

Policy for the Resolution of Procurement Disputes

1. Background.

All purchases must meet economic and efficiency criteria. The process of institutional procurement should be transparent, giving all eligible suppliers the same information and equal opportunity to compete in supplying goods, works, and services. If equivalent conditions are established, preference will be given to proposals that present sustainable technological innovations, and if the tie persists, to people integrating micro, small and medium-sized national enterprises.

2. Objectives.

- Establish an effective, transparent and impartial mean of communication for the presentation of disputes over institutional procurement.
- Correct or amend any faults occurred in the procurement process.
- Inhibit and punish corrupt practices.

3. Scope.

3.1. Actions object of dispute:

The acts that a person can impugn are:

- The call for proposals.
- The ruling.
- Institutional omissions that obstruct the formalization of the contract.

3.2. Request of disagreement.

Anyone has the right to submit an unconformity when:

- The person has submitted a proposal in a public call issued by FMCN.
- The person has submitted a proposal from a direct invitation from FMCN.
- A group of people has submitted a joint proposal in a public call or direct invitation from FMCN.
- The person has expressed interest in participating in the procurement process.

In the case of providers constituted as a legal entity, the legal representative is the only one authorized to submit a written disagreement.

In the case of suppliers with a joint proposal, the unconformity will only be taken into account if presented jointly by all the members.

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4. Definitions.

Unconformity. The chance individuals have to impugn a procurement ruling and all the events they consider irregular in the process of procurement.

Pieces of evidence. Those directly related to the facts arising the unconformity and that can change the procurement decision.

Discard. When the written disagreement is delivered beyond the deadline or the character of the discontented person is not credited.

Dismissal. The case in which the lack of evidence paralyzes the process.

Suspension. When the responsible authority orders to stop the procurement process until it has a final resolution.

Public call. Public request to submit economic proposals on specific goods, works, and services.

Direct invitation. The selection process which determines that a restricted group of suppliers, due to the nature of their commercial activities, is able to supply the good or service required by the institution.

Area of responsibility. The responsible for receiving and giving attention to the disgruntled person and conducting investigations on the basis of their dissatisfaction.

Resolving organ. The maximum authority commissioned to solve the disagreement.

5. Of the Disagreement.

5.1. Communication channels for the reception of written unconformity for procurements.

The dissatisfied person could present a written unconformity through:

- a) Traditional messaging
Recipient: Internal Audit
Address: Damas 49, Colonia San José Insurgentes, Benito Juárez, Mexico City, C.P. 03900.
- b) Electronic message: denuncia@fmcn.org
- c) Virtual mailbox: fmcn.org

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5.2. Written disagreement.

Requirements of the written disagreement:

1. The name of the offended person.
2. The address and email for receiving notifications.
3. Reference to the public call or decision originating the disagreement, or request to interrupt a current procurement process.
4. Description of the events and causes for the unconformity.
5. Proof directly related to the procurement process, which supports the disagreement. *Any evidence not associated with the procurement process will be discarded.*

The written disagreement must be accompanied by the public instrument evidencing the personality of the dissatisfied person.

5.3. Period for submission of the written disagreement.

- In the case of a public call, the disgruntled person will have six working days after the decision.
- In the case of a direct invitation, the disgruntled person shall have six working days after the institutional notice.
- Six business days before the closing of the call.

5.4. Causes of inadmissibility.

The disagreement is not applicable when:

- A person who did not participate in the procurement process presents the complaint.
- The objection is unfounded.
- The person who disagrees does not credit his personality.
- The written disagreement is presented in an extemporaneous way.

5.5. Motives of dismissal.

- Express withdrawal of the disgruntled person.
- When in the course of the investigation there is a cause for inappropriateness.

6. Dispute settlement mechanisms.

6.1. Hearing guarantee.

The person who disagrees shall have the right to present himself, explain and express what is in his interest, and must observe the requirements of the written disagreement.

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6.2. Extension of the disagreement.

