

Innovation in the Methods of Public Procurement in Latin America and The Caribbean

Case studies

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Vice Presidency
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Management and
Procurement Services Office

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INNOVATION IN THE METHODS OF PUBLIC PROCUREMENT IN LATIN AMERICA AND THE CARIBBEAN: **CASE STUDIES**



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Innovation in Public Procurement methods in Latin America and the Caribbean: Case studies

Efraim Jimenez

María Eugenia Roca¹

In recent years, Latin American and Caribbean countries (LAC) have modernized their public procurement systems and have been able to increase the efficiency and effectiveness in the use of public resources through new practices and technologies to promote greater competitiveness. The award decision based solely on price to ensure efficiency has also evolved into a multicriteria approach to include, beyond price, quality and sustainability criteria (economic, environmental, and social).

Through this study, the Inter-American Development Bank (IADB) contributes to the dialogue in LAC to promote the use of new public procurement procedures and practices. The study presents four innovative cases of procurement practices used in the region. These are inspired in practices in other regions, such as Europe and the United States.

This study identifies some trends in public procurement procedures, which promote more flexible contracting frameworks in order to incorporate additional methods based on a broader approach of Value for Money in accordance with the principles of transparency, efficiency, economy, integrity and fairness. Innovation in public procurement contributes towards the achievement of development goals in the region.

Clasificación JEL: H5, H57, K, K1, K2

Key words: procurement, public procurement, government procurement, contracting, innovation, value for money, Latin America and the Caribbean economic development, contracting procedures, procurement policies.

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LIST OF ACRONYMS

AoV	Awarding Value
BAFO	Best and Final Offer
Bank	The Inter-American Development Bank
CFE	Federal Electricity Commission
CGR	Comptroller General of the Republic
DAP	Delivered at Place
EMVARIAS	Subsidiary of the EPM Group
EPA	The US Environmental Agency
EPM	Public Companies of Medellin
FTA	Federal Transit Administration
HRAE	Regional Hospital of High Specialization
ICE	Costa Rican Electricity Institute
ICT	Information and Communication Technologies
IDB	Inter-American Development Bank
IHEIM	Hospital Infrastructure of the State of Mexico
ITSELF	Invitation to submit a final offer
LAC	Latin America and the Caribbean
LPTA	lowest price technically acceptable
MEAT	Most Economically Advantageous
NPI	National Polytechnic Institute
PEMEX	Mexican Petroleum
RFP	Request for Proposals
RICG	The Inter-American Network of Government Procurement
SEP	Mexican Ministry of Public Education
SFP	Public Service Secretariat
SICOP	Government's Electronic Purchasing System
TAD	Tecno-Alta Distribution
WFS	Weighted Factor Score

EXECUTIVE SUMMARY

Public procurement plays a key role in the world economy representing an average of 12% of the Gross Domestic Product (GDP) in public contracts (OECD,2017), thus it has the potential to influence market development and to promote innovation. In recent years, Latin American and Caribbean countries (LAC) have modernized their public procurement systems and have been able to increase the efficiency and effectiveness in the use of public resources through new practices and technologies to promote greater competitiveness. The award decision based solely on price to ensure efficiency has also evolved into a multicriteria approach to include, beyond price, quality and sustainability criteria (economic, environmental, and social). This approach has become key when defining the characteristics of the works, goods or services to be procured, and when selecting contractors or suppliers. This more modern concept of value for money considers the optimal combination of effectiveness, efficiency and economy in the use of public resources and considers the most relevant costs and benefits as well as the use of non-monetary attributes, when applicable.

Through this study, the Inter-American Development Bank (IADB) has identified some trends in public procurement procedures, which promote more flexible contracting frameworks in order to incorporate additional methods based on a broader approach of Value for Money in accordance with the principles of transparency, efficiency, economy, integrity and fairness. This study, based on surveys of public procurement regulators and information from external and internal sources of the Bank, identified and analyzed four innovative cases of procurement practices used in LAC. These are inspired in practices in other regions, such as Europe and the United States: bids with price discounts, bids with negotiation, use of merit points for bid evaluation and public-private partnerships.

In LAC, innovative procurement methods are used in various sectors and markets, for both simple and complex procurement. The use of non traditional procurement methods in the region responds to four main aspects that have encouraged its use: (a) the existence and maturity level of regulatory agencies; (b) the use of information technologies; (c) improvements in public procurement control and oversight; and (d) the increasing demand for public-private partnerships (PPP).

The IADB will continue to monitor these trends, as part of the constant search for adaptations of its contracting rules and procedures in the projects it finances, to adjust to the increasingly complex needs of its clients.

INTRODUCTION

This publication is a contribution of the Inter-American Development Bank to a growing dialogue in the Region to promote the use of innovative procurement methods in public procurement.

The research identified four interesting practices employed in several countries of the Region which are not considered by the Bank's Procurement Policies.

To identify these cases, the Inter-American Development Bank (which we will refer to as IDB or simply Bank throughout this document) conducted surveys among officers of public procurement regulatory agencies and consulted with the procurement specialists working at the IDB country offices.

Ten types of procurement methods not considered by the IDB procurement policies were identified by procurement specialists. Several of these procurement activities referred to the "design + construction" of civil works, which are of interest to Bank Borrowers due to the rising demand for this type of service in the development and construction of complex works.

The analyzed procurement methods are successful to many extents. On one hand, they vary from more traditional procurement methods and helped meeting the needs of employers in a relatively short time. On the other, the prices obtained through the employment of these method were reasonable and met the estimated targets. For many procurement agencies, the cases analyzed constituted a pioneering experience as they were being employed for the first time for the procurement of goods and services or to the design and construction of complex works.

The employment of these procurement methods illustrates the growing transformation of national procurement systems, where operators are actively seeking for new and more flexible contracting forms, which are based on internationally recognized concepts and are consistent with the principles of transparency and fairness.

The introduction of information technology also constitutes a relevant factor as it gives access to the public to participate of potential business opportunities. Since its introduction almost two decades ago, there has been a significant transformation of the national procurement systems and thus, the public bidding systems in Latin American and the Caribbean (LAC).

The analysis of the cases is presented following a similar structure to facilitate their comparison.

General structure of cases

Section	Primary objective	Secondary objective
1. Introduction	Identify the contracting agency	Describe the innovative procurement method
2. Description of the method	Describe the procurement process	Highlight main features of the procurement method
3. Global legal framework	Identify where the method is used	List laws and regulations of countries or regions where the method is used
4. National legal framework	Describe the underlying laws and regulations of the procurement method	Identify good practices
5. Details about a case	Describe, the procurement process, amount, award mechanism and bidders' participation	Identify achieved savings or accomplishments
6. Lessons learned	Summarize benefits, risks, and success factors	Options for future application
7. Expected benefits and risks	When possible, examine risks and benefits	Look out to future application
8. Success factors	When possible, highlight key success factors	Take advantage of success
9. Annex	Include laws, regulations, or sections relevant to the process	

Selection of cases

The selection of cases included in this document responds to the observation of trends in public procurement in other regions, particularly in Europe, where its Guidelines¹ are constantly changing in search of greater efficiency and participation, and in the United States of America where the number of design and construction type of contracts, mainly in the transport sector, has increased and where its related benefits have been well studied.

Four main aspects have influenced the increasing employment of non-traditional public procurement methods in LAC: (a) the degree of maturity achieved by the public procurement regulatory bodies; (b) the use of information technologies; (c) improved control and supervision of public procurement; and (d) the growing demand for public-private partnerships (PPPs).

Regulatory bodies: Most of the countries in LAC have set up regulatory bodies for public procurement which, in addition to modernizing laws

¹ https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en

and regulations, are also actively promoting the professionalization and certification of procurement operators. Attendance to regional regulatory bodies meetings and conferences offers opportunities for exchanging experiences and provides knowledge for better-trained and qualified management personnel. For instance, during an interview for this study an official of the Costa Rican Electricity Institute (ICE) stated that it was during an international procurement event where he heard about the “bidding with price discounts (during evaluation)” procurement method, by the exact time when he was drafting the Institute’s administrative contracting regulation, and therefore, introduced it. The Government later included it in its own purchasing regulations.

Information Technology: Applied to government procurement, new information technologies have transformed public procurement systems in the last 20 years. One of the most enthralling innovations driven by information technologies is the electronic reverse auction.

This dynamic of price reduction was possible when laws and regulations began to consider the concept of “dynamic composition of the offer” and thus, eliminating the principle of “invariability of bid prices during evaluation”, which was a firmly entrenched principle in public procurement legislation under civil law, until the reverse auction was incorporated as a public procurement practice. The price discount studied in this publication, is associated to the application of the principle of the dynamic composition of the offer.

Improvements in supervision and internal control: Changes in the design and administration of public procurement that result in innovative procedures and situations would have not been possible without the support and changes in mindset of external control units, such as the Auditor General or Tribunals and Administrative Litigation Courts in the countries.

For several years, control institutions have been interested in improving knowledge, and on enhancing quality of public procurement, which has contributed to generating confidence in government officials wishing to innovate. Without a change in the mindset of control bodies, the employment of procedures that require a certain degree of subjectivity, such as scoring technical offers or the negotiations, would not been possible.

Public Private Partnerships (PPPs) are a sound vehicle for attracting private sector investment to building public infrastructure. Generally, these investments involve risks and complex constructions that must tap in competition of different solutions for the same need.

PPP contracting has profoundly influenced public procurement by demonstrating that through dialogue, flexibility and negotiation between

the public and private sectors, the common objectives for the economic and social development of the Region can be achieved.

Preliminary results

This study is a compilation of innovative procurement methods employed by different government agencies in LAC, previously employed in other regions.

Innovative procurement methods have been employed in all sorts of procurements. From the construction of complex works under PPP, such as hospital services rendering in Mexico, and in simpler procurements such as the purchases of construction materials, the leasing of solid waste collection vehicles or car rentals.

In most of these innovative methods the bids evaluation criteria includes assessing the supplier's ability to render the services, as well as the technical advantages of the offers, for which weighting technical aspects and prices is required.

This approach departs from the traditional award to the lowest evaluated bid used in countries with regulatory frameworks based on the civil code, and gives way to concepts such as the most advantageous offer or the best value offer or bids with adjudication to the highest combined score.

Conclusions

This study aims to shed light on innovative trends in public procurement in LAC. A systematic observation of these trends by the Bank could eventually guide future modifications in its procurement policies to adapt to the increasingly more complex needs of the Borrowers in a more effective manner. The Bank's tendencies of interest baseline are as follows:

Innovation Partnership Europe and the United States are taking their first steps in developing public-private partnership, between a contracting entity and research oriented private companies to create new products and services that could address the needs of a government.

A long term-contracting form could be of interest to science and technology research agencies in the Region, for example for the development of new drugs or disease treatments, new fuels, or the development of mini or Nano-satellites for agricultural research, climate change or environmental protection.

Participation or Public-Private Partnerships Most Borrowing countries have legislation and regulations for contracting public-private partnerships

that have been successful for public procurement in water, sanitation, municipal services, public transport, and energy projects over the last decade.

Although PPP contracting mechanisms once distanced themselves from national public procurement mechanisms (mainly because public procurement regulators had no legal control over PPPs, which are generally supervised by sectorial regulatory bodies), the tendency is that the regulation of PPP contracting increasingly resembles common regulation of public procurement. This is because planning of public works is adopting modern mechanisms such as market studies, prequalification, competitive dialogue, and bidding with negotiation, which are precisely the contracting forms that are more attractive to the private investor.

General Recommendations

The study's participants recommend that the bank adopts (through a policy amendment) some variations to the procurement policies to open room to adopt some of the most effective public procurement methods and bring higher success to the region, just as it was done in the past with the introduction to the electronic procurement.

Certainly, at some point of the evolution of the Bank's portfolio and due to the participation of the Bank in PPP. There will be more option to use competitive dialogue or bidding with negotiation as a vehicle to select contractors and investors for development.

Before that time comes, the lenders of the Bank and its procurement technical and supervisory staff could stimulate the use of opportunities of price improvements in the processes, use of requests for proposals (a combination between technical proposal and price evaluation- specific to design and construction contracts) as an alternative to the traditional bidding awarded to the lowest price evaluated, and intensify the use of two envelope or two phases biddings.

In addition, it is recommended a cycle of evaluation that lasts between two or three years in which the experience in those innovative areas in public procurement is evaluated. If the evaluation is successful, it could be justified the adoption of most complex methodology by the Bank. Some of those innovations in public procurement are described in this document and some others were studied but were excluded due to incompleteness or partial success.

BIDDING WITH PRICE DISCOUNTS

1.1 Introduction

Established in 1949, the Costa Rican Electricity Institute (ICE) is the main provider of electrical and telecommunications services of Costa Rica. To date, this public-owned enterprise has an installed capacity of approximately 2,500 MW and 7,400 MVA in substations, it has 1,700 kilometers of transmission lines, and almost 20,000 km of electricity distribution lines. ICE's procurement of goods and services is of more than USD 1 billion per year. ICE has its own procurement policies² and one of its affiliated companies oversees the government's electronic purchasing system (SICOP).

Bidding with price discounts in public tenders is one of the procurement methods employed by the country and by the ICE. Bidding with price discounts is normally used in the procurement of standard goods and services. The Government of Costa Rica has previously used this method for the procurement of goods and services required for the construction of civil works without negotiations or risk transfers of any kind of civil works via a single request for discount prices to qualified bidders. The request is not mandatory, and its sole purpose is to provide a lower the cost of supply materials. Its employment obeys the same principle that justifies the request of lower prices to the participants of reverse auction.

2 ICE's procurement policies are different than the national procurement policies, however, they have some similarities. Among those, the ICE is also subject to audit by the General Comptroller of the Republic, but only for contracts above USD10 Million.

Link for inquires: <https://appcenter.grupoice.com/PEL/consultarAdquisiciones.do>

Link for procurement organization: <https://appcenter.grupoice.com/PEL/contactosProveeduria.do>

Link for electronic records: <https://www.mer-link.co.cr/index.jsp>

1.2 Description of the procurement method

When bidding documents allow the use of bidding with price discount, offers can be received in two ways: a) In paper form sent via mail in sealed envelopes or b) electronically submitted through SICOP. Once evaluated, the three best qualified offers are invited to present a discount to improve their competitive position (expressed in a discounted value of the offer). The presentation of the offers, with or without discount, follows the same procedures of the original presentation and must be submitted within a short period of time specified in the invitation to improve the offer. Price is the only factor to be modified. Lower bid prices from qualified bidders are evaluated and compared to each other. Finally, the offer with the lower price is selected.

The possibility that bidders may not present their best offer with the aim of lowering the price when invited to present a better offer is one of the inherent risks of employing the bidding with price discounts procurement method. This practice is known as “hold-back”. Similar concerns were in place when reverse auctioning was introduced as procurement method, however there is no evidence of bidders holding back. In the U.S. only bidders in a “competitive range” are invited to present new offers with better prices. ICE invites only the three best evaluated bidders as a strategy to decrease the risk of holding back.

1.3 Reference framework

For public procurement, the use of innovative methods is usually preceded by the development of a framework that regulates the conditions under which the procurement method could be employed. This section analyzes the regulatory framework of the countries and jurisdictions where bidding with price discounts is already regulated and that serve as an important reference to understand its development and applicability.³

3 This analysis does not correspond to a comparative study of the regulatory framework of the different countries in which this method is regulated, but seeks to contextualize the reader on the laws of different countries and jurisdictions that allow the use of this method of contracting and therefore provides valuable reference for its analysis.

Bidding with price discounts is widely used in the United States and European Union (E.U.) and it is generally employed in complex procurement processes. In Europe and the United Kingdom, bidding with price discounts was incorporated as a step part of the procurement method known as Competitive Dialogue, established in Article 29 of the European Community Directive 18/2004. In the E.U. Improvements of offers are commonly called “Invitation to submit a final offer” (ITSELF). The introduction of the reverse auction method propelled the use of the bidding with price discounts. Similarly, to bidding with price discounts, reverse actions gives the opportunity to qualified bidders to offer better prices during the evaluation phase. Articles 49 [11] “Proposals with Dialogue” and 51 [3] “Competitive Negotiation” of the UNCITRAL Model Procurement Law on Public Procurement 2011 includes the possibility of requesting improved bids in complex contracting processes.

Until 1997, in **the United States**, requests to improve bids were known as “Best and Final Offer” (BAFO).⁴ Thereafter, the method was renamed to “Final Proposal Revision (FPR)”. Bidders were then requested to improve bids in a competitive range (a smaller group of participants than the evaluator defines)⁵ This practice is to date applicable to procurement with negotiations that are complex. In simplified purchases, the federal system does not request bidders to improve offers.

State agencies such as the **Federal Transit Administration (FTA)** and the **US Environmental Agency (EPA)** have included bidding with price discounts as part of their “Best Practices for Hiring and Lessons Learned Manual”.⁶ According to EPA, qualified contractors in the water treatment sector⁷ “respond in a more realistic and detailed manner in their offers.” Other U.S. federal government programs⁸ have also

4 BAFO FAR 15.611

5 FAR 15.306: If there are negotiations, a competitive range should be established. Based on the qualifications of each proposal in relation to all evaluation criteria, the contracting officer will establish a competitive range composed of all proposals with the highest qualification, unless the rank is further reduced for process efficiency purposes.

6 Federal Transit Administration Best Practices Procurement & Lessons Learned Manual <https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

7 <https://www.epa.gov/transforming-waste-tool/procurement-process-best-practices-managing-and-transforming-waste-streams>

8 As an example: Community Development Block Grants (CDBG) (Entitlement) (HUD)

considered the use of BAFO procurement method as a good practice. At the **state and municipal levels**, many governments use BAFO in complex purchases following the Public Infrastructure Procurement Code Model developed by the American Bar Association in 2007, which favors the use of bidding with discount.^{9 10}

In Australia and New Zealand, in procedures employing BAFO, the selected bidders present and discuss technical solutions during the negotiation interaction on their technical proposals with a binding price. Following these negotiations, selected candidates must submit new BAFO bids based on the risk allocation and accepted technical terms.

The World Bank included BAFO in its procurement regulations for Borrowers in July 2016 as an option for complex procurement through Request for Proposal (RFP). This method is applicable to negotiation processes where competitive dialogue is not employed as procurement method.

