

# Public Procurement 2020

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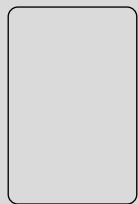
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Contributing editor

**Totis Kotsonis**

Pinsent Masons

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Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Public Procurement*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Greece, Israel, Mexico, Nigeria and Romania.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Totis Kotsonis of Pinsent Masons, for his continued assistance with this volume.



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# Mexico

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## LEGISLATIVE FRAMEWORK

### Relevant legislation

1 | What is the relevant legislation regulating the award of public contracts?

Mexico is composed of 31 states and Mexico City. The Federal Constitution enumerates the matters in which the federal Congress is authorised to make laws. The matters not expressly delegated to Congress are deemed as reserved to each state. The law applicable to public contracts will depend on the origin of the resources with which the good will be acquired or the respective service will be hired. Thus, if the resources belong to the federation, then the applicable provisions will be the federal law. If the resources belong to the states, even if they have their origin at the federal level and have been transferred from local treasuries or if they derive from their own products, rights, public use taxes and financing or for any reason they are considered state resources, the applicable law will be the local law.

Article 134 of the United Mexican States Constitution sets forth that all acquisitions, leases and disposals of all types of goods, the rendering of services of any nature and the contracting of works, will be awarded or carried out through public bidding by means of a public invitation to freely present solvent proposals in a closed envelope, which will be open to the public, to ensure the state has the best available conditions in terms of price, quality, financing, opportunity and other circumstances.

In general terms, the main laws applicable to public procurement are:

- the Public Procurement, Leasing and Services Law (LAASSP) and state procurement laws;
- the Regulations of the Public Procurement, Leasing and Services Law and state regulations if any;
- the Law on Public Works and Related Services and state laws on public works and related services;
- the Regulations of the Law on Public Works and Related Services and state regulations if any;
- the Federal Law on State Liability;
- the Federal Law on the Budget and Financial Responsibility;
- the Federal Law of Administrative Procedure and applicable state law;
- the Federal Antitrust Law;
- the Federal Anti-Corruption Law in Public Procurement;
- the Public-Private Partnerships Law;
- the Regulations of the Public-Private Partnerships Law;
- the General Law of Administrative Responsibilities; and
- the Federal Law of Administrative Responsibilities of Public Officers and applicable state law.

### Sector-specific legislation

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

In Mexico, the following procurement legislation supplements the general regime for contracting with some producers in the state, such as Petróleos Mexicanos (PEMEX) and the Federal Electricity Commission (CFE): the Regulatory Law of Article 27 of the Constitution in the Petroleum Industry; the PEMEX Law the CFE Law; and the Electrical Industry Law and some related regulatory provisions.

Furthermore, there are special provisions on public procurement applicable to the legislative and judicial branches and various policies, bases and guidelines on procurement, leasing and services of the various ministers of the executive branch, both federal and local.

### International legislation

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

Mexico is not a party to the Agreement on Government Procurement (GPA) of the World Trade Organization and is not a member of the European Union, therefore the EU procurement directives do not apply. However, Mexico's legislation on public procurement follows the same principles of these supranational models (openness, transparency and non-discrimination).

Moreover, the guiding principles of the relevant directives and agreements are usually also applicable to Mexico through:

- the free trade agreements that Mexico has entered into with various countries, which include chapters on public procurement, for example, Chapter 10 of the Treaty between Mexico, the United States and Canada (T-MEC); and
- economic partnership, political coordination and cooperation agreements, such as the Economic Partnership, Political Coordination and Cooperation Agreement between Mexico and the European Community and its member states, which provides, inter alia, that the parties shall agree to the gradual opening of agreed government procurement markets on a reciprocal basis.

### Proposed amendments

4 | Are there proposals to amend the legislation?

There are various proposals to amend the legislation. The most recent and relevant of these are as follows:

- expansion of CompraNet to incorporate the planning stages of contracting and the execution of contracts;
- creation of a Consolidated Procurement Committee to rule on exceptions to public tenders;
- strengthening of market research prior to the contracting procedure;

- strengthening of rules and conditions for transparency in restricted or direct contract awards;
- strengthening of transparency rules in contracting between public entities through various mechanisms, such as the creation of a portal for the dissemination of acquisitions and the obligation of public entities to provide information to the National Digital Platform of the National Anti-Corruption System;
- inclusion of the provision pursuant to which, in the event of a tie among competitors, a winner will be declared when a proposal presents better conditions for the preservation of the environment; and
- creation of the National Institute of Public Contracting Policy, responsible for medium- and long-term planning and to generate policies that help to make better use of resources and promote alternatives with the use of technology.

