

# HIGHLIGHTS



FIGHTING BID RIGGING IN PUBLIC PROCUREMENT

## A review of the procurement rules and practices of PEMEX in Mexico





## Fighting Bid Rigging in Public Procurement: A Review of the Procurement Rules and Practices of PEMEX in Mexico

The review of the procurement rules and practices of PEMEX (Mexican Petroleum, Petróleos Mexicanos) is the result of an agreement between PEMEX and the OECD that in 2015 decided to work in close co-operation to improve the organisation and methods of PEMEX's procurement.

The 2013 Mexican energy reform opened the energy sector to competition while keeping the ownership of Mexico's hydrocarbons under state control. Since 2014, following this reform, PEMEX is subject to new procurement rules that aim to make its procurement processes more efficient and effective. The OECD analysed the new regime and procurement procedures of PEMEX and elaborated recommendations to promote competition and fight bid rigging in accordance with international best practices.

### 1. Fight against bid rigging

Public procurement policies help public buyers achieve value for money. Such policies should include guidance to public procurement officials to design competitive tender procedures and enable the detection of illegal agreements among bidders, while creating incentives for suppliers to truly compete on price and quality. The OECD has, for a long time now, helped countries, and public entities in them, design competitive public procurement processes and set up methods to detect collusive agreements. The Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement, and the Guidelines which this Recommendation includes, are pioneering instruments in the fight against bid rigging based on international best practices.<sup>1</sup> Since 2011, Mexico has sought to improve its procurement practices and step up its fight against bid rigging in partnership with the OECD.<sup>2</sup>

Bid rigging is a serious and widespread risk affecting public procurement around the world costing millions of dollars to taxpayers. The OECD's experience has shown that when firms collude, the cost of goods and services can increase by 20%.<sup>3</sup> This percentage may even be higher: for example, in Mexico, the price per unit of insulin bought by the Mexican Institute of Social Security, IMSS, went down by 57.6% after COFECE detected and imposed sanctions against collusive practices.<sup>4</sup> Bid rigging cartels harm directly public resources and, therefore, the economy of a country in general.

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<sup>1</sup> [oe.cd/recibr](http://oe.cd/recibr)

<sup>2</sup> [oe.cd/fbrmex](http://oe.cd/fbrmex)

<sup>3</sup> Smuda, F. (2015), "Cartel Overcharge and the Deterrent Effect of EU Competition Law", Centre for European Economic Research Discussion Paper 12-050, <http://ftp.zew.de/pub/zew-docs/dp/dp12050.pdf>

<sup>4</sup> [https://www.cofece.mx/cofece/attachments/article/37/IMSS\\_Evaluacion\\_ex-post.pdf](https://www.cofece.mx/cofece/attachments/article/37/IMSS_Evaluacion_ex-post.pdf)

## 2. Key findings

The basic principles of PEMEX's public procurement regime are set forth in the PEMEX law and its implementing Regulation,<sup>5</sup> as well as in internal rules adopted by PEMEX itself.

This new internal procurement regime includes important improvements in relation to the general public procurement regime which used to regulate public procurement in PEMEX. For example, the market analysis, which is the main source of information to take decisions about procurement, is now done taking into consideration a wider set of sources. Also, PEMEX has adopted a new methodology known as Strategic Supply and Management of Categories. This methodology allows PEMEX, on the basis of an analysis of historical spending, the needs of the company and the results of market analysis, to adopt the contracting strategies that satisfy its supply needs while getting the best deal in terms of value and money. Furthermore, PEMEX has created electronic tools to get to know better its suppliers.

Despite these positive developments, the OECD report identifies areas of improvement and shows that PEMEX can continue developing its internal regime with the aim of making its procedures more competitive and immune to collusion.

Some of the most salient findings of the report are that PEMEX does not have a specialised department to conduct market analysis, it often uses exceptions to open public tenders and the tools created to collect procurement data do not contain red flags for bid rigging. The OECD recommendations are focused on addressing these and other limitations of PEMEX's public procurement regime.

## 3. Key recommendations

### *Staying informed about the market*

The OECD recommends setting up a specialised department dedicated to market analysis for all procurement procedures, in order to collect more comprehensive and reliable procurement information. This department should be provided with the necessary IT, material and human resources, capacity building and budget.

The report also recommends that PEMEX sets up a new, clear and step-by-step methodology for conducting market analysis, in order to identify market characteristics that facilitate collusion.