For the IDB, Paragraph 2.46 of **its Policies** GN-2349-9 March 2011 states that no bidder should be required to modify its bid or allow it to do so after the deadline for receipt. According to the Policy, the Borrower must ask the bidders for clarifications that may be necessary for bid evaluation, however it should not request or allow bidders to modify substantially the contents or the prices of the proposal after opening the bids.

The Bank has contributed to the acquisition financing of the ICE Institute of Electricity excluding the application of the bidding with discount. The use of bidding with discount is not a common practice established in the countries of the Region. This is not the case for reverse auctioning, which in most countries the principle of price invariability prevails from its submission to the award.

The case presented in this document contributes discussing the concept of “offer improvement” or “discounts” offered by bidders during the bid evaluation process in its simplest form without negotiation and without competitive dialogue and through a single review opportunity of the price.

9 Model Code for Public Infrastructure Procurement (MC PIP) sponsored by the American Bar Association’s Section of Public Contract Law and Section of State and Local Government Law

10 Other local governments: Virginia, New Mexico, North Carolina, City of Houston, local governments in Texas, optional in Hawaii.

1.4 Regulatory provisions of the country

In April 2009, the Government of Costa Rica enacted the regulatory decree Law 8660 of Strengthening and Modernizing Public Entities in the Telecommunications Sector. Chapter IV established a special administrative contracting regime For ICE. Specifically Article 20 defines that:

“The acquisition of goods and services carried out by ICE shall be subject to the special provisions contained in this Law and its Regulations. The Administrative Contracting Law No. 7494 of May 1, 1996, its amendments, and its Regulations will be applied in a supplementary manner. The acquisition of goods and services, made by ICE companies constituted as a corporation, will be excluded from the Law on Administrative Contracting “

Article 27 specifically introduced the use of discounts offered by bidders during the bid evaluation process as follows:

“... Discounts offered once the offers have been opened will be considered for the purposes of price comparison and eventual adjudication. The possibility of presenting discounts should be provided for in the specifications or the respective cartel ... “

This provision allowed ICE to use “bidding with price discounts” procedure during the evaluation and comparison of tenders, mainly in the procurement of goods, and sometimes technical services.

Around 2012, ICE reported profits of more than USDOL 100 million by using the best and final offer procurement method. The lowest price received in the opening of tenders, the purchase budget and the prices awarded because during the submission of the second round of offers provided by the qualified participants was lower that it would have been if only a one step process was applied. In year 2016, ICE employed BAFO in 40 different tenders.

To avoid bidder’s collusion or holding back risk, ICE generally invites the top three best-qualified bidders to improve their prices. Bidders must submit competitive offers from the outset to be able to occupy one of the three best rated seats. The request to improve price is also made if there are two or fewer qualified bidders.

The success achieved in the application of the bidding with price discounts in ICE procedures led the central public administration to adopt the bidding with discount in its public procurement regulations. Article 28 Bis of the Regulation of administrative contracting of the country introduced the bidding with price discounts in March 2009 as follows:

“Article 28a. Price improvements. (*) Bidders who have made eligible proposals may improve their prices for comparison purposes only if the cartel expressly provided for this possibility. The poster will define in detail the methodology to be applied in each competition, respecting equality, good faith, and transparency. The price to be taken for purposes of qualification will be the last one to be proposed by the respective bidders. For the application of this system it will be necessary that the bidders include, as a minimum, from their original offer a detailed budget of the work or a report of calculation of the price in the other contracts, indicating quantities and unit prices. In order to clearly identify the items or components affected by the discount. The offeror is obliged to justify with clarity the reasons that justify the reduction of its price. Price improvements should not imply a decrease in quantity or depreciation of the quality of the object originally offered, nor can it give undue advantages to those who propose it, such as making the price ruinous or non-profitable.

(*) The present article 28 bis has been added by Executive Decree No. 35218-H of April 30, 2009. LG # 88 of May 8, 2009. “

National regulation explicitly extends the price improvement method for the contracting of works. ICE uses BAFO for the procurement of simple goods and services only. The ICE does not offer any specific reason for not using the price improvement in civil works.

The specific provisions concerning the presentation of the improvement of supply or reduction of price are established in Instructions to Bidders IAL 20 of the bidding document presented in Annex 1. It should be remembered that the ICE and the country use the discount or improvement of supply without consideration of negotiations or transfer of risk. The procedure is limited to that qualified bidders, optionally, reduce their prices to win the tender and offer savings to the buyer.

Other discounts in the ICE purchasing system: ICE also accepts discounts on “Framework Agreement” contracts, as described in the Special Conditions: 7.5 The contractors will have the power to make discounts on the prices offered at any time, without having to carry out any procedure before the Institution. However, to be able to return to the original price or to increase it, it can only be carried out through the price adjustment mechanism, as indicated in item 18 of the present bill of lading.

1.5 Case description: Procurement of steel sheets

(a) Background

In 2011, ICE built several important electrical generation works such as P.H. Reventazón, P.H. Pirrís and P.A. Cachí. Generally, the ICE is directly responsible for the construction of works of projects and its uses their own resources of engineering and labor. Financing sources generally contribute to the payment of specialized goods and services procured by ICE.

Construction materials such as steel (in various forms), cement, electro-mechanical, electronic equipment and control equipment, sub-stations, construction equipment, transmission materials are among the major inputs of ICE’s construction work. Steel sheets are used extensively in the construction of pipes, in addition, reinforcement of tunnels, bridges, and multiple other similar works. The slabs and beams acquired in this procurement were used for shielding the new parallel tunnel of the Cachí Extension Hydroelectric Project in the low coverage areas, corresponding to access windows, in the final section of the line and in the construction of the surge tank of the Project.

(b) Bidding process

Financed with ICE resources, the 2011LA-00140 abbreviated tender included an invitation for the supply of 2,600 tons of ASTM A-537 steel sheets and 98 pieces of ASTM A-36 steel beams to be used in the expansion of the Cachí Expansion Project.¹¹

¹¹ There is no prequalification for common goods supply.

The estimated cost of the tender was public. The amount was of USDOL 3.1 million. Per ICE regulations, the estimated cost should not necessarily be announced, but the buyer must justify the reasons for concealing it. In preparing the estimated cost, ICE used a base price of USDOL 1,200 per metric ton.¹² The supply was bought DAP (Delivered at Place) terms to be delivered at ICE warehouse. ICE was responsible for processing customs and the payment of import taxes. Delivery time was initially set at 90 days.

In October 2011, ICE amended the bidding documents to: (a) extend the delivery period to 120 days (at the request of two interested bidders given a requirement clause specifying that the buyer reserved the right to modify the measures and dimensions of the items when issuing the purchase order); and (b) provided details of quality required tests and set the maximum carbon content from 0.35% to 0.47% to improve weldability of the elements.

The following table shows the schedule of the tender process:

Stage	Date
Publication	10/03/2011
Deadline for Bid Submission	11/15/2011
Bid Evaluation Report	12/16/2011
Award	01/20/2012

(c) Tender participation

Seven firms submitted bids in November 2011. The bid evaluation concluded in December. All seven bids met the bidding requirements and technical specifications. The following table shows the original prices and the discounted offers made by the bidders. Four proposals offered lower prices compared to the ones originally estimated by the ICE.

12 At that time, the international FOB price of rolled steel was USDOL \$ 800 per metric ton. Freight from China to Costa Rica cost about USDOL \$ 60 per ton, while the domestic freight rate was about USDOL \$ 30 per ton. Considering the above, the estimated price, even with contingencies and unloading at the national port, should have been around USDOL \$ 1,000 per ton. The higher estimated cost could be explained by: (a) reflecting the cost of doing business with a state enterprise; (b) The international price of steel of 2008 and 2009 was used, which was USDOL \$ 1,000 per ton; or (c) the specification of the high weldability of the ICE order had an additional cost above the international price.

Ranking before discount	1	2	3	4	5	6	7
Description	MAGAZ (Panamá)	CORPAC STEEL (EEUU)	ALMACÉN ROAG (CR)	ABONOS AGRO (CR)	SARET ACERO (CR)	SEGURIDAD FC (CR)	CENTROCEL (Panamá)
Steel sheet ASTM A537	1,996,465	2,095,102	2,022,850	2,233,930	2,246,861	2,658,145.36	3,446,636.03
Steel sheet ASTM A36	819,225	770,740	816,750	783,750	1,050,386	1,038,376.19	1,216,028.43
Steel beams	44,982	46,060	45,383.80	65,097.48	41,846	61,050.45	43,362.06
Local transport			125,001				
Total	2,860,672	2,911,902	3,009,984.80	3,082,777.49	3,339,093	3,757,572	4,706,026.52
% above lowest		101.79%	105.22%	107.76%	116.72%	131.35%	164.51%
Offered discount	101,132	182,412	268,144	Not invited to submit discounts			
Ranking after discount	3	1	2				
Final bid price	2,759,540	2,729,490	2,741,840.06				

Table 1 Bid Evaluation

(d) The bid evaluation

In December 2011, the three bidders with the lowest evaluated price submitted new process for the “discount round.” The winning bid offered a reduction in the price of USDOL 182,412. In January 2012, the tender was awarded to CORPAC STEEL PRODUCTS CORP in the amount of USDOL 2,729,490 at a unit price of approximately USDOL 1,050 per ton of steel. It was a good price considering the international price of steel at the time, the prices of ancillary expenses such as the sea freight, and the unloading at the national port and domestic transport.

An appeal for revocation was filed against the award. In the appeal, Almacén Roag claimed that with the discount its offer would be the lowest in item 1. The ICE responded that the award, in accordance with point 17.2 of the bidding document, was for the global requirement, that is, all lots awarded to the same supplier and not by individual items, and rejected the claim.

(e) Benefits of the application of the supply improvement

The lowest evaluated bid offered USDOL 2,911,902 in its initial offer. In response to the discount request, the bidder offered a discount in the amount of USDOL 182,412 (6.3%). The economy in the purchase compared to the estimated cost was 12% with the improved price: without the discount, the economy compared to the estimated cost would have been only 6%.

(f) The award

The tender was awarded to CORPAC, based in Miami, Florida, which usually has an inventory of more than 10 thousand tons of steel products maintained in 30 warehouses strategically located in the region¹³.

(g) Conclusion

The combination of actions in this tender was favorable to the buyer, considering that the prices paid after applying the discount were close to the international price of the material and its delivery at the time.

1.6 Lessons learned and recommendations

The approach applied to the bidding with price discounts in Costa Rica is simple and straightforward: Qualified bidders have a second chance to win the tender by presenting a better offer on prices. The bidding with price discount differs from the traditional principle in the public procurement under civil law that price of the offer is invariable from the bid submission until it is awarded.

The approach applied in the country operates under the following characteristics:

- (a) The tender must announce the application of the procedure in the bidding rules;
- (b) The estimated cost is published;
- (c) Applies to goods, services, and simple works in which there are no negotiations;

¹³ CORPAC is a regular supplier of Steel products in the national market: <http://www.corpacsteel.com/steel-core-projects/>.

- (d) Giving or not the discount is a prerogative of the bidder;
- (e) Only bidders with the lowest qualified prices are invited to offer the discount (generally the lowest three bidders evaluated) so that all bidders must submit competitive bids from the outset; and
- (f) The presentation of the discounts has the same formalities as the initial offer.

In the cases examined for application of the procedure, it is not clear whether the bidders invited to offer discount are aware of the assessed prices of the other two best qualified bidders.

In consultation with ICE, they affirmed that the process is transparent and all information is disclosed so that bidders can offer a competitive discount.

If this were so, the procedure also departs from the classic principle of confidentiality of the evaluation since it reveals an intermediate step, such as evaluated prices, before final adjudication. The other participants would learn that they are not invited to submit an offer improvement when they appreciate that their price evaluated in the first instance does not appear to be among the lowest three.

Jurisprudence in the use of the mechanism: at times, ICE tenders that use the system of improvement of supply have been subject of appeal, such as the 2013LA-000003-0000400001 for the procurement of Steel Poles¹⁴. In effect, one firm requested revocation of the award because it had not been invited to offer discount. The ICE rejected the appeal by showing that the appellant's offer did not comply in several technical respects and had been disqualified prior to the invitation to offer discounts.

1.7 Expected benefits and risks

The main expected benefit in the use of the bidding with discount is the reduction in prices.

When applied in existing public procurement regimes, bidding with price discounts allows all or some of the qualified bidders to offer

¹⁴ http://www.merlink.co.cr:8084/search/EP_SEJ_POQ402.jsp?recursoSegno=392&cartel-No=20130800250&cartelSeq=00&cartelCate=1&movePage=COQ721

a discount or lower price during the evaluation process, without modifying any other conditions of the bid hence generating savings to the purchaser and providing a second chance to the qualified bidder to win the competition

The main risk of using the bidding with discount is that bidders may abstain of presenting a better price (hold-back) until the time when they are invited to offer discounts.

The savings achieved by ICE in the application of the procedure seem to show that the invitation to only a small number of qualified bidders (generally the top three evaluated on the original offer) to offer discount prevents the hold-back.

Increased savings: the percentage of discount offered by the winners in several other bidding processes by them are: (a) engines: 22 %; (B) drill hammers: 27%; (C) coating pipes: 13%; and (d) drilling weight bars: 8%.

1.8 Success factors

Jurisprudence: Public contracting in Costa Rica is generally rapid, but closely supervised by the Comptroller General of the Republic (CGR), which contributes to the country having a good record in terms of transparency and competitiveness. ICE procurement may be subject to protests by requesting a revocation to ICE. This applies to procurements exceeding USDOL 10 million. The General Comptroller must surveille the process. The Comptroller's Office has known cases of tenders with the use of the bidding with price discounts (such as in a case where the bidder who was the winner in the study case filed a complaint) without objections to the implementation of the bidding method,¹⁵ so that the applicability of the procedure is legally recognized.

Implementation by the ICE: the bidding with price discounts is one of the few substantial changes introduced in the country's public procurement methods in recent years. One of the factors of success in the use of this procurement method is that ICE implemented it first.

¹⁵ https://cgrfiles.cgr.go.cr/publico/docs_cgr/2015/SIGYD_D_2015006377.pdf

Simplicity: the greatest success factor of the bidding with discount in Costa Rica is the simplicity of its application. Unlike the use of FPR or BAFO in the United States, Europe or Oceania, which occurs as part of a more complex processes such as competitive dialogue or negotiations, that may include changes in specifications or in the terms and conditions of the supply, in Costa Rica, the bidding with discount is limited to a single price reduction, which contributes to ease its application, its supervision and the good response of bidders.

Increasing economies: the use of the bidding with price discounts generates savings by procuring at cheaper prices. This is the case when comparing initial vs. final prices. In public procurement, it is common to that economies of scale occur when new procurement procedures and mechanisms are introduced. For instance, contract were awarded at cheaper prices that the ones originally estimated when reverse auctions and framework agreements were introduced. The bidding with price discounts seems to maintain a level of savings without sacrificing competition.

2.1 Introduction

Created in 1955 as an autonomous public enterprise, the PUBLIC COMPANIES OF MEDELLÍN (EPM) is a decentralized entity of the municipal order with the Municipality of Medellin as its only shareholder. In 1997, EPM became a municipal order industrial and commercial enterprise of the State through the Agreement 069 of December 10 of the same year issued by the Medellin Council. Due to its legal nature, EPM is endowed with administrative and financial autonomy in accordance with Article 85 of Law 489 of 1998.

EPM Group corporate purpose is the provision of residential utility services such as water, sewerage, energy, fuel gas distribution, basic telephone services and mobile local telephony in the rural sector among other telecommunications services. EPM also provides garbage collection, as well as other complementary activities related to the these services.

EPM is currently an IDB Borrower. The contracting of EPM goods and services is regulated by Decree 2015-DECGGL-2 090 of September 11, 2015. Based on Decree 362 of September 2 2014, issued by the Board of Directors, the General Manager established the guidelines related to the contracting of goods and services that EPM as a contractor.

Per this Decree, EPM has three methods of contracting: (a) public solicitation of offers; (B) private solicitation of offers; and (c) a single offer request. For any of the modalities it is possible to use bidding with negotiation as the procurement method.

2.2 Description of the procurement method

Bidding with Negotiation is part of a public or limited tender process consisting of negotiating with the winner the terms and conditions of delivery, supply, or accessory conditions of the commissioned work, good or consulting service with or without adjustment on the contract price.

Negotiation on public procurement are common in the hiring of consulting services. Bidding with Negotiation is less frequent in the procurement of goods, works, and common services. However, for more complex contracting processes, tendering processes with negotiation opens the opportunity to reach better and tailored agreements to the interested parties.

In the Bidding with Negotiation, the contract is awarded to the selected bidder after consulting and negotiating the terms of the contract with one or more candidates. The objective of the Bidding with Negotiation is to introduce the best design and innovative options to a solution defined by the Employer in works, supplies or services of a complex nature.

During the bidding process, the successful tenderers are invited to submit their initial offers, which are subject to negotiations. Negotiation do not include minimum specifications or award criteria are generally not subject to negotiation.

All participants are treated equally and are informed accordingly on: (a) how design and technical specifications evolve; (b) the distribution of risks is in line with the reality of the market; and (c) are given sufficient time for bidders to modify their bids. At the same time, the information that the bidders have defined as confidential is protected. In examining the initial proposals, the employer may apply the evaluation criteria and reduce the number of participants excluding those who do not meet the criteria.

When the employer considers that it has sufficient number of solutions to its need, it informs the bidders of the intention to close the negotiations. It then sets a date for the submission of final bids; then performs the evaluation and awards the contract per the award criteria established in the bidding documents (preferably, without further negotiation).

2.3 Reference framework

In the public sector, the use of innovative procurement methods is usually preceded by the development of a framework that regulates the conditions under which the procurement will take place. This section analyzes the regulatory framework of countries and jurisdictions in

which bidding with negotiation is regulated as a procurement method and therefore constitutes an important reference to understand its development and applicability.¹⁶

The European Procurement Directives of 2014 define Bidding with Negotiation¹⁷ as a special procedure but not an exceptional one. The justification for adopting the method under the Directives read as follows:

“(42) There is a real need for contracting authorities to be more flexible when it comes to choosing a procurement procedure for negotiations. Increased recourse to such procedures would also likely increase cross-border trade, as the evaluation has shown that contracts awarded through negotiated procedure with prior publication are obtained on a particularly high number of occasions by cross-border offers. Member States should be able to make use of competitive tendering procedures or competitive dialogue in situations where it is unlikely that satisfactory results can be achieved through open or restricted procedures without negotiation ...

