



STRENGTHENING COMPETITIVENESS IN MEXICO
THROUGH REGULATORY IMPROVEMENT

Review of Practices of Local Public Procurement in Five Mexican States



STRENGTHENING COMPETITIVENESS IN MEXICO
THROUGH REGULATORY IMPROVEMENT

**Review of Practices
of Local Public Procurement
in Five Mexican States**

2015

Table of Contents

List of acronyms	7
Executive Summary	13
Chapter 1. Introduction	17
1. Project background	17
2. Public procurement as a strategic activity for Mexican states	18
3. Transparency and access to information in public procurement	20
4. Preventing misconducts in public procurement	21
4.1. <i>Bid rigging</i>	21
4.2. <i>Fraud, Bribery and Integrity</i>	22
5. Improving administrative processes to strengthen competitiveness.	24
6. Accountability, control and sanctions	26
Chapter 2. Public Procurement at the Federal Level in Mexico	29
1. Government structure and regulatory framework at the federal level.	29
2. Institutions involved in public procurement at the federal level	30
<i>Ministry of Public Administration</i>	31
<i>Ministry of Economy (SE)</i>	36
<i>Economic Competition Authorities</i>	37
<i>National Institute for Access to Public Information</i>	37
3. Public procurement cycle at the federal level.	37
3.1. <i>Pre-tender stage</i>	38
3.2. <i>Tender stage</i>	50
3.3. <i>Post-award stage</i>	54
4. Best Practices at the Federal Level	56
Chapter 3. Public Procurement in Five States	61
1. Differences between federal and state level procurement	61
2. Case studies	63
<i>Aguascalientes</i>	64
<i>Coahuila</i>	81
<i>Morelos</i>	96
<i>Nuevo Leon</i>	108
<i>State of Mexico</i>	130
Chapter 4. Best Practices in Public Procurement in Five States	147
Chapter 5. Recommendations and Proposals for Action	157
References	169

Annexes	173
--------------------------	-----

List of Boxes

Box 1. The evolution and relevance of CompraNet	33
Box 2. Key ideas of consolidated purchases	40
Box 3. Direct social control in procurement: Social Witness in Mexico	49
Box 4. State of Aguascalientes	65
Box 5. “Today we are now purchasing” (Hoy se compra)	68
Box 6. Coahuila	82
Box 7. SEFIR Activities	85
Box 8. Morelos	97
Box 9. The State of Nuevo Leon	110
Box 10. The State of Mexico	131

List of Graphs

Graph 1. Global Economic Crime Survey	147
---	-----

List of Figures

Figure 1. Institutions relevant to procurement at the federal level	31
Figure 2. Procurement stages at the federal level.	38
Figure 3. Pre-tender stage summary	39
Figure 4. Procurement procedures at the federal level	45
Figure 5. Tender stage summary.	51
Figure 6. Post-tender stage summary	54
Figure 7. Integration of Procurement Committee	70
Figure 8. Ministry of Finance and Treasury procurement structure	112
Figure 9. Integration of the Procurement Committee	114

List of Tables

Table 1. Average overcharge by number of cartels in different economic surveys	21
Table 2. Public availability of procurement information at central level governments (2010)	57
Table 3. CompraNet Functionalities comparison	59
Table 4. Principal differences between federal and state level procurement	63
Table 5. Procurement procedure and range of purchase	75
Table 6. Staff involved in procurement	84
Table 7. Planned expenditures and real expenditures (Mexican pesos)	88
Table 8. Procurement procedure and range of purchases	89
Table 9. Number of public tenders and value of contracts	90
Table 10. Exemptions to tenders (direct awards and restricted invitations)	90
Table 11. Restricted invitations	91
Table 12. Direct awards	91
Table 13. Complaints and disagreements	93
Table 14. Procurement procedure and range of purchase in Morelos	104

Table 15. Procurement procedure and range of purchase in Nuevo León	119
Table 16. Procurement procedure and range of purchase in the State of Mexico	139
Table 17. Advancements in key areas of the procurement cycle at state level in five states . . .	149
Table 18. Best Practices in public procurement in five states.	153

List of acronyms

AM	Administrative Manual (Manual Administrativo de Aplicación General en Materia de Adquisiciones, Arrendamientos y Servicios del Sector Público, MALASSSP)
ANCDE	Agreement for the Coordination of Economic Deregulation (Acuerdo Nacional para la Coordinación de la Desregulación Económica, ANCDE)
AP	Annual Plans (Planes Anuales, AP)
ASEC	Superior Audit Office of Coahuila (Auditoría Superior del Estado de Coahuila-ASEC)
ASF	Audit Office (Auditoría Superior de la Federación, ASF)
CCDAE	Agreement for the Deregulation of Business Activity With its Municipalities (Carta Compromiso para la Desregulación de la Actividad Empresarial, CCDAE)
CEMER	Regulatory Improvement Commission (Comisión Estatal de Mejora Regulatoria del Estado de Morelos, CEMER)
CFE	Federal Electricity Commission (Comisión Federal de Electricidad, CFE)
CIBD	Certificate of Independent Bid Determination (Certificado de Determinación Independiente de Ofertas)
CIDE	Center for Research and Teaching in Economics (Centro de Investigación y Docencia Económicas, CIDE)
COFECE	Comisión Federal de Competencia Económica (Federal Economic Competition Commission, COFECE)
COFEMER	Federal Commission for Regulatory Improvement (Comisión Federal de Mejora Regulatoria, COFEMER)
COMPRAMEX	Electronic Procurement System (Sistema de Compras Gubernamentales del Estado de México, COMPRAMEX)
CompraNet	Federal Electronic Database for Tenders (Sistema Electrónico de Información Pública Gubernamental, COMPRANET)
CONAC	National Council for Accounting Harmonization (Consejo Nacional de Armonización Contable, CONAC)

CPA	Federal Centralised Public Administration (Administración Pública Federal Centralizada, APFC)
CURP	National Registration Number (Clave Única de Registro de Población, CURP)
DGA	General Directorate of Acquisitions (Dirección General de Adquisiciones, DGA)
DGMR	General Directorate of Material Resources (Dirección General de Recursos Materiales, DGMR)
DPA	Federal Decentralized Public Administration (Administración Pública Federal Descentralizada, APFD)
ERA	Electronic Reverse Auctions in Nuevo Leon
ESAF	Superior Audit Office of the State of Morelos (Entidad Superior de Auditoría y Fiscalización del Estado de Morelos, ESAF)
FECA	Federal Economic Competition Act (Ley Federal de Competencia Económica, LFCE)
FRBA	Federal Responsibility Budgetary Act (Ley Federal de Presupuesto y Responsabilidad Hacendaria, LFPRH)
GDP	Gross Domestic Product (Producto Interno Bruto, PIB)
GEM	Government of the State of México (Gobierno del Estado de México, GEM)
ICAI	Institute for Access to Public Information of Coahuila (Instituto Coahuilense de Acceso a la Información Pública-ICAI)
IFETEL	Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFETEL)
IGEMR	Institute of Entrepreneurial Management and Regulatory Reform (Instituto de Gestión Empresarial y Mejora Regulatoria, IGEMR)
IMCO	Mexican Institute for Competitiveness (Instituto Mexicano de la Competitividad, IMCO)
IMIPE	Institute of Public and Statistical Information (Instituto Morelense de Información Pública y Estadística, IMIPE)
IMSS	Mexican Institute for Social Security (Instituto Mexicano del Seguro Social, IMSS)
INAI	National Institute for Transparency, Access to Public Information and Data Protection (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, INAI)
ISSSTE	Institute for Social Security and Services for State Workers (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado)
LAACSEC	Procurement Act (Ley de Adquisiciones, Arrendamientos y Contratación de Servicios para el Estado de Coahuila)

LAACSEN	Public Procurement Act (Ley de Adquisiciones, Arrendamientos y Contratación de Servicios del Estado de Nuevo León, LAACSEN)
LAEAPS	Procurement Act (Ley sobre Adquisiciones, Enajenaciones, Arrendamientos y Prestaciones de Servicios, LAEAPS)
LAIP	Transparency and Access to Public Information and Protection of Personal Data Act (Ley de Acceso a la Información Pública-LAIP)
LCPEMM	Procurement Act (Ley de Contratación Pública del Estado de México y Municipios, LCPEMM)
LDCMPME	Ley para el Desarrollo de la Competitividad de la Micro, Pequeña y Mediana Empresa (Law for the Development of the Competitiveness of Micro, Small and Medium Enterprises)
LFSEA	Law of Superior Control of the State of Aguascalientes (Ley de Fiscalización Superior del Estado de Aguascalientes, LFSEA)
LGEMREA	Business Management and Regulatory Act (Ley de Gestión Empresarial y Mejora Regulatoria para el Estado de Aguascalientes, LGEMREA)
LGTAIPDP	General Law on Transparency, Access to Information and Protection of Personal Data (Ley General de Transparencia, Acceso a la Información y Protección de Datos Personales)
LIF	Federal Revenues Law (Ley de Ingresos de la Federación, LIF)
LIPEPDPEM	Public Information, Statistics and Protection of Personal Data Act (Ley de Información Pública, Estadística y Protección de Datos Personales del Estado de Morelos, LIPEPDPEM)
LMASCENL	Alternative Methods for Conflict Resolution Act of Nuevo León (Ley de Métodos Alternos para la Solución de Conflictos del Estado de Nuevo León, LMASCENL)
LMRM	Regulatory Improvement Act (Ley de Mejora Regulatoria para el Estado de Morelos)
LOAPC	Organic Law of Public Administration (Ley Orgánica de la Administración Pública del Estado de Coahuila)
LOAPEA	Organic Law of Aguascalientes (Ley Orgánica de la Administración Pública del Estado de Aguascalientes)
LOAPEC	Organic Law of the State of Coahuila (Ley Orgánica de la Administración Pública del Estado de Coahuila)
LOAPEM	Organic Law (Ley Orgánica de la Administración Pública del Estado de México, LOAPEM)
LOAPNL	Organic Law of the State's Public Administration (Ley Orgánica de la Administración Pública para el Estado de Nuevo León, LOAPENL)

LPEA	Patrimonial Act of Aguascalientes (Ley Patrimonial del Estado de Aguascalientes)
LRSPENL	Responsibilities of Public Servants Act of the State and Municipalities of Nuevo Leon (Ley de Responsabilidades de los Servidores Públicos del Estado y Municipios de Nuevo León, LRSPENL)
LTAIENL	Transparency and Public Information Act of the State of Nuevo Leon (Ley de Transparencia y Acceso a la Información del Estado de Nuevo Leon, LTAIENL)
MSMEs	Small and Medium Enterprises
NAFIN	Nacional Financiera, Development Banking Institution (Nacional Financiera)
NDP	National Development Plan (Plan Nacional de Desarrollo)
OEA	Organization of American States (Organización de Estados Americanos)
OECD	Organisation for Economic Co-operation and Development (Organización para la Cooperación y el Desarrollo Económicos, OCDE)
OIC	Órgano Interno de Control (Internal Control Unit)
OSD	Offer with Subsequent Discounts (Ofertas Subsecuentes de Descuento)
OSFEA	Audit Office of the State of Aguascalientes (Órgano Superior de Fiscalización del Estado de Aguascalientes, OSFEA)
OSFEM	Audit Office of the State of Mexico (Órgano Superior de Fiscalización del Estado de México, OSFEM)
PAAAS	Programa Anual de Adquisiciones, Arrendamientos y Servicios (Annual Procurement Programme)
PEF	Presupuesto de Egresos de la Federación (Federal Budget)
PEMEX	Petróleos Mexicanos (Mexican Oil State Company)
PJF	Judicial Branch (Poder Judicial de la Federación, PJF)
PND	Plan Nacional de Desarrollo (National Development Plan)
POA	Annual Operative Programme (Programa Operativo Annual, POA)
POBALINES	Policies, Rules and Guidelines (Políticas, Bases y Lineamientos en Materia de Adquisiciones y Arrendamientos de Bienes Muebles y la Prestación de Servicios)
PPA	Public Procurement Act (Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, LAASSP)
PPAA	Public-Private Association Act (Ley de Asociaciones Público-Privadas, LAPP)
PPP	Public Procurement Program (Programa de Compras Públicas)
PPR	Public Procurement Regulation (Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, RLAASSP)

PPR	Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, RPPA (Public Procurement Bylaw-PPB)
PWA	Public Works Act (Ley de Obras Públicas y Servicios Relacionados con las Mismas, LOPSRM)
RLAACSENL	Public Procurement Regulation (Reglamento de la Ley de Adquisiciones, Arrendamientos y Contratación de Servicios del Estado de Nuevo León, RLAACSENL)
RLCPEMM	Bylaw of the Procurement Act (Reglamento de la Ley de Contratación Pública del Estado de México y Municipios, RLCPEMM)
SE	Ministry of the Economy (Secretaría de Economía, SE)
SEDENA	Ministry of National Defense (Secretaría de la Defensa Nacional)
SEFIN	Ministry of Finance (Secretaría de Finanzas)
SEFIR	Ministry of Oversight and Accountability (Secretaría de Fiscalización y Rendición de Cuentas)
SFP	Secretaría de la Función Pública (Ministry of Public Administration)
SHCP	Ministry of Finance (Secretaría de Hacienda y Crédito Público)
SICAPEM	Internal Electronic System (Sistema Integral de Administración Pública, SICAPEM)
SIIF	Integrated Financial Information System (Sistema Integral de Información Financiera, SIIF)
SINTAD	Integral System of Acquisitions (Sistema Integral de Adquisiciones, SINTAD)
SISAI	System of Requests for Access to Information of the State of Aguascalientes (Sistema de Solicitudes de Acceso a la Información del Estado de Aguascalientes)
SITODEM	Geo-Referenced System for Expenditure in Public Works (Sistema de Información y Transparencia de Obras para el Desarrollo Metropolitano, SITODEM)
SP	Sectorial Plan (Plan Sectorial)
SSA	Ministry of Health (Secretaría de Salud)
TFJFA	Jurisdictional court with fiscal and administrative authority (Tribunal Federal de Justicia Fiscal y Administrativa, TFJFA)
UPAC	Unit for Awarding Contracts (Unidad de Procesos para la Adjudicación de Contratos, UPAC)
VCLT	Vienna Convention on the Law of Treaties
VU	One-Stop Shop (Ventanilla única)

Executive Summary

Mexico has made significant progress in adapting public procurement legislation and policies to international standards, most notably those set by the Organisation for Economic Cooperation and Development (OECD). Though more progress has been attained in federal regulation—which applies to purchases carried out by the central government and other federal agencies—some state governments have made inroads and adopted best practices.

This report describes best practices in five Mexican states: Aguascalientes, Coahuila, State of Mexico, Morelos and Nuevo León. These best practices not only include legislation, guidelines and policies, but also means for actual performance to fulfil legal provisions. In this respect, several challenges remain in place as sometimes some actors may bypass legislation to obtain private gains. This report is a picture of best practices as viewed from legislation and reports provided by government officials. However, deeper research by states needs to be done to describe precisely the dynamics of procurement process as well as some ways by which officials and bidders may sometimes circumvent the law.

At the federal level, México has implemented several best practices suggested by the OECD *Principles for enhancing integrity in public procurement* of the. According to a survey carried out by OECD in 2010, Mexico is one of the most transparent member States in public procurement. It has CompraNet, a system that allows not only for transparency, but also a proper and easy use of relevant information, which is updated daily, can be transported, transformed and handled, and can be used to control procedures, to supervise public officials, and monitor specific areas of government, as well as the whole structure.

However, progress has been uneven at the local level. Many states have taken significant steps, as some of the cases used for this study show, but others lag behind. According to a study published by *Transparencia Mexicana*, the national chapter of Transparency International, while at the federal level there are better rules for maximising value for money in public procurement, this is not the case at the state level: many states laws allow for budget thresholds to be easily exceeded, and for government agencies to make unnecessary purchases with little consideration of the real needs of the population.

According to the same study published in 2012, “twenty states do not require government entities by law to measure the feasibility of a project, nor the project’s contribution to the issuing institution’s goals and objectives.” Fortunately, some states are beginning to change in this respect and are advancing in the adoption of international best practices on public procurement (see chapter 3).

In terms of promoting competition, the laws governing public procurement in many states do not promote fairness in the allocation of contracts and most do not include an obligation

to ensure results are derived from competitive processes. In 2012, according to the study cited above, less than a third of states required that government entities performed market studies prior to designing a procurement process. Once again, cases included in this study show best practices that can be emulated by those states lagging.

Regulatory improvement policy is highly developed at the federal level, while at the local level development is medium to low. Applying regulatory policy to public procurement advances transparency in the development of its legal framework, allows the participation of relevant stakeholders, and guarantees the effectiveness and efficiency of the measures adopted.

An effective strategy for preventing integrity violations' in the field of public procurement authorities is the adoption a culture of integrity throughout the entire public procurement cycle, from the needs assessment to contract management and payment. The integrity on procurement was analysed in the four dimensions: Transparency, Good Management, Prevention of misconduct, compliance and monitoring and Accountability and control.

Transparency

In terms of transparency and the use of technology, only nine states in 2012 mandated in their laws the use of electronic bidding systems and specified what information needed to be held in those electronic systems. Although this has been changing rapidly under the umbrella and example of the national system CompraNet is evident the contrast between a federal government which has placed great emphasis on increasing transparency and many states lagging behind on this matter. So, the States must consolidate the use of the procurement systems and should moving towards the adoption of the Open contracting data standard.

Good management

The professionalisation of public servants in charge of public procurement in Mexico should be strengthened. The capacities building and the adoption of specific integrity rules and ethics codes in this activity ensure the efficiency and correct functioning of public procurement processes. All Mexican states must work towards the professionalization of procurement activity.

Prevention of misconduct, compliance and monitoring

In general, this is a dimension in which all states must work hard to identify the activities and positions with the greatest risk of corruption throughout the public procurement cycle. The development of strategies and the adoptions of tools for the assessment, treatment and monitoring these integrity risks, should be a priority. Nuevo León is the state with the most progress in this dimension.

Accountability and control

The participation of society in public procurement processes ensures accountability and promotes the proper functioning of the process. The Mexican government at the federal level has adopted the figure of social witnesses, which is also beginning to be adopted in local governments.

However, the study identified the absence of a legal framework for whistle-blower protection, as well as efficient mechanisms for making complaints and claims of the public procurement process.

A very long road is still visible ahead. State governments are now realizing that reforming and restructuring public procurement in these four key areas is not only desirable, but also necessary. Several international organizations have studied public procurement for a long time, and they have concluded that public resources can become a real tool for economic and social development, if governments compromise themselves in incorporating international best practices in their public procurement system.

Chapter 1

Introduction

1. Project background

The Organisation for Economic Co-operation and Development (OECD) has worked continuously on regulatory reform since the mid-nineties. This work elaborates upon several studies carried out by the OECD, including *Criteria List of Reference for Regulatory Decision-Making* (1995), studies on policy and regulatory institutions in 23 member countries (including three on Mexico published in 1999, 2004 and 2014), as well as Brazil, China, Colombia, Indonesia, Kazakhstan and Russia. The work also takes into consideration the *OECD Guiding Principles for Regulatory Quality and Performance* (2005), the establishment of a Regulatory Policy Committee in 2009, the 2012 *OECD Recommendation on Regulatory Policy and Governance* and the 2012 *OECD Guide to Improve the Quality of State and Municipal Regulations and Strengthen Mexico's Competitiveness* (*Guía para Mejorar la Calidad Regulatoria de Trámites Estatales y Municipales e Impulsar la Competitividad de México*).

In January 2011 the OECD signed an inter-institutional agreement with the Mexican competition authority (*Comisión Federal de Competencia Económica*, COFECE)¹ and the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*, IMSS). The purpose was to assist authorities in implementing the *OECD Guidelines for Fighting Bid Rigging in Public Procurement*. The Guidelines, approved in 2009, provide practical and applicable checklists for designing effective public procurement procedures and for detecting collusive practices during the course of tender processes, with the aim of reducing the risk of bid rigging in public tenders.

In October 2011 the OECD signed another agreement on fighting bid rigging with the Government of the State of Mexico (*Gobierno del Estado de México*, GEM). In June 2012 another was signed with the and finally, in 2011 the OECD signed agreements with Mexico's biggest energy suppliers, (*Comisión Federal de Electricidad*, CFE) and the Mexican Oil State Company (*Petróleos Mexicanos*, PEMEX) to review their procurement procedures and provide recommendations to reinforce their transparency, accountability, efficiency and competitiveness. In November 2012 and April 2013, the OECD and COFECE organized training courses in terms of procurement procedures for approximately 200 CFE officials'.

In 2011 and 2012, respectively, the OECD signed agreements with IMSS and the State's Employees' Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de*

¹ Formerly known as *Comisión Federal de Competencia* (CFC)

los Trabajadores del Estado, ISSSTE) to assess their procurement strategies and procedures. The two reviews made numerous recommendations on the organisation of public procurement, workforce management and development, relationships with private sector suppliers and integrity and transparency measures. The recommendations were followed, with significant financial benefits for IMSS and ISSSTE.

In 2013, ISSSTE asked OECD a follow-up initiative to assess planning and co-ordination in its procurement processes, recommend good practices with regards to market intelligence, review external suppliers' provision of medical services and analyse competition for ISSSTE's contracts, with the twin aim of better allocating resources and improving healthcare results.

This report is the first to collaborate simultaneously with five local-level governments and authorities on the subject of public procurement. Its aim is twofold. First, to highlight procurement practices that can be considered as best practices so that other states can emulate them. Second, to identify areas of opportunity to improve the efficiency and quality² of local-level procurement.

The information for this report was gathered from three complementary sources. First, from laws, documents and reports describing the regulatory framework in each of the five case studies as well as for the federal level. Second, from a questionnaire sent to state government officials requiring them to describe specific aspects of the procurement process in each state.³ And third, from fact-finding missions carried out in each of the five states under consideration in which thirty-three interviews were conducted with public officials, civil society and business representatives (a detailed list of interviews can be found in the Annexes of this report).⁴

2. Public procurement as a strategic activity for Mexican states

Public procurement is an important economic and government activity. It involves significant funds and is used to deliver public services to citizens and achieve policy goals such as job creation, support to micro, small and medium enterprises (MSMEs), environmental sustainability or innovation. Public procurement represents an average of 30% of government expenditures and 13% of gross domestic product (GDP) in OECD member states, which translates to approximately €4.3 trillion in 2012. On average, 55% of procurement among OECD member countries is carried out by local-level authorities.⁵

The OECD has a far-reaching agenda on public procurement reform to support countries develop an overarching approach to procurement that enables efficiency, fosters growth and accomplishes their strategic goals. As part of this agenda, in 2015 the OECD Council is in the process of adopting the *Recommendation of the Council on Public Procurement (2015b)*, to encourage a balanced approach to the use of procurement as a smart governance tool to achieve economy, efficiency and secondary policy objectives.

² As "quality of local-level procurement", this report refers to the fact that public procurement processes ensure the quality of the goods, services and public works that will be acquired by the State, while advancing value for money, in all the phases of the procurement cycle.

³ The questions covered the following topics: strategic planning, transparency and access to information, prevention of misconducts, administrative simplification and accountability. Additionally, facts were corroborated with state level officials to guarantee a mutual understanding of the issues and the procurement cycles.

⁴ Interviews were carried out between November 10th, 2014 and April 17th, 2015.

⁵ OECD, *Implementing the OECD Principles for Integrity in Public Procurement. Progress since 2008*, 2013a.

It is important to safeguard the strategic role of public procurement through sound planning, design and delivery. An effective public procurement system serves public needs, provides customer satisfaction, delivers value for money in a fair, open, competitive and transparent way and is measured and evaluated for improvement on a regular basis. Additionally, rapid detection of risks must allow the governments to respond to increasingly complex policy and market changes.

The OECD published the *Principles for Integrity in Public Procurement* in 2009. In this document, they established a *10 Key pillars of the Principles for enhancing integrity in public procurement*, divided in four general topics:

Transparency

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.
2. Maximize transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

Good management

3. Ensure that public funds are used in procurement according to the purposes intended.
4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

Prevention of misconduct, compliance and monitoring

5. Place mechanisms to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms for monitoring public procurement as well as to detect misconduct and apply sanctions accordingly.

Accountability and control

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from potential suppliers in a fair and timely manner.
10. Empower civil society organizations, media and the wider public to scrutinize public procurement.

After this assessment, the 2013 report *Implementing the OECD Principles for Integrity in Public Procurement: Progress Since 2008* identified key challenges for improvement in public procurement. These include:

- a. Less compliance-focused and more results-oriented approach to procurement.
- b. Recognition of procurement as a strategic activity.
- c. Professionalization of the procurement workforce.

- d. Evidence-based approach to procurement policies.
- e. Introduction of systematic procurement performance monitoring.
- f. Implementation of e-procurement systems.

The *Recommendation of the Council on Public Procurement*, currently under adoption by the OECD Council⁶, addresses these challenges and provides effective guidance on how to implement a public procurement system with state-of-the-art tools and techniques and use public funds sustainably and efficiently. In particular, the Draft Recommendation advises all governments to “balance the use of the public procurement system to pursue secondary policy objectives with the need to provide effective and efficient public services delivery.” This means that procurement programs should:⁷

- a. Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities
- b. Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems
- c. Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives.

This is particularly relevant for the Mexican case, because the *Ley para el Desarrollo de la Competitividad de la Micro, Pequeña y Mediana Empresa*, LDCMPME, establishes in its Article 10, section IX that government agencies must assign 35% of all their contracts to MSMEs. This means that government agencies not only have to purchase with the objective of obtaining a better value for money—as stated in Article 134 of the Constitution—but have to buy from MSMEs, even if sometimes they cannot offer best price and quality. Allowing for these two objectives to work effectively requires for adjoining strategies that meet the three conditions enlisted above.

3. Transparency and access to information in public procurement

The focus of transparency in public procurement should be subject to the principle of promoting fair conditions to all suppliers available, for which an adequate and timely provision of transparency of the procurement cycle is paramount. Transparency has two main audiences:

- Procurement officials that need access to key information to make better decisions and achieve their intended goals.
- The public in general, as well as civic organizations, which can oversee and scrutinize procurement decision-making processes.

To guarantee that analysts and interested parties can carry out robust analysis, all actions and decisions made during the procurement process should be enlisted and systematized. These should include at least all those related to the institutional frameworks, laws and regulations, specific procurements (including forecasts, calls for tender, award announcements, participants

⁶ At the time of writing this Report, the OECD's Public Procurement Council approved the Recommendation on Public Procurement in 2015, with 12 principles. This recommendation complements the OECD (2008) Recommendation on Enhancing Integrity in Public Procurement, which is one of the theoretical bases for the analysis of this report. In this regard, for future analysis, the OECD (2015b) Recommendation of the Council on Public Procurement is available on the following link: <https://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

⁷ OECD, *Recommendation of the Council on Public Procurement*, 2015b, pp. 4-5.

in tenders and so on), and include evaluation indicators (e.g. benchmarks, monitoring results) to help improve the performance of the procurement system over time.

As described in the OECD CFE report (2015a),⁸ information that should be readily available for analysts should include at least “the product, dates, number and identity of participants in the tender, number and identity of participants in clarification meetings, quantities purchased and their unitary price, number of tender batches, rejected proposals, claims for non-conformity, evaluation criteria, submission of joint bids and split awards, indication of whether it was a consolidated purchase or not, among many others.”⁹

4. Preventing misconducts in public procurement

4.1. Bid rigging

Fair and open competition among suppliers is the most important disincentive against misconducts. Furthermore, it encourages innovation, which can result in lower prices or better quality in supplies and services. The complexity of public procurement and the fact that it involves significant financial resources creates opportunities and incentives for dishonest behaviour on the part of public officials as well as private suppliers.

Bid rigging is illegal in all OECD countries. A study that analysed six different surveys that estimate the effects of cartels on prices found that, on average, the presence of a collusive agreement increases prices by over 30%.

Table 1. **Average overcharge by number of cartels in different economic surveys**

Reference	Number of Cartels	Average Overcharge	
		Mean (percent)	Median (percent)
Cohen and Scheffman (1989)	5 – 7	7.7 – 10.8	7.8 – 14.0
Werden (2003)	13	21	18
Posner (2001)	12	49	38
Levenstein and Suslow (2002)	22	43	44.5
Griffin (1989), private cartels	38	46	44
OECD (2003), excluding peaks	12	15.75	12.75
Total, simple average	102-104	30.7	28.1
Total, weighted average	102-104	36.7	34.6

Source: Table 1 in John M. Connor and Yulija Bolotova, *Cartel overcharges: Survey and meta-analyses*, International Journal of Industrial Organization, vol. 24, issue 6, November 2006, pp. 1109-1137.

In a bid-rigging scheme, potential competitors agree to eliminate competition so that prices are higher and/or quality is lower. As a consequence, governments pay more for goods and services to the detriment of taxpayers. Schemes for bid rigging are difficult to identify. According to the

⁸ See section 5.2 in Chapter 5 of the OECD report for CFE.

⁹ OECD, *Fighting Bid Rigging in Public Procurement in Mexico. A Secretariat Analytical Report of Compliance with Procurement Legislation, Regulations and Practices in CFE with OECD best practices*, Paris, 2015a. Pg. 139.

OECD (2009a) *Guidelines for Fighting Bid Rigging in Public Procurement*, these frequently create an appearance of competition where there is none. Such schemes may include cover bids—where dishonest bidders submit offers that cannot win because they include conditions that will be rejected or because the price is too high—and bid-suppression—where suppliers that participate in the early stages of tender processes agree with its competitors not to submit a final bid—.

Another modality of bid rigging is market allocation into geographic areas (such as states) or among potential customers, and cartel members decide in advance which firms should be allowed to win. If a cartel decides to allocate the market by customers, each firm sells to particular clients. Finally, there is also the bid rotation scheme in which cartel members bid for different contract opportunities or take turns winning different tenders.

In 2012, the OECD Council adopted a *Recommendation on Fighting Bid Rigging in Public Procurement* that calls for governments to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

In this endeavour, the 2009 OECD *Guidelines for Fighting Bid Rigging in Public Procurement* and their worldwide dissemination are particularly important. The Guidelines are based on best international practices and offer nonbinding advice to public institutions on how to reduce the risk of bid rigging through effective tender design and by detecting collusive practices during the tender process. These checklists are bulleted below, however a complete version of the Guidelines can be found in the following link: <http://www.oecd.org/daf/competition/cartels/42851044.pdf>.

Design (prevention) checklist:

- a. Be informed before designing the tender process
- b. Design the tender process to maximise the potential participation of genuinely competing bidders
- c. Define your requirements clearly and avoid predictability
- d. Design the tender process to effectively reduce communication among bidders
- e. Carefully choose your criteria for evaluating and awarding the tender
- f. Raise awareness among your staff about the risks of bid rigging in procurement

Detection checklist:

- a. Look for warning signs and patterns when bids are submitted
- b. Look for warning signs in all documents submitted
- c. Look for warning signs and patterns related to pricing
- d. Look for suspicious statements at all times
- e. Look for suspicious behaviour at all times

The indicators of possible bid rigging described identify numerous suspicious bid and pricing patterns. They should not however be taken as proof of wrongdoing. For example, a firm may have not bid on a particular tender offer because it was too busy to handle the work. High bids may simply reflect a different assessment of the cost of a project. Nevertheless, when suspicious patterns and pricing are detected or when procurement agents hear odd statements or observe peculiar behaviour, further investigation is required. A regular pattern of suspicious behaviour over a period of time is often a better indicator of possible bid rigging than evidence from a single bid.

Steps procurement officials should take if bid rigging is suspected:

- a. Have a working understanding of the law on bid rigging in your jurisdiction
- b. Do not discuss concerns with suspected participants
- c. Keep all documents, including bid documents, correspondence, envelopes, etc.
- d. Keep a detailed record of all suspicious behaviour and statements.
- e. Contact the relevant competition authority in your jurisdiction
- f. After consulting with your internal legal staff, consider whether it is appropriate to proceed with the tender offer.

4.2. Fraud, Bribery and Integrity

Foreign Bribery

The recently published OECD Foreign Bribery report¹⁰ focuses on the enforcement of foreign bribery actions coupled to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Anti-Bribery Convention) published in 1999. The report shows that enforcement of anti-bribery laws has increased since the implementation of the Convention. It describes data from 427 foreign bribery cases since 1999.

This report (2014) indicates that on average, bribes in foreign transactions equalled 10.9% of the total transaction value and 34.5% of the profits. However, it should be noted that the number of bribes only indicate those values appearing in official judgements, so the bribes promised could have been considerably higher than the amount reported. In general, representatives from industries pay bribes to officials: 57% of the bribes were paid to obtain public procurement contracts.

The same report finds that over a third of the cases came to the attention of authorities through self-reporting companies and individuals, 13% were the direct responsibility of investigations of enforcement authorities and another 13% were prompted by mutual legal assistance between countries. Media coverage and investigative journalism prompted 5% of the cases. However, only 2% of the cases were instigated through whistle-blower mechanisms. Notwithstanding, of the 31% of self-reporting companies, 31% were detected because of internal audits, 28% because of due diligence and 17% of the cases were investigated because of whistle-blowers inside the companies.

¹⁰ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, Paris, 2014a. See: www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.

Finally, seven out of every ten cases were settled with sanctions and the remaining cases ended up with convictions. In any case, according to the report, the application of enforcement mechanisms against bribery seemed to be working in countries that were following the recommendations set out in the 1999 Convention.

Whistle-blower protection

The OECD has an array of legal instruments for fighting corruption including fraud and bribery. One of these mechanisms is whistle-blower protection which encourages employees to report wrongdoings by protecting them from reprisal. It is an important part of preventing corruption because employees are usually the first to recognize wrongdoings in the workplace. Such disclosures include passive bribery, the misuse of public funds, waste and fraud. It is a useful tool that helps authorities detect and deter economic competition violations. While not enlisted as such, the 2012 OECD *Whistle-blower protection: encouraging reporting*, considers the following elements:¹¹

- Specific legislation is important to legitimise the mechanisms under which whistle-blowers can disclose wrongdoings.
- Whistle-blower protection mechanisms should include internal and external channels by which disclosures can be made.
- Whistle-blowers must be able to follow-up on inquiries after a wrongdoing is reported.
- The requirements for reporting wrongdoings should avoid being either overly prescriptive or overly relaxed.
- If a whistle-blower has suffered harm, the protection mechanisms should include remedies and compensations.
- Whistle-blowers should have the right to take action in court proceedings.
- Whistle-blower protection should be supported by awareness programs and training of public officials.
- Whistle-blower protections mechanisms should be evaluated and improved over time.

5. Improving administrative processes to strengthen competitiveness

A strong administrative process requires that the largest number of genuine competitors gain access to government tenders. In particular, the 2015 OECD Draft Recommendation of the Council on Public Procurement recommends that access to procurement opportunities for potential competitors of all sizes be guaranteed through three conditions:

- a. Have in place coherent and stable institutional, legal and regulatory frameworks that is clear and simple

¹¹ See also: OECD (2011a) *G20 Anti-Corruption Action Plan Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, Paris, 2011: <http://www.oecd.org/daf/anti-bribery/48972967.pdf>.

- b. Deliver clear and integrated tender documentation, standardised where possible and proportionate to the requirements.
- c. Use competitive tendering and limit the use of exceptions and single-source procurement.

Additionally, state officials may have to deal simultaneously with regulations that govern both federal transferences and local revenues. This multi-level regulatory framework poses a number of challenges affecting the relations of public entities with citizens and businesses, such as the existence of two systems that limit the streamlining of procurement processes. Good administration thus requires streamlining both processes without increasing substantially the workforce or internal processes.

State governments in Mexico are increasingly paying attention to regulatory reform.¹² So much that by September 2014, 25 out of 32 states already had a law on regulatory reform and 23 had a specific citizen council responsible for proposing and following up on the implementation of reform strategies. However, the level of commitment to regulatory reform varies significantly among states. Whereas some have centralised procedures, useful e-government tools, frequent impact assessments and evaluations, other states do not have a specific regulatory reform on their policy agenda. This is also the case of some municipalities, where the institutional capacity and infrastructure is weak.

According to the 2012 OECD Guide, most businesses that enlist in the provider registries find it is still a complicated process because of the many documents required and because they perceive too much administrative red tape. In the nine states considered in the Guide, the average time for getting enlisted in a local level registry was 9.8 days. The same Guide offered two recommendations:

- Establish an online registration tool to register suppliers, in which all documents and information can be uploaded and archived.
- Simplify the requirements for registering suppliers.

