



Compliments of U.S. Department of Commerce, International Trade Administration
U.S. Export Assistance Center, Arkansas
425 West Capitol Avenue, Suite 425
Little Rock, AR. 72201
Phone: 501-324-5794, Fax 7380
Little.rock.office.box@mail.doc.gov
<http://www.buyusa.gov/arkansas>

MEXICO: UPDATE ON MEXICAN GOVERNMENT PROCUREMENT LAWS.

Author Name: Manuel Jimenez

Date (09/2006)

International copyright, U.S. Department of Commerce, 2006. All rights reserved outside of the United States

Disclaimer: The information provided in this report is intended to be of assistance to U.S. exporters. While we make every effort to ensure its accuracy, neither the United States government nor any of its employees make any representation as to the accuracy or completeness of information in this or any other United States government document. Readers are advised to independently verify any information prior to reliance thereon. The information provided in this report does not constitute legal advice.

Summary

This report provides information to facilitate U.S. companies' efforts to widen their business opportunities in Mexico. The report also includes a summary about Mexican government procurement regulations and procedures that interested bidders must follow in order to participate in government tenders. This report also outlines the most relevant topics related with the procedures ruled by the North America Free Trade Agreement.

Mexican Government Procurement Needs

The Mexican government consumes large volumes of raw material, repair parts, finished goods, and hired services, for the execution of important infrastructure and construction works. In 2005, government procurement amounted \$26.75 billion, of which 31 percent was used to purchase goods, 44 percent to services and 25 percent to construction services, according to official estimations.

Entities and Enterprises Public Entities:

- The Communications and Transportations Secretariat (SCT)
- The Public Education Secretariat (SEP)
- The Agriculture, livestock, fisheries, rural development and feeding Secretariat
- The Treasury Department (SHCP)
- Health Secretariat (SS)

Public enterprises:

- Petróleos Mexicanos (PEMEX)
- Federal Commission of Electricity (CFE)
- Mexican Social Security Institute (IMSS)
- The State Workers Security and Social Services Institute (ISSSTE)

Goods and Services

Mexican government demand of goods is focused in consumption goods (such as food, office supplies, clothing, footwear and medicines) or in those that require strong investments in capital goods, such as oil drilling equipment, sea platforms, electric power plant equipment, and towers for transmission lines.

The most required services are building, cleaning, maintenance of plants, machinery, equipment and surveillance as well as services for system analysis, design, programming, and maintenance. The products and services most frequently purchased by PEMEX (Mexican Petroleum) are: tubes, pipes, integral oil process systems, liquid and gaseous nitrogen, gas additives, gas analyzers, liquid chlorine, and tow truck repairmen.

The CFE (Electricity Federal Commission) requires transformers, cable, replacement parts for power plants, concrete and wooden posts, fuel, and charcoal. The SCT (Ministry of Transportations and Communications) frequently needs block signal systems, motor vehicles, architecture and engineering services for toll road constructions, as well as automatic data processing equipment. IMSS (Mexican Social Security Institute) procures medicines, medical supplies, as well as laboratory materials.

Government Procurement Laws and Procedures

Article 134 of the Mexican Constitution establishes basic ruling principles for procurement, asserting that contracting will take place through open tendering procedures. Specific procedures are provided in the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público y Ley de Obras Públicas y Servicios Relacionados con las Mismas (Law for Acquisitions, Leases and Services and Law for Public Works). This law can be consulted, in

Spanish at the following internet address:
<http://www.funcionpublica.gob.mx/index1.html>

Currently, Mexico has signed Free Trade Agreements with the following countries: - United States of America and Canada, Colombia, Venezuela, Costa Rica, Bolivia, Nicaragua, Israel and the European Union. These Agreements can be reviewed in Spanish at the following internet address: <http://www.economia.gob.mx>. The provisions included in the agreements do not apply to procurements carried out by local or provincial governments when it is self-funded.

