

OECD Public Governance Reviews

# Reforming ISSSTESON's Public Procurement for Sustainability





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**Please cite this publication as:**

OECD (2019), *Reforming ISSSTESON's Public Procurement for Sustainability*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/a6ee30a8-en>.

ISBN 978-92-64-34630-7 (print)

ISBN 978-92-64-91102-4 (pdf)

OECD Public Governance Reviews

ISSN 2219-0406 (print)

ISSN 2219-0414 (online)

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# Foreword

Health systems are under increasing stress in OECD countries. Aging populations and the high incidence of chronic diseases, which require long and costly treatments, call for health systems to implement strategies that will maximise efficiency and minimise waste in order to preserve and, where possible, improve the availability and quality of health care services. This is all the more necessary in countries where access to basic public services such as health care are unequally distributed. With a Gini coefficient of 0.46, Mexico has the highest inequality rate among OECD countries. Already, Mexico has the lowest per capita spending on health care (USD 1 034) among OECD countries. In order to improve access to health care services, Mexico needs to spend more and spend better.

Health services in Mexico are decentralised and the autonomous Mexican States play an important role not only in investing resources transferred from the federal government, but also in managing health and pension institutions under their jurisdictions. This is the case of the Institute of Security and Social Services for the Workers of the State of Sonora (ISSSTESON), the second largest state in territory, with a population of three million people.

With close to 180 000 affiliates, ISSSTESON provides health care and pensions to employees of the State Government of Sonora. In view of the increasing disparity between income and expenditure, ISSSTESON and the State Government of Sonora are engaged in ongoing reforms to ensure the sustainability of the system, including the crucial area of public procurement.

As a key actor in Sonora's health care system, ISSSTESON invited the OECD to assess its procurement policies and practices against the 2015 *OECD Recommendation of the Council on Public Procurement*, in particular as they relate to efficiency, accessibility, integrity, transparency, professionalisation, use of e-procurement tools, risk management, and evaluation. The review *Reforming ISSSTESON's Public Procurement for Sustainability* is the result of this OECD peer review on public governance. These reviews help governments at all levels to design and implement strategic, evidence-based and innovative policies to strengthen their governance, to respond effectively to diverse and disruptive economic, social and environmental challenges, and to deliver on their commitments to citizens.

While the OECD has worked with various national social security institutions of Mexico in the past, such as the Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social*, IMSS) and the State's Employees' Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, ISSSTE), ISSSTESON is the first social security institution at the state level reviewed by the OECD.

The report finds that ISSSTESON, with the support of the State Government of Sonora, is determined to overcome its present difficult financial situation. For example, it has begun to reform the governance of its procurement function in order to improve co-ordination and internal control, and to realise the potential for efficiencies from aggregating demand. Likewise, it reached an agreement with the State Ministry of Finance and the State University to settle their debts with the Institute.

However, this report also concludes that much still needs to be done to ensure the sustainability of the institution, and all political actors should come together to advance the necessary reforms. First, efficiencies could be realised by improving its public procurement governance and functioning. The Institute and the Sonora state government should also review the regulatory framework for public procurement to allow for greater flexibility in the strategies, tools, and features of the system. Finally, as this review documents, the pension benefits offered by ISSSTESON are generous when compared to other states in Mexico and OECD countries. The agreements to settle past debts are a step in the right direction, but if the pension scheme is not reformed, pressure will continue to increase, which may jeopardise the scheme's long-term sustainability.

The OECD remains ready to support ISSSTESON and the government of Sonora as it implements the necessary reforms to improve the Institute's overall situation and its capacity to procure better. If reforms are advanced in a timely manner, Sonora could become the benchmark for other federal states in Mexico beset with similar challenges in their health care and pension systems for public employees.

# Acknowledgements

Under the direction and oversight of Marcos Bonturi, OECD Director for Public Governance, and Janos Bertók, Head of the Public Sector Integrity Division at the OECD, this review was co-ordinated by Senior Policy Analyst Jacobo Pastor García Villarreal, with support from Paulo Magina, Head of the Procurement Unit. The authors of the different chapters include Pétur Berg Matthíasson, Jacobo Pastor García Villarreal, Rossana Aragón Plaza, and Natalia Sandoval Peña. Fundación Idea provided the draft of the chapter on the revenue structure of ISSSTESON. Editorial assistance was provided by Meral Gedik, Juan Pablo Bolaños, and Thibaut Gigou. Rania Haidar and Aleksandra Bogusz provided administrative assistance. The OECD Mexico Centre, under the leadership of Roberto Martinez, and the staff in charge of publications, notably Alejandro Camacho, were instrumental in co-ordinating the editorial process for the Spanish publication.

This review is part of a series of governance reviews in OECD and G20 countries. It is also part of a series of sub-national reviews in Mexico to advance good governance of public procurement. The report benefited from the insights and comments from the staff in the different departments of ISSSTESON. During the fact-finding missions the OECD also met with staff from the Ministry for Control (*Secretaría de la Contraloría General del Estado de Sonora*), the Ministry of Finance (*Secretaría de Hacienda del Estado de Sonora*), Sonora's Supreme Audit Institution (*Instituto Superior de Auditoría y Fiscalización, ISAF*), the Office of the State's Legal Counsellor (*Consejería Jurídica*), and ISSSTESON's Internal Control Body (*Órgano Interno de Control, OIC*), as well as representatives of suppliers, business chambers, and civil society organisations.

The OECD expresses its gratitude to the Government of the State of Sonora for its fruitful co-operation and leadership. In particular, the OECD would like to thank Governor Claudia Pavlovich Arellano; ISSSTESON General Director, Pedro Ángel Contreras López; Minister for Control, Miguel Ángel Murillo Aispuro; and Minister of Health, Enrique Claussen.

Ambassador Sybel Galván and the staff from the Permanent Delegation of Mexico to the OECD were instrumental in supporting the OECD in this project.

This report incorporates information shared during an OECD workshop on preventing bid rigging in public procurement, which took place on 18-19 May 2017, which benefited from the participation of Iratxe Gurpegui, Competition Expert, OECD Competition Division; Roberto Zúñiga Cervera, Research Analyst, Mexico's Federal Competition Commission (*Comisión Federal de Competencia, COFECE*); José Rodrigo Ríos Dordelly, Director for Regulatory Analysis, COFECE; and Juan Pablo Herrera, Co-ordinator of the Group for Economic Studies, Superintendence for Industry and Commerce, Colombia. Special thanks to ISSSTESON and its officials for their support in organising and carrying out this workshop.

Finally, this review benefited from the invaluable input provided by OECD peers: Joana Candeias, Coordinator of the Unit for Aggregated Purchasing, Central Procurement Body for Health (Portugal); and Carlos Ramírez, then external advisor to the Ministry of Health (Colombia). These peers contributed

significantly to the policy dialogue with their ISSSTESON counterparts and enriched the Public Procurement Review with their views, experience and comments.

The review was approved by the OECD Working Party of the Leading Practitioners on Public Procurement (LPP) on 2 August 2019 and declassified by the Public Governance Committee on 23 August 2019. It was prepared for publication by the OECD Secretariat.



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# Abbreviations and acronyms

AFP	Fund management firms <i>Administradoras de Fondos de Pensiones</i>
CAPRP	Presidential Council on Pension Reform <i>Consejo Asesor Presidencial para la Reforma de Pensiones</i>
CEO	Chief Executive Officer <i>Director general</i>
CFE	Federal Electricity Commission <i>Comisión Federal de Electricidad</i>
CIPEBG	Committee for Integrity, Ethical Practices and Good Government <i>Comité de Integridad, Prácticas Éticas y Buen Gobierno</i>
COCODI	Committee for Control and Institutional Performance <i>Comité de Control y Desempeño Institucional</i>
COFECE	Mexico's Economic Competition Commission <i>Comisión Federal de Competencia Económica</i>
COFEPRIS	Federal Commission for Protection against Sanitary Risks <i>Comisión Federal para la Protección contra Riesgos Sanitarios</i>
COMERS	Sonora's Commission for Regulatory Improvement <i>Comisión de Mejora Regulatoria de Sonora</i>
CONAMER	National Commission for Regulatory Improvement <i>Comisión Nacional de Mejora Regulatoria</i>
CONSAR	National Pension System Committee <i>Comisión Nacional del Sistema de Ahorro para el Retiro</i>
DJEI	Department of Jobs, Enterprise and Innovation (Ireland) <i>Departamento de Empleo, Empresa e Innovación de Irlanda</i>
EDCA	Open Contracting Data Standard <i>Estándar de Datos para las Contrataciones Abiertas</i>
EEV	Environmentally friendly vehicles <i>Vehículos ecológicos</i>
EPEAT	Electronic Product Environment Assessment Tool <i>Herramienta de Evaluación Ambiental de Productos Electrónicos</i>
ERM	Estonian Road Administration <i>Administración de Caminos de Estonia</i>

ESPD	European Single Procurement Document <i>Documento Europeo Único de Contratación (DEUC)</i>
EU	European Union <i>Unión Europea</i>
EUR	Euros
FOVISSSTESON	ISSSTESON's Housing Fund <i>Fondo de Vivienda del ISSSTESON</i>
GACM	Airport Group of Mexico City <i>Grupo Aeroportuario de la Ciudad de México</i>
GCWCC	Government of Canada Workplace Charitable Campaign <i>Campaña Benéfica del Gobierno de Canadá en el Lugar de Trabajo</i>
GPP	Green public procurement <i>Contratación pública verde (CPV)</i>
HR	Human resources <i>Recursos humanos</i>
HUF	Hungarian Forint <i>Forint Húngaro</i>
ICT	Information and communication technologies <i>Tecnologías de la información y las comunicaciones</i>
ICU	Intensive Care Unit <i>Unidad de Terapia Intensiva (UTI)</i>
IMSS	Mexican Institute for Social Security <i>Instituto Mexicano del Seguro Social</i>
ISAF	Sonora's Supreme Audit Institution <i>Instituto Superior de Auditoría y Fiscalización</i>
ISO	International Organization for Standardization <i>Organización Internacional de Normalización</i>
ISSSTE	State's Employees Social Security and Social Services Institute <i>Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado</i>
ISSSTESON	Institute of Security and Social Services for the Workers of the State of Sonora <i>Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora</i>
IT	Information technologies <i>Tecnologías de la información (TI)</i>
KPI	Key Performance Indicators <i>Indicadores Clave de Desempeño (ICP)</i>
LACS	Local Anti-corruption System <i>Sistema Estatal Anticorrupción (SEA)</i>
LACSS	Law on the Anti-corruption State System <i>Ley del Sistema Estatal Anticorrupción del Estado de Sonora</i>

LGMR	General Law on Regulatory Reform <i>Ley General de Mejora Regulatoria</i>
LGRA	General Law of Administrative Responsibilities <i>Ley General de Responsabilidades Administrativas</i>
LGTAIP	General Law on Transparency and Access to Public Information <i>Ley General de Transparencia y Acceso a la Información Pública</i>
LRSS	Responsibilities State Law <i>Ley Estatal de Responsabilidades</i>
MEAT	Most Economically Advantageous Tender <i>Oferta económicamente más ventajosa</i>
MICI	Integrated Framework for Internal Control <i>Marco Integrado de Control Interno</i>
MXN	Mexican pesos <i>Pesos mexicanos</i>
NAIM	New International Airport of Mexico <i>Nuevo Aeropuerto Internacional de México</i>
NZGP	New Zealand Government Procurement <i>Contratación del Gobierno de Nueva Zelanda</i>
OECD	Organisation for Economic Co-operation and Development <i>Organización para la Cooperación y el Desarrollo Económicos</i>
OGP	Office of Government Procurement (Ireland) <i>Oficina de Contratación del Gobierno de Irlanda</i>
OIC	Internal Control Body <i>Órgano Interno de Control</i>
OSCE	Government Procurement Supervising Agency (Peru) <i>Organismo Superior de las Contrataciones del Estado de Perú</i>
OSD	Auction mechanism <i>Oferta subsecuente de descuento</i>
PC	Personal computer <i>Computadora personal</i>
PNT	National Transparency Platform <i>Plataforma Nacional de Transparencia</i>
PPS	Public Procurement Service (Korea) <i>Servicio de Contratación Pública de Corea</i>
PPSD	Public Procurement Supply Directorate (Hungary) <i>Dirección de Contratación Pública de Suministros de Hungría</i>
PREI	Institutional Resources Planning <i>Planeación de Recursos Institucionales</i>
PSC	Public Service Commission (Canada) <i>Comisión del Servicio Público de Canadá</i>

PWGSC	Public Works and Government Services of Canada <i>Obras Públicas y Servicios Gubernamentales de Canadá</i>
RFI	Request for information <i>Solicitudes de información</i>
RIA	Regulatory Impact Analysis <i>Análisis de Impacto Regulatorio (AIR)</i>
SAI	Institutional Supply System <i>Sistema de Abasto Institucional</i>
SEA	State warehouse system <i>Sistema Estatal de Almacenes</i>
SFP	Federal Ministry of Public Administration <i>Secretaría de la Función Pública</i>
SFS	Supplier Feedback Service (New Zealand) <i>Servicio de Opiniones de los Proveedores del Gobierno de Nueva Zelanda</i>
SIEC	Electronic Purchases System <i>Sistema Electrónico de Compras</i>
SITISSSTESON	Independent Union of ISSSTESON Workers <i>Sindicato Independiente de los Trabajadores del ISSSTESON</i>
SMEs	Small and medium enterprises <i>Pequeñas y medianas empresas (PYMEs)</i>
SNTE	National union of the education sector <i>Sindicato Nacional de Trabajadores de la Educación</i>
SOE	State-owned Enterprise <i>Empresa pública (EP)</i>
SUEISSSTESON	ISSSTESON employees' union <i>Sindicato Único de Empleados del ISSSTESON</i>
SUTSPES	Union of the employees servicing the branches of government of the State of Sonora <i>Sindicato Único de Trabajadores al Servicio de los Poderes del Estado de Sonora</i>
UMAEs	Highly specialised medical units <i>Unidades Médicas de Alta Especialidad</i>
UN	United Nations <i>Organización de las Naciones Unidas</i>
UPII	Unit for Institutional Planning and Innovation <i>Unidad de Planeación e Innovación Institucional</i>
USD	United States Dollars <i>Dólares de los Estados Unidos de América</i>



# Executive summary

The Institute of Security and Social Services for the Workers of the State of Sonora (ISSSTESON), which provides medical and social security services to state government employees, is in a difficult financial situation. Its deficit in 2017 was MXN 2 737 million, and its budget needs are increasing at rates that are almost twice as high as growth in income. This review supports public procurement reforms in order to maximise efficiency and safeguard the Institute's long-term sustainability, while ensuring quality services for ISSSTESON's 180 000 affiliates.

## Key findings

One of the major challenges ISSSTESON faces is in the efficiency of its operations. Until recently, ISSSTESON's General Procurement Office was integrated in the Administrative Services Deputy Directorate, which included both the Tenders Department and the Acquisitions Department. The Tenders Department responsible for handling public tenders, including restricted tenders, and the Acquisitions Department in charge of direct awards, were merged in March 2019. Nevertheless, each ISSSTESON hospital continues to have its own decentralised procurement responsibilities. This dispersion has created an array of problems related to co-ordination, consistency, and information sharing which ISSSTESON would like to address by consolidating the procurement process within its own central office.

ISSSTESON publishes procurement information in several electronic platforms. Although the introduction of the National Transparency Platform (PNT) has done much to help the Institute comply with the disclosure of the different information items required, some items continue to be difficult to find, in particular those relative to oversight mechanisms and completion agreements, and documents are often uploaded in formats that are not machine-readable. ISSSTESON does not have a single IT-based procurement platform. The Institute's central administration and its decentralised units in hospitals use the state version of Compranet for public tenders and restricted invitations and the Electronic Procurement System (SIEC) for direct awards.

At the same time, ISSSTESON has worked to improve their integrity standards and recently adopted several integrity measures to reinforce its commitment. It approved its Integrity Programme in December 2017 and established a Committee for Integrity, Ethical Practices, and Good Government in June 2018. As part of the Integrity Programme, in August 2017 the Institute published a Code of Ethics and Conduct and Integrity Rules.

There are approximately 30 ISSSTESON employees who work exclusively on procurement-related matters. However, ISSSTESON has not set any specific requirements for procurement officials to fulfil in terms of skills, competencies, or job profiles and there are no specific entry requisites that procurement employees must fulfil prior to recruitment.

Regarding the financial structure of the Institute, despite recent reforms, Sonora's pension system is generous in terms of retirement age, years of contribution, and pension returns when compared to national and international practices. The system is under duress for several reasons, including: i) delays in the payment of contributions by the State of Sonora Ministry of Finance and other affiliated institutions; ii) increasing demand for the Institute's services – it is expected that by 2057 the number of pensioners will have increased by 100%; iii) generous retirement conditions; and iv) the loss of all 129 lawsuits demanding pension readjustment for higher benefits. In this context, the political challenges to reforming Ley 38 – which regulates ISSSTESON – are clearly significant.

## Key recommendations

The current financial shortcomings experienced by ISSSTESON hinder its efforts to develop and implement efficient procurement practices. Indeed, one of the consequences stemming from the lack of liquidity is the delay in payment to suppliers. This creates opportunities for inadequate behaviour, but also affects the potential interest of businesses to participate in ISSSTESON's tender procedures and thus the Institute's ability to access quality goods and services at competitive prices. The effectiveness of the following recommendations to improve the long-term sustainability of the Institute and to maximise efficiencies stemming from its procurement function are contingent on the extent to which present budgetary constraints are alleviated.

- ISSSTESON could further integrate or co-ordinate its different procurement entities, establish better communication channels, improve information quality, and allow for aggregated purchases.
- ISSSTESON could maximise the use of public tender procedures and limit exceptions as a means to increase efficiencies, boost competition, reduce corruption risks, and obtain better value for money.
- ISSSTESON could obtain better value for money by issuing guidelines for the drafting of tender documents that define technical specifications for the award criteria. It could focus on the use of functional (generic) requirements and on the implementation of award criteria that rewards the reduction of total life-cycle costs.
- Scaling up and integrating ISSSTESON's electronic platforms for procurement would increase transparency and efficiency in its procurement operations.
- Along with the development of a consolidated e-procurement system, ISSSTESON should work on the integration of this system with others (i.e. budget, stock) and the sharing of information between databases.
- ISSSTESON should launch an effort to collect and systematise data on procurement performance to improve the decision-making process and realise the potential for greater efficiency.
- ISSSTESON should explicitly state in its integrity rules and codes specific provisions and guidance for procurement officials, including in the codes developed by hospitals and clinics.
- ISSSTESON should consider the development of a competency framework for its procurement officials, covering most aspects of the procurement cycle.
- Reforming Ley 38 to increase the effective retirement age and the required years of contribution to better align them with national and international practices. Ideally, ISSSTESON should return to its core business: providing pensions and healthcare. Additionally, Sonora's Ministry of Finance should abide by the payments established in the agreement to settle the outstanding debt. Settling this debt and avoiding future delays in payments are essential to provide the Institute with the necessary liquidity and certainty to finance its operations, including procurement.

# 1 The Revenue Structure of ISSSTESON

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ISSSTESON (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora), an institution that provides medical and social security services to public workers in the state of Sonora, Mexico, faces a difficult financial conjuncture. A recent fact-finding mission revealed that one of the main concerns for ISSSTESON's senior management is the lack of a stable revenue stream, which has resulted in issues of solvency for the institute, with delays in payments to suppliers. This situation has practical implications for its affiliates, and is likely to deteriorate unless reforms are introduced. ISSSTESON needs a comprehensive restructuring to ensure its financial stability. This chapter analyses ISSSTESON's revenue structure, its recent evolution and its most important challenges, and offers recommendations to set it on the path toward financial sustainability.

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## 1.1. Recent evolution and current situation

In Mexico, some local governments, including those of the 32 federal states and about 2 450 municipalities, as well as 55 public universities, have their own pension schemes, mostly of the defined-benefit type, with no portability of entitlements among them (OECD, 2016<sup>[1]</sup>). In the federal state of Sonora, ISSSTESON is the institution in charge of providing pensions and health services to the public employees of the state government.

To explain the sources of ISSSTESON's financial challenges and to propose solutions, it is necessary to understand the institute's legal framework and its financial situation in recent years. This section will review the institute's legal structure and analyse the state of its finances by evaluating its sources of revenue, the balance between revenue and spending in the last five years, and its current financial situation. It will also discuss certain elements that may be preventing the institute from functioning in a cost-effective manner.

### 1.1.1. Regulatory framework of the finances of ISSSTESON

In 1948, the Legislature of Sonora passed a law that established the Fund for the Protection of Public Workers (*Fondo de Protección Burocrática*), creating an institution to administer and provide pensions for public workers. A year later, the Fund was reformed and renamed the Directorate of State Pensions (*Dirección de Pensiones del Estado*). In 1962, a new law mandated that workers contribute an additional 5% of their salary for medical assistance and medicine. That year, Congress passed Law 38 (*Ley 38*), creating ISSSTESON and establishing the legal basis for the institute.

ISSSTESON was initially conceived of as an institution whose sole responsibility was to manage pensions and healthcare. In 1989, however, *Ley 38* was reformed to include new services, like mortgage and instalment credit. Today, ISSSTESON provides a wide-ranging set of pensions, medical and financial services to its affiliates (a full list appears in Annex 1.A). Thanks to these additional services, the institute's spending has increased, while its sources of revenue have remained constant.

The disparity between income and spending has become more acute, which is why *Ley 38* was revised again in 2005, to address the structural flaws of the pension scheme. These modifications, however, were not sufficient to shore up the institute's financial architecture. Box 1.1 presents a summary of the main reforms of *Ley 38*, and Table 1.1 summarises the main elements of *Ley 38* as it stands today. Subsequent sections argue that the law may be straining ISSSTESON's financial viability.

### Box 1.1. The 2005 reform of Ley 38

In 2005, *Ley 38* was reformed to attempt to rectify ISSSTESON's unstable and deteriorating financial profile. The reform consisted of two main changes: *i*) an increase in the percentage of "quotas" (which are paid by the workers) and contributions (paid by the state) and *ii*) an increase in the number of years of contributions workers must make to receive a pension. Before the 2005 reform, workers contributed 5% of their salary to medical services and 4% to the pension fund. After 2005, the percentages were raised to 5.5% for medical services and 10% for the pension fund. The state, meanwhile, contributed 6% of the workers' salaries for medical services and 4% for pension funds. After the reform, the share paid by the state increased to 7.5% of the workers' salaries for medical services and 17% for pensions. A new contribution for hospital infrastructure was also introduced, both for quotas and for contributions. In terms of years of contribution, local public officials who were affiliated with ISSSTESON after 2005 have to contribute 35 years of service in the case of men and 33 years in the case of women. For those affiliated with ISSSTESON prior to 2005, the additional years of service required to receive a pension were determined based on the number of years they had served prior to the reform.

Table 1.1. Key elements of Law 38

Topics	Article	Explanation and relevance
Sources of revenue	<i>Article 4</i>	Establishes ISSSTESON's obligations to workers affiliated with the institution and to workers affiliated with other local entities that have signed agreements with ISSSTESON. The basic benefits include medical services, credits (mortgage credits and instalment credits) and pensions. Pensions represent the bulk of the institute's expenses.
	<i>Article 16</i>	Establishes that every worker must provide a quota of 17.5% of his salary to ISSSTESON, which is divided as follows: 10% for pensions, 5.5% for medical services, 0.5% for short-term loans, 0.5% for instalment credit and 1% for hospital infrastructure, equipment and maintenance.
	<i>Article 21</i>	Establishes that the state must contribute 29.5% of each worker's salary. This includes: 17% for pensions, 7.5% for medical services, 0.5% for short-term loans, 0.5% for instalment credit, 0.4% for global indemnity, 0.1% for funeral arrangements, 2.5% for administrative expenses and 1% for hospital infrastructure, equipment and maintenance.
	<i>Article 116</i>	States that when ISSSTESON is not able to carry out its mandate, Sonora's Ministry of Finance has an obligation to cover the deficit.
Structure and operation	<i>Article 98</i>	Specifies that the Board of Directors will be composed of seven members: the General Director of the institute; three members appointed by the executive, legislative and judicial powers; and three designated by Sonora's Federation of Labour Unions.
	<i>Article 104</i>	Establishes that the Board of Directors has the authority to plan ISSSTESON's operations and services; decide on investments for the institute; authorise any necessary measures to guarantee the provision of services, including the transfer of resources between programmes, with the exception of the pension and mortgage funds; grant, modify or suspend pensions within the legal framework; designate or remove personnel; approve internal rules governing the institute's finances and the medical services; approve income and spending budgets, and the work plan that follows; grant benefits and rewards to employees, with the authorisation of the General Director; propose reforms of this law to the state's executive power; and ask for actuarial valuations to evaluate the institute's solvency.

### 1.1.2. Sources of revenue

One of ISSSTESON's main problems is insufficient income to provide the level of services required by law. This makes a review of the institute's revenue structure necessary: of its composition, the scope of its affiliation, and how resources are managed.

As shown in Table 1.1, Articles 16 and 21 of *Ley 38* contain the legal provisions related to ISSSTESON's sources of income. The income structure is based on a system of *quotas* and *contributions*, in which workers provide a 17.5% quota of their salary to ISSSTESON, and in turn, the state of Sonora pays a counter-contribution of 29.5% of the worker's wage. Article 22 creates an obligation for the State and other local entities to transfer retained resources to ISSSTESON every 15 days, through their respective administrations.

Despite the legal obligation, no mechanism is in place to enforce this allocation. Meetings with ISSSTESON's senior management made clear that the lack of practical enforcement has resulted in a significant amount of debt owed to the institute, and has required additional administrative efforts to pressure debtors to pay.

Without an effective enforcement mechanism, ISSSTESON is left with an unpredictable and ineffective revenue system that significantly reduces its resources. It also faces the challenge of managing its resources more efficiently.

The system of quotas and contributions specifies how income should be allocated among services. However, the fact-finding mission to ISSSTESON revealed that income is concentrated in a common fund and used as needed. The biggest portion of this fund is used to pay for pensions, which, according to Article 58 bis of *Ley 38*, should have its own, independent fund. This management of resources in a common instead of a compartmentalised way is concerning, since it implies that there is no effective control over the income and spending of each of the main services of ISSSTESON. Furthermore, there is an opportunity cost, in the form of lost interest.

There are two ways in which ISSSTESON receives contributions and quotas:

- Through the Ministry of Finance (*Secretaría de Hacienda*): Some municipalities withhold resources from their workers and then transfer them to the Ministry, which should in turn transfer them to ISSSTESON. As previously noted, Articles 21 and 22 establish the state's contribution and the mechanism by which it is to transfer the resources to ISSSTESON every 15 days. There is no mention, however, of any sanctions or mechanisms to ensure that this transfer is executed promptly. The lack of authority to enforce the requirements makes negotiation the only instrument available to ISSSTESON in collecting revenue from the state. The ministry also withholds the quotas of state employees, and the problem of delayed or incomplete transfers applies as well.
- Directly from municipalities and other state public institutions: Article 3 of *Ley 38* states that the institute can enter into agreements with municipalities and other public entities (such as universities and the teachers' union) so their affiliates can participate in ISSSTESON's benefit scheme. These entities transfer resources to ISSSTESON directly, not to the Ministry of Finance. The Board of Directors has the authority to establish the conditions under which these entities are incorporated. This broadens the scope of coverage for workers in Sonora, but complicates the auditing of income, since monitoring and negotiating the different streams of debt requires extra administrative effort.

### 1.1.3. ISSSTESON's current financial situation

According to documents ISSSTESON provided, the institute's deficit in 2017 was MXN 2 737 million. Income increased 6% from 2016 to 2017, while spending increased by 12%. This suggests that spending is increasing at higher rates than income – and in recent years, at almost twice the rate. A significant portion of the deficit can be attributed to the liabilities due to ISSSTESON from the Ministry of Finance and

from municipalities and other local institutions. Documents provided by ISSSTESON estimate these liabilities at MXN 2 540 million, with the ministry owing MXN 2 300 million and the municipalities and local institutions close to MXN 240 million. Indeed, in Mexico, most municipalities lack a formal pension system, and pension obligations for municipal employees are paid through current expenditure (OECD, 2016<sup>[11]</sup>).

As for the debt owed by the Ministry of Finance, an interview with some of its senior officials suggested that the 2015-2021 administration has fully adhered to its financial obligations to ISSSTESON. The pending debt can mainly be attributed to past administrations. Given that the liquidity issues extend to the ministry's finances and to the state of Sonora in general, it has been difficult to pay ISSSTESON the accumulated liabilities. Despite the unfavourable circumstances, on 30 April 2019, ISSSTESON and the Ministry established an agreement for payment of the outstanding debt (see Box 1.2).

### **Box 1.2. The agreement between ISSSTESON and Sonora's Ministry of Finance for the payment of outstanding debt**

On 30 April 2019, ISSSTESON and the state of Sonora's Ministry of Finance entered into an agreement to settle the outstanding debt from the previous state administration from 2009-2015, as well as from municipalities, entities and other public bodies. This agreement aims to improve ISSSTESON's financial situation, to service its 180 000 beneficiaries.

As of that date, the state government had paid around MXN 1 080 million of the outstanding debt, leaving a balance of a little more than MXN 1 200 million.

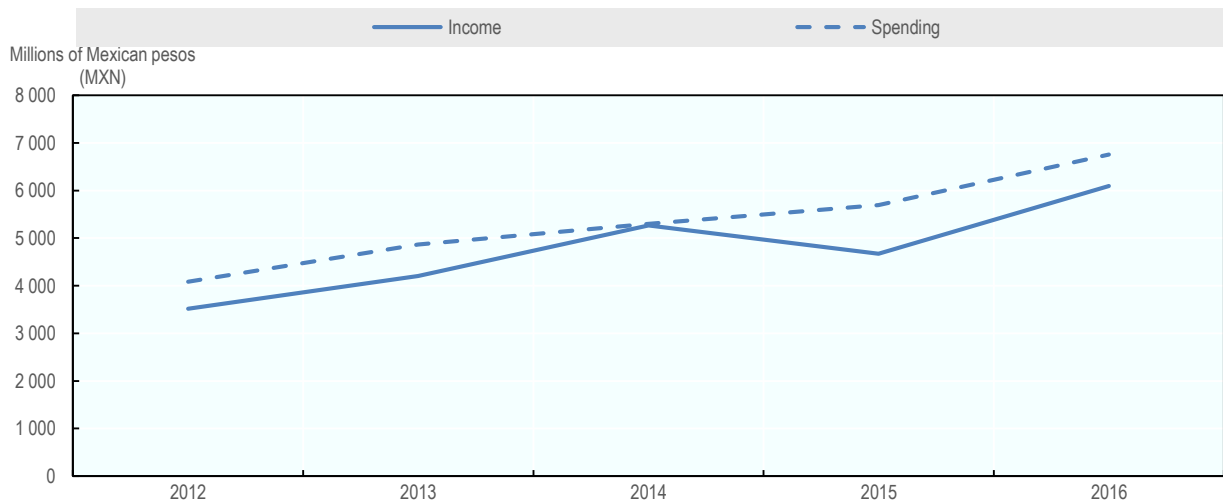
In order to pay, the State Government will sell 65 unutilised land properties located in nine municipalities. The sale of these properties will be overseen by Sonora's Supreme Audit Institution (*Instituto Superior de Auditoría y Fiscalización*, or ISAF), which can audit the procedures at any stage.

Source: (ISSSTESON, 2019<sup>[2]</sup>), *Firman Hacienda e ISSSTESON convenio para pago de adeudo heredado*, <http://www.isssteson.gob.mx/index.php/articulos/ver/970>, (accessed on 6 May 2019).

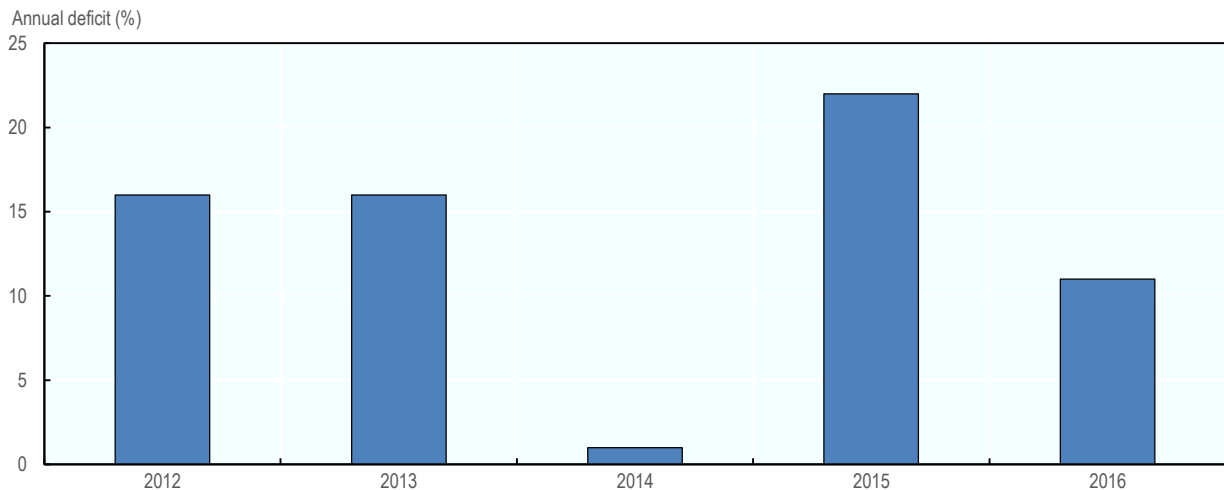
One of the main issues associated with ISSSTESON's insolvency concerns the debt owed to suppliers, which, according to documents provided by the institute, totals MXN 496 378 229.38. Since they have no guarantee of payment, suppliers' distrust towards ISSSTESON has grown significantly, to the point where they are sceptical about participating in further procurement processes with the institute. When they do, their prices include a premium to account for the uncertainty over payment. Fewer incentives to participate and fewer suppliers means that competition is reduced, leading to higher prices. The institute thus ends up acquiring goods and services through direct awards at uncompetitive prices, further increasing its revenue/spending gap.

#### **1.1.4. Balance revenue/spending in the past 10 years**

ISSSTESON's current financial situation reflects a sustained discrepancy between its revenue and spending, as illustrated in the figures below. Figure 1.1 presents an overview of ISSSTESON's inconsistent income, at a time when spending has increased at a stable pace over the past five years. It also illustrates that ISSSTESON has operated at a deficit for the past five years. 2014 was the only year that income was almost sufficient to cover the institute's expenses. Figure 1.2 shows that since 2012, ISSSTESON's spending deficit has ranged between 11% and 22% in relation to income (with the exception of 2014). In 2015, ISSSTESON experienced its most critical deficit in recent years.

**Figure 1.1. Evolution of ISSSTESON's income and spending balance (2012-16)**

Source: (Altavista Soluciones, 2016<sup>[3]</sup>), "Informe sobre el Análisis de la Estructura Financiera del ISSSTESON", internal working document, Sonora.

**Figure 1.2. ISSSTESON's annual deficit trends (2012-16)**

Source: (Altavista Soluciones, 2016<sup>[3]</sup>), "Informe sobre el Análisis de la Estructura Financiera del ISSSTESON", internal working document, Sonora.

### **1.1.5. Potential resistance from ISSSTESON's stakeholders and local public entities**

Over the last two decades, 14 federal states in Mexico reformed their pension system, including Sonora. Some pension programmes had come under strong financial pressure and dire prospects remain in more than half of the states (OECD, 2016<sup>[11]</sup>).

After the fact-finding mission to ISSSTESON and after interviewing the relevant actors, it became clear that the governance and the political dynamics within the institute and with local public entities might be holding back the reforms necessary to increase ISSSTESON's chances of building a sustainable financial structure. This section will explore some of the obstacles for deeper and structural reforms.



First of all, as previously noted, the debt owed by the state Ministry of Finance is, to date, the most significant factor in ISSSTESON's liquidity crisis. In this respect, the ministry's willingness to co-operate with the institute is a significant first step. However, it is important that discussions between the two institutions develop constructively, so they can reach agreement on the exact amount of debt owed to ISSSTESON and on a concrete payment plan through the end of this administration (2015-2021). ISSSTESON could push for a thorough implementation of this plan based on the ministry's legal obligation under *Ley 38* to finance ISSSTESON's deficit whenever its obligations cannot be met.

While the relationship with the ministry is promising, the political dynamics within the institute – particularly with the Board of Directors – may prove challenging. The board plays an important role in defining operational, day-to-day activities and is responsible for the institute's overall strategy and long-term vision. The unions, which occupy three out of the seven seats on the Board of Directors, have particularly strong influence over the institute and are likely to resist measures that could provide more stability if they reduce or eliminate benefits. Box 1.3 lists the most important responsibilities of Boards of Directors for effective governance in public enterprises; guidelines C, D and E are particularly relevant for ISSSTESON.<sup>1</sup>

### **Box 1.3. OECD Guidelines on Corporate Governance of State-Owned Enterprises: The Responsibilities of Boards**

**A.** The boards of state-owned enterprises (SOEs) should be assigned a clear mandate and ultimate responsibility for the performance of the enterprise. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably.

**B.** SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long-term interest of the enterprise.

**C.** **The composition of SOE boards should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities.**

**D.** **Independent board members, where applicable, should be free of any material interest or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.**

**E.** **Mechanisms should be introduced to avoid conflicts of interest that prevent board members from objectively carrying out their board duties and to limit political interference in board processes.**

**F.** The Chair should assume responsibility for boardroom efficiency and, when necessary, in coordination with other board members, act as the liaison for communications with the state ownership entity. Best practices call for the Chair to be separate from the CEO.

**G.** If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.

**H.** SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.

I. SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency.

J. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.

Source: (OECD, 2015<sup>[4]</sup>), *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264244160-en>.

Lack of compliance by local public entities is also an obstacle to improving ISSSTESON's financial administration. As noted earlier, no enforcement mechanism is set up to guarantee the appropriate transfer of resources to ISSSTESON. This not only creates liquidity issues, but adds to the administrative burden of having to negotiate directly with several entities. In this context, it becomes essential that ISSSTESON reviews which agreements have already expired and which institutions are behind in their contributions, in order to consider whether to cease to providing service to their affiliates.

Finally, it is possible that affiliates of ISSSTESON may resist administrative reforms. Measures that could alter the pension or healthcare scheme are usually rejected based on the perception that they will take away previously promised benefits that unions have won for employees. A communication campaign is vital, to explain the need for reform effectively (as well as the risks of not introducing reforms).

### **1.1.6. Sustainability of political support for reform**

Many of ISSSTESON's financial issues can be traced to the lack both of a long-term strategy and the sustainable implementation of financial reforms. Strategies appear to vary depending on the government in power, but the structural and operative issues remain and accumulate. Any comprehensive reform to rescue ISSSTESON should have a long-term perspective and be designed to ensure sustainability, regardless of the administration in office. Minor managerial improvements or adjustments will not be enough to secure the long-term sustainability of the institution.

As previously noted, the State Government of Sonora expects to be able to pay off its debts to ISSSTESON in 2021. If these resources are forthcoming, there should be careful planning on how this income will be administered. The process should be transparent, and close collaboration with ISSSTESON can improve co-ordination and efficiency.

Similarly, it is important to anticipate that comprehensive legislative reforms may take some time to design, promote and pass in the state Legislature. External consultants commissioned by ISSSTESON have suggested that the only long-term solution for the institute's issues is a comprehensive modification of *Ley 38* that redefines the scheme by which social security for workers in Sonora is granted. Reform efforts in the past have resulted in strong opposition from unions, which protested outside Sonora's State Congress during a previous attempt to pass reforms. Similar pressure has been mounted by ISSSTESON's workers themselves, many of whom are unionised and refuse to be affected by any legal modification.

## **1.2. Challenges in improving the governance of ISSSTESON's finances**

After a review of ISSSTESON's finances, it becomes necessary to look more deeply into the main causes of the institute's lack of revenue. The lack of solvency and the absence of a long-term strategy to deal with it have practical implications for 180 000 affiliates.

### 1.2.1. Structural problems

The previous section described how ISSSTESON's financial status is the result of a flawed and progressively weakening social security structure. This section will explore these issues to demonstrate that ISSSTESON'S' current pension and healthcare system is unsustainable both in the short and the long term.

The chief cause of ISSSTESON's sustainability crisis is its pension scheme. At present, 13 500 people receive pensions, a number that is expected to increase significantly. Actuarial valuations commissioned by ISSSTESON suggest that 6 487 people will start receiving pensions in 2017 alone, and that by 2057, the number of pensioners will increase by 100%. Demand for ISSSTESON's services is growing at a rate that exceeds the institute's capacity, given the increase of life expectancy in Sonora. In 1970, life expectancy for women was 66 years and for men, 64 years. In 2015, life expectancy for women has risen by 12 years to 78, and for men, by eight years, to 72 (Sin Embargo, 2013<sup>[5]</sup>). If this issue is not addressed, thousands of affiliates are at risk of not receiving pensions.

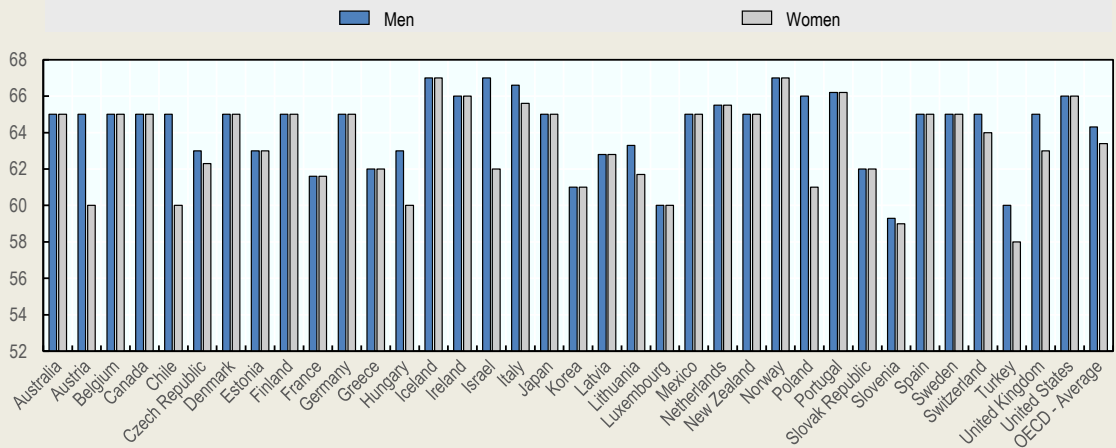
In addition to ISSSTESON's coverage of affiliates, the system's requirements for retirement with pension benefits is also becoming unsustainable. While the 2005 reform to *Ley 38* attempted to modify these structures, it fell short of the comprehensive reform that ISSSTESON needs to move towards financial stability. Retirement age for public servants is 55, subject to a minimum of at least 15 years of contribution. For workers who were affiliated with ISSSTESON before 2006, the number of years of contribution required for retirement is 30 for men and 28 for women, with a pension of 100% of the salary base for life. For workers affiliated after 2006, the mandatory number of years served required for retirement is 35 for men and 33 for women. The pension is 100% of the salary base for life, capped at 20 times the minimum wage per month.

For years of contribution, retirement age and pension returns, Sonora stands far from national and international standards. The average age of retirement for OECD countries is 64 for men and 63 for women. The OECD countries that require minimum years of contribution tend to approach the 40-year benchmark, and, with the exception of the Netherlands and Turkey, no OECD country has a net pension replacement rate of 100%. Box 1.4 includes benchmarks for some international and national best practices for age of retirement, required years of contribution for retirement and net pension replacement rates.

**Box 1.4. International and national practices**

When comparing Sonora’s pension requirements to those of other Latin American or OECD countries, it is clear that the former represents a much less demanding scheme for workers. The figure below illustrates the age of retirement for workers in OECD countries:

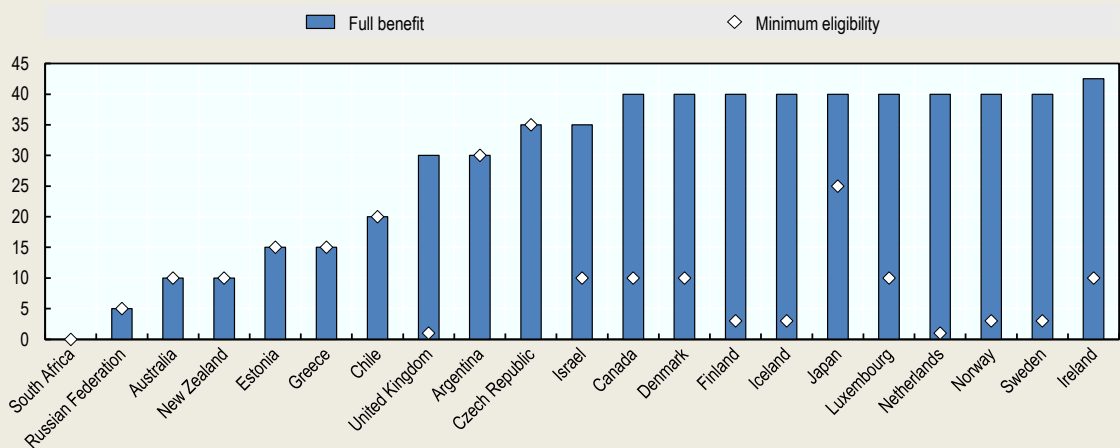
**Figure 1.3. Age of retirement in selected countries by gender**



Source: (OECD, 2017<sup>[6]</sup>), "3.8. Current retirement age in 2016 for a person who entered the labour force at age 20", in *Design of pension systems*, OECD Publishing, Paris, [https://doi.org/10.1787/pension\\_glance-2017-graph34-en](https://doi.org/10.1787/pension_glance-2017-graph34-en).