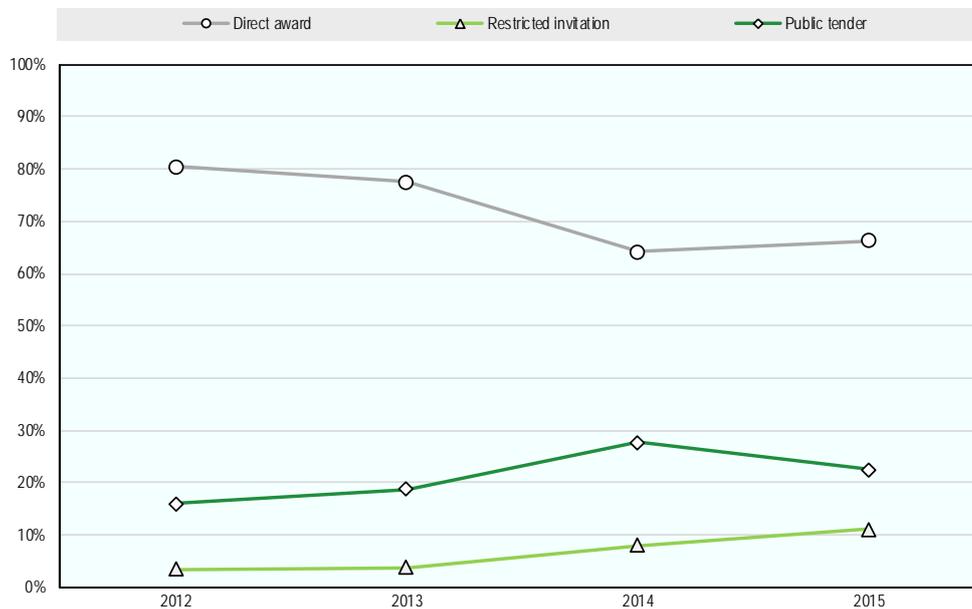
### *Maximising the potential participation of genuinely competing bidders*

The report shows that during the period 2012-2015, the exceptions to open public tenders have been extensively used.

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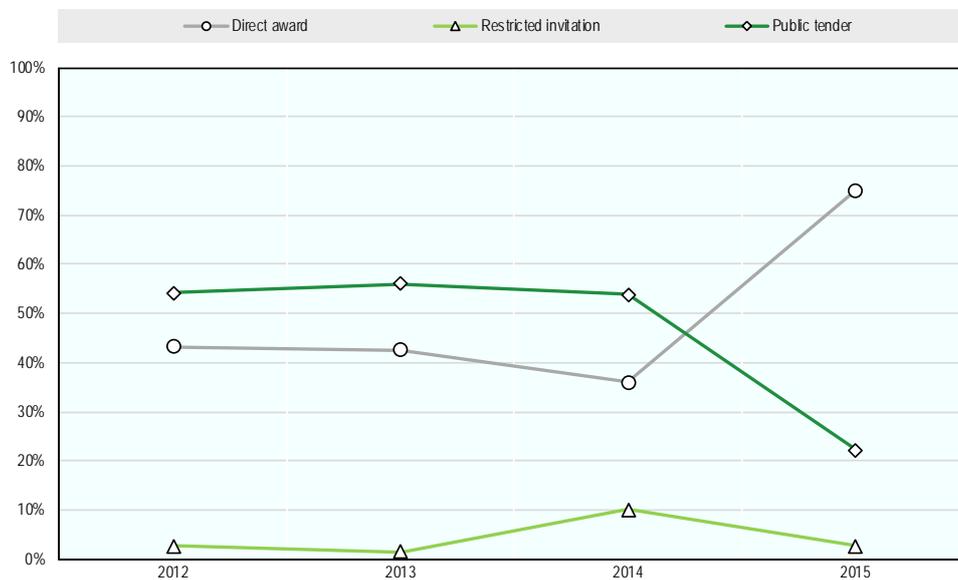
<sup>5</sup> [www.diputados.gob.mx/LeyesBiblio/pdf/LPM\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM_110814.pdf),  
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**Figure 1. Use of different types of contracting procedures (by volume), 2012-15**



Source: Based on data provided in PEMEX's reply of 28 March 2016 to the OECD's questionnaire for this project.

**Figure 2. Use of different types of contracting procedures (by value), 2012-15**

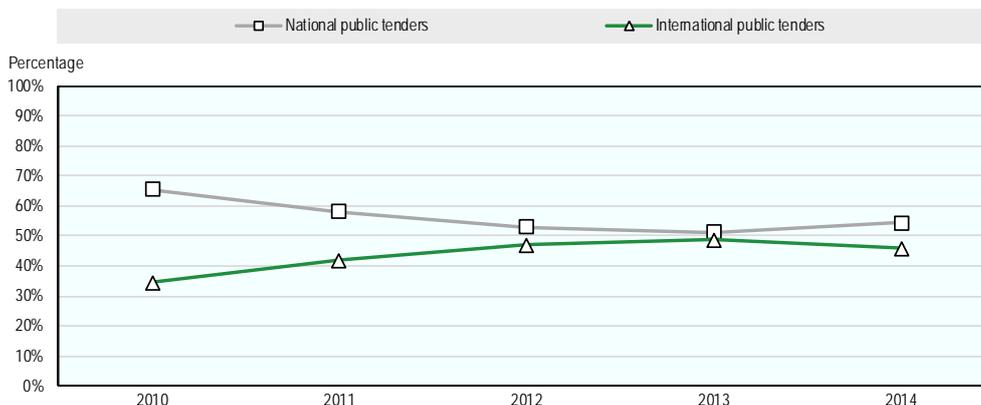


Source: Based on data provided in PEMEX's reply of 28 March 2016 to the OECD's questionnaire for this project.