Ruling entities

The Secretaría de Contraloría y Desarrollo Administrativo (Ministry of the Comptroller and Administrative Development, SECODAM) establishes and promotes standards to ensure that the government procurement procedures promote fair conditions for all the participants, as well as promote transparency in contract awards. The Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Credit, SHCP) authorizes the budget for the "Annual Acquisitions Program of Goods, Leases and Services and Annual Public Works Program" (PAAAS and PAOP) presented by the entities and enterprises each year, in order to establish their procurement requirements. The Secretaría de Economía (Ministry of Economy) receives the PAAAS and PAOP from the Federal Public Administration, integrates and presents them to the business sector and promotes the participation of small business in government procurement. The corresponding, PAAAS and PAOP may be consulted on Internet at the following addresses: <http://www.siem.gob.mx>, <http://www.compranet.gob.mx>

Procurement procedures

Based on the Law of Acquisitions, Leases and Services and the Law of Public Works, procurement generally takes place by open tendering procedures, through public notice. In the process of open tendering, any supplier that fulfills all the requirements specified in the invitation to participate, and tender documentation can submit their bid. The process of open tendering may be:

1. National - When only Mexicans can participate, and the goods to be procured must have at least fifty percent of local content.
2. International - When foreigners and Mexicans can participate, and it will take place under the following circumstances:

- a) When it is mandatory by Free Trade Agreements, or
- b) In procurement to be performed by sources provided with loans from international financial institutions, or
- c) When local offers cannot fulfill the requirements, or
- d) In case of price convenience.

Participation can be denied to foreigners from countries that are not part of a trade agreement or that don't grant Mexico reciprocal treatment. Mexican government entities and corporations are allowed to perform their acquisitions by:

- I. Public Tender
- II. Invitation to at least three suppliers, or
- III. By direct awarding.

Government procurement requirements

Invitations to participate in government procurement tenders are published in the specialized section of the Official Gazette, every Tuesday and Thursday of the year (except on holidays). Notices will also be published in a local state newspaper where goods will be used, services hired or construction works executed. SECODAM divulges information about open tendering procedures on the Electronic government procurement system (COMPRANET) at the following Internet addresses: <http://compranet.gob.mx> and <http://www.skytips.com.mx/directory>

The Official Gazette or D.O.F

The D.O.F. is a government publication for official notifications. Tuesdays and Thursdays editions include a section with regard to government procurement (notices on invitations to participate, awarded notices or any modifications to tender documentation, etc.). It can be bought in some newsstands within the Mexican territory or can be available by subscription at the following address: - Abraham González No. 48, Planta Baja Colonia Juárez, México, D.F. C. P. 06600 52 (5) 546-72-84. Web site: <http://www.gobernacion.gob.mx>

Procurements Notice

This notice includes:

1. Name of the entity to which tenders must be submitted.
2. Address, date, and schedules for obtaining tender documentation and its cost and terms of payment.
3. Address, date and time for reception and opening of tenders.
4. Description of the nature and quantity of goods or services.

5. Date for starting or completion of the delivery of the goods or services.
6. Statement to whether tendering is national or international, and if so, if it is under the coverage of a Trade Agreement.
7. Language or languages in which tenders may be submitted.

Access to tender basis

Government tenders can be found at <http://compranet.gob.mx>. from the date of issuance until six days before the submission date. Tender documentation can be consulted freely at any time during this period. Nevertheless, only those who have purchased the tender documentation and are legally authorized will be able to submit bids. The basis includes all the conditions and necessary requirements for the development and presentation of the tender (which must be the same for all participants) including time limits, address for deliveries, regulations, conventional penalties, collaterals, and payment terms. Proposals must be submitted in writing, as stated in the procurement notice, in two sealed envelopes: one including the technical proposal and another including the economical proposal.

Performance bonds may be required:

1. To guarantee the validity of the proposal during the tender process;
2. If the contract is awarded, as collateral;
3. When payment in advance is granted;

Opening of bids

The opening of bids takes place in two stages:

1. First stage: Bids are presented in sealed envelopes. The opening of the envelopes takes place in a public meeting. Technical offers presented in writing will be opened first and followed by those submitted electronically. Proposals that don't meet all conditions will be rejected. Participants will sign all technical offers presented.

After a thorough analysis of the proposals, only those that comply with the technical requirements will be accepted for the next stage.

