



OECD Public Governance Reviews

Public Procurement in the State of Mexico

ENHANCING EFFICIENCY AND COMPETITION



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Preface

Public procurement represents, on average, 30% of total general government expenditures and close to 12% of gross domestic product in OECD countries. Yet, the importance of public procurement goes beyond its economic dimension, as it is increasingly recognised by governments as a tool for achieving broader policy objectives and well-being outcomes. Many diverse policy areas benefit from public procurement in concrete terms. For example, 96% of OECD countries have a strategy or policy to support small and medium enterprises (SMEs), and 81% have a strategy or policy to support innovation through public procurement. In addition, the COVID-19 crisis has demonstrated how crucial procurement systems are to ensure the delivery of essential goods and how they can contribute to greater resilience and the capacity of states to maintain and improve public service delivery.

The OECD has been working with its member and partner countries for several years to support their public procurement systems through tailored reviews that identify weaknesses and make recommendations for improvement. It also accompanies countries in designing and implementing reforms, develops standards based on good practices and peer learning, and collects data for comparative analysis.

In Mexico, OECD has made an important contribution to the public procurement agenda in recent years, particularly in the health and energy sectors through reviews of the Mexican Institute of Social Security (IMSS) and the State Employees' Social Security and Social Services Institute (ISSSTE), as well as of the state-owned companies *Petróleos Mexicanos* (PEMEX) and the Federal Electricity Commission (CFE). Likewise, OECD has worked with a group of federal states by reviewing their procurement practices and making reform recommendations, namely with the State of Nuevo León and the Institute of Security and Social Services for the Workers of the State of Sonora (ISSSTESON).

OECD work in Mexico has found that public procurement is too rarely considered as a strategic activity at the sub-national level. With a single focus on regulatory compliance, less value for money is created through procurement. Likewise, minimising the importance of public procurement has opened the window for abuse and integrity failures that have undermined citizen trust in public institutions.

We are delighted to have the opportunity to co-operate with federal states that have realised the strategic role of public procurement in delivering services and improving the quality of life for citizens. Indeed, the State of Mexico is determined to be a leader in reaping the benefits of good governance of public procurement, and we will accompany the State of Mexico in implementing our recommendations.

In this pursuit, there is no time to waste. The COVID-19 crisis is having a major impact on our economies and governments must act with determination to minimise its harm to the population, particularly among the most vulnerable. We congratulate the State of Mexico for such determination and invite other federal states in Mexico to work with OECD to promote better policies for better lives.



Elsa Pilichowski

OECD Director of the Public Governance Directorate

Foreword

The State of Mexico is the biggest federal entity in Mexico in terms of its population, which is currently estimated at 17.3 million inhabitants. The State of Mexico is also home to the country's most populated municipality, Ecatepec de Morelos, with around 1.6 million inhabitants. The economy of the State of Mexico produces about 8.7% of Mexico's GDP, and GDP per capita in the state grew 9.8% between 2010 and 2016, well above the national average of 8.5%. However, the state also faces important challenges. For example, 47.9% of its population is considered to be below the poverty line and 6.1% in extreme poverty. Likewise, trust in public institutions, as measured by citizen perceptions, is low. The situation has become even more challenging as a result of the effects of COVID-19 on national and state economies.

The Government of the State of Mexico has set ambitious initiatives to tackle these challenges, as reflected in the State Development Plan 2017-23, including reducing inequality by addressing the needs of vulnerable groups and achieving the full implementation of the State Anticorruption System (*Sistema Anticorrupción del Estado de México y Municipios*, SAEMM). Public procurement can be a powerful tool for advancing these initiatives. First, effective and efficient public procurement is crucial for delivering public services to improve the standard of living, while ensuring value for public resources. Second, ensuring transparent public procurement and high standards of integrity among procurement officials can help build trust in public institutions. Likewise, public procurement, which represented about 25% of the State of Mexico budget in 2019, could be used to develop its SME sector, particularly at a time when the COVID-19 crisis has severely affected business activities.

This report presents the findings and policy recommendations of the Public Procurement Review of the State of Mexico. The review addresses existing strategic and operational gaps, and reflects on what the state can do to improve the governance of its procurement system. The system is centralised under the Ministry of Finance and led by its General Directorate of Material Resources (*Dirección General de Recursos Materiales*, DGRM). It also makes recommendations for facilitating competition in the State of Mexico's tender processes and, therefore, improve its access to goods and services of better quality and at better prices.

As part of the review process, workshops were held on the key phases of the public procurement cycle, such as market analysis, award criteria, and risk management, with the support of peer experts from the Government of Schleswig-Holstein, Germany, and the Open Contracting Partnership.

This review recognises the achievements of the procurement system of the State of Mexico, such as being one of the states at the forefront in implementing its anticorruption system and requiring a Certificate of Independent Bid Determination from bidders. This latter was recommended in a previous OECD report for the State of Mexico in 2012. Likewise, this review provides recommendations on how to upgrade public procurement practices including, for example, improving the transactional capabilities of the e-procurement platform COMPRAMEX and developing the capacities of the procurement workforce, to align it with proven OECD good practices.

After publication, OECD will accompany the Government of the State of Mexico in implementing the recommendations and prepare a follow-up report to be delivered in approximately one year, in order to allow sufficient time for reforms to be carried out.

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Under the direction and oversight of Elsa Pilichowski, OECD Director for Public Governance and Edwin Lau, Head of the Infrastructure and Public Procurement Division, this review was co-ordinated by Jacobo Pastor García Villarreal, Senior Policy Analyst.

Chapters 1 and 4 were written by Jacobo Pastor García Villarreal; Masayuki Omote wrote Chapters 2 and 6 and Costanza Caputi and Gabriela Villa Aguayo wrote Chapters 3 and 5. Juan Pablo Bolanos contributed inputs and data analysis at an early stage of the project. Valuable comments were received from Paulo Magina and Matthieu Cahen. Editorial assistance and communications efforts were provided by Elisabetta Pilati and Lauren Thwaites. Aleksandra Bogusz provided administrative assistance.

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This report is part of a series of governance reviews in OECD and G20 countries. It incorporates information shared during an OECD workshop on market intelligence, award criteria and open contracting. Special thanks to SECOGEM, the Ministry of Finance and their officials for their support in organising and carrying out this workshop. The OECD is also grateful to the peer experts who participated in the workshop: Lars Ohse, Chief Procurement Officer of the Central Purchasing Body of the federal state of Schleswig-Holstein, Germany, and Nicolás Penagos, Senior Program Manager for Latin America, Open Contracting Partnership.

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Table of contents

Preface	3
Foreword	4
Acknowledgments	5
Acronyms and abbreviations	10
Executive Summary	15
1 Governance of the public procurement function in the State of Mexico	17
1.1. Procurement structure and governance	18
1.2. The normative framework for public procurement in the State of Mexico	22
1.3. Co-ordination and communication	33
1.4. Current approaches to market engagement	35
References	41
Note	42
2 Leveraging on e-procurement to increase efficiency and transparency of public procurement	43
2.1. Digitalising procurement processes to improve efficiency	45
2.2. Enhancing the culture of access to information and open government data to improve procurement transparency	57
2.3. Moving towards e-procurement reform: key factors for the successful reform of COMPRAMEX	66
References	76
3 Enhancing the effectiveness of centralisation of procurement in the State of Mexico	79
3.1. Centralisation brings results, if carried out effectively	81
3.2. Opportunities for expanding the scope of centralisation in the State of Mexico	82
3.3. Improving the effectiveness of centralisation by the General Directorate of Material Resources	89
3.4. Establishing an effective organisation as a central purchasing body	101
References	112
Notes	114
4 Ensuring integrity and accountability in public procurement in the State of Mexico	115
4.1. Policy framework to promote integrity in public procurement	121

4.2. Management of conflicts of interest by public procurement practitioners	126
4.3. Accountability and monitoring concerning sanctions on suppliers	131
4.4. Engaging the private sector and civil society to strengthen integrity in the procurement function	133
4.5. Review, challenge and remedy system	143
4.6. Risk management and internal control to identify and address integrity risks in public procurement	148
References	169
Notes	171
5 Advancing efficiency throughout the whole procurement cycle	172
5.1. A legal and policy framework conducive to efficiency in the public procurement system	173
5.2. Increased competition is needed to drive efficiency throughout the procurement cycle	179
5.3. Achieving efficiency through focus on quality in the procurement process	188
5.4. Strategic public procurement as driver for efficiency	193
References	197
Notes	199
6 Maximising capacities of the public procurement workforce through professionalisation	200
Introduction	201
6.1. Overview of the regulatory framework, strategy, and institutional framework related to the public procurement workforce	203
6.2. Assessing capacity and professionalisation needs to establish an effective professionalisation strategy	209
6.3. Developing a competency framework and a certification framework	214
6.4. Strengthening the capacity-building system	218
References	231
FIGURES	
Figure 1.1. Factors determining the attractiveness of a centralised purchasing system	21
Figure 1.2. Objectives of ex post regulatory evaluation in OECD and accession countries	26
Figure 1.3. Trend in RIA adoption across OECD jurisdictions	27
Figure 2.1. Evolution of functionalities of e-procurement systems in OECD countries	46
Figure 2.2. Functionalities of e-procurement systems in OECD countries, 2018	46
Figure 2.3. Procurement modalities used at the Federal Government of Mexico, 2012-2019	51
Figure 2.4. Integration of the e-procurement system(s) with other digital government systems, 2018	55
Figure 2.5. Framework for an open government strategy	58
Figure 2.6. Availability of public procurement documents to the general public	60
Figure 2.7. Successful factors for e-procurement reforms	67
Figure 2.8. Plural Working Group for the reform of CompraNet, established by Mexico's Federal Government	70
Figure 3.1. Number of coordination agreements per product category	84
Figure 3.2. Share of procurement procedures (services), by value	90
Figure 3.3. Share of procurement procedures (goods), by value	90
Figure 3.4. Types of framework agreements	99
Figure 3.5. Organisational structure of the DGRM	102
Figure 3.6. Contract management's contribution to performance	103
Figure 4.1. Integrity risks throughout the public procurement cycle	117
Figure 4.2. Share of general government procurement in selected Latin American countries by level of government, 2007 and 2014	118
Figure 4.3. Perception on how frequent corruption is by federal state in Mexico	120
Figure 4.4. Perception of corruption in the State of Mexico by sector	121

Figure 4.5. Existence of a strategy or policy to pursue responsible business conduct through public procurement	135
Figure 4.6. Measures to promote integrity among suppliers in OECD and selected countries	136
Figure 4.7. Use of social witnesses by number of reports produced and institutions engaging them during 2014-2018	139
Figure 4.8. Main participants in the management of the public procurement process under the centralised scheme	150
Figure 4.9. Management and control of procurement procedures under the centralised scheme	153
Figure 4.10. The Three Lines of Defence Model	163
Figure 4.11. Control of procurement procedures under the Three Lines of Defence model	165
Figure 5.1. Use of Direct Awards by the Ministry of Finance (number of procedures)	178
Figure 5.2. Potential steps of disqualification throughout the procurement cycle	180
Figure 5.3. Objectives of market analysis	182
Figure 5.4. <i>Desechamiento</i> among ministries, auxiliary organisations and municipalities	184
Figure 5.5. Use of binary criterion in the State of Mexico (%)	191
Figure 6.1. Measures in OECD countries to ensure adequate capacity of the public procurement workforce	202
Figure 6.2. Key priority areas to establish an effective professionalisation and capacity building system in the State of Mexico	203
Figure 6.3. Organisational chart of the Institute for Professionalisation of Civil Servants	206
Figure 6.4. Certification process for public procurement officials	217
Figure 6.5. Challenging procurement areas in terms of strengthening capacity building	222

TABLES

Table 1.1. Participation by the different entities of the State Government in the public procurement cycle	19
Table 1.2. Goods and services subject to ex ante approval assessments and central areas in charge	34
Table 1.3. Market engagement alternatives throughout the public procurement cycle	36
Table 2.1. Functionalities of COMPRAMEX	48
Table 2.2. Functionalities of the E-Procurement System in Latin America, 2016	50
Table 2.3. Number of procedures and volumes for the procurement of goods, services and public works in the State of Mexico, 2018	53
Table 2.4. Information available in COMPRAMEX	62
Table 2.5. Access to information in Ipomex: requirement vs actual availability	63
Table 2.6. Subgroup topics of the Plural Working Group for CompraNet reform	70
Table 2.7. YouTube support material for self-training on the use of CompraNet	74
Table 2.8. Recommendations and roadmap for COMPRAMEX reform	75
Table 3.1. Centralised procurement by the Ministry of Finance	83
Table 3.2. Expenditure on goods and services by auxiliary bodies	85
Table 3.3. Product groups requiring authorisation for purchase by the DGRM	86
Table 3.4. Average number of bids received for open tenders, DGRM	91
Table 3.5. Analysis of bids with more than one supplier	93
Table 3.6. Benefits and risks of framework agreements	97
Table 3.7. Most procured goods by the DGRM in 2018	98
Table 3.8. Most procured services by the DGRM	98
Table 3.9. Parameters for defining the type of framework agreement	99
Table 3.10. Performance targets of the DGRM	109
Table 3.11. Example of KPIs for measuring the performance of a CPB	110
Table 4.1. Main institutions spending in public procurement in the State of Mexico, 2019	119
Table 4.2. Regulatory framework addressing conflicts of interest in the State of Mexico	128
Table 4.3. Examples of the use of integrity pacts in various countries	137
Table 4.4. Quotas paid by contracting authorities to social witnesses during 2019	138
Table 4.5. Number of reports produced by social witnesses during 2018	139
Table 5.1. 2020 Expenditure Budget of the Government of the State of Mexico	176
Table 5.2. Points and percentages award criterion for contracts in the State of Mexico	192
Table 5.3. Awarded contracts for SMEs (Ministry of Finance of the State of Mexico)	194
Table 6.1. Public procurement workforce in the State of Mexico	210
Table 6.2. Procurement competency framework in Scotland	216
Table 6.3. Certification programmes established in the State of Mexico	217

Table 6.4. Trainings organised by the Institute for Professionalisation of Civil Servants	219
Table 6.5. Availability of trainings on public procurement in the State of Mexico	220
Table 6.6. PEMEX's e-learning modules	223
Table 6.7. Professionalisation mechanisms of the public procurement workforce in the State of Mexico	230

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Acronyms and abbreviations

BPQR	<i>Criterio de mejor relación precio-calidad</i> Best Price-Quality Ratio
CAEM	<i>Comisión del Agua del Estado de México</i> Water Commission of the State of Mexico
CAS	<i>Comités de Adquisiciones y de Servicios</i> Procurement Committees for Goods and Services
CCE	<i>Consejo Co-ordinador Empresarial</i> Business Co-ordination Council
CEMER	<i>Comisión Estatal de Mejora Regulatoria</i> State Commission on Better Regulation
CIBD	<i>Declaración de Determinación Independiente</i> Certificate of Independent Bid Determination
CMIC	<i>Cámara Mexicana de la Industria de la Construcción</i> Mexican Chamber of the Construction Industry
CPEUM	<i>Constitución Política de los Estados Unidos Mexicanos</i> Political Constitution of the United Mexican States
COCODIs	<i>Comités de Control y Desempeño Institucional</i> <i>Institutional Control and Performance Committees</i>
COMPRANET	<i>Sistema de contratación electrónica de México (país)</i> National E-procurement platform
COMPRAMEX	<i>Sistema de contratación electrónica del Estado de México</i> State of Mexico's e-procurement platform
COPLADEM	<i>Comité de Planeación para el Desarrollo del Estado de México</i> Committee of Planning for the Development of the State of Mexico
CPB	<i>Central de compras</i> Central purchasing body
CRTSEM	<i>Comité de Registro de Testigos Sociales del Estado de México</i>

	Committee for the Registration of Social Witnesses
CSOs	<i>Organizaciones de la sociedad civil</i> Civil society organisations
DGRM	<i>Dirección General de Recursos Materiales</i> General Directorate of Material Resources
DGSEI	<i>Dirección General del Sistema Estatal de Informática</i> State Computer System
EC	<i>Comisión Europea</i> European Commission
EDCA	<i>Estándar de Datos para las Contrataciones Abiertas</i> Open Contracting Data Standard
EU	<i>Unión Europea</i> European Union
GMSH	<i>Administración de inmuebles de Schleswig-Holstein</i> Building Management Schleswig-Holstein
GPA	<i>Acuerdo sobre Contratación Pública</i> Agreement on Government Procurement
ICT	<i>Tecnologías de la información y las comunicaciones</i> Information and Communications Technologies
IEEM	<i>Instituto Electoral del Estado de México</i> Elections Institute of the State of Mexico
IMIFE	<i>Instituto Mexiquense de la Infraestructura Física Educativa</i> Institute for Education Infrastructure of the State of Mexico
INEGI	<i>Instituto Nacional de Estadística y Geografía</i> National Statistics and Geography Institute
INFOEM	<i>Instituto de Transparencia y Acceso a la Información Pública del Estado de México y Municipios</i> Institute for Transparency, Access to Public Information of the State of Mexico and its Municipalities
INTOSAI	<i>Organización Internacional de Entidades Fiscalizadoras Superiores</i> International Organisation of Supreme Audit Institutions
IPOMEX	<i>Información Pública de Oficio Mexiquense</i> Public Information by default of the State of Mexico
ISEM	<i>Instituto de Salud del Estado de México</i> Health Institute of the State of Mexico

ISSEMyM	<i>Instituto de Seguridad Social del Estado de México y Municipios</i> Institute for Social Security of the State of Mexico and Municipalities
IT	<i>Tecnologías de la información</i> Information Technologies
JCEM	<i>Junta de Caminos del Estado de México</i> Board of Roads of the State of Mexico
KPIs	<i>Indicadores clave desempeño</i> Key performance indicators
LAASSP	<i>Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público</i> Law for Acquisitions, Leasing and Services of the Public Sector
LAC	<i>América Latina y el Caribe</i> Latin America and Caribbean region
LCPEMyM	<i>Ley de Contratación Pública del Estado de México y Municipios</i> Public Procurement Law of the State of Mexico and Municipalities
LGRA	<i>Ley General de Responsabilidades Administrativas</i> General Law for Administrative Responsibilities
LOAPEM	<i>Ley Orgánica de la Administración Pública del Estado de México</i> Organic Law of the Public Administration for the State of Mexico
LOPSRM	<i>Ley de Obras Públicas y Servicios Relacionados con las Mismas</i> Law on Public Works and Related Services
MAPS	<i>Metodología para la Evaluación de los Sistemas de Contratación Pública</i> Methodology for Assessing Procurement Systems
MEAT	<i>Oferta económica más ventajosa</i> Most Economically Advantageous Tender
MICI	<i>Marco Integrado de Control Interno</i> Integrated Internal Control Framework
MXN	<i>Pesos mexicanos</i> Mexican pesos
NACS	<i>Sistema Nacional Anticorrupción</i> National Anti-corruption System
OCDS	<i>Estándar de Datos para las Contrataciones Abiertas</i> Open Contracting Data Standard
OECD	<i>Organización para la Co-operación y el Desarrollo Económicos (OCDE)</i> Organisation for Economic Co-operation and Development
OIC	<i>Órgano Interno de Control</i>

	Internal Control Body
OSFEM	<i>Órgano Superior de Fiscalización del Estado de México</i> Superior Audit Body of the State of Mexico
OSCE	<i>Organismo Supervisor de las Contrataciones del Estado (Perú)</i> Government Procurement Supervising Agency (Peru)
PD	<i>Plataforma Digital Estatal</i> State Digital Platform
PMCP	<i>Plataforma Mexiquense de Contratación Pública</i> State of Mexico Platform of Public Procurement
POBALINES	<i>Políticas, Bases y Lineamientos, en Materia de Adquisiciones, Enajenaciones, Arrendamientos y Servicios de las Dependencias, Organismos Auxiliares y Tribunales Administrativos del Poder Ejecutivo del Estado de México</i> Agreement setting the policies, basis and guidelines relative to acquisitions, leasing and services of the ministries, auxiliary bodies and administrative tribunals of the Executive Branch of the State of Mexico
PTAR	<i>Programas de Trabajo de Administración de Riesgos</i> Risk Management Work Programmes
RIA	<i>Análisis de Impacto Regulatorio</i> Regulatory Impact Assessment
RCC	<i>Lista de comprobación de criterios regulatorios</i> Regulatory Criteria Checklist
SAASCAEM	<i>Sistema de Autopistas, Aeropuertos, Servicios Conexos y Auxiliares del Estado de México</i> System of Highway, Airports, Services and Auxiliary of the State of Mexico
SAEMM	<i>Sistema Anticorrupción del Estado de México y Municipios</i> Anti-corruption system of the State of Mexico
SAI	<i>Instituciones de fiscalización superior</i> Supreme Audit Institutions
SCII	<i>Sistema de Control Interno Institucional</i> Institutional Internal Control System
SDGs	Objetivos de desarrollo sostenible Sustainable Development Goals
SECOGEM	<i>Secretaría de la Contraloría del Gobierno del Estado de México</i> Ministry of Control of the State of Mexico Government
SEIEM	<i>Servicios Educativos Integrados al Estado de México</i> Integrated Education Services to the State of Mexico

SFP	Secretaría de la Función Pública Ministry of Public Administration of Mexico's Federal Government
SICAPEM	<i>Sistema Integral de Contratación y Administración Patrimonial del Estado de México</i> Integrated System of Procurement and Asset Administration of the State of Mexico
SIRESPeM	<i>Sistema Informático de Registro de Servidores Públicos del Estado de México</i> Information System of Public Servants of the State of Mexico
SITRAMyTEM	<i>Sistema de Transporte Masivo y Teleférico del Estado de México</i> Massive Transport System and Funicular of the State of Mexico
SMEs	<i>Pequeñas y medianas empresas (PYMEs)</i> Small and medium-sized enterprises
SPP	<i>Sistema de Planeación y Presupuesto</i> Planning and Budget System
TJAEM	<i>Tribunal de Justicia Administrativa del Estado de México</i> Tribunal of Administrative Justice of the State of Mexico
UAEM	<i>Universidad Autónoma del Estado de México</i> Autonomous University of the State of Mexico
UMA	<i>Unidad de Medida y Actualización</i> Measurement and Update Unit
UNEP	<i>Programa de las Naciones Unidas para el Medio Ambiente</i> United Nations Environment Programme
WTO	<i>Organización Mundial de Comercio (OMC)</i> World Trade Organization

Executive Summary

Key findings

The State of Mexico spends about 25% of its budget in public procurement. Sixteen ministries of the state public administration can carry out procurement operations through their Administrative Units or through the General Directorate of Material Resources (*Dirección General de Recursos Materiales*, DGRM) of the Ministry of Finance, while 90 auxiliary bodies carry out their own procurement, unless they have signed an agreement with the Ministry of Finance to buy specific goods or services through DGRM. In practice, most of the procurement for the central administration (i.e., the ministries) is executed by the Ministry of Finance.

Contrasting perceptions between the DGRM and its users regarding the benefits of centralised procurement may undermine its logic of aggregating demand to access better prices. Therefore, one of the main challenges for the Government of the State of Mexico is to demonstrate that it is convenient for the ministries and auxiliary bodies to rely on the DGRM to carry out their procurement. Opportunities for greater centralisation are still available, and particularly significant given the amount of procurement of goods and services that takes place outside the centralisation scheme of the DGRM, particularly procurement by auxiliary bodies.

Enlarging the pool of suppliers is important for the DGRM to improve efficiency. The current supplier pool is relatively small. For 2018, the average number of bids received in a sample of purchases was 2.4 and 1.7 for goods and services, respectively. There is thus limited competitive pressure for a sizeable share of tenders. Several features of the State of Mexico's normative framework also hinder the potential for efficiency. For example, international tenders are severely limited to specific circumstances and the number of exceptions allowing the use of non-competitive procurement procedures is relatively high. Furthermore, many of the suppliers who actually submit a tender are often disqualified along the way.

The Public Procurement Law of the State of Mexico and Municipalities (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM) promotes the gradual introduction of COMPRAMEX, the e-procurement system of the State of Mexico. However, the government has not carried out electronic tenders using COMPRAMEX, due to the limited transactional functions of the platform. There is no clear timeline or implementation plan to upgrade COMPRAMEX.

The State of Mexico is a leader among Mexico's federal entities in the implementation of its own anticorruption system, as it was one of the first to fully establish the institutions mandated by law. However, the State of Mexico does not have an agenda or programme to promote business integrity.

There is a gradual, although still insufficient, appropriation of control by the staff responsible for management tasks in ministries and auxiliary bodies. An illustration of this problem is the active participation of internal control bodies (OICs) in managing the control of procurement procedures, which may affect their impartiality in their internal audit function.

Finally, the State of Mexico has a long history in its regulatory framework and strategy to improve the professionalisation and capacities of its civil servants. However, these regulatory frameworks and

strategies focus on civil servants in general, and could be oriented to the professionalisation of the public procurement workforce specifically.

Key recommendations

- **The Government of the State of Mexico should demonstrate the value added of the centralised procurement scheme to the different stakeholders.**
 - The State Government should be more proactive in communicating the potential benefits of the centralised scheme to the user areas, and to other stakeholders.
- **The Co-ordination Committee of SAEMM, the Ministry of Finance and SECOGEM, should develop a framework for market engagement that delivers the benefits of such a practice, while mitigating the risks, particularly integrity risks.**
 - There are some specific alternatives at the pre-tendering stage that may be relatively easy for the State of Mexico to implement with the aim of increasing the average number of bids.
- **The State of Mexico should introduce new transactional functions for e-procurement processes.**
 - The State of Mexico could establish a website on e-procurement reform, which would clearly outline the reform vision, strategy, programme and timeframes to ensure that the efforts of the government are visible.
- **The State of Mexico should expand the scope of centralisation.**
 - The DGRM could work actively to expand the scope of its centralised purchases to include new users, as well as to increase the share of centralisation of auxiliary bodies.
 - The DGRM could adapt its service to the needs of the contracting authorities, namely proposing voluntary framework agreements for standardised goods and services, which would require a legislative reform.
- **The State of Mexico should facilitate competition to deliver value for money with centralised procurement.**
 - The DGRM should start by acquiring a precise understanding of the causes behind low levels of competition, including frequent disqualifications and void tenders.
 - Digitalisation through the expansion of e-procurement could offer an important course of action.
 - Where possible, the DGRM could consider advertising its tenders in other markets (at federal level or in neighbouring states).
 - The DGRM also needs to continue the trend to privilege the use of competitive procedures throughout its tenders, limiting direct awards only to strict exceptional circumstances.
- **The State of Mexico could engage the private sector and civil society to strengthen integrity in the procurement function.**
 - The Government of the State of Mexico should partner with the business community to develop and advance an agenda for business integrity, particularly regarding procurement activities.
 - SECOGEM should advance the reform of the social witness programme applied in the State of Mexico to strengthen the independence, expertise and wider engagement of social witnesses throughout the procurement cycle and in the different modalities.
- **The State of Mexico should develop a competency framework and a certification framework to advance the professionalisation agenda by recognising public procurement as a professional task.**

The State of Mexico could carry out a survey to assess the capability and needs of the public procurement workforce in order to identify its strengths and weaknesses.

1

Governance of the public procurement function in the State of Mexico

This chapter analyses the governance structure of the public procurement function in the State of Mexico, including the way public procurement is organised and the main stakeholders, as well as the normative and institutional framework. The chapter also discusses co-ordination and communication mechanisms to facilitate the good governance of the procurement function. Likewise, it discusses current approaches to engage with suppliers and the business community to understand the markets and facilitate their planning and participation in tender opportunities. Finally, it assesses the use of better regulation standards, particularly related to public consultation, when reforming public procurement rules.

1.1. Procurement structure and governance

Out of a total budget of MXN 291 059 million for the State of Mexico in 2019, 25% was dedicated to public procurement, that is MXN 71 968 million. The Organic Law of the Public Administration for the State of Mexico (*Ley Orgánica de la Administración Pública del Estado de México*, LOAPEM) establishes that the state government will carry out its functions through ministries (*dependencias del Ejecutivo*) and auxiliary bodies. There are 16 ministries which form the central administration, while auxiliary bodies comprise decentralised bodies, state-owned enterprises (SOE) and public funds (*fideicomisos públicos*).

According to the Public Procurement Law of the State of Mexico and Municipalities (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM), the 16 ministries can carry out procurement operations through their Administrative Units and the General Directorate of Material Resources (*Dirección General de Recursos Materiales*, DGRM) of the Ministry of Finance. However, the 90 auxiliary bodies, including 84 decentralised bodies, three public funds, one SOE and two civil associations, carry out their own procurement activities, unless they have signed an agreement with the Ministry of Finance to buy specific goods or services through DGRM.

Most of the procurement for the central administration (the ministries) is centralised in the Ministry of Finance, which has the following responsibilities relative to public procurement:

- Registering and regulating the acts and contracts which stipulate the rights and liabilities for the state government.
- Purchasing the goods and services required for the functioning of the executive branch, with federal or state resources.
- Timely provision of the elements and materials required to carry out functions in other ministries.
- Administering, controlling and supervising state government warehouses.
- Enforcing the guarantees, under any modality, in favour of the state government through the processes established in law.

In addition, the Ministry of Finance is the policy maker regarding public procurement and issues regulation applicable throughout the state public administration, such as the Agreement setting the policies, basis and guidelines relative to acquisitions, leasing and services of the ministries, auxiliary bodies and administrative tribunals of the Executive Branch of the State of Mexico (*Políticas, Bases y Lineamientos, en Materia de Adquisiciones, Enajenaciones, Arrendamientos y Servicios de las Dependencias, Organismos Auxiliares y Tribunales Administrativos del Poder Ejecutivo del Estado de México*, POBALINES). It also has the power to define the meaning of procurement regulations. During 2018, the Ministry of Finance established 246 contracts for goods, to an estimated value of MXN 6 560 million, and 159 contracts for services, to an estimated value of MXN 7 274 million. The Ministry of Finance executes the annual procurement plans and centralises the purchase of goods and services required by most ministries, such as printing of documents, uniforms, school supplies, food products, security services, leasing of vehicles, professional services, ICT services and services related to conventions and events. These purchases should be carried out either through direct award (value of the contract is below MXN 500 000), restricted invitation, (value of the contract is MXN 500 001 – MXN 1 500 000) or public tender (value of the contract exceeds MXN 1 500 000).

In addition, the Ministry of Finance can establish agreements with auxiliary bodies and municipalities to include them in the centralised purchases. Participation by auxiliary bodies in centralised purchases varies and often depends on the good or service to be procured; for example all auxiliary bodies participate in the centralised procurement for telephone services. During 2018, the Ministry of Finance established 52 agreements with 27 decentralised bodies and one autonomous body to carry out their procurement procedures for goods and services and join the contracts in force for printing and copying services, fuel, cleaning services, security, insurances (life, vehicles and buildings), telephone and Internet services,

human resources management and leasing of vehicles to name a few. During 2019, 87 agreements were signed with 42 decentralised bodies and one autonomous body. However, only 46.6% of the procurement value disbursed by the state is centralised. Furthermore, no municipality has signed an agreement to join the centralised purchasing scheme.

The auxiliary bodies with the highest procurement budgets in 2018 were the Health Institute of the State of Mexico (*Instituto de Salud del Estado de México*, ISEM) with MXN 10 254 million (3.5% of the total budget), the Institute for Social Security of the State of Mexico and Municipalities (*Instituto de Seguridad Social del Estado de México y Municipios*, ISSEMYM) with MXN 9 125 million (3.1% of the total budget) and Integrated Education Services of the State of Mexico (*Servicios Educativos Integrados al Estado de México*, SEIEM) with MXN 4 307 million (1.5% of the total budget).

However, different ministries usually carry out some procurement directly through their administrative units. Such purchases are called “ordered contracts” (*contratos pedidos*) and should not exceed MXN 570 000. *Contratos pedidos* evolved from a previous practice called “inclusive spending” (*compras solidarias*), which aimed to benefit SMEs and businesses from the State of Mexico in procurement processes.

The following table describes the role of the different entities of the State Government in each of the stages of the public procurement cycle.

Table 1.1. Participation by the different entities of the State Government in the public procurement cycle

Stage	Activity	Responsible entity
Pre-tendering	Procurement planning	Ministries of the central administration and auxiliary bodies.
	Needs definition	Ministries of the central administration and auxiliary bodies.
	Market research	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Determination of reference prices	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Producing tender documents	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
Tendering	Issuing the call for tender	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Clarification meetings	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Modifications to tender documents	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration, along with the users or technical areas from such ministries. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Tender	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Bid evaluation	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration, along with their Acquisitions and Services Committees (<i>Comités de Adquisiciones y Servicios</i>). In the case of procurement carried out by auxiliary bodies themselves, their Acquisitions and Services Committees complete this task.
Post-tendering	Contract award	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task.
	Signature of contract	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration. In the case of procurement carried out by auxiliary bodies

		themselves, their administrative units complete this task.
	Subcontracting management	In general, subcontracting is not allowed and requires previous authorisation by the Ministry of Finance for processes pertaining to the central administration.
	Modifying agreements	The Ministry of Finance carries out this activity for the procurement of the ministries of the central administration, along with the users or technical areas from such ministries. In the case of procurement carried out by auxiliary bodies themselves, their administrative units complete this task, along with the users or technical areas from such bodies.
	Dispute resolution mechanisms and complaints (<i>inconformidades</i>)	Ministry of Control (<i>Secretaría de la Contraloría</i> , SECOGEM)

Source: Information provided by the Government of the State of Mexico.

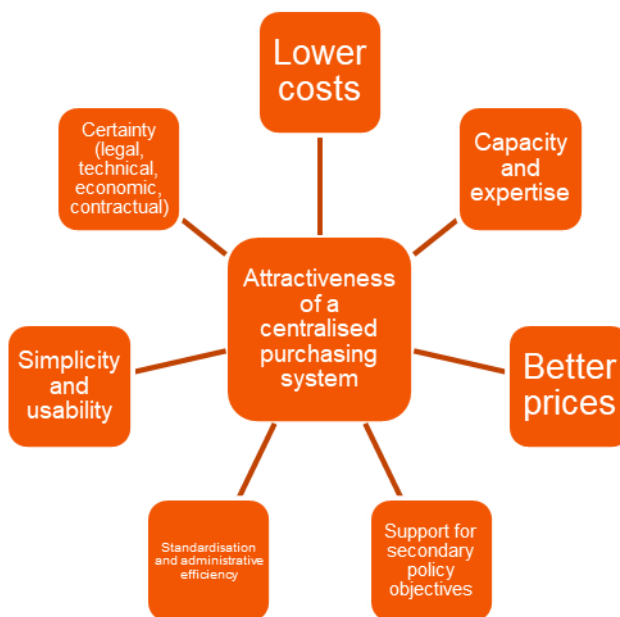
The Ministry of Control (*Secretaría de la Contraloría*, SECOGEM) is the internal control and audit institution of the government and, as such, audits public procurement activities. In the case of administrative breaches, SECOGEM can apply administrative sanctions to public servants for non-severe failures (*faltas no graves*), while severe failures (*faltas graves*) are transferred to the Administrative Tribunal of the State of Mexico (*Tribunal de Justicia Administrativa del Estado de México*, TJAEM).

1.1.1. The Government of the State of Mexico should be able to demonstrate the value added of the centralised procurement scheme (and other procurement strategies or tools to be implemented in the future) to the different stakeholders

During the fact-finding mission, the OECD team heard from different entities that they sometimes have to carry out small purchases directly as they need to factor in delays from the Ministry of Finance in the tendering and delivery of materials needed for daily operations. On the other hand, the Ministry of Finance claims that the interactions between the DGRM and its users are agile. For example, if DGRM finds that the files provided by user units requesting a purchase are incomplete, it will ask user units to provide the missing information through a written request or through the Integrated system of procurement and asset administration of the State of Mexico (*Sistema Integral de Contratación y Administración Patrimonial del Estado de México*, SICAPEM). Such contrasting perceptions may undermine the fundamental logic of centralised procurement, which consists of, among other things, aggregating demand to access better prices. Some entities claimed that they would prefer a decentralised procurement scheme, as they do not detect enough value added from the Ministry of Finance.

Indeed, the value of a centralised purchasing system for the users relies upon several factors. The extent to which benefits accrued are visible to the public entities relying on a centralised purchasing body (CPB), in this case the Ministry of Finance, will determine the acceptance and support of it (see Figure 1.1)

Figure 1.1. Factors determining the attractiveness of a centralised purchasing system



Source: (OECD, 2015^[1]).

One of the main challenges faced by the Government of the State of Mexico is demonstrating the convenience for ministries and auxiliary bodies to rely on the Ministry of Finance to carry out their procurement. Convenience could be illustrated as access to better prices and quality of goods and services, simplified procedures, increased certainty and fewer challenges by bidders, and the ability to provide expert advice to leverage public procurement strategically.

Based on the services the Ministry of Finance provides as a CPB, the Government of the State of Mexico should clearly identify what the value added of centralised procurement is and design a strategy to develop and communicate it. For example, if one of the added values will be access to lower costs, the State Government could develop a methodology to measure savings derived from the centralised scheme. Likewise, for example, if the Ministry of Finance were to demonstrate its value added by providing advice to user units on the management of the pre-tendering stage (i.e., procurement planning and needs definition), it would have to create a workforce of procurement professionals with the expertise to do so. Indeed, the Ministry of Finance may already have several opportunities to demonstrate its value added. For instance, it could work with its user units to illustrate how market analyses shape the procurement strategies to deliver value to them.

Similarly, if the State of Mexico were to adopt further procurement strategies and tools, they could demonstrate clear benefits for the different stakeholders to garner further support. For example, the State of Mexico is in discussion for the development of a reform to allow the implementation of framework agreements and indeed, during the fact-finding mission, the OECD team found that the State Government could raise awareness about the benefits of framework agreements to facilitate buy-in by contracting authorities and advance a potential reform.

Currently, the Ministry of Finance circulates the benefits of the centralised procurement scheme on a more ad hoc basis through meetings with the Administrative Co-ordinators of the ministries and auxiliary bodies participating in centralised purchases. These meetings are carried out within a prescribed programme and are useful to communicate guidelines and decisions taken from DGRM. For example, in early 2020, the meeting consisted of communicating decisions stemming from austerity measures to be applied throughout the state public administration, including centralised purchasing of printing and mobile communication

services, as well as leasing of vehicles. These meetings could be leveraged to obtain feedback from the administrative co-ordinators regarding previous centralised purchases, as well as to identify opportunities for more agile processes and the actions that need to be taken by both, DGRM and its user units. Indeed, they are an established channel to communicate the benefits of centralised procurement.

However, the Administrative Co-ordinators are only intermediaries between the user areas and DGRM. Therefore, the Government of the State of Mexico could be more proactive in communicating the potential benefits of the centralised scheme to the user areas, and to other stakeholders, including suppliers, business chambers, municipalities (so that they are more eager to sign agreements to participate in centralised purchases), and the general public. This could for instance be done through an annual report (or even interim reports during the year) specifically focusing on the added value of centralised procurement.

Improving the results obtained from the centralised scheme demands strong institutional leadership. If procurement is to be treated as a strategic activity, government entities will need to operate under a clear mandate, and align political will. For instance, the Government of the State of Mexico must advance reforms to remove obstacles for upgrades (e.g. the possibility of engaging in framework agreements and the establishment of alternative dispute resolution mechanisms) and make the funds available to improve e-procurement. But more importantly, government officials will have to realise that these reforms are worth the effort and, if implemented correctly, will deliver long-term savings that outweigh the short-term costs.

The OECD has identified several critical factors possessed by successful centralised purchasing organisations that obtain savings. Firstly, it is important for CPBs to have a clear mandate to operate. The mandate may be broad or narrow, but it must be clear. Secondly, good relations with both users and suppliers is important for building confidence in the operations of the CPB, which in turn is important to motivate tender participation. Thirdly, and in relation to the second factor, it is important to actually obtain favourable purchasing terms and products, thereby creating legitimacy and loyalty towards the centralised purchasing systems established. Specifically, the more inclined procuring entities are to use the CPB services, the more attractive it is for potential suppliers to compete for contracts. As the average number of bids in State of Mexico tenders is quite low (2.35 in 2018), this factor is key for the Ministry of Finance. Indeed, the CPB competency and behaviour are important drivers of success.

Contrary to what happens in states such as Nuevo León, where public works are undergoing a similar centralisation process to the one applied for goods and services, in the State of Mexico the procurement of public works is not centralised. This may be due to the fact that the centralised scheme for goods and services has yet to demonstrate its value added. In any case, the experience of centralised procurement of goods and services should be useful to assess if, in the near future, the State of Mexico also wants to centralise the procurement of public works and, if so, establish the pillars required to make the system attractive for users and potential bidders.

1.2. The normative framework for public procurement in the State of Mexico

1.2.1. The State of Mexico should allow for a review of the normative framework for public procurement to upgrade it and incorporate innovations that would advance efficiency and trust

Article 134 of Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*, CPEUM), establishes the principle that the procurement of goods and services should be carried out through public tenders in order to achieve the best terms with regards to price, quality, financing, opportunity and other applicable circumstances. The principles set out in the CPEUM are then detailed in a set of normative instruments, applicable for procurement financed through federal or state funding.

In this context, federal states in Mexico have a dual legal framework for the procurement of goods and services, and for public works, depending on the source of funding (federal resources or state funds). As illustrated in Figure 4.2, 70% of public procurement spending in Mexico is executed at the sub-national level (i.e., by federal states and municipalities). Procurement of goods and services funded with federal resources (very common, for example, in the health sector) are consequently subject to federal regulations, notably the Law for Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASP) and its corresponding Bylaws (*Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*). Likewise, procurement of public works financed with federal resources (quite common, for example, in the education sector) is also subject to federal rules, notably the Law for Public Works and Related Services (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*, LOPSRM) and its Bylaws (*Reglamento de la Ley de Obras Públicas y Servicios Relacionados con las Mismas*). Even if there is a mix of resources funding the procurement, as long as federal resources involved and regardless of the amount, these federal regulations apply.

On the other hand, procurement of goods and services financed by state and/or municipal funds is regulated mainly by the LCPEMyM and its Bylaws (*Reglamento de la Ley de Contratación Pública del Estado de México y Municipios*). Likewise, public works procured exclusively with state and/or municipal funds are regulated by the Administrative Code of the State of Mexico, 12th Book (*Código Administrativo del Estado de México, Libro Décimo Segundo de la Obra Pública*). Some other laws applicable to procurements funded with state and/or municipal resources are the following:

- Political Constitution of the Free and Sovereign State of Mexico (*Constitución Política del Estado Libre y Soberano de México*): Article 129 reiterates Art. 134 of the CPEUM by establishing the duty to ensure the best conditions for the state in terms of price, quality, financing, opportunity, and other applicable circumstances.
- LOAPEM: It regulates the organisation and functions of the central administration and auxiliary bodies. It also establishes the centralised procurement scheme for goods and services and the powers of the Ministry of Finance in this regard.
- Financial Code of the State of Mexico and Municipalities (*Código Financiero del Estado de México y Municipios*): It regulates the financial activities of the State of Mexico and its municipalities, including the collection, management and application of public funds, as well as the transparency and disclosure of financial information relative to budgeting, execution, evaluation and accountability.
- Expenditures Budget of the Government of the State of Mexico (*Presupuesto de Egresos del Gobierno del Estado de México*): It is issued every year to allocate the budget to state institutions and programmes.
- POBALINES: It establishes guidelines to comply with the LCPEMyM and provides detailed information about how to carry out procurement procedures.

In addition to the above laws and regulations, there is a set of rules establishing ethical norms and standards applicable to procurement officials. These will be described in more detail in Chapter 4 but are largely the following:

- Law of Administrative Responsibilities for the State of Mexico and its Municipalities (*Ley de Responsabilidades Administrativas del Estado de México y Municipios*).
- Code of ethics for public officials of the executive power and auxiliary bodies (*Código de Ética de los Servidores Públicos del Poder Ejecutivo del Gobierno del Estado de México y sus Organismos Auxiliares*)
- Protocol for public servants intervening in public procurement or granting licenses, permits, authorisations or concessions (*Protocolo de actuación de los servidores públicos que intervienen*

en las contrataciones públicas, prórrogas, el otorgamiento de licencias, permisos, autorizaciones, concesiones y sus modificatorios nacionales como internacionales), the Protocol hereinafter

- Code of Conduct of the Ministry of Finance (Código de Conducta de la Secretaría de Finanzas).

Although some of the laws composing the regulatory framework for public procurement have been reformed recently, for example specific articles of the LCPEMyM were reformed through decrees 496 (24 August 2015), 178 (20 December 2016), 267 (15 December 2017) and 11 (21 December 2018), in general the regulatory framework is outdated and requires significant reform to modernise public procurement and free it from binding constraints hindering efficiency and trust.

The LCPEMyM, for example, was originally published in May 2013 and the POBALINES on December 2013 (latest reform on August 2017). Likewise, the 12th Book of the Administrative Code of the State of Mexico was published on 2 September 2003. Despite the recent reforms, some important opportunities for upgrading include the following:

- Specific provisions to allow framework agreements (*contratos marco*) and alternative procurement strategies.
- Removing limits on the participation of international bidders to allow for greater competition.
- Favouring e-procurement over paper-based procedures.
- Allowing and clarifying the use of different award criteria (i.e., Most Economically Advantageous Tender, MEAT).
- Upgrading the participation of social witnesses in procurement procedures.
- Allowing the use of alternative mechanisms (i.e., arbitration, mediation, etc.) for dispute resolution to save time and resources of the state government in the case of challenges (51 challenges or *inconformidades* were filed from 2016-2018).

In light of such opportunities, the State of Mexico should undertake a comprehensive review of the normative framework for public procurement. Reforms requiring amendments of primary laws will even imply legislative action. Evaluations of regulations after a period of implementation should be primarily focused on whether the intended outcomes of regulatory intervention have been achieved. This is the main purpose of retrospective analysis, and its systemic application that is recommended in the 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance*. The *OECD Regulatory Policy Outlook 2015* provides a set of evaluation criteria that could form the basis for an evaluation framework (Box 1.1) (OECD, 2015^[2]).

Box 1.1. Principles for setting an evaluation framework

General criteria

- **Relevance:** Do the policy goals cover the key issues at hand?
- **Effectiveness:** Was the policy appropriate and instrumental to successfully address the needs perceived, as well as the specific problems the intervention was meant to solve?
- **Efficiency:** Do the results justify the resources used? Or could the results be achieved with fewer resources? How coherent and complementary have the individual parts of the intervention been? Is there scope for streamlining?
- **Utility:** To what degree do the achieved outcomes correspond to the intended goals?

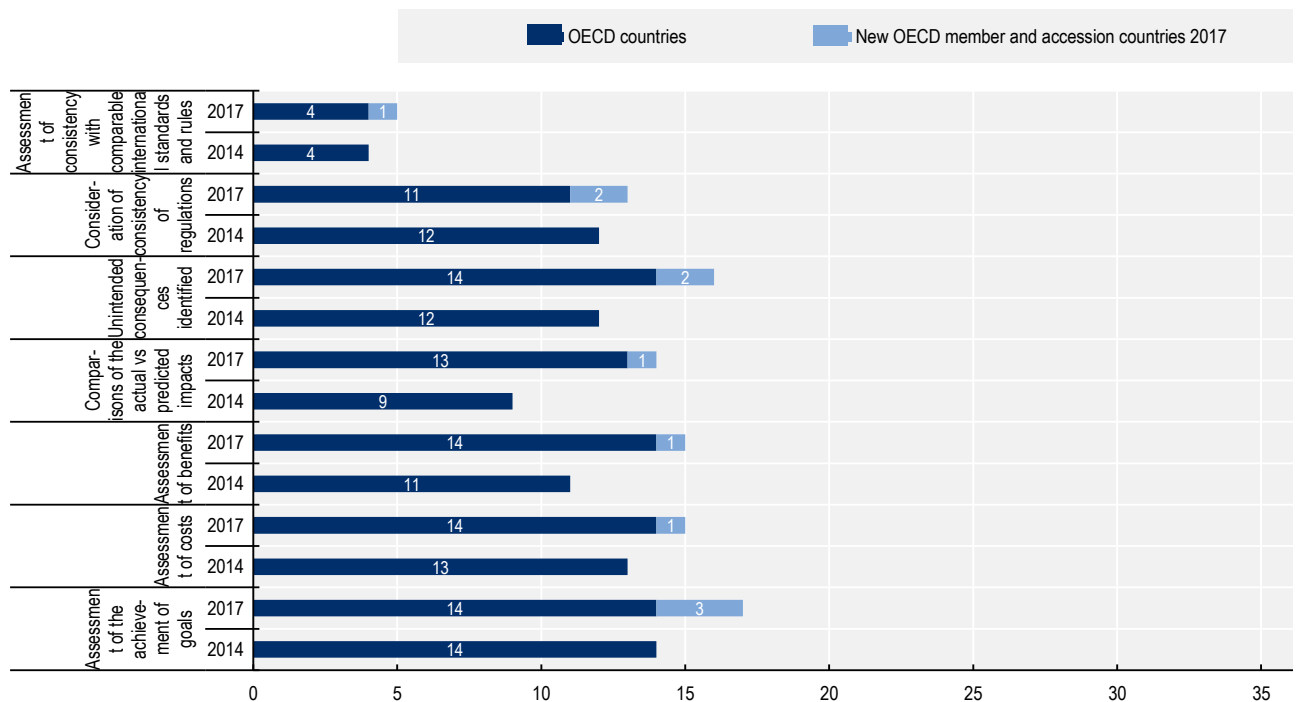
Additional criteria

- **Transparency:** Was there adequate publicity? Was the information available in an appropriate format and at an appropriate level of detail?
- **Legitimacy:** Has there been a buy-in effect?
- **Equity and inclusiveness:** Were the effects fairly distributed across the stakeholders? Was enough effort made to provide appropriate and equitable access to information?
- **Persistence and sustainability:** What are the structural effects of the policy intervention? Is there a direct cause-effect link between them and the policy intervention? What progress has been made in reaching the policy objectives?

Source: (OECD, 2015^[2]).

Methodologies used in OECD countries for ex post regulatory evaluation usually concentrate on the achievement of policy goals, the unforeseen consequences of a regulation and the assessment of costs and benefits (see Figure 1.2).

Figure 1.2. Objectives of ex post regulatory evaluation in OECD and accession countries



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania.

Source: (OECD, 2018^[3]).

During the normative review process, the State of Mexico should be mindful of overregulation. There is a difficult balance to strike between flexibility and control. Recent integrity failures at the national and state level in Mexico have led to the flawed assumption that more regulation will definitely lead to less corruption. In fact, the current strong compliance approach has perhaps limited the ability of procurement officials to achieve value-for-money. When reviewing the regulatory framework, the State of Mexico should bear in mind regulatory burdens imposed on procurement officials. It should then seek controls with clear indicators to evaluate the effectiveness of these regulations.

1.2.2. The State of Mexico could apply better regulation standards, particularly public consultation and ex ante impact assessment, when introducing reforms to procurement regulations

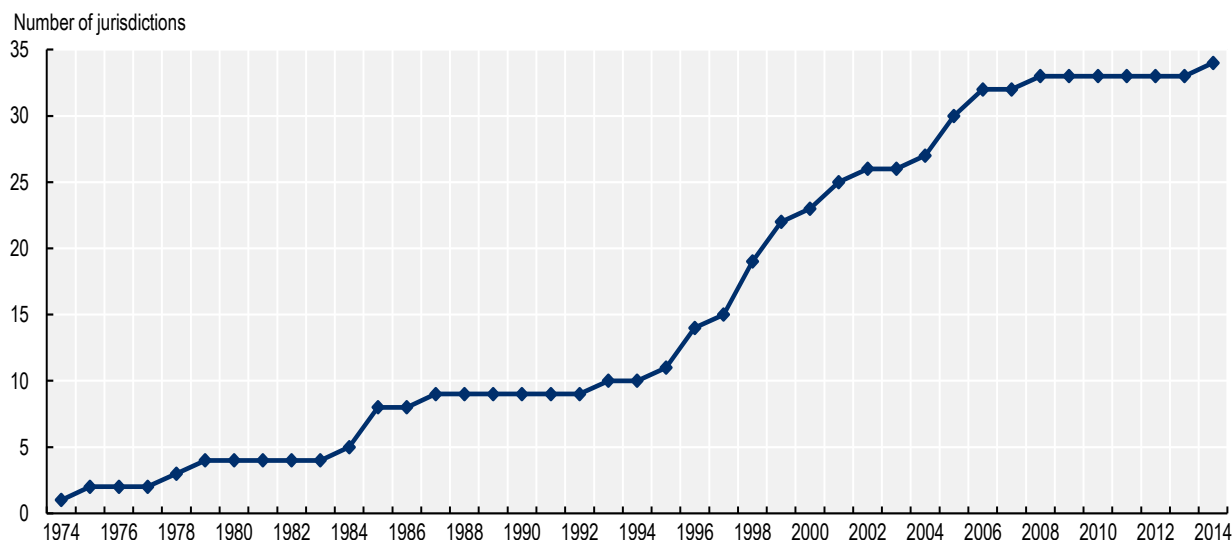
The OECD *Recommendation on Public Procurement* 2015 encourages adherents to “develop and follow a standard process when formulating changes to the public procurement system. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner” (OECD, 2015^[4]).

Additionally, the OECD *Recommendation on Regulatory Policy and Governance* suggests that adherents “Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient^[5] in achieving those goals” (OECD, 2012^[5]).

Better regulatory standards can lead to multiple benefits as they subject governments to the discipline of evidence-based rulemaking. First of all, such standards help governments assess, together with the relevant stakeholders, the extent to which a regulation addresses the public policy problem at hand. They also give governments an idea of potential unintended consequences and alternatives to mitigate costs and risks. Public consultation in particular can build buy-in for reform and therefore facilitate compliance from the target audiences. Along with RIA, these instruments provide information on the distributive effects of the costs and benefits of regulation, allowing for a more fair distribution. Finally, better regulation standards advance the transparency of the rulemaking process and prevent capture, maintaining first and foremost the public interest.

Ex ante assessment processes for regulatory proposals, such as RIAs, applied to either new regulations or reforms to existing rules can underpin the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world. As illustrated in Figure 1.3, some form of RIA has now been adopted by all OECD members, although they have all nevertheless found the successful implementation of RIA administratively and technically challenging.

Figure 1.3. Trend in RIA adoption across OECD jurisdictions



Notes: Based on data from 36 countries and the European Commission.

Source: 2014 and 2017 Regulatory Indicators Survey results.

Box 1.2. The OECD Recommendation on Regulatory Policy and Governance with regards to RIA

- Adopt ex ante impact assessment practices that are proportional to the significance of the regulation, and include benefit-cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts, including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- Ex ante assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.
- Ex ante assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. Ex ante assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.
- When regulatory proposals would have significant impacts, ex ante assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. Ex ante assessments should, where relevant, (OECD, 2008^[6]) provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness and distributional effects.
- RIA should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision-making. Good practice would involve using the RIA as part of the consultation process.
- Ex ante assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation can be achieved by other less restrictive means.
- When carrying out an assessment, officials should:
 - Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
 - Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
 - Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.
- RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012^[5]).

The Law on Better Regulation for the State of Mexico and its Municipalities (*Ley para la Mejora Regulatoria del Estado de México y sus Municipios*) actually requires state and municipal ministries and auxiliary bodies to carry out a RIA when developing new regulations or reforms to rules in force leading to compliance costs for the private sector. According to Article 42, RIAs should include the following elements:

- A clear statement of the reasons behind the need for new regulations or reforms to existing ones;
- alternatives considered before deciding to put forward a new regulation or reform an existing one;
- problems created by the current rules and how the new regulation or the reform to existing one will address them;
- risks stemming from failing to issue the proposed rules;
- legal basis for the regulatory project and consistency of the proposed regulation with the current legal framework;
- benefits stemming from the proposed regulation;
- identification and description of the administrative procedures (*trámites*) eliminated, adjusted or created with the proposed regulation;
- resources available to advance compliance with the regulation; and
- a description of early consultation initiatives carried out in creating the regulatory proposal, as well as the opinions collected from stakeholders.

Likewise, Article 45 requires the State Commission on Better Regulation (*Comisión Estatal de Mejora Regulatoria*, CEMER) to publish the regulatory proposals, along with their corresponding RIAs, and all the opinions and comments by stakeholders expressed during a public consultation lasting no fewer than 20 days.

The approach mandated by law is consistent with international practices with regards to compliance costs for the private sector. Indeed, new public procurement rules or reforms to existing ones are probably going to have some impact on the private sector, particularly on potential participants in bidding processes. But even if such regulatory processes are deemed to have no compliance costs for the private sector, for the specific case of public procurement rules, the State of Mexico may also consider the potential costs for the public sector itself. For example, a reform to mandate the electronic processing of the application to the Supplier's Registry may not be costly for bidders, indeed it would likely lead to savings, but it would certainly entail direct costs for the government in terms of upgrading the current procedure. Therefore, good practice suggests that, bearing in mind potential costs and benefits for the private and the public sector, the State of Mexico should apply better regulation standards to new procurement rules or reforms to the existing ones.

In line with this recommendation, contracting authorities in general, and in particular the Ministry of Finance's DGRM as the CPB of the State Government, should work together with CEMER to develop their capacities to apply better regulation standards. For example, when issuing new procurement rules or introducing reforms to existing ones, DGRM should bear in mind the basic pre-requisites for a good public consultation, such as those considered by the Australian Productivity Commission (see Box 1.3).

Box 1.3. Preconditions identified by the Australian Productivity Commission for a good consultation process

- Consultation objectives need to be set. Clear objectives help identify the target audience and select the right consultation method to assist evaluation.
- 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.
- Other departments and agencies may need to be involved.
- Methods of consultation need to be determined.
- The nature and form of questions included in written consultation documents need to be considered.
- 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: (OECD, 2008^[6]).

The DGRM could also consider the following questions in preparing to adopt better regulation standards to public procurement reforms:

- When specifically should it apply the 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 and imply costs for either the public or the private sector.
- Who will be in charge of the standard better regulation process for procurement rules? It might be advisable to designate a specific department to liaise with CEMER and assume this role.
- What kind of public procurement rules would be subject to the better regulation 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 analyses should be drawn up to launch procurement regulatory proposals?
- Where and when should the procurement regulatory proposals and their RIAs or analyses be published? For instance, on the Ministry of Finance's website, or on a special website created for the better regulation process?
- Bearing in mind the minimum legal requirement of 20 days, how long should public consultation last? For example, major reforms to procurement rules may be suitable for an extended consultation period.
- Through which channel(s) should stakeholders send their comments? Online or face to face, including information and communication technology tools used for consultation: for example, by email, on a government website, in virtual discussions or on social media. The DGRM 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 DGRM provide feedback on comments received from stakeholders?
- What should a 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 be either on the Ministry of Finance’s website or on a special website created for the better regulation process.
- How will DGRM publicise the new regulation(s) issued and the date of entry into force? It would be advisable to include in the internal 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.

Although there are different methods for carrying out consultation on public procurement regulations, good practice suggests they should be inclusive and allow for feedback from a wide range of stakeholders. Germany, for example, organises such consultation processes through public procurement committees (see Box 1.4).

Box 1.4. Consultation on procurement legislation in Germany

Public procurement committees are a unique element of the German public procurement framework. These bodies serve as fora for stakeholders from the federal, Länder and municipal levels to contribute to the drafting of procurement legislation. Among the members of the committees are representatives from the public sector (federal ministries, Länder ministries and municipal associations (*Kommunale Spitzenverbände*), the private sector, chambers of industry and commerce, and unions. The main purpose of this committee-based approach is to capture the concerns of different stakeholders. While the Federal Ministry for Economic Affairs and Energy (BMWi) is the main institution responsible for devising public procurement policy and drafting primary legislation in Germany, procurement committees draft tertiary legislation. The procurement committees have been criticised for their lack of democratic legitimacy. Yet, they have allowed for the integration of business and other stakeholder interests into contract regulations.

Source: (OECD, 2019^[7]).

Regarding ex ante impact assessment, the State of Mexico could explore a more streamlined approach, simpler and easier to implement than a full-fledged RIA, focusing on specific impacts stemming from procurement regulations, such as on SMEs. For example, British Columbia (BC), Canada, adopted a Regulatory Criteria Checklist (RCC), which replaced RIA in 2001, and incorporated a small business lens in 2007. The Small Business Roundtable pushed to incorporate this feature, which is important as most businesses in BC fit this description (about 83%). Questions such as “is the benefit to government or external partners worth the increased cost to small business and those who must comply?”, “has business process mapping been undertaken to streamline the requirements and lessen the time needed by small business to comply?”, “has small business had the opportunity to see and comment on the proposed requirements?”, “has the amount of time required by small business to comply been reduced?”, and “can compliance occur with existing resources of small business?” demonstrate that small businesses must be a concern of regulators when drafting and introducing new rules (García Villarreal, 2010^[8]).

Box 1.5. The Regulatory Criteria Checklist of British Columbia, Canada

The RCC is composed by 11 different categories with their respective questions:

A) Reverse Onus-Need is Justified:

- Has the scope of the public policy problem been assessed?
- Is government intervention necessary to address the problem?

B) Cost-Benefit Analysis:

- Is the benefit to government or external partners worth the increased cost to small business and those who must comply?

C) Competitive Analysis:

- Has the impact of the requirements on BC's economic competitiveness been assessed?
- Have the requirements been compared with other relevant jurisdictions?

D) Streamlined Design:

- Do the requirements avoid or eliminate duplication or overlap with federal or local government requirements or those of other ministries?
- Has business process mapping been undertaken to streamline the requirements and lessen the time needed by small business to comply?

E) Replacement Principle:

- Will one regulatory requirement be eliminated for each one new regulatory requirement introduced by the legislation or regulation?

F) Results-Based Design:

- Does the design reflect government's commitment to regulatory requirements that are results-based and use scientific evidence?

G) Transparent Development:

- Are the requirements transparent for ease of access, understanding and compliance?
- Has small business had the opportunity to see and comment on the proposed requirements?

H) Time and Cost of Compliance:

- Has the amount of time required by small business to comply been reduced?
- Can compliance occur with existing resources of small business?
- Have government service standards been set?

I) Plain Language:

- Have the requirements been drafted in plain language and in a way that facilitates compliance?

J) Simple Communications:

- Will this change be communicated?
- Can it be described in less than one page?

K) Sunset Review/Expiry Principle:

- Has a date been set to review the requirements to ensure continued relevancy?
- Does the legislation or regulation contain a sunset provision for requirements to expire?

Source: (García Villarreal, 2010^[8]).

1.3. Co-ordination and communication

1.3.1. The Government of the State of Mexico should improve co-ordination and communication relative to the centralised procurement scheme by raising awareness about the role of each institution to make it a success

A common flaw of centralised procurement systems, particularly of emerging ones, is the lack of clearly defined roles, not only for the CPB, but actually for all stakeholders including users, hindering co-ordination. Without clear roles and every institution assuming its responsibility for success, the scheme may become a “blame game”, in which users blame the CPB of being unresponsive or too slow, the CPB blames users of submitting incomplete files or flawed information, the treasury (i.e., the unit paying the suppliers) blames the CPB of incomplete files for processing payments and the CPB blames the treasury of being too formalistic, and so on. In the end, it is the citizens who need the public services who suffer from such lack of co-ordination, as well as suppliers who do not get their payments on time.

Hence, the Government of the State of Mexico should reinforce the idea that the centralised scheme will only be successful and deliver its intended benefits if all the stakeholders assume their responsibilities. Currently, there are not many co-ordination mechanisms to raise such awareness. One of them, described above, is the meetings between the Ministry of Finance and the Administrative Co-ordinators of ministries and auxiliary bodies.

Another mechanism for co-ordination and consistency of procurement activities is the assessments (*dictámenes*) on specifications for specific goods and services. These instruments are managed from a central office to advance the consistency in the purchase of goods and services throughout the public administration. The following table illustrates which goods and services are subject to such assessments and which are the central offices in charge of them. Ministries and auxiliary bodies procuring such goods and services directly should first obtain the *dictamen* from the corresponding area.

Table 1.2. Goods and services subject to ex ante approval assessments and central areas in charge

Technical area	Goods and services
Ministry of Public Safety (<i>Secretaría de Seguridad</i>)	Vehicles, security equipment and technologies, telecommunications equipment
State System for ICT (<i>Sistema Estatal de Informática, SEI</i>)	Computers, software and related services
Directorate for Regulations and Patrimonial Control (<i>Dirección de Normatividad y Control Patrimonial</i>) of the Ministry of Finance	Furniture, equipment, industrial and agriculture machinery, vehicles and transport equipment
Ministry of Education (<i>Secretaría de Educación</i>)	Printing and preparation of official publications
Social Communication	Goods using the institutional and corporate brand
Institute for Information and Geographic, Statistical and Cadastral Research of the State of Mexico (<i>Instituto de Información e Investigación Geográfica, Estadística y Catastral del Estado de México, IGCEM</i>)	Goods containing geographic, statistical or cadastral information
Ministry of Health (<i>Secretaría de Salud</i>)	Medical equipment, tools and furniture and auxiliary equipment for diagnostic.

Source: Information provided by the Ministry of Finance.

Sixteen ex ante assessments are processed each month on average. Once issued by the corresponding area, DGRM reviews it quantitatively.

Another mechanism for co-ordination and communication is the Procurement Committees for Goods and Services (*Comités de Adquisiciones y de Servicios, CAS*). Such committees are collegiate bodies which support the Ministry of Finance and other institutions in integrating procurement procedures for goods and services. In contrast with the federal regime, where CAS' main function is reviewing and approving exceptions to public tenders, in the State of Mexico they have the following functions, according to the LCPEMyM and its Bylaws:

- Participating in open tender, restricted invitation and direct award processes, including those carried out as reverse auctions, until before the award of the contract;
- Issuing the award notice (*dictamen de adjudicación*);
- Reviewing and approving exceptions to public tender;
- Analysing and assessing the technical and economic proposals submitted by bidders;
- Requesting technical assistance, as needed, to business chambers or federations, professional associations, research institutions or other similar entities;
- Implementing actions deemed necessary to improve procurement procedures; and
- Creating subcommittees and working groups necessary to carry out its functions.

The CAS established in the Ministry of Finance have the following membership:

- The head of the area in charge of managing the procurement of the central administration, which is DGRM;
- A representative of the financial area of the Ministry;
- A representative of each ministry or administrative unit with a stake in the procurement of the good or service in question;
- A representative from the Office of the Legal Counsellor (*Consejería Jurídica*);¹
- A representative from the Internal Control Body (*Órgano Interno de Control, OIC*); and
- An executive secretariat, appointed by the president of the CAS, in this case, the head of DGRM.

