
MÉXICO – PUBLICATION OF THE ADMINISTRATIVE CONTRACTING REGULATIONS FOR PEMEX

On January 6, 2010, the Board of Directors of *Petróleos Mexicanos* (“Pemex”) published in the *Official Gazette (Diario Oficial de la Federación* or “DOF”) the administrative regulations that govern the procurement of all acquisitions, leases, public works, and services related to Pemex’s core activities (*Disposiciones administrativas de contratación en materia de adquisiciones, arrendamientos, obras, y servicios de las actividades sustantivas de carácter productivo de Petróleos Mexicanos y Organismos Subsidiarios*) (the “Regulations”)¹. This Client Alert describes generally the scope and content of the Regulations and includes commentary regarding the overall significance of the Regulations with respect to the energy reform passed in November 2008.

I. SCOPE AND CONTENT

The Regulations provide the essential frame of reference required to implement the energy reform passed in November 2008 with respect to the acquisitions, leases, service contracts, public works, and other related services that Pemex and its subsidiaries may require, so long as these contracts refer to Pemex’s core activities (*actividades sustantivas de carácter productivo*) (the “Core Activities”). Together, the Pemex Law (published in the DOF on November 28, 2008), the Regulations of the Pemex Law (published in the DOF on September 4, 2009), and the Regulations, constitute the applicable legal framework under which Pemex and its subsidiaries may contract for the acquisition of goods and services. The last piece of the puzzle, the form agreements, has yet to be publicized by Pemex.

With respect to its content, the Regulations further specify and detail the basic concepts established in the Pemex Law and the Regulations of the Pemex Law, completing the special contracting regime created for the acquisition of goods and services by Pemex with respect to its Core Activities. The Regulations address Pemex’s actions related to the planning, budgeting, and programming of the contract for goods and services; the instances in which Board of Director approval shall be required to contract; all matters regarding the different contracting processes; the service provider and contractor registry; and the specific provisions all Pemex contracts shall contain.

It is worth noting that the Regulations also establish the conditions that oil and gas exploration and production contracts may contain. In accordance with the Regulations, the economic model of such contracts may be structured to consider, among others, variables such as the maximum productivity in determined phases or periods that may ultimately guarantee a rational exploitation of oil and gas fields; payment obligations subject to the project’s available income; and provisions that seek the utilization of the most adequate technology, but that reject the international model of risk contracts. Also, according to

¹ To view the Regulations in English, please [click here](#). To view the Regulations in Spanish, please [click here](#).

the Regulations, oil and gas exploration and production contracts may include clauses that permit the unitization of fields that extend into two or more contiguous work areas and that establish minimum exploration activity investment amounts as well as the terms and conditions for Pemex to declare the commerciality of a hydrocarbon discovery.

Finally, the Regulations specify that an exploration and production contract shall never include clauses that guarantee its profitability, the obligation to grant a contractor similar conditions given to other contractors, or that payment may be conditioned on the declaration of a commercial discovery by Pemex.

II. CONCLUSION

Overall, the Regulations indicate that the Mexican government is one step closer to completing the much awaited contractual framework, which is expected to permit Pemex to perform its Core Activities in a more flexible and agile way. The Mexican government believes that the Regulations, which supplement the Pemex Law and the Regulations of the Pemex Law, will pave the way to addressing many of the concerns and needs specific to Pemex contractors, which under the previous legal framework were applicable to all government acquisitions and were not satisfied and often overlooked. By addressing issues such as bid process, overall compensation, guarantees, and contract execution, among others, the Regulations not only constitute the next-to-last step of the Mexican government's implementation of a better opportunity for private companies to enter into more balanced contracts with Pemex, but they also show Pemex's clear intention to subject payment to performance indexes and the project's available income – something that current and future contractors must carefully evaluate based on the particular terms and conditions of each individual project.

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