



INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
UNITED STATES SECTION

Cd. Juarez, Chih., April 30, 2007

**GENERAL PROCEDURES FOR THE USE OF FUNDS ASSIGNED TO THE
INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES
AND MEXICO, THROUGH THE MEXICAN SECTION**

A) BACKGROUND

The 1944 Water Treaty between the United States and Mexico confers on International Boundary and Water Commission (the Commission) the full character of an International Organization, constituted by a Mexican Section and a United States Section, therefore in that sense the Commission has on many occasions the need to disburse resources or realize administrative functions that require criteria and procedures in order for the Commission to operate as an International Organization and not as an entity of their respective governments as occurs with each one of the respective Sections.

In that context, the International Boundary and Water Commission, United States and Mexico, receives annually through the Mexican Section financial contributions from different entities within the Government of Mexico, allocated for the operation and maintenance of international works under the Commission's charge, for which it is necessary to define the procedures for their use, since those funds are strictly outside the realm of Mexican Federal Legislation, applicable to the acquisition of goods and services, the contracting of public works or the contracting of the personnel required to ensure the proper operation and maintenance of the referenced works or to ensure the proper administration of said projects or information that they generate.

Therefore, the purpose of this document is to establish the procedures and norms with which the Mexican Section must comply to make use of the funds assigned to the Commission through it for the operation and maintenance of the international works it is responsible for under the terms of the current treaties between the United States and Mexico regarding boundaries and water.

In that regard, it is prudent to establish procedures for the use of funds, assigned to the Commission through the Mexican Section, under the terms described herein, and which must be allotted for the operation, maintenance, or construction of joint international projects, for the development of studies required for the previous or else for the construction of new projects that are identified as necessary under the terms of the treaties in force, and including the contracting of personnel required to ensure said projects are carried out or to operate and maintain them, or else to analyze the information that they generate.



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B) ACQUISITION OF GOODS AND SERVICES

1. Based on the above, in matters regarding acquisitions of goods and services, this may be undertaken according to the following acquisitions parameters, stipulated in U.S. Dollars or the equivalent in Mexican Pesos:

PURCHASES & SERVICES	MAXIMUM AMOUNT THAT CAN BE DIRECTLY AWARDED	MAXIMUM AMOUNT THAT SHALL BE AWARDED VIA SELECTIVE TENDER	MINIMUM AMOUNT THAT SHALL BE AWARDED VIA PUBLIC TENDER
	\$ 12,000.00 USD	\$ 50,000.00 USD	\$ 50,001.00 USD

In matters regarding direct purchases, the purchasing division must receive at least three estimates when the amount of the goods and services to be awarded exceeds \$1,000.00 USD or the equivalent in Mexican Pesos.

2. The following guidelines must be observed for selective tendering involving at least three companies or individuals:

- I.** Criteria must invariably be written down and made available to the individuals or organizations invited to participate.
- II.** The invitation shall be extended to companies or individuals whose commercial or professional activities are related to the goods or services intended to be purchased or contracted.
- III.** The invitations shall indicate the period for submitting proposals, as well as the total amount and complete description of the goods or services required, the timeframe and delivery address, including the payment terms.
- IV.** The submission and opening of proposals may be carried out in the bidders' absence, even though they will invariably be invited to said event. The Mexican Section may consider inviting a representative of the Internal Control Agency of the Secretariat of Foreign Relations to the event.
- V.** To make the corresponding award, a minimum of three technically responsive proposals must be received.
- VI.** In the case that two calls for bids to at least three companies or individuals have been declared void, the head of the division responsible for contracting can directly award the contract.
- VII.** Anything not stipulated in these guidelines will be determined by the Mexican Commissioner, who must issue a written statement of the resolution adopted, which



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must be based on and inspired by the authority given to him by the 1944 Water Treaty.

3. The following procedure must be followed for public tendering:

The notice of procurement may include one or more goods or services, and will contain, as appropriate, the following:

- I. The name, registered business name or partnership name of the convening agency or entity;
- II. An indication of the places, dates and times in which the interested parties can obtain the bidding criteria, and, if applicable, the fees and means of payment. When the criteria involve a fee, this will be set only for the purpose of recovering the expenses involved in publishing the notice of procurement and making copies of the documents provided; interested parties may review them prior to payment, a requirement to be eligible to participate in the bidding process. Likewise, the interested parties may inquire about and obtain the bidding criteria by a means of electronic transmission established by the Commission;
- III. The date, time and place the proposals will be submitted and opened, the first meeting to clarify the bidding criteria, and the instructions to submit the bid either by postal or messenger service, or electronic transmission;
- IV. An indication whether the bid is national or international; and if international, whether it will be covered under the chapter for public sector purchases of a particular treaty, and the language or languages, in addition to Spanish, in which the bids can be submitted;
- V. An indication whether any of the conditions contained in the bidding criteria, as well as in the proposals submitted by the bidders are negotiable;
- VI. The general description, quantity, and unit of measure for the goods or services that will be the subject of the bid, including this information for at least five of the most expensive items;
- VII. Delivery location and timeframe;
- VIII. Payment terms, indicating the moment when the terms come due;
- IX. The percentages of the upfront payments, if applicable, and;



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- X. An indication that any person may attend the different bidding events as an observer, without being required to obtain the criteria, as long as their participation is previously registered.