A prompt registration of suppliers has two clear advantages. First, it encourages providers that were not previously registered to prepare their bids before the time to submit proposals has run out. Second, albeit more importantly, it encourages a larger number of providers to enlist. This is particularly important because a larger pool of potential suppliers increases the probability that better purchasing conditions will be achieved.

Additionally, the 2015 OECD *Draft Recommendation of the Council on Public Procurement* advises governments to develop processes to drive efficiency throughout the public procurement cycle through three activities:

- a. Streamline the public procurement system and its institutional frameworks.
- b. Implement sound technical processes to satisfy customer needs efficiently.
- c. Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money.

¹² OCDE, *Guide to Improve the Regulatory Quality of State and Municipal Formalities and boost Mexico's competitiveness*, 2012b.

Additionally, the 2015 Recommendations emphasize the importance of e-Procurement innovation in government administration. The mechanisms for simplification advise governments to:

- a. Employ recent digital technology developments that allow integrated e-procurement solutions covering the public procurement cycle.
- b. Pursue state-of-the-art e-procurement tools that are modular, flexible, scalable and secure.

Consistent with the idea of bettering the performance of public servants, the OECD Draft Recommendation also recommends governments to guide improvements through evaluation procedures, to achieve this, they must:

- a. Assess periodically and consistently the results of the procurement process.
- b. Develop indicators to measure performance, effectiveness and savings of the public procurement system

6. Accountability, control and sanctions

According to the *OECD Principles for Enhancing Integrity in Public Procurement* (2009b), good management means ensuring that public funds are used according to the purposes intended and ensuring that public servants meet high professional standards of knowledge, skills and integrity.

To guarantee that public servants meet high professional standards, they must be allowed to further improve their skills by taking courses and training that allows them to increase their productivity, engage more effectively with citizens, improve their overall results and allow them to actively participate in reducing corruption and fighting bid rigging. In terms of procurement this means that public servants should be, where relevant, trained and well versed in the subjects relevant to their positions. In particular, training for the use of new digital technology, integrity in the workplace, the development of market studies and detecting bid rigging are vital for effective and efficient procurement.

In order to ensure that public funds are used according to the purposes intended the *OECD Draft Recommendation of the Council on Public Procurement (2015)* advises governments to:

- a. Establish clear guidelines for oversight of the public procurement cycle to ensure that the chains of responsibility are clear.
- b. Develop a system of effective and enforceable sanctions for government and private-sector procurement participants.
- c. Handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions.
- d. Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are coordinated, sufficiently resourced and integrated to ensure:
 - Performance monitoring of the public procurement system
 - Reliable reporting and compliance with laws and regulations
 - Consistent application of procurement laws, regulations and policies

- Reduction of duplication and adequate oversight in accordance with national choices
- Independent ex-post assessment and, where appropriate, reporting to relevant oversight bodies.

In the following chapters of this study aims to help Mexican states improving their competitiveness describing the four pillars mentioned previously (transparency, preventing misconducts, improving administrative processes to strengthen competitiveness, and accountability, control and sanctions) providing an overview of procedures, regulatory framework and institutions involved in procurement at the federal level (Chapter 2) as well as for the case of five Mexican states (Chapter 3), and emphasizing the best practices observe at state level (Chapter 4).

Chapter 2

Public Procurement at the Federal Level in Mexico

1. Government structure and regulatory framework at the federal level

According to Article 90 of the Mexican Constitution, the federal government is divided into Centralized (CPA) and Decentralized Public Administration (DPA). The Centralized Public Administration is composed by 17 Ministries of State, the Office of the Legal Counsel to the President and the Attorney General of the Republic.

Each Ministry is regarded as Leader of their specific Sector and responsible as well for designing goals, objectives, strategies and actions to compose the National Development Plan (NDP). It is a six-year plan that articulates and guides the whole expense policy for the whole federal government. From the NDP, every Sector Leader develops a Sectorial Plan (SP) and each entity in turn develops its Annual Plans (AP).

The NDP, the SP's and the AP's are the basis to design the federal budget, which is drafted by the Executive and approved by Congress. Once it is approved, the Ministry of Finance (SHCP) distributes federal funds to each Ministry, according to their Budget Plans, and to their annual Public Procurement Program (PPP). The SHCP distributes the federal budget, controls the flow of federal funds and is responsible for the relocation, cuts, expansion or redistribution of federal money. Each entity is responsible for the proper execution of their AP's and their annual PPP's.

To ensure conditions of efficiency, effectiveness, economy, transparency and integrity in public procurement and public works, Article 134 of the Mexican Constitution instructs all federal public institutions to carry out public tenders. The same article considers exceptions to the rule, but while public institutions may carry out other methods of solicitation (direct awards or restricted invitations), these are always required to ensure that the conditions for public procurement enlisted above are guaranteed.

There are three important laws regulating public procurement and public works contracts in Mexico that derive from Article 134: the *Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público* (hereinafter, Public Procurement Act, PPA), the *Ley de Obra Pública y Servicios Relacionados con los Mismos* (Public Works Act, PWA) and the *Ley de Asociaciones Público Privadas* (Public Private Partnership Act, PPAA). The PPA regulates all purchases and services bought, rented or leased

with federal resources. State governments are entitled to their own laws for procurement with local funds.

The PPA law establishes the general rules that must be followed during the key stages of the procurement cycle. In general terms, the law provides for the obligation to present an annual procurement programme, three procurement methods (tender, direct award and restricted invitations), exceptions to tender procedures (and the establishment of a committee in charge of reviewing and approving these cases), the criteria for awarding contracts, the general conditions for supervising the procurement cycle, contract modification conditions, sanctions to providers and the complaint mechanisms through administrative processes. These rules will be described in the following sections of this chapter.

There is also a by-law to the PPA, the Public Procurement Regulation or PPR (*Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*) and an administrative manual (*Manual Administrativo de Aplicación General en Materia de Adquisiciones, Arrendamientos y Servicios del Sector Público*). While the PPR establishes criteria and provisions to apply the PPA, the administrative manual breaks down and simplifies the public procurement cycle into tasks. The following sections provide a general overview of the procurement cycle at the federal level based on the legal framework and the previous OECD reports carried out in Mexico on public procurement:

2. Institutions involved in public procurement at the federal level

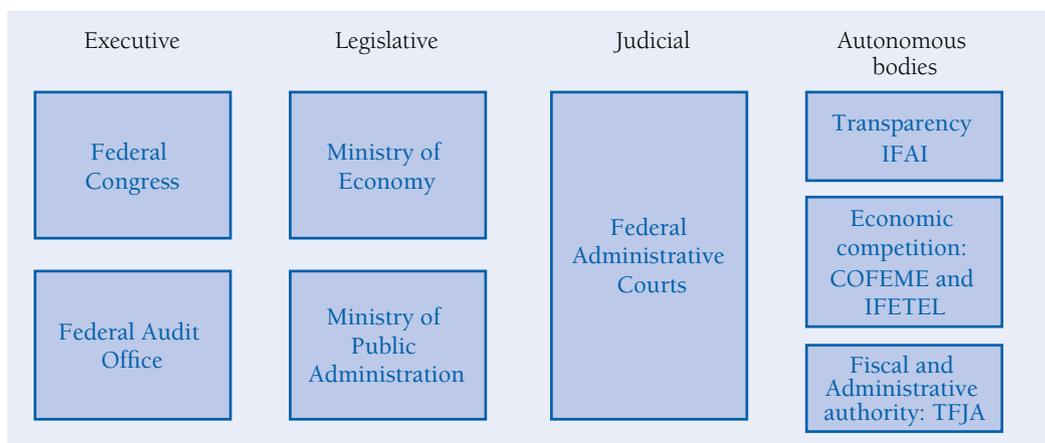
There are four types of federal authorities that participate in PP:

- a. **Executive Authorities:** Each federal entity has a specialized Procuring Unit in charge of collecting the necessities of every department that composes the entity, and establish the annual PPP. They are also the authorities in charge of loading the PPP into CompraNet (the electronic system of procurement information), and through this platform, manage every procurement process.
- b. **Regulatory Authorities:** Federal entities that regulate the whole process of public procurement through the emission of norms and the creation of the proper criteria to interpret them. The Ministry of Public Administration (SFP) has a specialized unit in charge of creating norms and establishing the adequate interpretation. The Ministry of Economy creates norms that regulate certain aspects of specific products, services and industries that are crucial to the process of public procurement. Those norms are fundamental to the process because they establish the basic parameters of quality, endurance, origin, performance, security and durability of goods and public works to be acquired by the government.
- c. **Legality Authorities:** Federal entities in charge of resolving issues of legality in public procurement processes, and establishing administrative responsibilities for individuals, corporations and public servants. The SFP has specialized units in charge of resolving controversy that arises from different interpretations of the law and procurement regulation, and it also has units that investigate wrongdoings in order to establish specific responsibilities and impose sanctions.

- d. **Policy Authorities:** Each Ministry has a Planning and Programming Unit in charge of establishing an adequate and balanced relation among necessities, budget, aims and objectives, as well as to align the NDP, the SP and the AP. Also, the SFP has a specialized unit in charge of analyzing the whole PP market, the global necessities of the government, and crating general or targeted policy, to improve the efficacy of the federal budget.

Article 7 of the PPA states that the Ministry of the Economy (*Secretaría de Economía, SE*) and the Ministry of Public Administration (*Secretaría de la Función Pública, SFP*) are responsible for implementing and interpreting the PPA. However, there are important institutions that also partake in public procurement, namely the Federal Congress enacts laws such as the PPA and approves of the budget for procurement; and its Audit Office (Auditoría Superior de la Federación, ASF) supervises and observes the expenditure carried out by the executive branch. The Judicial branch (Poder Judicial de la Federación, PJF) and a jurisdictional court with fiscal and administrative authority (Tribunal Federal de Justicia Fiscal y Administrativa, TFJFA) are responsible for settling disputes in which the government is involved through its administrative courts. Additionally, there are autonomous bodies that guarantee transparency in public information, data protection and safeguard economic competition.

Figure 1. **Institutions relevant to procurement at the federal level**



Ministry of Public Administration

According to article 7 of the PPA, the SFP is responsible for issuing the administrative provisions necessary to comply with the PPA. It is in charge of organising and co-ordinating the governmental control and evaluation system; it also oversees public expenditures, together with the Ministry of Finance (*Secretaría de Hacienda, SHCP*). SFP defines the norms for the federal public administration's instruments and control procedures. Further still, it establishes the basis for audits in all agencies and entities of the federal administration in order to ensure compliance with all regulations.

SFP is in charge of administering the Electronic System of Procurement Information (*Sistema Electrónico de Información Pública Gubernamental, CompraNet*), which is an electronic database of

public information related to procurement of goods, services and public works.¹ This instrument offers suppliers the possibility to carry out electronically procurement processes at the federal level. CompraNet also publishes the annual procurement programmes for every federal government agency, includes social witnesses and supplier registries, as well as a list of blacklisted suppliers.

SFP is also responsible of administering, organising and operating the System of the Professional Career Service in the federal public administration. Moreover, this institution is entitled to appoint and remove the heads of the agencies' internal control functions and the General Attorney's Office, who are hierarchically and functionally dependent on SFP. Furthermore, it is responsible for investigating any conduct of public servants that may violate administrative procedures, establish sanctions, and take cases to appropriate authorities when necessary. SFP is also responsible for conducting public procurement and managing government property.

Most recently, in February 2015, SFP was assigned with the following eight anti-corruption activities:

- Take the necessary measures to ensure that, as of May 2015, all federal public servants file a "Statement of Potential Conflicts of Interest" which incorporates international best practices and has the support of experts from the Organization for Economic Cooperation and Development, OECD.
- Create an Ethics and Conflict of Interest Prevention Unit, which must also coordinate the activities of the Ethics Committees and Prevention of Conflicts of Interest in each government agency.
- Issue Integrity Rules for the Federal Public Service that broaden and deepen the existing Code of Ethics.
- Protocols for establishing contact between individuals and public officials responsible for deciding on public procurement procedures, licenses, concessions and permits shall be established.
- All agencies of the Federal Government had until April 2015 to identify and classify the level of accountability of public servants involved in these procedures.
- Hasten the operation of the One-Stop Shop (*Ventanilla Única*) for public services. This will reduce potential opportunities for corruption by eliminating the interaction between federal officials and individuals.
- The public list of suppliers sanctioned by the Government of the Republic will be complete and more detailed and will indicate the cause of his sanctions when applicable.
- Collaborative arrangements with the private sector regarding transparency and fighting corruption will be extended. The active participation of citizens is essential to identifying processes and procedures vulnerable to conflicts of interest or corruption.

¹ See: Box 1. CompraNet

Box 1. **The evolution and relevance of CompraNet**

CompraNet began operations in 1997. It was a very efficient tool to publicize information relative to specific tender procedures in the public sector, mainly the federal government. But it was only an information device, and a very questionable data base, as regulations to upload information were lax.

In 2000, CompraNet evolved as it incorporated the possibility to receive tender proposals via web for selected processes. However, to register and be accredited as a buying unit or a tender participant involved still high transactional costs, as it required the actual presence of the interested party in the office that managed the system. That version reached around 12 thousand registered suppliers that could submit a proposal using the system.

In 2009, the Ministry of Public Administration—in charge of running the system—was obliged to search new alternatives to incorporate CompraNet to the new demands that were rising from the private sector, from the international community and from new reforms to the Public Procurement Law. CompraNet 5.0 started the process of being reconfigured, adapting international best practices, demands from the private sector, and the requirements of the new legislation.

The following premises were the basis to create CompraNet 5.0, in accordance with international best practices:

- The existence of a single, unifying internet platform that allowed the elimination of every local platform used by other agencies of the federal government
- A system controlled and administered by professionals in procurement regulations
- A system that could be used in goods, services and public works
- A system developed to allow communications with other systems and data bases
- An Internet-based platform with free access from multiple users
- User friendly and with powerful and easy to use search engines.

The new version of CompraNet started operations in 2010. After one year of transition in which government entities had the chance to handle procedures in both platforms until their procurement officials were able to obtain the necessary abilities to be certified in the new system, as of June 2011, every tender procedure above 300 days of the official minimum wage (about 1,400 USD) has to be processed by the new system.

Statistic and historical information in this box was taken from: José Arturo Ordaz Cruz y Crystal Palacios Velázquez. *Compras gubernamentales y tecnologías de la información: Caso Compranet en México* (México: UDLAP). Retrieve from http://catarina.udlap.mx/u_dl_a/tales/documentos/lad/ordaz_c_ja/capitulo1.pdf.

Box 1. The evolution and relevance of CompraNet (Cont.)

As it happens with every new system, COMPRANET was not the preferred one overnight. As can be seen in the next table, a steady but slow decline in the use of the traditional system of procurement was coupled with a steady, and also slow increase in the use the electronic platform.

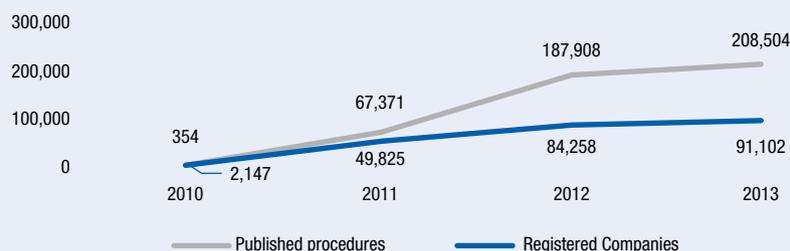
Electronic vs face-to-face procedures, 2001-2011

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Electronic	615	3,824	8,426	10,290	12,382	14,978	16,675	17,256	14,913	13,559	26,068
Face-to-face	31,460	26,771	19,541	17,760	16,475	15,390	15,733	18,409	15,192	14,142	8,123
Total	32,075	30,595	27,967	28,050	28,857	30,368	32,408	35,665	30,105	27,701	34,191

Source: Ministry of Public Administration.

The increase in the procedures published using the electronic platform attracted more and more companies that wanted to use the system to do business with the federal government, which spends almost 40% of the budget in public procurement, around 6% of Mexico's GDP.

Registered companies vs published procurements, 2010-2013



Source: Ministry of Public Administration.

A massive training program was needed to allow the system to work efficiently. As shown in the next table, every new procuring unit using COMPRANET needed officials certified to handle it. A complete culture of “paper procedures” had to be confronted.

Box 1. **The evolution and relevance of CompraNet** (Cont.)

Main Modules and functionalities of CompraNet

Contrary to regular practices, CompraNet was not developed to be a pilot system, but a definite platform to manage every phase of the procurement process. The idea was to provoke a drastic and structural change in the whole process. The rationale behind the decision was that gradual and incremental changes seem to encounter a more efficient and better organized opposition.

The new transactional platform, now made the sole mandatory system by the Public Procurement Law, contains the following modules:

- A module for Annual Procurement Programs from every ministry and federal entity. Every good and service that is intended to be procured during the year, has to be announced by January of every year.
- The “RUPC” or Sole Registry of Suppliers and Contractors. Through this Registry, every government entity can access authentic and up-to-date information from suppliers and contractors, which reduce their transactional costs by supplying information and legal documents only once.
- A module that handles every public tender, every restricted invitation and direct purchase.
- A section that displays complete information regarding framework agreements, and facilitates specific purchases derived from them
- The “Black List”: the display of every supplier and contractor disbarred and sanctioned.
- A section with the List of Social Witnesses and their previous testimonies.
- A module with information regarding the electronic signature to sign every proposition and eventual challenges. (Issued by the Ministry of Finance because it is the same signature used in tax procedures).
- A module to perform procurement processes through reverse auctions (Dutch or English versions).
- A module that classifies every good, service and public work, using the exact same system as the one used by the Ministry of Finance (SHCP), allowing the possibility to trace them from the budget process, and establishing the possibility to link both systems in the future.
- The function of absolute traceability of every system operator. Every action leaves a record of the person, the time, and the action performed, allowing supervising authorities to analyze every step of the process to pin point responsibilities
- A new and improved search engine that enables every bite of information to be used in an easy and efficient manner. A Business Intelligence Suite specially designed to search, use, handle and transform every piece of information available

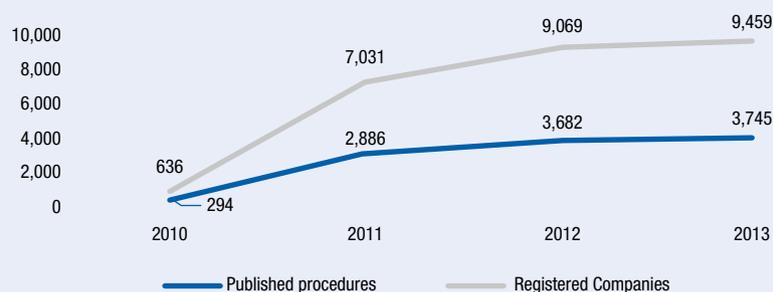
Box 1. **The evolution and relevance of CompraNet** (Cont.)

- A messaging system to suppliers and contractors, according to their electronic profile, regarding business opportunities with the government.

Public servants with several decades of traditional methods and ways had to be transformed into electronic specialists, almost overnight.

The process has been very successful in terms of developing basic capabilities to use the system, but fell short in creating new abilities and in establishing a new and modern culture of public procurement.

Operator certificates and procuring units



Source: Ministry of Public Administration.

Ministry of Economy (SE)

According to Article 8 of the PPA, SE is responsible for issuing the rules that entities using federal funds must meet to promote the participation of domestic companies, especially MSMEs. Additionally, it must design and implement programmes to generate supply chains for goods and services that are regularly tendered.

SE has the following responsibilities regarding public procurement:

- Determine, under consideration of SFP, the rules that enhance the participation of local providers to guarantee equality in competition (Art. 14).
- Take into account the opinion of SFP to determine the criteria for the application of the international reservations, transition mechanisms or other assumptions set out in the treaties (Art .26).
- Verify that the goods purchased meet the requirements for the degree of local content or rules of origin and, if they do not, inform SFP (Art. 57).

Economic Competition Authorities

In terms of public procurement, competition authorities have the legal obligation to investigate issues related to collusion between providers that sell to government agencies. The COFECE and the Federal Telecommunications Institute (*Instituto Federal de Telecomunicaciones, IFETEL*) are two independent agencies responsible for preventing barriers to competition, and are bound to the Federal Law of Economic Competition (FLEC). IFETEL focuses on the telecommunication sector only.

Article 29 of PPA states that the tender procedure must conform to the FLEC. Similarly, the FLEC (Art.12; XIX) grants COFECE the authority to issue opinions, whenever it considers necessary, on measures that affect competition or that concern local industries throughout the procurement processes. Such an opinion must be filed before the presentation of the financial bids during tenders (Art. 98, FLEC).

National Institute for Access to Public Information

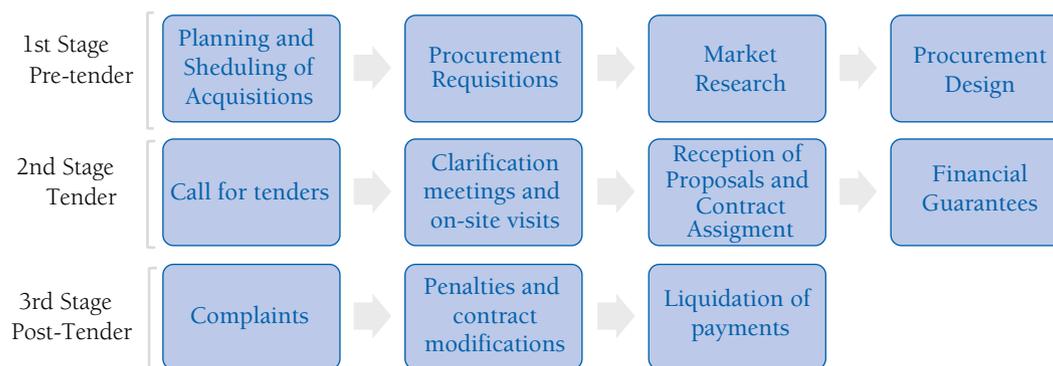
The National Institute for Transparency, Access to Public Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, INAI*) is an independent government agency created to guarantee the right to freedom of information.² The INAI oversees that procurement information is published and accessible (Art. 6 of the *Ley General de Transparencia, Acceso a la Información y Protección de Datos Personales, LGTAIPDP*). It also decides the criteria for classification and declassification of information and oversees that confidential information is withheld from the public for up to five years (Art. 101). Additionally, there is a National System for transparency (integrated by the INAI, the state's transparency authorities, the General Audit Office, the General Archive and the Mexican Institute of Statistics and Geography) that oversees the protection of personal data held by government agencies (Art. 31).

Although the PPA does not grant the INAI any role during the public procurement cycle, the procurement law specifies that transparency should always be guaranteed concerning acquisitions, leasing arrangements and services hired using federal resources (Art. 56, II). Furthermore, LGTAIPDP states that all information that originates from procurement procedures, which is not classified as confidential, should be considered as public information by default (Art.70, XXI).

3. Public procurement cycle at the federal level

The following diagram briefly describes the phases of the procurement process at the federal level: pre-tender, tender and post-award stages.

² In May 2015 a new transparency law was published which expanded the faculties of this Institute to oversee not only access to information for federal agencies, also at the state level agencies and any individual that receives and uses public resources. As a result, its acronym changed from IFAI (Federal) to INAI (National).

Figure 2. **Procurement stages at the federal level**

This structure will be used to compare processes among states and agencies within federal entities. For example, while the Estado de México carries field studies for market research, Aguascalientes only calculates prices and assesses the market availability from inquiries to suppliers enlisted in their provider registry. Another example: Nuevo León is the only state that offers whistle-blower protection, an invaluable element for a more effective and efficient filing of complaints.

3.1. Pre-tender stage

The pre-tender stage is the most important phase of the cycle because it condenses the largest amount of workload before tenders are carried out. As such, the most relevant steps for preventing misconducts and increasing efficiency and effectiveness can be applied here. This process may be divided into four consecutive steps:

- Planning and scheduling** of acquisitions: approval of the budget and annual procurement programme. The integrity risks involved in this activity are a poor procurement planning, procurement not aligned with overall investment decision-making process and failure to budget realistically or deficiency in the budget.³
- Requests** for procurement are submitted by government agencies and corroborated by the administrative offices responsible for public procurement. Some integrity risks involved in this function are: technical specifications are tailored for a specific company, selection criteria are not objectively defined and not established in advance, requesting unnecessary samples of goods and services, buying information on the project specifications.⁴
- Market research** is carried out and reference prices are estimated. Some integrity risks involved in this activity are the following: lack of adequate needs assessment, influence of external actors on officials' decisions and informal agreement on contract⁵.
- Procurement design:** selection of the procurement method and the evaluation criteria. The integrity risks involved in this function are a lack of proper justification for the use

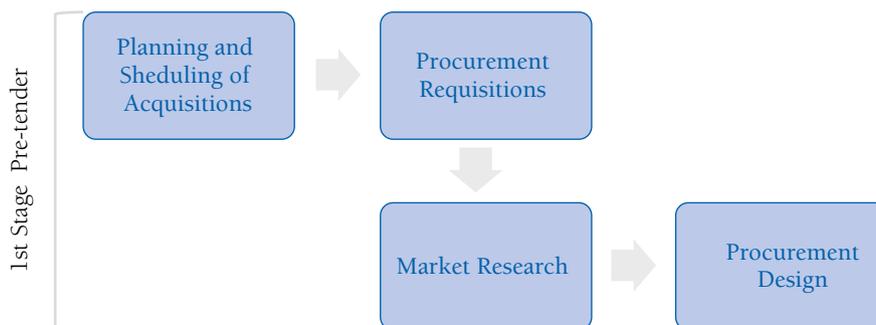
³ OECD (2016), Preventing Corruption in Public Procurement.

⁴ OECD (2016), Preventing Corruption in Public Procurement

⁵ OECD (2016), Preventing Corruption in Public Procurement

of non-competitive procedures and the abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modification.⁶

Figure 3. **Pre-tender stage summary**



Planning and scheduling of acquisitions

At the federal level, Article 20 of the PPA requires government agencies to present an Annual Procurement Programme (APP). This programme must comply with the objectives and priorities of the National Development Plan (NDP), with sectorial plans and objectives, in addition to the objectives, goals and resource projections set out in the Federal Budget.⁷

Procurement committees—established by the same purchasing agency—must review and approve the APP.⁸ Upon approval, the programme must be published no later than January 31st of each year, both on the webpage of the government agency and on CompraNet.⁹

The APP establishes a complete list of the goods and services that will be bought and the month when it will be required. Usually, procurement areas make a list of the goods and services and pass it on to their administrative area. This area has the responsibility of assessing the possibility of consolidated purchases and avoiding a larger number of direct awards. If consolidation of purchases is an option, it may require of the approval of the procurement committee.

Consolidation and framework agreements

As noted in previous OECD reports,¹⁰ the most common problems that obstruct efficient consolidations are contract fragmentations and overestimation of reference prices. Public officials should consider consolidating purchases when many procuring areas request the same type of goods and services because it makes it easier to obtain better prices through economies of scale.

Mexico has benefited substantially from consolidation agreements among federal agencies as well as among federal institutions and state governments. One example is the model for regional

⁶ OECD (2016), Preventing Corruption in Public Procurement

⁷ Article 18 of the Public Procurement Act. Last reformed in June, 2011.

⁸ Article 22 of the Public Procurement Act. Last reformed in May, 2009.

⁹ Article 21 of the Public Procurement Act. Last reformed in May, 2009.

¹⁰ See both ISSSTE and CFE, OECD reports.

consolidation intended for procuring goods that are only feasible for the federal government. In this way, IMSS claims to have increased its procurement expertise and strengthened chains of regional suppliers. Similarly, ISSSTE has consolidated purchases across its many offices throughout the country and has increased the number of joint biddings with IMSS and other agencies and state governments. In particular, in December 2013, IMSS joined ISSSTE and two other federal agencies, those of the Ministry of National Defence (*Secretaría de la Defensa Nacional*, SEDENA) and the Mexican Oil State Company (Petróleos Mexicanos, PEMEX), as well as the Ministry of Health (*Secretaría de Salud*, SSA) and those of the states of Baja California, Campeche, Colima, Tlaxcala and Veracruz for a consolidated purchase for 1,800 medicines. The official figures estimate potential savings of up to USD \$2.9 billion. Savings surpassed 3.7 million pesos (USD \$250 million).

A framework agreement is a specific form of consolidated procurement. This mechanism — established by SFP — has placed such agreements in place for purchasing of particular goods or services procured by at least five different public institutions or local governments. SFP aggregates purchasing institutions' needs and negotiates with interested suppliers to set quality standards for a certain volume of agreed sales. Public entities which are parties to a framework agreement then purchase goods and services directly from the suppliers specified in the agreement either at a fixed price or, if it is not fixed, at a price calculated with a method stipulated in the framework agreement. Framework agreements exist since 2008 and, as of March 2015, there were seven operated by SFP for vaccines, food coupons, clothes and uniforms, software, call centres, leasing arrangements for land vehicles, vehicle maintenance.¹¹ Any provider that wishes to adhere to a framework agreement may do so, as long as competition is not constricted in any way.

Box 2. Key ideas of consolidated purchases

A consolidated purchase occurs when an institution or group of institutions decide to buy larger volumes of the same product(s) to meet the demand from different units through one integrated procurement procedure instead of organising many tenders. The main purpose of consolidation is usually to increase administrative efficiency and obtain better prices because of the larger volumes purchased.

The main idea behind these contracts is that the size of the contracts endows the procurer with enough bargaining power to obtain better prices and/or quality standards and allows suppliers access to economies of scale. Public institutions usually make use of consolidated purchases when procuring goods and services that are widely used in their organisation. This allows them to ensure better prices and quality of the products they buy in abundance, for example standardised products such as office supplies, packaging services, and communication devices to name a few.

These consolidated purchases distinguish themselves from other contracts because they are usually very large and are intended for different areas of an institution or even for several public institutions that require the same goods or services. There are two ways of consolidating purchases: within an institution –i.e. different areas or regional offices- and between different public institutions. It should be noted that, if they wish to, regional offices (or areas) may organise consolidated purchases.

¹¹ See: <http://www.funcionpublica.gob.mx/index.php/ua/sracp/upcp/contratos-marco.html>.

Box 2. **Key ideas of consolidated purchases** (Cont.)

Consolidated purchases can also be used strategically. By using a different combination of purchasing areas and volume every year, any given institution can simultaneously save money, foster niche markets and limit predictability. However, once again, detailed market studies and procurement planning is required in order to maximise these options.

Also, the implementation of consolidated purchases between several institutions would translate into significant benefits for public institutions: maximising purchasing power, generating more competition and encouraging lower prices. Consolidated purchases are also an effective way of disrupting possible collusive agreements.

However, purchases consolidation involves two major risks: 1. market concentration and development of monopolistic structures and 2. unnecessary commercial risks. On the first one, the large volumes often involved in centralised procurement tend to favour large suppliers rather than small, new suppliers. This situation may restrict competition, with a resulting deterioration in terms of sourcing. Over time, this problem may grow if the supplier market becomes more concentrated. And the second one, may happen that a central purchasing body procures goods or services that procuring entities do not consider as meeting their requirements and therefore that they do not want to purchase. This is particularly the case where products are not homogenous and where substitutes exist.

Source: OECD (2015a). Fighting Bid Rigging in Public Procurement in Mexico: A Secretariat Analytical Report on Compliance with OECD Standards of Procurement Legislation, Regulations and Practices in CFE. OECD Public Governance Reviews, OECD Publishing, Paris. P. 45, 48, 150 <http://www.oecd.org/daf/competition/FightingBidRigging-Mexico-CFE-Report-2015.pdf> and OECD (2011c), "Centralised Purchasing Systems in the European Union", SIGMA Papers, No. 47, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5kgkqgv703xw-en>.

Procurement requisitions

Once procurement has been planned for the year, any purchase that takes place usually goes through the following process. Initially, the procuring area (or requiring area) fills out a solicitation for purchase or requisition. This document is usually administered through an internal procurement system. If this corroboration system is not electronic then the process risks being slowed down. The purchase must comply with two conditions that are verified by different offices. First it must be included in the Annual Procurement Programme, which is usually verified by the administrative office responsible for the purchasing area. Second, it must have budgetary sufficiency; the financial area of the administrative offices verifies that this is the case. Once these two conditions are met, then the request is validated and the procurement process may continue.

Market research for procurement

According to Article 26 of the PPA purchasing agencies are required to carry out a market research for the goods and services to be purchased. Article 29 of the same law specifies the required sources of information:

- a. CompraNet, and if there is no information on the webpage, civil servants should consult historical information.
- b. Specialized agencies, chambers, associations or industrial, commercial groups or services or manufacturers or suppliers.
- c. Websites, telephone calls or other means.

There are two prices that are always estimated by public servants through market research or inquiries and are defined in Article 2 of the PPA:

- a. **Non-acceptable price:** a price ten per cent higher than the median (or average) price obtained in a market study
- b. **Convenient price:** is determined from the average of the prevailing prices resulting from the technically accepted bids in the tender process, and subtracts the percentage determined by the agency or entity in its policies, bases and guidelines -also known as POBALINES-.

These two prices determine the range deemed acceptable for choosing a winner. However, it has previously been observed that the convenient price is in fact troublesome,¹² since this price could obstruct the presentation of a better (lower) price, thus undermining the ability to obtain a better deal. In this respect, the key to allowing for better price references should be both the combination of both a comprehensive market study that can reduce overestimation and clear-cut terms of reference that guarantee the quality of the products and services that are expected.¹³

A report elaborated by the OECD for Mexico's Federal Electricity Commission (CFE) gave the following recommendations for market research:¹⁴

Recommended minimum requirements for a market research

- a. Identify the characteristics of markets that could facilitate bid rigging: identical or simple products or services, few if any substitutes, little or no technological change, small number of companies, little or no entry to the market, prevalence of industry associations, and evidence of repetitive bidding.
- b. Provide information on domestic and foreign supply.
- c. Assess the existence of substitute products.
- d. Different procurement options (buying, leasing, etc.).
- e. Basic assessment of competition in the market.

¹² See recommendation 4.3 in the OECD ISSSTE Report.

¹³ Additionally, the previous OECD reports on fighting bid rigging in Mexico have already recommended that if the PPA is not amended to abolish the convenient price, public agencies should use a larger discount factor than 40 per cent when establishing a convenient price. Alternatively, guarantees that vouch for the seriousness of providers may be used as a better substitute because they do not discard a potential competitive price.

¹⁴ See recommendation 5.3.2 in Chapter 5 of the OECD CFE Report.

Recommended principles for market research

- a. **Trustworthy information:** Information must come from official sources and be readily available or be the result of a trusty investigation of the Unit.
- b. **Confidentiality:** Information regarding the market studies must be kept secret from suppliers at all time
- c. **Transparency:** Market studies require frequent interactions between both parties. A documented account of all meetings should be registered.
- d. **Preparedness:** Market studies must be considered with anticipation so that they can be properly crafted and ready for use when required.
- e. **Differentiation:** Not all market studies require the same in-depth analyses. Procurement officials must be prepared to decide on the extent of the analysis required depending on the structure of the market and the characteristics of goods or services.