Most of the countries illustrated above also require more years of contribution before workers receive full pensions:

**Figure 1.4. Years of contribution required for pension benefits in selected countries**

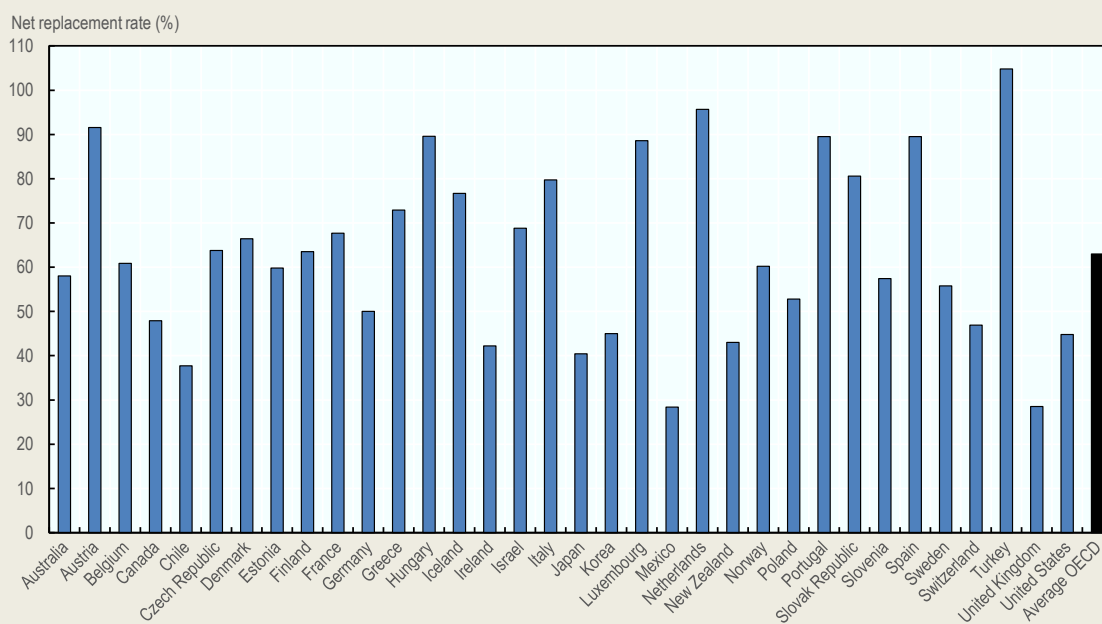


Source: (OECD, 2015<sup>[7]</sup>), "Years of contribution or residence required for basic pensions", in *Pensions at a Glance 2015: OECD and G20 indicators*, OECD Publishing, Paris, [https://doi.org/10.1787/pension\\_glance-2015-graph10-en](https://doi.org/10.1787/pension_glance-2015-graph10-en).

Life expectancy upon retirement and pension replacement rates for the countries indicated in the figures also tend to be lower, easing the pressure on governments to support retired workers with expensive

pensions over long periods. The following figure illustrates a benchmark for net replacement rates for OECD countries, with an average rate of 63%.

**Figure 1.5. Net pension replacement rates for OECD countries (2016)**



Source: (OECD, 2019<sup>[8]</sup>), "Net pension replacement rates" (indicator), <https://doi.org/10.1787/4b03f028-en> (accessed on 5 August 2019).

Compared to other states in Mexico, Sonora has still not yet set minimum and maximum rates for pensions based on a clearly defined salary (19 state laws comply with this stipulation, while seven define a maximum rate) or established a reasonable age for retirement (only four states in the country allow workers to retire between 53 and 57 years old; 13 states have set a minimum age of 63-65 years old).

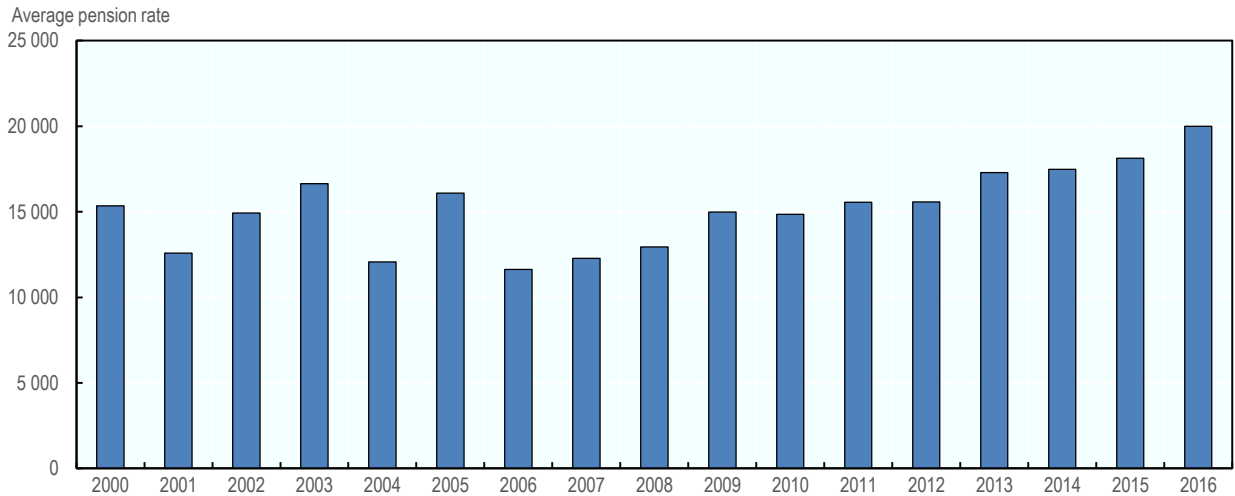
Source: Information provided by ISSSTESON.

Moreover, the salary base on which ISSSTESON calculates pensions is also proving problematic. *Ley 38* does not provide a clear definition of the salary base on which pensions will be determined, which has meant that pensions are calculated differently for affiliates. Municipalities sometimes reduce their workers' salaries when they declare them to ISSSTESON and the state of Sonora. Because pensions are based on the salary declared, most pensions are less than they would have been if the real salary had been used as a basis. ISSSTESON's audits on pension determinations show that miscalculations are common, not only due to the lack of legal clarity on how to calculate them, but because state employees are often not recognised in official records. This has had costly implications: ISSSTESON has been involved in 129 cases of pension readjustment lawsuits – all of which it has lost – in which pensioners demanded higher benefits based on their real salaries. According to documents provided by ISSSTESON, these complaints have already cost the institute MXN 143 million (Altavista Soluciones, 2016<sup>[3]</sup>).

Moreover, ISSSTESON relies on a fragile fact-checking system for calculating pensions. While *Ley 38* grants the institute the legal authority to request information relevant to performing its duties, it does not provide ISSSTESON with attributions for verifying accounting records. Thus, the basis for calculating pensions is not always precise, and calculations are often based on whatever data is available, rather than the most accurate figures, which has also led to pension readjustment lawsuits.

These issues have inflated ISSSTESON's payroll to a point that the institute cannot sustain. Documents provided by ISSSTESON suggest that the monthly payroll for pensioners has steadily increased in the last three years. In January 2014, it reached MXN 128 million, and by December 2016, MXN 192 million, an increase of 50% (MXN 64 million). In addition to the flaws already mentioned, this discrepancy can also be explained by an increase in pension amounts. The average pension in 2014 was MXN 17 480, but rose to MXN 20 006 in 2016. This problem is compounded by the rise in the number of pensioners each month: by January 2014, there were 10 750 pensioners, and by December 2016, 13 000. Figures 1.6 and 1.7 show the progression in pension rates and number of pensioners since 2000.

**Figure 1.6. Evolution of average pension rates in MXN (2000-16)**



Source: Information provided by ISSSTESON.

**Figure 1.7. Evolution in the number of pensioners (2014-16)**



Source: Information provided by ISSSTESON.

The evolution of medical conditions has also compromised ISSSTESON's sustainability. Information provided by the institute suggests that, as life expectancy increases, the diseases most often treated at the institute from 1985 to 2016 have shifted from curable and temporary conditions, which were then more complicated to treat than they are today, to more complex and chronic diseases. Such conditions as measles and malaria were common until the early 1990s, while chronic heart disease and obesity have become more prevalent in the past decade (ISSSTESON, 2017<sup>[9]</sup>). Conditions such as respiratory infections, diabetes, hypertension and pneumonia, however, have remained constant since 1985. The change in the nature of medical conditions and the need for long-term treatments have entailed a heavier financial burden on ISSSTESON.

In conclusion, ISSSTESON's income and expenditure structure is now severely misaligned. While income is solely determined by the number of state employees that the institute covers, spending is determined not just by the number of state employees, but by the number of pensioners and the health of both groups. With higher life expectancy and more demand for pension and health coverage, the discrepancy between income and spending will only increase. The most practical solution to this problem would be to turn the pension system into a defined-contribution scheme, with workers saving for their retirement in individual accounts. This would significantly reduce spending.

### **1.2.2. Institutional operational issues**

In addition to its structural problems, ISSSTESON's administrative operations have also contributed to its financial weakness. The fact-finding mission revealed that ISSSTESON, with its 3 302 employees, does not practise performance-based management. Rather, the allocation of benefits and bonuses appears to be independent of any systematic monitoring of performance and results. Benefits for punctuality and attendance, for example, appear to be standard, while unionised workers receive even more substantive benefits. Some of these include food allowance vouchers, seniority bonuses, medical incentives, economic support for transport, full scholarships for undergraduate and graduate studies, quarterly and annual incentives, bonuses for years of service, an annual bonus and bonuses for unionisation anniversaries. These add to the already onerous monthly payroll of MXN 87 million.

### **1.2.3. Leadership and co-ordination issues**

Meetings during the fact-finding mission showed that four key state institutions, the Office of the Governor, the Ministry of Finance, the Ministry for Control and Sonora's Supreme Audit Institution (*Instituto Superior de Auditoría y Fiscalización*, or ISAF), recognise that improving ISSSTESON's finances should be a top government priority. They consider the condition of the institute among the state of Sonora's top three concerns. ISSSTESON and these institutions have begun a process of discussion and collaboration to create a pathway to recovery. This is a positive improvement that needs to be maintained; cohesion and close collaboration will be vital in the push for comprehensive reform.

As already noted, resistance to reforms that could restore financial stability is likely from unions and unionised workers, as well as from ISSSTESON employees. Anticipating and preparing for this opposition will be crucial in pushing for wide-ranging reform. Moreover, ISSSTESON should expect substantial discussions with the judicial branch as pension and benefit adjustment lawsuits continue.

### **1.2.4. Enforcement issues**

As noted, one of the key issues for ISSSTESON's solvency is its resource collection system, particularly from municipalities and other local public institutions. One way to ensure these stakeholders keep up to date with their obligations is to decide that ISSSTESON stop providing services to affiliates, which would pressure local authorities to respect their payment obligations. This should go hand in hand with a communications strategy that explains to affiliates the urgency of these measures and the disastrous consequences of the present course.

## Proposals for action

ISSSTESON's main weaknesses can be attributed to two core issues: a flawed financial and administrative structure, particularly with respect to pensions, and operations that could be more efficient, that is, doing more with less and making decisions based on creating value for money. This section will provide focused recommendations to address these issues in order to upgrade ISSSTESON's financial architecture. These include a section on comprehensive reform of ISSSTESON's structure and one on short-term modifications to alleviate the institute's financial situation.

### **A comprehensive reform of ISSSTESON's financial and administrative structures**

Restructuring ISSSTESON's pension scheme is necessary and urgent. Some possible measures to approach this include:

- Increasing the effective age of retirement: By 2014, the average pension age for OECD countries was close to 64 years for men and 63 years for women; the retirement age in Mexico is 65. ISSSTESON would undoubtedly benefit from moving towards national and international practice.
- Increasing the required years of contribution: Not all OECD countries have established minimum years of contribution as pension requirements. While Sonora requires 30 years for men and 28 for women, countries like Belgium or Germany have contribution requirements of 45 years, and Luxembourg, Canada and Spain, average mandatory contributions of 39 years. Increasing the number of years of contribution could provide ISSSTESON with a more robust pension fund to sustain current and future pensioners.
- Revising pension calculation by establishing a clear salary base, including assessing what the salary should be and stipulating it unambiguously in the law.
- Establishing pension ceilings on replacement rates: As figure 1.5 shows, the average net pension replacement rate for OECD countries is 63.2%, and for Mexico 28.4%. Sonora's 100% replacement rate has proven to be excessive and a clear deviation from international and national practice.

### ***Modernisation and standardisation of the collection system***

The institute could increase its financial resilience if its ability to collect revenue was enhanced by setting up a common resource transfer system for all public institutions. This should include transparent communication arrangements informing each party of the amounts owed. If parties fall behind in their obligations, the institute would suspend the healthcare and pension benefits of affiliated workers. To achieve this, it is recommended that a sanctions and responsibilities scheme be created, clearly linking lack of compliance to a well-defined, proportional sanction. This scheme should be based on the fact that lack of compliance by local entities has serious implications for Sonora and all its public workers.

### ***Transfer of pension savings to individual accounts***

Maintaining an independent and productive trust fund for pensions is particularly important given the burden that the pension scheme represents for ISSSTESON. In its current form, it resembles a resource-retaining tool more than an investment fund. Since projections suggest that demand will continue to grow, it is important to reform ISSSTESON's normative structures to allow these resources to be invested. This could be done by transforming the pension system into a defined-contribution scheme, where workers save and invest for their own pension in individual accounts. Box 1.6 describes



how ISSSTE adopted the recommended scheme and turned the institute's pension fund into an autonomous institution that competes in market conditions for the best rates of return.

### ***Compartmentalising ISSSTESON's main areas***

Maintaining closer control of ISSSTESON's finances would require a reform to set up independent budgets and decentralised bodies for each of its services. Ideally, the institute should return to its core business of pensions and healthcare.<sup>2</sup> Each area should have complete control over its finances, and spending should be directly related to income. The state would cover any deficit, rather than relying on the budgets of other areas. This would not only be more efficient but increase accountability.

### **Short- and mid-term modifications to alleviate the institute's financial situation**

#### ***Mitigating ISSSTESON's present and future debt***

One solution for reducing ISSSTESON's debt to its suppliers would be to subrogate it to the Ministry of Finance. ISSSTESON would be relieved of its obligations to suppliers, which could in turn return to participate in ISSSTESON's procurement processes, making them more competitive. This transfer would partially pay off the ministry's debt to ISSSTESON.

Another possible solution for relieving ISSSTESON's financial obligations would be to negotiate early voluntary pensions. It could then pay off pensions for life in a single transfer, at a lower rate than if they were paid gradually.

#### ***Establishing attainable short and mid-term financial plans***

It is important that Sonora's Ministry of Finance abide by the payments established in the agreement to settle the outstanding debt. The ministry recognises its debt to ISSSTESON, but settling this debt and avoiding future delays in payments are essential. This payment plan could be made conditional on a performance review of ISSSTESON's operational structure and efficiency, which would pressure the institute to improve its management.

#### ***Optimising procurement and service provision in healthcare***

Meetings with suppliers and the heads of medical administration of ISSSTESON revealed that medical purchases are often made through direct awards, implying high costs. Many factors lead to these direct awards, such as inadequate planning or the fact that suppliers may not provide the required goods because of delays in payment. One possible solution could be to leverage rental or purchase of private services.<sup>3</sup> The resulting competition would help make prices more affordable.

#### ***Restructuring operational efficiency and cost-reducing management***

A comprehensive reform of ISSSTESON's financial structure, income sources and spending will, however, not sufficient to restore the institute's finances. A close assessment of operational efficiency and resource management within the institute is also vital. Some elements to consider include:

- **Restructuring the benefits scheme of ISSSTESON workers, to reduce expenses.** While it is important to maintain basic benefits granted by law, additional benefits should only be granted after careful evaluations of performance and productivity.
- **Reducing or eliminating unnecessary bureaucratic processes.** An assessment could be made showing how improvements in technological and organisational skills could make the institute more efficient. For example, introducing electronic signatures would be more efficient and yield savings in printing, paper and office supplies. Such improvements could also be applied in procurement and human resources, for example.

- **Harmonising, updating and communicating operation manuals for each area.** ISSSTESON could become more efficient if it established a common methodology for operations. The current process of institutional re-engineering, which requires the drafting of new organisational manuals, offers an opportunity to address this recommendation.
- **Establishing more transparent transactions (for example, payments to suppliers and contributions by affiliated institutions).** This would not only improve efficiency, but help build stronger relationships with suppliers, affiliated institutions, state employees and pensioners.

Box 1.5 describes a successful case of pension reform that could be instructive for ISSSTESON.

### Box 1.5. Chile: Comprehensive reform of a pension system

In 1981, Chile transformed its pension system from a defined-benefit, pay-as-you-go plan to a privately managed defined-contribution scheme, with workers' contributions administered by specialised fund management firms (*Administradoras de Fondos de Pensiones*, or AFP). This change was considered revolutionary, and many countries with unviable pension systems, especially in Latin America, tried to replicate it.

While the new approach helped develop capital markets and led to a period of sustained growth in Chile, reality proved that the model fell short of expectations: it omitted essential social security components, such as poverty alleviation and gender inequality, and required expensive administrative machinery.

Pension reform was thus one of President Michelle Bachelet's central campaign promises. Shortly after she was elected, in March 2006, the Presidential Council on Pension Reform (CAPRP), or the Marcel Commission, was established. The intent was to create a diverse, open space for discussion as the basis for a comprehensive reform proposal. The council involved over three months of work, in which actors such as international and national experts, representatives of workers' organisations and women's groups, pensioners, businesses, research institutes, academics and independent professionals were encouraged to share their experiences and requests for pension reform. A report on these hearings appeared in July, and in December, a draft of the reform was presented to Congress.

The reform was instituted in 2008, modifying two major pillars of the pension scheme: it added a non-contribute pension benefit element to alleviate poverty and inequality, and it designed auction mechanisms for AFPs, to reduce administrative charges. Although some concerning issues, like low pensions and deficient coverage remain, prompting renewed demands for reform, the 2008 reform succeeded in integrating social components and making administrative procedures more efficient.

Chile's 2008 pension reform was successful for several reasons. First, it was an inclusive process involving many voices and interests, which improved the quality of policy and created broad consensus on the benefits of reform. Second, it was a transparent process with an effective communication strategy. Stakeholders understood the need for reform and were encouraged to propose solutions. Third, it was a democratic effort and authorities were aware of the complexity of the concerns at stake. Sustained leadership ensured cohesion and allowed the time necessary to make the effort comprehensive and sustainable.

Source: (Barr and Diamond, 2016<sup>[10]</sup>), "Reforming pensions in Chile", *Polityka Społeczna*, No. 1, 2016, pp. 4-9, <https://www.ipiss.com.pl/?lang=en>, (accessed on 15 August 2017).

### Box 1.6. Mexico's ISSSTE, an independent pension fund

Until recently, the structure of Mexico's pension scheme for public workers, regulated by the State Employees Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, or ISSSTE), retained the structure it had when it was created in 1959. As demographic, economic and social changes occurred, this scheme, based on a defined-benefit plan, began to threaten ISSSTE's financial solvency.

In 2007, Congress approved a reform to the Law on ISSSTE (*Ley del ISSSTE*), which replaced the pension scheme with a defined-contribution plan under which workers contribute to their own pension savings through individual accounts, rather than financing those of current pensioners. These resources would be accumulated in *Pensionissste*, a new body created within ISSSTE to manage and invest pension savings. This body would act as a public Retirement Fund Manager (*Afore*) and compete with private funds to offer the best market conditions and the most attractive rates of return.

In 2015, *Ley del ISSSTE* was modified again to turn *Pensionissste* into a state enterprise (*paraestatal*) with administrative, operative and financial independence from ISSSTE. While *Pensionissste* became a decentralised body, it would still remain a public entity subject to supervision. In addition, its operations would also be regulated by the rules of the National Pension System Committee (*Comisión Nacional del Sistema de Ahorro para el Retiro*, or CONSAR), which oversees the functioning of *Afores*.

An independent *Pensionissste* based on individual contributions implied:

- More rigorous regulation: *Pensionissste* became a highly regulated entity in both the public and private systems. This guaranteed not only more productivity, but more transparency and accountability.
- Increased efficiency: *Pensionissste* began to depend on how strategically it managed its resources, rather than relying on federal budget contributions.
- More stability: The possibility of investing individual savings based on market competition guaranteed more revenue and thus more productivity for *Pensionissste*. This, in turn, made the pension scheme more stable.

Source: (Government of Mexico, 2015<sup>[11]</sup>), "Diez cosas que debes saber sobre la Reforma a la Ley del ISSSTE", [www.gob.mx/gobmx/articulos/diez-cosas-que-debes-saber-sobre-la-reforma-a-la-ley-del-issste](http://www.gob.mx/gobmx/articulos/diez-cosas-que-debes-saber-sobre-la-reforma-a-la-ley-del-issste), (accessed on 15 August 2017).

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## Notes

<sup>1</sup> Although ISSSTESON is not a state-owned enterprise, the OECD Guidelines on Corporate Governance of State-Owned Enterprises are still useful for illustrating the role ISSSTESON's Board of Directors can play.

<sup>2</sup> The report *OECD Review of Pension Systems: Mexico* even recommends that pension and health social security institutions should be clearly separated both legally and financially.

<sup>3</sup> Currently, ISSSTESON rents some medical equipment for its healthcare services. Likewise, medical and hospitalisation services are contracted out for care that is not provided by the institute.

## Annex 1.A. List of services provided by ISSSTESON

Healthcare	<p>Healthcare at ISSSTESON is provided based on three levels of complexity. The first level encompasses basic dental services, laboratory tests and X-rays. The second level includes consultations, general hospitalisation (specialisations like paediatrics, OB/GYN, surgery and internal medicine); special lab tests, ultrasounds and X-rays with contrast agents. Finally, the third level includes high-specialty hospitalisations, cardiovascular surgery, haemodialysis, CT scans, neurosurgery, complex lab tests, radiotherapy, coronary angiographies and nuclear medicine tests.</p> <p>Some of the other services provided are: pacemakers, stents, electrophysiology study, cardiac valves, lithotripsy extracorporeal, bone densitometry, orthopaedic prosthesis, external hearing system, intraocular lenses, contact lenses, conventional glasses, laser-ray ophthalmological surgery, orthodontics, dental guard, eye tomography, splenectomy with X-rays, ocular-tissue grafts, bariatric surgery, intra-gastric balloon, orthoses and endoscopic surgery with laser rays.</p>
Pensions	Retirement; retirement for old age; handicapped pensions; pensions for widowhood of pensioner; pensions for widowhood of active affiliates; pension for orphans; pensions for parents who depend economically on a child who predeceases them; pensions from a work-related accident or condition.
Credits	House credits through FOVISSSTESON ( <i>Fondo de Vivienda ISSSTESON</i> ); Short-term credits; instalment credits for furniture; instalment credits for vehicles; liquidated damages.
Culture and recreation	<i>Sindicato Único de Empleados del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora (SUEISSSTESON)</i> and <i>Sindicato Único de Trabajadores al Servicio de los Poderes del Estado de Sonora (SUTSPES)</i> scholarships for children of workers, workers who are studying and children of pensioners: Scholarships for undergraduate studies for SUEISSSTESON; promotion and economic support for sports with SUEISSSTESON and SUTSPES; provisions for infants of affiliates for SUEISSSTESON, SUTSPES and <i>Sindicato Nacional de Trabajadores de la Educación (SNTE)</i> Section 54; economic support for scholarships for children of workers of <i>Sindicato Independiente de los Trabajadores del ISSSTESON (SITISSSTESON)</i> .
Clubhouses	Workshops, events, and trips for pensioners in the localities of Hermosillo, Obregón, Nogales and San Luis Río Colorado.

## 2 Towards Sustainable and Efficient Public Procurement in ISSSTESON

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This chapter analyses the extent of co-ordination among the different contracting units in ISSSTESON and alternatives to improve communication and information sharing amongst them. It also assesses the incidence of exceptions to public tendering and argues for limiting their use in order to increase competition and efficiency in the institute's public procurement. It goes on to describe the mechanisms used to collect market information and suggests that the institute should focus on market research. It also discusses alternatives for increasing efficiency in ISSSTESON's public procurement, such as simplifying processes, harmonising tender documents and introducing tools such as centralised procurement and framework agreements. Finally, it evaluates the extent of the institute's market engagement and suggests alternatives for constructive engagement while safeguarding integrity.

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Budgetary constraints are one of the main obstacles faced by the Institute of Security and Social Services of the Workers of the State of Sonora (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora*, or ISSSTESON) to carrying out efficient public procurement. The main threat to its financial stability lies in the fact that contributors' payments are not made directly to ISSSTESON but to the State of Sonora's Ministry of Finance (*Secretaría de Hacienda*). Due to the state's financial problems, the Ministry of Finance systematically retained these payments and only passed them on to ISSSTESON either in part or not at all, and in any case with significant delays. In sum, the fact that ISSSTESON does not have full access to the beneficiaries' payments (which constitute most of its income) is at the heart of the institute's inability to pay its suppliers in a timely fashion. As a result, suppliers do not always respect their contractual obligations, which reduces participation in the institute's procurement procedures. Moreover, the broad healthcare coverage ISSSTESON provides is likely to exceed the capacity of its budget.

These budgetary deficiencies limit ISSSTESON's efforts to develop efficient procurement practices and policies. Any analysis of ISSSTESON's procurement thus depends on the institute's budgetary situation, and the effectiveness of the recommendations proposed below will depend on the extent to which its budgetary constraints are alleviated.

At the time of the fact-finding mission, no strategy had been formulated to guide ISSSTESON's procurement activities, nor were there plans to create one.

## 2.1. Efficiency in ISSSTESON's procurement processes

### 2.1.1. ISSSTESON could further integrate or co-ordinate different procuring entities

As discussed in Chapter 5, ISSSTESON's procurement workforce, in the General Procurement Office, is organically integrated in the institute's Administrative Services Deputy Directorate (*Subdirección de Servicios Administrativos*), which includes both the Tenders Department (*Departamento de Licitaciones*) and the Acquisitions Department (*Departamento de Adquisiciones*). The Tenders Department is responsible for handling public tender procedures, including restricted tenders, and the Acquisitions Department manages direct awards.<sup>1</sup> The responsibilities of public officials are set up in ISSSTESON's internal rules, while each of the different administrative units involved in the procurement process has its own procedures manual. The procedures manual applicable to the Deputy Directorate of Administrative Services is available online (*Secretaría de la Contraloría General, Gobierno del Estado de Sonora, 2016*<sup>[1]</sup>).

Apart from the General Procurement Office, each ISSSTESON hospital has its own decentralised acquisitions area. When these areas need goods or services, they submit a request to the Tenders Department or to ISSSTESON's warehouse. If neither can provide the required item, the hospital will purchase it through a direct award procedure. However, no written instrument sets out the particular competencies of the hospitals and the General Procurement Office. Although in practice, the powers of these decentralised acquisitions areas are confined to minor and urgent purchases, such purchases make up a significant proportion of the institute's overall spending, as this chapter shows.<sup>2</sup>

The following table contains a list of ISSSTESON's procurement units and their respective locations:



**Table 2.1. Location of ISSSTESON procurement units**

Procurement unit	Location	City
General Procurement Office	ISSSTESON building	Hermosillo
Guaymas Hospital Procurement	Hospital Clínica Guaymas	Guaymas
Dr. Ignacio Chávez Medical Centre Procurement	Hospital Centro Médico Dr. Ignacio Chávez	Hermosillo
Adolfo López Mateos Hospital Procurement	Hospital Lic. Adolfo López Mateos	Ciudad Obregón
Nogales Clinic Procurement	Clínica Hospital de ISSSTESON Nogales	Nogales

Source: Information provided by ISSSTESON.

The procuring units are not formally co-ordinated. ISSSTESON might consider integrating them (by completing the merger between the Tender Department and the Acquisitions Department, for example), or by establishing co-ordinating procedures between them when merging them is not a feasible option, to guarantee that procurement plans are discussed at the central level with the different purchasing areas.<sup>3</sup> This way, the institute could ensure that the expertise and lessons learned from its procurement practices can benefit the whole institute, minimising the operative costs for the different units. Such co-ordination could ensure that purchases are aggregated where necessary, to avoid fragmentation and the use of direct awards.

ISSSTESON's Committee for Acquisitions, Leases and Services (*Comité de Adquisiciones, Arrendamientos y Servicios*, or the Acquisitions Committee) could be instrumental in this context. The Acquisitions Committee is led by ISSSTESON's Director General; the Executive Secretariat is led by the head of the Tenders Department and its members include the heads of the institute's Finance Deputy Directorate, the Administrative Services Deputy Directorate, the Medical Services Deputy Directorate, and the supply area. The head of the institute's Legal Department, the head of the Internal Control Body (*Órgano Interno de Control*, or OIC) and a representative of the Ministry of Finance participates in the Acquisitions Committee in an advisory capacity, but they do not have voting rights.

The Acquisitions Committee's duties include the following:

- approving policies, rules and guidelines on acquisitions, rentals and services;
- analysing and issuing opinions on drafting and updating procurement programmes and budgets, on the basis of information on their needs provided mandatorily by different administrative units;
- authorising exceptions to open tender procedures, according to the applicable law;
- issuing opinions on procurement procedures, providing recommendations to avoid non-compliance with applicable legal or administrative provisions;
- deciding on procurement matters that are not provided for by the applicable law.

Since the powers of the Acquisitions Committee are not limited, they could also be extended to include co-ordinating and integrating tasks necessary to achieve the objectives described above.

By co-ordinating and integrating tasks, ISSSTESON would be following the OECD's recommendation to streamline public procurement and its institutional frameworks (OECD, 2015<sup>[21]</sup>). The OECD encourages adherents to evaluate existing procedures and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, the OECD recommends building a service-oriented public procurement system around efficient and effective procurement processes and workflows.

### 2.1.2. ISSSTESON could maximise the use of the public tender procedure and limit exceptions

As a rule, ISSSTESON is permitted to procure the goods, services and public works it requires through open tender procedures. However, the institute can use restricted invitation or direct award procedure schemes for exceptional circumstances defined in the Acquisitions Law of the State of Sonora (*Ley de Adquisiciones, Arrendamientos y Prestación de Servicios Relacionados con Bienes Muebles de la Administración Pública Estatal*). Article 19 of the Acquisitions Law, for example, allows for an exception to the open tender procedure if the product can only be acquired from one source, due to patent rights.

Article 26 of the Acquisitions Law allows for direct award or restricted invitation procedures (to at least three potential suppliers) for purchases that, individually considered, do not exceed a specific threshold established in the Expenditures Budget Decree, which is issued for each fiscal year by the government of the state of Sonora. This decree lists the maximum amounts for each contract that public authorities are allowed to award by means of direct award or restricted invitation, depending on the total annual budget authorised for each institution.

Article 54 of Decree No. 107, setting up the Expenditure Budget for the State of Sonora for Fiscal Year 2017, sets the following thresholds for the purchase of goods:

**Table 2.2. Thresholds for the purchase of goods, 2017**

Total annual budget range authorised for each entity (MXN 1 000s)		Amount that can be awarded through the direct-award mechanism (MXN 1 000s)	Maximum amount for each operation that can be awarded through the restricted invitation mechanism (MXN 1 000s)
From	To		
0	2 000	75	220
2 001	4 000	90	260
4 001	7 000	110	350
7 001	10 000	130	450
10 001	14 000	150	650
14 001	28 000	170	850
28 001	40 000	180	950
40 001	65 000	190	1 050
65 001	105 000	220	1 300
105 001	180 000	240	1 500
180 001	320 000	270	1 800
320 001	500 000	310	2 000
500 001	and above	350	2 500

Source: Information provided by ISSSTESON.

For leases and services, the amounts were set as follows for fiscal year 2017.

**Table 2.3. Thresholds for leases and services**

Direct award	Simplified tender (restricted invitation)		Open tender (as applicable)
Up to MXN 11 323	3 proposals MXN 33 970.50	5 proposals MXN 113 235	From MXN 33 970

Source: Information provided by ISSSTESON.

For public works, the amounts set for 2017 were the following.

**Table 2.4. Thresholds for public works**

Public works	Geographic area or region	Direct award	Simplified tender	Public tender
		All municipalities	Up to MXN 754 900	From MXN 754 900 to MXN 1 887 250
Services associated with public works	All municipalities	Up to MXN 301 960	From MXN 301 960 to MXN 754 900	From MXN 754 900

Source: Information provided by ISSSTESON.

Although the Acquisitions Law does forbid artificially splitting contracts to make them conform with these thresholds, neither the Law nor its Regulations (*Reglamento de la Ley de Adquisiciones, Arrendamientos y Prestación de Servicios Relacionados con Bienes Muebles de la Administración Pública Estatal*) provide any guidance or examples of what constitutes artificial splitting of contracts.

Article 27 allows for direct awards in case a qualifying situation occurs. Such situations can include danger to the social order or economy, for acts of *force majeure*; acquisitions of perishable goods; if there are less than three suppliers capable of providing the product; if the prior contract for the acquisition of the product has been terminated; if the acquisition is made through non-standard commercial transactions; and when the acquisition involves rural or marginalised urban groups.

In practice, the direct awards procedure applies, apart from low-value purchases, to purchases that were not planned for and included in the Annual Procurement Programme.<sup>4</sup> Moreover, contracts are also directly awarded as an interim way to cover short-term needs while public tender procedures are carried out.

The OECD *Recommendation of the Council on Public Procurement* (OECD, 2015<sub>[2]</sub>) recommends using competitive tendering procedures as a rule and limiting the use of exceptions. This is intended to increase efficiency, fight corruption, secure value for money and boost competition. Exceptions should be limited, pre-defined and require justification if they are used. They should also be subject to oversight.

It appears that ISSSTESON may be making excessive use of direct awards. Urgent purchases are frequent. Different units frequently submit urgent requests to purchase products such as healing materials.

The following table offers an overview of using exceptions to the use of open tender procedures.

**Table 2.5. Use of exceptions in public procurement processes at ISSSTESON (2011-15)**

Procurement method	Number of procedures (orders)						Value of the procedures (MXN million)					
	2011	2012	2013	2014	2015	Total	2011	2012	2013	2014	2015	Total
Open tender	32	28	32	30	29	151	538	795	636	588	663	3 220
Restricted invitation	2	0	1	5	4	12	1.55	0	1.84	3.74	2.83	9.96
Direct award	12 401	11 359	11 691	12 053	12 130	59 634	233	215	234	263	352	1 297

Source: Information provided by ISSSTESON.

This situation can be attributed to several factors. First, deficiencies in the procurement planning process could be one of the causes obstructing public tender procedures and encouraging the use of direct awards. The need for supplies tends to be underestimated; in ISSSTESON's experience, the supplies purchased for a whole year often run out several months before the year is over. As a result, supplies for the remaining months have to be purchased by direct awards, thus reducing competition and value for money.

Procurement planning could be optimised by avoiding urgent-purchase surcharges. In particular, planning of the procurement timeline could ensure that open tenders are carried out far enough in advance to avoid the need for direct awards to cover unmet needs in the periods between two tender procedures.

Second, as noted above, neither the Acquisitions Law nor its Regulations contain any guidance on what constitutes artificial splitting of contracts. In practice, it appears that ISSSTESON tends to run public tenders only for what can be approximately anticipated. It is common to have medicines, materials and medical equipment not provided for in the annual budget or in the authorised medicines of the basic basket (*cuadro básico*), given that they are used to respond to sporadic diagnoses or to treat patients with relatively rare diseases. By the time the need is felt, they cannot be procured in an aggregated fashion in a competitive procedure, and must be procured individually by means of direct awards. It would be advisable to issue guidelines to avoid this situation or establish innovative practices, such as framework agreements, to address such cases. In particular, these guidelines should emphasise that even low-value purchases should be aggregated and tendered as far as possible, when they constitute recurring business needs foreseeable over a determined period of time, even if the exact value of each order cannot be determined in advance.<sup>5</sup> For such cases, framework agreements are one solution that would allow ISSSTESON to place smaller orders with providers at short notice at prices comparable to those governed by large contracts awarded through a competitive procedure. Framework agreements are included in the *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>) as a tool capable of improving procurement procedures, reducing duplication and achieving greater value for money.

ISSSTESON has also noted that its routine use of direct awards to satisfy urgent needs is not only due to insufficient procurement planning, but to its lack of resources. Even if purchases are planned, when they are not paid for, distributors may run out of funds for acquiring products from the manufacturers and may be unable to fulfil the contract. In such cases, ISSSTESON is forced to turn to direct awards and look for new suppliers to which it is not as indebted. In the end, the institute has to pay a price premium as a result of these deficiencies. Delays in payments also inhibit supplier participation in the procurement processes, which results in a lack of offers for specific goods.<sup>6</sup> As already noted, it is essential that ISSSTESON ensure that budget deficiencies do not prevent it from properly paying suppliers.

ISSSTESON already has mechanisms that would allow it to implement these measures. Every year, the different requiring units and warehouses in the institute create a consolidated list of requirements for the upcoming year and submit it to the Deputy Directorate to which they belong (within ISSSTESON's General Procurement Office) or to the relevant hospital's acquisitions area (if the requiring unit is part of a hospital). The relevant Deputy Directorates are thus in a good position to observe the principles described in this section, since they are in charge of unifying, reviewing and assessing the lists submitted to them by the different units. The requirement lists resulting from this review are then fed into the drafting of the Annual Procurement Programme.<sup>7</sup>

This process occurs at the same time as the preparation of the expenditures budget. As the different needs are incorporated into the Annual Procurement Programme, they are budgeted for in the expenditures budget.

The Directive Board (*Junta Directiva*) is also in charge of overseeing this process; it authorises the Annual Procurement Programme for budgeting and returns to the Administrative Deputy Directorate, which can then initiate the relevant open tender procedures through the Tenders Department. These bodies could provide an extra layer of input and control, in addition to the Deputy Directorates.

Moreover, several control institutions are already charged with monitoring compliance with these principles, ensuring that direct awards are carried out as a truly exceptional measure.

The Acquisitions Committee is already responsible for following up on how many acquisitions are made by means of a direct award procedure and oversees compliance with the applicable law in the choice of this procedure. Direct awards need to be approved by the Acquisitions Committee for authorisation, under

Fraction I of Article 27 of the Acquisitions Law. The Acquisitions Committee must also authorise the procurement programme for direct awards, the value of which is calculated monthly.

Similarly, the Superior Audit Institute reviews whether direct awards fall within the exceptions established by the law, and the Internal Control Body reviews the same parameters, namely whether the acquisitions are within the established thresholds and whether they are justified under the law. This review, carried out on the basis of data from the Electronic Procurement system (*Sistema Electrónico de Compras*, or SIEC), covers not only the appropriate use of the binary criterion, but also whether goods can be provided as urgently as needed.

The existing legal instruments can also support the implementation of these principles without the need for amendment: exceptions to open tender procedures are certainly allowed, but they are not mandatory, even under conditions described in the articles mentioned above.

### **2.1.3. ISSSTESON could improve its market intelligence mechanisms**

Market investigations are an essential component of efficient and effective procurement procedures, helping procuring entities design procurement procedures to optimise value for money.

ISSSTESON does not have a mechanism to carry out market investigations. It outsources this function to an external company to determine the approximate value of the intended purchase, and assigns a budget to each individual procurement procedure.

Market investigations at ISSSTESON are considered to be an administrative formality; the institute has no specific tools and would benefit from setting up internal expert teams to conduct them. The applicable law contains no provisions indicating how exactly to carry out a market study. To gain some insight into the markets, ISSSTESON officials in charge of preparing technical specifications and determining reference prices consult historic price data from the institute and, if no reference prices or previous market studies are available, contact two or three companies to obtain price quotations.<sup>8</sup>

Recently, ISSSTESON commissioned an external contractor to carry out market investigations under Article 10 of the Acquisitions Law, which authorises ISSSTESON to engage technical advisers to carry out market investigations and improve the acquisitions, leasing and services procurement system. This firm intervenes once the requirements have been defined but before the calls for tender are drafted. The firm's methodology consists of checking historical prices and quotations, current market price levels, the firms active in the relevant market, and the rules applicable to the product in question.<sup>9</sup>

However, this more sophisticated market research is not carried out as a rule for most procurement procedures. Instead, market investigations are usually a relatively rushed affair, due to the lack of sufficient time allotted to carry them out, and because there is no plan to guarantee that enough time can be allocated to carry out an adequate market investigation. As a rule, once the technical requirements are defined, procurement officials are expected to issue a call for tender almost immediately. There is also no co-operation amongst the different areas in ISSSTESON that work on market investigations.

ISSSTESON could use specialised staff and procedures to conduct in-depth market studies to gain a better understanding of the market, which is crucial if it is to obtain the best value for money. It could also set up guidelines for procedures for carrying out comprehensive market investigations covering a minimum number of sources, other than historical prices and supplier quotations,<sup>10</sup> including an ongoing dialogue with other public entities on the prices paid for equivalent products by each purchasing body. Mexico's Economic Competition Commission guidelines for conducting market investigations (COFECE, 2016<sup>[3]</sup>) could serve as the basis for this document. Moreover, a timeline should be created and enforced to guarantee that sufficient time is allocated for market investigations. It is also recommended that ISSSTESON create a communication channel between the relevant areas in this context, so they can share orientation, information and tools for market investigations.

The Acquisitions Committee is well placed to become the body issuing the relevant guidelines and provisions. A specialised market investigation unit could be created in the Administrative Services Unit. As for the legal framework, although the Acquisitions Law does not contain detailed provisions on how best to carry out market research, Article 3 of the Law authorises the Ministry of Finance and the State's Ministry for Control to interpret the Law for administrative purposes.

#### **2.1.4. ISSSTESON could get better value for money by adapting the drafting of tender documents**

ISSSTESON's Tenders Department is responsible for drafting the tender documents, which consist of the call for tender and their annexes, including technical specifications and requirements.

Technical specifications are somewhat standardised at ISSSTESON and generally consist of a description associated with a certain product reference code; functional requirements have never been used by the institute. Other requirements are similarly standardised; for example, the guarantee required following contract awards is invariably 10% of the contract value, under Article 33 of the Acquisitions Regulations, regardless whether the nature of the contract makes this a proportionate or sufficient amount.

Minimum requirements can also prove problematic. Institute officials interviewed by OECD in the fact-finding missions reported that ISSSTESON's guarantee and eligibility requirements have sometimes been inadequate, and that the institute has drawn up contracts with companies that could not fulfil their commitments.<sup>11</sup>

As for guarantees, the monetary limits prescribed by law may be insufficient to ensure contract compliance, or alternatively may be excessive and prevent the vast majority of suppliers from participating.

Eligibility requirements may also be periodically reviewed to avoid the risk of unwittingly acquiring unlicensed drugs from the black market. In its tender procedures, ISSSTESON always requires registration of the products with the health regulator, the Federal Commission for Protection against Sanitary Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*, or COFEPRIS). Recently Sonora's Ministry for Health detected a counterfeit oncology drug acquired in a direct purchase where the authorised distributor letter was not required. ISSSTESON does require such documentation in its tender procedures. At the other extreme, requiring suppliers to be distributors, rather than manufacturers, of certain products has in the past proven to be an excessively burdensome eligibility requirement. In Sonora, most patent-drug manufacturers sell through a single provider, so that if ISSSTESON runs a tender focusing on patent drugs, competition will be nonexistent. In this case, the choice of procedure could have also been investigated further, so that it could be better adapted to the specific requirements of each procurement procedure. For instance, in the case of patent-drug purchases from exclusive distributors, the use of a tender procedure was not appropriate given the absence of competition, and the auction mechanism (*oferta subsecuente de descuento*, or OSD) could not be used for any of the products.

As for award criteria, in practice, ISSSTESON exclusively uses the binary criterion, choosing the lowest-priced proposal that complies with basic requirements guaranteeing that the supplier is capable of complying with the relevant obligations. The importance of price as an award criterion is so high that procurement officers may often feel obliged to opt for a product with a lower price, on the assumption that the control institutions may otherwise object to their decision. This can entail higher costs in the long term, and have a negative impact on patient experience (since use of the drugs may involve longer hospital stays or harsher secondary effects). No guidelines or policies are used to define the technical specifications or the award criteria, and no training on this is provided to officials in charge of setting them up.

It would be advisable for ISSSTESON to create guidelines or policies for the drafting of procurement documents, which should focus on the use of functional requirements and on the development of award criteria that reward reductions of total life-cycle costs rather than merely price. ISSSTESON could train officials responsible for drafting procurement documents to ensure the application of these principles. The

institute could similarly create a specific quality-control procedure or unit in charge of reviewing tender documents prior to their publication. Procurement documents could also be standardised to a certain extent, to simplify and streamline procurement procedures, as discussed further in this chapter.

These measures would be in line with the OECD's recommendation to implement sound technical processes to satisfy customer needs efficiently, for instance by developing appropriate technical specifications or identifying adequate award criteria. Delivering clear and integrated tender documentation, standardised where possible and proportionate to the need, is another measure recommended by the OECD to facilitate access to procurement opportunities (OECD, 2015<sup>[2]</sup>).

ISSSTESON's current structure can provide a basis for the implementation of these measures, since they include several layers of tender document review. Currently, once the tender documents have been drafted by the Tenders Department, they are returned to the Deputy Directorates representing the requiring units, so that they can confirm and approve the calls for tender and annexes, or propose amendments or additions according to their needs. Once finalised, the tender documents are submitted to the State's Ministry for Control and to the State's Legal Counsellor for approval. These bodies control, in particular, compliance with the regulatory framework and whether requirements could be considered discriminatory or unduly limit participation.<sup>12</sup> Their review could also be extended to controlling compliance with the principles set out in this section.

The applicable legal framework would also allow for the implementation of these principles. Far from focusing exclusively on prices, Article 19 of the Acquisitions Law explicitly states that tenders are meant to ensure that the State achieves the best available conditions in terms of price, quality, financing, opportunity and any other relevant circumstances. The Acquisitions Law does allow for the use of the points and percentages criterion (which allows for a more comprehensive assessment of the cost/benefit of the acquisition) and requires its use when the procurement concerns products involving a high degree of technical specialisation or technological innovation (see Articles 20 and 24 of the Acquisitions Law). Article 21 of the Acquisitions Regulations also, for example, allows for the procuring entity to determine the amount of the guarantee required for suppliers at the moment of bidding (in order to ensure seriousness of the proposals)<sup>13</sup> on a case-by-case basis; ISSSTESON could use this leeway to waive the requirement of a guarantee when appropriate, to avoid restricting participation.

### **2.1.5. ISSSTESON could consider extending the scope of public contracts**

#### *Geographical scope*

ISSSTESON's tenders are generally national in scope, despite the fact that the Sonora Acquisitions Law mentions the possibility of carrying out international tenders. Opening procurement procedures to the participation of international bidders encourages competition in the market and allows procuring entities to obtain better value for money. ISSSTESON could explore the possibility of opening its procurement procedures to foreign bidders, but it should first ensure liquidity to carry out the corresponding payments in cases of awarding them a contract.

While the Acquisitions Law does contain provisions that favour local, regional or national firms in certain conditions at the evaluation stage, this would not stop ISSSTESON from opening up to international competition participation in its procurement procedures. This could yield price advantages, given that Sonora is a border state. Market research could assess the potential for participation of foreign bidders in light of the amounts contracted, distribution costs and operational implications, among other factors.