4. The notices of procurement will be published in a regional newspaper or wherever the Commission determines appropriate.

5. The criteria issued by the Commission for public bids will be available to the interested parties, at both the physical address designated by the convener and through the means of electronic transmission established by the Commission, as of the publication date of the notice of procurement and up to and including the sixth calendar day prior to the deadline for submission and opening of the proposals. It is the sole responsibility of the interested parties to obtain the criteria within this period, which will include, as applicable, the following:

- I. The name, registered business name or partnership name of the convening agency or entity;
- II. Method to verify the existence and legal status of the bidder;
- III. Date, time and place of the meeting to clarify the bidding criteria, for which attendance to the meetings held is optional; date, time and place of the event to submit and open the proposals; communication of the decision and the contract signing.
- IV. Explanation that noncompliance with any of the requirements established in the bidding criteria potentially affecting the responsiveness of the proposal will be motive for disqualification, as well as proof that a bidder has agreed with one or more other bidders to raise the price of the goods or services, or any other agreement intended to gain advantage over the other bidders;
- V. Language or languages, in addition to Spanish, in which the proposals may be submitted. Technical attachments and pamphlets may be presented in the language of the country of origin of the goods or services, accompanied by a summary translation in Spanish.

In the case of goods and services requiring submission of technical specifications, proposals, technical attachments and brochures in a language other than Spanish, a foreign language may be designated, with prior approval of the requesting division head, in which said documents can be drafted and submitted without their respective translation;

- VI. Currency in which the costs will be estimated and the respective payment made. For national public bidding processes, the proposals and the payment of goods and services will be made in Mexican pesos. In the case of shipment transport services, purchase of



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airplane tickets, and the seizure of goods, the proposals may be presented in the foreign currency determined by the convener and its payment may be made in the national currency at the exchange rate applicable on the day of payment. In any case, what is stipulated in the specific provisions relative to the topic will be applied.

For international bidding processes, in which the convener decides to make payments to foreign providers in foreign currency, the national bidders may present their proposals in the same currency set by the convener. However, payments made within the national territory shall be made in national currency and at the exchange rate applicable on the date said payment is made. In the case of foreign providers, payments outside the country may be made in the currency designated in the respective bidding criteria;

- VII.** An indication whether any of the conditions contained in the bidding criteria, as well as in the proposals submitted by the bidders, are negotiable;
- VIII.** Clear and detailed criteria for evaluating proposals and awarding the contracts;
- IX.** Complete description of the goods or services, or an indication of the systems employed to identify them; specific information requirements for maintenance, technical assistance and training; list of spare parts that must be estimated when they make up an integral part of the contract; drawings; quantities; samples and tests that will be performed, as well as the method for executing them;
- X.** Delivery conditions and timeframe; as wells as instructions on the location, in national territory, where the deliveries must take place. When there is more than one delivery point, it may be stipulated that prices be proposed for each one of them, or one price for all of them;
- XI.** Requirements that must be met by anyone who wishes to participate, specifying how they will be used in the evaluation;
- XII.** Payment terms, indicating the moment when the terms come due;
- XIII.** Information about guarantees; as well as an indication whether an advance payment will be made, in which case the respective percentage, which cannot exceed fifty percent of the total amount of the contract, and the time when it will be made must be indicated;
- XIV.** Traditional penalties will apply for delay in the delivery of goods or the provision of services;
- XV.** Indication whether the winning bidder who does not sign the contract due to causes attributable to him will be sanctioned;



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XVI. If applicable, terms and conditions that the bidders' participation must fulfill when the proposals are sent via postal or messenger service, or by electronic transmission. The fact that the bidders choose to use one of these methods to send their proposals does not prohibit them, in any way, from attending the different events that comprise the bidding process;

XVII. The conditions for pricing, specifying if prices are fixed or variable;

XVIII. The cases in which postponement of compliance with the contractual obligations and requirements to be met may be granted;

XIX. The causes for which the contract may be rescinded, under the terms outlined in this document;

XX. The provisions concerning the terms and conditions to which the return or replacement of goods will be subject for reasons of defects in quality or noncompliance with the specifications initially agreed upon, as long as substitutions do not imply any modification;

XXI. The information for licenses, authorizations, and permits that are required by other provisions for the purchase or lease of goods and the provision of the corresponding services, of which the Commission is aware;

XXII. The indication that in case of violation of intellectual property rights, the liability is ascribed to the bidder or supplier, whichever is the case. Barring the existence of an impediment, an indication that the mentioned rights will be stipulated in favor of the agency or entity in question, when contracting consulting services, technical assistance, studies, and investigations, under the terms of the applicable legal provisions, and

XXIII. The type of contract and a template.

6. The timeframe to submit and open proposals for international bidding processes cannot be less than twenty calendar days, counted from the date of publication of the notice of procurement.

For national bids, the period to submit and open proposals will be at least fifteen calendar days, starting from the date the notice of procurement is published.