Procurement Design

Procurement design must consider the following elements:

- Procurement procedure (direct award, restricted invitation or public tendering)
- Tender procedure (face-to-face, electronic or mixed)
- Evaluation criteria (cost-benefit; point/percentages; binary)
- Reverse auctions
- Social witnesses

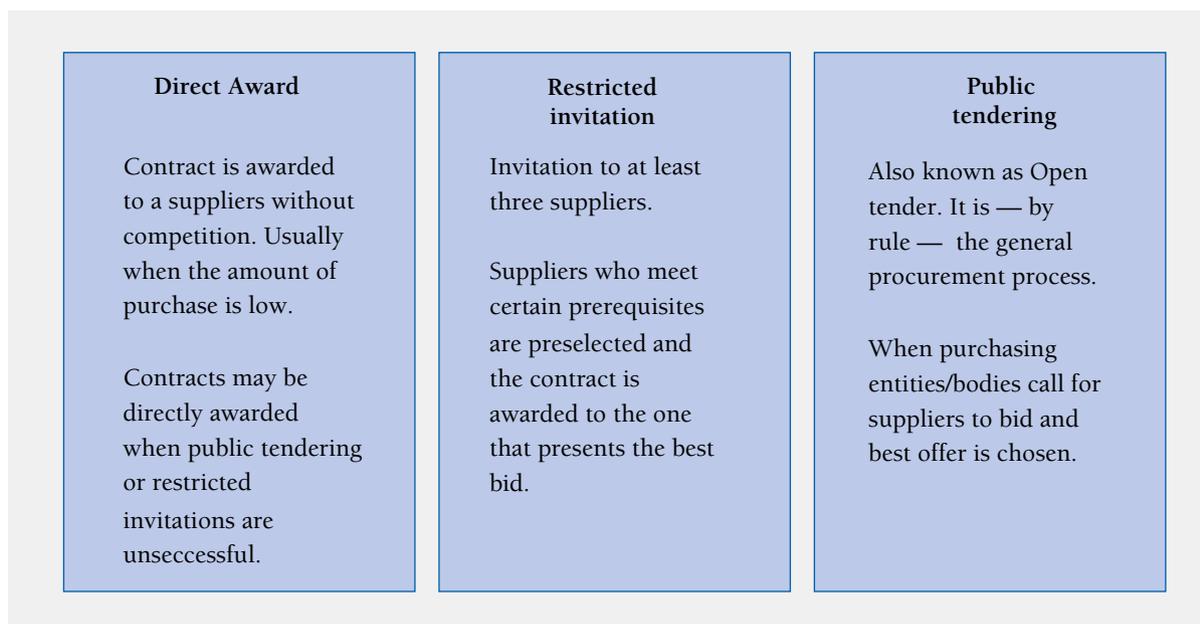
According to the *OECD Guidelines for fighting bid rigging in public procurement*, when carrying out an auction—or any procurement tender—entities should:

- Invite interested suppliers to dialogue with the procuring agency on the technical and administrative specifications of the procurement opportunity. However, avoid bringing potential suppliers together by holding regularly scheduled pre-bid meetings.
- Limit as much as possible communications among bidders during the tender process. When bids are submitted face to face an opportunity exists for last minute communication and deal making among firms. This could be prevented, for example, by using electronic bidding.
- Carefully consider what information is disclosed to bidders at the time of the public bid opening.
- When publishing the results of a tender, carefully consider which information is published and avoid disclosing competitively sensitive information as this can facilitate the formation of bid-rigging schemes.
- Where there are concerns about collusion due to the characteristics of the market or product, if possible, use a first-price sealed bid auction rather than a reverse auction.

- Consider if procurement methods other than single stage tenders based primarily on price can yield a more efficient outcome. Other types of procurement may include negotiated tenders and framework agreements.
- Use a maximum reserve price only if it is based on thorough market research and officials are convinced it is very competitive. Do not publish the reserve price, but keep it confidential in the file or deposit it with another public authority.
- Beware of using industry consultants to conduct the tendering process, as they may have established working relationships with individual bidders. Instead, use the consultant's expertise to clearly describe the criteria/specification, and conduct the procurement process in-house.
- Whenever possible, request that bids be filed anonymously (e.g. consider identifying bidders with numbers or symbols) and allow bids to be submitted by telephone or mail.
- Do not disclose or unnecessarily limit the number of bidders in the bidding process.
- Require bidders to disclose all communications with competitors. Consider requiring bidders to sign a Certificate of Independent Bid Determination.
- Require bidders to disclose upfront if they intend to use subcontractors, which can be a way to split the profits among bid riggers.
- Because joint bids can be a way to split profits among bid riggers, be particularly vigilant about joint bids by firms that have been convicted or fined by the competition authorities for collusion. Be cautious even if collusion occurred in other markets and even if the firms involved do not have the capacity to present separate bids.
- Include in the tender offer a warning regarding the sanctions in your country for bid rigging, e.g. suspension from participating in public tenders for a certain period, any sanctions if the conspirators signed a Certificate of Independent Bid Determination, the possibility for the procuring agency to seek damages, and any sanctions under the competition law.
- Indicate to bidders that any claims of increased input costs that cause the budget to be exceeded will be thoroughly investigated.
- If, during the procurement process, external consultants assist you, ensure that they are properly trained, that they sign confidentiality agreements, and that they are subject to a reporting requirement if they become aware of improper competitor behaviour or any potential conflict of interest.

Procurement procedures

The Public Procurement Act establishes the use of three procurement procedures: direct award, restricted invitation and public tendering.

Figure 4. **Procurement procedures at the federal level**

The general rule is that government agencies must use public tenders because they promote greater competition, better prices and higher quality of goods and services. However, exceptions are allowed. In order to determine which procedure to carry out, government officials must first determine the amount they expect to spend. The specific amounts that determine the type of procurement procedure are listed every year in the annexes of the Federal Budget.¹⁵

If the expected value of contracts is petty (\$170,000 to \$450,000 pesos without VAT in 2015),¹⁶ procurement officials may choose a direct award. This procedure does not require a call for tender, thus it does without clarification meetings or any of the tender proceedings. That is to say, to save time, it skips the four tender stages (See Diagram 2).

If the purchase is slightly more expensive (\$584,000 to \$3,105,000 pesos without VAT in 2015),¹⁷ public servants may choose a restricted invitation: a tender procedure without open competition, because participants are chosen from the supplier registry (without any specific criteria). Finally, if the expected expenditure is over the amount specified for a restricted invitation, then tenders are mandatory. That is, unless any of the 20 conditions cited in Article 41 of the PPA apply to a particular purchase. These exceptions basically consider emergencies, cases with sole-source supply, national security and backing underprivileged communities.

According to recommendations laid out in previous OECD reports on bid rigging,¹⁸ public agencies should limit their use of exceptions to public tenders that are permitted under the PPA as their use results in fewer bidders and lessens the likelihood that value for money is being achieved.

¹⁵ In 2015, Annex 9 of the Federal Budget. See: http://www.diputados.gob.mx/LeyesBiblio/pdf/PEF_2015.pdf.

¹⁶ In 2015: \$11,000 USD to \$29,150 USD without VAT (16%), the range of values depends on the authorised budget allowed to purchasing areas.

¹⁷ In 2015: \$37,800 USD to \$201,120 USD without VAT (16%), the range of values depends on the authorised budget allowed to purchasing areas.

¹⁸ See: IMSS, GEM, ISSSTE and CFE reports.

Additionally, government agencies should be aware of the risk of asymmetry of information among purchasing areas on the one hand, and administrative areas on the other. This asymmetry of information sometimes skew evidence to favour exceptions over tender proceedings when technical jargon and weak market studies point to evidence of sole-source supply.

The entity responsible for authorising the particular exceptions to public tenders is the Procurement Committee (*Comité de Adquisiciones*), one of which exists for every government agency. Such committees must (Art. 22, PPA):

- Review the programme and budget for acquisitions, leasing arrangements and services, and any amendments thereto, and state any suitable observations and recommendations.
- Rule on the merits of the exceptions to public tender found in any of the cases referred to in sections I, III, VIII, IX second paragraph, X, XIII, XIV, XV, XVI, XVII, XVIII and XIX Article 41 of the PPA before the commencement of the proceedings. This function may also be exercised directly by the head of the agency or entity or public servant that has been assigned with this responsibility. In no case the responsibility may fall upon a public servant with a lower level than general director.
- Rule on the “policies, rules and guidelines” (POBALINES) for procurement, supplying them to the head of the agency for consideration. Where appropriate, authorizing cases that have not been considered in the law. The committees shall establish in these policies, issues of environmental sustainability, including the assessment of technologies to reduce the emission of greenhouse gases and energy efficiency in order to optimize and use resources sustainably.
- Produce a quarterly report of completion and overall results of procurement carried out and, if necessary, recommend appropriate measures to verify that the programme and the budget may be completed in a timely manner.
- Authorize, where warranted, the creation of subcommittees and approve the integration and operation thereof.
- Create and approve of the operational guidelines for the Committee, which must consider the following:
 - a. It shall be presided by the *Oficial Mayor* or equivalent.
 - b. The regular members must have a minimum hierarchical level of general director or equivalent
 - c. The total number of members of the Committee shall be odd, and must invariably vote each of the matters submitted to them
 - d. The legal department and internal control body or entity shall attend meetings of the Committee, as advisors, with voice but no vote, having to give a reasoned explanation in matters known to the Committee. Advisers may not have a hierarchical level below the general director or equivalent.
 - e. The Committee shall rule in the same session all matters submitted to it; the PPR establishes the how committees may exceptionally deal with particular issues in later sessions. Committee members with voice and vote, and advisers thereto, may

designate in writing their substitutes, which shall not be less than one hierarchical level area director.

International tenders and economic reservations

Procurement officials must always verify that their government agencies are listed in the procurement chapters of any international treaties and check the monetary thresholds that apply to different types of goods and services. Every six months SFP updates and publishes the current value of these thresholds in Mexican pesos. If the purchase required by an institution is worth more than the threshold indicated in the treaty, then an international tender with the signatory countries becomes mandatory. According to Article 28 of the PPA, there are two types of international tenders:

- **International tenders subject to trade agreements:** National and international bidders that come from a country that has a trade agreement with Mexico are allowed to participate in these tenders. This type of tender is mandatory when it is specified in the agreement.
- **Open international tenders:** National and international bidders are allowed to participate without requiring the firm to come from a country that holds a treaty with Mexico. This option is available when a national tender has been declared uncontested¹⁹ or when it is being financed with a foreign credit.

Notwithstanding, when an expected purchase exceeds the thresholds established in the treaties, a national tender may still be chosen over an international one if there are binding *reservations*.²⁰ These reservations are always included in the treaties with the objective of allowing local industries to level up against foreign competitors before the market is opened to international competition.

Choosing the tender procedure

According to Article 26 *bis* of the PPA, bids may be face-to-face procedures, electronic (remote) or have both components (mixed). In the face-to-face procedures, suppliers must submit their proposals in a sealed envelope. An issue with this procedure is that suppliers meet in person, and this could facilitate the establishment of a collusive arrangement.

In electronic (or remote) tendering procedures, suppliers must register their proposals in the CompraNet (See Box 1. CompraNet). In this case, all communications are made remotely and it is easier for bidders to remain separated. Finally, mixed procedures are a combination of the two tools procedures above and are usually used when the CompraNet does not allow for certain information to be uploaded into the system (such as bids presented in dollars).

¹⁹ When a contract is not subject to a trade agreement and national tender has been declared uncontested, the procuring institutions may choose indistinctly to either issue an international tender subject to trade agreements or to carry out an open international tender.

²⁰ A reservation is defined by the 1969 Vienna Convention on the Law of Treaties (VCLT) as: a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. (Article 2 (1) (d)).

Evaluation criteria

A bid that maximizes the number of bidders requires clear criteria for awarding the contracts and evaluation methods that are respected throughout the process. The PPA allows the following evaluation criteria (Art. 39, section XIII and Art. 36 *bis*): cost-benefit analysis, points/percentage analysis and the binary method. The points/percentage and cost-benefit criteria require a justification from the civil servant responsible for the purchase, while the binary method does not need any justification at all. The differences among the three methods are as follows:

- a. **Cost-benefit criterion:** using this criterion, the various components of supply of bidders are monetised to conduct a cost-benefit analysis. The tender is awarded to the bidder that guarantees the best overall benefits to the procuring institution.
- b. **Point/percentages criterion:** using this criterion, different parts of the bids have different ratings. The tender is awarded to the bidder with the highest number of points.
- c. **Binary criterion:** with this option, the contract is awarded to the bidder who meets the technical requirements and offers the lowest price within an acceptable range²¹.

The PPA (Art. 14) explicitly states that government agencies shall favour procurement in which Mexican labour and capital is used, as well as favouring national suppliers with a price-margin preference of up to 15% over propositions from foreign suppliers.

Reverse auctions

A mechanism for maximizing competition is a **reverse auction**; also known in Mexico as Offer with Subsequent Discounts (*Ofertas Subsecuentes de Descuento*, OSD). Article 2 of the PPA defines OSDs as procedures in which suppliers outbid each other for a lower price. This tool allows procuring agencies to get better deals and has been successful in federal agencies such as ISSSTE, IMSS and CFE.

In the case of IMSS, five reverse auctions carried out in November 2014—in which 80% of the purchases would be bought from the best offer and 20% from the second best—resulted in a 5% increase of suppliers with respect to the previous year and a reduction in the costs of several vaccines and other medicines. In the case of CFE, it began using this mechanism for coal purchases.

OSDs can only be carried out electronically. This process is optional for procurement agencies at the federal level.

“As mentioned above, OECD Guidelines for fighting bid rigging in public procurement suggest that “wherever there are concerns about collusion due to the characteristics of the market or product, if possible, use a first-price sealed bid auction rather than a reverse auction”. This is because a reverse auction is a competitive process, typically done electronically, in which a procuring entity solicits subsequent discount bids from suppliers during a defined period after the submission of their initial bids, this implies that suppliers can adjust their bids by multiple times in response to other competitors’ bids and bidders can submit one or more decreasing

²¹ The acceptable range is determined as the interval between a Convenient Price and a Non-Acceptable Price. See definitions in Art. 2 in the PPA, sections XI and XII.

bids²². In this regard, if the procuring entity have concerns about possible collusion due to the characteristics of the market or product, then with a reverse auction is possible that suppliers could be colluding and submitting bidders in common agreement because the dynamic of the reverse auction allow to all bidders to know and see bids from each one in real-time. So, in this context, the first-price sealed bid auction could be a mechanism to reduce collusion risk, because nobody can see the bids and they have just one shot to submit its proposal.”

Social witnesses

Social witnesses are citizens, independent auditors and social organisations that oversee public tender procedures that are larger than a predetermined threshold (approximately USD \$22.7 million in 2014). Social witnesses are third parties deemed to have no conflict-of-interest in procurement procedures and whose task is to observe the tender process in order to enhance the accountability, legality and transparency of the process. Social witnesses are certified by SFP and are compensated for their services. These may propose improvements during the bidding process. Also, if they detect any irregularities, they may issue a formal complaint to the internal control bodies.

As explained in a previous OECD report,²³ the role of social witnesses (or any other form of civil engagement) in tendering procedures should be enhanced by having them focus on competition and corruption issues in addition to transparency and adherence to laws and procedures. Public institutions and SFP should ensure that they hire individuals and firms with the background and experience that enable them to provide expert procurement advice to public procurement officials. In addition, training courses for social witnesses that focus on bid rigging and competition issues may be implemented.

Box 3. Direct social control in procurement: Social Witness in Mexico

The social witness is a representative of civil society, who acts as an external observer in a specific public procurement process. In order to promote transparency, diminish the risk of corruption and improve overall efficiency of procurement, this practice has been used for several years on a voluntary basis by public organisations in Mexico, following Transparencia Mexicana’s recommendation.

The social witness not only provides a public testimony on the procurement process but may also provide non-binding recommendations during and after the process. The social witness must be a highly honourable, recognised and trusted public figure who is independent from the parties involved in the process. The social witness has full access to the information and documentation in the procedure and also has the right to participate in critical stages of the procurement process, in particular:

- Checking the basis of the bid and the bidding notice;
- Observing all the sessions that are held with possible bidders to clarify any doubts they may have;

²² Latin American Competition Forum, Session III - Improving Effective Public Procurement: Fighting Collusion and Corruption. Background Note. OECD, 2012c, p. 11

²³ See section 2.5 of the CFE OECD report.

Box 3. **Direct social control in procurement: Social Witness in Mexico** (Cont.)

- Receiving the unilateral integrity declarations from the parties;
- Witnessing the delivery of technical and economic proposals;
- Observing the session in which the awarding will be announced.

Since December 2004, a strict regulation specifies the criteria for participation of social witnesses in procurement. In order to obtain a registration, they should in particular:

- Prove that they are not public officials;
- Have no penal antecedents nor have been sanctioned or disqualified;
- Declare formally that they will not participate in a procurement that could lead to a conflict-of-interest situation (e.g. family or personal relationship, business interest, etc.);
- Have knowledge of legal regulations related to procurement (if not they will attend a training session provided by the government).

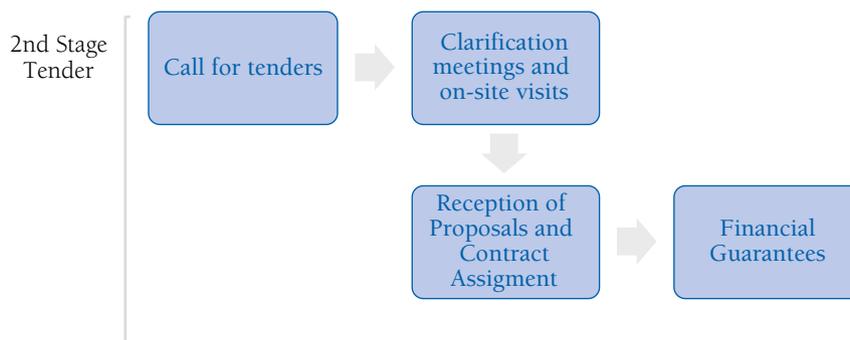
In case of disrespect of ethical standards or disclosure of information on the procedure, the social witness is liable to sanctions. The use of social witness has proved successful for the procurement of the Comision Federal de Electricidad (Federal Electricity Commission). The recommendations of the social witness have led to significant improvements, including an increase by 50% of the number of suppliers that have submitted bids, the expansion of the time limit for the presentation of bids and the provision of more precise and clear answers to the questions of bidders.

The government estimated that the involvement of the social witness has led to a saving of USD 26 million in the overall cost of this procurement of hereditary insurances. The actual list of registered social witnesses in Mexico can be found on the website of the Ministry of Public Administration (<http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm>).

Source: Mexico, response to the OECD Questionnaire on OECD (2007), Integrity in Public Procurement: Good Practice from A to Z, OECD Publishing, Paris, <https://doi.org/10.1787/9789264027510-en>.

3.2. Tender stage

This stage of the bidding process can be divided into two phases. First, the reception of financial guarantees, and the evaluation of the proposals to assign agreements to the winner(s). Second, the clarification meetings—between bidders and suppliers to resolve any particular doubt— and on-site visits—inspections carried out by authorities to possible suppliers to verify their existence and solvency—when required. The process summarized here as follows:

Figure 5. **Tender stage summary**

Some risks involved in the key functions of this stage are the following²⁴:

- Absence of public notices for the invitation to bid,
- Evaluation and award criteria are not announced
- Procurement information isn't disclosed and isn't made public.
- Lack of competition or cases of collusive bidding (cover bidding, bid suppression, bid rotation, market allocation).
- Conflict of interest and corruption in the evaluation process through:
 - Familiarity with bidders over time
 - Personal interests such as gifts or future/additional employment
 - No effective implementation of the "four eyes-principle"
- Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing)
- Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities)
- Lack of access to records on the procedure.

Calls for tenders

Agencies or entities upload the calls for tenders into CompraNet for 10 days so that these can be reviewed and improved (PPA, art. 29). Once the final version is ready, the call for tender is published in the Official Gazette and announced on CompraNet. This version must contain the date, a serial number, the object of the tender, the volume or amount that is required (in case of goods), the scheduled dates for the purchasing proceedings and the full texts of the terms of reference (PPA, Art. 30). Namely, the requirements enlisted in Article 29 are the following:

- The corporate and trade name of the procuring institution.
- A detailed description of the goods or services required.

²⁴ OECD (2016), Preventing Corruption in Public Procurement.

- The specification of the tender process (electronic tender, a face-to-face tender or a mixed tender).
- The requirements that suppliers should meet to participate in the tender process, as long as these characteristics do not limit competition.
- The documents that suppliers should provide in order to confirm their legal status.
- A clause stating that any interested bidder should include with its bid a sworn statement that the exceptions specified under Articles 50 and 60 of the PPA do not apply (i.e. that it does not have an unacceptable track record and there is no conflict of interest).
- A clause stating that any interested party should include a sworn statement that the firm will abstain from interfering with procurement officials in such a way as to influence the tender process in their favour.
- If the contract goods or services must be tested, it should include the test specifications and the approval parameters in accordance with the Federal Standardization Act.
- A statement specifying whether only one contract will be awarded or if there will be several contracts to bid for.
- The evaluation and awarding criteria.

Joint bids

Joint bids refer to independent bidders submitting a single bid for a tender without formalizing a long-lasting partnership. The pro-competitive purpose of a joint bid is to allow new or small suppliers into a tender that would otherwise be unmanageable on their own. In these circumstances joint bids attract more bidders and increase competition. In Mexico joint bids are always allowed unless the procuring institution decides otherwise. Article 34 of the PPA only requires that:

- a. People legally responsible for each party be clearly identified and;
- b. Bids take into account the legal framework set out in the Federal Economic Competition Act.

Currently, federal procurement officials must accept joint bids unless they can justify otherwise. Previous OECD reports²⁵ recommended that the federal legislation should be amended so that joint bids are permitted *only* when tender documents expressly mention that they will be accepted. This would require bidders to specify the rationale and expected benefits of the joint bids.

Clarification meetings and on-site visits

Article 33 of the PPA stipulates that bidders are entitled to at least one meeting to clarify any doubts concerning technical specifications. The procuring institutions must present their answers 24 hours before the proposals should be handed over. Clarification meetings may be held up to six days before the submission of proposals. The procuring institutions may then modify

²⁵ See ISSSTE and CFE OECD reports.

the requirements for the call for tender no later than the seventh day before the submission of proposals. However, these changes cannot alter the content or volume of the tender significantly.

Particularly, according to the recommendations laid out in three of the previous OECD reports,²⁶ clarification meetings may enhance bid rigging as potential bidders can identify their competitors as they have access to others' meetings records or when meetings take place in person. This goes against the OECD recommendation of limiting communication among bidders.

Reception of proposals and contract assignment

Proposals may be submitted remotely through CompraNet or delivered in sealed envelopes, depending on the procedure stated in the call for tender (PPA, Art. 35). When delivered physically, proposals are split into two separate envelopes, one with technical specifications and the other for financial proposition. Bidders must, at all times, submit proposals that comply with the laws that govern economic competition, government accountability and transparency.

Bidders can only submit one proposal for each procedure. Once proposals have been submitted, public officials open the contents of both envelopes—first the technical and if it complies with the requirements stated on the terms of reference and then the financial proposition—checking that all the documentation required is submitted. Then, the contents of the propositions are registered. This document must include the date, time and place where the procuring institution will announce the winners. This date must not fall later than twenty calendar days after the opening of the proposals (PPA, Art. 35).

The most important part of the evaluation is making sure that the process of assigning the winner follows the evaluation criteria stated in the call for tender—this may be points/percentages which takes into account the degree of requirements accomplished by the bidder and assigns a score which impacts directly in the financial guarantees, cost-benefit or binary—in every step of the way. If the procedure for determining the financial winner uses a reverse auction, the procuring institution must indicate when and where the auction will take place (PPA, Art. 35).

Whenever there is a tie between bidders, the PPA and its by-laws indicate that the tiebreaker criteria must be set to favour micro, small and medium enterprises. If this is not enough to break the tie, the winner is drafted randomly from an urn.

Financial guarantees

Financial guarantees are requested to ensure that suppliers are serious in their intent to participate in tenders and have the ability to meet contract requirements (Article 48 of the PPA). However, providers are exempted from presenting it for direct awards or restricted invitations. The type and amount of the guarantee is determined by the government agency responsible for the tender. In particular, the amount of a financial guarantee may be reduced depending on the track record of suppliers.²⁷ The final amounts are usually defined in the agencies' Internal Procurement Guidelines (POBALINES). In legal terms, the guarantees that are specified in the

²⁶ See CFE GEM, IMSS, ISSSTE and CFE

²⁷ See SFP's Guidelines on the reduction of financial guarantees by suppliers, 2010. Available at: http://www.funcionpublica.gob.mx/unaopspff/doctos/comunes/dof09-09-2010_C3.pdf

Procurement Regulation Act are guarantees in advance, completion guarantees, guarantees for defects and flaws, and quality guarantees (Articles 81, 85, 86, 87, 91, 96 and 103 of the PPR).

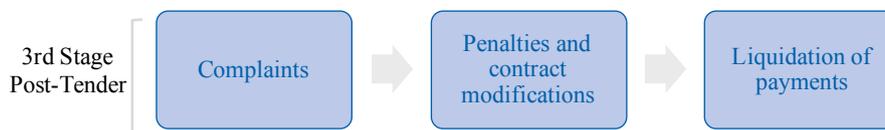
3.3. Post-award stage

The last stage of the procurement process begins when the contract has been awarded and legal procedures are settled regarding complaints by losing bidders. It ends when three things occur: the bidder has complied with all the provisions of the contract, the financial guarantee has been terminated and, most importantly from the perspective of the supplier, the provider has been paid in full.

Some integrity risks involved in the key activities on this phase are the following²⁸:

- Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing, such as:
 - Substantial change in contract conditions to allow more time and/or higher prices for the bidder
 - Product substitution or sub-standard work or service not meeting contract specifications
 - Theft of new assets before delivery to end-user or before being recorded
 - Deficient supervision from public officials and/or collusion between contractors and supervising officials
 - Subcontractors and partners chosen in an on-transparent way or not kept accountable
- Deficient separation of financial duties and/or lack of supervision of public officials leading to:
 - False accounting and cost misallocation or cost migration between contracts
 - Late payments of invoices
- False or duplicate invoicing for good and services not supplied and for interim payment in advance entitlement.

Figure 6. **Post-tender stage summary**



²⁸ OECD, 2016. Preventing Corruption in Public Procurement.

Complaints

Bidder complaints may be lodged before SFP. If the Ministry considers the claim well founded and reasonable, it may proceed to cancel the tender or restricted invitation. The decisions must be published on CompraNet.

Alternatively, suppliers may choose to settle a complaint through the conciliatory mechanisms carried out by SFP (PPA, Art. 77). SFP will aim to reconcile disagreeing parties in a contractual agreement. Furthermore, SFP supervises that the parties involved meet the conditions established in the contractual agreement. Additionally, when problems arise regarding the interpreting of clauses (PPA, Art. 80), suppliers may ask for a commercial arbiter that follows the proceedings of the Commercial Code (*Código de Comercio*).

Penalties and contract modification

Penalties arise when providers fail to meet the provisions established in the procurement contracts. For instance, when suppliers do not deliver their goods on time, or when the products are flawed. In these cases SFP may sanction the supplier. The fines range from fifty to a thousand times the minimum wage (in the Federal District) on the day of the infraction (Art. 59). If the estimated value of the infraction is less than 50 times the minimum wage, then suppliers will be fined from ten to forty times the minimum wage, raised to the power of the month (sic).

According to Article 60 of the PPA, SFP can temporarily (from three months to five years) disqualify businesses from procuring when:

- a. Suppliers have failed to fulfil two or more contracts in a year;
- b. Suppliers have had at least two contracts terminated in the past three years;
- c. Suppliers have not met all the contractual obligations;
- d. Suppliers have provided erroneous information or wilfully partaken in misconducts;
- e. Suppliers fall in any of the assumptions considered in Articles 50, section XII and the second paragraph of Article 74 of the PPA.

Article 52 of the PPA allows contracting areas to modify up to 20% of the value of any contract, provided they are duly justified. Similarly, suppliers may argue that due to unforeseen circumstances they will be unable to comply with the contractual agreement. In this case, if the procuring institution considers there is enough evidence to corroborate these facts, it can either cancel the contract or modify it for up to 10% of the value of the contract. Notwithstanding, the PPA forbids the modification of prices, payments, advances, progressive payment schemes or any change that skews the competition towards the supplier.

Liquidating contracts with the suppliers

The PPA (Article 51) indicates that liquidating contracts should take place as established in the contracts signed with the suppliers. Payments must be met in full within 20 days from the day invoices are generated. If a payment is delayed, the government must pay a financial compensation to the supplier that is based on an index included every year in the Federal Revenues Law (*Ley de Ingresos de la Federación*).

From the perspective of the supplier, the procurement cycle is completed when they are paid in full and the financial guarantee is terminated. When payments are delayed, the number of suppliers willing to sell to the government is constrained because a number of firms cannot afford to wait, thus reducing the amount of genuinely competitive participants in tenders. Additionally, since smaller firms are more vulnerable to delays, these are likely to be the most affected parties. Nevertheless, firms willing to sell to the government will have financial incentives to raise their prices to compensate for uncertainty and idle time, thus encouraging inefficient trading and undermining the value of the taxpayers' money.

Reforms to procurement laws

The PPA has 211 amendments made on 12 occasions since its publication in 2000. The first relevant reform to the PPA came in 2005 and the second most important in 2009. Major technical specifications were added to the entire procurement process. The most notable changes dealt with the opening of proposals, clearer specifications on how to open and deal with the presentation of bids, payment and liquidations to suppliers, the minimum content of contracts, financial guarantees, the minimum content of the call for tender, the filing of complaints, the specification evaluation criteria, the modalities for direct awards, the functioning of procurement committees, the introduction of reverse auctions and many others that have been described throughout this chapter.

4. Best Practices at the Federal Level

Using the *10 Key pillars of the Principles for enhancing integrity in public procurement*, mentioned in the first chapter of this study we can objectively describe the best practices and some areas of opportunity at the federal level. We can also create a framework to make comparisons among the five case studies analysed in the next chapter.

Transparency

1. *Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.*
2. *Maximize transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.*

Both principles are met entirely by the Mexican federal system. According to a survey carried out by OECD in 2010, Mexico is one of the most transparent member States in public procurement. As we can see in the following table, Mexico is classified with “Always” in nine out of 10 criteria, and only in one with “sometimes”.

Table 2. **Public availability of procurement information at central level governments (2010)**

Country	Laws and policies	General information for potential bidders	Selection and evaluation criteria	Contract award	Specific guidance on application procedures	Tender documents	Procurement plan of anticipated tenders	Justification for awarding contract to selected contractor	Contract modifications	Tracking procurement spending
Australia	●	□	□	●	□	□	●	■	□	○
Austria	●	□	□	□	□	□	□	○	□	○
Belgium	●	●	●	●	●	●	●	●	●	○
Canada	●	●	■	●	●	■	○	■	●	○
Chile	●	●	□	●	●	●	●	●	□	●
Czech Republic	●	●	●	●	●	●	□	□	□	□
Denmark	●	●	□	□	□	□	●	□	□	○
Estonia	●	●	●	●	●	■	●	●	■	●
Finland	●	●	●	●	□	■	□	●	○	○
France	●	●	●	□	●	□	□	■	●	■
Germany	●	●	□	□	○	□	○	○	○	○
Greece	●	●	●	●	□	●	□	●	○	○
Hungary	●	●	●	●	●	●	●	●	●	●
Iceland	●	●	●	●	●	●	●	●	●	■
Ireland	●	●	●	□	□	●	●	□	□	○
Israel	●	□	●	□	□	●	□	■	●	○
Italy	●	●	●	●	●	●	●	■	●	■
Japan	●	●	●	●	●	●	●	●	●	■
Korea	●	●	●	●	●	●	●	●	●	●
Luxembourg	●	●	●	□	□	●	□	■	■	□
Mexico	●	●	●	●	●	●	●	●	□	●
Netherlands	●	□	□	□	□	□	□	□	□	○
New Zealand	●	■	●	●	■	●	●	■	■	○
Norway	●	□	□	□	□	■	●	■	■	■
Poland	●	●	●	●	●	●	●	●	■	○
Portugal	●	□	□	□	□	□	□	□	□	□
Slovak Republic	●	●	●	●	●	■	□	○	●	○
Slovenia	●	□	□	□	□	□	□	■	□	■
Spain	●	●	●	●	●	●	●	●	●	○
Sweden	●	●	□	□	●	□	□	□	○	○
Switzerland	●	●	●	●	●	●	○	●	○	□
Turkey	●	●	●	●	●	●	□	■	■	●
United Kingdom	●	●	○	●	●	○	●	□	○	○

Country	Laws and policies	General information for potential bidders	Selection and evaluation criteria	Contract award	Specific guidance on application procedures	Tender documents	Procurement plan of anticipated tenders	Justification for awarding contract to selected contractor	Contract modifications	Tracking procurement spending
United States	●	●	□	□	□	□	□	○	■	□
Brazil	●	●	●	●	■	●	○	■	●	●
Egypt	●	●	●	□	●	●	○	○	□	○
Ukraine	●	●	●	●	●	●	●	■	○	○
Total OECD34										
Always	34	26	21	21	19	18	17	13	11	6
Upon request	0	1	1	0	1	5	0	10	7	6
Sometimes	0	7	11	13	13	10	14	7	10	5
Not available	0	0	1	0	1	1	3	4	6	17

Source: OECD 2010 Survey on Public Procurement.

According to the same survey, the Mexican and the Korean central web pages are the only ones that manage and display 100% of the information regarding public procurement.

Good management

3. Ensure that public funds are used in procurement according to the purposes intended.
4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

This is perhaps the most important area of opportunity for Mexico's procurement system. For example, it does not have a module with information to allow authorities, participants, or the public in general to ensure that public money is properly used. CompraNet ends when the contract is signed and thus the results of the project tendered cannot be measured without an audit or specific investigation. However, the establishment of a specialised unit in charge of analysing the whole procurement cycle, the global necessities of the government, and creating general or targeted policies to improve the efficacy of the federal budget is a good step towards the proper use of public funds. This Unit is the one in charge of creating opportunities to use different procurement strategies such as Framework Agreements, Reverse Auctions and Consolidated Purchases.

A mass training programme was launched, but only to build administrative and technical capabilities to use the e-procurement system. A broader training program is needed to create a new culture of knowledge, skills but more important, integrity.

Prevention of misconduct, compliance and monitoring

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly.

As shown in the following table, CompraNet is a system that allows not only for transparency, but also a proper and easy use of relevant information, which is updated daily, can be conveyed, transformed and handled, and can be used to control procedures, supervise public officials, and monitor specific areas of the government, as well as the whole structure.

Table 3. **CompraNet Functionalities comparison**

Functionality	Mexico	Chile	Korea
Analysis of unit prices	✓		
Update daily	✓		
Custom Queries VS predefined reports	Both	Reports	Reports
Presenting information in aggregate	✓	✓	
Performance Indicators of procurement procedures	Dynamic	Static	Static
Exporting information to Excel, CSV, PDF, among others.	✓	✓	
Data on the number and amount of each procurement procedure	✓	✓	
Relevant information for each contract awarded	✓	✓	
General information about the suppliers and contractors registered	✓		✓
Specific inquiries for annual procurement programs	✓		
Graphic analysis of the information	✓	✓	✓
Interactive Geographical analysis and active PDF (portable information)	✓		

Availability of information: México 2010-2013; Chile: 2005-2012; Korea: 2001-2010.

Sources: www.compranet-im.funcionpublica.gob.mx; www.analiza.cl; www.pps.go.kr.

In comparison, in the traditional paper-based system, monitoring the actions of public officials was very complex and difficult task, not only for the general public, but also for the investigation and control authorities. All the information was in the hands of a few people, mainly the ones responsible for the decisions. Because the fundamental documents were not public and could be easily altered, hidden or destroyed.

The information was also sectionalized and therefore very difficult to understand, thus creating many opportunities for corruption. It was almost impossible to pin point administrative responsibility to a certain official for a specific decision. It also provoked expensive barriers for the private sector, but also discouragement to participate in monitoring the behavior of public officials, in discussing measures to improve the system and in promoting accountability.

Accountability and control

8. *Establish a clear chain of responsibility together with effective control mechanisms.*
9. *Handle complaints from potential suppliers in a fair and timely manner.*
10. *Empower civil society organizations, media and the wider public to scrutinize public procurement.*

The e-procurement platform is a very effective measure to trace and collect evidence from every step of the process. Every action and every decision made in every process leaves evidence that can be used to establish administrative responsibilities. Therefore, it is a fundamental and effective tool to establish a clear chain of responsibility.

CompraNet has also an electronic bidder module that allows a fast, fair, transparent and objective process. The bidder does not need to supply basic documents again or prove personality, and the authority has every piece of information needed for a fair and legal decision.

The business intelligence suite, available with no charge to every person with access to the internet, allows the public easy access to every bite of information that the system has, which is updated daily with every new tender, and is designed to allow people not only to use it, but also to transport and transform information.

Chapter 3

Public Procurement in Five States

1. Differences between federal and state level procurement

The most noticeable difference in procurement between state-level entities and the federal government is the size of expenditures and the characteristics of the goods and services purchased. Federal agencies such as ISSSTE, IMSS or CFE buy large quantities of goods compared with most local governments. Additionally, the sophistication of the requirements is much higher than in most states in Mexico. To put these differences into perspective, CFE programmed approximately \$5.39 billion dollars for procurement in 2015 while Nuevo León¹—the state with the largest expenses in procurement procedures in this report—programmed approximately \$108 million dollars in the same year.² That is to say, CFE programmed nearly 26 times more money for procurement than the entire state of Nuevo León.

The second notable difference is that state administrations must deal with expenditures of both local and federal origin —sometimes within the same procurement process—. In this sense, in order to avoid the risk of greater work load on local public procurement, from the phase of planning until the auditing stage, - local governments should consider standardising their procurement processes with the federal level process (described in the previous chapter) or the Mexican government could issue a General Law on Public Procurement in order to regulate the adoption of best practices as basic elements of the country's Public Procurement Policy, as well as establishing standardized procedures, when appropriate. On the other hand, local governments should be attentive to design a streamlined public tender process in order to make it more efficient, as well as to conduct administrative coordination efforts with the federation to avoid excessive workloads.