2. Second stage: a) Opening of economical proposals. b) In the case of two or more responsive bids, the one with lower price will be awarded. c) If the proposals submitted do not comply with the economic requirements, a new tender will take place. Contract awards will be notified through a public meeting in which all bidders can participate, as well as published in COMPRANET. Government entities must inform

interested parties the reasons that they were not selected. A list of the contracts awarded will be published in the Official Gazette or "Diario Oficial de la Federación", within 72 days after the award decision.

Signature of contracts

1. Acquisitions of Goods and Services – No later than twenty days after the award date.
2. Public Works: - No later than thirty days after the award date.

Payments

1. Suppliers of goods and services - No later than forty-five days after the goods and services have been provided.
2. Public construction works - No later than twenty days after the approval for the completed works has been released.

Appeals

Appeals can be submitted to the Public Function Ministry <http://www.funcionpublica.gob.mx>. Función Pública is the reviewing authority empowered to rule on bid challenges based on the Law of Acquisitions, Leases and Services and to the Law of Public Works or that derive from Trade Agreements signed by Mexico.

A bid challenge can be exercised by either persons or firms that consider that their rights were affected. A challenge must be filed in writing or by electronic means, within ten working days after the justification for the complaint is known.

Resolutions to a bid challenge may include:

1. Invalidate the tendering procedures;
2. Invalidate the proceedings;
3. Dismissal of the complaint;

The parties can submit an appeal against a given resolution issued by Función Pública. Such appeal can be submitted to the competent judicial authority.

AMENDMENTS TO MEXICAN GOVERNMENT PROCUREMENT LAWS

Amendments to Mexico's Law of Public Works and Related Services, the Public Works Law, and the Law of Acquisitions, Leases and Services of Public Sector, the Acquisitions Law, were published in the Mexican Official Gazette on July 7h, 2005:

1. Broader limitations to blacklisted companies. If a company is blacklisted and barred from bidding with the Mexican government for a

certain period of time, due to contracts defaults or other reasons, the sanction imposed to such company will also apply to its affiliates.

2. Simplification of the bid process. The former two-tier process is replaced with a single tender opening stage

3. New cause for early termination of the contract. Early termination of the contract may now be dictated as a result of inconformity complaint resolved by the Public Functions Secretariat or a court judgment.

4. Project Scheduling. Agencies and public offices will be required to publish their annual program of projects to be published for bid by November 30th of each year. The program should be updated no later than March 31st.

5. Amendments to the claims process. The new amendments reduce the period of time to resolve a complaint filed against a bidding process to a maximum of 40 business days from the date of filing. The amendment also establishes a penalty applicable if a complaint is not substantiated.

6. Registry of contractors. Creation of a registry of contractors to review the legal, technical and financial capacity and experience of the bidders in advance.

7. Publication of pre-bid documents. The calling entity is required to publish a preliminary draft of the bidding documents for comments on-line by possible interested parties.

Other modifications resulting from the amendments that are only applicable to the Public Works Law include:

1. Sharing information with public entities or instrumentalities. Any individual may approach any agency or public office to submit and file studies or programs to trigger the development of new projects.

2. Criteria for calculation of personnel's salaries for the bidders' proposal. The bidding guidelines shall include a list of salaries and fees of technical personnel that will work on the relevant project.

3. The amendment provides for an alternate mechanism of points and percentages for the evaluation of proposals in services agreements. Based on this mechanism, the calling entity will be able to consider and allocate points to different aspects of a given proposal, including the company's background. If the government entity decides to launch a bid under the points

and percentages mechanism, the price consideration will only be given a maximum of 50% of the overall components for the evaluation.

The NAFTA and Government Procurement

The North America Free Trade Agreement has created the world's largest free trade zone in the world, simplifying commercial transactions between Mexico, the United States of America, and Canada, due to the following:

1. Elimination of commercial barriers.

2. Clarification and simplification of rules of trade, making the application process more transparent.

3. Allows foreign companies from member countries to do business in Mexico under the same terms and conditions provided to local companies.

4. Requirements and tariffs on imports (except for some agricultural products, automobiles, textiles and energy) have been eliminated.