(43) For works contracts, these situations include works which are not conventional buildings or works which include design or innovative solutions. For services or supplies that require an adaptation or design effort, recourse to competitive bidding or competitive dialogue can be valuable. This adaptation or design effort is especially necessary in cases of complex acquisitions, for example in the case of sophisticated products intellectual services, for example some consulting, architectural or engineering services, or large Information and communication technologies (ICT). In such cases, negotiations may be necessary to ensure that the supply or service in question meets the needs of the contracting authority...

¹⁶ This analysis does not correspond to a comparative study of the regulatory framework of the different countries in which this method is regulated, but seeks to contextualize the reader on the laws of different countries and jurisdictions that allow the use of this method of contracting and therefore provides valuable reference for its analysis.

¹⁷ Directive 2014/24 / EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18 / EC. - Directive 2014/25 / EU of the European Parliament and of the Council of 26 February 2014 on the procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17 / EC.

(44) The tendering procedure bidding with negotiation should also be able to be used in cases where an open or restricted procedure has led exclusively to irregular or unacceptable tenders. In such cases, contracting authorities should be able to carry out negotiations with a view to obtaining normal and acceptable offers.

(45) The tendering procedure with negotiation must be accompanied by adequate safeguards to ensure compliance with the principles of equal treatment and transparency. Contracting authorities must indicate in advance the minimum requirements which characterize the nature of the procedure, which should not be altered in the negotiations. The award criteria and their weighting must remain stable throughout the procedure and should not be negotiated with a view to ensuring equal treatment for all economic operators. Negotiations should aim to improve bids to enable contracting authorities to purchase works, supplies and services that are perfectly adapted to their specific needs. The negotiations may relate to the set of characteristics of the works, supplies and services acquired, including, for example, quality, quantities, trade clauses and social, environmental, and innovative aspects, insofar as they do not constitute requirements minima. It should be noted that the minimum requirements to be established by the contracting authority are the conditions and characteristics (physical, functional, and legal) that any tender must respect or possess, to enable the contracting authority to award the contract in accordance with the criterion of the chosen award. To ensure transparency and traceability of the process, all phases of the process will be duly documented. Also, all offers throughout the procedure must be submitted in writing.”

The 2014 Directive extended the possibility of using competitive dialogue and competitive bidding under the same requirements. This alignment should facilitate the possibility of resorting to competitive dialogue - previously restricted to cases of market complexity.

The use of the negotiated tender procedure is possible, for example, for works of non-standard buildings, and for supplies or services that require adaptation or design efforts. This development has an advantage and a disadvantage: the advantage is that it is easy and

objective to define what is standard and what is not. The problem is that the buyer, before starting the process, must determine whether the supply is standard or not.

The World Bank included the Negotiations procedure in its procurement policies in July 2016 as an option for complex procurement through RFPs.¹⁸

2.4 Regulatory provisions of the country

The following text describes the Negotiation process established in EPM Decree 2015-DECGGL-2090 of September 11, 2015¹⁹:

Article 17. Direct negotiation. Direct negotiation may be carried out when one or more eligible offers exist and it is considered that more favorable conditions of a technical, commercial, economic, or other nature can be obtained. This stage must be preceded by the corresponding justification. Direct negotiation can be carried out with the proponents invited to participate under any of the modalities of request of offers: unique, private and public.

In the public solicitation of tenders, the negotiation will be done with at least the eligible bidder who has obtained the highest score, and maximum with three (3) eligible bidders with the highest score, except in the terms of reference or in the offer request If it stipulated something different.

The evaluation team will meet with the proponents called at this stage, so that EPM and the proponents know in detail the elements of the offer on which the negotiation will take place and on which a technical improvement is sought, Commercial, economic or of any other kind. The negotiator will be able to clarify concerns and list the elements that have not been requested and that affect the economic value.

Once this stage is completed, a new offer will be requested with the conditions to be negotiated, within the term established for that purpose, expired which will be evaluated the bids, considering

18 <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005&ver=current>

19 <https://www.epm.com.co/site/Portals/3/documentos/proveedores/contratacion/Normas%20B%20C3%A1sicas%20para%20la%20Contrataci%C3%B3n%20V7.pdf>

the weighting factors established in the case of the public or private solicitation of offers.

During the negotiation stage, no bidder can withdraw its offer. If the bidder is silent or the responses do not meet EPM's expectations, the convenience of accepting the offer in its original form will be evaluated and, if it is not considered appropriate, a written record of the reasons will be provided.

This stage proceeds in processes whose value exceeds five thousand legal minimum monthly salaries (5000 SMLMV)²⁰ after the observations on the analysis report and conclusions have been resolved. For processes, whose value is equal to or less than five thousand legal minimum monthly salaries in force (5000 SMLMV), direct negotiation, if applicable, will be done before the report of recommendation and acceptance of the offer is prepared. "

In bidding with negotiation, unlike the bidding with discounts (in which only the opportunity to lower the price is given, but no other condition of the requirement is altered) some of the non-substantial supply conditions can be altered during the negotiations.

2.5 Renting of garbage trucks

(a) Background

In January 2014, EMVARIAS (a subsidiary of the EPM Group) invited to the submission of bids through a process of public solicitation of offers with announcements in the national media and on the company's website, for the renewal of part of the fleet of compacting vehicles under an operating lease arrangement. The contract would last for seven years and was expected to generate operating savings of USDOL 3 million in net present value. The estimated cost of the operating lease was USDOL 30 million and included the preventive and corrective maintenance of 50 vehicles and their respective compacting boxes. The term "renting" is being used more frequently to describe a lease with operation of the assets.

The process of vehicle leasing is one of the objectives of the "Linda

²⁰ Approximately USD 1,138,000 in 2016

Calle Siglo XXI” plan, and the renewal of the operating lease fleet seeks greater availability of vehicles and environmental sustainability in the city.

(b) Bidding process

The public invitation (with announcement) to submit bids occurred initially on January 20, 2014. However, no offers were initially received. EPM analyzed with the potential proponents of “renting” the reasons for no submission of proposals. Based on these consultations, the terms and conditions of the bidding process were modified and a new Bidding was called.

The prices to be quoted by the proponents in the form of full renting included the following items: i) supply of vehicles (chassis and compacting boxes), ii) registration and annual permits during the term of the contract, iii) payment of annual taxes, iv) general insurance of the vehicle, v) preventive and corrective maintenance of the chassis, vi) change of tires for wear and tear, vi) other services and activities required for the operation, without considering the option of vehicle recovery, and vii) the price of the preventive and corrective maintenance service of the compacting box.

The new tender for an operating lease was announced by EPM on March 7 with reference number O6-2014. The tender closed on April 4, 2014. Only one offer was received. Following the technical, economic and legal evaluation, negotiations were conducted between EPM and Renting Colombia, in a process that was closely supervised by the Attorney General’s Preventive Vigilance of the Public Function Office.

Technical qualifications: The bidders’ qualification criteria required the bidder to prove experience during the last 5 years on operating at least 3 contracts (counted until the closing date for the submission of bids) of heavy vehicles of two or more axes with a load capacity equal to or greater than 8 tons, including preventive and corrective maintenance of vehicles. The value of those contracts individually or combined was required to be equal or greater than USDOL 2.3 million. The experience could be accredited by certificates issued by Employers of the leasing company.

Financial qualifications: Bidders were to demonstrate: (a) shareholders’ Equity as of December 31 2012, greater than or equal to 50% of the

official budget of the contract; (b) companies that are not from the financial sector must present a percentage of indebtedness, less than or equal to 80%, defined according to the following expression: $IE = \text{Total Liabilities} / \text{Total Assets} \times 100\% < 80\%$; (c) Entities such as banks and financial operators must present a solvency ratio equal to or greater than 9%, measured in accordance with the current regulation and the methodology established for that purpose by the Ministry of Finance.

(c) Tender participation

During the bidding process, the bidding documents were amended three times and were published in a timely manner on EPM's webpage. An informative meeting with potential proponents was held on March 14. 36 representatives of 11 companies attended the meeting. SINOTRUK, Ingenia Green Colombia, Alemautos, Kenworth, Bancolombia, FANALCA, HELM and EQUIRENT were among the companies initially interested.

(d) Evaluation of bids

The evaluation criteria is presented in Annex 2. The evaluation consisted of a combined grading of a technical and economic proposal (price offer). The best evaluated bidders were asked to submit a new price proposal (the original is retained if the bidder does not modify the price).

The only offer received was an operating lease for USDOL 34 million, including the preventive and corrective maintenance of 50 vehicles and their respective compacting boxes. The contract included 47 Kenworth rear cargo vehicles, of which 22 were gas operated and 25 by diesel engines, with Fanalca brand compactor box. The remaining three cars were front-loading gas, Mack brand, with Heil brand compactor box. The delivery of the vehicles concluded in October 2014. This model generated savings and as result, EPM decided to expand the agreement and contract for the procurement of 40 additional gas-operated vehicles.

(e) Benefits of the application of the tender with negotiation

According to EPM Group calculations, the cost for the purchase of each compactor was of USDOL 190,000 USDOL, additional to 10,000 USD per year for vehicle maintenance, insurance, and registration.

The operating lease generated savings for EMVARIAS/EPM for USDOL 4 million of operating costs in net present value over the seven-year horizon. Savings were planned to be invested in improving the working and salary conditions of 203 drivers. This plan, implemented with Pascual Bravo University, included the development of skills and knowledge of drivers.

(f) Contract award

The contract 051-2014 was signed between EPM and Renting Colombia. Renting Colombia is a subsidiary of Grupo Bancolombia. The company has more than 16 years of experience in the leasing and management of vehicle fleets and it is the market leader in this activity in Colombia and Peru. Its current fleet totals to over 11,000 vehicles, including 4,000 heavy load trucks. After the contract was awarded, EMVARIAS extended the contract with the supplier for 40 additional gas operated vehicles for a total of USDOL 30 million.

(g) Conclusion

EMVARIAS owns 129 compactor vehicles of which 90 were acquired to the contract of the Bidding with Negotiation procurement method. EPM announced that it will finish renewing the fleet of vehicles using the renting model.²¹ However, the execution of the contract and its subsequent extension is an indication of the Customer's satisfaction and the success of the employed procurement modality.

The bidding with negotiation safeguard offers the possibility to modify of the terms and conditions of the initial bid may be rejected by the bidder, in which case their bid would be evaluated and compared with the bid of other bidders, and if it remains the best evaluated bid, it still has the right to be awarded.

²¹ <http://comunicados.co/2015/12/emvarias-renueva-de-su-flota->

The possibility of a negotiation on non-substantial aspects of the contract with potential suppliers offers an opportunity to achieve better results. However, this can only be achieved by institutions with a high degree of maturity and professionalism that can conduct negotiations without detriment to the parties.

2.6 Lessons learned and recommendations

Bidding with Negotiation opens an opportunity for public enterprises that have the institutional capacity and adequate technical resources to negotiate with suppliers and obtain the expected benefits. EPM is one of the companies in the Region that fulfill this criteria and thus, has the capacity to negotiate on fair terms for all parties involved. It is not surprising that EPM or its affiliates are pioneering in the introduction of negotiations in tenders for the supply of goods and works in the Region.

Negotiation in this method does not address substantial issues, but may result in additional benefits to the Employer. Negotiation is not mandatory for the bidder; they have a prerogative to keep the initial conditions of the offer unchanged.

The renting (but without residual value of the goods at the end) is a novel acquisition model that allowed the Company to renew 50 specialized high-performance vehicles (16 work-hours a day). The method of contracting bidding with negotiation was an adequate complement to the requirement.

The bidding stirred interest in the market, but as in any innovative and novel process, potential bidders were cautious and, despite the interest shown, only one bidder presented the offer, in terms consistent with EPM savings calculations, to the point that a year later extended the contract to obtain the services of 40 additional vehicles.

2.7 Expected benefits and risks and factors of success

The use of Bidding with Negotiation in the field of renting garbage trucks was successful, even though some municipal representatives opposed the “renting” model, mainly because of the labor implications of the arrangement, but not necessarily because of the procurement modality.

By mid-2015, two of the garbage trucks set on fire. The Contractor determined, through international investigators, that the damaged vehicles complied with all controls and checks of rigor, which made the mishaps almost unlikely. The Supplier stated that it had paid almost USDOL 1 million in expenses for 800 accident events occurred in the operation of the leased fleet.

The managerial capacity and other capabilities of the company EPM and its subsidiaries was the relevant success factor of this procurement.

For the contracting of complex equipment, EPM and EMVARIAS combined two novel and innovative procurement procedures: operating lease rather than the purchase of the vehicles and use of the bidding with negotiation. Even though only one bid was submitted, in reviewing the price and saving model obtained in the tender, EMVARIAS decided to expand almost doubling the value of the contract with an increase in the supply.

Another factor of success is the presence in the market of at least one solid firm that provides the specialized service, which is a subsidiary of a prestigious banking company that assumed the commercial risks of innovation in public procurement.



THE USE OF POINTS IN BID EVALUATION

3.1 Introduction

The point or score evaluation system is the standard evaluation mechanism for the procurement of goods, services, and construction of works in Mexico. For this case, we analyze the standard contracting scheme of the Mexican Ministry of Public Education (SEP). This case does not differ from the national standard of using points in the evaluation of biddings. However, it offers interesting insights given the object of the contract of renting transport services for SEP personnel, as an alternative to the acquisition and maintenance of vehicles.

The Bank finances SEP projects, but procurement arrangements exclude the use of points in the evaluation of bids, to avoid evaluating the characteristics or experience of the bidder as part of the evaluation criteria.

The employment of this procurement method, commonly known as best value offer allows the contractor to promote a certain design or innovation needs by giving a bigger weight to specific characteristics in the evaluation.

In Europe, the use of points in the evaluation of tenders is called the Most Economically Advantageous Tender (MEAT)²², which includes the weighting of: (a) the qualifications of the bidder (among others, experience in similar projects, availability of resources for Delivery performance and managerial skills); (b) the technical characteristics of the product; (c) the price of the supply, including the life-cycle cost; (d) other environmental and social factors.

In other countries of the Americas, such as the **United States or Panama**,²³ this procurement method is called “best value” offer. For instance, many contracts of the Panama Canal expansion project are

²² MEAT can also be awarded at the lowest price of the bidder who complies with the requirements if the Employer so determines

²³ Panamá: Law 22 of 2006

being implemented employing this procurement method.²⁴ In other countries of the Region, such as Peru and Honduras,²⁵ the concept of “value for money” is considered a principle in public procurement, however it is not conceived as a procurement method. The Inter-American Network of Government Procurement (RICG) compiled a series of thematic presentations on the use of the Best Value for Money.²⁶

The UNDP and the World Bank include the concept of “Best Value for Money” as one of its guiding principles for the contracting and procurement of its operations, but similarly to other countries in the LAC region, Best Value for money not regarded as a procurement method.

3.2 Description of the procurement method

The use of points in the evaluation of offers seeks to ensure the best value for the contractor. The bids are requested by public bidding and are presented in two components: a) a technical component and b) an economic component.

The evaluation of bids begins with the examination of the technical component which is evaluated using predetermined weighted criteria (weights are previously assigned) based on the importance that the different technical components have for the contracting party. Concluded the technical analysis, the economic component is then analyzed. The lowest price bid receives the higher score. The remaining offers are assigned a proportional score that varies in relation to the lowest bid score.

The contract is awarded to the offer with the highest final score that results from the combination of technical and economic/price component.

24 <https://micanaldepanama.com/wp-content/uploads/2012/02/resumen-ejecutivo.pdf>

25 Article 4 4 Decree No. 36-2013 Ley de Compras Eficientes y Transparentes a través de Medios Electrónicos.

26 <http://ricg.org/mejor-valor-por-el-dinero/contenido/464/es/>

3.3 Reference framework

For public procurement, the use of innovative procurement methods is usually preceded by the development of a regulatory framework. This section analyzes some regulatory frameworks including the concept of Best Value for Money in public procurement, and thus are important references for other countries and jurisdictions. Specifically, this section analyzes the regulatory frameworks of the United States, The Netherlands, Sweden, and the European Union, and of the World Bank.²⁷

In the United States, the use of points in the evaluation of offers is known as Best-Value method.²⁸ The use of Best-Value is considered as a flexible and appropriate procurement method, in which the Employer must carefully choose the weighting parameters of the bid evaluation criteria²⁹. The parameters can be grouped into five main categories: (a) cost; (b) delivery term; (c) performance and qualifications of the bidder³⁰; (d) quality of management proposed by the bidder; and (e) design quality.

In procurement made by the federal government of the United States, the concept of Best Value has a different meaning as explained below: FAR 2.101:

“Best value means the expected outcome of an acquisition that, in the Government’s view, provides the greatest overall benefit in response to the requirement.”

Consequently, there may be contracts in which the Best Value is reached by awarding the LPTA offer (lowest price technically acceptable) as is the case with MEAT in Europe. In other words, the

27 This analysis does not correspond to a comparative study of the regulatory framework of the different countries in which this method is regulated, but seeks to contextualize the reader on the laws of different countries and jurisdictions that allow the use of this method of contracting and therefore provides valuable reference for its analysis.

28 http://www.colorado.edu/tcm/sites/default/files/attached-files/nchrp_rpt_561_0.pdf

29 Best-Value Procurement Methods for Highway Construction Projects, National Cooperative Highway Research Program, Transportation Research Board Washington, D.C. 2006. “1,100 projects were examined for this study, which allowed us to conclude that the use of the Best Value methodology resulted in improvements in cost and reduction of execution times.”

30 The legal basis in the United States for using these competencies in the assessment lies in the Brooks Act. The Brooks Act is a United States federal law of 1972 that requires the federal government to choose engineering and architectural firms based on their competence, qualifications, and experience rather than price.

score is not necessarily required to reach the Best Value. The GSA manual³¹ treats the determination of Best Value as a “continuum”, i.e. it is a spectrum, ranging from the low price, technically acceptable to the high price, technically superior.