Local governments usually run their procurement through a Central Administration Office (usually called *Oficialía Mayor*) that can either be an independent office or a branch of the Ministry of Finance. The states considered in this report use highly centralised procurement procedures. However, this does not mean that all local governments in Mexico use this structure; some may have a decentralised process, especially those who have not enacted new procurement laws.

¹ CFE Annual Procurement Programme 2015a.

² Calculated as the sum of Chapters 2000, 3000 and 7000 of the State Budget. (*Ley de Egresos de Nuevo León*), 2015.

“Another difference is based on the fact that, in Mexico, economic competition is a federal matter, this means that there are not local authorities to regulate local economic competition, rather, COFECE and IFETEL are the federal authorities in charge of the competition policy in the whole country. Actually, according to the Economic Competition Federal Law³ both authorities have several attributions for being coordinated with local authorities on tendering and to give their opinion on tendering procedures. However, at moment of writing this report, as will be seen in the following sections, few measures have been implemented to significantly reduce the risk of bid rigging at the state-level.”

Each state has their own supplier registry, which results in a limited pool of available suppliers. No evidence from the cases considered for this study suggests the existence of a strategy with the explicit intention of increasing the number of suppliers.⁴ It is known that when prices are estimated based on information provided by local suppliers, prices tend to be skewed because they forego national and international estimates. Therefore, a significant area of opportunity is the creation of a national supplier database or, in any case, increased interchange of information among states, as well as with the federal government to identify more accurate prices. In this sense, the development of strategies to increase the base of suppliers registered or to share suppliers register among states could have a dual purpose: firstly, to expand the sample of potential suppliers for market research and thus reduce the potential bias, and secondly, to increase the conditions of competition in public procurement processes by having a greater number of bidders.

Regarding consolidation of purchases, according to Article 17 of the PPA these processes may be designed to include several state-level governments and municipalities, as well as federal agencies. However, there are no recorded cases of consolidation including more than one state or municipalities across different states in the cases considered for this report. During fact-finding missions carried out for this study, some public officials were concerned that their local laws did not consider the option of consolidation among states and were therefore unable to suggest how they could formalise such a contract. For instance, Aguascalientes is a very small state that could benefit if its office supplies were consolidated with the neighbouring states of Jalisco or Guanajuato. Alternatively, neighbouring municipalities even if they are from different states could benefit from purchasing from nearby suppliers. This is another area of opportunity if Mexican states are to make the most of its federal arrangement by using economies of scale.

Article 134 of the Mexican Constitution establishes that the use of public resources must be carried out under the principles of efficiency, effectiveness, economy, transparency and honesty. Until 2007 these principles were mandatory only for federal agencies. In that year a constitutional amendment made this mandate applicable to all public officials, including those of states and municipalities. Finally, another amendment in 2008 made this compulsory for all levels of government.

³ Article 12, sections IV, XII, XIII, XIX, XX, XXIII and XXVII of the Economic Competition Federal Law.

⁴ Increasing available pool of suppliers is one of many possible efficiency indicators for assessing procurement programmes. However, none of the procurement programs reviewed considered indicators of any kind.

Table 4. **Principal differences between federal and state level procurement**

Difference	Explanation	Issues and considerations
Size of expenditures	Federal level entities buy large quantities of goods while local government buy smaller ones.	Lesser access to economies of scale and lower sophistication of requirements
Dual procurement framework	Local governments buy goods with both federal and local expenses	Greater workload if the processes are not standardized and streamlined
Economic competition authorities	Economic competition is a federal matter, this means that there are not local authorities to regulate local economic competition	Local governments need to reach out to a federal authority to deal with cases of relative and absolute monopolistic practices
Suppliers registry	Each state has their own suppliers registry	Skewed prices and insufficient market research due to smaller pools of suppliers
Consolidation of purchases	States considered in this report have no recorded evidence of consolidated purchases with other states	Small purchases tend to have higher prices and less access to opportunities that take advantage of economies of scale.

2. Case studies

Five states were chosen as case studies to make an in-depth and detailed examination of procurement legislation and practices at the local-level. These states are Aguascalientes, Nuevo León, Coahuila, Morelos and the State of Mexico. These states were selected under three criteria: 1. regional plurality, 2. approval of the Ministry of Economy and 3. willingness of state governments to participate in the project. Each was assessed by a methodology comprising three sources of information:

- a. Regulatory framework and official documentation involved in procurement procedures.
- b. Information provided by public officials responsible for procurement procedures.
- c. Fact-finding missions to interview public officials responsible of procurement procedures.

The analysis for each state was conducted following the three stages of the procurement process at the federal level described in Chapter 2: pre-tender stage, tender stage and post-award stage. The topics in focus for state level reports are four:

- a. **Analysis of procurement process including rules, institutions and procedures.** Comprises the main characteristics of rules, procedures and institutions involved as well as the reform agenda for each case study.
- b. **Degree of transparency and integrity in public procurement.** Refers to the access of information that suppliers and public in general have to public procurement information as well as integrity, good management and controls along the process according to the legal framework.
- c. **Promotion of competition and reducing the risk of bid rigging.** Refers to the approach of state level governments to promote a genuinely competitive procurement procedures and disincentives to bid rigging from suppliers.
- d. **Simplification of procedures for registering as suppliers.** Refers to processes and structure that each state has to promote a broader participation of suppliers and more competition.

Aguascalientes

Procurement for the State of Aguascalientes surmounted to approximately \$2.2 billion pesos (USD 146 million in 2015) from 2012 to 2014 (a yearly average of \$48 million USD). According to information provided by local authorities, procurement is mostly spent on equipment for crime prevention, law enforcement and public safety; goods and services for the most vulnerable population in the state; housekeeping; security and insurance for government agencies; and broadcasting services for local government programs. However, no comprehensive statistics were provided to describe expenditures in more detail.

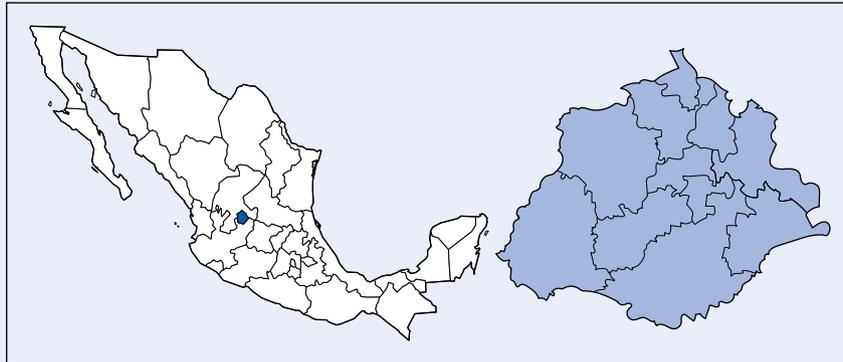
The law governing procurement is the Patrimonial Act of Aguascalientes (*Ley Patrimonial del Estado de Aguascalientes*, LPEA). This law has no bylaws or regulations, but five manuals related to procurement:

- a. *Manual of Government Procurement of the State of Aguascalientes (Manual Único de Adquisiciones de Gobierno del Estado de Aguascalientes)*. Regulates general processes and policies involved in public procurement.
- b. *Manual of Processes and Procedures (Manual de Procesos y Procedimientos)*. Describes the sequence and responsibility of each area inside the Ministry of Finance, including those related to ITs.
- c. *Manual of General Policies for the Control of Resources of the Departments and Entities of the Government of the State of Aguascalientes (Manual de Políticas Generales para el Control de los Recursos de las Dependencias y Entidades de Gobierno del Estado de Aguascalientes)*. Explains how state-owned property must be administered.
- d. *Manual of General Guidelines and Policies for the Control of Resources of the Dependencies and Entities of the Government of the State of Aguascalientes (Manual de Lineamientos y Políticas Generales para el Control de los Recursos de las Dependencias y Entidades del Gobierno del Estado de Aguascalientes)*. Explains how to address how resources and expenses should be administered, planned and spent.
- e. *Manual of Integration and Operation of the Procurement and Disposal Committee (Manual de Integración y Funcionamiento del Comité de Adquisiciones y Enajenaciones del Gobierno del Estado)*. Explains the rules of the Procurement Committee.

The existence of these manuals reflects a clear assignment of responsibilities in the tasks at hand.

Box 4. **State of Aguascalientes**

Located in north-central Mexico. Aguascalientes is one of the smallest states in the country as well as one of the more productive in terms of manufacturing. It is considered as having one of the best business climates in the country and it has become a strategic hub for foreign investment, especially for automotive and aeronautical industry.



State highlights

Population (2010): 1,184,996 (27th of 32 federal states)

Territory: 5,471 km² (29th of 32 federal states)

Municipalities: 11

Capital: Aguascalientes

Political

Government (2015): PRI

Congress: 27 seats (PRI 44%, PAN 26%, others 30%)

Economy

GDP 2013 (PPP): 18,657 million (27th of 32 federal states)

Income per capita 2012 (PPP): 1,986 (9th of 32 federal states)

HDI 2010: 0.763 (9th of 32)

Education

Average years of schooling: 9.2 (7th of 32 federal states)

Corruption and Perception Index 2010: 4.7 (4th of 32 federal states)

Competitiveness Index (2014): 53.3 (3th of 32 federal states)

Variables from: INEGI, PNUD, Mexican Chapter of Transparency International and Mexican Institute for Competitiveness.

Regulatory reforms

Regulatory reform has been a constant throughout the last twenty years in Aguascalientes and it has had a significant impact in legislation related to public procurement. The local government made the first step when it co-signed a National Agreement for the Coordination of Economic Deregulation (*Acuerdo Nacional para la Coordinación de la Desregulación Económica*) and organized the establishment of an Agreement for the Deregulation of Business Activity with its municipalities (*Carta compromiso para la Desregulación de la Actividad Empresarial*) in 1995 and 1997, accordingly. The objectives of these agreements were to expedite and streamline public administration, and to strengthen interagency coordination with municipal governments.

Since 2001, a Fast Business Registration Programme was set in motion and allowed the state government to reduce turnaround times in state and municipal procedures regarding start-ups. In collaboration with COFEMER, they created *Programa Uno* to allow business to start operations in shorter periods. Most importantly, the Ministry of Economic Development created a One-Stop Shop (*Ventanilla única*) to lower the costs to be part of the government suppliers' registry. The *Ventanilla Unica* has an ISO-9000/2000 certification.

In July 2013 the local Congress approved a Business Management and Regulatory Act (*Ley de Gestión Empresarial y Mejora Regulatoria para el Estado de Aguascalientes*, LGEMREA). This law created the Institute of Entrepreneurial Management and Regulatory Reform (see below) and obliges all entities of the state of Aguascalientes to abide to programmes for regulatory improvement. The Institute has collaborated in the implementation of information systems across state level entities.

According to a study carried out by COFEMER published in 2012 that applied the OECD *Indicators of Regulatory Management Systems* to Mexican states in 2008, Aguascalientes stands out as the third most efficient in regulatory reform (just after Nuevo León and Colima), with a grade of 49/100. That is to say, 18 points beneath the OECD average, 67 out of 100).⁵

One of the main strengths of procurement in Aguascalientes is its explicit and complete legal framework and the means to guarantee that reforms passed over the last years are implemented accordingly. However, this study detects the lack of training of public officials for measuring the impact of regulation, specifically in procurement areas.

Transparency is another aspect in which Aguascalientes ranked higher than the OECD average. The report carried out by COFEMER considers that the state has the instruments to appropriately justify the establishment of new regulatory reforms and evaluate and discard alternatives. Regarding the ease of licensing, permits and one-stop offices, Aguascalientes was ranked as the 12th highest, still above the OECD average. That is to say, the report considers that Aguascalientes has had important advances regarding opening business and simplifying administrative services.

The most salient deficiencies is the lack of coordination between federal and state regulators in matter of competition and the protection of consumers. Finally, it is worth observing that there are practically no mechanisms for civil engagement or mechanisms that make it easier to third parties to appeal administrative decisions—and revisions.

⁵ COFEMER (2012) *Retos y Perspectivas del Sistema de Gestión Regulatoria en las Entidades Federativas*, Comisión Federal de Mejora Regulatoria/LATIN-REG, y Comisión Especial para la Competitividad de la LXI Legislatura de la Cámara de Diputados. Mexico.

Relevant changes to the procurement laws and future reform

The Congress of Aguascalientes adjusted its Constitution in 2013 to replicate Article 134 of the Federal Constitution. With this change, the state government as well as the municipalities must now comply with procurement principles at the federal level.

As mentioned before, the *Ley Patrimonial del Estado de Aguascalientes* (LPEA) governs public procurement. There have been 23 amendments to it since 2000, all of which modified or added relevant content to the procurement framework. Only in six of this 23 amendments content was removed. Overall two of the amendments are considered the most relevant:

- a. Allowing the Judiciary and the Legislature branches to make (and enforce) their own rules for procurement.
- b. Favouring companies based in Aguascalientes with a 10% preference in prices against foreign competitors.

The second major change to the LPEA was made in 2009 to establish criteria for procurement procedures: price, quality, financing, opportunity, energy efficiency, responsible use of water, optimisation and sustainable use of resources and protection of the environment. Additionally, the Ministry of the Environment and Resources is now required to certify providers that sell goods that contain wood.

According to our interviewees, the state government through its Central Administrative Office (*Oficialía Mayor*), is currently working on a proposal for a new law governing public procurement. This is an opportunity to improve the current framework by expanding the scope and detail of the procurement cycles. It should be noted that this opportunity could align it with the budgetary laws and those related to accountability.⁶

Procurement agencies and actors

Central Administrative Office

The Central Administrative Office (*Oficialía Mayor*) plays the most important role in state government purchases. According to Article 42 of the Organic Law of Aguascalientes (*Ley Orgánica de la Administración Pública del Estado de Aguascalientes*, LOAPEA) this office directs, coordinates, implements and evaluates policies, guidelines and programmes for personnel, material resources (which include procurement) and general services.

After any purchase is requested—through an automated system (*Sistema de Compras de Gobierno del Estado*)—*Oficialía Mayor* carries out all the procurement activities except paying suppliers. There are no individual buyers in the state government and this office holds control over the purchasing procedures. It is also responsible for the purchasing web site “*Hoy se compra*”, the information system SISAI-Infomex, as well as for the administration of the catalogue of products available for purchase by state government agencies.

⁶ As of March 12, 2015 —while this study was in revision— a new Public Procurement Act was approved and abrogated the LOAPEA.

The Central Administrative Office also establishes procedures to verify quality, specifications and quantities in procurement. It also monitors the timely distribution of goods and usage of warehouses.

Box 5. **“Today we are now purchasing” (Hoy se compra)**

Government Procurement System of the State of Aguascalientes

It is a website created by the Government of the State of Aguascalientes to provide transparency in public procurement processes and related issues. The website has the following tools:

- Catalogue of products and details of the suppliers who commercialise them
- Suppliers catalogue
- Information of registration and endorsement formalities of the Unique Supplier Register
- The regulatory framework for public procurement
- Public Works Tenders
- Tenders for Goods Services
- Calling and disposals
- Summary of Calls for Public Tenders
- Call Annexes

Source: <http://eservicios.aguascalientes.gob.mx/SAE/hoysecompra/Index.aspx>.

Institute of Entrepreneurial Management and Regulatory Reform

The Institute of Entrepreneurial Management and Regulatory Reform (*Instituto de Gestión Empresarial y Mejora Regulatoria*) is part of the Ministry of Economic Development and bound to the Regulatory Act, LGEMREA. According to the LGEMREA (Art. 3) the Institute should pursue 17 objectives, of which the most relevant to procurement are the following:

- a. Simplify the regulatory framework through the partial or total removal of administrative acts, requirements and procedures;
- b. Increase the rate of approval of procedures, formats, requirements, standards and regulations, and any administrative act of the units;
- c. Strengthen and expand the mass participation of the social and private sectors to stimulate competitiveness, investment and economic growth in the State;
- d. Advance permanent and precise coordination between the state, municipalities and the social and private sectors, business management tasks and regulatory reform;

- e. Implement information technology tools for procedures and services as cross-cutting tools;
- f. Promote the implementation of electronic instruments and the usage of certified electronic signatures or any other mechanisms for the accomplishment of procedures and services;

The institute may intervene on behalf of the state or municipal governments in procurement operations, administration, disposals, inspection and surveillance of state property and, where appropriate, assists in the writing of contracts. It is also a part of the Procurement Committee, and the Institute must approve of any rules, policies and guidelines that are bound to LPEA.

It also approves the formats for safekeeping procurement contracts and prepared an administrative manual for procurement (*Manual Único de Adquisiciones del Gobierno de Aguascalientes*, 2005). Further still, it is responsible for reviewing the annual procurement programme drafts of all government agencies.

Ministry of Finances

The Ministry of Finance (*Secretaría de Finanzas, SEFIN*) is in charge of the state expenses of all local-level entities. According to Article 31 of the LOAPEA the Ministry of Finance is responsible for the coordination of the state's economic policy and budget, including planning, budgeting and evaluation of expenses.

According to the LPEA (Art. 11) every acquisition requires studies or projects in which the Ministry of Finance should be involved. Article 33 of the same Act gives the Ministry of Finances the jurisdiction to dictate necessary measures in matter of procurement to comply with the legislation as well as with the state's Development Plan and institutional plans.

State Coordination Office

The State Coordination of Projects and Planning (Coordinación Estatal de Planeación y Proyectos) establishes objectives and goals to increase the quality of services and products offered by the state to its citizens. For this purpose, the State Coordination Office should provide with quantitative data in matter of projects and planning (Art. 33, LOAPEA). Although most of its attributions are more related to public works, it is responsible for the State Planning System.

This means that, in combination with SEFIN it receives the acquisition programmes from all local-level entities and incorporates the Annual Acquisitions Programme (Art. 41, LOAPEA), which should be delivered no later than in January of each year.

Procurement Committee

The Procurement Committee is headed by the *Oficialía Mayor* and has the following members: a secretariat, three vocals representing the *Oficialía Mayor*, the State Coordination Office and a representative from the chamber of commerce. Three additional members are part of the committee but lack voting authority: the Ministry of Oversight and Accountability and a member from the purchasing entity. The General Audit Office is also the responsible of integrating the Committee, which must meet on a monthly basis.

According to LPEA, the Committee is responsible for authorising all public tenders financed with local funds; has the power to propose the termination of contracts, approve the number of goods and services to be procured, determine if suppliers meet the desired quality, service, price, payment and delivery time and, additionally, propose cases in which suppliers should be excluded from the supplier registry.

Figure 7. **Integration of Procurement Committee**

Voice and vote		Voice	
I.	Oficialía Mayor (head)	I.	Ministry of oversight and accountability
II.	Secretariat	II.	Purchasing Entity
III.	Oficialía Mayor (vocal)		
IV.	State Coordination Office		
V.	Commerce chamber representative		

It is worth noticing that as member of this committee, the representative from the chamber of commerce may face a clear conflict of interest as this body must carry out market research inquiries. However it is an advantage to have an external opinion from the supplier's point of view. In the case of procurement committees at the federal level, they do not have any private sector participants and there is also the obligation of guaranteeing an odd number of members to avoid deadlocks in the decision-making process.

Institute for Transparency

The Institute for Transparency (*Instituto de Transparencia del Estado de Aguascalientes*) is responsible for guaranteeing that public entities publish and update procurement information detailing the following:

- a. Topic or category of procurement: public works, goods, leasing arrangements and services, as well as for studies or research.
- b. Amount of the contract.
- c. Name of the supplier, contractor or legal representative with whom the contract is signed.
- d. Enforcement terms of the contract.

According to the Transparency Index 2014 (*Métrica de la Transparencia*) carried out every four years by the CIDE (*Centro de Investigación y Docencia Económicas*), Aguascalientes occupies the 15th place out of the 32 states in Mexico. Although the result of this evaluation is not over average, it must be noted that —after the evaluation took place— the Institute published an administrative manual that details the exact format in which government information should be published that is met by the system called SISAI-Infomex. The *Oficialía Mayor* administers this software. There Manual describes detailed explanations for most of the procurement elements and procedures.

According to interviews carried out during the fact-finding missions, the Institute has not received requests for information regarding procurement to this date.

Ministry for Oversight and Accountability

According to the LOAPEA, the Ministry for Oversight and Accountability (*Secretaría de Fiscalización y Rendición de Cuentas*) is responsible for supervising that procurement procedures are carried out as stated in the LPEA and can intervene any act that contravenes the laws to which government is bound. Article 43 of LOAPEA dictates that the Ministry has 21 responsibilities, of which the most relevant are the following:

- a. Formulate policy and actions for monitoring, evaluation, supervision and accountability in the public administration and in the exercise of public service.
- b. Plan, make programmes, establish, organise and coordinate the System for Control, Evaluation and Oversight of the Government of Aguascalientes, and keeping it up to date.
- c. Encourage and support citizen engagement in the monitoring and evaluation of government entities and the practice of public service.
- d. Establish, promote and supervise compliance of the laws regarding oversight of the public administration, monitoring, evaluation, auditing and accounting to be observed by Federal agencies and entities, and, where appropriate, provide the support and advice they request.
- e. Monitor, audit and supervise public procurement and its correspondence with the state budget, and if necessary, apply administrative sanctions.
- f. Plan, establish and coordinate, together with the Ministry of Finance and *Oficialía Mayor*, a comprehensive self-assessment system of governance, for which it must:
 - Incorporate the Indicators System of Performance, Efficiency, Effectiveness and Economy of the government, with involvement of relevant agencies and entities of public administration;
 - Evaluate governmental activities based on self-assessment carried out by agencies and entities of the public administration.
- g. Undertake a systematic evaluation of the exercise of state-owned resources and those that are the responsibility of the government.
- h. Maintain an inventory of movable and immovable property of the public administration; monitor the proper use and conservation status thereof, and inform the Ministry of Finance any aspect that may affect the registration of this ownership.
- i. Monitor and supervise the agencies of the executive, make sure they comply with the rules and provisions for recording and accounting systems, contracting and payment of staff, procurement of services, public works, acquisitions, leasing arrangements, maintenance, use, destination, involvement, alienation and deregistration of movable and immovable property, warehouses and other assets and material resources of the executive.

- j. Coordinate with the State Audit Office the procedures necessary for the proper performance of their respective duties.
- k. Coordinate with the Federal Government the integration of the structure of the control and evaluation units in the office for Coordination Planning and Project Coordination, to control and evaluate the resources transferred from the Federal Government.
- l. Acknowledge, investigate and resolve the acts and / or omissions of public servants that constitute administrative responsibilities and compensation claims; determine the damage to the State, taking it to the competent authorities for execution, and with the statement of responsibilities, proceed to collect any compensation that may result from the administrative penalty or judicial complaint.
- m. Submit complaints or criminal charges when the conduct of public servants may be considered a crime.
- n. Appoint external auditors, according to the specific laws, that will carry out special audits.

The Ministry determines the appropriateness of the cancellation of any public procurement procedure. Additionally, this office may carry out visits and inspections requested by the Secretary of Management and Innovation or other state government agencies. The Ministry may request data and reports from public servants regarding procurement procedures. It may apply fines that range from fifty to three hundred times the general minimum wage per month in the state (i.e. approximately from \$7,500 USD to \$45,000 USD). Further still, it may ban suppliers from submitting bids or procurement proposals for up to two years and is responsible for receiving all the claims of nonconformity that may arise during procurement procedures.

Audit Office of Aguascalientes

The Audit Office of the State of Aguascalientes (*Órgano Superior de Fiscalización del Estado de Aguascalientes*, OSFEA) conducts audits and reviews documents to verify that public procurement follows processes and procedures correctly (Article 21 of the *Ley de Fiscalización Superior del Estado de Aguascalientes*, LFSEA). If the OSFEA finds irregularities it may issue recommendations to improve the performance of the required entities. OSFEA may also recommend fines and penalties, yet these must be applied by either the Executive branch or the state Congress.

According to interviews carried out during the fact-finding missions, municipalities constantly fail in filling out public accountancy records as required by the *Consejo Nacional de Armonización Contable*, CONAC. At the state level, agencies are bound by a *Manual Único de Adquisiciones* that was created to follow the guidelines set out by the CONAC. Municipalities, on the other hand, must establish their own methodologies, however these must also follow the principles laid down in the *Ley General de Contabilidad Gubernamental*, by the end of 2015. The result is that state government agencies are bound homogenous accountancy procedures, while municipalities continue to fill in their accountancy records with diverse parameters.

Supplier registry

The Institute of Entrepreneurial Management and Regulatory Reform administers the supplier registry in Aguascalientes. It can be filled online, which diminishes costs for suppliers to subscribe.

The law establishes a 10-day limit for the government to authorise or deny registration (Art. 49, LPEA) and companies must renew their inscription every year. Notably, if businesses decide to renew their registration during January and February (Art. 50), they must submit fewer documents as an incentive. To successfully subscribe to the supplier registry, companies must fulfil thirteen requirements (Art. 48), of which the most important are the following:

- a. Submit the application form.
- b. Attach a certified copy of their charter, duly registered in the Public Registry of Property and Commerce, as well as crediting its legal representative.
- c. Manifest by presenting evidence, that the company is in fact a legally established producer or service provider.
- d. Demonstrate financial solvency and capacity for the production or supply of goods, commodities or movable property and leasing arrangements or services
- e. Provide additional information requested.⁷

Businesses may be excluded from the registry (Art. 51, LPEA) when the suppliers deny authorities the possibility of inspections or access to information, when goods and services do not meet the contractual arrangements or, alternatively, when the suppliers fail to upkeep their economic proposals and do not compensate the State.

The Procurement Process

The following section describes the procurement process, mirroring the process detailed in Chapter 2 for the federal level. Subsequently, differences are described for each stage in the following section.

Pre-tender stage

The most notable feature of the pre-tender phase in Aguascalientes is that market research (namely, prices estimations and availability of resources) is carried out before the requisition is authorised. This means that market research is a decentralised activity carried out by purchasing units and not the administrative area (*Oficialia Mayor*). However, the procurement committee has an important role in authorising all purchases, which is not the case of committees at the federal level. That is to say, there are no specialised areas for conducting market studies at the state level. Nevertheless, *Oficialia Mayor* follows a guidance from procurement manuals.

1. Planning and scheduling of acquisitions

Government agencies are responsible for the annual planning of their procurement. They must determine their needs and base their scheduling on the basis of their approved budget—which is enacted by the local Congress by December of each year. The law (Art. 34, LPEA) requires

⁷ This may refer to documentation regarding tax payments, legal documentation of the firm and information regarding international or national providers/distributors.

purchasing areas to align their procurement objectives to those of the *Plan Estatal de Desarrollo*. Additionally (Art. 35, LPEA) the planning must detail all actions and procedures required before procurement, as well as those during and after procuring.

Administrative units within government agencies initially gather the procurement needs from individual areas that do not have purchasing authority. These are then passed on to *Oficialía Mayor*, which merges all requests into one programme. All of this information is collected through an internal electronic system (*Sistema de Compras de Gobierno del Estado*). It is unclear from the current legal framework, to determine where the opportunity for detecting consolidation opportunities lies.⁸ However, according to our interviews, *Oficialía Mayor* is currently responsible for this activity. Further still, the LPEA does not allow for framework agreements.

2. Requests for procurement

All requisitions are electronically administered. If the requisition complies with the law and has an authorised budget, the Ministry of Finance may then authorise the purchase (using a reference code that is assigned to the electronic requisition). All requisitions must consider the following (Art. 13 of the Procurement Manual):

- Budgetary sufficiency approval from the Ministry of Finance including Value Added Tax.
- Price estimations carried out 15 days before the requisition is submitted.
- Indicate if procurement will be pursued with federal or local income.

All purchases should fall into one of ten categories⁹ specified in Article 14 of the Procurement Manual. After corroboration and authorisation, the requiring area is then excluded from the procurement process, and may only follow up on the stage of its requirement by browsing the internal electronic system. From this point on, *Oficialía Mayor* is responsible for designing and carrying out all procurement activities.

3. Market research

The Procurement Manual of Aguascalientes does not require detailed market research. It only specifies (Art. 26) that the requisitions for direct awards and “*concursos*” (see below) should include price estimations of three and five potential suppliers, respectively, and find out if there is enough supply in the local market to satisfy demand. The Manual suggests that the suppliers that are reached for the price estimates should be different every time (Art. 26). However, it also limits the selection of business to those registered in the supplier registry (Art. 27). Therefore, the pool of suppliers is naturally skewed to obtain prices in local markets and thus impervious to national and international estimates. Notwithstanding this limitation, the platform “*Hoy se Compra*” has a section devoted to estimating prices for direct purchases, which enables fast transactions from small and local businesses.

⁸ The Procurement Manual (Art. 69) refers the responsibility to the now extinct Ministry of Management and Innovation.

⁹ These are: materials and supplies, equipment, hardware, printing and graphics, construction materials, services, stationary, spare parts, workshop services and uniforms.

4. Procurement design

There are four standard procedures for procurement in Aguascalientes, whereas at the federal level there are only three¹⁰. Aguascalientes includes another process that is called a contest (*concurso*). This method is basically a limited form of a restricted invitation, whereby five providers are invited to submit a proposal.

Table 5. **Procurement procedure and range of purchase**

Procurement Procedure	Range of purchase as daily minimum wage ¹¹	Approximate amount (2015, USD)
Public tender	> 15,000 m.w.	>\$ 70,000
Restricted Invitation	Exception to public tender	-
<i>Concurso</i>	3,000 M.W. – 15000 m.w.	\$14,000 - \$70,000
Direct award	< 3,000 m.w.	< \$14,000

Source: *Oficialia Mayor* of the State of Aguascalientes.

Restricted invitations are only allowed in Aguascalientes when one of the following applies (Art. 56, LPEA):

- a. There are justifiable technical, scientific or legal reasons for a particular brand.
- b. In the case of perishable goods, grains, basic or semi processed food and second hand goods. In the case of the latter, the purchase price will not be greater than that determined through the appraisal from banking and credit institutions or other third parties entitled thereto.
- c. When a public call for tender had no acceptable proposals or bids. In this case, *Oficialia Mayor* must invite the same providers and include others with the objective of compensating for the lack of supply.

With the authorisation of the administrative director, any purchase that is no greater than 75 days the minimum wage (approximately \$350 USD) may be purchased through a direct award—financed with a revolving fund. All purchases greater than 300 days the minimum wage require a formal requisition from the purchasing entity. Procurement comprehended between 75 and 3,000 days the minimum wage (approximately \$300 USD to \$14,000 USD) may be purchased through a direct award. The format for filing a requisition is designed and approved by the Institute of Entrepreneurial Management and Regulatory Reform, however *Oficialia Mayor* administers the system.

Evaluation Criteria: another difference between Aguascalientes and federal legislation is that the state law does not account for different evaluation criteria. At the federal level, there are three types of evaluation to analyse the feasibility of the technical and financial proposals from suppliers: binary criterion, criterion points / percentages or criterion of cost / benefit. Article 62 of the LPEA (section XVIII) only establishes that the criteria and methods for the evaluation of

¹⁰ See Evaluation Criteria in section 2.3.1 in Chapter 2.

¹¹ The minimum wage in the state of Aguascalientes in 2014 was approximately \$70 pesos a day or \$4.7 USD.

proposals must be established in the terms of reference. Finally, Article 71 of LPEA establishes that any measures for facilitating the submittal of bids and making more agile the tender proceedings may not be evaluated in the proposals.

It is noteworthy that Article 27 of LPEA establishes that, all other things constant, local suppliers will be favoured with a price margin preference of up to 10% of bids from foreign competitors. That is to say, the same amount as established in the Federal law (Art. 38 of the PPA).

Reverse auctions: The state of Aguascalientes does not consider reverse auctions or OSDs as an available procuring mechanism.

Social witnesses: There is no mention of social witnesses in either the LPEA or the Procurement Manual.

Tender stage

1. CALL FOR TENDER

Calls for tender in Aguascalientes must be included in the electronic website of the *Oficialía Mayor* according to Article 61 of LPEA—in practice this is publicly announced in SISAI-Infomex and “*Hoy se Compra*”—. Even though the legal framework of public procurement compelling the publication of the call for tender in the state’s electronic public procurement system, it also has a mixed modality, which means for this state that bidders may choose to participate in person or electronically in the clarification meeting(s), the act of submission and opening of proposals and the act of award.

Several differences from the federal system are worth pointing out. First, Article 61 mentions that tenders are intended for local suppliers when these are to be financed with local resources. Second, if there are no local suppliers, procurement officials must invite at least three providers registered in the supplier registry. Finally, if there is only one bid or proposition presented during the tender, and the proposed price is lower than the estimated price obtained during the market research, then the outcome of the tender must be accepted. Another noteworthy element is that the terms of reference may be published up to two days before the due date for submitting proposals (Art. 62, LPEA). Thus, the call for tender does not require the inclusion of the terms of reference as they do at the federal level (Art. 29 of the PPA). Therefore, the terms of reference—that are necessary for clarification-meeting-questions—may only be available to any potential suppliers for two days before they can clarify their doubts. On the contrary, at the federal level, questions are answered on the basis of the call for tender, which must include the terms-of-reference.

Joint bids: These are accepted under Article 67 of LPEA as long as the bid establishes (to the satisfaction of the procuring institution) all the responsibilities that each separate company will have. There are no considerations on the effect of a potential reduction in the number of participants.

2. CLARIFICATION MEETINGS

There are no restrictions in the LPEA or the Procurement Manual for the clarification meetings. LPEA (Art. 62) specifies that the date and place for clarification meetings must be included in the terms of reference and Article 65 (LPEA) and Article 43 (Procurement Manual) establish that

clarification meetings must be carried out when and where these are established in the terms of reference. However, there is no mention or specific explanations in the procedures manuals.

According to the questionnaire answered by government officials, clarification meetings usually work as follows. First, suppliers provide the Procurement Committee with written questions regarding the terms of reference, and within the date and time indicated. Questions may be submitted either directly at the offices of *Oficialía Mayor*, through a private delivery service or through email in a Word file. Then these are reviewed and answered in the date and place established in the terms of reference.

Neither the LPEA nor the procedures manuals refer to on-site visits to suppliers before any contract is awarded. During the fact-finding missions it was remarked by public officials that this would be addressed in the new legislation.

3. RECEPTION OF PROPOSALS AND CONTRACT ASSIGNMENT

According to the questionnaire answered by public officials, there is a strict policy of no contact whatsoever with suppliers until the call for tender is announced. In case contact is made electronically, emails are erased without opening them.

All bids and proposals must be submitted in two sealed envelopes. The first one includes the technical proposal and the other the financial bid. That is, proposals are not accepted electronically (Art. 67, LPEA). All technical bids must enclose the financial guarantee determined in the terms of reference.

Aguascalientes opens bids in two-stages. First, there is a technical analysis that discards any proposals that failed to meet the exact requirements and then discards the corresponding suppliers (Art. 71, LPEA). Then it turns it over to the Procurement Committee that determines if the proposals are feasible. If any proposals are rejected, suppliers are informed in a written statement according to the terms of reference. The second stage is when economic bids are opened. Any bids that do not fall within the allowed price range are rejected. The contract winner is announced within 10 days of the projected day established in the terms of reference. If no winner is announced then another tender is programmed. If there is no winner during the second round, then a direct award or restricted invitation may be authorised.

4. FINANCIAL GUARANTEES

Percentages for financials guarantees are determined by *Oficialía Mayor* and published in the terms of reference according to Article 68 of the LPEA. The suppliers must hand these over after 10 days of the winners being announced and these are returned once the contract has been completed. Advance payments are allowed as long as the financial guarantees are presented beforehand and are mandatory (Art. 82, LPEA) for all goods that take more than ninety days to produce. *Oficialía Mayor* is responsible for interpreting when a contract has been breached. However, the Ministry of Finance is responsible for applying any economic sanctions for suppliers that fail to meet any contractual arrangements.

Post-award stage

1. COMPLAINTS

Article 118 of LPEA establishes that any complain may be filed to the Ministry of Oversight and Accountability whenever the law has been infringed to determine responsibilities. These cases must be filed in written form within three days of the announcement of the winners. There is no anonymity since the complainer must ascertain their legal interest in the complaint.

All complaints must establish evidence that the procurement process did not comply with the LPEA or the terms of reference. The Ministry then has 18 days (Art. 119, LPEA) to investigate and resolve the complaint, without considering any delays due to clarifications.

When any of the complaints are found valid, the Ministry may suspend the procurement process. Further still, the resolution may be challenged (Art. 121, LPEA) with the means established in the *Ley de Procedimiento Administrativo del Estado de Aguascalientes*, LPAEA.