It is not possible to determine whether these amendments will be approved and, if so, when this will happen.

## APPLICABILITY OF PROCUREMENT LAW

### Contracting authorities

#### 5 Which, or what kinds of, entities are subject to procurement regulation?

In terms of the applicable law, the entities subject to procurement regulation are:

- the administrative units of the Federal Executive;
- the state ministers and the Legal Department of the Federal Executive;
- the Office of the Attorney General of the Republic;
- decentralised agencies;
- majority-owned state enterprises and trusts in which the settlor is the federal government or a parastatal entity; and
- federal entities, municipalities and public bodies in each case, with total or partial charge to federal resources, pursuant to the agreements they enter into with the Federal Executive.

Federal entities that are constitutionally autonomous and entities with a specific procurement regime (such as *Petróleos Mexicanos* and the *Federal Electricity Commission*), shall apply the criteria and procedures set out in the public procurement laws only in respect of matters not provided for in the provisions governing them and provided that they do not conflict with them, subject to their own control bodies.

### Contract value

#### 6 Are contracts under a certain value outside the scope of procurement regulation? What are these threshold values?

Mexican law does not distinguish between contracts under a certain value to exclude them from the procurement regulation. The only agreements outside the scope of procurement regulation are the following:

- in urgent cases arising from unforeseen circumstances or force majeure;
- when procurement is exclusively for military or navy purposes, or when procurement through competitive tendering, would jeopardise national security or public safety;
- when, according to the characteristics of the goods, services or construction, there is only one contractor or supplier on the market, in which case direct award of the contract is authorised, provided that no technically reasonable alternative or substitute goods or services exist; and

- in the case of goods or services covered by a framework contract, where it authorises the award of the specific contracts by direct agreement.

### Amendment of concluded contracts

#### 7 Does the legislation permit the amendment of a concluded contract without a new contract award procedure?

The following general rules are applicable to the amendment of concluded contracts pursuant to the Public Procurement, Leasing and Services Law (LAASSP):

- the agencies and entities may, within their approved and available budget, under their responsibility and for justified and explicit reasons, agree to increase the amount of the contract or the quantity of goods, leases or services requested, provided that such modifications do not exceed, in aggregate, 20 per cent (25 per cent pursuant to the Law on Public Works and Related Services) per item; and
- any amendment to contracts must be made in writing, and departments and entities must refrain from making amendments relating to prices, advances, progress payments, specifications and, in general, any amendment that would involve granting more advantageous conditions to a supplier than those originally established.

#### 8 Has case law clarified the extent to which it is permissible to amend a concluded contract without a new contract award procedure?

There is currently no case law clarifying the extent to which it is permissible to amend a concluded contract without a new contract award procedure.

### Privatisation

#### 9 In what circumstances do privatisations require the carrying out of a contract award procedure?

Privatisation does not require a contract award procedure. To privatise a company or activity, the applicable legal system must be modified by Congress (either federal or local) and, subsequently, private companies may carry out the relevant activity. Notwithstanding this, in the past, the state has tendered for the privatisation of some services, such as open television or railways. This will depend on the transitional provisions of the relevant privatisation decree.

### Public-private partnership

#### 10 In which circumstances does the setting up of a public-private partnership (PPP) require the carrying out of a contract award procedure?

All applicants that wish to become part of a public-private partnership (PPP) must participate in a competition for the award of the contract. The agencies and entities that intend to develop a PPP project are those that call for tenders, which must be carried out in accordance with the principles of legality, free competition, objectivity and impartiality, transparency and publicity, in compliance with the LAASSP and under equal conditions for all participants.

The above-mentioned competition seeks to award the projects in the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances.

## ADVERTISEMENT AND SELECTION

### Publications

- 11 | In which publications are calls for the expression of interest in regulated contract awards advertised?

Calls for the expression of interest in regulated contracts awards are advertised on CompraNet, which is the electronic government public information system on procurement, leasing and services.

