

PEMEX, its efforts to be competitive



Early 2010 PEMEX's new rules for buying and contracting the acquisition of products and services, as well as the execution of public works were published in Mexico's Official Daily Gazette. It is a single set of rules mixing provisions from the Acquisition, Leasing and Public Services Law [Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público], the Public Works and Related Services Law [Ley de Obras Públicas y Servicios Relacionados con las mismas] and a new tailored code that will control exclusively the acquisitions and public works execution between PEMEX and/or its subsidiary entities and its multiple contractors.

As expected, it continues with the trend established by the energy reform (end of 2008) of assimilating the state owned company to any of its counterparts, international oil companies that operate independently and totally under corporate governance rules.

They are directly related with the also brand new regulations of PEMEX published at the end of last year, and all together incorporate important changes that range from transferring of technology to the way in which PEMEX and its subsidiaries will maximize the economic value of their projects, including the improvement of the contract's transparent mechanisms.

- 3.) These incentive based contracts must be registered at the National Hydrocarbon Commission [Comisión Nacional de Hidrocarburos], who will be responsible, among others, for auditing and revising the way in which PEMEX grants these incentives.
- 4.) PEMEX and its subsidiaries will have the ability to relate the training of PEMEX's personnel by contractors. Contracts involving new processes, products, activities, models or services will be revised in order to incorporate provisions for transferring of rights (technology) agreements.
- 5.) The establishing of blocks as it occurs in licensing systems, namely the United

Interestingly, the regulations have an especial section for exploration and production contracts, which highlights the new approach of PEMEX in addressing the urgency in developing new projects and increasing proven reserves.

The most important features are:

- 1.) Sets up the bases for the so called “Incentive-based contracts”, which are precisely designed to overcome the difficulties of the current regime and encourage contractors to be more efficient by rewarding them fairly. Although the payment to contractors must be in cash and not in kind since production sharing agreements continue to be forbidden under Mexican law, the new regulations allows PEMEX to compensate throughout a performance criteria.
- 2.) According with its article 62, the remunerations can be established *“in function of the goals accomplished or in function of explicit and quantifiable indicators, expressed in measurement units, such as production, capacity, reserves replacement ratio, incorporation of reserves, costs reductions, the obtaining of any surplus, and others that have a direct impact in the profitability of PEMEX, its subsidiaries or the outcome of the project.”*

Kingdom Continental Shelf. These working areas will be identified by their latitude and longitude and will be granted to contractors according with the programmes authorized by PEMEX.

- 6.) Unitization provisions are also envisaged, mainly due to the possibility that hydrocarbons could be underlying between 2 or more blocks, assigned to different companies.
- 7.) Paradoxically, regarding exploration contracts, the payment to the contractor could be subject to the condition that the subsidiary entity, specifically PEMEX Exploration & Production, determines whether the discovered reservoir is commercial or not. This characteristic becomes relevant since it constitutes an expected disposition on risk contracts, common within the petroleum industry but completely contradictory and forbidden by Mexican Law. Moreover, it represents the starting point for further changes of prohibitions that now, distinguish the petroleum industry in Mexico from the rest.

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