Market opportunities have significantly increased as a result of NAFTA. Due to the elimination of trade barriers to access the Mexican market, the import process is simplified. Goods, services and construction service sectors in Mexico have gradually been accessible to U.S companies. Bid challenge and dispute settlement procedures are expedited, which has provided national treatment and non-discrimination practices to suppliers from signatory countries.

National Treatment and Non-Discrimination

National Treatment requires that each of the countries involved in the Agreement shall grant suppliers of the other two countries, treatment no less favorable than the one it grants to:

1. Its own goods and suppliers, and
2. The goods and suppliers of another country.

Regarding non-discrimination practices and according to the NAFTA, no country will treat a locally established supplier in less favorable terms than those granted to another locally established supplier because of degree of foreign participation or ownership, nor shall they discriminate against a locally established supplier on the basis that the goods or services offered by such supplier are goods or services originated in a third country. National treatment provisions do not include measures related to customs duties, import charges, duties or levies and other import regulations.

Rules of origin

In no case can Mexico apply rules, which are different or inconsistent with those rules that are applied in the normal course of international trade.

NAFTA Certificate of Origin

The NAFTA Certificate of Origin is a legal document and determining origin can be a complex process. Completion of a NAFTA Certificate of Origin is an affirmation that the party signing the document has researched the terms of the NAFTA Agreement and has determined that the goods covered by the Certificate of Origin are "originating goods" as defined by the Agreement.

A NAFTA Certificate of Origin should only be completed for products exported to Canada or Mexico, which meet the NAFTA rules of origin for production in the NAFTA countries. Inclusion of products that do not qualify is illegal and subject to fines and penalties. A NAFTA Certificate of Origin is not required for shipments to Mexico or Canada. Goods will clear Customs without a NAFTA Certificate. The exporter should only prepare a NAFTA Certificate if the product qualifies for preferential tariff treatment under the NAFTA rules of origin, for the remaining products with tariffs under NAFTA.

Mexican government procurement market

U.S. companies can sell their products and services to those Federal Government entities and enterprises that are listed in the Government Procurement Chapter of the North America Free Trade Agreement. Following is the list of the most relevant entities and enterprises:

Secretaría de Gobernación (SG)
<http://www.gobernacion.gob.mx/>
Secretaría de Relaciones Exteriores (SRE)
<http://www.sre.gob.mx/>
Secretaría de Hacienda y Crédito Público (SHCP)
<http://www.shcp.gob.mx/>
Secretaría de la Función Pública
www.funcionpublica.gob.mx
Secretaría de Energía (SE)
<http://www.energia.gob.mx/>
Secretaría de Economía (SEconomía)
<http://www.economia.gob.mx>
Secretaría de Agricultura, Ganadería y Desarrollo Rural (SAGAR)
<http://www.sagar.gob.mx/>
Secretaría de Comunicaciones y Transportes (SCT)
<http://www.sct.gob.mx/>
Secretaría de Desarrollo Social (SEDESOL)
<http://www.sedesol.gob.mx/>
Secretaría del Trabajo y Previsión Social (STyPS)
<http://www.stps.gob.mx/>
Secretaría de la Reforma Agraria (SRA)

<http://www.sra.gob.mx>
Secretaría de Turismo (SECTUR)
<http://mexico-travel.com/>
Secretaría de Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP)
<http://www.semarnap.gob.mx/>
Procuraduría General de la República (PGR)
<http://www.pgr.gob.mx/>
Petróleos Mexicanos
<http://www.pemex.com/>
Comisión Federal de Electricidad
<http://www.cfe.gob.mx>
Government Procurement
<http://rtn.net.mx/compranet> or <http://compranet.gob.mx>
<http://www.contactogobierno.com.mx/>
Sources

1. Secretaría de la Función Pública
<http://www.funcionpublica.gob.mx>
2. Secretaría de Economía -
<http://www.economia.gob.mx>

For More Information

The U.S. Commercial Service can be contacted via e-mail at: dennis.simmons@mail.doc.gov or adrian.orta@mail.doc.gov
Phone: 011 52 55 5140 2620 or 011 5255 5140 2619; Fax: 011 52 55 5566 1111; or visit our website: <http://www.BuyUSA.gov/mexico>