The membership of CAS in auxiliary bodies resembles the one in the Ministry of Finance. Instead of DGRM, the head of the Administrative Co-ordination presides over the CAS in auxiliary bodies and it includes, as

well the representative from the financial and legal units, the OIC, and the user unit (i.e., the one requesting the purchase).

Despite the existence of the mechanisms described above (ad hoc meetings of the Ministry of Finance with Administrative Co-ordinators, ex ante approval assessments and the CAS) to facilitate co-ordination and communication, all of them have limited functions not always clearly related to the strategic steering of the centralised procurement scheme.

The State of Mexico would benefit from establishing a high-level group (i.e., interministerial group, committee, etc.) to engage all relevant stakeholders in the strategic steering of the centralised procurement scheme, develop ownership, communicate its benefits and assign clear roles to achieve whole-of-government objectives. Such a high-level group could work through technical committees, involving operational staff and even external stakeholders (i.e., suppliers), to address the main concerns, reforms and challenges relative to the centralised procurement scheme. Such mechanisms would reiterate the idea that the success of centralised procurement lies not only in the Ministry of Finance, but also in the commitment by all stakeholders. Likewise, they would bring to the forefront a new perception of public procurement as a strategic activity for the achievement of public policy objectives, beyond a mere administrative function.

1.4. Current approaches to market engagement

Market engagement is a process that allows public procurers, at all stages of the procurement cycle, to communicate institutional needs and requirements to suppliers, discuss possible solutions openly and transparently, encourage innovation in the design and delivery of a solution and understand market capacity, capability and trends. Governments, and particularly CPBs, should have a robust understanding of the size, composition and nature of their supply markets, keeping abreast of new developments and ideas, as well as emerging technologies that can help get better results.

Market engagement can not only complement market research and analysis and provide a better perspective of market trends, but also leads to multiple benefits such as (New Zealand Government Procurement Branch, 2015^[9]):

- Gathering information on market structure and operations;
- allowing the market to understand better government needs;
- allowing public procurers discuss the outcomes needed and get feedback on their requirements as to inform the development of specifications and avoid limiting potential competition;
- allowing public procurers to test the feasibility of their needs against market availability and capacity;
- opening discussions about developing or enhancing solutions to meet the government needs;
- providing opportunities for suppliers to partner with others to provide enhanced solutions;
- allowing discussions on how to present government requirements to keep procurement opportunities attractive for the market;
- creating interest in government opportunities and allowing participation by SMEs;
- gathering information on risks; and
- facilitating procurement planning and an optimal approach to market strategy.

On the other hand, market engagement may entail specific risks when poorly executed, such as the following (New Zealand Government Procurement Branch, 2015):

- Giving unfair advantages to one or a few suppliers;
- encouraging accusations of favouritism from unsuccessful suppliers;

- committing to a specific solution at an early stage;
- failing to protect intellectual property and commercially sensitive information;
- engaging in a way that may put specific suppliers in disadvantage (i.e., SMEs);
- creating unrealistic expectations in the market or in specific suppliers;
- raising trust issues as a result of integrity failures and alienating potential suppliers from participating in government procurement opportunities; and
- creating opportunities for collusive behaviour from suppliers.

1.4.1. The Co-ordination Committee of SAEMM, the Ministry of Finance and SECOGEM, should aim to develop a framework for market engagement that delivers the benefits of such a practice, at the time that mitigates the risks, particularly integrity risks

OECD has found that the assumption that more control will inevitably lead to fewer integrity breaches is quite common in the context of Mexico (OECD, 2018b). Past bad experiences, particularly relative to public procurement, have led public servants to believe that more controls are necessary to prevent integrity failures. This has created an environment where public procurement officials prioritise compliance over value-for-money considerations, hindering innovation and practices such as market engagement.

While it is true that market engagement entails risks, as recognised above, this should not prevent the State of Mexico from gaining from its benefits, while also taking specific actions to mitigate the risks. Currently, the Government of the State of Mexico does not have a comprehensive strategy for market engagement beyond the publication of annual procurement plans and the market research carried out by the Ministry of Finance. Clarification meetings, while commonly used, are not mandatory (as they are under federal regulations).

Market engagement can happen at any time of the procurement cycle and the Ministry of Finance and SECOGEM should consider developing a framework (i.e., rules, guidelines, etc.) for market engagement. Some of the specific forms of engagement are illustrated in the following table.

Table 1.3. Market engagement alternatives throughout the public procurement cycle

Pre-tendering	Tendering	Post-tendering
Annual procurement plan	Briefing suppliers who submitted a bid	Debriefing suppliers
Trade shows	Clarification meetings (on site or electronic)	Contract award notice
“Meet the buyer” events		Contract and supplier management
“Show and tell” events		Strategic supplier management
Meeting industry bodies and business chambers		
Meeting with a group of suppliers or with a supplier individually		
Pre-tender briefings to potential suppliers		
Industry workshops		

Source: (New Zealand Government Procurement Branch, 2015^[9]).

There are some specific alternatives easy for the State of Mexico to implement with an aim to advance interest in government procurement and increase the average number of bids, which, as mentioned throughout this report, is particularly low. For example, the annual procurement plans of ministries and auxiliary bodies could be more specific and published in the e-procurement platform COMPRAMEX

following an open format, which allows data reusability. The Ministry of Finance could organise events to “meet the buyer” or an expo (*Expo Compras de Gobierno*) where it can discuss its different needs (not a specific contract) with potential suppliers and they can provide information about their products and services and present their solutions (“show and tell”). Likewise, it could organise workshops to train suppliers to prepare bids and avoid cases where they are disqualified for failing to meet a formality (for example, a missing document or a signature) (see Box 1.6).

Box 1.6. Market engagement methods at the pre-tendering stage

- **Trade shows:** A trade show (or expo) is an event that allows suppliers in a specific industry to showcase and demonstrate their latest products, services and examine recent market trends and opportunities.
- **Meet the buyer/meet the supplier:** An event where a range of potential buyers get to meet with a range of potential suppliers. It is not about doing a deal or getting a contract. It is an opportunity where buyers can discuss their needs, suppliers can provide information about their products and services, and supply chain networks can be created or strengthened.
- **“Show and tell” solutions:** Where an agency has an idea of what it wants to buy, it can hold a ‘show-and-tell’ to allow potential suppliers to present their solutions. Suppliers can be asked to give their views on the agency’s requirements, including whether or not they are feasible and how they might be delivered.
- **Meeting with industry bodies:** Meeting with industry bodies and representative groups enables an agency to discuss its needs and allows representatives of that industry to explain how the industry works, present possible solutions and provide contacts for relevant suppliers.

Source: (New Zealand Government Procurement Branch, 2015^[9]).

Regarding the post-tendering stage, debriefing bidders is a commonly used alternative in OECD countries. Unsuccessful bidders may want to know why their bids failed, but they currently do not have many avenues for obtaining feedback. The amount of information that can be conveyed varies according to the circumstances of the particular contract, but the procuring entities could give a broad indication of the reasons why suppliers were rejected, based on cost and where they ranked in the tender list. This alternative, coupled with the workshops suggested above, could be useful to motivate suppliers to keep participating in government tenders and do so with enhanced success perspectives.

Implementation of adequate debriefing with the suppliers provides a valuable opportunity for both parties to benefit from the tender process. Verbal debriefings can improve relationships with suppliers, as well as the quality of their offers, while providing valuable insight to both parties. A debriefing can even be made available to a successful bidder as a first step in establishing a sound working relationship – and a precedent for constructive feedback. However, verbal debriefings must be used judiciously. Debriefings must operate under a clear framework in order to reduce any associated risks and costs.

Box 1.7. The benefits of debriefing

Debriefing is beneficial to bidders because it:

- helps them to rethink their approach in order to make future bids more successful;
- offers targeted guidance to new or smaller companies to improve their chances of doing business in the public sector;
- provides reassurance about the process and suppliers' contribution or role; and
- provides a better understanding of what differentiates public sector procurement from private procurement.

Debriefing may help the State of Mexico by:

- identifying ways to improve subsequent solicitation processes, including associated communications;
- making sure best practices and guidance are updated to reflect any relevant issues that have been highlighted;
- encouraging better bids from suppliers in the future;
- getting a better understanding of how that segment of the market thinks, enhancing the organisation's market intelligence;
- helping establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in the future; and
- potentially reducing the number of challenges.

Source: (OECD, 2018^[10]).

As mentioned before, a comprehensive framework for market engagement should also address the risks entailed. The Protocol already provides some measures to mitigate integrity risks by requiring public procurement officials to hold any meetings with private individuals in official premises, with the presence of an OIC representative, and favour written communication. However, in its current form, the Protocol may hinder market engagement activities. Therefore, the Co-ordination Committee of the Anti-corruption system of the State of Mexico (*Sistema Anticorrupción del Estado de México y Municipios*, SAEMM), as the institution entitled to issue the Protocol, in co-ordination with the Ministry of Finance and SECOGEM, should aim for a framework that better balances control and the possibility to engage. The way to approach this balance may depend on the specific market engagement activities to be pursued but, for example, the regulatory framework (including the Protocol) may need to be reformed to allow procurement officials to meet business chambers, conduct workshops, or debrief unsuccessful suppliers. In fact, during the fact-finding interviews, public servants of the State of Mexico claimed that debriefing suppliers, for example, may entail a violation of the Protocol. Evidently, there should be protocols and rules to engage based on basic principles of fairness (i.e., providing the same information to all suppliers, allowing equal access and giving all suppliers the same treatment), impartiality, openness and transparency.

Under any of the market engagement alternatives, it will be important to make the process clear to all suppliers, manage their expectations and communicate the values under which the government pursues market engagement. Keeping records of meetings also supports the transparency of the process.

In addition, Chapter 4 discusses recommendations which would support mitigating the risks of market engagement, such as prompting ethical reasoning by procurement officials and partnering with the business community to advance an agenda for business integrity. The latter recommendation, for example,

is necessary to prevent collusive agreements among potential suppliers. Indeed, some of the market engagement alternatives may provide opportunities for potential suppliers to meet each other and seek collusive behaviour.

Proposals for action

The State of Mexico has committed to a centralised procurement scheme in whose governance participate a wide variety of stakeholders. However, the limited scope of centralisation achieved so far suggests that there is still much room for additional efficiencies, which could be supported by reviewing the regulatory framework and upgrading co-ordination and communication. The following recommendations aim to be helpful in achieving these objectives.

Procurement structure and governance

The Government of the State of Mexico should be able to demonstrate the value added of the centralised procurement scheme (and other procurement strategies or tools to be implemented in the future) to the different stakeholders.

- The Ministry of Finance should clearly identify what will be its value added and design a strategy to develop and communicate it.
- The State Government should be more proactive in communicating the potential benefits of the centralised scheme to the user areas, and to other stakeholders, including suppliers, business chambers, municipalities and the public in general. This could be done through an annual report (or even interim reports during the year).

The normative framework for public procurement

The State of Mexico should allow for a review of the normative framework for public procurement to upgrade it and incorporate innovations that would advance efficiency and trust.

- The State of Mexico should undertake a comprehensive review of the normative framework for public procurement based on a set of evaluation criteria that could form the basis for an evaluation framework.

The State of Mexico could apply better regulation standards, particularly public consultation and ex ante impact assessment, when introducing reforms to procurement regulations, either as a consequence of the review suggested above or as a result of other improvement initiatives.

- Even if regulatory processes are deemed to have no compliance costs for the private sector, for the specific case of public procurement rules, the State of Mexico may also consider the potential costs for the public sector itself and require the application of regulatory quality tools.
- Contracting authorities in general, and particularly the Ministry of Finance's DGRM, as the CPB of the State Government, should work together with CEMER to develop their capacities to apply better regulation standards.
- Regarding ex ante impact assessment for public procurement rules, the State of Mexico could explore a streamlined approach, simpler and easier to implement than a full-fledged RIA, focusing on specific impacts stemming from procurement regulations, such as on SMEs.

Co-ordination and communication

The Government of the State of Mexico should improve co-ordination and communication relative to the centralised procurement scheme by raising awareness about the role of each institution to make it a success.

- The Government of the State of Mexico should reinforce the idea that the centralised scheme will only be successful and deliver its intended benefits if all the stakeholders assume their responsibilities.

- The State of Mexico would benefit from establishing a high-level group (i.e., interministerial group, committee, etc.) to engage all relevant stakeholders in the strategic steering of the centralised procurement scheme, develop ownership, communicate its benefits and assign clear roles to achieve whole-of-government objectives.

Current approaches to market engagement

The Co-ordination Committee of SAEMM, the Ministry of Finance and SECOGEM, should aim to develop a framework for market engagement that delivers the benefits of such a practice, at the time that mitigates the risks, particularly integrity risks.

- There are some specific alternatives at the pre-tendering stage that may be relatively easy for the State of Mexico to implement with the aim to advance interest in government procurement and increase the average number of bids.
- The Co-ordination Committee of SAEMM, the Ministry of Finance and SECOGEM should aim for a framework that better balances control and the possibility to engage. This entails analysing any necessary regulatory reforms to apply specific engagement methods, such as debriefing bidders.
- Make the process of market engagement clear to all suppliers, manage their expectations and communicate the values under which the government pursues it, including integrity rules and protocols.

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Note

¹ Even though the LCPEMyM establishes that the Legal Counsellor participates in the CAS, this office no longer exists and its functions were assumed by the Ministry of Justice and Human Rights.

2 Leveraging on e-procurement to increase efficiency and transparency of public procurement

This chapter focuses on analysing the e-procurement system of the State of Mexico, COMPRAMEX. E-procurement contributes to increased efficiency and transparency of public procurement procedures. COMPRAMEX has not led to remarkable achievements since 2013 when the public procurement law was enacted to advance the e-procurement agenda. The chapter assesses the current functions of COMPRAMEX from the viewpoint of efficiency. It also reviews the extent to which COMPRAMEX contributes to increasing transparency through publishing information related to public procurement in terms of coverage, quality and user-friendliness. Then, the chapter discusses the five key elements that the State of Mexico should take into account for the successful implementation of e-procurement reform: institutional leadership, stakeholder engagement, technical functionality, governance and capacity building. The chapter will provide recommendations and a roadmap on how to transform COMPRAMEX into a more comprehensive, transactional, interconnected and transparent e-procurement system with reusable and comprehensible data.

Countries have increasingly been harnessing digital technologies to achieve better outcomes and deliver services more effectively and efficiently. E-procurement refers to the *integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process*. (OECD, 2015^[1]) It is an effective tool to ensure efficiency and transparency of public procurement processes. Indeed, the OECD *Recommendation of the Council on Public Procurement* calls upon countries to improve the public procurement system through the use of digital technologies to support appropriate e-procurement innovations along the entire procurement cycle.

E-procurement can significantly increase efficiency of public procurement procedures by eliminating paper-based processes that bear a high administrative burden. Decrease in administrative burdens stimulates greater competition in public procurement and delivers better procurement outcomes (lower prices and better quality). For example, European countries that made the transition to e-procurement as of 2016 reported savings between 5% and 20% (European Commission, 2016^[2]).

In addition, e-procurement systems allow governments to increase the transparency of public procurement activities, as well as to collect consistent, up-to-date and reliable data. Transparency leads to making governments more accountable and gaining citizen trust.

E-procurement also promotes integrity in procurement processes by increasing traceability and strengthening internal controls that ease the detection of integrity breaches. It also reduces corruption opportunities by preventing unnecessary physical contact between prospective suppliers and public servants during the tender process (OECD, 2016^[3]).

In 2013, the State of Mexico enacted the Public Procurement Law of the State of Mexico and Municipalities (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM). This Law aims to, as its principal objective, facilitate the digitalisation of public procurement procedures through the gradual introduction of COMPRAMEX, the e-procurement system of the State of Mexico. However, COMPRAMEX reform has not marked a consequential improvement. The State of Mexico has never carried out electronic modalities using COMPRAMEX due to its limited transactional functions such as the lack of an e-submission function. Therefore, all tender processes in the State of Mexico are still carried out on a paper-basis modality.

Under the current fiscal constraints, the State of Mexico needs to focus on using public funds in an efficient manner. Therefore, e-procurement could be positioned as one of the measures to deal with this situation through making the public procurement process more efficient and transparent. Currently, the State of Mexico has a reform plan to update COMPRAMEX by the end of 2020 by making its transactional systems more comprehensive but there are no clear roadmaps to implement this reform. The current climate could constitute a driving force for the State of Mexico to show a strong institutional commitment by advancing its e-procurement reform that stagnated since the legislative framework on e-procurement was reformed in 2013.

This chapter will start by assessing the current state of play of COMPRAMEX as a tool to increase efficiency and transparency of public procurement system. It highlights that the COMPRAMEX reform has not achieved significant progress since 2013, in spite of the regulatory requirement by the LCPEMyM. Then, the chapter discusses the five key elements that the State of Mexico should take into account for the successful implementation of the e-procurement reform: institutional leadership, stakeholder engagements, technical functionality, governance, and capacity building. Lastly, the chapter provides a roadmap on how to transform COMPRAMEX into a more comprehensive transactional, interconnected, and transparent e-procurement system.

Box 2.1. OECD Recommendation of the Council on Public Procurement: e-procurement

VIII. RECOMMENDS that Adherents improve the public procurement system by harnessing the use of digital technologies to support appropriate e-procurement innovations throughout the procurement cycle.

To this end, Adherents should:

- i) Employ recent digital technology developments that allow integrated e-procurement solutions covering the 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 contract award and management, 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 for 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.

Source: (OECD, 2015^[1])

2.1. Digitalising procurement processes to improve efficiency

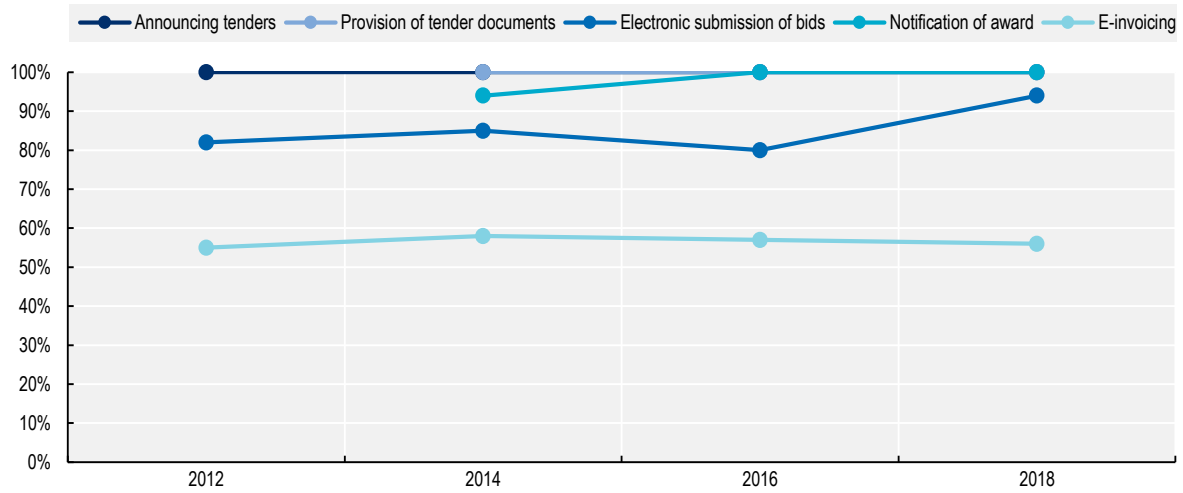
2.1.1. COMPRAMEX reform has not witnessed a remarkable achievement since 2013 regardless of the regulatory requirements. In order to increase efficiency, the State of Mexico could digitalise the procurement cycle by implementing functionalities aligned with regulatory requirements

E-procurement systems increase efficiency in public procurement by introducing standardisation, streamlining and integration of processes and result in better value for money in the use of public funds. E-procurement can increase competition in the market, thus reducing the prices paid by government, which can yield between 5% and 25% in cost savings (The Asian Development Bank, 2004^[4]).

Recognising the benefits of e-procurement in increasing efficiency in public procurement processes, OECD countries have gradually been expanding functionalities of e-procurement systems to shift from platforms providing procurement information to more transactional systems.

The Figure 2.1 shows the evolution of functionalities of e-procurement systems in OECD countries from 2012 to 2018. All OECD countries published tender announcements as of 2012, provided tender documents as of 2014, and carried out award notification as of 2016 in their e-procurement systems. Of all OECD countries, 82% had already put e-submission in place in 2012 and this rate increased to 94% in 2018. On the other hand, the introduction of e-invoicing has stagnated at around 55% with little progress between 2012 and 2018.

Figure 2.1. Evolution of functionalities of e-procurement systems in OECD countries



Note: 33 OECD countries for 2012 (Data are unavailable for Greece). The information on *Provision of tender documents* and *Notification of award* is not available in 2012.

33 OECD countries (2014) Data for the Czech Republic and Israel are not available for 2014.

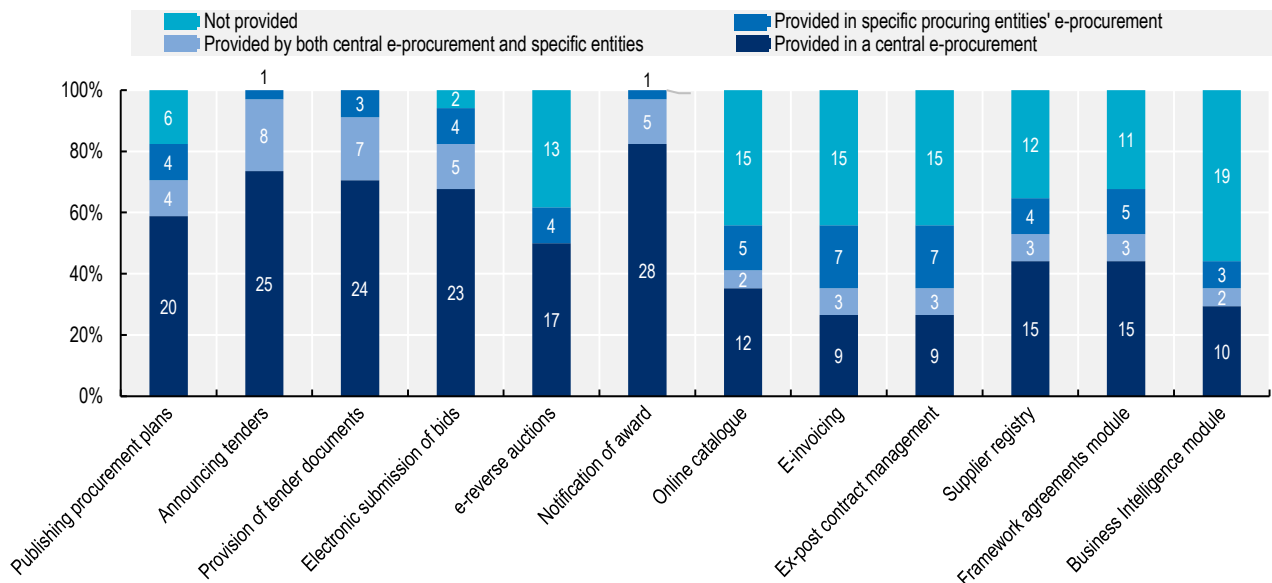
30 OECD countries (2016) Data for the Czech Republic, France, Luxembourg, Switzerland and the United States are not available.

34 respondents for 2018 (31 OECD countries plus Morocco, Peru, and Costa Rica).

Source: Created based on (OECD, 2013^[5]), (OECD, 2015^[6]), (OECD, 2017^[7]) and (OECD, 2019^[8]).

In 2018, almost all OECD countries had transactional systems during the pre-tender and tender phases, such as publishing procurement plans, announcing tender notices, providing tender documents, electronic submission of bids, and notification of award, while the transactional functions during the post-tender phase (or contract execution period) were still limited, for example, in e-invoicing and contract management.

Figure 2.2. Functionalities of e-procurement systems in OECD countries, 2018



Note: Based on data from 34 respondents (31 OECD countries plus Morocco, Peru, and Costa Rica).

Source: (OECD, 2019^[8]).

The State of Mexico has been taking initiatives to digitalise procurement processes. Indeed, advancing the e-procurement agenda was one of the principal purposes for the enactment of the Public Procurement Law of the State of Mexico and Municipalities (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM) in 2013. It intended to facilitate the digitalisation of public procurement procedures through the gradual introduction of e-procurement contributing to increased transparency and efficiency in order to bring the maximum benefits to the State of Mexico citizens.

Article 3, bullet I, of the LCPEMyM defines COMPRAMEX as the e-procurement system of the State of Mexico. Article 18 stipulates that COMPRAMEX shall be preferably used to carry out public procurement procedures for goods and services which are financed by state resources partially or totally. This principle also applies to municipalities.

COMPRAMEX aims at reducing costs of procurement procedures for both contracting authorities and suppliers, controlling public expenditures and achieving the maximum efficiency and transparency. (Article 19). Indeed, the introduction of COMPRAMEX is supposed to contribute to modernising the public procurement system and to increasing citizen participation in the procurement processes. The strategic use of COMPRAMEX aims not only to achieve more transparent procedures, but also increase competition through promoting the participation of more suppliers in public procurement processes and facilitating data collection to carry out evidence-based strategies.

Article 11 of the Bylaws of the LCPEMyM (*Reglamento de la Ley de Contratación Pública del Estado de México y Municipios*) states that the Ministry of Finance is in charge of developing and administering COMPRAMEX. Currently, the website of COMPRAMEX provides the following components:

- Catalogue of goods and services (Article 20 of the Law)
- Supplier register database (Article 21 of the Law)
- Annual procurement programme (Article 13 of the Law)
- Information on each individual procurement procedure (tender notice, tender documents, minutes of tender opening, contract award decision, and contract documents)

COMPRAMEX publishes the annual procurement programme of all the public entities of the State of Mexico including municipalities, although some entities do not fulfil the obligation of publishing it in COMPRAMEX. It also allows for the supplier online registration in order to reap its benefit to decrease administrative burdens and costs. For example, *ChileProveedores*, an advanced platform for supplier registration developed in Chile, reduced transaction costs by 50% (Shakya, 2017^[9]). Furthermore, SICAPEM-PMCP (*Sistema Integral de Contratación y Administración Patrimonial del Estado de México-Plataforma Mexiquense de Contratación Pública*), the internal system of COMPRAMEX, facilitates the process of market research and financial management of contracts. COMPRAMEX also functions as a transparency portal of public procurement which publishes information on each individual public procurement procedure such as tender notices, tender documents, the minutes of a tender opening, contract award decision, and contract documents. This will be discussed further in the next section relative to access to information.

However, COMPRAMEX reform has not achieved the results foreseen by the LCPEMyM: the use of COMPRAMEX in public procurement processes remains very limited. Article 28 of the LCPEMyM defines three modalities of open tender in accordance with the means used:

- Face-to-face (paper-basis), in which bidders submit their proposals exclusively on a paper basis in a sealed envelope, during the tender opening or by mail if specified in the tender notice. Under this modality, the clarification meetings and tender opening will be carried out in person and bidders must participate in these sessions.

- Electronic (e-procurement), in which tender processes are carried out exclusively through COMPRAMEX. Under this modality, clarification meetings, tender opening, and contract award notification are carried out through COMPRAMEX, without the physical presence of bidders.
- Mixed, in which bidders may choose whether to participate in person or electronically in clarification meetings, tender opening and contract award notification.

Although the Law foresees these three modalities, all the tender processes in the State of Mexico have been carried out in the paper-basis modality. In other words, the State of Mexico has never carried out electronic or mixed modalities through COMPRAMEX.

This situation is attributed to the limited transactional functions of COMPRAMEX. It only allows for the publication of tender notices and bidding documents, although LCPEMyM and its Regulations require that COMPRAMEX publishes tender notices, tender documents, minutes of the tender opening, contract award decision, contract documents, and when applicable the minutes of clarification meetings. Table 2.1 summarises the functionalities of COMPRAMEX.

Table 2.1. Functionalities of COMPRAMEX

Procedures of public procurement	COMPRAMEX
Supplier registration	X
Publishing annual procurement plans	X
Market research	X
Reference prices	X
Tender notice / Call for tender	X
Automatic notification system of tender opportunities	
Upload/Download of tender documents	X
Organising clarification meetings	
Reception of Minutes of clarification meetings	X
Reception of bid proposals	
Organising tender opening meetings	
Reception of Minutes of tender submission and opening	X
Analysis and evaluation of bid proposals received	
Organising meetings for contract award notice	
Sending of contract award	X
Contract signature	
Submission of invoice by suppliers	
Payment procedures to suppliers	

Source: Information provided by the Ministry of Finance of the State of Mexico.

The Law also foresees e-submission (Article 36) and e-signature (Article 65). It requires that the bids (technical and financial proposals) be submitted in an electronic format when the procurement procedures are carried out through COMPRAMEX meaning that contracts can be signed with electronic signature. However, these functions are still under development and not currently available in COMPRAMEX, which causes a discrepancy between the requirements of the regulatory framework and the actual situation.

In particular, e-submission of bids is a critical element to increase competition of public procurement through increasing the number of bid proposals, which is the central topic discussed in Chapter 5. E-submission allows bidders from outside the State of Mexico, such as Mexico City or even foreign companies, to participate in the tender process. In fact, almost all OECD members have an e-submission function in their e-procurement systems at a certain level of government.

The European Commission developed an initiative to support the transition to an e-procurement system that covers the whole public procurement cycle for all European Union (EU) member countries. This initiative also includes mandatory e-submission of bids (See Box 2.2).

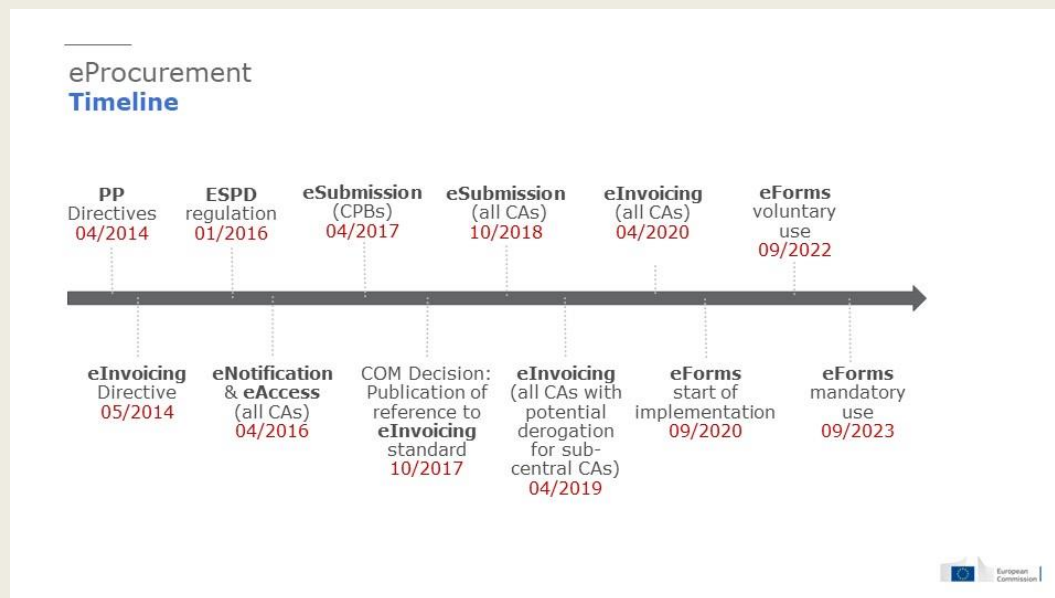
Box 2.2. Mandatory use of e-Procurement in the European Union

In preparation for the digital transformation of public procurement, the EU developed a phased nine-year (2014 - 2023) public procurement reform to introduce a compulsory and fully transactional e-procurement tool, including modules on e-invoicing, e-notification, e-access, e-submission and other e-forms, as well as a comprehensive reform to public procurement directives.

According to the guidelines published by the European Commission in 2014, the EU supports the process of rethinking public procurement process with digital technologies in mind. This goes beyond simply moving to electronic tools; it rethinks various pre-award and post-award phases. The aim is to make them simpler for businesses to participate in and for the public sector to manage. It also allows for the integration of data-based approaches at various stages of the procurement process.

According to the EU, digital government is one of the key drivers toward the implementation of the 'once-only principle' in public administrations – a cornerstone of the EU's Digital Single Market strategy. And with the adoption of digital tools, public spending should become more transparent, evidence-oriented, optimised, streamlined and integrated with market conditions. This puts e-procurement at the heart of other changes introduced to public procurement in new EU directives and introduces the notion that in the age of big data, digital procurement is crucial in enabling governments to make data-driven decisions about public spending.

In order to achieve this goal, the new rules on e-procurement in the EU are to be gradually introduced with the following timeline:



Source: (European Commission, n.d.[10])

In the Latin America and Caribbean region, e-procurement facilitated the e-submission function in 13 out of 19 countries surveyed as of 2016: Mexico, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Jamaica, Panama, Peru, El Salvador and Uruguay.

Table 2.2. Functionalities of the E-Procurement System in Latin America, 2016

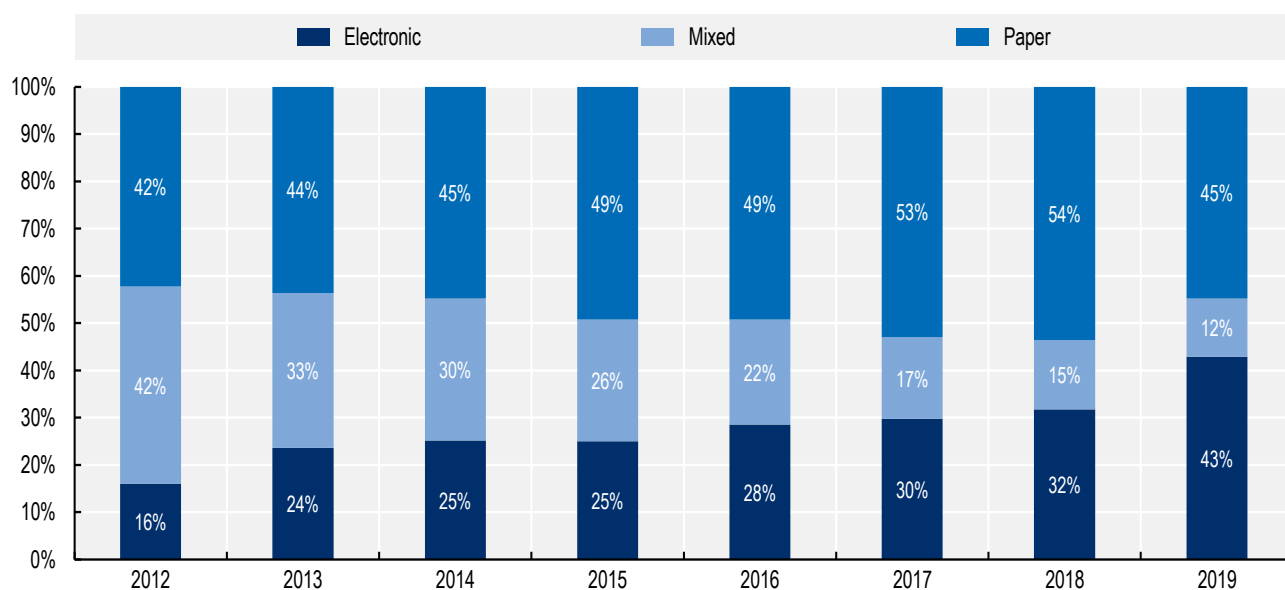
Country	Tender notice	Electronic submission of bids	Notification of award	Electronic submission of invoices	Ex-post contract management
Antigua and Barbuda	●		●	●	○
Argentina	●		●	○	
Brazil	●	●	●	●	
Chile	●	●			
Colombia	●	●	●		
Costa Rica	●	●	●		
Dominican Republic	●	○	●	○	●
Ecuador	●	●	●		
Guatemala	●	●	●		
Haiti	●				
Honduras	●				○
Jamaica	●	●	●	●	
Mexico	●	●	●		
Nicaragua	●		●		
Panama	●	●	●	○	No data
Paraguay	●				
Peru	●	●	●		●
El Salvador	●	●	●		
Uruguay	●	○			
● Mandatory and provided	19	11	14	3	2
○ Not mandatory but provided	0	2	0	3	2
(blank space) Not provided	0	6	5	13	14

Note: Electronic submission of bids is available in Colombia now according to the OECD Surveys on Public Procurement 2018, although it was marked as "not provided" as of 2016.

Source: (OECD, 2016^[11]).

CompraNet, the e-procurement system of the Federal Government of Mexico, has provided the e-submission function since 2000. (See Box 2.3) However, e-submission is not mandatory for federal government procurement. Contracting authorities can choose whether to allow electronic submissions, because the Federal Law on Public Sector Acquisitions, Leases and Services (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) also foresees the three modalities: Face-to-face (paper-basis), electronic, and mixed. However, there has been a remarkable increase in the use of e-submission from 16% in 2012 to 43% in 2019.

Figure 2.3. Procurement modalities used at the Federal Government of Mexico, 2012-2019



Note: E-submission is applied to all the procurement procedures using electronic modalities, while not all mixed modalities necessarily use e-submission.

Source: Created based upon (CompraNet, 2019_[12]).

In 2019, 43% of all the public procurement procedures at the federal government level applied the electronic modality, which uses e-submission through CompraNet, in addition to 12% for mixed modality, which might have used e-submission. This implies that at least 43% and up to a maximum of 55% of the tender procedures at the federal level applied e-submission in 2019 (CompraNet, 2019_[12]).

This data from the Federal Government also demonstrates that it takes a lot of time to transform procurement practices from paper-based to electronic. Therefore, it is all the more urgent that the State of Mexico takes immediate actions to develop such functionality.

Box 2.3. Evolution of CompraNet in transactional functions

Since its official launch in 1996, CompraNet has evolved in its transactional functions. The most significant features of each version were as follows:

- CompraNet 1.0 (1996): module to publish tender notices and disclose contract award decisions
- CompraNet 2.0 (1997): access to bidding documents, upon receipt of a bank slip to prove payment of fees related to federal legal rights
- CompraNet 3.0 (2000): electronic submission of bid proposals and contract award notices
- CompraNet Plus 4.0 (2007): 4.0 never replaced CompraNet 3.0 because it ran into performance issues. After six months, the pilot implementation project was cancelled
- CompraNet 5.0 (2010): Version 5.0 provides a wide variety of functions:
 - supplier registration
 - loading and sharing of the annual procurement plans
 - loading of documents related to non-open tender activity, such as closed tenders (restricted invitations) and direct awards, both permissible by law under certain circumstances
 - execution of various forms of e-auction, including English/reverse and Dutch auctions
 - traceability of user activities, such as loading and accessing documents
 - online training for buyers
 - extraction and analysis of data from the Datamart database
 - development of a supplier registry, against which government buyers can provide ratings (on a 0-100 scale) to record contract compliance
 - dissemination of documents such as minutes of clarification meetings, reports by social witnesses, executed contracts and any variations or modifications

Source: (OECD, 2018^[13])

During the fact-finding mission, contracting authorities stated that all the procurement procedures should be digitalised in the State of Mexico, although there is no clear timeline or implementation plan to achieve this. Some contracting authorities shared their experiences of having received more bid proposals when they allowed for e-submission through CompraNet for their federal-funded procurement procedures. Recognising the benefit of e-submission in increasing competition through more bid offers, they restated the importance of developing the e-submission function for COMPRAMEX, to come in line with CompraNet.

The automatic notification of tender opportunities to suppliers is another function that contracting authorities raised in order to increase efficiency of public procurement. Currently, COMPRAMEX does not provide an automatic notification of tender opportunities to suppliers. Therefore, each supplier needs to check the website COMPRAMEX regularly to know whether or not there are tender notices which match their interests. In some cases, suppliers miss the tender opportunities that might match their areas. This situation leads to inefficiency and decreases the level of competition in public procurement. The automatic notification system is available not only in CompraNet but also in *Tianguis Digital*, the e-procurement platform of Mexico City, which implies that this function is becoming a standard e-procurement function in Mexico.

Currently, the State of Mexico has a reform plan to update COMPRAMEX by the end of 2020 by making transactional systems more comprehensive, providing new functions including e-submission and e-signature, in accordance with the LCPEMyM. The State of Mexico will also benefit from the introduction of an automatic notification system of tender opportunities to suppliers. In the medium and long term, the State of Mexico could consider the possibility of adding more advanced functions such as organising clarification meetings and tender opening meetings in a virtual way through COMPRAMEX, submission of invoices by suppliers and payment procedures.

It is also worth stating that article 33 of the LCPEMyM stipulates that tender notices of open tenders have to be published not only in newspapers but also in COMPRAMEX. This applies to all of the three modalities, including the paper-based modality. However, not all public entities comply with this obligation. This applies equally to the submission of the annual procurement programme. The State of Mexico should ensure that all the public entities in the State of Mexico publish their tender notices and the annual procurement programmes in COMPRAMEX, in accordance with legal requirements.

Implementing the e-procurement reform will allow COMPRAMEX to move towards a transactional tool in public procurement procedures. This will contribute to maximising the benefits of using e-government tools to achieve more efficiency and value for money in the use of public funds.

Using COMPRAMEX for the procurement of public works

Public works represent a significant portion of public procurement in countries. In the State of Mexico, public works accounted for 46.2% in terms of the number of procurement procedures and 17.3% in terms of value in 2018.

Table 2.3. Number of procedures and volumes for the procurement of goods, services and public works in the State of Mexico, 2018

		Auxiliary Bodies (*)	State Government of Mexico		Share
			Ministry of Finance	Ministry of Public Works	
Goods	Number	777	246		28.61%
	Amount (MXN)	6 143 850 931.16	6 561 551 364.99		35.05%
Services	Number	742	159		25.20%
	Amount (MXN)	9 934 589 160.67	7 345 299 303.18		47.67%
Public works	Number	1 491		161	46.20%
	Amount (MXN)	5 396 502 075.91		870 493 803.24	17.29%

Note: The data of auxiliary bodies is limited to the following eight entities: SEIEM, ISEM, ISSEMyM, CAEM (*Comisión del Agua del Estado de México*, Water Commission of the State of Mexico), IMIFE (*Instituto Mexiquense de la Infraestructura Física Educativa*, Institute for Education Infrastructure of the State of Mexico), JCEM (*Junta de Caminos del Estado de México*, Road Board of the State of Mexico), SAASCAEM (*Sistema de Autopistas, Aeropuertos, Servicios Conexos y Auxiliares del Estado de México*, System of Highway, Airports, and Related and Auxiliary Services of the State of Mexico) and SITRAMyTEM (*Sistema de Transporte Masivo y Teleférico del Estado de México*, Massive Transport System and Funicular of the State of Mexico).

Source: Information provided by the State Government of Mexico.

Regardless of this high number and volume of procurement for public works, the State of Mexico does not have an e-procurement system for public works. Indeed, the sole e-procurement system of the State of Mexico, COMPRAMEX, is an e-procurement platform exclusively for goods and services. In summary, an essential part of the public procurement market does not benefit from the efficiency and competition that an e-procurement platform could bring to the State of Mexico.

The current regulatory frameworks of procurement for public works consists of the 12th Book of the Administrative Code of the State of Mexico (*Libro Décimo Segundo del Código Administrativo del Estado de México*) and its Bylaw (*Reglamento del Libro Décimo Segundo del Código Administrativo del Estado*

de México). These regulatory frameworks, however, do not refer to the use of e-procurement systems, except the e-tender notice.

According to Article 12.25 of the 12th Book of the Administrative Code of the State of Mexico and Article 38 of its Regulation, tender notices of public works have to be published at least (i) in one of the newspapers with the highest circulation in Toluca (the state capital), (ii) in one of the newspapers with the highest national circulation, and (iii) through an electronic platform that the Ministry of Control administers. However, this electronic platform has not been developed yet and tender notices of public works are published only in newspapers.

In order to comply with Article 12.25, the Ministry of Control has the idea to use its website to publish tender notices of public works in the short term. In the long term, however, the State of Mexico could consider the possibility of using COMPRAMEX not only for the procurement of goods and services, but also for that of public works.

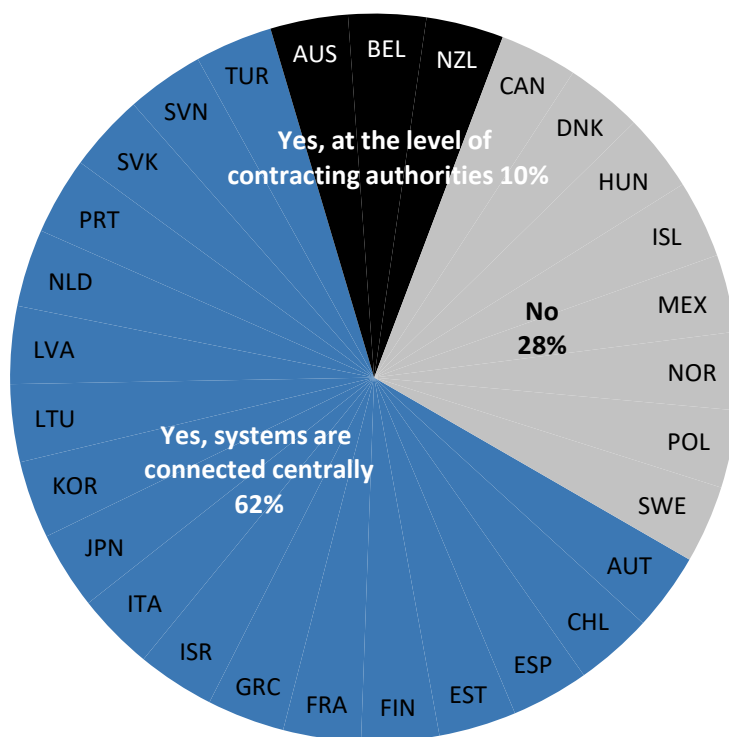
Indeed, developing a separate e-procurement system would lead to financial and administrative burdens for both government and bidders, and contracting authorities and suppliers would need to learn how to use two separate e-procurement platforms.

There are examples of using one common e-procurement system for the procurement of goods, services and public works in Mexico. CompraNet, for example, can be used for the procurement of goods, services and public works. In 2009, the reforms to the Law on Public Sector Acquisitions, Leases and Services (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) and the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*, LOPSRM) granted CompraNet a legal status as the official e-procurement platform for the federal government's procurement activity. (OECD, 2018^[13]) Mexico City also plans to extend the coverage of its e-procurement platform, *Tianguis Digital*, to the procurement of public works. The State of Mexico could benefit from considering the possibility of following these initiatives from across the country.

2.1.2. Integrating COMPRAMEX with other digital government systems to increase efficiency and transparency in public procurement and bolster anti-corruption initiatives

Integrating an e-procurement system with other government IT systems, such as those for public financial management (i.e., budget system, business and tax registries, and social security databases), leads to greater efficiency in the use of public funds. OECD countries are increasingly integrating their e-procurement systems with those for financial management. In fact, while only 37% of OECD countries reported some level of integration with other government IT systems in 2016, this percentage increased to 72% in 2018 (OECD, 2019^[14]).

Figure 2.4. Integration of the e-procurement system(s) with other digital government systems, 2018



Note: Data for the Czech Republic, Germany, Ireland, Luxembourg, Switzerland, the United Kingdom and the United States are not available.
Source: (OECD, 2019^[14]) 2018 OECD Survey on the Implementation of the 2015 OECD Recommendation on Public Procurement.

This positive change has been driven by the international trend to cover the entire public procurement cycle with fully-fledged e-procurement solutions, from planning and preparation to contract execution and payment. For example, the Korean E-Procurement System (KONEPS) provides the highest connectivity from across systems assessed in the OECD area, as it is interconnected to over 200 external databases: 65 of them are from public entities, while others include databases from 12 private sector business associations, nine credit rating companies and the payment systems of 15 commercial banks (OECD, 2016^[15]).

The Law on Digital Government of the State of Mexico (*Ley de Gobierno Digital del Estado de México y Municipios*) calls for the interconnection of different government systems. Section XI of Article 9 of this Law stipulates that the Digital Government Council should promote interoperability of ICTs available at federal, state and municipal levels in order to ensure the co-ordination necessary for the successful implementation of digital government.

Article 19 of the LCPEMyM requires COMPRAMEX to be interconnected with the budget system. According to the Ministry of Finance, COMPRAMEX is interconnected with its budgeting system (*Sistema de Planeación y Presupuesto*, SPP). However, this interconnection refers to the availability of the URL to move from COMPRAMEX to SPP in order to manually check budget information. In other words, the budget information such as the budget approval status does not automatically appear in COMPRAMEX. Article 14 of the LCPEMyM stipulates that public procurement processes cannot be started without confirmation of actual budget availability followed by the corresponding budget approval. Therefore, it

would be ideal if COMPRAMEX (or its internal system SICAPEM-PMCP) could be automatically linked with the budgeting system in order to reflect the approval status without any manual processes.

The Electronic System for Government Procurement (*Sistema Electrónico de Contrataciones del Estado*, SEACE) administered by the Government Procurement Supervising Agency of Peru (*Organismo Supervisor de las Contrataciones del Estado*, OSCE) provides insights which the State of Mexico could consider for the integration of its e-procurement system with other government IT systems, in order to increase efficiency and transparency of procurement system (See Box 2.4).

Box 2.4. Integration of the SEACE with other IT systems in Peru

Peru

OSCE, Government Procurement Supervising Agency of Peru, integrated its e-procurement system of Peru, SEACE, with other government systems such as:

1. The Integrated Financial Management System (SIAF) of the Ministry of Economy and Finance (MEF) allows direct online linking for certifying the budgetary credit, enabling procuring entities to publish their procurement notices. SIAF also allows online direct linking for transferring information and contract data (suppliers' RUC, amounts, etc.). This linking enables the entities to register commitments, accruals and payments.
2. The National Registry of Suppliers (RNP) of the OSCE allows direct online linking in order to verify if the suppliers are registered in the RNP. That registration enables suppliers to participate, present their bids and be awarded with and sign the contract.
3. The Single Register of Contributors (Registro Único de Contribuyente, RUC) of the National Superintendence of Customs and Tax Administration (SUNAT) is directly linked with SEACE in order to obtain the denomination of the natural or judicial person that will be paid as a result of the procurement.
4. The INFObras System of the Office of the General Comptrollership of the Republic allows direct online linking with procurement related to public works, which enables publication of the procurement notice.

Source: (OECD, 2017^[16])

In addition, the integration of COMPRAMEX with other government systems could support the efforts of the State of Mexico to implement the digital state platform of the anti-corruption system. System integration provides more visibility and accountability on the use of public expenditures, and makes the monitoring of economic activity easier. Indeed, Germany and Colombia provide insights on system integration to support anti-corruption initiatives by making public spending more visible. (See Box 2.4)

Box 2.5. System integration to advance anti-corruption initiatives in Germany and Colombia

Germany

Germany's anti-corruption framework was updated in 2017 with a law that introduced a competition register (*Wettbewerbsregister*). The register enables procurers to digitally verify whether potential suppliers have committed a criminal offence. Furthermore, the register permits public authorities to access company information. Once the procurement process is digitalised, information from the competition register can be incorporated directly into the e-procurement process. Connecting information across systems ensures that companies listed in the register are prohibited from registering for and participating in tenders.

Colombia

In 2015, Colombia upgraded its e-procurement platform. During the second phase of this upgrade, Colombia integrated the Electronic System for Public Procurement (*Sistema Electrónico para la Contratación Pública*, SECOP II) with the Integrated System of Financial Information (*Sistema Integrado de Información Financiera*, SIIF). This direct connection between the e-procurement system and the financial reporting system greatly increased data accuracy and transparency on spending by contracting authorities. Integrating procurement and budget data mitigated risks of corruption, cases of false accounting and late payment of invoices.

Source : (OECD, 2019^[17]) and (OECD, 2016^[18])

The State of Mexico could benefit from integrating COMPRAMEX with other systems such as the budget system, business and tax registries, and complaints system (*Denuncia EdoMex*), and transparency portal (*Sistema de Información Pública de Oficio Mexiquense*, IPOMEX), in order to enhance efficiency and transparency in public procurement.

2.2. Enhancing the culture of access to information and open government data to improve procurement transparency

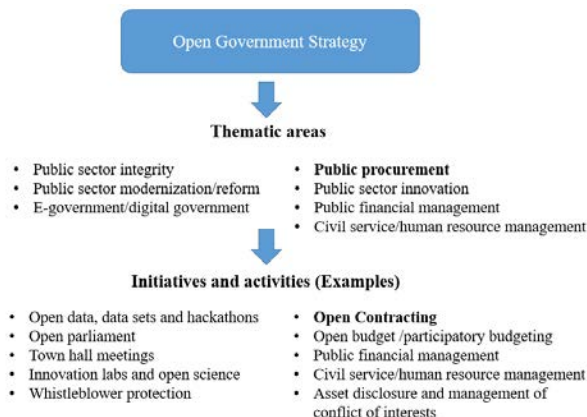
Countries have been promoting open government strategies in order to improve transparency, accountability and citizens' trust in the public sector. Open government is defined as "a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth" (OECD, 2017^[19]).

Access to public information has been the cornerstone of an open and inclusive government, because it is a fundamental element to reduce corruption and increase trust among citizens and their governments. (OECD, 2016^[20]) Access to information is also one of the targets (16.10) of the Sustainable Development Goals (SDGs) adopted by all United Nations Member States in 2015. (United Nations, 2015^[21]) Proactive disclosure refers to disclosing relevant information without a prior public request. This voluntary disclosure of information contributes to enhanced transparency and openness, as well as avoiding the costs associated with the administrative procedures and fees to file a request for information (OECD, 2016^[20]).

When public sector information is proactively published in open and machine-readable formats and, where possible, free of cost, it becomes open government data, facilitating its reuse by anyone – anywhere – without legal or technical limitations (e.g. copyrights, proprietary formats) (OECD, 2017^[22]). The reuse of open government data enables any stakeholder such as citizens, civil society, and businesses to better understand and monitor governmental activities.

Public procurement is considered as one of the most important thematic areas of the open government strategy, and one of the most popular initiatives is open contracting, or publishing information related to public procurement in open and machine-readable formats.

Figure 2.5. Framework for an open government strategy



Source: Adapted from (OECD, 2016_[20])

E-procurement systems allow governments to provide information related to public procurement in open and machine-readable formats. Thus, they contribute to increasing transparency, as well as collecting consistent, up-to-date and reliable data on procurement processes. Transparency has the potential to gain citizen trust in governments and making governments more accountable.

The OECD *Recommendation of the Council on Public Procurement* calls upon Adherents to “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.” (See Box 2.6)

Box 2.6. OECD Recommendation of the Council on Public Procurement: transparency

II. RECOMMENDS that Adherents ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle.

To this end, Adherents should:

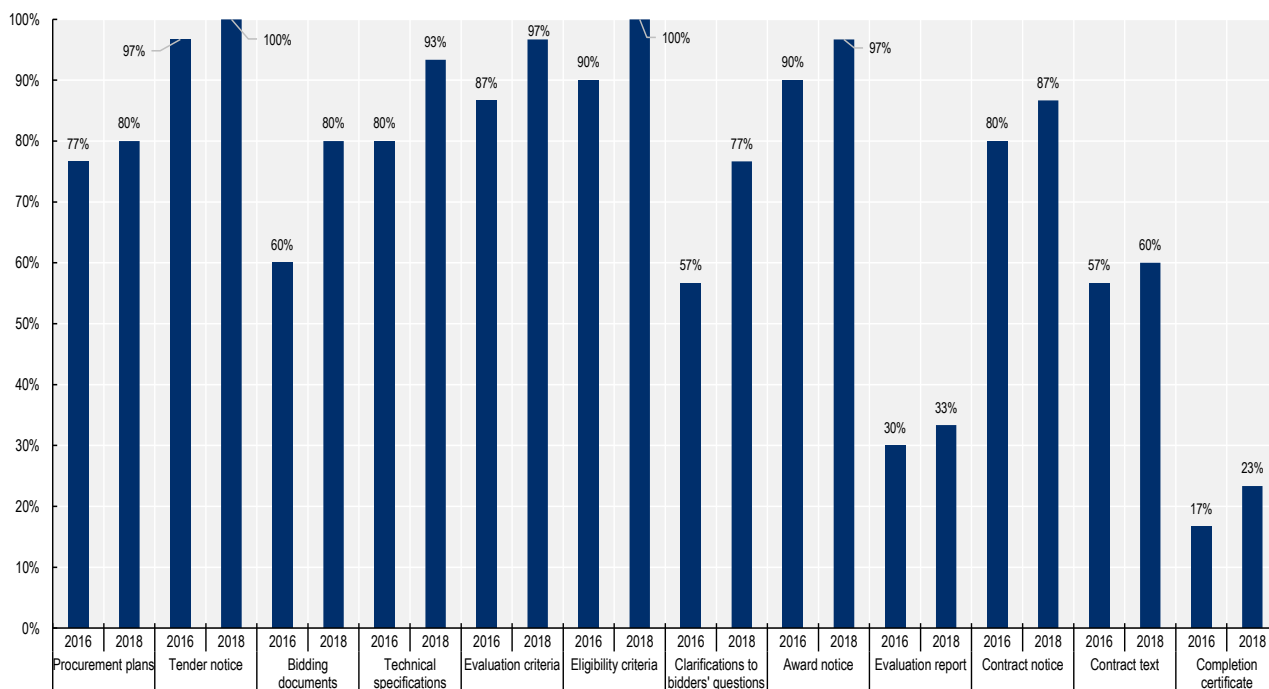
- i) Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, 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 (i) stakeholders to understand government priorities and spending, and (ii) policy makers to organise procurement strategically.

Source: (OECD, 2015^[1])

OECD countries have been publishing a wide variety of information related to public procurement. The 2018 OECD *Public Procurement Survey* data show that all the 30 countries surveyed published tender notices and eligibility criteria in 2018, while fewer countries published tender evaluation reports (33%), contract documents (60%), and completion certificates (23%) (OECD, 2019^[8]).

Although governments produce large amounts of information related to public procurement, they face challenges relative to quality and coverage. These data are often incomplete (as they do not cover all procurement stages, such as payments), fragmented across numerous public entities (not all entities publish information), or have been left largely unused for research and policy purposes (OECD, 2017^[22]).

Figure 2.6. Availability of public procurement documents to the general public



Note: Based on data from 30 respondents (29 OECD countries and Costa Rica) that answered both the 2018 and the 2016 Surveys on Public procurement.

Source: (OECD, 2019^[8]).

The following section assesses the progress of access to procurement information and open government data in the State of Mexico, and how COMPRAMEX could evolve towards a transparency tool to promote open contracting data by publishing information in open and machine-readable formats.

2.2.1. The State of Mexico discloses a variety of information through COMPRAMEX and Ipomex, but needs to improve its coverage, quality and user-friendliness

The State of Mexico has been advancing the agenda of access to information in an effort to increase transparency in public procurement. Article 3, bullet VIII, of Law of Transparency and Access to Information of the State of Mexico and Municipalities (*Ley de Transparencia y Acceso a la Información Pública del Estado de México y Municipios*, LTAIPeMyM) provides the definition of open data (*datos abiertos*), and requires that data shall be processed and collected in an automatic way by the public. Article 24 also refers to the availability of information and statistics generation in open and accessible formats.

Box 2.7. Definition of open data in the Law of Transparency and Access to Information of the State of Mexico and Municipalities

Open data is defined as digital data that is accessible online to the public, and that can be used by any interested parties, with the following characteristics:

- **Accessible:** data is available for any stakeholder for any purpose;
- **Comprehensive:** data describes the details of the topic with the necessary metadata;
- **Free of charge:** data can be obtained free of charge;
- **Non-discriminatory:** data is available for any stakeholder without registration;
- **Timely:** data is updated regularly;
- **Permanent:** data is preserved so that the historical versions remain available for public use;
- **Primary:** data comes from the original source with the maximum level of breakdown;
- **Machine-readable:** data shall be structured, totally or partially, to be processed and interpreted by electronic tool automatically;
- **In open formats:** data shall be available in accordance with the logical structure used to store data in a digital file, whose technical specifications are available to the public, without posing any difficulty of access and costs; and
- **Freedom of use:** data can be used free. Citing the source of origin is the only requirement for using data

Source: (Gobierno del Estado de México, 2015^[23])

However, this concept of open data has not been fully applied, in particular in machine-readable characteristics, given the current situation where only the PDF data of some documents related to tenders are available. The details of this will be discussed later in the section.

Currently, the State of Mexico has two principal open data platforms that disclose information related to public procurement: COMPRAMEX and Ipomex, the transparency portal of the State of Mexico.

COMPRAMEX

Article 156 of the Bylaws of the LCPEMyM stipulates that the information related to public procurement processes and signed contracts should be registered in COMPRAMEX, and that this information should be accessible to the public free of charge. (Gobierno del Estado de México, 2013^[24])

COMPRAMEX allows any stakeholder to obtain information of individual procurement processes based on two categories: ongoing procurement processes and past procurement processes carried out between 2015 and 2018. Users can filter information of one public entity from different types of institutions (central government, auxiliary bodies, courts, autonomous organisations, and municipal governments), although it is not allowed to choose one specific entity for the central government.

The information available is similar between ongoing procurement processes and past procurement processes. COMPRAMEX uploads in PDF format documents of tender notices, tender documents, minutes of clarification meetings, minutes of tender opening, minutes of second financial proposal opening, tender evaluation reports and contracts. The information available in these PDF documents allows stakeholders to understand the details of each individual procurement procedure. In particular, the State of Mexico applies a good practice by disclosing tender evaluation reports and contract documents, because these documents are not disclosed widely in the OECD countries. Indeed, among the 30 countries

that responded to the 2018 OECD *Public Procurement Survey*, 33% publish the tender evaluation report, while 60% disclose contract documents (OECD, 2019^[8]).

Table 2.4. Information available in COMPRAMEX

Information	Ongoing process	Past processes (2015-2018)
Tender method (e.g. Paper-based open tender)	X	X
Tender notice Number	X	
Procurement procedure number	X	X
Name of goods and services	X	X
Date of tender notice	X	X
Current status (e.g. ongoing, etc.)	X	
Current procurement cycle	X	
Downloadable PDF Documents		
Tender notice	X	X
Tender documents	X	X
Minutes of clarification meetings	X	X
Minutes of tender opening	X	X
Minutes of second financial proposal opening	X	X
Tender evaluation reports	X	X
Contract	X	

Note: "Tender method" does not specify whether the tender was paper-based for ongoing processes. "Current procurement cycle" refers to, for example, tender evaluation, clarification meeting, tender opening, counteroffer, contract, etc.

Source: Created based upon the information available in COMPRAMEX.

Regardless of this situation, however, there are some limitations of the information available in COMPRAMEX. In general, this information is available only for the central government. For some public entities, such as auxiliary bodies and municipalities, there is no information registered in COMPRAMEX, or only limited information can be found, such as tender notice date, but available without its PDF document. Furthermore, the information is not available for the procurement of public works, because COMPRAMEX is an e-procurement system exclusive to goods and services.

In addition, users need to download and review each non-reusable PDF document of each individual procurement to collect information. For example, users need to download PDF documents to find even the most basic information, such as contract amount. Furthermore, COMPRAMEX discloses the information of each individual procurement procedure without allowing users to obtain the aggregate information, such as the total procurement volumes of specific organisations. For example, in order to collect the statistics on the total volume of procurement of a certain entity, users need to painstakingly download and read all the PDF contract documents of all the procurement procedures carried out by a specific entity. The current system works well when users need information of one individual procurement procedure of a specific public entity. However, the current characteristics of COMPRAMEX are generally not user-friendly, in particular in terms of aggregating information.

In this sense, COMPRAMEX is different from Compranet, which provides excel sheets for each fiscal year since 2002. These excel sheets include the basic information related to public procurement, including contract amounts for all the public procurement procedures (goods, services and public works, tender methods such as open tender, and modalities such as paper-based, electronic and mixed) for one fiscal year. This allows users to easily calculate the aggregated contract amount of one fiscal year with various customised options, for example calculating the total contract amounts of open tender procedures for the procurement of public works which used electronic modalities (Compranet, 2019^[12]).

Ipomex

A Law on Access to Information is at the centre of open government reforms. More than 100 countries, including 65% of countries in the Latin America and Caribbean (LAC) region, and 97% of OECD countries passed a Law on Access to Information. In general, these laws aim to (i) ensure the greatest degree of transparency of government operations and (ii) encourage reuse of information. (OECD, 2016^[20])

Ipomex is the transparency portal of the State of Mexico for disclosure of information to the public in accordance with the LTAIPEMyM. This platform is administered by the Institute for Transparency, Access to Public Information of the State of Mexico and its Municipalities (*Instituto de Transparencia y Acceso a la Información Pública del Estado de México y Municipios*, INFOEM)

Ipomex discloses information related to public procurement not only for goods and services, but also for public works, unlike COMPRAMEX discussed earlier.

Article 92. XXIX of the LTAIPEMyM stipulates the minimum information that each public entity, including municipal governments, shall disclose in Ipomex on public procurement procedures for open tenders, restricted invitations and direct awards. Each public entity is also allowed to publish additional information, on top of the minimum information. The information is available in the HTML and downloadable in an excel format.

Table 2.5 shows the requirement of disclosing specific information related to public procurement in accordance with Article 92 of the LTAIPEMyM, and its actual availability in Ipomex, for each procurement procedure (open tender/restricted invitation and direct award).

Table 2.5. Access to information in Ipomex: requirement vs actual availability

Information	Open tender / Restricted invitation		Direct award	
	Requirement in Article 92	Actual availability in Ipomex	Requirement in Article 92	Actual availability in Ipomex
Tender notice or invitation, and applied legal regulations	X	X		
Name of bidders or invitees	X	X		X
Name of the successful bidder and justification of its contract awarding	X	X	x (*1)	X
Institution that requests the procurement process and the institution in charge of carrying it out	X	X	X	X
Tender notice or invitation (*2)	X	X		
Contract award decision	X	X		
Contract documents, and their annexes	X	X		X
Oversight and supervision mechanisms, including - when available -urban and environmental impact studies;	X	X	X	X
Budget line in accordance with the classifiers for expenses	X	X		
Fund source, specifying if funds come from a federal, state or municipal source, as well as the type of funds	X	X		X
Signed modified contracts with the purpose of the modification and its date of signature	X	X		X
Financial and physical progress reports for public works and services	X	(*3)	X	(*3)
Certificate of receipt	X	(*3)	X	(*3)
Payment	X	(*3)	X	(*3)

Proposal submitted by the bidder			X	
Motivations and legal foundations applied for direct award			X	X
Authorisations to proceed with a direct award			X	
Quotations considered, specifying the name of the suppliers and amounts			X	(*4)
Number, date, and amount of the contract, as well as delivery and completion date			X	X

Note: *1 Justification of contract awarding is not required for direct award, *2 Duplication with "Tender notice or invitation, and applied legal regulations", *3 There is a link to the PDF document, but it is a one blank page with "N/A", *4 No information on quotations considered, minutes of second financial proposal opening are not required in Article 92, and are only available in COMPRAMEX.