7. When the periods indicated in the above paragraphs cannot be observed by the division requesting the goods or services because of justifiable reasons, as long as the intent is not to limit the number of participants, the head of the division responsible for contracting can reduce the period to not less than ten calendar days, starting on the date the notice of procurement is published.



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8. The Commission, as long as it does not intend to limit the number of bidders, can modify the timeframe or other aspects stipulated in the notice of procurement or in the bidding criteria, beginning on the date the notice is published, up to and including the sixth calendar day prior to the submission deadline and event to open the proposals as long as:

- I. In matters regarding the notice of procurement, modifications are communicated to the interested parties through the same medium as was used for its publication, and
- II. In the case of the bidding criteria, an announcement is published in the periodicals where the notice of procurement was published, so that the interested parties may contact the proper agency or entity to be informed, more specifically, of the respective modifications.

The publication of the announcement mentioned in this paragraph will not be necessary when the modifications are the result of the clarification meetings, as long as a copy of the respective minutes is provided, within the period indicated in this section, to each one of the bidders who received the criteria for the corresponding bidding process.

- III. In the case of the bidding criteria, or the modifications to them, they are distributed through the same channels as the original documentation, or, when the modification arise out of the clarification meetings, they are made available or a copy of the respective minutes are given to each one of the bidders that have received the criteria for the corresponding bidding process.

9. In no instance can the modifications described be used to substitute the goods or services originally convened, to add others from different sectors or that vary significantly from their characteristics.

Any modification to the bidding criteria, arising from the clarification meeting(s) will be considered an integral part of the bidding criteria itself.

10. In the clarification meetings, the conveners will resolve in a clear and concise manner the doubts or issues presented by the interested parties on the basis of the bidding criteria, duly reflecting all this in the respective minutes that are taken for this purpose. If the modifications are implemented, in no instance can they substitute or substantially vary the works originally convened, nor add different ones.

Proposals will be submitted in a sealed envelope containing the technical and economic proposal. Documentation different from the proposal may be submitted, at the discretion of the bidder, inside the proposal envelope or separate from it.

Except in cases justified in the bidding criteria, it will be established that two or more entities may present joint proposals without having to be part of a corporation or merger, in the case of



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corporate entities, as long as for the purposes of the proposal and in the contract it clearly stipulates, to the satisfaction of the agency or entity, the roles that each entity will fulfill, as well as the way in which the compliance with these obligations will be enforceable. In this scenario, the proposal must be signed by the joint representative that has been designated by the group of entities for that purpose.

11. Prior to submission and opening of the proposals, the convener may compile a registry of participants, as well as perform preliminary review of documentation different from the proposal. The foregoing will be optional for the bidders, therefore anyone who has paid the fees for the bidding criteria and who decides to present his proposal and documentation on the date, time and place established for the occurrence of said act cannot be barred from participating.

The act of submitting and opening the proposals will be carried out in accordance with the following:

- I. Once the proposals are received in a sealed envelope, they will be opened; any proposal that has omitted one of the requested requirements will be thrown out;
- II. At least one bidder, if one is present, and the Commission representative presiding over the act will initial those parts of the proposals previously identified by the convener in the bidding criteria, which in effect will constitute proof of documentation, immediately after which the total amount of each one of the proposals shall be announced;
- III. Minutes will be kept to serve as proof that the act of submitting and opening the proposals was held, listing the proposals accepted for subsequent evaluation, and the amount of each one of them, as well as those that have been thrown out and the reasons why; the minutes will be signed by the attendees and will be made available to them or they will be provided with a copy; the lack of a bidder's signature will not invalidate its contents and effects, being made available as of that date to those who did not attend to serve as their notification, and
- IV. In the minutes referred to in the previous paragraph, an indication of the location, date and time when the bidding decision will be announced; this date must fall within twenty calendar days following the date set for this act and may be postponed, as long as the new period chosen does not exceed twenty calendar days from the date originally established for the decision. The convener will then evaluate the accepted proposal(s). If criteria for points and percentages and cost-benefit have not been established for said evaluation, the convener will evaluate, as appropriate, at least two of the lowest-priced proposals.

The Commission, in order to evaluate the proposals, must verify that they fulfill the requirements requested in the bidding criteria, taking into account, as appropriate, the following:



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- I. The criteria for evaluating and awarding the proposals established in the bidding criteria, considering the characteristics of the contracting involved;
- II. Said criteria must consider the principles of transparency, equality, impartiality, clarity, objectivity, and precision, without favoring any one bidder;
- III. If in regard to services, the points and percentages mechanism may be used to evaluate the proposals, where the price component will count for fifty percent, indicating in the bidding criteria the weight given to each one of the other components that will be considered during the evaluation. Likewise, whenever necessary, in the case of services the breakdown of prices per unit will be requested, specifying how this will be used, and
- IV. Within the evaluation criteria, the cost-benefit criterion can be established, as long as it is definite, measurable, and applicable to all the proposals.

12. The conditions set by the convener for the purpose of facilitating the presentation of proposals and streamline the bidding activities, as well as any other requirement whose noncompliance, in and of itself, does not affect the proposals' responsiveness will not be subject to evaluation. If bidders do not comply with those conditions or requirements, this will not be reason to dismiss their proposals.