Additionally, the LPEA contemplates the Ministry intervening as a conciliator between discontented parties (Art. 123, LPEA). It is therefore also responsible for organising the proceedings. When the issues are not settled through conciliations, then the parties may proceed through judicial channels (Art. 124, LPEA).

2. PENALTIES AND CONTRACT TERMINATION

According to the Procurement Manual of Aguascalientes (Art. 66), the government may apply penalties to suppliers that do not deliver the goods and services on time. These penalties are taken from the financial guarantees. The conventional penalty (Art. 67) is 0.2% of the total value of the contract per day. However, this amount must not surpass the total value, in which case the contract is rescinded. Contracts may be rescinded if any of the contractual obligations are not met in full. The Ministry of Oversight and Accountability is responsible for these tasks as well as for keeping the track record of suppliers that have failed to deliver in the past.

3. LIQUIDATION OF PAYMENT TO SUPPLIERS

Suppliers are paid within the limits established in the contractual arrangements (20 calendar days after the invoice is received). Officials interviewed for this study argue that most of the payments are completed within the time limits and thus has no use of short-term credits financed by neither private nor public institutions—such as “*Cadenas Productivas*” of NAFIN.

The explanation provided by public officials refers to that the internal payment system—called *Sistema Integral de Información Financiera* (SIIF)—, which discourages late payments. The Ministry of Finance administers this system which assigns a particular budget from the moment the requisition is approved. And, most importantly (following Article 25 of the LPEA), procuring areas are constrained to availability in the funds of the specific budget item assigned for any purchase. At the federal level and in other states, there are no such requirements. That is, the budget is appropriated until the contract is formalised—as required by Article 4 of the *Ley General de Contabilidad Gubernamental*. In any case, if suppliers are being paid on time, this will most likely increase the affluence of suppliers willing to sell to the government, thus encouraging higher competition in the procurement process. However, no statistics were provided to corroborate these facts.

Best practices

Manuals for procurement

Policy Dimensions: All

The existence of five different manuals —apart from the Public Procurement Act— related to public procurement means that procedures are more specific and allows for clear-cut responsibilities and tasks. Further still, they allow for procurement officials to take into account different considerations that could enhance the results of procurement.

During the fact-finding missions it was perceived that public officials responsible for public procurement from *Oficialía Mayor*, as well as from purchasing entities, have a clear understanding of procedures and legal issues involved in public procurement. However, these manuals may still be improved significantly to comply with OECD best practices.

Multiyear programming

Policy Dimensions: Planning and scheduling

Multiyear programming is considered a good practice because it allows for better programming and, in particular, it enables procurement officials to foresee potential opportunities for consolidation and the use of economies of scale. It is also a tool for achieving goals and objectives for the state's Development Plan.

Consolidated purchases

Policy Dimensions: Preventing misconducts / Administrative procedures

Consolidated purchases have increased in both volume and number in Aguascalientes over the years. Consolidation procedures have increased from 3 to 10 products and services since this method was allowed. Overall, consolidated purchases are used for standardised products such as office supplies and maintenance services. The OECD considers this as a good practice because this procedure allows public institutions to create savings. However, planning a consolidated purchase should consider that markets with few or no competitors could lead to higher prices. Consolidation requires the procuring areas to plan with caution so that the different departments involved can avoid repeating purchases.

Consolidates purchases also contributes to a better procurement planning, a better administration of resources, a better distribution of purchases and a more efficient consumption of resources.

Accessible and transparent information of providers

Policy Dimensions: Transparency and access to information

The Institute of Entrepreneurial Management and Regulatory Reform of Aguascalientes administers the only supplier registry that exists in the state. The LPEA considers this mechanism since 2000. The way the information is presented encourages transparency in the procurement

process, as anyone can see which suppliers are selling to the government and which contracts were signed.

This catalogue, available on a government website¹² and open to everyone, includes a specific code number, and can be searched in one of ten general categories (such as materials and supplies, movable and immovable property etc.) and then in another two sub groups that make it easier to identify particular suppliers. The contracts alternatively may be accessed through a different section of the same platform. The provider catalogue only includes participants who have not committed any form of fraud or irregularity. This registry makes it more unlikely for the government to hire informal companies, because the Ministry of Finance verifies their legal standing.

E-procurement

Policy Dimensions: Transparency and access to information / Administrative procedures

Agascalientes has developed an electronic procurement system. A department in *Oficialía Mayor* administers this system, which was designed by the Institute of Entrepreneurial Management and Regulatory Reform and takes into account transparency guidelines established by the transparency authority, ITEA. All procurement procedures are run through this platform.

The platform also includes the website *Hoy se compra*, a user-friendly webpage that publishes calls for tenders and restricted invitations, as well as procurement documentation. It is part of a larger mainframe that merges all state government services and websites and makes them available to the general public.

Bids must still be submitted in paper because electronic submittals are not instructed in the LPEA—according to public officials this should be addressed by the new procurement legislation—. *Hoy se Compra* has a particular section devoted to estimating prices for direct purchases, which enables fast transactions from small and local businesses. This must be considered an innovative step for estimating local prices.

It is noteworthy to recall the strict policy of no contact with suppliers until the call for tender is announced and that, in case contact is made electronically, emails are erased without opening them.

Hoy se compra website displays online solicitations for both state government and state-owned agencies. All government contracts (financed with local revenue) can be downloaded on this site, and it is possible to search contracts according to different providers or by categories of goods and services. Since most products have a specific category in the system the website is useful for identifying historical purchases and prices.

Certainty of payments to suppliers

Policy Dimensions: Preventing misconducts / Administrative procedures

The LPEA states in Article 25 that purchasing areas cannot procure if there are no funds. This is a good practice because it becomes much harder to postpone paying to the suppliers, which concurrently reduces their incentives to overcharge prices and increases the likelihood

¹² See: http://eservicios.aguascalientes.gob.mx/segiservicios/hoy_se_compra/View/Compras/proveedores.asp.

of suppliers wishing to sell to the local government. Moreover, since suppliers are paid without delays, this practice prevents borrowing from financial institutions.

However, there is a downside to this practice: if procurement gets deferred because of particular problems to the federal or local treasuries, the requiring areas cannot proceed with any purchases. Thus, postponements of federal transfers could affect the timely provision of public services and could make it difficult for requiring areas to comply with the authorised procurement programme. Alternatively, the annual procurement programme could risk being too imprecise, because uncertainty in the transfers does not allow for planning according to timelines in the procurement programme.

Coahuila

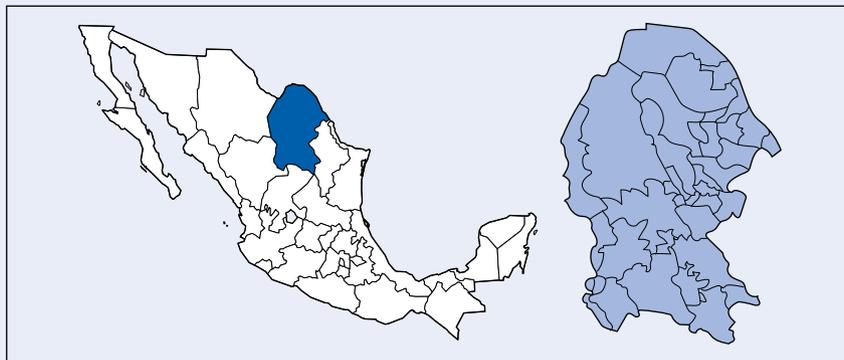
Coahuila spent on procurement approximately 775 million pesos (USD 50 million) in the period January – October of 2014. According to official data, 94% of state purchases were subject to competitive national tenders and 35% of the successful bidders were locally based.

The law governing public procurement is the Procurement Act (*Ley de Adquisiciones, Arrendamientos y Contratación de Servicios para el Estado de Coahuila*, LAACSEC). This law, however, does not have regulations or bylaws for its implementation. Nevertheless, the areas responsible for carrying out the procurement processes have developed organizational manuals and particular procedures for each one. The Ministry of Finance is the agency responsible for carrying out procurement processes and has a specialized area (apart from public works), which monitors and administers the acquisitions of state purchases. This area, in turn, is supported by the Ministry of Oversight and Accountability (*Secretaría de Fiscalización y Rendición de Cuentas*, SEFIR).

As in the federal framework, the Organic Law of the State of Coahuila (*Ley Orgánica de la Administración Pública del Estado de Coahuila*, LOAPEC) establishes —as principles of public administration— the efficiency in the use of resources, the promoting of competitiveness, the ensuring of transparency in the use of resources and the promoting of civic participation.¹³

While this document was being prepared, Coahuila was in the process of adopting a new procurement law that will add new mechanisms to the procurement process. According to interviews carried out during the fact-finding mission, these include social witnesses and the implementation of OSDs (reverse auctions).

¹³ Article 8 of the Public Administration Act for the State of Coahuila de Zaragoza

Box 6. **Coahuila**

Located in northern Mexico. Coahuila de Zaragoza is the third largest state in the country and as most of the states in the north-central region of the country it has a well-developed metallurgic and automotive industry, and in recent years it has become a cluster for the aerospace industry.

State highlights

Population (2010): 2,748,391 (16th of 32 federal states)

Territory: 151,595 km² (3th of 32 federal states)

Municipalities: 38

Capital: Saltillo

Political

Government (2015): PRI

Congress: 25 seats (PRI 64%, PAN 16%, others 20%)

Economy

GDP 2012 (PPP): 54,958 million (8th of 32 federal states)

Income per capita 2012 (PPP): 2,522 (5th of 32 federal states)

HDI 2010: 0.776 (5th of 32 federal states)

Education

Average years of schooling: 9.5 (3rd of 32 federal states)

Corruption and Perception Index 2010: 8.3 (18th of 32 federal states)

Competitiveness Index (2014): 48 (10th of 32 federal states)

Variables from: INEGI, PNUD, Mexican Chapter of Transparency International and Mexican Institute for Competitiveness.

The public procurement of the government of Coahuila was worth approximately \$50 million in 2014 ⁽¹⁾. According to official data, 94% of state purchases were subject to competitive national tenders and 35% of the successful bidders were locally based. The law governing public procurement in the state of Coahuila de Zaragoza (hereinafter Coahuila) does not have a fixed set of rules. However, the coordination responsible for carrying out the procurement processes does have organizational manuals and particular procedures for each area. In fact, the Finance Ministry is the body responsible for carrying out the procurement processes and has in place a special coordination (which is has no connection with the tendering process, public works or services), which monitors and administers the acquisition of state purchases. Thus, in turn, is supported by the Ministry of Auditing and Accountability.

For its part, the organic law of Coahuila takes into account the manner in which (while maintaining firm the principles of public administration) resources may be used efficiently. It emphasizes the importance of competition, guarantees the transparency in the use of resources and encourages the responsible participation of civil society. ⁽²⁾

While this document was being prepared, Coahuila was in the process of adopting a new law for the acquisition of state purchases which will add further checking mechanisms to the procurement process. These include social witnesses and the implementation of later discounts for those who observe the rules of fair play.

3.3.1. Regulatory framework

Since 2011, the State of Coahuila has put in place four new policy norms to strengthen transparency and accountability.

- 1) An efficient and orderly administration.
- 2) Responsible management of Public Finances
- 3) Government innovation.
- 4) Government transparency.

Regulatory reforms

Since 2011, the State of Coahuila has put in place four new policies to strengthen transparency and accountability:

- a. An efficient and orderly administration.
- b. Responsible management of public finances.
- c. Government innovation.
- d. Government transparency.

According to the Mexican Institute for Competitiveness (IMCO), Coahuila ranked fourth among the 32 states of the Republic in 2012 in terms of competitiveness. However, it ranked several places below in public finances because its debt rose from 2% of its federal revenues in 2005 to 25% in 2010. By 2014, the state moved up some places in the Index of Budget Information (*Índice de Información Presupuestal*, also published by IMCO) occupying the sixth position out of 32.

The following are amongst Coahuila's main innovations in the area of regulations: the Prevention and Punishment of Corrupt Practices in Procurement Act,¹⁴ published in October 2012; the Accountability and Auditing Act,¹⁵ published in November 2014; a new Access to Public Information and Protection of Personal Data Act,¹⁶ published in August 2014. In addition, the Procurement Act was modified in 2012 as well as the law governing the responsibilities of public servants in 2014.¹⁷

In the area of transparency, Coahuila has advanced innovative features. During the period of 2012-2015, it opened spaces for citizen participation and made daily tasks of public administration more transparent. This latter innovation is divided into five transparency areas: norms, public information, as well as administrative, educational and financial transparency. One example of this effort is the transmission of tendering processes live on the web.

According to the study carried out by COFEMER (2012) that used the *Indicators of Regulatory Management Systems* of the OECD, Coahuila possesses clear and complete procedures for drawing up legislative initiatives and administrative provisions. They are superior to their equivalents in other OECD countries.

Procurement agencies and actors

Ministry of Finance

The institution mainly responsible for public procurement in Coahuila is the Ministry of Finance (*Secretaría de Finanzas, SEFIN*). Article 99 of the Constitution of Coahuila states that SEFIN is responsible for keeping, collecting, and distributing public funds.

In 2014, the number of employees that worked at SEFIN was 51, of which 39% (20 employees) were directly involved in procurement procedures. This area has duplicated the number of staff directly involved with the procurement process from 2010 as seen in the table below.

Table 6. **Staff involved in procurement**

Year	Employees	Employees directly involved with procurement
2010	48	10
2011	39	9
2012	36	8
2013	37	9
2014	51	20

Source: SEFIN.

¹⁴ *Ley para Prevenir y Sancionar las Prácticas de Corrupción en los Procedimientos de Contratación Pública del Estado de Coahuila de Zaragoza y sus Municipios* (Law to Prevent and Sanction the Corruption Practices in the Public Procurement Procedures of the State of Coahuila de Zaragoza and its Municipalities).

¹⁵ *Ley de Rendición de Cuentas y Fiscalización Superior del Estado de Coahuila de Zaragoza* (Law of Accountability and Superior Control of the State of Coahuila de Zaragoza).

¹⁶ *Ley de Acceso a la Información Pública y Protección de Datos Personales para el Estado de Coahuila de Zaragoza* (Law on Access to Public Information and Protection of Personal Data for the State of Coahuila de Zaragoza).

¹⁷ *Ley de Responsabilidades de los Servidores Públicos Estatales y Municipales del Estado de Coahuila de Zaragoza* (Law on Responsibilities of State and Municipal Public Servants of the State of Coahuila de Zaragoza).

In the same way, the Organic Law of Public Administration (*Ley Orgánica de la Administración Pública del Estado de Coahuila, LOAPC*) in Article 29, Subsection II states that SEFIN is in charge of the management, planning, programming, budgeting, implementation, and evaluation of activities concerned with the treasury, the economy, finances, and taxes. Moreover, it must coordinate the functions of the Procurement Committee and Equity transactions.

SEFIN authorizes the use of public resources and the assigning of contracts through the General Directorate of Acquisitions (DGA).¹⁸ The DGA is a part of the Sub-secretariat of Administration and has a staff of 46, who are in charge of procurement procedures (this is without taking into account staff from other areas). It is worth noting that the DGA has no voice in public works.

Ministry of Oversight and Accountability

The Ministry of Oversight and Accountability (SEFIR) is in charge of supervising that agencies comply with the regulations concerning planning, budgeting, governmental accounting, the contracting of procurement, leasing, services and the proper carrying out of public work projects (Art. 37, LOAPC). Moreover, SEFIR may propose reforms to regulatory frameworks, implement the rules governing public procurement, monitor procedures, publish information about procurement, generate statistical data and provide information to internal control units or the public in general.

The SEFIR is also responsible for establishing the norms that govern audits, inspections, and evaluations of other departments. Additionally, it encourages more efficient operations and makes sure that the aims included in public programmes are reached. This unit is also responsible for keeping the supplier registry of the State updated. It must also deal with the complaints and disagreements of suppliers that arise from particular processes of contracting.

Among other innovations for which SEFIR has been responsible are the following: the live transmission of all phases of tendering processes; the Integral System for the transparency of public works for the development of the Metropolitan Areas and the Open Government website of Coahuila which uses and implements the model suggested by the Organization of American States (OEA). Citizens' observatories, a citizen's budget, and social comptrollers have also been introduced.

Box 7. **SEFIR Activities**

According to government officials, opening tenders to public scrutiny has created a feeling of confidence among the general public. However, this perception has not yet been measured.

SITODEM is a modern oversight instrument. It has brought citizens closer to governmental activities by geo-referencing expenditure. It presents information about the Integral System of Public Investment in a precise and easy to understand format.

The information made transparent includes the following: the names of approved public works and programmes, their cost together with the amount already spent, public work projects, the responsible department, beneficiaries and auditors. However, information about contractors or supplies is still lacking.

¹⁸ Except in the following cases: the Coahuila Institute of Educational Infrastructure; the System for the Integral Development of the Family and the Protection of its Rights; the Secretariat for Women; the Technological Universities and Institutes.

Procurement Committee

The Procurement Committee in Coahuila has technical, consultative, and advisory responsibilities. It is composed of SEFIN, SEFIR and the requiring agencies. It revises and approves all the calls for tender, the terms of reference and their annexes (including the catalogue of articles with specifications). It also revises the evaluation of proposals, their economic framing, and the final decisions to award contracts.

Among the committee members are experts invited from the acquiring agencies that have a voice (but cannot vote) in the revision of the process and may issue an opinion about the qualities of the product being bought. They help to prevent suppliers from offering goods or services that do not provide benefits in terms of price or quality. However, the committee cannot comment on the need to purchase or on the need for market research for the goods/services being discussed.

According to the manuals of the Procurement Committee, government agencies may voice opinions in Committee's meetings and oversee, by means of a representative, the correct application of the regulatory norms. In addition they may express opinions about the decisions taken by the Committee.

The Committee has the following as its main responsibilities:

- Reviewing and coordinating operational procurement systems and those related to warehouse management.
- Analysing the documents submitted by the agencies regarding acquisitions.
- Advising on the criteria and guidelines for procurement.
- Scrutinizing procurements carried out through public tenders or invitation to at least three suppliers.
- Submitting proposals for the maximum amounts that State departments can spend on procurement.

Once the criteria have been revised and approved by the Committee, the Directorate of Competition and Tenders of the SEFIN monitors the procurement process.

Institute for Transparency of Coahuila

The Institute for Access to Public Information of Coahuila (ICAI) is the local five-member body for ensuring access to information and transparency. In 2014, the State Assembly approved a new Transparency and Access to Public Information and Protection of Personal Data Act (LAIP). This amended law imposes new obligations of transparency on state agencies such as the publication of the registers of suppliers and contractors and the lists of the beneficiaries of social programmes.

The second section of the LAIP governs the information that must be made public and the government agencies that are obliged to supply it. It is worth noting that normal practice includes both written and electronic publication of information. Regarding procurement, it states (in Art. 21) that public agencies must keep printed copies for direct consultation and distribution by electronic means of the following information:

I. For tenders and restricted invitations:

- a. The tender or call for tender issued
- b. The names of the participants or suppliers
- c. The name of the winner together with an explanation of the reasons for the choice of this supplier
- d. The name of the person responsible for supervising the work project or service
- e. The number of the contract, the date it was signed, the cost, and the time allowed for its delivery or execution
- f. The mechanisms for monitoring and surveillance including, where appropriate, studies of possible effects on the environment and urban impact
- g. Any amendments to the agreement regarding its purpose or date of execution delivery.
- h. Progress reports on the work or services contracted.

II. For direct awards

- a. The motivation and legal basis for the project /service.
- b. Where appropriate, the bids that have been considered specifying the amounts and the names of suppliers.
- c. The name of person or organisation to which the contract has been awarded.
- d. The administrative unit which solicited the project /service and that is responsible for overseeing its delivery.
- e. The number, date of signing, and amount of the contract and the time allowed for its delivery or execution.
- f. The mechanisms for monitoring and surveillance, including, where appropriate, studies of possible effects on the environment and urban impact.
- g. Progress reports on the work or services contracted.

Audit Office

The Superior Audit Office of Coahuila (ASEC) is in charge of auditing the public accounts of the government and other autonomous bodies, as well as the spending of different federal funds.

At first glance, the norms that regulate auditing at this high level vary widely. They include federal, state, and local laws in addition to the rules and regulations that govern the operation of annual audit programmes. According to such regulations, ASEC has the responsibility of overseeing that funds are spent as established by the annual plan for acquisitions and that all legal requirements are complied with. The fact-finding missions carried out by the OECD seem to indicate that the regulations are reasonably observed at the state level though not, perhaps, at the municipal level. ASEC staff commented during the fact-finding mission that decisions to use direct award processes are sometimes of questionable justification. According to interviews, lack of proper justification for direct awards rarely occurs in the state government, but more frequently in the municipalities.

The Procurement process

The following section describes the procurement process, mirroring the process detailed in Chapter 2 for the federal level.

Pre-tender stage

1. PLANNING AND SCHEDULING OF ACQUISITIONS

Each department of the state administration, as well as all autonomous bodies, takes individual responsibility for this stage. The pre-tendering begins with the formulation of an Annual Operative Programme (*Programa Operativo Annual*, POA) by each department. These plans are sent to SEFIN and SEFIR for revision and approval by no later than January the 30th of each year.

The POA includes a so-called Estimated Annual Procurement Programme (*Programa Estimado Anual de Adquisiciones*) that is revised by the Deputy Secretary of Expenditures of SEFIN. Once approved by the Executive, it becomes the Annual Procurement Programme. This programme is the model that must be followed during the budgetary year and dictates the manner in which each department carries out its procurement.

The guidelines for the Procurement Programme are established in the Procurement Act. According to Article 11 of LAACSEC, the departments should plan their acquisitions taking into account their needs and must have their Annual Procurement Programme and budgets approved by SEFIN.

In terms of adjusting procurement planning to its real expenditure, it is worth noticing that the central government underspent a significant amount of resources, as seen in the table below. This means that some resources planned for procurement are not spent (in average 31% of underspending between 2012 and 2015).

Table 7. **Planned expenditures and real expenditures (Mexican pesos)**

Year	Approved amount of expenditure	Real expenditure	Percentage of Underspending
2012	\$1,241,639,725	\$754,542,944	39%
2013	\$819,342,257	\$721,641,047	12%
2014	\$1,018,714,130	\$594,787,015	42%

Source: SEFIN.

2. REQUESTS FOR PROCUREMENT

The next stage involves a requisition by a department or acquiring entity and its revision and approval by the responsible authorities (*Oficialía Mayor*). This process takes approximately eight days.

Departments and agencies capture the pre-requisition on the Integral System of Acquisitions (*Sistema Integral de Adquisiciones, SINTAD*), which is for internal use. The Direction of Management

and Control of Requisitions (an office of the Directorate of Acquisitions) is charged with revising and approving the procurement, whether it arises from the Procurement Programme or not. Once this process has been concluded, the Sub-secretariat of Expenditures assigns the necessary resources to initiate the process of procurement.

Along with this process, the Sub-secretariat for the Control and Supply of Goods and Materials of SEFIN checks the availability of the goods through SINTAD and the Warehouse and Inventory Control (CAE). Finally, the requisition is received, and the annexes and signatures of authorization are verified.

3. MARKET RESEARCH

There is no obligation in law to carry out market research before the call for tenders. The only exceptions to this rule occur when the tender is international or when there are changes in the agreed purchase price. However, market studies are often made because SEFIN obliges the acquiring departments to carry them out.

Departments and other bodies, having taken a decision, may ask permission from the internal comptrollers to contract technical assistance to do market research, (Art. 50, LAACSEC) which should include the investigation of prices, levels of quality, and other features.

In the case of direct awards, the acquiring departments must present at least three price estimations. When the purchase is less than \$1,250 USD only one price estimation is required.

4. PROCUREMENT DESIGN

An important innovation included in the reform of 2012 is the reduction in the amount allowed for a direct award. In the present regulatory framework, the LAACSEC distinguishes three processes by which departments may acquire goods (see table 8): a national or international public tender (the generic case), an invitation to at least three suppliers and direct award.

Table 8. **Procurement procedure and range of purchases**

Procurement Procedure	Range of purchase as daily minimum wage ¹⁹	Approximate amount (2015, USD)
Public tender	> 15, 000 m.w.	> \$ 80,000
Restricted invitation to at least 3 providers	4,460 < and > 17,850	> \$ 20,000 < \$ 80,000
Direct award (3 estimations)	305 < and > 4,460	> \$ 1,400 < \$ 20,000
Direct award	< 305 m.w.	< \$ 1,400

The amounts are approved every year in the state budget. Until 2012, the maximum amount permitted for a direct award was \$67,000 USD. Before this year, most purchases were carried out using this procedure.

¹⁹ The minimum wage in the state of Coahuila was approximately \$67 pesos a day or \$4.5 USD.

The number of tenders increased almost exponentially from 2010 to 2014, as seen in table 9. Accordingly, the value of the contracts signed after tenders increased almost 18 times in the same period.

Table 9. **Number of public tenders and value of contracts**

Year	Total number of tenders	Value of contracts in millions of pesos	Value in millions of dollars (2015)
2010	3	\$136	\$9.1
2011	4	\$77	\$5.2
2012	46	\$692	\$46
2013	166	\$607	\$40
2014	299	\$2,547	\$170

Source: SEFIN.

While public tenders saw a significant increase between 2010 and 2014, most of them were national tenders. From 2010 to 2013, only three international tenders were held. However, 2014 was a surprisingly good year for international tenders because the central government carried out 36 open international tenders that summed up to \$429 million pesos (approximately \$28 million USD), almost 17% of the value of all contracts assigned through all tenders that year. Another surprising fact is that the central government of Coahuila carried out all of its tenders using electronic procedures. That is, there were no face-to-face proceedings in the period between 2010 and 2014.

On average, exemptions to tenders summed 41% of the value of all non-tender procedures (direct awards and restricted invitations) in the 2010-2014 period, as showed in table 10.

Table 10. **Exemptions to tenders (direct awards and restricted invitations)**

Year	Number of exemptions	Value of contracts in millions of pesos	Value as a percentage of non-tender proceedings
2010	13	\$51	48%
2011	15	\$38	36%
2012	8	\$4	9%
2013	9	\$85	68%
2014	41	\$312	45%

Source: SEFIN.

Regarding restricted invitations, the number increased from 2010 to 2014. However, the value of the contracts signed after these procedures were carried out varied significantly. In particular, the amount of the contracts fell to less than 400 thousand dollars in 2012 and 2013, but summed over \$17 million USD in 2014. Table 11 summarises these results.

Table 11. **Restricted invitations**

Year	Total number of restricted inv.	Value of contracts in millions of pesos	Value in millions of dollars (2015)
2010	7	\$24	\$1.5
2011	10	\$46	\$3
2012	12	\$5.6	\$0.4
2013	20	\$5	\$0.3
2014	89	\$262	\$17

Source: SEFIN.

Finally, the amount of proceedings and the value of the contracts that originated from direct awards tripled between 2010 and 2014 period, as seen in table 12.

Table 12. **Direct awards**

Year	Total number of direct awards	Value of contracts in millions of pesos	Value in millions of dollars (2015)
2010	203	\$83	\$6
2011	356	\$61	\$4
2012	477	\$32	\$2
2013	307	\$119	\$8
2014	773	\$430	\$28

Source: SEFIN.

Evaluation Criteria: The LAACSEC specifies that the evaluation criteria to be used by the Committee should be clearly defined, however it does not lay down any specific option. Article 58 of LAACSEC mentions these criteria only in the sense that they have “complied” or “not complied” with the required guidelines.

Reverse auctions: The LAACSEC makes no provision for reversed electronic bidding. As of May 2015 a proposal to include it in the system was being considered.

Social witnesses: Social witnesses have not yet been considered by the LAACSEC. During interviews with state officials, a project to establish guidelines for the use of social witnesses in procurement procedures was mentioned to be in the pipeline.

Tender stage

1. CALL FOR TENDER

Public tenders are the default method of purchase. Article 42 of the LAACSEC states that the tendering process should begin with the publication of a call for tenders in a newspaper of

wide circulation. In the case of an invitation to at least three suppliers, it begins with the delivery of the first invitation. All procurement processes involving federal budget must be published on CompraNet. The Directorate of Competition and Tenders is charged with the responsibility of overseeing this stage.

For tenders financed with federal funding, the terms of reference are delivered free of charge, but those financed with state funds have a cost which does not follow any specific methodology. The terms of reference for the tenders may be acquired up to 7 days before the opening of propositions (Art. 7, LAACSEC).

A limiting factor in public procurement in Coahuila is the requirement for physical presence of suppliers during purchasing processes. Although Article 43 of the LAACSEC stipulates that participants may submit their proposals electronically, in practice this does not happen. During interviews it was clear that all purchasing processes are conducted in the face-to-face format. Moreover, it should be noted that, in order to reduce suppliers' costs, these are allowed to participate in the purchasing process without being registered in the supplier registry. Their registration is only mandatory if they are awarded the contract.

The law favours local suppliers, granting them a margin of preference of up to 5% in the amount of their bids (Art. 18, LAACSEC). Additionally, one common requirement, according to the interviews carried out, is that goods should not come from Asia (an exception is made for Japan).

Joint bids: Legal framework allows granting the same contract to more than one bidder when this possibility is established in the evaluation criteria of the call for tender and when the difference between the lowest bid and the others does not exceed 5%.

2. CLARIFICATION MEETINGS

The call for tender must specify the date, time and place of clarification meetings, Article 51 of the LAACSEC does not place a limit on the number of meetings. This depends on the kind of goods or services to be discussed and the suppliers. However, at least one meeting is obligatory.

The meetings may take place from the fourth day after the publication of the tender conditions to the seventh day before the presentation and opening of the proposals. The assistance of the suppliers is optional.

A recent (2012) reform to this process states that, should the dates of presentation and opening of bids be postponed (as a result of the clarification meetings) this must be published on CompraNet. In addition, the new dates must be at least seven days after the last meeting.

3. RECEPTION OF PROPOSALS AND CONTRACT ASSIGNMENT

The bids of the suppliers are delivered physically in a sealed envelope and include technical and economic proposals. If the call for tender requires it, these must also include a digital copy of the information. When the bids are opened, government officials, representatives of the private sector, and candidate suppliers may be present.

The interested parties must acquire the terms of reference to participate (when the procurement involves the use of state resources) and must declare —together with their economic proposal— that their prices are not subject to unfair conditions (i.e. collusion).

If suppliers are awarded the contract, they must present a valid registration in the supplier registry (which is granted by SEFIR). In the case of public tenders, the deadline for the presentation of proposals may not take less than seven days or more than fifteen calendar days from the date of publication of the call for tenders. In the case of international tenders, the deadline may not be less than twenty calendar days.

The envelopes are opened, and the technical and economic proposals are analysed by the Acquisitions Committee. Once the bids have been reviewed, a decision is taken, and the contract is awarded to the bidder who most closely meets the criteria established in the terms of reference and can show evidence of solvency. In cases where 20 more suppliers meet all the technical criteria, the contract is awarded to the proposal with the lowest price.

4. FINANCIAL GUARANTEES

The suppliers must guarantee their bids with a minimum deposit of 5% of the economic proposal. If they turn out to be winners, they must produce a further compliance guarantee of between 10% and 20% of the value of the contract. The guarantees take the form of insurance policies issued by a Mexican bond company.

An exception to this is made in the cases where the amounts of the contracts are less than 800 minimum salaries (3,600 USD). These may have a different type of guarantee, in proportion to the amount of the proposal.

Post-award stage

1. COMPLAINTS

Article 60 of the LAACSEC states that a decision by the Committee is final. However, there is the possibility that a supplier may raise an objection or file a complaint. These are presented before the SEFIR. They may have to do with any of the actions which comprise the process of contracting (call for tenders, criteria, clarification meetings, opening of the envelopes or the final decision).

In the particular case in which an objection is raised because a department impedes the formalisation of a contract, the supplier has a period of ten working days to present it.

These disagreements may be presented in writing or electronically. In the latter case, electronic signature must be used. It has emerged from the interviews that, since the live transmission of tenders started, there has not been a single complaint.

Table 13. **Complaints and disagreements**

Year	Complaints and disagreements
2010	12
2011	2
2012	0
2013	10
2014	2

Source: SEFIR.

2. PENALTIES AND CONTRACT TERMINATION

The departments which are contracting must specify the penalties to which suppliers will be subject to in the case of delays or breach of contract. These penalties are determined by the amount of goods/services being acquired.

Article 77 of the LAACSEC states that departments may cancel their contracts with suppliers at any time if these do not comply with the terms of reference. A contract may also be terminated early. However, in cases where the cancelation of the contract may cause damage to, or affect the functions of the department, an option exists to deduct amounts from the final payment.

According to SEFIR, only nine providers were blacklisted between 2010 and 2014 and no public official was sanctioned for misconducts regarding procurement procedures. Additionally, no penal processes have been initiated or passed on to the *Ministerio Público* (district attorney) for prosecution.

3. LIQUIDATION OF PAYMENT TO SUPPLIERS

The periods of time for the payment and liquidation of contracts are established in the terms of reference as well as in the contract between the purchasing agency and the supplier. The LAACSEC states that these periods of time may not exceed 90 working days from the date of presentation of the invoice.

Allegedly, the suppliers are paid within the allowed time frame (estimated times need confirming), however, no data was available to verify this claim. Additionally, it was argued that the departments possess budgetary autonomy to pay in shorter period of time (three days). Nonetheless, the press has reported a severe delay of payments due to mismanagements of the administration previous to 2011.

Best practices

Collaboration between the Executive and Legislative branches

Phases: All

Coahuila has had a number of reforms and amendments that are relevant to the procurement process in recent years (most notably, those regarding transparency, prevention of corrupt practices and the responsibilities of public servants). This intense activity is an example of effective coordination and collaboration between the two branches of government and reflects real interest on behalf of the State to improve the legal framework.

Greater transparency requirements in public procurement

Phases: Post-award

The most recent transparency act (2014) includes a larger number of agencies that are bound to the law. Further still, it includes the obligation of publishing the supplier registry. In particular there is an extensive list of requirements that must be published electronically for either tenders or direct awards.

Spaces for citizen oversight

Phases: All

The state of Coahuila has created spaces for citizen oversight by means of creating committees (*Observatorios Ciudadanos*) that encourage citizens to monitor procurement activities. Such have the potential to increase the accountability of public spending. Additionally, the emphasis on encouraging citizen participation has led to information technologies that are more accessible to the general public. One notable example of the latter is the geo-referenced system for expenditure in public works, (*Sistema de Información y Transparencia de Obras para el desarrollo metropolitano*) SITODEM.

Video recording and broadcasting of tender procedures

Phases: All

Beginning in 2011, the government of Coahuila has broadcasted all of its tender proceedings and posted the videos on the internet.²⁰ This practice increases transparency and provides accessible evidence to participants of the proceedings. This in turn may reduce the number of disagreements and complaints because the videos allow disgruntled parties to review the proceedings before filing complaints.

Open government standards in website

Phases: All

The website that lodges procurement information for Coahuila complies with the Open Government standards suggested by the Organization of American States. Having an open government policy is necessary to increase transparency and allows for greater accountability and, additionally, makes access to procurement information more accessible to the general public.

Pre-Budget Annual Procurement Programme

Phases: Pre-tender: Planning and programming

Coahuila has a planning document called the “Estimated Annual Procurement Programme” that is written before the approval of the annual state budget. This document is then approved as the Annual Procurement Programme. The existence of this document suggests that the procurement budget is adjusted to planning, and not the other way around. Moreover, the existence of such a document may allow for a more conscientious planning (and budgetary) process(es) and potentially increase the efficiency of public expenditures.

Internal procurement system linked with warehouses

Phases: Pre-tender: Planning and programming

Coahuila has an internal procurement system called *Sistema Integral de Adquisiciones*, SINTAD. This system is linked to the availability of goods in the warehouses operated by the state

²⁰ <http://www.sefircoahuila.gob.mx/>.

government. Having this information increases administrative efficiency and reduces the costs of planning.

Direct awards that require price estimations

Phases and stages: Pre-tender - Procurement design

Coahuila considers two types of direct awards depending on the amount of the expected contract. If the direct award is on the higher end of the authorised amounts (between \$1,400 USD to \$20,000 USD) the requiring areas must include three different price estimations. This allows public servants to calculate more accurate reference prices. Smaller direct awards do not require price estimations, allowing for timely purchases.

