respectively;
3. acquisitions, leases and services contracted by public research centers when the contract will be paid with self-generated resources of their scientific research and technological development funds pursuant to Science and Technology Law. Such acquisitions are subject to the operation rules of such funds;
4. acquisitions of goods or provision of services regarding health matters contracted with supra-national entities through collaboration mechanisms previously agreed; and
5. contracts entered into by and between government agencies, unless the government entity obliged to provide the relevant good or service does not have the capacity to fulfill with its obligation by itself and subcontracts a third party for such purposes in which case, the Federal Procurement Law will be applicable.

In addition to the provisions of the Public Procurement

Law, certain public entities must also comply with their respective internal Policies, Bases and Guidelines on Acquisitions, Leases and Services (*Políticas, Bases y Lineamientos en Materia de Adquisiciones, Arrendamientos y Servicios or "Pobalines"*).

As mentioned above, in addition to the general regime, Productive State-Enterprises (*Empresas Productivas del Estado*, or "EPEs"), such as Pemex and CFE, have a different regime for the contracting of goods, leases, services and works. Both the Pemex and CFE law expressly exclude such entities from the scope of the Public Procurement Law, and subject their procurement processes to their own creation statutes, respectively. Each EPE statute provides the basis for their procurement processes and grants the Board of Directors of each entity the power to issue policies, basis and guidelines to regulate their procurement processes taking into account such basis. Both the Pemex Board of Directors and the CFE Board of Directors have issued their respective regulations (i.e *Pemex: Disposiciones Generales de Contratación para Petróleos Mexicanos y sus Empresas Subsidiarias*. CFE: *Disposiciones Generales en Materia de Adquisiciones, Arrendamientos, Contratación de Servicios y Ejecución de Obras de la Comisión Federal de Electricidad y sus Empresas Productivas Subsidiarias*).

Although the EPEs are governed by this particular regime, there are still some similarities with the general public procurement regime. In general, the award processes of the EPEs are very similar to the general procurement regime applicable to all government entities, for example, public bidding processes are the general rule and restricted invitation and direct award the exceptions, under the relevant statutes. The main difference between both regimes is that (i) governing bodies have more discretion in determining the applicable rules for procurement within the scope provided in their applicable laws, and (ii) EPE's contracts are subject to the common commercial law and principles after they are awarded.

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

As stated above, as a general rule, acquisitions, leases and sales of any kind of assets, the provision of services and the contracting of works are regulated, irrespective of their amount, by Federal Procurement Law. This is also true with respect to the applicable procurements processes of the EPEs and their applicable regulations.

However, please note that Federal Procurement Law

establishes that contracting entities may contract acquisitions, leases or services by means of a restricted invitation or a direct award when the amount of the relevant contract does not exceed the thresholds set forth in the Federal Government Expenditure Budget (*Presupuesto de Egresos de la Federación*).

On this regard, please note that the 2021 Federal Government Expenditure Budget establishes the following thresholds (VAT excluded):

For acquisitions, leases and services:

Authorized budget for acquisitions, leases and services	Up to	Maximum total amount of each operation which may be directly awarded	Maximum total amount of each operation which may be awarded by means of a restricted invitation
Higher than			
\$757,575.75	\$757,575.75	\$10,858.58	\$37,222.22
\$1'515,151.51	\$1'515,151.51	\$12,373.73	\$53,585.85
\$2'525,252.52	\$2'525,252.52	\$13,939.39	\$69,797.97
\$5'050,505.05	\$5'050,505.05	\$15,555.55	\$86,111.11
\$7'575,757.57	\$7'575,757.57	\$17,020.20	\$102,676.76
\$12'626,262.62	\$12'626,262.62	\$19,343.43	\$123,939.39
\$17'676,767.67	\$17'676,767.67	\$20,909.09	\$139,595.95
\$22'727,272.72	\$22'727,272.72	\$22,525.25	\$148,181.81
\$30'303,030.30	\$30'303,030.30	\$23,989.89	\$164,292.92
\$37'878,787.87	\$37'878,787.87	\$24,797.97	\$172,878.78
\$50'505,050.50	\$50'505,050.50	\$27,171.71	\$189,141.41
\$50'505,050.50		\$28,636.36	\$197,626.26

*amounts set in thousands of USD considering an exchange rate of \$19.8 Mexican pesos per dollar.