#### *Time scope*

ISSSTESON's contracts with suppliers are limited to a maximum of a year. Although the optimal duration of public contracts can only be determined on a case-by-case basis after a thorough market investigation,

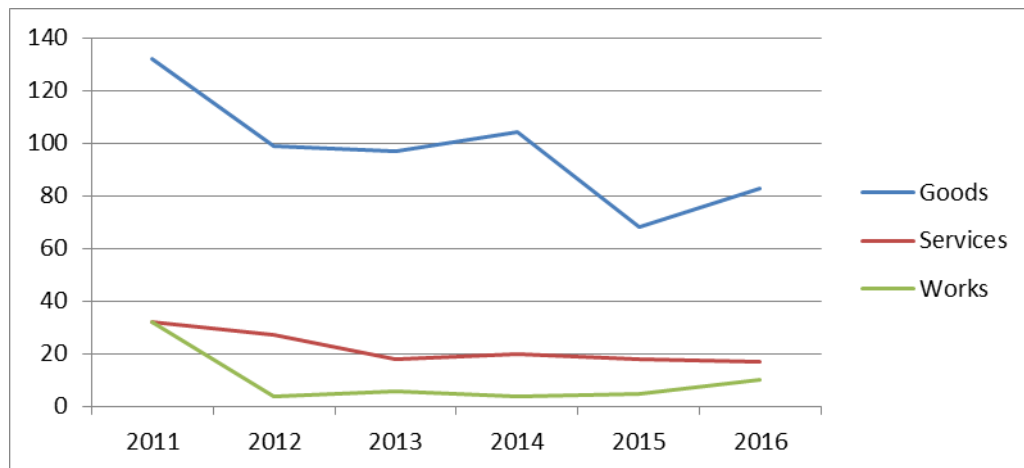
longer contract periods can often provide significant advantages. For instance, they can create economies of scale leading to price reductions, allow for the reimbursement of large initial investments on the part of firms that would otherwise not be commercially feasible for suppliers, guarantee the continuity of supply, attract larger bidders to ISSSTESON's procurement procedures, or reduce the administrative burden of annual procurements for needs that are likely to persist over a number of years. ISSSTESON could benefit from the option to sign multiannual contracts, or annual contracts with the possibility of extension for a determined period, in specific cases that the institute deems appropriate.

ISSSTESON is currently negotiating with the Ministry of Finance over using multiannual contracts in cases where this could yield significant advantages (i.e. multi-year leasing programmes for medical equipment). Unfortunately, the regulatory framework is not explicit, and there is resistance to the use of multiannual contracts. The institute is encouraged to continue actively pursuing the possibility. At the same time, Sonora's authorities should review the regulatory framework to provide certainty in their use.

### 2.1.6. ISSSTESON could promote simplification and reduce red tape in procurement processes

The number of proposals received by ISSSTESON in its procurement procedures has been in decline throughout this decade, as the following figure shows.

**Figure 2.1. Average offers received in open-tender procedures**



Source: Information provided by ISSSTESON.

Competition is a precondition of achieving value for money, and ISSSTESON could try to facilitate access to procurement opportunities for potential competitors of all sizes (including small and medium enterprises, or SMEs), as the *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>) advises. ISSSTESON could explore ways to maximise participation of genuinely competing suppliers in its procurement procedures.

Reducing bureaucratic burdens can be one way to achieve this goal. The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>) proposes streamlining public procurement systems and its institutional frameworks. ISSSTESON could assess whether the existing procurement processes and institutions entail waste from functional overlaps or inefficient silos. The processes and workflows could be reworked to increase their efficiency and effectiveness, reducing administrative red tape and costs.



### *Suppliers' registry*

Suppliers are recently required to sign up in a registry to participate in ISSSTESON's procurement procedures under Article 22 of the Acquisitions Regulations. Under current practice, application to the registry must be in person (for open tenders) and entails a fee. In addition to the direct cost, international experience suggests that indirect administrative costs, for example, the hours spent complying with formalities, are onerous for businesses, particularly for SMEs, and may constitute a barrier to participating in procurement procedures. Ideally, in-person application to the suppliers' registry should not be mandatory and should only entail minimal fees, if any. It should also be possible to register by electronic means. The Acquisitions Law requires application to the suppliers' registry, but other restrictive aspects (i.e. the requirement for in-person registration and the fee) are not required by the Acquisitions Law or its Regulations, which would allow for their removal. Electronic registration in the suppliers' registry on an online platform is already possible for suppliers applying for contracts through the direct award procedure. This could be used as a useful precedent for extending the system to suppliers wishing to participate in tender procedures.

### *Multiple e-procurement systems*

ISSSTESON uses several e-procurement systems. Compranet, the federal e-procurement system, was used for programming needs and receiving quotations electronically in the context of tender procedures. A local version of Compranet, launched by the State Government in June 2017, took its place for tender procedures in which ISSSTESON does not use federal funds. Sonora's product codes are not standardised with the codes used in the federal procurement system.

The Electronic Procurement System (*Sistema Electrónico de Compras*, or SIEC) is now exclusively used for direct award procedures. This was set up in 2010 to harmonise the annual needs of different units in ISSSTESON (the Annual Acquisitions Programme is uploaded into SIEC every year) and to allow quotations to be submitted electronically.

Another internal ISSSTESON system, the State Warehouse System (*Sistema Estatal de Almacenes*, or SEA), an older and less sophisticated version of the SIEC that is not public, is used as a support system if a request issued on the SIEC fails to yield quotations. In such cases, procurement officials may use the SEA and submit an invitation to a minimum of three suppliers.

These multiple e-procurement portals can be a source of inefficiency and waste, particularly because they do not use the same product codes consistently. Integrating these tools into a one-stop shop or single contact portal with access to all procurement opportunities could be helpful, in line with the OECD's recommendation to develop tools for improving procurement procedures and reducing duplication (OECD, 2015<sub>[2]</sub>).<sup>14</sup>

### *Tender documentation*

The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sub>[2]</sub>) advises adherents to "deliver clear and integrated tender documentation, standardised where possible and proportionate to the need". ISSSTESON is advised to design tender opportunities to encourage broad participation from potential competitors, in particular by ensuring that tender documents provide clear guidance to inform buyers' expectations of contract terms.

In line with the OECD Recommendation, ISSSTESON could adjust the extent and complexity of the information required in tender documentation to the size and complexity of the procurement opportunity. In this sense, ISSSTESON could find it helpful to use standardised tender documents, such as model contracts, tender submission templates or catalogues of general conditions, which could be adapted or allow for negotiation on a case-by-case basis. The time allowed for suppliers to provide this information should also be adapted to the complexity of the project, taking into account the urgency of the procurement.

### *Developing and using alternative procurement tools*

The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>) advises the development of “processes to drive efficiency throughout the public procurement cycle in satisfying the needs of the government and its citizens”. Centralised purchasing, joint procurement, framework agreements, dynamic purchasing, contracts with options and e-catalogues could be tools for achieving greater value for money and reducing duplication, as noted by the OECD Recommendation. Centralised purchasing, for instance, may lead to benefits such as savings from economies of scale created by aggregating demand and public procurement expertise. Likewise, most OECD countries are leveraging framework agreements to maximise efficiency, value for money and savings by aggregating and consolidating demand, thus reducing the pool of suppliers (see Box 2.1 for a description of how Chile leverages framework agreements). ISSSTESON could therefore consider exploring the use of alternative procurement tools that could help it achieve better value for money.

#### **Box 2.1. Chile’s use of framework agreements**

Framework agreements have been instituted in Chile since 2003. The Law No. 19 886 on Public procurement states that ChileCompra is responsible for implementing and managing this type of agreement. A by-law further details obligations of the public entities using framework agreements.

ChileCompra is one of the few central purchasing bodies that have very few framework agreements with a single supplier. Apart from the framework agreement relating to mandatory health insurance, all other instruments are concluded with multiple suppliers. On average, ChileCompra awards a framework agreement to 185 suppliers out of 248 bids received. This means that almost 70% of the bidders are admitted under framework agreements. Yet, more than 60% of suppliers on average did not receive any purchase orders in 2014, and the top 10 suppliers under each framework agreement accounted, on average, for 71% of the total revenue.

With the mandate and responsibility for managing framework agreements, ChileCompra developed an online platform (ChileCompra Express) for accessing all goods and services available for purchase by public entities. ChileCompra Express allows public entities to purchase goods and services available in the framework agreements. The platform also allows suppliers to modify their offerings. Changes to product specifications and prices submitted by suppliers are then assessed by ChileCompra and incorporated into the platform, if deemed appropriate.

Source: (OECD, 2017<sup>[4]</sup>), *Public Procurement in Chile: Policy Options for Efficient and Inclusive Framework Agreements*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264275188-en>.

ISSSTESON may want to consider initiating or joining consolidated procurement procedures, as the applicable legislation (Article 16 of the Acquisitions Law) allows the institute to do so, particularly with the state’s Ministry of Health.<sup>15</sup>

Other forms for achieving procurement efficiencies, such as framework agreements (as discussed above) or dynamic purchasing systems, are not currently provided for by the law, but they are not explicitly forbidden. ISSSTESON, together with the Ministry for Control, could study the legal framework to consider reforms that provide certainty for the use of these instruments as part of its toolbox of available procurement mechanisms.

### **2.1.7. ISSSTESON could enhance its contract management and procurement evaluation**

The OECD's *Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>) advises that adequate resources and expertise be made available for contract management after a contract is awarded. It also advises using oversight and control mechanisms to increase accountability throughout the public procurement cycle, including appropriate complaint and sanctions mechanisms. However, ISSSTESON has no specific contract management procedures or bodies: each of the officials within the Tenders Department is charged with managing each specific contract, with no overall supervision or co-ordination of this function. ISSSTESON would do well to take measures to upgrade its contract management framework.

#### *Disputes relating to contract performance*

In the event that any dispute arises from the outcome of the tender procedure, the state's Ministry for Control is to resolve it. However, there is no established legal framework to deal with any disputes arising from contract performance. A Conciliation Area exists for this purpose at the federal level, but the state of Sonora has no equivalent.

ISSSTESON could set up a mechanism for handling disputes arising in connection with contract performance, which could be used both by suppliers and by the institute itself.

#### *Assessing and incentivising suppliers' contract performance*

Since ISSSTESON does not have any formal processes for contract or supplier performance, in practice only contract administrators can assess suppliers' performance.

The lack of incentives to secure suppliers' compliance and improve their performance is aggravated by the delays in payments to suppliers; and no mechanisms allow for the use of information on suppliers' performance to evaluate their bids to tender similar goods and services in future. Although ISSSTESON's procurement officials take supplier compliance into account in the context of direct awards, there is no mechanism to share information among procurement officials from either the Acquisitions or the Tenders Department. Similarly, there is no points system to reward firms with a good compliance record.

In line with the OECD Recommendation, ISSSTESON could set up mechanisms to incentivise suppliers' compliance with their contractual obligations. A follow-up process on contract performance or supplier performance could not only allow for better control of how each contract is performed, but allow ISSSTESON to assess suppliers' past performance in the context of future tender evaluations. For example, in a tender using points and percentages criteria, a good performance record would entitle the bidder to extra points, and conversely, a poor performance record would cause the bidder to lose points. Bidders' performance record could be even more important for suppliers of critical goods for ISSSTESON, whose activities require high standards of compliance

#### *Ensuring a well-functioning payment system*

Contract compliance also involves the purchasing body's responsibility to pay suppliers according to contract conditions (amount and time).

For ISSSTESON, payment is due 30 days after performance of the contract and submission of an invoice on the part of the supplier, as established by Article 31 of Sonora's Acquisitions Law. Anticipated payments are possible, under the conditions established in Article 22 of the same Law. In the context of public works, a 30% advance on payment is normally offered. Generally, no advance payments are offered in other kinds of contracts, but nothing would prevent this practice. Article 19 of the Acquisitions Law stipulates that whenever the manufacturing process of a good takes more than 60 days, an advance payment of between 10% and 50% of the contract's value will be granted to Sonora SMEs that are awarded a contract.

However, due to the budgetary constraints described in Chapter 1, payment periods vary significantly depending on the availability of funds. Payments can take several years to be completed, which has on occasion landed suppliers in financial trouble or in certain cases, in bankruptcy. Federal legislation is more stringent towards public institutions on payments to suppliers, but Sonora's legislation allows for asymmetrical payment obligations, strictly enjoining suppliers to provide goods but allowing ISSSTESON to delay payments. The greatest risk faced by the institute is a potential disruption of supply stemming from its failure to pay its suppliers, whereas suppliers must assume the financial costs of payment delays.

This not only discourages participation in ISSSTESON's procurement procedures but disincentivises suppliers' performance and, in some cases, renders them incapable of fulfilling the contract.<sup>16</sup> ISSSTESON's failures to pay have caused some suppliers to stagnate or reduced their capacity. SMEs are particularly affected by this problem, and their limited access to credit means that they cannot assume the costs of the delay. ISSSTESON's payment problems can deter the participation of SMEs, so that only large and powerful firms can afford to submit bids.

According to suppliers interviewed, more clarity is needed around the order in which payments to suppliers are handled: while some suppliers are paid promptly, others have to wait for years before receiving payment. With every change of state government, ISSSTESON's preferred suppliers change, and new suppliers are favoured with prompt payment.<sup>17</sup> Chapter 4 includes recommendations on how ISSSTESON can increase improvements in integrity in its procurement procedures and practices.

ISSSTESON could endeavour to ensure a transparent, timely payment system, promoting compliance on the part of suppliers and encouraging competition in the market. This would be an ideal commitment in light of the promise by the state Ministry of Finance to settle its debt with the institute.

#### *Measuring the performance of the public procurement system*

Following the *OECD Recommendation of the Council on Public Procurement* (OECD, 2015<sup>[2]</sup>), ISSSTESON could improve performance by evaluating the results of its procurement policies and practices in general, as well as those of individual procurement procedures. The institute would need to collect detailed data on procurement procedures, which, with historical data, could periodically and consistently assess procurement results, and guide future procurement decisions and strategies (including needs assessments of the requiring units). This could be carried out with the help of indicators, as the OECD recommends, measuring performance, effectiveness and savings of the public procurement system.<sup>18</sup>

ISSSTESON does have specific control mechanisms in place in this respect. As noted above, the Acquisitions Committee, Sonora's Supreme Audit Institution (*Instituto Superior de Auditoría y Fiscalización*, or ISAF), and the Internal Control Body oversee procurement procedures; the Ministry for Control, Office of the Legal Counsellor and Ministry of Finance also participate in different stages of open-tender procedures. However, their reviews focus on compliance with the law or calls for tender, but do not assess the performance of procurement instruments. Evaluating the effectiveness of ISSSTESON's public procurement system, from individual procurements to the system as a whole, could be carried out by extending the competences of the existing control mechanisms or by entrusting this task to a new body.

#### **2.1.8. ISSSTESON could focus on collaboration with and amongst stakeholders**

##### *Engaging in transparent and regular dialogues with stakeholders*

Dialogue between ISSSTESON and its suppliers could help the institute gain a better understanding of markets. It would also allow suppliers to become acquainted with ISSSTESON's procurement objectives, which would help firms prepare to fulfil the institute's requirements.

The OECD recommends that public buyers engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and encourage further understanding

of markets, while complying with protocols to safeguard integrity in the interactions between procurement officials and private agents (OECD, 2015<sup>[2]</sup>).

ISSSTESON does not consult with suppliers before implementing changes in procurement mechanisms. This can have a negative impact on procurement procedures and value for money for the institute. For example, the institute recently carried out a procurement procedure in an unexpected and complex format (*licitación integral*), which took suppliers by surprise because ISSSTESON had not previously discussed its plans with them. Suppliers reported that this limited their participation, giving them no time to prepare to comply with the procedure's requirements, which differed substantially from what they had anticipated.

Several firms were prevented from participating by specific requirements that they considered too stringent and unnecessary for guaranteeing contract performance, such as minimum social capital, number of vehicles available and warehouse size. Only one company complied with the requirements and was allowed to participate. This situation could have been avoided, to the benefit of both ISSSTESON and its suppliers, if a pre-tender dialogue had been conducted where the parties could agree on the minimum requirements that could protect the interests of both sides. Consulting or engaging with the market does not mean that ISSSTESON must implement the strategies suggested by consultees, but it can help the institute understand the market, recognise the market's capacity to adapt the selected procurement strategies, and mitigate the corresponding risks (such as limited participation).

ISSSTESON could engage in a productive dialogue with suppliers and businesses and enlist their input in carrying out its procurement strategies. This could help the institute present its public procurement objectives to suppliers so they can plan their business activities, which would in turn improve contract performance. Such conversations could help give ISSSTESON a better understanding of the relevant markets and help it to develop more effective tender specifications. It could also collaborate with suppliers by discussing the results of procurement procedures, and conduct surveys or publish indicators to measure suppliers' perception of procurement processes. Discussing the results of procurement procedures would include not only the award decision, but for example, the extent of participation, the adequacy of the bids for ISSSTESON's needs, and savings, quality and other criteria. Such discussions should be subject to rules and protocols safeguarding integrity and impartiality (see Box 2.2).

### Box 2.2. New Zealand's guide for constructive market engagement

New Zealand's Government Procurement Branch has produced a guide on procurement, *Constructive Market Engagement: A Guide to Engaging Effectively with Suppliers*. It defines market engagement as a process that makes it possible, at all stages of procurement, to:

- communicate needs and requirements to suppliers;
- openly and transparently discuss possible solutions;
- stimulate innovation in the design and delivery of the solution;
- understand market capacity, capability and trends.

The document describes why engaging with the market is important and the conditions under which engagement should take place, to avoid damaging trust in public procurement activities, for example:

- being fair, open, and transparent;
- recoding discussions;
- taking steps to ensure integrity, for example, giving the same information to all suppliers;
- giving equal access to all suppliers and treating all suppliers equally.

Finally, the document provides guidance about methods available for engaging with the market during pre-tendering (publishing forward procurement plans and meeting with industry bodies), tendering (briefing suppliers about the development of the process) and post-tendering (strategic supplier management and providing feedback to unsuccessful bidders).

Source: (New Zealand's Ministry of Business, Innovation and Employment, 2015<sup>[5]</sup>), *Constructive Market Engagement: A Guide to Engaging Effectively with Suppliers*, Wellington, New Zealand.

These exchanges could also be extended to general questions about the public procurement system, such as amendments to the applicable rules and procedures. Public consultations could include not only the private sector but civil society. The OECD recommends that public buyers develop and follow a standard process that promotes public consultation in formulating changes to the public procurement system, inviting comments from the private sector and civil society, ensuring publication of the results of the consultation phase, and explaining the options chosen, all in a transparent manner (OECD, 2015<sup>[2]</sup>). This is consistent with Sonora's regulatory framework, particularly the Law for Better Regulation in the State of Sonora and its Municipalities (*Ley de Mejora Regulatoria para el Estado de Sonora y los Municipios*).

#### *Co-operation amongst suppliers*

It is not clear whether subcontracting and joint bids are allowed by the normative framework applicable to ISSSTESON tenders. They are explicitly allowed only with regards to tendering for public works and related services, where supplier co-operation is allowed on the basis of Articles 44 and 48 of the Law on Public Works and Related Services of the State of Sonora, and Article 55 of its implementing Regulations.

In practice, subcontracting and joint bids are never allowed outside the field of public works and related services. ISSSTESON, together with the Ministry for Control, may explore the possibility of allowing for subcontracting and joint bids as a rule in its procurement procedures, since these mechanisms increase participation and encourage competition. If necessary, they could suggest legal reforms.

On the other hand, it is possible that ISSSTESON is unwittingly facilitating certain forms of anti-competitive co-operation amongst bidders by regularly holding in-person suppliers' meetings (*juntas de aclaraciones*) in the context of tender procedures. In line with the *OECD Guidelines for Fighting Bid Rigging in Public*

*Procurement* (OECD, 2009<sup>[6]</sup>), ISSSTESON could avoid bringing potential suppliers together at the tendering stage, since this significantly increases the risk of collusion amongst suppliers. This risk is higher where suppliers are few and inadequately paid, as is the case with ISSSTESON's suppliers.

## Proposals for action

- ISSSTESON could further integrate or co-ordinate different procuring entities, such as the Tenders Department, the Acquisitions Department and the decentralised acquisition areas of hospitals, establishing better communication channels within the institute's purchasing bodies and thus benefiting from a better quality of information and allowing for aggregated purchases.
- ISSSTESON could maximise the use of the public tender procedure and limit exceptions, as a means to increase efficiencies, boost competition, reduce risks of corruption and obtain better value for money. ISSSTESON could benefit from improved procurement planning processes focused on avoiding urgent-purchase surcharges. Exceptions should be limited, predefined and should require justification; rules on artificial splitting of contracts should be properly enforced so that this is not done on purpose, to avoid open tenders. The Acquisitions Law or its Regulations could provide guidance on the matter.
- ISSSTESON, with support from the auditing bodies, could improve its market intelligence mechanisms by developing clear parameters on what constitutes a proper market investigation and illustrating those parameters in internal rules. Once clarity is achieved on the items that compose a market investigation (which could include more parameters than simply historical prices and supplier quotations), the institute could adopt certain tools for developing those investigations and enlist internal expert teams to carry them out. This would help the institute gain a more comprehensive understanding of the market, which is crucial for obtaining value for money.
- ISSSTESON could obtain better value for money by issuing guidelines or policies for drafting tender documents, to define technical specifications for the award criteria. It could focus on the use of functional (generic) requirements and on the creation of award criteria that reward reduction of total-life cycle costs<sup>19</sup> rather than limiting the decision only to price. The state of Sonora's Acquisitions Law currently permits the use of the points and percentages criterion, which can allow for the best available conditions in terms of price, quality, financing, opportunity and other relevant features. This could have a positive impact on patient experience in interacting with ISSSTESON, leading to shorter hospital stays and reduced secondary effects.
- ISSSTESON could consider extending the scope of public contracts by opening its procurement procedures to international bidders. Sonora is a border state, so this could yield price advantages. The institute is encouraged to continue actively pursuing the use of multiannual contracts, or annual contracts with the possibility of extension for a determined period, to create better conditions of value for money and to reduce the administrative burden.
- ISSSTESON could promote simplification and reduce red tape in its procurement processes to give potential competitors of all sizes access to procurement opportunities. It could consider revising its processes and workflows to increase their efficiency and effectiveness. For example, the institute could revoke the mandatory in-person registration and associated fees for suppliers, allowing them to register on an online platform. It could also bring together the different e-procurement tools now in use in a one-stop-shop or single contact portal giving access to all procurement opportunities; adopt the use of standardised tender documents, which could be

adapted on a case-by-case basis, depending on the complexity of the project; and develop alternative procurement tools to obtain better value for money and reduce duplication.

- ISSSTESON could enhance its contract management and procurement evaluation dynamics to apply oversight and control mechanisms that support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes. It could consider implementing mechanisms in the legal framework to deal with disputes relating to contract performance; and ways to allow the use of information on suppliers' performance to help assess future tendering, including mechanisms to motivate suppliers' compliance with their contractual obligations; ensure an efficient and equitable payment system for all suppliers, given the environment of budgetary constraints, and collect detailed data on procurement procedures to evaluate the results of procurement policies and practices, as well as those of suppliers.
- ISSSTESON could focus on collaboration with stakeholders to obtain a better understanding of markets and allow suppliers to become acquainted with its procurement objectives. It could conduct transparent and regular dialogues with suppliers and business associations, and consult stakeholders before introducing changes in procurement mechanisms.

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## Notes

<sup>1</sup> However, the organic structure of ISSSTESON was amended in March 2019 by merging the Tenders Department with the Acquisitions Department.

<sup>2</sup> ISSSTESON is currently undertaking a process of reforms to consolidate procurement in its central offices. Under this new scheme, hospitals will only be allowed to purchase based on urgent needs authorised by the Co-ordination of Hospitals. New policies are being drafted to restrict this practice.

<sup>3</sup> The reforms described in the two previous endnotes address this recommendation.

<sup>4</sup> In 2019, the institute launched an effort to limit the procurement of goods not included in the Annual Procurement Programme and not considered under the authorised medicines basket (*cuadro básico autorizado*). For instance, hospitals agreed that only the procurement of medicines and medical equipment considered urgent will be authorised, after exhausting authorised goods.

<sup>5</sup> Some highly specialised drugs cannot be programmed because they are not included in the basic basket. Their management and storage can be complicated because they may need to be kept in a freezing room or because they are close to their expiry date.

<sup>6</sup> The incidence of lack of bids for specific goods may also be the result of other factors, such as an inadequate market analysis, which does not feed the tender design, and because the process is inconsistent with market capabilities.

<sup>7</sup> This programme includes information on each good or service purchased and its reference price; every work to be carried out is similarly listed, with its estimated value on the basis of the prior year's prices. The programme does not include an estimated purchase date.

<sup>8</sup> However, none of the suppliers interviewed by the OECD during the fact-finding mission reported having been contacted by ISSSTESON for these purposes.

<sup>9</sup> Only one firm provides such services to ISSSTESON, which was selected by the Directive Board. The prices paid by ISSSTESON to conduct these market studies vary, since some services are more complex than others, depending on the number of product reference codes the investigation needs to cover. The firm was not selected through a procurement procedure, because the State of Sonora's Acquisitions Law does not cover the rendering of professional services. The procurement of these services is regulated by a Decree dated 2011-2013. Under this Decree, a proposal to engage a firm for the provision of professional services is presented to the Directive Board, which can simply authorise it.

<sup>10</sup> Limiting requests for pricing information to suppliers is all the more important considering that, according to Mexico's Economic Competition Commission (*Comisión Federal de Competencia Económica*, or COFECE), providing quotations for market studies is one of the most common facilitators of collusion.

<sup>11</sup> However, such lack of compliance may also be the consequence of liquidity issues caused by delays in payment by the institute.

<sup>12</sup> After incorporating any amendments proposed by Sonora's Ministry for Control or the State's Legal Counsellor, the Tenders Department publishes a call for tender in a newspaper, and/or in the Official Bulletin (in the case of public works), as well as on the electronic procurement system, Compranet. No draft calls for tenders (*pre-bases*) are published, although there is no legal impediment to it.

<sup>13</sup> This guarantee is different from the one mentioned above, which is required by Article 33 of the Regulations to ensure contract compliance once the contract is awarded.

<sup>14</sup> Chapter 3 reviews ISSSTESON's e-procurement tools in detail.

<sup>15</sup> For example, ISSSTESON participated in the consolidated tender 2018 for the national health sector, led by the Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social*, or IMSS).

<sup>16</sup> Since many products are purchased from distributors, rather than from manufacturers, these distributors can become financially unable to purchase the goods to be supplied to ISSSTESON, due to the institute's failure to pay.

<sup>17</sup> Outsourced pharmacies (*farmacias subrogadas*) also change depending on the government in power.

<sup>18</sup> Chapter 3 analyses in detail public procurement evaluation and issues recommendations for ISSSTESON in this respect.

<sup>19</sup> For example, the Most Economically Advantageous Tender (MEAT) method allows the contracting authority to assess qualitative, technical and sustainability criteria, beyond price, to select the winning bid in a tender process.

# **3**

## **Increasing the Transparency and Performance Evaluation of the ISSSTESON Procurement System**

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This chapter reviews the legal requirements for transparency in ISSSTESON procurement, as well as the practices now implemented by the institute. It also provides recommendations for improving transparency and access to information policies to enhance accountability in public procurement. This chapter also discusses how ISSSTESON could leverage existing information technology (IT) systems to tackle a number of issues (information management, integration of systems and improved collaboration and communication) which could have a positive impact on procurement operations. Finally, this chapter assesses the extent to which ISSSTESON leverages data and indicators to evaluate and improve the performance of its procurement function.

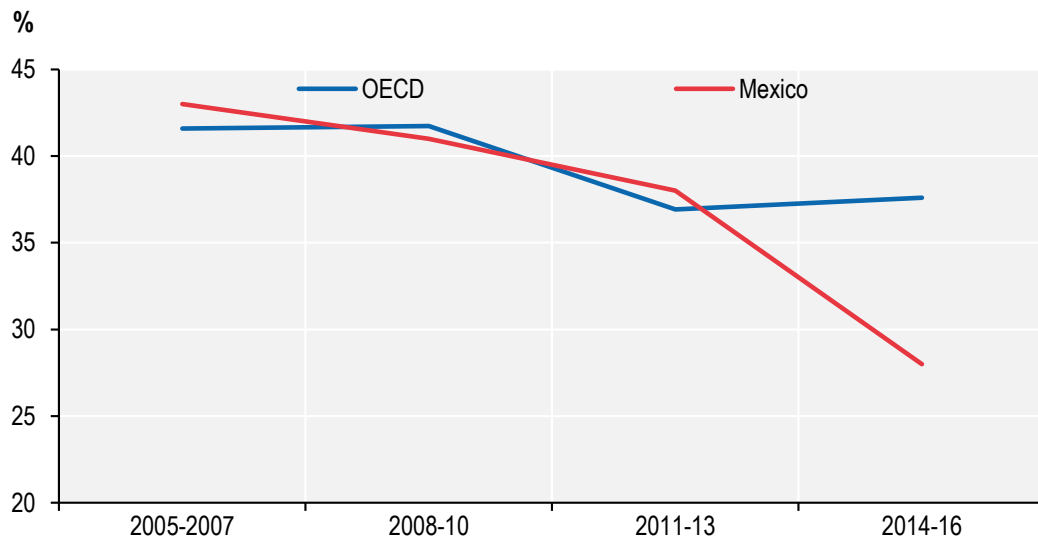
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### 3.1. Ensuring a high degree of transparency of the public procurement system

Mexico, like many other OECD countries, is going through a trust deficit. The erosion of public trust has been a recurring issue for many years, but it came to the forefront of public debate in several OECD countries with the onset of the 2008 global financial crisis and ensuing recession. On average in OECD countries, trust in government decreased from 42% (2005-2007) to 38% in 2014-16, but since 2011-13, the decline has slowed and trust levels are stabilising (see Figure 3.1). In sharp contrast to the OECD average, the reduction of trust levels in Mexico has been much steeper in the past five years. Trust in government has decreased from 38% in 2011-13 to 28% in 2014-16. Several reasons could explain this trend: the economic slowdown of the past five years, the revelation of several corruption scandals involving high-level government officials, deteriorating security conditions, low capacity to deliver public goods and services, and a challenging global environment for the very open Mexican economy.

**Figure 3.1. Trust in the Mexican government is on a downward trend**

% of respondents saying that they have trust in their national government



Source: Gallup World Poll.

The Institute of Security and Social Services of the Workers of the State of Sonora (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora*, or ISSSTESON) is not excluded from this situation. On the fact-finding mission, the OECD heard suppliers' scepticism about the integrity of the institute's procurement operations and the complaint from civil society that governments had used ISSSTESON as their "checking account" (*caja chica*). This negative perception was exacerbated by scandals involving ISSSTESON in the past administrations.

Regaining trust from the institute's beneficiaries and society at large presents a significant challenge. It requires extraordinary measures, beyond those strictly mandated by law, to demonstrate a commitment to transparency and integrity and to communicate clearly how ISSSTESON operates and how it uses its resources. Transparency can also be a tool for informing ISSSTESON's stakeholders the severity of its financial situation and the urgent need for reform.

The *OECD Recommendation of the Council on Public Procurement* outlines specific principles for dealing with transparency (Box 3.1). Public procurement carries a high risk of integrity failures. This is not only because of the interaction between the public and the private sectors in procurement operations, but also

because of the amounts involved. The OECD Foreign Bribery Report found that 57% of cases of foreign bribery were related to obtaining public contracts, based on data from the 427 foreign bribery cases filed since the entry into force of the OECD Anti-Bribery Convention in 1999 (OECD, 2014<sup>[1]</sup>).

Openness should be a critical feature of public procurement to reduce waste, prevent corruption and restore trust. Openness and transparency should not only be required in laws and regulations but become an integral part of the culture of integrity and the accountability practices of public organisations.

### **Box 3.1. The OECD Recommendation of the Council on Public Procurement (transparency)**

Adherents are recommended to ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle. To this end, Adherents should:

- i)** promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships;
- ii)** allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses;
- iii)** ensure visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle to allow (a) stakeholders to understand government priorities and spending, and (b) policy makers to organise procurement strategically.

Source: (OECD, 2015<sup>[2]</sup>), *OECD Recommendation of the Council on Public Procurement*, <http://www.oecd.org/gov/public-procurement/recommendation/OECD-Recommendation-on-Public-Procurement.pdf>.

While it is a necessary condition for accountability, transparency is not enough to guarantee greater accountability. This is especially true if it merely makes public a flow of complex information without a tool for understanding it or a mechanism for stakeholders to engage with public institutions in shaping the public debate and decision-making processes. Some governments may disclose significant volumes of information and remain opaque, while others may make public a more limited set of information and be more accountable, because they provide tools to make the information accessible and encourage forms of stakeholder participation.

This chapter reviews the legal requirements for transparency in procurement, as well as the practices implemented by ISSSTESON. It concludes with recommendations for improving policies on transparency and access to information.

## 3.2. Meeting legal requirements for transparency and access to information in public procurement

### 3.2.1. ISSSTESON should disclose all procurement information required by law, in a proactive and timely way. It should also give users guidance on how to find specific information on procurement.

ISSSTESON is required by law to proactively disclose relevant procurement-related information. Mexico has about two decades of experience in working on freedom of information regulations. The 2002 Federal Law on Transparency and Access to Government Public Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*) was the first to establish the duty of public entities of the federal government to disclose information proactively and upon request by individuals. This initiative was reinforced in 2007, when access to information became a constitutional right in Mexico.

In May 2015, Congress issued the General Law on Transparency and Access to Public Information (*Ley General de Transparencia y Acceso a la Información Pública*, or LGTAIP), which requires even more information to be disclosed proactively, much of it having to do with public procurement. The LGTAIP is explicit about the procurement-related information to be disclosed. This includes the outcome of procedures of direct awards, restricted invitations and public tenders, including the public versions of the files and the contracts awarded containing the information shown in Table 3.1.

**Table 3.1. Information on public procurement to be proactively disclosed, as laid out in the LGTAIP**

Direct awards	Restricted invitation or public tender
Bid proposal submitted by the participant	Call for tender and its legal basis
The legal basis to carry out the process	Name of the participants or invitees
Authorisation for the direct award	The successful bidder and justification
If applicable, the quotes considered, specifying suppliers and prices	Invitations issued
The name of the company or individual awarded the contract	The award decision
The requiring and the purchasing units	The contract and its annexes, if applicable
Number and amount of the contract, date, and time for delivery or execution	Surveillance and oversight mechanisms
Surveillance and oversight mechanisms	Budget code
Progress reports (physical and financial) of the works or services awarded	Origin of the resources
Completion agreement	Contractual modifications, including objective and date
Payment	Progress reports (physical and financial) of the works or services awarded
	Completion agreement
	Payment

Source: (Government of Mexico, 2015<sup>[3]</sup>), *Ley General de Transparencia y Acceso a la Información Pública*, <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGTAIP.pdf>, accessed on 28 February 2018.

As a general law, the LGTAIP mandates that federal states align their own regulations with its provisions. Sonora has already enacted reforms to align its own Transparency and Freedom of Information Law (*Ley de Transparencia y Acceso a la Información Pública del Estado de Sonora*) with the LGTAIP. Article 81 of Sonora's Law establishes the information to be proactively disclosed regarding public procurement, which is consistent with the information required by the LGTAIP and described in Table 3.1.

ISSSTESON publishes procurement information on several online platforms. First, in the National Transparency Platform (*Plataforma Nacional de Transparencia*, or PNT, ([www.plataformadetransparencia.org.mx/web/guest/inicio](http://www.plataformadetransparencia.org.mx/web/guest/inicio)), an online portal for consulting information to

be proactively disclosed by all public institutions in the country, including federal, state and municipal institutions. The information in the PNT is organised by trimester. At the time of consulting (8 May 2019), information on the first trimester of 2019 was not yet uploaded, but the information for 2018 was available. A random check of several public tender and direct award procedures suggests that the information available complies in general terms, with the legal requirements, with a few exceptions.

In the case of public tenders, the information available included items such as the calls for tender, the names of the bidders, the selected bidder and the corresponding justification, the award decision, the contracts, the budget codes, and the nature of the resources. However, some items of recurrent missing information included surveillance and oversight mechanisms, progress reports of the services awarded, completion agreements and payments.

With regards to direct awards, the information available included items such as the prices of the bids submitted by the participants, the legal justifications, the quotes considered, the companies awarded with a contract, the purchasing units, and the codes and value of the contracts. On the contrary, recurrent missing information related to delivery and execution time, surveillance and oversight mechanisms, progress reports of the services contracted, completion agreements and payments.

The second platform used by ISSSTESON to disclose information relative to its procurement operations is the Transparency Portal of the State of Sonora (<http://transparencia.sonora.gob.mx/>). However, the procurement information published here reveals several problems. The latest update to the information took place in May 2017. This is precisely because PNT replaced this platform. For the procurement of goods, the name of the bidders, the justification for the successful bidder, the award decision, the contracts, the progress reports, the completion agreements, the surveillance and oversight mechanisms, and the payments, among other critical information, are all missing. An Excel spreadsheet was the only element found, including the following information:

- good purchased,
- amount of the contract,
- extensions (no contract reported any extension),
- payment form (wire transfer in all cases),
- supplier's name,
- supplier's address,
- duration of the contract,
- citizen participation mechanism.

The same situation prevails for public works, but for the duration of the contract, the Excel spreadsheet for public works carried out in 2017 only provides the date in which the contract starts, but the date of completion is not indicated. The same omission is applicable to the procurement of services and leases.

The third platform on which ISSSTESON publishes procurement information is its very own website ([www.isssteson.gob.mx/](http://www.isssteson.gob.mx/)). A label "Tenders" (*licitaciones*) opens up a window where the user can search ongoing and concluded tenders. At the time of the review of the website (14 March 2019), there were no ongoing tenders. For ones that they were concluded, the user has access to several kinds of documents, such as the calls for tender, annexes and in some cases the model contract. Again, key information, such as the name of the bidders, the justification for the successful bidder, the award decision, the signed contracts, the progress reports, the completion agreements, the surveillance and oversight mechanisms and the payments are all missing.

A fourth source where ISSSTESON publishes information is CompraNet, the e-procurement platform of Mexico's federal government (<https://compranet.hacienda.gob.mx/>). ISSSTESON entered into an agreement with the Federal Ministry of Public Administration (*Secretaría de la Función Pública*, or SFP) in 1999 to be allowed to use CompraNet. In CompraNet, ISSSTESON uploads the calls for tender and their

annexes, the minutes of the meetings to open bids and award the contract, the minutes of clarification meetings, and the signed contracts. However, CompraNet is used merely as a mechanism for uploading information and ISSSTESON does not leverage CompraNet's transactional functionalities.<sup>1</sup>

The first problem observed with ISSSTESON transparency practices is that the institute is not fully complying with disclosure of all the procurement-related information stipulated by the LGTAIP and Sonora's law. Although PNT helped significantly to comply with the disclosure of the different information required, some information may still be hard to find, such as on the surveillance and oversight mechanisms and the completion agreements, which were not found in any of the four platforms described above for direct awards. Likewise, for public tenders, some items of information, such as the surveillance and oversight mechanisms, the progress reports and the completion agreements, are not available.

The second issue is the dispersion of the information over four platforms. ISSSTESON could develop a procurement microsite to upload and consolidate all procurement-related information. This would help ISSSTESON keep track of its compliance with information disclosure legal requirements and avoid the risk of inconsistencies between different platforms. On the other hand, it would provide a more user-friendly mechanism for searching for procurement information. Along with the microsite, ISSSTESON could develop a user guide indicating which kind of information is found on each of the four platforms described above as, for example, the use of CompraNet is required by law. The Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social*, or IMSS), for instance, has developed a procurement microsite, as recommended by OECD (see Box 3.2).

### Box 3.2. The IMSS Procurement Portal

IMSS created the Procurement Portal (*Portal de Compras del IMSS*, <http://compras.imss.gob.mx>) in 2011, to enhance transparency and improve understanding of IMSS expenditures. It presents IMSS procurement activities in a user-friendly manner, and provides a full picture of how, on what and why IMSS spends its resources, as well as their benefits. It also includes information on what is procured by delegations and highly specialised medical units (*Unidades Médicas de Alta Especialidad*, or UMAEs).

The portal contains information for suppliers and potential suppliers, and for the wider public. For example, information for suppliers includes the goods most often purchased by IMSS, the annual procurement plan, frequently asked questions, and the suppliers who sold the most to IMSS. Potential suppliers can benefit from information on how IMSS procures, how to sell to IMSS, and how to register in the IMSS suppliers' catalogue. Likewise, the general public can find the reports by social witnesses who observe tender procedures and the regulations applicable to IMSS procurement. There are also various categories of general statistics on IMSS procurement.

In addition to providing important information to suppliers and the general public, the portal is an informational tool for IMSS's various purchasing units, including the decentralised ones (for example, the delegations and UMAEs). The Procurement Portal has a section on suppliers who have failed to comply with contracts, which can be used by purchasing units to assess the risk of working with specific suppliers.

Source: (OECD, 2018<sup>[41]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security: Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264190191-en>.

A third issue has to do with the format in which the information is presented. There is no uniform standard for publishing information in the three platforms described above. Documents are often uploaded in PDF and other formats that are not machine-readable. ISSSTESON could develop the microsite suggested above, using the Open Contracting Data Standard (*Estándar de Datos para las Contrataciones Abiertas*,



or EDCA). Ukraine, for example, uses the EDCA to publish procurement-related information. In Mexico, the project to build the New International Airport of Mexico (*Nuevo Aeropuerto Internacional de México*, or NAIM) also adopted this standard (see Box 3.3).

### Box 3.3. National and international practices for using the Open Contracting Data Standard

#### Ukraine

After the Maidan revolution, civil society, the private sector and Ukraine's government came together to make the provision of humanitarian resources more transparent. Based on this experience, civil activists and procurement experts formed a public-private partnership, the *ProZorro* initiative, to work on expanding this experience to make Ukraine's procurement system more accessible.

The new system, based on the Open Contracting Data Standard, was launched in February 2015. It makes information related to public procurement (including annual plans, tender notices and documentation, bids, decisions of evaluation committees, and contracts) freely accessible online as open data. The results of the project have been impressive: in the first three months, the savings realised savings of USD 1.5 million in public funds, and competition increased from an average of two participating bidders per tender to three.

After the adoption of the new public procurement law in December 2015, and after it became mandatory on 1 April 2016, *ProZorro* was scaled up to include all procurement in Ukraine. The success of the project was largely due to the collaboration between different stakeholders. For them, this project went far beyond open data as a principle. The implementation was results-oriented, not only in terms of numbers and savings, but also in terms of transforming the business culture. Ukraine's project has been shared with others, and *ProZorro* won the World Procurement Award in the Public Sector.

#### New International Airport of Mexico (NAIM)

As a result of the commitment to publish NAIM procurement operations following the Open Contracting Data Standard, made by the President of Mexico during the Open Government Summit held in Mexico City on October 2015, the Airport Group of Mexico City (*Grupo Aeroportuario de la Ciudad de México*, or GACM) gradually published relevant information and documents concerning 461 procurement procedures, including information about their execution.

GACM was the first federal entity in Mexico to disclose its procurement procedures after the Open Contracting Data Standard was adopted. As of September 2018, 461 NAIM contracts had been uploaded in the open data website of Mexico's government ([gacm.gob.mx](http://gacm.gob.mx)). The information published includes the purpose of the contract, value, contractor, type of procurement procedure (i.e., open tender, restricted invitation or direct award), guarantees, calls for tender and awards. Likewise, documents such as the signed contract, terms of reference, the call for tender, the minutes of the clarification meetings, the award statement, the statement of the reception of the purchased items, and the payment settlement, are accessible through this site. Finally, as of the same date, GACM had published financial and physical progress data for most contracts.

Source: (Open Contracting Partnership, 2017<sup>[5]</sup>), "The Open Contracting Partnership showcase projects – Ukraine", available at <https://www.open-contracting.org/why-open-contracting/showcase-projects/ukraine/>, accessed on 2 March 2018 and (OECD, 2018<sup>[6]</sup>), *Second Progress Report on the Development of the New International Airport of Mexico City: Adapting Practices to Meet Emerging Challenges*, available at <https://www.oecd.org/gov/ethics/second-progress-report-development-new-airport-mexico.pdf>, accessed on 2 March 2018.

In addition to the information proactively disclosed, Sonora's Law empowers citizens to request specific information. During 2018, ISSSTESON received 785 requests for information, of which nine were declined, 58 were not taken care of and prescribed, and 29 were challenged through a *juicio de amparo*.

The response to a citizen's request, which must be provided within 15 working days, can be either positive (e.g. information is disclosed and provided to the requester) or negative (e.g. information is not disclosed, either because it did not exist or is restricted or confidential). The entity being requested for information can also decline the request in cases when the information is not within the realm of its responsibilities. When disclosed, the information can be provided by electronic means or on paper.

### 3.3. Using digital technologies to implement ISSSTESON strategies

This section discusses how ISSSTESON could leverage existing information technology (IT) systems to tackle a number of issues (i.e. information management, integration of systems, improved collaboration and communication) that would have a positive impact on procurement functions. It would be advisable for ISSSTESON to develop an IT-based platform to manage all the activities related to its procurement function. Introducing such a system in its procurement units could help to improve its procurement function overall, for example, by making the process more standardised, consolidating opportunities and planning. Likewise, the system would complement the functionalities enabled by CompraNet, the national e-procurement tool used by ISSSTESON, but it does not support the full digital management of the procurement cycle. Indeed, the *OECD Recommendation of the Council on Public Procurement* calls on Adherents to improve their public procurement systems by using digital technology to support innovations in e-procurement throughout the procurement cycle (see Box 3.4).

#### Box 3.4. The *OECD Recommendation of the Council on Public Procurement (e-procurement)*

Adherents are advised to improve the public procurement system by harnessing digital technologies to support appropriate e-procurement innovation throughout the procurement cycle. To this end, Adherents should:

- i) employ recent developments in digital technology that make possible integrated e-procurement solutions covering the public procurement cycle. Information and communication technologies should be used in public procurement to ensure transparency and access to public tenders, increasing competition, simplifying processes for the award and management of contracts, driving cost savings and integrating public procurement and public finance information.
- ii) pursue state-of-the-art e-procurement tools that are modular, flexible, scalable and secure in order to assure business continuity, privacy and integrity, provide fair treatment and protect sensitive data, while supplying the core capabilities and functions that allow business innovation. E-procurement tools should be simple to use and appropriate to their purpose, and consistent across procurement agencies, to the extent possible; excessively complicated systems could create implementation risks and challenges for new entrants or small and medium enterprises (SMEs).

Source: (OECD, 2015<sup>[2]</sup>), *OECD Recommendation of the Council on Public Procurement*, <http://www.oecd.org/gov/public-procurement/recommendation/OECD-Recommendation-on-Public-Procurement.pdf>.

### **3.3.1. Scaling up ISSSTESON's online platforms for procurement would increase transparency and efficiency**

ISSSTESON does not have a single IT-based procurement platform. Its central administration and decentralised units in hospitals may use the state version of CompraNet for public tenders and restricted invitations or the Electronic Procurement System (*Sistema Electrónico de Compras*, or SIEC) for direct awards.

