



## Alternative dispute resolution mechanisms during contract execution in Nuevo León



Public Procurement Principle: **Accountability**



Procurement Stage: **Post-award**



Audience: **policymaker, procurement entity, private sector**

### Description

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Alternative dispute resolution mechanisms during contract execution in Nuevo León  
According to Nuevo León's public procurement legislation, contracting parties can agree to use negotiation or mediation as a dispute settlement mechanism to resolve their distinct interpretations of the execution of contracts. Such dispute settlement mechanisms may be agreed upon in the contracts themselves, or in an independent agreement.

In any case, dispute settlements must agree to the following:

- The stage of negotiation or mediation, as well as an agreement of the time period when this negotiation will take place;
- the parties agree to conduct bargaining or mediation procedures in good faith;
- the applicable laws shall be those of the state;
- negotiations or mediations must be carried out in Spanish;
- the agreement resulting from the negotiation or mediation shall be binding to both parties. The parties to a contract may also agree to an arbitration procedure to resolve disputes about compliance with the contract in terms of the provisions of the Law of Alternative Methods for Conflict Resolution of the State of Nuevo León.

The use of negotiation, mediation or arbitration are not mutually exclusive, nor do they restrict the actions of the parties in cases of possible invalidity of acts of authority, violation of human rights or crimes. The arbitration procedure may be agreed upon in the contract itself or in an independent agreement. With the alternative non-adversarial method (negotiation or mediation), one or more service providers intervene in a dispute, without the authority to decide on the basis of the agreement that could be reached.

These providers are not permitted to issue a judgment or sentence, but will facilitate communication between the participants in the conflict. The purpose of the process is that these providers take control of the case and arrive at a solution. The conciliation and the mediation processes in Nuevo León have several stages. They generally start with the two parties trying to resolve an issue among themselves. If that does not work, a third party is brought in, but its role and authority can vary.

If the disagreement continues, the matter can be brought to arbitration. For arbitration in public works, the alternative non-adversarial method, regulated by the Code of Civil Procedures of the State, is applied. In this case, one or more providers of alternative methods (who are called arbiters) issue a definitive and mandatory award for the participants in the conflict, in order to finalize it. Despite the legal possibility to apply such alternative methods, there is no data available about the frequency of cases going to mediation or arbitration relating to issues arising during the execution of public procurement contracts.

The alternative methods have been used rarely, according to government information. Hence, the effectiveness of the process is unknown, as is any impact these procedures may have had on works in progress.

OECD (2021), Public Procurement in the State of Mexico Enhancing Efficiency and Competition, OECD Public Governance Reviews <https://doi.org/10.1787/22190414>