For public works:

Authorized budget for public works	Up to	Maximum total amount of each public work which may be directly awarded	Maximum total amount of each public work related service which may be directly awarded	Maximum total amount of each public work which may be awarded by means of a restricted invitation	Maximum total amount of each public work related service which may be awarded by means of a restricted invitation
Higher Than					
\$757,575.75	\$757,575.75	\$17,272.72	\$8,535.35	\$154,040.40	\$119,595.95
\$1'515,151.51	\$1'515,151.51	\$21,414.14	\$10,858.58	\$170,909.09	\$128,181.81
\$2'525,252.52	\$2'525,252.52	\$25,707.07	\$12,828.28	\$196,717.17	\$154,040.40
\$5'050,505.05	\$5'050,505.05	\$29,797.97	\$14,797.97	\$239,444.44	\$179,343.43
\$7'575,757.57	\$7'575,757.57	\$34,242.42	\$17,272.72	\$282,121.21	\$213,686.86
\$12'626,262.62	\$12'626,262.62	\$38,636.36	\$19,292.92	\$324,949.49	\$256,363.63
\$17'676,767.67	\$17'676,767.67	\$47,020.20	\$23,434.34	\$376,464.64	\$282,121.21
\$22'727,272.72	\$22'727,272.72	\$51,161.61	\$25,707.07	\$419,404.04	\$336,919.19
\$30'303,030.30	\$30'303,030.30	\$60,050.50	\$29,797.97	\$487,828.28	\$369,575.75
\$37'878,787.87	\$37'878,787.87	\$68,484.84	\$34,242.42	\$555,404.04	\$419,090.90
\$50'505,050.50	\$50'505,050.50	\$76,666.66	\$38,636.36	\$623,389.89	\$470,050.50
\$50'505,050.50		\$81,363.63	\$40,777.77	\$700,454.54	\$529,646.46

*amounts set in thousands of USD considering an exchange rate of \$19.8 Mexican pesos per dollar.

Additionally, with respect to Pemex and CFE, acquisition or lease of goods of certain brand or manufacturer by means of a restricted invitation or a direct award can be carried out when the amount of the relevant operation does not exceed the following thresholds:

Procedure	Threshold
Direct Award	< \$650,000 Mexican pesos.
Restricted Invitations	< \$3,000,000 Mexican pesos.

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.

Although any public acquisition below the thresholds described above may be awarded through a restricted invitation or a direct award, such acquisition shall still need to comply with the Federal Procurement Law or the EPE relevant statute, as applicable.

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

A call for bid has to be published in the official government website called "CompraNet", and a summary is published at the Federal Official Gazette (*Diario Oficial de la Federación*). The request for proposals or bidding guidelines are made available to interested parties either within the call for bids or separately, regularly at a cost (which is an immaterial cost, considering the size of these transactions).

The submission and opening of proposals shall take place at least 15 or 20 calendar days following the publication of the call, depending on whether the public bidding procedure is national or international, respectively.

Please bear in mind that, under Mexican law, the procedure described above is applicable to all contracts, whether they are low value contracts or not.

In the case of Pemex and CFE, their respective laws provide that any procurements process and contracts shall be published in their relevant website in accordance with Federal Transparency and Government Information Access Law (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*).

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?

Please note that, pursuant to the Federal Procurement Law, there are no initial selection stages before an invitation to tender documents are issued (actually, a cause for disqualification of a bidder, is the fact that such bidder has performed (directly or indirectly) any tasks or services related to the potential public bid (such as preparation of specifications, budgets, or quality control analysis)). On the other hand, if the procurement process is governed by the PPP Law, such cause for disqualification shall not apply.

Please note, however, that prior to engaging in any of the three procedures mentioned above, the governmental entity shall prepare a study that allows it to determine existing market conditions for the items or services required, such as the availability of goods or services in the required amount, the existence of domestic suppliers, or the location of international suppliers and also to obtain information regarding the price of such goods or services.

With respect to the EPEs regime, as stated before, each entity may establish its own rules and procedures. Generally, under such regulations, both Pemex and CFE may carry additional procedures, such as prequalification processes among others. Under the relevant regulations, EPEs have broad discretionary powers to include additional phases in their procurements processes. In any case, such additional rules and requirements have to be included in the relevant bidding rules that regulate each procurement process.

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?