The institute started using the state version of CompraNet in August 2017, to publish public tenders and restricted invitations subject to the regulatory framework for state procurement. It had been using the version of CompraNet used by the federal government. As noted earlier, ISSSTESON uploads in CompraNet the calls for tender and their annexes, and the model contracts, among other basic documents. The system, however, is used merely as a mechanism to upload information, and ISSSTESON does not take advantage of CompraNet's transactional functionalities. The regulatory framework still allows suppliers to use paper-based processes to participate in public tenders, which has limited the full transactional use of CompraNet.

Traditional procedures on paper have several disadvantages. First, when tenders are submitted in paper form, ISSSTESON must organise clarification meetings and bid-opening sessions that require the physical presence of bidders, rather than participating virtually in clarification meetings, which would reduce costs for both the contracting authorities and suppliers. Second, the physical contact between bidders in paper-based tenders increases the risk of bid rigging and collusion.

SIEC was developed in 2009 to streamline procedures for direct awards. It includes several modules:

- suppliers: This module allows suppliers to register in the system. It also allows the user to consult general information about the suppliers registered, such as name, address, contact information, product categories under which they are registered, and requisitions for which they have provided quotes, which are categorised into those that have been awarded, those that have not been awarded, and those that are in process. As of 21 May 2018, SIEC had 1 031 authorised suppliers, of a total of 1 644 that had pre-registered.
- requisitions: ISSSTESON publishes its needs in this module, and authorised suppliers can upload an offer in response. Once the requisition is published, the system sends an e-mail to the suppliers registered under the corresponding category to inform them of the opportunity to provide a quote. Requisitions are published by purchasing unit (i.e. central offices or hospital) and include a general description of the product needed, quantity and units (gallon, litre, piece, etc.).
- purchase orders: This module makes it possible to access information about purchase orders by category and supplier. The information displayed includes the quantity purchased, place of delivery, and the requisition linked to the purchase order.
- historic: This module accesses information on past procurement operations, by category, supplier or requisition. In each case, the system displays the amount paid to the supplier. In addition, it allows for monthly reports of completed purchases, cancelled purchases and suppliers.

The lack of a single organisational procurement management system integrated with other associated systems (e.g. budget, stock) is a significant weakness of ISSSTESON's procurement function.<sup>2</sup> The goals of fairness, competition and economic value are paramount in public procurement, and require effective and efficient procurement processes. This involves adequate controls to promote competition and minimise the risk of fraud, corruption, waste and the mismanagement of public funds. Information and communications technology (ICT) is a critical tool for encouraging efficiency and transparency in public procurement.

There is no clear justification for maintaining two separate ISSSTESON departments to carry out procurement operations, one for public tenders and restricted invitations and another one for direct awards.

Similarly, it makes little sense to maintain two different e-procurement platforms. This fragmentation prevents staff from specialising and is an inefficient use of their expertise, for example, on markets, which is precious to any procurement no matter what type of procedure is involved. It also complicates data collection, as the data is stored in two different databases and must be manually downloaded and processed to obtain a general picture of ISSSTESON's procurement operations. The need to master two different systems places an administrative burden on suppliers, which may deter participation and prevent ISSSTESON from selecting from a wider variety of products at better prices.

E-procurement, the use of information technologies in procurement, can help streamline and increase the efficiency of purchasing and yield significant cost and time savings. It can also help optimise the efficiency of the entire process by integrating support functions (whether legal, budget-related, product-specific, stock and supply management or statistical), encouraging the creation of specialised skills and facilitating the standardisation of practices as appropriate. ICTs enable economies of scale, for instance by consolidating procurement information on electronic portals.

In addition, e-procurement allows for more rigorous management of the procurement process, offering a mechanism for increasing objectivity in the selection of suppliers. This can have direct consequences on the perceived level of accountability and integrity of ISSSTESON activities. It can, for example, streamline the provision of data and information requested for auditing purposes, minimising the time spent on data collection required for internal control.

As for all other areas of public service, openness and transparency are core principles of public procurement. Fairness can only be ensured by making information throughout the process open and available to all. Using ICTs to share data in open formats developed by various departments of the institute at all levels can facilitate the consolidation of requirements, which could allow for better prices at greater volumes. Savings can be achieved with a combination of price reductions, administrative efficiencies and demand management. Such efficiencies can benefit both ISSSTESON, as purchaser, and its suppliers.

The development of SIEC and the use of CompraNet demonstrate ISSSTESON's efforts to promote more strategic use of information, increasing the use of ICTs to encourage co-ordination and collaboration at the various administrative levels. Such systems, however, only cover some aspects of the management of the procurement process. Rather than invest resources on individual systems, it would be advisable to adopt a comprehensive strategic view and formulate an action plan for a single integrated e-procurement system. This would more strategically frame the development of single components as part of a full-scale system.

Following the experience of such OECD countries as Korea, ISSSTESON should consider developing a complete e-procurement management system used by all of its procurement units, covering the entire procurement cycle and all procurement procedures (public tenders, restricted invitations and direct awards), accessed through a single portal and integrated with relevant IT systems and databases, such as those used for budgetary purposes (see Box 3.5).

All OECD countries have e-procurement systems for various functionalities. Fewer have systems covering the entire procurement cycle (that is, from needs identification and planning through tender, and including contract management and payments), including electronic submission of bids, contract management and issuing invoices (see Table 3.2). Digitising the procurement process can be a commercial incentive for suppliers, improving productivity through time and cost savings. It can also increase productivity by automating repetitive administrative tasks.

Table 3.2. Provision of e-procurement functionalities

	Announcing tenders	Provision of tender documents	E-submission of bids	E-reverse auctions	Notification of award	E-submission of invoices	Online catalogue
Australia	●	●	●	○	●	○	○
Austria	◆◆	◆◆	◆◆	◆	●	●	◆
Belgium	●	●	●	●	●	◆	●
Canada	●	●	○	○	●	◆	◆
Chile	●	●	●	○	●	○	●
Denmark	◆◆	◆	◆◆	◆	◆◆	◆◆	○
Estonia	◆◆	◆◆	●	●	●	◆	○
Finland	●	●	●	●	●	●	◆
Germany	◆◆	◆◆	◆◆	○	◆◆	○	○
Greece	●	●	●	●	●	○	○
Hungary	●	●	○	○	●	○	○
Iceland	●	●	○	○	●	●	○
Ireland	●	●	●	○	●	○	○
Israel	◆◆	◆◆	○	●	●	●	○
Italy	◆◆	◆◆	◆◆	◆	◆◆	●	●
Japan	◆◆	◆◆	◆◆	○	◆◆	◆◆	◆◆
Korea	●	●	●	○	●	●	●
Latvia	◆◆	◆◆	●	○	◆◆	○	○
Lithuania	●	●	●	●	●	●	◆
Mexico	●	●	●	●	●	○	○
Netherlands	●	●	●	○	●	○	●
New Zealand	●	●	●	●	●	◆	●
Norway	●	●	◆	○	●	◆	◆
Poland	●	◆	○	●	●	○	●
Portugal	●	●	●	●	●	○	●
Slovak Republic	●	●	●	●	●	○	○
Slovenia	●	●	○	●	●	●	●
Spain	●	●	●	○	●	●	●
Sweden	◆	◆	◆	◆	◆	◆	○
Turkey	●	●	●	○	●	○	○
United Kingdom	●	◆	◆	◆	●	◆	◆
<b>OECD total</b>							
● In a national central e-procurement system	29	26	21	11	29	10	11

◆ Only in e-procurement systems of some specific procuring entities	1	4	3	5	1	7	5
○ No	0	0	6	14	0	13	14
Colombia	•	•	•	○	•	•	•
Costa Rica	•	•	•	•	•	•	•
India	◆◆	◆◆	◆◆	◆◆	•	○	◆

Note: Data for the Czech Republic, France, Luxembourg, Switzerland and the United States are not available. In Poland, tender documents are provided on the websites of procuring entities or in the e-procurement systems of some sectoral procuring entities.

Source: (OECD, 2017<sup>[7]</sup>), *Government at a Glance 2017*, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2017-en](http://dx.doi.org/10.1787/gov_glance-2017-en).

Given the status of ISSSTESON's online platforms, the development and introduction of a consolidated e-procurement system could provide various advantages, such as:

- increasing the consistency and adequacy of the procurement activities through a common process, the availability of templates (e.g. model solicitation documents) and the automation of various steps of the process (bid evaluation and selection of the best offer, automatic calculation and application of penalties for late delivery, etc.);
- strengthening communication, collaboration, co-ordination and planning, which could have a positive impact on the overall quality of procurement;
- collecting key procurement data for decision making, performance management (of both the procurement function and suppliers) and auditing purposes;
- improving the transparency of the management of the procurement process, which could help increase overall accountability;
- reducing the time and effort required to complete the procurement cycle, freeing up resources for higher value-added activities (such as market research and developing procurement strategies).

It is important to bear in mind that no one solution fits all circumstances. It is thus critical that any decision to make an online tool mandatory for specific procedures takes into account the specific organisational and field context, as well as the level of IT readiness among users.

### Box 3.5. The KONEPS integrated e-procurement system (Korea)

In Korea, a notable improvement has been made in the transparency of public procurement administration since the early 2000s, after the introduction of a national e-procurement system.

In 2002, the Public Procurement Service (PPS), Korea's central procurement agency, introduced , KONEPS, a fully integrated, end-to-end e-procurement system. It covers the entire procurement cycle electronically, including a one-time registration, tendering, contracts, inspection and payment. All associated documents are exchanged online. KONEPS links to about 140 external systems to share and retrieve any necessary information and provide a one-stop service, including automatic collection of bidders' qualification data, a delivery report, e-invoicing and e-payment. It also provides related information on a real-time basis.

All public organisations are mandated to publish tenders through KONEPS, which links 45 000 public entities with 244 000 registered suppliers. PPS reports that the system has increased efficiency in procurement and significantly reduced transaction costs. It has also increased participation in public tenders and considerably improved transparency, reducing corruption by preventing illegal practices and collusive acts. For example, on KONEPS, the Korea Fair Trade Commission runs its BRIAS system (Bid-Rigging Indicator Analysis System), an automated detection system for identifying suspicious bid strategies. According to an integrity assessment conducted by Korea's Anti-Corruption and Civil Rights Commission, the integrity perception index of PPS has improved from 6.8 out of 10 to 8.5 since KONEPS was established.

Source: (OECD, 2016<sup>[8]</sup>), *Country case: Integrated e-procurement system KONEPS in Korea*, [www.oecd.org/governance/procurement/toolbox/search/integrated-e-procurement-system-koneps.pdf](http://www.oecd.org/governance/procurement/toolbox/search/integrated-e-procurement-system-koneps.pdf).

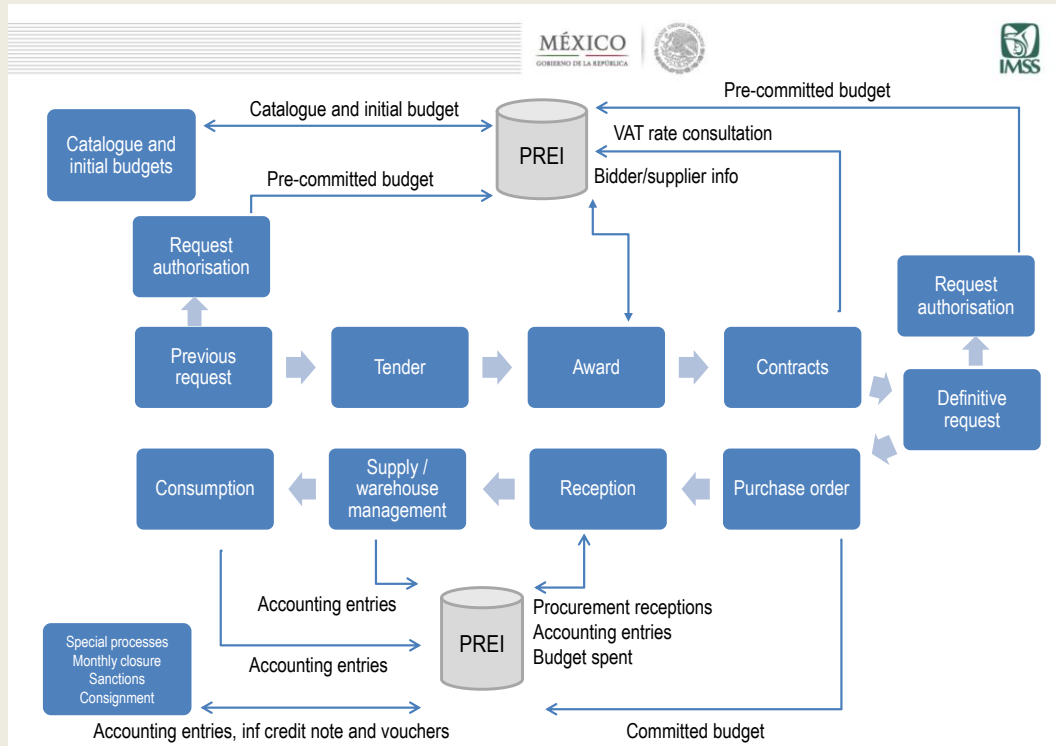
### 3.3.2. ISSSTESON should create a consolidated e-procurement system, sharing information between databases

Integrating IT systems and databases for electronic management of procurement is increasingly seen in OECD countries as a vital element for improving the efficiency and transparency of the procurement process. KONEPS, which covers all procurement processes (from suppliers' registration to bidding, contracting and payment) is one good example. A one-stop service, it is linked to about 140 external systems. In Mexico, IMSS has also linked some of its procurement-related IT systems (see Box 3.6).

### Box 3.6. Mexico's linked procurement systems, SAI and PREI, for IMSS

IMSS has two systems for managing procurement activities: the Institutional Supply System (*Sistema de Abasto Institucional*, or SAI) and the Institutional Resources Planning (*Planeación de Recursos Institucionales*, or PREI). The SAI was developed in 1997 and introduced in 2000 for IMSS procurement activities. The PREI is the platform used by IMSS to manage budget and financial information.

In line with its strategy of technical modernisation, IMSS decided in 2008 to incorporate SAI modules into the PREI. This was intended to enhance the efficiency of the system and provide full visibility of procurement activities and budgeting. The figure below illustrates how this interconnection works.



Source: (OECD, 2018<sup>[41]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare*, OECD Publishing, <https://dx.doi.org/10.1787/9789264190191-en>.

In ISSSTESON, the systems and databases used at the central and decentralised levels are not interoperable, which reduces the institute's ability to realise potential efficiencies. The low level of integration has a negative impact on ISSSTESON's resources, resulting in inefficiencies, errors and a lack of accurate information for decision making, operations and performance management. Integrated portals would allow units (and suppliers) to submit information only once, increasing the efficiency of the process.

IT integration would lead to greater efficiency in the management of procurement functions. It could also increase transparency in the management of procurement-related information. Better integration of systems could result in greater availability of standardised, consistent and consolidated data and might also help resolve certain inherent inefficiencies in the procurement process.



### ***3.3.3. Using ICTs to share information can boost efficiency and transparency in procurement***

Strategic use of ICTs could improve efficiency and transparency in communication between ISSSTESON's central procurement units, hospitals, senior management and the public. The institute's use of technology for exchanging information is rudimentary at present. Internal communication and information exchange within the central units, and with heads of departments and hospitals, is time-consuming, since it is mainly conducted in person, over the phone or via e-mail. Heads of department visit the various hospitals in person to learn how things are being done, and to ensure that they are done as expected. The overall impression is that there is no sense of the value of the time being lost.

There appears to be little awareness of how ICTs can be used strategically to manage communication and interpersonal exchange and support the management of operations, with real time savings. This could help establish an environment in the institute conducive to the use of ICTs to improve the performance of all functions. An e-procurement system could automatically record the data needed for decision making, improving performance and internal control. A better exchange of information and better communication could encourage co-ordination between the hospitals and central units. Finally, better communication with the public could increase the visibility of the procurement function and bring ISSSTESON closer to users.

On the other hand, the focus should not only be on implementing new ICTs. Greater use of simple technologies already in place (such as videoconferencing and teleconferences) would be a low-cost, low-commitment approach for improving communication and engaging, informing and motivating stakeholders. ISSSTESON could leverage simple technologies to broadcast live the events where contracts are awarded, engaging citizens and staff in organisations that might be interested in participating as observers.

Finally, ISSSTESON has no central repository of all important and useful documents and information. This would include market analyses by each procurement unit, which are not integrated into internal IT systems. This risks wasting the information and duplicating the efforts of units involved in similar procurement procedures. ISSSTESON might consider developing a central repository for sharing such information among procurement officials in the different units. Some information is already being uploaded. SIEC allows officials to consult the last prices of direct awards, for example, including those carried out by hospitals, and even the last reference prices registered. Box 3.7 describes a French information system developed in 2016 by Resah, a public interest group aiming to increase health sector performance.

### Box 3.7. Sharing procurement information in Resah (France)

The goal of Resah (*Réseau des acheteurs hospitaliers* or network of hospital buyers) is to support performance in the health sector by aggregating demand and professionalising the procurement workforce. It includes a central procurement body and a centre of expertise. Given that IT tools can be a lever for operational performance, the Resah developed an IT platform in 2016 with four modules: 1) aggregating demand, 2) standardisation, 3) performance management and 4) exchange.

The main goal of the exchange module is to serve as a collaborative platform for procurement officials from the entities and hospitals in the group. It includes three main spaces:

- communication: news, exchange I;
- contact details: joint directory, organisation chart per hospital department, etc.;
- work: good practice sheets, satisfaction questionnaires and exchange of best practices.

Beyond merely sharing procurement data, this information-sharing system creates a community of users who exchange ideas on procurement best practices and provide insights into strategic stages of the procurement cycle, such as the information needed to design procurement strategies.

Source: (OECD, 2018<sup>[4]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security: Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264190191-en>.

### 3.3.4. To prepare for a new e-system, ISSSTESON should facilitate uptake of electronic systems for procurement

Mexico is one of the OECD countries that allows electronic submission of bids on a national e-procurement system (CompraNet). Bidders for ISSSTESON, however, submit their offers on paper when participating in public tenders, as CompraNet is only used for informational purposes. ISSSTESON has made no recent efforts to increase adoption of CompraNet for transactional purposes, and uses SIEC for direct awards.

In 2019, ISSSTESON launched a new accounting system called SIREGOB (*Sistema Integral de Contabilidad Gubernamental*). This makes it possible to carry out procurement processes online, for both public tenders and direct awards. It allows potential suppliers to submit their technical and economic bids electronically and incorporates a module for reverse auctions.

Several facilitation strategies could help increase uptake of these systems. First, ISSSTESON's top management should decide to gradually increase the number of public tenders conducted online. Likewise, SIEC should be designated as the only system to receive offers for direct awards, until a new system for all procurement activities is launched, such as SIREGOB.

Second, better understanding of the users' needs and perspectives – of both ISSSTESON procurement officials and suppliers – could help design a focused capacity-building including training and assistance. To ensure a level of buy-in that would maximise the benefits of the investments made in e-procurement so far, a culture of confidence and trust in the IT systems should be encouraged. Targeted awareness-raising and capacity-building initiatives could help increase supplier awareness of the benefits of using e-procurement platforms.

Another possibility would be to make the use of e-procurement systems compulsory. Businesses in a number of OECD countries have taken this route to achieve the level of uptake necessary to guarantee the desired return on investment. Such a decision, however, requires a level of technical skills that many ISSSTESON suppliers now lack. Undertaking such a step without preparing the users may also entail risks, such as deterring businesses from participating and bidding in public tenders.

### 3.4. Sharing performance information and indicators on public procurement

Efficient management of the procurement function calls for an evidence-based assessment and decision-making process. In a context where countries hope to make public service delivery more efficient – chiefly because of budgetary constraints, but also in response to citizens' demands – it is essential to conduct an in-depth assessment of the procurement system. The *OECD Recommendation of the Council on Public Procurement* calls on countries and entities to drive performance improvements by evaluating the effectiveness of the public procurement system, from individual procurements to the system as a whole.

#### Box 3.8. The *OECD Recommendation of the Council on Public Procurement* (evaluation)

Adherents are recommended to drive performance improvements through evaluation of the effectiveness of the public procurement system, from individual procurements to the system as a whole, at all levels of government where feasible and appropriate.

To this end, Adherents should:

- i) periodically assess the results of the procurement process. Public procurement systems should collect consistent, up-to-date and reliable information and use data on prior procurements, particularly of price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight for future procurement decisions.
- ii) develop indicators to measure performance, effectiveness and savings of the public procurement system for benchmarking, and to support strategic policy making on public procurement.

Source: (OECD, 2015<sup>[2]</sup>), *OECD Recommendation of the Council on Public Procurement*, <http://www.oecd.org/gov/public-procurement/recommendation/OECD-Recommendation-on-Public-Procurement.pdf>.

In line with the OECD Recommendation, it is critical that ISSSTESON collect high-quality procurement data for systematic assessment. Such activities can be significantly upgraded by implementing a performance monitoring and management system. A system of this kind would allow for regular monitoring of progress against the priorities identified and help spot specific opportunities for improving the efficiency and effectiveness of the procurement process, contributing to the ongoing improvement of the function.

The OECD team found a virtually total lack of clear, appropriate data on the performance of procurement in ISSSTESON. This is a major obstacle to managing and improving the institute's procurement function and limits the development of optimal procurement strategies. The situation is exacerbated by the lack of a performance management system, which means the institute cannot fully assess the results of its procurement activity or any opportunities to identify areas for improvement. This results in poor incentives and reduced capacity to improve the procurement function and limits awareness of its strategic contribution to the organisation's objectives.

#### **3.4.1. ISSSTESON should start to collect systematic data on procurement performance to inform decision making**

ISSSTESON has no systematic or common data collection strategy. From 2006-09, it was certified under ISO-9001, which encouraged the institute to develop indicators and collect some data. The institute was required to measure compliance against the following quality goals:

- collecting 80% of the needs of the annual procurement plan on time;
- meeting 50% of clients' requests and informing them within 30 days of the response;

- meeting 70% of satisfaction with the delivery of goods by the suppliers awarded a contract.
- meeting 70% of client satisfaction with the delivery of requested goods.

The indicators developed to measure these objectives included the following indicators:

- timely collection of needs for the annual procurement plan = needs collected on time/total participating departments
- purchases requested by the different departments = requests met/requests received
- orders requested to awarded tenders = quantities received in warehouses/quantities requested to suppliers
- survey results = satisfied staff/total surveyed staff.

These valuable efforts unfortunately ceased in 2009, and the ISO certification was lost. The current lack of capacity to consolidate data rapidly and accurately into organisational-wide statistics and reports is a significant drawback for the institute. ISSSTESON had some difficulty providing the OECD with some of the information for this review, such as the use of exceptions to public tender. For this reason, it would be advisable to relaunch the efforts towards the ISO certification as a way of encouraging the different departments to produce updated indicators and the ensuing follow-up for continuous improvement.

The dispersion and lack of systematisation of performance data has limited the use of procurement statistics in planning, evaluation and decision making. This lack of credible, comprehensive procurement data prevents ISSSTESON from assessing the procurement system as a whole. It also compromises its ability to address strategic management elements such as its procurement strategy, internal control, performance monitoring and management.

A potential solution to the limited capacity for collecting data necessarily includes leveraging information systems. ISSSTESON should consider improving the existing capacity of its procurement information systems. This would encourage efficient collection of the key procurement data required for strategic purposes at the level of the procurement unit. Information systems should also facilitate online consolidation of that information at different aggregation levels. To fully reap the benefits, information systems should not only stock data, but collect data in a structured, reusable way. In developing platforms or IT tools, ISSSTESON needs to consider carefully the type of reporting and data needed.

ISSSTESON could start by looking inside the organisation to see what type of data – costs, schedules, methodologies and outcomes – are easiest to produce and collect. The institute could then develop an action plan to collect missing data. Relevant reports should be produced following adequate collection, use and assessment of that information. This will provide a clearer picture of the various procurement activities undertaken by ISSSTESON (at the consolidated or hospital level) and illustrate the value of that function.

#### ***3.4.2. Once data is available, ISSSTESON should develop indicators to assess procurement performance and introduce a performance monitoring and management strategy***

Identifying opportunities for improvement and establishing strategic priorities and objectives in ISSSTESON's procurement function requires a thorough understanding and assessment of its actual performance. Such an analysis is currently not available without organisation-wide indicators. The indicators developed in the framework of the ISO certification are no longer in use. However, the development of indicators requires the right kind of data, as well as the possibility of reusing them.

The performance of public procurement systems can be assessed at three distinct levels: the contract management/micro level, the contracting authority/macro level and national/meta level. These levels are closely linked, since the performance at the procedure or contract level has an impact on the performance of the entity, which in turn influences the performance of the procurement system at the national level. In

the case of ISSSTESON, these levels would correspond to individual contracts, administrative units and hospitals, and the whole institution. Indicators should be developed to reflect the strategies and policies designed at the unit and institutional levels. Box 3.9 describes the key aspects to consider in developing key performance indicators (KPIs). It could also be relevant to set specific targets to serve as goals for the entity. These would help identify gaps and bottlenecks for continuously improving the system, by undertaking relevant actions and tailoring specific strategies. Clearly, not all the indicators need to be monitored with the same frequency.

### Box 3.9. Characteristics of key performance indicators (KPI)

Good KPIs must possess fundamental qualities to fully benefit an organisation and its suppliers. They should be:

- **relevant**, i.e. linked to key objectives of the organisation (avoiding critical outcomes or risks), rather than on process;
- **clear**, i.e. spelled out in the contractual document and rendered as simply as possible, to ensure common understanding by the buying organisation and the supplier;
- **measurable and objective**, i.e. expressed in pre-determined measures and formulas, and based on simple data that can be gathered objectively and in a cost-effective manner;
- **achievable**, i.e. realistic and within the control of the supplier;
- **limited**, i.e. as few as needed to achieve the objectives, while minimising their disadvantages (costs, efforts and risk of dispute) to both entities. To the extent possible, the use of information and documentation already available under the contract management process should be encouraged, rather than requiring collection of additional data or documentation.
- **timed**, i.e. include specific time frames for completion.

Source: (OECD, 2018<sup>[41]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security: Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264190191-en>.

To set up a strategic procurement function with clear objectives focused on continuous improvement, ISSSTESON should identify clear organisation-wide priorities and targets for regular assessment of the progress of all procurement units through KPIs. Box 3.10 shows how the United Kingdom uses indicators to assess its procurement capacity.

### Box 3.10. Procurement Capability Reviews and the use of Indicators in the United Kingdom

In the United Kingdom, Procurement Capability Reviews were first announced in Her Majesty's Treasury Report *Transforming Government Procurement*, and piloted in early 2007. The Reviews were modelled on Departmental Capability Reviews operated by the Cabinet Office but focused on commercial activities of public organisations, both across the whole life-cycle, from policy and strategy to delivery and disposal, and across different commercial activities (i.e. from commodity procurement to complex procurement). To encourage a high level of confidence in the report and its recommendations, the reviews were conducted by a team with significant depth and breadth of experience and knowledge of commercial issues.

The goal of the procurement capability review was to assess three broad areas with corresponding indicators: *i*) leadership (visibility, vision and confidence levels); *ii*) skills development and deployment (effective resourcing and "intelligent client capability"); and *iii*) systems and processes (governance and organisation, strategic and collaborative approach to markets, effective use of procurement techniques, and knowledge management).

A primary aspect of the reviews was the use of KPIs to help organisations continuously improve. There are three different types of indicators:

- **key metrics** designed to help the public organisation and other governmental stakeholders track whether performance is improving over time. There are nine key metrics.
- **contextual metrics**, which inform the key metrics and are useful to track changes over time, but need to be interpreted alongside other information. Six contextual metrics are used.
- **diagnostics metrics**, more detailed measures to inform specific lines of enquiry during the Procurement Capability Review or subsequent evaluation. They are not intended for ongoing monitoring of procurement performance. There are eight diagnostic metrics.

KPIs were awarded scores on a five-point red/yellow/green scale. These scores were subsequently subject to a rigorous moderation process by an independent panel of representatives from the National Audit Office, the Confederation of British Industry, the HM Treasury and the Cabinet Office. A snapshot of 23 Procurement Capability Review performance indicators over four areas of interest (leadership, skills development and deployment, systems and processes, and results delivered) used under such review can be found in Annex Table 3.A.1.

Each reviewed organisation was expected to develop and implement an Improvement Plan in response to the review. The departments, with the appropriate governmental authority, agreed on an Engagement Plan based on assessed risk to delivery against the approved Improvement Plan. Follow-up plans included self-assessment by the department six months after the approval of the Improvement Plan, an evaluation around 12 months after the first review to measure progress against the Improvement Plan, leading eventually to a follow-up full review within 24 months.

Source: (Office of Government Commerce, 2007<sup>[9]</sup>), *Procurement Capability Review Programme: Tranche One Report*, London, available at: [https://webarchive.nationalarchives.gov.uk/20110802155428/http://www.ogc.gov.uk/documents/OGC\\_Procurement\\_Capability\\_Review\\_Programme\\_Tranche\\_One\\_Report.pdf](https://webarchive.nationalarchives.gov.uk/20110802155428/http://www.ogc.gov.uk/documents/OGC_Procurement_Capability_Review_Programme_Tranche_One_Report.pdf), accessed on 7 May 2018.

As a corollary of the efforts to design KPIs, ISSSTESON could consider developing a performance-monitoring and management strategy for its procurement function (see the experience of Ontario, Canada, in Box 3.11). This initiative should be based on a gradual plan determining such elements as:

- the specific elements of procurement subject to ongoing assessment, covering all important areas of risks, efficiency and weaknesses in the various activities of the procurement process;

- the specific metrics used to evaluate these various elements, including the data collected and the formulas used for calculation;
- specific targets for each metric, to identify improvement objectives and measure progress against them;
- the strategy to promote continuous improvement. Rather than simply identifying weaknesses, current best practices should promote performance-measurement activities that add value through continuous improvement.
- the process under which procurement performance will be assessed (frequency, responsibility to collect data, calculate the metrics and assess the results, etc.) and the results communicated within the institute that should be used for strategic planning purposes.

The execution of the strategy should be designed to minimise the resources needed (in time and effort) and the costs, while maximising the benefits. The lack and poor quality of procurement statistics and data is likely to prove an initial obstacle. ISSSTESON should thus initiate its performance-management monitoring system in stages. For example, the first round of evaluation could focus on developing a few key metrics and analysing a limited number of procurement units. Other metrics and units could be gradually addressed as data become available. To ensure timely, efficient assessment of the performance of the procurement function, it is critical that a clear time frame be established and respected for integrating other metrics and units. To ensure their full integration in procurement activities, performance priorities and targets should be communicated to all levels of the procurement function. This would include employees, for whom they would be part of the annual evaluation, and the main suppliers subject to performance strategy.

### Box 3.11. Ontario's measurement of procurement performance in healthcare systems

In November 2005, the Ministry of Finance of Ontario, Canada, invited 12 healthcare supply-chain specialists to assess the current state of supply-chain performance measurement at Ontario hospitals. The resulting report, *Performance Measurement: A Report by the Hospital Supply Chain Metrics Working Group*, proposes a series of 48 metrics and 21 supporting standards for hospitals to use in evaluating their supply-chain performance and target performance improvement. It also advises how to adopt and use the metrics to support the underlying leading practices and recommends introducing them in three stages: basic supply-chain operations, emerging supply-chain practices and supply-chain excellence.

Two companion reports, issued in 2009, expand on 20 of the metrics and 12 of the standards introduced in the original reports. Each defines the objectives, rationale and proposed benefits, together with formulas, targets, associated variables and potential data sources, related metrics and potential challenges in implementing them. The 20 metrics proposed by these recent reports cover six areas of interest (governance and process, financial, transactions and technology, customers, suppliers, and people) and are presented with their objectives in Annex Table 3.A.2.

Source: (OECD, 2013<sup>[10]</sup>), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264197480-en>.

### 3.4.3. ISSSTESON should focus on developing a range of useful key performance indicators

Given ISSSTESON's financial situation, demonstrating value for money should guide procurement strategies. The performance of the procurement system is often measured in savings made. There are two

ways to measure procurement savings: budgetary savings or performance savings. Calculating budgetary savings involves measuring how much the contracting authority is saving in terms of spent budget from one year to the next. Calculating performance savings considers the efficiency of procurement, while taking into account all financial aspects. One of the main challenges identified in the OECD survey on Centralised Framework Agreements was the methodology for calculating this indicator. A broad range of calculation methods are used in OECD countries, depending on the nature of contracting mechanisms or the perspective adopted (OECD, 2017<sup>[71]</sup>). Box 3.12 describes a variety of methodologies used.

### Box 3.12. Common methodologies for measuring procurement savings in OECD countries

- Comparison between historical prices or reference price based on market analysis and final price proposed by the awarded supplier;
- assessment of the total cost of ownership of products or services procured, and comparison with reference prices;
- comparison between the price list proposed by the awarded suppliers in the first competition stage, or the average historical price paid by contracting authorities, and the discounted price obtained after second-stage competition;
- comparison between historical processing or labour costs and new processing or labour costs.

Source: (OECD, 2018<sup>[41]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security: Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264190191-en>.

The evaluation of the cost of a product requires taking into account more than the initial price agreed in the contract. For instance, for medical devices, in addition to the price, the analysis could take into account the costs involved throughout the life of the product: maintenance costs, training, insurance, as well as indirect costs such as the impact on beds and patients' length of stay, and the time needed by medical professionals to use the product or take care of patients. Integrating these components into the calculations could provide ISSSTESON with new ways of generating savings.

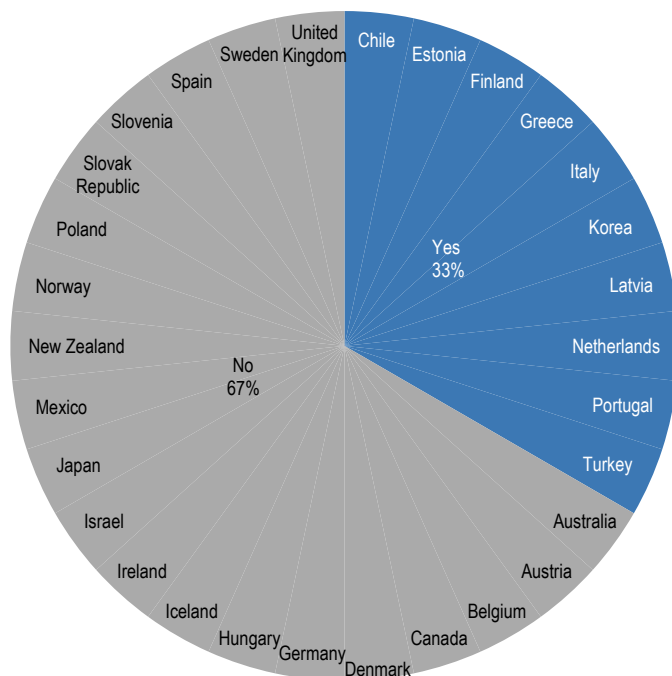
An additional argument why ISSSTESON should measure savings is that communication about savings is a persuasive way of reassuring stakeholders (employees, pensioners, the government and taxpayers) that ISSSTESON's procurement strategy is sound and improving its operational efficiency.

In addition to measuring price and cost savings, savings can also be expressed in terms of administrative costs. Tools such as e-procurement, centralised procurement and consolidated procurement can save significant amounts in processing and productivity. However, it is not easy to measure the savings and more generally the efficiencies derived from these instruments (see Figure 3.2).

Measuring savings in administrative costs requires information on direct procurement process costs (i.e. procurement officials' salaries and standardised time frames for each type of procurement procedure). It also requires a harmonised mapping exercise of roles and responsibilities within contracting authorities to incorporate indirect costs, such as hierarchical approvals or budgetary validations.



**Figure 3.2. OECD countries measuring the efficiencies generated by e-procurement systems**



Source: (OECD, 2017<sup>[7]</sup>), *Government at a Glance 2017*, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2017-en](http://dx.doi.org/10.1787/gov_glance-2017-en).

The efficiency of the procurement function could also be measured by the number or share of unsuccessful tenders or the number of products and services not awarded. These indicators could identify procurement categories in need of capacity building in the public procurement workforce or the need for enhanced engagement with the private sector. The share of products not awarded could also indicate deficiencies in specific product categories that ultimately prevent some patients from receiving the medicines they need.

Likewise, the performance of the procurement function can be measured by how easy it is for suppliers to access procurement opportunities. The ideal performance indicator on access is the number of bids measured against the number of economic operators in the respective market. ISSSTESON could also measure the level of effective competition or possible barriers to competition by excessive specifications by measuring indicators such as the number of qualified bids, the number of suppliers downloading or requesting tender documents, and the number/share of bids not awarded.

Additionally, ISSSTESON could develop an indicator to assess suppliers' level of compliance. This should be done with care, since delayed payments to suppliers have made it more difficult for them to deliver on time and in the quantities required. Even if the data are dispersed and not systematically collected, ISSSTESON holds information on the effective delivery date of goods and provision of services, as well as the expected delivery date. This information could be used to develop a specific indicator on the relevance of delivery time frames for each product category, hospital or supplier. This indicator can help ISSSTESON optimise its stock management.

Finally, ISSSTESON could produce indicators based on the quality of services provided to its beneficiaries, as the IMSS does (see Box 3.13).

### Box 3.13. Indicators developed by IMSS to measure the quality of its service

Since 2009, IMSS has run a National Satisfaction Survey to gather information on the perceptions of the quality of services provided to its affiliated beneficiaries. The most recent survey took place in April 2017 and had 24 757 respondents. This survey was designed to measure ten indicators, developed at the national level and at the delegations and High Specialty Medical Units (*Unidades Médicas de Alta Especialidad*, or UMAE) level:

- general satisfaction with medical care
- provision of drugs to patients
- treatment received during the visit to the unit
- average score of the treatment received by different categories of personnel
- waiting time for medical consultation
- cleanliness of the unit
- cleanliness of the bathrooms
- evaluation of the emergency service
- hospitalisation services
- surgery services

IMSS also uses another indicator on medical prescriptions prescribed to patients after a consultation. These drugs should be provided by IMSS pharmacies. The indicator aims to measure the percentage of drug prescriptions totally or partially provided to patients.

Source: (OECD, 2018<sup>[41]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security: Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris, <http://doi.org/10.1787/9789264190191-en>.

## Proposals for action

ISSSTESON faces significant challenges using e-procurement and generating performance information and indicators intended to increase efficiency and accountability in its procurement operations. It also needs to review its compliance with transparency requirements, which notably improved after the introduction of the National Transparency Platform, to regain public trust in the fairness and integrity of its procurement activities. The following recommendations are intended to support ISSSTESON's efforts to achieve such improvements.

### Ensuring a high degree of transparency of the public procurement system

- ISSSTESON should ensure that it complies with all the procurement information it must proactively disclose in a timely fashion, as established in general and local laws. In addition, the institute should rationalise the information provided on different platforms and provide guidance to users on where to find specific procurement-related information.

### Using digital technologies to implement ISSSTESON strategies

- Scaling up and integrating ISSSTESON's online platforms for procurement would advance transparency and efficiency in its procurement operations.
- As well as developing a consolidated e-procurement system, ISSSTESON should work on integrating this system with others (i.e. budget, stock) and sharing data between databases.
- Leveraging ICTs to increase co-ordination, communication and information sharing has the potential to advance efficiency, transparency and informed procurement strategies.
- In preparation for a new consolidated e-procurement system, ISSSTESON should encourage the uptake of online systems for its procurement operations.

### Generating and publishing performance information and indicators on the public procurement system

- ISSSTESON should launch an effort to collect and systematise data on procurement performance, to upgrade decision making and realise the potential for greater efficiency.
- Once data becomes available, ISSSTESON should develop indicators to assess the performance of the procurement function and facilitate continuous improvement, ultimately leading to a strategy for monitoring and managing performance.
- In developing indicators, ISSSTESON should focus not only on activity but on performance indicators, such as procurement savings/efficiencies, unsuccessful tenders, accessibility of tenders, suppliers' level of compliance, quality of services and prescriptions supplied.

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## Notes

<sup>1</sup> In June 2017, the State Government of Sonora launched CompraNet-Sonora to upload, follow up on and disclose procurement operations conducted according to state regulations.

<sup>2</sup> ISSSTESON is in the process of introducing the System for Accounting Harmonisation (*Sistema de Armonización Contable*), which includes a procurement module and aims to improve control and monitoring of institutional operations, spending and revenues, in line with the General Law for Government Accounting (*Ley General de Contabilidad Gubernamental*).

## Annex 3.A. Use of indicators and performance management in the United Kingdom and Ontario, Canada

**Annex Table 3.A.1. United Kingdom procurement capability review performance indicators**

Metrics	Leadership	Skills development and deployment	Systems and processes	Results delivered
Key	<ul style="list-style-type: none"> <li>Stakeholder confidence</li> <li>Supplier confidence</li> </ul>	<ul style="list-style-type: none"> <li>Ratio of procurement value-for-money savings to the cost of procurement function</li> </ul>	<ul style="list-style-type: none"> <li>Average processing cost per purchase order/per invoice</li> <li>Percentage third-party spend via pre-arranged contracts</li> <li>Percentage third-party spend via collaborative procurement</li> </ul>	<ul style="list-style-type: none"> <li>Procurement value-for-money savings as a percentage of third-party spend</li> <li>Percentage third-party spend through small and medium enterprises (SMEs)</li> <li>Performance against sustainable consumption and production targets</li> </ul>
Contextual	<ul style="list-style-type: none"> <li>Percentage third-party spend actively managed by procurement professionals</li> </ul>	<ul style="list-style-type: none"> <li>Cost of procurement function as percentage of third-party spend</li> <li>Percentage staff turnover of procurement professionals</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of third-party spend via procurement cards</li> <li>Percent achievement of payment terms/within 30 days of receipt</li> </ul>	<ul style="list-style-type: none"> <li>Average unit cost of a basket of 11 commodities</li> </ul>
Diagnostic	<ul style="list-style-type: none"> <li>Level of head of procurement function</li> </ul>	<ul style="list-style-type: none"> <li>Percentage procurement staff full-time equivalent that are qualified</li> <li>Percentage procurement staff undergoing professional training</li> <li>Percentage procurement employees externally resourced</li> <li>Percentage third-party spend covered by supplier relationship management</li> </ul>	<ul style="list-style-type: none"> <li>Percentage third-party spend via structured category management</li> <li>Percentage third-party spend management via e-sourcing (e-procurement)</li> </ul>	<ul style="list-style-type: none"> <li>Customer satisfaction with supplier performance</li> </ul>

Annex Table 3.A.2. OntarioBuys programme's supply-chain metrics

Area	Governance and process	Financial	Transaction and technology
Goal	Control the plan-to-pay process and use of leading practices	Reduce operating and purchasing costs of the supply chain	Reduce the transactional burden and improve information
Proposed metrics	<p><b>Metric 1.1. Percentage of active items under contract</b> Objective: To improve the control of supply chain spending by increasing the number of items bought under a negotiated contract</p> <p><b>Metric 1.2. Purchasing response time</b> Objective: To improve the ability to quickly issue rush orders to suppliers</p>	<p><b>Metric 2.1. Average cost to issue a purchase order</b> Objective: To maximise the productivity of supply chain staff associated with purchasing goods and services, including supplier management, contract management, order processing and problem resolution</p> <p><b>Metric 2.2. Inventory turnover in one month</b> Objective: To optimise the investment in inventory by balancing the cost of storing goods against the cost of replenishment, stock-outs and resulting service failures</p> <p><b>Metric 2.3. Operating costs as a percentage of expenditures</b> Objective: To optimise the overall operating costs of the supply chain department relative to the expenditures on goods and services</p>	<p><b>Metric 3.1. Number of purchase orders in one month</b> Objective: To create efficiencies and reduce costs by optimising the number of purchase orders</p> <p><b>Metric 3.2. Percentage of rush purchase orders</b> Objective: To reduce the number of unplanned and unscheduled rush purchase orders by improving planning and demand management</p> <p><b>Metric 3.3. Number of purchase orders placed per full-time equivalent in one month</b> Objective: To improve the productivity of the supply chain department in creating and issuing purchase orders</p> <p><b>Metric 3.4. Average lines per purchase order</b> Objective: To reduce transactional costs by consolidating purchase order lines into fewer purchase orders</p> <p><b>Metric 3.5. Average number of purchase orders placed to top ten suppliers in one month</b> Objective: To consolidate and reduce the number of purchase orders issued to the top ten most active suppliers</p> <p><b>Metric 3.6. Percentage of invoices with purchase orders</b> Objective: To reduce the number of invoices processed without a purchase order to properly control and manage organisational spending centrally through the supply-chain department</p> <p><b>Metric 3.7. Percentage of invoice matches</b> Objective: To improve accuracy in the information contained in purchase orders, receiving slips and supplier invoices</p> <p><b>Metric 3.8. Percentage of low-dollar-value purchase orders</b> Objective: To increase the use of alternative, easy-to-use purchasing methods for low-dollar-value purchases</p>
Area	Customers	Suppliers	People
Goal	Improve service delivery through comprehensive understanding of patient and clinical needs	Leverage supplier expertise and resources to drive better supply chain outcomes	Invest in employees to improve their contribution and help make supply chain a profession of choice
Proposed Metric	<p><b>Metric 4.1. Stock-outs at the cart level</b> Objective: To optimise stock levels at point-of-use storage locations across the healthcare organization, to safeguard patient safety and improve customer service</p> <p><b>Metric 4.2. Fill rates to customers</b> Objective: To improve customer satisfaction at point-of-use storage locations across the healthcare organisation</p>	<p><b>Metric 5.1. Percentage of invoices paid by due date</b> Objective: To increase compliance with agreed-upon payment terms to maintain good supplier relationships</p> <p><b>Metric 5.2. Supplier performance</b> Objective: To ensure reliable delivery performance from an organisation's top ten suppliers</p>	<p><b>Metric 6.1. Voluntary turnover</b> Objective: To improve retention of quality supply-chain staff</p>

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***Metric 4.3. Percentage of items activated in the master file in one month***

Objective: To increase the scope of goods and services purchased by the supply chain department to include new products and suppliers

***Metric 4.4. Percentage of items inactive in the master file in one month***

Objective: To rationalise the number of duplicate and alternate products, services and suppliers used across the organisation

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# **4**

## **Managing Risks and Supporting Accountability throughout the Public Procurement Cycle**

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Public procurement is a government activity subject to a high potential risk of corruption, conflicts of interest and inefficient use of public resources. Some of the chief reasons why public procurement is considered a high-risk activity are the volume and the regularity of transactions, the close interaction between the public and private sectors, and the complexity of the procedures. The fact that it involves significant financial resources creates both opportunities and incentives for dishonest behaviour on the part of public officials and private suppliers.

