

## **COFECE: Decree to reform the state of Tabasco's public procurement and acquisitions law infringes competition constitutional principles**

**Mexico City, October 15, 2018.-** In adopting the state of Tabasco's "Decree that amends and adds diverse provisions to the Public Works and Related Services Law and the Acquisitions, Leasing and Public-Sector Services Law" (Decree), free market access and competition process in public procurement would be seriously affected. The reform, approved by the state Congress of Tabasco on September 26, expands, without objective substantiation, the authority's margin of discretion in the granting of contracts, by extending exemptions to public procurement and the direct award of contracts, risking the correct exercise of the public budget.

The Federal Economic Competition Commission (COFECE or Commission) submitted to the Governor of the State of Tabasco, Arturo Núñez Jiménez, a set of recommendations for the Decree and proposed the state's Congress review the Commission's considerations with the purpose of guaranteeing the Decree is in compliance with articles 134 and 28 of the Mexican Constitution.

Competitive tendering processes are ideal to ensure the State obtains the best conditions regarding price, quality, financing and opportunity in procurement for public works, goods and services. Tabasco's existing laws on works and acquisitions are in line with that mandated in article 134 of the Mexican Constitution. According to article 28 of the Constitution, the principles of competition and free market access should govern all governmental bodies. It also stipulates that laws should set the modalities and conditions to ensure efficiency in service delivery and use of goods and services and avoid concentrations that go against the public interest.

The approved reforms to the Decree modify these conditions and competed processes are now subject to the authority's discretionary criteria:

- i) Reforms extend exemptions to public procurement by including "strategic projects that generate jobs and improve infrastructure and foster the State's economic and/or social development." These provisions are generic and grant the authority a high margin of discretion to decide when a project should be exempted from a tendering procedure.

- ii) They eliminate the references that the existing works and acquisitions law has in terms of the thresholds permitted for other types of procurement procedures, such as invitations to no fewer than 3 suppliers or direct award of the contract to a specific supplier, or enable the award of contracts using anticompetitive methods, without considering the magnitude of the public resource required for the undertaking of the project.

The Decree's justification includes a temporal element – the need to allow for the rapid development of refineries as well as auxiliary works for their functioning-, without specifying how the actual elimination of public procurement would allow for a more rapid development of energy related projects. Experience shows that the direct award of projects reduces advantages in terms of price and quality which, through public procurement or tendering processes, generate competitive pressure. This is precisely why it is desirable to attract a greater number of participants or contractors to projects of relevant magnitude to choose, among these, the option that ensure the best contracting conditions, as well as avoiding markups that directly damage the public purse.

Likewise, by disqualifying the use of competitive procurement processes, the hiring of inefficient firms is fostered, thus compromising the participation of competitors that have the capacity to offer better quality and price alternatives to public institutions, distorting the market through harm that extends past one single procurement process.

[See opinion in Spanish](#)

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*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's well-being and the efficient functioning of markets. With its work, COFECE seeks better conditions for consumers, more services of higher quality and a "level playing field" for companies.*