The disgruntled person shall have the right to extend the impugnation objects after the submission of the written disagreement.

The arguments aimed to improve the initial reasons for the unconformity in the delivered writing will not be taken into account.

6.3. Suspension of the procurement process.

Where the letter of disagreement contains a request for the suspension of an ongoing procurement process, the latter shall express the reasons for which the suspension should take place.

The area responsible shall determine to suspend or not the procurement process, to define the situation in which things will be left, and to establish the appropriate measures to preserve the evidence object of the disagreement.

On the other hand, when the responsible authority notices omissions in the procurement process, it will proceed with the suspension.

7. Area of responsibility.

The Internal Audit unit is responsible for receiving disputes over procurement and conducting an investigation of the facts and circumstances that caused it.

Responsibilities of the Internal Auditor:

1. Analyze the execution of the procurement process with responsibility, objectivity, independence, impartiality, honesty, and ethics.
2. Suspend the procurement process when the dispute arises in the course of bidding.
3. Conduct research:
 - Ask the offended person to confirm their general information.
 - Request clarifications or additional documentation on the evidence admitted.
 - Activate dispute settlement mechanisms.
 - Conduct interviews with staff involved in the procurement process.
 - Review the institutional file arising from the procurement process.
 - Consult the technical committees of FMCN.
 - Consult experts in the field.

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1. Maintain confidentiality related to the information derived from the investigation.
2. Revise the legal provisions relating to the procurement.
3. To issue recommendations to strengthen the transparency, impartiality, and integrity of the procurement process.
4. Present the research dossier to the Institutional Accompaniment and Risk Control Committee.
5. Execute final resolution.

The maximum period to conduct the investigation is thirty working days.

8. Resolving organ.

The Committee for Institutional Accompaniment and Risk Control (CAICR) is the body responsible for issuing definitive resolution, observations and recommendations.

Responsibilities of the Committee

1. Examine the investigation dossier.
2. Issue the final resolution.

9. Final resolution.

Internal audit is responsible for executing the final resolution, following up on observations and recommendations, and preparing the minute.

Contents of the Definitive Resolution Minute:

- Identification of the discontented person.
- Written disagreement.
- Description of the action, the object of the dispute.
- Analysis of the reasons for unconformity.
- Assessment of the evidence admitted.
- The opinion of the Technical Committees and experts in the field.
- Applicable legal provisions.
- Decisive points.

The Internal Auditor shall keep a record of the minutes for unconformity.

10. Notifications.

The Internal Auditor establishes written communication with the dissatisfied person in the following stages:

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10.1. Written disagreement. The Internal Auditor has three working days to notify the dissatisfied person about the reception of the written disagreement.

The Internal Auditor must inform the discontented person about the requirements to be fulfilled by the written disagreement (see 5.2. *Written disagreement*).

If after three business days, the offended person does not reply to the initial application, the Internal Auditor will dismiss the disagreement.

10.2. Analysis of the dispute reasons. To deepen on the analysis of the written disagreement, the Internal Auditor may request clarification or additional information on the evidence submitted by the disgruntled person.

If after three working days, the complaining person does not respond to the request for clarification, the Internal Auditor shall declare the disagreement as unfounded.

10.3. Final resolution. Within no more than 45 working days, the Internal Auditor sends written notification to the discontented person on the final decision of the institution.

11. Sanctions.

11.1. Penalties for the staff.

If, as a result of the investigation, an employee is identified as acting against the Code of Ethics, the penalties the institution will impose are:

1. Written admonition
2. Dismissal
3. Criminal complaint

The severity of the penalties will be based on the severity of the fault committed as well as its origin (actions derived from negligence or fraud).

The penalty shall be imposed by the supervisor of the person who has committed the fault; advised by the Committee of Institutional Accompaniment and Risk Control.

11.2. Penalty on the offended person.

If it is identified that the complaining person submitted a written disagreement for delaying or hindering the procurement process, the institution shall proceed with the disqualification of the supplier.