



Campa &  
Mendoza  
ABOGADOS

December 3, 2021

## Exploration and Extraction Comprehensive Services Contract – Cuitláhuac – 2<sup>nd</sup> Tender

This is a summary of the Tender No. PEP-CAI-S-GCP-501-91035-21-2 called by Pemex Exploración y Producción (“**PEP**”) to award the “*Cuitláhuac Exploration and Extraction Comprehensive Services Contract*” (the “**Tender**”).<sup>1</sup> The call for the Tender was published in the Federal Register (*Diario Oficial de la Federación*) on November 30, 2021. The Tender documents in Spanish may be found here.

This is the second tender called by PEP to award the same project. The first tender (under number PEP-CAT-S-GCP-501-91035-21-1) was first published in the DOF on July 13, 2021, but the tender was declared abandoned because no participant was able to satisfy the prequalification criteria.

The deadline to submit a statement of interest to participate in the Tender **is three (3) business days before January 10, 2022** (which is the deadline to submit prequalification documents).

What follows is a summary of the key terms of the Tender, as well as a summary of the key terms and conditions of the model services contract (the “**Contract**”).

---

<sup>1</sup> This is a courtesy summary of the Tender and is not intended to be or substitute legal advice as to the terms and conditions of the Tender. If you would like additional information or have questions on the content of this document, please contact us at [contacto@campaymendoza.com](mailto:contacto@campaymendoza.com) or at [diego.campa@campaymendoza.com](mailto:diego.campa@campaymendoza.com). *Campa y Mendoza, S.C.* disclaims any liability for reliance on the content of this document. This is not intended to be a comprehensive summary of all relevant terms and conditions of the Tender.





## EXECUTIVE SUMMARY

The Tender refers to the award of the Contract to render services (“**Services**”) to PEP that consist in the development, extraction and production of hydrocarbons to develop the Contract Area for a term of fifteen (15) years as of the Effective Date (which commences 30 days following the execution of the Contract) extendable for five additional years.<sup>2</sup> PEP, as holder of the Entitlement, will remain as the Operator under Entitlement (*Asignación*) A-0112-M Campo Cuitláhuac located 44.5 kilometers southeast of Reynosa, Tamaulipas. This Entitlement allows (is limited to) oil and gas extraction activities. The Contract Area’s surface is 195.04 km<sup>2</sup>.

In this “second round” of the Tender, virtually all of the information and documents remains the same of the “first round”, including but not limited to the model Contract. However, the technical and financial prequalification requirements have changed (*See* Section 3 below). For example, interested parties may evidence experience within the last 15 years and not only within the 5 years leading up the Tender. Also, the financial requirements have been reduced significantly from ~US\$190 million net worth to ~US\$74 million.

There continues to be a prequalification process for the Tender; *see* Section 2 below for main requirements. The process is conducted through Pemex’s electronic procurement system: *SISCEP*.

Both Mexican and foreign companies may participate in the Tender. Interested parties may participate individually or as part of an unincorporated consortium.

---

<sup>2</sup> The Services may include exploration.





The contractor takes no interest in or ownership over oil and gas in the subsoil. In general, the Services are rendered in accordance with a reference development plan. There are three main periods under the Contract: **(i)** the transition period (lasting 3 months); **(ii)** the primary period (lasting up to 12 months), and **(iii)** the development period which will run until the termination of the Contract.

The Contract model is similar to previous “fee per barrel” service contracts used in the past by PEP. The exploration and extraction comprehensive services contract (known as “*CSIEE*” for its acronym in Spanish) is a contract scheme expressly provided for by the Law of Petróleos Mexicanos (*Ley de Petróleos Mexicanos*) of 2014 and so far used by Pemex on a handful of Entitlements.<sup>3</sup>

Consideration (*Remuneración*) under the Contract will be determined on a percentage of the Available Cash Flow (“*FED*” for its acronym in Spanish). This Consideration will be paid monthly and always in cash. FED is equal to the amount generated by the Revenue (*Ingresos*)<sup>4</sup> after discounting the payment of taxes and governmental fees and the Irreducible Costs (*Costos Irreductibles*).<sup>5</sup> The Consideration is calculated by applying a percentage to the FED on each month. This percentage (known as the service provider percentage) in turn is calculated by applying an adjustment factor to an Initial FED Percentage based on revenues and production volume.