According to the Federal Procurement Law, contracting entities shall refrain from receiving proposals or award any contract to, among others, the following persons:

- those with whom any public officer who intervenes at any stage of the process has personal, familiar or business interests;
- those who have an employment or commission in public service or entities in which such persons participate, without prior authorization from the Ministry of Government Affairs (*Secretaría de la Función Pública*);
- those suppliers who, due to reasons attributable to themselves, the contracting entity has revoked them more than one contract within a period of 2 years starting from the first revocation notice;
- those who have been disqualified/banned by a ruling from the Ministry of Government Affairs;
- suppliers who are delayed in the delivery of goods or in the provision of services, due to causes attributable to themselves, regarding other contracts entered into with the contracting entity, provided that such contracting entity has been damaged;
- those declared in bankruptcy;

- those who file proposals for the same asset or service in a bidding procedure and are linked by a common shareholder (bid rigging);
- those who intend to participate in the bidding procedure and have carried out, by themselves or through companies that are part of the same group, analysis, quality control, budgets or any other document related to the procedure in which they are interested in participating, and that due to such prior activities, they had access to privileged information not available to the rest of the bidders;
- those who, by themselves or through companies that are part of the same group, aim to be contracted for the preparation of certificates, opinions and appraisals, when such documents will be used to solve any discrepancies derived from contracts entered into by such persons;
- those who execute contracts without having capacity to use relevant intellectual property rights;
- those who have used privileged information unduly supplied by a public officer or members of his family;
- those who contract advisory, consulting or support services regarding government contracting, if it is found that all or part of the relevant payment has been received by a public officer (directly or indirectly);
- those bidders who, due to causes attributable to them, have not formalized a previous awarded contract with the contracting entity when due; and
- others that for any reason are prevented from doing so by provision of law.

Federal Procurement Law sets forth that for the participation, award and contracting of acquisitions, leases, services and works, no requirement should be placed in order to limit free and open competition.

Both Pemex and CFE laws, as is the case of the Federal Procurement Law, provide for a specific catalogue of situations under which a bidder may be excluded. Also, the Board of Directors may include additional cases under which Pemex or CFE shall refrain from contract with certain entities.

8. Please describe a typical procurement procedure for a complex contract. Please

summarise the rules that are applicable in such procedures.

The procedure to perform a public bidding is, generally, as follows:

i) Review of acquisition reserves under international treaties. Prior to engaging in any procurement proceeding, the area (within the applicable governmental entity) that requires the goods or services shall file a purchase request to the designated centralized contracting area within such governmental entity. Such centralized areas shall verify whether the value of the proposed acquisition or service is in excess of the relevant thresholds provided by the government procurement chapter of the applicable free trade agreement (to such end, the contracting area shall file an inquiry with the Ministry of Economy (*Secretaría de Economía*) through the Inquiring and Orientation System Regarding Acquisition Reserves (*Sistema de Consultas y Orientación sobre las Reservas de Compras* or "SICORC") in order to verify the availability of a permanent reserve of the item in question).

ii) Market study. The contracting entity shall prepare a study that allows it to determine existing market conditions for the items or services required, such as the availability of goods or services in the required amount, the existence of domestic suppliers, or the location of international suppliers and to know the price of such goods or services. To prepare this study, the contracting entity shall obtain information regarding the good or service to be acquired from at least two of the following sources: (i) CompraNet website (or the contracting entities data base, if no information is available in CompraNet), (ii) specialized associations, chambers, manufacturers, distributors or suppliers of the corresponding sector; and (iii) any other sources available, provided that such research is duly documented. This research may also be used to, among others things, determine the type of public procurement procedure that is most appropriate.

iii) Call for bids: The call for the public bidding shall determine the guidelines for the relevant procedure as well as the requirements to participate in it. Among other information, the call shall establish the type of public bidding procedure.

As mentioned before, the call shall be published in the CompraNet website, and a summary will also be published at the Federal Official Gazette. Amendments to the call may be performed no later than 7 days prior to the submission and opening of proposals.

iv) Clarification meeting (Q&A Sessions): The entity

calling the bid shall perform at least one clarification meeting; however, attendance of bidders is not compulsory. The purpose of this meeting is to solve the doubts and queries of the bidders regarding the call and, in some cases, to amend the bidding documents, including the draft agreement to be executed by the winning bidder. This is the only opportunity bidders have to try to cause amendments to the proposed contract/concession to be awarded.