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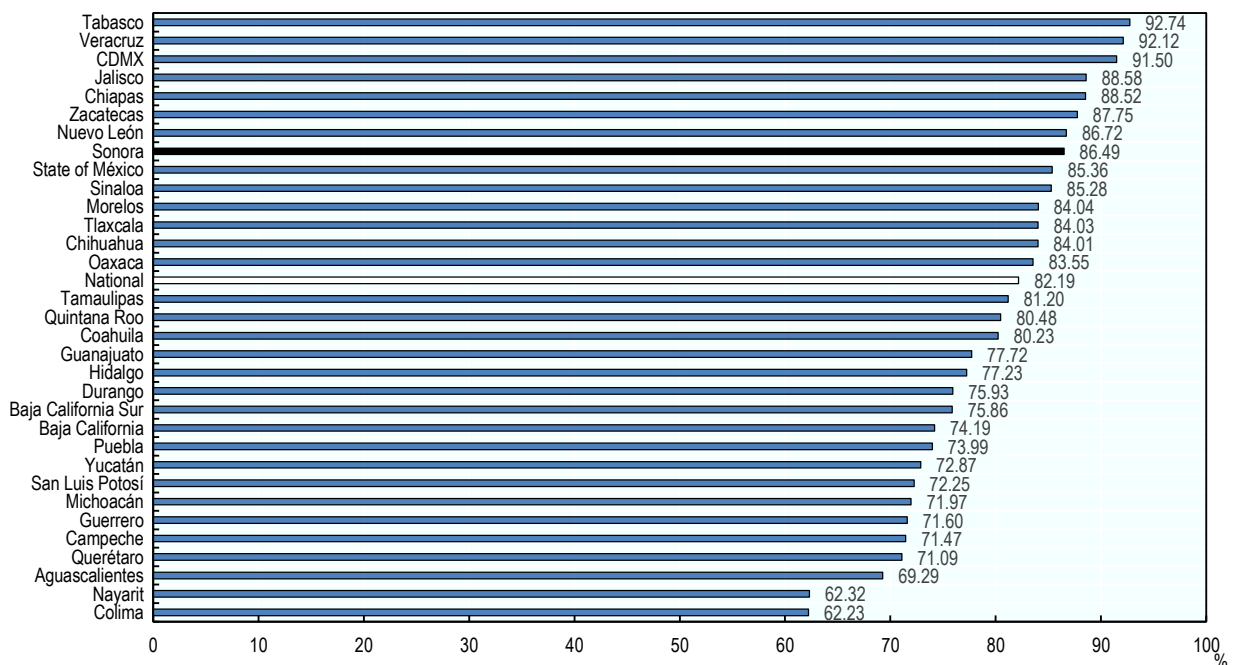
Corruption is a risk at any stage of the public procurement cycle. It can distort decisions on the selection of purchasing procedures, for example, selecting a direct award process rather than a public tender. It can also distort the type and volume of supplies needed, the purchase prices and the selection criteria. Potentially corrupt practices during procurement processes for the health sector (such as bribes to public officials or collusion behaviours) can result in severe financial losses for the buying organisation (OECD, 2013<sup>[1]</sup>).

International conventions describe bribery as an undue advantage (which may be pecuniary or non-pecuniary in nature, tangible or intangible) that is committed if the undue advantage is provided to a public official or a third-party beneficiary. An undue advantage can take in a variety of forms, such as money, loans, shares in a company, holidays, food and drinks, sex or a promotion (OECD, 2008<sup>[2]</sup>). Bribes can also occur at any stage of the supply chain of any product or service bought by the government. In procurement, bribery can emerge when officials obtain an undue advantage, in order to provide procurement contracts, or giving a monopoly position at the tendering stage, or when suppliers fail to deliver the product/service and are not accountable for it (WHO, 2008 in (OECD, 2013<sup>[1]</sup>)).

In Mexico, the perception of corruption is high. A recent survey by Mexico's Statistics Office (INEGI, 2016<sup>[3]</sup>) found that 82% of businesses perceive corruption as frequent or very frequent. For the state of Sonora, 86% of businesses perceive corruption as frequent/very frequent.

### Figure 4.1. Perception of corruption in Mexico and Mexican states

Percentage of businesses that perceive corruption as frequent and very frequent

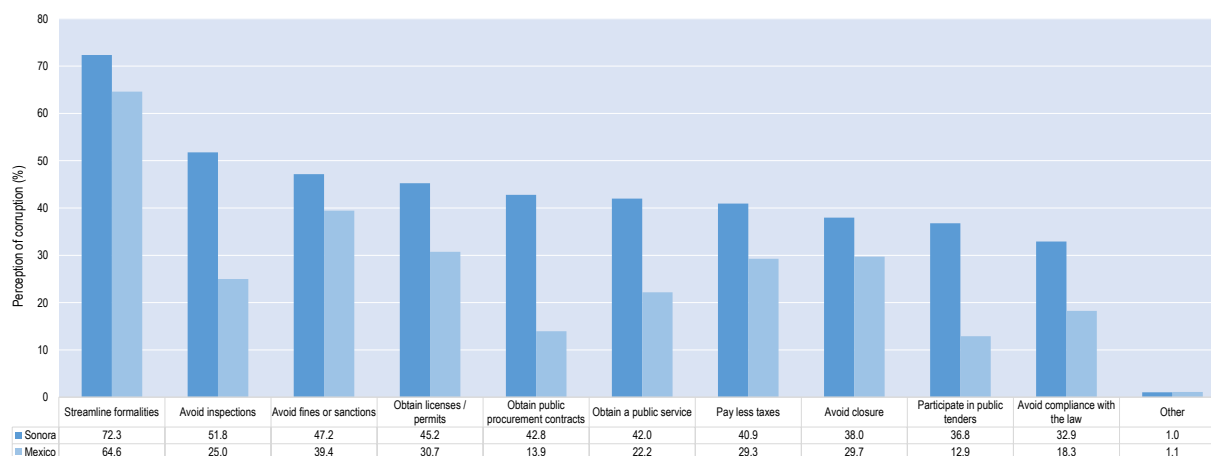


Source: OECD research with data from INEGI-ENCRIGE, 2016.

<http://www.beta.inegi.org.mx/proyectos/encuestas/encuestas/especiales/encrige/2016/>.

According to business perception, two of the ten main causes subject to acts of corruption are linked to public procurement. The national statistics data show that 14% of businesses are aware of corruption when obtaining public procurement contracts and 13% in public tenders. By contrast, in the state of Sonora, 43% of businesses are aware of corruption in obtaining public procurement contracts and 37% in public tenders.

**Figure 4.2. Perception of the causes of acts of corruption**



Source: OECD research using data from INEGI-ENCRIGE, 2016.

<http://www.beta.inegi.org.mx/proyectos/encestablecimientos/especiales/encrige/2016/>.

Effective prevention of corruption, well-designed public procurement systems, and good governance of public procurement processes can enhance allocation of resources and success in achieving secondary policy objectives (e.g. environmental protection, innovation, job creation, as well as the development of small and medium-sized enterprises, standards for responsible business conduct, or broader industrial policy objectives, among other factors).

The *OECD Recommendation of the Council on Public Procurement* (2015<sup>[4]</sup>) consists of 12 integrated principles that address potential risks of corruption. It outlines essential measures to help policy makers instil a culture of integrity throughout the public procurement cycle. The 12 principles take a holistic view, addressing various risks to integrity, from needs assessment, through the award stage, contract management, and up to final payment. Such principles include enhancing integrity in public procurement systems; promoting actions to integrate risk-management strategies for mapping, detection and mitigation throughout the public procurement cycle; applying oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes; encouraging transparent and effective stakeholder participation; and preserving the integrity of the public procurement system through general standards and procurement-specific safeguards.

**Figure 4.3. The 12 integrated principles of the OECD Recommendation of the Council on Public Procurement**



Source: (OECD, 2015<sup>[4]</sup>), *OECD Recommendation of the Council on Public Procurement*.  
[www.oecd.org/governance/procurement/toolbox/principlestools/](http://www.oecd.org/governance/procurement/toolbox/principlestools/), accessed on 26 November 2017.

This chapter assesses the integrity framework to manage risks and support accountability throughout the public procurement cycle in the Institute of Security and Social Services of the Workers of the State of Sonora (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora*, or ISSSTESON), from the perspective of the principles of risk management, integrity, participation and accountability. It is organised into four sections: *i*) encouraging effective risk-based internal control in ISSSTESON's procurement activities, *ii*) preserving the integrity of the public procurement system through general standards and procurement-specific safeguards, *iii*) providing opportunities for direct involvement of relevant external stakeholders in the procurement system to increase transparency and integrity, and *iv*) developing an effective complaints and sanctions system, including suppliers.

## 4.1. Encouraging effective risk-based internal control in ISSSTESON's procurement activity

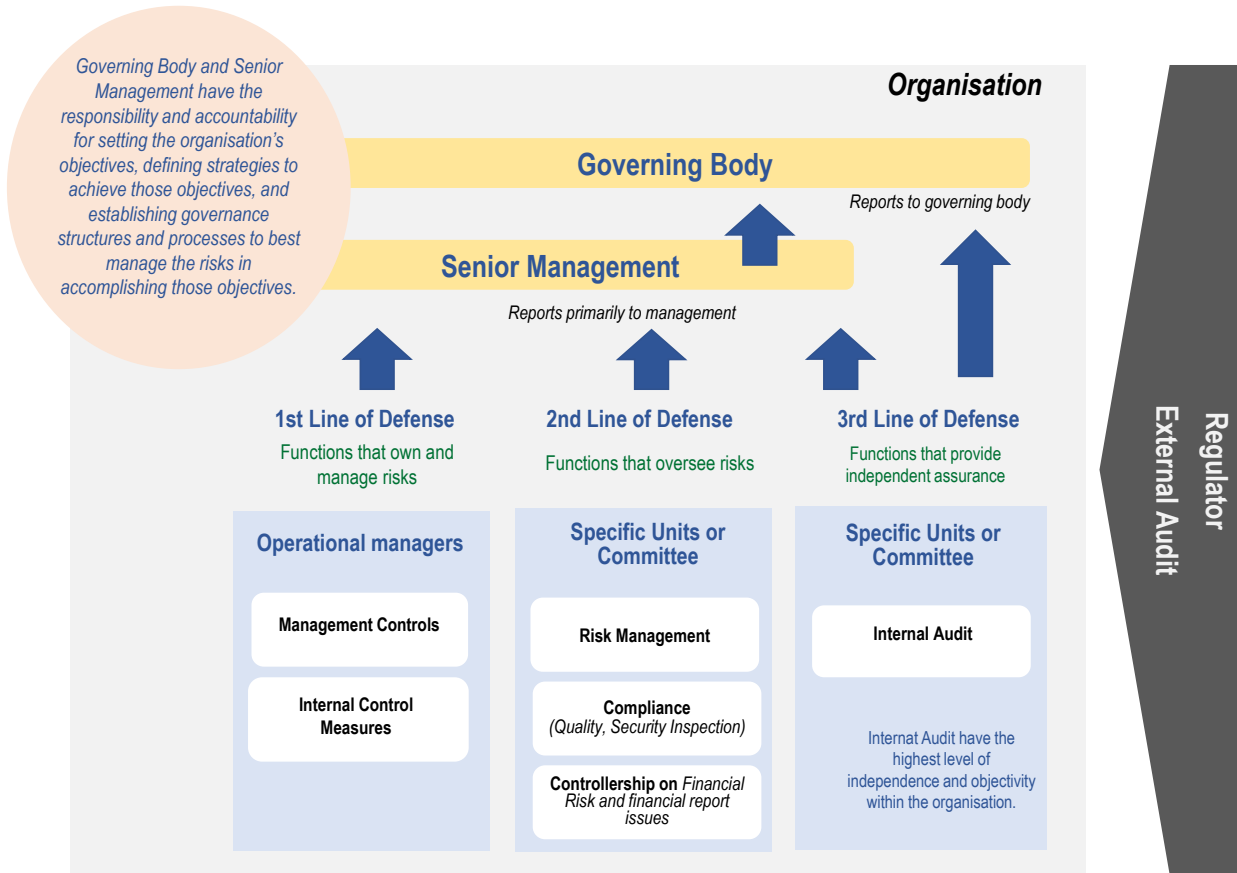
The *OECD Recommendation of the Council on Public Procurement* (2015<sup>[4]</sup>) suggests applying an internal control and risk-management framework to safeguard integrity in public sector organisations. It recommends developing a control environment and strategic approach to risk management, as well as building an efficient monitoring and quality assurance mechanism for the risk-management system. In particular, the recommendation suggests:

- ensuring a control environment with clear objectives that demonstrate managers' commitment to public integrity and public-service values, and that provides a reasonable level of assurance of an organisation's efficiency, performance and compliance with laws and practices;
- ensuring a strategic approach to risk management that includes assessing risks to public integrity and addressing control weaknesses (including building warning signals into critical processes), as well as building an efficient monitoring and quality assurance mechanism for the risk management;
- ensuring control mechanisms are coherent and include clear procedures for responding to credible suspicions of violations of laws and regulations and facilitating reporting to the competent authorities without fear of reprisal.

Controls help organisations run smoothly, reduce costs, avoid waste, hold officials to account for their actions, and report to the public and oversight institutions on the performance and value for money achieved. Internal controls are the policies, structures, procedures and processes that enable an organisation to identify and appropriately respond to internal or external risks, to comply with its mandate or objectives, safeguard its assets, and use public resources properly and efficiently (OECD, 2017<sup>[5]</sup>).

In effective risk management and control, duties of teams of internal auditors, enterprise risk-management specialists, internal-control specialists, quality inspectors and fraud investigators should be delegated and co-ordinated carefully to ensure that risk and control processes operate as intended; assigning and co-ordinating clear responsibilities effectively among these groups and understanding the boundaries of their responsibilities, so that there are neither "gaps" in controls, nor unnecessary duplications. Governments need a cohesive, co-ordinated and systematic approach to enhance communications on risk management and control by clarifying essential roles and duties. The "three lines of defence" model provides a simple and effective way (The Institute of Internal Auditors, 2013<sup>[6]</sup>) to illustrate this point (see Figure 4.4 and Box 4.1).

**Figure 4.4. The ‘three lines of defence’ model**



Source: Adapted from (The Institute of Internal Auditors, 2013<sup>[6]</sup>), “Position paper: The three lines of defence in effective risk management and control”, available at <https://global.theiia.org/>, accessed on 19 March 2018.

#### **Box 4.1. Mechanisms of operation of the ‘three lines of defence’ model**

##### **First line of defence:** operational management

It is in charge of line and mid-level managers (operational managers), who are responsible for:

- maintaining effective internal controls and executing risk and control procedures on a daily-to-day basis;
- identifying, assessing, controlling and mitigating risks;
- guiding the development and implementation of internal policies and procedures;
- ensuring activities are consistent with goals and objectives;
- implementing corrective actions to address process and control deficiencies.

##### **Second line of defence:** risk management and compliance functions

Aims to monitor the first line-of-defence controls and plays functions on risk management, compliance and control of financial risks. The responsibilities of the second line of defence vary depending on the specific nature of the organisation, but usually include the following:

- supporting management policies, defining roles and responsibilities, and setting goals for implementation;
- providing risk-management frameworks;
- identifying known and emerging issues;
- identifying shifts in the organisation's implicit risk appetite;
- assisting management in developing processes and controls to manage risks and issues;
- providing guidance and training on risk-management processes;
- facilitating and monitoring implementation of effective risk-management practices by operational management;
- alerting operational management to emerging issues and changing regulatory and risk scenarios;
- monitoring the adequacy and effectiveness of internal control, accuracy and completeness of reporting, compliance with laws and regulations, and timely remediation of deficiencies.

**'Third line of defence': internal audit**

Internal audit provides assurance on the effectiveness of governance, risk management and internal controls, including the manner in which the first and second lines of defence achieve risk-management and control objectives. Internal audit should act in accordance with recognised international standards for the practice of internal auditing, reporting to a sufficiently high level in the organisation to be able to perform its duties independently and ensuring an active, effective reporting line to the governing body. The responsibilities of the third line of defence include the following:

- Revising, auditing and reporting on the efficiency and effectiveness of operations and the accomplishment of the objectives of each administrative area in the organisation (including safeguarding of assets; reliability and integrity of reporting processes; and compliance with laws, regulations, policies, procedures and contracts).
- Revising, auditing and reporting all elements of the risk management and internal control framework, including: the internal control environment and the elements of the risk-management framework (i.e. risk identification, risk assessment and response, information and communication, and monitoring).
- Revising, auditing, and reporting overall entity, divisions, subsidiaries, operating units and functions including business processes, such as sales, production, marketing, safety, customer functions and operations, as well as supporting functions (i.e. revenue and expenditure accounting, human resources, purchasing, payroll, budgeting, infrastructure and asset management, inventory, and information technology).

Source: Adapted with information from (The Institute of Internal Auditors, 2013<sup>[6]</sup>), "Position paper: The three lines of defence in effective risk management and control", available at <https://global.theiia.org/>, accessed on 19 March 2018.

Governing bodies and senior management are the primary stakeholders served by the "lines", and they are the parties best placed to help ensure that the three lines of defence model is reflected in the organisation's risk-management and control processes. All three lines should exist in some form at every organisation, notwithstanding its size or complexity. Regardless of how the three lines of defence model is implemented, senior management and governing bodies should clearly communicate the expectation that information be shared and activities co-ordinated among each of the groups responsible for managing the organisation's risks and controls (The Institute of Internal Auditors, 2013<sup>[6]</sup>).

In the past, ISSSTESON had no administrative structure to monitor risks, but on 28 August 2017, the Committee for Control and Institutional Performance (*Comité de Control y Desempeño Institucional*, or

COCODI) was created. According to the Integrated Framework for Internal Control (*Marco Integrado de Control Interno*, or MICI) and its Administrative Manual, which is issued by the Ministry for Control, each ministry and agency of the public administration of Sonora was to set up a COCODI to support its head in implementing the MICI, applying and strengthening internal control, ethics and integrity, and to institute mechanisms to prevent the risk of corruption. The COCODI in ISSSTESON, presided over by the institute's General Director, met three times in 2018 (in April, July and October) and also in February 2019. In 2018, it reached 23 committee agreements. Responsibility for supervising such agreements is managed by the Unit for Institutional Planning and Innovation (*Unidad de Planeación e Innovación Institucional*, or UPII).

#### **Box 4.2. The Committee for Control and Institutional Performance (COCODI) in ISSSTESON**

The COCODI is a collective and specialised body presided over by the institute's General Director and including the following officials:

- the head of the Internal Control Body (*Órgano Interno de Control*, or OIC) as its executive;
- the head of UPII, as member 1;
- the head of the Legal Unit, as member 2;
- the head of the Information Technologies Department, as member 3;
- the representative of the sector co-ordinator, as member 4.

Furthermore, the heads of the different administrative units and the liaisons for internal control and risk management are permanent invitees.

The objectives of COCODI are the following:

- contributing to the timely fulfilment of institutional goals and objectives through preventive measures;
- strengthening and updating institutional internal control;
- overseeing compliance with and improvement of budget programmes;
- identifying and managing institutional risks, including risks of corruption;
- identifying and monitoring relevant topics and, if applicable, helping address problems through the approval of agreements and commitments;
- managing relevant and negative situations that emerge in the operation (financial, budget, technological and administrative) and suggesting agreements of corrective measures to address them;
- creating value for institutional management by efficiency and effectiveness in decision making.

Source: Produced by the OECD Secretariat with information provided by ISSSTESON.

Originally, the institute had planned to create an administrative area called the Specialised Internal Control Unit, responsible for identifying institutional risks that could impede the proper functioning of the institute. This idea was, however, abandoned. If the institute had in fact had an administrative area to control risks, it could have helped to avoid the current financial situation. The Annual Programme of Work for Internal Control (*Programa Anual de Trabajo de Control Interno*) identifies four areas for enhancing the efficiency and effectiveness of institutional management and preventing corruption: internal control, public accounts and budgeting, integrity and transparency, and audit.

The evaluation of the annual programme of work is a responsibility of ISSSTESON's OIC (see Box 4.3 for a summary of the results of the 2018 evaluation).



### Box 4.3. Evaluation of ISSSTESON's System for Institutional Internal Control and Programme of Work for Internal Control (2018)

As of the end of 2018, two evaluations of internal control in ISSSTESON had been conducted, in December 2016 and September 2018. At the strategic level, compliance increased from 44.71% to 68.68%, while at the directive level, compliance increased from 56.82% to 61.93%. However, at the operational level, compliance fell from 64.60% to 47.72%, from an “average” to an “underperforming” score. Improvement was thus necessary chiefly at the operational level.

Additionally, the last evaluation highlighted such progress as:

- communication of the institute's Code of Ethics and Conduct, vision and mission;
- application of organisational climate surveys;
- formalising the functions of the system for internal control and risk management in the organisational manuals of the General Directorate and the Deputy Directorate for Administration;
- compliance at 100%, for the second consecutive year, with the submission of the asset declarations by public officials.

As for risk management, the evaluation noted that drafting of risk matrixes and the programmes of work to address operational and strategic risks was launched from March to April 2018.

Finally, the assessment recommended that ISSSTESON analyse the results for each control element, to better align them with the improvement measures suggested in the Programme of Work 2019.

Source: Produced by the OECD Secretariat with information provided by ISSSTESON.

#### **4.1.1. ISSSTESON's senior management could demonstrate a strong commitment to internal control and audit, ethics and integrity**

ISSSTESON's Board of Directors should establish the three lines of defence and empower the administrative units responsible for implementing them. The first line is in charge of all the operational managers of the organisation. Middle- and high-level managers are in charge of implementing controls and helping identify and prevent risks in their areas. ISSSTESON's second line of defence should be in charge of all senior managers and, at the same time, could be organised and supervised by UPII, as the unit in charge of following up the agreements taken in COCODI. Additionally, to comply with the third line of defence, ISSSTESON could set up a new function of internal audit reporting to the board and complementing external audit.

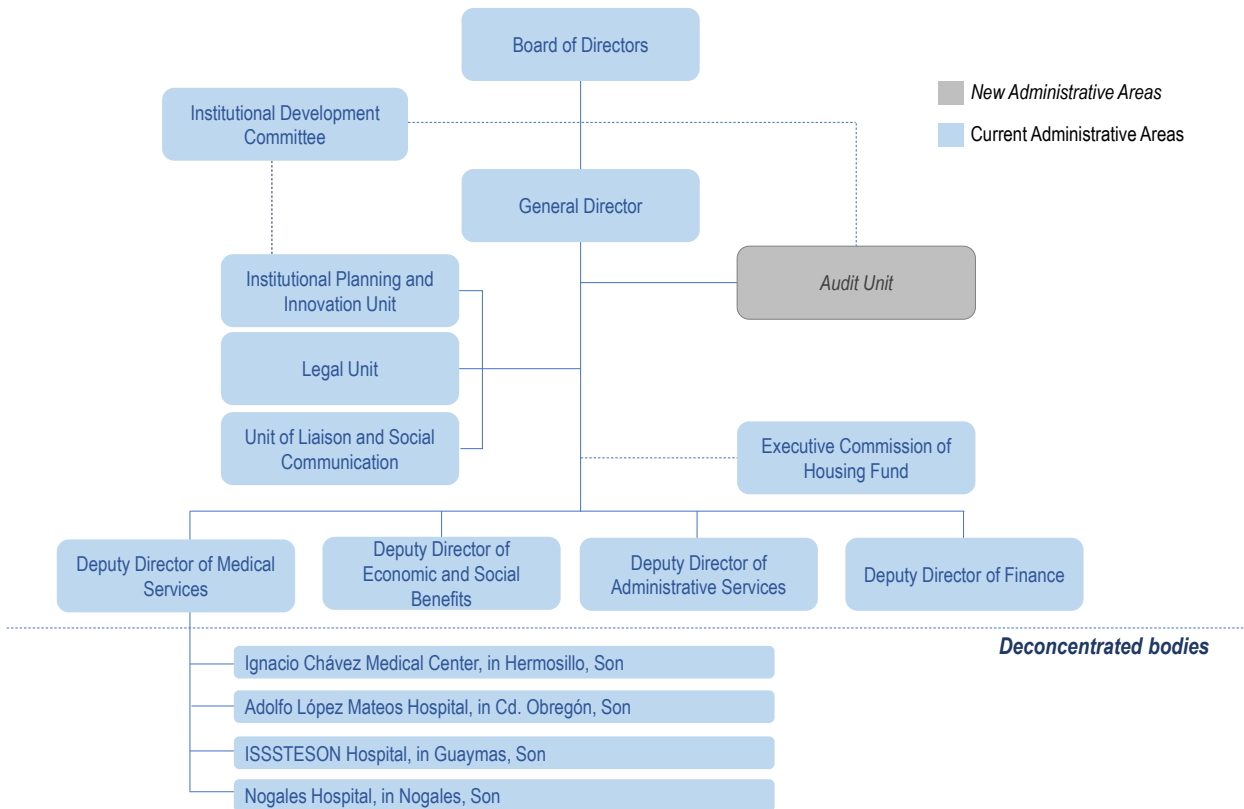
The COCODI provides ISSSTESON an opportunity to develop efficient risk-management strategies to avoid corruption in public procurement and enhance financial sustainability, both fulfilling its mandates (health services, financial services, and pension and mortgage administration) and promoting secondary policy objectives, such as competitiveness of local enterprises in the health sector.

The fact that UPII has the responsibility to follow up on the agreements made by COCODI offers several advantages. Issues related to internal control, for example, are easily co-ordinated and managed because under the current ISSSTESON Internal Regulations (Article 18), the unit is also responsible for setting up and co-ordinating several programmes, such as: institutional planning, co-ordinating and integrating the sector programme, the institutional development programme, ISSSTESON's annual operational and budget programme, and the annual public works plan. It is also in charge of monitoring, performance evaluation and accountability of the institute (including administrative units and deconcentrated bodies).

This includes gathering statistics, reports on public funds (*cuentas públicas*), organisation and proceedings manuals, and implementing codes of ethics and conduct. The unit is also legally mandated to identify opportunities, propose administrative innovations and regulatory changes, and make recommendations on administrative development and management processes, including streamlining procedures.

Despite this progress, the institute's internal control and risk management systems leaves room for improvement. ISSSTESON, for example, needs to create an internal audit function. This should be under the General Director's first line of control and should report its findings and recommendations to the Board of Directors. The Audit Unit should also propose audit rules and plans to the Board for its approval.

**Figure 4.5. ISSSTESON organisation chart for its new Audit Unit**



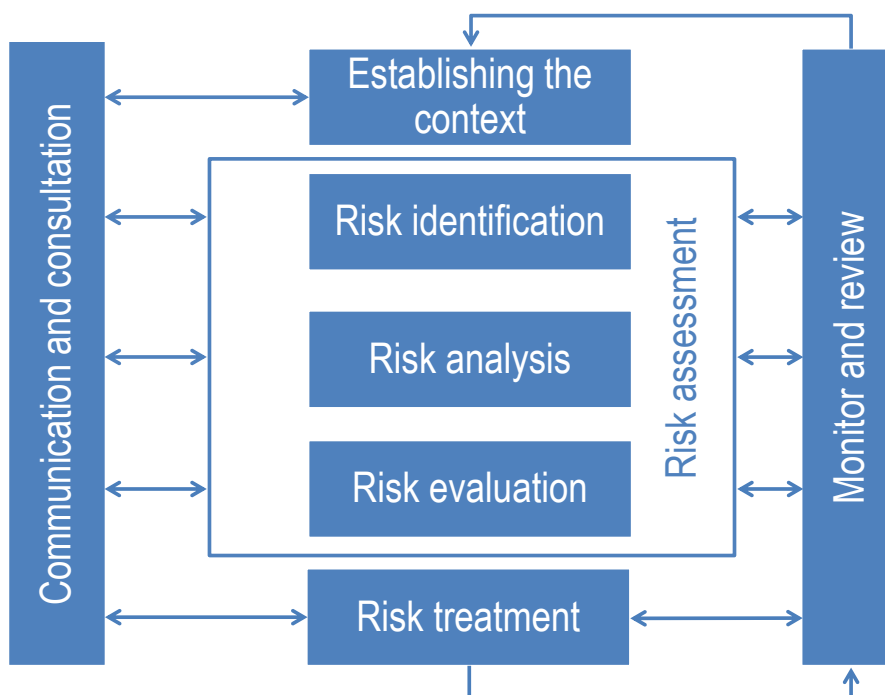
Source: Adapted from ISSSTESON's Internal Regulations (2015).

Integrating risk-management strategies for mapping, detection and mitigation of risks in public procurement is vital for effective internal control. The *OECD Recommendation of the Council on Public Procurement* (2015<sup>[4]</sup>) explicitly suggests identifying and addressing: 1) threats to the proper function of the public procurement system, 2) potential mistakes in the performance of administrative tasks, and 3) deliberate transgressions. Any risks and threats noted should be brought to the attention of the relevant officials. To prevent fraud, misuse of public funds and corruption in public procurement, public officials, and particularly procurement practitioners, need a full understanding of the potential risks. This will help them address threats and limit fraud and corruption: to detect potential deviations, to exclude corrupt suppliers/bidders, and to take action against dishonest procurement practitioners (OECD, 2009<sup>[7]</sup>).

Risk management covers two main areas: risk assessment and risk mitigation/treatment (OECD, 2009<sup>[7]</sup>). Risk assessment plays a key role in the selection of appropriate internal control measures (OECD, 2017<sup>[5]</sup>),

because it consists of identifying potential risks, analysing their causes and consequences and evaluating their impact.

**Figure 4.6. The risk-management cycle according to ISO 31000:2009**



Source: Adapted by (OECD, 2017<sup>[5]</sup>) from ISO 31000: 2009; (OECD, 2013<sup>[8]</sup>), *OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth*, <https://doi.org/10.1787/9789264193819-en>.

Integrity risks emerge in different types of procedures, as well as at different stages of the public procurement cycle. For example, in open tenders, corruption can occur when confidential information on supplier bids is selectively disclosed, allowing particular bidders access to inside information. In a direct award, corruption may arise when the assessment of quality and reliability are unfair and influenced by bribes. In a limited invitation procurement, there may be opportunities for extortion and bribery during the back-and-forth of price discussions with firms (Vian, 2002, in (OECD, 2013<sup>[1]</sup>)). On the other hand, if businesses expected to compete against each other agree tacitly or overtly to raise the price of goods or services, a specific type of collusion, known as bid rigging, occurs (OECD, 2011<sup>[9]</sup>). This harms governments, because it prevents them from maximising value for public money.

Corruption can occur in the different phases of tendering. The following table illustrates actions or omissions implying risks of corruption, according to relevant activities in each phase of tendering.

**Table 4.1. Checklist of integrity risks in the procurement process**

Phase of the public procurement cycle	Relevant activities in the phase	Actions or omissions implying risk of corruption
PHASE 1 Pre-tendering phase	Needs assessment and market analysis	Lack of adequate needs assessment
		Influence of external actors on officials' decisions
		Informal agreement on contract
	Planning and budgeting	Poor procurement planning
		Procurement not aligned with overall investment decision-making process
		Failure to budget realistically or deficiency in the budget
	Development of specifications/ requirements	Technical specifications are tailored for a specific company
		Selection criteria is not objectively defined and not established in advance
		Requesting unnecessary samples of goods and services
		Buying information on the project specifications
Choice of procurement procedure	Lack of proper justification for the use of non-competitive procedures	
	Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications	
PHASE 2 Tendering phase	Request for proposal/ bid	Absence of public notice for the invitation to bid
		Evaluation and award criteria are not announced.
		Procurement information is not disclosed and is not made public.
	Bid submission	Lack of competition or cases of collusive bidding (cover bidding, bid suppression, bid rotation, market allocation)
	Bid evaluation	Conflict of interest and corruption in the evaluation process through:
		1. familiarity with bidders over time
		2. personal interests such as gifts or future/additional employment
	Contract award	3. no effective implementation of the "four eyes principle"
Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing)		
Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities)		
PHASE 3 Post-award phase	Contract management performance	Lack of access to records on the procedure
		Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing:
		1. Substantial change in contract conditions to allow more time and/or higher prices for the bidder
		2. Product substitution or sub-standard work or service not meeting contract specifications
		3. Theft of new assets before delivery to end user or before being recorded
	4. Deficient supervision from public officials and/or collusion between contractors and supervising officials	
	5. Subcontractors and partners chosen in a non-transparent way or not kept accountable	
	Order and payment	Deficient separation of financial duties and/or lack of supervision of public officials leading to:
		1. False accounting and cost misallocation or cost migration between contracts
		2. Late payments of invoices
False duplicate invoicing for goods and services not supplied and for interim payment in advance of entitlement		

Source: (OECD, 2016<sup>[10]</sup>), *Preventing Corruption in Public Procurement*, OECD, Paris, <http://www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf>.

ISSSTESON faces relevant risks in the procurement cycle, such as:

- Pre-tendering phase: Even when ISSSTESON develops a budget plan every year, non-competitive procedures like direct awards are not exceptions but common practice.
- Tendering phase: The lowest price and binary method are the common evaluation and award criteria in ISSSTESON's public procurement procedures. In addition, the Law on Acquisitions, Leases and Services of the State Public Administration (*Ley de Adquisiciones, Arrendamientos y Prestación de Servicios Relacionados con Bienes Muebles de la Administración Pública Estatal*) establishes in its Article 24, the option to use two more criteria: evaluation by points and percentages and cost-benefit evaluation. These could be used if government entities provide justification to show that applying such mechanisms allows them to objectively assess the creditworthiness of the proposals, and/or when government entities need to obtain goods, leases or services that involve the use of highly specialised technical features or technological innovations. Interviews with the personnel involved with technical tenders in ISSSTESON, however, revealed that they fear they may be subject to sanction, because administrative units usually consider only the lowest price criterion. As a result, some confusion persists among both technical and administrative personnel over the application of the methods established by the law, which constrains procurement practitioners from making better decisions.
- Post-award phase: ISSSTESON uses an electronic system of Sonora's Ministry for Control (Evidence System) to monitor the progress of contracts (<http://sevi.sonora.gob.mx>). However, ISSSTESON does not have a monitoring strategy, evaluation method, and a record of the performance evaluation of each contract and supplier.

#### **4.1.2. To address corruption, COCODI and UPII should have clear functions of risk management and internal control**

COCODI, through UPII, should communicate better to the different areas of the institute the risk assessment methodologies, consisting of at least the following elements:

##### *Risk identification*

UPII could map all the risks associated with corruption. In order to do so, it can use checklists, like the checklist of integrity risks in the procurement process (Table 4.1) and the generic checklist to enhance integrity in non-competitive tender methods (Box 4.4).

The corruption risk map should identify critical processes, risk activities and vulnerable positions. With this information, the UPII could create and establish internal controls using a risk-based approach, so that oversight is focused on processes, activities and positions with a higher potential risk of corruption.

#### Box 4.4. Generic checklist for enhancing integrity in non-competitive tender methods

##### Price competition and comparability

- Have multiple quotes or some form of price competition for procurement been solicited?
- Have price comparisons or reconciliation been made with previous procurement projects?
- Where highly specified goods or services are required, have existing and proven suppliers been considered?

##### Risk identification

- Have potential risks associated with the procurement been identified and considered (e.g. insurance, warranties, deliverables, etc.)?
- Have adequate efforts been made to identify and address potential conflicts of interest?
- Have the scope and term of contracts entered into under non-competitive processes been limited to the minimum required to respond appropriate and effectively?

##### Documentation and reporting

- Have conversations, communications and instructions associated with the procurement been documented and filed?
- Have contracts in excess of [a specified price] been published in the relevant government gazette/online procurement portal?
- Have contracts in excess of [a specified price] been noted as non-competitive procedures in the procuring authorities' reports?

Source: (OECD, 2009<sup>[11]</sup>), "Public Procurement Toolbox, Tool: Template and checklist for enhancing integrity in non-competitive tender methods", <http://www.oecd.org/governance/procurement/toolbox/search/template-checklist-enhancing-integrity-non-competitive-tender-methods.pdf>, accessed on 20 March 2018.

#### *Impact evaluation of the potential consequences of risks*

Identifying risks is not enough. It is also necessary to link them to their potential consequences and, where possible, to measure the impact of the consequences if they arise. Impact measurement is always desirable, because it offers perspective on the probability of risk and helps design strategies for risk mitigation.

#### *Strategies for risk mitigation*

Such strategies consist of developing a system of warning signals in critical processes, vulnerable positions and risky activities or projects. ISSSTESON could design an indicator system (red flags) signaling corruption in its public procurement process, to help detect and prevent risk. Some of the most common red flags in public procurement are (OECD, 2017<sup>[12]</sup>):

- physical losses
- unusual relationships with suppliers
- manipulation of data
- photocopied documents
- incomplete management/audit trail

- IT controls of audit logs designed to not allow budget overspends
- IT login outside working hours, unusual invoices (i.e. format, numbers, address, phone, VAT number)
- overly vague descriptions of goods/services supplied
- duplicate/photocopied invoice
- a high number of failed IT logins
- round-sum amounts invoiced
- favoured customer treatment
- sequential invoice numbers over an extended period of time
- failure to declare interest/gifts/hospitality
- no process for identifying risks (i.e. risk register)
- unusual increases/decreases.

The World Bank has also identified the ten most common red flags of fraud and corruption in procurement.

#### **Box 4.5. Ten most common red flags of fraud and corruption in public procurement processes**

1. Complaints from bidders
2. Numerous contracts with values just under procurement thresholds (contract splitting);
3. Unusual bid patterns, for instance:
  - Bids are distinguished from one another by a regular percentage, i.e. 1%, 3% 10%.
  - Bids are inexplicably too close or too far apart, i.e. less than 1% or more than 10% between the lowest bid and the next lowest bid.
  - Losing bid prices are round or unnatural numbers, i.e. USD 355 000 or USD 65 888 000.
  - Unexplained inflated bid prices, i.e. total bid or components of the bid are unreasonably higher than the cost estimate.
  - Losing bidders become subcontractors.
  - Winning bidders apparently rotate.
  - Delays in completing the Bid Evaluation Report (BER) or contract award and signing may indicate negotiation of corrupt terms.
  - Bid security is repeatedly extended.
4. Fees of agents or prices of goods are apparently inflated.
5. Bidders appear suspicious, such as fictitious or shell companies.
6. Lowest price bid is unjustifiably declared non-responsive.
7. Repeat awards to same contractor;
8. Unjustified changes in contract terms and value are made.
9. Multiple change orders to the contract are made after the contract has been signed and during implementation.
10. Goods/services are of low quality or not delivered.

Source: (The World Bank, n.d.<sup>[13]</sup>), *Most Common Red Flags of Fraud and Corruption in Procurement in Bank-financed Projects*, [http://siteresources.worldbank.org/INTDOI/Resources/Red\\_flags\\_reader\\_friendly.pdf](http://siteresources.worldbank.org/INTDOI/Resources/Red_flags_reader_friendly.pdf), accessed on 20 April 2018.

### *Specific measures for avoiding risks in the procurement cycle*

Some specific steps to consider include raising awareness of risks among the procurement workforce and suppliers, procurement workforce workshops to deal with the identified risks, specialised training for public procurement practitioners, and whistle-blower protection programmes.

UPII should propose to the General Director and Board of Directors of ISSSTESON a set of measures to prevent and detect risks in the procurement cycle. The implementation of those measures and the recommendations of the annual evaluation reports should be designed and co-ordinated by this unit.

### *Monitoring and evaluating the risk-management strategy*

Risks of corruption are not static and evolve as changes occur in the organisation and the outside world. Another element for enhancing the strategy to assess the risk of corruption is to introduce a system to monitor and periodically evaluate the strategy, to ensure that it reflects reality and remains effective (OECD, 2017<sup>[12]</sup>).

COCODI could lead the monitoring and evaluation of the risk-assessment strategy to make sure it is updated and, if necessary, adjusted.

### *Communicating the risk-management strategy*

Senior management has a strong influence on internal control and risk management. Employees generally observe the behaviour of top management closely and model their decisions, attitudes and conduct on the tone communicated (OECD, 2017<sup>[12]</sup>).

ISSSTESON's senior management should send clear messages to the organisation's staff to support the strategy and to model correct behaviour. It should also empower administrative areas in charge of internal control and audit functions. UPII could design a communication plan of the risk-management strategy to inform employees of the risks that have been identified (critical processes, risk activities and vulnerable positions) and of the specific measures intended to mitigate them, such as whistle-blower protection programmes and mechanisms and penalties for acts of corruption.

## **4.2. General standards for safeguarding the public procurement system**

Organisations should develop a strong legal and institutional integrity framework and enhance public officials' capacity to manage the risk of corruption in the public procurement. The aim of integrity policies in public procurement is to promote a culture of integrity throughout the public procurement cycle, from needs assessment to contract management and payment. Integrity can be defined as the use of funds, resources, assets, and authority, according to the intended official purposes, in the public interest. Public integrity implies consistent adherence to shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector (OECD, 2017<sup>[14]</sup>).

Preserving integrity in public procurement requires integrity frameworks and codes of conduct with high standards of ethics and integrity and rules of conduct for all stakeholders in the procurement cycle, training programmes for the procurement workforce and internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring (OECD, 2009<sup>[15]</sup>).

Integrity policies in public procurement should adapt tools to specific risks of the procurement cycle as necessary. Public procurement, as the government activity with the highest integrity risks, requires highly qualified officials. For example, the procurement workforce should be able to identify potential conflicts of interest between private interests and public duties that could influence public decision making.



### 4.2.1. Integrity framework

The integrity framework is a systemic, comprehensive approach involving instruments, processes and structures for encouraging integrity and preventing corruption in public organisations. It involves interdependence and co-ordination between internal elements of the system (instruments, processes and structures). Governments may organise these internal elements into four functions: determining and defining integrity; guidance towards integrity; monitoring integrity; and enforcing integrity. These should attempt to strike a balance between a rule-based and a value-based approach (OECD, 2009<sup>[16]</sup>).

**Table 4.2. A classification of integrity management instruments**

		Determining and defining integrity	Guidance towards integrity	Monitoring integrity	Enforcing integrity
Core	Rules-based	<ul style="list-style-type: none"> <li>• Risk analysis</li> <li>• Code of conduct</li> <li>• Conflict-of-interest policy</li> <li>• Gifts and gratuities policy</li> <li>• Post-employment arrangements</li> <li>• Structural measures (e.g. function rotation)</li> </ul>	<ul style="list-style-type: none"> <li>• Rules-based integrity training</li> <li>• Oath, signing an “integrity declaration”</li> <li>• Advice, counselling</li> </ul>	<ul style="list-style-type: none"> <li>• Whistle-blowing policies</li> <li>• Complaints policies</li> <li>• Inspections</li> <li>• Integrity testing</li> <li>• Early-warning systems</li> <li>• Systematic registration of complaints, investigations, etc.</li> <li>• Survey measurement of integrity violations and organisational climate</li> </ul>	<ul style="list-style-type: none"> <li>• Formal sanctions</li> <li>• Procedure for handling integrity violations</li> </ul>
	Values-based	<ul style="list-style-type: none"> <li>• Analysis of ethical dilemmas</li> <li>• Consultation of staff and stakeholders</li> <li>• Code of ethics</li> <li>• Non-written standard setting</li> </ul>	<ul style="list-style-type: none"> <li>• Values-based integrity training</li> <li>• Integrating integrity in the regular discourse (e.g. announcing the integrity policy through channels of internal and external communication)</li> <li>• Exemplary behaviour from management</li> <li>• Coaching and counselling for integrity</li> </ul>	<ul style="list-style-type: none"> <li>• Survey measures of integrity dilemmas</li> <li>• Informal probing for ethical dilemmas and issues among staff</li> </ul>	<ul style="list-style-type: none"> <li>• Informal sanctions</li> </ul>
Complementary		<ul style="list-style-type: none"> <li>• Assessing the fairness of the reward and promotion systems</li> <li>• Appropriate procedures for procurement, contract management and payment</li> <li>• Measures in personnel management (e.g. integrity as a criterion for selection, evaluation and career promotion)</li> <li>• Measures in financial management (e.g. “double key”, financial control)</li> <li>• Measures in information management (e.g. protecting automated databases)</li> <li>• Measures in quality management (e.g. reviewing the quality-assessment tool)</li> </ul>		<ul style="list-style-type: none"> <li>• Internal control and audit</li> <li>• External control and audit</li> </ul>	

Source: (OECD, 2009<sup>[16]</sup>), *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, GOV/PGC/GF (2009)1, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF\(2009\)1](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF(2009)1), accessed on 20 March 2018.

In Mexico and its federal states, the preference has commonly been for rules-based approaches in integrity policies. On 11 May 2017, the state of Sonora endorsed its Law on the Local Anti-Corruption System (*Ley del Sistema Estatal Anticorrupción del Estado de Sonora*, or LLLACS), a set of revised and newly expressly enacted laws, notably the Law on the Local Anti-Corruption System and the State Responsibilities Law (*Ley Estatal de Responsabilidades*). The first establishes the principles and general rules of the integrity framework of the state of Sonora, as well as the public entities that constitute the system and their mandates (see Box 4.6). The second establishes the principles and obligations of the adequate

performance of public officials; it differentiates between serious and less serious administrative offenses by public officials, the sanctions applicable, as well as the procedures for their application and the powers of the competent authorities to impose them.

#### **Box 4.6. Objectives of the Law on the Local Anti-Corruption System of the State of Sonora**

- I.** Establishing the foundations and mechanisms for co-ordination among the various units to fight against corruption in public entities;
- II.** Establishing and, where appropriate, implementing the minimum foundations for the prevention of corruption and administrative offences;
- III.** Establishing the foundations for the issuance of comprehensive public policies against corruption, as well as on audit and control of public resources;
- IV.** Establishing the basic guidelines that define co-ordination of the competent authorities of all levels of government for the development of public policies on prevention, detection, control, punishment and the fight against corruption;
- V.** Regulating the organisation and functioning of the Local Anti-Corruption System, its Co-ordinating Committee and Executive Secretariat, as well as establishing the foundations for co-ordination among its members;
- VI.** Establishing the foundations, principles and procedures for the organisation and functioning of the Citizen Participation Committee;
- VII.** Establishing the foundations and policies for the promotion and dissemination of a culture of integrity in the public service, as well as accountability, transparency, auditing and control of public resources;
- VIII.** Establishing permanent actions that promote integrity and the ethical behaviour of public officials, as well as creating the foundations for all governing bodies in the State, establishing effective policies of public ethics and responsibility in the public service;
- IX.** Establishing the foundations for co-ordination of the State authorities that are members of the National Audit System;
- X.** Harmonising the foundations for the development and implementation of electronic systems mandated by the Law of the National Anti-Corruption System for the supply, exchange, systematisation and update of the information produced by public entities;
- XI.** Promoting the foundations for the development and implementation of an electronic system that guarantees the proper supply, exchange, systematisation and updating of the information produced in the framework of the transparency laws, the competent institutions in the state and municipalities.