Source: (Gobierno del Estado de México, 2015^[23]) and information available in Ipomex.

Most of the information required by Article 92 is available on Ipomex. However, some information such as "proposal submitted by the bidder" and "Authorisations to proceed with a direct award" are not available. In addition, the link to PDF documents is available for financial and physical progress reports, certificate of receipt, payment, but the linked documents are blank pages that state "N/A." The State of Mexico should take the necessary measures to fully comply with the requirements in Article 92.

Regardless of this situation, it can be concluded that the State of Mexico discloses a wide range of information related to public procurement through Ipomex. Indeed, Ipomex discloses all the information available in COMPRAMEX, except the link to the minutes of second financial proposals (PDF).

Regardless of these good practices in disclosing information through Ipomex, two main challenges remain for the information found in Ipomex: coverage and user-friendliness. First, not all public entities of the State of Mexico comply with the disclosure obligations. For example, no information is disclosed for some municipalities: the excel sheet is blank without any information or the excel sheet itself cannot be found in Ipomex. In fact, in early 2015, 87% of municipalities reported less than 50% of their transparency obligations in Ipomex, according to the introductory text of the LTAIPEMyM. (Gobierno del Estado de México, 2015^[23]).

Another issue is user-friendliness. Ipomex only allows users to download an excel file with the combination of one public entity, one type of procurement (open tender/restricted invitation or direct award), and one fiscal year (2018, 2019, etc.). The current system works well when users need information for one public entity. However, it will not work optimally when users need information for multiple public entities at once. Even the simplest operations, like aggregating contract values of a contracting authority over time, require programming skills and painstaking tasks, because many excel sheets need to be downloaded, then extensively cleaned and restructured before one can start analysing the data. For example, in order to obtain information related to public procurement for all the public procurement methods (open tender, restricted invitation and direct award) for two fiscal years 2018 and 2019 for 300 public entities, users would need to download 1 200 excel files (four excel sheets per public entity multiplied by 300 public entities) from the Ipomex website. Furthermore, if users need the aggregated amount of contracts for these 300 public entities, 1 200 separate excel sheets need to be merged into one to calculate the aggregated amount.

This situation is very different from that of CompraNet, which provides excel sheets with the basic information related to public procurement, including contract amounts for all public procurement procedures (goods, services and public works; tender methods such as open tender, and modalities such as paper-based, electronic and mixed) for one fiscal year.

2.2.2. Upgrading COMPRAMEX to store and disseminate public procurement information in a user-friendly manner

The State of Mexico has been advancing in ensuring access to public procurement information through the two platforms. COMPRAMEX provides PDF formats of some documents related to public procurement for goods and services. Ipomex provides more comprehensive coverage of information than COMPRAMEX in excel formats and it also discloses information related to the procurement of public works. However, both platforms face common challenges. Not all public entities comply with transparency obligations through COMPRAMEX and Ipomex, some do not disclose the information or publish low-quality information. In addition, both platforms lack user-friendliness in collecting information in re-usable and machine-readable formats, a fundamental pillar of open data. COMPRAMEX provides non-reusable PDF formats. Ipomex provides more comprehensive coverage of information than COMPRAMEX, but users need to download multiple excel files to analyse aggregated information because downloading options are limited with the combination of one public entity, one type of procurement methods, and one fiscal year of one individual procurement procedure, unlike the case of Compranet.

The State of Mexico should provide reusable, higher quality and machine-readable data in a format that allows for analyses. This is a fundamental element not only for improving transparency and accountability, but also facilitating evidenced-based policy making through key performance indicators (KPIs) that measure the performance of public procurement systems, which will be discussed in Chapter 3.

For the time being, the State of Mexico could consider the possibility of publishing in COMPRAMEX all the public procurement information that is currently available in Ipomex. More flexible search options should be added in order to provide machine-readable and re-usable information. Search categories should comprise, although not be limited to, the combination of procurement information (such as contract amount, number of bidders), public entity (entity A, B, C), type of procurement procedures (open tender, restricted invitation, and/or direct award), and fiscal year (2018, 2019, 2020, etc.). For example, the aggregated contract amount for multiple public entities for open tender for 2018 and 2019 should be calculated in one search to avoid the current situation in which users download hundreds or even thousands of separate excel files to calculate this information.

The interconnection of COMPRAMEX with Ipomex should also be considered. Currently, public procurement officers need to update the information both for COMPRAMEX and Ipomex, which leads to duplicated tasks and risks of inconsistencies. Therefore, it would be ideal if the information updated in COMPRAMEX were reflected automatically in Ipomex. However, it is worth mentioning that COMPRAMEX and Ipomex are governed by regulations of different nature, and each platform is managed by different entities (Ministry of Finance for COMPRAMEX, and INFOEM for Ipomex). Therefore, the interconnection of these platforms should be considered as a potential option in the long-term, taking into account the coordination required.

The possibility of using COMPRAMEX for the procurement of public works is also important in this context, because currently COMPRAMEX is an e-procurement system only for the procurement of goods and services, and the procurement information related to public works is only available in Ipomex.

These efforts will also create the basis for the State of Mexico to consider the adoption of the Open Contracting Data Standard (OCDS), which Mexico has been trying to promote for some time. (See Box 2.8)

Box 2.8. Mexico and the Open Contracting Data Standard

The Open Contracting Data Standard (OCDS) is an open data standard for public contracting, implemented by over 30 governments around the world. It is the only international open standard for the publication of information related to public procurement. It was created to support organisations to increase contracting transparency and enable deeper analysis of contracting data by a wide range of users.

The OCDS recommends data and documents to be published with the classification level of basic, intermediate, and advanced, and how to publish them. Thus, the OCDS facilitates the structured publication of data at all stages of the contracting process: planning, tendering, awarding, contracting and implementation.

In December 2015, Mexico announced its compromise to implement the OCDS for all government contracts, starting with the New Airport of Mexico City. Although the Mexican government has agreed to implement the OCDS, the information currently published in national and local e-procurement systems does not provide completely “sharable, reusable, machine readable data” as required by the OCDS.

However, Mexico has been active in promoting the OCDS. For example, Mexico established the Contracting 5 (C5) Initiative with Colombia, France, the United Kingdom and Ukraine, an international forum to exchange practices and knowledge on open contracting and build a shared knowledge-base towards the adoption of the OCDS by a greater number of countries.

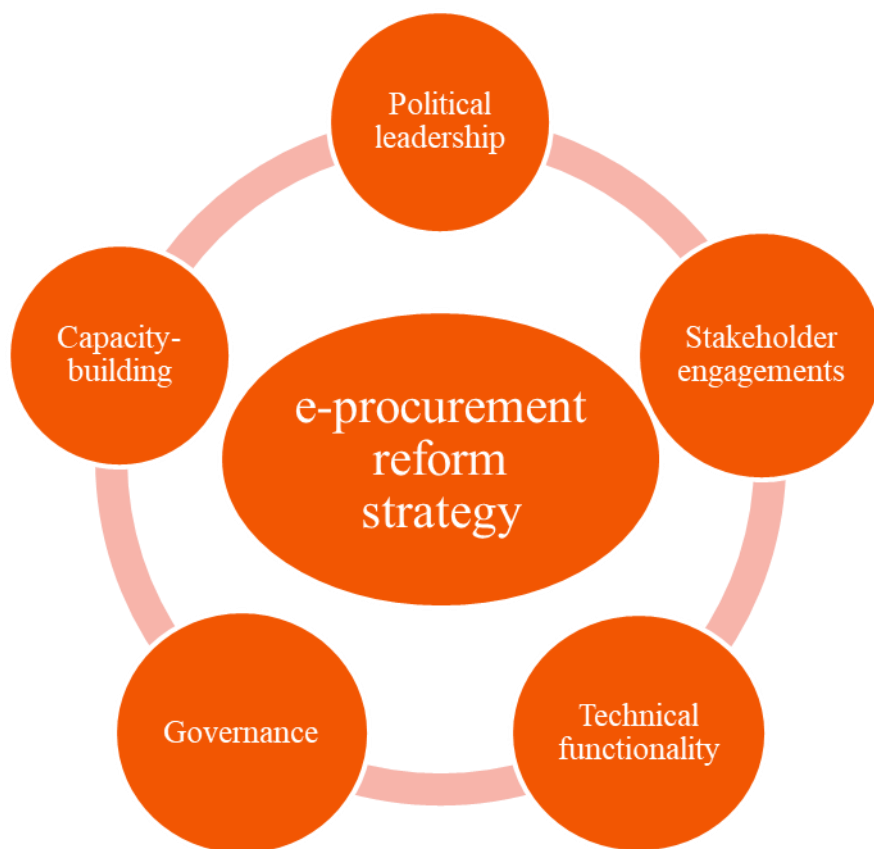
Source: (OECD, 2017^[22]) and website of OCDS

2.3. Moving towards e-procurement reform: key factors for the successful reform of COMPRAMEX

2.3.1. *The State of Mexico needs a clear strategy and strong institutional leadership to advance the reform of COMPRAMEX*

Implementing e-procurement reform requires time. Therefore, well-planned strategies and roadmaps are required for the successful implementation of e-procurement reform. This section discusses the factors that the State of Mexico should take into account in order to develop the e-procurement reform strategy for successful implementation. The development of such a strategy should focus on five key elements: institutional leadership, stakeholder engagement, technical functionality, governance and capacity building.

Figure 2.7. Successful factors for e-procurement reforms



Source: Adapted from (The European Bank for Reconstruction and Development, 2015^[25])

Institutional leadership is a decisive factor for the successful implementation of e-procurement reforms. Governments need to clearly define the vision for what is to be achieved through e-procurement reform and assign an agency responsible for advancing the agenda, backed by strong institutional leadership. For example, the Federal Government of Mexico set up a vision for the reform of CompraNet as a starting point of the process (Box 2.10).

Indeed, institutional leadership is a critical element for e-procurement reform in the State of Mexico. The reform has not achieved significant progress since 2013, when the LCPEMyM was amended to facilitate the digitalisation of public procurement procedures through COMPRAMEX. Currently, the State of Mexico has a plan by the end of 2020 to update COMPRAMEX by introducing e-submission and e-signature, which is foreseen in the LCPEMyM. The Ministry of Finance is in charge of implementation under the leadership of the DGRM and the General Directorate of the State IT System (*Dirección General del Sistema Estatal de Informática*, DGSEI). However, such implementation plan is still under development, which implies that the timeframe might not be achieved, considering the time necessary to implement the e-procurement reform.

In addition, lack of institutional commitment is reflected in the absence of the Digital Agenda of the State of Mexico, which has not been developed regardless of the requirement of the Law on Digital Government of the State of Mexico, issued in 2015. Article 9 of this law stipulates that the State Council on Digital Government should approve a Digital Agenda. However, five years on from the establishment of this law the Council has not taken the decisions to move forward this Agenda. Therefore, the State of Mexico should convene the State Council on Digital Government, in accordance with the Law, to discuss and develop the Digital Agenda. The Council consists of 31 institutions: the heads of the Ministry of State, the

Ministry of Economic Development and the Ministry of Finance, as well as the heads of the remaining thirteen ministries, four mayors, the head of the Human Rights Commission, and the State's Attorney General, among other stakeholders.

The membership of the Council creates an opportunity to gain strong political buy-in from the whole-of-government. It is critical to develop the Digital Agenda of the State of Mexico, including the reform of COMPRAMEX. In Turkey, for example, the decision of the Prime Minister to include e-procurement reform into eleven high priority e-government agendas and projects not only demonstrated strong political commitment by the Turkish government, but also made it easier to allocate financial and technical resources. (The European Bank for Reconstruction and Development, 2015^[25]) Strong institutional support would bolster the reform of COMPRAMEX as an advanced e-procurement system with improved transactional functionalities, interconnection with other government databases and open data platforms.

In order to demonstrate such a strong commitment, the State of Mexico would also benefit from establishing a website dedicated to e-procurement reform, which should clearly outline the reform vision, strategy, programme and timeframe to ensure that the efforts of the government are visible to the public.

2.3.2. The State of Mexico could establish a Plural Working Group to define the vision statement of COMPRAMEX reform

The Ministry of Finance is in charge of implementing e-procurement reform, under the leadership of the DGRM and the DGSEI. In addition to institutional commitment, it is critical to consider stakeholder engagement during the reform process. The OECD *Recommendation on Public Procurement* calls upon countries to invite stakeholders, including the private sector and civil society, to participate in public procurement reform, as it is a project with a multitude of stakeholders, each of whom has different views and conflicting interests. This participation process ensures that the reform gains strong social support through shared understanding between the government and stakeholders (See Box 2.9).

Box 2.9. OECD Recommendation of the Council on Public Procurement: participation

VI. RECOMMENDS that Adherents foster transparent and effective stakeholder participation.

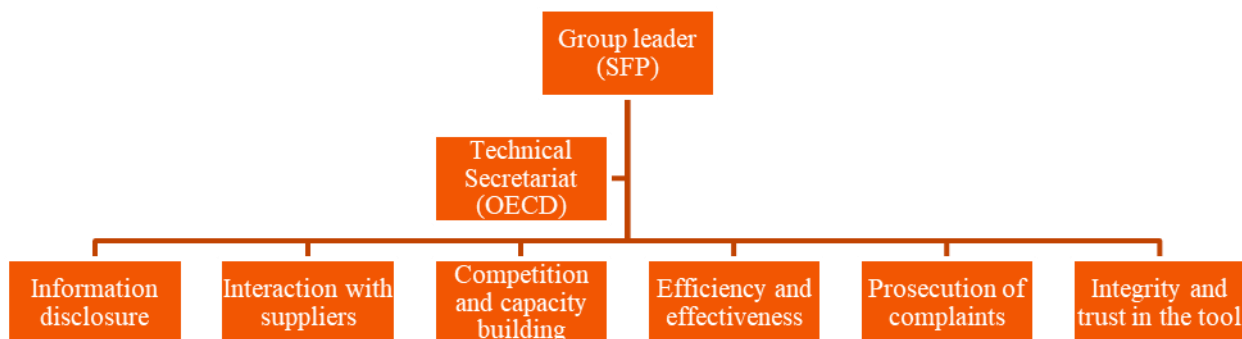
To this end, Adherents should:

- i) Develop and follow a standard process when formulating changes to the public procurement system. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner.
- ii) Engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets. Effective communication should be conducted to provide potential vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender specifications by better understanding market capabilities. Such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing. Such interactions should also be adapted to ensure that foreign companies participating in tenders receive transparent and effective information.
- iii) Provide opportunities for direct involvement of relevant external stakeholders in the procurement system with a view to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained.

Source: (OECD, 2015^[1])

During the phase of designing a reform strategy for COMPRAMEX, the State Government could consider the experience of the Federal Government of Mexico relative to CompraNet's reform. In 2018, the Ministry of Public Administration (*Secretaría de la Función Pública, SFP*) of the Federal Government convened a multi-stakeholder group for the reform of the e-Procurement system. This multi-stakeholder group included representatives from the public sector, business, and civil society, and worked towards the development of a shared vision statement regarding e-procurement in Mexico. The vision statement also aimed to serve as a guide for the future development of e-procurement tools in Mexico, including at the subnational level. This collaborative practice was in line with the principle of participation included in the *Recommendation of the OECD Council on Public Procurement*.

Figure 2.8. Plural Working Group for the reform of CompraNet, established by Mexico's Federal Government



Source: (OECD, 2018^[13])

The Plural Working Group consisted of six subgroups: information disclosure, interaction with suppliers, competition and capacity building, efficiency and effectiveness, management of complaints and integrity and trust in the tool. Each subgroup was represented by a wide range of stakeholders, including the public sector, civil society, and businesses, and worked on specific key issues and themes, as Table 2.6 illustrates.

Table 2.6. Subgroup topics of the Plural Working Group for CompraNet reform

Topic	Key issue	Participants	Themes covered
1. Information disclosure	CompraNet discloses all information relevant for users	Journalists, civil society organisations (CSOs), suppliers, National Institute on Transparency, Freedom of Information and Personal Data Protection (INAI), businesses (chambers of commerce), SFP	Availability, accessibility, opportunity, usefulness, accuracy of information
2. Interaction with suppliers	Streamlining the tools for engaging suppliers through e-procurement	Businesses (chambers of commerce)	Functionality enhancements, transparency, anti-corruption, statistics, professionalisation
3. Competition and capacity-building	Encourage the use of electronic means throughout the public procurement cycle	Public servants, contractors and suppliers	Robustness of platform, reducing participation costs, reducing administrative costs, limiting direct contact between participants
4. Efficiency and effectiveness	Alternative solutions and measures to improve the platform	Civil society organisations (CSOs)	Analysis of applicable regulations, background of CompraNet, practical operation of the platform, accessibility of processes and results
5. Management of complaints	Processing of complaints focused on creating confidence and credibility in the business sector	Public servants and businesses (chambers of commerce)	Analysis of current process flow, diagnosis of options to improve SIDEDEC (SFP's complaint system), <i>Sistema Integral de Denuncias Ciudadanas</i> and CompraNet (best practices), technological update proposal
6. Integrity and trust in the tool	Identify actions that increase trust in CompraNet, ensuring accurate and timely information	Civil society organisations (CSOs)	Integrity of the information contained in CompraNet, trust in processes related to CompraNet, mechanisms and actions external to CompraNet that affect its reliability and integrity

Source: (OECD, 2018^[13])

As already discussed, the establishment of the Plural Working Group was an indispensable element to set up a shared vision statement for Mexico's e-procurement system (See Box 2.10).

Box 2.10. Vision for Mexico's e-procurement system

In 2018, the multi-stakeholder working group convened by the Federal Government of Mexico to reform CompraNet developed a collaborative vision statement to establish new foundations for e-procurement systems in Mexico. In this vision, the Plural Working Group on Public Procurement recognised the opportunities provided by digital technology to enable a fully transactional system that supports the whole public procurement cycle, from planning through tendering and award (contracting), to payment and contract management, as well as subsequent monitoring and auditing. The vision statement considers the following twelve principles that capture the goals and ambitions of all stakeholders involved in the public procurement process:

- 1. Transactional:** The entire public procurement cycle will be managed electronically and establish complete flows connecting each of the steps automatically.
- 2. Standardised:** The entire public procurement cycle will conform to specifications and approved pre-established formats and adopt internationally accepted contracting data standards.
- 3. Transparent:** The e-procurement system will be the only access point for information of the government procurement cycle for any type of procurement procedures.
- 4. Trustworthy:** The information uploaded to the system will be accurate, complete, updated and secured under strict protocols.
- 5. Interconnected:** The system will offer interconnection between the processes of the procurement cycle as well as between government information systems (e-government), including those of budget and revenue agencies.
- 6. Co-ordinated:** The various entities and user units of the system will use it as a tool to ease coordination and facilitate consolidated purchases looking for the best market conditions and the standardisation of the procurement process. The system will include modules that allow for public procurement strategies such as reverse auctions and framework agreements.
- 7. User-friendly:** The system is designed to offer users clarity on the available information and where to find it, as well as quick access to the system and high-speed navigation, A help desk provides useful advice to users, with sufficient numbers of qualified staff to address users' needs.
- 8. Instrumental for users:** The platform provides information for both public servants and the social and private sectors. It will help them in the following tasks: analysing public procurement and the performance of those involved in such activity; making decisions to participate in procurement processes; defining public procurement policies and improvement initiatives for public procurement; supporting audit and control tasks, and carrying out investigations and analyses of procurement outcomes, including the production of statistics and indicators. The platform will also facilitate the preparation of market research and Annual Plans of acquisitions, leases and services, as well as public works, so they can be published in a timely manner with updated information and provide useful input for the industry. The system's Registry of suppliers, including suppliers profiles, shareholders, history of performance in public procurement and illicit actions, will contribute to informed decision making by procurement officials.
- 9. Accountable:** The system links to citizen complaint mechanisms set up for the complete procurement cycle and includes an updated registry of suppliers that have been sanctioned.

10. Dynamic and innovative: A focus on process innovation will help the system introduce new information-management methodologies in procurement for public works, goods and services, based on knowledge from previous experiences, opinion and feedback from users, and guided by international best practices.

11. Geared towards economic competition: The system encourages competition, free concurrence and reduces entry barriers, transaction and administrative costs for all types of users.

12. Exemplary: The e-procurement system of the Federal Government will be a good practice for all other public e-procurement systems in Mexico to follow, such as those to be developed by states, municipalities and public entities subject to different procurement regimes.

Source: (OECD, 2018^[13])

The State of Mexico could consider setting up a multi-stakeholder group in order to establish a dialogue with a wide range of actors for communication and feedback on upcoming reforms of its e-procurement system.

2.3.3. The plural working group could define technical functionalities for the future of COMPRAMEX

Governments need to define the technical functionalities of the e-procurement system to implement its reform. These technical functionalities could consist of, but are not limited to, the following:

- Transactional functions of procurement processes: Which procurement processes (for example, e-submission) should be carried out by the e-procurement system and for which procurement categories (goods, services and/or public works)? In addition, it is important to define whether it is mandatory for each of those processes to be carried out electronically
- Interconnectivity: Which digital government systems (for example, the budgeting system) should be inter-connected with the e-procurement system?
- Access to information: What kind of information (for example, the number of bidders for each procurement process) is disclosed in the e-procurement platform and how the information will be collected?

The current situation and recommendations for COMPRAMEX have been already discussed in sections 1 and 2 of this chapter. The technical functionalities should be defined with a clear timeframe for implementation and aligned with the vision statement to be developed.

In addition, new functionalities should be introduced in a phased approach, supported by a piloting period with the participation of selected stakeholders. The piloting period would help reform leaders better understand the user environment for potential improvement, as well as training needs.

2.3.4. The plural working group could help reviewing the current regulatory framework of public procurement, in accordance with the vision statement

E-procurement reform entails amendments to the regulatory framework. The LCPEMyM states that full digitalisation will be completed gradually. Potential amendments to the current LCPEMyM could involve the following aspects, to be identified by the Plural Working Group, to feed into the normative review recommended in Chapter 1.

- New e-purchasing options such as framework agreements, which are discussed in Chapter 3.

- New transactional functions of procurement processes (it should be clear in which cases it is mandatory to use those functions).
- Interconnectivity of COMPRAMEX with other digital government systems, such as the budget system (SPP), business and tax registries, complaints system (*Denuncia EdoMex*) and the transparency portal (IPOMEX).
- E-platform for the procurement of public works (for example, to use COMPRAMEX for the procurement of public works).
- Information disclosure (for example, to publish the same level of information that is currently available in IPOMEX and to list all the information to be disclosed).

2.3.5. The State of Mexico should overcome potential barriers to COMPRAMEX reform through capacity-building and awareness-raising activities

Successful implementation of e-procurement reform requires a change management process. Governments should ensure that public procurement officers, as well as any other stakeholders, including suppliers, are not only aware of the strategic importance of e-procurement but also have the right skills and knowledge of the processes and functionalities of the new e-procurement system. Therefore, it is highly important to provide capacity-building opportunities.

Indeed, the 2016 OECD *Survey on Public Procurement* demonstrates that the main challenges faced by contracting authorities in OECD countries when using e-procurement systems are an organisational culture that is not as innovative as it could be (57%), limited ICT knowledge and skills (40%) and limited familiarity with the economic opportunities that e-procurement systems can offer (37%). According to a survey carried out by the OECD, the State of Mexico identified the lack of an open organisational culture focused on innovation, as the main obstacle to the development of an updated e-procurement system. These challenges need to be addressed by building capacities and raising awareness of the e-procurement system as a useful economic tool.

Currently, the State of Mexico does not provide training on COMPRAMEX. In addition, the guidelines on how to use COMPRAMEX are not available in the website. It would be indispensable to provide training on the new functions of COMPRAMEX not only to public procurement officials, but also to suppliers. The State of Mexico could consider developing training programmes on COMPRAMEX as part of its change management process, as was done in the case of the Compranet reform (See Box 2.11).

In addition to the provision of training opportunities, the State of Mexico could set up a help-desk to answer questions on the use of COMPRAMEX. Currently, contracting authorities and suppliers can contact the Ministry of Finance for any questions related to the use of COMPRAMEX. However, having a dedicated help desk would facilitate the smooth transition into an updated version of COMPRAMEX. For example, in Colombia, the help desk administered by *Colombia Compra Eficiente* is staffed by a team of 30 officials, made up of two supervisors (one quality assurance role and one trainer) and 26 agents, each of whom processes an average of 944 cases per month. The service is available to users in three different channels: call, online chat and e-mail (OECD, 2018^[13]).

Box 2.11. Capacity-building initiatives of the Federal Government of Mexico on CompraNet

Preparing users for changes to the e-procurement system should involve efforts to provide training targeted at suppliers and contracting authorities.

For procurement practitioners, SFP developed a face-to-face training programme, as well as online courses for self-training on the use of CompraNet. Around 10 800 procurement officials were trained through face-to-face sessions between 2011 and 2018.

Since 2012, more than 18 300 suppliers received face-to-face training at an average of 2 600 per year. However, it was necessary to expand the scope of training efforts, considering the number of suppliers registered in CompraNet (over 260 000 as of August 2018). Under these circumstances, SFP developed a series of training videos regarding different procurement processes and CompraNet, in order to deal with the limited resources to increase face-to-face sessions for suppliers. In total, eight videos were produced with a total count of over 340 000 views since 2015 and over 1 800 subscribers to CompraNet's YouTube channel.

Table 2.7. YouTube support material for self-training on the use of CompraNet

Title	Description	Total views
1. Online registry	Describes the steps to follow so that the physical/legal person (<i>persona física/moral</i>) of Mexican nationality can successfully register in CompraNet	158 454
2. Work area	It explains the main screen to which the physical or legal person registered in CompraNet accesses with an account, as well as showing the different areas for specific activities	20 934
3. Search for contracting procedures in CompraNet	It shows the steps to follow to search for a procurement procedure in CompraNet	594
4. Express interest in a procurement procedure	Describes the steps to follow to search for and register for a procurement procedure published in CompraNet and participate electronically	21 229
5. Sending questions for clarification meetings	Sending of questions related to a contracting procedure, which are answered at the clarification meetings	7 989
6. Sending and e-signing proposals	Procedure that describes the process of sending and signing proposals in CompraNet	41 544
7. Consultation of published acts	Consultation of minutes related to the events of the procurement procedure	6 368
8. JAVA upgrade demo	Installation and update of JAVA in Internet Explorer and Mozilla Firefox	82 995

Source: (OECD, 2019^[26])

An additional Technical Guide for Suppliers on the use of CompraNet (*Guía técnica para licitantes sobre el uso y manejo de CompraNet*) was also developed in a PDF format available for free download from CompraNet.

Source: (OECD, 2019^[26])

Proposals for action

The State of Mexico reformed the LCPEMyM in 2013 in order to facilitate the digitalisation of public procurement procedures through the gradual introduction of COMPRAMEX. This was an important step to increase efficiency and transparency in public procurement. However, efforts have not led to transactionality in the use of COMPRAMEX: It has never been used to carry out procurement processes in the electronic modality since the reform in 2013. There is much room for improvement in transactional functions that do not comply with the requirement of the legal framework, its interconnection with other government systems and the disclosure of public procurement information in a user-friendly way.

This situation could be attributed to the weakness of several elements such as institutional will, awareness of the strategic importance of public procurement and a clear vision and roadmap for the reform strategy. This is illustrated in the absence of the Digital Agenda, a plural working group (or some other form of stakeholder engagement) and a clear implementation plan for the COMPRAMEX reform, which is scheduled to be completed by the end of 2020.

Therefore, the State of Mexico needs to develop strategies and a roadmap for the successful implementation of e-procurement reform. The development of the reform strategy should focus on five key elements: institutional leadership, stakeholder engagement, technical functionality, governance and capacity building.

The State of Mexico will benefit from considering the following recommendations and roadmap to reform COMPRAMEX to increase efficiency and transparency of public procurement, as Table 2.8 illustrates. The timeframe consists of three phases: short (within six months), medium (within one year), and long (over one year). The actions that fall into “short” and “medium” will be subject to the follow-up survey that is planned in one year after the launch of this review.

If successfully implemented, COMPRAMEX could be transformed into a more comprehensive, transactional, interconnected and transparent e-procurement system with reusable and comprehensible data.

Table 2.8. Recommendations and roadmap for COMPRAMEX reform

ID	Action	Recommendation	Timeframe
1	Establishing a plural working group	The State of Mexico could establish a plural working group for communication and feedback on future e-procurement reforms. The members could consist of multiple stakeholders, including representatives of the public sector, business, and civil society	Short
2	Organising subgroups of the plural working group	A plural working group could organise subgroups	Short
3	Setting up the vision statement of COMPRAMEX	A plural working group could set up the vision statement of COMPRAMEX	Medium
4	Convening the State Council on Digital Government	The State of Mexico should convene the State Council on Digital Government, in accordance with the Law, to discuss a Digital Agenda	Short
5	Developing a Digital Agenda	The State Council on Digital Government should develop a Digital Agenda of the State of Mexico, including the reform of COMPRAMEX in order to gain strong political buy-in from the whole-of-government	Medium
6	Establishing a website on e-procurement	The State of Mexico could establish a website on e-procurement reform. The website should clearly outline the reform vision, strategy, programme and	Short

	reform	timeframes to ensure that the efforts of the government in the e-procurement reform are visible to the public	
7	Regulatory framework	The State of Mexico could review the current regulatory framework of public procurement in accordance with the vision statement	Medium
8	Defining new transactional functions of e-procurement processes	A plural working group could define new transactional functions for e-procurement processes. These functions could include e-submission, e-signature and automatic notification of tender opportunities to suppliers	Medium
9	Introducing new transactional functions of e-procurement processes	The State of Mexico should introduce new transactional functions for e-procurement processes, identified in item 8	Long
10	Defining government systems to be interconnected with COMPRAMEX	The plural working group could suggest government systems to be interconnected with COMPRAMEX. These systems could include the budget system (SPP), business and tax registries, complaints system (<i>Denuncia EdoMex</i>) and the transparency portal (IPOMEX)	Medium
11	Integrating COMPRAMEX with other digital government systems	The State of Mexico should implement the interconnection of COMPRAMEX with other digital government systems, identified in item 10	Long
12	Defining the future of the e-procurement platform for public works	The plural working group should define the future of the e-procurement platform for public works. The State of Mexico could discuss the possibility of using COMPRAMEX not only for goods and services, but also for public works. In the meantime, the Ministry of Control could use its website for the tender notice of public works	Medium
13	Setting up an e-procurement platform for public works	The State of Mexico should introduce e-procurement processes for public works	Long
14	Defining the information disclosed in COMPRAMEX	The plural working group could define the information related to public procurement to be disclosed in COMPRAMEX. As a medium-term goal, the State of Mexico could consider the possibility of publishing in COMPRAMEX all the public procurement information currently available in Ipomex. More flexible search options should be added in order to allow users to collect information in machine-readable and re-usable formats	Medium
15	Publishing information in COMPRAMEX	The State of Mexico should disclose in COMPRAMEX the information related to public procurement, identified in item 14, with flexible search options	Long
16	Capacity building	The State of Mexico should design capacity-building activities on how to use new functions of COMPRAMEX. Audiences to be targeted include procurement officials and suppliers, as part of the change management process	Medium

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3

Enhancing the effectiveness of centralisation of procurement in the State of Mexico

This chapter analyses the current structures, mechanisms and practices for centralising public procurement in the State of Mexico with a view to strengthening its effectiveness. It identifies areas for the expansion of centralisation to further increase its efficiency and effectiveness. Further, it focuses on the use of framework agreements as efficiency tools to effectively reap the benefits of centralised public procurement, including creating greater competition in the market. Finally, the chapter examines organisational structures that are most conducive to results when it comes to centralisation of procurement.

With shrinking public budgets in times of fiscal austerity, government administrations are looking for ways to rationalise public spending and to achieve more with less. Considering the size of public procurement expenditure—an average of 12% of GDP in OECD countries—public procurement presents opportunities for such efficiency gains (OECD, 2019^[1]). With a procurement expenditure of MXN 71 968 million in 2019 representing 24.7% of the expenditures budget of the state¹, the government of the State of Mexico is responsible for making sound use of taxpayers money. Significant savings can be generated by streamlining, rationalising and consolidating expenditure carried out through public procurement. A number of tools and techniques are used within OECD countries to achieve better value for money.

Centralisation of public procurement expenditure is a key tool used to this end. It involves aggregating procurement demand from different entities by using various efficiency tools, notably centralised purchasing and framework agreements.

While centralisation provides clear benefits to a procurement system, it also needs to be carried out effectively to deliver on the savings and rationalisation that are associated with it. In fact, putting in place a centralising institution without proper knowledge, tools, processes and the institutional framework may not produce desired results.

This chapter analyses how the State of Mexico could enhance its current institutional structure, processes and tools to further reap the benefits of increased centralised spending. This chapter argues that centralisation can only be effective to the extent that appropriate institutional structures, efficiency tools and governance systems are in place. Beyond that, centralisation provides opportunities to increase competition, and thereby generate further value for money in public procurement in the State of Mexico.

Box 3.1. Options for increased efficiency in the OECD Recommendation of the Council on Public Procurement

The Council:

VII. RECOMMENDS that Adherents develop processes to drive **efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

i. Streamline the public procurement system and its institutional frameworks. Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.

ii. Implement sound technical processes to satisfy customer needs efficiently. Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract.

iii. Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

Source: (OECD, 2015^[2])

3.1. Centralisation brings results, if carried out effectively

With a population of approximately 16 million, the State of Mexico is the most populous state in the country. From an administrative perspective, it is divided into 125 municipalities. Its urban area is in close proximity to Mexico City; namely, 59 municipalities are considered part of Mexico City's suburban area. From an economic point of view, the State of Mexico compares well to other states with an economy that represents approximately 8.7% of total GDP of the Mexican Federation (INEGI, 2019^[3]). Its economy is primarily characterised by manufacturing and industry. As a large state composed of many procuring entities, the overall procurement system presents good opportunities for centralisation.

To ensure efficiency and value for money, sufficient capacity to carry out procurement must be present at all levels of government. Typically, this is a major challenge across OECD countries, as capacity of procurement staff tends to be weak at regional and local level. Indeed, very often civil servants at lower levels of government only conduct procurement occasionally and therefore lack the necessary skills and specialisation.

In this context, maximising the centralisation of public procurement often via a dedicated authority and the use of appropriate efficiency tools can be of great value. This lifts the burden of public procurement from entities that are not specialised, and achieves greater value for money through economies of scale generated by the aggregation of demand.

Across the OECD, many countries have recognised the benefits of centralisation of public procurement and are increasing efforts to streamline their procurement systems by aggregating needs. The benefits of centralisation are primarily linked to savings (OECD, 2019^[4]). Specifically, these savings occur from better prices through economies of scale, as well as lower transaction costs. Indeed, by aggregating the demand of multiple contracting authorities, greater spending power is achieved. Limiting the number of authorities conducting procurement transactions also rationalises expenditure. At the same time, concentrating the public procurement function into one organisation generates improved capacity and specialised expertise, leading to even better results and savings.

Not least, centralisation contributes to a more efficient procurement system by creating a central point of contact for suppliers and public entities. Namely, centralisation is most often achieved through the set-up of a central purchasing body (CPB), i.e. a contracting authority that acquires goods, services or works on behalf of other contracting authorities. In fact, while many countries opt for establishing a CPB or similar centralising institution, the degree of centralisation may vary depending on the institutional and administrative culture. In some countries centralisation is made mandatory, e.g. Lithuania or Chile. Other countries may have a preference for a decentralised system that gives more flexibility to single public buyers and entities. This is the case in the Netherlands, where the emphasis lies on raising the level of skills and competencies of buyers across levels of government.

The benefits from centralising procurement expenditure have also been recognised in the State of Mexico, since reforms to purchase more centrally have been ongoing for several years. Centralisation is particularly relevant in a large state composed of many procuring entities. As detailed in Chapter 1, procurement expenditure on goods and services at central level is centralised via the DGRM of the Ministry of Finance. However, the overall centralised expenditure by the Ministry of Finance represents approximately 68% of its total procurement expenditure, indicating that there are further opportunities for streamlining and rationalisation².

Furthermore, current austerity policies put the government of the State of Mexico under increasing pressure to achieve greater efficiency and value for money. Policymakers and procurement practitioners should have a clear understanding that centralisation can support this effort, if carried out effectively. However, this requires a solid grasp of the expected benefits, the necessary reform steps, and a precise overview of the inputs and preconditions necessary to obtain the overall objective.

Importantly, centralisation needs to be adapted to the local context to work effectively. It is clear that consolidating public procurement strips some authorities of decision-making abilities over its purchases and related budget. Pressuring local authorities into a mandatory centralised scheme may not be a wise reform option if there is a strong independent administrative culture among municipalities. In this case, setting up a voluntary scheme may be a more appropriate strategy. In other cases, authorities may be glad to give up tasks that they consider burdensome. This can be the case if an authority faces serious consequences in case of procurement irregularities at audit (e.g. personal liability or sanctions). The incentives under such circumstances may be aimed at limiting the amount of procurement conducted, as it represents a potential liability for an organisation.

Despite being widely recognised as beneficial, centralisation also brings about a number of disadvantages that should be weighed against the benefits and potential savings. Academic research points to higher co-ordination and set-up costs, loss of relationships with local suppliers, potential barriers to SMEs for larger centralised procurements, complex co-ordination and inefficiencies (Albano and Sparro, 2010^[5]). One of the greatest limitations pertains to the fact that the specific needs and unique requirements of contracting authorities may not be fully met (OECD, 2019^[4]). With respect to the market, centralised procurement also brings about the risk of higher market concentration and the development of monopolies, as larger volumes disproportionately benefit large suppliers and may create barriers to market entry (OECD, 2018^[6]).

Thus, each country or regional administrative entity needs to strike the appropriate balance between centralisation and autonomy of contracting authorities.

3.2. Opportunities for expanding the scope of centralisation in the State of Mexico

As discussed in Chapter 1, a significant degree of centralisation is already ongoing in the State of Mexico, particularly for goods and services at central level. Namely, the DGRM acts as the CPB for goods and services for ministries of the state government (*dependencias*). The ministries are obliged to purchase via the DGRM with the exception of *contratos pedidos*, i.e. purchases of less than MXN 570 000 (USD 29 640) carried out via direct awards. Otherwise, the DGRM executes all other purchases of goods and services required by the *dependencias*.

In contrast, auxiliary bodies and municipalities are allowed to carry out procurement of goods, services, and public works independently. This also applies to entities that have a decentralised status, such as entities under the portfolio of a particular state ministry. It should be noted that these entities are allowed to join centralised purchases by the DGRM, upon signature of a co-ordination agreement.

The type of procurement by the DGRM includes so-called centralised purchases, i.e. goods and services that are requested by multiple organisations. The following are examples of product groups requested by more than 15 different users:

- Office materials and equipment
- Materials and tools for processing in equipment
- Cleaning materials
- Vehicle leasing

Centralised purchases make up 44.9% of procurement of goods and 89% of procurement of services. The combined share of goods and services purchased under the centralisation scheme amounts to 68.1%.

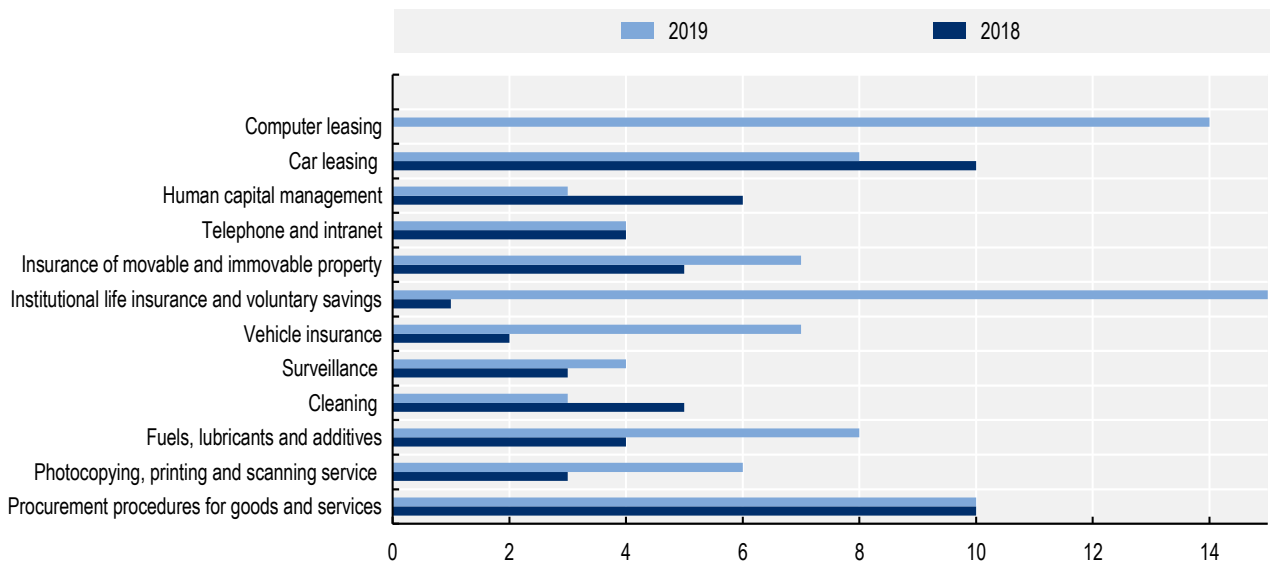
Table 3.1. Centralised procurement by the Ministry of Finance

Centralised purchases					
Central sector and decentralised bodies					
Goods		Services		Goods and services	
Amount awarded (MXN)	Share of total goods	Amount awarded (MXN)	Share of total services	Amount awarded (MXN)	Share of total MoF expenditure
2,944,056,042.72	44.9%	6,476,433,156.50	89.0%	9,420,489,199.22	68.1%

Source: Data provided by the Ministry of Finance

With an established CPB, the State of Mexico is already reaping some of the benefits of centralisation and efficiency. However, opportunities for greater centralisation are still available and could be exploited. These are particularly significant when looking at the size of procurement of goods and services that is currently outside the centralisation scheme of the DGRM. As of 2019, the DGRM holds 87 co-ordination agreements with decentralised and autonomous bodies. This number has increased from 52 in 2018, demonstrating the growing interest in such centralisation. The agreements cover product and service categories that are often subject to centralisation, such as cleaning, telephone, printing services as well as car leasing. Two particular categories have generated strong interest in 2019, namely computer leasing and insurance (Figure 3.1). The increased interest in procurement of computers is linked to the strategy for the technological upgrade of the entire government of the State of Mexico.

Nevertheless, two main areas of additional procurement expenditure emerge when examining the overall procurement expenditure in the State of Mexico, namely procurement conducted by auxiliary bodies and by municipalities. The following sections outline how these areas of expenditure could be further included in the centralised procurement by the DGRM to further reap the benefits of increased centralisation across the State of Mexico (e.g. savings, value for money, efficiency in transactions, etc.). It is worth noting that municipalities and auxiliary bodies have budgetary autonomy, allowing them the choice to determine whether to adhere to this purchasing system. To integrate these entities more fully in the centralised purchasing scheme, the DGRM would need to set up a dedicated structure that is capable of analysing their specific needs and offering them attractive conditions. This would require a broader concerted reform action by several stakeholders in the State of Mexico providing the resources and the capacity to the DGRM to take a bigger role in centralising public procurement across more purchasing entities.

Figure 3.1. Number of coordination agreements per product category

Source: Data provided by the Ministry of Finance

3.2.1. Auxiliary bodies could be included more firmly in the centralisation scheme of the Ministry of Finance

Auxiliary bodies play a significant role in the public procurement system in the State of Mexico. There are in total 90 auxiliary bodies dealing with many different policy areas. Specifically, these consist of 84 decentralised entities, three trusts, one state participation company and two civil associations. Among those, eight are particularly important with respect to public procurement, as their combined procurement expenditure amounts to MXN 21.5 billion in 2018. For comparison, this is more than the annual expenditure of the DGRM MXN 14 billion for the same year.

Auxiliary bodies are responsible for essential services to citizens, such as water management, healthcare, road infrastructure, social security, among others. Some of the most relevant entities in terms of their function and procurement spending are listed here:

- ISSEMYM – Institute for Social Security of the State of Mexico and Municipalities
- ISEM - Health Institute of the State of Mexico
- CAEM - Water Commission of the State of Mexico
- SEIEM – Integrated Educational Services of the State of Mexico
- IMIFE – Institute for Education Infrastructure of the State of Mexico
- JCEM - Board of Roads of the State of Mexico
- SAASCAEM - System of Highways, Airports, Services and Auxiliary
- SITRAMYTEM - Massive Transport System and Funicular of the State of Mexico

Given their role and activities, these auxiliary bodies oversee significant procurement expenditure often in the area of public works. However, by analysing the procurement expenditure of these entities, it emerges that goods and services make up the vast share of their overall spending (74.9% in terms of value in 2018),

as depicted the table below. Given its high share, it is conceivable that parts of this expenditure consists of standardised items and could lend itself to centralisation.

Table 3.2. Expenditure on goods and services by auxiliary bodies

TOTAL	2016	2017	2018
Number of procedures	2002	1467	1519
% of total	61.5%	54.7%	50.5%
Value of procedures	14,718,517,888.93	13,118,582,383.29	16,078,440,091.83
% of total	73.9%	76.4%	74.9%

Note: The data of auxiliary bodies is limited to the following eight entities: SEIEM, ISSEMyM, CAEM, IMIFE, SAASCAEM and SITRAMyTEM.
Source: Data provided by the Ministry of Finance.

While formally having some degree of autonomy, auxiliary bodies and municipalities are legally entitled to participate in the scheme of centralised purchases of the Ministry of Finance by signing co-ordination agreements. To date, the Ministry of Finance holds 87 co-ordination agreements with decentralised bodies. These agreements typically define the engagement of the two parties with respect to public procurement, which can consist of participation in centralised purchases for one or multiple goods, or refer to a specific purchase that is requested to the DGRM.

It is common for auxiliary bodies to participate in the centralised purchase of standardised goods and services, such as telephone services, printing services and similar low-value product groups. The degree to which auxiliary bodies participate in centralisation varies from organisation to organisation. From the discussions with the OECD team, it emerged that auxiliary bodies do not approach the decision of 'outsourcing' parts of their procurement in a strategic way, e.g. by measuring the costs and benefits of either choice. As discussed in Chapter 1, the value proposition of centralised procurement is often not clearly communicated and thus these entities are not able to compare scenarios (e.g. quality and prices offered under a centralisation scheme), and make decisions accordingly. It follows that participation in centralised purchases is often a product of an established practice, and the perception of the effectiveness of the DGRM. Some auxiliary bodies consider it beneficial to enrol in the scheme for selected product groups, while others express a strong preference for their own procurement procedures, including for goods and services that are not essential to their function.

Nonetheless, as described in Chapter 1, the DGRM holds regular talks with the heads of administrative units in ministries and auxiliary bodies and informs them in a timely manner about the benefits of centralisation and the goods and services that are subject to such centralisation.

With strong discretion regarding the participation to the centralisation scheme, large chunks of auxiliary bodies' expenditure appears to be outside of it. While this is certainly a sensible choice for the individual organisations, from a systems-perspective, further centralisation would increase the overall efficiency of the procurement system.

Despite being largely independent in their procurement processes, auxiliary bodies are formally required to request authorisation from the DGRM when purchasing a number of products listed in the POBALINES (see Table 3.3). This authorisation is in accordance with the provisions of the Austerity and Containment Measures for public spending of the executive branch of the Government of the State of Mexico for fiscal year 2019 (Measures Number 17 and 33).³ For these product groups, auxiliary bodies are by default participating in the centralised purchases of the DGRM. In the fact-finding mission, auxiliary bodies commented that as a general principle they would be denied the permission to purchase independently for these goods and services. Obtaining this validation required lengthy discussions with the DGRM to explain their specific needs that would justify an independent procurement. In addition, for a number of goods and

services, auxiliary bodies must seek a technical opinion and approval of the technical specification by the relevant line ministry (Chapter 1, Table 1.2).

Table 3.3. Product groups requiring authorisation for purchase by the DGRM

Fuels
Lubricants and additives
Cleaning
Surveillance of buildings
Photocopying, printing and scanning

Source: Pobalines N-086

Overall, the current system presents a number of drawbacks from the perspective of auxiliary bodies, which emerged from discussions with a sample of auxiliary bodies during the OECD fact-finding mission. As discussed, these entities lack information on potential savings or other benefits of participation in a centralisation scheme. Hence, they are unable to make an informed choice about participation. At the same time, there is limited visibility on the value-added of procurement carried out by the Ministry of Finance. Finally, if auxiliary bodies make the decision to purchase independently, for some product groups they face a lengthy approval process that may jeopardise their operations.

Not surprisingly, the incentive system for auxiliary bodies is geared towards carrying out procurement independently, as it gives them more control and flexibility over the process and the results. In order to increase centralisation of procurement expenditure by auxiliary bodies it is key to consider factors affecting their decision-making, and present them with a service offer that is appealing to them. This entails delivering clear savings on procurement, particularly on those product categories that do not represent an essential activity for organisations. Furthermore, offering choice before the entities have to engage in the purchasing process would be advantageous for them. In other words, procurement officers are interested in being able to know what the service offer looks like prior to committing to purchasing through the DGRM. Framework agreements present a suitable tool to respond to this need, as discussed further in section 3.3. The Italian CPB, *Servizi Informativi Pubblici* (Consip), has taken an interesting approach to balance centralisation on the one hand, and flexibility on the other (see Box 3.2).

It is worth mentioning that the DGRM maintains constant communication with those organisations that participate in centralised purchases. Namely, there is a directorate in charge of being in direct contact with these decentralised organisations in order to streamline procedures. Furthermore, to avoid putting the operations of auxiliary bodies at risk, an annual procurement programme must be prepared, in which the auxiliary bodies plan and schedule their purchasing procedures.

Box 3.2. Italian CPB ‘meet or beat’ rule to regulate participation to framework agreements

The participation to the framework agreements of Consip, Italy’s CPB, can be either mandatory or voluntary depending on the type of organisation and the product group. Namely, procurement of certain categories of supplies are mandatory (e.g. fuel, mobile telephony) for central and local authorities. Central government authorities are mandated to procure via Consip.

All other types of contracting authorities (e.g. health sector, local authorities, schools and universities) are not mandated to participate in Consip’s framework, however, they must respect the so-called ‘meet or beat’ rule. This rule implies that contracting authorities are able to opt out of Consip’s centralised framework agreements provided they are able to demonstrate better prices on their own. The comparison of prices is carried out based on a quality/price benchmark. Specifically, Consip publishes prices and other features of its framework contracts on the e-procurement platform.

This scheme provides an incentive for Consip to make its framework agreements as competitive as possible. At the same time, it gives contracting authorities the flexibility to look for solutions that best fit their needs.

Source: (European Commission, n.d.^[7])

Given their significant procurement expenditure, there is large potential for centralising the procurement of auxiliary bodies within the centralisation scheme of the DGRM. This requires a number of actionable steps, particularly related to making centralisation as attractive as possible to auxiliary bodies. As mentioned, expanding the centralisation scheme also requires a broader reform that gives the DGRM a mandate to set up a dedicated structure to engage with the centralisation of purchases by more auxiliary bodies. Indeed, as a first step, the Government of the State of Mexico could request a detailed study into the market opportunities presented by such centralisation. With a clear view of the opportunities for centralisation, the government could endow the DGRM with the mandate and resources needed to expand the current centralisation scheme, including engaging in awareness raising and information activities.

Furthermore, to make a wider centralisation scheme operational, the DGRM would need to focus on understanding the needs of auxiliary bodies to ensure that its current offer of centralised purchases matches their demand. The DGRM could also focus on providing auxiliary bodies with an estimate of potential savings to be achieved through its centralisation scheme. This is likely to generate interest in centralisation, in particular for product groups that are not essential to the core tasks of auxiliary bodies. Making use of appropriate efficiency tools would also allow for the expansion of centralised procurement in an effective way that creates value for all users of the DGRM. Finally, awareness-raising and information activities regarding the benefits of centralisation would need to underpin this reform.

3.2.2. Municipalities present an additional opportunity for centralisation

Although permitted by the legal framework, municipalities *de facto* do not participate in the centralisation of public procurement by the DGRM, as they are autonomous in their procurement decisions. In part, this could be linked to budget matters, as the budgetary cycles at local and state level are not aligned. In fact, local authorities have a strong culture of autonomy and may therefore be reluctant to co-operate more closely with the state administration.

Despite the cultural and operational factors, which may present a barrier in establishing greater co-operation with the municipal level, the opportunities from achieving greater centralisation at local level should not be dismissed. Firstly, the State of Mexico has one of the highest number of municipalities in the Federation. This is likely to lead to duplications and inefficiencies, as municipalities face basic needs

regarding their IT systems, furniture, cleaning services, and similar repetitive goods and services. Furthermore, the economic argument of centralisation should be looked at as well. In fact, procurement expenditure at local level is considerable in the State of Mexico.

Secondly, limiting the procurement activities at municipal level would allow freeing up resources for other productive activities. It is often the case that local authorities, particularly small ones, lack specialisation in public procurement. This leads to poor results and presents a risk for irregularities and mistakes. Therefore, providing municipalities with easy solutions and tools to obtain specific categories of goods and services is likely to be well received, particularly if on a voluntary basis.

Other OECD members have introduced centralisation at municipal level and reaped the benefits of this type of centralisation throughout various levels of government. The example of Schleswig-Holstein, one of the federal states in Germany, is a good case to analyse (see Box 3.3). Here, public procurement was entirely centralised with the creation of a central purchasing body, namely the Building Management Schleswig-Holstein (*Gebäudemanagement Schleswig-Holstein – GMSH*). Despite initial scepticism, the GMSH delivered value to its users, and increasingly authorities started to make use of its centralised procurement. Importantly, other states in Germany followed suit introducing their own regional CPBs.

Box 3.3. Centralisation of public procurement at state level in Schleswig-Holstein, Germany

Prior to the introduction of the central purchasing body GSMH, the German federal state of Schleswig-Holstein counted 380 procurement departments. This set-up was inefficient and costly, due to the large number of transactions, duplications, and errors that resulted from procurement being carried out by a large number of non-specialised procurement officials.

Furthermore, given the fragmented demand, each of the entities was able to exercise only limited market power. Similarly, most entities lacked know-how in specific product categories, such as electronic procurement, or procurement techniques, such as vendor management or in-depth market analysis. Complex cases requiring in-depth knowledge of tender law also presented a challenge for these procurement units.

To address this situation, the GMSH was established as a state owned company in 1999 with the task of centralising public procurement and delivering facility management. The objective of centralisation was to create economies of scale and reduce inefficiencies and redundancies.

The primary customers of the GMSH are entities from the state administration. However, GMSH's mandate gave it legal authority to operate for any public entity within Schleswig-Holstein, including small municipalities. Specifically, all direct public administrations in Schleswig-Holstein were mandated to procure via the GMSH. Instead, indirect public administrations and municipalities could choose whether to opt-in to centralised procurement.

Since its creation, the share of centralised procurement carried out for authorities choosing to opt-in rose steadily, as entities increasingly gathered a better understanding of the value of centralisation. To date, the GSMH registers a yearly spend of EUR 350 – 400 million per year and provides procurement services for approximately 1 500 other customers.

Source: Information provided by GMSH; (OECD, 2019^[4])

Once again, similarly to the auxiliary bodies, the incentive system of centralisation needs to resonate with municipal leaders. Centralisation should present them with an opportunity to facilitate their daily tasks by taking away a difficult job that did not provide value added. If procurement is made simple through centralisation, thereby allowing them to deliver value for money, they are likely to join in.

It should be noted that the same calculus might not apply to all local authorities. In larger entities, such as the capital Toluca, there is already a degree of specialisation in public procurement. The municipality has a dedicated team for procurement and already consolidates its own repetitive expenditure. In this case, centralisation via the DGRM needs to demonstrate more attractive conditions than their own procurement practices. These could be monetary, such as savings, but other factors, such as greater transparency, could provide selling points to municipal stakeholders.

In short, flexible mechanisms of centralisation based on voluntary participation (e.g. framework agreements) can prove beneficial to local authorities, and thereby increase the overall efficiency of the procurement system. The DGRM could start with gathering an overview of recurrent needs from municipalities, and actively reach out to them about the benefits of centralised public procurement.

3.3. Improving the effectiveness of centralisation by the General Directorate of Material Resources

The goal of centralisation is to reach better results—either in terms of lower prices or better quality—than each of the contracting authorities would have been able to do on their own. Several dimensions need to be taken into account when ensuring the effectiveness of a CPB. From an operational perspective, the CPB should use appropriate efficiency tools to maximise value for the final user. From a market perspective, the CPB needs to ensure it has the right structure to understand market dynamics and react to them with a view of achieving value for money.

For instance, if a CPB offers attractive prices, but its processes are too lengthy or cumbersome and users experience delays, the centralisation effort may prove to be of limited value for final users. Similarly, if the CPB has a limited overview of the market, it may be faced with low levels of competition and relatively higher prices.

Thus, to fully benefit from centralisation, it is key to ensure effective operations of the central purchasing body. This entails making use of appropriate efficiency tools (e.g. e-procurement, framework agreements) and having structures and processes in place that encourage efficiency.

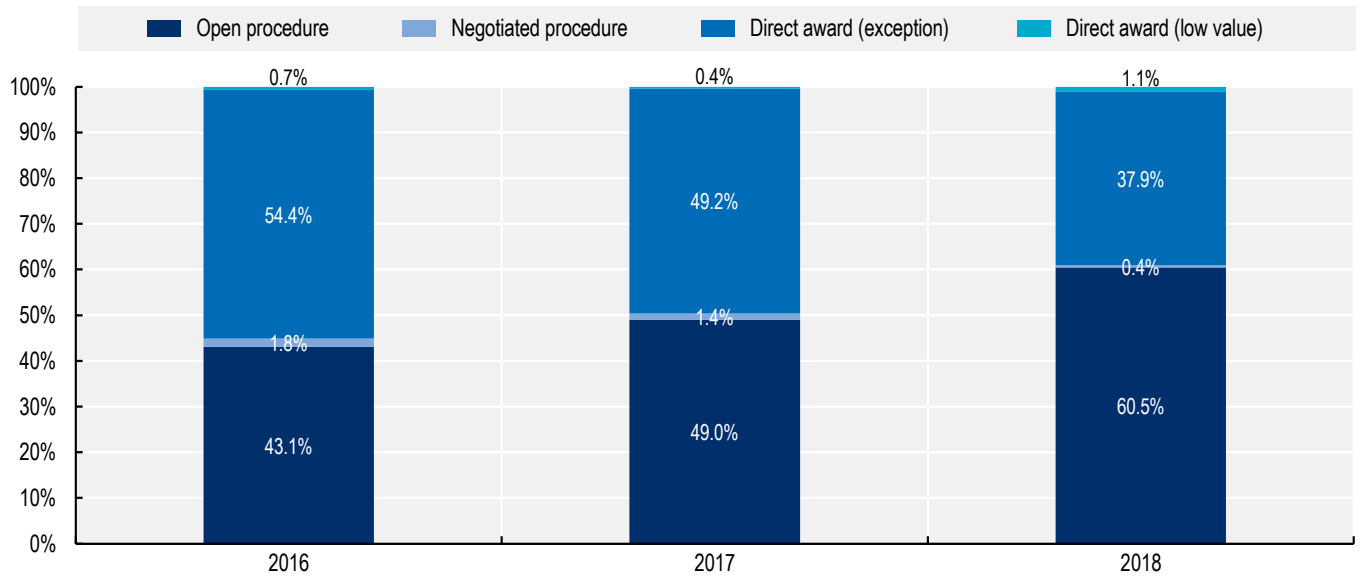
The following section examines how the DGRM could enhance its operations to better serve current users as well as expand operations, e.g. to potential new users.

3.3.1. Increasing the level of competition is paramount and requires multiple actions

As a CPB, one of the goals is to maximise efficiency using competitive forces in the market to generate the best value for money. However, ensuring competition is not always an easy task, particularly when procuring large quantities of goods and services. For instance, smaller suppliers such as SMEs may not be in a position to deliver such contracts.

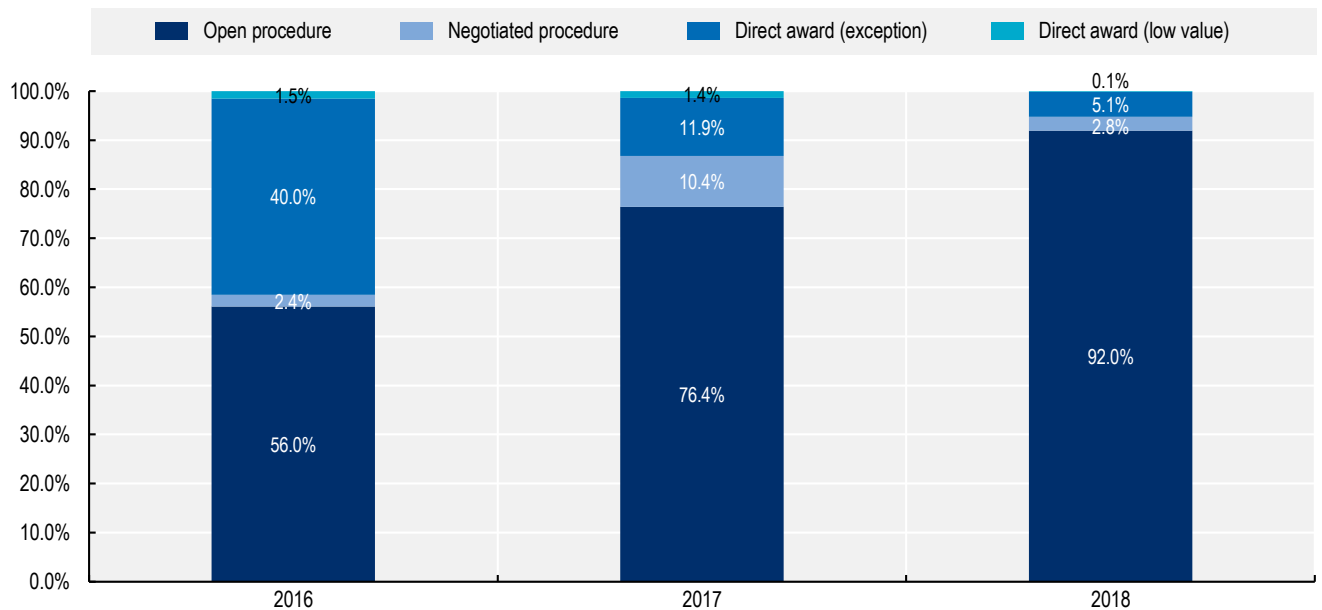
The use of competitive procedures is the starting point for ensuring maximum competition. These procedures place no restrictions on the market and therefore facilitate the largest participation. Procedures that limit competition such as a restricted tender or even direct award should be reserved for exceptional circumstances. It should be noted that the General Directorate of Material Resources makes heavy use of non-competitive procedures, particularly with respect to the use of exceptions to directly award a service contract. Indeed, over 50% of service contracts awarded in 2016 were awarded directly via the use of an exception (Figure 3.2). The trend has been decreasing over the past years, but direct award via exceptions is still comparatively high (37.9% in 2018). For goods, there has been a drastic reduction in this kind of direct award from 40% in 2016 to 5.1% in 2018. According to officials at the DGRM, the exceptions used represent the best option due to the characteristics of the purchase (security, confidentiality, etc.). Chapter 5 explores the use of exceptions in the State of Mexico in greater detail.

Figure 3.2. Share of procurement procedures (services), by value



Source: Data provided by the Ministry of Finance

Figure 3.3. Share of procurement procedures (goods), by value



Source: Data provided by the Ministry of Finance

Widening the pool of suppliers can be an important source for efficiency for the DGRM. In fact, by analysing a sample of 196 service purchases of years 2015-2019 representing 50.4% of the yearly average number of procedures by the DGRM⁴, it emerged that the supplier pool is often small and tenders often receive only one bid. For 2018, the average number of bids received amounted to 2.4 and 1.7 for goods and

services, respectively. In addition to a low number of bids, frequent technical and economic disqualification and void bids also limit the competition in contracts by the DGRM. In contrast, bids at federal level have much higher average participation rates. From 2010 to 2018, on average 4.3 bid proposals were received for each open tender conducted in CompraNet (OECD, 2018^[8]). During the fact-finding mission, authorities confirmed that federal tenders often receive a much higher number of bids compared to local ones. Greater participation could be linked to the fact that the market at federal level is more open internationally, but also that the use of e-procurement simplifies participation for suppliers. Conversely, low levels of participation may also be linked to the possibility of collusion as well as low administrative capacity, which can translate into payment delays.

During the OECD fact-finding mission, officials from the DGRM argued that centralised procedures receive limited participation from bidders in part due to the fact that only a limited pool of suppliers has the capacity to deliver the volume of the requested goods and services. However, the approach to market research and market engagement followed by the DGRM is not designed to determine the size of the market or gather an overview of potential bidders. Investing in the tender preparation phase and market research would allow to more accurately determine whether participation in DGRM's tenders is proportionate to the market capacity. Similarly, if the market analysis reveals that only a small pool of suppliers can deliver on the contract at local level, the DGRM would be able to take appropriate measures, such as facilitating the participation of suppliers at national or international level. More details on practices for market research and market engagement are discussed in Chapter 5.

Table 3.4. Average number of bids received for open tenders, DGRM

	2016	2017	2018
Goods	2.02	1.82	2.35
Services	1.9	1.6	1.66

Source: Information provided by the Ministry of Finance

The detailed analysis of 196 tender services procedures conducted by the DGRM between 2015 and 2019 shows that close to 60% of tenders receive no more than one offer. The remaining procedures are competitive in the sense that more than one suppliers bid for the tender⁵.

The level of competition, however, can be considered even lower than that of this initial analysis. In fact, by further studying a sub-set of the sample which includes only competitive tenders (a total sample of 64 procedures representing 16.5% of the yearly average of tenders by the DGRM), it emerges that in many instances there is much less competition than it could be expected, as shown in Table 3.5. Namely, only 6.6% of tenders that received more than one bid can be considered competitive. The remaining tenders that received more than one bid resulted in disqualification of the bidder (4.1%) or were void (4.6%). A significant number of procedures (13.3%) are competitive on the surface, but actually show multiple bidders competing (and winning) different lots of the same procurement procedure. This can be linked to the fact that various bidders offer lots that do not overlap, or that bidders are disqualified for one or more lots leaving only one qualified bidder per lot. In this sense, there is very limited competitive pressure for a sizeable share of tenders.