Bear in mind that, normally, contracting entities request from bidders the granting of guarantees through which they secure the formality of their proposals. These guarantees are executed in the event the winning bidder does not enter into the contract due to causes attributable to such bidder.

v) Submission and opening of proposals: The event of submission and opening of proposals shall take place at least 15 or 20 calendar days following the publication of the call, depending on whether the public bidding procedure is national or international, respectively.

Proposals shall include a technical and economic offer, and shall be submitted in a closed envelope. Two or more individuals or companies may submit a joint proposal without the need of incorporating a special purpose vehicle. In this event, the parties shall appoint a common representative.

Following submission of the proposals, the envelopes shall be opened and signed by a public servant and by one of the bidders. A minute shall be drafted which shall include the amount stated in each proposal together with the date on which the decision shall be published. This date shall be within the 20 calendar days following the event of submission and opening of proposals and such period may be extended only once for a same period.

vi) Evaluation: In the evaluation of the proposals, the contracting entities shall use the criteria established in the bidding guidelines (normally a criteria based on lowest price, or highest number of points or an acceptable proposal (from a technical, quality, and opportunity standpoint), which are described in detail in section 11 below.

vii) Decision: Together with the name of the bidders which won the award, the decision shall state the proposals which were rejected, those considered acceptable and the date and place in which the agreement will be executed. The award will be binding to the winning bidder from the date of notification of the award.

viii) Execution of the Contract. Contracting entity and the

winning bidder should execute the agreement within the period set in the award or in the event such period has not been provided, within 15 days following notice of the award.

Depending on the manner in which bidders may appear in the event of submission and opening of proposals, public bidding procedures may be in-person, through electronic means or mixed.

Timeline (assuming no extensions) and estimation for the total length of the procedure (minimum).



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

As described above, any contract, irrespective of its value, should be executed pursuant to procedures set in Federal Procurement Law. In the event that a contracting entity requires the execution of a low value contract, it will have the choice to award it by means of a restricted invitation or direct award, considering the applicable thresholds set forth in the Federal Government Expenditure Budget.

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?

Mexico's Federal Constitution sets forth that public funds should be managed with efficiency, efficacy, economy, transparency and honesty. In this sense, government contracting should ensure to the Mexican State that the goods or services contracted grants the best conditions regarding price, quality, financing, opportunity and any other relevant circumstances.

Considering the above, bidders should comply at all times with applicable regulations on public procurement and refrain from bribery acts or any other kind of acts which may be construed as acts to influence the contracting entity regarding the award decision.

Furthermore, please consider that the Ministry of Government Affairs has issued several guidelines and handbooks, including a code of ethics for public officers,

which should be followed by contracting entities and bidders in any public procurement contracting. Likewise, the General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), as well as the General Law of the National Anti-Corruption System (*Ley General del Sistema Nacional Anticorrupción*) contain principles and guidelines to be followed by both, contracting entities and bidders.

In addition to the above mentioned laws, both the Pemex and CFE laws include a chapter entirely dedicated to promote transparency of the public biddings and any of their procurement processes. As mentioned above, the Board of Directors of the entities have broad authority to issue specific regulations applicable to ensure the integrity of the contracting processes taking into account the basis provided in the Pemex or CFE laws, respectively.

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

The Federal Procurement Law sets forth two evaluation criteria:

1. **Binary.** Under this criterion, the proposal with the lower price is preferred.
2. **Points and Percentages Criterion (Cost-Benefit).** This criterion grants different value (through points, percentages or monetary values) to the different items considered during the evaluation. Please note that the Ministry of Government Affairs has issued certain guidelines for the application of this criterion.

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.

Federal Procurement Law sets forth that the award shall contain, among other things:

1. a list of all bidders whose proposals have been rejected, describing all the legal, technical or economic reasons that motivated such determination, indicating the points of the bidding guidelines, which have not been met; and
2. name of the winning bidders, indicating the

reasons that motivated such determination pursuant to criteria set forth in the call.

Please note that when a bidding procedure is in-person or mixed, the award will be announced at a public meeting to which any bidder may attend and a copy of the ruling and the correspondent minute will be given to the participants. Likewise, the content of the decision will be published in the web site "Compranet" on the same day it has been issued. Bidders who have not attended the meeting will receive a mail informing them that the results will be available in "Compranet". In the case of bidding procedures which have been carried out through electronic means and for bidders who sent their proposals by electronic means in mixed biddings, the decision will be notified through "Compranet" on the same date the public meeting has been held. They will receive a mail informing them that the results will be available in "Compranet".