Broadcasting services included in the supplier registry

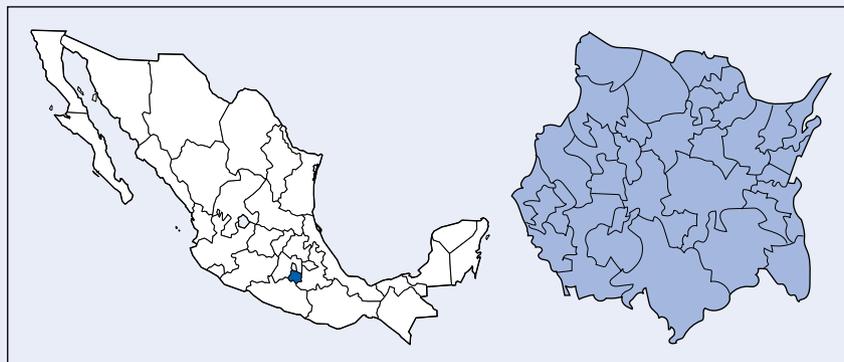
Phases and stages: All

Coahuila includes broadcasting services in their supplier registry. This increases accountability and transparency and is particularly relevant to oversee the payments made to media companies during electoral campaigns.

Morelos

Morelos spent on procurement approximately \$1.8 billion pesos (approximately \$116 million USD) in the 2012-2014 period (an annual average of approximately USD 38 million). While specific statistics on how these amounts were spent was not provided, it was suggested that the Ministry of Culture, the Ministry of Social Development, the State Commission on Public Security and the Attorney General's Office are the government agencies with the highest expenditures. In particular, the goods bought are mostly computer equipment and office furniture and stationery. In the case of the state attorney's office, the largest expenses were for forensic laboratory reagents, training and security services.

Morelos has had two laws governing the procurement process. The first was published in 1989 and was replaced in 2008 by the current procurement Act (*Ley sobre Adquisiciones, Enajenaciones, Arrendamientos y Prestaciones de Servicios, LAEAPS*). In 2009, it subsequently enacted regulations that set out the arrangements for ensuring compliance with the aforementioned law. Finally, it is noteworthy that the central government of Morelos does not have procurement manuals or guidelines that define processes or further detail civil servants' responsibilities.

Box 8. **Morelos**

Located in centre Mexico, Morelos is one of the country's smallest states. Its economy is primarily dependant on services (commerce, restaurants and accommodations) as well as manufacturing industry: automotive, textile, paper, cement and food; that is located mainly in industrial hubs located in the municipalities of Cuautla and Emiliano Zapata.

State highlights

Population (2010): 1,777,227 (23th of 32 federal states)

Territory: 4,490 km² (30th of 32 federal states)

Municipalities: 33

Capital: Cuernavaca

Political

Government (2015): PRD

Local congress (seats): (PRI 17%, PAN 14%, PRD 31%, others 38%)

Economy

GDP 2012 (PPP): 19,708 Million (26th of 32 federal states)

Income per capita 2012 (PPP): 11,089 (22th of 32 federal states)

HDI 2012: 0.749 (14th of 32 federal states)

Education

Average years of schooling: 8.9 (14th of 32 federal states)

Corruption and Perception Index 2010: 6.7 (10th of 32 federal states)

Competitiveness Index (2014): 67 (9th of 32 federal states)

Variables from: INEGI, PNUD, Mexican Chapter of Transparency International and Mexican Institute for Competitiveness.

Regulatory reforms

In December 2007, the Congress of Morelos published the Regulatory Improvement Act (*Ley de Mejora Regulatoria para el Estado de Morelos, LMREM*). This law contemplates the following:

- Creation of the State Commission for Regulatory Improvement and its Board of Directors
- Integration of a State Council for Regulatory Improvement in the Public Administration and various sectors of society
- Development of annual programmes for Regulatory Improvement
- Creation of the State Register of Procedures and Services
- Implementation of the Manifesto of Regulatory Impact, which promotes the benefits of implementing regulatory reform
- Creation of the Supplier Registry
- A System for Rapid Business Start-Ups

According to a study by the COFEMER (2012) on regulatory reform in the states, Morelos is ranked 14 out of 32 in regulatory management with a score of 38/100, approximately 29 points below the average of OECD countries (67/100).

In general, the government of Morelos has promoted three important pillars for regulatory reform: local regulatory reform, transparency and public consultation, and strategies to improve regulatory policy. Regarding the aspect of local regulatory reform, the state of Morelos has made efforts to improve its legal framework and establish clear objectives and principles of regulatory quality. Although Morelos finds itself below the OECD average, it has the highest rating in terms of coherence between economic policies at state, municipal and federal competition policy, trade and the protection of consumers. The largest areas of opportunity are the low level of skills of the staff responsible for implementing the regulatory assessments and little to no participation of the local Congress in strengthening the regulatory quality of the state.

Additionally, the state of Morelos is in the group of states with the highest performance in the area of filing complaints and disagreements, and in complying with the regulations and administrative review processes. However, the state is still lacking in efficient risk analysis, or periodical assessments and evaluations regarding regulatory reform.

Supplier registry

In Morelos it is not a requirement to be subscribed to the supplier register in order to participate in tenders. However, it is a requirement to be on call for the restricted invitation procedures and direct awards. Two characteristics of the supplier registry stand out. First, the entire subscription is carried out online,²¹ so interested parties must submit all documentation through the website of the Unit for Awarding Contracts (*Unidad de Procesos para la Adjudicación de Contratos, UPAC*) to verify. Second, the requirements to subscribe are very few and, according to the interviews carried out during the fact-finding missions, this has had the consequence of

²¹ See: www.proveedores.morelos.gob.mx.

increasing the registration of suppliers from other states. The requirements to subscribe are as follows:

- a) For people: Birth certificate, CURP (national registration number), an official identification, social security registration (IMSS)
- b) For businesses: Business charter, tax identification number, social security registration (IMSS), proof of address, and identification of official representative.

Procurement agencies and actors

Unit for Awarding Contracts

The Unit for Awarding Contracts (*Unidad de Procesos para la Adjudicación de Contratos, UPAC*) has technical, operational and managerial autonomy. It is part of the Ministry of Public Administration and was created in 2012. According to the fact-finding missions, this unit was created to maintain greater control over purchases made by the central government. Previously, this task was the responsibility of the Patrimony Division of the Ministry of Administration.

According to Article 3 of the Agreement²² that gave birth to UPAC, the unit is responsible for all administrative procedures related to public tenders, direct awards and restricted invitations for all central government agencies. It is also responsible for monitoring and validating the administrative procedures for the awarding of contracts, offering opinions, and the development and integration of the annual procurement programmes. Moreover, it participates in the procurement committees and subcommittees of the different government agencies and oversees the renovation of the Supplier Registry.

Regulatory Improvement Commission (CEMER)

The Regulatory Improvement Commission (*Comisión Estatal de Mejora Regulatoria del Estado de Morelos, CEMER*) was created in 2007 as a public agency with legal personality, property and autonomy established by the Regulatory Improvement Act. This commission is a part of the Ministry of Economy. According to Article 14 of the LMRM, the commission has, among others, the following powers:

- Promote, coordinate and supervise the development of the regulatory reform process
- Conduct a continuous review of state regulation
- Integrate, update and manage the State Register of Procedures and Services
- Advise and coordinate the work on the regulatory reform of the agencies
- Provide technical advice on regulatory reform and comment on new draft regulations
- Promote the implementation of regulatory reform
- Enter into agreements with municipalities in the state to promote adherence to the programme of regulatory reform

²² Acuerdo por el que se crea la Unidad de Procesos para la Adjudicación de Contratos del Poder Ejecutivo del Estado de Morelos (Agreement by which the Unit for the Adjudication of Contracts of the Executive Power of the State of Morelos was created).

- Celebrate agreements and other legal acts necessary to achieve its objectives
- Promote, organise and participate in forums, seminars and other activities to promote the process of regulatory reform
- Publish an annual report on the status of the regulatory reform in the state and on the performance of the commission.

Procurement Committee

The governor and the heads of the ministries of the Treasury, Administration, Oversight, as well as the head of UPAC and the requesting area (or their authorised representatives) are all part of a central procurement committee. All of these members are entitled to voice and vote in any of the proceedings. The committee has the following duties:

- Propose internal policies, rules and guidelines for public procurement
- Analyse and resolve unforeseen problems in internal policies, rules and guidelines
- Review and approve the Annual Procurement Programme
- Analyse the preparatory documentation for procurement procedures
- Advise, prior to the commencement of proceedings, on the merits of holding tenders and authorising exceptions to these
- Establish and approve the calls for tenders
- Offer opinions and approve the decision on the awarding of contracts in tender processes and auctions
- Act as an advisory body regarding leasing arrangements
- Authorise the creation of procurement subcommittees in other central government agencies
- Coordinate, direct and supervise the procurement process instrumented by subcommittees
- Authorise, when necessary, the reduction of the deadlines for the submission and opening of proposals in public tenders
- At the beginning of each year, determine the minimum and maximum amounts authorised for purchasing property and hiring services according to the annual budget
- Determine amounts and conditions for the financial guarantees

Institute of Public and Statistical Information (IMIPE)

The IMIPE is responsible for supervising that government agencies publish and update public procurement information. Under the Public Information, Statistics and Protection of Personal Data Act (*Ley de Información Pública, Estadística y Protección de Datos Personales del Estado de Morelos, LIPEPDPEM*), agencies must make available to the public the calls for tenders and other information regarding permits, licenses, concessions, public works, acquisitions, leasing

arrangements and services. Furthermore, they must publish the opinions, arguments and final data included in the files and documents elaborated during procurement procedures. Additionally, they must publish the results of the procurement processes and these must include accurate information about the contract, the amount, the name of the supplier, contract deadlines and mechanisms of participation and citizen involvement.

The IMIPE has guidelines and criteria created to evaluate the agencies and improve their transparency. In this regard, the central government of Morelos has a centralised transparency website in which all agencies are obliged to publish their information. The fact-finding mission revealed that IMIPE carries out a monthly evaluation and assigns ratings to the different agencies depending on their performance.

Ministry for Oversight

The Ministry of Oversight of Morelos is responsible for proposing and implementing policies of preventive control, surveillance, and control of resources used by departments and agencies. It monitors the implementation and application of public expenditure as established in the existing legal framework. The Ministry has voice and vote in the central procurement committee.

During the fact-finding mission it was revealed that the Ministry has a staff of four public servants dedicated to the oversight of public procurement, the largest team of the Ministry.

Under Article 23 of the Organic Law of Public Administration of Morelos, the Comptroller has 29 responsibilities. Below are the most relevant duties to public procurement:

- Audits, reviews, inspections and supervision of government agencies
- Sanctions on public servants who fail to comply with their administrative responsibilities
- Monitor, supervise and evaluate the results of policies, programmes and actions of governments, agencies and entities of state government
- Evaluate programmes and projects for updating administrative procedures and make recommendations for the best use of information technology to improve governance, quality of processes and public services
- Evaluate policies, strategies and the priorities of programmes and actions for the provision of public services
- Encourage government agencies to implement a system of indicators to ensure compliance with the goals and objectives of the local development programmes
- Implement a Performance Evaluation System for all programmes, projects and services of state government
- Promote and coordinate the actions of the citizen comptroller and citizen observatories to measure the effectiveness and efficiency of public administration through social participation

Audit Office

The Superior Audit Office of the State of Morelos (*Entidad Superior de Auditoría y Fiscalización del Estado de Morelos*, ESAF) conducts audits and analyses all documents related to the public account on behalf of the Legislative branch of government. Broadly speaking, it analyses and assesses the expenditure incurred by the agencies of the Executive branch. If the ESAF finds any irregularities, it emits observations that the agencies must resolve in a period of 50 business days (Art. 38 section V of the Supreme Audit of Morelos Act).

The Procurement Process

The following section describes the procurement process, mirroring the process detailed in Chapter 2 for the federal level. Subsequently, differences are described for each stage in the following section.

Pre-tender stage

5. PLANNING AND SCHEDULING OF ACQUISITIONS

The offices of the central government of Morelos are required to make an Annual Procurement Programme. To do so, the agencies must plan their procurement expenditures based on the approved budget every year. This programme must be aligned to the objectives and projects of the State's Development Plan (Art.20). Correspondingly, it must be aligned to the objectives, goals and resource projections set out in the local Budget for the corresponding fiscal year and seek to promote and encourage local MSMEs.

The Procurement Subcommittees of each government agency are responsible for drawing up their corresponding part of the Annual Procurement Programme with information from different areas (Art. 12 of the Regulations of the procurement law). Once collected in one document, the central Procurement Committee approves it (Art. 28). According to the fact-finding mission, a recurring problem is that these subcommittees usually programme and budget ineffectively. In this sense, UPAC commented that approximately 70% per cent of the agencies carried out acquisitions through direct awards.

6. REQUESTS FOR PROCUREMENT

According to interviews, requesting areas must submit the following documents to the UPAC:

- Procurement request
- Market research request
- Technical specifications and annexes
- Budget sufficiency verification from the Ministry of Finance
- Contract model

It is worth mentioning that these documents or their delivery process is not mentioned or considered in the existing legal framework. Currently there is no electronic system for the delivery of this documentation, which makes the entire process slow and limits streamlining requests.

7. MARKET RESEARCH

The Law on Procurement of Morelos explicitly states that the convening area (UPAC) must carry out some degree of market research. According to Article 21c of the local procurement act, the market study should verify the availability of local and foreign goods and services of the amount, quality and timeliness required and determine an estimated reference price.

Furthermore, Article 21d establishes that the market study should determine the advantages of grouping several goods or services in a single batch of a tender and determine an acceptable price, inquire if there are reasonable substitutes in the market, and choose the legal procedure for acquiring them. Finally, Article 22 establishes that market research that must be carried out to determine if procurement will require an international tender. In this regard, the study must:

- a. Demonstrate the absence of domestic suppliers
- b. Determine if the national price is inconvenient

To confirm the absence of domestic suppliers, the law requires the following:

- Information that proves that having held a national competitive tender in the twelve months prior to the current research, no submitted proposals met the expected standards
- Information that proves that domestic products do not adequately meet the expected standards
- Information from chambers of commerce, associations, industrial and commercial groups representing in the corresponding field, that reveal that there is at least one national supplier that can meet the requirements

To determine that the national price is inconvenient the law requires the following comparisons:

- Of the national prices (at least one year prior to the date of completion of market research), against the prices of the same goods produced and offered abroad, during the same period in the domestic market. This comparison should include the prices of at least two foreign suppliers, manufacturers preferably, and include the conditions of delivery to a final destination in Mexico with taxes.
- Of the price of a particular good in Mexico (at least one year prior to the date of completion of market research), against the price paid for a foreign good by government agencies in the same time period
- Of the domestic price against updated price indexes or international prices.

8. PROCUREMENT DESIGN

In the same way as the federal level, the local law establishes three procurement procedures in Morelos: direct award, restricted invitation to at least three suppliers and public tender (Art. 33). The central Procurement Committee establishes and approves annually the amounts of the

procurement procedures (Art. 28 section XIV). It must be mentioned that the lowest amount authorised for direct awards entitles local agencies to carry out small purchases. All other procedures are carried out through UPAC.

Table 14. **Procurement procedure and range of purchase in Morelos**

Procurement Procedure	Range of purchase in Mexican Pesos	Approximate amount (2015, USD)
Public tender	> 2 million	>129,000
Restricted Invitation	1 million – 2 million	64,000 – 129,000
Direct award	25,000 – 1 million	1,700 - 64,000
Direct award (by agencies)	< 25,000	< 1,700

The fact-finding mission revealed that before 2013 each administrative area, of every government agency, had monthly a limit of \$25,000 USD to spend on “small” direct award procedures. Currently, the central Procurement Committee limited this amount to the entire agency and all of its administrative areas.

Evaluation Criteria: According to Article 40 of the implementing regulations of the Procurement Act of Morelos, the UPAC is responsible for establishing the criteria for evaluating proposals. The two authorised criteria for purchases with local resources are the cost-benefit and binary criteria, unlike at the federal level, which also includes the point / percentages criterion. However, it should be mentioned that only the cost-benefit criterion is included in the legal framework. Notwithstanding, the fact-finding mission revealed that the most used criterion was the binary.

Reverse auctions: The state of Morelos does not consider reverse auctions or OSDs as an available procuring mechanism in the current legal framework.

Social witnesses: There is no mention of social witnesses in the Procurement legal framework.

Tender stage

5. CALL FOR TENDER

Article 40 of the procurement law states that calls for tender and the terms of reference for bids must be made available for consultation in electronic media (through the state-run CompraNet) and sold to interested parties at the address specified by the UPAC. There are no guidelines for determining the cost of the terms of reference for particular bids. The law only specifies that the cost must seek the recovery of expenses. Nevertheless, interested parties may analyse them prior to payment but are obliged to pay for them if these wish to participate. The terms of reference of the tenders must contain the following:

- The documents provided by suppliers to prove their existence and legal personality
- Date, time and place of the clarification meetings
- Specification that bidders will be disqualified for breaching any of the requirements or when it is proven that a bidder has agreed to collude with another to raise prices or gain advantage over other bidders
- Criteria for the evaluation of proposals
- Dates, places and conditions of delivery of goods or the provision of services
- Price and payment conditions
- Contractual penalties for late delivery of goods or services
- Authorisation for joint bids
- The indication that no physical or moral persons that were disqualified by judicial or administrative indictments may participate
- Instructions for preparing and submitting proposals and financial guarantees
- The grounds for termination of contracts
- The type and contract model

Joint bids: These are accepted as long as the bids specify the responsibilities of each of the bidders.

6. CLARIFICATION MEETINGS

The dates, times and places of the clarification meetings are established in the call for tender (Art. 40 of the Act). There must be at least one for each procurement procedure. Participants must submit their questions in writing or electronically 24 hours before the meeting (Art. 33 of the regulation). Clarification meetings may be carried out from the day after the terms of reference have been put on sale until one business day prior to the presentation and opening of proposals, but there is no restriction of them having to be face-to-face meetings.

7. RECEPTION OF PROPOSALS AND CONTRACT ASSIGNMENT

Participants have up to 15 business days to prepare their proposals after the date established for the sale of the terms of reference. For international tenders, participants have up to twenty business days (Art. 40 of the Act).

Delivery of proposals must be carried out using two closed envelopes or packages that contain the technical and financial proposals. In a first stage, bidders must register and prove their legal status. Later, the technical proposals are reviewed and all proposals that fail to meet the requirements are discarded (Art. 42 of the Act).

In a second stage, UPAC and the subcommittee of the agency of the requiring area has 48 hours to evaluate the proposals that have not been discarded in the first stage. Any proposal that does not fall within the range of accepted prices is dismissed (Art. 38 of the regulation). Once a proposal has been selected, the central Procurement Committee must approve the result. UPAC has twenty business days from the date of the submittal of the proposals to publish its final

decision. This may be deferred for only twenty additional days if there is a justifiable cause (Art. 42 of the Act). When a tender has been unsuccessful twice, a direct award or a restricted invitation may ensue. Contracts must be formalised within ten business days. The fact-finding mission suggested that on average it takes 40 days to carry out an entire tender procedure. However, no official figures were available.

8. FINANCIAL GUARANTEES

Bidders or suppliers that have been awarded a contract must provide a financial guarantee. This is at least twenty per cent of the total contract amount. If there are advance payments, suppliers must hand in a guarantee for the full amount of the advance. The financial guarantees must be handed to the Treasury and must be submitted no later than the day after the signing of the contract (Art.75 of the law). Finally, convening units in coordination with the Legal Counsel are entitled to either terminate a contract or discount amounts from the financial guarantees (Art. 77 of the Act) when suppliers infringe the contracts.

Post-award stage

4. COMPLAINTS

Bidders are entitled to file complaints or disagreements regarding the procurement proceedings to the Ministry of Oversight of Morelos. There is no provision for anonymity and there are no whistle-blower protection mechanisms in place.

Any disagreement that is filed after the deadlines authorised are automatically rejected (Art. 105 of the Act). The Ministry of Oversight must then take all the necessary measures to ensure that procurement procedures were held within the Law. The Ministry may require information from different agencies, and these have 6 business days to comply. If the disagreements are valid, the Ministry may suspend the procurement procedure (Art.107 of the Act). Further still, if the disagreement is regarding the formalisation of the contract, the Ministry may establish a conciliation procedure (Art.109 of the Act).

5. PENALTIES AND CONTRACT TERMINATION

The departments and agencies have fifteen business days to submit any documentation proving damages caused by a supplier to the Ministry of Oversight after they become aware of any infringements (Art. 76 of the Regulation). Providers that violate the law may suffer a fine that ranges from fifty to one thousand days of the minimum wage (approx. \$205-\$4,100 USD). In addition, the Ministry of Oversight may temporarily blacklist them for a period of three months to five years. As mentioned before, the government is entitled to terminate a contract and call in the financial guarantees (Art. 77 of the Act) in case of breaches to contracts with the state.

6. LIQUIDATION OF PAYMENT TO SUPPLIERS

The Ministry of Finance through the treasury area is responsible for paying suppliers through bank transfers. Therefore, it is necessary for suppliers to be registered in the treasury. Neither the regulation nor the law sets maximum deadlines, however these are legally obliged to comply with

the payment conditions established in the call for tender. The fact-finding mission suggested that payments take from five to thirty days. However, no official data was provided.

During the fact-finding mission, UPAC suggested that government agencies wait a long time for resources to be transferred from the Treasury. Therefore, government agencies are constantly making modifications to their procurement programmes. This inefficiency may also be reflected onto timely payment to suppliers.

Best Practices

Procurement Bylaw

Phases: All

Policy Dimensions: All

The existence of a Procurement Bylaw that clearly and precisely regulates the procurement process in Morelos is a successful practice in terms of legal framework. This Bylaw specifies responsibilities of each entity participating in procurement processes. Nevertheless, it should be noted that some improvements could be done to the legal framework to be more in accordance with the OECD principles.

Consolidated Purchases

Phases: Pre-tender

Policy Dimensions: Preventing misconducts / Administrative processes

The government of the State of Morelos began to make some efforts to consolidate purchases of certain goods and services and that practice has increased efficiency of public spending and saved public resources. An illustrative case is the procurement of petrol for official vehicles.

Before the creation of the UPAC, the spending on the acquisition of petrol was by means of invoices that could be handle to any provider of this good. This made it easier for public officials to incur in misconducts and supply petrol to private vehicles with public funds. A tender process was made and just one supplier resulted winner. The new way to supply petrol to any public vehicle is by special cards corresponding to each vehicle with matching plates. This way, it is easier to give follow up to the use of any vehicle and evaluate if the use of it goes in accordance to the public official tasks. According to some analysis made by the UPAC this had an impact of reducing annual costs by 30%. This year is planned to consolidate the acquisition of stationary goods for 26 administrative office from the Ministry of Finance.

Electronic Suppliers Registry

Phases: Tender

Policy Dimensions: Regulatory reforms/Competition

Morelos has implemented an electronic suppliers registry for all state level entities. This registry is managed by *Oficialía de Partes*, which is the only entity capable of administering and keeping the registry up to date.

Since the registry can be made electronically it is less costly for suppliers to apply and this has had a positive impact in the size of the registry. It also should be noted as a best practice that suppliers do not need to be part of the registry to participate in any tender process. It is only obliged to register in case it turns out as winner.

Public information regarding procurement

Phases: All

Policy Dimensions: Transparency and access to information

The *Ley de Información Pública, Estadística y Protección de Datos Personales del Estado de Morelos* (LIPEPDPEM) establishes as public information the following official documents: calls for tender, any information and studies regarding tendering of public works, as well as acquisitions of goods and services and any documentation regarding the procurement process like opinions, arguments and the results of the processes. Any information about the results of the tender, contracts, name of suppliers, amounts and quantities purchased, terms of compliance and mechanisms of citizen participation.

As mention before, IMIPE evaluates on a monthly basis all state level entities and assigns scores depending on its performance in terms of transparency. This has worked as an incentive for all entities to improve in transparency and accountability according to the legal framework.

Market studies

Phases: Pre-tender

Policy Dimensions: Preventing misconducts/ administrative processes

The implementation of market studies for any public procurement is a best practice. Such studies act as tools to identify estimated prices among goods and services procured by the state as well as a range (of price) at which the state would be willing to buy them. Market studies also provide valuable information about characteristics and behaviour of supply and demand from certain goods and services. For the case of international tenders, the legal framework is also specific about studies that should also be carried out.

The Procurement Act as well as its bylaw in Morelos are specific about such studies. This makes public officials as well as suppliers to gain deep insights of the market as well as the possibility to identify potential cases of collusion of suppliers.

Nuevo Leon

Procurement for the State of Nuevo Leon surmounted approximately \$8.2 billion pesos without considering taxes (USD 546 million) from 2012 to 2014 (a yearly average of \$182 million USD). According to information provided by local authorities, the entities that carry out most of the state's procurement procedures are the Ministry of Safety and Law Enforcement (*Secretaría de Seguridad Pública*), the Ministry of Social Development (*Secretaría de Desarrollo Social*) and the Ministry of Education (*Secretaría de Educación*). As for goods that the state purchase the most they account for broadcasting public information and policies, digitalization services, helicopters and

aircrafts (rentals), food for social rehabilitation centres, aircrafts maintenance, school kits and consulting services.²³

One first finding along the legal framework analysis is that the state's Constitution does not mention "public procurement" whatsoever. Nevertheless, Article 85 mandates that "*public budget should be approved, assigned and expenditures should follow the rules of efficiency, efficacy, economy, transparency and honesty*", as in the federal Constitution.

Procurement is first stated in the Organic Law of the State's Public Administration (*Ley Orgánica de la Administración Pública para el Estado de Nuevo Leon, LOAPENL*). Public procurement framework also includes:

- a. The Public Procurement Act (*Ley de Adquisiciones, Arrendamientos y Contratación de Servicios del Estado de Nuevo León, LAACSENL*). The law that governs public procurement in Nuevo Leon.
- b. The Ministry of Finance Organization Bylaw (*Reglamento Interior de la Secretaría de Finanzas y Tesorería del Estado de Nuevo León*). Establishes procedures related to public procurement, specifically for the *Dirección de Adquisiciones*, an area inside the Secretary of Finances.
- c. The Expenses Act (*Presupuesto de Egresos del Estado de Nuevo León*). Planned every year by the Executive branch taking into account all state level agencies that spend public budget. It is approved by the local Congress. This law also contemplates a time schedule for expenditures.
- d. The Procurement Guidelines (*Lineamientos Generales para las Adquisiciones, Arrendamientos y Contratación de Servicios que requieran las Dependencias y Entidades del Estado de Nuevo León*). This guidelines refer to all procedures and regulations that state agencies should meet in order to procure public goods.

Moreover, there are three manuals to guide procurement procedures:

- a. *Manual Guía del usuario de la Dirección de Adquisiciones y Servicios Generales*. Destined for public officials in charge of public procurement inside the Ministry of Finances.
- b. *Manual de la Subasta Electrónica Inversa*. This manual specifically states the procedures to follow up in a reverse auction.
- c. *Catálogo de bienes y servicios susceptibles de adjudicarse por Subasta Electrónica Inversa*. This catalogue complements the manual for reverse auction. It considers all good subject to this mechanism.

²³ No detailed statistics were provided by local authorities, since the procurement information system does not count with that tool.

Box 9. **The State of Nuevo Leon**

Located in north-eastern Mexico, Nuevo Leon is a highly industrialised state with the second highest GDP per capita in the country. It is known for being an important hub for Mexican entrepreneurial culture and industry clusters in construction, bottlers, automotive and glass manufacturers, among others. Recently it has become an important IT cluster as part of an initiative of the Citizen Council of Software Industry.

State highlights

Population (2010): 4,653,458 (8th of 32 federal states)

Territory: 64,156 km² (13th of 32 federal states)

Municipalities: 51

Capital: Monterrey

Political

Government (2015): PRI

Congress: 42 seats (PRI 38%, PAN 43%, PANAL 7%, others 12%)

Economy

GDP 2012 (PPP): 121,589 Million (3rd of 32 federal states)

Income per capita 2012 (PPP): 3,295 (3rd of 32 federal states)

HDI 2010: 0.794 (2th of 32 federal states)

Education

Average years of schooling: 9.8 (2nd of 32 federal states)

Corruption and Perception Index 2010: 9.1 (22th of 32 federal states)

Competitiveness Index (2014): 52.5 (4th of 32 federal states)

Variables from: INEGI, PNUD, Mexican Chapter of Transparency International and Mexican Institute for Competitiveness.

Regulatory reforms

Nuevo Leon has had three laws regulating public procurement since 1987, being the first the *Ley de Adquisiciones, Enajenaciones, Arredamientos y Prestaciones de Servicios para la Administración Pública del Estado de Nuevo León (LAACSENL)*, which had only a few major reforms in 1997 being the most important the one granting the Executive branch the power to procure telecommunications services through direct awards and, to celebrate contracts of leasing with providers not comprised in the Suppliers Registry.

The second procurement law was enacted in 2006 under the same name and the third and last one is the LAACSENL, published in 2013, which is the result of recommendations from COFECE and the Public Procurement Act Model published by IMCO, a thin-tank.

The LAACSENL published in 2013 included the following relevant aspects:

- Establishes the principles of efficiency, efficacy, economy, transparency and honesty in the use of public resources.
- Planning of procurement procedures to contribute to achieve goals established in the State's Development Programme.
- Publicity of the Annual Procurement Programme in CompraNet.
- Consultation of records prior to any contract of consulting services.
- Establishes the *Secretario Técnico* inside the Procurement Committee as the responsible to foresee that procurement follows its due process.

As part of an Anti-Corruption Plan, the Executive branch enacted in 2011 a Whistle-blower Act (*Ley para Incentivar la Denuncia de Actos de Corrupción de Servidores Públicos del Estado de Nuevo León*) to promote good practices among public officials. The main objectives of this law are:

- Establishing a mechanism for the reception, filling and process of citizen complaints as well as a reward system.
- Increasing transparency regarding public procurement and public works with the use of the Reverse Auction mechanism.
- Establishing a simulated user programme.
- Generating a culture of integrity.
- Creating the Anti-Corruption Unit.²⁴

With respect with the first objective, the fact-finding missions spotted that only two rewards have been delivered. According to public officials, this mechanism as well as the simulated user is lacking in promotion to citizenship, which have turned in low impact and results. Other objectives have had better results like the implementation of Reverse Auctions, which have had some results in government saving and improvement in transparency of the procurement procedures, according to interviewed public officials. Nevertheless, no statistics were shown to observe how much this savings account for.

²⁴ When this report was elaborated, the state of Nuevo Leon was the only among 32 others with an Anti-Corruption Unit as a decentralised body with budget sufficiency and autonomy.

Procurement agencies and actors

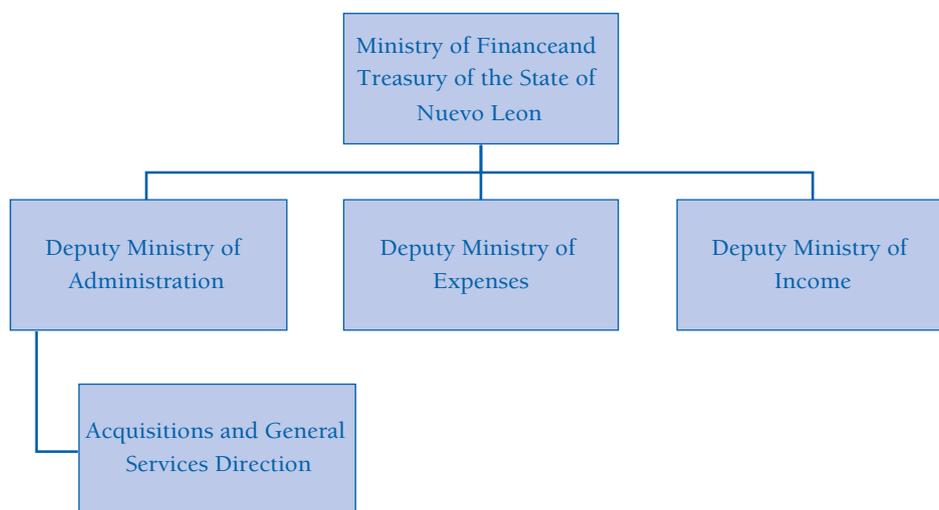
Ministry of Finance and Treasury

As stated in Article 21 of the Organic Law of the State of Nuevo Leon, the Ministry of Finance and Treasury (*Secretaría de Finanzas y Tesorería General*) is the authority responsible for administering finances and taxes related to human and material resources, as well as general services. In respect to procurement it is mandated to:

- Overlooking the compliance with the framework applied to public procurement.
- Assisting all public entities with their annual procurement planning as well as with their administration systems in this respect.
- Planning and purchasing the necessary goods for compliance with state government goals and objectives established in the states development programme.
- Chairing the Procurement Committee.
- Establishing the rules and framework for purchasing IT.
- Receiving the annual procurement programmes of all state-level entities and formulating the Annual Expenses Programme.
- Programming, executing and celebrating contracts related with public procurement for all state-level entities.

As stated by the LAACSEN, the Ministry of Finance and Treasury is also the authority responsible for interpreting the law regarding any administrative effect. As part of its internal organisation, the Ministry of Finance and Treasury counts with three main areas: Administration, Expenses, and Income. The unit in charge of procurement is dependent from the administrative area, as explained by the following figure.

Figure 8. **Ministry of Finance and Treasury procurement structure**



Neither the LAACSEN nor the Civil Code state anything about conciliation process among parties when disagreement occurs.

Centralised Procurement Unit

Works as the administrative office responsible for public procurement in Nuevo Leon. According to Article 23 of the LAACSENL its functions are the following:

- Procuring services that are susceptible to consolidated purchases and framework agreements.
- Determining if purchases referred in the previous matter should be purchased from only one provider or simultaneous provision—in which case they should also establish criteria for proposals evaluation—.
- Carrying out market research.
- Informing to COFECE of any suspicious behaviour or the committing of any violation to the Federal Competition Act (*Ley Federal de Competencia Económica, LFCE*) and to any competent authority if a crime has been committed. This function is very important, since economic competition is a federal matter. Local authorities must coordinate efforts with the Competition Authority (COFECE) in order to comply with the Economic Competition Federal Law and reduce the risks of monopolistic practices in local public procurement, among other subjects.
- Requesting reports to state level entities of their performance related to key indicators established by the Ministry of Finances and Treasury.
- Delivering an annual report to the Procurement Committee, the Ministry of Finance and Treasury and to the Ministry of Oversight and Transparency (*Contraloría y Transparencia Gubernamental*) about the progress of the Annual Procurement Programme.
- Managing the Suppliers' Registry (*Padrón de Proveedores*).
- Managing the Studies' Registry (*Registro de Estudios*) concerning market studies.
- Assisting state level entities in planning and carrying out their procurement procedures.

No matter actions taken by the Audit Office or the Ministry of Oversight and Transparency, as stated by Article 77 of the LAACSENL, the Central Procurement Unit can also assess the quality of the goods acquired by any state entity and the result of these assessments should be stated in a document signed by suppliers and the head of the purchasing agency.

Procurement Committee

The Central Procurement Committee or any of the state level entities has the following obligations:

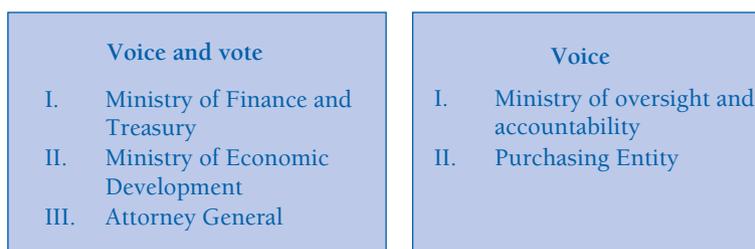
- Acknowledging the annual procurement programmes (including those of multi-annual nature).
- Partaking in every stage of the procurement process.
- Analysing and evaluating procurement procedures carried out by any state level entities.
- Ruling in cases of exceptions of public tenders.
- Defining integration and operational procedures of procurement sub-committees.

The Committee also has the authority to invite to its sessions representatives of any state level entity when the nature of the process requires their presence. In cases of consolidated purchases or framework agreements they can also sign coordination agreements between stakeholders.

According to Article 22 of the LAACSEN, every procurement Committee should have a *Secretario Técnico* as the authority responsible to foresee that the procurement follows its due process. The responsible for designating this Secretariat is the head of the Central Procurement Unit and its functions are established in the Procurement Bylaw.

The LAACSEN establishes the formation of the state's Procurement Committee as follows:

Figure 9. **Integration of the Procurement Committee**



For the case of state level authorities, the committees should include representatives from the purchasing entity (with voice and vote) —instead of the Ministry of Finance— and one from the purchasing area —instead of the purchasing entity—.