13. Among the requirements that in and of themselves do not affect the responsiveness of the proposal: proposing a delivery period shorter than the one requested, in which case, the one stipulated in the bidding criteria will prevail; omitting aspects that may be covered with information contained in the technical or economic proposal; not observing the established formats, if the required information is presented in a clear manner; and not observing the requirements that lack legal basis or any other requirement that does not have as its intent to objectively determine the responsiveness of the proposal presented. In no instance can substitutions be made for substantive deficiencies in the proposals submitted.

Once the proposals have been evaluated, the contract will be awarded to:

- I. The one whose proposal is responsive because it meets, according to the awarding criteria established in the bidding criteria, the legal, technical and financial conditions required by the convener, and satisfactorily guarantees compliance with the respective obligations.

Should it happen that two or more proposals are deemed responsive because they satisfy all of the requirements requested by the convener, the contract will be awarded to the one who submits the proposal with the lowest price, and

- II. The proposal that has the best combined score in terms of points and percentages or cost-benefit criteria.



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14. The decision resulting from the bidding process will be announced at a public meeting, to which the bidders who participated in the submittal and opening of proposals, may freely attend, with its respective minutes that will be signed by the attendees, who will be provided with a copy. The lack of a bidder's signature will not invalidate its contents and effects, being made available as of that date to those who did not attend to serve as their notification. In lieu of that meeting, each one of the bidders may be notified in writing of the bidding decision within five calendar days after its issuance.

15. At the same decision event or attached to the aforementioned notification, the Commission will provide the bidders with information in writing about the reasons why their proposal was not the winning one.

16. There is no recourse against the decision contained in the notification:

17. The Commission will proceed to declare a bidding process void when the proposals presented do not meet the requirements in the bidding criteria, or their prices were not acceptable, according the research done on pricing, and a second notice of procurement will be issued.

The results of the investigation as to why it was determined that the prices are not acceptable will be included in an opinion. The bidders will be informed of that determination in the corresponding decision.

For those public tender processes in which one or more of the items are declared void, the convener may proceed to hold a new public tendering, solely with respect to those items, or may proceed to either a selective tender procedure to invite at least three individuals or with a direct award, as appropriate.

18. The Commission can cancel a bidding process, items or concepts included in them, due to unforeseeable circumstances or force majeure. Similarly, it can be cancelled when there are circumstances, duly justified, that terminate the need to purchase or lease the good or contract the provision of services, and under which continuing with the contracting process could cause damage or harm to the agency or entity itself. The decision to void the bidding process, items or objects, must specify the event that motivated the decision, which will be reported to the bidders.

19. When it is deemed convenient and the Commission justifies and promotes it, and price and quality become clear and objective reasons, the option may be exercised to purchase through the United States Section of the Commission goods needed by the Commission, according to the procedures establish in the "Joint Memorandum between Secretaries" dated November 21, 1997.



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C) CONTRACTING FOR PUBLIC WORKS AND RELATED SERVICES

20. In matters regarding public works, this may be undertaken according to the following parameters, stipulated in U.S. Dollars or the equivalent in Mexican Pesos:

PUBLIC WORKS CONTRACTING	MAXIMUM AMOUNT THAT CAN BE DIRECTLY AWARDED	MAXIMUM AMOUNT THAT SHALL BE AWARDED VIA SELECTIVE TENDER	MINIMUM AMOUNT THAT SHALL BE AWARDED VIA PUBLIC TENDER
	\$ 20,000.00 USD	\$ 190,000.00 USD	\$ 190,001.00 USD

21. In matters regarding services related to public works, this may be undertaken according to the following parameters, stipulated in U.S. Dollars or the equivalent in Mexican Pesos:

CONTRACTING OF SERVICES RELATED TO PUBLIC WORKS	MAXIMUM AMOUNT THAT CAN BE DIRECTLY AWARDED	MAXIMUM AMOUNT THAT SHALL BE AWARDED VIA SELECTIVE TENDER	MINIMUM AMOUNT THAT SHALL BE AWARDED VIA PUBLIC TENDER
	\$ 12,000.00 USD	\$ 50,000.00 USD	\$ 50,001.00 USD

22. Public works are considered to be those works that have as their objective to build, install, expand, upgrade, remodel, restore, preserve, maintain, modify or demolish immovable property. Similarly the following concepts are included in public works:

- I. The maintenance and restoration of movable property built in or attached to an immovable property, when it implies modification to the immovable property itself.
- II. Comprehensive or turnkey projects, in which the contractor is obligated starting with the design of the work through its completion, including, when required, the transference of technology;
- III. Exploration, locating and drilling works other than for the purpose of extracting oil or gas; improvement to the soil or subsoil; vegetation removal; extraction or similar works for the purpose of exploiting and developing natural resources found in the soil or subsoil;
- IV. Agricultural and ranching infrastructure;
- V. The installation, mounting, placement or application, including the function checks of movable property that must be built into, attached or destined for an immovable property, as long as said goods are provided to the contractor by the convener or, if purchase is included, their price is less than the amount of the works contracted, and
- VI. All things of a similar nature.



