

## *Definitive Bidding Guidelines and Production Sharing Contract First Call to Bid-Round One- Shallow Waters*

On May 29th and June 9th, 2015, the National Hydrocarbons Commission (CNH) made the last amendments to the Bidding Guidelines for the First Invitation to Bid, and the final draft of the Production Sharing Contract (the Contract.) With this, the bidding process's rules and conditions, and the final draft are already defined, giving legal certainty to all bidding process participants (the Bidders.)

### **1. Bidding Guidelines:**

#### **a) Removal of Restrictions.-**

Among the most relevant amendments made by the CNH are those related to the removal of a cap on the numbers of blocks for which a company or consortium can bid, which had been previously limited to five. In this regard, the CNH allowed the Bidders to bid for the total number of blocks (fourteen) related to the exploration and extraction in shallow waters.

Likewise, the restriction related to the operator having the higher participation within a consortium was eliminated, however the latter must retain at least one third of such participation. Also, the CNH removed the obligation for the participants to destroy, once the bidding process ends, the information gathered in the public bidding process data room. The commercial use of such information can only be authorized through written consent by the CNH.

#### **b) Significant Adjustments.-**

Regarding the bidding guideline's adjustments, the CNH approved for consortium financial partners to hold a greater share than the operator and the entity responsible for the project. The Bidders also must include in the economic offer envelope, an additional envelope indicating the amount offered in cash in case of a tie, which will be only opened in event of a tie.

### **2. Final Draft of the Production Sharing Contract:**

#### **a) Preliminary Investigation and Conciliation.-**

The CNH conducted an analysis in greater detail taking into account the observations and comments that were made by the Bidders, and decided to include in the Contract two-import additional concepts. The first one is related to the inclusion of a clause called "Clause of Preliminary Investigation," which is intimately linked with the administrative rescission provided for under article 20 of the Hydrocarbons Law. The second one relates to the expansion and use of alternative methods of dispute resolutions through conciliation, which brings, in one way or another, a sense of strength of article 21 of the Hydrocarbons Law.

By including the "Clause of Preliminary Investigation" in the Contract, the CNH brought into the mix a previous obligatory step to be exhausted before beginning the administrative rescission process. Once the CNH is made aware of non-compliance signs related to one or more obligations that lead to an administrative rescission

procedure, the CNH must follow two important steps. First, it must notify the Contractor of the probable non-compliances, and second, it must collect sufficient evidence to determine whether to proceed with the administrative rescission process. It is important to highlight that this stage may last between 30 days and two years.

With this addition, on one hand the CNH will not be able to proceed immediately and discretionally with the administrative rescission process, since in order to do so it must collect all the necessary proof elements in this prior stage. However, on the other hand, these amendments allow the Commission to determine on a discretionally basis when it will consider that there are “sufficient” elements of proof to proceed with the rescission process, and the CNH will also decide, how long such preliminary investigation stage will take, from thirty days, up to two years.

In regards to the “Conciliation” figure, the CNH provided in the Contract that any dispute or difference between parties may be settled through a conciliation procedure before a conciliator at any time. This process must be in compliance with the United Nation Commission on International Trade Law Conciliation Rules, and may be brought by any party. The process starts with an invitation to conciliate sent by one party to the other, and this party has 15 days to accept or refuse it. In the event that parties do not reach an agreement within three months, the controversy or difference must be settled through arbitration.

Nonetheless, it is important to notice that any of the parties can refuse to conciliate. Moreover, once the conciliation process begins, any of the parties may opt to terminate the conciliation process and proceed with the arbitration process. Furthermore, the conciliation process will not apply for controversies in connection with the administrative rescission, which follows the same principle that was provided to restrict arbitration for administrative rescission causes, leaving arbitration possible only for contractual rescission.

Regarding the conciliator, parties may agree either to its nomination or to request the assistance of any institution to do so. The conciliator must meet certain requirements such as: (i) at least 10 years of conciliation experience, and (ii) must be independent, impartial and neutral in its decisions. A person cannot be conciliator if: (i) he or she has been employee of any of the parties or their subsidiaries companies within the previous six years before his or her nomination, (ii) he or she has been consultant or contractor of any of the parties or their subsidiaries within the previous three years before his or her nomination, and (iii) he or she has a significant financial interest with any of the parties.

#### **b) Settlement.-**

The CNH inserted a clause expressly including the settlement figure, which was already provided under the Hydrocarbons Law. This clause sets forth that no later than six months after the termination of the Contract for any reason, parties must enter into a settlement in which the outstanding balance must be reflected. This settlement can include any transaction or agreement that the parties have agreed on in order to settle any dispute presented during the contractual period.

#### **c) Insurances.-**

The scope of insurances was enhanced and clarified, and these must be valid prior to the beginning of the activities conducted by parties. These insurances must cover: Civil liability; control of wells; material damages and injuries to personnel.

**d) Force Majeure.-**

Within the scope of this provision, the CNH agreed that in the event that force majeure lasts over a year, the Commission may grant an extension up to four periods of three months each. Also, the provision stipulates that in case that force majeure lasts over two years, any of the parties may opt to terminate the Contract.

**e) Guarantees.-**

The CNH included in the Contract some conditions to assure that the Contractor is acting with the support of a sufficiently solvent Guarantor. Also, it is stated that the Contractor may request the return or reduction of the compliance guarantees once the compliance with its obligations is evidenced, and the CNH has certified this.

**f) Adjustment of the Time for Plan Submission.-**

The period for submitting the Exploration Plan was extended from 60 to 120 days. Also, the period for submitting the Development Plan was extended from 120 days to one year.

**g) Federal Courts.-**

The CNH added to the Contract that not only any controversy or dispute arising out of or in connection with the administrative rescission must be brought before Mexican Federal Courts, but any act of authority related to the Contract as well.

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Sincerely,

***Von Wobeser & Sierra, S.C.***

Mexico City, June 15th, 2015.