The main economic factor to award the Contract is: **(i)** the FED percentage offered that shall be **within the range of 62.49% to 65.54%**, and **(ii)** any “advanced activities: major workovers or drilling.

Payment from PEP will occur in a term not to exceed ninety (90) calendar days counted as of the receipt of the invoice.

---

<sup>3</sup> Examples include *Olmos* and *San Ramon y Blasillo*.

<sup>4</sup> Contract Price for Condensate times the volume of Condensate plus Contract Price for Gas times the volume of gas.

<sup>5</sup> A rate for gathering, transportation and treatment of condensate and gas.





Like in the case of the first tender for this project, PEP will create a trust (the “**Trust**”) whereby PEP acts as settlor (*fideicomitente*) and the service provider/contractor as first beneficiary (*fideicomisario en primer lugar*).<sup>6</sup> However, there seems to be a fatal flaw in this structure because instead of PEP assigning the receivables of any production of the Contract Area (*i.e.*, receivables on commercialization of the production of condensate and gas), it is the service provider/contractor the one who assigns the collection rights (receivables) of the Consideration under the Contract to the Trust. Thus, instead of creating a security trust to ensure payment of the Consideration by PEP, the Trust acts as a payment administration trust only which potentially would only benefit potential lenders of the service provider/contractor.<sup>7</sup>

The Contract provides liquidated damages for non-compliance with the programs for the primary period, annual services program, HSE violations, termination for default. Liability cap of the contractor/services provider: US\$297,300 million.<sup>8</sup>

The Contract is (will be) governed by the federal laws of Mexico. Any dispute shall be heard and resolved by the federal courts seating in Mexico City.

---

<sup>6</sup> Given that the service provider/contractor will assign its collection rights (*i.e.*, Consideration) under the Contract in favor of the Trust, the latter should also be characterized as settlor.

<sup>7</sup> We recommend seeking clarification from PEP on this specific point.

<sup>8</sup> Exceptions to the cap may render the cap moot.





1. *Tender Schedule.*<sup>9</sup>

No.	Event / Milestone	Deadline	Status
1.	Submission of statement of interest	No later than 3 business days before January 10, 2022.	
2.	Deadline to submit requests for clarification on the prequalification	December 10, 2021, 09:00hrs	
3.	Responses to requested clarifications	December 20, 2021	
4.	Reception of prequalification documents	January 10, 2022, 09:00 hours	
5.	Prequalification results	January 26, 2022	
6.	Data room access (attention by PEP personnel)	From January 27 to February 15, 2022	
7.	Deadline to submit requests for clarification on the Tender guidelines/rules	January 28, 2022, 09:00hrs	
8.	Responses to requests for clarification of the Tender rules/guidelines	February 2, 2022	
9.	Site visit	From February 17 to 23, 2022	
10.	Deadline to submit requests for clarification to the Tender rules/guidelines (second round)	February 25, 2022, 09:00hrs	
11.	Responses to requests for clarification on Tender guidelines/rules (second round)	March 4, 2022	
12.	Final version of Tender guidelines/rules	March 9, 2022	

<sup>9</sup> As of December 2, 2021.





No.	Event / Milestone	Deadline	Status
13.	<b><u>Submission and opening of bids</u></b>	<b><u>March 22, 2022</u></b>	
14.	Notice of the award and result of the Tender	March 31, 2022	
15.	Estimated date for execution of Contract	April 12, 2022	

## 2. *Electronic Procurement System Pemex (known as “SISCeP”).*

The Tender will be conducted electronically through Pemex’s SISCeP which is a procurement system implemented for all procurement across Pemex.

