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New terms for public procurement of the Federal Electricity Commission

To ensure that public procurement of the Federal Electricity Commission (CFE) is carried out on more favorable and strategic terms, on November 20, the Federal Official Gazette published the Amendment to General Procurement Provisions of the CFE and its productive subsidiary companies (“Amendments”).

The most relevant aspects of the Amendments are as follows:

1. The inclusion, within the functions of the Contracting Area (responsible for procurement procedures), of management and administration of framework agreements, as well as the detection of potential suppliers.
2. As of now, the Annual Procurement Program (“APP”) will be mandatory and linked to the financial resources and the annual operational program.
3. A specialized area of market intelligence is created, independent of the Contracting Area, which will have within its functions the integration of the APP and the preparation of necessity analysis, market assessments and specification sheets.
4. The methodology for research and updating of market conditions is redesigned to meet the following requirements:
 - a) Defining the maximum contract price.
 - b) Determining the most suitable procurement procedure.
 - c) Identifying the risk of collusion and anti-trust conditions.
 - d) Identifying market conditions that could affect the price of goods or services.
 - e) Defining specific mechanisms for each procurement procedure.
 - f) Identifying parameters for the evaluation of goods and services, as well as potential suppliers.
 - g) Determining the appropriateness of guarantees.

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5. The Amendments provide the following distinction for each procurement procedure according to their nature:
 - a) National
 - b) International, covered by treaties
 - c) Open international

6. Amendments also provide that specification sheets and contract models approved by the Technical Advisory Council will cease to be mandatory. Instead, such models may be adapted to procurement characteristics in each case, and according to the investigation of market conditions.
7. Additional requirements for outsourcing, on-demand contracts and any increase in the number of contracts are included.

In this sense, the Amendments provide that all bidders should incorporate within their technical offer the declaration that the individuals they intend to employ have the necessary technical and financial resources to carry out the works.

8. The Amendments eliminate the maximum limit for contracts concluded under a framework agreement.

Prior to the Amendments, all contracts concluded on the basis of a framework agreement could not exceed the threshold established biannually by the Ministry of Economy for contracts subject to free trade agreements signed by Mexico. As of now, such restriction is removed.

9. The Amendments include that the CFE and its subsidiary productive companies ("SPC") may terminate contracts without the need for a court decision.

This means that the contracting company (the CFE or the SPC that concluded the contract) may at any time terminate the contract without the need for a judicial resolution, where the supplier is in breach of his obligations under the terms and procedure laid down in the contract.

The Amendments, in force as of November 30, shall apply to all public procurement settled thereafter. Contracts concluded before such a date will be governed by rules applicable at the time of their conclusion.

For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail: contacto@ritch.com.mx