GSA recognizes that Best Value procurements include technical, economic and previous performance factors of the bidder to determine which option provides the best solution. For instance, if a government requires an efficiency increase to reduce operating costs, acquiring a high-performance computer at a higher price may be a better option than acquiring a lower performance at a lower price.

The Best Value GSA manuals, indicates that the Best Value analysis should involve conducting a risk analysis; and the employer willingness to pay an additional cost for:

- (a) Achieving socio-economic objectives
- (b) Better performance of the Supplier in the past
- (c) Better technical approach
- (d) Improved management capabilities
- (e) Using non-price factors, which means that, apart from the LPTA quote, other monetary parameters will be used

Such instructions indicate that when the Best Value is determined, a sorting activity can take advantage of the full spectrum of the techniques as defined in FAR 2.101. When making the value determination, the bidding documents should specify the factors of evaluation and their relative weights in the decision-making process.

The new **World Bank** regulatory framework for borrower’s procurement, which entered into force in July 2016, establishes the use of the scoring system for the awarding of contracts.³² Two types of evaluation systems are considered in the Bank’s policies: (a) evaluation in monetary terms and; (b) “Rated-Type Criteria”. On the scoring criteria, the WB explanatory note on bid evaluation specifies the following:

“Merit score criteria are used to evaluate non-price attributes of bids. They are typically used in a Request for Proposals (RFP) process when

31 www.gsa.gov/MASSTUDENT/section7_2.html

32 <http://pubdocs.worldbank.org/en/201591478724669006/Guidance-Evaluation-Criteria.pdf>

attributes or differences in attributes between different Proposals may not be quantifiable (or evaluation criteria cannot be expressed) in monetary terms or when a borrower wishes to differentiate proposals using points of merit. The scoring system can be used:

1. In conjunction with the passing criteria or not passing criteria to classify and initially select the bidders; and
2. In the evaluation of the proposals (and exceptionally of the offers) to identify the most advantageous proposal”

The instructions alert that the parameters to score in the evaluation of RFP proposals, shall evaluate the extent to which the supplier can meet and exceed the requirements to perform the contract, instead of evaluating past performance of the supplier.

The evaluation parameters may include, but are not limited to, the following features:

1. Characteristics of performance, capacity or functionality that meet or exceed the levels specified in the functional requirements or influence the life-cycle cost;
2. Quality of the technical proposal regarding the description of the method, key personnel, availability of equipment, organization of the site, safety, quality assurance, mobilization schedule, implementation schedule and any other activity specified by the Employer; and
3. Ability to meet and exceed any procurement requirements

The World Bank’s recommendations suggest that the assignment of points to the technical aspects is simple, for example, using a score from 0 to 4 in which:

- 0: means that the function is absent
- 1: when the function is present, but has deficiencies;
- 2: when the proposal meets the requirements;
- 3: when marginally exceeds the requirements
- 4: when it significantly exceeds the requirements

In Europe, the assessment system in the evaluation of offers is known as the Most Economically Advantageous Tender (MEAT). Directive 2014/24 / EU specifies MEAT as follows:

“Article 67: The most economically advantageous tender from the point of view of the contracting authority shall be determined based on the price or cost using a cost-effective approach, such as the calculation of the life-cycle cost in accordance with to Article 68, and may include the best value for money, which will be evaluated based on criteria that include qualitative, environmental and / or social aspects related to the subject of the public contract in question, such as:

1. Quality, including technical value, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, and marketing conditions;
2. The organization, qualifications and experience of the personnel responsible for executing the contract, if the quality of the personnel employed can significantly affect the performance of the contract, or
3. After-sales service and technical assistance and delivery conditions such as the delivery date, delivery date and delivery period or deadline. “

In the Netherlands and Sweden, the method is known as the Weighted Factor Score (WFS). However, in these countries other methods, which do not use points such as the Awarding on Value - (AoV) are available. For AoVs, maximum values are set at the prices of parts of the offer.³³ The differences (deltas) between the prices quoted and those in AoV are calculated to determine where is the largest accumulated delta. No characteristics of the bidder are weighted, nor are weights given to criteria for their relative importance: the evaluation is done in monetary terms.³⁴

The application of the weighted evaluation method usually generates a debate regarding the way the points are assigned and whether the points awarding method considers universal principles of transparency, fair and equal treatment of bidders.

³³ http://essay.utwente.nl/65258/1/Weise_BA_MB.pdf

³⁴ https://www.researchgate.net/publication/254860242_Supplier_selection_requires_full_transparency

Relative score formula

The use of points in the evaluation of offers requires the award of points at the price offered. Many formulas have been used in Europe to establish a price score.³⁵ A commonly used formula is the “relative scoring formula” that assigns the price score as follows:

$$\text{Score of the Price} = \frac{\text{Lowest evaluated price} \times \text{Weight of the price}}{\text{Price of the offer being evaluated}}$$

A common criticism on the use of the system of price scoring with this type of formula is that the score of an offer will depend on a price relative to the alternative offer. This does not occur in the allocation of the technical score, in which the points assignment is based on the merits of each offer regardless of the technical capacities and experience of other participants. It also happens that the order (or ranking) of the evaluation between two very competitive offers depends on a third offer that may be less competitive or irrelevant. A frequent criticism of the scoring system is that bidders cannot predict the evaluation criteria before submitting their bids because the ranking or outcome depends on an unknown variable: the lowest price received or evaluated.³⁶

Absolute evaluation

To avoid the risks posed by the relative score formula, some buyers apply scores on the evaluation of bids only on the technical characteristics of bids. The points are then converted to monetary values. This system of evaluation of offers by points is known as “absolute evaluation”. This evaluation model is a good alternative for the Multilateral Development Banks (MDBs) as they seek to promote evaluation of monetary terms.

Absolute evaluation generally consists of a three-step procedure: (a) each offer receives a score in the evaluation of criteria other than price, usually technical characteristics, but may also include after-sales service, operation and maintenance, etc.; (b) each technical score is transformed into monetary value, which is added or deducted from

35 <http://www.bto.co.uk/blog/price-scoring-%E2%80%93-getting-it-wrong.aspx> and http://www.bto.co.uk/media/473384/price_scoring___does_the_perfect_formula_exist.pdf

36 <http://whoswholegal.com/news/features/article/29137/the-art-identifying-the-economically-advantageous-tender-use-relative-evaluation-models-public-utilities-procurement/>

the price offered; and (c) the offers compare to each other in monetary terms. The most appreciated characteristic of the application of an absolute evaluation model is that the evaluation of an offer does not depend on other offers, thus contributing significantly to the principle of equal opportunity.

A variant of the absolute evaluation occurs when the employer assigns the maximum score of the price factor to his own cost estimate of what may be the best price and gives the price of the participants a proportion of that maximum score as a function of the deviation from that ideal price.

Proportion of weights

The third aspect about the use of points for the evaluation of offers that is usually discussed with attention is the ideal proportion of technical qualification / price. There isn't a specific generally accepted determined weighting distribution. However, purchasing systems that use the score generally provide guidance on how points should be allocated.

Some buyers use the Kraljic's matrix to set the ranges of quality and cost weight variation that can be used depending on the type of acquisition, as in the following example³⁷:

R I S K	BOTTLENECK PRODUCTS	STRATEGIC PRODUCTS
	<ul style="list-style-type: none"> ➤ Monopolistic market ➤ Large entry barriers <p>Quality 60% Price 40%</p>	<ul style="list-style-type: none"> ➤ Critical for product cost ➤ Dependence on supplier <p>Quality = 50% Price = 50%</p>
	<ul style="list-style-type: none"> ➤ Large product variety ➤ High Logistics complexity ➤ Labor intensive <p>Quality = 30% Price = 70%</p>	<ul style="list-style-type: none"> ➤ Alternative sources of supply available ➤ Substitution possible <p>Quality = 30% Price = 70%</p>
	V A L U E	

Source: adapted from <http://www.supplychainopz.com/2013/05/supply-chain-portofolio-matrix.htm>

37 <http://www.supplychainopz.com/2013/05/supply-chain-portofolio-matrix.html>

3.4 Regulatory provisions of the country

In 2009, Mexico introduced reforms in public procurement laws. Back then, reforms sought to maximize the efficiency of public procurement to obtain better conditions for public contractors, grant a greater flexibility in procurement procedures and increase transparency of public procurement. The reforms favored the evaluation of other characteristics of the supplier or contractor in addition to price, to ensure compliance with contracts and quality.

The new regulation established three ways of evaluating offers:

- (a) **Binary system:** It consists of a “pass or fail” evaluation applicable to standardized services and goods in which the preponderant factor is the price and the qualifications of the bidder do not intervene. The binary system is the default method for works of low amount, or when it is justified that it is not possible to apply the method of points or percentages;
- (b) **Cost / benefit:** mainly used in equipment; not used in works or related services, and in which case the bidding document must include the calculation methodology; and
- (c) **Type Rated Criteria:** Indicated for works. It should be the preferred method for contracting goods and services. The points system is mandatory for procurement of high technology. Bidding must be awarded to the one who gets the highest score from the combined evaluation of the price and characteristics of the supplier or contractor.

3.5 Procurement of integral ground transportation services

(a) Background

In 2011, the SEP announced a national public bidding for a multi-year (from 2011 to 2014) contract for land transportation integrated service for SEP's workers. For the request of interests of this bid, more than 50 companies expressed their interest. Arrendomóvil, Ferbel Norte, Integra Arrenda, Tecno Alta Distribución (TAD), Transvan, TIP Mexico and Unifin were among the companies expressing their interest of participating in the bidding.³⁸

(b) Bidding Process

In February 2011, bidding LA-011000999-N9-2011 invited suppliers for the procurement of transportation services for the SEP and dependencies. The estimated cost of the tender was public and announced in the tender. The estimated cost was between USDOL 18 and 45 million depending on the number of years to be awarded. At the beginning of March the clarification meeting was held.

The following graph represents the different steps used by the SEP for the contracting of transportation services using the use of points in the evaluation of offers as a procurement method.³⁹

38 The estimated rental cost of a basic sedan vehicle is around USDOL 320 / month although some dependencies have paid for the same service twice. Alberto Aguirre. El Economista, México: <http://eleconomista.com.mx/columnas/columna-especial-politica/2016/02/23/servicios-integrales>

39 X Conferencia Anual sobre Compras Gubernamentales de las Américas de la RICG



Source: adapted from Unidad de Política de Contrataciones Públicas, Criterios de Evaluación de Proposiciones, Alejandro Luna, X Conferencia Anual sobre Compras Gubernamentales de las Américas RIGG, octubre 2014.

The Secretary of the Public Function (SFP), which regulates federal contracting, establishes the ranges of application of the scores in the point system, in accordance with the following guide:

Item	Range of Points		
	Goods and leasing	Public Works	Services
Technical proposal	Min 37.5 of 50 points	Min 37.5 of 50 points	Min 45 of 60 points
Characteristics of good or quality of works	20 to 25	15 to 20	
Bidder's capacity	5 to 15	10 to 20	12 to 24
Experience	5 to 7.5	10 to 15	12 to 18
Work plan			6 to 12
Contract performance	10 to 20	3 to 6	6 to 12
Local content		3 to 5	
Training and transfer of knowledge		3 to 6	
Bid Price	Max 50 points	Max 50 points	Max 40 points

Same source: X Conferencia Anual sobre Compras Gubernamentales de las Américas RIGG, octubre 2014.

(c) Participation in the tender

Two bidders submitted offers:

Bidder	Bid Price
Tecno Alta Distribución S.A. de C.V.	Pesos 498,862,305.27
Solar Autorentas S.A> de C.V.	Pesos 521,753,180,00

Source: CompraNet

(d) Evaluation of bids

Pursuant to article 36 of the Law of Procurement, Leases and Public Sector Services and article 52 of its Regulations, the evaluation points criteria were established in the bidding document. 60 points were assigned to the technical proposal and 40 points to the economic (price) proposal. 45 out of 60 points on the technical proposal were required from the bidders to be considered for the evaluation of the economic proposal. The technical evaluation considered four criteria:

Criterion	Points
Bidders capacity	24
Experience of the Bidder	18
Work plan	12
Contract compliance	6

Source: Bidding bases

The tender documents established that the technical characteristics (dimensions, power, transmission, etc.) of the various types of vehicles were also aspects to be assessed.

Annex 3 includes the award criterion as established in the tender. In the evaluation, both offers met all the technical aspects of almost all the types of vehicles. Solar armored SUV's failed to comply with all the requirements. Both offers received met all administrative and legal requirements.

The following table summarizes the results of the technical evaluation:

Bidder	Total score	Bidder capacity	Bidder Experience	Work plan	Contract compliance
Tecno Alta Distribución S.A. de C.V.	48	15	18	12	3
Solar Autorentas S.A. de C.V	33,3	9	6,3	12	6

Source: CompraNet

Solar Autorentas did not qualify technically and therefore, it was not further evaluated. The criterion in which Solar lost significantly points was in the experience of the firm (whose demonstration consisted in the evidence of performing two similar contracts).

(e) Benefits of applying the use of points

Given that only one company received the required technical qualification and thus only one economic offer was evaluated, it is not possible to appreciate in this case the real benefit of using the scoring system.

In other tenders awarded through the points system, marginally more expensive offers compensate for this extra cost with offers from more robust bidders, with more experience or with better work plans. In such cases the benefit of using the best value system is best appreciated.

(f) The award

The bidding process concluded with award of the contract to Tecno Alta Distribución (TAD), Coahuila Motors, Digicar America and Global Assurance Brokers Consortium for USDOL 50 million.

TAD had previously offered this type of transportation services to public entities, including Petróleos Mexicanos (PEMEX) and Federal Electricity Commission (CFE) until 2014 and 2016, respectively, when other companies won the service. TAD also lent to other public institutions such as the National Institute of Anthropology and History and the National Polytechnic Institute (NPI). With respect to NPI there are press reports about a possible contract failure. More recently, TAD unsuccessfully participated in tenders of the same nature with SEDESOL.

(g) Conclusion

The evaluation system of goods, services and works in Mexico combines the quality of the product or the work, the experience of the contractor or supplier and its performance as a supplier is a standardized procedure for public procurement in Mexico.

Due to the size of Mexico's purchasing market, the application of the best value system is the most relevant example of the systematic application of the methodology for evaluating bids on a rated type criterion in our Region.

3.6 Lessons learned and recommendations

In public procurement, the most transparent procurement method is the allocation of a contract to the bid with the lowest price offer, since it does not give much room for results manipulation. However, it is also recognized that the lower-priced method entails higher risks of awarding bids of inappropriate quality. When it comes to the acquisition of goods, quality standards can be well established in the technical specifications.

The methods that award points, in any of their variations, to the characteristics of the goods and services and to the qualifications of the bidder are considered to favor certain products, suppliers and bidders generally those large and well-established companies that usually get the best grades. One of the solutions to mitigate such risk is to include in the bidding document the details of the methodology for awarding the points. In the case of Mexico, the bidding documents established a very detailed methodology.

3.7 Expected benefits and risks and factors of success

A clear definition of the scoring system in the evaluation criteria and the tender documents is one of known challenges when employing this procurement method. The biggest criticism concerns that part of the evaluation points are assigned to the bidder rather than evaluate the offeror's ability to execute the contract.

The bidding document should be clear enough so that potential bidders understand the areas that are most critical and can simulate the evaluation before submitting their bids.

If there are ambiguities in the bidding document that are interpreted differently by different bidders, the scoring procedure will be incorrect. This can lead to protests from losing bidders.

Some observers have attributed to the use of the points system the rupture of some monopolistic structures in Mexico, including the item of rent of vehicles for the transport of personnel. In fact, TAD, the winner of the tender in this case, had a hegemonic position in the market for the leasing of vehicles to institutions for many years but with the application of a scoring system, this company has lost largest contracts notwithstanding their experience and background.

The application of the points system is well established and has a long tradition in Mexico. The frequent use of the method, which must be used for unless otherwise justified (not using the point assessment system requires a prior justification), has allowed the development of national capacities in the application of the method in all dependencies of government purchasers at the national level.

A well-established protest system in Mexico on the SFP for federal government purchases is a guarantee that awarding points is reasonably objective.



PUBLIC PRIVATE PARTNERSHIP

4.1 Introduction

In January 2012, decree DOF 16-01-2012 of Public Private Partnerships Act was enacted in Mexico. This Decree regulates the long-term contractual relations between public sector entities and private companies. Specifically, Decree 16-01-2012 regulates the provision of services to the public sector through the services and infrastructure provided by a private company.

Since 2003, the federal government has used different PPP schemes for the development of infrastructure, energy (especially oil and electricity), health, education, and public security projects. At the state level, most states have legal frameworks that allow them to develop their own PPP schemes, which were complemented and strengthened by the 2012's federal law.

Concessions and Public Private Partnerships (PPPs) were designed to promote the development of public infrastructure. The main difference between a concession and a PPP, or its Public Service Delivery Projects variant (PPS), is that in the former the private sector **provides a service to the public** assuming the risks involved. In the second, the private sector **provides a service to the public sector**, as in the operation of a hospital. Public-Private Partnerships (PPPs) are being used in many countries to develop public infrastructure works, mainly in the energy, transport and water and sanitation sectors, but also in other sectors such as health and education.

When PPPs emerged in the countries of the Region as an alternative to public spending, investor selection often occurred with little or no competition, especially in private sector initiatives or in projects with “unrequested” offers.

In Mexico, the issuance of investment certificates, the selection of the investor partners began to be the result of tenders, sometimes restricted or limited, but generally open.

In sectors such as health, progress in the use of PPPs was as well noticeable in other countries of the Region such as Chile, Brazil and Peru, and to a lesser extent in Colombia. Mexico, together with Brazil and Peru, are the countries with the greatest development of PPPs and PPS. However, they still do not reach the level of maturity of PPPs of developed economies like the United Kingdom or Australia.

From the perspective of public procurement, PPPs represent a two-pronged challenge: (a) the selection of the investor partner; and (b) the contractual conditions of the resulting association.

In Mexico, the National Infrastructure Fund and the National Bank for Public Works and Services (Banobras) are the two most representative institutions responsible for PPP financing, while the Ministry of Communications and Transport (SCT) promotes private investment in their sector. The provision of services for the development, construction, equipping and operation of public health facilities between 2005 and 2012 for about USDOL 430 million is one of the largest examples of Public-Private Partnerships (PPPs) in the Region.