In addition, each tender call under the Public Procurement, Leasing and Services Law and the Law on Public Works and Related Services is published in the Federal Official Gazette and those made in terms of the applicable state legislation are published in the Official Gazettes of each entity.

In terms of the law, the agencies and entities must make available to the public, through CompraNet and its website, no later than January 31 of each year, their annual acquisitions, leases and services programme corresponding to the relevant fiscal year.

### Participation criteria

- 12 | Are there any limits on the ability of contracting authorities to determine the basis on which to assess whether an interested party is qualified to participate in a contract award procedure?

The participation criteria, which are determined in the call for tenders, are minimum aspects that any offer needs to comply with to be considered by the authority and usually refer to the capacity of the participants (eg, their economic capacity). The invitation to tender includes, inter alia, the requirements to be met by those interested in participating in the procedure, which should not limit free participation, competition and economic competition. The agency or entity that calls for bids must consider the previous recommendations issued by the Federal Antitrust Commission, if any. In terms of the applicable legislation, no requirements or conditions that are impossible to meet may be included for participation in the bidding process.

- 13 | Is it possible to limit the number of bidders that can participate in a contract award procedure?

In general terms, it is not possible to limit the number of bidders that can participate in a contract award procedure. However, it is possible to distinguish between the subjects that can participate depending on the nature of the tender. Thus:

- only persons of Mexican nationality may participate in national tenders;
- in international tenders under treaty coverage, only Mexican and foreign bidders from countries with which Mexico has entered into a free trade agreement with a government procurement chapter may participate; and
- Mexican and foreign bidders may participate in open international tenders.

### Regaining status following exclusion

- 14 | How can a bidder that could be excluded from a contract award procedure because of past irregularities regain the status of a suitable and reliable bidder?

When the Ministry of Public Service imposes sanctions on bidders for violating the applicable law, aside from economic fines, it is entitled to disqualify these bidders from any bidding procedure that may not be less than three months or more than five years. The mere passing of this term will allow the bidder to be included in contract award procedures

again. Aside from this, and for the self-cleaning that could derive from the bidder's filing and success of a legal appeal, there is no such procedure for 'cleaning' past irregularities in Mexico.

## THE PROCUREMENT PROCEDURES

### Fundamental principles

- 15 | Does the relevant legislation require compliance with certain fundamental principles when designing and carrying out a contract award procedure?

The legal basis for public procurement, found in article 134 of the Mexican Constitution, sets forth the principles that should govern it, namely, efficiency, effectiveness, economy, transparency and honesty. Likewise, both the Public Procurement, Leasing and Services Law (LAASSP) and the Law on Public Works and Related Services include the protection of the free trade process.

### Independence and impartiality

- 16 | Does the relevant legislation or case law require that a contracting authority is independent and impartial?

Applicable law in Mexico requires that the planning, programming, budgeting and contracting of acquisitions, leases and services be done with efficiency, effectiveness, economy, transparency, honesty and fairness.

Among other measures, to guarantee the above, the laws provide for the existence of social witnesses in some public tenders, whose function is to propose to the authorities improvements to strengthen transparency, impartiality and the legal provisions regarding acquisitions, leases and services.

There are other administrative and criminal laws that regulate the sanctions and responsibilities incurred by public officials who violate their duty of impartiality and independence. For example, in terms of the General Law of Administrative Responsibilities, a public official who intervenes by reason of his or her employment, position or commission in any way, in the processing or resolution of matters in which he or she has a conflict of interest or legal impediment, commits a serious administrative offence, which may be sanctioned by criminal laws.

### Conflicts of interest

- 17 | Does the legislation address expressly the issue of conflicts of interest?

The General Law on Administrative Responsibilities defines conflict of interest as the possible impairment of the impartial and objective performance of the functions of public officials on account of personal, family or business interests and considers it a serious administrative offence.

The public official could be considered to have participated in hidden enrichment or concealment of conflict of interest if he or she fails to truthfully file the declarations of his or her patrimonial situation or interests, having the purpose of concealing, respectively, the increase in his or her patrimony or the use and enjoyment of goods or services that are not explainable or justifiable, or a conflict of interest.

The administrative sanctions applicable for the commission of serious administrative offences may consist of suspension or dismissal from employment or commission, economic sanction or temporary disqualification from employment or commissions in the public service and from participating in acquisitions, rentals, services or public works. More than one of these sanctions may be imposed.