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23. Services related to public works are considered to be those works that have as their objective to conceive of, design and calculate the elements that make up a public works project; the investigations, studies, technical assistance and consultations that are linked to the actions regulated by this document; the administration or supervision of the execution of the works or studies that have as their objective rehabilitate, correct or increase the efficiency of the installations. Similarly the following concepts are included among services related to public works:

- I. The planning and design, including the activities that have as their objective to conceive of, model and calculate the elements that make up a basic engineering, structural, installations, infrastructure, industrial, or electromechanical project, or any other engineering specialty that is needed as part of a public works construction plan;
- II. The planning and design, including the activities that have as their objective to conceive of, model and calculate the elements that make up an urban planning, architectural, graphic or artistic design project, or any other design, architecture or urban planning specialty that is needed as part of a public works construction plan;
- III. Technical studies of agrology and livestock development, hydrology, soil mechanics, seismology, topography, geology, geodesy, geotechnics, geophysics, geothermics, oceanography, meteorology, aerophotogrammetry, environment, ecology and transportation engineering;
- IV. Economic and pre-investment planning studies; technical, economic, ecologic or social feasibility studies; studies for evaluation, adaptation, land ownership, financial, development, and restoration of efficiency to installations;
- V. Coordination, supervision and control of the works; laboratory analysis and quality control; geotechnical laboratory, material resistance and industrial radiography work; preparation of construction specifications, budgeting or the drafting of any other document or work for the awarding of the corresponding works contract;
- VI. Organizational, information technology, communications, virtual and computer system work applicable to the matters regulated by this document.
- VII. Opinions, expert analyses, appraisals and technical regulatory audits, and studies applicable to the matters regulated by this document.
- VIII. Studies that have as their objective to rehabilitate, correct, substitute or increase the efficiency of the installations on an immovable property;
- IX. Technological support studies, including the development and transference of technology among others, and



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X. All things of a similar nature.

24. For direct purchases, the requesting division must receive at least three estimates when the amount of the works or related services to be awarded exceeds \$2,000.00 USD or the equivalent in Mexican Pesos.

In matters regarding selective tender involving at least three companies or individuals, the following guidelines must be observed:

- I.** Criteria must invariably be written down and made available to the individuals or organizations invited to participate.
- II.** The invitation must be extended to companies or individuals whose commercial or professional activities are related to the works or services intended to be purchased or contracted.
- III.** The invitations will indicate the period for submitting proposals, as well as the total amount and complete description of the works or services required, the timeframe and delivery address, including the payment terms.
- IV.** The submission and opening of proposals may be carried out in the bidders' absence, even though they will invariably be invited to said event. The Commission may consider inviting a representative of the Internal Control Agency of the Secretariat of Foreign Relations to the event.
- V.** To make the corresponding award, a minimum of three technically responsive proposals must be received.
- VI.** In the case that two calls for bids to at least three companies or individuals have been declared void, the head of the division responsible for contracting can directly award the contract.
- VII.** Anything not stipulated in these guidelines will be determined by the Mexican Commissioner, who must issue a written statement of the resolution adopted, which must be based on and inspired by the authority given to him by the 1944 Water Treaty.

25. The following procedure must be followed for public tendering:

The notices of procurement may include one or more works or related services, and will contain, as appropriate, the following:



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- I. The name, registered business name or partnership name of the convening agency or entity;
 - II. An indication of the places, dates and times in which the interested parties can obtain the bidding criteria, and, if applicable, the fees and means of payment. When the criteria involve a fee, this will be set only for the purpose of recovering the expenses involved in publishing the notice of procurement and making copies of the documents provided; interested parties may review them prior to payment, a requirement to be eligible to participate in the bidding process. Likewise, the interested parties may inquire about and obtain the bidding criteria by a means of electronic transmission established by the Commission;
 - III. The date, time and place the proposals will be submitted and opened, the first meeting to clarify the bidding criteria, and the instructions to submit the bid either by postal or messenger service, or electronic transmission;
 - IV. An indication whether any of the conditions contained in the bidding criteria, as well as in the proposals submitted by the bidders, are negotiable;
 - V. The general description, quantity, and unit of measure for the works or related services that will be the subject of the bid, including this information for at least five of the most expensive items;
 - VI. Delivery date and location;
 - VII. Payment terms, indicating the moment when the terms come due;
 - VIII. The percentages of the upfront payments, if applicable;
26. The notices of procurement can include one or more public works or related services, and will contain:
- I. The name, registered business name or partnership name of the convening agency or entity;
 - II. Method for bidders to verify their legal status, experience, and technical and financial capabilities that are required to participate in the bidding consistent with the characteristics, complexity and magnitude of the works;
 - III. An indication of the places, dates and times in which the interested parties may obtain the bidding criteria, and, if applicable, the fees and means of payment. When the criteria involve a fee, this will be set only for the purpose of recovering the expenses involved in publishing the notice of procurement and making copies of the documents



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provided; interested parties may review them prior to payment, a requirement to be eligible to participate in the bidding process. Likewise, the interested parties may inquire about and obtain the bidding criteria by a means of electronic transmission established by the Commission;