Officials from the DGRM pointed out that publicity given to each procedure complies with the provisions of the legislation on the matter. Indeed, calls for tender are published in one of the newspapers with the largest circulation in the State Capital and in one of the newspapers with the largest national circulation, as well as through COMPRAMEX. With this dissemination established by law, it is expected that all bidders considered capable of meeting the requirements indicated in the call for tender are able to participate. Yet, procurement officials in many OECD countries go beyond the publicity requirements stipulated by law. For instance, as described in Box 3.4, many OECD countries have put in place strategies that actively seek to

facilitate suppliers' access to procurement markets, including electronic procurement markets, through training and outreach, particularly for SMEs.

Box 3.4. Strategies to increase access to tenders by SMEs

OECD countries have put in place specific strategies to increase access to tenders, targeting specifically SMEs. These practices focus on training suppliers to participate in procurement markets, either by focusing on their access through the e-procurement system (Italy's example) or by providing dedicated training on how to submit tenders (Ireland).

Italy - Supplier Training Desks

To facilitate access to its digital marketplace ("MePa"), the Italian CPB Consip has set up supplier training desks ("*Sportelli in Rete*") in cooperation with supplier associations. The scheme consists of a network of dedicated training desks operated throughout the country that provide SMEs with assistance on the use of electronic procurement tools. Consip operates in a 'train-the-trainer' approach: it provides direct training to its partner associations, which in turn train SMEs at no charge.

Approximately 60 000 SMEs are suppliers to the public e-marketplace for low-value purchases. This high rate of participation has been achieved, among others, thanks to the training received by the procurement training desk. This initiative has also allowed to change Consip's perception in the market, as an organisation that provides business opportunities in transparent and competitive market.

Ireland – Go-2-Tender Programme for SMEs

The Irish agency InterTradeIreland organises the Go-2-Tender Programme, namely a two-day practical tendering workshop designed for SMEs. The workshops address theory and practice of how to successfully submit tenders, covering a wide range of topics such as bid/no bid decision, drafting proposals, as well as registering on the procurement portal. The trainings are provided by procurement specialists, and include guest speakers from central government or large public sector organisations. Workshop participants have to meet various eligibility criteria and are required to pay a EUR 100 fee for participation. The programme has been very successful by gathering over 900 companies since its introduction in 2007, which have been able to win procurement contracts worth EUR 69 million.

Source: OECD (2016), *Public Procurement Toolbox*, OECD Publishing, Paris, <http://www.oecd.org/governance/procurement/toolbox/search/supplier-training-desks-std-str-italy.pdf>; and European Commission, *Teach SMEs how to tender*, https://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_10.pdf.

Patterns in which the level of competition is dwindling throughout the procedure can also raise a red flag with respect to potential collusion. Collusion refers to illegal agreements amongst suppliers to determine a price or divide a particular market with the goal of increasing profits from public contracts. This practice is difficult to detect, as it can be subtle. Procurement officials need to be aware of the potential red flags and be informed about the administrative procedure to take if they suspect any issues. A 2012 study by the OECD provides recommendations to limit potential bid rigging and enhance competitive practices in the State of Mexico. For instance, this includes introducing unpredictability in the way tenders are carried out, e.g. choice of procurement procedure (use of reverse auction), timing of the tender, extent of centralisation and splitting of contract into multiple awards (OECD, 2012^[9]).

Table 3.5. Analysis of bids with more than one supplier

	Number of tenders	Share of total sample (196 tenders)
Disqualification due to missing documents	8	4.1%
One qualified bidder	8	4.1%
The bidders were not in real competition because they proposed and were awarded with different lots.	26	13.3%
There was competition between the 2 bidders. The awarded bidder proposed a better price	13	6.6%
Void tender	9	4.6%
Total	64	32.7%

Source: OECD analysis of COMPRAMEX data

The OECD is active in working on preventing bid rigging through a number of measures, such as spotting red flags, and increasing reporting by procurement officials. The Box 3.5 below provides an overview of OECD instruments to fight bid rigging.

Box 3.5. Checklist for detecting bid-rigging in public procurement

In 2009, the OECD introduced the Guidelines for Fighting Bid Rigging in Public Procurement as a comprehensive strategy to support contracting authorities in the design of tenders to limit the risk of bid rigging, as well as in the detection of potential collusive patterns. Specifically, the Guidelines entail a checklist for detecting bid-rigging, which emphasises watching for the following elements red flags, among other recommendations for action:

- **Warning signs and patterns when businesses are submitting bids:** This refers to patterns that seem at odds with the logic of competitive markets. It can include red flags such as geographic allocation in the winning of tenders, regular suppliers not bidding for tenders, certain companies submitting bids but never winning, submission of a joint bid between two companies that could have responded on their own.
- **Warning signs in all documents submitted:** Documents submitted can include indications of potential collusion, for instance there can be evidence that the bids were prepared by the same person. This can include identical mistakes, similar handwriting or stationary, identical miscalculations, bids containing less detail and last minute adjustments.
- **Warning signs and patterns related to pricing:** Pricing can be an indication for bid rigging as companies coordinate on their pricing strategy and price increases. Patterns and red flags include sudden and identical price increases that cannot be explained by market factors, disappearance of discounts or rebates, identical prices especially when prices were the same for a long time period or were previously different, a large price gap between the winning bid and the other bids.
- **Suspicious statements:** Companies may make suspicious statements that suggest coordination among themselves, such as reference to an agreement in spoken or written, statement that certain firms do not operate in particular areas or to particular customers, justification of prices by referring to “industry suggested prices”, “standard market prices” or “industry price schedules”.
- **Suspicious behaviour:** Contracting authorities should pay attention to reference to any meetings or event amongst suppliers, where they could discuss prices. Suspicious behaviour

includes private meetings before the submission of bids, regular socialisation amongst suppliers and submission of a bid by a company incapable of completing the contract.

Procurement officials are asked to be aware about bid rigging law in their jurisdiction, keep records of suspicious activity and behaviour, contact the relevant authorities and discuss with internal legal teams if appropriate to continue with a tender in case of suspicions.

Source: (OECD, 2009^[10])

Research shows that the cost of foregoing competition is high. In fact, a study on the impact of transparency in public procurement in the European Union found that single bidder contracts are on average 7.1% more expensive than contracts with two or more bidders (Czibik et al., 2017^[11]). If this number is multiplied by the value of the single bid contracts of the DGRM, the cost of foregone competition becomes evident.

There are multiple factors linked to limited responses to a tender. For instance, the contracting authority may not be successful in publicising opportunities through the right channels, i.e. businesses are not aware of the calls for tender issued by the public administration. A limited number of bidders for a contract may be also linked to the market structure, as it is the case in monopolistic and oligopolistic markets. At the same time, the features of the contract may not be attractive for potential suppliers. Late payments by the public administration are also a factor that may reduce supplier participation. Finally, collusion among suppliers could also play a role in limiting the number of suppliers participating in a tender.

Healthy competition is at the centre of procurement, as it is the best guarantee for value for money. Competition is even more important in the context of centralised purchasing, as the goal of centralisation is to achieve better value for money. Considering the central role the DGRM plays in procurement in the State of Mexico, it is essential that it actively promotes competition in its tenders. This will require a series of actions tackling multiple causes for low participation, including a legislative reform that would give the DGRM greater flexibility to engage with suppliers. In fact, the current legislative framework foresees tender publication requirements in at least one of the most widespread newspapers in the State of Mexico, in COMPRAMEX, and in a national newspaper. The DGRM could move beyond these channels of advertising procurement opportunities by focusing on market engagement activities, including providing dedicated training to suppliers to increase access to procurement opportunities.

As discussed in the Chapter 5 on Efficiency, often low levels of competition can be prevented through thorough market engagement and market research. These actions allow strong insight into what makes a contract attractive to suppliers. At the same time, market engagement can shed some light to identify potential negative perceptions of the contracting authority by suppliers, e.g. red tape or payment delays. Market analysis also allows the contracting authority to determine whether the market is large enough, and whether it should seek to expand to additional markets, such as in a different state. Not least, facilitating access to procurement procedures via greater use of e-procurement could also enhance competition. Access to tenders should be as open as possible. Thus, the DGRM needs to ensure increase the share of competitive procedures and limit direct award to exceptional cases, in which they are appropriate.

Furthermore, an analysis of the underlying factors for the limited competition of the DGRM may shed light onto how to improve its processes to enhance competition for its tenders, and thereby achieve greater efficiency. This could include an analysis of frequent disqualification of bidders (see Chapter 5). Indeed, this would allow the DGRM to determine potential approaches to prevent such occurrence, e.g. simplification of administrative requirements or better communication to the market.

Finally, the DGRM needs to hinder any potential collusion through awareness raising, investigation and sanctioning. The OECD Guidelines for Fighting Bid Rigging in Public Procurement also provide recommendations on how to design tenders that minimise the risk of potential bid rigging (OECD, 2009^[10]).

3.3.2. Centralised purchases show limitations due to delays and limited planning by the DGRM

The DGRM makes use of centralised purchases for procurement on behalf of other public entities. The procurement categories and its overall yearly procurement plan are decided based on a plan that integrates the procurement planning of all ministries and other entities relying on the DGRM for their procurements. For 2018, the DGRM concluded 246 procurement contracts for goods worth MXN 6.6 billion (USD 344.9 million) and 159 contracts for services worth MXN 7.3 billion (USD 382.4 million). Among the most common product groups are goods such as food and uniforms, and services such as vehicle leasing.

To define the overall procurement needs, auxiliary bodies and ministries must send their procurement requirements to the DGRM by 31 January every year. An internal system for data exchange (*Plataforma Mexiquense de Contratación Pública*, PMCP) facilitates the exchange of information via electronic means. Based on the input collected, the DGRM consolidates demand into various categories and forms its annual procurement programme. This information is fed into the so-called catalogue of goods and services managed by the DGRM.

To order a specific item (either through centralised or other procurement procedures), users within the various ministries need to first send a request to the DGRM's Market Research Department, after having validated their own budgets. This allows them to receive a price estimate for the good or service in question. Once this price is obtained, the users finalise the order by specifying the desired quantities. The Procurement Co-ordination Department maintains contact with the users throughout the procurement procedure, in particular to define technical specifications. The DGRM interacts with a procurement co-ordinator within each ministry to ensure that processes are streamlined.

This strategy brings about a certain level of centralisation and rationalisation of the sizable procurement expenditure, but current processes show a number of opportunities for improvement, as reported during the OECD fact-finding mission. For instance, the DGRM could provide beneficiaries with greater visibility on when they will receive the requested goods and services, and inform them ahead of time if delays are expected. This would reduce practices in which beneficiaries inflate their procurement needs to have a greater stock available, as they anticipate delays for receiving the goods and services needed. Furthermore, state ministries and other entities also resort to *contratos pedidos* if their urgent needs are not met on time by the centralised purchases of the DGRM. Introducing framework agreements would also support greater flexibility in meeting beneficiaries' needs.

3.3.3. Framework agreements could address some inefficiencies and duplications of centralised purchases

At present, framework agreements are not defined in the legal basis of the State of Mexico, and authorities within the State of Mexico are largely unfamiliar with their modalities of application and the benefits they can bring to the centralisation of public procurement. In contrast, internationally including in some Latin American countries, framework agreements have established themselves as indispensable tools to be used for conducting procurement in an aggregated form. At federal level in Mexico, framework agreements, though not widely used, are included in the legal basis, as per Article 17 and 41, bullet XX, of the Law on Acquisitions, Leasing and Services of the Public Sector and Article 14 Bylaws on Acquisitions, Leasing and Services of the Public Sector. It should be noted that the DGRM has gathered experience with framework agreements by applying the national law. Awareness about the opportunities presented by framework agreements is growing, as demonstrated by keen interest in international good practice exchanges.

As per the EU's legal definition, a framework agreement is an agreement with one or more economic operators for the supply of goods or services. It establishes the terms for contracts to be awarded by one

or more entities during a given period (i.e. maximum price, minimum technical specifications and, where appropriate, the quantities envisaged) (European Parliament, 2014^[12]).

Chile, for instance, has longstanding experience in making use of framework agreements in the context of its central purchasing body *ChileCompra*. Similarly, Colombia has introduced the use of framework agreements in 2013 through its central purchasing body (CPB) *Colombia Compra Eficiente*. The use of framework agreements in Colombia allowed to drastically reduce the time for ordering goods and services from several months to just a few hours (OECD, 2018^[6]).

Framework agreements involve the advertisement of an opportunity by a contracting authority, which will then enter into a contract with one or more suppliers for goods, services or works over a pre-defined period of time. While framework agreements are most commonly used in combination with centralised purchasing (i.e. carried out by a CPB), this is not a pre-requisite. Framework agreements may also be put in place by single contracting authorities that want to reduce the transactions for standardised and repeated purchases.

Depending on the centralisation model adopted by the country, framework agreements can be mandatory or voluntary. Both options have their advantages and disadvantages that need to be considered and adapted to local circumstances. Mandatory frameworks are well-suited to gathering additional demand and achieving greater economies of scale, but may lock-in final users with goods and services that do not fully meet their needs. At the same time, the centralising authority may have less of an incentive to be client-oriented if its 'customers' have no option to seek alternatives. Similarly to centralised purchases, framework agreements generate efficiencies and economies of scale, as they allow to aggregate demand from various entities and reduce the number of individual transactions. In contrast to centralisation as carried out by the DGRM, framework agreements give sufficient flexibility to both meet heterogeneous needs as well as adapt to undefined quantities of goods and services to be procured.

International good practice shows that selecting the appropriate efficiency tools allows generation of savings whilst meeting user needs, thereby creating value for money. Indeed, framework agreements could help the DGRM to optimise some of the aspects that lead to inefficiencies when implementing centralised purchases. For instance, framework agreements can provide increased flexibility to meet various types of demand over longer periods of time, thereby alleviating pressure to have a predefined amount of goods and services available at specified times. Framework agreements would also allow for greater visibility of available goods and services upfront. Contracting authorities such as auxiliary bodies or municipalities could make an informed decision on whether centralisation via framework agreements is of value to them. This has been highlighted as a key success factor for the participation in framework agreements by several stakeholders in the OECD fact-finding mission.

Moreover, framework agreements reduce the number of procurements to be carried out each year, as they are usually drawn up for longer periods of time. This would further allow the DGRM to streamline its operations, shifting efforts from conducting repetitive procedures to creating well-designed framework agreements for its users. Other common benefits of framework agreements result from the faster procedure to receive goods and services for final beneficiary.

Positive results from the use of framework agreements are often reported by public buyers. A survey conducted in Denmark, showed that a majority of public buyers experienced price reductions, less resource-intensive procurement process and a good match of supply and user demand as a result of framework agreements (Danish Competition and Consumer Authority, 2015^[13]).

Table 3.6. Benefits and risks of framework agreements

Benefits	Procurement intelligence on spending <ul style="list-style-type: none"> • Identification of duplication of needs • Price benchmark within the organisation and the market • Reduce procurement costs related to gathering market analysis
	Influence on markets <ul style="list-style-type: none"> • Negotiating position of contracting authorities is strengthened vis-à-vis suppliers • Allows steering the market in new directions such as strategic policy goals (e.g. stronger environmental performance of goods and services) • Capacity constraints in the market can be identified and managed
	Economies of scale <ul style="list-style-type: none"> • Enabling smaller organisation benefit from the economies of scale of aggregating demand • Economies of scale depend on the price elasticity of supply
	Reducing transaction costs <ul style="list-style-type: none"> • Transactions are reduced for the buyer, as there is a reduction in the number of individual tender competitions given the availability of an aggregated arrangement • Transaction costs are also reduced for suppliers as they experience less bidding costs
Risks	Skilled procurement workforce <ul style="list-style-type: none"> • Framework agreement can be complex and require specific skills throughout the procurement cycle to achieve results • Benefits of aggregation may be missed if staff does not have the right skills and competences
	Complex agreements <ul style="list-style-type: none"> • There is a strong need for proper planning and preparation of large and complex framework agreements, otherwise the costs of conducting the procedure may become very high
	Distorting markets <ul style="list-style-type: none"> • By incorporating the demand of many contracting authorities • SMEs and smaller providers may not be able to be competitive in a framework agreement
	Missing innovation <ul style="list-style-type: none"> • If framework agreements are too long, the contracting authorities may not benefit from innovation occurring in the market

Source: Handbook on Public Procurement Aggregation and Frameworks: Developing strategies – Assessment of demand and supply (OECD forthcoming (OECD, n.d.^[14]).

As discussed, the strength of framework agreement as an efficiency tool lies in their flexible use, which can be adapted to achieve multiple objectives based on the product category at hand and the related shape of the market. However, it should be noted that not all goods and services are suitable for the use of framework agreements. Goods and services under a framework agreement should be fairly standardised and represent sizeable demand in terms of needs aggregation.

Goods and services suitable for framework agreements

Looking at the product categories that the DGRM purchases most often, as listed in Table 3.7 and Table 3.8, it emerges that there is strong potential to generate further economies of scale beyond the currently ongoing centralisation. In fact, the most purchased products by the DGRM are among those that are often purchased via framework agreements.

Typical product groups for framework agreements consist of the following:

- ICT (information and communication technology) products and services;
- Telecommunications products;
- Office furniture;
- Travel services;
- Office equipment and supplies;
- Vehicle and transport services;
- Fuel (for heating and transport) and electricity;
- Food

As displayed below, many of the goods and services procured most by the DGRM are suitable for framework agreements.

Table 3.7. Most procured goods by the DGRM in 2018

Product category (goods)	Value (MXN bn)
Food products	4.5
Prints	0.3
Clothing and uniforms	0.2
School supplies	0.6
Security and protection clothes	0.3
TOTAL MXN	5.9

Source: Information provided by the Ministry of Finance

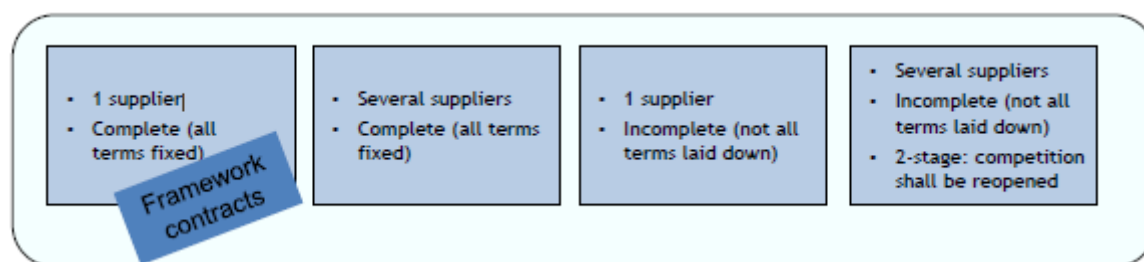
Table 3.8. Most procured services by the DGRM

Product category (services)	Value (MXN bn)
Vehicle lease	1.8
Professional and technical services	1.1
Fleets and fleet operation	0.8
ICT services	0.6
Events	0.5
Total MXN	4.8

Source: Information provided by the Ministry of Finance

Setting the right parameters

Beyond looking at product categories, it is important to be aware about the different type of framework agreements. As discussed, these efficiency tools can be used flexibly and to achieve different goals. In part, this is linked to the various modalities of the use of framework agreements. There are four main types of framework agreements that are each more adapted to specific market conditions and user requirements (Figure 3.4). To choose the right type of framework agreement thus requires detailed knowledge of the market and product group, as well as a strong view of user needs. Experienced buyers that make use of framework agreements are therefore often specialised by product categories. This level of specialisation can be acquired in a body or structure that is fully dedicated to purchasing, such as a CPB.

Figure 3.4. Types of framework agreements

Source: (OECD, 2014^[15])

The first type is also referred to as framework contract. It is characterised by the fact that the agreement is concluded with a single supplier and all terms of the contract fixed. This type of framework agreement is suitable when procuring standardised goods and the good is characterised by high fixed costs. This supplier has an incentive to provide his best price to access the full framework contract.

The second option for a framework agreement is also 'complete' meaning that all terms are fixed, but it is concluded with multiple suppliers. This type of framework agreement works best in cases where the expected participation is high and the fixed costs are low.

Framework agreements can also be designed as 'incomplete', i.e. not all terms laid down, with a single supplier. Incomplete framework agreements are most suited in cases where the market is very flexible and products tend to become obsolete quickly.

Finally, framework agreements may be designed as multi-supplier arrangements that do not set out all the terms of the arrangement. This entails a second step, the so-called 'mini-competition' in which suppliers present offers each time the contracting authorities launches a specific contract under the framework agreement.

Table 3.9 below summarises some of the parameters to take into consideration when designing a framework agreement.

Table 3.9. Parameters for defining the type of framework agreement

	High	Low
Expected participation	Multiple suppliers	Single supplier
Fixed costs	Single supplier	Multiple suppliers
Specificity, obsolescence, flexibility of supply	Incomplete framework agreement	Complete framework agreement

Source: (European Commission, n.d.^[17])

While the benefits of framework agreements have been documented across many cases, it is important to note that these efficiency tools need to be calibrated attentively to market conditions and user needs. They are complex instruments that require a skilled procurement workforce, as well as careful analysis of market and needs.

Framework agreements: impact on competition

In the State of Mexico, the introduction of framework agreements could have a positive impact on competition, in addition to the benefits in terms of processes and customer orientation. Framework agreements are found to produce positive effects on competition provided that they are designed effectively.

A key aspect in strengthening competition through framework agreements rests on the attractiveness of the framework for suppliers. Several factors play into the attractiveness of a framework agreement. The uniform terms and conditions for purchases, for instance, reduce costs for suppliers and thereby make a framework appealing. In contrast, if the framework agreement requires too many goods and services, it makes it more difficult for suppliers to present a bid. Importantly, one of the main characteristics of the attractiveness of framework agreements rests on the certainty of revenue stemming from the agreement. Conversely, if revenue flows are perceived as uncertain, it poses a barrier for suppliers to bid. Another effect of revenue certainty is the price offered in their bids. Enterprises are more willing to give a discount when they have confidence in the revenue generated from the framework agreement (Danish Competition and Consumer Authority, 2015^[13]).

It should be noted that the use of competition-friendly procedures for awarding a framework agreement is the starting point for greater participation. Beyond that, several considerations also need to be taken into account, such as determining the overall size of the framework agreement as well as the appropriate allotment strategy. Market analysis and market engagement are essential to determine the parameters of a framework agreement that maximises competition. Namely, the contracting authority needs to have a strong view of what conditions are attractive for the market suppliers to set the right incentives for participation. Not least, it should also keep in mind that participation has a cost for suppliers, and therefore the procedure should be as simple as possible from an administrative point of view.

Box 3.6. Research Unit at Consip

The Italian Central Purchasing Body, Consip, makes use of an internal research unit to address specific aspects of the design of framework agreements, ensuring thereby that this efficiency tool is best adapted to market conditions.

The research unit is staffed with five specialists that provide in-house economic consulting. In particular, the research unit supports the sourcing team on what is the best strategy to reap the benefits of competition. For instance, the research unit provides input on the appropriate tool, the allotment strategy, the award criteria and scoring rules, as well as contract incentives to achieve better outcomes with the framework agreement.

Source: Consip, Presentation at South Asia Region Public Procurement Conference, 20-23 February 2017
<http://pubdocs.worldbank.org/en/126381490813164358/Framework-Agreements-Gain-Luigi.pdf>

Steps towards the implementation of framework agreements

Framework agreements are a key tool to operationalise centralisation in an effective manner. In the State of Mexico, they could contribute to capturing additional procurement expenditure from auxiliary bodies and municipalities, particularly as they can be set up as voluntary instruments. Furthermore, by designing framework agreements appropriately, the DGRM can expand its product offer, generate savings for its users as well as achieve operational savings for its own organisation.

However, implementing framework agreements requires an enabling environment. At present, a key obstacle to the use of framework agreement in the State of Mexico is the lack of a legal basis. Thus, as the first step to take advantage of the benefits of framework agreements, authorities in the State of Mexico need to reform the law to allow the use of this efficiency tool.

Furthermore, as there is little direct experience with implementation of framework agreements, organisational readiness and capacity also need to be considered. This involves developing specific expertise for the design of framework agreements, i.e. reinforcing capacity on market research and needs analysis, as well as enhancing capacity during the contract management phase. Indeed, when an

organisation uses framework agreement, significant effort shifts to managing the contractual relationship with the supplier. The organisational structure of DGRM as a central purchasing body may therefore need to evolve accordingly, as elaborated further in the section below.

3.4. Establishing an effective organisation as a central purchasing body

Internal processes play an important role in reaching an organisation's wider goals. This applies strongly in the case of centralised public procurement, as the organisation needs to be structured to deliver value for money for its users. Indeed, the greater the procurement expenditure of the organisation, the more its internal processes need to be set up to best contribute to efficiency gains arising from aggregation. Furthermore, an organisation should ensure that information between various units and functions flows smoothly and internal data is used effectively.

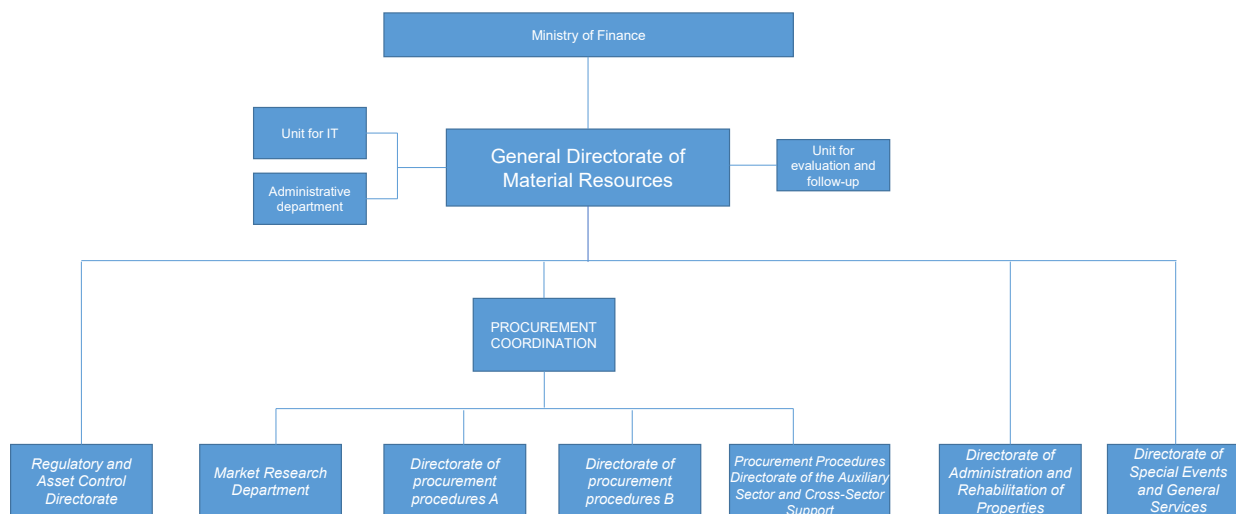
Efficient processes should span over the full procurement cycle, in particular:

- Gathering and understanding the needs of other contracting authorities;
- Planning and designing centralised purchases and framework agreements including conducting market analysis;
- Carrying out the procurement procedure(s); and
- Following up on contract execution and performance

In the context of potentially expanding operations and introducing new efficiency tools, ensuring the effectiveness of its operations is paramount for the DGRM. The following section examines what elements it could take into account to further strengthen its organisational efficiency.

3.4.1. Tailoring the organisation to specialise in procurement functions

Currently, the DGRM is organised in several procurement areas covering various functions related to public procurement. The Procurement Co-ordination Department oversees the purchasing sub-departments, the Market Research Department, and the directorate responsible with liaising with auxiliary bodies and other decentralised entities. Additional functions of the DGRM include regulatory and asset control, as well as property administration and management of special events and general services.

Figure 3.5. Organisational structure of the DGRM

Note: This is a simplified structure. The full organigram of the Ministry of Finance is available on IPOMEX: <http://www.ipomex.org.mx/ipo3/archivos/downloadAttach/447120.web>

Source: IPOMEX

In terms of tasks and functional set-up, the main functions typically covered by CPBs include needs analysis, market analysis, legal and contract management. Often CPBs are organised per product category to take advantage of specific expertise needed for each product serviced. Overall, the DGRM is structured to address these functions. However, several functions could be further strengthened to tailor operations to the procurement function at hand, and thereby increase efficiency.

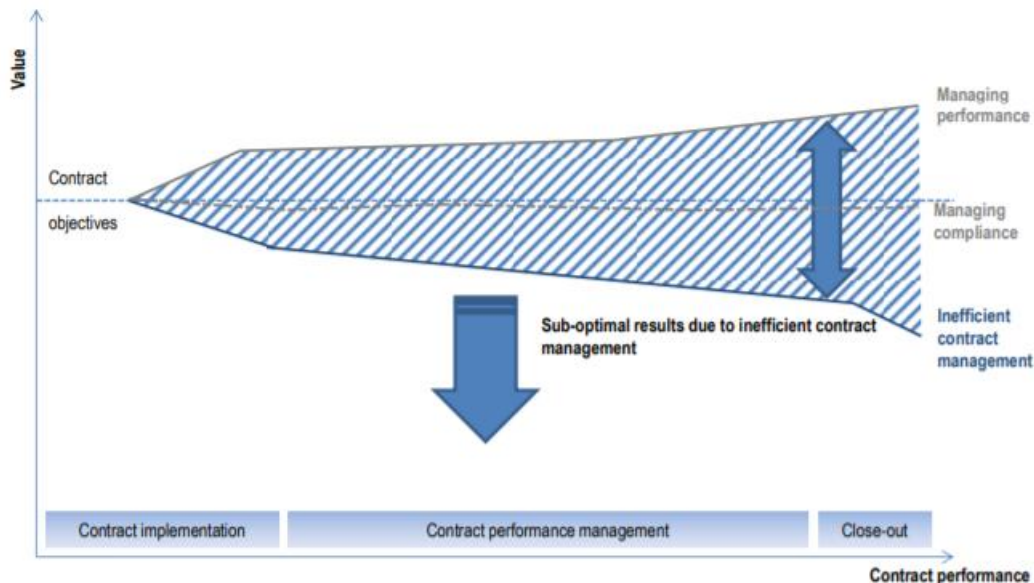
Notably, the DGRM does not specialise its procurement functions around product groups, as is usually done in CPBs. Instead, the DGRM relies on the product expertise of users, in particular for complex procurements. Once an organisation has reached a large enough scale, it can specialise effectively by setting up dedicated expertise for its main product groups. This allows the CPB to have detailed market and industry knowledge on the goods and services it procures, which in turn leads to better results in terms of value for money.

It should be noted that organisational functions are closely linked to the capacity and skills needed to fulfil each of the functions, which in turn plays a major role in the overall performance and efficiency of the organisation. The specific skills and competencies needed for ensuring adequate capacity throughout the procurement cycle are discussed in detail in Chapter 6 on capacity.

Making the most of the contract management function

Effective contract management contributes to overall efficiency gains in public procurement. This is particularly important in the case of a large purchaser, such as the DGRM, that concludes approximately 400 contracts in a given year. With effective structures in place, buyers can ensure that suppliers deliver on the requested performance, or corrective action can be taken on time. Conversely, the lack of appropriate contract management increases the risk of sub-optimal results, as depicted in Figure 3.6 below. Currently, the focus of contract management as conducted by the DGRM lies heavily on compliance with contractual requirements. Instead, the DGRM could enhance its contract management function to focus on delivering good performance in co-operation with the user areas. In accordance with the regulations established to date, the user areas are responsible for the monitoring, compliance and payment of the contracts made by the DGRM. Furthermore, the contract management function becomes particularly important in the context of the implementation of framework agreements.

Figure 3.6. Contract management's contribution to performance



Source: (OECD, 2017^[16])

Within the organisational structure of the DGRM, there are several so-called Departments of Contracts dedicated to contract management according to product groups. These departments are responsible for preparing and signing contracts derived from purchasing procedures, as well as keeping track of them, ensuring for example compliance or archiving.

While the most basic functions of contract management are ensured by the presence of these departments, it is less clear whether contract management is understood as a function where value can be generated. Evidence from the fact-finding mission suggests that there is room for improvement in terms of capacity of staff and co-ordination, as well as specific guidelines for contract management.

Box 3.7. The process of contract management

Contract management activities can be broadly grouped into three areas: delivery management, relationship management and contract administration.

- **Delivery management** ensures that whatever is ordered is actually delivered with the required level of quality and performance, as stated in the contract. Delivery management may include checking the nature, quantity and quality of:
 - 1) goods supplied on delivery, and, also when appropriate, at the time of manufacture;
 - 2) works carried out, including conformity with designs and drawings, quality of workmanship and materials;
 - 3) services performed, including checking that required service levels and timescales are met.
- **Relationship management** seeks to keep the relationship between the economic operator and the contracting authority open and constructive. The aim of this is to resolve or ease tensions, and identify potential problems at an early stage while also identifying opportunities for improvement. Relationships should be professional, and should include a professional approach to managing issues and dispute resolution.
- **Contract administration** covers the formal governance of the contract and any permitted changes to documentation during the life of the contract. This area of contract management ensures that the everyday aspects of executing the contract effectively and efficiently are taken care of.

Source: OECD (2011), *SIGMA Policy Brief "Contract Management"*, http://www.sigmaxweb.org/publications/Contract_Management_Public_Procurement_2011.pdf.

Indeed, during the fact-finding interviews, a number of specific areas emerged that could be addressed by improved contract management, namely:

- **Payment delays:** In the State of Mexico, the payment schedule is set at 45 days after the receipt of an invoice. Suppliers, however, complain that almost all payments are delayed by 30 to 90 days, as reported during the fact-finding mission. This may be attributable to poor co-ordination between the end users and the payment division. The management of payment delays is a critical aspect, because it is often one of the causes that discourages suppliers, and especially SMEs, to participate in public tenders.
- **Receipt of goods and services:** While the form of delivery of goods or provision of services is established in the contracts and is defined by users at the time of preparing the tender specifications, users have reported lacking clarity about receipt and acceptance of goods and services. For instance, the DGRM does not put in place clear standards for delivering a certification of goods and services. Often staff do not have full view on what goods they are supposed to receive and upon what basis they need to accept them. Clearly, this represents an area where processes can be improved and made more efficient and straightforward.
- **Guidelines for contract management:** Staff involved in contract management are often left without precise instructions on how to handle common situations regarding supplier management, such as minor delays in the receipt of goods.
- **Limited interaction with suppliers:** The contract management function is meant to generate value during the implementation of the contract by solving issues and problems through effective supplier relationships. In the State of Mexico, the culture of supplier relationship is not strongly developed.

If issues arise, formal complaints are filed, allowing no margin for negotiation to settle minor disputes directly with the supplier.

The box below shows how contract management can support the performance of a procurement system. As outlined below, an important aspect of contract management lies in anticipating potential issues by strengthening the relationship with suppliers and taking a risk management approach. With such an approach, sub-optimal results and inefficiencies are minimised. Users can be supported by dedicated guidance, such as the one provided by Queensland Government in Australia (see Box 3.8). Furthermore, it is important for users to be able to easily access the contract specifications, as well as the administrative terms and conditions to be able to determine whether goods and services should be accepted or penalties should apply. Establishing relationships with suppliers also allows to solve potential issues with dialogue ahead of resorting to contractual penalties. Finally, the feedback from users on contract performance (stemming, for example, from simple indicators as illustrated in Box 3.8) should be used to inform any new contract.

Effective contract management in the DGRM needs to be structured around its organisational set-up, taking into account the fact that users play an important role in the execution of the contract. Indeed, contract follow-up is mostly handled by users, with support by the DGRM, as defined in article 127 of the Bylaws of the LCPEMyM and POBALIN-062. Similar set ups are in place in OECD countries when implementing framework agreements. Namely, in the majority of cases, CPBs delegate contract management activities to entities carrying out the purchase orders. Nevertheless, CPBs also tend to provide guidance to their users. This approach could be valuable for the DGRM, too. It could define guidelines and minimum standards that should be applicable for entities procuring through the DGRM (OECD, 2018_[17]). Guidelines need to be comprehensive to establish a shared understanding of the contract management function. To be effective they should also enter into concrete operational detail, such as requirements for inspection (OECD, 2018_[17]). It should be noted that any modification of the contract management function in the State of Mexico would entail the reform of the aforementioned regulations.

Box 3.8. Supplier performance management in Queensland, Australia

The Government of Queensland, Australia, has developed a practical guide to support supplier performance monitoring for the benefit of procurement departments across Queensland. The guide is addressing the role of supplier performance management during the implementation of the contract, while acknowledging that effective performance management should inform the whole procurement process.

In a concise manner, the guide covers several key elements related to contract management, such as determining a contract management plan, establishing supplier performance monitoring, monitoring and managing supplier performance, establishing key performance indicators (KPIs), and dealing with poor performance.

As part of the guide, a checklist has been developed to support contract managers in identifying dimensions to be monitored to determine supplier performance. Procurement officials are invited to use the checklist as a starting point for their performance monitoring, adapting it to their specific procurements.

Delivery	Product	Customer service
<p>Consider whether the supplier:</p> <ul style="list-style-type: none"> • delivers on time • meets due date without expediting • offers a competitive lead time • delivers correct items and quantities • provides accurate documentation and information • responds to emergency delivery requirements 	<p>Consider these aspects relating to the product or service being procured:</p> <ul style="list-style-type: none"> • meets specifications • reliability/durability • product or contract service quality • quality and availability of documentation, instructions, technical manuals • packaging suitability, environmental aspects 	<p>Consider the following factors for each supplier:</p> <ul style="list-style-type: none"> • compliance with contract terms and conditions • supplier representatives have sincere desire to serve • provides feedback to the procuring organisation from factory/manufacturer • effectiveness of sales support • market insight • training provided on equipment or products • support on professional or technical matters • administrative efficiency • adherence to their company policies • adherence to their company quality systems

Source: Department of Housing and Public Works of the State of Queensland (2018), *Managing and monitoring supplier performance*, <https://www.forgov.qld.gov.au/sites/default/files/documents/procurement/procurementguidesuppliersperformance.pdf?v=1574136818>.

Box 3.9. Elements of contract management frameworks

For effective performance, a contract management framework typically includes the following elements:

- Planning, information collection and analysis
- Contract administration, including the definition of roles and responsibilities for managing the contract
- Performance reporting and monitoring: This should include access to relevant standardised information that facilitate controls and support decision-making
- Relationship management, aimed at creating a long-term relationship of mutual benefit between the parties. The main purpose of relationship management is to effectively anticipate risks
- Governance and integrity mechanisms that set the framework for interactions with suppliers
- Knowledge sharing and information management. This allows accessing relevant information to the project to key parties, as well as facilitating compliance with information-related obligations (e.g. disclosure)
- Change management focused on managing and accepting risks from change events
- Contingency plans and reaction to unplanned events
- Review of the framework itself to adapt to the needs of the organisation

Source: (OECD, 2017^[16])

Enhancing communication channels with internal clients

As an organisation dedicated to offer a service to others, the success of a CPB depends on their ability to meet customer needs (OECD SIGMA, 2011^[18]). In this respect, setting up internal processes that make sure to capture these needs is critical for a CPB. This can also include channels of continuous feedback from its internal customer to constantly align its practices with the needs of the end-users. Currently, the DGRM holds meetings with its stakeholders every four months approximately. In addition to that, follow-up via official letters is also an option to communicate with the DGRM.

Despite such established practices, stakeholders considered that these channels for feedback to the DGRM are not always effective in addressing some of their issues of concern. For instance, during the fact-finding interviews, some stakeholders considered approval processes by the DGRM too long for their own operational activities. Namely, auxiliary bodies must receive approval for procurement of certain product categories, prior to being able to launch the tender. Similarly, the lack of up-to-date information on the status of their procurement requests was an issue reported by some stakeholders, which sometimes resulted in the duplication of procedures with entities deciding to purchase on their own via *contratos pedidos*. As reported by stakeholders, the main opportunity to provide feedback is to file a complaint whenever the goods received do not correspond to those requested.

Instead, strengthening the available mechanisms to better capture needs, concerns and feedback from users would allow avoiding or addressing such inefficiencies. In this respect, the DGRM could explore whether more frequent meetings would provide value to its stakeholders, or whether these meetings should focus more explicitly on improving the co-operation between DGRM and its users. Alternatively, the DGRM could consider setting up a channel for anonymous feedback, such as a mailbox for ideas or a regular satisfaction survey.

3.4.2. Generating value from the use of data and KPIs

Another important element to improve efficiency of the operations of the DGRM is by making use of internal data for decision-making, performance measurement and tracking, as well as communication with stakeholders. At present, the DGRM makes limited use of an established system of key performance indicators (KPIs) that would allow specific target setting and performance measuring. Furthermore, gathering insight from its internal data seems cumbersome. If such data is available only internally, the process of accessing it appears to be lengthy and cumbersome.

Importantly, stakeholders in the State of Mexico seem to have limited awareness on the value of easily accessible internal data for the purposes of analysis and decision-making. In fact, measuring some key indicators gives quick insight on the performance of an organisation with respect to its targets. Managers and decision-makers are able to identify which areas need further attention and are able to take action quickly. For instance, an indicator on the number of bids received may be tracked. If the number is below a certain threshold, procurement officials can analyse the causes for this, compare with tenders in other product groups or beyond the state borders, and take corrective action. Similarly, easily accessible historic data is valuable for the purposes of market research and understanding the pricing strategies of suppliers. Finally, KPIs should also allow for the measurement of savings or other key benefits of centralised purchasing (e.g. number of days to conclude a contract). These kinds of indicators are valuable in the communication with users or potential users, notably to provide them with incentives for participation in centralised procurement.

To this end, a performance evaluation system should be in place, showing the results of the procurement process periodically and consistently, and generating insights for areas of improvement. Such a performance system built on the regular monitoring of relevant KPIs and based on consistent, up-to-date and reliable information could ideally stem from digital sources such as the e-procurement system.

In fact, the OECD 2015 Recommendation of the Council on Public Procurement calls on members to develop indicators to measure performance, effectiveness and savings of the public procurement system (Box 3.10).

Box 3.10. The OECD 2015 Recommendation of the Council on Public Procurement – Evaluation Principle

The Council:

X. RECOMMENDS that Adherents 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. Assess periodically and consistently 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 regarding price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight and could guide 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^[2])

According to the responses of the OECD fact-finding questionnaire, in the State of Mexico no organisation has a performance framework in place dedicated to measuring the efficiency of their procurement system.

In this sense, the concept and value of performance evaluation seem to lag behind. Nevertheless, on an occasional basis, some organisations are subject to quality management standards or perform evaluations mandated by the Senior Management⁶. These exercises, however, are not embedded in the procurement process on a consistent basis.

Currently, the performance of the DGRM is assessed on the basis of annual operational targets, which focus on the number and value of public procurement procedures to be executed each year. Specifically, yearly objectives of the DGRM involve the definition of the total number of tenders and the number of open tenders, as well as the budget for the foreseen tenders. A comparison of planned and actual is carried out each year. In addition to this internal reporting, the DGRM provides the Ministry of Finance with a yearly report on its activities.

It is interesting to note that there is wide discrepancy between the projection and the actual execution for the years 2017 and 2018. Overall, the DGRM vastly underestimates the effort required each year, as there is a strong gap between the planned target and the realisation. This could pose challenges in estimating the resources needed to carry out activities, e.g. the DGRM could risk being understaffed for its operations if planning is constantly below actual.

Table 3.10. Performance targets of the DGRM

	2017			2018		
	Planned	Actual	Gap	Planned	Actual	Gap
Number public procurement procedures	145	295	+103%	190	240	+26%
Number of open tender	29	131	+352%	80	93	+16%
Procurement of goods and services (MXN m)	5,650	8,150	+44%	4,365	13,907	+219%

Source: Data provided by the Ministry of Finance

This exercise of establishing performance targets could be substantially expanded to capture many dimensions of the operations of a CPB. As discussed in the OECD Report on *Productivity in Public Procurement* (OECD, 2019^[19]), the measurement of the effectiveness of a CPB can cover direct inputs and outputs, but also broader impacts, such as environmental or social impacts. The table below provides an overview of simple indicators that could be the starting point for a performance measurement framework for the DGRM.

Table 3.11. Example of KPIs for measuring the performance of a CPB

Key statistics on the CPB	<ul style="list-style-type: none"> Number of employees Number of procurement procedures Value of procurement procedures Number of contracting authorities as users Number of suppliers
Cost and time of procurement processes	<ul style="list-style-type: none"> Resources used (personnel dedicated to a procurement procedure) Number of clarification meetings held Duration of public procurement procedure Number of cancelled bids
Competition	<ul style="list-style-type: none"> Number of suppliers per bid Number of bids received that surpass the reference price Number of counteroffers
Execution of annual procurement plans	<ul style="list-style-type: none"> Percentage of execution of the procurement plan Number of modifications to the plan
Use of efficiency tools	<ul style="list-style-type: none"> Number of framework contracts Number of reverse auctions
Complementary goals	<ul style="list-style-type: none"> Share of SME participation Number of contracts with green/social clauses
Contract execution	<ul style="list-style-type: none"> Number of modification of contracts Number of sanctioned enterprises Number of days for contract payment

The DGRM could make better use of its internal data for understanding, tracking and improving the performance of its own organisation. This would also allow it to communicate this performance, notably savings from centralised procurement, to the entities that make use of its services, thereby potentially increasing its portfolio and achieving larger-scale savings. Operational effectiveness as well as the contribution to strategic policy goals could also be part of the framework for measuring the performance of the DGRM.

Proposals for action

The State of Mexico introduced centralisation of public procurement by centralising the procurement function under the DGRM of the Ministry of Finance. While this is an important step, there is room for improvement to fully benefit from centralisation in terms of savings, administrative simplification and competition. The following recommendations aim to be helpful in further expanding centralisation of public procurement, as well as enhancing its effectiveness.

Expanding the scope of centralisation in the State of Mexico

The DGRM could work actively to expand the scope of its centralised purchases to include new users (i.e. municipalities) as well as to increase the share of centralisation of auxiliary bodies that already take part in the centralisation scheme. To do so, the DGRM could adapt its service offer to the needs of these contracting authorities, namely propose voluntary framework agreements for standardised goods and services. In practical terms, this could entail the organisation of focus groups with procurement officials from auxiliary bodies and municipalities to have a clear picture of the needs of these public entities. A conference to raise awareness could be envisioned as well.

Improving centralised purchases through the use of framework agreements

Centralisation could also be made more efficient through the use of framework agreements. These instruments allow aggregating the expenditure of all potentially interested parties, as the specific parameters do not need to be set in advance. If offered on a voluntary basis, entities can decide on an ad-hoc basis whether the offer of the framework agreement fits their needs. As the first step, the State Legislature would need to reform the current legal framework to allow for framework agreements.

Once such a reform is adopted, the DGRM could strengthen the capacities of the unit for market research and engagement to best tailor framework agreements. This organisational unit would also be tasked to ensuring that framework agreements gain sufficient participation from the market.

Generating competition to deliver value for money with centralised procurement

Increased competition to the DGRM's tenders is key to achieve benefits from centralisation in the State of Mexico. As such, the DGRM needs to take a comprehensive approach tackling multiple aspects related to low levels of competition. As the first step, the DGRM should focus on acquiring a precise understanding of the causes behind low levels of competition, including frequent disqualifications and void tenders. It could review its procurement process to identify potential areas that repeatedly lead to disqualifications and take appropriate action (e.g. supplier trainings). Increased digitalisation through the expansion of e-procurement could offer an important course of action for increasing supplier participation. Where possible, the DGRM could consider advertising its tenders in other markets, either at federal level or in neighbouring states. To facilitate for such broader market consultation, a reform of the current legal framework may be envisaged. The DGRM also needs to privilege the use of competitive procedures throughout its tenders, limiting direct awards only to strict exceptional circumstances. Not least, procurement officials could be trained to identify red flags on collusion and design tenders that reduce the risk of bid rigging.

Strengthening internal processes to reflect procurement specialisation and contract management

The structure of an organisation contributes to the overall efficiency and effectiveness to carry out its mission. In this respect, the DGRM, in cooperation with Institute for the Professionalisation of Public Servants, could consider investing in the specialisation of procurement officials according to dedicated functions through tailored training. Within its own organisation, the DGRM could consider expanding

contract management, as well as creating specialised expertise for purchasing by product categories. Specifically, it could also provide detailed guidance to its users on contract management practices to ensure a harmonised approach to contract management, which promotes performance instead of compliance.

Making use of data for performance assessment and continuous improvement

Internal data is highly valuable for the management of an organisation, including the definition of performance targets and assessing performance. To this end, the DGRM could set up a framework of KPIs that establish its organisational goals beyond its current practice. On a yearly basis, it could evaluate its performance based on these metrics to ensure continuous improvement of the organisation, as well as the larger impact of its activities. KPIs also simplify communication with users and stakeholders, allowing to highlight the performance of the organisation.

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Notes

¹ Answers to OECD fact-finding questionnaire provided by the State of Mexico.

² Data provided by the Ministry of Finance

³ See <https://share.sisop.edomex.gob.mx/archivos/facfae6c384534897aba75b2f9f4040d>.

⁴ The average number of procedure was calculated based on data from 2016, 2017 and 2018 including tenders for goods and services. Data provided by the Ministry of Finance.

⁵ Analysis of COMPRAMEX data by the OECD team.

⁶ Survey questionnaire : Evaluation principle Q4

4

Ensuring integrity and accountability in public procurement in the State of Mexico

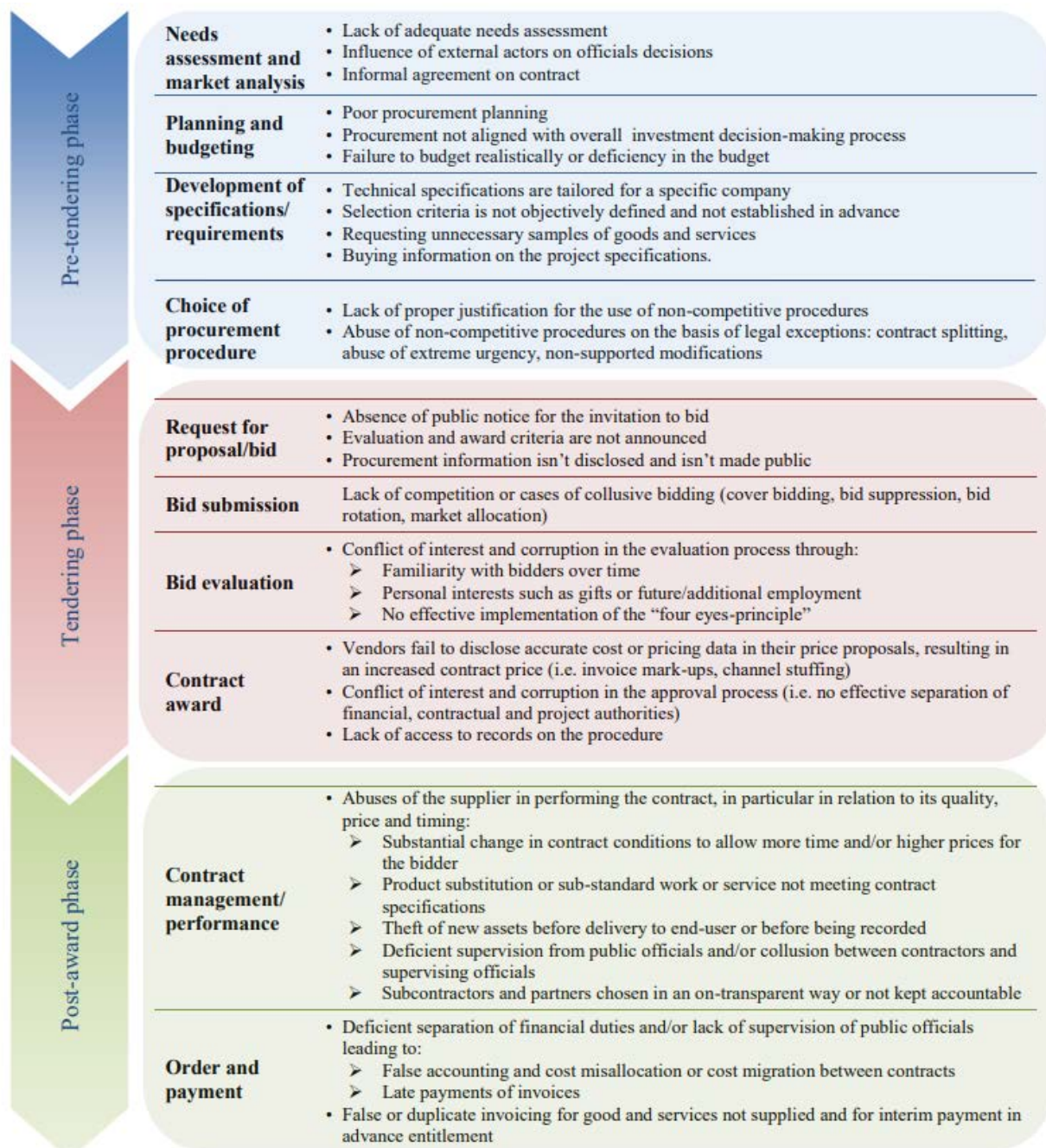
This chapter analyses the system for ensuring the integrity and accountability of public procurement processes in the State of Mexico, the existing integrity policies and the legal framework to establish how effective they are at mitigating the risk of corruption and managing conflicts of interest during the public procurement cycle. The chapter also discusses the risk management strategies and tools available in the State of Mexico to identify and address corruption and fraud risks and adapt control activities effectively in order to ensure the proper function of the public procurement system. Finally, it assesses the measures implemented to actively engage the private sector and civil society in promoting integrity in public procurement and the courses of action that suppliers can take to challenge procurement decisions during tender procedures and contract execution.

Public procurement is one of the government activities most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public servants and businesses, and the multitude of stakeholders.

Various types of corrupt acts may exploit these vulnerabilities, such as embezzlement, undue influence in the needs assessment, bribery of public officials involved in the award process, or fraud in bid evaluations, invoices or contract obligations. In many OECD countries, significant corruption risks arise from conflicts of interest in decision-making, which may distort the allocation of resources through public procurement. Moreover, bid rigging and cartelism may further undermine the procurement process (OECD, 2016^[1]).

Integrity risks affect all stages of the procurement cycle, as they exert different kinds of pressure at every step – from needs assessment to execution, contract management and evaluation (see Figure 4.1).

Figure 4.1. Integrity risks throughout the public procurement cycle



Source: (OECD, 2016^[1]).

Corruption in public procurement can both occur at the national and subnational levels. On the one hand, decentralisation may narrow the scope for corruption, in line with the assumption that politicians and public servants at local levels are more accountable to the citizens they serve. Voters may be better able to discern the quality of their leadership and the results they deliver. Likewise, local politicians and civil servants can be more in touch with specific needs and contexts of their constituencies. However, greater opportunities and fewer obstacles to corruption may be at play at the subnational level, due to weaker governance capacity (through for example less developed auditing functions, limited legal expertise or low

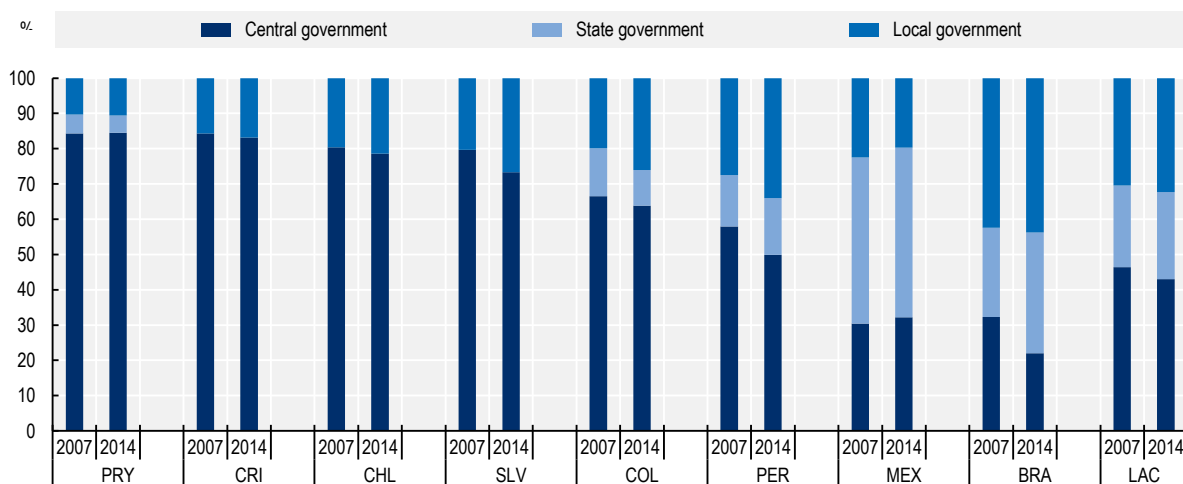
IT capacity) or closer community contacts between public officials and business representatives (OECD, 2016^[11]).

In fact, previous OECD public procurement reviews in Mexico's federal states (i.e., Nuevo León and Sonora) found many opportunities to further integrity and internal control in public procurement. For example, while integrity policies and frameworks have been adopted by many federal states, very few guidelines and tools have been specifically developed for procurement officials. State governments are often unaware of the integrity risks present in public procurement and hence lack the tools to map such risks and apply mitigation measures. Issues such as conflicts of interest have been further regulated but the implementation of such rules is work in progress and still has to demonstrate effectiveness in preventing misbehaviour.

This chapter analyses the State of Mexico integrity policies and the legal framework it applies to public procurement operations. The chapter highlights recent developments and emphasises areas where further efforts are needed. Specifically, it discusses ethics frameworks, corruption risk mapping, disclosures and management of conflicts of interest, as well as integrity training and awareness programmes. It also addresses the key role of the private sector in these issues and the importance of making extensive the integrity standards to all stakeholders in the procurement cycle. Finally, the chapter assesses these issues against the key principles of the OECD *Recommendation on Public Procurement* (OECD, 2015^[2]) and the initiatives taken in the context of establishing the anti-corruption system of the State of Mexico (*Sistema Anticorrupción del Estado de México y Municipios*, SAEMM).

In Mexico, public procurement represents 5.2% of GDP and 70% of this activity is carried out at the sub-national level, as described in Figure 4.2. Public procurement activities in the State of Mexico accounted for nearly MXN 71 968 million in 2019, which represents 24.7% of the expenditures budget of the state. Spending on public procurement in the State of Mexico is concentrated in the areas of health, public safety, social development, and education, as illustrated in Table 4.1.

Figure 4.2. Share of general government procurement in selected Latin American countries by level of government, 2007 and 2014



Source: (OECD, 2017^[3]), "Share of general government procurement by level of government, 2007 and 2014", in Public procurement, OECD Publishing, Paris, <https://doi.org/10.1787/9789264265554-graph110-en>.

Table 4.1. Main institutions spending in public procurement in the State of Mexico, 2019

Institution	Public procurement budget, millions (MXN)	Percentage of the total budget of the institution
Health Institute of the State of Mexico (ISEM)	10 254	3.5
Institute for Social Security of the State of Mexico and Municipalities (ISSEMYM)	9 125	3.1
Ministry of Social Development	7 030	2.4
Ministry of Public Safety	7 397	2.5
Ministry of Finance	5 035	1.7
Integrated Education Services of the State of Mexico	4 307	1.5

Source: Information provided by the Government of the State of Mexico.

The OECD *Recommendation on Public Procurement* highlights the importance of safeguarding integrity in the public procurement system.

Box 4.1. The OECD Recommendation on Public Procurement (integrity)

The Council:

III. RECOMMENDS that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards.

To this end, Adherents should:

- i) Require high standards of integrity for all stakeholders in the procurement cycle. Standards embodied in integrity frameworks or codes of conduct applicable to public sector employees (such as on managing conflict of interest, disclosure of information or other standards of professional behaviour) could be expanded (e.g. through integrity pacts).
- ii) Implement general public sector integrity tools and tailor them to the specific risks of the procurement cycle as necessary (e.g. the heightened risks involved in public-private interaction and fiduciary responsibility in public procurement).
- iii) Develop integrity training programmes for the procurement workforce, both public and private, to raise awareness about integrity risks, such as corruption, fraud, collusion and discrimination, develop knowledge on ways to counter these risks and foster a culture of integrity to prevent corruption.
- iv) Develop requirements for internal controls, compliance measures and anticorruption programmes for suppliers, including appropriate monitoring. Public procurement contracts should contain “no corruption” warranties and measures should be implemented to verify the truthfulness of suppliers’ warranties that they have not and will not engage in corruption in connection with the contract. Such programmes should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training requirements for supplier personnel.

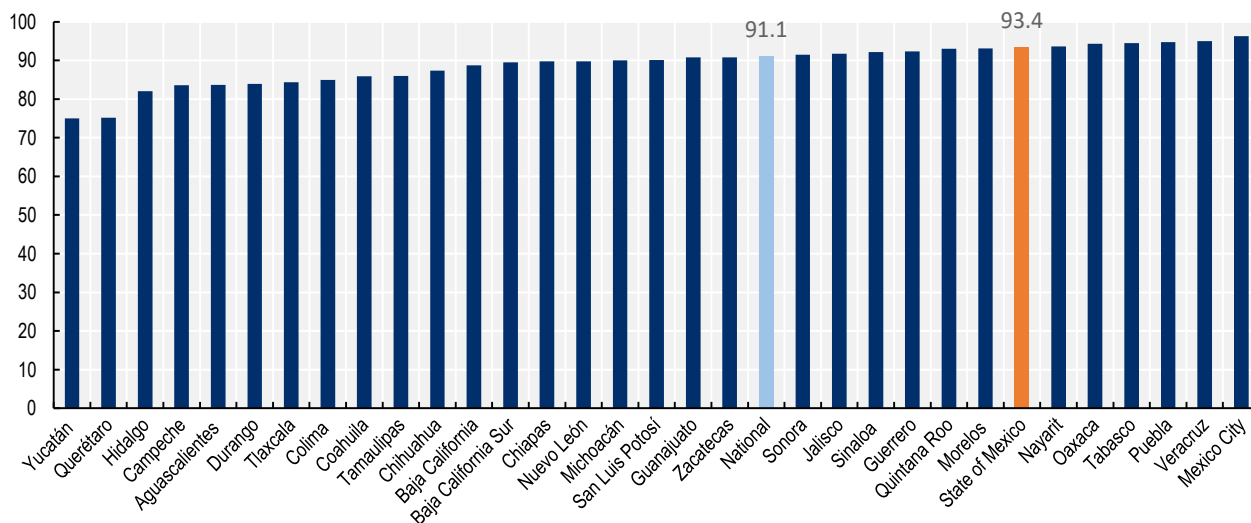
Source: (OECD, 2015^[2]).

Maintaining the integrity of the procurement system requires, amongst others, the following features:

- Procurement procedures are transparent, and promote fair and equal treatment of bidders;
- public resources linked to public procurement are used in accordance with intended purposes;
- procurement officials' behaviour is in line with the public purpose of their organisations; and
- systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny (OECD, 2018^[4]).

Safeguarding integrity has been a major concern for the public in the State of Mexico for some time. According to a survey published by the National Statistics and Geography Institute (*Instituto Nacional de Estadística y Geografía*, INEGI) in 2017, corruption was identified by 57.5% of the state population as the second major problem, just behind public safety and crime (78.6%). A high percentage of citizens perceive that corruption is taking place in the state. In fact, the percentage of citizens who report government corruption is frequent or very frequent in the State of Mexico surpassed the percentage of citizens who perceived corruption as frequent or very frequent at the national level in Mexico (93.4% vs 91.1%), as shown in Figure 4.3.

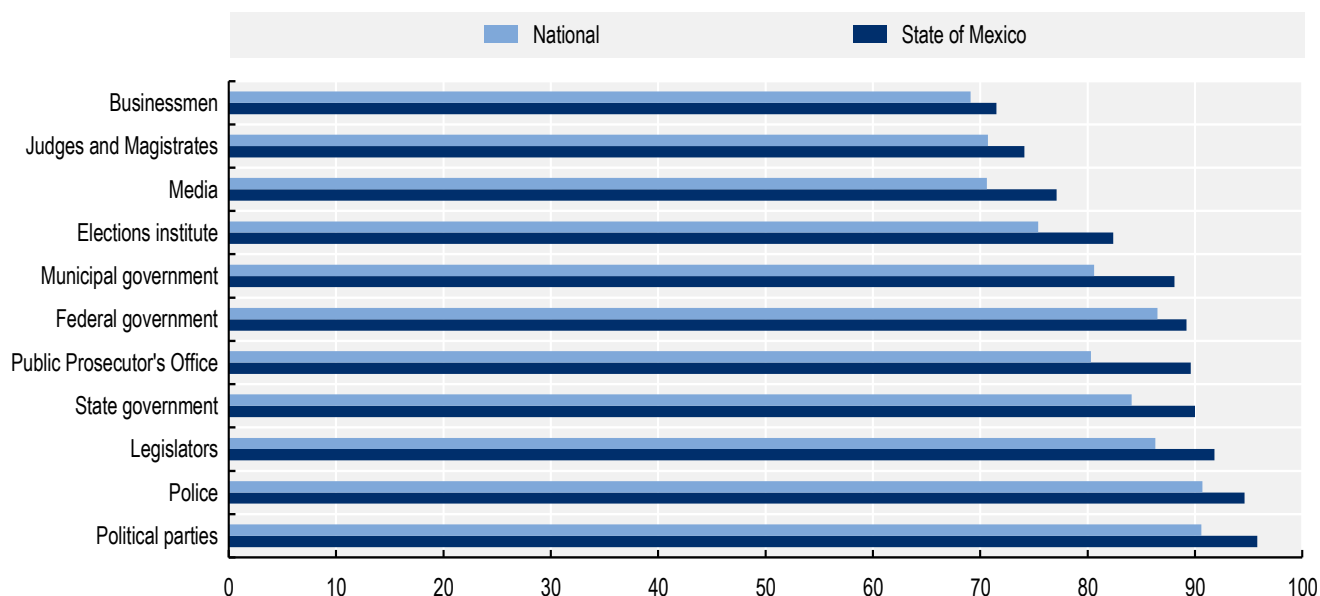
Figure 4.3. Perception on how frequent corruption is by federal state in Mexico



Source: (INEGI, 2017^[5]).

The results of a survey on government quality by INEGI in 2017 show that corruption of political parties, police, legislators, and the state government are the main integrity problems perceived by citizens (see Figure 4.4).

Figure 4.4. Perception of corruption in the State of Mexico by sector



Source: (INEGI, 2017^[5]).

In this context and in compliance of the Constitution, the General Law on the National Anticorruption System and the General Law of Administrative Responsibilities, the State of Mexico was one of the first federal entities to set up a local anticorruption system, aligned with the one established at the national level in May 2015.