On the basis of these data, it is recommended that PEMEX limits the use of the exceptions to open public tenders, which currently seems to be excessive and unjustified.

Another finding of the report is that, during the period 2010-2014 the number of PEMEX's national public tenders was higher than the number of international public tenders. The value represented by the international public tenders went down 11% since 2013.

**Figure 3. Percentage of national and international public tenders in relation to all PEMEX public tenders (in volume) 2010-2014**



Source: Based on data provided in PEMEX's reply of 31 August 2015 to the OECD's questionnaire for this project.

**Figure 4. Percentage of national and international public tender in relation to all PEMEX public tenders (in value) 2010-2014**

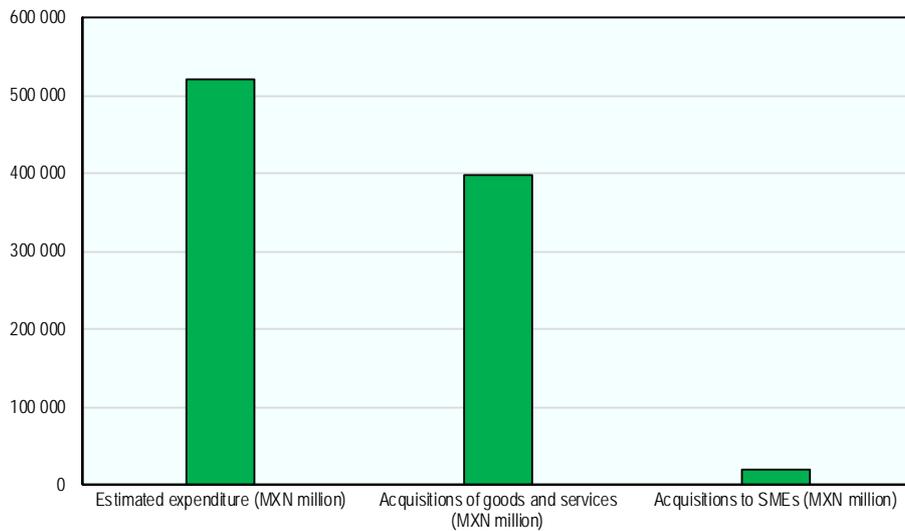


Source: Based on data provided in PEMEX's reply of 31 August 2015 to the OECD's questionnaire for the project.

It is recommended that PEMEX endeavours to open its procurement markets to foreign bidders by abolishing restrictions on their participation, without infringing the relevant legal framework.

The report found that PEMEX only spent 5% of its 2014 budget on goods and services provided by SMEs.

**Figure 11. PEMEX's budget, 2014**



Source: Based on data provided in PEMEX's reply of 31 August 2015 to the OECD's questionnaire for the project.

It is advisable to boost the participation of SMEs, which are related to the industry and that add value to the business, so as to maximise the number of participants in open public tenders.

Electronic bidding should be the default bidding system. Adopting electronic bidding procedures will help lower tender costs for bidders and PEMEX.

Finally, the payment for tender documents should be exceptional; in order to reduce the costs of participation in a tender procedure and not discourage potential participants.

### *Reducing communication among bidders*

Unnecessary transparency in public procurement and, in particular, the dissemination of sensitive commercial information may facilitate collusive agreements. The OECD recommends that PEMEX manages the information flow towards third parties in a way that it avoids disclosing sensitive information, for example by creating a public version and an internal version of the PEMEX Annual Programme of Acquisition<sup>6</sup>, and publishing only the public version.

PEMEX should also avoid creating unnecessary opportunities for bidders to meet during the tender process, such as face-to-face meetings, or at least limit these opportunities to the minimum.

Finally, the OECD recommends to PEMEX to insert a clause in the tender documents warning potential bidders of the sanctions for bid rigging and use contractual penalties for suppliers involved in bid rigging. PEMEX could also temporarily exclude from future tenders companies found guilty of bid rigging.

<sup>6</sup> This programme is based on PEMEX's business plan and on the directions given by the Board of Directors. It contains a general description and estimated budget of the acquisitions, leases, works and services that PEMEX intends to contract during the relevant fiscal year.

### *Raising awareness among public procurement officials*

PEMEX should also set up regular training for procurement officials on how to avoid or limit the risks of collusion. PEMEX could create a hotline to anonymously report suspicions of bid rigging.

The OECD recommends that PEMEX establishes a closer co-operation with the Mexican competition authorities, COFECE and IFT.

The report can be downloaded here:

[oe.cd/fbrmex](https://oe.cd/fbrmex)



[www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging)