## Bidder involvement in preparation

### 18 | Are there any restrictions on the ability of a bidder to be involved in the preparation of a contract award procedure?

In general terms, the involvement of a bidder in the preparation of a contract award procedure is not permitted; however, the applicable laws provide for the possibility that, prior to the publication of the call for tender, the agencies and entities disseminate the project through CompraNet, at least for 10 working days, during which time they will receive the relevant comments at the email address provided for this purpose. These comments and opinions will be analysed by the agencies and entities to determine, where appropriate, whether they will enrich the project.

## Procedure

### 19 | Which procurement procedure is primarily used for the award of regulated contracts?

Most of the regulated contracts are awarded through the public tender procedure. The rest of the awarding schemes (ie, the invitation to three persons and direct awarding) are extraordinary schemes, which are used in urgent cases derived from acts of God or force majeure and when the hiring is made exclusively for military or naval purposes, or the hiring through public bidding puts national security or public safety at risk.

## Separate bids in one procedure

### 20 | Can related bidders submit separate bids in the same procurement procedure?

The agencies and entities in a procurement procedure must abstain from receiving proposals or awarding any contract to bidders who are linked to each other by a common partner or associate or in any case are related bidders (an individual or entity that in the same contracting procedure is acknowledged as such in the articles of association, by-laws or in their amendments of two or more bidding companies, because it has a share participation in the capital stock, which gives it the right to intervene in the decision-making or administration of such entities).

## Negotiations with bidders

### 21 | Is the use of procedures involving negotiations with bidders subject to any special conditions?

Mexican law expressly provides that the conditions included in the call for tender, the invitation to at least three persons or in the proposals submitted by the tenderers are not negotiable. Participants are entitled only to request clarification or additional information to the authority in relation to the call. No use of procedures involving negotiations with bidders are permitted.

### 22 | If the legislation provides for more than one procedure that permits negotiations with bidders, which one is used more regularly in practice and why?

No procedure that permits negotiations with bidders is authorised under the Mexican laws.

## Framework agreements

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

Framework contracts are contracts that a unit or entity enters into with one or more potential suppliers, through which the technical and quality

specifications, scope, prices and conditions that will regulate the acquisition or lease of goods or the provision of services that subsequently, by means of specific contracts, where appropriate, formalise the premises or entities. Pursuant to the LAASSP, the Ministry of Public Service is authorised to promote framework contracts after determining the technical and quality characteristics agreed with the entities, by means of which they acquire goods, leases or services, by entering into specific contracts.

The conclusion of specific contracts derived from framework contracts authorises the agencies and entities, under their responsibility, to be able to contract acquisitions, leases and services, without being subject to the public bidding procedure, through the procedures of invitation to at least three persons or direct award.

Prior to the conclusion of a framework contract, the authority shall:

- agree with the agencies and entities on the technical and quality characteristics of the goods to be acquired or leased or the services to be acquired or hired;
- conduct a market investigation, with the support of the units and entities it considers appropriate and that are related to the goods and services that are the subject of the framework contract;
- determine the volume of the goods or services required, so that each framework contract leads to economies of scale;
- identify the units and entities that, according to their needs, may enter into the specific contracts under the framework contract, (which must be a minimum of five);
- publicise on CompraNet the launch of the actions leading to the conclusion of each framework contract, to involve as many interested parties as possible; and
- draft the framework contract, with the support of the units and entities.

The framework contract will be entered into by the unit or entity that has requested it, with the participation of the Ministry of Public Service, where possible.

### 24 | Is it possible to conclude a framework agreement with several suppliers?

It is possible to enter into a framework contract with several suppliers without the need for an additional competitive procedure. In terms of the provisions of the LAASSP Regulations, any potential supplier that complies with the same requirements and conditions agreed in the framework contract may join the contract after it has been signed.

## Changing members of a bidding consortium

### 25 | Is it possible to change the members of a bidding consortium during the course of a contract award procedure?

Mexican laws prohibits the possibility of modifying the members of a bidding consortium during the contract award procedure, but it does provide that persons who are members of a joint bidding consortium may incorporate into a new company to comply with the obligations set forth in the joint bidding agreement, provided that the responsibilities of such agreement are maintained in the new company.