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

There are diverse remedies available to unsuccessful bidders according to the Federal Procurement Law. Bidders are able to file an appeal (*inconformidad*) for specific moments and circumstances within the bidding procedure. In case they obtain an unfavorable resolution, a contentious administrative appeal (*recurso de revision*) may be filed before the administrative authority or a *nullity claim* before the Federal Administrative Court. The rulings of the Federal Administrative Courts may be challenged with an *amparo* lawsuit before the Federal Collegiate Tribunals.

On the other hand, in general terms, the Federal Procurement Law does not allow unsuccessful bidders to challenge the contract, but only the administrative decision of awarding the contract. The latter, because once the contract is awarded, the other bidders do not have any legal interest on the contract. However, the contract may be challenged under certain circumstances, by filing extraordinary remedies such as an indirect *amparo* lawsuit alleging that an applicable legal provision is unconstitutional.

Also the authority has a remedy to nullify their own resolutions, in case they were illegally or irregularly issued. This remedy called *juicio de lesividad* should be filed by the authority within a legal timeframe of 5 years after the irregular resolution was issued. The Federal Administrative Court is the Mexican court entitled to solve this authority's nullity claim.

With respect to the EPEs, both the Pemex and CFE regulations provide for a Reconsideration Appeal

(*Recurso de Reconsideración*), which allows unsuccessful bidders to challenge the procurement process. In addition, any unsuccessful bidder may file an administrative claim before the Federal Administrative Court.

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

It is not uncommon for award decisions to be challenged by other bidders. However, since contracting entities usually take extreme care of complying with all applicable regulations (since relevant public servants might be sanctioned with fines, disqualification, discharge of employment or even jail, pursuant to General Law of Administrative Responsibilities and the Federal Crime Code), it is rare that the award be changed as a result of the challenge process.

A bidder challenging the result of an award should not necessarily suffer reputational harm (as long as the merits of its claim are valid and it is not using such right to claim as an opportunity to derail the bidding process); on the other hand, a baseless claim may in fact affect the plaintiff's reputation.

It is difficult to determine the costs derived from such a claim, as it should be analyzed on a case by case basis.

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).

In this case, from an administrative litigation standpoint, a procurement dispute would take about three years to be resolved. This would depend on the specific contract; however, in case the authority breaches the contract, a nullity claim shall be filed before the Federal Administrative Court. This nullity claim in general terms takes between one and a half and two and a half years to be ruled by the Federal Administrative Court. Once this ruling is issued, the authority is able to file a revision appeal, whilst the affected private party is entitled to file a direct *amparo* lawsuit before the Federal Collegiate Tribunals. In this type of cases, the Federal Collegiate Tribunals take between four to six months to get to a final determination. On the other hand, if the private party is the one that breached the government agreement, then, said contract always includes rescission or termination clauses. However, in order to determine if a contract dispute should be carried on under an administrative, civil or arbitration procedure,

such route should be analyzed case by case.

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

As a rule, foreign bidders have the same rights/remedies as those afforded to Mexican bidders. However, please note that:

1. in open international public biddings, a national product (as defined in the Federal Procurement Law) will be preferred to a foreign product on equal circumstances; this is, the price of acceptable offers of national products will be granted a preferential discount (for price qualification purposes only) of 15% to compete against acceptable offers of foreign products;
2. in the case of international public biddings under international treaty coverage, bidders will be subject to provisions contained in the relevant chapter of the free trade agreement under which the public bidding has been called.

Furthermore, you should note that Mexico is party to several international treaties for the protection of foreign investments, which obligate Mexico to give a fair and equal treatment to bidders from countries that are party to such treaties, in most cases granting national treatment.

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?

As described above, there are three types of public biddings: national, international under international treaty coverage and open international public biddings. National public biddings are addressed only to Mexican individuals or companies and therefore, an overseas-based bidder will not be entitled to participate. However, if the overseas-based bidder has a Mexican subsidiary (i.e. a company incorporated in Mexico), then the Mexican subsidiary, who for all effects would be a Mexican company, will have the right to participate in the relevant bidding as national.

Please bear in mind that any subsidiary shall be subject to all applicable regulations and restrictions regarding foreign investment such as the Foreign Investment Law

(Ley de Inversión Extranjera).