Ministry of Oversight and Transparency

The main attributions for the Ministry of Oversight and Transparency of the State of Nuevo Leon relate to planning, organising and coordinating control systems across the state's Public Administration, to oversee the use of public resources by means of audits and verifications as well as surveillance activities and attending and coordinating the complaints, disagreements, and sanctions system. It is also the entity that will safeguard individual rights to access to public information.

According to Article 33 of the LOAPENL, the Ministry of Oversight and Transparency has the following attributions concerning procurement:

- Overseeing the compliance of the use of public resources with its legal framework.
- Promoting compliance with planning and budgeting from all state level entities as well as municipalities.
- Undertaking actions to promote transparency and accountability.
- Providing the necessary so that any person has access to public information.
- Intervening or requesting help from external auditing offices or consulting firms to verify that budgeting rules are being followed.

- Receiving and proceeding with due process that arise from complaints or disagreements in contracts celebrated by any state level entity with other parties.
- Sanctioning public officials who incur in administrative offenses.

According to the LAACSENL other attributions to the Ministry of Oversight cover:

- Sanctioning suppliers that incur in irregularities or infringe contract agreements.
- Participating in the state's Procurement Committee (voice only) as well as committees formed by purchasing areas.
- Managing the state's Social Witness Registry.
- Training public officials responsible for procurement in all local-level and municipal offices.

Fact-finding missions suggest that, albeit the existence of an annual audit programme, in practice any additional audit only proceed if there is a claim or by petition of any state level entity. Also, if there is disagreement with suppliers, it must be analysed by the Ministry of Finance and Treasury and then dispatched to the Ministry of Oversight, which is not present in the resolution of disagreements.

Social Witnesses

When procurement procedures surpasses amounts of 18,000 USD and in exceptional cases determined by the Procurement Committee, there is a mandate to involve Social Witnesses in the process. This figure functions as follows:

- The state has only one Social Witnesses Registry and every municipality of Nuevo Leon has their own.
- Municipalities may to use the Social Witnesses Registry of the state.
- Higher education institutions, colleges and commerce and business chambers can propose social witnesses to be part of the Registry. Proposals are authorised by the Ministry of Oversight and Transparency or any internal comptroller office, in the case of state level entities.
- The Ministry of Oversight and Transparency manages the state's Registry. In the case of municipalities, internal comptroller offices will be in charge of this duty.
- Social Witnesses will take part in every stage of the procurement process, and in cases of irregularities, they should inform the Ministry of Oversight and Transparency or the municipalities comptroller offices and the General Audit Office.

In case of sensitive information or security issues in procurement procedures, an exception to social witnesses may be applied.

General Audit Office

As stated in Article 63 of the State's Constitution, the General Audit Office (*Auditoría Superior del Estado de Nuevo Leon*) is an autonomous technical body of the legislative branch in charge of

assessing the use of public funds. It is responsible for scrutinising public spending and reporting the results of its findings, lookout for irregularities and issue recommendations or impose responsibilities to public officials.²⁵

The result of this scrutiny is made public and delivered to Congress in a document named *Informe de Resultados de la Revisión de la Cuenta Pública*, which shall be voted and approved by the members of the state Congress.

According to Article 78 of the LAACSEN, all state level bodies have to facilitate and help the General Audit Office in the process of reviewing their expenses, giving all the information that is required from them with respect of procurement of goods and services.

Transparency and Access to Information Commission

Article 6 of the Constitution of the State of Nuevo Leon states that every citizen has the right to access public information. In terms of procurement, the Transparency and Access to Information Commission (*Comisión de Transparencia y Acceso a la Información del Estado de Nuevo Leon*) has the capacity to apply an economic sanction economically to public officials or obliged entities.

When a reservation of information is made, it could be for up to seven years. This may apply to procurement of goods and services related to security. In terms of any other information request, it must be answered in the following three business days. According to Article 20 of the Transparency and Public Information Act of the State of Nuevo Leon (*Ley de Transparencia y Acceso a la Información del Estado de Nuevo Leon, LTAIENL*), information regarding procurement procedures should be published electronically including contracts, agreements or any document that arises from procurement (call for tenders, participants, winner, administrative entity, dates, amounts, delivery dates of goods and services and modification agreements)

It is also ruled in Article 10 of the LTAIENL that the Suppliers Registry should be published electronically and must contain at least name and company, type of good or service it supplies and address.

The Procurement process

The following section describes the procurement process, mirroring the process detailed in Chapter 2 for the federal level. Subsequently, differences are described for each stage.

Pre-tender stage

1. PLANNING AND SCHEDULING OF ACQUISITIONS

Public procurement planning should conform to the objectives and priorities of the State's Development Plan and relevant programmes as well as the provisions contained in the Annual Procurement Programme (Art. 9). They should consider the following (Art. 10):

- a. Any action during and after the completion of transactions.

²⁵ When the fact-finding missions were carried out there was no one in charge of the General Audit Office.

- b. Objectives in the short, medium and long-term.
- c. Financial and deliveries scheduling.
- d. The parties responsible for the implementation of annual programmes.
- e. Information provided by the “Electronic Public Procurement System” to determine the maximum prices of reference.
- f. Substantive programmes, administrative support and investment; as well as procurement of goods intended for sale and those subject to production processes.
- g. The existence of assets, the estimated delivery time, technological advances incorporated in the goods and drawings, plans and specifications.
- h. Maintenance requirements and conservation of real state property.
- i. When public procurement exceeds one financial year, the purchasing entity must determine both the total budget and the budget of the subsequent financial years; in the formulation of the latter, costs and forecasts for the fulfilment of obligations.
- j. Framework agreements that will be applied to purchase goods or services.
- k. The results of performance indicators from the previous year.

State agencies must publish their annual procurement program by January 31 of each year through the Electronic Public Procurement System and its website —excluding information which may endanger the attainment of the most favourable prices, quality, financing opportunities, and confidential information as established by the Transparency and Access to Information Act—. They may also add, modify, suspend or cancel scheduled procedures if the causes are approved by the Procurement Committee (Art. 12).

Consolidated purchases: The Procurement Act of the State of Nuevo Leon allows for consolidated purchases (Art. 4). In such cases, the goods to be procured must be authorised by the Treasury (Art. 15) and established in a catalogue. The decision to consolidate should be justified on the grounds of evidence based on market research. The Centralised Procurement Unit is responsible for organising these procedures in a similar manner to the federal level (Art. 23).

Framework agreements: The Centralised Procurement Unit organises these with one or more potential suppliers through evidence presented in market studies. These should include technical and quality specifications for particular goods. The agreement must indicate the price and estimated demand (Art. 4) and is authorised by the Treasury (Art. 15). Procurement that is subject to a framework agreement may only be purchased outside of this arrangement if the purchasing area can demonstrate that these are being acquired through better conditions than those found in the framework agreement (Art. 101).

2. REQUESTS FOR PROCUREMENT

Purchase applications are submitted through the Electronic Public Procurement System. This system re-directs the requests to a specialised Centralised Procurement Unit called “Operations”, which verifies that requests comply with legal and budgetary requirements. Once this is verified, the application is sent to an area with public servants called “Negotiators”. These public officials are divided into two areas: one dedicated to the purchase of goods and another dedicated to

the procurement of services. This area must then carry out market research and undertake the purchasing procedures that follow. Requesting areas may follow the stage of their request through the Electronic Public Procurement System.

3. MARKET RESEARCH

The Centralised Purchasing Unit, using the “Negotiators”, is responsible for conducting market research in order to find the best purchasing conditions for the state (Art. 26). The law specifies that procedures for direct awards that fall into the exceptions to public tenders considered in sections I, III, V, VII, VIII, XI, XIV, XVI, XVIII and XIX of Article 42 of LAACSENL do not require market research in procurement (Art. 46, RLAACSENL). However, every other case requires market research, and these studies must include the following (Art. 26):

- a. Verification of the existence of goods, leasing arrangements or services and suppliers at local, national or international level
- b. The maximum reference price based on the information to be obtained from: states, municipalities, government agencies, public or private organisations, suppliers, or a combination of these sources. Market research may be based on local, national or international information.

It should be noted that the Procurement Bylaw establishes in its Article 44 that market research for procurement should determine:

- a. When to combine goods into a single batch in a tender
- b. Acceptable price
- c. Maximum reference price
- d. Appropriateness for reverse auctions (OSDs)
- e. The existence of economically feasible substitutes of required goods or services
- f. The best procurement procedure (design)
- g. Identify the best type of international or national tender for the requirements

4. PROCUREMENT DESIGN

According to Article 29, the character of the tenders will be identical to those defined in the PPA—national, international bound by treaties or open international tender (see: Chapter 2). In the cases where a national public tender procedure has been unsuccessful, government agencies may choose to make a second bid or, if the unsuccessful bid comes from a second contest, they may choose to use a direct award or restricted invitation. When it is not possible to determine the degree of domestic content or the origin of goods or services, the tender must be an open international tender. The four procurement procedures considered in LAACSENL are the following (Art. 25):

- a. Public tender
- b. Restricted invitation (five invitations)
- c. Direct award (with three estimates or with only one)
- d. Electronic reverse auction (not contingent on any amount)

Table 15. **Procurement procedure and range of purchase in Nuevo León**

Procurement Procedure	Range of purchase in minimum wages ²⁷	Approximate amount (2015, USD)
Public tender	> 24,000	>\$96,000
Restricted Invitation	14,400-24,000	\$57,600-\$96,000
Direct award (3 estimations)	2,400-14,400	\$9,600 - \$57,600
Direct award	<2,400	< \$9,600

Source: Ministry of Finance and Treasury of the State of Nuevo Leon.

The LAACSENL establishes that all procurement proceedings must guarantee the following (Art. 25):

- Equal treatment for all participants.
- The best conditions of free competition.
- The absence of restrictions on interstate commerce.
- Equal access to information regarding procedures to all stakeholders to avoid favouring any one participant.

Tenders and restricted invitations are carried by default through the Electronic Public Procurement System. This system requires safe and legal electronic identification mechanisms administered by the Centralised Procurement Unit (Art. 27). As an exception, they may use the face-to-face process when it is justified as a better option or when there is insufficient infrastructure to ensure the usage of the electronic system (in particular for municipalities). In these cases, bidders may submit their proposals through the post or using a courier service.

Direct awards may be carried out through a virtual market (Art. 43). Depending on the amount (See: Table 13), the procedure may require three price estimations and suppliers must be clearly identified. Alternatively, restricted invitation procedures are published in the Electronic Public Procurement System and must have a minimum of three bids. If this condition is not satisfied, the restricted invitation is declared void (Art. 44). The deadline for submission of proposals may not be less than ten calendar days from the time when the last invitation was delivered. When two procedures have been declared void, then these may be awarded directly; albeit the requirements should not be modified.

In addition to these three mechanisms, Nuevo Leon applies Electronic Reverse Auctions (ERAs). This is an optional procedure that is not contingent on any amount. However, only goods and services that are included in a catalogue may be purchased through this procedure (Art. 54). The catalogue of goods and services must be updated monthly and published on the Internet. The catalogue must contain a generic description of the goods and services, substitutes and technical and commercial specifications (Art. 54). In the case this procedure is chosen, the contract is awarded to the bid that offers the best advantages in terms of price, delivery of goods or services and form of payment (Art. 52 and Art. 58). To participate in ERAs, providers must obtain an access account authorised by the comptroller bodies of the purchasing agency (Art. 55). ERAs must be organised within a period of six calendar days from the date of publication of the call for tender (Art. 56).

²⁶ This table only considers the largest amount allowed for government agencies according to the Budget.

Procurement format: The LAACSENL allows for the two formats for procurement procedures electronic (by default) and face-to-face, when justified. Fact-finding missions suggests that the latter one is used more frequently when federal funds are involved.

Evaluation Criteria: Article 39 of LAACSENL establishes that for the evaluation of proposals, government authorities should use the method indicated in the call for tender. The criteria for evaluating proposals must be quantifiable and objective. When the evaluation requires expertise and the requirements have sophisticated technological specifications, the law allows for the use of the points and percentages criteria. While the evaluation criteria must be defined by the Treasury, these must include at least the following (Art. 39):

- a. The time frame for the delivery of goods, as well as the beginning and termination of the provision of services.
- b. The total cost of the goods or services considering production capacity, lifetime, maintenance costs, disposal costs and, where appropriate, certifications.
- c. In the case of services, experience of suppliers, proven performance, technical skills, human and material resources, administrative systems, and the proposed methodology.
- d. In the case of consultancies: relevant experience relevant to the requested service; the quality of the methodology and work plan and the skills of the consultants.
- e. Environmental criteria of the goods or services.

Reverse auctions:

Nuevo Leon is one of the first states in the country to include a reverse action mechanism in its procurement design procedures. Procurement processes are recorded and documented in a system known as *Administración de Recursos Materiales*, from which 22 instructive manuals derive.

Tenders may use reverse auctions (OSDs) when the points and percentages criterion is not used and when the requirements may be objectively defined or are commensurable. Subsequently, participants whose technical proposals have not been disqualified may participate (Art. 30) when the following conditions are met (Art 56, RLAACSENL.):

- a. The market research suggests an expected participation of at least five bidders
- b. The volume of procurement makes reverse auctions desirable
- c. The bid may be performed exclusively through electronic means
- d. There is no need for a maximum reference prices

In reverse auctions, the initial price is the lowest price obtained in the opening of proposals from participants.

Social witnesses:

Social witnesses in Nuevo Leon participate in bids that amount to more than 4,500 days annual minimum wage (approximately \$6.57 million USD), and in those cases determined by the Procurement Committee (Art. 28). Social witnesses are thus involved in all stages of the procurement process and are expected to make recommendations, track them and provide a

testimony. This testimony is published within ten calendar days of their participation. If a social witness detects irregularities, he or she should inform the internal control body of the purchasing entity as well as the Audit Office. It is worth noting that the law allows the government to exclude social witnesses from participating in bids that include information that is considered a risk to public safety.

Tender stage

1. CALL FOR TENDER

The call for tender may be obtained in printed or electronic form. Obtaining the call in print cannot have a higher price than the printing cost. Nevertheless, all call for tenders are published in the Electronic Public Procurement System. There must also be a summary in the Official Gazette of the State, on the website of the requiring government agency, and one of the largest newspapers of the state, except in cases of Electronic Reverse Auctions. Prior to the publication, the requesting agencies may disclose the project for call for tender through their website during ten business days prior to the final version in order to receive feedback and improve the project. Calls to public tender should contain the following (Art. 31):

- Name and description of the requiring government agency.
- Description of the object of expenditure and any aspects the requiring agency deems necessary to determine the scope of the contract.
- Date, time and venue of the following acts: the first clarification meeting, the call for tender, submission and opening of proposals, and announcement of the winner.
- Period between publication of the announcement and presentation of proposals.
- Indication of whether the tender will be electronic or face-to-face, and the format of proposals.
- Chosen tender procedure and the languages in which proposals may be submitted.
- Technical annexes and the languages allowed.
- Requirements to be met by those interested in participating in the process, all of which should not limit free participation, economic competition or incur any of the practices prohibited by the LFCE
- Statement specifying that participation in the presenting and opening of proposals is enough to submit a manifest that assures that they have sufficient authority to represent an interested party without any need to prove their legal status.
- Specifications in which bidders should prove their legal personality and an e-mail account.
- Statement that bidders are required to submit in a sealed envelope, either through the Electronic Public Procurement System or physically, indicating that they do not fall into any of the impediments to participate stated in Article 37 of LAACSEN

- Requirement for a statement of integrity, where potential suppliers assure their commitment to behave honestly in the various stages of the bidding and refrain from behaving contrary to the Law;
- Specification that bidders are required to submit a CIBD. They must also manifest that they know the offenses and penalties in case of committing a prohibited practice established in the LFCE
- If testing is required, the call for tender must include the methodology and the minimum outcome that must be to be obtained.
- Indication of whether the contract will cover one or more fiscal years and if it will be an open contract
- If joint bids are accepted, it should indicate that bidders must justify their individual inability to submit proposals
- If the call for tender allows outsourcing, the call must include a statement in which it establishes that bidders should state they will do so in their technical proposal and submit a written justification to substantiate their inability to submit a proposal without subcontracting another company
- In case of simultaneous supply, the call for tender must specify: the criterion used to evaluate the proposals, the maximum number of sources of supply that will be awarded and the difference in price offered, which may not exceed five per cent. Simultaneous supply will be authorised by the head of the agency or entity and may only be used when justified by market research;
- Evaluation criteria for bids
- Address or electronic means of the agency where complaints may be submitted by bidders
- Causes that will be used for dismissing proposals, which should include collusion and any other agreements that are intended to allow a bidder to gain an advantage over other participants
- Contract model for the procurement process
- Indication that anyone may attend the events of the tender as an observer, as long as they register before the start of each event

Joint bids: these are accredited through market research. The research should justify that this form of bid might increase the number of independent bidders. To this end, the joint bids and the contract should establish the obligations of each party, and how compliance will be achieved. Participants who submit joint bids should state, in writing, the impossibility of presenting proposals individually (Art. 36). Additionally, Nuevo León allows for subcontracting or outsourcing (Art. 49); but only when the call for tender specifically allows it. In these cases, those wishing to use subcontracting should also submit a written justification to substantiate their inability to submit a proposal on their own.

Certificate of Independent Bid Determination: These are considered in the LAACSENL (Art. 4) and are announced since the call for tender and signed as an addendum in the contracts.

2. CLARIFICATION MEETINGS

At least one clarification meeting is required by law, and participation on behalf of potential bidders is optional. Interested parties must submit a written statement expressing interest in participating that includes general information and the name of their representative. Questions and inquiries may be sent through the Electronic Public Procurement System or in physical form depending on the approved format—established in the call for tender. The deadline for questions is twenty-four hours before the scheduled clarification meeting date. Each clarification meeting has a documented minute that is published in the Electronic Public Procurement System, except when there are any legal restrictions, such as confidential information (Art. 34).

3. RECEPTION OF PROPOSALS AND CONTRACT ASSIGNMENT

Article 32 establishes that government agencies should ensure that participants have enough time to prepare their proposals. To do so, from the publication of the call for tender, the minimum time for opening of proposals is 15 days for national tenders and 20 days for international tenders. In certain cases, government agencies may reduce these deadlines, but there is the specific restriction that these may not be less than 10 days. Similarly, the government may also authorise a time extension.

Delivery of (technical and economic) proposals is carried out through the Electronic Public Procurement System or, when authorised, in physical form through sealed envelopes. The presentation and opening of proposals must conform to the following: in a first event, the contents of the proposals are registered and documented, additionally the date and time when the winner will be announced is made known. In the case of OSDs, after the technical evaluation, the authorities indicate when the bidding process will take place (Art. 35). When the procedure has been carried out through electronic means, the results of the tender are published in the Electronic Public Procurement System and a notification is sent to bidders by email, otherwise, it is done in person. The results are not allowed to include confidential information. Also, if the tender has been declared void, the announcement should explain the reasons and the legal basis. The ruling and announcement of the tender should contain the following (Art. 40):

- a. Bidders whose proposals were not considered for the contest, expressing all legal, technical or economic reasons supporting such a resolution
- b. Bidders whose proposals were accepted for the contest, with a summary of their proposals
- c. Name of the winners, indicating the reasons for awarding the contract
- d. Date, place and time for the signing of the contract, the presentation of financial guarantees and the delivery of payment advances
- e. Name, position and signature of the public officials responsible for the tender
- f. Name and positions of the public officials responsible for the evaluation of proposals

4. FINANCIAL GUARANTEES

The requiring area is responsible for defining the financial guarantees to ensure compliance with the contractual obligations. The law (Art. 48) states that financial guarantees should seek to

neither discourage the participation of bidders nor facilitate lack of compliance of the contract by the supplier. It should be noted that the law specifically allows the state to use guarantees to enforce fines and other penalties. The law considers the following types of financial guarantees:

1. Good performance guarantee: Ensures proper and timely performance of the contract. It requires the following:
 - a. The winning supplier must deliver this guarantee on signing the final contract
 - b. Late penalties may not exceed the amount of the guarantee
 - c. It may be equivalent to 10% to 30% of the total value of the contract. In exceptional cases, it may be greater than 30% with a written justification
 - d. Exceptions to this guarantee are allowed where sections I, III, VI, XI and XIV of Article 42 of LAACSEN apply (exceptions to tender) and in the case of services paid after termination of the contract.
2. Advance payment guarantee: It is equal to one hundred per cent of the funds granted in advance and use the same instruments as the performance guarantee
3. Guarantee for defects, hidden vices and liabilities in the contract.

Post-award stage

1. COMPLAINTS

Participants may submit complaints or disagreements (Art. 79) within 31 working days after the winner of a procurement procedure has been announced (Art. 80). The authority who receives the complaint must forward it the next business day to their oversight authority (Art. 81) in order to decide whether to revoke, modify or confirm the result of a purchase process (Articles 82, 85, 86 and 87). Then the oversight authority must review grievances, weigh in evidence (Articles 83, 84), and resolve the complaint within 45 working days (Art. 88).

The legal framework also provides the figures of negotiation and mediation (Art. 89) and arbitration (Art. 90). These mechanisms should be agreed upon in the contract or through an independent agreement. The mechanisms may be complimentary. These parties may agree to use a dispute resolution mechanism to resolve disputes concerning the interpretation or implementation of contracts or (and) can resort to arbitration based on the Alternative Methods for Conflict Resolution Act of Nuevo León (*Ley de Métodos Alternos para la Solución de Conflictos del Estado de Nuevo León*, LMASCENL).

2. PENALTIES AND CONTRACT TERMINATION

Providers may be sanctioned by the Ministry of Oversight or the respective internal control body according to the seriousness of the offense and the existence of fraud or bad faith. Sanctions can be warnings, fines or blacklisting suppliers from the provider register (Art. 92) for a period that can range from three months to five years, depending on the seriousness of the offense (Art. 95). The factors sanctions depend on (Art. 93) the seriousness of the offense, relapse, the economic situation of the offender and damage. Resolutions are notified to the Centralised Procurement Unit

and published in the Electronic Public Procurement System and the website of the government agency responsible for the contract (Art. 94).

Serious offenses warrant fines ranging between 100 and 1,000 times the minimum wage and blacklisting from the provider register. The faults that are not considered serious are punished with warnings and in case of relapsing, with fines ranging between 50 and 500 times the minimum wage. Any offenses have prescription of five years (Art. 99). The LAACSENL establishes the following as serious offenses (Art. 97):

- Presenting false documents.
- Presenting information that aims to circumvent being blacklisted.
- Participation of firms with common partners or associates.
- Untimely delivery of or not presenting financial guarantees.
- Contractual noncompliance with serious damages or consequences.
- Conflict of interest between public servants and suppliers.

Public servants are sanctioned in accordance to the Responsibilities of Public Servants Act of the State and municipalities of Nuevo Leon (*Ley de Responsabilidades de los Servidores Públicos del Estado y Municipios de Nuevo León*, LRSPEMNL), which is independent of the civil or penal order (Art. 102) for the following (Art. 101) reasons:

- Avoiding informing the internal control body or the Comptroller of noncompliance of contract or financial guarantees.
- Maintaining a conflict of interest with suppliers and not excusing themselves from participating in a procurement process.
- Performing a procedure that violates the provisions of the Act.
- Not elaborating the Annual Procurement Programme on time.
- Not delivering and publishing the annual or quarterly reports.
- Not updating information on the Electronic Public Procurement System.
- Not adjusting to the authorised the budget.
- Performing acquisitions outside of a framework agreement without proving that better conditions were obtained.
- Limiting the participation of Social Witnesses.
- Not undertaking market research.

3. LIQUIDATION OF PAYMENT TO SUPPLIERS

While the law and regulations for procurement in Nuevo Leon do not specify the need to pay providers in a timely manner, the state is responsible for meeting the terms specified in the call for tender and the contract. However, no systematic information to estimate the efficiency and effectiveness of the payment to suppliers is available and, further still, the Centralised Procurement Unit has no record of this information.

Best practices

Procurement law drafted with the support of organised civil society and observed by the competition authority

Phases: All – Legal framework

Possibly the most important characteristic of the legal framework of Nuevo León is that the LAACSENL was drafted in collaboration with the *Instituto Mexicano para la Competitividad* (IMCO) and the competition authority COFECE. This collaboration allowed the Nuevo León to seek and include best practices, many of which are those recommended by the OECD. These best practices are included below. Additionally, this law has recently (2014) approved of its implementing regulations (RLAACSENL) that allow for further interpretation of the law and its particular processes.

Whistle-blower protection legal framework

Phases: All – Legal framework

Another singularity of Nuevo León is the existence of a specific law created to protect whistle-blowers. As a consequence, there are clearly defined mechanisms for whistle blowing and specific mechanisms for protecting individuals that take the risk to do so. The existence of such a legal framework is unseen in other states or, even, at the Federal level.

Anti-corruption Unit

Phases: All – Legal framework

A new unit was created within the Ministry of Oversight and Transparency to attend to any complaints or whistle blowing carried out by individuals against the government agencies. This new Unit complements the functions of the Ministry through different activities that include priority investigations and simulated users.

Procurement committees impartial to requiring areas

Phases: All – Legal framework

Procurement Committees in Nuevo León haven odd number of participants, therefore reducing the likelihood of stalemates in the decision-making process. Additionally, it is notable that the requiring areas are not allowed to vote in Committees, and are only allowed to voice their opinions. This makes the Committees more independent from the requiring areas when considering the ideal (pro-competitive) type of procurement design.

Most procurement proceedings are electronically held

Phases: All – Legal framework

In Nuevo León, most procedures are held electronically through the Electronic Public Procurement System. Face-to-face proceedings are only an exception, rarely authorised, and

still included to allow for extraordinary cases in which the technology is not available (namely malfunctions or the absence of technological assets in certain municipalities).

Elaborate planning requirements for procurement

Phases and stages: Pre-tender - Procurement design

According to the LAACSENL, planning for procurement in Nuevo León requires for objectives to be defined in the short, medium and long term. Further still, the law specifies the requirement of physical and financial scheduling, reference prices available in the “Electronic Public Procurement System”, the corroboration of the existence of assets, estimated delivery time, specifications, maintenance requirements and, most importantly, if procurement exceeds one financial year, the budget for the different years must be contemplated and finally, it must take into account existing framework agreements. All of these specifications make for an extensive planning process for procurement.

Consolidated purchases and framework agreements

Phases and stages: Pre-tender - Procurement design

Nuevo León uses consolidated purchases on a regular basis. This is considered a good practice by OECD standards because these types of purchases allow for an efficient use of economies of scale that allow governments to achieve better value for money. Additionally, Nuevo León considers framework agreements among its procurement tools and mechanisms. It should be noted that purchasing areas are allowed to buy goods outside of a framework agreement if the price for those goods is better than the price established in the framework agreement in place, thus constantly encouraging better price-seeking conditions.

Conditions for reverse auctions (OSDs)

Phases and stages: Pre-tender - Procurement design

Reverse auctions may enable procuring institutions to obtain better prices for particular goods and services. In particular, Nuevo León only allows these procedures when the points and percentage evaluation criteria is not used and when the market studies identifies that: there are at least five potential bidders, the requirements may be objectively defined and are commensurable, the volume of procurement makes the procedure desirable, the good in question may be performed exclusively through electronic means, if there is no need for a maximum reference price. These specifications increase the likelihood that the using reverse auctions will be a more competitive method for obtaining better purchasing conditions.

Electronic Reverse Auctions (ERAs) and a virtual market

Phases and stages: Pre-tender - Procurement design

Electronic Reverse Auctions (ERAs) are a very efficient way of obtaining better prices from, otherwise, single bid offers in direct award procedures because it allows for counterbids in real time. To do so, Nuevo León has put in place a virtual market where different registered suppliers

may bid on small purchases of goods that have been previously authorised and uploaded into a catalogue. This catalogue is updated monthly.

Direct awards that require price estimations

Phases and stages: Pre-tender - Procurement design

Nuevo León considers two types of direct awards depending on the amount of the expected contract. If the direct award is high (approximately \$9,600 USD to \$57,000), the requiring areas must include three different price estimations. This allows for more accurate reference prices. Smaller direct awards do not require price estimations, allowing for timely purchases whenever unexpected situations may arise.

Commensurable evaluation criteria and independent evaluators

Phases and stages: Pre-tender - Procurement design

The legal framework considers that, regardless of the evaluation criteria, these must be quantifiable and assess the time frame for the delivery of goods as well as different quality specifications. These conditions are an ingenious method to ensure that any form of evaluation may be followed through, assessed in the aftermath of the procurement process and decrease the likelihood of complaints against procurement procedures. Moreover, the announcement of the winner of the tender must include the name and job of the public servants responsible for organising the tender on the one hand, and for evaluating the proposals on the other. This separation of responsibilities increases accountability and may reduce the likelihood of conflicts of interest when assigning the winners.

Well-defined rules for Social Witnesses

Phases and stages: Pre-tender - Procurement design

The use of social witnesses is clearly defined in the law. It includes the creation of registry of social witnesses that may be accessed by municipalities. Additionally, the tasks and responsibilities of social witnesses are further detailed in the implementing regulations of the law.

Streamlined registration of providers

Phases and stages: Pre-tender – Procurement design

Nuevo León has an efficient and streamlined process for registering providers. This process allows the government to guarantee that businesses, which are a part of the formal sector, participate in tenders and are more likely to comply with their contractual agreements.

Well-designed and fully functional Electronic Public Procurement System

Phases and stages: Pre-tender – Procurement design

The Electronic Public Procurement System that is responsible for organising requests and overseeing procurement process is fully functional. The requiring areas (users) had no complaints

regarding the system and all central government agencies used it constantly. The system streamlines the requirements and sends the requests to different areas within the Centralised Procurement Unit. The system fits seamlessly into the procurement process, which has an ISO-9000 certification.

Specialised agents and clear-cut uses defined for market research

Phases and stages: Pre-tender – Procurement design

The Central Procurement Unit uses its “Negotiators”—specialised agents in either goods or services—to carry out its market research. This specialisation allows for a better understanding of price schemes in the local markets (because the centre their attention to local providers) and makes the calculation of reference prices independent from the requiring areas, which increases the likelihood of unbiased estimations. The contents of market studies are specified in the implementing regulations of the procurement act. The implementing regulations specify the expected outcomes of market research. That is to say: when to combine goods into single or multiple batches, it should identify substitutes, establish an acceptable price and the maximum reference price, it should also enable decision makers to decide if it is fitting to use reverse auctions, and, in general the the best procurement design that may elicit the best purchasing conditions.

Certificates of Independent Bid Determination and statement of integrity

Phases and stages: Tender – Call for tender

Following the OECD recommendations, Nuevo León makes it mandatory for participants in tenders to sign a CIBD. These signed documents are important deterrents to anticompetitive practices and should bind legal representatives of corrupt firms to penalties and sanctions included in the economic competition (or antitrust) frameworks to increase the likelihood of competitive tenders. Additionally, the Nuevo León requires potential bidders to present a statement of integrity where they assure that they commit to behaving honestly and refraining from conducts contrary to the Law.

Pro-competitive requirements for joint bids and subcontracting

Phases and stages: Tender – Call for tender

The law requires interested bidders to justify their inability to participate on their own in both joint bids and subcontracting agreements. This requirement is an exceptionally good practice because it increases the likelihood that joint bids and subcontracting will not hiding a collusive arrangement and simultaneously ensures the participation of businesses that would otherwise be unable to partake in the tender (i.e. MSMEs).

10-day limit for submitting proposals

Phases and stages: Tender – Reception of proposals

It is very important that procuring institutions make sure that potential suppliers have enough time to prepare their bids adequately. While time may be of the essence, the fact that Nuevo

León establishes a 10-day limit may avoid unnecessary problems with the bids and increases the likelihood of observing competitive tenders.

Different types of financial guarantees

Phases and stages: Tender – Financial guarantees

The legal framework considers an array of three different financial guarantees that are further explained in the regulating implementing regulations or bylaw. Financial guarantees serve as a mechanism for assuring the seriousness of bids, and as retaliatory mechanism for unreliable providers.

Different types of offenses (serious and non-serious)

Phases and stages: Tender – Financial guarantees

The legal framework considers two types of offenses that may be sanctioned, with differentiated type of sanctions (including the blacklisting of suppliers) and different amount of fines. These are intended for both suppliers and public servants alike. The existence of these definitions and specifications conjoins the procurement framework to that of oversight. Consequences for misconducts should be readily enforced and publicized to convey the prevalence of Rule of Law and discourage future potential misconducts.

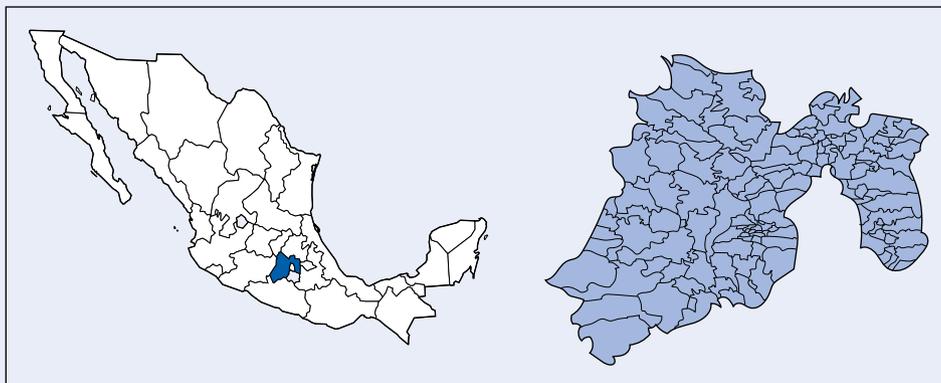
State of Mexico

Procurement in the State of México (*Gobierno del Estado de México, GEM*) surmounted to approximately \$13.9 billion pesos (USD 934 million) from 2012 to 2014²⁷. According to information provided by public officials, procurement in this state is mostly spent on: construction supplies, computer equipment, vehicles; telephone services, radio communications, mobile communications, photocopying, fuels and lubricants, security and surveillance, cleaning services for buildings and logistics services (rental of chairs, tents, tarpaulins, rental latrines and buses). The central government agencies with largest purchases were the Ministry of Public Safety (mostly patrol vehicles and special protective apparel), the Ministry of Education (mostly vehicles, computer equipment and sports kits) and the Ministry of Transport (solutions for licensing vehicles and passports with radio frequency chips). The GEM reports that approximately 50% of its procedures are direct awards to local suppliers.

The, legal framework of procurement at GEM is subject to a Procurement Act (*Ley de Contratación Pública del Estado de México y Municipios, LCPEMM*) and its Bylaws (*Reglamento de la Ley de Contratación Pública del Estado de México y Municipios, RLCPEMM*). Additionally, GEM has a manual²⁸ that dictates the operation and responsibilities of the central procurement committee and specific Guidelines for procurement at the central level and in municipalities (*Políticas, Bases y Lineamientos, POBALINES*).

²⁷ \$180 million USD in 2012, \$600 million USD in 2013 and \$154 million USD

²⁸ In Spanish: *Manual de Operación del Comité de Adquisiciones y Servicios de la Secretaría de Finanzas*

Box 10. **The State of Mexico**

Located in centre Mexico. The State of Mexico is the most populated state in the country. It is divided into 152 municipalities of which 59 are considered as part of Mexico City's suburban area. Economically, it is one of the most productive states in the country, producing around 9% of Mexico's GDP and it is an important industry and manufacturing core.

State highlights

Population (2010): 15,175,862 (16th of 32 federal states)

Territory: 22,351 km² (25th of 32 federal states)

Municipalities: 125

Capital: Toluca de Lerdo

Political

Government (2015): PRI

Local congress (seats): (PRI 53%, PAN 14%, PRD 16%, others 17%)

Economy

GDP 2012 (PPP): 150,393 Million (2nd of 32 federal states)

Income per capita 2012 (PPP): 1,250 (24th of 32 federal states)

HDI 2012: 0.742 (19th of 32 federal states)

Education

Average years of schooling: 9.1 (8th of 32 federal states)

Corruption and Perception Index 2010: 16.4 (31th of 32 federal states)

Competitiveness Index (2014): 44 (16th of 32 federal states)

Variables from: INEGI, PNUD, Mexican Chapter of Transparency International and Mexican Institute for Competitiveness.

Regulatory reforms

According to the study carried out by COFEMER published in 2012²⁹ that applied the OECD *Indicators of Regulatory Management Systems* (2008) to Mexican states, GEM stands out as the fifth most efficient in regulatory reform, with a grade of 47/100, 20 points beneath the OECD average of 67.