Several construction and service companies invested in Mexico around USDOL 400 million in the construction and equipment of six federal and state hospitals in exchange for an annual payment made by the government. The contract modality used was the Service Provision Project (PPS).

4.2 Description of the procurement method

The type of contract to be used in PPP emerges as an even more complex issue than investor selection. PPP investment transactions require negotiations to reflect the characteristics and variables of a given infrastructure project.

Recognition of these variables and how to address them, the impact of different legal systems in different countries, and the need to have tailor made provisions are an obstacle to the adoption of an international standardized contract for hiring PPP partners.

Efforts in this direction suggest limiting the standardization of the contract model to eight principles that have the greatest impact on PPP relations. These are:

- (a) Events of force majeure
- (b) Harmful government actions
- (c) Changes in the law
- (d) Termination payments
- (e) Refinancing
- (f) Rights of lenders to intervene
- (g) Confidentiality and transparency
- (h) Applicable Law and Dispute Resolution

Selection of the investor: in Mexico, the procurement of PPPs is done through public bidding. The type of long-term contract used is called the “Provision of Services”.

Service Provision Projects (PPS): The construction of the regional hospitals of the ISSEMYM (Social Security Institute of the State of Mexico and Municipalities) of Toluca and Tlalnepantla are the result of a PPP. Hospitals were constructed through a PPS by which in addition to the design and construction of the works, the Contractor has the following obligations:

- (a) The maintenance or replacement of equipment of the installations during the validity of the Project
- (b) The availability of consumables linked to the equipment
- (c) Comprehensive hemodialysis services, laboratory, and a monitoring mechanism to accompany the contracting unit during the first 4 years to follow up the service commitments acquired under the Service Delivery Agreement

PPPs in the health sector of Mexico went through several generations of models.

Few of the characteristics and functionalities of the concession changed from generation to generation.⁴⁰ The hospitals of Toluca and

⁴⁰ In the case of the Hospitals, the difference of generations of APP appears to be associated to the sequence or temporality of the bidding and not to special characteristics of each generation. The difference between “generations” is clearer in the road sector. In the first generation of concessions, the State guaranteed a minimum income to the concessionaire. The second generation only guaranteed partial income. The third-generation distributed risk better while the fourth generation paid for availability of the work, which is consistent with the PPS model of the health

Tlalnepantla correspond to the fourth generation of PPPs in the health sector of Mexico. Other cases include Hospitales Bajío and Chihuahua, the first to be built by APP. With the second generation was carried out the construction of the General Hospital of Ciudad Victoria; while the third generation carried out the construction of the General Hospital Zumpango.

4.3 Reference framework

In procurement by the public sector, the use of innovative procurement methods is usually preceded by the development of a framework that regulates the conditions under which procurement will take place. This section will analyze the regulatory framework of some of the countries and jurisdictions in which contracting of APP is regulated as a procurement method and thus, constitute an important reference to understanding and applicability.⁴¹

The use of PPP schemes in the health sector dates back at least a decade in the region:⁴²

Country	Not started	Study completed	Bidding	Construction	Operation	Total
Brazil		6	11	6	1	24
Chile				3	2	5
Colombia		1				1
Mexico		6	1		6	13
Peru	1	11			4	16
T&T		1				1
Total	1	25	12	9	10	60

PPP Projects in the Health Sector as of February 2016
Source: Technical Note No. IDB-TN-1068

sector in Mexico.

- 41 This analysis does not correspond to a comparative study of the regulatory framework of the different countries in which this method is regulated, but seeks to contextualize the reader on the laws of different countries and jurisdictions that allow the use of this method of contracting and therefore provides valuable reference for its analysis.
- 42 10 years of Public-Private Partnerships (PPPs) in health in Latin America What have we learned? Note 4 of the series of technical notes on public-private partnerships in the health sector in Latin America. Technical Note No. IDB-TN-1068: <https://publications.iadb.org/handle/11319/7751>

Projects in Mexico, Brazil, Colombia, Peru and Chile. Brazil, Peru and Mexico account for 88% of projects in the region. In Peru, PPPs in the health sector are modalities of participation of private investment in which experience, knowledge, equipment and technology are incorporated, and risks and resources are distributed, preferably private, to create, develop, improve, operate or maintain public infrastructure or provide public services.

The law that regulates the PPPs of Peru is Legislative Decree No. 1012 - Framework Law of Public Private Partnerships for the Generation of Productive Employment.

This Law establishes Rules for the Expedited Process of Promotion of Private Investment that was modified by Legislative Decree No. 1016, in its Third Complementary Transitory Disposition. Through DS-146-2008, the Regulations of the APP Framework Law further elaborated.

The PPP modality may include: concession, operation, management, joint venture and other forms. It is not an APP when the object of the contract is the provision of labor, supply and installation of equipment or execution of public works. An APP can be accessed either by state initiative or by private initiative (also regulated in Legislative Decree No. 1012), depending on whether the origin of the project is in the public sector or in the private sector.

The use of PPPs in the health sector has been widely analyzed. The Bank issued a technical note which recounts public health experiences in the Region). The authors point out six general lessons:

- (a) PPPs allow for the execution of large investment plans in less time
- (b) (B) Political support is necessary for the implementation of PPPs
- (c) The APP contract allows the investment portfolio to be “shielded”
- (d) PPPs generate a benchmark for the traditional investment and operation processes
- (e) PPPs oblige the health sector to modernize its approach and management capacity

In Colombia, the PPP model of the health sector follows the following graphic scheme:

4.4 Regulatory provisions of the country

After the expansion in the use of PPPs in Europe, particularly in the United Kingdom, Mexico decided to adopt the use of PPPs for the construction of public works. PIDIREGAS was the first long-term public infrastructure investment project recorded in the country with active participation of the private sector. This scheme was created in 1995 through a normative reform designed to overcome the public resource scarcity, product of the 1994 economic crisis, and the major capital investment needs required to develop energy infrastructure for Petróleos Mexicanos (PEMEX) and the Comisión Federal de Electricidad (CFE).

Among the main innovative features was the possibility for public entities to reach out to capital markets for private financing. Through PIDIREGAS, public entities signed contracts with private firms to build and transfer an asset in exchange of long-term differed payments. The main source to finance those payments was the income generated by the project itself. In some cases, the public agency wouldn't have to buy the assets but use it in coordination with the private firm.

The success previously achieved in infrastructure projects, incentivized the country on exploring diverse PPPs investment modalities. Mexico became the first country in Latin America to adopt PPP schemes for projects in the health sector. The first project tendered took place in 2005 and consisted in the construction of the Regional Hospital of High Specialization (HRAE) Bajío, Guanajuato, followed by HRAE Ciudad Victoria in 2007.

In Mexico, the APP partnership procurement is carried out by means of a public tender per the provisions of Articles 38 and following of the Law of APP of January 16, 2012⁴³. The contracting generally consists of an open tender.

According to the local regulatory framework, the criterion of public works award may include scores or percentages of weighting of technical aspects and the price unless the use of the binary system is justified. Binary system is an evaluation of qualifications and content on a pass or fail basis awarded to the lowest price.

43 http://www.diputados.gob.mx/LeyesBiblio/ref/lapp/LAPP_orig_16ene12.pdf

In fact, in the case of the Toluca Hospital, the bidding process indicates that the evaluation method is binary which is possible in public works, when there is a justification for not using the technical-price weighting system.

Instead of pass or fail, the technical evaluation of the technical quality aspects of the proposals was based on a point system. The bidders had to reach a minimum number of points. However, that score was not weighted with the price. The contract was awarded to the lowest price bid.

4.5 Description of the case: Construction and Non-Medical Operation Hospitals

a) Background

On January 19, 2010, the Governor of the State of Mexico published Decrees 40 and 41 in order to approve the development of the Regional Hospital Projects of Tlalnepantla and Toluca under the PPS modality.⁴⁴

In the application of the PPS model, the State was responsible for providing the physicians, nursing services and medical supplies of the hospital, while the PPP partner oversaw supervising and carrying out the construction process, managing the facilities and equipment, and the provisioning of services over a long period.⁴⁵

ISSEMyM was the implementing agency of the Toluca and Tlalnepantla PPP hospitals. After conducting tenders between 2009 and 2010, the contracts of Toluca and Tlalnepantla were awarded in October and November 2010 to Mexican contractors Prodemex and Marhnos, respectively.

44 The planning and management for the establishment of a PPP generally requires the service of a firm specialized in this field that allows the structuring of projects considering risk assessment, financial advice, construction of financial models and legal support. The consulting firm Currie & Brown, a European firm specialized in the field of public-private partnerships, was the structuring agent for the procurement of approximately 12 hospital facilities in Mexico, including the regional hospitals of Toluca and Tlalnepantla for the State of Mexico.

45 The regional hospitals of Toluca and Tlalnepantla have general outpatient, emergency and hospitalization services for the four basic specialties: pediatrics, obstetrics, surgery, and internal medicine, which include several subspecialties of second level of care supported by auxiliary diagnostics services, as well as with hemodialysis and inhalation therapy units, adult and children intensive care units. Both hospitals have an External Consultation Clinic type B.

The Tlalneplantla PPS contract was signed in August 2011 and was financed with conventional long-term debt and development equity securities that were purchased by Afore Banamex and New York Life Insurance. New York Life Insurance was the first-time foreign investors company backing up the financing of a Mexican PPP.

As an interesting feature, performance-based hospital services contracts introduced a new level of risk participation in Mexican PPPs, making PPP partners responsible not only for construction and maintenance but also the installation of equipment, consumables and certain clinical services to ensure that the facilities remain fully operational during the 25 years of the agreement.⁴⁶

In Mexico, the procurement of PPPs is carried out through public tenders, generally a public tender with a deadline of not less than 20 days for the submission of bids. In the cases examined from the Regional Hospitals of Mexico, there was no prequalification.

The qualification requirements set forth in the International Bidding Terms 44065001-011-10 (section VIII, Page 83) consisted of six main criteria:

- (a) General Accreditation of experience in Design and Construction: Must demonstrate at least 5 (five) years of experience in design and construction activities in similar projects at the date of submission of their proposal
- (b) General Accreditation of Experience in Administration: Must prove at the date of presentation of his proposal, minimum experience of 3 (three) years in administration of Similar Projects
- (c) Accreditation of specific experience in the construction of hospital facilities: at the date of presentation of their proposal, the bidder must certify at least one contract for the construction of hospital facilities of at least 15,000 square meters or 100 beds

46 Similar to the Mexican experience of the Toluca and Tlalneplantla hospitals is the Brazilian experience of awarding a PPP in the health sector for the construction of the Hospital do Subúrbio in the city of Salvador. This modality of contracting, the first APP in Brazil of the health sector, improved emergency hospital services for one million people in the state capital of Bahia. APP Hospital do Subúrbio was contracted in May 2012. The contract was awarded to a consortium made up of Promedica, one of the main Brazilian companies in the health sector and Dalkia, a French company specialized in the management of non-medical facilities and services. The concessionaire is responsible for equipping, maintaining and operating both clinical and non-clinical services in the hospital for ten years. The case reports indicate that Promedica and Dalkia invested USDOL 23 million in the first year and are likely to invest USDOL \$ 9 million over the life of the concession.

- (d) Stockholders' equity of at least USDOL 15 million presented in at least 2 of the last 3 fiscal years
- (e) Total income greater than USDOL 75 million accumulated during the last 3 fiscal years. Total revenues refer to net revenues (net sales), after discounts
- (f) To certify financing from a national or foreign financial institution, for the execution of a project, for at least USDOL 30 million within the last 3 (three) fiscal years

Among the problems solved for the execution of the Toluca Hospital was the resolution in September 2011 of the dispute over the possession of a fraction of the hospital land, which led to an extension of the Contractor's execution period.

Other interesting features of the tender are as follows:

Reimbursement of the design: although the PPPs usually request the design of the works to the winner, there are cases in which parts of the design of the works are finished and available to the Contractors at the time of the bidding. In our case, the bidding document established that the value of the designs prepared by ISSEMYM should be reimbursed by the winning bidder for USDOL 550,000.

Specific purpose society: the bidding document established that the winning Consortium should establish a specific purpose society⁴⁷ to execute the construction and physical operation of the hospitals. The specific purpose company shall be limited to the development of the Project and to the performance of the activities that are necessary in the attainment of said object.

Other conditions of bidding rules: bids should be submitted in two separate technical and economic packages with deferred opening of the second envelope. The validity of the offers was requested for 150 days. The economic envelopes should include a bid guarantee of 10% of the Annual Payment for the Service.

Financing conditions: The bidding documents established that bidders should describe the financial terms and conditions of their financing in the terms shown in Annex 4.

47 Clause 2.2 Consortium and Specific Purpose Company

Evaluation criteria: the evaluation methodology is described in Annex 5 and included:

- (a) The presentation of a series of documents and mandatory certifications that, if not presented, would lead to rejection of the proposal
- (b) Accreditation of the experience and technical ability described above as qualification requirements to be examined on a pass or fail basis
- (c) The quality of the technical proposal in terms of the functional units of the preliminary bid and the functionality of the design with a maximum score of 118 points, and 83 points as the minimum to technically qualify
- (d) Financial evaluation: the contract will be awarded to the Bidder who meets the technical requirements whose Maximum Payment for Services is the lowest without exceeding the Budget Ceiling established by the Employer (which is not public, but is delivered to the social witness of the tender in a sealed envelope)

b) The bidding process

During 2010, the International Public Tenders for the design, construction and operation Regional Hospitals of Toluca and Tlalnepantla, respectively 44065001-011-2010 and LPI 44065001-012-2010 were carried out.

Three consortia with 11 firms participated in the Toluca contract. The Tlalnepantla contract involved four consortia representing 15 companies. A fourth bidder for the Hospital de Tlalnepantla was disqualified.

The tender consisted of a two envelopes international bidding process. The first envelope to be opened contains the technical offer and the second the economic one. Opening of the second envelope only takes place after the opening of the first one. The economic offers received were offers from national consortia according to the following detail:

Toluca Regional Hospital

GIA Construction A-HERME-ISS	Marhnos group	Prodemex-Proan
Annual Payment: \$268,800,000.000	Annual Payment: \$322,881,182.76	Annual Payment: \$236,532,000.00
Maximum amount of the contract: \$6,384,000,000.00	Maximum amount of the contract: \$7,587,707,794.86	Maximum amount of the contract: \$5,617,635,000.00

Tlalnepantla Regional Hospital

GIA Construction A-HERME-ISS	Marhnos group	Prodemex-Proan
Annual Payment: \$282,900,000.000	Annual Payment: \$267,901,000.00	Annual Payment: \$249,479,988.00
Maximum amount of the contract: \$6,718,883,000.00	Maximum amount of the contract: \$6,362,648,750.00	Maximum amount of the contract: \$5,925,149,715.00

The tender process of the Regional Hospital of Tlalnepantla was very similar to the one of the Hospital of Toluca. The main difference of Tlalnepantla is that a participant consortium was disqualified due to lack of experience and resources for the task⁴⁸.

The process was carried out by the Social Witness of the PPS tender of the Regional Hospital of Toluca⁴⁹:

48 Source: La Gaceta Page 29 of January 13, 2011: Report of the Social Witness Dimuid Hurley O'Sullivan, November 24, 2010: The Cuisa consortium did not comply and its offer was discarded. One of the basic technical requirements was that bidders should have experience in building hospitals of at least 100 beds and 15,000 square meters of construction. Cuisa showed evidence of the construction of 60-bed hospitals and about 9,000 square meters of construction. Another basic technical requirement was that bidders should have a Minimum Stockholders' Equity of \$ 200 million pesos in at least 2 of the last 3 years. Cuisa credited an equity of \$ 187 million pesos in 2009, \$ 127 million pesos in 2008 and \$ 133 million pesos in 2007.

49 Source: La Gaceta Page 22 del January 13, 2011: CPC Fernando Dablantes Camacho, Social Witness Report

Activity	Date or Data	Source or commentary
Bid invitation	24 mayo 2010	COMPRANET and two newspapers of wide circulation
Document availability	May 24 and August 17, 2010	90 days
Prospective Bidder who purchased bidding documents	Constructora y Edificadora Gia+a S.A. de C.V.; Promotora y Desarrolladora Mexicana, S.A. de C.V.; Igsa Solutions, S.A. de C.V.; Acciona Infraestructuras Mexico, S.A. de C.V. ; Siemens, S.A. de C.V.; Concesiones Aldesen, S.A. de C.V.; Operadora Cicsa S.A. de C.V.; MK Humana, S.A. de C.V.; Vitalmex Internacional, S.A. de C.V.; Grupo Marhnos, S.A. de C.V.; Heberto Guzmán Desarrollos y Asociados, S.C.; Constructora y Urbanizadora Ixtapan, S.A. de C.V.	12
Extended deadline	June 23	
Clarification meetings	June 16 and 30, July 14 and 27 and August 10 2010	
Amendments	August 16 and 25	
Bid opening and securing second envelope	August 31	<p>Consortium: Constructora y Edificadora GIA+A, S.A. de C.V., Grupo Hermes, S.A. de C.V. and ISS Facility Services, S.A. de C.V.</p> <p>Consortium: Marhnos Turismo, S.A. de C.V., Marhnos Construcciones, S.A. de C.V., Inmar del Noreste, S.A. de C.V., Proyectos Inmobiliarios Marhnos, S. de R.L. and Armando Juan Negrotti.</p> <p>Consortium: Promotora y Desarrolladora Mexicana, S.A. de CV., Promotora y Desarrolladora Mexicana de Infraestructura, S.A. de C.V. y Desarrollo de Hospitales PROAN, S.A. de C.V.</p>
Financial proposals opening ceremony	September 10, 2019	Three consortia qualified technically

c) Bid evaluation Regional Hospital of Toluca

The three participating consortia presented the technical and complementary documents required as mandatory in the requested terms. This allowed them to accredit the capacity and technical experience necessary for the project.

Under the specific conditions, experience was requested in the conclusion of at least one contract for the construction of a hospital installation of at least 15,000 m², or 100 beds, celebrated in the last two years, and the experience required in the administration of similar projects.

Regarding design functionality and aspects related to design, the three consortiums reached the minimum required score in the bidding documents, and met the experience of subcontractors in the required services.