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

The Federal Administrative Court is the Mexican tribunal entitled to deal with public procurement issues. This Federal Administrative Court is allowed to rule in connection with procurement disputes related with the decision of awarding a procurement contract, as well as in connection with the interpretation and fulfillment of contracts. Notwithstanding the foregoing and as mentioned above, each Mexican state, normally issues its own local procurement laws and regulations, therefore, it will be the local administrative courts the ones entitled to deal with public procurement issues.

Bear in mind, however, that certain government contracts include arbitration clauses specially those related to large and complex projects, where they use an international administering body, such as ICC or LCIA, with seat of arbitration typically in Mexico.

19. Are post-award contract amendments/variations to publically procured, regulation contracts subject to regulation in your jurisdiction?

Any amendment to an awarded contract should meet the following requirements:

- amendments shall be in writing and signed by the public officer who signed the original agreement (or by the person who substitutes such officer);
- amendments shall comply with the provisions set forth under the original contract; and
- amendments shall not grant nor imply more advantageous conditions to the contractors compared to those established in the original contract.

Besides, please note that contracting entities may agree to increase the contract amount or the quantity of goods, leases or services requested under the original contract, subject to their approved and available budget, provided that the corresponding amendments do not exceed (in the aggregate) 20% of the contract amount or the quantity of goods, leases or services originally agreed and the price of such goods, leases or services remains unchanged.

In principle, changes to identity of the supplier are not

allowed because the award decision was made in accordance with the legal, technical and financial characteristics of the winning bidder. However, applicable laws allow for a winning bidder to assign its rights under the bid to a third party in very limited cases and always with the prior written consent from the contracting entity.

On the other hand, EPEs are not subject to the restrictions provided in the Federal Procurement Law. As mentioned before, Pemex and CFE are not as restricted as other governmental entities regarding their procurement processes. In this regard, both Pemex and CFE regulations provide minimum requirements to amend any executed contracts, including (i) justify such amendment, (ii) securing the relevant budget to execute the amendment, (iii) that the contractor does not fall within any of the exclusion cases. With respect to the assignment of contracts, each EPE may determine the specific rules to perform such assignment, in any case both regimes have these common features (i) both would require the prior consent of the relevant EPE and (ii) the proposed assignee has to fulfill the technical, financial and legal requirements included in the bidding guidelines.

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

As described above, contracts may be directly awarded if they meet the requirements set forth in the applicable law. The tendency to grant contracts through direct awards usually changes in each administration (according to public sources, during the last year of president Peña Nieto's administration and the first two years of president Lopez Obrador's administration, the percentage of direct awards (as compared to the total number of procurement processes) increased significantly and was above 80% of the federal projects. You should note, however, that there is growing pressure from civil society and the press to reduce such percentage in an effort to motivate more transparency and level playing field in public bids.

Choice of direct award must have its legal basis in applicable law and principles of economy, efficacy, impartiality, honesty and transparency shall be observed. The contracting entity shall point out in writing the reasons and causes that support such choice. In the event, the direct award has not been duly based in law and facts, the decision may be declared null and void.

21. Have your public procurement rules been sufficiently flexible to allow contracting authorities to respond to the COVID-19 pandemic? What measures have been most used and in what areas have any difficulties arisen? Is it likely that lessons learned from procurement during this period will give rise to longer term changes?

As described above, Federal Procurement Law provides the option of carrying out procurement procedures through electronic means, as well as award the contracts by means of restricted invitations or direct awards in

justified cases. Therefore, this law provides the mechanisms that would allow the contracting entities to respond to a pandemic situation such as COVID-19. However, some requisites are still very formal, which may arise difficulties to bidders (e.g. granting of powers of attorney before Notary Public, formalization of contracts, etc). In this sense, Federal Procurement Law should be amended to make even more flexible all procurement procedures and grant to the electronic signature more weight vis-à-vis the autograph signature. Consistently, both the Pemex and CFE laws and regulations favor the use of electronic means to carry out any procurement procedures, which allow them to continue carrying out their activities through the pandemic.

Contributors

Bernardo Martinez-Negrete E.
Partner (Life Sciences/Infrastructure)

bmartineznegrete@galicia.com.mx



Antonio Borja
Partner (Infrastructure/Energy)

aborja@galicia.com.mx



Alejandro de la Borbolla
Partner (Infrastructure)

aborbolla@galicia.com.mx



Alan Rogel
Associate (Infrastructure)



Juan Manuel Camarena
Associate (Energy)



Diego Manzano
Associate (Administrative Litigation)