4.1. Policy framework to promote integrity in public procurement

The State Development Plan 2017-2023 establishes four pillars (social, economic, territorial, and public safety) and three horizontal axis (gender equality, capable and responsible government, and connectivity and technology for good government). The axis on capable and responsible government identifies five elements to develop: i) Greater transparency and permanent accountability; ii) preventing and fighting corruption through the effective operation of the SAEMM; iii) good governance based on dialogue and social peace; iv) balanced public finances; and v) public management by results and permanent evaluation.

Objective 5.5 of the axis on capable and responsible government consists of promoting transparent and accountable government institutions. Strategy 5.5.5 refers specifically to public procurement: Ensuring that state government institutions comply with transparency regulations relative to procurement and contracts.

Objective 5.6 mandates the implementation of the SAEMM, which mirrors the reforms establishing the National Anti-corruption System (*Sistema Nacional Anticorrupción*, NACS). The NACS was approved at the federal level in May 2015 through the publication of a decree modifying several articles of the Mexican Constitution, the enactment of the General Law of the National Anti-Corruption System and seven secondary laws. On 30 May 2017, the State of Mexico government published in its Official Gazette (*Periódico Oficial "Gaceta del Gobierno"*) the Law of the SAEMM. The SAEMM sets out the principles, general basis, public policies, and procedures to co-ordinate state and municipal authorities in preventing, detecting and punishing administrative offences and acts of corruption, as well as auditing, controlling public resources, transparency and accountability, in line with the NACS.

4.1.1. The State of Mexico, through collaboration of the relevant institutions, could balance the rules-based approach of some provisions by recognising the limits of excessive controls and prompting ethical reasoning by procurement officials

Under the policy framework described above, the State of Mexico developed rules and tools to advance ethics in the public service. Firstly, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities was aligned with the national framework to regulate administrative responsibilities of public servants, namely with the General Law for Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, LGRA). Subsequently, on 2 April 2019, the Code of ethics for public officials of the executive power and auxiliary bodies was published. Previously, on 23 September 2015, in compliance with the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, the State Executive issued the Protocol for public servants intervening in public procurement or granting licenses, permits, authorisations or concessions (hereafter, “the Protocol”).

The Code of Ethics establishes fifteen principles to be followed by all public servants: legality, honesty, loyalty, impartiality, efficiency, economy, discipline, professionalism, objectivity, transparency, accountability, merit-based competition, effectiveness, integrity, and equality. Likewise, it dictates the values to be observed by public servants of the state administration: public interest, respect, consideration of human rights, non-discrimination, gender equality, cultural and environmental preservation, co-operation, and leadership. In Chapter IV, Rules of Integrity, Article 8 establishes that state ministries and auxiliary bodies should incorporate rules of integrity, within their attributions on public conduct, public information, procurement, licences, permits, authorisations, concessions, government programmes, services, human resources, real estate management, evaluation, internal control, administrative procedure, permanent performance with integrity, co-operation with integrity and adequate behaviour.

While these principles, values and rules are applicable for all public servants, Integrity Rules in codes of conduct refer specifically to public officials managing procurement, licenses, permits or concessions. It mandates that public servants performing such activities should behave transparently, legally and impartially, guiding their decisions by the interests of society and ensuring the best conditions to fulfil the state responsibilities. It provides examples of how this mandate is broken:

- Failing to declare potential conflicts of interest and business transactions with businesses or individuals listed in the Registry of suppliers and service providers of the Government of the State of Mexico.
- Failing to apply the principle of equity and fair competition that should prevail in procurement procedures.
- Asking for prerequisites different from those strictly necessary to provide public services, leading to excessive and unnecessary costs.
- Establishing conditions in the calls for tender leading to an advantage or differentiated treatment for bidders.
- Favouring bidders by accepting their compliance with tendering requirements when there is really lack of compliance, simulating compliance or allowing compliance out of time.
- Favouring suppliers relative to their compliance with the requisites for requests for quotes.
- Unduly disclosing information about bidders participating in a procurement process.
- Being partial in the selection, award, withdrawal or cancellation of a contract stemming from a procurement procedure.
- Influencing the decisions by public servants to favour a particular bidder in procurement procedures.
- Failing to apply fines to bidders, suppliers and contractors that infringe regulations.

- Sending e-mails to bidders, suppliers or contractors from personal accounts instead of institutional ones.
- Meeting bidders, suppliers or contractors outside of institutional premises, except for onsite inspections.
- Failing to comply with the Protocol when interacting with the private sector.
- Receiving, directly or through relatives up to the fourth grade, government contracts from the entity in which one works.
- Hiring advisory or professional services with individuals or organisations in which one has a personal interest or participation, or with relatives up to the fourth grade.

The Protocol aims to establish general guidelines that should be observed by procurement officials in their interactions with private individuals and companies to prevent corruption and ensure that public decision-making is not taken captive by private interests. It is applicable to all procurement officials registered in the Information System of Public Servants of the State of Mexico (*Sistema Informático de Registro de Servidores Públicos del Estado de México*, SIRESPM), managed by the Ministry of Control (*Secretaría de la Contraloría*, SECOGEM). Indeed, SECOGEM, through its internal control bodies (*Órganos Internos de Control*, OIC) deployed in ministries and auxiliary bodies of the state public administration, is responsible of monitoring compliance, while both the Ministry of Finance and SECOGEM are responsible for its implementation. The protocol follows a similar instrument implemented at the federal level and published in the Official Gazette on 20 August 2015. Such a federal instrument was assessed by OECD in a previous review (OECD, 2017^[6]) and, indeed, the State of Mexico protocol replicates many of its shortcomings.

Some of the main rules established in the protocol are the following:

- Contact with private individuals and companies by public institutions should take place only through public officials. During procurement procedures, there will be no personal interactions, except for those necessary to carry out the process, as established by law.
- If public procurement officials become aware of wrongdoing by other public servants or private individuals or companies, they should report it to the OIC.
- During procurement procedures, bidders will submit a statement (*manifiesto*) disclosing their business, personal, or family relationships, as well as potential conflicts of interest, with senior public servants (Governor, ministers, legal counsellor, attorney general, deputy ministers, heads of unit, etc.) and those intervening in procurement procedures, including their wives, partners, and relatives up to the second degree.
- Contact with private individuals and companies should only take place in official premises and through official means, preferably, in written form (paper-based or electronically). In case of phone calls or meetings, the conversations will be taped or videotaped, so the public official will inform beforehand that the conversation will be recorded.
- In the case of meetings, they should be agreed previously and the public official should inform his boss. At least two procurement officials should be present in the meeting and the OIC should appoint one of its officials to participate as well. At the end of the meeting, the minutes will describe the contents of the discussions and it will be signed by the participants.
- Procurement officials will abstain from sharing information regarding deliberative processes, analyses and assessments, until a resolution is formally issued.

In addition to the elements mentioned above, the Ministry of Finance, which serves as a centralised purchasing body, issued its own Code of Conduct, published on 30 August 2019. This code dictates the principles and values to be observed by the ministry's officials and builds on the mandate of the Agreement of the executive to issue the Ethics Code for Public Officials of the State of Mexico, and the Guide to

develop codes of conduct and integrity rules in the ministries and auxiliary bodies of the State of Mexico. It includes specific provisions on the responsibility and expected behaviours of procurement officials.

While the Protocol addresses some of the main risks of interactions between procurement officials and the private sector, it has weaknesses that may hamper its potential to achieve the intended effect (i.e., positively influencing the behaviour of public servants) and may even be counterproductive. In fact, the Protocol would benefit from a more balanced approach between rules and values, as there is a limit to what can be achieved from traditional controls and sanctions. The Protocol is rules-based, minimising a more values-based approach which could lead to negative consequences for motivation and commitment of public servants under the belief that they are intrinsically considered as corrupt.

Box 4.2. Rules-based versus values-based approaches

Public integrity refers to the consistent alignment of, and adherence to, shared values, principles and norms for upholding and prioritising the public interest in the public sector. Fostering integrity therefore relates to encouraging desired behaviour over undesired behaviour, including – but not limited to – corrupt practices. Several approaches can be taken to promote these desired behaviours, including a compliance/rules-based approach and a values-based approach. A compliance-based approach includes attention to prevention through establishing enforceable standards, often in laws, regulations, and codes of conduct, as well as providing education, training, and counselling on these standards. This approach ultimately provides for a range of enforcement mechanisms based on the severity of the misconduct. A values-based approach aims to inspire integrity through raising awareness of ethics, public-sector values, and the public interest, and adherence to codes of ethics or guiding principles.

International experiences show that integrity policies are most successful when these two approaches are combined and well balanced, with the exact relative importance, as well as the actual shape of both approaches, depending on the social, political and administrative context and on the history of the organisation concerned. After interviewing government stakeholders, this review finds that a better balance must be struck in the State of Mexico to create a “culture of integrity”, shifting away from an overwhelming rules-based approach.

Source: (OECD, 2017^[6]).

The protocol also states the rules which are easy to evade or hard to enforce. For example, recording conversations between public servants and private individuals or companies could be avoided by having them in person and off site, which in itself is also forbidden. Even the requirement to favour written communications can be averted through informal communications. Likewise, the requirement to have two procurement officials and an OIC representative in meetings does not fully impede the possibility of colluding to benefit a particular bidder in response to a bribe. In other words, rules in themselves are not enough to hinder corrupt behaviour. However, they should be complemented by raising awareness of public servants and private representatives about the importance of integrity in public decision-making and service delivery and by the interiorisation of public service values.

Mexico as a country, including its federal entities, suffers the consequences of previous integrity failures in the form of excessive formal controls, which hinder flexibility and innovation in the public service. As documented in previous OECD reviews (see, for example, (OECD, 2018^[7]), this leads to procurement officials worrying more about compliance with regulations than generating value for money. The tone and content of the Protocol reinforces the idea that public servants are inherently corrupt and should be distrusted. Too many controls may damage intrinsic motivations to behave ethically, such as commitment to the public interest or to the institution. Such motivations are necessary as no rule is infallible and, as discussed above, the rules dictated by the protocol may not be so difficult to evade. This does not mean

controls should be eliminated, but they should certainly be balanced with values, principles, and other intrinsic motivations public servants may have.

Another potentially controversial practice is the application of reliability tests (*evaluaciones de confianza*) upon those whose main functions include supervising public works. The Administrative Code of the State of Mexico (12th Book, Chapter IX) establishes that public servants supervising public works will be subjected to reliability tests performed by SECOGEM's Unit for Reliability Testing (*Unidad Estatal de Certificación de Confianza*) upon recruitment, reincorporation, promotion and permanence.

Furthermore, an approach leaning excessively towards control may hinder market engagement activities of procurement officials. Public institutions need to have a sound understanding of the nature, size and composition of the supply markets from which they purchase goods and services. Procurement officials need to keep up to date with new ideas and developments, as well as emerging technologies, to be better placed to create value-for-money. They can do so through several activities throughout the procurement cycle, all of them requiring interactions with market agents, such as trade shows, "meet the buyer" events, meeting with industry chambers and debriefing suppliers (New Zealand Government Procurement Branch, 2015^[8]). While such interactions should indeed be regulated and subject to control items, they should also be subjected to behaviour principles and values, allowing procurement officials the flexibility to reach out to markets with clear objectives and protocols.

An alternative approach to balance controls is by facilitating ethical reasoning of procurement officials. SECOGEM, in collaboration with the Co-ordination Committee of the SAEMM and other relevant institutions, could develop case studies, checklists, and practical manuals illustrating typical ethical dilemmas of procurement officials and prompting them to solve such situations applying not only the rules, they cannot foresee every possible scenario, but also the values contained in the Code of Ethics and the codes of conduct. *The Ethics, probity and accountability in procurement manual*, developed by the Government of Queensland, Australia, provides a good reference for illustrating ethical dilemmas (see Box 4.3).

Box 4.3. The Ethics, probity and accountability in procurement manual in Queensland, Australia

The following excerpt from the Ethics, probity and accountability in procurement manual describes how procurement officials in Queensland should act in situations where they risk committing unethical behaviour. The example below details what officials should do when they receive an invitation to a seminar from a supplier:

“Attendance by a procurement officer at a public seminar offered by a potential supplier is unlikely to create a conflict of interest. However, the officer must not discuss confidential matters relating to the tender process, and must not use the tender process to obtain a discount on any registration fee. Officers directly involved in the tender process should inform the tender management team as well as their own manager, and gain approval for their attendance at the seminar, which should be fully documented.”

Source: (The State of Queensland, 2019^[9]).

4.2. Management of conflicts of interest by public procurement practitioners

4.2.1. The State of Mexico should develop its framework to manage conflicts of interest with a shared definition, practical illustrations, and systematic training for procurement officials

The current institutional framework in the State of Mexico involves a network of actors in charge of preventing, investigating and sanctioning corruption acts – as well as solving conflicts of interest and ethical dilemmas. SECOGEM and its different administrative units are responsible for promoting best practices and internal monitoring. They are also responsible for investigating acts, omissions or behaviours by public servants to determine administrative responsibilities SECOGEM has jurisdiction per the Organic Law of the Public Administration of the State of Mexico (*Ley Orgánica de la Administración Pública del Estado de México*, LOAPEM) and the Internal Bylaws of SECOGEM (*Reglamento Interior de la Secretaría de la Contraloría*), amongst other secondary regulations. However, such jurisdiction only extends to ministries and entities of the state public administration – not to municipalities. Nonetheless, SECOGEM has attributions to intervene at the municipal level, when authorised by law, regarding state transfers.

The Internal Bylaws of SECOGEM currently in force were approved and published in November 2018. Among the reforms, two new units were created: the Unit on Public Procurement Policies and the Unit on Corruption Prevention. On the one hand, the Unit on Public Procurement Policies has the following attributions:

- Providing preventive advice to ministries, auxiliary bodies and municipalities relative to public procurement processes financed with state resources.
- Verifying, directly or through the OICs, that the registry of procurement officials contains all the information established by law.
- Reviewing and assessing compliance with the Protocol.
- Receiving the reports by social witnesses, as well as their suggestions and proposals to strengthen the transparency and impartiality of public procurement.

On the other hand, the Unit on Corruption Prevention has the following responsibilities, among others:

- Analysing and suggesting measures to support ministries and auxiliary bodies in preventing, detecting and hindering administrative faults and corruption.
- Requesting information and documents to ministries, auxiliary bodies and OICs to produce analyses on anticorruption in the state public administration.
- Developing and proposing policies, guidelines, criteria, indicators, strategies and other general tools relative to ethics, integrity rules, prevention and hindering administrative faults and corruption and prevention of conflicts of interest for public servants of the ministries and auxiliary bodies of the State of Mexico.
- Proposing the Ethics Code for the public servants of the State of Mexico, communicating its content and verifying compliance with it.
- Issuing an opinion upon request about the realisation of conflicts of interest by public servants of the state public administration.
- Requesting information and documents to ministries and auxiliary bodies in order to issue an opinion about the realisation of a conflict of interest.
- Issuing general statements and recommendations to prevent corruption and conflicts of interest in the public service.
- Collecting, analysing, and assessing information to produce analyses relative to ethics, integrity and prevention of corruption and conflicts of interest in the ministries and auxiliary bodies of the government of the State of Mexico.
- Coordinating, keeping a record, and following up the recommendations issued by the Ethics Committees.
- Designing and promoting communication, training and raising awareness programmes relative to ethics, integrity and prevention of corruption and conflicts of interest.

The integrity framework of the State of Mexico mandates the creation and maintenance of an Ethics Committee in each ministry and auxiliary body of the state administration to analyse and advise on public servants' compliance with integrity rules, per the Ethics Code for Public Officials of the State of Mexico and the Codes of Conduct. Since then, the Ethics Committees has borne the responsibility of providing support to the integrity system by ensuring that public servants and citizens are informed of the state government's ethics rules. Its nine members occupy an honorary position with voting rights, eight of them elected by peers, representing different levels of the hierarchy and one serving as the president of the committee (the minister or head of agency), who is a permanent member, and whose role is merely advisory. While its decisions are non-binding, the opinions and suggestions given should enhance integrity in the State of Mexico public sector. This is an example of another initiative where the State of Mexico followed the policy established at the federal level.

According to the Agreement mentioned above, the Ethics Committees have the following attributions:

- Drafting and approving its annual working plan during the first trimester of each year. The working plan should include specific objectives, goals and activities.
- Monitoring implementation and compliance with the Code of Ethics and the Integrity Rules.
- Participating in the drafting, review and update of the corresponding code of conduct and oversee its implementation and compliance.

The Ethics Committees can receive reports of violations of the Code of Ethics, the Integrity Rules, and the corresponding Code of Conduct. If confirmed, the Ethics Committees should refer the case to the corresponding OIC.

The framework for the management of conflicts of interest is elaborated in the table on the following page.

Table 4.2. Regulatory framework addressing conflicts of interest in the State of Mexico

Regulation	Description
LGRA	It defines conflict of interest as a situation affecting the impartial and objective performance of public servants due to personal, family or business interests. It establishes the obligation for public servants to declare such situations through a standardised template.
Law of Administrative Responsibilities for the State of Mexico and its Municipalities	It follows the definition by the LGRA. It establishes the obligation for public servants to declare such situations and inform the hierarchical superior, who should instruct him on how to behave in case he cannot abstain from intervening in a specific situation entailing a potential conflict of interest.
Agreement of the executive to issue the Ethics Code for Public Officials of the State of Mexico, the integrity rules and the general guidelines to foster integrity through the Ethics Committees	It defines conflict of interest as the incompatibility between the public duties and the private interests of a public official and materialises when the public interest is unduly influenced by a different interest, economic or personal, leading the public official to pursue its own interest or that of a third person. It establishes the principles and rules for the operation of Ethics Committees.
Protocol for public servants intervening in public procurement or granting licenses, permits, authorisations or concessions	It regulates the potential interactions between procurement officials and private agents. It establishes that private individuals and companies should disclose potential conflicts of interest stemming from personal, family or business relationships with senior officials and those involved in procurement operations.
Code of Conduct of the Ministry of Finance	It states that a conflict of interest materialises by offering, giving, requesting, accepting, or receiving, directly or through a third party, money, commissions, incentives, donations or real state creating a personal or an institutional commitment to be retributed. It establishes ministry's officials will abstain from intervening in cases leading to personal, family or business benefits for themselves or his family members, up to the fourth degree.

Source: Information provided by SECOGEM.

A basic and shared definition of conflict of interest is critical, as it helps public servants determine objectively whether they can execute their duties and functions in situations where there appears to be a conflict of interest, but this is not or may not be the case. The definition adopted by the State of Mexico should label the situation above as an “apparent conflict of interest” – which could be as serious as having an actual conflict. Since potential or apparent conflicts of interest are not listed in the State of Mexico regulations, detection and enforcement may be difficult. Whichever approach the State of Mexico adopts in its framework for the management of conflicts of interest however, it is important to ensure that it clearly defines the concept in its legislative framework as related to public procurement.

The OECD report *Managing Conflict of Interest in the Public Service: OECD guidelines and country experiences* makes a distinction between actual, apparent and potential conflict of interest in various situations. The OECD defines a conflict of interest as a clash between the public duty and private interests of a public official, in which the public official has private-capacity interests that could improperly influence the performance of his or her official duties and responsibilities. An actual conflict of interest is a direct conflict between a public official's current functions and his private interests. An apparent conflict of interest occurs when a public official's private interests could improperly influence the performance of his duties, but this is not, in fact, the case. A potential conflict of interest encompasses, on the other hand, a situation in which a public official has private interests which could create a conflict of interest if the official becomes involved in the future (OECD, 2004_[10]). The framework to manage conflicts of interest in the State of Mexico

does not distinguish between these three types of conflict of interest. OECD data shows that 85% of member countries have a specific definition of conflicts of interest for public procurement officials in their regulatory frameworks (OECD, 2019^[11]). The definitions used by other OECD countries, such as Canada or New Zealand, could be a good reference for the State of Mexico.

Box 4.4. Definitions of conflict of interest used in Canada and New Zealand

Canada

Canada's Conflict of Interest Act (S.C. 2006, co., sq.) states that "a public office holder is in a conflict of interest when he exercises an official power, duty or function that provides an opportunity to further his private interests or those of his relatives or friends or to improperly further another person's private interests" (Article 4). In addition, Article 5 specifies the general duty expected of public servants. "Every public office holder shall arrange his private affairs in a manner that will prevent the public office holder from being in a conflict of interest." While the Conflict of Interest Act is primarily aimed at elected and other senior officials, the Treasury Board Code of Values and Ethics applies this definition and similar responsibilities to every public servant in government.

New Zealand

The definition of conflict of interest is tailored to targeted groups, such as public servants, ministers or board members of crown companies. Nevertheless, these definitions contain common features. For example, they all cover actual and perceived conflicts of interest, as well as direct and indirect conflicts. In addition to the general definitions developed for these targeted groups, other documents list possible types of situations where conflicts of interest arise, together with concrete practical examples.

- Public servants: "Conflicts of interest are defined as any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationships with the public, clients, or ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual's private interests (e.g. company directorships, shareholdings, offers of outside employment).
- Ministers: "Conflicts of interest can arise because of the influence and power they wield – both in the individual performance of their portfolio responsibilities and as members of Cabinet. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as actual conflict of interest in establishing what is acceptable behaviour. A conflict of interest may be pecuniary (that is, arising from the Minister's direct financial interests) or nonpecuniary (concerning, for example, a member of the Minister's family) that may be either direct or indirect" (Cabinet Manual).
- Members of the Board of Crown Companies: Conflict of interest is defined as a situation in which a board member is "party to, or will or may derive a material financial benefit from" a transaction involving his or her company (The Companies Act 1993, Part VIII, Sections 138 and 139).

Source: (OECD, 2004^[10]).

Implementing appropriate measures to prevent apparent and potential conflicts of interest is as important as implementing measures to manage actual conflicts of interest. For example, State of Mexico authorities should be particularly vigilant of cases in which potential bidders are former public servants or when newly hired public servants have experience in the private sector (for instance, in the construction industry). This practice, of working with actors who are closely linked to the sector in which procurement will occur, is

known as a “revolving door”, and is not fully anticipated by the state law. “Revolving door” practices increase the risk of integrity breaches and opportunities for conflicts of interest.

In this regard, the regulatory framework in the State of Mexico needs to be more specific. For example, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, in its Article 76 states that private agents are forbidden to hire individuals who served in the public sector during the previous year and who possess information that will benefit their market position or provide an advantage vis-à-vis its competitors. This practice is defined in the law as “unduly hiring a former public official” (*contratación indebida de ex servidores públicos*) and also stipulates a sanction for the public official. However, sharing information is not the only potential integrity risk for a former procurement official now working in the private sector. For example, he may also want to take advantage of his insider relationships to influence an award decision or the selection of a direct award over a public tender.

Elaborating and further developing the conflict of interest rules also applies for gifts. While the Law of Administrative Responsibilities for the State of Mexico and its Municipalities forbids public servants to receive any kind of gift, there might be situations, for example a protocolary gift, in which it might be hard for procurement officials to refuse receiving the gift. The main point, even beyond the actual cost of the gift, is the extent to which receiving the gift might jeopardise the impartiality and objective judgement of a procurement official or the extent to which it may create the will to reciprocate. A very strict approach completely forbidding gifts may lead to cynical behaviour in which the public official not only fails to comply with the regulation, but also is unaware of the impact on his judgement. The OECD toolkit *Managing Conflict of Interest in the Public Sector* proposes a checklist for public servants to reflect on the potential implications of a gift. This prescriptive checklist reduces the potential for confusion to four simple tests, arranged under a mnemonic – GIFT (genuine, independent, free and transparent) – to make the tests easier to remember. Each element of the GIFT mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes (see Box 4.5).

Box 4.5. Gifts and gratuities checklist

Genuine

Is this gift genuine, in appreciation for something I have done in my role as a public official, and not requested or encouraged by me?

Independent

If I accept this gift, would a reasonable person have any doubt that I could be independent in doing my job in the future, especially if the person responsible for this gift is involved or affected by a decision I might make?

Free

If I accept this gift, would I feel free of any obligation to do something in return for the person responsible for the gift, or for his family, or friends or associates?

Transparent

Am I prepared to declare this gift and its source, transparently, to my organisation and its clients, to my professional colleagues, and to the media and the general public?

Source: (OECD, 2005^[12]).

4.3. Accountability and monitoring concerning sanctions on suppliers

4.3.1. SECOGEM could give better visibility to the registry of blacklisted companies and expand its functionalities

According to the Organic Law of the Public Administration of the State of Mexico, Article 38 Bis, XI, SECOGEM has the responsibility of monitoring compliance of duties by suppliers and contractors, requiring them the information relative to their activities. Indeed, the Law on Public Procurement of the State of Mexico and its Municipalities also establishes in Article 74 that SECOGEM will manage a registry of the individuals or businesses in the following situations:

- Suppliers or service providers who incurred in delays in the delivery of goods or services, as a result of their own fault;
- Those who had a contract rescinded, as a result of their own fault;
- Those who provided false information or behaved in bad faith in any stage of the process to award a contract, its formalisation, execution or during the process of filing a complaint (*inconformidad*);
- Those who have established contracts violating the statements of this Law, as demonstrated with information held by OICs.

SECOGEM, specifically the General Directorate of Administrative Responsibilities, gathers the information from ministries and auxiliary bodies to put together this registry and shares it with them. Ministries and auxiliary bodies should inform SECOGEM, within the first five working days of each month, about the individuals and businesses subject to an “administrative sanctioning process” (*procedimiento administrativo sancionador*) as a result of one of the situations listed above. The officials in charge of procurement of goods, services, leasing, public works and related services as well as the heads of OICs of ministries and auxiliary bodies of the executive, the Office of the Attorney General of the State of Mexico, administrative tribunals, auxiliary bodies and state public funds (*fideicomisos públicos estatales*) are all responsible for informing SECOGEM.

The information is kept in the Registry of barred and sanctioned companies, suppliers and contractors (*Registro de empresas, proveedores y contratistas objetados y sancionados*). It also includes information on companies and individuals barred from procurement procedures or sanctioned by the Federal Ministry of Public Administration (SFP) or by other federal states.

The information is public and available at www.secogem.gob.mx/EmprObj/BoletinPublico.asp. The user can search for a company by sanction (barred from participating in procurement procedures, fines, objected, and compensating administrative process or *procedimiento administrativo resarcitorio*¹), by company name, or by activity (industry, commerce, services and others). The information provided by the system for each company includes its full denomination, number of deed, tax number, notification date, the irregular situation and the authority that reported it. In some cases, more information is available, including the exclusion date and the follow up to the case (challenges, court rulings, etc.).

The registry is not easy to find on the Internet. SECOGEM could give it more visibility by creating links from the entry point of its own webpage (www.secogem.gob.mx), the e-procurement platform COMPRAMEX or the website of the Government of the State of Mexico (www.edomex.gob.mx). Such “bad publicity” for blacklisted companies would in itself create incentives for good behaviour from suppliers.

Likewise, SECOGEM could expand the functionalities of the registry to make it more useful for procurement officials. For example, it could provide the option to download documents containing resolutions sanctioning companies so that procurement officials could have complete information on the irregular situation leading to sanctions and the implications for future procurement procedures. Debarment policies have been developed in many countries although rules differ across jurisdictions and international organisations (see Box 4.6). Furthermore, the registry could go beyond being a blacklist to become a

source of information on supplier performance. It could incorporate information on contract performance so that procuring authorities could identify risks when awarding a contract to a specific company. Additionally, SECOGEM could migrate the registry to an open data format to improve accessibility and the possibility to use the data to identify trends and patterns useful for decision-making.

Box 4.6. Debarment policies applied in public procurement

Integrity violations of companies may lead to permanent or temporary exclusion from public procurement. In line with European Union legislation, there are mandatory debarment rules in place in EU Member States, according to which, bidders against whom final court convictions for corruption have been handed down are excluded from future tenders. In EU Member States, laws contain debarment provisions and contracting authorities have cross access to their internal debarment databases. Multilateral Development Banks have developed an Agreement for Mutual Enforcement of Debarment Decisions and made public the list of companies and individuals ineligible to participate in their tendering processes.

The 2009 OECD *Anti-Bribery Recommendation* calls on Parties to the OECD *Convention on Bribery of Foreign Public Officials in International Business Transactions* to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials”.

While debarment has gained significant terrain in the last decade, particularly as a device in the fight against corruption and a tool to restore trust in government procurement, there is a lack of solid theoretical underpinning for these rules, and its efficiency continuous to be discussed, in terms of access, competition and value-for money principles, amongst others.

Source: (OECD, 2016^[1]), and (Hjelmeng, 2014^[13]), “Debarment in Public Procurement: Rationales and Realization”, in G.M. Racca and C. Yukins, *Integrity and Efficiency in Sustainable Public Contracts*, www.researchgate.net/publication/265550163_Debarment_in_Public_Procurement_Rationales_and_Realization, consulted on 5 November 2019.

Article 87 of the Law on Public Procurement of the State of Mexico and its Municipalities dictates that any individual or company, national or foreign, is liable when participating in procurement procedures in the following cases:

- Commits, offers or delivers money or any other benefit to a public official so that he carries out or abstains from an action related with his duties in order to obtain a benefit or an advantage;
- Carries out actions in order to obtain an undue benefit or advantage in the public procurement process;
- Carries out actions or omissions in order to participate in procurement procedures even though it is barred by an administrative resolution or a legal instrument;
- Carries out actions or omissions in order to evade requisites or rules in public procurement or pretends to comply with them;
- Intervenes on its behalf, but for the benefit of third parties barred from procurement procedures, so that such third parties get, partially or in full, the benefits of the procurement;
- Obliges a public official to subscribe, provide, destroy or deliver a document or a good in order to obtain a benefit or advantage;

- Promotes or uses its influences, economic or political power, real or fictitious, on a public official in order to obtain a benefit or advantage; and
- Files false or altered information or documents in order to obtain a benefit or advantage.

The individuals and companies which participate in the situations described above can be fined with the equivalent of 300 to 300 000 times the daily value of the Measurement and Update Unit (*Unidad de Medida y Actualización, UMA*)² in force at the time.

In addition, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, Article 68, defines the actions by private individuals or companies related to serious administrative offenses, namely bribery, illicit participation in administrative procedures, trying to influence or capture an authority, using false information, obstructing investigations, collusion, irregular use of public resources and unduly hiring a former public official. Applicable sanctions for individuals include economic fines equivalent to one or two times the benefits obtained or, when no benefit is obtained, from 100 to 150 000 times the daily value of the UMA; a temporary bar from participating in procurement of goods, leasing, services and public works for no less than three months and no more than eight years; and compensation of damages to the public finances of the state, municipality or public entity.

Likewise, for businesses sanctions include economic fines equivalent to one or two times the benefits obtained or, when no benefit is obtained, from 1 000 to 1 500 000 times the daily value of the UMA; a temporary bar from participating in procurement of goods, leasing, services and public works for no less than three months and no more than ten years; suspension of economic activities for no less than three months and no more than three years; dissolution of the society; and compensation of damages to the public finances of the state, municipality or public entity.

4.4. Engaging the private sector and civil society to strengthen integrity in the procurement function

Public procurement can benefit from partnerships between government institutions and the private sector to advance integrity. Integrity is required to allow governments, on the one side, and businesses and citizens, on the other, to engage in a mutually responsive way thus rendering the public procurement system more accountable and ensuring value-for-money. In this sense, low levels of integrity and accountability in public procurement can jeopardise the effective use of public funds.

Preventing integrity breaches requires the active engagement and efforts from the government, the private sector and civil society, due to their complexity. Civil society and businesses can play an oversight and monitoring role in public procurement. By serving as a mechanism for direct social control on government activities, civil society and the business community can further integrity in government activities and restore public trust.

4.4.1. The Government of the State of Mexico should partner with the business community to develop and advance an agenda for business integrity in procurement activities

Currently, the State of Mexico does not have an agenda or programme to promote business integrity. This is an area of opportunity, particularly as there are already some programmes established by the Federal Government (SFP, see Box 4.7) and business chambers, such as the Business Co-ordination Council (*Consejo Coordinador Empresarial, CCE*) and the Mexican Chamber of the Construction Industry (*Cámara Mexicana de la Industria de la Construcción, CMIC*). Furthermore, advancing integrity in public procurement is an important preventive action given the fact that the LGRA and the Law of Administrative Responsibilities for the State of Mexico and its Municipalities establish sanctions for businesses that

participate in acts of corruption and consider that businesses with an integrity programme could benefit from milder sanctions.

Box 4.7. The Business Integrity Registry of the Ministry of Public Administration (SFP)

The registry consists on a distinction for those businesses that actively commit to comply with ethical standards by engaging their employees and suppliers. The objective is to provide positive incentives to promote business integrity and advance preventive measures and standards. The first stage for the implementation of the registry includes the development of an IT platform and legal reforms. The second stage consists on the implementation of the distinction for business that participate in procurement procedures.

Business integrity as described in the LGRA

Article 25 of the LGRA establishes that a programme of business integrity should include, at least, the following elements:

- A clear and complete organisation and procedures manual, establishing the functions and responsibilities of each area, the chain of command and leadership in all the organisation;
- A published and socialised code of conduct, including systems and mechanisms for implementation;
- Adequate and effective systems for control, audit and surveillance to constantly and periodically assess compliance with the integrity standards by all the organisation;
- Adequate systems to report wrong-doing, both internally and to the corresponding authorities, as well as disciplinary procedures and concrete consequences for those who behave violating internal rules or Mexico's legislation;
- Adequate systems and processes to train staff on the integrity measures;
- Human resources policies preventing hiring individuals that may create an integrity risk for the company; and
- Mechanisms that ensure transparency and disclosure of interests.

In order to facilitate business take up, SFP launched in June 2017 the Model Business Integrity Programme (*Modelo de Programa de Integridad Empresarial*), which was developed together with business associations. The model is a good example of translating legal provisions into concrete and practical guidance for the private sector by providing concrete examples on what each element of the Business Integrity Programme entails and including good practices from the private sector.

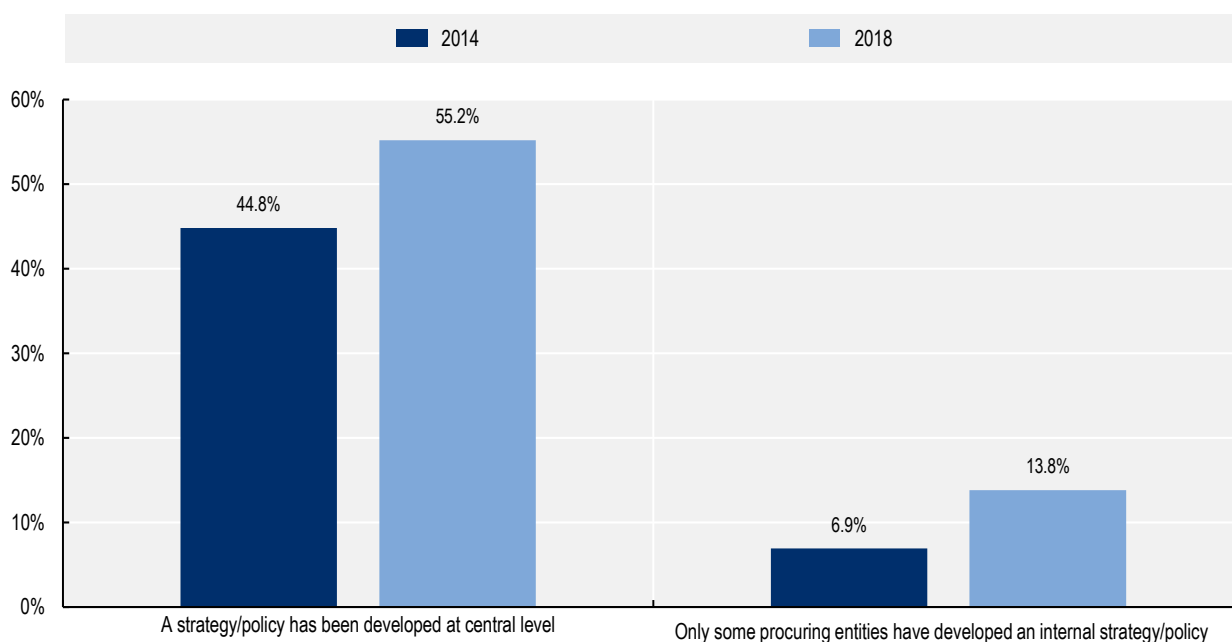
Source: SFP (2017), *Modelo de Programa de Integridad Empresarial*, https://www.gob.mx/cms/uploads/attachment/file/272749/Modelo_de_Programa_de_Integridad_Empresarial.pdf and <https://www.gob.mx/sfp/articulos/funcion-publica-lanza-padron-de-integridad-empresarial>, consulted on 5 November 2019.

While a business integrity programme, such as the one established at the federal level, would definitely be a step in the right direction for the State of Mexico, it is also important to reflect on how the verification process would work. It would be advisable that the government of the State of Mexico does not conduct any verification. Instead, SECOGEM could set guidelines on what to consider for an effective verification. International practices illustrate that policy guidance can direct companies to obtain independent third-party assurance. For example, in the UK Adequate Procedures Guidance, the Ministry of Justice suggests that organisations consider obtaining external verification or assurance of their anti-bribery system. Similarly, under the Government of Canada's Integrity Regime, in order to be reconsidered eligible for bidding following debarment, companies are required to provide certification from an independent third

party that integrity measures have been implemented. However, in Mexico there is still not a well-developed market for this kind of certification. Consequentially, SECOGEM could invite business chambers and universities to support the effort to devise a basic verification system while the market develops.

Businesses that apply an integrity programme could also be rewarded in procurement procedures. For example, the State of Mexico could advance reforms of procurement regulations to establish that, in a situation where two bids get the same score, the bid from the company with a business integrity programme gets the contract. Alternatively, during assessments based on points and percentages, companies that implemented a business integrity programme could get extra points towards the final score. In this way, the State of Mexico could leverage public procurement strategically to advance business integrity, just like 69% of OECD countries use it to promote, for example, responsible business conduct (see Figure 4.5).

Figure 4.5. Existence of a strategy or policy to pursue responsible business conduct through public procurement



Source: (OECD, 2019^[11]).

In any case, developing an agenda for business integrity should necessarily be a joint effort between the state government and the business community, with other stakeholders also considered to provide feedback (i.e., academia).

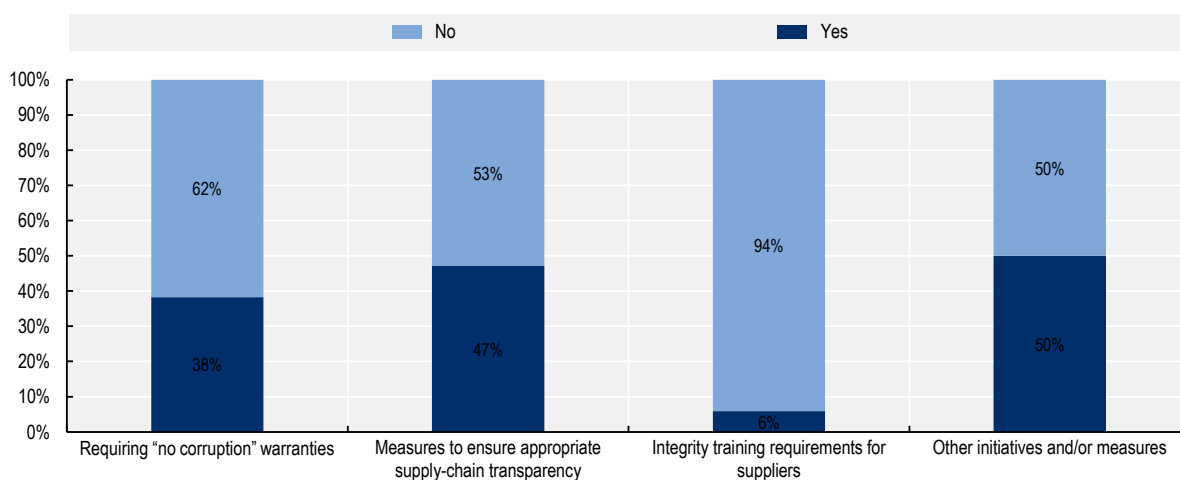
4.4.2. The Government of the State of Mexico could advance other measures to promote business integrity, such as integrity pacts, anticorruption clauses and supply-chain transparency

The OECD *Recommendation on Public Procurement* underlines the need to develop requirements for internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring. It stresses the need for procurement contracts to contain "no corruption" warranties and measures to verify the truthfulness of suppliers' commitments that they have not and will not engage in corruption in connection with the contract. According to the OECD Recommendation, such programmes

should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training for supplier personnel.

In order to preserve integrity in public procurement, it is critical to work with external actors, in particular the private sector. The results of the 2018 OECD *Survey on Public Procurement* show that, consistent with the overarching guidance provided in the key principles, there are initiatives being pursued to promote integrity among suppliers (see Figure 4.6). In Australia, for example, the Commonwealth Procurement Rules allow entities to exclude tenderers on the grounds of bankruptcy, insolvency, false declaration or significant deficiencies in the performance of any substantive requirement or obligation under prior contract. In Latvia, the contracting authority can exclude a candidate or tenderer (or their subcontractor where a value threshold of 10% of the total value of the contract is met) from participation in a procurement procedure in certain circumstances including tax debts, as outlined in the legislation.

Figure 4.6. Measures to promote integrity among suppliers in OECD and selected countries



Source: (OECD, 2019^[11]).

As mentioned in the introduction to this chapter, the public procurement cycle involves multiple actors, and therefore integrity is a requirement for all of them. Both the public and private sectors are responsible for taking measures to preserve integrity. Private companies often have their own integrity system in place, and many countries engage with private sector actors to instil integrity in public procurement. For example, standards applicable to public sector employees may be expanded to private sector stakeholders through integrity pacts.

Integrity pacts are one way of preserving the integrity of public procurement systems. They consist of agreements between the government entity offering a contract and the companies bidding for it, that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. Following OECD recommendations (OECD 2012), the State of Mexico made it mandatory for participants in tenders to sign a Certificate of Independent Bid Determination (CIBD). These signed documents are important deterrents of anticompetitive practices and bind legal representatives of firms to penalties and sanctions included in the anti-trust frameworks to increase the likelihood of competitive tenders. This instrument is a good practice and is recommended by the OECD *Guidelines on Fighting Bid Rigging*, as it makes firms' legal representatives aware of, and directly accountable for, unlawful behaviour. In order to reinforce this tool, the signed declarations of bidders could be published in COMPRAMEX or any other website aimed at promoting integrity.

As discussed before, integrity risks are present at every stage of the procurement cycle. To minimise these, the State of Mexico could consider extending the scope of CIBDs so that the bidder states that it has not engaged in anti-competitive conducts with other bidders (i.e., by exchanging bid information related to their offers or by discussing the bid strategy) and it will not engage in other forms of corrupt behaviour (i.e., bribery, providing false documents and information), turning them into far-reaching integrity pacts addressing all the stages of the procurement cycle, from bid preparation to contract execution.

Table 4.3. Examples of the use of integrity pacts in various countries

Countries	Description
Germany	An integrity pact was implemented for the construction of the Schönefeld International Airport in Berlin, a project worth EUR 2.4 billion
India	Integrity pacts are an essential part of the Draft National Anticorruption Strategy. The Central Vigilance Commission (CVC) issued Directive 008/CRD/013 on the implementation of integrity pacts as “standard operating procedures” in procurement contracts of any major government department
Indonesia	Integrity pacts were adopted and applied in local government contracts in up to 20 districts
Italy	Integrity pacts were introduced mainly at the municipal level in the Milan City Council
Korea	The Korean pact model emphasises whistleblower protection and an ombudsman system to carry out independent external monitoring
United Kingdom	Integrity pacts were adopted and implemented mainly in the defence sector

Source: (OECD, 2015^[14]).

4.4.3. SECOGEM should advance the process of reform of the social witness programme applied in the State of Mexico

Civil society oversight is a commonly used tool to further integrity in public procurement. It can not only play a role of scrutiny and monitoring, but also in increasing the transparency of government activities, and, as such, help restore public trust in government. The regulatory framework in the State of Mexico could be used to establish the obligation or opportunity for the government to consult with the public during the procurement planning process (e.g. prior to large-scale or environmentally or socially sensitive procurements). In some countries, citizens are –under clearly specified conditions and subject to signing a statement of confidentiality –permitted or encouraged to act as observers in procurement proceedings. Hence, the State of Mexico could consider empowering citizens to be officially involved in the monitoring of procurement performance and contract completion.

The Administrative Code of the State of Mexico (First Book, Title X) establishes the “social witness”, which is a mechanism to engage civil society in procurement procedures that imply serious risks of corruption or opacity due to their complexity, impact or the amount of resources involved. The social witness has the right to provide comments and opinions in procurement procedures and drafts a report at the end of his intervention with suggestions to improve transparency, efficiency, effectiveness and impartiality. Such a report must be made public on the webpage of the contracting authority. If the social witness identifies any irregular situation, he has the duty to promptly notify SECOGEM. In fact, SECOGEM keeps the record of the results of the interventions by social witnesses.

In order to engage a social witness, the procurement must entail actions or works with high social impact, a significant amount of resources, have significant influence on economic or social development, a growth strategy at the municipal, regional or state level, or a strong imperative to increase transparency. The contracting authority, when requesting the participation of a social witness, must explain which of the previous categories they are related to.

An individual or organisation interested in serving as a social witness must register with the Committee for the Registration of Social Witnesses (*Comité de Registro de Testigos Sociales del Estado de México*,

CRTSEM), composed by the Autonomous University of the State of Mexico (*Universidad Autónoma del Estado de México*, UAEM) and the Institute for Transparency and Access to Public Information of the State of Mexico and its Municipalities (*Instituto de Transparencia y Acceso a la Información Pública del Estado de México y Municipios*, INFOEM), which keeps a registry of social witnesses and makes it public on their websites (<http://www.testigossociales.org.mx/TestigosSociales/#tesSocRegis>). The registration is valid for one year and can be extended year upon year for up to four years, depending on the performance of the social witness.

The application to become a social witness should include a written request, CV, document attesting that the interested person or individual has not been sentenced for a crime, a statement indicating the following: that the interested individual is not a public official and was not so during the last year, that he has not been barred from public service and that he will abstain from participating in procurement procedures in which he may have a conflict of interest, and an attestation of participation in the training determined by the CRTSEM.

The CRTSEM has five members, who are public servants from UAEM or INFOEM:

- The President, who is appointed alternatively by INFOEM and UAEM;
- Two members appointed by INFOEM; and
- Two members appointed by UAEM.

The contracting authority requesting the participation of a social witness must establish a contract indicating the scope of his work and the corresponding compensation, in line with the quotas established by the CRTSEM (see Table 4.4 for the quotas established for 2019).

Table 4.4. Quotas paid by contracting authorities to social witnesses during 2019

Estimated procurement amount (thousand MXN)	Quota per process (MXN, excluding taxes)
From 150 000 to 1 000 000	38 077.54
From 1 000 001 to 30 000 000	44 805.19
From 30 000 001 to 60 000 000	52 231.45
From 60 000 001 to 100 000 000	59 419.26
From 100 000 001 to 150 000 000	66 127.89
From 150 000 001 to 200 000 000	74 274.10
From 200 000 001 to 250 000 000	81 461.90
From 250 000 001 onwards	88 889.33

Source: INFOEM website, <http://www.testigossociales.org.mx/TestigosSociales/#cuotas>, consulted on 6 November 2019.

Among other tasks, the social witness can participate in the drafting and review of the call for tender, clarification meetings, inspections of the sites for installation or construction, the events to receive and open bids, assessment of technical and economic proposals, award meetings and contract formalisation. Therefore, their work concentrates mainly on the tendering phase, with some participation in the pre-tendering phase, but no involvement in the post-tendering stage. This was identified as a risk in a study to take stock of the experience of social witnesses at the federal level (SFP and USAID, 2018_[15]). There is indeed an opportunity to widen the scope of the involvement of social witnesses to include the pre-tendering (i.e., reviewing market analyses, award criteria, technical specifications) and the post-tendering stage (i.e., contract management, social audits, delivery of goods, services or works, closure of the contract and payment).

As of 6 November 2019, there were 21 individuals and one organisation (a bureau of accountants) in the registry of social witnesses. The registry includes contact information and the field of procurement expertise (goods, services or public works), as well as degrees in the case of individuals, where

accountants, lawyers and public administrators prevail. During 2018, social witnesses produced 53 reports out of their engagement in procurement procedures. Interestingly, the institutions whose procurement operations were most observed by social witnesses were the Elections Institute and the State Legislature, while the entity consolidating common purchases of the central public administration, the Ministry of Finance, only used them six times (see Table 4.5).

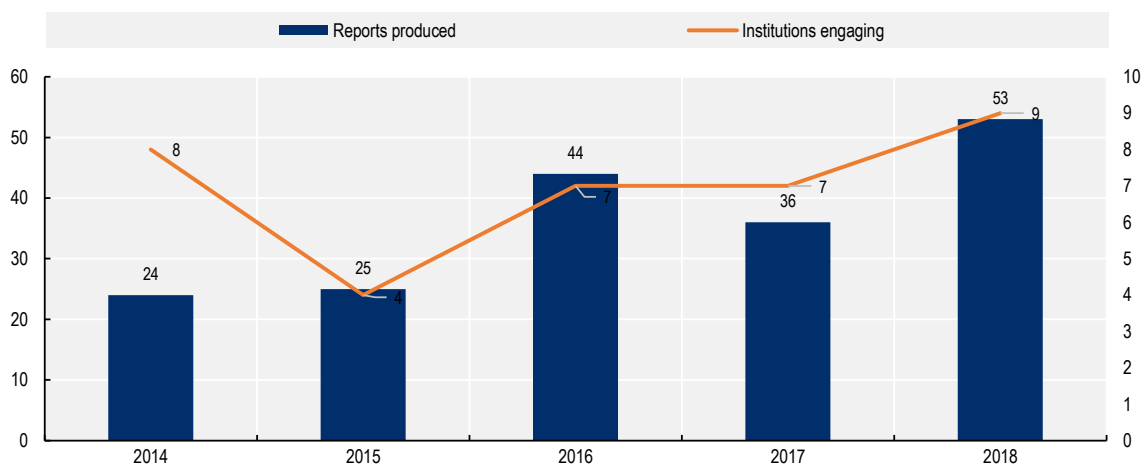
Table 4.5. Number of reports produced by social witnesses during 2018

Institution	Number of reports by social witnesses
Legislative Branch	14
State of Mexico SAI (OSFEM)	1
Ministry of Finance	6
Ministry of Social Development	1
Ministry of Justice and Human Rights	1
Integrated Educational Services of the State of Mexico	6
ISSEMYM	2
Elections Institute of the State of Mexico (IEEM)	17
Massive Transport System and Funicular of the State of Mexico (SITRAMYTEM)	5
TOTAL	53

Source: INFOEM and UAEM (2018).

In perspective, the use of social witnesses increased during the period 2014-2018 in terms of reports produced, except in 2017, and also in terms of the number of institutions engaging them, except in 2015 and 2017 (see Figure 4.7).

Figure 4.7. Use of social witnesses by number of reports produced and institutions engaging them during 2014-2018



Source: INFOEM website, <http://www.testigosociales.org.mx/TestigosSociales/#comite>, consulted on 6 November 2019.

Social witnesses are also used at the federal level, in a programme managed by SFP. Even though there is evidence of significant benefits from it, there are also opportunities highlighted by the OECD and other institutions.

The social witness programmes managed at the federal and state level have some similarities, but also important differences. First, while the federal programme is managed by the control authority (SFP), including the registration, training, and assessment of the work by social witnesses, at the state level the responsibilities are shared between UAEM, INFOEM and SECOGEM. It is said that charging UAEM and INFOEM with the registration of social witnesses is to keep them at arm's length from the institutions of the executive branch of government. However, the control institutions (SFP and SECOGEM), as a result of the nature of their work, might be better placed to assess and develop the expertise of social witnesses in terms of integrity risks. Secondly, the federal regime establishes clear thresholds over which a procurement process must necessarily engage a social witness.³ The State of Mexico regulations are rather vague in this sense, as they do not establish a clear threshold. Third, the compensations paid to social witnesses vary significantly. At the federal level, the compensation is based on the work hours required from the social witness and a payment per hour determined after a market study carried out by SFP. As their payments are fixed in UMAs, some entities consider they can be quite onerous (SFP and USAID, 2018^[15]). While a high compensation might provide an incentive for more individuals and organisations to become a social witness, it may also move public entities to avoid their participation, particularly given the lack of a clear threshold.

The differences described above give an insight into some of the reforms needed for the social witness scheme of the State of Mexico. Furthermore, the independence of social witnesses, might be jeopardised by the fact that the contracting authority, whose procurement procedure the social witness is observing, hires and pays him. The social witness might feel intimidated or uncomfortable criticising the job of an entity that is hiring and paying him. The entity might even apply some direct or indirect pressures to hinder the witness' job, for example, delaying their payments. The budgetary pressure that the social witness programme may exert may also lead contracting authorities to avoid them in an attempt to cut costs. In order to prevent these situations and strengthen the independence of social witnesses, reforms could be advanced so that social witnesses are hired by SECOGEM or INFOEM, rather than by the contracting authority.

In addition to setting clear thresholds for the engagement of social witnesses, there could be random appointments for specific procurement procedures. These could include not only public tenders, but also restricted invitations and direct awards, where social witnesses could review, for example, the justification to carry out a non-competitive process or to modify contracts during the execution of works and services.

In the past, the OECD has noted that social witnesses at the federal level may be quite knowledgeable about the engineering of public works or specific markets, but not about integrity risks (OECD, 2018^[4]). The State of Mexico should be aware of this risk and provide permanent and systematic training for social witnesses. SECOGEM, with its expertise on control activities and public ethics, could lead the work to prepare tailored training programmes for social witnesses to be able to identify and recommend actions to mitigate integrity risks. Another weakness observed at the federal level is that the same social witness may participate in several processes involving the same procuring institution, creating the risk of familiarity with procurement officials and business agents. SECOGEM, INFOEM and UAEM should strive to address this risk, which is exacerbated at the state level by the limited number of social witnesses, by rotating social witnesses so as to avoid this familiarity, which may lead to conflicts of interest.

The Annual Report 2018 by CRTSEM concludes that even though there are a growing number of applications to become social witness, there are also a significant number of social witnesses who quit or did not request the extension of their registrations (INFOEM and UAEM, 2018). The report does not provide an explanation for these trends and, therefore, INFOEM, UAEM and SECOGEM could work together to analyse and explain this behaviour. One potential explanation might be that social witnesses do not perceive that their work is appreciated or at all useful. In this case, the three institutions could launch a campaign to widely communicate the programme and the benefits it has delivered for the State of Mexico. As part of this campaign, there could be an annual report or a website to follow up on feedback from social witnesses and the improvements stemming from their suggestions.

Box 4.8. The reform on social witnesses being prepared by the State of Mexico

The State of Mexico, through SECOGEM, is preparing a reform on the functioning of social witnesses, which was drafted after consultation with UAEM and INFOEM. The reform proposal is under analysis at the Ministry of Justice and Human Rights (*Secretaría de Justicia y Derechos Humanos*), which has to review and clear it before sending it to the State Legislature.

The reform proposes the creation of two committees, one for the registration of social witnesses, which would incorporate SECOGEM alongside UAEM and INFOEM, and another to appoint social witnesses, which would be led by SECOGEM and incorporate the participation of either business chambers or the Citizen Participation Committee of the SAEMM. The registration committee would call a public process to recruit social witnesses annually or depending on need.

The reform also aims to strengthen the profiles of social witnesses by requiring a minimum experience of five years dealing with procurement matters. This need was identified by SECOGEM as it observed that the reports by social witnesses often do not make any relevant recommendations and quite frequently are “copy-paste” versions of previous reports. However, SECOGEM has no authority to sanction social witnesses in such cases.

Likewise, the reform would require social witnesses to prepare interim reports in each stage of the procurement process, in addition to the final report.

In summary, the reform would align the State of Mexico practice for social witnesses with the federal programme.

Source: Information provided by SECOGEM.

4.4.4. The State of Mexico could explore alternative mechanisms for civil society engagement in procurement procedures and public works, such as integrity monitors, social contracts and social participation frameworks

As opposed to social witnesses, who concentrate on one phase of the cycle, the integrity monitor is particularly relevant for public works and follows the entire process, including tendering, contract management, fiscal oversight, records compliance and onsite construction monitoring. Corruption and mismanagement can stem from lack of information and internal communication. An integrity monitor following the entire process thus reduces such risks. The State of Mexico could explore the possibility of nominating an integrity monitor who can follow the entire procurement cycle for the next major work of infrastructure, as used during the Tappan Zee Bridge Project in the United States (see Box 4.9).

Box 4.9. The integrity monitor in the Tappan Zee Bridge Project, New York State, United States

In order to counter the corruption risks associated with the Design-Build model of the Tappan Zee Bridge, it was decided to retain an independent procurement integrity monitor for the project. The Governor's office and the New York State Thruway Authority (NYSTA) determined to address the tension between the need, on the one hand, for confidentiality in the evaluation of the proposals and negotiations with the proposers versus, on the other hand, the need for transparency in the decisions surrounding the expenditure of public funds, by having an independent firm, outside of the procurement process itself, monitor compliance with the controls governing that process.

The objectives of the integrity monitor included process evaluation, process enhancements and compliance monitoring. In order to achieve these ends, it was entitled to: i) obtain and review selected documentation relating to integrity and security of the procurement process; ii) make recommendations for enhancements of the process to appropriate personnel; iii) perform monitoring through: unannounced attendance at meetings selected on a random basis; review of documents produced by the procurement process; interview with those involved in process; physical observation of compliance with all critical security/integrity-related controls; communication with appropriate personnel as to any issues found so as to facilitate immediate remediation; and iv) prepare a final report.

Source: Thacher Associates, "Tappan Zee Hudson River Crossing Project: Report of the Independent Procurement Integrity Monitor", www.newnybridge.com/documents/int-monitor-report.pdf (consulted on 6 November 2019).

There are additional mechanisms for more profound engagements that the State of Mexico could explore, such as community monitors, social contracts, and social participation frameworks (OECD, 2015^[14]).

- Community monitors observe progress and the quality of public works. They can be useful for creating trust among stakeholders, but need to be properly trained.
- Social contracts are designed to clarify and capture stakeholder commitments. These are co-signed by the leading agency and representatives of users, contractors, local governments, and congressmen during the implementation phase of public works. The contracts reflect the agreed roles that emerge from dialogue processes. They illustrate not only the adherence of the leading agency to social participation principles, but also the contributions of each stakeholder towards public works, as well as roles and behaviours of each party that contribute implicitly to fighting corruption and to enhancing the governance environment. Social contracts can also be complemented with bilateral agreements between the leading agency and the parties.
- A social participation framework (SPF), when applied, is set up from the outset of a public works project. The SPF is used during project preparation and continued throughout its cycle. The SPF contemplates three components: participation, communication, and transparency and accountability. The overall main objectives of the SPF are: i) guaranteeing a broad participation of the different stakeholders aiming at, amongst other objectives, establishing their roles and responsibilities in realistic and fair terms; ii) creating awareness of the importance of expenditures and mechanisms for maintenance to preserve the project's condition; iii) disseminating the project's objectives and achievements; and iv) increasing the public works transparency and accountability throughout their cycle.

Currently, the State of Mexico applies social control techniques (*contraloría social*) through a Control and Surveillance Citizen Committee (*Comité Ciudadano de Control y Vigilancia*) where citizens volunteer to monitor and prevent corruption in public works.

4.5. Review, challenge and remedy system

4.5.1. The State of Mexico could make challenge processes more accessible for bidders by allowing electronic filing and providing the necessary information in tender documents

An accountable public procurement system provides bidders with the opportunity to claim for the review of procurement processes and challenge award decisions, as established in the *OECD Recommendation on Public Procurement* (OECD 2015b).

To be effective, a remedy system must be well designed, capable of offering protection, accessible to suppliers, uncomplicated, inexpensive and efficient in processing cases. Any stakeholder, including unsuccessful tenderers, who believe that the public procurement process has been conducted in violation of relevant laws must have access to effective review and remedy mechanisms. These mechanisms build confidence in the system among businesses. They also increase the overall fairness, lawfulness and transparency of the procurement procedure.

It is important for suppliers to have remedies available to enforce procurement rules. If suppliers have remedies, they can be motivated to monitor procurement procedures and require that procurement rules be followed so that their chances of being awarded a contract are not unlawfully diminished. Thus, remedies both enhance the lawfulness of procedures and encourage competition. In order for remedies to be effective, they must be:

- Clear and straightforward (i.e. understandable and easy to use);
- Available to all economic operators wishing to participate in a specific contract award procedure without discrimination, in particular on the grounds of nationality; and
- Effective in preventing or correcting instances of unlawfulness on the part of suppliers or public authorities.

Box 4.10. The OECD Recommendation on Public Procurement (accountability)

The Council:

XII. RECOMMENDS that Adherents apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes.

To this end, Adherents should:

iii) Handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrongdoing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.

Source: (OECD, 2015^[2]).

The Law on Public Procurement of the State of Mexico and its Municipalities (Articles 90 to 94) and the Administrative Code of the State of Mexico (Twelfth Book) establish the administrative challenge called *instancia de inconformidad* (INI). INI is the procedure to challenge acts or decisions in a public tender or restricted invitation, including the call for tender, the event to present and open bids, inspections, clarification meetings, the bid assessment and the award. SECOGEM (General Directorate for Administrative Responsibilities) is in charge of processing the corresponding INI.

The INI should be filed in written form within 10 working days of the publication of the award decision and it should include:

- The name of the person who files it;
- The address in the State of Mexico to receive notifications;
- The reason for the challenge, tender or restricted invitation number, and if applicable, the name of the work, good or service awarded;
- The date of the award event or publication;
- Description of the events supporting the challenge, under oath;
- If possible, the legal instruments trespassed;
- Evidence; and
- The request to suspend the process being challenged, if applicable.

Although filing an INI in electronic form is anticipated in the Law on Public Procurement of the State of Mexico and its Municipalities, in practice the procedure must be completed in written form. By allowing bidders to submit INIs electronically, the State of Mexico could make the challenge procedure more accessible and less demanding in terms of administrative burden.

The INI can only be filed by the bidders participating in or invited to the procurement procedure. They can request the suspension of the award if they provide a guarantee for damages incurred on public finances. The guarantee must be equivalent to the amount of the contract. However, the awarded bidder can also provide a guarantee (*contragarantía*) for the same amount to avoid the suspension. In the case that an INI is filed, the contracting authority may request the suspension of the award if it considers that failing to do so will cause more damages to the public finances.

Once SECOGEM has all the required documents and information, a resolution will be issued within 30 working days. Resolutions are not public. 51 INIs were filed in the period 2016-2018, which is 17 per year on average, and 14 during 1 January-5 April 2019. It would seem as the number of INIs during 2019 will be higher than the average of the previous three years, but still low relative to the number of procedures undertaken. There is not enough information available to provide an explanation for the number of INI, but the State of Mexico could carry out focus groups with suppliers to better understand whether the process is accessible enough. To put the situation in context, lack of complaints is not the norm in Latin America. Two recent reviews carried out by the OECD in Colombia and Peru found that, in both countries, public procurement complaints per year numbered in the hundreds.

After the resolution, there is still a second instance before the Tribunal of Administrative Justice of the State of Mexico (*Tribunal de Justicia Administrativa del Estado de México*, TJAEM), in case the person who filed the INI is not satisfied. This second challenge must be filed in written in the corresponding regional court (*Sala Regional*) of the TJAEM within 15 days of notification of the resolution on the INI.

The State of Mexico provided the OECD with templates of calls for tender from several auxiliary bodies, namely CAEM, IMIFE, ISEM, SEIEM and SITRAMYTEM. Although the wording slightly differs, all the templates include a brief section indicating to bidders that they may challenge award decisions through an INI filed before SECOGEM or the OIC. However, such sections could be more precise for bidders, for example, by describing the required information that INIs should include or at least by referring bidders to a website with further information. Tender documents and award statements (*actas de fallo*) could be more explicit and describe more thoroughly the alternatives for bidders to challenge award decisions.

The possibility to challenge award decisions through INI is also communicated by SECOGEM through brochures and posters, which are distributed and announced in the ministries and auxiliary bodies that carry out procurement activities, as well as in SECOGEM's website (www.secogem.gob.mx/inconformidades).

4.5.2. The State of Mexico could explore non-adversarial methods for conflict resolution during the execution of contracts providing review alternatives that might be less costly and burdensome than traditional legal means

Currently, SECOGEM, specifically the General Directorate for Investigations, is in charge of receiving and managing reports and complaints by suppliers relative to lack of compliance in contracts by ministries and auxiliary bodies. The regulatory framework for public procurement in the State of Mexico does not anticipate alternative (non-adversarial) methods for dispute resolution during contract execution. These can be good alternatives to the traditional legal mechanisms as they can be less burdensome and provide faster solutions. The procurement regulations in the State of Nuevo León, for example, do anticipate alternative methods (see Box 4.11).

Box 4.11. Alternative dispute resolution mechanisms during contract execution in Nuevo León

According to Nuevo León's public procurement legislation, contracting parties can agree to use negotiation or mediation as a dispute settlement mechanism to resolve their distinct interpretations of the execution of contracts. Such dispute settlement mechanisms may be agreed upon in the contracts themselves, or in an independent agreement. In any case, dispute settlements must agree to the following:

- The stage of negotiation or mediation, as well as an agreement of the time period when this negotiation will take place;
- the parties agree to conduct bargaining or mediation procedures in good faith;
- the applicable laws shall be those of the state;
- negotiations or mediations must be carried out in Spanish;
- the agreement resulting from the negotiation or mediation shall be binding to both parties.

The parties to a contract may also agree to an arbitration procedure to resolve disputes about compliance with the contract in terms of the provisions of the Law of Alternative Methods for Conflict Resolution of the State of Nuevo León. The use of negotiation, mediation or arbitration are not mutually exclusive, nor do they restrict the actions of the parties in cases of possible invalidity of acts of authority, violation of human rights or crimes. The arbitration procedure may be agreed upon in the contract itself or in an independent agreement. With the alternative non-adversarial method (negotiation or mediation), one or more service providers intervene in a dispute, without the authority to decide on the basis of the agreement that could be reached. These providers are not permitted to issue a judgment or sentence, but will facilitate communication between the participants in the conflict. The purpose of the process is that these providers take control of the case and arrive at a solution.

The conciliation and the mediation processes in Nuevo León have several stages. They generally start with the two parties trying to resolve an issue among themselves. If that does not work, a third party is brought in, but its role and authority can vary. If the disagreement continues, the matter can be brought to arbitration.

For arbitration in public works, the alternative non-adversarial method, regulated by the Code of Civil Procedures of the State, is applied. In this case, one or more providers of alternative methods (who are called arbiters) issue a definitive and mandatory award for the participants in the conflict, in order to finalize it.