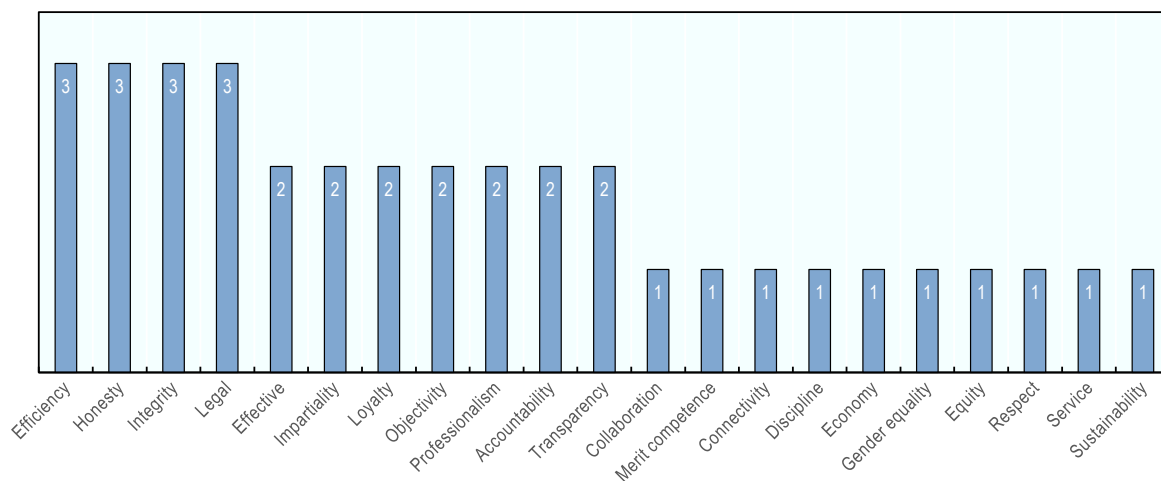
Source: Law on the Local Anti-Corruption System of the State of Sonora, Article 2, issued 11 May 2017.

On 1 June 2017, the State Government of Sonora issued its Code of Ethics and Conduct, as well as the Integrity Rules for public officials of the State Public Administration. According to Article 5 of the LLACS, the public entities of the State of Sonora are mandated to create and maintain structural and regulatory conditions that allow for the proper functioning of the state as a whole, and the ethical and responsible performance of each public servant. ISSSTESON, as a decentralised body with legal personality and its own budget, is to abide by this legal framework.

Article 5 of the LLACS establishes guiding principles that govern the public service: legality, objectivity, professionalism, honesty, loyalty, impartiality, efficiency, effectiveness, fairness, transparency, economy,

integrity and merit. On the other hand, Article 7 of the State Responsibilities Law establishes that public officials will observe, in the exercise of their employment, position or commission, the principles of discipline, legality, objectivity, professionalism, honesty, loyalty, impartiality, integrity, accountability, effectiveness and efficiency. Article 4 of the Code of Conduct and Ethics for Public Servants of the State of Sonora Public Administration (*Código de Ética y Conducta para los Servidores Públicos de la Administración Pública Estatal*) establishes and defines the values that all public servant of the State of Sonora must observe in their activities, which are: honesty, legality, collaboration, connectivity, efficiency, integrity, gender equality, accountability, respect, service, sustainability and transparency. The State of Sonora's framework for integrity promotes 21 values or principles (Figure 4.7).

**Figure 4.7. Principles and values in the State of Sonora's Law and Ethics Code**



Source: Information from Article 5, LLACS; Article 7, State Responsibilities Law and Article 4, Ethics Code.

Twenty-one values or principles are mentioned in the three legal instruments. Only four (19%) are mentioned in all three. Seven principles (33%) are mentioned in two of the instruments, and the remaining ten (48%) are mentioned only in one. The table below shows which values are mentioned in which instruments.

**Table 4.3. State of Sonora integrity principles**

Principles/values	LLACS (Article 5)	LRSS (Article 7)	Code of Ethics (Article 4)
Efficiency	X	X	X
Honesty	X	X	X
Integrity	X	X	X
Legal	X	X	X
Effective	X	X	
Impartiality	X	X	
Loyalty	X	X	
Objectivity	X	X	
Professionalism	X	X	
Accountability		X	X
Transparency	X		X
Collaboration			X
Merit competence	X		
Connectivity			X
Discipline		X	
Economy	X		
Gender equality			X
Equity	X		
Respect			X
Service			X
Sustainability			X
Total values/principles	13	11	12

Source: Based on information from Article 5, LLACS; Article 7, State Responsibilities Law and Article 4, Ethics Code.

The State of Sonora recently passed ten rules for integrity, including: *i)* public performance, *ii)* knowledge of regulations and their applicability, *iii)* developing duties, *iv)* use and distribution of material, human and financial resources, *v)* public information, *vi)* public procurement, permits, licences, authorisations and concessions, *vii)* relationship with co-workers, *viii)* relationship with public entities, *ix)* relationship with society, and *x)* co-operation with integrity. The sixth rule establishes that public officials, directly or indirectly, in charge of public procurement, permits, licenses, authorisations and concessions, should be transparent, neutral and legal, that they should conduct their decisions according to social needs and the public interest, and that they should guarantee the best conditions for the State. To advance public officials' commitment to the Ethics and Conduct Codes and the rules of integrity, each public official must sign a Commitment Letter.

In 2014, the State of Sonora issued an Anti-Corruption Law in Public Procurement, which applies to public procurement processes at the state and municipal levels. It establishes the responsibilities and sanctions that will be imposed on any person or business (enterprises, suppliers and public servants who participate, directly or indirectly, in the procurement process) for infractions related to public procurement in the state or its municipalities. The law also stipulates that the sanctioning procedure be conducted by the control bodies with the objective of determining responsibility for participation in public procurement and application of the corresponding sanctions. Article 6 establishes that participants in a public procurement process shall conduct themselves ethically, with truth and honesty in all acts and attitudes, without giving rise to acts of corruption throughout the whole procurement process until its completion, and refraining, at all times, from offering, lending, giving, conditioning, delivering or any other action that resembles, by itself or by a third person, for any reason, benefits, services, money or any other good to any public servant in the recruitment procedure.

Likewise, in June 2018, Sonora's Ministry for Control issued a guide to identify and prevent conflicts of interest in the State Public Administration (*Guía para identificar y prevenir la actuación bajo conflicto de interés en el ejercicio de la función pública en la Administración Pública Estatal*). This is intended as a tool to provide advice to public servants and contribute to the identification, prevention and management of conflicts of interest faced in the work environment or outside it. Its specific objectives are:

- Establishing general guidelines to facilitate the understanding, identification and correct management of conflicts of interest that public servants of the State Public Administration should follow;
- Helping instil a culture of transparency, accountability, the rule of law, ethics and public integrity, by introducing tools to prevent conflicts of interest;
- Harmonising criteria to identify, prevent and manage conflicts of interest in the ministries and agencies of the State Public Administration.

Under this general framework and based on the Guidelines for Establishing and Operating Committees for Integrity, Ethical Practices and Good Government of the State Public Administration (*Lineamientos para la Integración y Funcionamiento de los Comités de Integridad, Prácticas Éticas y Buen Gobierno de la Administración Pública Estatal*), published on 26 June 2017 in the State Official Gazette, ISSSTESON approved its own integrity programme in December 2017 and established its Committee for Integrity, Ethical Practices and Good Government (*Comité de Integridad, Prácticas Éticas y Buen Gobierno*, or CIPEBG) on 8 June 2018. This committee's main objective is to strengthen the fundamental values and principles inspiring public servants to respect the law and reject corruption, and to promote conduct that dignifies and appreciates public service. The institute's General Director is the Committee's President, and it also includes a vice-president, a technical secretariat that serves as the liaison with the Ministry for Control and the representatives of the different administrative units. The committee's Annual Report 2018 reports a compliance index of 93.3% with its programme of work (see Box 4.7).

#### **Box 4.7. 2018 Report of ISSSTESON's Committee for Integrity, Ethical Practices and Good Government**

The committee's report for 2018 states that 14 of the 15 activities anticipated in the Annual Programme of Work were carried out, although training staff on ethics and values is still pending. It also documents a survey assessing the knowledge and implementation of the principles and commitments established under the Integrity Programme. The survey was sent via e-mail to selected staff to be applied in the medical units of Guaymas, Nogales and Ciudad Obregón. It was also directly applied in the headquarters and the Hermosillo hospital, for a total of 161 participants.

The survey shows that 70% of the ISSSTESON workers surveyed are aware of the institute's Code of Ethics and Conduct, but that only 43% can identify its contents. In light of this finding, the report recommends a permanent effort to communicate the Integrity Programme, to train staff from all the administrative units and to have new recruits sign the Code of Ethics and Conduct during the hiring process.

The document notes that the Committee did not receive any reports of violation of the Code of Ethics and Conduct during the period analysed.

Source: Produced by the OECD Secretariat with information provided by ISSSTESON.

As part of ISSSTESON's Integrity Programme, it published its own Code of Ethics and Conduct and Integrity Rules (*Código de Ética y Conducta y Reglas de Integridad del ISSSTESON*) in August 2017 (see Box 4.8). This follows the code and rules applicable to all state public officials, and although some

guidelines directly apply to the public procurement function, ISSSTESON could complement its efforts with an integrity framework tailored specifically for the procurement workforce.

#### **Box 4.8. The Code of Ethics and Conduct and Integrity Rules for ISSSTESON employees**

This code applies to all public servants working in ISSSTESON headquarters, hospitals, pharmacies, warehouses and modules. It is organised into several sections:

- Ethical principles for public servants: mission, vision and quality policy of the institute.
- Code of Ethics: collaboration, connectivity, efficiency and results, honesty, integrity, rule of law, gender equality, accountability, respect, service, sustainability and transparency.
- Values and conduct (administrative offices): empathy; honesty; responsibility and equality; leadership and innovation; commitment and integrity; unity and congruence; and transparency, impartiality and rule of law.
- Values and conduct (medical centres, hospitals, clinics and modules): empathy; honesty; responsibility and equality; leadership and innovation; commitment and integrity; unity and congruence; and transparency, impartiality, and rule of law.
- Integrity rules: public behaviour; knowledge of the regulatory framework and its application; exercise of duties; use and allocation of material, human and financial resources; public information; public procurement, licences, permits, authorisations and concessions; relationships with work colleagues; relationship with ministries and agencies of the public administration; society engagement; co-operation for integrity; and conflicts of interest.

Source: ISSSTESON (2017), *Código de Ética y Conducta y Reglas de Integridad*, Hermosillo.  
<http://www.isssteson.gob.mx/index.php/codigoetica>, accessed on 2 May 2019.

Given the general framework and ISSSTESON's own Code of Ethics, and taking into account the rules of action established in the Law on Acquisitions and the Law of Public Works of the State of Sonora (*Ley de Obras Públicas del Estado de Sonora*), ISSSTESON should develop a specific Code of Conduct and specific guidance for procurement officials. This should conform with the legal provisions of the Anti-Corruption Law in Public Procurement and should also ensure that specific provisions for public procurement are included in the codes developed by hospitals and clinics. A Code of Conduct for procurement officials would have the advantage of being tailored to the specific risks of the procurement cycle in the health sector.

The Internal Regulations of ISSSTESON (Article 18, Fraction XX) grants the UPII authority to co-ordinate and lead direct actions for the promotion of values in the institute; elaborate in collaboration with the administrative units and deconcentrated bodies the corresponding Ethics and Conduct Codes for the authorisation of the Ministry for Control; and keep them updated and co-ordinate their dissemination with the support of the Social Communication Liaison Unit.

With the participation of public officials and stakeholders, ISSSTESON's UPII should design a Code of Conduct or Ethics to emphasise the specific conduct expected in public procurement and prioritising the values to be observed. This would guide the conduct of procurement practitioners when they face ethical dilemmas. This unit should also set up an annual programme to train public procurement officials and regular and potential suppliers, focusing on communicating the priority values and identifying conflicts of interest and mechanisms for reporting corruption.

### Box 4.9. Codes of conduct and codes of ethics

#### Conceptual issues

A distinction is often made between a “code of conduct” and a “code of ethics”. This distinction usually refers to both the contents of the code and the way in which it is enforced.

The “**code of conduct**” is a typical instrument of a rules-based approach to integrity management. It starts from the assumption that people are essentially self-interested and that they will only behave with integrity when this coincides with their self-interest. Hence, a preferably detailed code of conduct will describe, as specifically and unambiguously as possible, the behaviour that is expected. Such a code of conduct will also establish strict procedures to enforce the code: systematic monitoring and strict punishment of those who break the rules.

A “**code of ethics**”, on the other hand, is rooted in a values-based approach. It focuses on general values, rather than on specific guidelines for behaviour, thus putting more trust in the organisational members’ capacities for independent moral reasoning. Rather than telling them what to do, the organisation provides its members with a general framework that identifies the general values and provides support, training and coaching for the application of these values in everyday real-life situations.

As for choosing between the two types of codes, the recommendation is to situate this in the broader **question of the balance between rules-based and values-based approaches**. This should also take into consideration the external context. If a detailed and well-developed legal framework already exists outside the organisation and is applicable to it, one could argue that there is no need for detailed rules-based codes within the organisation.

Source: (OECD, 2009<sup>[16]</sup>), *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, GOV/PGC/GF(2009), [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF\(2009\)1](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF(2009)1).

The UPII should guarantee the creation of rules-based and values-based codes on the public procurement cycle, and where applicable, phase by phase, on the following themes:

- prioritised values for public procurement, whenever possible, by phase of the procurement cycle
- conduct expected during the public procurement cycle
- conflict-of-interest policy, in line with the Guide, to identify and prevent conflicts of interest in the State Public Administration, issued by the Ministry for Control
- gifts and gratuities policy
- post-employment arrangements.

In drafting the Code of Ethics and Conduct of Procurement officials, ISSSTESON should consider the new national and state anti-corruption legal frameworks and the statements regarding values, conflicts of interest, gifts and gratuities and post-employment arrangements, especially Mexico’s General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, or LGRA) and the State Responsibilities Law (*Ley Estatal de Responsabilidades*).

### Box 4.10. Canada's Government Code of Conduct for Procurement

The Code of Conduct for Procurement supports the Government of Canada in fulfilling its commitment to reform procurement, advancing greater transparency, accountability and the highest standards of ethical conduct. The Code consolidates the government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations of its employees and suppliers. The Code of Conduct for Procurement applies to all transactions entered into by Public Works and Government Services of Canada, either for their own procurement or on behalf of a client department. The Code of Conduct for Procurement gives guidance regarding *i*) responsibilities of public servants, *ii*) conflict-of-interest measures, *iii*) post-employment measures, *iv*) vendors' responsibility regarding solicitation and contract provisions, *v*) vendors' duty to respect the responsibilities of public servants, *vi*) vendor complaints and procedural safeguards, and *vii*) sanctions.

#### Conflict-of-interest measures

Public servants:

- are required to evaluate their assets and liabilities, taking into consideration the nature of their official duties and the characteristics of their assets. If there is any real, apparent or potential conflict of interest between the execution of their official duties and their assets or liabilities, they are to report this to their deputy head in a timely manner;
- may engage in employment outside the public service and take part in outside activities unless the employment or activities are likely to give rise to a real, apparent or potential conflict of interest or would undermine the impartiality of the public service or the objectivity of the public servant;
- considering involvement in political activity, should seek the advice of their manager, a designated departmental official, the Public Service Commission (PSC) or a human resources adviser before acting;
- are not to accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their official duties and responsibilities or that may place them under obligation to the donor. This includes activities such as free or discounted admission to sporting and cultural events, travel or conferences;
- may not solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or organisation in the private sector who has dealings with the government (with the exception of fundraising for such officially supported activities as the Government of Canada Workplace Charitable Campaign). When fundraising for such official activities, public servants should ensure that they have prior written authorisation from their deputy head in order to solicit donations, prizes or contributions in kind from external organisations or individuals;
- are responsible for demonstrating objectivity and impartiality in the exercise of their duties and in their decision-making, whether related to staffing, financial awards or penalties to external parties, transfer payments, programme operations or any other exercise of responsibility.

#### Post-employment measures

All public servants have a responsibility to minimise the possibility of real, apparent or potential conflict of interest between their most recent responsibilities within the federal public service and their subsequent employment outside the public service. Former public servants in executive positions or positions at risk for post-employment conflict of interest, for a period of one year after leaving office, shall not:



- accept appointment to a board of directors of, or employment with, private entities with which they had significant official dealings during the period of one year immediately prior to the termination of their service. The official dealings in question may either be directly on the part of the public servant or through their subordinates;
- make representations on behalf of persons or entities outside the public service to any government department or organisation with which they had significant official dealings during the period of one year immediately prior to the termination of their service. The official dealings in question may either be directly on the part of the public servant or through their subordinates;
- give advice to their clients or employer using information that is not publicly available concerning the programmes or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

Source: Adapted from (OECD, 2016<sup>[17]</sup>), with information from Public Works and Government Services Canada (2014), "Context and purpose of the Code", [www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html](http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html), accessed on 21 March 2016.

### 4.3. Involving stakeholders in the procurement system to increase transparency and integrity

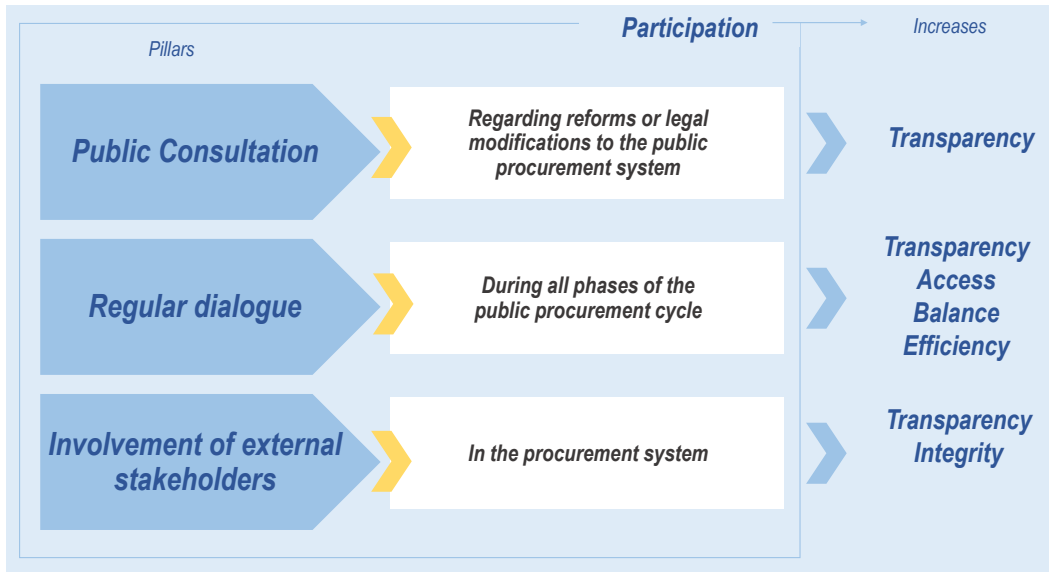
Stakeholder participation is crucial for the success of procurement policies and for enhancing their efficiency, transparency, integrity and accountability. Creating a level playing field where suppliers can compete for government contracts, and supporting citizen involvement in oversight of government operations requires proactive and adequate disclosure of information throughout the procurement cycle (OECD, 2009<sup>[18]</sup>).

Stakeholder engagement in procurement procedures helps create a level playing field for suppliers, encouraging competition in public procurement and opening channels for the participation of civil society (OECD, 2018<sup>[19]</sup>). Equally, opportunities for direct involvement of relevant external stakeholders in the procurement system increases transparency and reduces the risk of corruption in public procurement. Scrutiny of procurement operations by external stakeholders (i.e. civil society organisations, the media, business organisations and the wider public) creates positive incentives for public officials and complements government accountability and control mechanisms.

In this sense, the OECD 2015 *Recommendation of the Council on Public Procurement* establishes three pillars to encourage transparent and effective stakeholder participation:

- developing and following a standard process when formulating changes to the public procurement system;
- engaging in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to ensure a correct understanding of markets;
- providing opportunities for direct involvement of relevant external stakeholders in the procurement system, while ensuring an adequate level of scrutiny.

**Figure 4.8. Pillars of participation of the public procurement system**



Source: (OECD, 2009<sup>[20]</sup>), Public Procurement Toolbox, <http://www.oecd.org/governance/procurement/toolbox/>, accessed on 21 March 2018.

#### **4.3.1. Public consultation on reforms in the public procurement system**

The experience of OECD member countries indicates that open and inclusive policy making can help governments better understand and respond to the changing needs of society, to use ideas and resources from civil society and business to confront complex policy challenges, to lower costs and improve policy outcomes, and to reduce administrative burdens on policy implementation and service delivery (OECD, 2017<sup>[21]</sup>).

One tool for encouraging participation in procurement is to organise public consultations about any reforms to the procurement system. Such consultations should be conducted in a transparent, inclusive fashion, soliciting the participation of business associations, civil society organisations, regular and potential suppliers, procurement officials, as well as citizens and enterprises in general.

Engaging the private sector and civil society in any proposed changes to the public procurement system aims to align the expectations and understanding of both suppliers and procurement officials.

The standard process for formulating changes in public procurement should allow for public consultation and, at the same time, set up the rules for how to conduct such consultations. These should include details of how the consultations should be organised, which channels can be used (for both active and passive consultation), how far-reaching the consultation process should be, and how to disclose the comments received and the answers given by the procurement authority, as well as the outcome of the consultation and the justification for the decisions taken.

### Box 4.11. Prerequisites for a good consultation process

The Australian Productivity Commission has identified certain preconditions for a good consultation process:

1. Consultation objectives need to be set. Clear objectives help identify the target audience and select the right consultation method to assist evaluation.
2. The stakeholders need to be clearly identified. In particular, the target audience may be broader than those directly affected or those who have a known interest.
3. Other departments and agencies may need to be involved.
4. Methods of consultation need to be determined.
5. The nature and form of questions included in written consultation documents need to be considered.
6. Consultation risks need to be managed. Actions may need to be taken to mitigate risks such as low participation rates and poor presentation of complex issues that may be too difficult to understand.

Source: Productivity Commission (2004), *Regulation and its Review 2003-04*, Annual Report Series, Canberra, on (OECD, 2008, p. 17<sup>[22]</sup>), *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers*, <http://www.oecd.org/gov/regulatory-policy/buildinganinstitutionalframeworkforregulatoryimpactanalysisriaguidanceforpolicymakers.htm>, accessed on 21 March 2018.

The procurement authorities should consider (OECD, 2009<sup>[18]</sup>):

- establishing rules of public consultation in the standard process of formulating changes to the public procurement system,
- promoting public consultation,
- inviting comments from the private sector and civil society,
- taking into account the input, comments and feedback received, if relevant and applicable,
- publishing the results of the consultation phase,
- explaining the decisions taken,
- designing programmes to build the capacity of relevant stakeholders to understand changes to the public procurement system.

The State of Sonora has a Regulatory Improvement Law (*Ley de Mejora Regulatoria para el Estado de Sonora*), which establishes a procedure for the review, improvement and citizen participation in the preparation of the regulatory framework in agencies and entities of the state's public administration. The regulatory procedure mandates state regulators to draft a Regulatory Impact Analysis (RIA) for each regulatory proposal issued, including the following elements:

- the reasons for issuing the new regulation;
- the alternatives considered, the reasons for rejecting them and the solution proposed;
- the potential risks of not issuing the regulatory proposal;
- the legal basis of the regulatory proposal, the regulatory background and the coherence of the regulatory proposal with the legal system in force;
- the costs and benefits of the regulatory proposal;
- identification and description of the formalities created by the regulatory proposal;
- the resources and mechanisms to ensure compliance with the regulation.

The State of Sonora's Commission for Regulatory Improvement (*Comisión de Mejora Regulatoria de Sonora*, or COMERS) is charged with implementing a regulatory improvement process like the one in force at the federal level in Mexico. Under its Regulatory Improvement Law, COMERS is to publish the RIA and the regulatory proposals in online forums, as soon as they are received by the Commission, so stakeholders can send their comments, suggestions and observations. As in the federal regulatory improvement process, if regulatory proposals do not involve compliance costs or delays for citizens and enterprises, the agencies and entities of the State Public Administration are not obliged to draft an RIA.

#### Box 4.12. Mexico's RIA process, regulatory consultation and public procurement issues

In Mexico at the federal level, regulatory consultation (i.e. consulting stakeholders on the contents of draft regulations) is strongly influenced by the requirements formally established in two separate pieces of legislation. The General Law on Regulatory Reform (*Ley General de Mejora Regulatoria*) sets out specific public consultation requirements as an integral part of the Regulatory Impact Assessment (RIA) process applicable in drafting primary and secondary regulations. Second, transparency legislation has established more general consultation requirements independent of the RIA process. In particular, this law requires all regulatory proposals to be published on the website of the relevant ministry or regulatory agency.

The RIA process provides important opportunities for public consultation, as well as safeguards to ensure that comments from stakeholders receive the necessary attention. The National Commission for Regulatory Improvement (*Comisión Nacional de Mejora Regulatoria*, or CONAMER) publishes all draft RIAs as soon as they are received, as well as its own comments on the draft RIA and all input received from stakeholders. This generalised publication of a wide range of RIA-related documentation is good practice among OECD countries. Publication of CONAMER's response to the draft RIA, notably, provides stakeholders with additional information that can potentially allow them to participate more effectively in the process. For example, by highlighting weaknesses in the analysis, this material may help stakeholders identify data or other materials they possess that could be incorporated into the analysis to enhance its quality. More generally, the publication of all stakeholder comments on the proposal provides the basis for a detailed dialogue on its merits among interested parties.

The draft RIA is required to be open for consultation for at least 20 working days. In practice, however, much longer consultation periods appear to be the norm. This reflects, in part, the time CONAMER requires to undertake its initial analysis of the RIA document and publish its response. The process thus offers extensive opportunities for stakeholder input.

It is always possible that procurement-related regulations impose compliance costs only on government institutions, and not on private individuals. In such a case, exceptions may be requested. For example, CONAMER exempted the State Employees' Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, or ISSSTE) Procurement Guidelines (also known as POBALINES) from the RIA process in October 2011 on this basis.

Source: (OECD, 2018<sup>[19]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264190191-en>.

ISSSTESON has no standardised procedure for revising its rules on procurement. The State of Sonora has a Regulatory Improvement Unit, COMERS, but ISSSTESON does not appear to comply with the requirement to review and analyse regulatory proposals or use other tools for regulatory improvement, such as public consultation and RIA. It does not solicit proposals or comments from civil society and business associations to improve the public procurement system when amending regulations or issuing new ones.

As a good practice, ISSSTESON should develop an internal policy to subject procurement-related rules to the regulatory quality requirements and controls established in the Regulatory Improvement Law of the State of Sonora, which are not necessarily applied to ISSSTESON at present.

ISSSTESON would benefit from setting up an internal protocol or procedure to subject itself systematically to COMERS' regulatory impact process when developing new procurement rules or modifying the existing ones, even in cases where there are no compliance costs for citizens and enterprises. ISSSTESON could benefit from COMERS' expertise and by further public consultation, letting stakeholders access more information about procurement regulatory proposals and encouraging them to engage more actively in the process.

If COMERS does not have the capacity to receive and process ISSSTESON's public procurement regulatory proposals, ISSSTESON would need to establish and regulate an internal standard process (regulatory impact process) to follow each time it revises one or more elements of its public procurement system. The standard process should include an early regulatory public consultation process for all the stakeholders (internal and external, foreign and domestic), formalising the policy for letting stakeholders comment on draft procurement regulations. ISSSTESON should also formally disclose to all its stakeholders, and publish online, both the standard process and the rules for early regulatory consultation.

#### Box 4.13. Public consultation in Canada

In 2009, the government of Canada issued a *Guide for Effective Regulatory Consultations*. The guidelines give information on the components of effective regulatory consultation, with checklists, on:

- an ongoing, constructive and professional relationship with stakeholders
- a consultation plan
  - statement of purpose and objectives
  - public environment analysis
  - developing realistic timelines
  - internal and interdepartmental co-ordination
  - selecting consultation tools
  - selecting participants
  - effective budgeting
  - ongoing evaluation, end-of-process evaluation and documentation
  - feedback/follow-up
- conducting the consultations
  - communicating neutral, relevant and timely information
  - ensuring that officials have the necessary skills.

Source: Treasury Board Secretariat (2009), *Guidelines for Effective Regulatory Consultations*, [www.tbs-sct.gc.ca/rtrap-parfa/erc-cer/erc-cer01-eng.asp](http://www.tbs-sct.gc.ca/rtrap-parfa/erc-cer/erc-cer01-eng.asp) (consulted on 20 March 2015), on (OECD, 2015<sup>[23]</sup>), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

ISSSTESON could consider the following questions in designing its internal standard process:

- When should it apply the internal standard process to consult with external stakeholders about reforms to procurement regulations? For instance, whenever new procurement rules are issued or if the existing ones are reformed by ISSSTESON.
- Who is in charge of the internal standard process? It might be advisable to designate ISSSTESON's Institutional Planning and Innovation Unit for this role.
- What kind of public procurement rules would be subject to the standard process? For instance, would all rules relative to procurement that will be issued, or only the amended procurement rules with compliance costs for enterprises or citizens?
- What kind of analysis should be drawn up to present the procurement regulatory proposals? For instance, ISSSTESON could adopt the structure proposed by OECD for the RIA (Box 4.14).
- Where and when should the procurement regulatory proposals and their RIA or analysis be published? For instance, on ISSSTESON's website, or on a special website created for the standard process?
- How long should the regulatory public consultation last? Most OECD countries guarantee minimum periods of public consultation of more than four weeks (OECD, 2015<sup>[23]</sup>).
- Through which channel(s) should stakeholders send their comments? Online or face to face, including information and communications technology (ICT) tools used for consultation: for example, by email, on a government website, in virtual discussions or on social media) as well as face-to-face consultation? ISSSTESON could use such means as advisory groups or preparatory committees; meetings for formal and informal consultation with selected groups; and focus groups.
- How and when will ISSSTESON give feedback on comments received? It could consider establishing an obligation to produce a report on the regulatory public consultation processes.
- What should the report of regulatory public consultation include? Ideally, it would include feedback on the comments received, indicating the input considered, explanations of the option(s) chosen, and if applicable, the new version of the regulatory proposal.
- Where could stakeholders find the report on regulatory public consultation? This might either be on ISSSTESON's website or on a special website created for the standard process.
- How will the institute publicise the new regulation(s) issued and the date of entry into force? It would be advisable for ISSSTESON to include in the internal standard process an obligation to design a communications strategy for the new procurement regulation that is to be issued or amended, to inform the relevant stakeholders. The strategy could include programmes to build the capacity of relevant stakeholders to understand changes in the public procurement system.

### Box 4.14. Elements of RIA in OECD countries

#### Constitutive elements

**I.** Definition of the policy context and objectives, in particular the systematic identification of the problem that provides the basis for action.

**II.** Identification and definition of all possible regulatory and non-regulatory options that will achieve the policy objective.

**III.** Identification and quantification of the impact of the options considered, including costs, benefits and distributional effects.

**IV.** The development of enforcement and compliance strategies for each option, including an evaluation of their effectiveness and efficiency.

**V.** The development of monitoring mechanisms to evaluate the success of the policy proposal and to feed that information into the development of future regulatory responses.

**VI.** Public consultation incorporated systematically, to give all stakeholders the chance to participate in the regulatory process. This provides important information on the costs and benefits of alternatives, including their effectiveness.

#### Focusing the analysis

Additionally, RIA could include specific analyses on:

- risk assessment
- competition assessment
- environmental impact
- market openness.

Source: (OECD, 2008<sup>[22]</sup>), *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264050013-en>.

In addition to setting up a RIA process for public procurement issues, ISSSTESON could consider a programme to reduce red tape and streamline administrative burdens in public procurement procedure. The aim would be to increase participation of suppliers and small and medium enterprises (SMEs) in public procurement. The institute could call on all suppliers involved in one or more tenders in the recent past, and even those that were not awarded, with the goal of consulting them on the key problems faced in the tender process, and specifically, about the opportunities for improving procurement formalities.

#### **Box 4.15. Spain's simplification of the public procurement procedure: Self-Declaration**

Through the Act 14/2013 for the support and internationalisation of entrepreneurs, (which modified the Royal Legislative Decree 3/2011, of Contracts of the Public Sector), Spain introduced measures to support and facilitate participation of SMEs in public procurement.

In addition to several changes in the legal regime of classification, and to expand the thresholds requiring pre-classification, Act 14/2013 added a new paragraph to Article 146 of the Royal Legislative Decree 3/2011, in Contracts of the Public Sector. This allows contracting entities to accept a self-declaration from potential suppliers, rather than requiring them to submit a series of documents certifying the legal, social, and fiscal situation of a SME willing to participate in public procurement procedures. This self-declaration will always suffice in contracts for projects of less than EUR 1 million and in provision and service contracts of less than EUR 90 000.

The tenderer chosen for award of the contract is, however, required to provide the relevant evidence, and contracting authorities are not permitted to conclude contracts with bidders that are unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any point, if they consider this to be necessary to respect the proper conduct of the procedure.

Although these measures have been adopted as targets by national authorities in Spain, they comply with the new European Union Directives on Public Procurement: "Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists of administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through use of a European Single Procurement Document (ESPD) consisting of an updated self-declaration, could result in considerable simplification, for the benefit of both contracting authorities and economic operators."

Source: Spain Ministry of Finance and Public Administrations on (OECD, 2015<sup>[24]</sup>), "Compendium of Good Practices for Integrity in Public Procurement", GOV/PGC/ETH(2014)2/REV1.

#### **4.3.2. Encouraging dialogue between procurement authorities, suppliers and business groups**

Another way to encourage stakeholders (internal and external) to participate in the public procurement system is transparent and regular dialogue between procurement authorities and suppliers and business associations. Dialogue with the relevant stakeholders adds a level of scrutiny that can help identify problems (bottlenecks in processes and possible risks of corruption and collusion) and opportunities for improvement in the procurement process. It can also help improve tender design.

Procurement authorities should encourage such dialogue to give potential suppliers a better understanding of their needs and give procurement officials information on market capabilities that can help them develop more realistic and effective tender specifications (Table 4.4). Such interactions should also ensure that foreign companies participating in tenders receive transparent and effective information. These interactions between potential suppliers and procurement officials should be subject to appropriate fairness, transparency and integrity safeguards (OECD, 2009<sup>[18]</sup>).



**Table 4.4. Objectives and basic actions for regular dialogues with suppliers**

Objective	Basic actions
Objective 1. Give potential suppliers a better understanding of the procurement authority's needs	<ul style="list-style-type: none"> <li>• Offer potential suppliers the chance to seek clarification before tendering, especially for high-value procurements (i.e. the disclosure of information should be carefully considered, taking into account possible risks of collusion between private sector actors)</li> <li>• Provide prompt responses to potential suppliers' questions for clarification, and communicate them consistently, to create a level playing field (time frames should be defined in the legal framework)</li> <li>• Debrief unsuccessful bidders so that they understand why their proposals did not match others' tenders, without disclosing commercially sensitive information about other tenders,</li> <li>• Promote regular dialogue between both parties in the contract management phase, so problems can be quickly identified and resolved</li> <li>• Adapt the interactions to ensure that foreign companies participating in tenders receive transparent and effective information (in terms of language and timeliness),</li> <li>• Establish regular contact with business associations.</li> </ul>
Objective 2. Ensure that procurement authorities have a correct understanding of markets, so they can develop more realistic and effective tender specifications	<ul style="list-style-type: none"> <li>• Conduct effective market research, regular market surveys and strategic sourcing on all tenders (i.e. collect relevant information on potential suppliers, products and prevailing prices for goods and services),</li> <li>• Discuss economic competition</li> <li>• Use (early) engagement mechanisms with suppliers, such as Requests for Information (RFIs) and one-to-one consultations with suppliers, and hold industry/supplier days, information discussions, competitive dialogues (when necessary), etc.</li> </ul>

Source: Adapted from (OECD, 2009<sup>[18]</sup>), "Public Procurement Toolbox, Participation"  
<http://www.oecd.org/governance/procurement/toolbox/principlestools/participation/>, accessed on 22 March 2018.

Several effective tools can be used to manage dialogues with relevant stakeholders (internal and external), which can be structured depending on the phase of the procurement cycle (Table 4.5). Stakeholders can be involved at any point of the procurement cycle, as long as the procurement authorities conduct themselves with high standards of integrity (fairness, openness, transparency, equal access and treatment, non-discrimination, providing the same information to all suppliers) and maintain records of any discussions, lists of attendees and information shared, as well as questions and answers.

In the pre-tendering phase, it is advisable for procurement authorities to organise capacity-building workshops on the legal framework of public procurement, the anti-corruption system and potential penalties. Specialised training could be organised to communicate to potential suppliers the purchasing needs (for instance, the annual procurement programme), as well as tips and practical sessions on how to elaborate bid proposals, among other themes that suppliers request and consider necessary.

It would be advisable for ISSSTESON to organise discussions about draft calls for tender, to solicit relevant input from suppliers to improve tender documents and develop effective tender specifications. It would also be beneficial to establish supplier training desks (either physical or online) to provide assistance to suppliers.

At the same time, and with the aim of obtaining information from the market, procurement authorities could introduce such activities as: RFIs, inviting suppliers to "show and tell" events, and organising industry days. This would encourage buyers to discuss their needs and allow suppliers or industry representatives to offer information about their products or services, as well as to explain how the industry works, analyse possible solutions, and identify suppliers able to offer the goods and services that procurement authorities need.

In the tendering phase, the procurement authority could organise one press conference with industry and external stakeholders to present the tender and another to communicate results. As noted earlier, the participation of the media and relevant external stakeholders enhances the level of scrutiny and promotes a level playing field, which in turn increases transparency and accountability. Clarification meetings with all potential suppliers are desirable. The number of meetings needed will depend on the size of the tender and the technical specifications of the purchase, but at least one is called for. Suppliers who are interested

in submitting a bid or who have submitted an expression of interest can participate in clarification meetings. In the same vein, procurement authorities could hold a question-and-answer session or send a list of all questions and their answers to all suppliers.

The Law on Public Works and Related Services of the State of Sonora (*Ley de Obras Públicas y Servicios Relacionados con las Mismas para el Estado de Sonora*) establishes in Articles 44 and 46 that the call for tenders should include the date, time and place where the clarification meeting will take place. Although the Law on Acquisitions does not explicitly include an obligation to hold a clarification meeting, ISSSTESON follows as good practice the requirement established in the Law on Public Works and usually includes a clarification meeting in its calls for tender.

**Table 4.5. Tools to increase stakeholder participation in the procurement cycle**

Phase of public procurement cycle	Tools for promoting a constructive dialogue
PHASE 1 Pre-tendering phase	<ul style="list-style-type: none"> <li>• Publication of forward procurement plan (i.e. Annual Procurement Plan)</li> <li>• “Meet the buyer” events for interested suppliers</li> <li>• Capacity-building workshops on the legal framework, to communicate purchase needs, including tips and practical sessions on how to elaborate bid proposals.</li> <li>• Public consultation on draft calls for tender</li> <li>• Supplier training desks to assist suppliers</li> <li>• One-to-one consultations with suppliers</li> <li>• Pre-tender briefings for suppliers interested in a contract opportunity</li> <li>• RFIs</li> <li>• “Show and tell” meetings to allow suppliers to explain their proposed solutions</li> <li>• Industry days</li> </ul>
PHASE 2 Tendering phase	<ul style="list-style-type: none"> <li>• Press conference with industry and external stakeholders to launch the tender</li> <li>• Clarification meetings with all potential suppliers</li> <li>• Question-and-answer sessions, or lists of questions and answers sent to all suppliers</li> <li>• Press conference with industry and external stakeholders to communicate results</li> </ul>
PHASE 3 Post-award phase	<ul style="list-style-type: none"> <li>• Communication with suppliers to inform them who has been successful</li> <li>• Publication of contract award notice</li> <li>• Debriefings with unsuccessful bidders to provide feedback</li> <li>• Clarification meetings with suppliers awarded a contract</li> <li>• Opinion surveys of tenders</li> </ul>

Source: Adapted from (New Zealand Government, 2015<sup>[25]</sup>), *Constructive Market Engagement: A Guide to Engaging Effectively with Suppliers*, <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-constructive-market-engagement.pdf>, accessed on 22 March 2018.

In the post-award phase, it is desirable to let suppliers know who has been successful and publish a contract award notice. Procurement authorities can also hold debriefings with unsuccessful bidders to address their concerns and receive feedback on the tender process. Debriefings are also useful to let suppliers know why their proposals were unsuccessful, to help them develop capacity and lend transparency and trust to the process. To manage contracts, the procurement authority could organise clarification meetings with the supplier awarded a contract. These meetings are helpful to explain the contract terms, defined times, organisation mechanisms, and so on. Opinion surveys on tenders are also a good way of obtaining feedback on the process and identifying opportunity areas for future tenders.

Verbal debriefings and meetings can improve suppliers’ relationship with procurement authorities and the quality of their offers, while giving them valuable insights. They must, however, be used judiciously, under clear guidelines, to reduce any risks and costs associated with breaches of integrity. To increase the benefit of discussions, and to mitigate potential risk, procurement authorities should develop guidelines or protocols to establish a clear framework that governs the process. The amount and type of information dispensed will depend on the circumstances of the contract and the market situation (OECD, 2018<sup>[19]</sup>).

The procurement authority should ensure that no competitive advantage, for whatever reason, is afforded to any suppliers. Special attention should be paid when sharing any information, at any point, to ensure that all suppliers receive the information. For example, if a tender is anticipated, particular care should be taken in interactions with external stakeholders and suppliers.

#### Box 4.16. Policy of New Zealand's procurement authority on asking suppliers for information

Pre-procurement	After publishing a notice of procurement
<p>At the pre-procurement stage, the procurement authority will probably be conducting basic market research and analysis to inform the procurement plan. This may be informal, but should nevertheless be planned. The procurement authority may want to ascertain:</p> <ul style="list-style-type: none"> <li>• the number of suppliers and the total size of the market</li> <li>• key suppliers and their market shares (supply)</li> <li>• the number of buyers and their influence on the market (demand)</li> <li>• the degree of competition</li> <li>• current prices, pricing methods and other factors influencing price</li> <li>• market trends and regional differences</li> <li>• the availability of alternative goods and services (product differentiation)</li> <li>• any current or potential developments, innovation or new technology in the market</li> <li>• the nature and quality of the supply chain(s)</li> <li>• supplier positioning – the level of vulnerability buyers would be exposed to if a particular supplier was to fail.</li> </ul>	<p>Once the procurement authority enters into a formal tender process, it must ensure that the engagement with suppliers is well planned, properly managed and fully recorded. There are increased risks because it has now embarked on a formal process.</p> <p>At this stage, the procurement authority may want to engage with suppliers to:</p> <ul style="list-style-type: none"> <li>• explain in detail its needs and specify its requirements</li> <li>• describe the results it wants to achieve and what success would look like</li> <li>• allow suppliers to ask questions</li> <li>• encourage suppliers to identify improved efficiencies in the design of the product or delivery of the service</li> <li>• seek opportunities for suppliers to develop innovative solutions</li> <li>• give suppliers an opportunity to fine-tune their solution to best meet needs.</li> </ul>

Source: (New Zealand Government, 2015<sup>[25]</sup>), *Constructive Market Engagement: A Guide to Engaging Effectively with Suppliers*, <http://www.procurement.govt.nz/procurement/pdf-library/agencies/guides-and-tools/Constructive-Market-Engagement.pdf>, accessed on 22 March 2018.

ISSSTESON has no mechanisms of participation for stakeholders to provide comments, information and ideas for improving tenders. The only such mechanism noted was the clarification meeting that ISSSTESON is mandated to conduct as part of the procurement procedure mandated by the Law on Public Works. In these meetings, suppliers can seek clarifications and ISSSTESON officials can obtain elements to correct and/or clarify the calls for tender. Clarification meetings are conducted in person and the participation of potential suppliers is optional, but they usually participate so their questions can be answered. Information on the meeting is uploaded to the e-procurement system, Compranet. At present, however, ISSSTESON has no systemic, regulated participation scheme for the entire public procurement cycle.

#### 4.3.3. ISSSTESON should introduce stakeholder participation at all phases of the procurement cycle

Meanwhile, ISSSTESON should develop protocols and a clear procurement framework to regulate precisely when each participation tool can be used and what kind of information can be shared, depending on the phase of the procurement cycle and the participation tools selected. ISSSTESON could identify the best channels for communicating with potential suppliers.

ISSSTESON does not at present have guidelines for elaborating draft tenders, other than what is mandated by law. Consequently, procurement practitioners usually rely on previous tenders or the experience and opinions of Sonora's Ministry for Control. Even though the ministry's mechanism of control must be maintained, ISSSTESON could develop guidelines to elaborate draft tenders with the aim of harmonising criteria and facilitating the work of procurement practitioners.

### Box 4.17. IMSS' Strategy to Increase Competition in Public Tenders

On 20 July 2017, IMSS launched the Strategy to Increase Competition in Public Tenders, which aims to facilitate the participation of the largest number of bidders in the market and to upgrade procurement conditions in terms of price and quality for IMSS.

The strategy is based on two pillars: *i)* strengthening the tender processes carried out by IMSS and *ii)* protocol for carrying out priority tenders.

The protocol establishes higher standards than those required by law for tenders that have been classified as a priority, using the following criteria:

- social impact: tenders with a high impact due to the type of goods or service purchased.
- adjustments in the call for tender: tenders whose terms have been adjusted relative to previous processes in order to increase participation.
- size: tenders exceeding MXN 500 million.

The protocol starts by identifying tender processes at risk of exposure to external pressure. The process of these tenders is public and involves stakeholders at every stage. The protocol consists of the following steps:

1. A meeting is organised with external stakeholders, including chambers of commerce and civil society organisations, two weeks before the publication of the call for tender. During these meetings, IMSS staff explains the tender process and, if it differs from previous processes, explains the reasons why.
2. The call for tender is published on CompraNet for ten working days.
3. A press conference is held on the day that the calls for tender are published and on the day of the contract award. These press conferences involve external stakeholders, such as chambers of commerce and civil society organisations.
4. Clarification meetings, opening of bids and the award event are broadcast on several platforms (IMSS' own website, Twitter and Facebook).

Source: (OECD, 2018<sup>[19]</sup>), *Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264190191-en>.

#### 4.3.4. Involvement of external stakeholders in the procurement system for ensuring scrutiny

To enhance public policies, trust in government is necessary to improve government relations with citizens. Consultation and active participation provide government with an informed basis for policy making. At the same time, they ensure more effective implementation, as citizens become better informed about the policies and are involved in their development. Involving citizens in public issues creates greater acceptance for the political outcomes, since when governments endorse openness, citizens tend to perceive them as worthy of their trust. Making governments more transparent and accountable enhances the basis for active citizenship, which in turn leads to a stronger democracy (OECD, 2001<sup>[26]</sup>).