The methodology used for the evaluation of technical offers is described in Annex 5 and included three steps:

- (a) The presentation of a series of documents and obligatory certifications that in case of not being presented would cause in the rejection of the proposal
- (b) The accreditation of the experience and technical capacity as described above
- (c) The quality of technical proposal in terms of functional units in preliminary design and the functionality of the design for a total score of 118 points as the and a minimum of 83 points to qualify.

Subsequently, the executing agency determined that the three participating consortia accredited their legal and financial capacity, complying with stockholders' equity and total required income and creditworthiness, in terms of the conditions established in the bidding documents.

In September 2010, the results of the qualitative evaluation of the three technical proposals were read out, and the envelopes containing the economic proposals were opened, which were delivered in that act by a security company contracted for this purpose. A public notary confirmed that envelopes were closed and had not been previously opened.

The review concluded that the economic offers will have the documentation requested in the bidding documents as mandatory. The maximum amount of payments for services offered not including VAT was as follows in Mexican pesos:

Entity	Imports of their offers excluding taxes (IVA)		
	Monthly payments for offered services	Annual payment for offered services	Maximum amount of payments for offered services
Pordemex	\$19,711,000.00	\$236,532,000.00	\$5,617,635,000.00
GIA	\$22,400,000.00	\$268,800,000.00	\$6,384,000,000.00
Marhnos	\$26,906,765.23	\$322,881,182.76	\$7,587,707,794.86

Table No. 2. Economic Offers of Participating Consortiums in Mexican Pesos
Source: Social testimony referred to above published in the Government Gazette of January 13, 2011

Given that at least one of the proposals for the prices offered was below the budget ceiling of the executing agency, the three proposals were accepted.

On September 13, 2010, the ISSEMyM Project Committee evaluates the technical and economic results of the proposals submitted by the three consortia mentioned, endorsed by the opinions of the technical, financial and legal advisors, resolves the award in favor of the Consortium Promotora y Desarrolladora Mexicana, SA De C.V., Promotora y Desarrolladora Mexicana de Infraestructura, S.A.C.V. and Hospital Development PROAN, S.A. C.V. (Jointly the “Prodemex Consortium”); whose price turned out to be the lowest and the other two consortia were informed that the reason why they were not winners was that their monthly payment, annual payment and maximum amount of payments for services offered were higher to that offered by the Consortium Prodemex.

d) Benefits of applying the method

Based on the report of the Governor of the State of Mexico, the procurement of this PPP had an approximate cost of 4,700 million Mexican pesos per hospital. According to the report, the use of PPP through a PPS contract, allowed the State to have significant savings, as the hiring by traditional mechanisms would have generated higher estimated costs per hospital of 5,700 million Mexican pesos.

The following are considered advantages of using PPP:

From the financial point of view

- a. Best choice among the various financing alternatives.
- b. Minor immediate disbursements by the government.
- c. Repayment of services and infrastructure
- d. Lower public debt, if any.

From the technical point of view

- a. Complementary exploitation of the advantages and capacities of the public and private sectors.
- b. Greater efficiency in the provision of public services and the construction of infrastructure

In terms of efficient use of public resources

- a. Incentives for the timely conclusion of the work: the link between the design and construction of the project and the payment conditioned by the provision of the service generates the appropriate incentives for it.
- b. Incentives for private companies to minimize their costs of operation and maintenance throughout the life of the project.
- c. Cheaper and better quality performance standards and public services.

In terms of project management

- a. Better supervision and management of the project by the government, leaving its operation to private companies.
- b. More efficient risk allocation.

e) The award of the Hospitals of Toluca and Tlalnepantla

Consortia formed by Promotora and Desarrolladora Mexicana, S.A. (PRODEMEX) for the case of Toluca, and Grupo Marhnos, S.A. for Tlalnepantla were the winning consortia of the tenders.

The company Marhnos had, at the time of the tender, good prestige in the public health construction sector. However, starting in 2015, it was rumored that the company was facing some financial distress due to the operation of a hospital located in Yucatán and the construction of

the Reynosa-Mission International Bridge. Both constructed through PPPs.

In each case, a Service Delivery Project (PPS) contract was signed with specific purpose companies formed by the winning Contractor of each tender. For the Regional Hospital of Toluca, the concessionaire company was called “Concesionaria Hospitalaria Toluca” (CHT) while, for the Tlalnepantla Hospital, the concessionaire was officially known as “Hospital Infrastructure of the State of Mexico, SA de CV (IHEM) belonging to the Marhnos group. Cal y Mayor Asociados acted as an independent engineer consulting company.

A review of the IHEM concessionaire’s Income Statement showed a net profit of 25 million pesos in 2015 and 17 million pesos in 2014 (see Annex 2). The projects are part of the second generation of Service Delivery Projects (PPS) issued by the Government of the State of Mexico were recognized by the World Bank and are considered as the most advanced of its type at the national level. Estimated savings are calculated to be of USDOL 150 million over the 25-year period.

f) Status of the PPP

Hospitals went into operation in the middle of 2012, at a cost above USDOL 25 million. Both hospitals were built and operated using the PPS scheme. Savings are estimated to be USDOL 4.6 million per year for the state government.

g) Conclusion

The PPP processes of the hospitals of the State of Mexico are working satisfactorily. The calculations show that the operation costs are a third lower. Both hospitals are expected to serve 6,000 hospitalized patients and 20,000 outpatients a year.

4.6 Lessons Learned: Expected Benefits, Risk and Success Factors

The benefits commonly attributed to PPPs in the health sector are listed in Section 5 (d). Such advantages consider a variety of technical, administrative, and financial aspects that result in a better use of public resources.

The PPPs in this case are long term: the service contract is for 25 years. APP hospitals are currently operating over five years. If the contractors continue to fulfill all their obligations, the advantages and benefits predicted will be consolidated.

Risks are present throughout the full term of the service contract. Some of those risks are: risk of design, over cost and delay; operation and maintenance, infrastructure availability, residual value, politics, demand, and finance. In the road sector, concessions in Mexico were considered very successful in the first years of operation. However, of the almost 50 concessions granted to date, the government canceled almost half before the expiration of the term of the concession.

From the perspective of structuring the operation, in 2010, the Toluca Regional Hospital was classified by the International Finance Corporation (IFC) of the World Bank as one of the most advanced PPP of its kind, placing ISSEMyM at the frontline in the provision of public health services in the country.

According to the IFC, which advised the ISSMyM on the structure and implementation of PPPs, the contracts were structured with environmental awareness so the operation will save 20% of energy compared to other hospitals and that reduced emissions by an amount of 10 tons of CO₂ per year. According to the IFC, the overall cost of operation was reduced by one-third and attracted private investments for USDOL 60 million each.

The type of concession adopted by ISSEMyM continues to be at the forefront of APP schemes in Latin America after five years of successful operation.

The participation of a highly-experienced structuring firm, as well as the experience and beneficial influence of the federal level at the state-level APPs, are two factors of success, together with the maturity and institutional capacity, level of professionalism of the public official, and the clarity of the Regulatory framework of Mexico.



1. Bidding with Price Discounts

Annex 1: Transcription of Bidding Documents

Discount Clause, pages 9 and 10 of the Bidding Documents

“20. Discount Clause

20.1 Once the analysis of bids has been carried out, the Technical Area responsible for the evaluation of bids will draw up a comparative table of bids that comply legally and technically and will request the Supplier to communicate to the representatives with sufficient legal capacity of the first three in price.

20.2 The Provider shall cite the first three technically and legally chosen proposers, giving it a period of five working days and setting the date and time to submit the discount to its offer in closed envelope, without affecting the other terms of the proposal. You must record in the file of the invitation made via fax, email or WEB page of the Provider.

In case only one company is eligible, a direct negotiation with the offeror will be carried out.

20.3 The discount document must be presented in a sealed envelope, provided it is carried out until the deadline set for the purpose duly identified with the following legend:

Discount offer

Short tender No. 2011LA-000140-PROV

Date of presentation.

Name of the firm

20.4 In the call for discount will be present by the ICE the Coordinator of Administrative Contracting of the respective UEN, a representative of the Legal Area and a representative of the Provider.

20.5 The supplier’s representative shall draw up a record of the list of participants in the face-to-face event and the name of the company he represents.

20.6 The supplier's representative will proceed to read aloud to those present the scope of the discount proposal and will include it in the minutes that are drawn up for this purpose.

20.7 The discount act shall be signed by the participants of the ICE group and by those representatives of the companies directly interested who so request.

20.8 The discount must be free of conditions to be subject to acceptance.

20.9 No discount proposals that have not been submitted at the hearing set by the ICE's Provider for this purpose will not be accepted.

2. Bidding with Negotiation

NOMBRE ANEXO: DIFFERENCES BETWEEN COMPETITIVE DIALOGUE AND BIDDING WITH NEGOTIATION

DIFFERENCES WITH THE COMPETITIVE DIALOGUE.

In the Bidding with Negotiation, the Employer shall have a very clear conception of the object of the contract or the desired solution (to provide solid basis and adequate negotiating capacity). Negotiations during the process will encourage new ways of meeting the need and distribute risks in the best possible way. In the Competitive Dialogue, the way in which the Employer idealizes the solution to his/her need is not decisive in the process. Unlike the Competitive Dialogue - in which discussions always end before the final presentation of the best offer - in the Bidding with Negotiation, discussions can proceed with the selected bidder even after the award and until the contract is finalized. In most cases, discussions should also end with the submission of the final offer.

In some circumstances, there is some confusion between the methods "Competitive Dialogue" and "Bidding with Negotiation." The misunderstanding begins because the European norms are indifferent between both methods. Certainly, from the point of view of the process, there are no major differences: both are bidding processes where the contractor discusses with the offerors the potential solutions to the client's changing requirements.

The main difference is the contractor's capacity to bid complex procurement contracts. If the contractor's capacity is low and/or the procurement process is out of the scope of

the executing agency, it is preferred to use “Competitive Dialogue.” That way, the agency learns about the market and the industry and it can specify a need/requirement in a more competitive and assertive way. (**think out of the box**).

On the other hand, if the contractor is more experienced and has the resources to establish technical negotiations with one or more suppliers, the most appropriate method will be the “Bidding with Negotiation.” With this method, it will be easier to get solutions that improve the contractor’s initiative through using the innovation and technology offered by the market when the creativity is boosted. (**push the envelope**)

Annex 2

The following link provides the full text to the tender with negotiation of Directive 2014/24/EU of February 26, 2014: **<http://eur-lex.europa.eu/eli/dir/2014/24/oj>**

Annex 3

The following link provides the bidding document used by EPMVarias for the negotiated tender:

https://www.epm.com.co/site/Portals/0/centro_de_documentos/Contratos_Emvarias/Arrendamiento_Operativo/PLIEGO_DE_CONDICIONES.pdf

The following part of the evaluation criterion of Request for Proposals 06-2014 is reproduced below:

EVALUATION

The evaluation consists of a series of steps that begin with the revision of the formal and documentary aspects of the proposal, aiming to determine the fulfillment of the participation requirements and the “complete” nature of the proposal and end with the application of the factors, criteria and weighting formulas that allow to make proposals comparable in terms of scores. Consequently, among the proposals that comply with legal, technical and economic requirements, and

after weighting, the most favorable proposal for EMVARIAS will be selected, according to the maximum score assigned to each of them.

3.1 Legal aspects. EPM will examine proposals to determine whether tenderers are qualified to formulate them in accordance with the requisite participation requirements, whether they are complete, whether the required guarantee has been provided, whether the documents have been duly submitted, if there are no miscalculations, and in general, if they conform to the documents of the present contracting process.

3.2 Weighting Factors. The offers will be evaluated considering the criteria listed below and based on this will establish an order of eligibility. The qualification of the offers will have a maximum score of one thousand (1,000) points, distributed as follows: FACTOR SCORE Value 950 Rear Suspension System (Ssi) 50.

Finding errors or inconsistencies can be corrected - because, for example, can be inferred from the explicit data provided by the proponent - EMVARIAS will assume as value that resulting from making corrections or adjustments legally relevant.

The proponent offering the lowest price per fixed fee will have a maximum allocation of nine hundred (950) points, based on the total value of the canon offered in the price form. The others will be assigned proportional scores according to the following formula: $Poi = Vo / Vi \times 950$ Where: Poi = Score of the analyzed proposal. Vi = Quoted value of the analyzed proposal Vo = Quoted value of the most economic proposal

Additional weighting factor: In addition, a score will be awarded if the tenderer complies with the following characteristic: Si = If the proposal has a heavy-duty, low-weight, compact rubber or elastomer bellows lubrication-free, With longitudinal and transverse dampers and torsion bars, without central hub, shall have a value of fifty (50) points; Otherwise you will have zero (0) points.

3.3 Deviations. Any error, reserve, omission, informality or nonconformity is considered to be a deviation from the present offer in relation to the conditions or terms of the statement or in relation to the rules in force in science, technology or Practices applicable to the performance of the services and / or activities.

Notwithstanding their understanding in the common language, for the purposes of this specification the terms just noted shall also be understood with the following scope:

- (a) **Error:** Is the lack or inadequate provision of data, information or expressions that either had to be supplied or included, or had to have a different form or content.
- (b) **Reservation:** It is the implicit or explicit attitude of the proponent to keep or conceal information necessary for the understanding or evaluation of his offer, or the warning that he is subject to some type of condition not foreseen in the statement.
- (c) **Omission:** It is the proponent's clear attitude to delete information or essential elements of it, in such a way that either a form appears incomplete, or a text loses meaning or the scope of the information becomes useless. Informality: It is the use of expressions or formats different from those indicated or commonly used in the field of activity that governs the "object" of the contracting, as occurs when the proponent presents data outside a form assigned for it.
- (d) **Disagreement:** It is the inadequacy that presents some information, characteristic or condition that must provide the proponent, in relation to a current standard or rule. For example, there is disagreement in the offer of a vehicle with diesel engine, if the requested was gasoline, even though both, in principle, can serve the same purpose. Substantial deviations. Substantial deviations are:
 - i. They affect in an "essential" manner the form, scope, quality or operation of the services and / or activities required.
 - ii. Limits the EPM / EMVARIAS rights or the obligations of the offeror emanating from the contract; or
 - iii. If rectified, it would unfairly affect the competitive position of other bidders who have submitted an offer and who substantially conform to the conditions or terms of the bidding documents.

The other deviations are not substantial and will be corrected directly by EPM when this is feasible from the information provided by the proponent; Otherwise, EPM reserves the right to request clarifications, clarifications or corrections that are necessary, without this supposing the right of the offeror to modify the proposal. The requested bidder must attend the call of EPM within the term that is indicated for the effect; In case of not doing so, EPM will be able to eliminate its offer.

Mathematical, arithmetic or formal errors submitted by bids will be corrected directly by EPM as follows: a). If there are discrepancies between a unit price and the total price obtained by multiplying that unit price by the corresponding quantities, the unit price will prevail. The total price will be corrected unless there is an obvious error in the decimal point of the unit price, in which case the total quoted price will prevail and the unit price will be corrected; 59 (b). If there is an error in a total price as a result of adding or subtracting subtotals, the subtotals will prevail and the total price will be corrected; And (c). If there is a discrepancy between words and figures, the amount expressed in words shall prevail unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail, subject to subparagraphs a) and b) above.

When the offeror fails to quote an item or activity, it will proceed as follows: For the purposes of the comparison of the offers, EPM will include the highest price quoted by the other bidders so that said offer has been rejected or eliminated. For purposes of acceptance of the offer, the value of the item or activity will be the average of all bids submitted including those that have been rejected or eliminated.

In any case, substantial deviations will lead to the elimination of supply.

3.4 Total score and comparison of proposals. Once the proposals have been evaluated in each one of the indicated factors, the scores obtained in each one of these will be added together and the total score of each proposal will be assigned; Based on this the corresponding comparison will be made by means of the elaboration of a list that locates respectively to each proponent

from which it has obtained the greater total score until the one obtains the minor one. The proposer who occupies the first place will be considered selected and his offer will be recommended to the server competent for the acceptance. If by doing the weightings two or more proposals are scored with the same score in the first place, the proposal with the highest score will be preferred in additional weighting factors. If equality remains, the proposal that presents the highest value of the related contract for the fulfillment of the participation requirement will be preferred.

- 3.5 Economic adjustment.** Before deciding on the completion of the contracting process, if applicable, proceed to the stage of economic adjustment of the proposals that comply with the technical and contractual conditions. For this purpose, EPM will call the proposers who meet these conditions and will request them to present a new economic proposal in a closed envelope, within 60 of the term established for that purpose, expired which will be opened and evaluation of These proposals, applying the formula already established for this factor. The stage of economic adjustment will proceed when the proposals received are economically inconvenient, before the relevant studies and analyzes, will be decided if the economic adjustment stage is proceeded. If any or some of the proponents do not submit a new economic proposal, it will be understood that they maintain their initial offer. During the economic adjustment stage, no proposer may withdraw its proposal, or introduce modifications that make it worse for EPM.
- 3.6 Eligible Proposals.** In any case where more than one bid is submitted, the evaluation process will end with the drawing up of a list in which the organized proponents appear according to the total scores obtained after the weighting of the factors set, in descending order from the First - that will be the one that has obtained the highest score - until the last one - that will correspond to who presents the lowest score.
- 3.7 Direct negotiation.** Direct negotiation can be carried out when there is a single eligible offer, it is considered that better trading conditions can be obtained. In these events, there can be no substantial changes in the technical conditions. For this purpose,

EPM will indicate to the proponent those aspects in which, according to her, the proposal can be improved or adequate and will request an express manifestation of the proponent within an indicated period before making the decision that they deem convenient. If the bidder is silent or the response does not meet EPM's expectations, the convenience of accepting the offer in its initial form will be evaluated and, if it is not considered appropriate, a written record of the reasons will be given.

- 3.8 Selection of the proposer:** the recommendation of acceptance of the offer will be made by EPM and the communication of acceptance will be made by EMERS.
- 3.9 Process desert declaration.** 61 During the period of validity of the offer, the competent server of EMVARIAS will declare the hiring process if no proposal is received, or none of the received ones are valid or convenient for EMVARIAS.
- 3.10 Termination of the process.** When there are circumstances that cause EPM to lose its competence for the acceptance or declaration of the process, or a vice appears in the process that may lead to a nullity of the action, or when the exigencies of the service require it or Circumstances of public order impose it, or in the opinion of EPM the process is inconvenient, EPM will terminate the hiring process in the state in which it is.
- 3.11 Communication.** If the process culminates with the declaration of desert or the termination of the contracting process, the decision will be communicated to the proponents or interested parties.