Despite the legal possibility to apply such alternative methods, there is no data available about the frequency of cases going to mediation or arbitration relating to issues arising during the execution of public procurement contracts. The alternative methods have been used rarely, according to government information. Hence, the effectiveness of the process is unknown, as is any impact these procedures may have had on works in progress.

Source: (OECD, 2018^[7]).

In Peru, there is an institutional arbitration system managed by the Government Procurement Supervising Agency (*Organismo Supervisor de las Contrataciones del Estado*, OSCE), which specialises in dispute settlement in public procurement. It is autonomous and governed by both its own regulations and by the legislative decree establishing norms for arbitration (see Box 4.12).

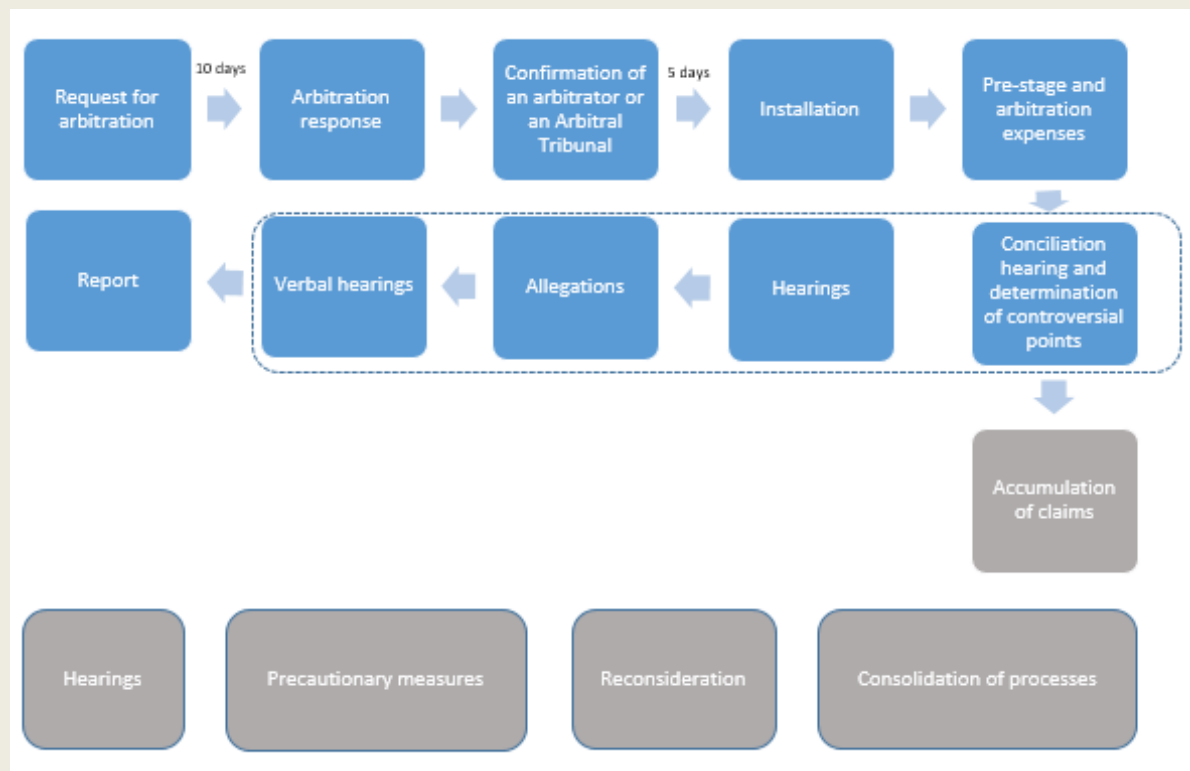
Box 4.12. Arbitration in public procurement in Peru

The SNA-OSCE (National Arbitration System) is responsible for organising and administering institutional arbitration proceedings in Peru, with the objective of settling disputes that occur during the execution of contracts, in accordance with the regulatory framework between contractors and public entities. SNA-OSCE only organises and administers those arbitration proceedings where parties mutually agree to, as well as those that by legal mandate should be administered, in accordance with the following assumptions:

- If the contract does not include an arbitration agreement, the clause referring to institutional arbitration will refer to SNA-OSCE as the body responsible for such an assignment;
- If the arbitration agreement does not make reference to a determined arbitration institution, it is understood that the arbitration shall be carried out under the responsibility of SNA-OSCE;
- In case the arbitration agreement indicates that the organisation and administration of the arbitration shall fall to any of the functional authorities of the SNA (National Arbitration System), it will be understood that the SNA-OSCE shall be in charge of such assignment.

Additionally, there are arbitration institutions in the private sector that also administer and organise institutional arbitration.

The figure below illustrates how the arbitration proceedings work:



Source: (OECD, 2017^[16]).

If the State of Mexico were to explore alternative mechanisms for dispute resolution during contract execution, it would have to clearly define its role in the mediation, conciliation and arbitration processes. The State of Mexico would have to clarify whether it would purely be a supervisor or also a mediator. Then,

information about the recurrence to mediation and conciliation would need to be gathered by a unit within government (i.e., within SECOGEM). Furthermore, the government could benefit from keeping a list of unresolved cases that go to court, as a proxy of the effectiveness of alternative methods. Such alternatives would also be useful for infrastructure as public works contracts tend to be more complicated, given the risks involved in such projects. In addition, financial commitments are usually significantly higher in public works contracts.

4.6. Risk management and internal control to identify and address integrity risks in public procurement

Public procurement systems are essential for public organisations to achieve their objectives effectively while making best use of the scarce resources available. The complexity of these systems has been reduced thanks to the incorporation of computer systems, which can range from a simple electronic dashboard system to more advanced transactional ones. Electronic processing of procurement processes has gained in efficiency by using uniform regulations for various organisations, improving speed, simplifying procedures and securing transparency that facilitates both internal and external control of processes.

The State of Mexico has made efforts to improve the efficiency and transparency of its procurement system through administrative regulation, policy guidelines, and the implementation of an e-procurement system. The Ministry of Finance administers COMPRAMEX, a tool that improves the transparency of calls for tender worth millions of pesos per year in goods and services that the State of Mexico requires for the fulfilment of its objectives, plans and policies. Meanwhile, the control, risk management and auditing of public procurement has made progress thanks to the operation and support of SECOGEM, and to the activity of the OICs regarding control and auditing. However, there is no clear and direct link between the management of the procurement system and the internal control function, understood as a process and a system aimed at achieving the objectives of the Government of the State of Mexico. In other words, risk management should still be linked with public procurement in each ministry or body and the internal control system should be implemented comprehensively in the respective departments. This separation affects a series of key elements that should be treated as a clear opportunity for improvement.

The OECD Council has made recommendations on public procurement, stressing the need to promote transparency, integrity, accessibility, participation, efficiency, use of technologies, effectiveness, risk management, accountability and the integration of public procurement with public finance. In addition, the Council has made recommendations concerning public integrity, focused on the highest level of commitment on the part of staff to integrity, institutional responsibility, the strategic approach to risk mitigation, standards of conduct and a culture of integrity, leadership, meritocracy and transparency, a framework of risk control and management, external oversight and control and stakeholder engagement.

Public procurement represents a quarter of the budgetary resources of the State of Mexico and has a decisive impact on the delivery of services to the state's population and on citizen satisfaction. Oversight of the system and its operations is a duty of the state authorities and a real requirement when it comes to accountability to citizens. In this framework, the internal control system, risk-based management and the role of internal audit are central aspects of any effective effort to implement a governable, efficient and transparent public procurement system.

The State of Mexico can adopt the recommendations of the OECD Council on public integrity and public procurement, by introducing legal reforms and implementing public policies that facilitate inter-institutional co-ordination and the creation and use of effective tools, digital and otherwise, designed to actively and productively fulfil the functions of management and control of public procurement.

Taking into account the OECD recommendations, this section addresses the challenges and opportunities facing the State of Mexico in terms of control, risk management and auditing applied to public procurement.

The *OECD Recommendation of the Council on Public Procurement* is a fundamental guide that emphasises supervision and control, co-ordination and sufficiency of resources.

Box 4.13. The Recommendation of the Council on Public Procurement (accountability and risk management)

The Council:

XII. RECOMMENDS that Adherents apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes.

To this end, Adherents should:

iv) Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are coordinated, sufficiently resourced and integrated.

The Recommendation also emphasises the importance of controlling the management of the entire procurement cycle based on risk.

XI. RECOMMENDS that Adherents integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle.

To this end, Adherents should:

i) Develop risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.

ii) Publicise risk management strategies, for instance, systems of red flags or whistle-blower programmes, and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.

Source: (OECD, 2015^[17]).

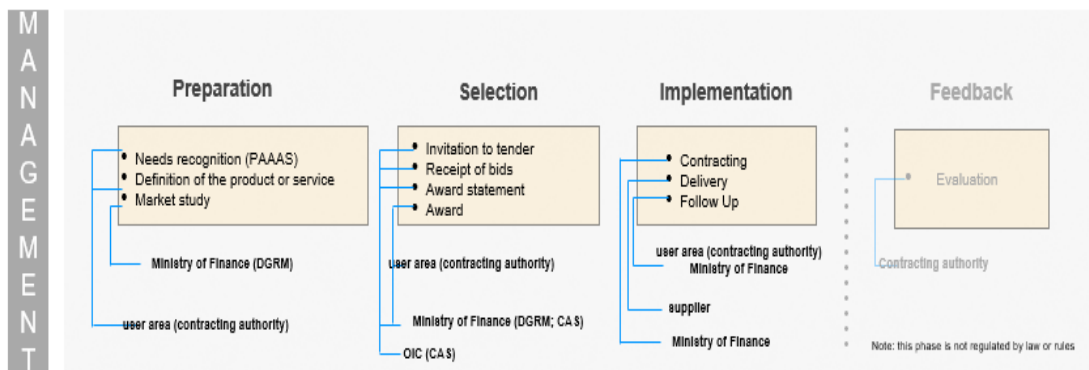
The State of Mexico has taken steps in recent years to standardise and modernise the state procurement system, with a special emphasis on the activity of the Ministry of Finance and the General Directorate of Material Resources (DGRM), while also strengthening the institutional and the state regulatory framework in the area of control, supported in particular by SECOGEM and its OICs in the ministries and auxiliary bodies. Many of the reforms concern the activity and co-ordination of these institutions of the Government of the State of Mexico.

COMPRAMEX is an e-procurement system that is still operating on a limited basis in terms of transactionality and that records the total resources allocated to procurement procedures. The DGRM has more than 500 officials dedicated to operating the system, which provides a concentration of the purchasing power of the State of Mexico and that decisively contributes to implementing its policies of reducing public spending, austerity and efficiency. However, as mentioned previously, auxiliary bodies and municipalities can also carry out their own contracting processes when they do not voluntarily choose to do so through the DGRM.⁴ Furthermore, procurement financed through federal funds follows different

procedures from those financed through state funds, which adds complexity to the set of operations involving the procurement system.

The following figure summarises the main actors in the management of the procurement process for a public tender managed under the centralised scheme (i.e., through the DGRM).

Figure 4.8. Main participants in the management of the public procurement process under the centralised scheme



Internal controls also help organisations achieve their most important objectives and maintain and improve their performance. The Government of the State of Mexico is implementing an internal control system, following the approach of the Integrated Internal Control Framework (*Marco Integrado de Control Interno*, MICI), based in turn on the Committee of Sponsoring Organizations of the Treadway (COSO), which allows organisations to effectively and efficiently develop internal control systems that adapt to their contexts, mitigate risks to acceptable levels, and support decision-making and governance. COSO helps to design and implement an effective internal control system, whether for private or public institutions. This should be applied and implemented throughout the state administration.

The Integrated Framework allows organisations to focus on three aspects of internal control:

- **Operational objectives:** this refers to the effectiveness and efficiency of the operations carried out by the organisation, including the objectives of operational and financial performance, and the protection of assets against losses;
- **Reporting objectives:** this refers to internal and external financial and non-financial reporting and may encompass reliability, punctuality, transparency or other terms established by regulators, recognised standard setters, or organisational policies; and,
- **Compliance objectives:** aimed at compliance with the laws and regulations to which the organisation is subject.

Box 4.14. The five integrated components of internal control (adapted from COSO)

Control environment. The control environment is the set of standards, processes and structures that provide the basis for implementing internal control throughout the organisation. The board and senior management set the tone at the top of the organisational hierarchy on the importance of internal control, including expected standards of conduct, while the management reinforces expectations at different levels of the organisation.

Risk assessment. Each entity faces a range of risks from external and internal sources. Risk is defined as the possibility of an event occurring and negatively impacting on the achievement of objectives. Risk assessment involves a dynamic and iterative process to identify and assess risks to the achievement of objectives. Risk assessment forms the basis for determining how risks will be managed. A precondition for risk assessment is the setting of objectives at different levels of the organisation.

Control activities. Control activities are the actions established through policies and procedures that help to ensure that management directives are carried out to mitigate the risks to achieving objectives. Control activities are carried out at all levels of the entity, at several different stages within business processes and in the technological environment. They may encompass a range of manual and automated activities, such as authorisations and approvals, verifications, balances and reviews of organisational performance.

Information and communication. Information is necessary for the entity to carry out its internal control responsibilities in support of the fulfilment of its objectives. Internal communication is the way that information spreads throughout the organisation, flowing up, down and through the entity. It enables staff to receive a clear message from senior management that control responsibilities must be taken seriously.

Monitoring activities. Evaluations are used to determine if each of the five components of internal control are present and operating correctly. Evaluations can be continuous and integrated into the processes, or separate and carried out periodically, varying in scope and frequency. The findings are evaluated based on standards, and any deficiencies are reported to management and the board of directors, as appropriate.

Source: COSO.

The most recent regulatory milestones in the implementation of the Integrated Framework were the publication, on 14 November 2016 in the Government's Official Gazette, of the Administrative Manual in the field of Internal Control for Ministries and Auxiliary Bodies in the Public Administration of the State of Mexico (*Manual Administrativo en materia de Control Interno para las Dependencias y Organismos Auxiliares en la Administración Pública del Estado de México*), updating the state regulatory framework on internal control; the publication, in the Federation's Official Gazette, on 3 November 2016, of the Agreement by which the Provisions and the Administrative Manual of General Application in the Field of Internal Control are issued" (*Acuerdo por el que se emiten las Disposiciones y el Manual Administrativo de Aplicación General en Materia de Control Interno*); which is the predecessor in the Federation of the "Agreement by which the Minister of Control issues the provisions and the administrative manual on internal control for ministries and auxiliary bodies of the Government of the State of Mexico" (*Acuerdo por el que el Secretario de la Contraloría emite las Disposiciones y el Manual Administrativo en Materia de Control Interno para las Dependencias y Organismos Auxiliares del Gobierno del Estado de México*), published on 4 September 2017. This is an ongoing implementation process, which has completed the regulatory stage and has put in place the structures for the operation of the system in ministries and auxiliary bodies. The process of implementing the regulations and technical guidelines has begun and, in

some cases, the application of the model is underway. From a general perspective, the internal control system of the ministries and auxiliary bodies presents different levels of development.

An important component for the implementation of internal control in the State of Mexico is the existence of a State Development Plan, together with institutional, sectoral, and special programmes, which, although not part of the internal control system, are necessary pre-existing conditions for its operation. Without defining clear objectives for state performance, internal control cannot function properly. Likewise, the State of Mexico Government is subject to laws that define public values, the general principles of administration, and desirable and undesirable behaviours. These include the General Law of Administrative Responsibilities and the General Law of the National Anticorruption System, published on 18 July 2016, as well as the Law of the Anticorruption System of the State of Mexico and Municipalities and the Law of Administrative Responsibilities of the State of Mexico and Municipalities, published on 30 May 2017.

A valuable factor of the implementation of the Institutional Internal Control System (*Sistema de Control Interno Institucional*, SCII) is the role of SECOGEM, which enables the organisation of internal control and its process of implementation, through proposal, advisory, training and co-ordination activities. Implementation of the new system in ministries and auxiliary bodies has been supported by SECOGEM, which has provided the tools for regulation, diagnosis and management of the system to the institutional heads and management bodies, and has supported them through the OICs. The OICs are units located in each of the ministries and auxiliary bodies, and are for internal auditing as well as processing, verification and resolution of cases of administrative responsibility established by law.

As mentioned above, from a general perspective, the internal control systems of the ministries and auxiliary bodies present different levels of development. Despite the fact that the State of Mexico still lacks information of demonstrated and consolidated quality on the level of maturity of the various elements of the system in public institutions, there is a certain consensus that in general the most developed element is the so-called Control Environment and that the least developed elements are Risk Management, Control Activities, and Information and Communication. This situation is typical of an implementation process in its early phases, which involves technical complexities and initial resistance.

Risk assessment is central to COSO, since it focuses on the importance of prevention, anticipating the probability of internal and external events that affect the achievement of organisational objectives, and establishing measures to avoid, mitigate or accept such adverse events. Every public and private entity has to confront various types of risk. COSO defines risk as the possibility of an event occurring and negatively impacting on the achievement of objectives (COSO 2013 Internal Control Framework). From this angle, risk assessment involves a dynamic and iterative process to identify and assess them. The risks of achieving these objectives throughout the entity are considered in relation to established risk tolerance. As such, risk assessment forms the basis for determining how risks will be managed in order to achieve the intended objectives. Regarding public procurement, the internal control system and risk management in particular are vital elements for good performance, but their level of implementation of the internal control system and risk management are tasks that remain pending.

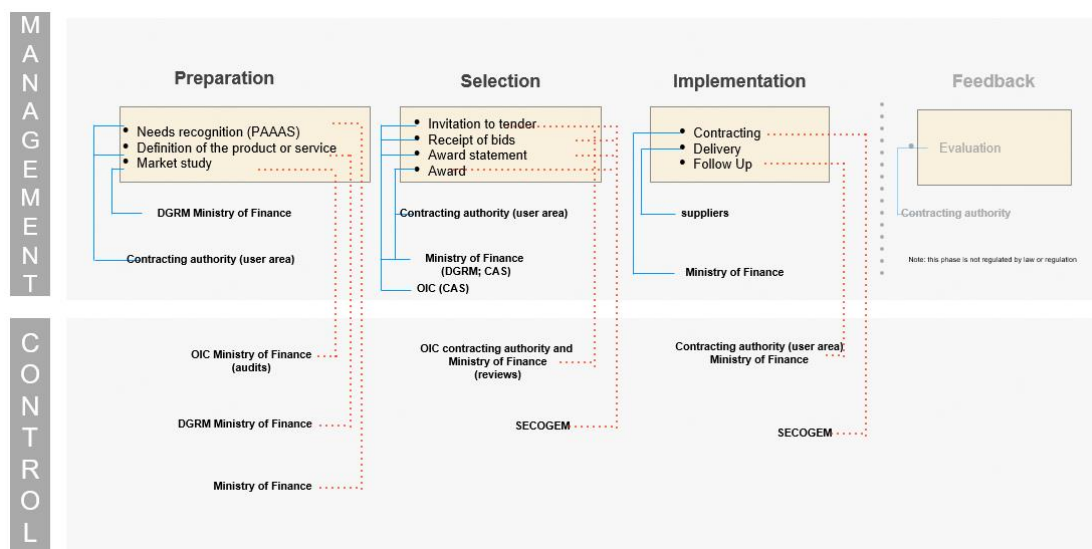
The internal audit function of the State of Mexico Government is carried out by the OICs, which functionally and technically depend on SECOGEM, providing services to each ministry and entity at the state level, according to mainly the LOAPEM and the Internal Bylaws of SECOGEM, which are in force since 22 November 2018. The OICs are autonomous in the execution of their tasks and belong to SECOGEM's functional structure. The government's internal audit function operates as an internal-external audit structure, which both supports the institutional heads and depends on SECOGEM. This design has advantages from the perspective of independence and co-ordination, as well as disadvantages with regards to collaborating and creating trust with the rest of the administration. Regarding public procurement, OICs carry out routine control tasks as part of contracting processes and auditing actions to groups of procurement processes, which in itself generates control risks, as will be explained later.

As mentioned, the institutional internal control system of the Government of the State of Mexico is still in the process of being implemented, and includes a series of actors with roles and responsibilities of various kinds, both at the state level and at the institutional levels. This set of factors means that, despite the progress made, especially at the regulatory and institutional level, significant challenges still remain for the governance, efficiency and transparency of the public procurement system. These challenges are closely related to the vision and culture of control, the effective incorporation of risk management tools into procurement and the design and practices of internal audit and control in the State of Mexico.

4.6.1. The Government of the State of Mexico should go beyond mere compliance in its internal control tasks to identify and mitigate risks of corruption and fraud

As has been observed, about 25% of the State of Mexico's budget is allocated to public procurement, which is executed by 108 public institutions of the State Government, with the procurement of certain categories of goods and services used throughout the public administration being concentrated in the DGRM, while others are purchased directly by the ministries and auxiliary bodies. As in other states in Mexico, state regulations apply to procurement operations that are financed exclusively by state or municipal resources, while federal regulations apply when any amount of federal funds is used to pay for acquisitions. There is both a centralised and decentralised scheme in the state public administration that adds complexity to co-ordination and control operations. Regulatory and institutional complexity and the administration of significant annual volumes of resources are risks inherent to the function of the Ministry of Finance, and constitute a strategic risk factor for the Government of the State of Mexico. A simplified view of the procurement process and the agents of control, according to current legislation, are set out in the figure below.

Figure 4.9. Management and control of procurement procedures under the centralised scheme



According to figures from the Ministry of Finance, during the period 2016-2018, the procurement of goods and services through public tender by the DGRM amounted to 52% in terms of the number of contracts, and 63% in terms of the value of such contracts; in 2019 they amounted to 78%. This is a positive sign of progress and shows that it is possible for public tenders to become widespread as the favoured procurement method. However, according to the data provided by the Ministry of Finance, a significant number of public tenders and restricted invitations are declared void due to lack of qualified offers. This may be due to weak communication between the procurement system and the market, or a sign of the risk of abuse of non-competitive methods. For example, in 2018, 17.24% of restricted invitations for the

purchase of goods were declared void due to a lack of acceptable bids, while for services this occurred in 10.34% of cases. Considering that public tendering is the method that best guarantees the efficiency of the result and transparency and control of the process, and that e-procurement systems can help to achieve the objectives of austerity and greater efficiency, it is necessary for the Government of the State of Mexico to take measures to ensure that these results become more reliable and sustainable over time.

Access to information on the system by external and internal actors is still of low significance to control. While COMPRAMEX can be said to be in line with state regulations, the system is not fully publicly accessible to suppliers or relevant stakeholders, other than public servants. It is still no more than an electronic whiteboard that does not permit integration, and offers only restricted access to the data it contains, even by other state institutions. This electronic system is not accessible for the broader spectrum of stakeholders who would provide improved and effective control of procurement processes. The limited information available to procurement system participants (suppliers, market, civil society, public decision-makers, researchers), including to public servants with financial, legal and audit control functions, weakens decision-making and internal and external controls. Strengthening access by control authorities to procurement information may require establishing agreements between, on the one hand, the Ministry of Finance and other spending agencies and, on the other hand, SECOGEM.

A related aspect that weakens control over procurement is the poor level of interaction with the market, which is necessary to understand the value it brings to government performance. In the best case scenario, social witnesses in the State of Mexico may eventually acquire the capacity to observe sectoral purchases, but it is unlikely they will do so in relation to risks of corruption and fraud. This weakness of control by external actors means that internal control and auditing should play a more significant role in preventing risks, especially risks to integrity.

COMPRAMEX is making progress in its coverage, which is a step in the right direction, but nevertheless in 2018 COMPRAMEX registered about 40% of procurement expenses, leaving approximately 60% still in the hands of auxiliary bodies. Even in ministries, where control is usually stronger than in auxiliary bodies, evaluations of the level of maturity of the internal control system are not applied to the procurement system itself, but only as a possible unit to be considered in the identification and evaluation of risk together with others, as occurs with the DGRM in the Ministry of Finance. On the other hand, an examination of a sample of documents on risks and institutional risk management 2018-2019 suggests that in general they do not include public procurement processes in particular. Exceptionally, some identify risks arising from inadequate procurement processes, establishing formal corrective and mitigating measures that do not address the cause of the problem or that have little effective impact. Out of a sample of administrative audits carried out on procurement by DGRM in 2017 and 2018, it is clear that they are aimed at formal compliance with the legal provisions and in almost all cases yielded no findings, which implies that they are not being useful to spot management failures in the procurement cycle (from planning to the delivery of goods and services). The strong administrative focus of procurement management and audits in the State of Mexico may also be affected by the “control paradox.” This describes the cultural process by which compliance-focused organisations comply with orders and rules out of fear of sanction, which generates a dynamic of mistrust that reinforces the controls, thereby making acts of control mere formalities completed only out of the need to comply. In this sense, procurement officials may be more concerned with mere normative compliance than with creating value for money.

The Government of the State of Mexico should consider that public procurement is one of the government activities most exposed to the risks of corruption and fraud. The governance of the procurement function should also advance effective internal control and integrity, balancing control practices with organisational dynamics that foster responsible autonomy. It would also be advisable for the State of Mexico to implement cross-cutting international standards and recognised tools for internal control, risk management and auditing, as well as international commitments for the prevention of corruption in public procurement, such as those set out in the *United Nations Convention against Corruption*, signed in Mérida in 2003, and to incorporate specific tools that make it easier for managers and supervisors to identify risks of corruption

and fraud in their everyday tasks. In an initiative to increase trust in the public sector, the State of Mexico should make an additional effort and implement good internal and external control practices, beyond what is strictly required by law. Decision-making and dissemination of reforms, spending efficiency, and control are central to defining the expectations of the procurement system for citizens.

4.6.2. The Government of the State of Mexico should deepen the implementation of institutional internal control systems, especially in the areas relative to public procurement

Public procurement is more efficient and better aligned to the legal framework when the organisations participating in it have strong internal control systems that are based on risk management. The Government of the State of Mexico is implementing an institutional internal control system throughout the administration, following the approach of the Integrated Internal Control Framework, based on COSO, which has the following five elements: Control Environment, Risk Management, Control Activities, Information and Communication, and Monitoring.

The internal control system of ministries and auxiliary bodies of the State of Mexico presents different levels of development. Within this context, the component of the system with the highest level of maturity is Control Environment, expressed in the legal norms, policies and instructions issued by the authority. The component with the lowest level of maturity is Risk Management. This presents an incipient level of implementation due both to cultural challenges and to deficiencies in the practical application of methodologies to identify, describe, evaluate, respond and monitor risks, and in the application of consistent measures to address and mitigate identified risks, including integrity risks.

In the public procurement system, this state of affairs is expressed in the solid framework of rules and policies, along guidelines for austerity and the fight against corruption. It also promotes a simplified vision of procurement, as a series of administrative operations framed in the different stages of the process. This administrative vision of procurement focuses control on verifying compliance with the legal, formal and procedural steps and requirements (typical of a healthy control environment) and often makes it difficult to visualise procurement as a management challenge of a systemic nature, with multiple stakeholders and aimed at addressing public needs. On the contrary, control should be conceived as an ongoing activity of the various units involved in the procurement process and at their respective decision levels, aimed at ensuring compliance with organisational objectives through efficient and transparent management. The State of Mexico should accelerate and deepen the use and evaluation of institutional internal control systems, and especially those relative to procurement processes. To achieve this, it should seriously address a series of challenges and opportunities.

First, the procurement system in general, and COMPRAMEX in particular, should be subject to performance evaluations. According to the information provided by various institutions, including the Ministry of Finance and SECOGEM, the Government of the State of Mexico does not have reports on the results, strengths, weaknesses, opportunities and areas of reform relative to the procurement system to facilitate strategic decision making. Nor does it have a dedicated performance framework to measure efficiency of the procurement system. The institutional control environment is weakened to the extent that the state government lacks comprehensive reports on the system, and does not disclose to staff and suppliers its expectations on the performance of the procurement system in each institution, including integrity expectations. These evaluations can even be more comprehensive and incorporate various areas of reform, as this review does. Indeed, this review aims to provide an accurate diagnosis of the results of the reforms implemented in recent years and, above all, to identify gaps that the system still presents with respect to international best practices, as well as a series of actions that may contribute to close them.

Second, it is advisable that the senior management of the state government institutions reiterates an attitude of control, and communicate this constantly within their organisations. This is known as “tone from the top,” which reflects the leadership and commitment of the administrative bodies (the government) and

the management (the heads of ministries and entities). The Government of the State of Mexico should continuously ensure that the senior management of each entity, as well as the intermediate managers, are aware of the systemic nature of internal control, the impact of the control measures of a unit, or their omission, on the rest of the organisational units and on institutional results, and the need to systematically apply internal control mechanisms in procurement processes. Likewise, it should strengthen resources to make risk control and management more effective. To achieve this, the Government of the State of Mexico should require and enforce accountability of institutions and their senior management, vis-à-vis the government and the population, and carry out the reorganisation of control resources necessary to strengthen their management results.

From an organic perspective, within ministries and entities, a consistent effort should be made so that the members of the Institutional Control and Performance Committees (*Comités de Control y Desempeño Institucional*, COCODIs) fully understand their functions and the expected results of their work, with special attention on procurement and services provided to the population. COCODIs in ministries are chaired by the head of the institution and made up of the heads of the programming and budget, finance, legal affairs and information technology directorates, together with the co-ordination of internal control and the head of the information, planning, programming and evaluation unit (the composition may vary slightly depending on whether it is a sectorised entity or not). The objective of the Committees is to contribute to the timely fulfilment of institutional goals and objectives and the improvement of budget programmes, analysing significant variations in the plans and results, and the fulfilment of the institution's programmes. In this sense, they are one of the collegiate bodies of greatest value for decision-making on direction, co-ordination and control in each institution. At the same time, COCODIs are in charge of identifying and analysing risks, as well as determining preventive measures and monitoring control strategies and actions. In the State of Mexico there is an insufficient understanding and appropriation of the control work by the COCODIs and their members, despite the important role they play in institutional performance. COCODIs bring together key managers for planning, control and performance, but in many cases the importance of the internal control system, or of risk management, is not fully understood. Likewise, COCODIs do not include the heads of executive areas, which may contribute to the lack of appropriation of control by those who direct the areas that lead to results, resulting in insufficient coherence between the "action" of the organisation and the "control" of it. COCODIs often significantly delegate their analyses and decisions on the advice provided by OICs, increasing the disconnection between management and control. In this regard, COCODIs could improve their understanding of the technical aspects of risk control and management by regularly integrating institutional areas linked to performance, in order to strengthen their decision-making on control, thereby transferring responsibility for control in executive areas to those who manage those areas.

COCODIs, and the heads of institutions, should regularly consider public procurement among their key processes and, in the case of ministries and auxiliary bodies with the highest volume of procurement, include it permanently as a key process whose internal control will be strengthened, and for which risk analysis and management will be carried out. This would be a first step for each institution to systematically identify procurement risks, including integrity risks, take appropriate mitigation and corrective measures, and report and communicate the events and results to management and the governing boards. COCODIs are a body of central importance in defining operational and control objectives of the system and procurement processes in each institution, and on that basis they could contribute to improving the performance of public procurement. Meanwhile, institutional staff, and especially those in the units and functions regarding procurement, should be aware about the role they play and the expected results of their performance in the task of control, at their respective organisational levels.

Likewise, it is necessary that the Government of the State of Mexico adopts measures that favour the achievement of results in procurement, by gaining cross-cutting knowledge of the internal control system of public contracting in the government in general, and in ministries and entities in particular. Likewise, it should use this knowledge for decision-making on measures to strengthen internal control. In this sense,

it is necessary that ministries and entities, including the DGRM, with the technical support and guidance of SECOGEM, ensure that they accelerate further effective development of the elements of an institutional internal control system, and in particular with regards to the procurement process. Regarding the SCII in general, efforts should be directed towards strengthening the following elements in particular:

- risk identification and management;
- control activities relative to risks at their various organisational levels and processes; and,
- information and communication of activities for management decision-making.

Regarding the procurement system, it is necessary to carry out an evaluation of the level of maturity of the internal control system throughout the process, engaging the various institutional management and control stakeholders. This systemic evaluation of a complete process of operations throughout the administration will help identifying critical areas for development, and guiding control efforts and resources. The evaluation results should give rise to a medium-term plan to strengthen the internal control system for public procurement in the State of Mexico.

Box 4.15. Colombia Compra Eficiente and evaluation of the internal control system

Colombia Compra Eficiente is the public procurement programme of the Colombian State. It considers the permanent evaluation of its internal control and risk management as an objective of its procurement system, carrying out internal control evaluations on an annual basis, and publishing its results on its website so that they are accessible to all interested parties.

These reports contain the conclusions of the internal control evaluations of the strategic administration processes, financial management, human resource administration, contract and legal management, among others, and in each case propose internal control recommendations that affect the procurement system. The public character of these reports ensures periodic accountability for the internal control system of the public procurement governing body in Colombia, and a higher level of external citizen control, thereby strengthening the legitimacy of the institution.

By way of example, the report for the second half of 2019 concluded, among other things, that:

- “After evaluating the profiling worksheet of the Strategic Direction process and its procedures, it was observed that these documents do not cover in detail the activities to be carried out in order to fulfil the defined objective. For example, the budget planning procedure does not identify the existing relationship with the budget management procedure led by the General Secretariat to delimit the administration of the budget without determining whether they are operating and/or investment resources. Similarly, it was observed that controls are not adequately designed and they are not applied in a permanent manner. The documentary management of the process does not present the traceability that supports the development of the value chain.”
- “The Strategic Direction process was not observed to have updated the assessment and treatment of its risks, meaning that these are not being managed, circumventing the provisions of paragraph ‘f’ of Article 2 of Law 87 of 1993 and dimension No. 7 of the Integrated Planning and Management Model, and creating uncertainty about the fulfilment of the process objectives by not identifying deviations in a timely manner.”

The same report made recommendations, including the following:

- “Analysing the pertinence of preparing a working plan for the redesign of the organisation’s Model for operations by process, harmonised with the functions established for the ANCP-CCE and in compliance with its central purpose, mission and vision, which allows the creation of the value chain to satisfy the needs and interests of users.
- In order to strengthen risk management within the entity, updating the risk policy regarding aspects such as: Risk appetite and tolerance, and frequency of risk monitoring in accordance with assessments, among other relevant aspects; as well as the procedure defined in the strategic direction process, in order to obtain a greater degree of maturity regarding this aspect.”

Source: <https://www.colombiacompra.gov.co/colombia-compra/informes-de-gestion/informes-de-control-interno>.

A valuable measure that would help complementing efforts to increase the level of maturity of the SCII is internal accessibility to information systems and the opening up of data on procurement in order to allow analysis, control and external supervision by civil society. A basic measure to strengthen control and auditing is the opening up of as much useful information as possible to all interested parties, together with unrestricted access to data by internal units of the State of Mexico, such as SECOGEM, the OICs of each ministry and entity, and the procurement and analysis units of each institution. Furthermore, the use of open contracting data is already a good practice internationally that should be applied to the modernisation

of the system and its regulations. This would open the door to a greater breadth of control, where data analysis, technology and third parties would reinforce control conditions towards efficient and transparent management.

4.6.3. Facilitating the development of a risk culture and providing technical resources to identify integrity risks would help the Government of the State of Mexico to anticipate and improve accountability in public procurement

Management of integrity risks in procurement is another aspect where the State of Mexico could take steps to strengthen its results. Risk analysis and management is above all a preventive tool that makes it possible to anticipate and take corrective or mitigation measures. It is systemic in nature and contributes to good procurement planning, management and control. A good risk map is capable of detecting the main operations affected by risks, including integrity risks, while identifying the risk points, practices and actors. In this way, it is possible to take action before the anticipated events occur. In addition, an adequate risk management plan decisively contributes to achieving institutional results and goals.

The experience of the ministries and entities of the State of Mexico shows that the implementation of risk management in officials' own routines is an ongoing process, and one that requires more resources. On the one hand, many public organisations do not yet fully understand the importance of risk analysis and how it relates to their functions, identifying routine risks or relying too heavily on the experience of OICs. On the other hand, these organisations still lack resources for awareness-raising and training for the units and leaders in charge of identifying risks and mitigation measures, who have experience in their respective areas but are unaware of the best techniques and good practices to deliver and use information on risks for the management of their areas. The State of Mexico Government can take advantage of existing specialised tools for training and technical assistance on risk management. Mexico's Superior Audit Office (*Auditoría Superior de la Federación*, ASF) has, for example, a Public Sector Risk Self-Assessment Guide, based on national legislation, international best practices and COSO 2013 guidelines. The guide focuses on conceptual and concrete aspects of risk management methodology, addressing techniques for identifying risks and adding tools consistent with the state's methodological arrangement. This type of resources should be used with the officials responsible for procurement processes, at various levels, to enrich the assessment and management of risks.

Risk management is a preventive and systemic concept that seeks to anticipate the use of management and control resources to avoid possible adverse events, backing the achievement of mission objectives at each level of the state organisation. The State of Mexico would also benefit from adopting internal guidelines and allocating resources that promote the awareness-raising, dialogue and training work by SECOGEM and the Ministry of Finance for the units responsible for procurement, including the DGRM. Indeed, procurement systems in different countries share many challenges and the units in charge often face similar weaknesses and opportunities. This is no different to what happens in the institutions of the State of Mexico. Operational, financial, legal and reputational risks are constant in public procurement, yet are not usually found in the risk maps of the ministries and entities.

In this sense, it is necessary for the State of Mexico Government to ensure that the risk maps and the programmes for the treatment of risks deal comprehensively with the risks of such an important area of management as procurement. Specifically, greater appropriation and use of risk maps by the COCODIs would be useful, and even more so if they prepare their own public procurement risk maps. Procurement risk analyses should incorporate data from a large set of operations allowing the assessment of financial, legal, political, sector and reputational risks, among others. Co-ordination between the Ministry of Finance and SECOGEM is essential to implement such a measure with technical support and a results-oriented approach.

Another aspect that should be strengthened is incorporating integrity risks of procurement into risk maps. In this regard, the risk maps prepared by the institutions, especially those where procurement is significant

in amount or in their contribution to results, should consider the possibility of fraud and corruption risks in procurement. Fraud and corruption-related practices in procurement usually consider great variety in different countries, and include, for example:

- bribery and bribe-taking, in the preparation, contracting and delivery phases, including supervision;
- embezzlement and misappropriation of public funds, whether as an internal or internal-external practice;
- fraud and bid-rigging;
- simulation of procurement operations, payment or fulfilment of contracts;
- falsification of documents to prove conditions for participation or fulfilment of the contract;
- theft of purchased material goods or their redirecting to other purposes or users;
- illegal sale of state property, such as medicines and school supplies;
- sustained extension or undue increase in the amount of contracts;
- improper use of reserved or privileged information to access business opportunities or contracts in unduly favourable conditions;
- directing contracts;
- capture of technical regulations on goods and services; and
- improper award of contracts for the purposes of political finance

SECOGEM, in co-ordination with the Ministry of Finance and the Administration and Finance Units in auxiliary bodies, should make efforts to modify the risk culture in institutions and the technical understanding of risks in procurement. Risk maps, including integrity risks, are frequently prepared without including a key step for ensuring the quality of such maps: a discussion and consensus about the meaning of risk. An essential methodological component of a risk map is that it is produced collectively by people with experience in the organisation and its operations and it should be consistent with the goal of identification and analysis. In this sense, a risk consists on the probability that a threat may adversely affect the achievement of objectives. The absence of a common understanding of risk, adapted to the reality of the organisation, may lead to confusion in the risk identification carried out by institutional managers, between the possibility that adverse events occur and currently existing adverse events, or even with the current commission of crimes within the organisation itself. Hence, the real understanding of the notion of risk influences the result of the collective preparation of the risk map. Under such conditions, risks could be omitted in the belief that to recognise them would be to report a mistake, fault or crime carried out by a colleague or official; while risks (forecasts of a future event based on experience) could also be confused with current events. The identification of risks is based on the organisational experience of the past operation of the entity and its environment, and does not refer to events that are currently occurring in procurement processes, but rather to the probability that this will occur in the future. Its preventive and systemic nature separates it from reporting current inefficiencies and irregularities, and it is aimed at decision-making relative to control measures to avoid or mitigate risks that may affect organisational objectives. SECOGEM should play a decisive role in raising awareness, understanding and finally applying a notion of risk that invites public servants to recognise risks; this includes techniques aimed specifically at contextualising and understanding integrity risks in various forms, as applied to public procurement.

In this same vein, the procurement and control processes in the State of Mexico include various stakeholders, mainly the contracting organisations, the DGRM, the OICs and SECOGEM. Due to the compartmentalised nature of the management of the procurement process, not all participants in diagnoses and mitigation measures fully understand the variety of risks, including integrity risks, that may exist throughout the entire chain of operations, ranging from the detection of a need up to the evaluation of compliance with the contract and its results, as well as the various stakeholders involved. In this regard, the risk maps and the measures included in the Risk Management Work Programmes (*Programas de Trabajo de Administración de Riesgos*, PTAR) should ensure their quality through a process of greater

inclusion of stakeholders in their discussion and approval, as well as through clear communications about the measures to adopt. This higher quality should also be ensured in monitoring the control measures relative to procurement processes. In this sense, the State of Mexico should make sure that those responsible for preparing risk maps and the recipients of plans and reports fully understand what the risk involves, the types of risk that should be identified, especially integrity risks, and the pertinence of the control, follow-up and monitoring measures.

It is necessary to improve the information and evidence on integrity in procurement for decision-making on reforming and improving the system. The responses to the OECD questionnaire on public procurement suggest a significant point, namely that none of the ministries and entities consulted have detected irregular activities in public purchases between 2016 and 2018. In other words, despite the fact that the State of Mexico has the LCPEMyM, which organises and regulates the public procurement process, assigns management, interpretation and control responsibilities, and explicitly establishes prohibitions and incompatibilities, and that it carries out thousands of purchasing operations each year; it does not have records detecting integrity failures, such as those referred to in Article 87 of the LCPEMyM, over that period of time, by ministries and entities, including the Ministry of Finance.

International experience shows that irregularities, such as fraud and corruption, are common in public procurement, and that their scope will depend on market practices, the culture of values and legality, and the institutional strength of public organisations. In fact, the OECD found that 57% of the international bribery cases, identified between February 1999 and June 2014 in signatory countries to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, were related to obtaining public contracts (OECD, 2014^[18]). The State of Mexico would improve its decision-making if it carried out an independent and specific evaluation of the risks of fraud and corruption in public procurement, taking into account the characteristics of the market, the organisational culture of the State Government, and institutional capacities, in order to identify opportunities for improvement.

An additional high-impact measure is establishing closer co-ordination of the activities for control, analysis and exchange of information about contracts between SECOGEM, OSFEM, SFP and the Superior Audit Office (ASF), in order to implement coordinated control plans, leverage training resources and share information about control and risks in public procurement. This may require setting up cooperation agreements to exchange information on procurement among SECOGEM, ASF, SFP and OSFEM.

4.6.4. The Government of the State of Mexico should promote the appropriation of control by public servants and the proper use of the audit function, adopting the model of the three lines of defence

Based on the interviews carried out about the control system in the State of Mexico during the fact-finding mission, among the ministries and auxiliary bodies there is a gradual, although still insufficient, appropriation of the control task by the staff and executives responsible for management tasks. The heads of unit and senior management levels are moving-to varying degrees-from a conception of control based on the OICs, where these bodies have the central or sole responsibility for implementing control tools, to one in which the administrators assume responsibility for control. At the same time, many officials responsible for mission areas lack a technical approach to risks and are unaware of the importance of identifying risks in a timely manner. Meanwhile, an attitude of self-censorship persists in public servants towards recognising adverse situations in their own areas of work, which increases the difficulty in noticing errors, inefficiencies and irregularities. Internal control is an inherent function of the management and direction of organisations. As such, the State of Mexico would strengthen its management by enhancing the appropriation of control by managers and staff of the ministries and entities.

Another aspect of the problem is the active participation of OICs in managing the control of procurement procedures, which is a factor that may affect their impartiality in their internal audit function. It would be beneficial to ensure that OICs neither carry out tasks belonging to the management, nor those that pertain

to the units in charge of implementing the internal control system, such as the contracting units or the DGRM. One way to do this is by reducing their interventions in procedures potentially subject to audit, such as procurement, supervision and inspection processes. In this regard, it is worth evaluating reforming or clarifying Article 49 of the Law on Administrative Responsibilities of the State of Mexico and Municipalities, which assigns supervision tasks of the execution of public procurement procedures to the Ministry of Control and the OICs. Supervision is a task pertaining to line managers, and must be carried out by them or by the control systems or mechanisms, to ensure that managers and heads are responsible and accountable for the control tasks pertaining to their positions. Likewise, it would be beneficial to reduce or eliminate the engagement of OICs in verification actions that fall outside the independent nature of the audit function, such as the so-called inspections, especially when they relate to procurement procedures.

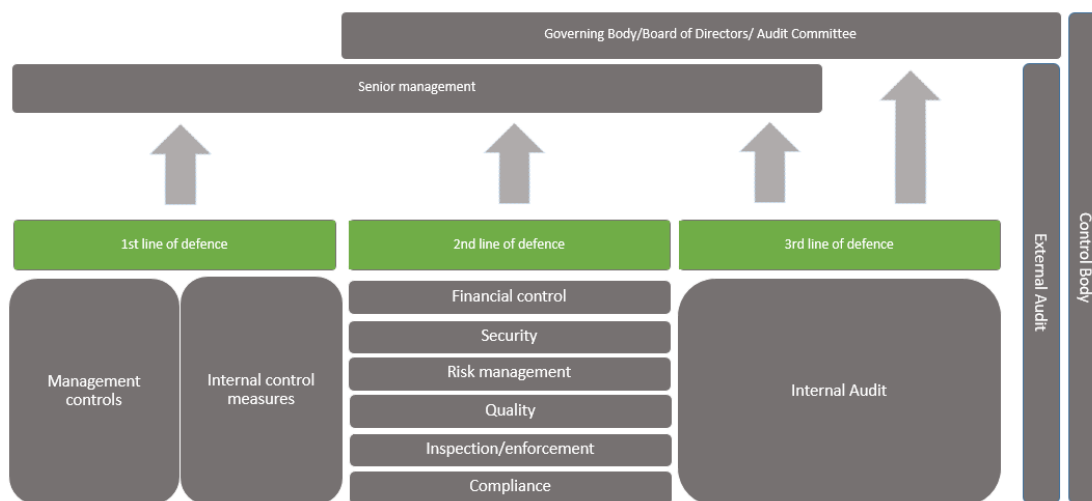
In addition, it is important not to lose sight of the fact that the OICs, by participating in the committees and meetings throughout the procurement process, are a direct part of it, carrying out first-line of control activities. This type of direct participation is not typical of units that carry out tasks of investigation, sanction, and even less of auditing, since it creates conditions that may reduce impartiality in the execution of their own tasks, especially in the case of internal audits. In accordance with generally accepted auditing standards, internal audit is usually an advisory unit, located at the highest level, independent of the first line, which makes impartial judgments based on audit techniques. Its tasks must be free from any potential conflict of interest, and participating as an OIC in different phases of the procurement process leads to less impartial conditions in the event that it has to investigate processes and impose sanctions, especially when auditing. In this sense, it is advisable to reform Articles 43 and 44 of the Bylaws of LCPEMyM, which establish the participation of a representative from the corresponding control body in the Committees for Acquisitions and Services.

The International Organisation of Supreme Audit Institutions (INTOSAI) agreed on international standards for supreme audit institutions and in the International Standards of Supreme Audit Institutions 1 (ISSAI 1) approved criteria for auditing standards focused on upholding independence in the external auditing of public administration. Although these criteria, contained in the Lima Declaration, are aimed at ensuring greater independence of the public bodies for external control, their norms are also valid to promote the independence of the internal audit function with respect to managers. According to ISSAI 10, on the independence of Supreme Audit Institutions (SAIs), these “should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organisations that they audit,” and also “should ensure that their personnel do not develop too close a relationship with the entities they audit, so they remain objective and appear objective.” Along these same lines, the General Government Internal Audit Council, an advisory body to the President of Chile, has asserted that “to guarantee objectivity, internal auditors should not get involved or participate in line activities, make management decisions in the entity, or engage in any activity that results in a real or potential conflict of interest when issuing opinions and recommendations” (Technical Document No. 101, Structure and Functioning of the Internal Government Audit Units and Coordination with CAIGG, CAIGG, 2018).

In fact, the problem also stems from Article 36 of the Internal Bylaws of SECOGEM, which establishes that “ministries and auxiliary bodies will provide, in their jurisdictions and according to their budgets, the resources required by OICs to fulfil their duties”. This goes against the principle of financial and administrative autonomy set forth in ISSAI 10.

The Three Lines of Defence Model is an acknowledged and valuable tool to improve the organisation of control. Its adaptability to the characteristics of each organisation makes it easy to understand and apply in different contexts. According to this model, three separate groups (or lines of defence) are needed within the organisation to effectively manage risk and control, where the board and senior management provide the guidelines and advice. The figure below explains the separation of tasks at the different levels of management and control.

Figure 4.10. The Three Lines of Defence Model



Box 4.16. The Three Lines of Defence Model

The model helps improve the understanding of risk management and control by defining roles and responsibilities. The underlying concept of the model is that under the supervision and guidance of senior management and the board three separate groups (or lines of defence) are needed within the organisation to effectively manage risk and control.

The responsibilities of each of the groups (or “lines”) are:

1. Taking ownership of and managing risk and control (first-line operational management).
2. Supervising risk and control in support of management (senior management implements risk, control and compliance functions).
3. Provide independent assurance to the board and senior management regarding the effectiveness of risk management and control (internal audit).

Each of the three lines has a different function within the general framework of governance of the organisation. When each fulfils its assigned role effectively, the likelihood of the organisation succeeding in achieving its overall goals increases.

All members of an organisation have some responsibility for internal control, but to help ensure that essential tasks are performed as intended, the model provides clarity on specific roles and responsibilities. When an organisation has properly structured the three lines, and they operate effectively, there should be no gaps in coverage, no unnecessary duplication of effort, and thus a greater likelihood that risk and control are effectively managed. The board will have more opportunities to receive objective information regarding the organisation’s most significant risks, and also on how senior management is responding to those risks.

The functions within each of the lines of defence will vary from one organisation to another, and some functions could be merged or split between the lines of defence. For example, in some organisations, parts of a compliance function in the second line might be involved in designing controls for the first line, while other parts of the second line might focus primarily on monitoring such controls.

In general, in the ministries and auxiliary bodies of the State of Mexico, the three lines of defence model is technically unknown. However, auditors understand the need for a separation of roles and seek to contribute to promoting appropriation of control in the first and second lines of defence. In the State of

Mexico, the first line of defence should be made up of public servants and areas directly managing procurement operations in each of the ministries and auxiliary bodies. Those officials should appropriate risk and help define the design and execution of the institution's controls to respond to such risks.

The second line is designed to support management, contributing knowledge, excellence in processes and management oversight, along with the first line, helping ensure effective risk management and control in procurement. It would be beneficial to separate the functions of the second line of defence in ministries and auxiliary bodies from the first line of defence, while remaining under the control and guidance of the management. The second line should essentially consist of a supervisory or surveillance function over the units involved in the organisation's procurement processes and that directly manage risks.

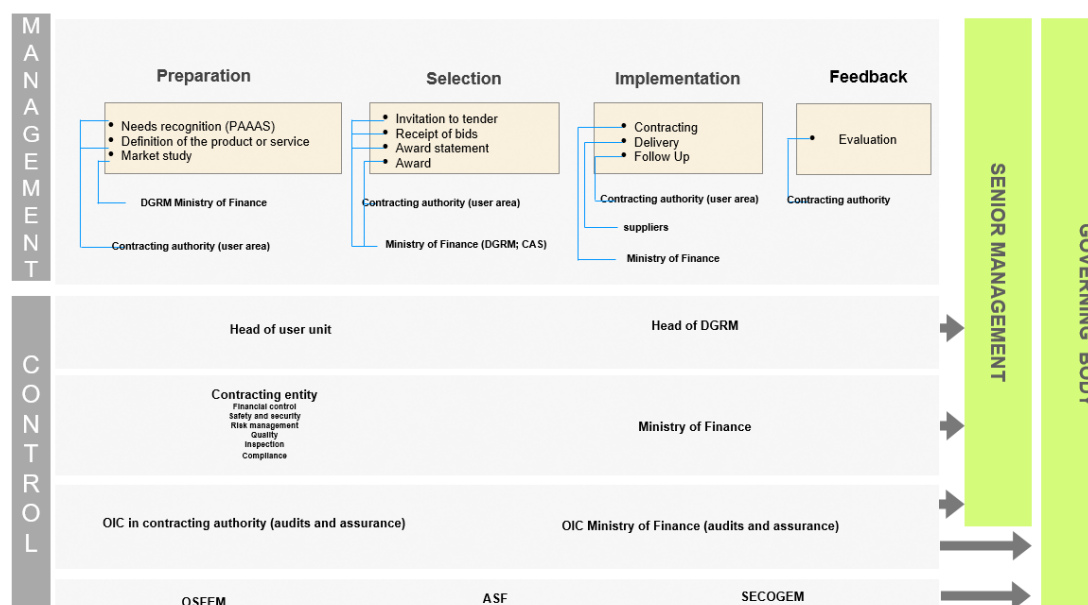
The third line of defence provides assurance to senior management and the board, confirming that the efforts of the first and second lines are consistent with expectations. Therefore, the third line of defence is not designed to perform management functions in order to protect its objectivity and independence from the organisation. In ministries and auxiliary bodies of the State of Mexico, this assurance task should be clearly established as a function of the OICs, and at the level of the State executive branch as a function of SECOGEM. It is the OICs which in their audit function should provide assurance to ministers and governing bodies about the effectiveness of risk management in the procurement process.

Along the above arguments, the State of Mexico could take some of the following measures to separate the internal audit role from the first line of control, thereby strengthening the independence of internal audit and risk appropriation by the first line:

- Reform state regulations incorporating provisions that establish clear obligations and control and verification procedures for the managers and units of the contracting ministries and entities, and the DGRM, where appropriate, regarding the legality, efficiency and transparency of the procurement processes. This means establishing control obligations for which public servants are accountable, avoiding the dispersion of responsibilities;
- Incorporate resources, mechanisms and training in procurement management policies aimed at ministries and entities for the systematic improvement of the management of public procurement, and the systemic analysis of the risks it involves. This will help the staff responsible and the management to responsibly appropriate of the processes and results that concern them, allowing accountability. The understanding of procurement should transition from the administrative vision towards a culture of permanent management evaluation, using different levels of analysis, from those aimed at evaluating individual procurement procedures and sets of procedures to the entirety of the procurement for each sector, in order to link them with expected results, accountability and citizen satisfaction;
- Strengthen control and evaluation led by SECOGEM and the OICs by applying audit techniques and procedures focused on risk areas susceptible to corruption and incorporating risk-based management audit techniques, and providing strategic recommendations for decision-making on improvements to the system. These measures should be in line with the procurement management policy, and incorporate resources, mechanisms and training for systematic improvement of the audits carried out by the OICs to procurement procedures and processes.
- Clearly identify the functions and responsibilities of operation, supervision and auditing of the procurement processes in each ministry and entity. The aim is to define, distinguish and coordinate the tasks of the procurement process, communicating management expectations and the mechanisms of responsibility and accountability at each level. To achieve this, the State of Mexico could take into account the Three Lines of Defence model in the design of procurement regulations, policies and practices, with special emphasis on strengthening internal control and the advisory and independent role of internal audit.

The following figure shows how the various functions of control are linked and distinguished under the Three Lines of Defence Model:

Figure 4.11. Control of procurement procedures under the Three Lines of Defence model



4.6.5. The Government of the State of Mexico should take advantage of the opportunities provided by massive use of data and technology to increase the effectiveness of control

As can be seen in Figure 4.11, the procurement system of the State of Mexico involves institutional actors that manage procurement procedures (especially contracting institutions and the DGRM) and institutional control actors (mainly SECOGEM and the OICs). According to the LCPEMyM, the State Executive, through SECOGEM, is responsible for overseeing the application of procurement regulations. It is also in charge of the control and supervision of actions related to planning, programming, budgeting, execution and control of purchases, sale, leasing of goods and procurement of services in municipalities, when they are carried out fully or partially with state government funds. On its side, the Ministry of Finance must publish the information relative to centralised procurement procedures of the State Government, according to the Law on Transparency and Access to Public Information of the State of Mexico and Municipalities.

However, the OICs and SECOGEM lack access to data, systems and technologies that would enable them to properly carry out the generic control tasks assigned to them by the LCPEMyM. The Ministry of Finance could allocate resources for the design, development and implementation of technological tools that, for example, automate processes for verifying compliance with bidder requirements, as well as for validating prohibitions, disqualifications and incompatibilities in procurement, including alerts about potential conflicts of interest. The Ministry of Finance OIC and SECOGEM could have their verification, analysis and auditing capacity strengthened as a result of full access to public procurement records and databases. SECOGEM could, with the support of database analysis and data mining technologies, conduct comprehensive assessments, relationship and correlation analysis and identification of relevant patterns in thousands of procurement procedures that raise warning flags for deviations and, potentially, irregularities. Such a measure would strengthen the capacities of the Ministries of Finance and SECOGEM to control procurement processes, while freeing up human resources to carry out risk-based audits of operations and strategic procurement processes. Taking such a measure would relieve SECOGEM from the burden of maintaining direct control over operations and strengthen its capacity to issue alerts and carry out strategic analysis.

At the same time, the Government of the State of Mexico could strengthen the control of procurement procedures with the application of automated verification mechanisms for prohibitions, disqualifications

and incompatibilities in procurement, such as those listed in article 74 of the LCPEMyM. Leaving aside the Registry of black-listed suppliers, which only holds limited information, as previously indicated, the ministries and entities of the State of Mexico lack mechanisms to immediately and automatically identify the existence of grounds for prohibiting the reception of proposals and entering into contracts, such as suppliers in delay, those who have entered into contracts in contravention of the law, who include public servants among their partners, who participate in expert opinions related to the procurement process, or to whom administrative compensation liabilities have been imposed. Although the Registry of blacklisted suppliers can be consulted, this check has to be carried out manually and will only identify the suppliers who have actually been sanctioned, without providing information about their performance. The control functions of this type of prohibitions, disqualifications and incompatibilities should be assigned to the contracting institutions, which would benefit from automated registries and systems. The work of the OICs, on their part, should consist on ensuring the reliability and timeliness of such systems.

Although there are formal and regulatory mechanisms to avoid contracting suppliers for which there are grounds for impediment, this does not mean that they work effectively. For example, for some of the cases indicated in the LCPEMyM, there are mechanisms for registering or disclosing sanctions, but they are not coordinated in such a way as to issue a timely alert to those in charge of managing the procurement process, or the contracting entity, warning that the bidder or supplier in question is prohibited from entering into contracts. As mentioned above, there is a Registry of black-listed companies (*Registro de Empresas y/o Personas Físicas Objetadas y Sancionadas*), in which contracting authorities and internal control bodies can record suppliers, contractors and service providers who incur in irregularities in contracts signed with ministries and auxiliary bodies of the state executive branch or with municipal governments, and this is circulated in the respective bulletin. However, there is no direct link or an application that automatically identifies bidders in the updated and aggregated databases. Another similar example would occur with compensatory administrative responsibilities (*responsabilidades administrativas resarcitorias*), since SECOGEM, through the General Directorate of Administrative Responsibilities, administers the Comprehensive System of Responsibilities (*Sistema Integral de Responsabilidades*, SIR), in which the sanctioning authorities (General Directorate of Administrative Responsibilities and the OICs) record the compensatory administrative responsibilities imposed on individuals. SECOGEM has warned in response to the OECD questionnaire that this type of automated mechanism is not foreseen in the most important regulations on the matter, such as the laws on the national and state anti-corruption system, the State Law on Administrative Responsibilities, the Administrative Code and the LCPEMyM.

In summary, and according to the responses to the OECD questionnaire about incompatibilities and prohibitions of article 74 of the LCPEMyM, it follows that:

- information systems exist to inform, either via the SECOGEM or the Ministry of Finance, about situations of incompatibility or prohibition of suppliers, such as the Registry of blacklisted suppliers and the SIR;
- some units also have useful information that allow verifying the existence of other prohibitions and incompatibilities, but that is not public knowledge or is accessed through passwords limited to certain organisational units;
- in any case, most of this information is not interconnected and is not freely accessible by any contracting unit; and
- there are incompatibilities and prohibitions that cannot be verified, as in the case of suppliers who have made improper use of privileged information or whose performance has been deficient, without necessarily incurring a sanction.

The incorporation of big data technologies and automation of operations would allow those in charge of the procurement process, along with the OICs, to get real-time verification of most of these prohibitions, both when receiving bids and when signing contracts. A technological application would do the work of consulting the updated lists of the Registry of blacklisted suppliers and the SIR, as well as other databases

that should operate in an updated manner, the existing records of companies that are bankrupt, have public servants among their partners, include people who are disqualified and participate in analyses, expert opinions and other activities related to the procurement process. These tools would simplify the review and control tasks in the process line and could be simultaneously accessible to the Ministry of Finance, SECOGEM and the contracting entities, facilitating the control of each procurement operation and allowing the strategic management of suppliers with prevention measures and risk management.

In the same way, the State of Mexico could benefit from incorporating big data tools specially designed to issue early alerts about risks or anomalous situations in procurement procedures such as, for example, the division of contracts or the abuse of restricted invitations. Most of the ministries and entities of the State of Mexico, including the Ministry of Finance, lack systems to raise alerts about the abuse of exceptional (non-competitive) procurement mechanisms, the concentration of contracts in proportionally few bidders or the existence of anomalous patterns of supply, contracting, modification and execution of contracts. Although COMPRAMEX publishes information on individual procurement operations, this information does not include free and full access to the databases of suppliers and operations, so as to facilitate the analysis of massive data sets about the acquisition of goods and services, thus limiting the possibilities of internal scrutiny and citizen control. Likewise, COMPRAMEX lacks simplified and transparent information on public works and related services.

Big data tools should be in the hands of Ministry of Finance units, other than DGRM and SECOGEM, and they should have unrestricted access to the databases of the procurement system, including financial monitoring of payments to suppliers, in order to integrate databases into systems designed to raise red flags in situations of risk in massive sets of procurement operations and ongoing contracts. The audits carried out by OICs in the different ministries and entities, including the Ministry of Finance OIC, could focus resources on high-risk procurement processes, making more strategic use of their control resources.

Proposals for action

The State of Mexico has advanced the reforms to establish its local anticorruption system, aligned with the mandate of the National Anticorruption System. As part of this effort, SECOGEM is implementing several initiatives to embed integrity in the state public administration, including some specifically targeted at procurement officials. The Protocol, along with the Ethics Committees and the codes of ethics and conduct, are steps in the right direction. However, the State of Mexico has the opportunity to avoid some of the shortcomings incurred by the federal government and other states. Furthermore, the State of Mexico can do much more to engage external stakeholders, such as the business community and civil society, in its integrity strategies. The following recommendations aim to be helpful in creating a culture of integrity, particularly among the public procurement community.

Policy framework to promote integrity in public procurement

The State of Mexico could balance the rules-based approach of some provisions, such as the Protocol for public servants intervening in public procurement, by recognising the limits of excessive controls and prompting ethical reasoning by procurement officials.

Management of conflicts of interest by public procurement practitioners

The State of Mexico should develop its framework to manage conflicts of interest by providing a shared definition (including actual, apparent and potential conflict of interest), illustrating practical situations in public procurement processes (i.e., revolving door, gifts) and how they can be solved, and systematically training procurement officials.

Accountability and monitoring concerning sanctions on suppliers

SECOGEM could give more visibility to the registry of blacklisted companies by linking it to its webpage and expand its functionalities so that procurement officials can use the information it contains for decision-making.

Engaging the private sector and civil society to strengthen integrity in the procurement function

The Government of the State of Mexico should partner with the business community to develop and advance an agenda for business integrity, particularly when engaging in procurement activities.

The Government of the State of Mexico could advance other measures to promote business integrity throughout the public procurement cycle, such as integrity pacts, anticorruption clauses in contracts and supply-chain transparency.

SECOGEM should advance the process of reform of the social witness programme applied in the State of Mexico to strengthen the independence, expertise and wider engagement of social witnesses throughout the procurement cycle and in the different modalities beyond open public tenders.

The State of Mexico could explore alternative mechanisms for civil society engagement in procurement procedures, particularly for public works, such as integrity monitors, social contracts and social participation frameworks.

Review, challenge and remedy system

The State of Mexico could make challenge processes more accessible for bidders by allowing electronic filing and providing the necessary information in tender documents (i.e., calls for tender, contracts).

The State of Mexico could explore non-adversarial methods for conflict resolution, such as conciliation, mediation and arbitration in order to provide review alternatives that might be less costly and burdensome than legal challenges.

Risk management and internal control to identify and address integrity risks in public procurement

The Government of the State of Mexico should go beyond mere compliance in its internal control tasks and implement specific tools to identify and mitigate the risks of corruption and fraud.

The Government of the State of Mexico should deepen and further advance in the implementation of institutional internal control systems, especially in the areas relative to public procurement.

Facilitating the development of a risk culture and providing technical resources to identify integrity risks would help the Government of the State of Mexico to anticipate them and improve accountability in public procurement.

The Government of the State of Mexico should promote the appropriation of control by public servants and the proper use of the audit function, adopting the model of the Three Lines of Defence throughout the administration.

The Government of the State of Mexico should take advantage of the opportunities provided by the massive use of data and technology to increase the effectiveness of control.

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Notes

¹ The compensating administrative process is regulated by the abolished Law of Responsibilities for State and Municipal Public Servants.

² The Measurement and Update Unit (UMA) is the economic reference expressed in Mexican pesos to determine payments of fees and tariffs established in federal laws and in those of federal states, as well as in the regulations stemming from them. For example, during 2018, the average daily UMA value was MXN 80.60 (approximately USD 4).

³ According to the Law for Acquisitions, Leasing and Services of the Public Sector (LAASSP), the procurement of goods and services for more than 5 million UMAs (approximately MXN 400 million) must necessarily be observed by a social witness. Likewise, according to the Law of Public Works and Related Services (LOPSRM), the procurement of public works and related services for more than 10 million UMAs (approximately MXN 800 million) must also be accompanied by a social witness.

⁴ In fact, municipalities carry out their own procurement, disregarding the source of funding, being federal, state or municipal.