(OECD, 2001<sup>[26]</sup>) defines active participation as the participation of citizens in policy discussions, for instance, by proposing policy options. At the same time, the responsibility for formulating policy and the final decision rests with the government. Engaging citizens in policy making involves an advanced two-way relationship between government and its citizens, based on the principle of partnership.

Given the risk of corruption in procurement operations, it is good practice for governments to enlist representatives of civil society, academics or end users in reviewing the integrity and functioning of the procurement process, as well as involving the media and the wider public through awareness-raising programmes and communication campaigns. The role played by oversight institutions such as Congress and the Supreme Audit Institution (at national or subnational level) through their reports is particularly helpful for enhancing public scrutiny of public procurement (OECD, 2009<sup>[27]</sup>).

Involving external stakeholders as observers of the procurement system, and introducing open-data strategies throughout the public procurement cycle encourages citizens' active participation in public procurement. The *OECD Recommendation of the Council on Public Procurement* (2015<sup>[41]</sup>) suggests introducing "direct social control" and "community monitoring" mechanisms to encourage citizens' active participation at key decision-making points. The following box shows some of the actions governments can take to involve external stakeholders.

#### **Box 4.18. Opportunities for direct involvement of external stakeholders**

##### **Encouraging involvement of relevant external stakeholders in the procurement system.**

- Implementing "direct social control" and "community monitoring" mechanisms that encourage the involvement of representatives from civil society, academics or end users as external observers of the procurement process or at key points, such as social witness programmes or public hearings;
- Facilitating access to data to the relevant external stakeholders;
- Providing clear channels to allow external observers to inform control authorities of potential irregularities or corruption, using an online complaint mechanism and digital means;
- Designing confidential and accessible complaint mechanisms to reduce potential intimidation of users, while allowing public officials to have access to feedback on public services and policies.

##### **Ensuring scrutiny to ensure confidentiality, equal treatment and other legal obligations in the procurement process.**

- Disclosing relevant information related to public procurement processes (records can be made available for civil society, media and the wider public), including on open data websites;
- Disseminating information on budgetary and financial execution (which facilitates civil society initiatives to track the management of public funds);
- Implementing an "open agenda" mechanism, under which procurement officials disclose to the private sector every meeting and the minutes of those meetings.

Source: (OECD, 2016<sup>[28]</sup>), *Checklist for supporting the implementation of OECD Recommendation of the Council on Public Procurement: Participation*, <http://www.oecd.org/governance/procurement/toolbox/search/Checklist%2005%20Participation.pdf>.

Procurement practitioners should take at least two steps: i) introduce "direct social control" mechanisms with legal and direct channels, to allow external observers to inform control authorities of potential irregularities or corruption; and ii) design confidential, accessible complaint mechanisms to reduce potential user intimidation (OECD, 2009<sup>[27]</sup>).

Direct social control mechanisms involve an independent expert monitor in the procurement process. This expert may be from civil society, the academy or an end user, or commercially contracted. The external independent expert usually has access to all documents and meetings on the procurement process.

Procurement authorities should set up strict criteria to define when direct social control mechanisms may be used, as well as for selecting an external observer. Criteria for determining when direct social control mechanisms should be used include the value (especially for high-value procurement), complexity and sensitivity of the procurement. External observers should be subject to systematic verification to confirm they have no conflicts of interest and are aware of restrictions and prohibitions on potential conflicts of interest, such as the handling of confidential information. Governments should support these initiatives by ensuring timely access to information and providing clear channels to allow the external observer to inform control authorities in the case of potential irregularities or corruption (OECD, 2009<sup>[27]</sup>).

At the federal level, Mexico has a successful mechanism of direct social control, “social witnesses”, documented in OECD integrity reviews (Box 4.19).

#### Box 4.19. Social witnesses in Mexico

Since 2009, Mexico has required that social witnesses participate at all stages of public tendering procedures above certain thresholds, to enhance public scrutiny. In 2017, the thresholds were MXN 400.2 million (approximately EUR 18.6 million) for goods and services and MXN 800.4 million (approximately EUR 37.2 million) for public works.

Social witnesses are non-government organisations and individuals selected by the Ministry of Public Administration (*Secretaría de la Función Pública*, or SFP). SFP keeps a registry of the approved social witnesses and evaluates their performance. Unsatisfactory performance can lead to their removal from the registry. If a federal entity requires the involvement of a social witness, it informs the SFP, which designates one from the registry.

Social witnesses’ functions include proposing strategies to improve transparency, impartiality and compliance with the legal framework, as well as reporting any illegal acts they may uncover. Their participation is required by law in public tenders worth more than MXN 5 million minimum daily wages applied in Mexico City, as well as in other cases where SFP deems it appropriate.

As of 16 August 2017, the SFP had registered 45 social witnesses in CompraNet for public procurement projects (up from five in 2005): seven civil society organisations and 38 individuals. SFP notes that the monitoring of the most relevant procurement processes of the federal government by social witnesses has so improved procurement procedures, thanks to their contributions and experience, that they have become a strategic element for ensuring the transparency and credibility of the procurement system. An OECD-World Bank Institute study found that the participation of social witnesses in the procurement processes of the Federal Electricity Commission (*Comisión Federal de Electricidad*, or CFE) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%.

At the end of a procurement process, a social witness issues a report containing comments and recommendations. These reports are published on CompraNet. However, social witnesses do not have the authority to stop a procurement process or revoke a decision. They may express opinions, but do not have any influence or right to make decisions. If social witnesses raise concerns over a possible corrupt action during a procurement process, their opinions and concerns are recorded in the report.

Source: Research based on information from (OECD, 2015<sup>[24]</sup>) *Compendium of Good Practices for Integrity in Public Procurement*, OECD, Paris, GOV/PGC/ETH(2014)2/REV1, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH\(2014\)2/REV1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2014)2/REV1&docLanguage=En), and (OECD, 2018<sup>[19]</sup>).

ISSSTESON encourages the participation of “Citizen Commissioners”, who are responsible for providing input on public perception of health services. Selected by Sonora’s Ministry for Control, they are typically

senior citizens and retirees who have worked for ISSSTESON and are familiar with its services. Citizen Commissioners receive compensation, and the result of their work is presented to senior officials.

Citizen Commissioners, however, do not participate in procurement processes. ISSSTESON, with Sonora's Ministry for Control, could thus consider adding new functions for Citizen Commissioners and adapting the mechanism to create social witnesses or external observers of public procurement processes.

To this end, ISSSTESON and the Ministry for Control should develop strict criteria to define when Citizen Commissioners may assist public procurement processes, and the profiles and requirements they need to participate. In addition to senior citizens and retirees (as end users), representatives of civil society and other experts might be invited to participate.

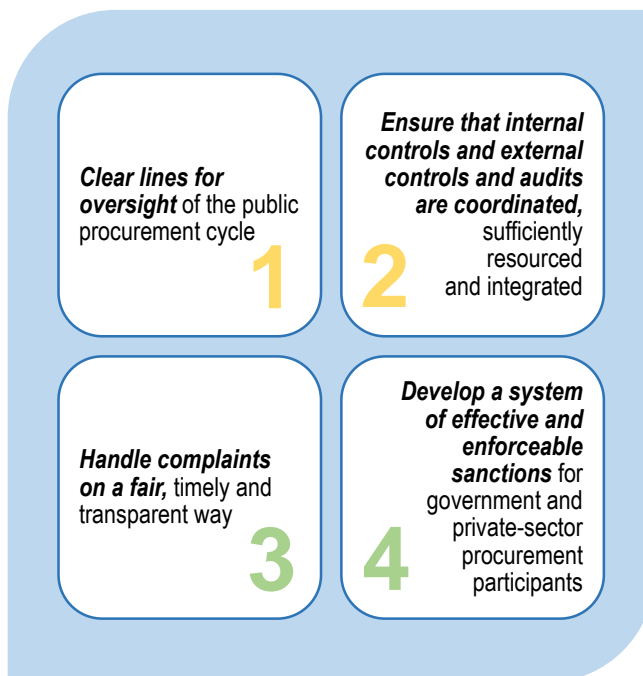
A local college, Kino University, has created an anti-corruption education programme, called "You can succeed without being corrupt" ("*Se puede alcanzar el éxito sin ser corrupto*"). This offers an opportunity to link academia and students with procurement practitioners and increase awareness of integrity in society at large.

Although civil society, the media and chambers of commerce have not yet engaged in oversight activities, ISSSTESON could invite them to participate in the review of open public procurement processes. This would enhance their awareness of integrity and increase their expertise in procurement.

#### 4.4. Developing an effective complaints and sanctions system

Accountability enhances good governance and integrity in public procurement. The OECD (2015<sup>[4]</sup>) *Recommendation of the Council on Public Procurement* establishes four key elements to encourage accountability in the public procurement cycle (Figure 4.9).

**Figure 4.9. Key elements to encourage accountability in the public procurement cycle**



Source: (OECD, 2009<sup>[29]</sup>), "Public Procurement Toolbox, Accountability Principle", <http://www.oecd.org/governance/procurement/toolbox/principlestools/accountability/>.

The first and second elements refer to developing a well-defined chain of responsibility by outlining the authority for approval (for instance approval of spending, sign-off and key stages) based on an appropriate segregation of duties, as well as the obligations for internal reporting. This chain of responsibility should be developed through a comprehensive control framework, through regulations, internal guidelines and in general, legal foundations.

To ensure appropriate oversight of procurement transactions (reception, bids opening, evaluation, award, contract management, compliance, effectiveness and efficiency of procurement operations), the control framework should consider four factors: *i)* internal controls, *ii)* independent internal audit function, *iii)* external audits and *iv)* competent oversight bodies. These should be integrated and co-ordinated to enhance procurement performance monitoring, avoid duplication of responsibilities and efforts, and harmonise and mutually reinforce internal and external audits.

To segregate duties, it is important to discuss and define at which level procurement practitioners should be authorised to grant approvals in the procurement cycle; and the responsibilities of public servants involved in public procurement. For example, policy makers should know who can be authorised to sign off, what kind of responsibilities are delegated, and which kind of internal reports will be done and for whom.

Efficiency and effectiveness will be facilitated if duties are properly defined and if a clear chain of authority and control is established for decision making. These elements are not enough, however, to maintain public confidence in procurement operations. To complete the accountability strategy, it is necessary to add two more elements: a comprehensive complaints system, including whistle-blower protection, and an effective and enforceable sanctions system.

ISSSTESON's public procurement rules on segregation of duties and the approval criteria of procurement awards appear confusing. On the fact-finding missions, ISSSTESON procurement practitioners expressed concern about the processes of control and audit. Although both technical and economic criteria are permissible criteria for consideration in awarding contracts, in practice, award decisions that do not select the lowest bid are questioned.

#### **4.4.1. ISSSTESON should develop guidelines for internal and external audits with the Ministry for Control**

ISSSTESON has a Supervisory and Audit Committee that is charged with analysing, integrating and co-ordinating internal control duties with the internal and external audit information. Every three months, ISSSTESON's General Director sends the committee a report on the financial management of the funds of the institute. It is also charged with obtaining from the Superior Institute of Audit and Control (*Instituto Superior de Auditoría y Fiscalización*, or ISAF), information related to the financial status and results of the audits, as well as the inspections and visits to ISSSTESON. The committee participates as a contributor of the Ministry for Control in the audit and review procedures conducted in ISSSTESON.

The Supervisory and Audit Committee (*Comité de Vigilancia y Fiscalización*) monitors the expenditure of the institute and the investment of its resources, and supervises their application. Members of the committee may not be members of ISSSTESON's Board of Directors or hold any position in the institute, with the exception of the General Director, who acts as Technical Secretariat of the Committee, with the right to speak but not to vote. Committee members perform their duties on an honorary basis.

Oversight of monitoring and evaluation activities of the institute is carried out by a Public Commissioner appointed by Sonora's Ministry for Control and an internal control body. Both bodies are part of ISSSTESON organisational structure, but they make technically independent decisions and opinions and are accountable to the Ministry for Control.



The Public Commissioner evaluates the general performance and functions of the institute, analyses ISSSTESON's expenditure efficiency and, in general, requests information and performs the acts required for the proper performance of its functions. The Public Commissioner participates in the Procurement Committee, as well as ISSSTESON's Board of Directors.

The Internal Control Body (*Órgano Interno de Control*, or OIC), which aims to support and enhance the management of the institute, carries out its functions in accordance with guidelines issued by Sonora's Ministry for Control. The OIC also collaborates with ISSSTESON in observation of other oversight entities. The OIC has a legal department in charge of complaints, a department in charge of audits and one more to carry out its administrative functions.

The OIC has an annual audit plan, which may be adapted if, during the year, certain complaints are received or if circumstances warrant a special review or supervision. The OIC works in two types of evaluations: performance and financial evaluations. Some of them may be *ex officio* and should be included in the annual audit plan and others may be requested and based on complaints from beneficiaries.

#### **4.4.2. ISSSTESON and its oversight bodies should agree on internal and external audit plans**

Agreement on the audit plans could benefit from publication on an online system that also publishes the audit reports and their results, principal auditing observations and recommendations, as well as the follow-up on implementing and enforcing the audit recommendations. This would enhance the institute's accountability.

ISSSTESON should be aware that complaints communicate useful information to the procurement system and can help identify challenges in the process, the barriers to entry and the risks of corruption that suppliers are experiencing. Complaints are a source of input for improving the procurement system.

#### Box 4.20. Online complaint form, New York State, Office of the Inspector General (US)

The Inspector General's Office is entrusted with the responsibility of ensuring that the state government, its employees and those who work with the state meet the highest standards of honesty, accountability and efficiency.

To report allegations of misconduct in the state government, the office has created an online complaint form designed to provide as much information as possible on:

- Who is engaged in misconduct?
- Which state agency is involved?
- What wrongdoing occurred?
- When did it happen?
- Are there witnesses to the misconduct that we can contact?
- What laws or agency regulations have been violated?

The form also asks for information about complainants, who may request confidentiality. Complainants can provide information about the documentation in their possession that relates to the complaint. The form is available in other six languages, including French, Spanish, Chinese and Russian.

Source: (OECD, 2015<sup>[30]</sup>), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico*; OECD Procurement Toolbox 2009, <http://www.oecd.org/governance/procurement/toolbox/search/online-complaint-form-new-york-office-of-the-inspector-general.pdf>.

The State Government should set up a system to gather and handle all complaints, in a fair, timely and transparent way. An effective public procurement complaints system should permit complaints regarding, at the least: *i)* infringements of public procurement rules, *ii)* public procurement procedures, *iii)* contract award decisions, and *iv)* the interpretation of contract clauses in managing the contract.

A public procurement complaints system should consider establishing mechanisms for challenging procurement decisions. These are usually called “remedies to challenges” and may be organised into two or more levels of challenges. First, the procurement system could include an alternative dispute settlement mechanism (i.e. conciliation), encouraging informal problem solving and preventing formal reviews. Secondly, it could establish a formal review process conducted by the procuring entity and, in a third instance, by a body with enforcement capacity independent of the respective procurement authorities.

“Remedies to challenges” should be provided at an early stage of the decision-making process, before the contested contract is signed. A good practice in OECD member countries is a mandatory standstill period between the contract award and the beginning of the contract, to allow legal actions by the harmed bidder to allow a reasonable chance of being reinstated in the procurement procedure (OECD, 2009<sup>[27]</sup>; OECD, 2009<sup>[29]</sup>).

### Box 4.21. New Zealand's Guide to supplier feedback and complaints

New Zealand's Guide to supplier feedback and complaints gives suppliers a short overview of how to give feedback or raise concerns about a government procurement process, how to make a formal complaint, and how to use other options to resolve a problem if previous steps do not give satisfaction. It includes information about the procurement process, suppliers' rights in the process, the responsibilities of those involved in the process, and the role of the Ministry of Economic Development. It also explains how an agency should respond to supplier complaints and provides useful contacts.

A supplier may complain to an agency if it has concerns about any part of a procurement process and if it believes the agency has failed to follow the rules. This process supports ongoing development and improvement in procurement throughout government, during and after the tender process. Concerns can be raised at the agency dealing with the process or using the New Zealand Government Procurement's Supplier Feedback Service (SFS). New Zealand Government Procurement (NZGP) monitors the number and nature of supplier complaints. If necessary, it will clarify procurement policy and practice guidance for agencies, so that similar problems are less likely to arise in the future. NZGP must be sent copies of all written complaints (and related correspondence) that government agencies' chief executives receive. SFS allows suppliers to voice their concerns to a neutral agency and gives government an understanding of the problems suppliers are experiencing in the procurement process.

According to the Guide, suppliers have several options for communicating their concerns:

**Step 1.** Attempt to sort the matter out directly with the agency (supplier + agency). Options available:

- discussion
- formal complaint.

**Step 2.** Engage third party to help resolve the issue with the agency (supplier + agency + third party, i.e. SFS). Options available:

- mediation or alternative dispute resolution
- an independent review or investigation, also called a "probity audit".

**Step 3.** Escalate complaint to an authority and/or go to court (supplier + agency + authority court). Options available:

- investigation by the Auditor-General
- investigation by the Ombudsman
- investigation by the State Services Commission
- going to court.

Source: (New Zealand Government Procurement, 2015<sup>[31]</sup>), "Guide to supplier feedback and complaints: How to provide feedback or make a complaint about procurement", <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-supplier-feedback-and-complaints.pdf>, accessed on 22 March 2018.

To encourage transparency and accountability, it is always desirable to have clearly defined procedures for submission and resolution of complaints, as well as for follow-up. It is advisable to maintain an online portal updated with the procedures, decisions or resolutions taken from complaints and statistics about number of challenges filed and the types and the number of sanctions imposed each year.

Procurement authorities also have to design and implement a whistle-blower protection framework in public procurement. Whistle-blower protection refers to legal protection from discriminatory or disciplinary actions

for employees who disclose to competent authorities, in good faith and on reasonable grounds, wrongdoing of any kind in their workplace, including in both public and private sector organisations (OECD, 2016<sup>[32]</sup>).

Employees in both public and private sectors can access up-to-date information concerning workplace practices and are usually the first to recognise wrongdoing. However, if the organisation has no mechanism to protect those who report wrongdoing, employees may be subject to intimidation, harassment, dismissal and violence by their colleagues or superiors (OECD, 2016<sup>[32]</sup>). Fear of reprisal is an important reason for potential whistle-blowers to avoid reporting wrongdoing. An organisational culture that creates “fear of consequences or risk aversion” can be less oriented towards ethics and integrity results.

Whistle-blower protection frameworks (and a regulatory framework that is actively implemented) give employees positive incentives to help authorities deter and detect wrongdoing, as corrupt acts, fraud and mismanagement. As part of this framework, a legal obligation for public officials to report corruption and other criminal offences could be set up, as well as criminal sanctions for those who fail to report.

#### Box 4.22. Austria’s whistle-blower hotline

In March 2013, Austria’s Ministry of Justice set up a whistle-blower hotline on the homepage of the Public Prosecutor’s Office Against Corruption and White-Collar Crime. As of September 2013, approximately 590 notifications were submitted, of which only 53 were deemed not relevant. The whistle-blower hotline had a pilot phase of two years. The Federal Ministry of Justice’s whistle-blowing website enables investigators from the Public Prosecutor’s Office against Corruption and White-Collar Crime (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*, or WKStA) to get in direct contact with whistle-blowers, while protecting their anonymity. Whistle-blowers are entitled to decide whether they want to remain anonymous or to identify themselves to investigators.

Source: (OECD, 2016<sup>[33]</sup>), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264252103-en>.

ISSSTESON and Sonora’s Ministry for Control have set up mailboxes to collect complaints from suppliers and citizens. Suppliers seldom use them, however, because they fear being singled out and being excluded from upcoming bids or procurement processes. ISSSTESON does not receive many appeals or complaints, because providers do not want to challenge the government. Suppliers also often do not know where and how to file a complaint or appeal.

OIC staff collect citizen complaints (complaints, suggestions and recognitions) from the mailboxes every Monday. After review, they are turned over for investigation to the corresponding ISSSTESON division and have a deadline of five working days to provide a response to the OIC. In all cases, ISSSTESON’s General Director is copied. After assessing the responses, the OIC determines if they are adequate and, if so, are sent by certified mail to the person who filed the complaint. If complainants are not satisfied with the response, they have a few extra days to ask for additional information or clarifications. The OIC produces a monthly report for the General Director detailing the status of the complaints, suggestions and recognitions received, classifying the information by subject and the administrative unit concerned.

The State of Sonora’s Anti-Corruption Law in Public Procurement lists at least seven types of infringements in public procurement (Box 4.23). The law requires individuals to report these to the corresponding control body. It also mandates all those participating in the procurement process and all public servants to report, in writing, the actions or omissions they are aware of in the exercise of their functions that could be sanctioned under the Law. If they fail to comply with this obligation, they may be sanctioned.

### Box 4.23. Infractions in public procurement in the State of Sonora

Any person who:

- promises, offers or delivers money or any other gift to a public servant or third party, in exchange for performing or refraining from undertaking an act related to his/her functions or to those of another public servant, with the purpose of obtaining or maintaining a benefit or advantage, regardless of the acceptance or receipt of the money or the gift or the result obtained.  
They will also incur responsibility when the promise or money offered, or if any gift is made to a third party that in any way interferes with the design or preparation of the public bid or any other act related to the public procurement process.
- takes any action that implies or has the purpose or effect of obtaining an improper benefit or advantage in public procurement;
- is responsible for acts or omissions whose purpose or effect is to participate in public procurement, despite being prevented from doing so by law or administrative resolution;
- is responsible for acts or omissions whose purpose or effect is to avoid the requirements or rules established in public procurement regulations or to simulate compliance with them;
- intervenes on his/her own behalf in the interests of another person or persons who are unable to participate in public procurement, so that those persons may obtain, totally or partially, the benefits derived from contracting;
- unlawfully obliges a public servant to give, subscribe, grant, destroy or deliver a document or any kind of good, in order to obtain an advantage or benefit for themselves or a third party;
- promotes or uses influence, economic, political or social power, over any public servant, in order to obtain for themselves or a third party a benefit or advantage, independently of the acceptance of the public servants or of the obtained result;
- presents false or altered documentation or information with the purpose of achieving a benefit or advantage.

Source: Article 7, Anti-Corruption Law on Public Procurement of the State of Sonora.

According to the Anti-Corruption Law on Public Procurement of the State of Sonora, the complaint letter shall contain the facts and any other information about alleged infringements, the identification data of the alleged suspect; and the evidence for the alleged infringements.

Even though the Anti-Corruption Law on Public Procurement of the State of Sonora establishes a complaint and sanction system for state and municipal public procurement, Sonora does not have whistle-blower protection and witness protection mechanisms. The current legal framework protects neither external whistle-blowers nor ISSSTESON public officials who wish to report wrongdoing.

To prevent violation of public procurement laws, internal control bodies can sign collaboration agreements with individuals and corporations who participate in public procurement, as well as with chambers of commerce or industrial and trade organisations, to help them develop self-regulatory mechanisms, including the implementation of internal controls and an integrity programme to advance an ethical culture, as well as mechanisms for complaint and protection of whistle-blowers (Anti-Corruption Law on Public Procurement of the State of Sonora, Articles 32-33). No evidence, however, suggests that collaboration agreements have been signed or that mechanisms or programmes for complaints and protection of whistle-blowers have been set up between ISSSTESON and its stakeholders.

As for developing a system of effective and enforceable sanctions for government and private-sector procurement participants, Sonora's Anti-Corruption Law on Public Procurement establishes an administrative sanctioning procedure to be set up by internal control bodies. It also determines administrative sanctions, as well as mechanisms to reduce penalties.

Administrative sanctions could be economic sanctions that are equivalent to from one to 50 000 measurement and updating units (*unidades de medida y actualización*) or 30% to 35% of the amount of the contract awarded to both individuals and companies, as well as being barred from participating in public contracts in the State of Sonora for a period of not less than six months and no more than ten years in the case of individuals and 20 years for companies. A person who has committed any of the offences sanctioned by the Anti-Corruption Law on Public Procurement of the State of Sonora, or participates in carrying it out, can benefit from a reduction in penalties if he/she confesses his or her responsibility. The benefit may reduce the penalty by between 30% to 50% of the amount of the sanction.

ISSSTESON and its oversight bodies should take the opportunity afforded by the local anti-corruption reform to review, harmonise and adapt its procurement regulatory framework with Mexico's General Law of Administrative Responsibilities. ISSSTESON and the state government could consider developing a clear legal framework protecting whistle-blowers, and creating simple, transparent mechanisms for filing complaints. They should also consider introducing a clear mechanism facilitating follow-up of any complaints submitted, from the submission of complaints until the final decision is made. An online platform for this purpose would be desirable. Finally, ISSSTESON should develop a communications strategy for the sanctions system and its procedures, to publicise complaints about public procurement processes, the consequences of acting improperly, and remedies for challenging mechanisms.

## Proposals for action

ISSSTESON faces important challenges in its procurement system. To increase its efficiency and its capacity to manage and avoid corruption in the public procurement cycle, it should review, adjust and improve its internal control mechanisms, integrity policies and tools, and internal and external stakeholders' participation schemes, as well as its audit procedures and co-ordination mechanisms, and the complaints and sanctions system.

Sonora's recent Law on the Local Anti-Corruption System and all the anti-corruption legal framework issued offers ISSSTESON an opportunity to develop and harmonise its internal integrity policies with the new state regulations and international good practices. This legal framework also allows it to actively promote a robust framework of secondary regulations on co-ordinating internal controls and audit mechanisms conducted by the state oversight bodies, such as the Ministry for Control and the Superior Institute of Audit and Control.

The following provides an overview of the key proposals for action in this regard.

### Encourage effective risk-based internal control in ISSSTESON procurement activities

- ISSSTESON should create and organise its three lines of defence to develop a cohesive, co-ordinated and systematic approach to enhance communications on risk management and control and to clarify essential roles and duties.
- The first line is the responsibility of the organisation's operational managers. Middle and high-level managers are in charge of implementing controls and helping identify and prevent risks in their areas.

- The second line of defence, which includes functions of risk oversight (risk management, compliance and control of financial risks) should be the responsibility of the Committee for Control and Institutional Performance (COCODI), through the Unit for Institutional Planning and Innovation (UPII), and senior management.
- The UPII should be empowered by the Board of Directors to develop efficient risk-management strategies, including those governing public procurement.
- The COCODI and the UPII should have clear functions of risk management and internal control. The UPII should communicate its risk-assessment methodologies, including, at the very least, the following elements: risk-identification mechanisms, impact evaluation measures, strategies for risk mitigation, specific measures to prevent or avoid risks associated with the procurement cycle, and monitoring and evaluation.
- As for the third line of defence, ISSSTESON could create a new function of internal audit. This function should propose to the Board of Directors the audit rules and plans, and report directly to it.

### **Preserve the integrity of the public procurement system through general standards and procurement-specific safeguards**

- ISSSTESON should develop a dedicated Code of Ethics or Conduct and specific guidance for procurement officials and also ensure that specific provisions for public procurement are included in the codes that hospitals and clinics develop. A Code of Conduct for procurement officials would have the advantage of being tailored to the specific risks of the procurement function.
- As the unit that co-ordinates and leads direct action for promoting ethical values in the institute, the UPII should:
  - design, with wide participation from public officials and stakeholders, a specific Code of Conduct or Ethics for the procurement workforce, emphasising the conduct expected in public procurement and prioritising the values that should govern the resolution of ethical dilemmas faced by procurement practitioners.
  - develop an annual training programme for public procurement officials focusing on communicating the prioritised values, identifying conflicts of interest and the mechanism for reporting misbehaviour.
  - help develop integrity standards for the public procurement function, and where applicable, focus phase by phase on the following elements:
    - prioritised values for public procurement,
    - conduct expected of procurement officials,
    - policy on conflicts of interest, in line with the Guide to identify and prevent conflicts of interest in the State Public Administration issued by the Ministry for Control,
    - gifts and gratuities policy,
    - post-employment rules.

### **Provide opportunities to involve external stakeholders in the procurement system, to increase transparency and integrity**

- As a measure of good practice, ISSSTESON could create an internal policy, protocol or procedure to subject its procurement-related rules to the regulatory quality requirements and controls established in the Regulatory Improvement Law of the State of Sonora via the COMERS, but which are currently not necessarily applicable to ISSSTESON.

- If COMERS does not have the capacity to receive and process ISSSTESON's regulatory proposals for public procurement, it is advisable for ISSSTESON to establish and regulate an internal standard process (regulatory impact process), to follow each time it modifies one or more elements of its public procurement regulations.
- This standard process should include an early public consultation process that should be accessible for all stakeholders (internal and external). The standard process and the rules of early regulatory consultation should be formally disclosed to all stakeholders and published on ISSSTESON's website.
- ISSSTESON should create a stakeholder participation scheme for suppliers, industry and civil society to obtain detailed information about the institute's needs and support better public policies. At the same time, ISSSTESON should consider developing protocols or guidelines to select and apply stakeholder participation mechanisms when applicable.
- ISSSTESON, with the Ministry for Control, could consider adding new functions for Citizen Commissioners and adapting the mechanism for creating social witnesses or external observers of public procurement processes. Participation need not be limited to senior citizens and retirees (as end users), and could include representatives of civil society and academia. ISSSTESON and the Ministry for Control should define which cases could involve Citizen Commissioners and the profiles and requirements for participating as Citizen Commissioner.

#### **Develop an effective complaint and sanctions system**

- ISSSTESON, with the Comptroller General's Office, could develop clear guidelines for internal and external audits, harmonising priorities and key elements of control.
- ISSSTESON and oversight bodies (ISAF, OIC, the Ministry for Control and the Supervisory and Audit Committee) should carry out independent audits to public procurement operations and coordinate the internal and external audit plans by developing an online system where they can disclose the audit plans, the audit reports, the main auditing observations and recommendations, as well as any follow-up on the implementation and enforcement of the audit recommendations.
- ISSSTESON's oversight bodies should:
  - take the opportunity given by the local anti-corruption reform to review, harmonise and adapt the procurement regulatory framework and make the necessary adjustments, in order to incorporate good international practices on integrity and management control.
  - consider developing a clear legal framework for whistle-blower protection, as well as establishing easy and transparent complaint mechanisms anyone can use.
  - consider simplifying the follow-up mechanisms for complaints submitted until a final decision is taken. The use of an electronic platform would be desirable.
  - develop a communication strategy for the sanctions system and its procedures.



## Further reading

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# **5** Towards Strategic Public Procurement and Enhancing the Competency Framework of ISSSTESON's Public Procurement Workforce

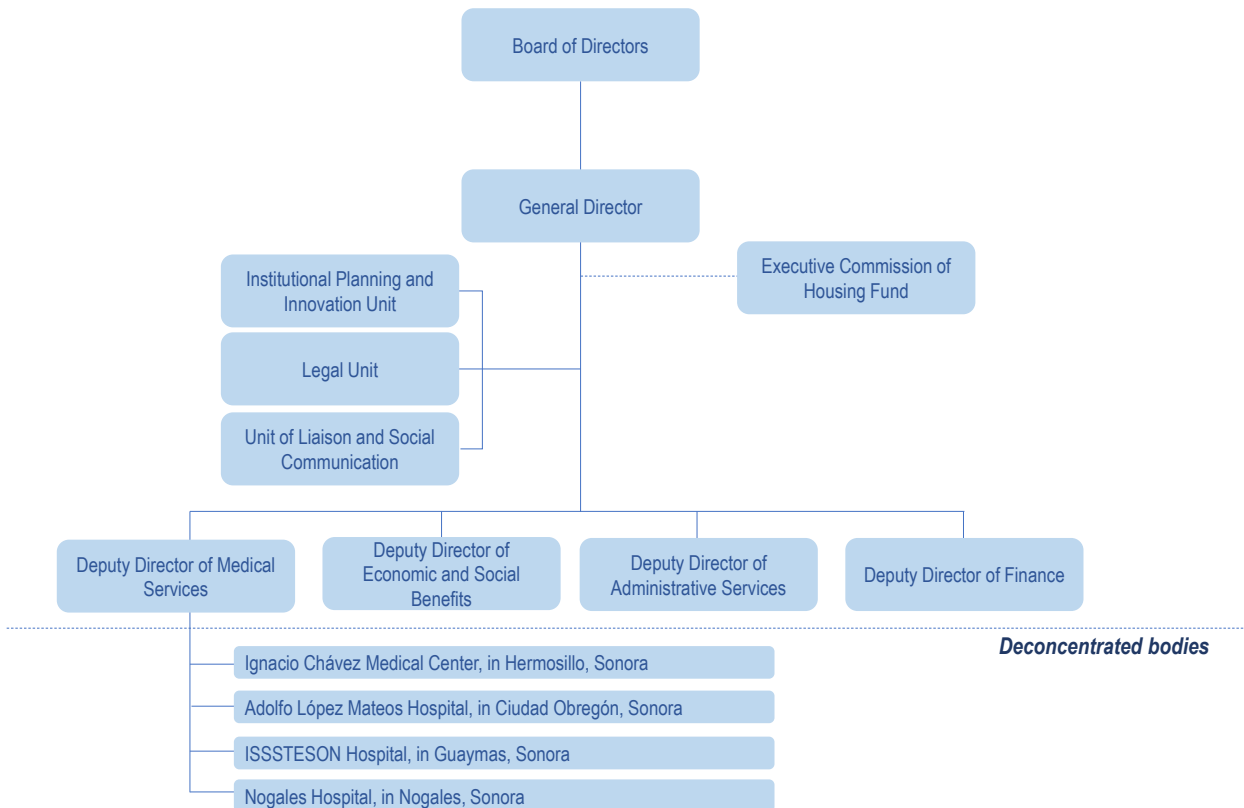
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This chapter assesses to what extent ISSSTESON utilises public procurement strategically to support complementary policy objectives, such as developing SMEs, social and green objectives, as well as innovation. It also highlights pathways ISSSTESON can explore to achieve the maximum impact for strategic public procurement and the support for complementary policy objectives. This chapter also analyses the competency of the public procurement workforce at ISSSTESON, identifying skills gaps and opportunities for improvement. Part of this analysis is focused on strategic human resource management of the public procurement function.

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The Institute of Security and Social Services for the Workers of the State of Sonora (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora*, or ISSSTESON) can trace its roots back almost 70 years. A decentralised public body with its own legal framework and assets, it is responsible for granting social security benefits and services, mainly pensions and health services, to the public servants of the State Government of Sonora, its municipalities and affiliated organisations. The institute is divided into departments located at the central offices in the state capital, Hermosillo, and in hospital units, which are distributed around the state (see Figure 5.1 for the institute’s organisational structure).

**Figure 5.1. The organisational structure of ISSSTESON**



Source: (ISSSTESON, 2015<sup>[1]</sup>), *Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado de Sonora*, <http://transparencia.e.sonora.gob.mx/NR/rdonlyres/3FF4F43E-5292-4D7D-B260-ECE3BE9C0720/146442/ORGANIGRAMAGENERALACTUALIZADOJUNIO2015.pdf>, accessed on 5 October 2017.

The purpose of this chapter is to analyse two key elements of the 2015 *OECD Recommendation of the Council on Public Procurement* (hereafter the “OECD Recommendation”) (OECD, 2015<sup>[2]</sup>): strategic public procurement and capacity building. Public procurement is becoming more complex, shifting from an administrative task to a strategic function, and this will require that the procurement workforce develop multidisciplinary capacities. It is thus highly relevant to address both topics in this chapter.

The OECD Recommendation calls on adherents to develop a procurement workforce that can continually deliver efficient and effective value for money (see Box 5.1). If the procurement function is to be strategic, professionals will need to master a wide set of skills and competencies, including negotiation, project and risk management. The procurement function must specify, provide access to and manage the external resources and assets that an organisation will need to fulfil its strategic objectives. Adequate capacity in the procurement workforce is thus a crucial component of a sound public procurement system and will lay the foundation for successful development of all other elements.

### Box 5.1. The *OECD Recommendation of the Council on Public Procurement (procurement workforce)*

**IX. RECOMMENDS** that Adherents develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively.

To this end, Adherents should:

**i)** ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools, for example, sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system.

**ii)** provide attractive, competitive and merit-based career options for procurement officials, through the provision of clear means of advancement, protection from political interference in the procurement process and the promotion of national and international good practices in career development, to enhance the performance of the procurement workforce.

**iii)** promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce. The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems.

Source: (OECD, 2015<sup>[2]</sup>), *OECD Recommendation of the Council on Public Procurement*, <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

The OECD Recommendation encourages balancing use of the public procurement system to pursue secondary policy objectives with the primary procurement objective, which refers to delivering the goods and services necessary to accomplish government functions in a timely, economic and efficient manner (OECD, 2015<sup>[2]</sup>). To ensure a competitive and effective awarding process, the OECD recommends that institutions facilitate access to procurement opportunities by pursuing secondary policy objectives (also known as “strategic public procurement”). The policy choice whether to pursue secondary objectives will vary depending on the government and citizens’ needs, but the Recommendation identifies steps that should be taken whenever such objectives are pursued (see Box 5.2).

### Box 5.2. The *OECD Recommendation of the Council on Public Procurement (secondary policy objectives)*

**V. RECOMMENDS** that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be balanced against the primary procurement objective.

To this end, Adherents should:

**i) evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities**, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.

**ii) develop an appropriate strategy for integrating secondary policy objectives in public procurement systems**. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for developing action plans or guidelines for implementation.

**iii) employ appropriate impact-assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives**. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones, to provide policy makers with the necessary information about the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy target objective outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: (OECD, 2015<sup>[2]</sup>), *OECD Recommendation of the Council on Public Procurement*, <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

## 5.1. The institutional setup for human resource management at ISSSTESON

The department of Administrative Services (*Subdirección de Servicios Administrativos*) monitors the proper dissemination and implementation of policies and procedures for the administration of human, material and service resources. It proposes and applies the basic policies on recruitment, selection, remuneration, promotion, training and development of workers in the service of the institute. The administrative department has a dual role. Not only is it responsible for human resources (HR), but it also organises the drug supply system, in the acquisition, storage and distribution processes. The administrative area schedules the execution of the projects of public tendering.

The HR department of ISSSTESON headquarters has 11 divisions, according to the organisational chart. How they function is defined in the manuals developed by the institute.<sup>1</sup> Additionally, there are three HR departments within hospitals that function in an administrative manner (i.e. sorting payrolls). The main HR department is located at the central offices, and its main roles include:

- optimising the administrative processes of contracting, induction, training, development and evaluation of institute staff.
- assisting in the identification of the institute's HR needs, implementing training programmes and informing staff.
- preparing and keeping up to date job descriptions, manuals and profiles of the areas that make up the institute, for application in recruitment, induction, training and promotion of staff.



The responsibilities of ISSSTESON employees are set up in the internal regulations; including procedure manuals for each of the administrative units involved in the procurement process, where activities and responsibilities for all public officials are set up. There are internal systems for the procurement process itself where officials interact with each other in order to approve the acquisitions process. Manuals have been developed for the following procurement procedures:

- Award of public works and related services (*Adjudicación de obra pública y servicios relacionados con la misma, 2017*)
  - Objective: following up on requests for direct awards and provision of public works and services relating to it.
- Procedures for the purchase of medicines, equipment and supplies through direct awards (*Asignación de claves por proveedor para la adquisición de medicamentos, bienes y suministros a través de adjudicación directa, 2017*)
  - Objective: Carrying out timely procurement procedures for medical goods and supplies through direct procurement, using the Electronic Procurement System (*Sistema Electrónico de Compras, or SIEC*).
- Integration of the Annual Procurement Programme (*Integración del Programa Anual de Adquisiciones, 2015*)
  - Objective: making purchases in a timely manner based on the needs of the institute and the authorised budget, ensuring the proper integration of the annual procurement programme.
- Public Tendering Procedure (*Trámite de Licitación Pública, 2017*)
  - Objective: guaranteeing the award of goods and services in a transparent and impartial way while ensuring quality and seeking the best conditions for the State.

Approximately 3 300 employees work for ISSSTESON, including its four hospitals. Information provided by the institute shows that 90% of the employees are unionised and 10% non-unionised (*empleados de confianza*) (see Table 5.1). Some employees are unionised, i.e. affiliated with a labour union, and some are not. ISSSTESON reports a very low turnover rate among employees working in public procurement. Changes typically occur every six years, as new senior management takes over when a new state government administration is sworn in. Management positions are political appointments, not filled through competitive procedures. The planning area, however, has developed certain criteria, such as job profiles for all positions in ISSSTESON, which include the main functions, a general description of the work and the desired skills, salary and remuneration.

**Table 5.1. ISSSTESON personnel, by type of appointment (2016)**

Administrative units	Unionised	Non-unionised	Temporary contracts	Scholars	Medical residents/ interns	TOTAL
ISSSTESON – administrative offices	523	131	92	16	1	763
Medical Centre Dr. Ignacio Chávez	1 032	36	226	55	5	1 354
CIAS Norte	21	3	16	0	0	40
CIAS Centro	46	2	18	0	0	66
CIAS Sur	88	7	41	13	0	149
Hospital Lic. Adolfo López Mateos and Clinic	283	26	34	12	1	356
Hospital ISSSTESON Guaymas	132	7	23	6	0	168
Hospital ISSSTESON Nogales	24	10	102	1	0	137
Other areas in the state	128	56	84	4	0	272
<b>TOTAL</b>	<b>2 277</b>	<b>278</b>	<b>636</b>	<b>107</b>	<b>7</b>	<b>3 305</b>

Source: Information provided by ISSSTESON.

Thirty employees are exclusively assigned to procurement matters on a daily basis. As noted in Chapter 2, procurement employees work in two separate departments. Six public officials work at the Tenders Department, which manages public procurement processes such as tenders, and 12 officials work at the Acquisitions Department, which centrally manages procurement through direct awards. ISSSTESON has an Acquisitions, Leasing and Services Committee (Acquisitions Committee), which authorises centralised procurement for the different areas and hospital units; four hospitals have a procurement unit in charge of purchasing input and materials considered as urgent needs that their warehouses lack (see Table 5.2).

**Table 5.2. ISSSTESON procurement units**

Procurement Unit	Location	City
Procurement General Offices	ISSSTESON building	Hermosillo
Procurement Hospital Guaymas	Hospital Clinic Guaymas	Guaymas
Procurement Medical Centre Dr. Ignacio Chávez	Hospital Medical Centre Dr. Ignacio Chávez	Hermosillo
Procurement Adolfo López Mateos	Hospital Lic. Adolfo López Mateos	Obregon City
Procurement Clínica Nogales	Clinic Hospital ISSSTESON Nogales	Nogales

Source: Information provided by ISSSTESON.

## 5.2. Foundations for enhancing the competency of the workforce

Recent OECD surveys suggest that the workforce is a major weakness of many procurement systems (OECD, 2017<sup>[3]</sup>). In OECD countries, procurement practitioners face challenges in the transition from an administrative to a strategic function, with the increasingly complex rules, the multidisciplinary nature of the profession and the lack of professionalisation. The OECD's experience working with countries suggests that capacity is a key element in a sound public procurement system. An efficient system usually includes:

1. procurement rules and procedures that are simple, clear and that ensure access to procurement opportunities;
2. effective institutions for executing procurement plans and procedures; and for producing, managing and monitoring contracts;
3. appropriate electronic tools;
4. suitable human resources, in numbers and skills, for planning and carrying out procurement processes;
5. competent contract management.

The quality of public procurement is highly dependent on the competencies of the individual procurer. In day-to-day procurement processes, the desk officer makes the crucial decisions that make the difference between effective and efficient procurements and wasteful ones. While smaller, less complex purchases require little specialised skill, complex procurement cases can only be negotiated for the public good if the official handling the case has the requisite professional knowledge.

ISSSTESON has not established any specific requirements for procurement officials in terms of working skills, competencies or job profiles, and there are no specific entry requirements procurement employees must satisfy prior to recruitment. ISSSTESON has not evaluated the chief capacity challenges procurement officials face, and no strategy is in place to improve the procurement capacity of the workers. ISSSTESON

should develop a capacity-building or training plan for its procurement workforce, including an incentive system to encourage better performance. No advisory services or help desks have been established to answer questions, give advice or recommend good practices or frameworks. Other officials who work in procurement, such as auditors and internal comptrollers, do not receive any specific training. The same goes for suppliers, who do not receive any support or training from ISSSTESON, and have to rely on their own resources to understand the procurement processes.

ISSSTESON could benefit from introducing measures that formally structure capacity-building efforts for the public procurement system. The HR Department could also be charged with developing guidance material and trainings, as needed. Ireland, for example, could serve as a model for developing guidance materials (see Box 5.3 below).

### **Box 5.3. Development of national procurement guidelines in Ireland**

One of the primary objectives of establishing the Office of Government Procurement (OGP) in Ireland was to improve the professionalisation of the staff involved in procurement. The Irish state spends approximately EUR 8.5 billion every year on goods and services. It is thus essential that the public service operate in a co-ordinated, efficient fashion. Procurement is a key element of the government's public service reform.

The OGP is currently finalising national guidelines for goods and services of low and high value in public procurement tendering competitions. These guidelines will be published as a dynamic document available online, with links to relevant information, as well as policy and template documents.

The purpose of these guidelines is to promote best practices and consistency of application of the public procurement rules in relation to the purchase of goods and services. The guidelines have been written in plain language with the goal of providing a clear description of the rules. The guidelines form part of the OGP National Procurement Policy Framework, which consists of five branches:

- legislation (directives, regulations),
- government policy (circulars, etc.),
- general guidelines,
- the Capital Works Management Framework,
- detailed technical guidelines, template documents and notes that are issued periodically.

Source: Information provided by the Office of Government Procurement (OGP).

#### **5.2.1. A strategic vision for the procurement workforce**

Many countries develop strategies to increase the capacity of their public workforce systematically, often specifically for public procurement. Such capacity strategies for the public sector and specifically for public procurement can offer benefits, as they aim to systematically increase the capacity of public procurers. A strategy can help officials prioritise activities. Ideally, ISSSTESON would opt first for an assessment of the procurement workforce, highlighting strengths, weaknesses, gaps and building blocks to serve as the starting point for any capacity-building measures. The needs assessment should pave the way for the development of an ambitious and sustainable training plan. The training action plan should provide a detailed roadmap for increased skills and competence of the procurement employees (see Figure 5.2).

**Figure 5.2. The process for assessing needs, developing a plan and implementing it**



Source: (OECD, 2017<sup>[4]</sup>), *Developing Public Procurement Capacity in Europe*, <http://www.oecd.org/gov/public-procurement/publications/public-procurement-capacity-europe.pdf>.