- IV. The date, time and place the proposals will be submitted and opened, the site visit to where the works will be carried out, and the instructions, if applicable, to submit the bid electronically.
 - V. An indication whether the bid is national or international; and if international, whether it will be covered under the chapter for public sector purchases of a particular treaty, and the language or languages, in addition to Spanish, in which the bids can be submitted;
 - VI. An indication whether any of the conditions contained in the bidding criteria, as well as in the proposals submitted by the bidders, are negotiable;
 - VII. General description of the works or service and the location where the work will take place, as well as the indication if parts of it may be subcontracted, if applicable;
 - VIII. Period of execution of the works expressed in calendar days, indicating the estimated start date;
 - IX. The percentages of the upfront payments, if applicable;
 - X. An indication that any person may attend the different bidding events as an observer, without being required to obtain the criteria, as long as their participation is previously registered;
 - XI. Determination of the percentage of national content, if applicable, and
 - XII. The other general requirements that the interested parties must meet, depending on the characteristics, complexity and magnitude of the works.
27. The notices of procurement will be published in a regional newspaper or wherever the Commission determines appropriate.

The criteria issued by the agencies and entities for public bids will be available to the interested parties, at both the physical address designated by the convener and the means of electronic transmission established by the Commission, as of the publication date of the notice of procurement and up to and including the sixth calendar day prior to the deadline for submission and opening of the bids. It is the sole responsibility of the interested parties to obtain the criteria within this period, which will include, as applicable, the following:



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- I. The name, registered business name or partnership name of the convening agency or entity;
- II. Method to verify the existence and legal status of the bidder;
- III. Date, time and place of the meeting to clarify the bidding criteria, for which attendance to the meetings held, if they are held, is optional; date, time and place of the two stages of the event to submit and open the proposals; communication of the decision and the contract signing.
- IV. Explanation that noncompliance with any of the requirements established in the bidding criteria will be motive for disqualification, as well as proof that a bidder has agreed with one or more other bidders to raise the price for the work, or any other agreement intended to gain advantage over the other bidders;
- V. Language(s), in addition to Spanish, in which the proposals may be submitted;
- VI. Currency(s) in which the proposals may be submitted; In cases where the estimate is permitted in foreign currency, it shall be established that payment made in national territory will be made in the national currency and at the exchange rate on the date when said payment is made, as well as the method, review periods, and the maximum percentages for costs adjustments that the contract will be subject to;
- VII. An indication whether any of the conditions contained in the bidding criteria, as well as in the proposals submitted by the bidders, are negotiable;
- VIII. Clear and detailed criteria for the evaluation of the proposals and awarding of the contracts;
- IX. Architectural and engineering plans that are required to prepare the proposal; applicable standards for quality of the materials, general specifications and construction specifics, in the case where the particular specifications must be signed by the individual responsible for the project;
- X. In matters regarding services related to public works, terms of reference that shall specify the purpose and scope of the service, the general specifications and particulars, the expected product, and the method of delivery, as well as the wage scales from the industrial chambers and professional organizations that shall serve as a reference to determine the salaries and fees for the technical personnel;
- XI. List of permanently installed materials and equipment to be provided by the convener, if applicable, that shall accompany the corresponding supply schedules;



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- XII.** Where appropriate, the inclusion of the percentage of the value of the work that the bidders must fulfill using national content in terms of materials, machinery, and permanently installed equipment, which will be used to execute the works;
- XIII.** Required experience, technical and financial capabilities, depending on the characteristics, complexity and magnitude of the works.
- XIV.** Information regarding guarantees; percentages, method and terms of the advance payments that may be conferred;
- XV.** Whenever one is to take place, the place, date, and time of a visit to the worksite, which shall happen within the period between the fourth calendar day following the publication of the notice of procurement and the sixth day prior to the act of submitting and opening the proposals;
- XVI.** Specific information about the tasks that may be subcontracted;
- XVII.** Period of execution of the work expressed in calendar days, indicating the estimated start date;
- XVIII.** Model of the contracts that the parties will be subject to, differentiating between those for public works and those for services;
- XIX.** In matters regarding contract with lump sum or mixed pricing, in the respective section, the conditions for payment;
- XX.** In matters regarding contracts with per unit or mixed pricing, the cost adjustment procedure that shall apply, as well as the list of items, quantities and units of measurement must be signed by the project lead in the respective section; and the list of the more important work items, for which an analysis and the list of basic materials, labor, machinery and construction equipment costs that make up part of the analysis must be presented. In all cases it shall be shown that each work item is duly integrated and supported, preferably, in the requested construction specifications and quality standards, making sure that these concepts are congruent with the amount of work required by the project;
- XXI.** Indication whether the winning bidder who does not sign the contract due to causes attributable to him will be sanctioned;
- XXII.** If applicable, terms and conditions that the bidders' participation must fulfill when the proposals are sent via postal or messenger service, or by electronic transmission. The fact that the bidders choose to use one of these methods to send their proposals does not



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prohibit them, in any way, from attending the different events that comprise the bidding process;

28. For the participation, awarding or contracting of public works or related services, no requirements can be imposed that have as their objective to limit participation. In no case shall requirements or conditions be established that are impossible to meet.