5

Advancing efficiency throughout the whole procurement cycle

Taking into account the significant volume that public procurement represents for the State of Mexico, this chapter identifies the opportunities to advance efficiency throughout the procurement cycle, not only from the point of view of the legal framework, but also looking at the practices of public entities. Several obstacles to competition and supplier participation in procurement limit the efficiency of the system. Focusing on quality in the contract award stage would also increase value for money. Not least, this chapter looks at how the State of Mexico could make better use of the opportunities provided by strategic public procurement to support its policy goals. It concludes with recommendations to enhance the efficiency of the public procurement system.

Since 2015, the government of the State of Mexico has been reforming its public procurement Law (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM) with a view to enhance the overall efficiency of public procurement. Part of the reform effort was dedicated to the streamlining of procurement procedures and introducing an e-procurement platform. These reforms have put the State of Mexico on a path towards greater transparency and efficiency of the procurement process.

While efficiency has been at the heart of the State of Mexico's reform effort in recent years, significant opportunities remain for increasing the efficiency of its procurement system. Indeed, efficiency is relevant in all aspects of public procurement, from the legal and policy framework, to the daily practices of procurement officials. Incidentally, the *OECD Recommendation on Public Procurement* emphasises the optimisation of efficiency at all stages of the public procurement cycle. Using this OECD Recommendation as the guiding principle, this chapter assesses the procurement system of the State of Mexico in light of the efficiency of current public procurement practices.

Specifically, this chapter highlights aspects of the legal and policy framework that have an impact on efficiency. Namely, it explores issues surrounding exceptions to public tendering and obstacles foreign suppliers face when accessing public procurement markets in the State of Mexico.

Furthermore, the chapter analyses efficiency-related dimensions throughout the procurement cycle, identifying opportunities to improve the efficiency of public procurement in key different stages, from market analysis to contract award. Competition is a key element throughout the chapter, given the importance of competitive tendering as a way of achieving better value for money. Furthermore, this chapter focuses on market analysis and market engagement practices as a driver for increased efficiency. In addition, going beyond price-only during tender evaluation is a critical dimension to the overall efficiency of the procurement process.

Finally, this chapter highlights the importance of a strategic approach to public procurement, in order to support policy goals that are relevant in the State of Mexico, such as promoting local SMEs and sustainable procurement.

5.1. A legal and policy framework conducive to efficiency in the public procurement system

Efficiency is associated with implementation of sound procurement procedures that generate savings and value for money. The concept of efficiency is understood broadly and encompasses the legal and policy framework of procurement. In fact, setting a legal and policy framework is vital to drive efficiency throughout the procurement process. The legal framework defines provisions regarding the use of competitive procedures, openness, transparency and access to public tenders, which contribute to the efficiency of procedures.

Ensuring that efficiency is reflected in the State of Mexico's procurement framework is essential to achieve the overarching goal of delivering value for money to citizens. The following section will discuss which areas of the legal framework could further drive efficiency in the State of Mexico.

Box 5.1. Options for increased efficiency in the OECD Recommendation of the Council on Public Procurement

The Council:

VII. RECOMMENDS that Adherents develop processes to drive **Efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

i. Streamline the public procurement system and its institutional frameworks. Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.

ii. Implement sound technical processes to satisfy customer needs efficiently. Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract

iii. Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

Source: (OECD, 2015^[1])

5.1.1. The legal framework at state level limits international tenders with potential repercussions on competition

As discussed in Chapter 1, public procurement activities in the State of Mexico are regulated by different legal frameworks depending on whether federal or state funds apply. As a general rule, if procurement activities are financed with federal funds, the applicable law is the federal 'Law for Acquisitions, Leasing, and Services of the Public Sector'¹ and its Bylaws². Conversely, if local funds are being used for the procurement procedure, the public procurement legal framework of the State of Mexico needs to be followed.

Both the federal and the state legal frameworks establish that there are two different kind of tenders depending on the bidders' nationality. If the bidder is a Mexican company, the tender is consider a *national* one; conversely, if the bidder is a foreign company, the tender is considered *international*.

In the State of Mexico, the Public Procurement Law of the State of Mexico and Municipalities (LCPEMyM) restricts international tenders for goods and services. International tenders are only allowed when the good or service is not available in the country or when international treaties make it compulsory³.

Similar restrictions for international suppliers apply at federal level. Namely, the Federal Procurement Law distinguishes two types of international tenders; the first one is under the coverage of international treaties. An example of such an international treaty is the Free Trade Agreement signed between the European Union and Mexico; this agreement establishes the openness of the Mexican Federal market to foreign suppliers (See Box 5.2). The second type is the so-called open international tender, in which both national and foreign suppliers can participate in the procedures. This tender can only be launched if a national

tender has been declared void, or if it is linked to specific stipulations about external loans granted to the federal government.

Box 5.2. EU-Mexico Free Trade Agreement

Current EU-Mexico Agreement

One of the main objectives of this modernised Free trade agreement is to have progressive and reciprocal liberalisation of goods and services between Mexico and the Member States of the European Union.

This modernised agreement includes a chapter on public procurement, which establishes the openness for European suppliers to the Mexican federal market. This agreement allows European suppliers to participate into Mexican tenders and vice versa.

Future steps

The Mexican Government confirmed its commitment to include the Mexican States in the coverage of the Government Procurement Chapter. The Federal Government began consultations in January 2018 with the Mexican States. This action intends to cover state-level entities like the ministries of public works, mobility/transport, health and/or education.

Source: (Mexican Government and the European Union, 2000^[2])

Restricting access to foreign companies as a policy is typically designed to favour the domestic economy. Incidentally, the State of Mexico Development Programme (2017-2023) emphasises public procurement as a measure to strengthen the business and service sectors. Contracting authorities are encouraged to implement specific programmes to promote the participation of local suppliers in the state's procurement procedures (Gobierno del Estado de Mexico, 2018^[3]).

However, the implications of this provision can be far-reaching. By restricting access to public tenders for international companies, the State of Mexico is limiting competition in its own procurement markets, with potential repercussions on value for money and the efficient use of resources. As discussed in Chapter 3 on centralisation, participation in public contracts is often low, meaning that suppliers do not face competitive pressure to provide value for money.

During the fact-finding mission, state government officials raised the issue with the OECD experts that no or few international tenders were carried out with state-owned resources. This underscores the fact that current competition for tenders in the State of Mexico is mostly addressed at the local level, thereby foregoing potential competition from abroad.

Since contracting authorities cannot go beyond the limits of the law, a reform of the law should be envisaged to provide greater flexibility towards international tenders, which could help increase the number of suppliers and, at the same time, enhance competition.

Other states in Mexico, according to their respective legal frameworks, have found a more flexible and welcoming strategy to advance competitiveness in their procurement cycles. For instance, just as established in federal regulations, the State of Nuevo León's legal framework establishes that international tenders are allowed when a national tender has been declared void, or when it is stipulated by contracts financed with foreign credits granted to the Federal Government (Art. 29-III)⁴. At international level, many countries have opened their public procurement markets to international trade by signing the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO). Mexico, however, is not part of the signatories of this Agreement.

It should be noted that a less restrictive regime applies to international tenders for public works. In fact, the Twelfth book of the Administrative Code of the State of Mexico, which sets the rules for procurement of public works, establishes that contracting authorities can allow for the participation of foreign companies that meet their needs. However, contracting authorities first need to establish, by market research, that no national company is able to deliver the requested works.

5.1.2. The use of exemptions to open tenders may further undermine competition and efficiency

The State of Mexico's legal framework states that all tender procedures should be open in order to encourage competition. This principle reflects one of the essential goals of public procurement, namely generating value for money. However, the procurement legal framework allows the possibility to use certain exceptions to this general rule. Having exceptions to the obligation of conducting competitive procurement procedures is a common feature. Indeed, the use of non-competitive procedures (e.g. direct award) may be justified in exceptional circumstances, e.g. whenever time is critical. For instance, in case of a natural disaster, the public administration is required to respond at once and it cannot afford to undergo a full procurement procedure.

The OECD *Recommendation on Public Procurement* (OECD, 2015^[4]) envisages the existence of exceptions and establishes that the rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition. Furthermore, the OECD recommends that competitive (open) procedures be the standard method for conducting procurement. It suggests this as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances warrant limitations to competitive tendering, such exceptions should be limited, pre-defined and should require appropriate justification. In addition, these limitations should be subject to adequate oversight taking into account the increased risk of corruption.

The legal framework for goods and services in the State of Mexico establishes the possibility to award a tender procedure by means of exception. Specifically, the law foresees two types of exceptions to an open tender, namely restricted invitation and direct award (Articles 27 and 43 of the LCPEMyM). Restricted invitation can be carried out under two circumstances. First, whenever an open tender has been declared void. Second, when the total sum of operations carried out under this exception does not exceed the thresholds established by the Expenditures Budget of the Government of the State of Mexico for the corresponding fiscal year. Direct award can be carried out under the exceptions defined in article 48 of LCPEMyM (see Box 5.3) or under the threshold established for direct award (*contratos pedidos*) (Table 5.1).

Table 5.1. 2020 Expenditure Budget of the Government of the State of Mexico

Threshold for direct award and restricted invitation

Authorised budget of the procuring entity (MXN pesos)	Direct award - maximum amount of each operation (MXN pesos)	Restricted Invitation- maximum amount of each operation (MXN pesos)
0-6,500,000	150,000.00	400,000.00
6,500,000-13,000,000	175,000.00	600,000.00
13,000,000-19,500,000	200,000.00	800,000.00
19,500,000-26,000,000	250,000.00	1'000,000.00
Above 26,000,000	500,000.00	1'500,000.00

Source: State of Mexico's 119 Decree which establishes the amounts for 2020 of the Expenditure Budget of the Government

Compared to international practice, the number of exceptions defined in article 48 of the LCPEMyM is relatively high. In addition, the current drafting of the law presents a number of exceptions that are ambiguous and may lead to misinterpretation. For instance, the exception III. “*Services that require special expertise, techniques or equipment, or the acquisition of used goods or special characteristics that can only be provided/supplied by a single person*” provides room for subjective interpretation. Similarly, exception V. “*There are circumstances that may cause significant losses or additional costs to the treasury*” appears difficult to evaluate objectively.

Finally, exception X. “*The State or the municipalities can meet the payment obligation in a deferred manner, without involving an additional financial cost or one that is less than the market cost*” does not meet the standard of limited and pre-defined exceptions.

Having many exceptions diminishes the openness of procurement opportunities to competition and therefore they should be limited to specific circumstances, in which competition is not suitable. Furthermore, if the exceptions are discretionary, there is a higher risk of abuse of the system. In addition, subjective exceptions make it difficult for oversight authorities to determine whether the direct award is justified or not. In conversation with OECD experts, this emerged as a challenge for controlling entities.

Despite the relatively high number of exceptions in the law, contracting authorities of the State of Mexico, as a good practice, need to support the use of exceptions with a formal justification. These justifications are not public; however, they are open to the public upon request.

It should be noted that the practice of having an elevated number high of exceptions to the tender procedures is quite common in Mexico: the State of Nuevo Leon, for example, presents around 20 exceptions, the State of Aguascalientes provides 14 exceptions and the State of Coahuila 24 exceptions.⁵

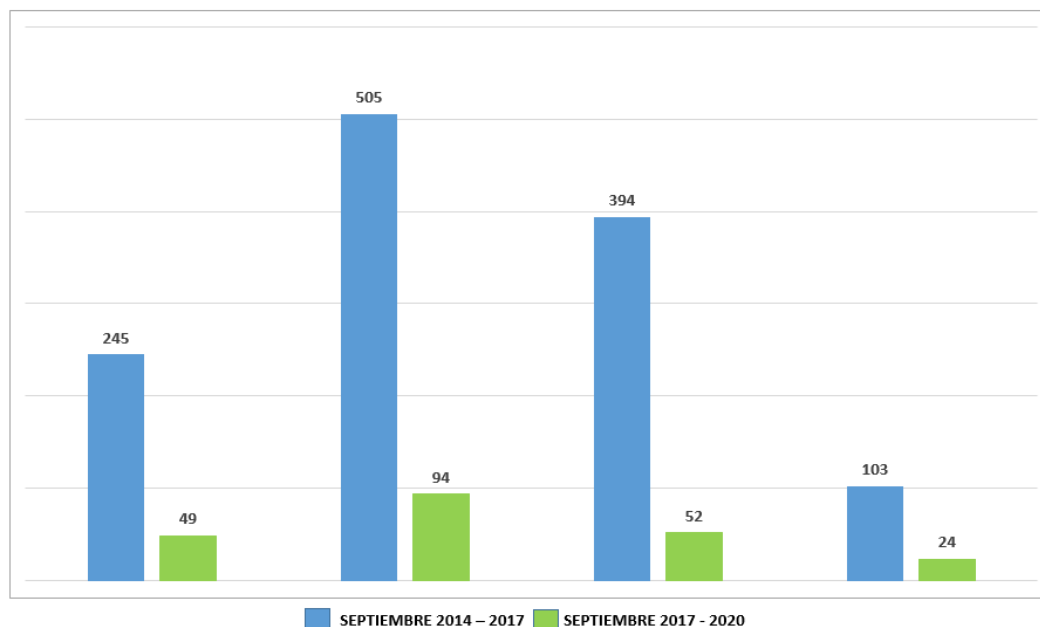
In contrast, the practices in neighbouring countries like Colombia, their legal framework states eight cases to use the exception of direct award, which are clear and consistent (OECD, 2016^[5]). Moreover, New Zealand’s Procurement Rules establish ten specific cases in which the authorities could use a closed competitive process or a direct source process (Rule 14) (Ministry of Business, 2019^[6]).

The availability of exceptions may not only be problematic from a legal point of view, but also in practice. In fact, once exceptions are available, they tend to be used. For instance, during the period 2014-2017 in the State of Mexico, there was a trend of high use of direct awards through exceptions in its procurement procedures. In fact, in 2016 direct awards accounted for 47.3% of the total value of procurement expenditure. This implies that a very significant amount of procurement expenditure was not subject to competition.

However, during the period 2017-2020, there is a decreasing trend, reducing the use of direct awards significantly, in terms of number of procedures. This positive trend is showed in Figure 5.1.

In order to continue this decreasing trend and assure proper competition during the tenders, the LCPEMyM and its Bylaws could be reformed to limit the possibilities of using exceptions and further detail the situations in which their use would be justified.

Figure 5.1. Use of Direct Awards by the Ministry of Finance (number of procedures)



Source: Information provided by the Ministry of Finance

Box 5.3. Direct award exceptions for goods and services according to Article 48 of the Public Procurement Law of the State of Mexico and Municipalities

The Ministry, entities, administrative courts and municipalities may acquire property, lease movable and immovable property and contract services, through direct award, when:

- I. The acquisition or service can only be made with a certain person, because of its nature. For instance, works of art, ownership of patents, registrations, specific trademarks, copyrights or other exclusive rights.
- II. The acquisition or lease of a property can only be made with a certain person, as it is the only property available on the real estate market that meets the characteristics of size, location, services and others required by the authorities.
- III. Services that require special expertise, techniques or equipment, or the acquisition of used goods or special characteristics that can only be provided/supplied by a single person.
- IV. The acquisition of goods, leases or services is urgent because the social order, health, public safety or environment of an area or region of the State is at risk; public services are paralyzed; the programs or actions are in support of the population to meet urgent needs, or some similar cause of public interest.
- V. There are circumstances that may cause significant losses or additional costs to the treasury.
- VI. Information of a confidential nature may be compromised for the State or municipalities, for reasons of public safety.

VII. There are extraordinary or unforeseeable circumstances arising from risk or disaster. In this case, the acquisition, lease and service shall be limited to what is strictly necessary to deal with such an eventuality.

VIII. A contract has been terminated due to causes attributable to the supplier or that the person who, having won a bidding process, does not attend the signing of the contract within the term established in this Law.

In these cases, the Secretariat, the entity, the administrative court or the city council may award the contract to the bidder who has submitted the solvent proposal closest to the winner and so on. In any case, the price difference shall not exceed ten percent, with respect to the winning proposal.

IX. A restricted invitation procedure has been declared void.

X. The State or the municipalities can meet the payment obligation in a deferred manner, without involving an additional financial cost or one that is less than the market cost,

XI. The amount of the operation does not exceed the amounts established in the State Government Expenditure Budget for the corresponding financial year. In the case of real estate leases, the amount of the operation shall be understood as the monthly rent.

XII. Goods are produced by cooperatives, rural production, collective interest, social solidarity, companies and associations with social purposes, whose object is not predominantly profit, produced in the State of Mexico and acquired directly from them.

Source: (State of Mexico, 2013^[7])

5.2. Increased competition is needed to drive efficiency throughout the procurement cycle

Competition is an essential element to drive efficiency in procurement procedures. A competitive process leads to better prices and higher quality goods and services (including innovation), yet these outcomes can only occur when the bidders genuinely compete. Therefore, governments should ensure broad access to public procurement markets, in order to promote competition and ultimately achieve value for money.

The current situation in the State of Mexico presents challenges regarding the level of competition in procurement. During the fact-finding mission, low levels of competition was raised as an issue. As discussed in Chapter 3 on centralisation, the Ministry of Finance faces low participation and limited competition in its tenders, with on average less than two bidders participating to a tender. Low participation in procurement also affects other entities, such as auxiliary bodies and municipalities.

According to an OECD analysis of fifty procedures from different municipalities, it emerged that 75% of the analysed tenders had low participation, with either only one or two bids.⁶ Similarly, low participation in tenders was recorded for auxiliary bodies: 52% of the tenders had between one and two bids⁷.

Several factors play a role in limiting the participation of suppliers throughout the procurement cycle. As a starting point, contracting authorities often lack a clear overview of the market, and a related strategy to engage with suppliers and maximise their participation. In addition, good communication with suppliers is a lever for strengthening participation in tenders. A useful example of improving engagement with suppliers, and therefore boosting participation, is the creation of new communication channels between the contracting authorities and market players.

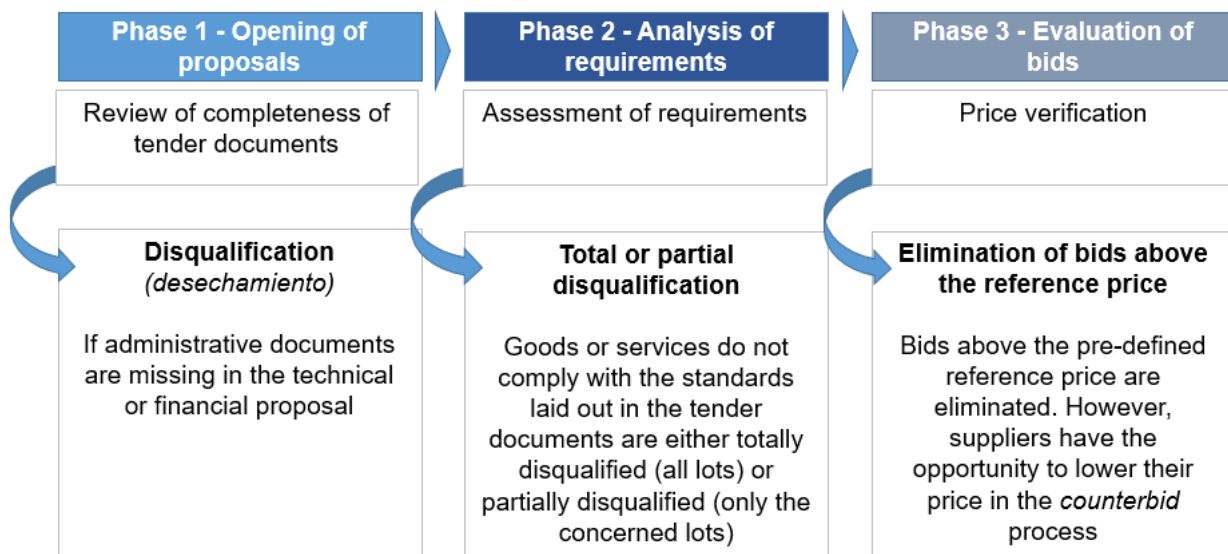
Furthermore, procurement practices are currently set up in a way that leads to high rates of disqualification of suppliers. In turn, competition is reduced throughout the various phases of the cycle. This includes the lack of robust market research leading to bids that overshoot the reference price, unclear or restrictive requirements for administrative disqualification (*desechamiento*), and restrictive disqualification practices for not meeting technical or financial requirements. These factors will be further analysed in the following section.

In fact, many of the suppliers who actually submit a tender do not make it to the end of the procurement process, as they are often disqualified along the way. There are three steps that can lead to disqualification, as shown in Figure 5.2.

First, administrative disqualification occurs when a supplier fails to meet administrative requirements. Second, suppliers could be disqualified for failing to meet technical requirements. Third, disqualification happens when the economic offer is above the so-called reference price, i.e. the contracting authorities' budget ceiling. In all these steps, suppliers are frequently disqualified, further reducing the number of viable bids and related competition.

In an attempt to reduce the high disqualification rates that lead to low competition, more channels should be developed to improve communication between suppliers and procurement officials. Since the current Protocol may limit the possibility to interact with suppliers, a reform that adds new flexible ways should help overcome such limitations. For instance, a reform could specify the conditions for contracting authorities to meet with suppliers in the pre-tendering stage to clarify questions, explain procedures in more detail, or learn more about specific needs, not least inefficiencies result from the so-called *counterbid* process. Suppliers are provided with a short amount of time to decide whether to reduce their prices. However, there is no standard format for this process, with each authority deciding on an ad-hoc basis how to conduct the counterbid.

Figure 5.2. Potential steps of disqualification throughout the procurement cycle



Given that each entity has the discretionary power to decide how much time they will give during the counterbid process, this presents a lack of clarity for suppliers, leading to confusion. The development of a standard document could help overcome this issue. For instance, the Government of the State of Mexico could add an article to the POBALINES indicating some minimal standards to follow during this procedure, taking into account features such as the number of lots and the volume or the total amount of the procedure.

The following section will explore factors that limit competition and efficiency in the procurement cycle. It should be noted that the focus of this analysis lies on procurement for goods and services, as it concentrates on the application of the Public Procurement Law of the State of Mexico and Municipalities, which governs procurement of goods and services.

5.2.1. Conducting market analysis and market engagement to broaden the pool of suppliers

As discussed above, low supplier participation in public procurement is a generalised issue that needs to be addressed by contracting authorities in the State of Mexico. The starting point for improving the efficiency of public procurement in the State of Mexico is to increase bidders' participation. One step towards expanding the pool of suppliers is to focus more on market analysis and market engagement. This would allow contracting authorities to have a better overview of which suppliers are left out and could therefore be brought into the procurement process.

An essential aspect to carry out a successful procurement procedure is related to sound market analysis. Market analysis gives insight into the size, shape and competitiveness of a given market, as well as providing accurate information on a product, e.g. technical and functional features, quality elements and price. This information is then used to design the procedure that maximises value for money.

In fact, market research is a mandatory process as per public procurement rules throughout the State of Mexico. According to Article 17 of the Bylaws, one of the main focuses of the market research is to determine the so-called reference price of goods, works and services. Additional objectives of the market research include determining the existence of goods or services, in the quantity and quality required, as well as verifying the existence of suppliers or service providers, knowing the price prevailing in the market and choosing the purchasing method to be used.

The reference price mentioned above is calculated as an average of at least three offers received and represents the maximum ceiling for a procurement procedure. Above this price, the bidder is automatically disqualified. The practice of determination of the reference price is discussed further in this section.

The fact contracting authorities are mandated to conduct market research, differs from most OECD countries, and represents in itself a positive element. Through this legal obligation, public buyers are aware of the need to carry out market research, which may not be universally the case, especially for infrequent buyers. However, as defined by law, market analysis in the State of Mexico is understood in a narrow sense. The main objective is to obtain the reference price without taking into account broader considerations that can be valuable throughout the procurement process.

Indeed, market research should not be limited to price aspects, but also take into account functional characteristics of goods, services or works, delivery conditions and product life. Furthermore, the contracting authority should gain a good understanding of market conditions and potential suppliers focusing on what general solutions are available in the market. Key dimensions to be covered during the market research phase are listed in Figure 5.3.

Knowing the market and available products is essential to generate value for money from procurement contracts. Only by knowing the market, the public buyer can design the specifications that reflect quality. Furthermore, market analysis allows adapting the tender to the conditions of the market. For instance, the size of lots may depend on whether the tender targets SMEs in a specific market, or similar considerations. With respect to competition, having a view of the market also gives insight into what kind of participation is expected for a given tender.

Figure 5.3. Objectives of market analysis

Dimensions to be explored in the market analysis phase



Source: OECD, Presentation during Workshop in the State of Mexico

Many of the OECD countries have developed market analysis guides to support contracting authorities in the task of drafting relevant market studies (OECD, 2019^[8]). The State of Mexico has also developed a practical guide called 'Procedures of authorisation and registration of market studies in the SICAPEM', which indicates all the steps to follow, the tools and definitions to use throughout the market research process. Moreover, the State of Mexico's practical guide includes the following tools to conduct market research:

- Review of historical prices;
- Mystery shopper: technique in which the analyst acts like any other customer to compare prices with suppliers;
- Browse web pages;
- Field research; and
- Market segmentation: technique that consists on making a total division of the market based on a specific product to analyse.

However, contracting authorities frequently resort to a market analysis based on three quotations requested from suppliers, exposing themselves to certain risks. Even if suppliers who were approached for a quotation are chosen arbitrarily and are not aware that others have been invited to this procedure, there is a risk of inflated quotations, pre-arrangements and collusive practices.

Other countries recommend extensive market research practices that take into account several market dimensions. For instance, Box 5.4 shows how the State of Queensland in Australia developed an specific guide for the analysis of the market that takes into account several dimensions, notably competitive dynamics in the market.

Box 5.4. State of Queensland (Australia) guide for market analysis

The State of Queensland (Australia) has developed a specific guide for market analysis. Referring to Porter's five strengths to build a structured approach to market analysis and understand competitive dynamics, this guide incorporates elements of procurement marketing to help contracting departments build an optimal procurement strategy. It includes detailed sections on market structure, competitive dynamics between suppliers, supply chains and alternative products (goods or services), among others.

Source: (State of Queensland Government, 2018^[9])

In addition to desk-based market analysis, it is also valuable to consult potential suppliers in order to be able to draft specifications and tender documents adapted to the reality of the market (structure, availability of goods, suppliers), as well as to solicit interest from them. Indeed, engagement with the private sector helps reduce the information gap for the authorities and collect more recent and reliable market information. As discussed in Chapter 1, currently the market research carried out by the State of Mexico's officials does not include dialogue or market engagement with suppliers. This approach is influenced by the Protocol restrictions that procurement officials of the State of Mexico should follow. However, procurement officials can carry out the so-called "verification visit" to confirm that the required structure or availability is in place. On the contrary, establishing contact with suppliers is often viewed with suspicion.

Nevertheless, market dialogue is as important as market research for adjusting the purchasing strategy of the contracting entity. In particular, in the context of low participation from suppliers, raising awareness to suppliers about upcoming tenders is essential. However, regarding fair competition for the suppliers, it is necessary for contracting services to communicate fairly and transparently with potential suppliers in order not to give undue advantage to one or more of them (OCDE, 2019^[10]).

There are a number of ways in which the authorities can improve market analysis through dialogue with potential suppliers and in turn, raise the level of competition and efficiency of public procurement processes. These are detailed in Chapter 1. Introducing such measures will likely enhance the quality of the tender preparation process, as contracting authorities receive direct feedback on what the market is able to deliver, and at what price.

For instance, the Mexican Federal Government publishes preliminary versions of tender specifications (*pre-bases*) on its COMPRANET e-platform in advance of a call for tender in order to gather comments from economic operators (OECD, 2018^[11]). Another important element within the engagement with the private sector is to alert potential suppliers to general information on future procurement opportunities. For instance, according to the information given by the Government of Mexico City, the *Tianguis Digital* platform has a notification system, which sends a message to already-registered suppliers about bidding procedures in real time.

The practice of meeting with suppliers is quite common in many OECD countries, for example in New Zealand, Italy and Greece. Sometimes this takes the form of organised meetings between several public purchasers and interested suppliers for specific product categories (OECD, 2018^[11]). Such meetings could shape a specific procurement strategy for the future, for instance showing how technical requirements and award criteria could be used in future procedures. This could also help to target new pool of suppliers and reducing market concentration.

5.2.2. Limit disqualification (*desechamiento*) due to missing administrative requirements

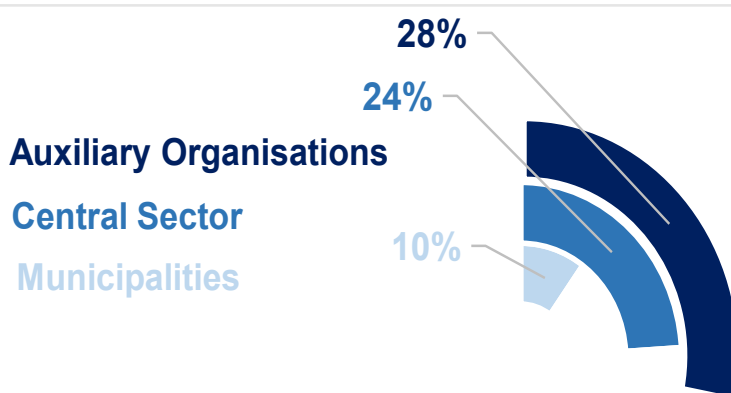
Another source of inefficiency lies in the frequent disqualifications that occur at the early stage of the procurement procedure. Losing suppliers in the procurement process is costly, considering the effort required by the supplier to submit a bid. As such, contracting authorities need to pay careful attention to reduce disqualification at this stage. This would allow them to receive more bids and thereby increase competition in their tenders.

In the State of Mexico, suppliers need to be present in the presentation and opening of proposals held by the contracting authority. The Bylaws of the LCPEMyM establishes that procurement officials must call upon every supplier to hand the envelopes containing their technical and financial proposals.

First, the procurement official will verify that all the technical proposals comply with the documents requested in the rules of procedure. If the suppliers do not comply with all the requested documents for the technical proposal, they are eliminated (*desechamiento*) before the opening of their financial proposals. Second, officials will proceed with the review of the financial proposal and will withdraw the bids that do not comply with all the documents before even evaluating them. According to Article 86 paragraph VII of the Bylaws of the LCPEMyM, the act of withdraw (*desechamiento*) needs to be properly justified by procurement officials.

The OECD analysed a sample of tenders that were extracted from COMPRAMEX. This analysis consisted of an in-depth review of 150 separate goods and services procedures, including 50 from the central sector, 50 from auxiliary bodies and 50 from municipalities. The following Figure shows that the three main sectors often eliminated bids due to lack of compliance with the requested documents at the very early stage of the procedure. Although conducted on a small sample, this analysis suggests that *desechamiento* is very common in the State of Mexico, particularly for procurement by auxiliary organisations and by the central sector. High levels of *desechamiento* undermine the efficiency and competition of the procurement system in several ways. First, from a suppliers' perspective, it represents a waste of resources, as the supplier has invested in the preparation of a bid, but has no opportunity of success as they are disqualified. From a contracting authority's perspective, high levels of disqualification reduce the participation to the tender, and thereby diminish competition and related value for money.

Figure 5.4. *Desechamiento* among ministries, auxiliary organisations and municipalities



Source: OECD COMPRAMEX analysis 2019

Furthermore, the analysis of COMPRAMEX procedures showed that often elimination of proposals occurred in response to common errors made by suppliers. Box 5.5 shows a list of the documents commonly forgotten by suppliers, which led to their exclusion from a procurement procedure.

Box 5.5. Proposals disqualification (*desechamiento*): Common suppliers' mistakes

Frequent mistakes by suppliers that led to disqualification included the absence of:

- the certificate of quality of the required good;
- the original or certified copy of the power of attorney (issued by a notary public) to represent the company is not submitted;
- the original letter from the manufacturer of the required good.

Additional mistakes consisted of:

- the envelope of the technical proposal was not addressed to the Government of the State of Mexico, Ministry of Finance and General Directorate of Material Resources;
- the warranty period for the required goods was not indicated;

Source: (OECD COMPRAMEX analysis 2019)

As detailed in the box above, disqualification is often linked to mistakes that could easily be prevented. In fact, some of the commonly missing information or documents could be replaced with the suppliers' certificate of the State of Mexico. This certificate is issued by the Ministry of Finance and, according to the Bylaws of the LCPEMyM, is valid for one year and proves that the suppliers who hold it meet all the requirements established by the Ministry. In addition, it allows the holder to participate in the procurement procedures with the benefit of replacing the presentation of the documents indicated in paragraphs I, II, III, IV, V and VI or article 32 of the Bylaws. In order to obtain this certificate, suppliers must submit an application with the information showed in Box 5.6.

Box 5.6. Submission of documents in order to get the Suppliers' Certificate according to Article 32 of the Bylaws of the Public Procurement Law of the State of Mexico and Municipalities

Required documents to obtain the Suppliers' Certificate:

- I. Constitutive certificate and its last modification, in the case of legal persons; or birth certificate, in the case of natural persons;
- II. Tax Identification Card and Registration in the Federal Taxpayers' Registry, indicating the current tax address, as well as the main activity at the time of the registration application;
- III. Power of attorney of the legal representative, issued by a Notary Public;
- IV. Official identification of the owner or legal representative;
- V. Annual tax return for the immediately preceding fiscal year or financial statements for the last fiscal year, issued by a registered public accountant under the terms of the Federal Fiscal Code; or bank statements, indicating the movements made and the balance at the end of the month preceding the date of application for registration, in the case of newly established companies.
- VI. Financial statements for the month immediately prior to the date of application for registration, accompanied by the professional certificate of the public accountant who issues them;
- VII. Two recent colour photographs of the owner or legal representative; and
- VIII. Letter of commitment to verify and update documents.

Source: (The State of Mexico, 2013^[12])

By focusing on reducing the number of disqualified proposals, the State of Mexico would contribute to greater participation in public tenders, ultimately increasing competition among suppliers. This requires a number of initiatives, particularly focusing on awareness about the suppliers' certificate.

As a starting point, suppliers need to be aware of the benefits that the certificate could bring to them at the moment of the tender. The State of Mexico could raise suppliers' awareness to motivate them to acquire the above-mentioned certificate, in order to reduce the amount of documents at the presentation of proposals. With this measure in place, the opening of proposals could take less time and be more effective. Importantly, more suppliers would have a chance to submit a valid bid, giving more options of goods or services for the contracting authorities. Once the value of the certificate is well understood by potential suppliers, another step to take could be its digitalisation. This could help suppliers and contracting authorities in terms of reducing administrative burdens and processing.

In addition, it is crucial that suppliers correctly understand the information that the contracting authorities are asking from them. Misunderstanding of the documents could lead to less interest to bid or wrong documents delivered at the proper time. In order to assure the correct understanding, the State of Mexico could focus on developing more ad hoc communication channels, for instance, training workshops for suppliers, half-day seminars and pre-recorded tutorial videos through the COMPRAMEX platform, to show suppliers how to respond appropriately to a tender to avoid common mistakes. The establishment of this dialogue could be very beneficial in tackling this common issue and maximising the efficiency of the procedure.

Reducing the occurrence of partial or total disqualification due to formalistic errors

Another obstacle to participation in the procurement procedure refers to the total or partial disqualification that occurs after the *desechamiento*. Having verified administrative requirements, the contracting authority proceeds with verifying technical requirements of the bids submitted. While there are fewer suppliers eliminated at this second stage, compared to the first one, a relatively high share of suppliers do not comply with either the technical or the financial requirements.

Namely, based on the sample of 150 procedures 17.3% of bids were eliminated at this stage. Once again, the reasons for disqualification can be minor and often formalistic in nature. For instance, if suppliers submit inconsistent prices in their bids, this can lead to disqualification. Similarly, an error in calculating various totals can lead to disqualification at this stage.

Overall, the State of Mexico should limit the opportunity for formalistic errors to lead to severe consequences such as disqualification, in particular in the context of low levels of participation. Contracting authorities could review their request for proposals in light of common mistakes and try to simplify the procedure by going through a reform of the existing framework or streamlining the language in the rules as much as possible to prevent similar types of errors. Alternatively, contracting authorities could invest in the standardisation of requirements or train suppliers as mentioned before.

5.2.3. Inefficiencies related to the Counterbid (*Contraoferta*)

A specificity of the public procurement system in the State of Mexico is in the so-called counterbid process, which is defined in the Bylaws of the LCPEMyM (article 2 paragraph X): ‘Procedure in which the bidders can reduce the price of their economic proposals, so that the new price they offer is within the reference price, which has been determined by the area responsible for carrying out the market study’.

After the qualitative evaluation of both technical and financial proposals, the procurement official will announce the remaining suppliers for which prices are within the reference price. As discussed above, this price is determined during the market research procedure by the Ministry of Finance’s Market Research Directorate. This reference price determines the ceiling for suppliers’ offers (See Box 5.7), meaning that any offers above the reference price are automatically discarded unless suppliers offer to lower their prices in the counterbid process.

Box 5.7. Determination of the reference price according to Article 18 of Bylaws of the Public Procurement Law of the State of Mexico and Municipalities

The reference prices shall be determined based on an average of at least two quotations from manufacturers, distributors or traders and chambers of commerce in the sector concerned. These quotations must be obtained by writing, by electronic means available, or through a price survey. They should take into account the same conditions about quantities, times and places of delivery of the goods or provision of the services, the form and terms of payment, the technical characteristics of the goods or services, and any other conditions applicable and allowing for an objective comparison.

Source: (The State of Mexico, 2013^[12])

While not as common as *desechamiento* and disqualification, this practice also contributes to the inefficiency of the procurement cycle in the State of Mexico. In the sample of 150 procedures analysed, 12% of tenders resulted above the reference price, and therefore triggered a counterbid. The relatively high share of tenders in which the reference price was overshoot may indicate that market research is not robust.

Beyond this, the non-disclosure of the reference price could contribute to inefficiencies in the procurement cycle. Namely, the fact that the budget ceiling is not disclosed from the onset of the procedure represents a hurdle for potential suppliers. If their offered prices are not within the market price and the supplier does not have the capacity to reduce the price during the counterbid procedure within the granted period, its offer is automatically rejected and the offered goods or services void.

To avoid this situation, contracting authorities in the State of Mexico could, in some procedures, disclose the reference price in the call for tender or in the rules of procedure. The disclosure of the reference price could also take into account the specific characteristics of the market, for instance, the size of it. By doing so, the State of Mexico would give more clarity and perspective to the suppliers, before establishing their prices for the goods or services offered. Moreover, the disclosure of the reference price could enhance the efficiency of the procedure. If the contracting authorities adopt this measure, only suppliers whose prices are within the market price will submit their proposals, saving time spent on the counterbid.

It should be noted, however, that there are some risks related to the disclosure of the reference price, in particular related to bid rigging. Indeed, disclosing the budget ceiling could spur suppliers to unlawfully coordinate and inflate prices accordingly (see discussion on bid rigging in Chapter 3 on centralisation). At the same time, the non-disclosure of the reference price is an ingrained practice and public buyers may be resistant to changing their established methods. Thus, contracting authorities need to weigh the advantages and disadvantages based on their particular circumstances. If many tenders were void due to the fact that the reference price is overshoot, this would speak in favour of disclosure. Another option for contracting authorities could be to run a pilot for a limited time, in which the reference price is disclosed. The results of this pilot phase could support decision-making for future action.

Another fact that could affect the efficiency of the procedure is the way in which contracting entities carry out counterbids. In fact, there is no standard approach to conduct a counterbid with each authority deciding independently how to set up the process. For instance, the Ministry of Finance typically gives 10 minutes for suppliers to reduce their prices, while auxiliary bodies and municipalities could give up to 48 hours. As mentioned before, this discrepancy could bring confusion to bidders, and leave them unprepared to provide an alternative price within a short period of time. It could also lead them to favour contracting authorities that provide more time during the counterbid process. The establishment of guidelines in the POBALINES could help overcome this issue.

5.3. Achieving efficiency through focus on quality in the procurement process

When considering the efficiency of a public procurement system, it is key to take into account the results that procurement achieves, i.e. whether any given procurement procedure delivers value for money for its final beneficiary. In other words, whether the procurement is fit for purpose, and delivers the goods and services that users have requested and actually need. Ensuring these outcomes requires a focus on several quality-related dimensions throughout the procurement process.

To achieve greater efficiency in public procurement, the State of Mexico could focus on enhancing the quality of procurement procedures conducted. This entails ensuring the bid is designed in a way to best respond to the needs of the final beneficiary. By focusing on quality, contracting authorities ensure that taxpayers' money is well spent and value for money is achieved.

This section looks at three key areas of the bid preparation, where contracting authorities can ensure that quality is reflected: needs analysis, drafting of technical specifications and finally, definition of award criteria.

5.3.1. Needs analysis should go beyond procurement planning

To achieve the benefits of efficient procurement, the first step that needs to be ensured is a clear overview of the needs of the final beneficiary. To this end, buyers should spend time on understanding these needs in a structured way, through a thorough needs analysis. This stage should not be limited to analysing the quantities of goods and services required, but it should also be about understanding the needs in terms of performance and functionalities expected.

However, in the State of Mexico, needs analysis is often conflated with annual procurement planning. According to the LCPEMyM, there is a legal obligation for all ministries and auxiliary bodies to prepare an annual plan based on the State of Mexico's Development Plan (*Plan de Desarrollo del Estado de México*), the regional plans and taking into account the austerity measures established in the corresponding Expenditures Budget. The annual procurement plans are to be uploaded to the COMPRAMEX system before 31 January of the current tax year. Article 9 of the LCPEMyM contains information and characteristics that the annual plans must include; however, every agency, ministry or municipality uses a different format for their procurement plans, and not all of them comply with the required information. Furthermore, not all the plans are available in the COMPRAMEX platform for public consultation.

The publication of procurement plans is an important practice that gives visibility to the market about upcoming procurement opportunities. Lack of transparency can have a negative impact on the level of participation of the potential suppliers in purchasing opportunities and therefore on the level of competition.

For instance, the state of Aguascalientes has a multiyear programming that enables procurement officials to foresee potential opportunities for consolidation and the use of economies of scale. Indeed, it is a tool for achieving goals and objectives for the State Development Plan (OECD, 2015^[13]). Furthermore, international best practice foresees the development of a standardised format of procurement planning programmes. The benefits of this would undoubtedly be the harmonisation of the presentation of economic operators, as well as the certitude that all plans would offer the same level of relevant, sufficient and homogeneous detail. (OCDE, 2019^[10]). The State of Mexico could develop a standard format for the annual procurement programme to ensure compliance with transparency obligations relating to procurement planning (See Chapter 1).

While important, procurement planning is not a substitute for an in-depth analysis of the needs related to the procurement of a good or service. Through procurement planning, the contracting authority identifies its aggregate needs, while the needs analysis defines the specific features for a single procurement procedure. In fact, the purchasing entity, particularly the user areas, needs to invest a significant amount of time in understanding the requirements of contracting authorities to gather sufficient information on what the best solutions to meet the underlying needs are. To go beyond gathering basic needs from a procurement plan, the procurement officials of the DGRM can expand existing interviews with each user area to further engage for more direct feedback on procurement requests.

5.3.2. Technical specifications: drafting of specifications reflecting needs and market analysis

The technical specifications are regulated in the rules of procedure (*Bases de Licitación*) of each process. According to the POBALIN-060, the contracting authority is the one that drafts the technical specifications and the approval is the responsibility of the requiring entity (i.e., the users). These entities have up to 48 hours to make changes to the technical specifications. According to the Bylaws, the tender documentation should be in Spanish and contain the technical specifications with a generic description of the goods or services, including presentation, unit of measure, quantity and, if applicable, specific information about maintenance, technical assistance and training; list of spare parts to be offered, as well as applicable standards. It also contains the specifications regarding clarification meetings, opening of proposals, applicable qualification criteria and reasons of possible disqualification. Furthermore, the tender

documents detail all elements after the award, such as contract characteristics, invoices, sanctions and reasons for suspension, among others.

The contracting authorities typically carry out a narrow market analysis, which enables them to draw up technical specifications. As mentioned before, the market study usually determines whether a specific product exists, what the maximum sale price is for the future purchase, and characteristics of available goods or services in the market. More efforts could be done to upgrade market study in the State of Mexico, in order to have clear and adapted technical specifications. Special attention should be given, not only regarding the solutions, such as alternative solutions to the goods, but also taking into account the market structure, for instance, the structure of the supply chain in order to identify the producers.

Apart from the technical specifications that each procedure must present, some goods and services need to have a technical opinion from different ministries in order to be validated. The POBALIN number 59 shows this list of goods and services (see Chapter 1, Table 1.2).

5.3.3. Using award criteria to enhance quality

Award criteria are used to evaluate the different offers by bidders and to award the contract to the best offer. Internationally there are two types of award criteria, which are used to award contracts. First, the lowest price criterion, in which the contract is awarded to the lowest-priced offer. In this criterion, the only factor that is taken into account is price (OECD, 2011^[14]).

On the other hand, there is the Best-Price Quality Ratio (BPQR) criterion, which takes into account other criteria in addition to or other than the price, such as quality, delivery time and after-sales services. This criterion presents various advantages, particularly when the contracting authority is seeking for the best quality of products.

The legal framework in the State of Mexico allows for quality consideration in the evaluation of bids with the so-called ‘points and percentages’ award criteria (*puntos y porcentajes*). The second method for awarding bids is via the so-called binary award criterion. Both types of award criteria are explained in Box 5.8 below.

Box 5.8. Award Criterion for goods and services for the State of Mexico

(a) In the binary award criterion, only those suppliers who meet the requirements set by the convenor and offers the lowest price will be awarded; and

(b) The points and percentages award criterion, should establish:

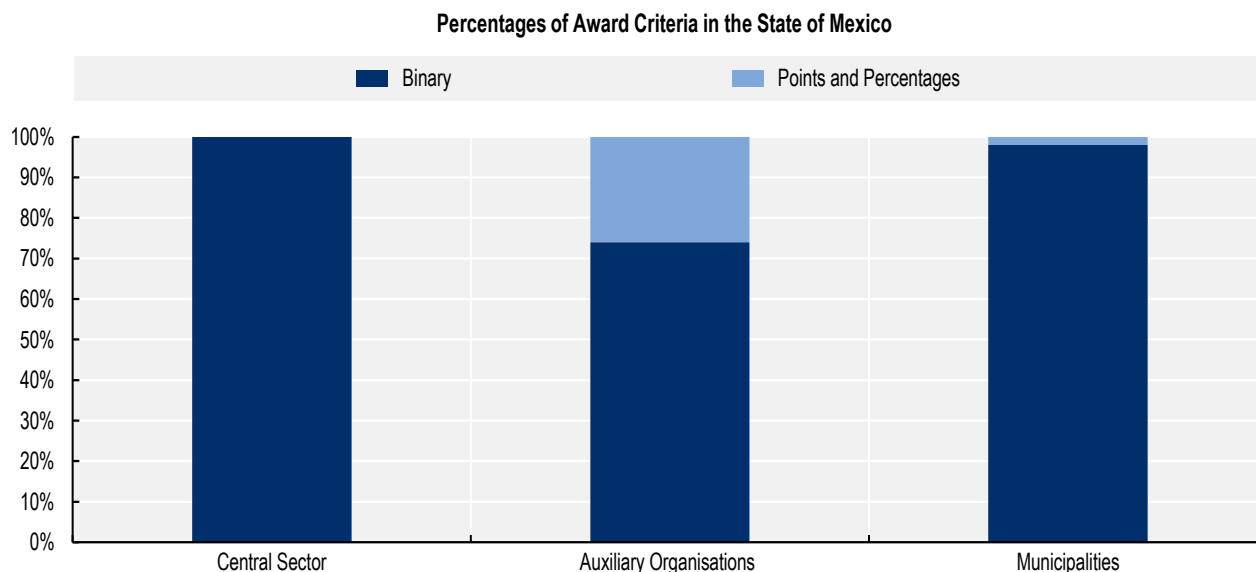
- items and sub-items of the technical and economic proposals;
- the numerical or weighting score that can be achieved or obtained in each;
- the minimum score or percentage that bidders must obtain in the evaluation of the technical proposal to continue with the evaluation of the financial aspects; and
- the ways in which the bidders must accredit compliance with the aspects required by the convenor in each item or sub-item in order to obtain a score or weighting.

Source: (The State of Mexico, 2013^[12])

Even though the State of Mexico’s legal framework establishes two criteria to award bids according to the nature and specific characteristics of the goods and services, the analysis of the procurement practices showed that the binary criterion, i.e. lowest price, was by far the most used criterion for a sample of tenders analysed. Figure 5.5 shows the outcomes of this analysis in terms of percentages about the use of the

award criteria in the three analysed sectors in the State of Mexico. This analysis is consistent with the discussions held during the OECD fact-finding mission, where officials confirmed the prevalent use of the lowest price criterion. Overall, contracting authorities have limited experience with points and percentages, and make use of it only in select complex cases.

Figure 5.5. Use of binary criterion in the State of Mexico (%)



Source: OECD analysis of COMPRAMEX data

Although, in theory, the contracting authorities seem to be aware of the benefits of the Best Price-Quality Ratio (BPQR) criterion, in practice it is clear that they do not tend to take advantage of it. Indeed, going beyond the lowest price would allow contracting authorities to reward offers that best meet their needs regarding several quality-related dimensions, such as functional characteristics, design types, environmental and social characteristics, after-sales services and delivery terms. Depending on the context, one or more of these dimensions may be most relevant. With appropriate award criteria, the contracting authority can prioritise those quality aspects that most respond to its needs.

Designing award criteria is a complex task, particularly if there is little use of this type of method. Often procurement officials prefer to use the same methods that have been used in the past because they perceive that this strategy does not put them at risk of a challenge. However, it also means that contracting authorities are foregoing significant opportunities to design efficient procurement procedures that deliver value for money.

In recent years, good practice has spread across Latin America and more countries seem to adapt their procurement laws with other criterion other than price only (See Box 5.9).

Box 5.9. Latin American practices enhancing quality of goods

In Peru

tender evaluations can be based on price and other criteria established by the entity in the tender documentation. The competition criteria established by their new legislation are referred to as: 1) the environment; 2) social goals; 3) improvements to the technical requirements; 4) delivery terms; 5) the experience of key staff, and more.

In Colombia

open tenders are evaluated using three criteria: 1) economic; 2) technical; and 3) the nationality of goods and services offered. Economic points are awarded according to the price of the bid. As for technical points, the procuring entity must allocate points based on the quality, delivery time or sustainable sub-criteria. Up to 20% of points must be given to bids of goods and services whose origin is Colombia or one of its trading partners, following the rules set in trade agreements.

Source: (OECD, 2017^[15]) (OECD, 2016^[5])

Even though the BPQR criterion presents various advantages, it is not recommended to use it for all procurement procedures. The use of the lowest price criterion (lowest price bid), besides the advantage of simplicity and rapidity, may be relevant in the case of purchases of highly standardised products with pre-established characteristics.

As mentioned before, the established award criteria in the State of Mexico are either the binary or the points and percentages. The points and percentages criterion is outlined in the Manual POBALINES (Agreement setting the Policies, basis and guidelines relative to acquisitions, leasing and services of the ministries, auxiliary bodies and administrative tribunals of the executive branch of the State of Mexico), in which its scoring rules are detailed, too.

Table 5.2. Points and percentages award criterion for contracts in the State of Mexico

POBALINES-064

	Award Criteria	Score
Technical criterion	Technical characteristics of the goods and services	20-35 points
	Suppliers capability	5-10 points
	Suppliers' experience and expertise in the market	5-10 points
	Contract execution performance	5-10 points
Financial criterion	Price	Maximum 50 points

Source: (The State of Mexico, 2013^[16])

Despite the fact that POBALINES provide guidance on the use of points and percentages, the use of criteria that offer best value-for-money (optimum combination between the various cost-related and non-cost related criteria) is still limited. This indicates that procurement officials need more clarity on the benefits of focusing on quality during contract award. At the same time, the available guidance in the POBALINES may not be sufficiently developed. In fact, by providing a 'one-size-fits-all' framework it may even reduce the incentives for making use of quality criteria, as procurement officials do not have sufficient flexibility to reflect their own needs when conducting a procedure. To tackle this issue, POBALINES could include a

specific section on the development of the BPQR criteria focused not only in the price, but also on the quality of the goods or services.

5.4. Strategic public procurement as driver for efficiency

Increasingly, public procurement is being recognised as a lever to pursue complementary policy objectives, going beyond the traditional role of public procurement in delivering goods, services and works to the public administration. In fact, governments across the OECD are harnessing the power of public procurement to support strategic goals. This is exemplified by the development national strategies to achieve complementary policy objectives through public procurement. These new policy objectives tend to include (but are not limited to), supporting innovation, developing small and medium enterprises, green considerations, inclusion of vulnerable groups and other societal challenges.

Indeed, the 2015 *Recommendation of the OECD Council on Public Procurement* highlights the importance to include complementary objectives in public procurement procedures (See Box 5.10).

Box 5.10. The 2015 Recommendation on Public Procurement – Balance principle

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 the integration of 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 the development of 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 necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target 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^[4])

There are several benefits that governments experience by introducing complementary policy objectives, such as: innovative solutions (construction, mobility, health, safety, IT services aging), achievement of sustainability goals (water quality and waste, deforestation, greenhouse gas emissions), and support of SME and social policy goals, among others. Depending on the government priorities, one or more of these dimensions can be tackled with public procurement. In recent years, across OECD countries there has been an upward trend in the policies that address green public procurement and responsible business conduct. Furthermore, the majority of OECD countries have implemented a policy or a strategy that focuses on SMEs' access to public procurement (OECD, 2019^[17]). Specifically, twelve Latin American and

Caribbean (LAC) countries, including Mexico, have also followed the international good practices by developing policies that foster SMEs participation in public procurement procedures. For instance, Brazil, Chile, Colombia or Costa Rica have developed a central level policy to support SMEs (OECD, 2020^[18]).

A key advantage of moving towards a strategic approach to public procurement means that tenders are no longer evaluated purely based on cost. As discussed above, moving away from lowest price brings a broader dimension of quality to public procurement. As a result, procurement may take into account costs over the life cycle and lead to better environmental performance. Similarly, suppliers have more opportunity to innovate and provide value for money through an improved product or service.

While many countries are increasingly active in promoting the strategic use of public procurement, there are also several challenges in implementing this approach. Namely, strategic public procurement requires advanced skills as well as an overall enabling environment conducive to greater experimentation. Procurement officials need to be aware of market developments and design procurement documents that reflect this knowledge. They need to be able to identify products and services aligned to sustainable or innovative solutions. Support structures, guidelines and tools can be helpful for practitioners that wish to implement strategic public procurement.

In the State of Mexico, the adoption of complementary objectives remains low and awareness regarding the potential of public procurement in this field is limited. Indeed, during the OECD fact-finding mission, procurement officials demonstrated little familiarity with the topic of strategic public procurement and how it can be implemented. Furthermore, many of the practices needed to successfully carry out strategic procurement are at early stage. For instance, market knowledge and market engagement are rarely practised, thereby making it difficult for procurement officials to request products that push the market towards a new standard. Not least, price remains the predominant award criterion.

Nevertheless, some provisions in the Bylaws and guidance (POBALINES) of the State of Mexico recognise the role of public procurement for achieving complementary policy goals, notably for the promotion of local SMEs as well as sustainability. In fact, the law foresees preferential treatment for an SME if there are two equal bids (Article 87 paragraph IV of the Bylaws). Moreover, the POBALINES state that when evaluating bids within the award stage, extra points must be given to SMEs⁸ (POBALIN-064).

The attention dedicated to SME participation in public procurement is reflected by the fact that the Ministry of Finance keeps track of contracts awarded to SMEs (see Table 5.3. Awarded contracts for SMEs (Ministry of Finance of the State of Mexico))

Table 5.3. Awarded contracts for SMEs (Ministry of Finance of the State of Mexico)

SMEs support	2016	2017	2018	TOTAL
Percentage	1.54%	1.92%	8.66%	12.12%
MXN pesos	\$21,737,347.10	\$21,737,347.10	\$21,737,347.10	\$21,737,347.10

Source: Information provided by the State of Mexico's Ministry of Finance

Since 2017, with the update of the POBALINES, green procurement was introduced in the State of Mexico. In fact, contracting authorities are required to include sustainable considerations regarding the care and preservation of the environment (See Box 5.11). While including sustainability requirements is an important first step towards green and strategic procurement, it is also important to follow up on the compliance with these requirements through measurement or policy evaluation.

Box 5.11. (2017) Reform of the POBALINES – New sustainable provisions

POBALIN-062 TER. Procurement of sustainable goods and services

The units and auxiliary bodies through their administrative units or equivalent must contemplate within their annual acquisition programme, the use of sustainable goods and services at the rate of a minimum of 5% of the total goods and services, in order to contribute to the care and preservation of the environment.

In the case of purchases of electronic equipment, they must verify compliance with the current Official Mexican Standards for energy efficiency.

The paper purchased for office use, must be made with a minimum of 50% recovered paper fibres and obtained under a post-consumer or pre-consumer recycling and bleaching process free of chlorine or otherwise paper made from controlled wood, which must have the appropriate certificates.

The purchase of wood, wood furniture and office supplies made from wood must have the corresponding certificates issued by the Ministry of the Environment and Natural Resources, which guarantee the origin and sustainable management of forest products.

Source: (The State of Mexico, 2013^[16])

Strategic public procurement is also used to support the local economy, in line with the priorities of the State Development Plan, which encourages the participation of local suppliers in state procurement procedures (Gobierno del Estado de Mexico, 2018^[3]). Namely, as per the Bylaws, contracting authorities must specify that, in equal circumstances, they will give preference to individuals or legal entities that own the certificate of the State of Mexico's company (*empresa mexiquense*). Regarding award criteria, the contracting authorities could establish additional price percentage (no more than 5%) to the owners of this certificate.

Even though the State of Mexico introduced policy initiatives regarding the inclusion of environmental aspects and SMEs participation, currently there is no control or assessment of practices in place. Thus, it could consider introducing a mechanism for follow up, which in turn could allow them to determine the impact of these policy initiatives. In addition, as further discussed in Chapter 6, joint efforts between the contracting authorities and the Institute for Professionalisation of Civil Servants of the State of Mexico could be put in place. This would allow to develop further knowledge among procurement officials on how to use and draw benefits from strategic public procurement.

The State of Mexico is advancing through the implementation of complementary objectives; the next steps to take could be to develop an appropriate strategy to determine which complementary policy objectives can be pursued and how they can be integrated in the practices of contracting authorities (OECD, 2019^[19]).

Proposals for action

Since 2013, the LCPEMyM has been reformed with a view to enhance transparency and efficiency throughout the procurement cycle and introducing the IT instruments to systematise public procurement procedures. Even though this implementation is a major advance, they are still key stages of the public procurement process that need to be upgraded. The following recommendations aim to be used as a lever to strengthen efficiency throughout the public procurement cycle.

Strengthening the pre-tender stage

The state of Mexico would benefit from strengthening the pre-tender procurement stage carried out by the contracting authorities.

- Needs analysis

The State of Mexico could review the compliance of the obligation of contracting authorities to publish the annual plan. Fostering this practice, the State of Mexico's government would avoid transparency issues and the participation gaps. Furthermore, the government of the State of Mexico should develop a standard format for the annual programme.

- Market research

In practice, contracting authorities should go beyond the objective of establishing a reference price. The aim is to get the best value for money. Moreover, a good understanding of the technical specifications is essential to conduct an in-depth market study, for this reason the market research guidelines, developed by the Ministry of Finance, could also address the technical and regulatory specifications.

Establishing of broader opportunities to foster supplier participation to procurement

- Open state-funded tenders to international bidders

The articles of the LCPEMyM relative to international tenders should be reformed to enable the Ministry of Finance to grant international tenderers access to state-funded procedures. Participation is a key action that advance the possibilities for the contracting authorities to have a larger pool of goods and services. Openness would also ensure more competition among bidders.

- Foster dialogue with suppliers

Dialogue between suppliers and authorities during procurement procedures could improve market analysis and thus the efficiency of the system, as contracting authorities could get a better understanding of the market and better preparation of tender documents. The creation of new channels of communication with the market could be envisaged in a reform of the Protocol. Besides, the State of Mexico could consider using its electronic procurement system for consultations with suppliers to establish questionnaires and announce meetings with suppliers (*expo*), in order to reduce information gaps.

- Creation of a notification system within COMPRAMEX

Low participation in tenders could be generated by various causes, such as high barriers to participation, lack of market engagement or limited attractiveness of contracts. Raising awareness among potential suppliers could reduce this participation gap, thus elevating the number of suppliers to have more competition. The State of Mexico could develop a notification system within the COMPRAMEX platform to send future opportunities to registered suppliers.

Establishing the appropriate award criteria

- The Government of the State of Mexico would benefit from encouraging contracting authorities to make greater use of the price/efficiency ratio method using several selection criteria, as provided for in the regulatory framework (points and percentages), especially when the needs of the contracting services have a degree of complexity.
- Using quality-related award criteria also allows contracting authorities to include strategic aspects in the tender, such as support to SMEs, environmental issues, or innovative goods.
- Establishing a section in POBALINES dedicated to instructing and guiding procurement officials in the strategic use of public procurement.

Reconsidering the list of situations when using direct award

To provide guidance to contracting authorities about when they can apply direct award or not, the State of Mexico could detail the specific scope of the situations included in Article 48 LCPEMyM. In addition, a reform of this article is desirable to modify the list of exceptional situations and reduce it as much as possible, as well as to clarify such situations and maximise competitive tendering.

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Notes

¹ <http://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/ley/vig/leyvig192.pdf>

² <http://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/rgl/vig/rglvig106.pdf>

³ Art. 31

⁴ Law on acquisitions, leasing and contracting of services of the State of Nuevo Leon, Article 29 paragraph III

⁵ Article 42 of the Procurement Law of the State of Nuevo León

⁶ COMPRAMEX data analysis of 50 procedures from 2016 to 2018, of the following municipalities: Amecameca, Atlacomulco, Chalco, Chicoloapan, Huixquilucan, Lerma, Metepec, Nezahualcóyotl, Tenango del Valle, Tepotzotlán and Toluca

⁷ COMPRAMEX data analysis on 50 procedures from 2016 to 2018 of the following Auxiliary Bodies: ISEM (Instituto de Salud del Estado de México), CAEM (Comisión del Agua del Estado México), IMIFE (Instituto Mexiquense de la Infraestructura Física Educativa), SITRAMyTEM (Sistema de Transporte Masivo y Teleférico del Estado de México)

⁸ Manual POBALINES of the State of Mexico, POBALIN-064

6

Maximising capacities of the public procurement workforce through professionalisation

This chapter focuses on the capacity of the public procurement workforce in the State of Mexico. Public procurement has been experiencing a major transition from an administrative function to a strategic one due to its increasingly complex rules and multidisciplinary nature. Therefore, a highly skilled public procurement workforce is required for a sound procurement system. The chapter reviews the existing regulatory frameworks, strategies, and institutional frameworks related to the professionalisation of the public procurement workforce at the State of Mexico. Then, it analyses key priority areas to establish an effective professionalisation and capacity building system: (i) assessing capacity of the public procurement workforce, (ii) developing a competency framework and a certification framework, and (iii) developing a capacity-building system. Lastly, the chapter provides proposals for action that the State of Mexico could consider to advance the professionalisation agenda by enhancing the recognition of public procurement as a professional task.

Introduction

Capacity of civil servants is fundamental to the success of public policy and service delivery. Currently, civil servants address problems of unprecedented complexity in societies that are more pluralistic and demanding than ever. (OECD, 2017^[1]) Under fiscal constraints, governments are required to do more with less. These circumstances also apply to civil servants who work on public procurement.

Adequate capacity of the public procurement workforce is a key element to ensure a sound procurement system in order to deliver efficiency and value for money in the use of public funds. Public procurement is a key economic activity, given the fact that it accounts for a significant share of public spending. In 2017, public procurement represented on average 11.8% as a percentage of gross domestic product (GDP) and 29.1% in terms of general government expenditures in OECD countries (OECD, 2019^[2]). Recently, public procurement has been experiencing a major transition from an administrative function to a strategic one due to its increasingly complex rules and multidisciplinary nature.

The *OECD Recommendation of the Council on Public Procurement* (hereinafter referred to as “Recommendation”) establishes a principle related to the capacity of the public procurement workforce. It calls upon countries to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively (OECD, 2015^[3]) (see Box 6.1).

Box 6.1. OECD Recommendation of the Council on Public Procurement: Capacity

IX. recommends countries to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively.

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.

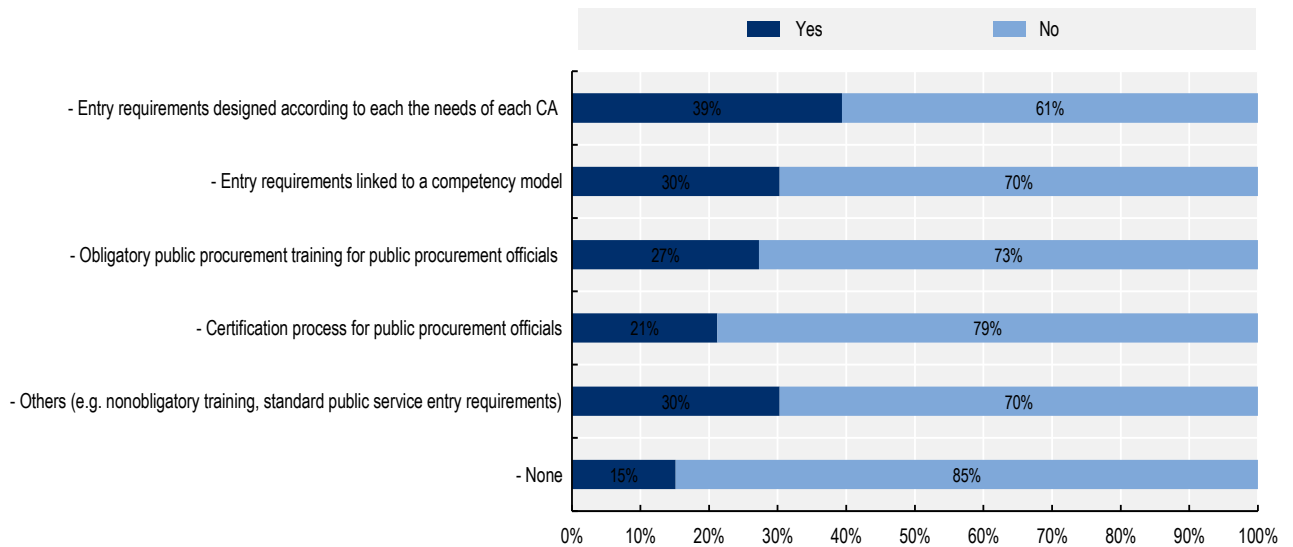
iii) Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce. The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems.