A detailed training plan for ISSSTESON should include courses that have been identified in the needs assessment. The training should include indicators to allow for a regular impact assessment. A training plan should be precise and to the point, but needs to include specific information, like the course's name, objective, target group, delivery mode and date. The training action plan should last for at least two to three years to allow time for the vision for improvement to emerge (OECD, 2017<sup>[4]</sup>). A shorter time frame would reduce the possibility of yielding any results. Part of the assessment of employees includes testing their competency before any training, and measuring progress after the training plan to measure progress.

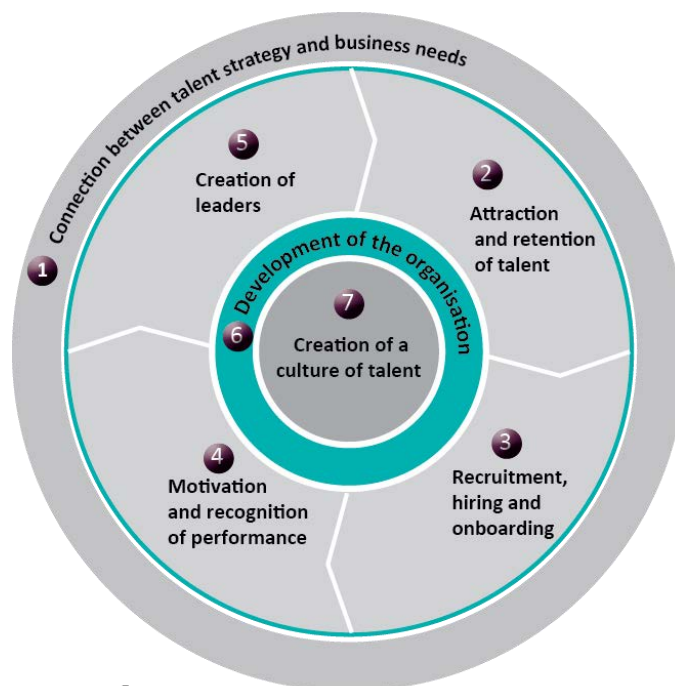
ISSSTESON has not updated its strategy or vision for procurement since 2006. However, from 2006 to 2009, the institute was granted the ISO-9001 certificate through the American Trust Register (ATR) enterprise. At the time, the procurement department developed indicators for employees working in the area, but unfortunately, this initiative was not followed up, and the certification was lost. By developing a strategy for public procurement, ISSSTESON would be setting a path for its procurement employees to follow. It is important procurement officials have a clear idea of their purpose and goals and to link them to ISSSTESON's overall objective of providing better health care for its beneficiaries. The old strategy sets a standard for quality, stating that ISSSTESON is committed to fulfilling the petitions or requirements received, through timely follow-up, and to ensuring a quality service. The mission and vision set out in 2006 resonates 12 years later:

- mission:
  - to acquire quality products for our clients, managing their demands and/or requests in a timely manner, in order to warrant full satisfaction.
- vision:
  - to be a department with a high sense of service and positive attitude, acquiring and supplying quality products for our clients.

Much has changed in the past 12 years: the staff, the regulatory framework and the procurement methods used and the technology used in procurement. The market is likely to change as well, with new suppliers coming in, and so are the expectations of the clients. For example, hospital units will have changed, as will the delivery time of products. All these factors are likely to influence ISSSTESON's setting of objectives and targets for procurement. It will be important to combine quantitative outcomes, for such things as timely gathering of the annual acquisitions programme and delivery time, with more subjective goals, such as satisfaction with the work of the two procurement departments.

ISSSTESON needs to commit to further developing its workforce. The state of Nuevo León, for example, has a plan (see Figure 5.3) to address not only public procurement officials, but also public officials in general. It sets out seven "pillars" for talent development that could also benefit ISSSTESON, including developing competency standards for all public positions, as well as staff training programmes and talent retention surveys.

**Figure 5.3. The State Government of Nuevo León's seven pillars for talent development**



Source: (Consejo Nuevo León, 2015<sup>[5]</sup>), El Nuevo León que queremos. Plan Estratégico para el estado de Nuevo León 2015-2030.

### **5.2.2. Getting the best person: professionalising the recruitment process**

The recruitment process at ISSSTESON depends on the area that is recruiting, whether it is a temporary position or a permanent one. Most positions are generally not advertised. A list is maintained of people who have registered with ISSSTESON and are interested in working for the institute. They share their résumés with ISSSTESON and are put on a list of potential candidates. When a position is vacant, the recruiting area consults the list and identifies people with the competences needed. After the recruiting area identifies candidates they want to interview, the central office interviews them and eventually makes the hiring decision. The main issue with this method of recruiting, as opposed to advertising, is that it restricts the institute to a list of people that may not include the person with the necessary skills and best qualified for the job. However, the institute first needs to define those skills. To compensate for not employing the best-qualified person, the institute should offer a training programme to ensure, with on-the-job experience, that the new recruit is capable of meeting the standards set by the unit.

Given the limited budget for training, an annual survey of the staff is conducted, enquiring about their preferences for training. Participants in the survey can choose between predetermined options or write down the name of any topic for which they feel training is necessary. The institute has registered instructors, but ISSSTESON employees also use other training centres managed by the state government. The institute occasionally works with local instructors, whose services can be quite expensive. It provides general training for its employees on such subjects as service quality, how to respond to clients, and how customer advisers should approach clients, etc. On average, about three courses are held every month, each for about 40 students, but none covers procurement. Employees who attend courses organised by the institute are evaluated six months after the course on how they are using the training. Their manager assesses how well they have applied the training received, and gives a general assessment. A process is in place for areas to request a course on a specific topic, but this rarely happens. The procurement area may need to be more proactive, to ensure that the skills and competencies of the staff are up to date.

### 5.2.3. Expanding the competencies of procurement officials

The role of procurement employees depends on the duties they have been assigned. At ISSSTESON, they have a limited role in developing technical specifications and market analysis. For technical specifications, each deputy direction requests each area to programme its annual needs and project its budget; the deputy direction then organises, studies, modifies and authorises it. A request is then made to the procurement department to start the procedure in question. Procurement officials thus do not participate in the development of technical specifications.

A thorough market analysis should provide the contracting authority valuable information about economic operators capable of meeting the requirements and about market activity. Hence, one of the key functions of a procurement official is to understand the market. Market research helps the buyer collect information to define its procurement requirements, select the most appropriate tender method, analyse and evaluate bids, and determine the most economically advantageous tender (OECD, 2016<sup>[6]</sup>). Such skills are limited at ISSSTESON. Market research is considered a simple administrative task, with no established procedures or expert teams to ensure that ISSSTESON procurement officials acquire close familiarity with the markets.

If ISSSTESON is to drive efficiency throughout the public procurement cycle and satisfy the needs of the government and its citizens, it must actively assess its processes for conducting market analyses. The government must then utilise adequate tools to improve procurement procedures. Capacity building on market research is needed in both of ISSSTESON's procurement departments. Market studies should be conducted by individuals with procurement or research expertise, given sufficient time and resources. ISSSTESON should also establish a guide for the minimum acceptable content of market studies, by developing a manual for use by the procurement units in the hospitals or at the central offices when they conduct market studies. Furthermore, the manual should clearly state that market analysis should be conducted in the planning stage of a procurement procedure, well before the launch of the procedure. That said, market analysis may be undertaken at set times in the year for purchases made on a regular basis.

Rather than work with isolated role descriptions, governments increasingly use competency frameworks to organise their public procurement workforce. The competency frameworks build on competencies that are represented in different procurement roles at different levels. Employees can increase their competencies and move from one level to another (see Box 5.4).

#### Box 5.4. What is competency management?

Competency management is a way of defining the abilities that employees need, and the behaviour they should adopt, to do their jobs well. Competency management links several human resource management activities to ensure that an organisation is staffed by people who perform effectively. The use of competency management in OECD countries has increased steadily in recent years and has been linked to demands for increased flexibility and autonomy in workforce management.

Source: (OECD, 2015<sup>[7]</sup>), *Achieving Public sector Agility at Times of Fiscal Consolidation*, <http://dx.doi.org/10.1787/9789264206267-en>; (OECD, 2011<sup>[8]</sup>), *Public Servants as Partners for Growth*, <http://dx.doi.org/10.1787/9789264166707-en>.

Introducing a competency-based system to manage public procurement officials from a human resources perspective offers several benefits. It can contribute to a clearer understanding of expectations of employees on different levels and in different roles. A competency framework can also identify officials who need training and development (Scottish Government, 2016<sup>[9]</sup>).

Skills and competencies for effective performance need to be specified for each job, and integrated into a competency model or framework. Competency management frameworks not only help to identify the

capabilities needed in the workforce; they can also be used at different stages of the human resource processes, such as workforce planning, recruitment, promotion, training and performance assessment. In a competency-based selection process, the required competencies identified for a vacant position are used as the selection criteria. Peru, for example, has developed a framework based on four categories (see Box 5.5). It has few competencies covering most aspects of the procurement cycle. However, many OECD countries have developed more complex competency management frameworks. In Scotland, for example, the framework has 13 competencies that identify the technical skills needed at different levels to conduct procurement. ISSSTESON could benefit from developing a framework like the one described in Box 5.5, adapting it to its own structure and organisation.

### Box 5.5. Peru's OSCE defines four types of competencies for procurement officials

The Government Procurement Supervising Agency (*Organismo Supervisor de las Contrataciones del Estado*, or OSCE) has defined the four skills and competencies required of public procurement officials:

1. cross-cutting competencies (team work, results-based management);
2. general competencies (records management, office automation, mathematics and statistics, organisational and management skills);
3. legal and administrative competences (public procurement system, other administrative systems, public management and administrative procedures);
4. technical competencies (planning and programming techniques, market-analysis techniques, monitoring and control techniques, and supply-chain management).

The latter covering professional and technical effectiveness skills, as well as personal effectiveness. The definition of required skills and competencies lets public procurement officials know the requirements and helps them identify the areas on which they need to focus.

Source: (OECD, 2017<sup>[3]</sup>), *Public Procurement in Peru: Reinforcing Capacity and Co-ordination*, <http://dx.doi.org/10.1787/9789264278905-en>.

The skills and competencies identified can then be used to develop job profiles, which combine a statement about what is expected of a job with a description of what the job-holder needs in terms of skills, experience and behaviour to do the job well (OECD, 2013<sup>[10]</sup>). ISSSTESON could consider using the assessment to identify or finalise specific procurement employee profiles for the requirements of a specific post.

## 5.3. Implementing strategic public procurement

Until a few years ago, public procurement was perceived as an administrative, back-office function. Today, however, it is seen as a crucial pillar of service delivery for governments and a strategic tool for achieving key policy objectives: from budget accountability to spending efficiency, to buying green and improving outcomes in health, to tackling global challenges such as climate change, and increasing socially responsible suppliers in the global value chain. Strategic public procurement can support a more circular economy and transform supply-chain business models, given the volume of government spending and its predominant role in resource-intensive public services such as infrastructure. Almost all OECD countries have introduced strategic procurement policies rewarding greening efforts and encouraging innovation, such as promoting lower energy consumption, life-cycle cost analysis or industrial low-carbon innovations.

Complementary policy objectives refer to goals that governments are increasingly pursuing through public procurement. In addition to efficiency, effectiveness and transparency, countries have increasingly realised that public procurement can help achieve overarching, complementary goals, typically including:

- support for small and medium enterprises (SMEs),
- innovation,
- “greening”, i.e. improving the positive impact on the environment,
- improving conditions for marginalised or economically under-represented groups,
- tackling other social challenges.<sup>2</sup>

The following sections offer background on such policy goals as they bear on public procurement. ISSSTESON has not yet conducted any efforts specifically on complementary public procurement.

### **5.3.1. The ISSSTESON framework for supporting secondary objectives**

The main law that governs ISSSTESON acquisitions is the Law on Acquisitions, Leasing and Provision of Services Related to Movable Property of the State’s Public Administration (*Ley de Adquisiciones, Arrendamientos y Prestación de Servicios Relacionados con Bienes Muebles de la Administración Pública Estatal*). The legislation permits the usage of different criteria to evaluate tenders. The Tender Coordination Unit is responsible for verifying the registration requirements to participate in the tender and to verify the delivery of the documents requested. ISSSTESON applies the binary approach, i.e. technical and economic evaluation. With the technical evaluation, the documents are fully studied and analysed and a technical decision is issued, taking into consideration several factors, including the best legal, technical, and economic conditions. SMEs from the state of Sonora are given preference over enterprises from other regions, in cases when the difference between bids is no greater than 5% compared to the lowest priced proposal, under Article 24 of the law.

The main goal of ISSSTESON’s public purchases is to achieve the best price for the requested product, taking into consideration the conditions of the product. Before purchasing, the requesting unit assesses the proposal, considering all technical aspects, like delivery time, guarantees, etc. The process for medicines is similar, but in this instance, one of the major factors is whether the objective is to purchase generic medicines, whose prices tend to be lower. The economic offer is assessed by the procurement department. Only limited consideration is given to the environmental aspects of the production of the goods or their delivery. ISSSTESON requires that suppliers from which it buys medicine have the necessary certificates, but most do not include any additional environmental standards. For the annual planning, many of the technical aspects of the goods or services to be purchased have been defined and included in a catalogue, along with price estimations. For new products, the requesting area sends a request format to the procurement unit, with its description and technical specifications. When the procurement unit receives a new request, an assessment is required to identify the options to include enhanced environmental criteria.

No specific legal, regulatory or other policy guidance governs ISSSTESON with regards to strategic public procurement. No strategy or policy has been introduced to promote secondary policy objectives in the legal procurement framework (such as promoting SMEs, sustainable green procurement, innovation, social procurement and socially responsible enterprises). No consideration is made for complementary objectives in tender documentation and offer evaluations. In offer evaluation, the life-cycle cost is not considered (including costs of use, ownership, maintenance and disposal). ISSSTESON processes include no impact evaluation methodologies to measure the efficiency of the procurement legal framework in achieving secondary policy objectives.

ISSSTESON has limited experience in applying any measurements other than the binary approach, and no attempt has been made to adopt other evaluation methodologies to achieve secondary policy



objectives. Only limited data and information is available on suppliers ISSSTESON has dealt with in the past. The system is, for example, unable to determine the number of SMEs that the institute has been purchasing from, whether for medicine or for any other good, service or work. As already noted, ISSSTESON provides very limited training to its procurement employees, and no targeted training on the immediate procurement challenges of the institute is given. General courses are offered on such issues as customer service, however, which is available for procurement staff.

### 5.3.2. Supporting secondary objectives through public procurement

The vast majority of OECD member countries use public procurement as a tool to promote policies or strategies encouraging secondary policy objectives. Twenty-eight member countries have developed strategies or policies to support one or all of the following categories: green public procurement, SMEs, and innovative goods and services. Such strategies are predominantly developed at the central level (Table 5.3). Mexico's federal government, for example, has taken steps towards supporting SMEs, green procurement and innovative goods and services, developing strategies for the central level. In 2014, 20 OECD member countries (71%) measured the results of their strategy or policy for supporting green public procurement and 17 (61%) measured the results of their strategy or policy for supporting SMEs (OECD, 2015<sup>[11]</sup>).

**Table 5.3. Public procurement strategies and policies to support secondary policy objectives**

	Green public procurement		SMEs		Innovative goods and services	
	2016	2014	2016	2014	2016	2014
Australia	■	●	●	●	●	●
Austria	◆◆	●	◆◆	◆	◆◆	●
Belgium	◆◆	◆◆	●	●	●	●
Canada	◆◆	◆◆	●	●	◆	●
Chile	◆◆	◆◆	◆◆	◆◆	○	●
Czech Republic	“..”	“..”	“..”	“..”	“..”	“..”
Denmark	●	●	●	●	●	●
Estonia	●	○	●	○	●	○
Finland	◆◆	●	◆	◆	◆◆	◆
France	“..”	◆◆	“..”	◆◆	“..”	◆◆
Germany	●	●	●	●	●	●
Greece	◆	◆◆	◆	●	○	○
Hungary	●	◆	●	●	●	●
Iceland	●	●	○	○	○	○
Ireland	●	●	●	●	●	●
Israel	●	“..”	●	“..”	○	“..”
Italy	●	◆	◆	◆	◆	◆
Japan	●	●	●	●	○	●
Korea	●	●	●	●	●	●
Latvia	●	“..”	●	“..”	◆	“..”
Lithuania	●	0	●	0	●	0
Luxembourg	“..”	◆◆	“..”	◆◆	“..”	◆
Mexico	●	●	●	●	●	●

Netherlands	◆	●	◆	●	◆	●
New Zealand	◆◆	◆◆	◆◆	◆◆	◆◆	◆◆
Norway	◆	■	◆	◆◆	◆◆	◆◆
Poland	◆◆	●	●	●	●	●
Portugal	●	●	●	◆	◆	◆
Slovenia	●	◆◆	●	●	●	●
Spain	●	◆◆	●	◆◆	●	◆◆
Sweden	●	◆◆	●	●	●	●
Switzerland	“..”	◆◆	“..”	◆◆	“..”	◆
Turkey	●	●	●	●	●	●
United Kingdom	●	●	●	●	●	●
United States	“..”	●	“..”	●	“..”	◆◆
<b>OECD total</b>						
● Strategy/policy developed at the central level	25	26	24	24	19	22
◆ Internal strategies/policies developed by some procuring entities	11	14	8	12	9	11
■ Rescinded	1	1	0	0	0	0
○ Never been developed	0	2	1	3	6	4
India	○	0	●	0	◆	0
Russian Federation	0	○	0	●	0	○
Colombia	●	◆	●	●	●	●
Costa Rica	●	●	●	●	○	○

Note: “..” indicates that data is not available.

Source: (OECD, 2017<sup>[12]</sup>), *Government at a Glance 2017*, [http://dx.doi.org/10.1787/gov\\_glance-2017-en](http://dx.doi.org/10.1787/gov_glance-2017-en).

Some of the instruments available to countries, states and institutions to advance strategic public procurement are criteria that positively discriminate the secondary objectives in a way that those objectives, whether social, green, innovative or SMEs, get additional credit when calculating the final score of the bids. Suppliers thus need to be competitive in different areas, not simply on price criteria, to increase their chances of being selected. One prerequisite for ISSSTESON in supporting secondary policy objectives, such as supporting local producers, is to include criteria establishing that a specific percentage of local content of all goods and services subject to public procurement will be given enhanced recognition in the assessment phase.

### 5.3.3. Beyond SMEs, towards more complex strategic procurement

ISSSTESON is not yet at the stage of fully embracing strategic procurement. The institute should consider developing a strategy to promote secondary policy objectives such as SMEs, innovation, sustainable green procurement, social procurement or socially responsible enterprises. However, it needs to pace itself, and set up the appropriate infrastructure before going full force into strategic procurement. It is not at present measuring or able to aggregate data on the number of SMEs it deals with. The knowledge is limited on this subject; as noted earlier, hence it is important to train procurement officials to increase their skills in applying secondary policy objectives.

The procurement department has little input in developing the technical specifications for a purchase prepared by the requesting area. It assesses the standards set but does not add any environmental criteria.

On the fact-finding mission to Sonora, concerns were raised in the procurement department that additional requirements would limit the participation of suppliers in public tenders. That is definitely possible in some cases, but if ISSSTESON fully commits to implementing strategic public procurement, a plan should be devised to indicate the procedures that the institute will include in its tender documents in the months and years to come, allowing the market to adjust, but creating room for new suppliers to compete for contracts.

One of the main factors that could delay the introduction of strategic procurement is the awarding criteria ISSSTESON currently uses. The institute relies heavily on the binary approach, which is not conducive to strategic procurement, since it means that every supplier either meets or does not meet specific requirements. Usually, the supplier selected fulfils the technical criteria but also offers the lowest price.

This approach is common in public procurement and should be used for procuring standardised products and services or when saving money is the main goal. ISSSTESON should thus consider expanding the use of evaluation criteria to accommodate requirements relating to strategic procurement. One example would be the most economically advantageous tender (known by an acronym, MEAT), which should be used for procurement of complex services/works or high-technology equipment, or when high quality is the main goal. This approach is identified on the basis of price or cost (using a cost-effectiveness approach, such as life-cycle costing) or the best price/quality ratio. Applying this criterion may include three different approaches:

- price only;
- cost only – using a cost-effectiveness approach, such as life-cycle costing;
- the best price/quality ratio.

When using the best price/quality ratio, the criteria are given a weighting by the contracting authority that reflects their relative importance. The purpose of this method is to identify the tender that offers the best value for money. It requires procurement officials to assign scores to different aspects of a tender when incorporating weighting criteria, so it can be compared among each other and summed up, a total score for each tender is enabled. The rule used for assigning a score to any dimension of a tender is a “scoring rule”. ISSSTESON has mainly been applying the binary approach, where suppliers either meet or fail to meet the technical requirement. Points and percentages for weighing different criteria have only been applied for public works, since the institute has not been able to develop a mechanism for goods and services. ISSSTESON will need to expand the use of evaluation criteria to better incorporate requirements that support strategic procurement.

### *Supporting small and medium enterprises*

In many countries, SMEs account for a large share of employment and growth. Given their significance in the economy, governments are recognising the importance of SMEs in encouraging economic prosperity and social well-being. In 2015 in Mexico, SMEs accounted for approximately 99% of all firms and for 70% of jobs on average, and generated between 50% and 60% of average value added (OECD, 2016<sup>[13]</sup>). Micro-enterprises dominate the business landscape throughout the globe, accounting for 70% to 95% of all firms (OECD, 2017<sup>[14]</sup>). In this context, countries endeavour to support SMEs. Public procurement is a major source of demand for SME services. SMEs often face obstacles to participating in public procurement, however. For example, SMEs may lack the capacity to bid for and deliver on large government contracts. Alternatively, delayed payments may deter SMEs from seeking government contracts, given their cash-flow constraints. Additionally, SMEs often have less access to credit, which makes it more difficult to invest, grow or respond to larger orders (Bell and Tayler, 2016<sup>[15]</sup>; European Commission, 2014<sup>[16]</sup>; OECD, 2016<sup>[17]</sup>).

Most OECD countries have strategies or policies that define objectives of support for SMEs in public procurement. A cross-cutting topic, goals of supporting SMEs are often found in two or more of countries' strategies or policies. A recent OECD survey (OECD, Forthcoming<sup>[18]</sup>) reports that approximately 83% of

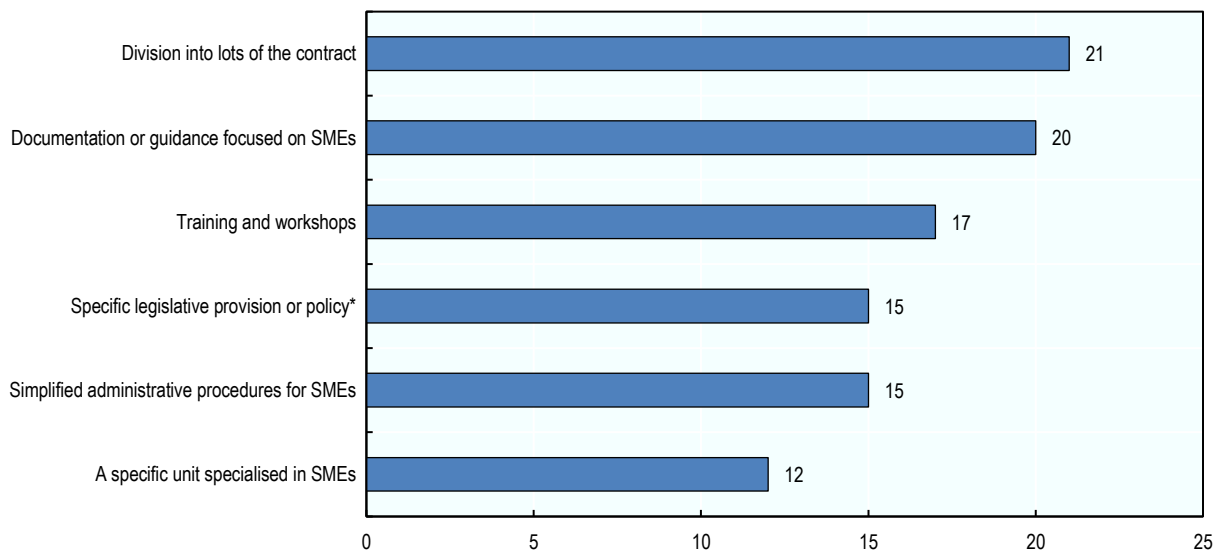
OECD countries have a strategy or policy supporting SMEs in public procurement. A majority of countries (22 countries, or 73%) include such objectives in a broader strategy/policy for public procurement, while less than half (12 countries, 40%) have as a goal to support SMEs in public procurement as a stand-alone strategy/policy.

Most of the OECD countries that actively support SMEs have an implementation mechanism. The nature of these varies, as the following examples show (OECD, Forthcoming<sup>[18]</sup>):

- **action plan**, i.e. the Austrian Action Plan on Public Procurement Promoting Innovation;
- **guidance**, i.e. guidance on use of the proportionality principle (the Netherlands);
- **legal framework**, i.e. a mechanism for implementation is given by the legal framework, since it establishes the assumptions that agencies and entities must apply to support SMEs (Mexico);
- **codes of conduct**, instruction codes, i.e. to government ministries to act in accordance with the administrative code regarding the participation of SMEs in government procurement (Israel);
- **tools**, i.e. an electronic calculation tool available to contracting authorities to help them find the right size of lots (Germany);
- **training for the procurement workforce**; either integrated into general capacity-building activities (10 countries, 33%) or training sessions on implementing SME objectives (12 countries, 40%).

To level the playing field for SMEs, OECD countries have set up specific measures and approaches, such as division of the contract into lots, guidelines, training and workshops for SMEs (see Figure 5.4). The European Union (EU) reinforced the strategic use of public procurement in the transposition of the 2014 Public Procurement EU Directives. This facilitated SMEs' access to public procurement through simplified and flexible procedures and by encouraging partitioning contracts into lots (OECD, 2017<sup>[12]</sup>).

**Figure 5.4. Approaches for supporting participation of SMEs in public procurement**



Note: Specific legislative provisions for instance could include set-aside, bid preferences.

\*e.g. set-aside, bid preferences.

Source: (OECD, 2017<sup>[12]</sup>), *Government at a Glance 2017*, [http://dx.doi.org/10.1787/gov\\_glance-2017-en](http://dx.doi.org/10.1787/gov_glance-2017-en).

Ireland's experience shows how important it is to actively support SMEs to participate in public contracts (see Box 5.6).

### Box 5.6. Ireland's secondary policy – the Go-2-Tender training programme for SMEs

Inter-Trade Ireland, an agency of Ireland's Department of Jobs, Enterprise and Innovation, offers businesses services to enhance opportunities for growth, innovation and competitiveness. Among other tasks, it provides services for SMEs. These aim to help SMEs compete in procurement markets.

Inter-Trade Ireland's flagship service in this area is the Go-2-Tender training programme. This is a two-day practical tender workshop designed for an SME audience that covers key aspects of procurement. In the workshop, SMEs are instructed how to succeed at tendering. Practical skills training includes instruction on how to identify opportunities, how to make bid or no bid decisions, and drafting successful tender proposals.

To participate, companies must meet a number of eligibility criteria, including being classified as an SME, operating in the manufacturing and tradable services sectors, and ability to demonstrate export potential. The workshops are conducted by experienced tender specialists and provide insights into the procurement practices of public sector bodies in Ireland. Guest speakers from central government procurement organisations are also invited. In addition to the plenary session, half a day of the workshop is dedicated to mentoring sessions, where participants can choose their topic of interest. Workshops are offered in various locations, and participation fees of EUR 100 apply. In 2016, seven seminars were held across the country. Participants can also apply for a follow-up workshop once they have concluded the first Go-2-Tender seminar. Since the programme was introduced in 2007, over 900 companies have completed the workshop. These companies won procurement contracts worth EUR 69 million in this same period.

Inter-Trade Ireland also organises "meet the buyer" events, giving SMEs the opportunity to meet public sector buyers face to face. The agency also offers further assistance with FAQs, guides, videos and presentations, as well as dedicated events on emerging trends in the procurement environment for SMEs.

Source: Information provided by the Office of Government Procurement (OGP).

To enhance the work ISSSTESON is doing, it should consider many of the implementation mechanisms OECD countries use to enhance its knowledge of the benefits that supporting SMEs can have for the community. The institute should look beyond the conditions set in the current legislation and identify other ways of supporting SMEs, such as alleviating barriers to participation.

#### *Going Green: implementing best practices in public procurement*

Green public procurement (GPP), that is, public purchase of products and services that are less environmentally damaging over their whole life-cycle, is increasingly used to achieve economy, efficiency, and secondary policy objectives. Countries have reported to the OECD, however, that they face obstacles in successfully converting to GPP, for a number of reasons: the common perception that green products and services are more expensive than conventional ones; public officials lack the technical knowledge to integrate environmental standards in the procurement process; and the lack of monitoring mechanisms to assess whether GPP achieves its goals. However, countries increasingly recognise that GPP can be a major driver for innovation, offering industry incentives to develop environmentally friendly works, products and services, particularly in sectors where public purchasers represent a large share of the market, such as construction, health services and public transport (OECD, 2015<sup>[19]</sup>).

Green public procurement is the cornerstone of sustainable procurement, and can be used as a powerful tool in promoting the purchase of green products. It is vital for ISSSTESON to enhance its understanding

of the advantages and disadvantages of switching conventional purchases to green ones. EU studies show that the uptake of GPP strongly correlates with the existence or absence of an eco-label scheme and that eco-labels play an important role in GPP solutions (see Box 5.7). The ability to support long-term uptake of green solutions can be disrupted by a number of factors, such as lack of information on green products, low buyer interest, and a lack of incentives for suppliers. OECD countries have reported that GPP knowledge, training, and advice from the procurement workforce are important elements for successfully using procurement to achieve environmental benefits (OECD, 2015<sup>[19]</sup>).

The life-cycle cost of products such as cost of use, ownership, maintenance, and disposal is not particularly considered when ISSSTESON is purchasing goods, services or public works. It is only when it is purchasing medicine that the institute carefully considers a product's lifespan. In this case, lifespan can become a factor, as it aims to avoid stocking medicine that has passed its use-by date.

### Box 5.7. Criteria for sustainable procurement

#### Estonia

The Estonian Road Administration (ERM) is a government agency operating in the administrative area of the Ministry of Economic Affairs and Communications. It is responsible for transport policy, that is, infrastructure, traffic and public transport. The ERM carried out a procurement process in October 2010 under the Green Investment Scheme ("Promoting the Use of Public Transport") funded by the agreement between Estonia and Spain on the sale and purchase of the CO<sub>2</sub> emissions quota. The agreement was awarded under Kyoto Protocol Article 17 and stipulated that the Estonian government invest the proceeds from the sale of the CO<sub>2</sub> quota in areas where reductions in CO<sub>2</sub> emissions can be achieved. The aim was to introduce new environmentally friendly buses to help popularise the use of public transport and reduce the transport sector's CO<sub>2</sub> emissions. Public procurement's goal was to buy new, cost-effective, environmentally friendly buses suitable for county and regular urban services (Category M3 vehicles).

#### Award criteria

The award criteria were weighted as follows: 55% for the value of the tender (i.e. lowest price); 24% for a combination of warranty, bus engine smoke opacity and repair and maintenance work; and 21% for other technical properties of the buses, including the following:

- Points were awarded if the engines of the buses offered complied with emission limits applicable to EURO V enhanced environmentally friendly vehicles (EEV), as specified in Directive 2005/55/EC. The tenderer had to prove compliance with this requirement by submitting an engine-type approval certificate, according to Directive 2005/55/EC.
- Points were awarded if the tender was accompanied by a confirmation from the manufacturer of the engines of the buses offered, specifying that the engine may be used without modification with diesel fuel, complying with the standard EVS-EN 590:2009+NA:2009 (the Estonian equivalent of the corresponding European standard). Diesel fuel may contain up to 7% of fatty acid methyl esters (FAME), described in standard EN 14214.
- Points were awarded if urban buses were equipped with dual-zone (driver's cab and passenger compartment) air-conditioning equipment for automated regulation of the interior temperature.

To avoid unequal treatment of tenderers and minimise the risk of disputes, the contracting authority decided not to include criteria on fuel consumption and CO<sub>2</sub> emissions of the offered buses. No compulsory testing procedure for Category M3 vehicles had been set up to measure fuel consumption and CO<sub>2</sub> emissions on which the contracting authority could rely. Evaluating such criteria based on testing results provided by the tenderers or the manufacturers of buses would not have provided an

adequate overview of the differences in fuel consumption and CO<sub>2</sub> emissions between the different buses offered. This was likely to result in unequal treatment of tenderers and to lead to disputes.

## Hungary

The Public Procurement Supply Directorate (PPSD) in Hungary is an autonomous central purchasing body. In 2013, PPSD planned to publish six procedures including environmental criteria (one for paper and stationery, four for IT and one for fuel procurement). The aggregated value was HUF 129.5 billion (paper and stationery: HUF 5.5 billion; information technology (IT): HUF 118 billion; fuel: HUF 6 billion). The terms of the contracts were for 24 and 48 months.

The green criteria applied in the procedures were:

- paper and stationery products:
  - i) environmentally friendly products (envelopes, folders and paper products for offices)
  - ii) meeting the environmental management standard (ISO 14001)
  - iii) technical specifications: environmental labels (FSC, NordicSwan, Blue Angel), eco-labels, recycling.
- IT:
  - i) EU standards
  - ii) energy consumption (standby and switched-off mode)
  - iii) noise level
  - iv) waste management (delivery, recycling, extermination)
  - v) re-manufactured products.
- fuel:
  - i) EU standards and environmental/sustainability criteria
  - ii) alternative fuels (biodiesel, bioethanol).

## Canada

Canada's Policy on Green Procurement was developed in 2006. Support for developing and implementing the policy was led by Public Works and Government Services Canada, in collaboration with Environment Canada, Natural Resources Canada, and the Treasury Board of Canada Secretariat. Canada has a Green Procurement Plan that includes a scorecard outlining the criteria currently being used and communicated to suppliers. This allows them time to prepare for the next renewal, thus maintaining supplier competition.

IT hardware is an example of a commodity where many environmental criteria have been included in the Standing Offer using this process, including:

- i) All desktop and notebook systems, as well as monitors, are certified through the Electronic Product Environment Assessment Tool (EPEAT Silver level).
- ii) Desktop systems and monitors are EnergyStar 4.0-certified.
- iii) Monitors are TCO'03.
- iv) Desktop systems include high-efficiency power supplies (80plus).
- v) All manufacturers represented on the Standing Offer are members of good repute of a recognised entity specifically established to address end-of-life electronics recycling and reuse in Canada.

vi) Desktop Category 1.0D and 1.0A Green PCs have reduced materials (with a smaller case and integrated components) and lower power consumption.

Where no centralised procurement instrument exists, the environmental considerations used for similar goods and services can be used in other procurement activities.

Source: (OECD, 2015<sup>[19]</sup>), *Going Green: Best Practices for Sustainable Procurement*, [https://www.oecd.org/governance/ethics/Going\\_Green\\_Best\\_Practices\\_for\\_Sustainable\\_Procurement.pdf](https://www.oecd.org/governance/ethics/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf).

The OECD has developed an analytical framework for green public procurement. If ISSSTESON is to advance in this respect, it will need to incorporate many of the following six dimensions:

1. set a GPP legal and policy framework to help buying entities incorporate GPP in their procurement procedures;
2. plan GPP, including understanding market capacity and available technical solutions, as well as assessing GPP costs and benefits;
3. introducing environmental standards in the technical specifications, procurement selection and award criteria, as well as in contract performance clauses;
4. professionalising GPP and increasing know-how and skills;
5. raising awareness of GPP solutions and their benefits with buyers, businesses and civil society;
6. monitoring the results of GPP and providing a feedback loop into policy and regulation.

#### *Towards a more innovative and sustainable public procurement*

Countries seek to support innovation because it promotes economic growth and creates employment. In cultivating innovation, countries increasingly emphasise demand-side policies (i.e. creating demand for innovative solutions) as opposed to supply-side policies (i.e. creating better conditions for innovation to materialise). Public procurement is one of the most important tools available to create and implement demand-side policies (OECD, 2017<sup>[20]</sup>).

Innovation is one of the most important secondary policy objectives and is identified in the UN 2030 Agenda for Sustainable Development. It is crucial for economies, as it drives job creation, productivity and growth. Countries use various measures to support innovation procurement: mostly policy instruments, regulations or legal instruments, according to a recent OECD study (OECD, 2017<sup>[20]</sup>) that surveys government procurement strategies and practices for innovation, and collects practices from 35 member and non-member countries. About 80% of the countries participating in the study take measures to support innovation procurement and 50% have a related action plan, either as part of broader innovation or procurement strategies or as stand-alone initiatives. Demand for a new product or service is the main reason for using public procurement for innovation. The second most common reason cited by countries is improving the performance of existing products or services, reducing costs and/or increasing energy efficiency.

Countries have to overcome a range of hurdles to implement their innovative procurement practices. The most common challenges are related to risk aversion, management, personnel and skills capacity, and political support. Sound measurement systems requiring robust data and indicators are crucial for evaluating procurement for innovation strategies and improving return on investment, as well as social benefits. Successful strategic innovation procurement requires governments to:

- communicate the positive outcomes of innovation;
- co-ordinate more closely in the horizontal and vertical management of tasks;
- demonstrate political leadership and political commitment;



- build up the capacity and numbers of skilled staff;
- cultivate a more open culture towards new ways of working;
- encourage co-operation among different branches of the public procurement process.

Meeting these goals is a long-term challenge for any institution. ISSSTESON has no policies or guidelines to encourage innovation in procurement activities or any requirements for innovative solutions in the regulations for working with suppliers. The institute has no evaluation criteria in tender documents related to social goals, innovation, life-cycle costs or the environment.

Although health care offers great opportunities to collaborate on innovation procurement projects (see Box 5.8), the institute's legal framework, culture and skills are clearly insufficient. For ISSSTESON and for most Latin American countries, introducing public procurement innovation is a challenge, especially with the current culture of excessive controls, which tends to reduce flexibility in procurement. The process is so formalised on paper that procurement officials tend to avoid any contact or discussion with the market.

#### **Box 5.8. THALEA uses telemedicine and telemonitoring to improve care for life-threatened patients**

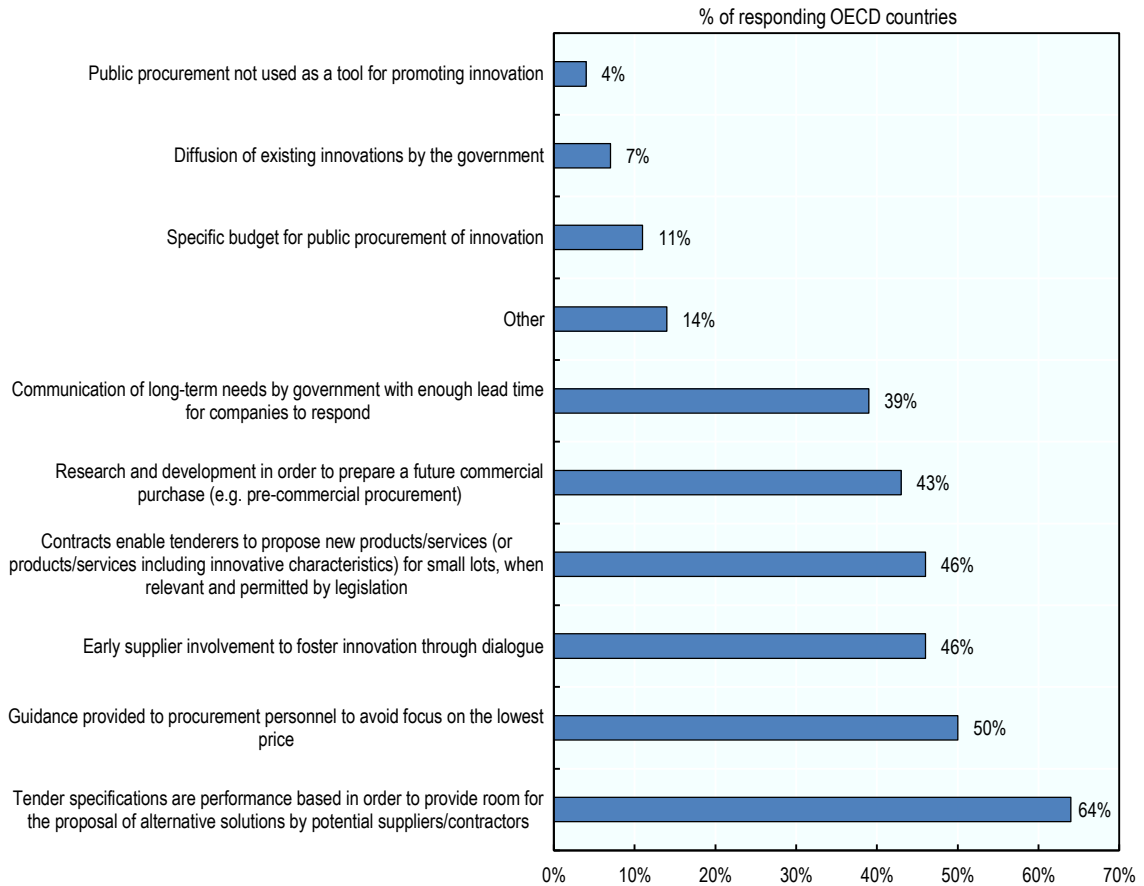
Early research from the European PCP-Project THALEA suggests that the consortium has a growing body of evidence that telemedicine can improve outcomes for intensive care unit (ICU) patients. No highly interoperable, manufacturer-independent telemedicine platform is now in place to detect ICU patients at increased risk. Encouraging results in other e-health-projects influenced the decision to use pre-commercial procurement (PCP), to provide the best possible solution for THALEA. Clearly identified demand and strategy detected by international ICU experts, agreed by multidisciplinary stakeholders (IT experts, excellence cluster e-health, insurance companies and ministries) at a pre-consortium meeting, ensures a perfect match of demand, strategy and funding instruments in an early phase of the project. Given the unacceptably high mortality of ICU patients, telemedicine has the ability to mitigate problematic pan-European challenges, such as demographic changes, a shortage of ICU professionals and a scarcity of financial resources. Bringing together market participants and stakeholders (procurers, ICU specialists, IT specialists) in close collaboration, PCP in THALEA may be able to create an appropriate common solution, fulfilling the demands for a telemedicine research framework.

For more information, see [www.thalea-pcp.eu/](http://www.thalea-pcp.eu/).

Source: (OECD, 2017<sup>[20]</sup>), *Public Procurement for Innovation: Good Practices and Strategies*, <http://dx.doi.org/10.1787/9789264265820-en>.

It is important that ISSSTESON appreciate the potential of public procurement innovation and how it is used in other countries. A 2012 survey by the OECD suggested that while most OECD countries seek to use procurement for innovation, only a few had a separate budget for the purpose (Figure 5.5). Many, however, had used performance-based tender specifications to encourage innovation, providing guidance for procurement officers or involving suppliers at an early stage in the tender process to encourage innovation. ISSSTESON could consider this in developing its procurement for innovation strategies.

**Figure 5.5. Use of procurement to promote innovation**



Source: (OECD, 2014<sup>[21]</sup>), "Intelligent Demand: Policy Rationale, Design and Potential Benefits", *OECD Science, Technology and Industry Policy Papers*, No. 13, OECD Publishing, Paris, <https://doi.org/10.1787/5jz8p4rk3944-en>.

## Proposals for Action

This chapter has focused on the key challenges faced by the institute's public procurement employees. Many of the suggestions and recommendations go beyond the role of procurement employees and can be reflected upon the larger workforce. This is an important lesson for ISSSTESON before embarking on a wide capacity-building assignment as procurement employees make up less than 1% of the total workforce. Implementing strategic public procurement is a greater challenge for ISSSTESON. Not only will it require improved competency among the procurement workforce, there will need to be a change of culture, because dealing directly with suppliers is restricted. Last but not least, the legislative framework will need to be modified to allow for many of the processes to be implemented, and criteria to be developed, used and evaluated. It is promising that there is some knowledge of SMEs within ISSSTESON, but the institute has no clear vision of how to involve them beyond what is already permitted under the law. The competency level could be raised and a new vision of strategic public procurement introduced if the institute were to consider the following proposals.

### Building the capacity of the procurement workforce:

- ISSSTESON should develop capacity-building or training plans for its procurement workforce, including an incentive system to encourage enhanced performance.
- ISSSTESON's Human Resources Department should be tasked with developing guidance material and trainings.
- ISSSTESON should carry out an assessment of the procurement workforce, highlighting strengths, weaknesses, gaps and any building blocks that could be used as a starting point for capacity-building measures.
- ISSSTESON should develop a strategy for public purchasing, incorporating a clear vision and objectives for its procurement employees to follow.
- ISSSTESON should advertise vacant positions for public procurement, to attract professionals with the skills and competencies needed for the job.
- ISSSTESON should define the skills and competencies procurement employees should have.
- ISSSTESON should build up knowledge of market research in its procurement function.
- ISSSTESON should establish a guide for the minimum acceptable content for market studies. It can do this by developing a manual to be used by the procurement units in the hospitals and at the central office.
- ISSSTESON should consider the development of a competency framework covering most aspects of the procurement cycle.

### Implementing strategic public procurement

- ISSSTESON should consider developing a strategy to promote secondary policy objectives such as SMEs, sustainable green procurement, innovation, social procurement or socially responsible enterprises.
- ISSSTESON's procurement unit should be involved in the development of technical specifications during the planning process, allowing it to incorporate enhanced environmental criteria.
- ISSSTESON should consider expanding the use of evaluation criteria to better incorporate requirements for strategic procurement.

- ISSSTESON should support secondary objectives by introducing several of the following: an action plan, developing guidance, adjusting the legal framework, introducing codes of conduct, and training.
- ISSSTESON should further explore the potential of public procurement innovation and launch a pilot project to understand its implications.
- ISSSTESON should consider taking on the different approaches noted in this chapter to help promote innovation among suppliers to meet the institute's needs in the future.

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## Notes

<sup>1</sup> The 11 divisions are training; scale movements; payroll administration, operation and integration; staff recruitment and selection; incentives payment and control; labour relations; economic benefits; working history; disabilities; civil responsibilities and social care; civil protection and contracts.

<sup>2</sup> (OECD 2015), *OECD Recommendation of the Council on Public Procurement*, [www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf](http://www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf).

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OECD Public Governance Reviews

# Reforming ISSSTESON's Public Procurement for Sustainability

This review analyses public procurement policies and practices of ISSSTESON, the institution providing health and pension services to the workers of the State Government of Sonora, Mexico. It benchmarks ISSSTESON practices against the 2015 Recommendation of the Council on Public Procurement to help the institute upgrade its procurement operations and increase efficiency, in a difficult financial environment. It also examines the revenue structure of the Institute and suggests reforms for the pension scheme, which is too generous compared to national and international experience.

Consult this publication on line at <https://doi.org/10.1787/a6ee30a8-en>.

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