3. Bidding Using Rated-Type Criteria in Evaluation

Annex 4

LAW OF PUBLIC SECTOR ACQUISITIONS, LEASES AND SERVICES
New Law published in the Official Gazette of the Federation on January 4, 2000 CURRENT TEXT Last reform published DOF 10-11-2014

Article 29. The call for public bidding, which will establish the basis on which the procedure will be developed and in which the participation requirements will be described, should contain:

- I. The name, denomination or social name of the unit or convening entity;
- II. The detailed description of the goods, leases or services, as well as the aspects that the Employer considers necessary to determine the object and scope of the contracting;
- III. The date, time and place of the first meeting of clarification to the call for tenders, of the act of presentation and opening of proposals and of the one in which the decision will be made known, of the signing of the contract, in its Case, the reduction of the term, and whether the tender will be face-to-face, electronic or mixed and the indication of how the proposals should be submitted;
- IV. The nature of the tender and the language or languages, in addition to Spanish, in which proposals may be submitted. Technical annexes and brochures in the language (s) determined by the Employer;
- V. The requirements to be met by those interested in participating in the procedure, which should not restrict free participation, competition and economic competence;
- VI. The indication that, to intervene in the act of presenting and opening tenders, it will be sufficient for bidders to submit a document in which their signatory states, under protest of truth, that they have sufficient powers to commit themselves or their represented, without it being necessary to prove its legal personality;
- VII. The way bidders must prove their legal existence and legal personality, for signing the proposals, and, where appropriate, signing the contract. Also, the indication that the bidder must provide an email address, if available;
- VIII. Specify that it will be requisite that the bidders submit together with the sealed envelope a written statement, under protest of truth, not to be in any of the assumptions established by articles 50 and 60 penultimate paragraph, of this Law;
- IX. To specify that it is a requirement that bidders submit a declaration of integrity, stating, under protest of truth, that by themselves or through interposing person, they will refrain from adopting behaviors, so that public servants of the dependence or Entity,

induce or alter the evaluations of the propositions, the result of the procedure, or other aspects that grant more advantageous conditions with respect to the other participants;

- X. If to verify compliance with the requested specifications, it is necessary to carry out tests, specify the method to execute them and the minimum result to be obtained, according to the Federal Law on Metrology and Standardization;
- XI. The indication as to whether the contract will cover one or more fiscal years, if it will be an open contract, and if applicable, the justification for not accepting joint proposals;
- XII. The indication of whether all the goods or services that are the object of the tender, or of each item or concept thereof, will be awarded to a single bidder, or whether the award will be made through the simultaneous supply process, in which If it is necessary to specify the number of sources of supply required, the percentages to be allocated to each one and the differential percentage in price to be considered;
- XIII. The specific criteria to be used for the evaluation of proposals and award of contracts, preferably using the criteria of points and percentages, or cost-benefit criteria;
- XIV. The domicile of the offices of the Secretariat of the Civil Service or of the governments of the federative entities, or, where applicable, the electronic means in which nonconformities may be presented, in accordance with the provisions of article 66 of this Law;
- XV. Indication of the express causes of rejection that directly affect the solvency of proposals, including verification that a bidder has agreed with another or others to raise the cost of the work, or any other agreement that has the purpose to obtain an advantage over other bidders, and
- XVI. Model of contract to which the parties concerned will be subject, which must contain the requirements referred to in article 45 of this Law.

For the participation, adjudication or contracting of acquisitions, leases or services, no requirements may be established that have as their object or effect to limit the competition process and free competition. Under no circumstances shall requirements or

conditions that cannot be fulfilled shall be established. The agency or convening entity shall consider the previous recommendations, if any, issued by the Federal Competition Commission in terms of the Federal Law on Economic Competition. Prior to the publication of the call for tenders, agencies and entities may disseminate the project through Compranet, at least for ten business days, during which time they will receive the relevant comments in the electronic address that for Such an end is indicated.

Article reformed DOF 07-07-2005, 05-28-2009

Article 36 Bis. Once the proposals are evaluated, the contract will be awarded to the bidder whose offer is solvent, because it meets the legal, technical and economic requirements established in the call for tenders, and therefore guarantees compliance with the respective obligations and, if applicable:

- I. The proposition has obtained the best result in the combined evaluation of points and percentages, or, of cost-benefit;
- II. If the modalities mentioned in the previous section had not been used, the proposition would have offered the lowest price, if it was convenient. The prices offered that are below the suitable price, can be discarded by the Employer, and
- III. To those who offer the lowest price resulting from the use of the modality of subsequent offers of discounts, if the proposal is technically and economically solvent. For the cases indicated in fractions I and II of this article, in case there is a level playing field, preference will be given to people who are part of the national micro, small and medium-sized enterprises sector. If there is a tie between the persons in the sector indicated, the award will be made in favor of the bidder who is the winner of the draw made in terms of the Regulations of this Law. In public tenders that have the participation of a social witness, invariably it must be invited to it. Likewise, a representative of the internal control body of the agency or entity in question will be called.

Article added DOF 07-07-2005. Reformed DOF 02-07-2008, 05-28-2009

Article 14. In contracting procedures of an open international nature, agencies and entities will opt, under equal conditions, for the use of the

country's human resources and for the acquisition and leasing of goods produced in the country and that have the Percentage of national content indicated in article 28, section I, of this Law, which shall count, in the economic comparison of the propositions, with a margin of up to fifteen percent preference in the price with respect to the imported goods, according to the rules established by the Ministry of Economy, following the opinion of the Secretariat and the Secretariat of Public Function. In the case of public bidding for the acquisition of goods, leases or services that use the evaluation of points and percentages, points will be awarded under the terms of this Law, to persons with disabilities or to the company that has workers with disabilities in a proportion Of five percent at least of the totality of its employees' plant, whose seniority is not less than six months, which will be verified with the notice of discharge to the mandatory regime of the Mexican Institute of Social Security.

Likewise, points will be awarded to micro, small or medium enterprises that produce goods with technological innovation, according to the corresponding certificate issued by the Mexican Institute of Industrial Property, which cannot have a validity greater than five years. Likewise, points will be awarded to companies that have implemented gender equality policies and practices, in accordance with the corresponding certification issued by the authorities and bodies authorized for that purpose.

Reformed paragraph DOF 10-11-2014 Reformed article DOF 07-07-2005, 28-05-2009

Annex 5

Articles 67 and 68 of the 2014/24 / EU Directive on price-quality ratio can be found in the following link: <http://eur-lex.europa.eu/legal-content/EN-ES/TXT/?uri=CELEX:32014L0024&from=en>

Annex 6

The following is the criterion for evaluation and adjudication of the NATIONAL PUBLIC TENDER for the contracting of transport services of the SEP:

In accordance with what is established in article 36 of the Law on

Acquisitions, Leases and Services of the Public Sector and 52 of its Regulations, as well as the Agreement issuing various guidelines in Acquisitions, Leases and Services and Public Works and Services related thereto, the criterion of points and percentages is established as an evaluation method, for which the following will be considered:

For the single item in which the minimum score that the bidders must obtain in the evaluation of the technical proposal participate will be 45 points out of the maximum 60 that can be obtained from their evaluation. Bidders who comply technically with this minimum score will be eligible for financial evaluation.

Evaluation in points per item

Proposal: contracting services

Technical: 60 (sixty points)

Economic: 40 (forty points)

TECHNICAL EVALUATION - weighting of 60 points

1. Minimum weighting of 45 points maximum.
 - I. Bidder Capacity
 - II. Experience and Specialty of the Bidder
 - III. Job offer
 - IV. Contract Compliance
 - V. Compliance with Technical Annex
 - VI. Compliance Standards and Certifications (SFI)

ECONOMIC EVALUATION - weighting 40 points

The Employer will proceed to carry out the evaluation of economic proposals, those proposals whose technical proposal is solvent for having obtained the score or percentage units equal to or greater than the established minimum.

The attributes to be evaluated in each case and the procedure for assigning points are presented below: SUMMARY OF SELECTION CRITERIA AND MAXIMUM POINTS:

TECHNICAL EVALUATION (60 points)

Capacity of the Bidder	24 points
Experience and Specialty of the Bidder	18 points
Work Proposal	12 points
Compliance of Contracts	6 points

ECONOMIC EVALUATION (40 points)

Analysis of the economic offer..... 40 points

TECHNICAL PROPOSAL	
RUBRIC	6 puntos
COMPLIANCE WITH CONTRACTS	
<p>a) Letters of Customer Satisfaction. A letter must be presented for each contract presented in the Specialty section of section II Experience and Specialty of the bidder. The letters must be original and addressed to the SEP, must contain at least: Name of the official or person who issues the letter, charge, telephone and official email, as well as expressly indicate the subject of the contract, which must be of services related to this tender and indicate that the services have been provided to full satisfaction.</p> <p>No letters = 0 points Letters from 1 to 2 = 2 points. Letters from 3 of 5 = 4 points More than 6 letters = 6 points.</p>	

Notwithstanding the foregoing, the Employer shall:

- Verify that the legal, technical and economic conditions required contain the information, documentation and requirements of this call, the meeting (s) of clarifications and its annexes.
- Verify that the characteristics of the services offered correspond to those established in the annex of this call.
- Verify that the offers submitted correspond to the characteristics and specifications of the services requested and verify that they comply with the quality required by the Employer.
- Verify that they guarantee and satisfy the delivery conditions of the provision of services.
- Prepare a comparative table with the points obtained by the participating bidders, which will allow a comparative analysis.

- Based on article 36 bis of the Law, once this procedure has been carried out, it will award the contract to the bidder who meets the legal, technical and economic conditions required by the Employer and therefore ensures compliance with the respective obligations, as well as the one that has the best combined evaluation.

Technical proposal:

- The compliance with the specifications requested in this call for proposals will be evaluated in terms of the technical conditions required by the Employer.
- At least the two proposals whose price is lower will be evaluated, if applicable, however, evaluations may be extended to the following proposals, considering also that the first two proposals could be disqualified.

Economic proposal:

- The economic proposals of those technical proposals that have been fulfilled with the minimum of points (Maximum of 40 points assigned to the economic proposal) will be evaluated.
- It will be verified that the economic proposals comply with what is requested in this call for this tender.
- Based on the results of the comparative economic tables and others that are elaborated, the lowest price will be chosen if this is convenient.

The evaluation of the economic proposals will be carried out as indicated in the tenth Guideline of the Second Article of the Agreement which issues various Guidelines in Procurement, Leases and Services and Public Works and Services related thereto, published in the Journal Official Journal of the Federation on September 9, 2010, and in order to apply the arithmetic formula framed in it, the value of the economic proposal of the bidder will be obtained by multiplying the unit cost offered by the required minimum amounts, said Amounts are detailed in Annex 10 of this call, the amount to be considered will be the total result of such operation, not including the value added tax.

In accordance with Article 36 Bis of the law once the evaluation of the proposals has been made the contract will be awarded to the proposal that has the best combined evaluation in terms of the criteria of points and percentages.

4. Public Private Partnership

Annex 7

Text of the bidding part of the of the APPs in Mexico of the Public Private Partnerships Act of January 16, 2012

Chapter Four

Awarding of Projects

FIRST SECTION

Bidding Process

Article 38. The agencies and entities that seek the development of a public-private partnership project will call for a competition, which must be carried out in accordance with the principles of legality, free competition and competition, objectivity and impartiality, transparency and publicity and, the details of article 31 of this Law, on equal terms for all participants.

In such competitions will seek to award the projects in the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances.

The agencies and entities may contract the services of an agent to hold a public-private partnership project. For these contracts, the provisions of Article 20 above shall apply. In any case, public servants will always be responsible for complying with the terms of the competition in terms of the sixth paragraph of article 134 of the Political Constitution of the Mexico.

Article 39. The corresponding call cannot be made without having the budgetary authorizations.

The agency or convening entity shall consider the recommendations that, if applicable, the Federal Competition Commission issues in terms of the Federal Law on Economic Competition.

Article 40. In accordance with the terms stated in the terms, the activities of the process may be carried out through electronic means, with technologies that preserve the authenticity, confidentiality and

inviolability of information, provided that such technologies, with the afore-mentioned characteristics, are certified by specialized third party of recognized experience that the Employer contracts.

The notifications by electronic mail will have the same effects as the personal notifications, when they fulfill the requirements that the Regulation establishes.

Article 41. Any person, physical or moral, national or foreign, who complies with the requirements set forth in the bid invitation, bidding documents and provisions applicable to the project in question may participate in competitions, with the exceptions indicated in following Article.

In the case of natural persons, they must be obliged to constitute, if they are winners, a moral person in terms of article 91 of this Law.

Two or more persons may submit, as a consortium, a joint proposal, in which case they must also be obliged to constitute, if they are winners, one or more moral persons, under the terms of article 91 of this Law, as well as appoint a common representative to participate in the bidding process.

Article 42. The following persons may not participate in competitions or receive an award to develop a public-private partnership project:

- I. Those in which a public servant who intervenes at any stage of the procurement procedure has a personal, family or business interest, or which may be of some benefit to him, his spouse or blood relatives or by affinity to the Fourth degree, or civil, or for third parties with whom he has professional, work or business relations, or for partners or companies of which the public servant or the persons mentioned above form or have been part during the two years prior to the date Of the contracting procedure in question;
- II. Persons convicted, by a final judgment within three years immediately preceding the date of the call for breach of contracts entered with federal agencies or entities;
- III. Those that, due to causes imputable to themselves, some dependency or federal entity have terminated administratively a contract, within the calendar year immediately prior to the call;
- IV. Those that for reasons imputable to themselves are in default

status in the fulfillment of their obligations in contracts signed with dependencies or federal entities;

- V. Those that are disqualified by the Secretariat of the Civil Service under the terms of the seventh title of the Law on Public Works and Related Services, of the sixth title of the Law on Acquisitions, Leases and Public Sector Services, or of the fourth section of the eleventh chapter of this Law;
- VI. Those who contract services of any nature, if it is verified that all or part of the payments paid to the service provider, in turn, are received by public servants by themselves or by other person, regardless of whether those who receive them have or do not relationship with the contracting process.
- VII. Those that have been declared in a commercial bankrupt, or
- VIII. The others that for any reason are prevented by law.

Article 43. Any person may attend the different acts of the bidding process, as an observer, after registration of their participation before the Employer. Observers shall refrain from intervening in any way in the bidding process.

The Regulation of this Law will establish the figure of social witnesses and will provide the terms of their participation in the tender procedure.

SECOND SECTION

Of the Call for Bids and Bidding Documents

Article 44. The call for competition shall contain at least the following elements:

- I. The name of the Employer, and the indication of being a bidding and a public-private partnership project, governed by this Law;
- II. The general description of the project, indicating the services to be provided and, where appropriate, the infrastructure to be built;
- III. The dates foreseen for the competition, the deadlines for the provision of services and, if applicable, the execution of infrastructure works, as well as the estimated dates for the beginning of one and the other; and
- IV. The places, dates and times in which the interested parties will be

able to acquire the bidding documents.

The publication of the call will be made through the electronic dissemination page -Internet- of the agency, in the Official Gazette of the Federation, in CompraNet, in a newspaper of national circulation and in another of the federative entity in Where the project will be developed.

In joint projects with federative entities and municipalities, they should also be published in the official media of each of these.

The purchase of the bidding documents will be an indispensable requirement to participate in the competition.

Article 45. The bidding documents of the competition shall contain at least the following elements:

- I. Those necessary for the participants to be able to elaborate their proposals, which will include, at least;
 - (a) The characteristics and technical specifications, as well as the minimum levels of performance of the services to be provided;
 - Y
 - (b) Where appropriate, the characteristics and technical specifications for the construction and execution of the infrastructure works in question.

In case of information that cannot be provided through CompraNet, the indication that it will be available to those interested in the domicile indicated by the Employer;

- II. The real estate, property and rights necessary for the development of the project and, where appropriate, the person responsible for obtaining it;
- III. The period for the provision of services and, where applicable, for the execution of infrastructure works, indicating the estimated start dates for one and the other;
- IV. Where appropriate, the terms and conditions under which the work and services may be subcontracted;
- V. The draft contract, with the rights and obligations of the parties, as well as the risk distribution of the project;
- VI. The draft of authorizations that, if necessary, are required for the development of the public-private partnership project that

- corresponds to grant the Employer;
- VII. The way in which the participants will accredit their legal capacity, experience and technical, administrative, economic and financial capacity, which are required according to the characteristics, complexity and magnitude of the project;
 - VIII. The obligation to constitute the moral person in terms of article 91 of this Law, if a person other than those mentioned in that article participates;
 - IX. The guarantees that the participants must grant;
 - X. Where applicable, place, date and time for the visit or visits to the work site;
 - XI. The date, time and place of the meeting or meetings for clarifications, the presentation of proposals, the opening of these, the communication of the decision and the signature of the contract;
 - XII. The language (s), in addition to Spanish, where proposals may be submitted;
 - XIII. The currency (s) in which, where appropriate, proposals may be submitted;
 - XIV. The list of documents that the participants must submit with their proposals,
 - XV. The criteria, clear and detailed, for the objective evaluation of the proposals and the award of the project, in accordance with what is stated in Articles 52 and 54 of this Law. These criteria will indicate the coefficient of integration of national product that must meet the participants in accordance with the type of project in question, seeking the greatest possible integration of national content, respecting the provisions of international treaties.
 - XVI. The causes of disqualification of the participants; and
 - XVIII. The other general elements, strictly indispensable, that the Regulation establishes, so that the bidding process fulfill the principles mentioned in the previous Article 38.

Article 46. None of the conditions contained in the call, in the own bidding documents and its annexes, nor in the proposals of the participants, will be negotiated, except as provided in the eighth chapter of this Law.

Article 47. No requirements may be established that result in limiting the process of competition and free competition. In its case, the Employer will consider the recommendations of the Federal Competition Commission.

The guarantees that, in their case, the participants must grant, should not exceed, in their aggregate amount, the equivalent of ten percent of the estimated value of the investments to be made.