## Participation of small and medium-sized enterprises

### 26 | Are there specific rules that seek to encourage the participation of small and medium-sized enterprises in contract award procedures?

There are provisions that seek to encourage the participation of small and medium-sized enterprises (referred to as MIPYMES and comprising the micro, small and medium-sized enterprises of Mexican nationality) in contract award procedures, namely:

- In the case of awarding a contract, in the event of equal conditions, preference will be given to persons who are members of MIPYMES.
  - In the case of goods whose manufacturing process exceeds 60 days, the agencies or entities must grant, under equal circumstances, from 10 per cent to 50 per cent advance payment in the case of MIPYMES.
  - In public tenders for the acquisition of goods, leases or services that use the points and percentage evaluation, points shall be awarded under the terms of the legislation applicable to MIPYMES that produce goods with technological innovation, in accordance with the corresponding certificate issued by the Mexican Institute of Industrial Property, and points shall be awarded to enterprises that have applied gender equality policies and practices.
  - The Ministry of Economy shall set forth the rules that must be observed by the agencies and entities, derived from programmes that aim to promote the participation of national enterprises, especially MIPYMES.
  - The units and entities must design and execute programmes for the development of suppliers of MIPYMES to generate supply chains for goods and services that they tender regularly.
- Procurement, Leasing and Services Law and the Public Works and Related Services Law.
- Cost-benefit criteria: for the application of these criteria, public officials must comply with the methodology for the comparison of economic offers in the contracting procedures of projects for the provision of services in charge of the Federal Public Administration agencies and entities.
  - Binary evaluation criteria: only those who meet the requirements set forth by the contracting authority and offer the lowest price will be awarded the contract. These criteria are used when it is not possible to use the other two sets of criteria. In this case, the bidder evaluates at least two proposals whose prices are the lowest; if they are not solvent, the proposals that follow in price are evaluated.

When the agencies and entities need goods, leases or services that involve the use of highly specialised technical characteristics or technological innovation, they shall use the evaluation criteria of points and percentages or cost benefit.

### Variant tenders

- 27 | What are the requirements for the admissibility of variant tenders? Are bidders free to decide whether to submit a variant tender or is this subject to the contracting authority expressly permitting it in the tender documentation?

Variant tenders are not authorised pursuant to the applicable provisions. Within the call, the authority must include a detailed description of the goods, leases or services, and the aspects that the contracting authority considers necessary to determine the object and scope of the contract, which must verify that the proposals of the participants comply with the requirements requested in the call for tenders.

- 28 | Is a contracting authority obliged to consider any variant tenders that might have been submitted?

Mexican legislation does not provide for the existence of variant tenders, therefore the contracting authority is not obliged to accept them or to consider the participant that has submitted them as the winner. A disagreement could arise if the participant does not comply with the detailed description of the goods, leases or services referred to by the contracting authority in the call.

### Tender specifications

- 29 | What are the consequences if a tender does not comply with the tender specifications?

If a tender does not comply with the material tender specifications, the authority may disqualify its proposal.

### Award criteria

- 30 | Does the relevant legislation specify the criteria that must be used for the evaluation of submitted tenders?

The departments and entities for the evaluation of the proposals must use the criteria set forth in the call for tenders. Mexican law provides for several types of evaluation criteria for the submitted tenders, namely:

- Points and percentage criteria: to determine the points and percentages to be awarded to each participant, public officials must comply with the guidelines for the application of proposal evaluation criteria through the points or percentage mechanism in the contracting procedures regulated by the Public Sector

### Abnormally low tenders

- 31 | Does the relevant legislation specify what constitutes an 'abnormally low' tender?

Mexican law does not provide a definition for an 'abnormally low' tender; however, it does provide that an 'unacceptable price' should be understood as a price that is 10 per cent higher than the median price derived from the market research conducted or, failing that, the average price of bids submitted in the same tender. In cases where there are no national suppliers, the policies, bases and guidelines may establish a lower percentage than that used to determine the unacceptable price, but this may not be less than 5 per cent.

The above-mentioned calculation of unacceptable prices is made only when the binary evaluation criteria is used. The relevant calculation shall be made in terms of the provisions of the LAASSP Regulations.

- 32 | Does the relevant legislation specify how to deal with abnormally low tenders?

Although Mexican law does not provide for the existence of abnormally low tenders, it provides for an 'unacceptable price', which is a price that is inconvenient or unacceptable. Bidders whose proposals contain this price may not be awarded the contract.