As per Section IV of the Tender rules (the “**Rules**”), PEP invites all interested parties to request assistance and training in the use of SISCeP at the site: <http://www.pemex.com/procura/procedimientos-de-contratacion/contratacion/Paginas/procedimientos.aspx>

If an interested party is not registered in the SISCeP, it shall complete a questionnaire at Pemex’s website (Suppliers). Once the information is verified, after 72 hours, the interested party will receive a certificate of its ID code and it will be required to create a user account and password.

## 3. *Prequalification.*

To be eligible to submit a bid, the interested party must first undergo a prequalification process (“**Prequalification**”). To prequalify, the interested party is required to submit three (3) categories of documents/information:





(i) **Legal-Administrative.**

This includes statement of conflict with public officials, legal standing/incorporation, official ID of legal representative, statement under oath about no disqualification, consent on tax and labor authorities sharing information with PEP, compliance, absence of legal disputes with Pemex, not being in the lists of simulated tax transactions (EFOS), voluntary participation, among others.

Despite that section X of the “Information to be Considered in the Tender” of the Tender rules provides that any person, Mexican or foreign may participate in the Tender, there is a document of the Legal-Administrative Prequalification criteria that requires that the “*Participant is of Mexican Nationality*”.<sup>10</sup>

(ii) **Financial Capability.**

- Credit Rating
  - o Submit a credit rating (**Investment Grade**) issued by an entity approved by the National Banking and Securities Commission (*Comisión Nacional Bancaria de Valores*) that is equal to or greater than: S&P: BBB-, Moody’s: Baa3, Fitch: BBB-, HR Ratings: HR BBB- (G), A.M. Best: bbb- and DRBs: BBB (baja).
- In substitution of the Credit Rating, Audit Report issued by an Independent Certified Public Accountant on the Financial Statements for the fiscal year 2020.
  - o The interested party will be required to satisfy the *Z2 Altman* test
  - o Net worth (*Capital contable*): equal to or greater than US\$74,200,000.00. In case of joint bids, the net worth of the members of the consortium will be added.
  - o No longer is there a requirement for a minimum amount of net working capital (*capital neto de trabajo*).

---

<sup>10</sup> This will have to be clarified with PEP as part of the Tender process.





- Only in the case of consortiums (joint bids) a “commitment letter to provide financial resources”.
- Financial Capability Backup (optional)
- Affiliates
  - o The interested parties may evidence financial capabilities through the use of affiliates or ultimate parent company without those being a party to a consortium. In this case, the affiliate or ultimate parent company: (a) shall be bound to execute the Contract as joint obligor; and (b) shall delivery a corporate guarantee in terms of the corporate guarantee model form.

(iii) **Technical Capabilities.**

- In case of joint bids, the submission of Private Joint Services Agreement executed by all consortium members.
- Experience of the interested party:
  - o Having operated a comprehensive exploitation mature project at any time within the last 15 years, with reservoirs found at depths equal to or greater than 2,000 meters, and having obtained an average production of at least 3,000 barrels per day of oil and/or 30 million cfd reached at any time within the last 15 years.
    - The Tender provides a definition for “mature field”.
  - o Submit a concession title or contract.
  - o Technical summary of the operated field.
- Experience in the analysis, design and operation of artificial production systems over the last 15 years:
  - o 3 calculation report showing the analysis and design of any artificial production system mainly operated by the participant, as well as the reports on results for a period of at least 6 months.
  - o Submit the design of the artificial system used
  - o Report on the production results and operation of the system for 6 months of intervention or that otherwise demonstrates the benefits of the artificial production system
- Policy on safety, occupational health and environmental protection (HSE)







- Organizational chart
- Allocation of resources to comply with HSE policy
- Experience of personnel on HSE
- HSE training
- HSE programs and effective audits
- HSE performance
  - Statistics on serious personal and industrial accidents of the interested party and subcontractors
  - Performance on the HSE Annex (*Anexo SSPA*)

#### 4. *Model Contract.*

Please contact us if you would like to learn more about the model Contract.

\* \* \* \* \*

