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GOVERNMENT PROCUREMENT IN MEXICO

(General Guidelines)

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The following Guidelines are applicable when becoming a supplier of the Federal Government in Mexico.

Note that The State Governments and the different Municipalities, within those States, will also have particular procurement legislation when becoming a supplier under their budgets.

FEDERAL PROCUREMENT LEGISLATION:

All Federal Government Procurement in Mexico is governed by the:

- (i) Acquisitions, Leases and Public Services Law, and
- (ii) Public Works and Related Services Law.

They apply to Federal Government Agencies, Companies and Utilities.

They also apply to State Governments, when using Federal Funds for the Project in Question.

They DO NOT APPLY when the LOCAL STATES use THEIR OWN FUNDS. In such case their own local procurement statutes apply instead.

FEDERAL CONTRACTING PROCEDURE:

The Federal Government may contract suppliers through 3 procedures:

- (i) Public bidding,
- (ii) Restricted bidding, and
- (iii) Direct award.

SPECIFIC GOVERNMENT SUPPLIER REGISTRY:

Many Government Agencies, Entities and Utilities, require that, all the participants in a Request of Proposal, be previously registered as suppliers at their particular at roster.

For that they should fulfill certain minimum requirements applicable to the trade or specialty of such Agency, Entity or Utility.

For example The Ministry of Defense, The Power Utility Company, The State Oil Company (PEMEX) have their own Supplier Registry.

PUBLIC BIDDING:

Is the most common procedure.

The Call is published by the Government indicating the requirements to become a Participant.

Those Requirements generally are:

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- (i) Entering Fee;
- (ii) Good Standing Evidence;
- (iii) Legal Representative & Evidence of Powers;
- (iv) Domicile Data;
- (v) Resume;
- (vi) Audited Financial Statements;
- (vii) Current Tax Filings;
- (viii) Technical and Economic Proposal; and
- (ix) Bonds for Performance and Use of Advance Payments.

According to the broadcasting media used, the Public Bidding Procedure can be: in person, electronic or mixed;

The awarding will be based on the best (i) technical, and (ii) economic proposal.

The Government may call for a second bid if no proposals meet the original call.

PUBLIC BIDS: (i) DOMESTIC, or (ii) INTERNATIONAL:

- Domestic Bids: Only Mexican citizens/entities may participate, and the goods to be acquired should be produced in Mexico with at least 50% of domestic content.
- International Bids: Should be called when:
 - (a) An International Treaty so Requires; or
 - (b) No Mexican Providers Exist; or
 - (c) A National Bid was Called and No Mexican met the Requirements; or
 - (d) The acquisition or project is financed with foreign credits.

Foreigners from of a Country with no reciprocal treatment for Mexican providers can be denied participation in International Bids.

RESTRICTED BIDDING and DIRECT AWARD:

Government Agencies may not call for a Public Bid, but rather:

- (1) INVITE A FEW BIDDERS (at least 3) and choose one among the best proposal, or
- (2) Award the contract to ONE ENTITY sine there are no competitors in the market.

Those cases are when:

- (i) Only one entity is the SOLE HOLDER of certain copyrights, patents, trademarks, or other exclusive rights;
- (ii) Due to EMERGENCY / UNCONTROLLABLE CIRCUMSTANCES (i.e. Force Majeure, Acts of God), and in order to avoid additional losses or costs since it is impossible to obtain goods or services on a timely basis;
- (iii) For MILITARY Purposes, or to Guarantee the SECURITY OF THE COUNTRY.

LIMITATIONS ON PROPOSALS:

The Government may not receive proposals from:

- (i) Those with whom the Awarding Officer shares a personal, familiar or business interest or relationship;
- (ii) Other Government Officers;
- (iii) Those to whom the Government had previously rescinded a contract for default;
- (iv) Suppliers who delayed the delivery of the goods or services related with a Contract currently in issue; and
- (v) Participants who are subject to bankruptcy.

CLAIMS BY PROVIDERS:

DURING THE PUBLIC BIDDING:

A Participant may claim the illegality of the bidding procedure or the ward before:

- (1) The Same Government Agency (recourse); or
- (2) The Ministry of Public Function ("Secretaría de la Función Pública") (claim).

Both will investigate and resolve by either:

- (i) Nullifying the act claimed; or
- (ii) Nullifying the whole procedure; or
- (iii) Declare the claim unwarranted.

DURING THE PERFORMANCE OF THE CONTRACT:

The Contractor may also file a claim before the Ministry if the Government is breaching any provision of the Contract.

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BREACH BY PROVIDERS:

Government may apply penalties to providers who do not timely comply with the Contract obligations.

Such penalties shall not exceed the amount of the performance bond given by the provider under the Contract.

In case of breach, the Government may also terminate the Contract.

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We these Guidelines are useful when becoming a supplier of the Government in Mexico.

Respectfully Submitted,



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and national companies
in all business areas, from
initial agreements to complex operations

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