## REVIEW PROCEEDINGS

### Competent review bodies

- 33 | Which bodies are competent to review alleged breaches of procurement legislation? Is it possible to appeal against a review body's decisions?

The Ministry of Public Service (through the internal control bodies of each entity or authority) is in charge of: (1) the sanctions to be imposed on bidders or suppliers that violate the provisions on this matter; and (2) the non-conformities initiated against public bids or invitation procedures to at least three persons.

The appeal procedure against the decisions of the Ministry of Public Service is followed before the Federal Court of Administrative Justice, whose decision may also be challenged through an action to be filed with the judiciary.



### 34 | Do the powers of competent review bodies to grant a remedy for a breach of procurement legislation differ?

The authority of competent review bodies to grant a remedy for a breach of procurement laws do not differ. The decision of the authority may:

- declare the non-conformities inadmissible;
- declare that the grounds for non-conformity are ineffective for the purpose of declaring the contested act void, where the alleged violations are not sufficient to affect its content;
- declare the procurement procedure null and void;
- declare the contested act null and void, for the purposes of its reinstatement, the validity of the procedure or act remaining in the part that was not the subject of the declaration of nullity; or
- order the execution of the contract.

#### Time frame and admissibility requirements

### 35 | How long do administrative or judicial review procedures generally take?

The ordinary time limit for an administrative review procedure before the Ministry of Public Service is between five and 10 months depending on the complexity of the case. The ordinary time limit for a judicial review before the judicial authority may vary, but usually ranges from 12 to 18 months.

### 36 | What are the admissibility requirements for an application to review a contracting authority decision?

The admissibility requirements for an application to review a contracting authority decision are:

- the name of the dissatisfied party – bidders that have submitted a joint proposal must designate a common representative in the initial submission; in the case of disputes submitted through CompraNet, electronic identification must be used instead of an autograph signature;
- address to receive notices;
- the challenged act, the date of its issue or notification or, failing that, the date on which it became aware of it;
- evidence offered by it that is directly and immediately related to the challenged acts; and
- facts or abstentions that constitute the background to the contested act and the reasons for non-conformity.

If the dissatisfied party requests the suspension of the tender procedure it shall grant a bond to guarantee the suspension on an amount equivalent to between 10 per cent and 30 per cent of the price of the contract as requested by the administrative review authority.

### 37 | What are the time limits within which applications for the review of contracting authority decisions must be made?

In general terms, the time limits within which applications for the review of contracting authority decisions must be made is six days in national public bids and 10 days for international public bids under the international treaties with government acquisitions chapter.

#### Suspensive effect

### 38 | Does an application for the review of a contracting authority decision have an automatic suspensive effect on the contract award procedure?

The application for the review of a contracting authority decision does not have an automatic suspensive effect on the contract award

procedure. It is only permitted if the dissenting party requests it in its initial submission and it is noted that there are or could be acts contrary to the provisions of the laws or those deriving from it and, furthermore, the social interest is not affected, or public order provisions are not contravened. The only way to have an automatic suspensive effect on the contract award procedure is if the authority, through the review application, reports a flagrant illegality in the procedure or a material violation of the laws.

In its request, the dissatisfied party will need to express the reasons why it considers the suspension to be appropriate and the damage it would suffer if the acts of the contracting procedure were to continue.

Having received the request, the authority may provisionally grant or deny the suspension. If the former, within three working days of receiving the prior report of the contracting authority, it will decide on the final suspension. The definitive suspension will be subject to the applicant, within three working days of the notification of the relative agreement, guaranteeing the damage that may be caused. The suspension decreed will be without effect if the interested third party grants a counter-guarantee equivalent to that exhibited by the dissatisfied party.

### 39 | Approximately what percentage of applications for the lifting of an automatic suspension are successful in a typical year?

As the authority considers that most of the public contracting procedures are of social interest, the lifting of an automatic suspension is usually authorised if the interested third party grants a counter-guarantee equivalent to the one exhibited by the dissatisfied party or if the authority, through the review application, reports a flagrant illegality in the procedure or a material violation of the law.

#### Notification of unsuccessful bidders

### 40 | Is the contracting authority required to notify unsuccessful bidders of its intention to conclude the contract with the successful bidder and, if so, when does that obligation arise?

