

EXECUTIVE SUMMARY

The State of Mexico is the largest of Mexico's 31 states in terms of the annual volume of goods and services purchased and one of the largest public buyer of goods and services in Mexico, after groups such as the state-owned oil and electricity companies (PEMEX and CFE, respectively) the Federal District (*Distrito Federal*) and the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*, IMSS in Spanish). The State of Mexico spends approximately 23 percent of its annual budget on public procurement.

After his election in September 2011 the Governor of the State of Mexico, Eruviel Avila Villegas, decided to seek the assistance of the OECD to improve the State's procurement practices and to step up its fight against bid rigging. On October 26, 2011, an Inter-Institutional Agreement was signed by and between the Government of the State of Mexico (*Gobierno del Estado de México*, GEM in Spanish), the OECD and the Mexican competition authority (*Comisión Federal de Competencia*, CFC in Spanish). With that Agreement GEM became the first state in Mexico to formally commit to a process to implement the OECD Competition Committee's Guidelines for Fighting Bid Rigging in Public Procurement in its procurement processes. As well, GEM committed to adopt and implement in its institutional policy the recommendations noted in point c) below that are deemed applicable.

The OECD committed to support the process of the implementation of the Guidelines by GEM through:

- a) providing capacity building for GEM officials regarding the design of public procurement to reduce the risks of bid rigging and enhance the identification of bid rigging practices;
- b) preparing an Analytical Report assessing to the extent to which current public procurement legislation, regulation and practices governing GEM procurement are consistent with the Guidelines; and,

- c) determining whether there are areas of opportunity for improvement in procurement legislation and regulation and in the practices at GEM in accordance with the Guidelines.

In respect of point a), in December 2011 the OECD Secretariat – together with staff from the CFC – organised a training course for over 120 procurement officials from GEM and some of its 125 municipalities.

This report fulfils the remaining points b) and c) listed above. Specifically, Chapter 3 of the report provides an overview of the existing legal framework governing public procurement in the State of Mexico, while Chapter 4 is a detailed summary of the laws and regulations applicable to the State when it procures goods and services, commissions public works and undertakes procurement via public-private partnerships.

Chapter 5 of the Analytical Report lists areas in the current federal and state procurement laws and regulations which the OECD considers restrict the scope for action by GEM and other public agencies and undermine their ability to obtain the best value from their purchases. Among other areas, that Chapter examines: limits to foreign bidders' participation in tenders; the use of procurement procedures which are less competitive than public tenders; certain disclosure requirements which may facilitate collusion; and, provisions which may also facilitate collusion such as mandatory clarification meetings, joint bids and split awards. Chapter 5 also presents possible remedies for each area.

Chapter 6 contains recommendations specific to GEM on how to improve its procurement procedures and systems. These recommendations address issues in the following broad thematic areas:

- taking advantage of opportunities for GEM to exercise its buying power;
- adopting best practices in coordination with the CFC and the Secretariat of Public Administration (*Secretaría de la Función Pública*, SFP in Spanish);
- fighting practices which may facilitate collusion;
- increasing the use of competitive mechanisms;
- improving the quality and use of market studies;
- upgrading monitoring and information-sharing activities;

- examining whether budget processes and timelines are undermining effective procurement procedures;
- enhancing training activities; and,
- establishing a coordination and oversight body for more effective procurement.

Each of the recommendations in Chapter 5 and Chapter 6 is linked to one or more sections of the Design Checklist and the Detection Checklist, which are found in the OECD's Guidelines for Fighting Bid Rigging.

Fighting bid rigging is a key priority for GEM in Mexico as it is for public agencies and buyers around the world. Reducing the risk of collusion saves money which can be used to satisfy other needs, fosters innovation and enhances a country's competitiveness. GEM is to be commended for its initiatives and efforts in this area. The OECD is confident that this Analytical Report will promote more competition in GEM's procurement and will allow GEM to obtain better "value for money" from its purchases, to the benefit of its residents and taxpayers.