The timeframe to submit and open proposals for international bidding processes cannot be less than twenty calendar days, starting on the date the notice of procurement is published.

For national bids, the timeframe to submit and open proposals for international bidding processes will be, at least, fifteen calendar days, starting on the date the notice of procurement is published.

29. When the periods indicated in this section cannot be observed by the division requesting the work because of justifiable reasons, as long as the intent is not to limit the number of participants, the head of the division responsible for contracting can reduce the period to not less than ten calendar days, starting on the date the notice of procurement is published.

30. The agencies and entities may modify the timeframe or other aspects established in the notice of procurement or in the bidding criteria, provided that it is not intended to limit the number of bidders, beginning on the date the notice is published, up to and including the sixth calendar day prior to the submission deadline and event to open the proposals as long as:

- I. With regard to the notice of procurement, the modifications are communicated to the interested parties through the same medium as was used for its publication, and
- II. In the case of the bidding criteria, they are distributed through the same channels as these were, so that the interested parties may contact the proper agency or entity to be informed, more specifically, of the respective modifications.

31. Publication will not be necessary when the modifications are the result of the clarification meetings, as long as a copy of the respective minutes is provided, within the period indicated in this section, to each one of the bidders who received the criteria for the corresponding bidding process.

32. In the clarification meetings, the conveners will resolve in a clear and concise manner the doubts or issues presented by the interested parties on the basis of the bidding criteria, duly reflecting all this in the minutes that are taken for this purpose. If the modifications are implemented, in no instance can they substitute or substantially vary the works originally convened, nor add different ones.



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Any modification to the bidding criteria, arising from the clarification meeting(s) will be considered an integral part of the bidding criteria itself.

Proposals will be submitted in sealed envelopes. Documentation different from the technical and economic proposal may be submitted, at the discretion of the bidder, inside or separate from said envelope.

33. Two or more entities may present joint proposals without having to be part of a corporation or merger, in the case of corporate entities, as long as for the purposes of the proposal and in the contract it clearly stipulates, to the satisfaction of the agency or entity, the roles that each entity will fulfill, as well as the way in which the compliance with these obligations will be enforceable. In this scenario, the proposal must be signed by the joint representative that has been designated by the group of entities for that purpose.

34. To facilitate the contracting procedures, the conveners shall make preliminary assessments of the specialization, experience and capability of the interested parties and verify their registration in the convener's registry of contractors, as well as the documentation different from the technical and economic proposal. In no case shall access be barred for anyone who is not registered in the registry, so those bidders that have paid the fees for the bidding criteria may submit a bid at the event for submission and opening of the proposals in question.

35. In all cases, preference shall be given to the interested parties' specialty, experience and technical capability, as well as those contractors that, if applicable, have executed works finished on time and on budget.

The act of submitting and opening the proposals will be carried out in accordance with the following:

- I.** Once the proposals are received in a sealed envelope, they will be opened and any proposal that has omitted one of the requested requirements will be thrown out;
- II.** At least one bidder, if one is present, and the public official with the authority to preside over the act will initial the list of items or the budget for the work in the proposals presented, which in effect will constitute proof of documentation, immediately after which the total amount of each one of the proposals shall be announced;
- III.** Minutes will be kept to serve as proof that the act of submitting and opening the proposals was held, listing the proposals accepted for subsequent evaluation, and the total amount of each one of them, as well as those that have been thrown out and the reasons why; the minutes will be signed by the attendees and will be made available to them or they will be provided with a copy; the lack of a bidder's signature will not invalidate its contents and effects, being made available as of that date to those who did not attend to serve as their notification, and



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IV. In the minutes referred to in the previous paragraph, an indication of the location, date and time when the bidding decision will be announced; this date must fall within thirty calendar days following the date set for this act and may be postponed, as long as the new period chosen does not exceed thirty calendar days from the date originally established for the decision.

36. The Commission, in order to evaluate the proposals, must verify that they fulfill the requirements requested in the bidding criteria, for which purpose the convener shall establish clear and detailed procedures and criteria to determine the responsiveness of the proposals, depending on the characteristics, complexity and magnitude of the works to be carried out.

37. In matters regarding public works, it shall be verified the bidder is in compliance with the required legal conditions; the resources proposed by the bidder are sufficient to satisfactorily execute, according to the performance schedule, the established amount of work; the analysis, calculation and integration of the prices are consistent with the current pricing conditions in the area or region where the works will be carried out. Under no circumstances may points and percentage mechanisms be used in the evaluation.

38. In matters regarding services related to public works, it shall be verified, among other things, that the bidder is in compliance with the required legal conditions; that the personnel proposed by the bidder have sufficient experience, ability and resources to execute the work requested by the convener in the respective terms of reference; that the wage scales are consistent with the requirements in the bidding criteria; that the execution outlines and schedules match the service offered.

39. The conditions set by the conveners for the purpose of facilitating the presentation of proposals and streamline the bidding activities, as well as any other requirement whose noncompliance, in and of itself, does not affect the proposals' responsiveness will not be subject to evaluation. If bidders do not comply with those conditions or requirements, this will not be reason to dismiss their proposals.