Source: (OECD, 2015^[3])

The capacity of the public procurement workforce has a significant impact on the functionalities of other principles of the Recommendation. In fact, any public procurement functions discussed in other chapters would not work in an efficient and effective manner without highly skilled officials who are capable of implementing procurement procedures on a daily basis. Therefore, it is essential to enhance the professionalisation and capacity of the procurement workforce so that public procurement policies and systems are fully enforced to ensure their maximum impacts.

Recognising the relevance of capacity of the public procurement workforce, many countries have been aiming to reinforce their capacities through different approaches. Figure 6.1 shows the main measures that OECD countries have taken.

Figure 6.1. Measures in OECD countries to ensure adequate capacity of the public procurement workforce



Note: "None" means no specific measure to ensure capacity of the procurement workforce. Data for 33 respondent countries (30 OECD countries plus Morocco, Costa Rica and Peru).

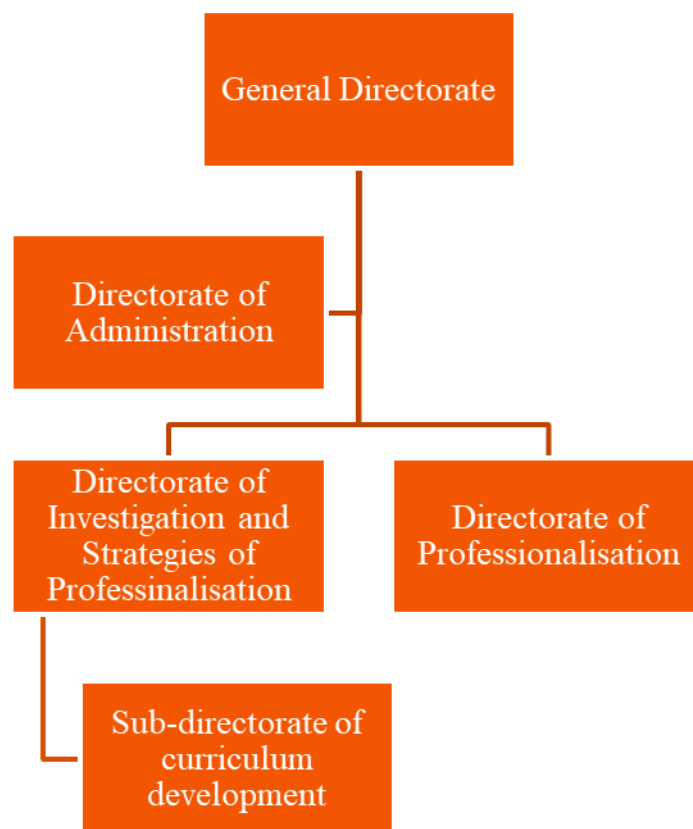
Source: (OECD, 2019^[4])

Indeed, 61% of OECD countries recognised public procurement as a professional function (OECD, 2013^[5]).

Professionalisation and capacity building of the public procurement workforce poses a big challenge in the State of Mexico, as the OECD study *Review of Practices of Local Public Procurement in Five Mexican States* pointed out in 2015 (OECD, 2015^[6]). Currently, public procurement is not recognised as a professional task in the State of Mexico.

This chapter will review the state of play of professionalisation and the current capacity building system of the public procurement workforce in the State of Mexico by benchmarking it against the OECD Recommendation and international best practices. The chapter reviews the existing regulatory frameworks, strategies, and institutional framework related to the professionalisation of the public procurement workforce at the State of Mexico. Then, it analyses key priority areas to establish an effective professionalisation and capacity building system: (i) assessing capacity of the public procurement workforce, (ii) developing a competency framework and a certification framework and (iii) developing a capacity building system.

Figure 6.2. Key priority areas to establish an effective professionalisation and capacity building system in the State of Mexico



It should be noted that carrying out a survey for the identification of the needs and capacity assessment of the public procurement workforce would be the first important step and the foundation on which to establish not only a professionalisation strategy, but also a competency framework and a certification framework, as well as a capacity-building system.

6.1. Overview of the regulatory framework, strategy, and institutional framework related to the public procurement workforce

6.1.1. The State of Mexico would benefit from establishing a regulatory framework and strategy tailored to the professionalisation of the public procurement workforce

Establishing a sound regulatory framework and a tailored strategy is a key step when countries intend to advance the agenda of professionalisation of the public procurement workforce.

The State of Mexico has a long history of regulatory frameworks and strategies to advance the professionalisation and capacity building of its civil servants. In 1998, the State of Mexico enforced the Labour Law of Public Servants of the State and Municipalities (*Ley del Trabajo de los Servidores Públicos del Estado y Municipios*). This law foresees the establishment of capacity building programmes (Article 101) and a career promotion system (Article 99) as part of the professionalisation system of civil servants in the State of Mexico (Gobierno del Estado de México, 1998^[7]).

The Regulation of Professionalisation for Public Servants of the State of Mexico (*Reglamento de Profesionalización para los Servidores Públicos del Poder Ejecutivo del Estado de México*) stipulates some aspects of the capacity building system, for example (Gobierno del Estado de México, 2015^[8]):

- rights and obligations of civil servants in terms of capacity building (Articles 41-48)
- needs identification of professionalisation (Articles 60-68)
- introductory trainings for newcomers (Articles 90-92)
- methods for capacity building, such as workshops and distance learning (Articles 93-96)
- partnership agreements with other entities, including universities (Articles 112-122)

Civil servants of the State of Mexico have the right to access capacity-building opportunities and request training, on top of completing mandatory training courses (Article 86 and 88 the Labour Law of Public Servants of the State and Municipalities).

The Development Plan of the State of Mexico 2017-2023 (*Plan de Desarrollo del Estado de México 2017-2023*), a policy priority and strategy document published by the Governor at the beginning of the administration, also refers to enhancing the professionalisation and capacity building of civil servants: capacity and professionalisation programmes for civil servants in municipalities, and capacity building for officials at the control/audit offices (Gobierno del Estado de Mexico, 2018^[9]).

However, these regulatory frameworks and strategies focus on civil servants in general, and could be better oriented to the professionalisation of the public procurement workforce. Therefore, the State of Mexico could benefit from improving regulatory frameworks and setting up strategies tailored specifically to public procurement professionalisation.

Recognising its strong impact on the public procurement system, some countries developed a tailored national strategy to enhance the capacity of the procurement workforce. For example, New Zealand set up initiatives to build the knowledge and skills of its procurement workforce (Box 6.2). PEMEX, the state-owned petroleum company of Mexico, also developed a strategy related to the capacity building of its public procurement workforce, “Professionalising to Transform” (*Profesionalizar para Transformar*).

Box 6.2. Key initiatives to professionalise and empower the public procurement workforce in New Zealand and PEMEX

New Zealand

New Zealand defined the following key initiatives to professionalise and empower the public procurement workforce:

- Developing a Procurement Capability Index (PCI), a self-assessment tool that measures agencies' procurement capability
- Assessing agency procurement capability on site and providing action plans for development
- Developing standard procurement role competency requirements and implementing in agencies
- Benchmarking key agency procurement and price performance against the private sector
- Increasing migration of skilled and qualified procurement officials to fill skills gap
- Ensuring that government procurement salaries reflect market standards
- Allocating resources to reform procurement practice in agencies
- Identifying opportunities for procurement shared service centres
- Including procurement professionals in works project teams

- Establishing a small team of strategic procurement experts (Commercial Pool) to support high risk/value projects across government
- Establishing resources to support Public-Private Partnership projects
- Determining procurement training needs and source providers
- Ensuring that procurement staff are trained to fill skill gaps
- Providing e-learning to support procurers to gain a professional qualification
- Targeting key procurement personnel within agencies to fast track their professional procurement education
- Developing and launching career development plans for procurement personnel
- Developing New Zealand procurement academy
- Encouraging and subsidising public sector procurement professionals in gaining recognised procurement qualifications
- Launching a procurement graduate programme to increase New Zealand capacity
- Facilitating secondments and career progression planning between agencies for procurement professionals
- Establishing and facilitating a Procurement Leaders Group (aged under 35 years) of future procurement leaders
- Developing “Demystifying Procurement” as a two-day introductory course to procurement in a public sector context or alternatively for learning on line.

PEMEX

In the context of its transition to a new mission focused on creating value, PEMEX, Mexico’s state-owned oil company, needed to be endowed with the right number of procurement officials with a fit-for-purpose set of competencies and skills. Hence, PEMEX established a strategy “Professionalising to Transform” (*Profesionalizar para Transformar*), its first intensive effort to establish a basic platform of standardised knowledge related to public procurement. As part of this strategy, seven e-learning courses were developed for its procurement staff, which concentrated on the basic procurement concepts, methodologies, and strategies (See Box 6.8 for the details of the courses).

Source: adapted from (OECD, 2016_[10]) and (OECD, 2017_[11])

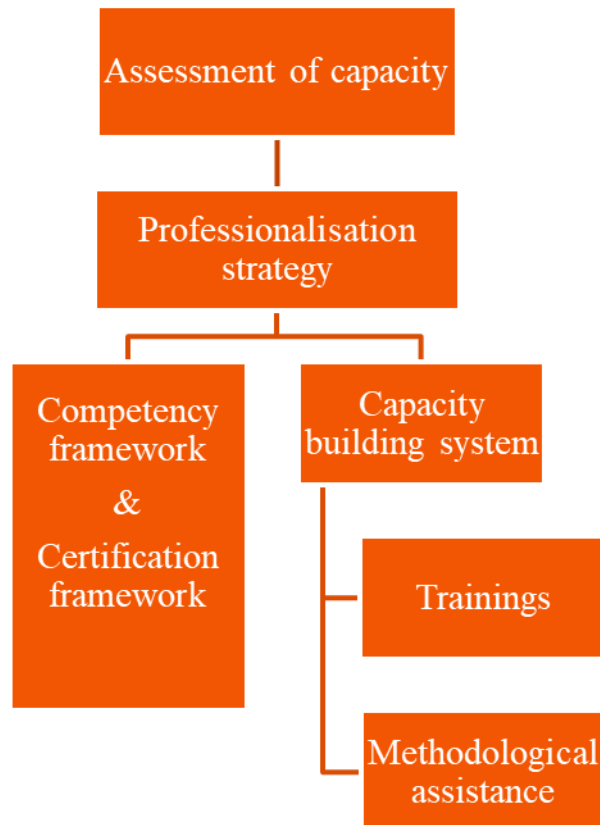
6.1.2. The Institute for Professionalisation of Civil Servants of the State of Mexico is a key actor in advancing the professionalisation agenda

It is indispensable to set up an institutional framework that clearly states which institution is responsible for implementing a professionalisation strategy of the public procurement workforce. Indeed, professionalisation and capacity building are considered as the main functions of the institutional framework of the public procurement system (OECD-SIGMA, 2016_[12]).

In the State of Mexico, the Institute for Professionalisation of Civil Servants of the State of Mexico (*Instituto de Profesionalización de los Servidores Públicos del Poder Ejecutivo del Gobierno del Estado de México*) is in charge of the professionalisation and capacity-building of civil servants, in accordance with Article 35 Bis of the Internal Regulation of the Ministry of Finance (*Reglamento Interior de la Secretaría de Finanzas*). Thus, the Institute for Professionalisation contributes to strengthening the public administration and improving the quality of public service delivery. It is a deconcentrated entity of the Ministry of Finance, which was established on 25 June 2003 (Instituto de Profesionalización de los Servidores Públicos del Gobierno del Estado de México, 2020_[13]).

The Institute for Professionalisation consists of two technical units: Directorate of Professionalisation and Directorate of Investigation and Strategies of Professionalisation (Article 7, section XXVII of the Internal Regulation of the Ministry of Finance of the State of Mexico, 2019).

Figure 6.3. Organisational chart of the Institute for Professionalisation of Civil Servants



Source: (Instituto de Profesionalización de los Servidores Públicos del Poder Ejecutivo, n.d.^[14])

Box 6.3. Mandates of the Directorates of the Institute for Professionalisation

The Internal Regulation of the Institute for Professionalisation of Civil Servants of the State of Mexico defines the mandates of the following Directorates and Sub-Directorate:

Directorate of Investigation and Strategies of Professionalisation (Article 10)

- I. Monitor and propose to the General Director, compliance with guidelines, policies, general rules and other
- II. dance with the mandates that correspond to each General Directorate.
- III. Coordinate actions to modernise professionalisation through the introduction of new information and communication technologies.
- IV. Propose professionalisation instruments that regulate the organization, operation and development of the Professionalization System of the Government of the State of Mexico.
- V. Validate and submit to the consideration of the Director General, the regulations, administrative manuals and other provisions that govern the operation of the Institute, in order to ensure compliance with the provisions on Transparency, Access to Public Information and Protection of Personal Data, in terms of the applicable regulations.
- VI. Design and update the methodology for the identification of professionalization needs of the public servants, in order to align the programmes to the needs of the position and the substantive functions of the administrative units.
- VII. Define an institutional capacity-building model that considers the profile of public servants, the curriculum structure, the didactic-pedagogical strategies and the learning evaluation strategies.
- VIII. Design and propose to the General Director, studies, research and development of technical, normative, theoretical-methodological and administrative instruments that support the execution of the General Professionalisation Programme.
- IX. Formulate and propose to the General Director, investigations, procedures and strategies that allow to determine the feasibility, conformation and operation of the Professional Career Service in the State of Mexico.
- X. Implement and propose to the General Director, theoretical-methodological strategies for the certification of competencies of the public servants of the State of Mexico.
- XI. Carry out and participate in the integration of studies and research related to the professionalisation of the public servants, fostering the collaboration of public and private academic institutions related to this area, and from these experiences prepare action plans for improvement in accordance with the mandates of the Institute.
- XII. Define the guidelines that promote the participation of public servants as facilitators, organizers, and evaluators.
- XIII. Formulate actions for the implementation of professionalisation proposals that meet current needs of public servants and participate, where appropriate, jointly with the ministries and auxiliary bodies in the design of thematic content of the capacity-building events imparted by the Institute, in order to improve the professionalization of the public service.
- XIV. Incorporate a modern scheme of educational management through coherent processes and collective decision-making to guarantee the effectiveness, transparency and quality of professionalisation.

- XV. Coordinate actions with the General Directorate of Personnel to strengthen and operate the Professionalization System in accorion programmes that promote interculturality, inclusive labor, gender equality, respect for human rights, and anti-corruption.
- XVI. Administer the development of forums, colloquia, seminars and other events related to the professionalisation of public servants of the Government of the State of Mexico.

Sub-directorate of curriculum development (Article 11)

- I. Develop the profiles of public servants based on the performance criteria, the essential knowledge required and the attributes of the competencies required by the position.
- II. Develop formative and informative contents based on the knowledge and skills required by the profile of public servants.
- III. Operate systems of evaluation and certification of the basic labour competencies of the public servants of the State of Mexico.
- IV. Determine the objectives, syllabus, resources, content, teaching methods, evaluation and bibliography of the capacity-building activities to integrate the professionalization catalogue and keep it updated.
- V. Design and evaluate proposals for training for middle and senior managers and its updating.
- VI. Select, elaborate and apply evaluation instruments (of the contents, of the instructional methodology and of learning).
- VII. Generate mechanisms to integrate a staff of facilitators with public servants who show interest in the academy and knowledge of their area of competence.
- VIII. Monitor and evaluate the performance of the facilitators who participate in the professionalisation activities promoted by the Institute.
- IX. Promote, select and coordinate the participation of public servants in the development and validation of thematic contents through the Academic Technical Committees.
- X. Other mandates foreseen in other legal provisions and mandated by the General Director of Investigation and Strategies of Professionalisation.

Directorate of Professionalisation (Article 12)

- I. Monitor compliance with the guidelines, policies, general rules and other instruments that regulate the organization, operation and development of the Professionalization System of the Government of the State of Mexico.
- II. Propose the General Director, the design, implementation and execution of the General Professionalisation Programme, which must be consistent with the Identification of Professionalisation Needs and contemplate the different teaching modalities, in order to strengthen and develop competencies of public servants.
- III. Coordinate and participate in the evaluation of the events that integrate the General Professionalisation Programme, as well as propose actions for the fulfilment of its objectives in accordance with article 94 of the Regulations of Professionalisation for Public Servants of the State of Mexico.
- IV. Periodically present the General Director, the progress of the General Professionalisation Programme in its three modalities: Face-to-face, online and mixed.
- V. Proposing open education systems for basic and middle and upper level school levels, closed education systems such as postgraduate specialisation, or those linked to the professionalisation of the public service.

- VI. Promote the collaboration of public, social and private institutions in the execution of professionalisation programmes for public servants, ensuring compliance with the Institute's objectives.
- VII. Organise and coordinate the submission of documents that certify the participation, utilization or performance of public servants in the professionalization programmes administered by the Institute.
- VIII. Coordinate the activities related to the conferral of recognitions for outstanding performance to public servants who are entitled to them.
- IX. Identify and establish communication with the points of contact for the professionalisation of each administrative unit, which allows it to fulfil its duties.
- X. Request authorization from the General Director for the project administration and actions derived from the General Professionalisation Programme.
- XI. Other mandates foreseen in other legal provisions and mandated by the Director General.

Source: (Instituto de Profesionalización de los Servidores Públicos del Gobierno del Estado de México, 2020^[13])

6.2. Assessing capacity and professionalisation needs to establish an effective professionalisation strategy

Assessing the capacity and the professionalisation needs of the public procurement workforce is a pivotal element in order to establish an effective professionalisation strategy. It could contribute to identifying knowledge and skill gaps. Capacity of the public procurement workforce has two aspects: the number of officials that work on public procurement and their capabilities (skills-based ability for an individual, group or organisation to meet obligations and objectives) (OECD, 2019^[15]).

6.2.1. The State of Mexico could establish a basic profile database of the public procurement workforce

Public procurement officials have the status of civil servants in the State of Mexico. As of 2019, there were 108 contracting authorities (18 ministries and other 90 auxiliary bodies) with 2 970 public procurement officials registered in the Information System of Registration of Public Servants of the State of Mexico (*Sistema Informático de Registro de Servidores Públicos del Estado de México*, SIRESPM), the database administered by the Ministry of Control, which is in the process of being interconnected with the State Digital Platform (*Plataforma Digital Estatal*, PD) of the SAEMM.

Table 6.1. Public procurement workforce in the State of Mexico

Institution	Number of public procurement officials
1. Ministries (in total 18)	1 408
Ministry of Finance	375
Ministry of Control	32
Ministry of Public Works	118
Other Ministries	883
2. Auxiliary bodies	1 562
SEIEM	19
ISEM	121
ISSEMYM	110
CAEM	78
IMIFE	91
JCEM	84
SAASCAEM	18
SITRAMYTEM	20
Others	1 021
TOTAL	2 970

Note: SEIEM: (*Servicios Educativos Integrados al Estado de México*, Integrated Education Services of the State of Mexico), ISEM (*Instituto de Salud del Estado de México*, Health Institute of the State of Mexico), ISSEMYM (*Instituto de Seguridad Social del Estado de México y Municipios*, Institute for Social Security of the State of Mexico and Municipalities), CAEM (*Comisión del Agua del Estado de México*, Water Commission of the State of Mexico), IMIFE (*Instituto Mexiquense de la Infraestructura Física Educativa*, Institute for Education Infrastructure of the State of Mexico), JCEM (*Junta de Caminos del Estado de México*, Road Board of the State of Mexico), SAASCAEM (*Sistema de Autopistas, Aeropuertos, Servicios Conexos y Auxiliares del Estado de México*, System of Highway, Airports, and Related and Auxiliary Services of the State of Mexico) and SITRAMYTEM (*Sistema de Transporte Masivo y Teleférico del Estado de México*, Massive Transport System and Funicular of the State of Mexico).

Source: Information provided by the State of Mexico based on the *Sistema Informático de Registro de Servidores Públicos del Estado de México* (SIRESPM).

In addition to the number of public procurement officials, it is useful to identify the basic profile of each one, such as academic background, years of professional experience and area of responsibility related to procurement (tender preparation, tender evaluation, contract management, control, etc.). In the State of Mexico, however, there is no unified database system that includes this information. According to the short survey carried out in ten major public institutions, including ministries and auxiliary bodies, only three out of the ten have this information to some extent.

The Ministry of Finance requested the General Directorate of Personnel (*Dirección General de Personal*) to develop a database of public procurement officials. However, there has not been progress on this initiative. This situation further implies that public procurement has not been recognised as a professional task in the State of Mexico. In addition, the Anti-corruption System of the State of Mexico requires that a platform be developed in order to identify public procurement officials and other high-risk positions, to be incorporated into the PD of the SAEMM. In fact, the Co-ordination Committee of the SAEMM is the institution entitled to dictate guidelines for the functioning of the PD and, as such, it could contribute to the development of a more robust database by requiring the information suggested in the previous paragraph about public procurement officials.

The State of Mexico would benefit from establishing a database that includes not only the number of its public procurement officials, but also their basic profiles, in order to plan professionalisation and capacity building strategies.

6.2.2. The State of Mexico could carry out a survey to assess the capacity and needs of the public procurement workforce in order to establish an effective professionalisation strategy

Assessing the capacity and the needs of the public procurement workforce is another pivotal element in establishing an effective professionalisation strategy. The result of an assessment can be used as the basis for developing key priority systems related to professionalisation of the public procurement workforce: a competency framework including specific job profiles, a certification framework, and a capacity-building programme. Given these benefits, the State of Mexico could carry out an assessment of the capacity of its public procurement workforce in the future.

The State of Mexico has some advantages in this area. The Ministry of Control already holds the Information System of Registration of Public Servants of the State of Mexico (SIRESPM) with the number of workers that constitute the public procurement workforce. In addition, the Institute for Professionalisation of Civil Servants has rich experience in carrying out large-scale surveys. For example, the Institute implemented an online-survey of 11 998 public servants in 2019 in order to identify professionalisation needs. Therefore, it would be feasible to carry out an online survey for 2 970 public procurement officials in order to identify their basic profiles and assess their capacities.

There are many international good practices on how to identify the basic profile of the public procurement workforce and assess their capacity. For example, Peru carried out a survey for individual public procurement officials through examinations. (See Box 6.4)

Box 6.4. Capacity assessment of the public procurement workforce in Peru

SERVIR (National Civil Service Authority) undertook two diagnoses of the capacity and knowledge gaps in the area of public procurement in 2010 and 2014. In 2014, SERVIR identified 6 158 public procurement practitioners, 78% of which participated in the evaluations.

The diagnosis was based on the scoring of a test of 30 questions. Then, the accuracy answer rate was used to classify the public procurement workforce into four categories:

- From 0% to 50%: Capacity building is needed for general and specific issues, in accordance with the functions of the public procurement staff (category 1)
- From 51% to 70%: Specific knowledge needs to be strengthened in order to carry out the functions of the public procurement staff (category 2)
- From 71% to 85%: Specific knowledge needs to be strengthened in order to advance the capabilities of the public procurement staff (category 3)
- From 86% to 100%: Optimal knowledge in order to carry out the functions of the public procurement staff (category 4).

The result reveals that the majority of the workforce (almost 40% out of 4 793 public procurement staff evaluated) needed specific knowledge to be strengthened in order to carry out their functions (category 2). Indeed, only 9.62% had enough knowledge in order to carry out their functions in an optimal way (category 4). In addition, the results showed that capabilities were stronger at national than at subnational level. This assessment also pointed out that the professionalisation of the public procurement workforce in Peru was most needed at the beginning of the career: almost 50% of public procurement staff with less than one year of experience are not meeting the criteria. The results of the capacity assessment will be useful to develop the professionalisation and capacity building strategy.

In addition to this diagnosis carried out by SERVIR, the OSCE (Government Procurement Supervising Agency) has been implementing the assessment of the professionalisation and capacity of the public procurement workforce in Peru by applying the methodology of the OECD MAPS (Methodology for Assessing Procurement Systems).

Source: (OECD, 2017^[16])

Likewise, OECD worked jointly with the Slovak Republic to assist the development of a training action plan to support a strategy for improving procurement performance. For this purpose, a questionnaire was developed for the structured assessment of the existing training offering, its content and structure, and both trainers' and trainees' perspectives (OECD, 2017^[17]) (See Box 6.5).

Box 6.5. Gap analysis of training needs in Slovakia

The OECD conducted a targeted training gap analysis exercise featuring detailed discussions with key individuals in Slovakia. The analysis was not restricted to the capability gaps of the workforce – it also explored the effectiveness of the institution's entire training programme, including the employees who were targeted, the training methods used, and how applicable the training content was for the areas in greatest need of development. A gap analysis was conducted using a questionnaire that sought to capture the current training situation. The questionnaire focused on three dimensions, each identified as being significant in determining the capability of the procurement workforce. Sample questions have been provided for each of the three dimensions below:

- Characteristics of the procurement workforce:
 - Is the procurement workforce clearly identified?
 - How is the workforce composed?
 - What is the typology of the public procurement workforce in terms of professional experience?
- The performance of the procurement system:
 - What is the share of procurement operations subject to open tender?
 - How many instances are there of irregularities leading to financial corrections?
 - What are the main grounds for challenges and complaints?
 - Which secondary policy objectives are most frequently implemented (green procurement, innovation, support to SMEs, etc.)?
- The training system in place:
 - Are there eligibility criteria for training participants?
 - How visible are training opportunities to staff members?
 - Are training courses structured according to seniority or according to different roles in the procurement life cycle?
 - What subjects are currently included in the training curriculum?
 - What types of delivery models are available (in-class, e-learning, distance learning) and are classes a mix of theory and practice?
 - What is the frequency of trainings and are there mandatory hours/events for staff to attend?
 - Is feedback collected from training participants?

This analysis enabled a thorough assessment of the existing trainings, their content and structure, and perceptions from both trainers and trainees. Fifty responses were gathered from trainers and participants, allowing for the identification of areas in greatest need of focus. Thirty-five individuals from 20 different entities were interviewed to discuss responses in more detail and investigate further training needs.

Source: (OECD, 2017^[17])

Section 6.4. *Strengthening the capacity-building system* will briefly show the results of the short survey to identify the challenging procurement tasks, which was carried out by the OECD to ten contracting authorities at the State of Mexico.

6.3. Developing a competency framework and a certification framework

Public procurement is a multidisciplinary process that requires specific skills and competencies. They include not only technical skills (market analysis, preparation of tender and contract documents, tender evaluation, contract management, etc.) but also soft skills (communication, negotiation, project management, etc.). These skills and competencies have to be clearly defined to ensure the sound and effective functioning of the public procurement system. The State of Mexico could consider the possibility of establishing a competency framework and a certification framework for the public procurement workforce, built on the results of the capacity assessment.

6.3.1. The State of Mexico could establish a competency model for the public procurement workforce

A competency framework maps critical skills and capability levels that are required for the overall strategic direction of an organisation. It helps procurement officials identify their skill gaps and can be used for different purposes of human resource management: recruitment, promotion and training. By 2018, 30% of OECD countries such as the United Kingdom (see Box 6.6) had developed a competency framework for public procurement officials. (OECD, 2019^[4]) The European Commission has also been developing a European competency framework for public procurement. This framework intends to support professionalisation policies at the national level, so that public procurement officials have the necessary skills, knowledge and integrity, as well as the opportunity to address training needs and career management (OECD, 2019^[4]).

The Institute for Professionalisation established a competency model (*Modelo de Competencias de Desempeño*) for civil servants of the State of Mexico in 2011. It consists of five areas of competency (Instituto de Profesionalización de los Servidores Públicos del Poder Ejecutivo, n.d.^[18]):

- Knowledge of public service (Conocimiento del servicio público)
- Public administration processes (Procesos de la administración pública)
- Public management (Gestión pública)
- Competencies specific to each position (Propias de la especialidad del puesto)
- Human and social development (Desarrollo humano y social)

However, the State of Mexico does not have a competency framework tailored to public procurement officers, although “competencies specific to each position” could cover it. In addition, there are no specific job profiles for public procurement officials.

The examples of the competency frameworks in the United Kingdom and Scotland could be instructive in the consideration of the establishment of a competency model tailored to the public procurement workforce in the State of Mexico. (See Box 6.6).

Box 6.6. Procurement competency framework in the United Kingdom and Scotland

United Kingdom

Commercial skills and behaviours are identified as one of the four priority areas within the Civil Service Capabilities Plan 2014. These cover the pre-procurement phase (when the ability to build markets, engage with suppliers and manage financial and investment risk is key) and effective contract and supplier management after the contract is agreed.

The Commercial Skills and Competency Framework for Developing and Practitioner Levels (hereinafter referred to as the “Framework”) sets out the current skills, behaviours and competencies that civil servants undertaking public procurement should demonstrate in delivering highly efficient, dynamic and professional procurement roles that lead to value for money. The Framework covers the three key components of the commercial cycle – pre market, sourcing, and contract and supplier management.

- Pre-Market: the process and skills to understand the market place in the development and delivery of a commercial strategy.
- Sourcing: the commercial process, agreements and skills required to acquire goods, works and services that will deliver business outcomes, specifically legality and value for money maximisation from existing commercial agreements.
- Contract and supplier management (Post-contract award): the process and skills used to manage the successful delivery of business outcomes and seek to maximise value through the duration of the contract.

It also incorporates two levels of integrated commercial skills and competencies – developing and practitioner.

- Developing – It demonstrates that somebody is able to understand key issues and their implications, and to ask relevant and constructive questions on the subject. They may be at the start of their career or a practitioner of another profession with some involvement in commercial activities beyond awareness. The developing level individual demonstrates behaviours and outcomes above an awareness level, but has not had sufficient opportunity or experience to put the skill into practice to merit Practitioner level.
- Practitioner – They display detailed knowledge of the subject and are capable of providing guidance and advice to others as well as undertaking commercial activity, based on significant commercial experience and qualifications.

The Government Commercial Profession Skill Levels cover those specialists who have developed their commercial expertise and experience beyond Practitioner level to reach Government Commercial Profession status. This status is sub-divided into four levels: Commercial Lead, Associate Commercial Specialist, Commercial Specialist and Senior Commercial Specialist. The levels within this grouping correspond to the “Expert” level included in the previous version of the Commercial Skills and Competency Framework.

It can be used to identify skill and knowledge requirements for different roles, plan career development and as a consistent reference for learning and development. All departments are expected to adopt this procurement skills framework in order to ensure a common approach to public procurement.

Scotland

The procurement competency framework in Scotland identifies the skills and competency levels required by all staff involved in the procurement process. It helps procurement practitioners take ownership of their personal development through a skills assessment, identifying training and

development needs and supporting career planning. Each competency has a number of skills listed with the description that identifies the level of competency: Level 1 (Foundation/Awareness), Level 2 (Developing/Working knowledge), Level 3 (Practitioner), Level 4 (Expert) and Level 5 (Master/Leader). The framework was updated in 2016 to reflect the changing Scottish procurement context and be aligned with CIPS (Chartered Institute of Procurement & Supply) Global Standards.

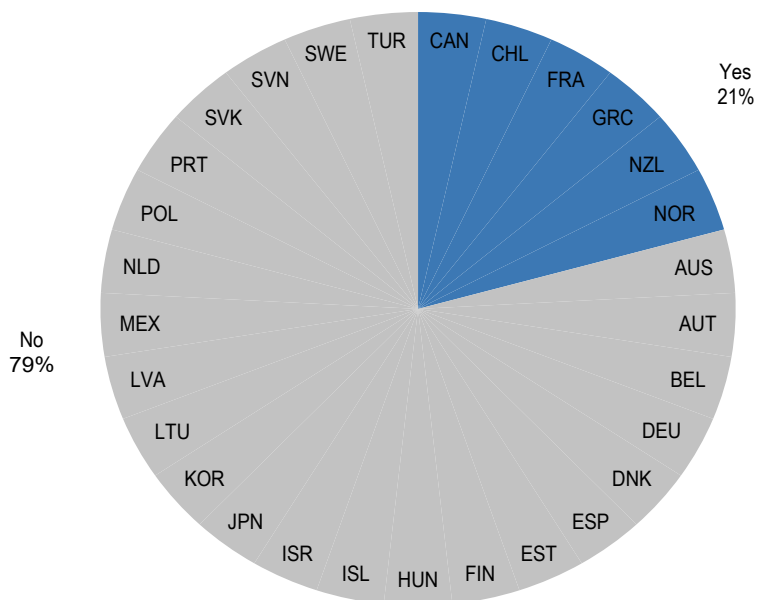
Table 6.2. Procurement competency framework in Scotland

Procurement Competency Framework (aligned to Government Purpose & CIPS Global Standards)								
Infrastructure Foundations (Why)	Process (How)			Performance (What)	People (Who)			
	Planning	Implementation	Delivery					
	Corporate Strategy	Pre-market engagement	Tender			Post contract	Performance Management & Measurement <small>(Including Benefits Tracking & KPI's)</small>	Self-development Managing High Performing Teams Leading & Influencing
Procurement Strategy and Policy	<ul style="list-style-type: none"> Commodity, Supplier & SC Profiling Spend Analysis Market & SC Analysis Specification development Building tender documents 	<ul style="list-style-type: none"> Contract Law & T's & C's EU and Regulated Tender Process Tender Evaluation Award & Debrief Negotiation Alternative routes to market 	<ul style="list-style-type: none"> Contract management Supplier management Supply chain management Inventory Management Distribution fleet and logistics 	Continuous improvement <small>(Including change Methodologies)</small>	Stakeholder Relationships Communications			
Legislation	Commercial and Financial Awareness Commercial competence and business acumen; Commercial models; Business case development; Financial Management; Budgeting							
Governance and Compliance					Planning and Risk Management Project and Programme Management (PPM); Risk Management			
Technology								
Standards & Conduct								
Early Engagement & role of intelligent client <small>(drives better outcomes)</small>								

Source: (Government Commercial Function, 2015^[19]) and (Scottish Government, 2016^[20])

6.3.2. The State of Mexico could also establish a certification framework for the public procurement workforce

A certification framework is another strategic tool to promote the professionalisation of the public procurement workforce. A certification framework can contribute to providing regular and specific training on the skills relevant to the procurement workforce (OECD, 2019^[21]). Therefore, it is closely linked to a competency framework that maps skills to ensure the sound and effective functioning of the procurement system. Establishing a certification framework is an emerging good practice of OECD countries in order to enhance the professionalisation culture of the public procurement workforce. In 2018, 21% of OECD countries had a certification framework in place.

Figure 6.4. Certification process for public procurement officials

Note: Data for the Czech Republic, Ireland, Italy, Luxembourg, Switzerland, the United Kingdom and the United States are not available. In Norway there is a certification for procurers at basic level, Innkjøpskortet, but it is not widely used.
Source: (OECD, 2019^[2]).

Currently, the State of Mexico does not have a certification framework for the public procurement workforce. However, the Institute for Professionalisation has experience in establishing a certification framework for specific topics. Indeed, it established twelve certification programmes.

Table 6.3. Certification programmes established in the State of Mexico

Requesting institution	Certification programme
COPLADEM	Strategy for planning and evaluation of public management
Ministry of Control	Evaluation of Institutional Performance
Ministry of Control	Responsibilities in Public Service
Ministry of Finance (Deputy Ministry of Administration)	Administrative Management
State Regulatory Improvement Commission	Regulatory Improvement
Institute for Professionalisation	Professionalisation Management
DGSEI	Strategic Management of Information Technologies
Ministry of Education	Professionalisation of high school teachers of the State of Mexico
Ministry of Education	Professionalisation of teachers who use information and communication technologies
Ministry of Finance (Evaluation and Performance)	Results management
ISSEMyM	Diploma in nursing
ISSEMyM	Diploma in social work and public relations

Note: COPLADEM: Committee of Planning for the Development of the State of Mexico, DGSEI: State Computer System, ISSEMyM: Institute of Social Security of the State of Mexico and Municipalities
Source: (Instituto de Profesionalización de los Servidores Públicos del Poder Ejecutivo, n.d.^[18])

These certification programmes were developed based on the specific needs for the specialisation of public institutions, as well as the Competency Model (*Modelo de Competencias de Desempeño*), with the participation of public servants who are familiar with the topics.

Therefore, the Institute for Professionalisation should be considered as a key actor when the State of Mexico plans to establish a certification framework for the public procurement workforce. Of course, this initiative should be requested by the institutions related to public procurement including the Ministry of Finance, the Ministry of Public Works and other contracting authorities.

All the stakeholders, including the Ministry of Finance, the Institute for Professionalisation, and auxiliary bodies, expressed their positive views on establishing a certification framework for the public procurement workforce in order to advance the professionalisation agenda, during the fact-finding missions and according to the short survey carried out by ten major public institutions, including ministries and auxiliary bodies.

The example of the certification framework in Croatia (see Box 6.7) may be instructive to consider when establishing a certification system for the public procurement workforce in the State of Mexico. In addition, it should be reiterated that carrying out a capacity assessment survey of the public procurement workforce would be the first important step to establish a competency framework and a certification framework.

Box 6.7. Certification frameworks in Croatia

Croatia has a comprehensive training system for procurement officers. The Directorate for the Public Procurement System (DPPS) within the Ministry of the Economy and Innovation, Entrepreneurship and Crafts (MOEEC) is in charge of implementing the public procurement policy through the following mechanisms:

- Developing, improving and coordinating the entire public procurement system; proposals, preparation and coordination of the development of draft proposals of laws and other regulations on public procurement.
- Operating a help desk and hotline.
- Publishing opinions and most frequent errors.
- Ensuring training in the field of public procurement.

DPPS launched a nation-wide certification scheme for public procurement officers in order to address the challenges regarding limited capacity. In order to obtain a certificate, candidates in the certification programme must pass an examination after taking 52-hour courses on public procurement. However, completing 52-hour courses is not a prerequisite for taking an exam. Candidates need to accomplish 70% accuracy of the 50 questions in order to pass the exam; the pass rate is about 75%. The certificate is valid for three years after which a 32-hour programme must be completed for renewal. The main certification costs EUR 500, while the renewal course costs EUR 150. The certificate has been issued to more than 5 000 people.

Source: (OECD, 2019^[21])

6.4. Strengthening the capacity-building system

Supporting a learning culture in the civil service will ensure that skills are reinforced and regularly updated. It allows the workforce to keep up with the fast-changing nature of work. This means making investments in learning opportunities for civil servants (OECD, 2017^[1]).

This section reviews the state of play in the capacity-building system of the public procurement workforce in the State of Mexico: training and methodological assistance (guidelines and manuals, standardised templates and help desk).

6.4.1. The State of Mexico could strengthen the quality and coverage of training on public procurement

Reinforcing the capacity of the public procurement workforce requires the development of an adequate training system. In the State of Mexico, the Institute for Professionalisation of Civil Servants of the State of Mexico is in charge of capacity building for civil servants in accordance with Article 35 Bis of the Internal Regulation of the Ministry of Finance. The Institute for Professionalisation can propose specific training programmes upon the results of needs identification of professionalisation or the request from public institutions, in accordance with Article 74 of the Regulation of Professionalisation for Public Servants of the State of Mexico.

In fact, the Institute for Professionalisation is a key training provider in the State of Mexico. It trained 132 772 civil servants through the provision of 4 220 face-to-face trainings between 2013 and 2016. In 2015, 6 867 civil servants were trained through online courses.

Table 6.4. Trainings organised by the Institute for Professionalisation of Civil Servants

	2013	2014	2015	2016	2013-2016
Number of public servants trained	27 135	25 633	30 655	39 092	132 772
Number of trainings	1 046	831	1 091	1 252	4 220
Average number of public servants per training	26	31	28	31	31

Source: (Instituto de Profesionalización de los Servidores Públicos del Poder Ejecutivo, n.d.^[18]).

The Institute of Professionalisation has a Talent Management Model (*Modelo de Gestión del Talento Humano*) and offers online and face-to-face capacity building opportunities, such as courses, workshops, conferences, diplomas and certifications. The Institute of Professionalisation provides civil servants with a programme that is composed of general and technical topics. On the one hand, the general topics have four categories: institutional culture, work climate, organisation and, processes and human development. On the other hand, the technical issues consist of categories such as level and function, as well as the regulatory framework. The duration of each capacity building activity varies in accordance with the needs of the public entities, but the face-to-face courses are 20 hours long.

In addition, public servants have access to the following 16 online courses in the digital platform:

- Responsible behaviour in the public service
- Ethical and professional conduct in the public service
- Service management
- Interpersonal communication
- Social and institutional communication
- Negotiation in the framework of behaviour of the public service
- Innovation, organisation and methods
- Strategic planning
- Analysis and problem-solving
- Administration of public projects
- Senior management in government

- Analysis and design of public policies
- Management control
- Performance-based budgeting and Integrated System of Performance Evaluation
- Systems of organisation and control of digital information
- Public Procurement Law of the State of Mexico and Municipalities and its Bylaws

Regulation of the Institute for Professionalisation of Civil Servants of the State of Mexico foresees conferring an award to civil servants for outstanding performance. (Article 49-52) This award is conferred to public servants who participate in face-to-face training courses at least 20 hours per year, recorded the best performance (10, in the scale of 0 to 10) and kept 100% attendance rate during the year. The Institute for Professionalisation conferred awards to 410 civil servants in 2018.

However, the Institute for Professionalisation provides limited training on public procurement. It has offered two training courses: (i) a 20-hour training on the legal framework of public procurement (Public Procurement Law of the State of Mexico and Municipalities, *Ley de Contratación Pública del Estado de México y Municipios*) and (ii) a 20-hour training on the procedures of *contrato pedido* (direct award due to small amount), according to the interviews carried out during the OECD fact-finding mission. In addition, the Institute does not have trainers exclusively for public procurement courses. It invites experts from public and private institutions to provide trainings on public procurement.

To fill in this gap, some contracting authorities have taken their own initiatives to train their public procurement officers. In fact, two out of the ten contracting authorities surveyed by OECD organised face-to-face trainings on public procurement in 2018, according to their answers. For example, some contracting authorities organised two courses on public procurement under the regulations of the federal government.

In addition, two contracting authorities provided online training courses. The Ministry of Finance provided 63 procurement officials with a 25-hour online course on the Public Procurement Law of the State of Mexico and Municipalities and its Bylaws. One contracting authority offered an online training module on soft skills such as teamwork, leadership and effective communication.

These initiatives from contracting authorities are considered as a positive step to improving the capacity of the public procurement workforce. However, these trainings focus only on the legal framework, as in the case of the trainings on public procurement provided by the Institute for Professionalisation. In addition, it should be noted that public procurement training is not available for economic operators who are interested in participating in public procurement. Therefore, public entities like the Ministry of Finance could consider the possibility of providing public procurement training to the economic operators, given that the Institute of Professionalisation is mandated to provide trainings only to public servants.

With increasing complexity and multidisciplinary characteristics of the public procurement function, procurement officials need to be trained to go beyond administrative tasks. Table 6.5 lists potential technical topics on public procurement and their availability in the State of Mexico.

Table 6.5. Availability of trainings on public procurement in the State of Mexico

Topic	Availability of trainings in the State of Mexico	
	Institute of Professionalisation	Other institutions
Public Procurement Law	x	x
Market Analysis		
Calculation of reference price		
Selection criteria (Pre-qualification criteria)		
Technical specifications		
Award criteria		

Tender evaluation & contract awarding		
Contract management		
<i>Ex ante</i> & <i>Ex post</i> control / Risk management		
Integrity in public procurement		
E-Procurement		
Centralised procurement		
Strategic public procurement / Green public procurement		
Strategic public procurement / SMEs		
Strategic public procurement / Innovation		
Socially responsible public procurement		
Soft skills (negotiation, etc.)		x

Source: Information provided by the State of Mexico

Understanding the regulatory framework for public procurement is an essential step for public procurement officers to implement effective procurement procedures. It allows public procurement professionals to understand their roles and avoid problems that may lead to bid challenges and contract disputes.

Then, public procurement officers are expected to understand and implement public procurement processes to deliver value for money. Standard procedures of public procurement consist of the following three stages: (i) pre-tendering stage; (ii) tender stage; and (iii) contract management. The pre-tendering stage includes the specific procedures such as tender planning and preparation (market analysis, drafting technical specifications, setting award/selection criteria, preparing tender documents and calculation of reference price) and tender notice. The tendering phase is composed of the tender opening, tender evaluation, clarification / negotiation with the successful bidder, contract awarding and signing of contract. The contract management phase includes procedures such as the supervision of progress, modification of the contract, regular reporting of progress, and payment. These procedures of each procurement cycle require adequate technical knowledge and skills (OECD, 2019^[21]).

Enhancing the level of integrity and ethics in public procurement is indispensable, given the fact that public procurement is one of the government activities that is most vulnerable to corruption. Effective control mechanisms through ex-ante and ex-post control are pivotal in supporting accountability and promoting integrity in the public procurement process. They also generate valuable evidence on the performance and efficiency of the procurement cycle (OECD, 2016^[22]).

Public procurement officials are required to be familiar with how to use the E-procurement platform. E-procurement brings several benefits, such as increasing transparency, facilitating digital access to public procurement, reducing direct interaction between procurement officials and companies at moments of high integrity risks, increasing outreach and competition, but also allowing for easier detection of irregularities. Capacity building on e-procurement is further essential in the context of the State of Mexico: the uptake of e-procurement is identified as one of the main challenges, as already discussed in the chapter on E-procurement.

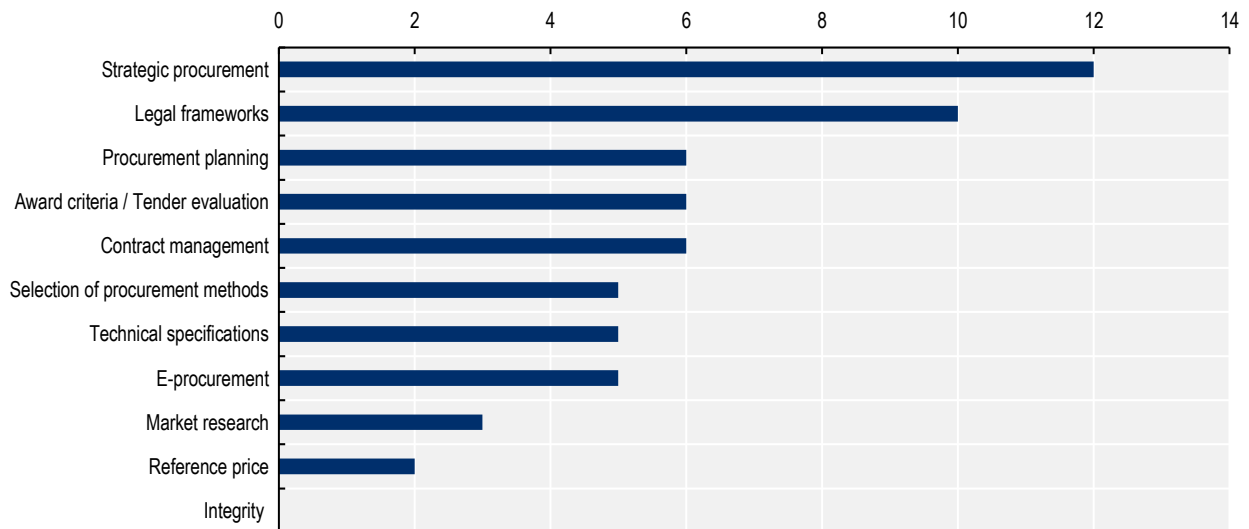
Strategic procurement is an emerging area of public procurement. Public procurement is used in order to pursue complementary policy objectives, while accomplishing its primary goal to deliver goods and services in a timely, economical and efficient manner. These policy objectives include SME development, environmental concerns (green public procurement), innovation and social responsibility.

Lastly, public procurement officials need to have adequate levels of soft skills, including but not limited to, negotiation, teamwork, communication, leadership, project management and information technologies.

Another issue is that the trainings provided by the Institute for Professionalisation and contracting authorities are not organised on a regular and systematic basis. It is not mandatory for procurement officers to take these trainings. In addition, no information is provided on the evaluation of these courses.

The development of a capacity building system is most effective when it reflects real training needs. Figure 6.5 shows the most challenging procurement areas identified by the contracting authorities surveyed by OECD in terms of capacity building:

Figure 6.5. Challenging procurement areas in terms of strengthening capacity building



Note: Each contracting authority was requested to choose and rank the five most challenging procurement topics in terms of strengthening capacity. Then, the result was summed up after the conversion in accordance with the following scoring rule: 1st challenge = 5 points, 2nd challenge = 4 points, 3rd challenge = 3 points, 4th challenge = 2 points, 5th challenge = 1 point.

Source: Based upon the answers to the questionnaire to ten major contracting authorities in the State of Mexico.

Strategic procurement was identified as the most challenging procurement topic in reinforcing the capacity of the public procurement workforce. Legal frameworks are selected as the second biggest challenge regardless of the availability of training provided by the Institute for Professionalisation and contracting authorities. This result implies that the State of Mexico needs to enhance the quality of training on the legal frameworks for public procurement. Indeed, while the legal framework is one of the most common topics for public procurement training in many countries, this is a topic where theory tends to prevail over practice. For example, lecturers tend to explain only the texts of articles without any practical examples and exercises.

These two challenges are followed by procurement planning, award criteria and contract management. The workshop on best practices of procurement provided by the OECD on January 2019 included a module on contract award criteria, in particular, on increasing the application of points and percentages award criteria to increase competition in public procurement processes. This workshop confirmed that there is much room and appetite for improving capacity on how to use points and percentages criteria.

It is essential to establish trainings based on the assessment of knowledge and skills gaps to reflect the specific need of the public procurement workforce. In addition, the application of the existing training, such as on the legal framework, should be improved. These trainings should be provided on a regular basis rather than ad-hoc. These trainings should also be aligned with a competency framework and a certification framework.

There are many examples that the State of Mexico could consider in order to develop training related to public procurement. In Mexico, PEMEX developed capacity-building programmes for their public

procurement officers. Topics covered are not only the regulatory framework of public procurement, but also various topics including e-procurement, tender evaluation and framework agreements (Box 6.8).

Box 6.8. Training modules of PEMEX and Canada

PEMEX

PEMEX developed training modules through e-learning to all the employees who carry out the procurement process as part of the strategy “Professionalising to Transform” on June 2014. They consist of four modules: 1) procurement context in PEMEX: structure and procedures under the PEMEX Law; 2) strategic supply; 3) framework agreements and preparatory contracts; and 4) bidding evaluation methods, which are composed of the seven e-learning courses described below.

These courses provide harmonised knowledge to incorporate good practices and standardise the procurement function.

Table 6.6. PEMEX's e-learning modules

Training Title	Length (hours)	Content
Module 1. Framework for PEMEX procurement		
Structure and procurement procedures under the PEMEX Law	9	Identify the regulatory framework applicable to PEMEX procurement in substantive activities.
Procurement under the PEMEX Law	4	Identify PEMEX's areas involved in procurement under its special procurement regime. Likewise, provide general and practical information to support the elaboration of documents needed to carry out procurement procedures.
Module 2. Strategic supply		
Introduction to strategic supply	2	Identify the concepts and stages of the strategic supply methodology to understand its importance to create value in the company, as well as to indicate the relevance of expenditure analysis.
Expenditure analysis in strategic supply	1.5	
Implementing the strategic supply methodology	2	
Module 3. Preparatory contracts (<i>Contratos preparatorios</i>)		
Preparatory contracts	5	Define preparatory contracts; identify the different types, and their advantages. Likewise, discuss the agreement, management and implementation of preparatory contracts.
Module 4. Methodologies to assess proposals		
Methodologies to assess proposals	9	Discuss different methodologies to assess proposals to facilitate a comprehensive analysis, identify optimal criteria and allow the selection of the proposal with the best conditions.

Source: (OECD, 2017^[11])

The Corporate Directorate for Procurement and Supply staff is also offered three additional courses on substance concerning strategic supply: Expenditure analysis (14 hours); Prioritising and selecting categories, stages of the methodology (15.5 hours); and Negotiation.

Canada

The curriculum in Canada consists of five courses:

- Who We Work For (C218)

- This course builds a foundational understanding of how Canada's non-partisan federal public employees serve the democratically elected government of the day
- Legal and Policy Environment for Procurement Material Management and Real Property (M714)
- This course provides an overview of the acts, regulations and policies, directives, national and international trade agreements and other instruments related to the procurement, material management and real property communities
- Introduction to Procurement (M718)
- This introductory course addresses basic responsibilities through all phases of the procurement process
- Overview of Material Management (C233)
- This course provides an overview of material management within the federal government context
- Overview of Real Property Management (C234)
This course provides an overview of real property management within the federal government context

The curriculum is periodically updated to reflect new or changing requirements. For example, a current update reflects newly defined technical government procurement competencies.

Source: (OECD, 2017^[11]) and (OECD, 2019^[4])

The OECD collaborated with the government of Lithuania in order to propose a certification framework and develop Training of Trainers (ToT) programmes to build capacities for public procurement practitioners who in turn provide trainings required under the proposed certification framework (see Box 6.9).

Box 6.9. Establishing a certification framework and training programmes in Lithuania

The OECD worked with the government of Lithuania under the Structural Reform and Support Services (SRSS) from the European Commission. In this project, the OECD proposed a detailed outline of the certification framework and professionalisation strategy tools, built upon a comprehensive assessment of the challenges with the key stakeholders and close discussion with the Ministry of the Economy and Innovation (MEI) and the Public Procurement Office (PPO) of Lithuania.

The certification framework consists of two levels: Basic and advanced. Candidates will be required to complete in total 60-hour courses (42 hours and 18 hours for each level) on 19 procurement topics such as the public procurement law, market analysis, technical specifications, award criteria, integrity in public procurement and strategic procurement (green public procurement, SMEs, innovation, and socially responsible public procurement). The OECD also proposed tools to promote the professionalisation strategy. These tools include e-learning, degree programmes, self-support tools (manuals, guidelines and standardised templates), a one-stop shop procurement portal for the community of practice, an award system exclusively for the public procurement professionals and practical trainings (On-the-job training, job-swapping, mentor and internship programmes).

As part of the key delivery of this project, the OECD provided two one-week Training of Trainers (ToT) programmes, in order to build capacities for the future trainers who will provide the training sessions required in the certification framework. In order to deliver the ToT programmes, the OECD developed training materials that cover 11 procurement courses out of the total 19 courses required in the certification framework. This corresponds to 31 hours, which accounts for approximately half of the total 60 hours required to complete both levels.

Source: (OECD, 2019^[21])

6.4.2. The State of Mexico could develop user-friendly methodological assistance mechanisms on public procurement

Methodological assistance constitutes a key pillar to strengthen the capacity-building system of the public procurement workforce. It is a useful tool to support public procurement officials to undertake their missions effectively.

OECD countries developed tools such as manuals and guidelines, standardised templates, and help desks. For example, Ireland issued user-friendly guidelines and standardised templates to facilitate the daily tasks of public procurement officers. France and Lithuania operate a help desk to answer inquiries about public procurement from contracting authorities and economic operators.

This section reviews the current system of methodological assistance available in the State of Mexico: guidelines and manuals, standardised templates and help desk.

Guidelines and manuals

Guidelines and manuals provide practical information on specific procedures and topics. International experiences show that there are wide varieties of topics for these methodological documents: guidelines on how to set contract award criteria; how to evaluate offers; how to use e-procurement platforms; how to implement strategic procurement and how to prevent corruption and bid rigging. (European Commission, n.d.^[23])

Currently, the State of Mexico has a limited number of guidelines and manuals. As mentioned before, the Government of the State of Mexico issued a specific guideline for the public procurement process, POBALINES in 2013. POBALINES describes procurement rules such as the tender evaluation criteria (POBALINES-064) and the prior approval of technical specifications for specific categories of goods and services by the Ministry of Finance (POBALINES-059). The State of Mexico also issued guidelines on the procedures for market analysis (*Procedimientos de autorización y alta de estudios de mercado en el SICAPEM*) in 2017. Indeed, these guidelines contribute to reducing discretionary interpretation of the law and thus complement the existing legal framework by identifying clear responsibilities during the procurement process (OECD, 2015^[61]).

However, it should be noted that there are challenges on the scope and quality of these guidelines. Currently, the State of Mexico has only two guidelines (POBALINES and the guidelines on market analysis). For example, it is important to develop user-friendly guidelines on strategic procurement and on how to apply points and percentages award criteria. These topics were identified as key challenges in accordance with the OECD short survey. In addition, these existing guidelines are considered as an extension of the regulatory framework that lists articles and lacks practical examples, rather than a more user-friendly guideline and manual to explain their content with examples and visual images.

The State of Mexico could benefit from developing guidelines for a variety of procurement topics and improving the quality of the existing guidelines to be more user-friendly with practical examples and visual images, as in the case of Costa Rica (see Box 6.10).

Box 6.10. Guidelines and manuals on strategic procurement in Costa Rica

In Costa Rica, the General Directorate of Asset Management and Public Procurement (*Dirección General de Administración de Bienes y Contratación Administrativa*, DGABCA) of the Ministry of Finance (*Ministerio de Hacienda*) developed user-friendly guidelines and manuals to promote the strategic use of procurement and align with the National Policy of Sustainable Public Procurement.

In 2015, DGABCA issued the Technical Guidelines for the Application of Sustainable Criteria in Public Procurement and Guidelines for its Implementation with the support of the European Commission and the United Nations Environment Programme (UNEP). These technical guidelines cover dimensions of strategic procurement such as green public procurement, SMEs development, innovation and social responsibility.

In order to ensure the effective implementation of this technical guidelines, DGABCA also developed the following manuals:

- **Practical Guide for Sustainable Procurement in the Public Sector:**
This guide explains how to incorporate environmental considerations into each step of the procurement cycle and provides specific examples for each product and service category of green public procurement.
- **Guide on Social Criteria in Public Procurement Processes in Costa Rica:**
This guide explains how to integrate social considerations into each step of the procurement cycle and provides the templates of the actual clauses to be incorporated in tender / contract documents.

Source: (Ministerio de Hacienda, n.d.^[24])

Standardised templates

Standardised templates are ready-to-use forms that contracting authorities can use to facilitate their work. Such templates usually include, but are not limited to, tender notices, tender documents, contract documents and tender evaluation formats. The purpose of these templates is to help contracting authorities save time and avoid potential errors. They also contribute to assuring the quality of procurement procedures and decrease the administrative burdens of economic operators who prepare bid proposals.

Currently, the State of Mexico has the following standardised templates:

- Tender documents
- Contract documents
- Checklist for the submission of documents required for tender proposals
- Matrix to evaluate technical and financial proposals

In addition, the Ministry of Finance has been trying to develop the platform to prepare tender documents by inputting the necessary information. However, there are some challenges. First, these templates should be widely disseminated. The initiative to develop these templates and checklists arose from each contracting authority, and therefore these useful tools are not shared with all the contracting authorities. Although some contracting authorities said that they used the templates of tender documents and contract documents that the Ministry of Finance developed, it is worth considering the possibility of unifying templates to be shared across all the contracting authorities of the State of Mexico. Templates need to be aligned with the information required by the regulatory framework.

In addition, while the State of Mexico has useful templates, it does not have guidelines to instruct public procurement officials on how to use them. The example of Ireland is illustrative in developing straightforward guidelines on how to use standardised templates (See Box 6.11).

Box 6.11. Guidelines and standardised templates in Ireland

Ireland developed *Public Procurement Guidelines for Goods and Services* and *Public Procurement Guidelines for Construction* to help procurement officers implement their daily tasks in accordance with the National Public Procurement Policy Framework. These guidelines provide a friendly explanation about the regulatory framework of public procurement by using visual charts.

Ireland also developed standardised templates of tender and contract documents for goods, services and public works. Templates of tender documents for goods and services are also accompanied with user guides on how to use these templates. There are ten forms of standardised contract documents for public works, each of which is appropriate for different circumstances, such as *Public Works Contract for Building Works designed by the Employer* and *Public Works Contract for Civil Engineering Works designed by the Contractor*.

These documents provide further opportunities to help professionalise, streamline and standardise the procurement function of contracting authorities in Ireland. They are also useful for economic operators by allowing them to understand better the public procurement system of Ireland.

Source: (Office of Government Procurement, n.d.^[25])

Guidance through help desks

A help desk is a contact point centre to assist contracting authorities and/or economic operators in clarifying their inquiries related to public procurement. It represents an efficient tool to provide quick and tailor-made

information. This function is essential because public procurement regulations can be modified frequently and involve complexity. A help desk can contribute to ensuring legal compliance and solving recurrent issues of daily procurement tasks, such as choice of procedures and award criteria. In general, the form of inquiries is a call centre and/or a mailbox (European Commission, n.d.^[26]).

Currently, the State of Mexico does not have a help desk to answer questions from public procurement officials and economic operators. According to Article 16 of the Internal Regulation of the Ministry of Control (*Reglamento Interior de la Secretaría de la Contraloría*), however, the Public Procurement Policy Unit of the Ministry of Control is in charge of providing contracting authorities with advice on the public procurement process. (Gobierno del Estado de México, 2018). The Unit receives 20-30 consultations per year. In addition, the Directorate of Public Procurement Policies (*Dirección de Políticas en Contrataciones Públicas*) accepts inquiries from contracting authorities on the regulatory framework of public procurement. However, it focuses on guidance about the legal framework, for example, the application of exceptions to ordinary competitive tender procedures, and does not cover technical questions such as those related to tender evaluation.

The State of Mexico would benefit from considering the possibility of setting up a helpdesk that could answer to the questions from both public procurement officials and economic operators, in a more systematic way. The examples of France and Lithuania provide insights on the development of a help desk (See Box 6.12).

Box 6.12. Help desk in France and Lithuania

France

The Ministry of Finance (Minefi) operates a call centre and e-mail inbox (CIJAP) with ten staff members who answer inquiries from contracting authorities, in particular, local contracting authorities. In 2014, 86% of the questions were answered on the spot. Most of the questions not answered on the spot are responded in writing within 48 hours. In the case where the question requires a more detailed legal interpretation, the inquiry is forwarded to a specialised Unit “Advice to buyers” of the Directorate for Legal Affairs of the Minefi. This unit generally produces written answers within 45 days. The call centre has been in high demand, dealing with 35 000 inquiries per year.

Lithuania

The Public Procurement Office of Lithuania (PPO) set up a help desk in order to provide responses to questions. This help desk is open not only to contracting authorities, but also to economic operators. Currently, the help desk receives questions only through email in order to ensure consistency and accuracy on the quality of answers. Regardless of the high volume of questions received through e-mail (2 000 requests / month on average), PPO maintains the speed of answer: 33% of the requests are answered within 1 hour, 17% in 1-8 hours, 11% (8-24 hours), and the rest 39% in more than 24 hours.

6.4.3. The State of Mexico could promote collaborative approaches with knowledge centres in order to develop its capacity-building system

Collaboration with knowledge centres, such as universities, is a critical element to improve skills and competences of the procurement workforce (OECD, 2015^[3]).

The Regulation of Professionalisation for Public Servants of the State of Mexico (*Reglamento de Profesionalización para los Servidores Públicos del Poder Ejecutivo del Estado de México*) states that the Institute for Professionalisation can sign collaboration agreements with academic institutions specialised in public administration, so long as that collaboration can address the capacity-building needs of public

servants (Article 112) (Gobierno del Estado de México, 2015^[8]) These partnership agreements can be training courses, post-graduate degrees and research projects on professionalisation. (Article 113).

The Institute for Professionalisation entered into a partnership agreement with the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México*, UNAM) and the Autonomous University of the State of Mexico (*Universidad Autónoma del Estado de México*, UAEM). These agreements foresee collaborative actions on the professionalisation of the public procurement workforce. However, no specific actions have been confirmed yet. As the Regulation of Professionalisation for Public Servants of the State of Mexico foresees, the State of Mexico could pursue the possibility of collaborating with these universities through: (i) establishing a degree programme on public procurement; (ii) providing introductory courses of public procurement for students at undergraduate programmes; and (iii) organising joint research and studies on the professionalisation of the public procurement workforce. The State of Mexico would benefit from promoting collaborative approaches with knowledge centres in order to develop its capacity-building system.

Proposals for action

The State of Mexico does not have a specific professionalisation strategy for the public procurement workforce that addresses the points discussed in this chapter. This implies that public procurement is not recognised as a professional task in the State of Mexico. The progress of professionalisation of the public procurement workforce is very limited regardless of willingness to advance this agenda and appetite from procurement practitioners.

Table 6.7 summarises the current progress related to the professionalisation of the public procurement workforce in the State of Mexico:

Table 6.7. Professionalisation mechanisms of the public procurement workforce in the State of Mexico

Issue	Available	Not available	Note
Assessment of the capacity of the PP workforce in the past		x	
Strategy to build the capacities of the PP workforce		x	
Competency model (job profile) of the PP workforce		x	The Institute for Professionalisation developed a competency model for civil servants, but it is not tailored to the public procurement workforce
Certification framework for the PP workforce		x	
Training for PP officers	x		The Institute for Professionalisation and contracting authorities offer some trainings, but topics are limited to the legal framework.
Training for suppliers		x	
Help desk		x	Currently, the Public Procurement Policy Unit of the Ministry of Control answers to questions related to the legal framework, but not to technical topics
Manual / guidelines	x		Only POBALINES and Guideline on market analysis. They could be more user-friendly.
Standardised documents / templates	x		Tender documents, contract documents, checklist of bid proposals and tender evaluation matrix. However, they are not widely shared among contracting authorities
Collaboration with knowledge centres (universities, etc.)	x		Partnership agreements with two universities. However, no specific actions done.

The State of Mexico would benefit from considering the following proposals for action to advance the professionalisation strategy of the public procurement workforce:

Regulatory, strategy and institutional framework

The State of Mexico could set up a regulatory, strategy and institutional framework tailored to the professionalisation of the public procurement workforce.

Identification of the basic profile and assessment of capacities

The State of Mexico should establish a database of public procurement officials, leveraging on the requirement of the National Anticorruption System. This database should include the basic profiles of

the public procurement workforce: number of officials, academic background, years of professional experience and area of their responsibilities.

In addition, the State of Mexico could benefit from carrying out a survey to assess the capacity of the public procurement workforce. This assessment could be the basis to identify strengths and weaknesses of the public procurement workforce, and be an important first step to setting up an effective professionalisation strategy, competency framework, certification framework and capacity-building system.

Competency framework and certification framework

The State of Mexico should develop a competency framework and a certification framework to advance the professionalisation agenda by recognising public procurement as a professional task. These frameworks could be used for planning and designing tailored and specific trainings for public procurement officials.

Capacity-building system (training and methodological assistance)

The State of Mexico should establish training systems that not only reflect specific needs of the public procurement workforce, but are also aligned with a competency framework and a certification framework. Currently, training topics are limited to legal frameworks. Training should be provided on a regular and systematic basis. Training should also be available for economic operators.

The State of Mexico should upgrade its methodological assistance system by enriching the scope and quality of guidelines, manuals and standardised templates, as well as by setting up a help desk.

In order to develop a well-organised capacity building system, the State of Mexico could take advantage of the current partnership agreements with UNAM and UAEM for collaborative actions for the professionalisation of the public procurement workforce.

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