

COFECE puts forward a *Competition agenda towards integrity in public procurement*

- *In 2017, public procurement amounted to 585 billion pesos, resources which, under conditions of greater competition, would have been maximized and resulted in better quality services and infrastructure.*
- *The document puts forward concrete actions to establish regulations and incentives that favor the design and implementation of competitive procurement processes.*
- *To unite efforts, the Agenda will be submitted to the Federal Government, the president-elect's transition team, the next federal legislators and the National Anticorruption System.*

Mexico City, July 17, 2018.- The large amount of resources for public procurement, which in 2017 amounted to 585 billion pesos, is an incentive to design tenders or procurement mechanisms susceptible to the simulation of competition or which are prone to corruption between public officials and providers.

Entities of the Mexican State have the constitutional obligation of acquiring goods and services under the best price, quality, financing and convenience conditions, through transparent and competitive procurement processes. However, on a recurring basis, in procurement processes: 1) exceptions to tenders are based on ambiguous or subjective justifications; 2) participation is restricted by unnecessary requirements; 3) public tenders favor agents with specific commercial profiles or technical specifications; 4) submission of aggressive bids is hindered; 5) simulation of competition is tolerated; 6) market research, subcontracting and restricted invitations to tenders are used to coordinate bids among bidders (collusive tendering or bid rigging); 7) contracts, concessions and permits are modified to avoid competition; and 8) disqualification is not used to deter collusion, in addition to fines imposed by COFECE.

To address the competition problems found, to inhibit corruption and discourage illegal agreements among companies and public officials to impose surcharges on government or to allocate public contracts, the Federal Economic Competition Commission (COFECE or Commission) puts forward the document: *Competition agenda towards integrity in public procurement*, in which the following set of actions is proposed:



1. Issue a presidential decree that requires COFECE's participation in relevant public tenders to ensure competition conditions.
2. Create a virtual market and the obligation - via decree- that all Federal Public Administration agencies procure small acquisitions of homogeneous goods through its use.
3. Require winning bidders to declare if they intend to use subcontractors, and whom and why; and not to allow the subcontracting of unsuccessful bidders; and when joint participation is allowed, not allow bidders to present joint and separate bids.
4. Increase standards for the approval of amending agreements (term, amount, quantity).
5. Give transparency to modifications of concessions, permits and/or contracts to avoid bias.
6. Enforce disqualification, provided for in the *Administrative Liability Law*, to economic agents sanctioned for collusion, in terms of the *Competition Law*, to participate in subsequent public tenders.

In addition, seven actions that require legislative amendments are proposed:

7. Require agencies to conduct sound and transparent market research.
8. Narrow down circumstances under which procurement procedures other than open public tenders may be used.
9. Eliminate the exception foreseen for contracting between agencies and entities of the Federal Public Administration.
10. Allow other bidders to participate in restricted procedures.
11. Restrict simultaneous participation of companies of the same economic group to avoid simulation of competition.
12. Transform the points or percentage evaluation mechanism into a two-stage mechanism.
13. Establish a General Public Procurement Law (acquisitions and public Works) in line with international standards.



When public contracts are competed, overpricing is limited, potential for influence peddling and favoritism in the award of a contract is reduced, and collusive agreements aimed at making illicit profits through complicity among so-called competitors, or between a bidder and a public official, are hindered.

COFECE will submit this Agenda to Federal Government, the president-elect's transition team, the next federal legislators and the National Anticorruption System, to unite efforts for the best possible public spending, as well as to establish a common front in building a more competitive country.

[See the document in Spanish: Competition agenda towards integrity in public procurement.](#)

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The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through this, it contributes to consumer welfare and the efficient functioning of markets. Through its work, COFECE seeks better conditions for consumers, greater output, better services and a “level playing field” for businesses



Annex: Problems found in public procurement from a competition perspective

1. *Collusion can occur during market research*: when competitors agree to manipulate quotations and reference prices.
2. *Poor design of tenders is the main cause of lack of competition*: establishing requirements favoring a bidder, unnecessary conditions that hinder participation of other bidders, or not defining objective and transparent evaluation and award procedures.
3. *The evaluation mechanism of assigning points or percentages* implies the subjectivity of whomever sets the criteria, weights and carries out the assessment, favoring proposals that do not necessarily provide the best conditions to the State.
4. *Methods for the exception to public tenders are prone to collusion*: although these are covered by the rules to achieve administrative efficiency, these can lead to abuses. Particularly, invitations to at least three suppliers are used to disguise direct awarding of contracts.
5. *Subcontracting may be used as a collusive mechanism*: when a winning bidder subcontracts losing bidders, this could be used as a payment for a collusive agreement. Therefore, authorities must know if winning bidders plan to subcontract, to whom and reasons behind subcontracting.
6. *Companies of the same economic group may simulate competition*: current regulation does not prohibit independent participation of companies of the same economic group, which could be used to coordinate bids (without being sanctioned by COFECE as these are not competitors), or to simulate increased competition to have national tenders.
7. *Amending contracts, concessions and permits to avoid competition*: agents can make lower bids in a public tender to win a contract, looking forward to extending the contract, modify its concession or permit on more favorable terms.
8. *Disqualification is not used to deter collusion, in addition to fines imposed by COFECE*: economic agents that have engaged in absolute monopolistic practices (cartel activities) should be blocked from participating in future procurement processes. This would have a greater effect and promote compliance with the *Federal Economic Competition Law*.