Article 48. The modifications to the bidding documents of the bidding process that, if applicable, the Employer makes must conform to the following:

- I. They shall only be used to facilitate the submission of proposals and the conduct of the competition;
- II. There should be no limitation on the number of participants in the bidding process;
- III. Each participant must be notified no later than the tenth working day prior to the submission of proposals. If necessary, the date set for the submission and opening of proposals may be deferred; and
- IV. They will give the participants the opportunity to withdraw from the competition, without implying any breach or guarantee.

The modifications thus made will be part of the call and bidding documents, so they must be considered by the participants in the preparation of their proposals.

THIRD SECTION.....

Presentation of Proposals

Article 49. To facilitate the bidding process, prior to the act of bid submission and bid opening of the proposals, the Employer may register participants, as well as make preliminary revisions to documentation other than the economic offer.

Article 50. The bidding will have one or more stages of consultations and clarifications, in which the Employer will answer in writing the doubts and questions that the participants have presented. Between the last meeting of clarifications and the act of presentation of the proposals, there must be enough time for the presentation of the

offers. If necessary, the date indicated in the notice for the submission and opening of proposals may be deferred.

Article 51. The deadline for submitting proposals may not be less than twenty working days, counted from the date of publication of the call.

Proposals will be presented in sealed envelopes, in accordance to the Regulations and in the bidding rules and will be open in public session.

In each bidding, the participants can only submit one proposal, with their technical offer and their economic offer. Proposals will be presented firmly, obliging those who make them and will not be subject to negotiation, notwithstanding that the Employer may request clarifications or additional information, in terms of article 52 below.

Once the act of presenting and opening proposals has begun, those already submitted may not be withdrawn by the participants.

To participate in the bid opening of the proposals, it is sufficient that the participants submit a written statement stating that they have the necessary powers to do so.

SECTION FOUR.....

Evaluation of the Proposals and Failure of the Bidding process

Article 52. In the evaluation of proposals, the Employer will verify that they comply with the requirements indicated in the bidding document, and that they contain sufficient elements to develop the project.

Only the criteria established in the bidding document should be considered, provided they are clear and detailed and allow an objective evaluation that does not favor any participant.

In the evaluation, point-and-percentage mechanisms, cost-benefit criteria, or any other criteria may be used, provided they are clear, quantifiable and allow an objective and impartial comparison of the proposals.

No requirement will be subject to evaluation if its breach does not affect the validity and solvency of the proposal. Failure to comply with these requirements will not be grounds for rejecting the proposal.

In no case corrections to shortcomings on substantial aspects will be allowed.

Article 53. To carry out the proper evaluation of the proposals, the Employer needs to request clarifications or additional information

from one or more of the participants, he / she will do so in terms indicated in the Regulations.

In no case shall these requests change the original proposal, nor violate the principles set forth in article 38 of this Law.

Article 54. After the evaluation of the proposals, the project will be awarded to the participant who submitted the solvent proposal, for complying with the legal, technical and economic requirements, according to the criteria established in the competition rules and, therefore, guarantees its fulfillment.

If it is found that two or more proposals are solvent for satisfying the requested requirements, the project will be awarded to the proposal that ensures the best economic conditions for the State, according to the provisions of the evaluation criteria indicated in the competition rules.

If equality of conditions persists, the Employer will opt for the project that offers the greatest use both human resources of the country, as well as the use of goods or services of national origin and those of the region in question.

In the case of a competition based on a project provided for in chapter three of this Law, the provisions of article 31, section V, of that chapter shall be in force.

The Employer may choose to award the project, even if there is only one bidder, if it meets the requirements of the bidding process and its proposal is acceptable to the unit or convening entity.

Article 55. The Employer shall prepare a report that will serve as the basis for the decision, which shall include the analysis of the proposals, the reasons for admitting or rejecting them, the comparison of the proposals, and the elements for which the winning proposal is the one that offers the best conditions for the State.

The decision to award the contract or if the bidding is declared void must include the reasons that motivated it. It will not include confidential or confidential information in terms of the applicable provisions.

The decision will be announced in a public meeting to which the bidders freely attend and will be published on the electronic dissemination page -Internet- of the Employer, as well as in CompraNet, within the deadline set forth in the bidding rules.

Article 56. When an arithmetic error is noticed, there is a typo or of any other nature, not affecting the result of the evaluation made, the Employer will proceed to its correction, by means of writing and notifying all the bidders.

If the error cannot be corrected according to the provisions of the previous paragraph, the correction - properly reasoned - must be authorized by the higher authority of the Employer, in which case the internal control body shall be consulted.

Article 57. Disqualification grounds, in addition to those indicated in the bidding documents:

- I. Failure to comply with any of the requirements established in the bidding documents, with the qualifications indicated in article 52 of this Law;
- II. Those who have used inside information;
- III. If the bidding process has started, a cause of disqualification is provided for in article 42 of this Law; and
- IV. If any of the participants agrees with another person or others to raise the cost of the work, or any other agreement that has the purpose of obtaining an undue advantage over the other participants.

Article 58. The Employer will proceed to declare the bidding null and void, when all the proposals do not meet the requirements requested in the bidding document, or when their economic offers are not acceptable.

The Employer may cancel a bidding process:

- I. Due to force majeure;
- II. When the conditions for the development of the project are substantially modified;
- III. When the need to execute is extinguished, or
- IV. When circumstances occur that, if continued with the procedure, may cause damage or prejudice to the Employer itself.

Except for the cancellations indicated by I above, the Employer will pay for non-recoverable expenses that, if appropriate, proceed in terms of the provisions of the Regulation.

Article 59. Against the decision awarding the bidding process, shall proceed, at the election of the participant concerned:

- I. The administrative appeal for review, in accordance with the Federal Law of Administrative Procedure; or
- II. The federal administrative litigation, in accordance with the Federal Law of Administrative Litigation.

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During the process, there is no recourse against other resolutions of the Employer. In the event of any irregularity in such resolutions, it may be challenged in as a claim against the award.

Annex 8

Financial results of the Operator of a PPS Hospital four years after the award of the PPS contract

Hospital Infraestructure, Mexico, S.A. from C.V. Results from January 1 to July 30, 2015 and 2014 (in Mexican pesos)		
	2015	2014
Income for services	116,280,317	110,174,615
Effective interest	45,454,116	45,715,757
Total income	161,734,433	155,890,372
Cost of services	89,338,033	89,058,978
Gross profit	72,396,400	66,831,394
Administrative costs	9,311,294	5,811,795
Income from operations	63,085,106	61,019,599
Other income (net)	(454)	273,749
Comprehensive financial result		
interest expenses	(32,565,381)	(36,636,073)
interest income	2,564,049	2,623,633
Net profit (loss)	(83)	(73)
Valuation effects of financial instruments	(1,698,951)	(4,821,285)
	(31,700,366)	(38,833,798)
Income before taxes	31,384,286	22,459,550
Income taxes	6,904,542	5,257,895
Net Income	29,479,744	17,201,655

Annex 9

Award Criteria used in the partnership of the APP of the Regional Hospital of Toluca. Clause 5 of the Section of International Public Tender Documents 44065001 - 011 - 10 for Provision of Services Regional Hospital of Toluca, carried out by the Coordination of Administration of the Social Security Institute of the State of Mexico and Municipalities (ISSEMyM):

GENERAL ASSESSMENT RULES AND AWARD CRITERIA

5.1 EVALUATION RULES

I. The Employer will verify that the bids comply with the requirements and conditions established in the bidding documents and, if applicable, in the clarification meetings.

II. The conditions established by the Bidder that have the purpose of facilitating the presentation of the Offers and expediting the conduct of the Bidding shall not be subject to evaluation, the nonobservance by the Bidders with respect to those conditions or requirements shall not be grounds for Discard their offers.

III. The evaluation methodology shall be carried out in accordance with Section VIII.

5.2 AWARD CRITERIA

I. The Contractor shall award the Contract in favor of the Bidder that: (i) meets the legal, technical and economic conditions required in the Bidding documents (ii) presents the lowest Maximum Service Payment Amount Offered, if it is lower than the Budget Ceiling.

II. In the event of a tie in two or more Offers in relation to the Maximum Payment Amount for Services Offered, the Contractor shall award the Contract in favor of the Bidder who is the winner of the manual raffle for insulation held by the Employer in the presence of the ISSEMYM Project Committee in the very act of failure, which will consist of the participation of one ticket for each Bid that is tied and deposited in an urn, from which the ticket of the winning Bidder will be extracted, an activity that will be coordinated by the Social Witness.

Annex 10

PE-3 LETTER OF INTENT OF FINANCING

The Bidder shall provide a summary of preliminary terms and conditions issued by a recognized financial institution indicating:

- Financing amount
- Period and procedure of disposal
- Grace period, if applicable
- Term for amortization
- Fees and Commissions
- Rate or interest rates, including base and differential rates
- Relevant coverage indices
- Supplier reservation requirements (maintenance, interest payment, etc.)
- Preliminary conditions prior to disposal
- Obligations to make preliminary; Normal for this type of operation and specific to the Consortium
- Obligations not to make preliminary, normal for this type of operation and specific to the Consortium
- Preliminary early maturity causes
- Dividend policy allowed to the Bidder
- Preliminary structure of guarantees
- Events to which the terms and conditions summary is subject

The summary of terms and conditions may be subject to subsequent approvals of the financial institution (s) issuing it; However, it must include a manifestation of the institution of which it knows the Project and that the conditions there exposed are with which the bidder in question would participate in winning. These conditions must coincide with the documents of the economic proposal.

The summary of terms and conditions must comply with the following requirements:

- Be issued by a financial institution or by a multilateral financial institution and be presented on letterhead of the financial institution issuing it

- To be addressed to the Bidder, or to the Lead Member of the Consortium or special purpose company (or the principal shareholder of the Consortium)
- Present name, title and original signature of the director of the Project finance area or its equivalent of the financial institution
- Reference to financing for the “Regional Hospital of Toluca”
- Corporate name of the Consortium or the main Consortium Member or the specific purpose company that requests the letter
- Manifesto to know the contract model and its annexes
- Description of the detailed schedule of activities to close the financing

Annex 11

SECTION VIII

EVALUATION METHODOLOGY

1. General description of the Evaluation Methodology

The central objective of this section is to establish a clear procedure that will allow Bidders to know the methodology that will be used by the Employer to evaluate the Bids. The foregoing, to select, where appropriate, the winning Bid that offers a satisfactory solution to the requirements established in the Terms, including the Contract model.

Quantitative evaluation

In this first stage, it will be verified that all the documents marked as mandatory in the technical proposal are presented and the delivery of the other documents will be registered, for which it will be used in Annex 6 of Section V. When the documents indicated as mandatory in the Sections III and IV of the Bidding documents are not presented, the proposal will not be admitted.

Qualitative evaluation

The evaluation methodology will include the evaluation of the following aspects:

1. Compliance with the delivery of documentation and mandatory requirements

2. Capacity and technical expertise, legal and financial capacity, of each Bidder
3. Compliance with the presentation of the 33 functional units
4. Minimum score required for the design functionality and aspects related to the design according to the corresponding evaluation table
5. Compliance with the requirements of the Economic Proposal

A. ACCREDITATION OF THE TECHNICAL CAPACITY Assessment of previous experience in design, construction and administration of facilities (“DCAI”)

Evaluation of the Bidder’s experience

Previous experience in DCAI must be accredited in terms of the mandatory document designated as PT-1 in Section III of these Rules.

This evaluation will consider the feasibility of the Bidder to provide the Services requested.

The absence of supporting documentation that does not accredit the following points: (i) 5 (five) years in the design and construction of similar projects, (ii) 3 (three) years in the administration of similar projects, and (iii) Of specific experience in the construction of hospital facilities: at the date of presentation of his proposal, he must certify at least one contract for the construction of hospital facilities of at least 15,000 square meters or 100 beds; Shall result in the rejection of the Offer.

For the purposes of the immediately preceding paragraph, “supporting documentation” means the documents that include the description of the projects developed, the term and amount of such projects, as well as the status of the projects (in progress, completed or not completed). This documentation includes, but is not limited to: (i) a copy of the contracts with an autograph signature of a legal representative of the Bidder, who, under protest of truth, declares that the data of the projects described herein are true, (lii) correspondence, and (iv) copy of invoices.

Once completed, the aspects to be evaluated will be the following:

1. General accreditation of experience in design and construction

of similar projects of at least five years and three years in administration of similar projects

2. Accreditation of specific experience in the construction of hospital facilities: at the date of presentation of your proposal, you must provide at least one contract for the construction of hospital facilities of at least 15,000 square meters or 100 beds.

The absence of documentation supporting the verification of the experience requested in Bidding documents will cause rejection of the Offer.

B. EVALUATION OF THE TECHNICAL PROPOSAL

In order to be entitled to the evaluation of the documents of the technical proposal, the Bidder must comply with the submission of the mandatory documents, as well as the Complementary Documentation in terms of Section III of these Bidding documents.

The evaluation of the technical documents will include the analysis of each document and information detailed in Section III, the technical documents specified in Section VI, as well as the specifications for presentation of the technical document PT-3 provided for in Section VI of the present Regulations. If any technical proposal does not comply with the requested requirements, it will be discarded in terms of point 6 of Section I of these Rules.

The evaluation of the technical documents that have complied will continue with the following aspects:

1. Functional Units in Preliminary Draft
2. Functionality and design
3. Aspects related to design

The Bidder must consider in its Preliminary Draft and Architectural Medical Program 33 Functional Units (28 of the Hospital and 5 of the Clinic).

Once accredited this consideration in Preliminary and Architectural Medical Program will be evaluated based on the evaluation table as follows:

No.	Items	Max score
2	Functionality and design	97
3	Details of the design	21
	TOTAL Points	118

The Bidder must comply with at least 83 (eighty-three) points previously mentioned in relation to the evaluation table, which is detailed below; In case of not doing so will be grounds for rejection of the Offer. When a Bidder complies with the 83 (eighty-three) points, Employer shall establish that said Bid meets the minimum required without being assigned a higher or specific score for each Technical Proposal.

ASPECTS TO EVALUATE

This section determines the specific aspects to be evaluated for each of the documents and information that the Bidder will provide as part of the technical documents provided for in Sections III and VI.

1. Functional Units in Preliminary Design:

The Bidder shall reflect in its Preliminary Draft and Architectural Medical Program the 33 Functional Units (28 Hospital and 5 Clinical) described in Annex 8 (Design, Construction and Functional Plan Requirements).

The Bidder shall reflect the 33 Functional Units in its Preliminary Draft and accredit it through the documents requested as PT-3 in Section III and VI of these Bidding documents.

Failure to consider the 33 Functional Units described in Annex 8 by the Bidder for the preparation of its Preliminary Draft, as well as the absence of documentation that supports and allows corroborating the presence of all 33 Functional Units will cause the dismissal of the offer.

For the purposes of the immediately preceding paragraph, “supporting documentation” means the documents requested in terms of PT-3 in Section VI of these Bidding documents.

Once completed, the technical evaluation will continue.

2. Functionality and Design

The evaluation of Functionality and Design will be based on the fulfillment of the functional and spatial relationship requirements

described in terms of Appendix B (General and Specific Data Sheets), described in Annex 8 (Design, Construction and Functional Plan Requirements).

The Bidder shall comply with the total of the specifications requested in Annex 8, however for evaluation purposes, the aspects described in the evaluation table must be accredited, at least for each of the Functional Units described in the evaluation table..

3. Details related to design

The evaluation of aspects related to the design will be based on the fulfillment of the requirements described in Section VI “Technical Information” of the Bidding documents, including all its sections and annexes.

In addition, the Bidder must comply with the requirements requested in Annex 8 (Design, Construction and Functional Plan Requirements).

Characteristics of the property: The preliminary project must be developed in the traverse that forms the property according to the plan integrated in Annex 3: Information Delivered, respecting the assigned area, as well as the vicinity of the same. It should include the proposed delimitation of the Land considering a perimeter fencing, functional, aesthetic integrated to the architectural concept of the Hospital, which guarantees the safety of the Facilities.

Architectural concept: It is understood as the expression of architecture manifested through concepts of composition, hierarchy and rhythm, through the application of heights in their volumes, textures, materials, ambiance, as well as the definition of composition axes and horizontal lines. These are manifested in the capture and use of light, through the quality and use of space, achieving a balance of the whole. The above with the purpose of providing the user with comfort and security. They must consider elements, aesthetic and functional, which become benchmarks in the locality or image of the institution, identifying this property as one of the Hospital Facilities of ISSEMYM.

User-building relationship: It considers how the design adopts to the characteristics, needs and functions of each space (open and closed spaces) for the type of activities to be developed, interrelation of areas according to related activities, organization and distribution of space, optimization of spaces considering furniture and equipment,

automation of services and systems, mainly. It evaluates the circulation paths, the technical personnel, patients, services, personnel and visitors should be clearly separated, among others. In the same way, the supply to the different services, the circulations of the waste and the circulations for people with different capacities (including minors, pregnant women and older adults). It will evaluate the transportation facilities and external and internal movements (doctors, patients, waste, food, services, visitors, among others) will be evaluated, complying with the applicable legislation for habitability, accessibility and operation. On the other hand, it must take care of ample and flexible spaces to modify or to enable the original project according to new requirements, besides the use and coherence between the structure and the form, integrating useful spaces, among which one must contemplate the use of the fifth facade considering the use of hollows, dead spaces, walls or supports that allow the use of said surface, looking for economy and spatial performance.

Likewise, it should consider the location of spaces that integrate the Functional Unit of Services in a strategic way, in order not to affect the design and architectural composition, being these hidden and guaranteeing the security, functionality and privacy of said spaces.

The integration of Functional Units is important; it shall incorporate both spatial and volumetric open areas, closed areas, pedestrian circuits, green areas, squares, emergency areas and services. Likewise, facilities for people with disabilities, evacuation routes, meeting areas and security must be integrated.

On the other hand, as part of the urban context, the adequacy of the elements that make up the order and organization of the architectural work must be included. In this sense priority will be given to access to patients, ambulances and emergency services, clearly identifying the accesses, circulations, service modules, permeable areas, islands or beaches of parking lots, emergency services, general services and their interrelation with the facilities that make up the hospital, as well as its support units and complementary services.

In case of not complying with the required aspects, the Offer will be rejected.

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