The contracting authority must notify the unsuccessful bidders of its intention to enter into the contract with the successful bidder at the time of award. The contracting authority must issue a ruling that contains, among other elements, the list of bidders whose proposals were rejected, expressing all the legal, technical or economic reasons that support this determination and indicating the points of the call that were not fulfilled in each case.

When the bidding is in person or mixed, the decision shall be made known at a public meeting where the bidders that have submitted proposals may freely attend, providing them with a copy of the same and taking the respective minutes. Likewise, the content of the ruling is disseminated through CompraNet on the same day it is issued. Bidders that have not attended the public meeting will receive an email informing them that the minutes of the ruling are available on CompraNet.

#### Access to procurement file

### 41 | Is it possible for an applicant seeking the review of a contracting authority's decision to have access to that authority's procurement file?

It is possible for an applicant seeking the review of a contracting authority's decision to have access to that authority's procurement file and this will happen when non-conformity is filed by the applicant seeking review. The contracting authority will make the authority's procurement file available for the applicant, except for reserved or confidential information.

## Challenges to contracting authority decisions

42 | How customary is it for contracting authority decisions to be challenged?

It is customary for contracting authority decisions to be challenged. In accordance with the Report of Work of the Ministry of Public Service issued for 2018 and 2019, in this period, 722 cases were resolved, of which 397 resolutions were issued based on the merits of the case. It was determined that in 191 cases (48 per cent), the resolutions were grounded, and partial or total nullity of the challenged act was declared as a consequence of determining an action contrary to the regulations of the matter. The resolutions in 206 cases (52 per cent) were determined to be ungrounded. In addition, 325 resolutions were issued in other respects (incompetence, dismissal and rejection).

## Violations of procurement law

43 | If a violation of procurement law is established in review proceedings, can this lead to the award of damages?

A violation of procurement law can lead to the award of damages pursuant to the provision of the Federal Law on State Liability that sets forth that the compensation will correspond to the reparation of any damage, including, if applicable, personal or moral damage. However, the main purpose of a review proceeding is to oblige the contracting authority to rescind the awarded agreement and the remaining part of the agreement to be re-awarded to the party seeking review of the procedure.

44 | Is it possible for a concluded contract to be set aside following successful review proceedings?

It is possible for a concluded contract to be set aside following a successful review proceeding. This is one of the possible resolutions of the procedure to be initiated in terms of law and, in fact, what the individual or entity exercising the relevant action usually seeks.

## Legal protection

45 | Is legal protection afforded to parties interested in a contract that might have been awarded without an advertised contract award procedure?

No, there is no legal protection afforded to parties interested in a contract that might have been awarded (unlawfully) without an advertised contract award procedure (illegal direct award or de facto award). However, any third party is entitled to file a complaint against the public officials who illegally awarded the contract.

## Typical costs

46 | What are the typical costs involved in making an application for the review of a contracting authority decision?

The lawyers' fees involved in making an application for the review of a contracting authority decision vary depending on the case.

## UPDATE AND TRENDS

### Emerging trends

47 | Are there any emerging trends or hot topics in public procurement regulation in your country? In particular, has the scope of applicability of public procurement law been broadened into areas not covered before (eg, sale of land) or, on the contrary, been restricted?

There are no updates at this time.

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## Coronavirus

48 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

On 27 March 2020, the federal government published a decree in the Federal Official Gazette stating extraordinary actions to combat the SARS-CoV2 virus (covid-19). Among these extraordinary actions is the acquisition of all types of goods and services, at national and international level, including medical equipment, diagnostic agents, surgical and curative material and hygiene products, and all types of assets and objects that may be necessary to deal with the crisis, without the need to carry out the public tendering procedure for the quantities required. The same actions have been implemented by several local governments. For example, Mexico City's government authorised both the Ministry of Health and the local water system (Sacmex) to contract and acquire, without any public bidding, all types of assets, leases and services, at the national or international level, that may be necessary during the pandemic. No additional government programmes, laws or regulations have been amended.

We strongly suggest that clients who are directly awarded a contract with the government during this time clearly state that the goods to be sold, the services to be rendered or the works to be executed are related to the above-mentioned extraordinary actions, to avoid the interpretation that the procedure should have been followed pursuant to the provisions applicable to traditional public bidding.

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