Once the proposals have been evaluated, the contract will be awarded to the bidder whose proposal is responsive because it meets, according to the awarding criteria established in the bidding criteria, the legal, technical and financial conditions required by the convener, and satisfactorily guarantees compliance with the respective obligations.

Should it happen that two or more proposals are deemed responsive because they satisfy all of the requirements requested by the convener, the contract will be awarded to the one who submits the proposal that is more economically favorable.



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40. The convener will issue an opinion that will serve as the basis for the decision, detailing in a chronological summary the acts of the procedure, the analysis of the proposals and the reasons for accepting or dismissing them.

41. In the case of a technical tie between bidding companies, the agencies or entities will award the works, all conditions being equal, to the companies where five percent of their payroll is made up of individuals with disabilities.

42. The decision resulting from the bidding process will be announced at a public meeting, to which the bidders who participated in the submittal and opening of proposals, may freely attend, with its respective minutes that will be signed by the attendees, who will be provided with a copy. The lack of a bidder's signature will not invalidate its contents and effects, being made available as of that date to those who did not attend to serve as their notification. In lieu of that meeting, the agencies and entities may choose to notify each one of the bidders in writing of the bidding decision within five calendar days after its issuance.

43. At the same decision event or attached to the aforementioned notification, the agencies and entities will provide the bidders with information in writing about the reasons why their proposal was not the winning one.

There is no recourse against the decision contained in the notification.

44. The Commission will proceed to declare a bidding process void when the proposals presented do not meet the requirements in the bidding criteria, or their prices for inputs were not acceptable, and a second notice of procurement will be issued.

45. The Commission may cancel a bidding process due to unforeseeable circumstances or force majeure. Similarly, it may be cancelled when there are circumstances, duly justified, that terminate the need to contract the works, and under which continuing with the contracting process could cause damage or harm to the Commission. The decision to void the bidding process must specify the event that motivated the decision, which will be reported to the bidders.

D) EXCEPTIONS TO THE PUBLIC BIDDING PROCESS

46. The Commission, of its own accord, may contract public works or related services without subjecting the procedure to the public tender process, by inviting at least three participants or through direct award when:

- I. The contract can only be executed with a specific individual because it deals with works of art, the exclusive licensing of patents, copyrights or other exclusive rights;
- II. There are circumstances, duly justified, that could cause significant losses or additional expenses;



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- III. There are emergency conditions that could endanger the supply of water to the populations, or the safety of international hydraulic works;
- IV. A public tender process has been declared void, provided that the essential requirements included in the bidding criteria have not been modified;
- V. Circumstances involving the maintenance, restoration, repair and demolition of immovable property, in which it is not possible to specify the scope, identify a list of items, quantities of work, determine the corresponding specifications or compile a performance schedule;
- VI. Circumstances involving services related to public works provided by a single individual, provided that they are performed by this one person, without requiring more than one specialist or technical adviser.

47. In the case that two calls for bids involving at least three people have been declared void, the head of the division responsible for contracting work at the agency or entity can directly award the contract.

The procedure to invite at least three people will be subject to the following:

- I. The submission and opening of proposals can be carried out in the absence of the corresponding bidders, but a representative of the Internal Control Agency will invariably be invited.
- II. To make the corresponding award, a minimum of three responsive proposals must be received.
- III. The period to submit proposals will be set for each contract, taking into account the characteristics, complexity and magnitude of the works.
- IV. Distribution of the invitation in a visible location in the offices of the convener or on their website, and in the communication media chosen by the Commission, for information purposes only, including who was invited to participate.
- V. National or international in nature.
- VI. Any other stipulations provided for in this document that could apply.

E) INTEGRITY OF THE PROCESS FOR ACQUISITIONS AND CONTRACTING OF WORKS



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48. In the course of any procurement by the Commission, no official of the Commission should:

- Solicit or accept, directly or indirectly, any promise of future employment, business opportunity on the part of the supplier or participate, directly or indirectly, in any discussion of future employment or business opportunity with any official, employee, representative, agent, or consultant of any current or potential supplier.
- Solicit, demand, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other article of value from any official, employee, representative, agent, or consultant of any current or potential supplier.
- Divulge any information of a commercial nature or related to the selection of suppliers, directly or indirectly, to any person that is not the official in charge of the procurement.

49. The Commission may apply the following sanctions in case of a violation of any of the provisions mentioned:

- Verbal reprimand
- Written reprimand
- Suspension of salaries and duties for up to 10 work days, and
- Termination

F) CONTRACTING OF PERSONNEL

50. The Commission may, at the expense of these resources, contract with personnel to be assigned to the Mexican Section to address and follow up on the various projects under the charge of the Commission in accordance with the current Treaties regarding boundaries and waters between the United States and Mexico.

51. For this purpose, a specific contract shall be drafted, stipulating the obligations of the personnel to be hired and the agreed benefits, which will invariably be signed by the Mexican Commissioner on behalf of the Commission.

The Commission may revise or modify the current producers whenever it deems it convenient.



ENG. CARLOS MARIN
United States Commissioner



ENG. J. ARTURO HERRERA SOLÍS
Mexican Commissioner