According to the report, the State of Mexico includes a complete legal framework for improving regulatory reform. It also considers that the state has an above the average institutional framework to ensure that regulatory reform is implemented. However, according to same report there is no specialised training for public servants to ensure regulatory reform implementation. Additionally, regulatory transparency is a weakness according to the same report because it ranks below the OECD average. The report considers that the state has problems with publicising and systematising public information.

The State of Mexico shows important advances regarding opening business and concentrating administrative services, according to the World Bank.³⁰ Regarding the ease of licensing, permits and one-stop offices, the state ranked as the 9th highest in 2014, with a score slightly above the OECD average. However, the report also indicates that the State of Mexico is one of the three Mexican states (together with Zacatecas and San Luis Potosí) that considers a dynamic system for evaluating and assessing the impact of new administrative improvements.

The report indicates that the State of Mexico has an above the average harmonisation between the federal and local laws that guide regulatory reform. However, there have been few advances in areas that regulate economic competition and the protection of consumers. Additionally, while the report considers that the State of Mexico has an advanced framework for assessing policy; it has below the average performances in the specificity and robustness of the analysis required.

Procurement agencies and actors

General Directorate of Material Resources

According to the provisions of Article 24, section XXXVII of *Ley Orgánica de la Administración Pública del Estado de Mexico* (LOAPEM), the Ministry of Finance is responsible for the procurement of GEM. The General Directorate of Material Resources (*Dirección General de Recursos Materiales*, DGMR) is responsible for undertaking this task. This area manages all the purchasing procedures. It currently has 516 public officials dedicated to the entire procurement cycle implying both federal and state resources. According to Article 32 of the RLCPEMM, the DGMR has, among others, the following responsibilities:

- Formulating and submitting to the Ministry of Finance policies and rules to be observed by all government agencies regarding: planning, programming, budgeting and execution of acquisitions, leasing arrangements, and hiring of services.

²⁹ COFEMER (2012) *Retos y Perspectivas del Sistema de Gestión Regulatoria en las Entidades Federativas*, Comisión Federal de Mejora Regulatoria/LATIN-REG, y Comisión Especial para la Competitividad de la LXI Legislatura de la Cámara de Diputados. Mexico.

³⁰ The World Bank, *Doing Business in Mexico, 2014. Understanding regulations for small and medium-sized enterprise*, Washington, 2014.

- Organising and operating, with the supporting of the *Dirección General del Sistema Estatal de Informatica*, an Electronic Procurement System. (i.e. COMPRAMEX)
- Consolidating, operating and maintaining: a) The catalogues of goods and services that may be purchased or hired and b) The supplier registry.
- Issuing certificates to registered suppliers.
- Implementing and monitoring the annual procurement programme for the executive branch of government.
- Scheduling, documenting and substantiating purchasing procedures.
- Making or, where appropriate, hiring technical consultation for performing market research, quality testing and those necessary for the improvement and modernization of procurement and services.
- Representing the Ministry of Finance, pursuant to its powers, in procurement committees.
- Issuing calls for tenders, terms of reference, carrying out invitations for restricted invitations and announce winners of procurement procedures.
- Performing physical inspections of the facilities of suppliers to verify their financial, administrative, technical and legal capacity and, where appropriate, to verify the quality of goods and services and the availability of stocks.
- Formulating, subscribing and following up contracts.
- Subscribing coordination agreements with subsidiary bodies, administrative tribunals, Legislative and Judicial powers, autonomous entities and municipalities for purchasing procedures.
- Meeting, substantiating and resolving contractual breaches incurred by suppliers and, where appropriate, applying sanctions.
- Reporting to the Ministry of Oversight of any breaches in contractual arrangements that are subject to administrative disciplinary proceedings.
- Developing and publishing the criteria and rules for the correct application of the LCPEMM and its bylaws.
- Requesting the administrative support of other administrative units of the Ministry of Finance regarding procurement and other activities related to its powers.

After any purchase is requested by any state entity, DGRM carries out the procurement, drafts the contracts and pays the suppliers by means of the Treasury (another area from Ministry of Finances). There are no individual buyers in the central government, so this office holds control over the entire purchasing process.

Commission for State-level Regulatory Improvement

Regulatory reform has been a constant in GEM. Currently, the *Comisión Estatal de Mejora Regulatoria* is a part of the Ministry of Economic Development. It is responsible for this administrative simplification and regulatory reform for the GEM and the municipalities. This Commission was created in September 2010 and started operations in May 2011. The objectives

of this commission are to reduce the number of obstacles in public administration and create a pro-competitive economic environment in the state. Its main tasks are:

- a. Present the Council's Annual Regulatory Improvement Programme.
- b. Receive and rule on new regulations and / or specific reform.
- c. Manage the State Register of Procedures and Services.
- d. Present an annual report of regulatory improvement.
- e. Promote and monitor the implementation of programs, projects and strategies entrusted to the Commission.

Among the several advances in regulatory reform relevant to procurement are the one-stop shop for public services, the ISO-9000 certificate for procurement process and the authorisation of the POBALINES (Procurement Guidelines) for procurement.

Ministry of Oversight

According to the Organic Law *Ley Orgánica de la Administración Pública del Estado de México*, LOAPEM, the Ministry for Oversight (*Secretaría de la Contraloría*) is responsible for supervising that procurement procedures are carried out as stated in the LPEA and may act upon legal infringements. According to Article 38 bis of LOAPEM, the Ministry has 24 responsibilities, of which the most relevant to procurement are the following:

- Planning, scheduling, organizing and coordinating the control system and government evaluation.
- Inspecting and supervising the exercise of state government spending and its consistency with the expense budget.
- Formulating and issue the rules and criteria governing the operation of instruments, systems and procedures for control of the state government.
- Monitoring and supervising compliance and enforcement of oversight laws, as well as advising and supporting internal control bodies of government agencies and trusts.
- Dictating the basis for conducting audits for government agencies and trusts.
- Checking compliance by government agencies and trusts obligations of the provisions of planning, budgeting, revenue, funding, investment, debt, equity and funds, and property values of the state government.
- Inspecting and monitoring directly or through the supervisory bodies that government agencies and trusts comply with the rules and provisions of the following: registration and accounting systems, procurement and payment of staff, contracting, public works, acquisitions, leasing arrangements, maintenance services, use and destination of goods, sales and disposal of fixed or other assets and material resources.
- Ensuring that federal and state resources of municipalities are applied as required.
- Monitoring compliance with the obligations of suppliers and contractors, requesting information related to their operations.

- Reviewing accounting standards and controls for programming, budgeting, human resources, material and financial resources, as well as the rules on debt contracting.
- Receiving and record the declaration of assets of public servants of the State and municipalities and monitor and make investigations that may be required in terms of the Responsibilities of Public Servants of the State and Municipalities Act.
- Meeting and investigating the acts and omissions on behalf of public servants, to apply administrative penalties and, if necessary, instruct appropriate measures for prosecution, providing data and information required. Additionally, conduct investigations, inspections and supervisions, through covert actions and simulated users to verify the legality, honesty, efficiency and timeliness of public services.
- Establishing measures and mechanisms aimed at achieving effective monitoring, supervision and control of state government spending and administrative modernisation.
- Providing advice and technical support to internal control bodies of municipal spending, when requested.

The Ministry may authorise the cancelation of public procurement procedures. To do so, it may request data and reports from government agencies regarding procurement procedures. It may apply sanctions (Art. 87 LCPEMM) that range from three hundred³¹ to three thousand times the general minimum wage in the state (i.e. approximately \$1,200 USD to \$12,000 USD). It is also responsible for receiving and answering all the complaints that may arise during tender procedures.

Procurement Committee

In the State of Mexico, the committee has attributions similar to those of its counterpart at the federal level. Its foremost task is ruling on exceptions to tenders. However, the Committee participates in all procurement proceedings (Art 23, LCPEMM). The Committee is responsible for reviewing all of the documents delivered in tenders to determine if the bids comply with the technical specifications and verify the economic propositions are within the allowed range determined by the market research.

Supplier registry

The registration process is carried out at the premises of the DGRM and as of May 2015, documents could not yet be submitted electronically. This process is regulated in Article 21 of the LCPEMM, and Articles 24, 25, and 29 to 42 of RLCPEMM. The interested party must present the original documents and a copy for verification. After the documents are verified a reference number is assigned to the company and a certificate (*Certificado de Empresa Mexiquense*) is issued to the supplier. This registration process is bound to the *Registro Único de Personas Acreditadas del Estado de México*, a process that is defined in the Electronic Means Act (*Ley de Medios Electrónicos*). This certificate may be created before or after winning a tender procedure because it is not necessary to submit a bid in a tender. The requirements for registration are the following:

³¹ It must be noted that the RLCPEMM indicates in Article 167 a range for fines that goes from thirty (whereas the LCPEMM indicates three hundred) to three thousand times the minimum wage.

- a. Constitutive Act and its last modification, in the case of collective legal persons; birth certificate in the case of individuals.
- b. Legal representation sufficiency, issued by a Public Notary.
- c. Tax identification and registration in the Register of Taxpayers, which should include address and predominant activity.
- d. Official identification of the owner or legal representative.
- e. Annual Tax return for the preceding year or financial statements of the last fiscal year, audited by public accountant.
- f. Financial Statements of the month immediately preceding the date of the registration application, accompanied by Certificate of the Public Accountant issuing them.
- g. Two recent colour passport-size photographs of the owner or legal representative.
- h. Letter of commitment of the validity of documents

Institute for Access to Public Information

The Institute for Access to Public Information (*Instituto de Acceso a la Información del Estado de México*) is responsible for making sure that, with the exception of confidential or privileged information, public entities publish and update procurement information detailing, among other information, the following (Art. 12, LTAIPEMYM):

- a. Annual programmes and information of public works and procurement including the contracting area.
- b. The bidding and contracting for the procurement of goods, leases and services which have concluded in their area of responsibility with individuals or corporations in private law.
- c. Concluded proceedings for issuing authorizations, permits, licenses, certificates and awards.
- d. The results of the audits performed by the OICs, the Ministry of Oversight, the OICs of the Legislative and Judicial Powers, general audit offices, municipal comptrollers and the external offices and corresponding explanations.
- e. Work programmes and annual reports of activities under each plan or programme established by the government agencies.
- f. The indicators established by the government agencies, taking into account the goals and objectives outlined in the National Development Plan.
- g. Public, state and municipal accounts.

According to the Transparency Index (*Métrica de la Transparencia*) carried out every four years by the CIDE (*Centro de Investigación y Desarrollo Económico*), GEM occupied in 2014 the 11th place out of the 32 states in Mexico. All information must be kept and guarded by the government for five years.

With the publication of the Public Procurement Act of the State of Mexico in 2013, the COMPRAMEX System was created; this electronic platform aims to systematize the procurement procedures for both electronic and mixed procedures. Following Article 18 of LCPEMM, the entity only uses the CompraNet for its procurement subject to the federal PPA and uses the COMPRAMEX System for all other purchases. According to public officials interviewed in fact-finding missions, electronic bids are not yet a common practice in the State. COMPRAMEX System has the following goals (Art. 19, LCPEMM):

- a. Reducing expenses incurred by public bodies and private participants.
- b. Controlling public spending.
- c. Advancing efficiency and transparency. The computer system authorising the ministries, administrative courts and municipalities to conduct their purchasing procedures should be linked to the accounting and budgeting system, in order to consider programming and scheduling of resources, implementation and enforcement of objectives and goals.

Similarly, the Bylaws of the Public Procurement Act of the State of Mexico and Municipalities, establish that the Ministry of Finance is responsible for COMPRAMEX, which shall be public and contain information regarding the annual procurement programmes of government agencies (Art. 11).

However, while COMPRAMEX System is good platform for procurement information, during the time this report was carried out, it was impossible to access any information as indicated in the law. That is, the platform was not yet functional.

Audit Office

The Audit Office of the State of Mexico (*Órgano Superior de Fiscalización del Estado de México*, OSFEM) conducts audits and reviews documents to verify that public procurement follows processes and procedures correctly. If the OSFEM discovers irregularities it may issue recommendations to improve the performance of the required entities. OSFEM also has the power to impose fines and penalties, yet these must either be applied by the Executive branch or by the state Congress.

As in the case of other states, according to the interviews carried out during the fact-finding missions, municipalities constantly fail in filling out the public accountancy records as required by the CONAC.

The Procurement process

Pre-tender stage

1. PLANNING AND SCHEDULING OF ACQUISITIONS

Similar to the federal level, state government agencies are responsible for the annual planning of their procurement requirements. These must determine their needs according to available stocks and base their scheduling on their approved budgets—which are enacted by the local Congress in December of each year. The law (Art. 9, LCPEMM) requires purchasing areas to align their procurement objectives to those of the *Plan Estatal de Desarrollo*. In particular, it requires planning to include objectives, goals and the estimated time frame in which these will be acquired.

Government agencies must send their procurement requirements to the DGRM by January 31st of every year (Art. 13, LCPEMM) for this area to prepare the Annual Procurement Programme. Ideally this should work through an internal system, however, since it is relatively a new process, it is still common that requests be physically delivered by the agencies. All this information will be soon collected through an internal electronic system (*Sistema Integral de Administración Pública*, SICAPEM). Similar to the federal level, planning is more of an administrative checklist and is not results-oriented. Therefore, the programme lacks commensurable indicators to evaluate the efficiency of procurement strategies.

The LCPEEM establishes that all products must be considered in a catalogue (Art. 16). This catalogue includes a code and description of the goods. Similarly, planning procurement requires scheduling and an estimated price of the goods (which is independent from market studies).

While the catalogue is an improvement to avoid arbitrary purchases that could be skewed towards particular suppliers, the details of the products is still limited, according to interviews conducted for this study. This means that the catalogue must undergo further work to conciliate the needs of different areas³².

Consolidated purchases: Consolidated planning is carried out by a specialised area of the DGRM.

Framework agreements: The state does not consider framework agreements in the LCPEMM.

2. REQUESTS FOR PROCUREMENT

In theory, all requisitions are electronically administered through the SICAPEM (*Sistema Integral Administración Pública*). On this platform, requisitions are approved, if and only if the request is considered in the Annual Procurement Programme, if there is enough money in the authorised budget item to authorise the purchase and if the item is considered in the catalogue included in the system. Since the system is relatively new, new categories and items have yet to be included. Further still, during the fact-finding missions, several purchasing areas disclosed that the system was not being used and requests were still being presented physically to the DGRM.

3. MARKET RESEARCH

The main purpose of market research is to acknowledge the quantity and quality of goods and services required are available in the market as well as to compare market prices. Article 17 of the Regulations of the RLCPEMM mentions that, prior to the processing of any requisition, state government agencies are responsible for obtaining (from the DGRM) a market research that consists of:

- a. A businesses log with name of suppliers that could sell the specified goods and services.
- b. A formal invitation to suppliers in order to estimate prices and economic propositions

³² An example given to us during the fact-finding missions was that the Ministry of Education requires lunch boxes for school trips. The system requires that the requiring areas specify the type of sandwich and fruits or drinks that will be considered. Each possible combination of lunch boxes requires a specific code. This makes the catalogue much larger than it needs to be, because such detail may be added in the terms of reference.

- c. Answers that must include the official response to these inquiries with description of the good or service to be provided, unit of measure, quantity, average prices and commercial conditions (method of payment, place and time of delivery).

Additionally, the LCPEMM (Art. 6) allows for the Ministry of Finance (or DGRM) to hire external consultants for market studies. This means that market research may be more or less specialised depending on the requisitions and may allow for a more accurate estimation of prices in different markets, national or otherwise.

The final price estimations of the market research are then used as reference prices. It is noteworthy to point out that requiring areas must also estimate a price when designing their procurement programmes. However, these prices are independent from each other.

4. PROCUREMENT DESIGN

The LCPEMM considers three procedures for procurement in the State of Mexico, which are identical to those at the federal level: tenders, restricted invitations and direct awards. However, in practice there is another procurement procedure: *compras solidarias* (solidary purchases).

Table 16. **Procurement procedure and range of purchase in the State of Mexico**

Procurement Procedure	Range of purchase in pesos (maximum range) ³⁴	Approximate amount (2015, USD)
Public tender	> 1,200,000	> \$80,000
Restricted Invitation	\$500,000-\$1,200,000	\$33,333-\$80,000
Direct award	<\$500,000	< \$33,333
<i>Compra solidaria</i>	< \$500,000 to one supplier	< \$33,333

Source: General Directorate of Material Resources.

With the authorisation of the administrative director, any purchase that is no greater than \$500,000 MX (approximately \$33,333 USD) may be purchased through a direct award. All purchases greater than this amount and lower than \$1.2 million pesos (approximately \$80,000 USD) may be purchased through restricted invitations. All procedures higher than this last amount must be procured through tenders.

The greatest limitation observed in the law is that international tenders are only allowed when the good is not available in the country or when international treaties make it obligatory (Art. 31). This greatly reduces the opportunity of guaranteeing a better value for money because it immediately excludes an enormous pool of potential suppliers from its competitive procedures.

Additionally, the state considers a programme called *compras solidarias*. This programme was created with the intention of favouring small and medium enterprises. It is not considered in the procurement legal framework, and is regarded as an economic stimulus strategy used as a fast-track for registering small businesses and, once registered; these companies are only allowed to sell once to the local government up to \$500,000 of a few articles (stationary goods, computers and so on). The benefits of this programme are not reported and the evaluation of the programme is not yet available.

³³ This table only considers the largest amount allowed for government agencies according to the Budget.

Procurement format: The LCPPEMM allows for the three formats for procurement procedures (Art. 28): face-to-face, electronic and a combination of both face-to-face and electronic procedures (mixed).

Evaluation Criteria: another difference between the federal and State of Mexico systems is that latter only considers two types of evaluation criteria. At the federal level, there are three types of evaluation criteria to analyse the feasibility of the technical and financial proposals from suppliers: binary criterion, criterion points / percentages or criterion of cost / benefit. Article 87 of the RCPPEMM does not consider cost/benefit criteria.

It is noteworthy that Article 70 of LCPPEMM establishes that, all other things constant, local suppliers (that own a *Certificado de Empresa Mexiquense*) will be favoured with a price margin preference of to 5% of bids from foreign competitors. That is to say, the same amount as established in the Federal law (Art. 38 of the PPA).

Reverse auctions: The State of Mexico allows for reverse auctions and regulates them in articles 51 to 53 of the LCPPEMM and 105 through 109 of RLCPEMM. These are administered through the COMPRAMEX system.

Social witnesses: This figure is included in the purchasing procedures when requested by the requiring agency, which in turn must authorise and pay these actors from their budget (Art. 69, RLCPEMM). These must be included for all procurement procedures that are higher than 2 million times the local minimum wage (approximately \$8 million USD).

Tender stage

1. CALL FOR TENDER

Calls for tender in are regulated under Article 33 of LCPPEMM. The calls are similar to those at the federal level and they are allegedly made public through the COMPRAMEX system.³⁴ The only difference is that these have a cost to interested parties (Art 34), and there are no indications on how this cost is estimated. However, the call for tender includes the terms of reference and, additionally, requires that the criteria for approving joint bids be specified. These are two characteristics that are in agreement with previous OECD recommendations.³⁵

Joint bids: These are accepted under Article 36 of LCPPEMM as long as the bid establishes all of the responsibilities that each separate company will have regarding procurement.

Certificate of Independent Bid Determination: The GEM has already a working version of a CIBD following previous OECD recommendations. This document is required for all bids submitted to tender procedures.

2. CLARIFICATION MEETINGS

The Bylaws of the Public Procurement Law of the State of Mexico and Municipalities has a detailed explanation of the objectives and procedures. Attendance is optional (Art. 74), anyone

³⁴ COMPRAMEX was not functional when this report was elaborated, and no information could be downloaded or visualised on the webpage.

³⁵ See: GEM, OECD Document.

wishing to attend must prove that they have acquired the terms of reference and must register thirty minutes prior to the scheduled date.

Requests for clarification must be submitted through COMPRAMEX or deliver them personally to the DGRM, not later than four hours before the date and time set for the meetings (Art. 75). In any case, requests submitted personally must be delivered also in an electronic device (Art. 76). The DGRM may discard requests for clarification that do not meet these requirements. The clarification meeting may be adjourned if required by the public servants to answer all inquiries (Art. 77). All the information regarding the inquiries and answers must be included in minutes and these must be available on COMPRAMEX and at the offices of the DGRM.

3. RECEPTION OF PROPOSALS AND CONTRACT ASSIGNMENT

Proposals are first opened in a public meeting and all contents registered specifying the time they were presented (measured in minutes). Afterwards, the Procurement Committee evaluates and assesses the proposals in both technical and financial terms (Art. 37, LCPEMM). All bids that fail to meet technical considerations are rejected. Economic bid below the reference price estimated through market research are approved. If, however, any bid is higher than the estimated price, the supplier is allowed to offer a counterbid that must, at least, equal the reference price (Art. 40). A second public meeting is then used to determine the winner. According to GEM, suppliers may submit anonymous propositions when using the electronic format of a procedure in COMPRAMEX (Art. 36). The winner is then announced 15 days after the call for tender (Art. 35).

4. FINANCIAL GUARANTEES

Percentages for financials guarantees are published in the terms of reference according to Article 33 of the LCPEMM. These may amount to 10% of the value of the contract (without VAT) according to Article 76 of LCPEMM. Suppliers may be exempted from paying guarantees as long as the goods or services are provided before the time for complying with the contract has run out or if purchases are not higher than two thousand times the minimum wage in the state (approximately \$8,000 USD). The RLCPEMM (Art. 128) considers guarantees for the following.

- a. Advance payment of goods or materials received by suppliers, within ten working days after signing the contract.
- b. Compliance within ten days after the signing of contract.
- c. Defects or hidden defects of the goods, within five working days of delivering.
- d. Possible disagreements that may arise if a procedure is suspended.
- e. Seriousness of the position in the presentation, opening and evaluation of bids, opinion and judgment award.

According to the government officials, twice a year the DGRM hires consultants for designing the procedures for insurances and determining financial guarantees for specific tenders.

Post-award stage

1. COMPLAINTS

Bidders may promote complaints provided that they have participated in the process (Art. 90, LCPEMM). Complaints must be submitted to the Ministry of Oversight, in writing or electronically, within ten working days of the date after winners have been announced. In the case of municipal authorities, complaints must be submitted to the local council. All complaints must establish evidence to suggest that the procurement process did not comply with the LPEA or the terms of reference. When any of the complaints are found valid, the Ministry may suspend the procurement process (Art. 92).

In matters governed by the LCPEMM shall not apply the administrative recourse of disagreement, under the Code of Administrative Procedure of the State of Mexico (Art. 94). Against the decision rendered in the administrative grievance, as well as other acts and decisions issued during recruitment and validity of contracts covered by this Act comes before the Court of Administrative Litigation. Further still, the resolution may be challenged (Art. 94) with the means established in the Code of Administrative Procedures of the State of México.

2. PENALTIES AND CONTRACT TERMINATION

Anyone that violates the law or the terms agreed in procurement contracts will be punished according to the Code of Procedures of the State of Mexico. All government agencies must report any contractual breaches to the Ministry of Oversight within the first five business days of each month (Art. 164).

Once the sanction has been imposed by the Ministry of Finance it should be paid in the first 15 business days from the day following the notice. If the person fails to recognise the penalty, the government agency must inform the Ministry of Oversight. Violations are determined as a result of tangible breaches of a contractual clause or an infringement of the legal framework (Art. 166). According to GEM, the main reasons why sanctions are applied are delays in delivery of goods and problems regarding technical specifications.

3. LIQUIDATION OF PAYMENT TO SUPPLIERS

Article 33 of LCPEMM establishes that payment to suppliers must adhere to the terms established in the call for tender. However, there was no data available to indicate if payment to suppliers was timely and efficient.

Relevant changes to procurement laws

The Government published the Procurement Act for the State of Mexico and Municipalities in 2013, which replaced a section (Tenth Book) of the Administrative Code of the State of Mexico. This Act integrally reforms purchasing regulations both for the state government and municipalities. Simultaneously, this required the publication of a bylaw that governs its specific regulations and guidelines (*Políticas, Bases y Lineamientos*, POBALINES) that apply to all government agencies. According to GEM, the benefits obtained were an overall greater fluidity in the purchasing procedures, an introduction of electronic and mixed procedures; the establishment of the binary and percentages evaluation criteria (the latter for guaranteeing

quality over price) and consolidated procedures that increased the benefits from economies of scale. GEM estimates an increase of 47% in the amount of money that was used for tenders from 2013 to 2014 with the new framework.

Best practices

Regulating bylaw and administrative guidelines (POBALINES)

Phases and stages: All

The existence of implementing regulations for LCPEMM is a good practice because it allows for reduced discretionary interpretation of the law. In this way, it complements the existing legal framework by identifying clearer responsibilities of public servants and providers during the procurement process. Additionally, the State of Mexico approved of specific guidelines for the procurement process in 2013 (*Políticas, Bases y Lineamientos*, POBALINES). These guidelines describe the more specific considerations that public servants must take into account when purchasing goods, hiring services or contracting leasing arrangements. In order to guarantee the consistency of the procurement process, the process has an ISO-9000 certification.

Evaluation and assessment system for implementing regulations

Phases and stages: Pre-tender - Planning and scheduling

As identified in the COFEMER (2012) report mentioned before, the State of Mexico is one of three in Mexico that have a robust system for evaluating and assessing the impact of new administrative improvements. The existence of such a framework should allow the government to improve the efficiency of any modifications to the system. However, in order to guarantee success, the appropriate training of personnel is essential to ensure results over time.

Consolidated purchases

Phases and stages: Pre-tender - Procurement design

The State of Mexico uses consolidated purchases on a regular basis. This is considered a good practice by OECD standards because these types of purchases allow for an efficient use of economies of scale that allow governments to achieve better value for money.

Reverse auctions

Phases and stages: Pre-tender - Procurement design

Reverse auctions may enable procuring institutions to obtain better prices for particular goods and services. In particular, they are very efficient at obtaining better prices for standardised goods and services that have a large number of potential suppliers.

Streamlined registration of providers

Phases and stages: Pre-tender – Procurement design

The State of Mexico has an efficient and streamlined process for registering providers allowed to participate in the direct awards and restricted invitations. This process allows the government to guarantee that businesses are part of the formal sector and are more likely to comply with their bids and contractual agreements because their financial stability is required. Further still, it is not necessary to be registered in the supplier registry in order to participate in tenders, albeit registration is obligatory if the provider wins a contract.

COMPRAMEX and SICAPEM Design

Phases and stages: Pre-tender – Procurement design

The COMPRAMEX system for procurement has a simple design that shows great potential for reducing expenses and greater transparency. The website seems user-friendly and includes many categories that would make information easy to obtain if it were fully functional.

Additionally, the internal procurement system called SICAPEM (*Sistema Integral de Administración Pública*) is functional, albeit still in development. This system is an efficient tool for streamlining requirements of all requiring areas and verifying that these comply with the Annual Procurement Programme and the authorised budget. Additionally, it includes a growing catalogue of goods and services that are authorised for purchase. In the near future, it will include historical price estimations based on previous purchases and market research.

Independent market research and realistic price estimations

Phases and stages: Pre-tender – Procurement design

Market research is independent from the requiring areas. That is, a specialised unit of the DGRM carries out this research. This allows for a better understanding of price schemes in local and foreign markets. The contents of market studies are specified in the implementing regulations of the procurement act. Additionally, the DGRM allows for the outsourcing of market studies (and financial guarantees) to specialised firms. This significantly increases the accuracy of price estimations (and appropriateness of financial guarantees) for goods and services.

Certificates of Independent Bid Determination

Phases and stages: Tender – Call for tender

Following the OECD recommendations, the State of Mexico makes it mandatory for participants in tenders to sign a CIBD. These signed documents are important deterrents to anticompetitive practices and should bind legal representatives of corrupt firms to penalties and sanctions included in the economic competition (or antitrust) frameworks to increase the likelihood of competitive tenders.

*Remote clarification meetings***Phases and stages:** Tender – Clarification meetings

Clarification meeting may be carried out through electronic (remote) proceedings using an electronic system (COMPRAMEX) no later than four hours before the date and time established for the clarification meetings in any call for tender. The existence of remote proceedings reduces the possibility of communication among potential bidders whenever the participants' names are kept anonymous and, in such cases, must be considered a good practice.

*Counterbids in the reception of proposals***Phases and stages:** Tender – Reception of proposals

A particularity of the tender proceedings of the State of Mexico is that (after bids are submitted and reviewed by the Procurement Committee), when the price offered by any supplier is higher than the estimation obtained through market research, bidders are allowed to present a counterbid that must be equal to or lower than the aforementioned price estimation. This may be considered a good practice as long as the price estimation obtained in the market research is unbiased because it allows potential suppliers to improve their bargaining position and allow the procuring institution to obtain a better price.

*Different types of financial guarantees***Phases and stages:** Tender – Financial guarantees

The legal framework considers an array of five different financial guarantees that are further explained in the regulating bylaw. Financial guarantees thus serve not only as a mechanism for assuring the seriousness of bids, but also serve as retaliatory mechanism for undependable providers. Additionally, the amounts of financial guarantees are sometimes calculated by outsourcing this calculation to professional consulting firms, which are better prepared to determine and assess the potential risks of certain purchases and services such as insurances.

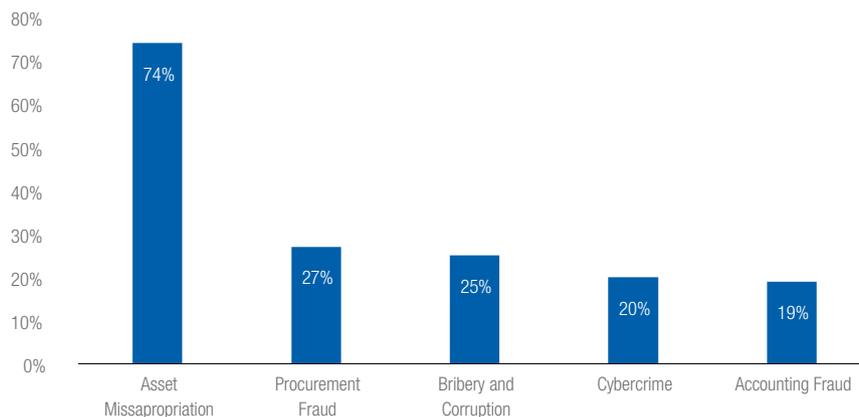
Chapter 4

Best Practices in Public Procurement in Five States

Public procurement is a fundamental area of government as it affects economic growth, business opportunities and the quality of public services. However, it is subject to malpractices, fraud and corrupt practices around the globe. Preventing such actions and routines has been a priority of the OECD and this study attempts to disseminate best practices at level of local governments in Mexico.

According to Price Waterhouse Coopers' 2014 *Global Economic Crime Survey* (Latin America Supplement), economic crime remains a fact of life for every business in all industry sectors: 35% of respondents reported that their organization experienced economic crime during the survey period. Procurement fraud received a significant response (27%), making it the second most reported type of fraud.

Graph 1. **Global Economic Crime Survey**



Source: <http://www.pwc.com/gx/en/economic-crime-survey/>.

Higher-than-average incidents of procurement fraud were reported in Brazil (44%), Peru (37.5%) and Mexico (31%).

As described in the second chapter of this Report, major progress has been made in Mexico at the federal level of government as it has been engaged in a thorough and radical transformation of its public procurement structure, processes, rules and technology. Several international organizations have recognized this process of reform, as very profound and successful.

The expectation was that this process would encourage state governments to follow the lead of the federal government. However, the transformation of public procurement at the state level has been slow, uneven and very often tied to political changes and necessities.

In 2009, the OECD published *Principles for Integrity in Public Procurement with 10 Key pillars of the Principles for enhancing integrity in public procurement*, divided in four general topics:

a. Transparency

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.
2. Maximize transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

b. Good management

3. Ensure that public funds are used in procurement according to the purposes intended.
4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

c. Prevention of misconduct, compliance and monitoring

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly.

d. Accountability and control

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from potential suppliers in a fair and timely manner.
10. Empower civil society organizations, media and the wider public to scrutinize public procurement.

The five states analysed in this Report have made significant advancements in these five key areas of the procurement cycle:

Table 17. **Advancements in key areas of the procurement cycle at state level in five states**

	Aguascalientes	Coahuila	Morelos	Nuevo Leon	State of Mexico
Transparency	✓	✓	✓	✓	✓
Efficiency/GM	✓		✓	✓	✓
GR/Prevention	✓	✓	✓	✓	✓
Control		✓		✓	✓
Accountability				✓	

a. Transparency

The five states analysed are now part of the worldwide tendency of allowing the general public to have complete access to key government processes and information. The five states have transparency laws that include special regulations for information that arises from public procurement processes.

Aguascalientes, Nuevo Leon, State of Mexico and Coahuila also developed electronic platforms that provide easy access to procurement information. These platforms have kick started the route to transform the traditional process to an e-procurement system that will allow for greater transparency, better control and more efficiency.

Aguascalientes

The Institute of Entrepreneurial Management and Regulatory Reform of Aguascalientes administers the only supplier registry that exists in the state. The LPEA considers this mechanism since 2000. The way the information is presented encourages transparency in the procurement process, as anyone can see which suppliers are selling to the government and which contracts were signed.

Aguascalientes has developed an electronic procurement system. A department in *Oficialía Mayor* administers the system, which was designed by the Institute of Entrepreneurial Management and Regulatory Reform and takes into account transparency guidelines established by the transparency authority, ITEA. All procurement processes are run through this platform.

Nuevo León

Most procedures are held electronically through the Electronic Public Procurement System. Face-to-face proceedings are only an exception, rarely authorized, and still included to allow for extraordinary cases in which the technology is not available (namely malfunctions or the absence of technological assets in certain municipalities).

The Electronic Public Procurement System that is responsible for organizing requests and overseeing procurement process is fully functional. The requiring areas (users) had no complaints regarding the system and all central government agencies used it constantly. The system streamlines the requirements and sends the requests to different areas within the Centralized

Procurement Unit. The system fits seamlessly into the procurement process, which has an ISO-9000 certification.

State of Mexico

The COMPRAMEX system for procurement has a simple design that shows great potential for reducing expenses and greater transparency. The website seems user-friendly and includes many categories that would make information easy to obtain if it were fully functional.

Coahuila

The website that lodges procurement information for Coahuila complies with the Open Government standards suggested by the Organization of American States. Having an open government policy is necessary to increase transparency and allows for greater accountability and, additionally, makes access to procurement information more accessible to the general public.

Morelos

The state has a Transparency Law that establishes a proactive system of disclosure of key information regarding public procurement, which is periodically evaluated.

b. Efficiency and Good Management

Apart from transparency, the area of efficiency has seen the most substantial progress at the state level. Multiyear programming in Aguascalientes; consolidated purchases in Aguascalientes, Nuevo Leon, State of Mexico and Morelos; and reverse auctions in Nuevo Leon and State of Mexico, are good examples of the intention to establish strategies and policies that allow for better value for money.

Aguascalientes

Multiyear programming is considered a good practice because it allows for better programming and, in particular, it enables procurement officials to foresee potential opportunities for consolidation and the use of economies of scale. It is also a tool for achieving goals and objectives for the state's Development Plan.

Consolidated purchases have increased in both volume and number in Aguascalientes over the years. Consolidation procedures have increased from 3 to 10 products and services since this method was allowed. Overall, consolidated purchases are used for standardized products such as office supplies and maintenance services.

Nuevo León

Nuevo León uses consolidated purchases on a regular basis. This is considered a good practice by OECD standards because these types of purchases allow for an efficient use of economies of scale that allow governments to achieve better value for money. Additionally, Nuevo León

considers framework agreements among its procurement tools and mechanisms. It should be noted that purchasing areas are allowed to buy goods outside of a framework agreement if the price for those goods is better than the price established in the framework agreement in place, thus constantly encouraging better price-seeking conditions.

State of Mexico and Morelos

The state of Mexico and Morelos also use consolidated purchases on a regular basis, which allow for an efficient use of economies of scale, which enables governments to achieve better value for money.

c. Good Regulation/Prevention

The five states analysed have been also engaged in a profound process of legal reform that establishes new, better and more systematic rules in this key area of government. The states of Aguascalientes and Mexico are following the lead of the federal government by creating manuals and guidelines that provide standardized interpretations of the law, and also better understanding of stages, requisites and documentation needed.

Aguascalientes

The existence of five different manuals —apart from its Public Procurement Act— related to public procurement means that the procurement process is more specific and allows for clear-cut responsibilities and tasks. Further still, they allow for officials to take into account different considerations that could enhance the results of procurement.

Nuevo Leon

Possibly the most important characteristic of the legal framework of Nuevo León is that the LAACSEN was drafted in collaboration with IMCO and the competition authority COFECE. This collaboration allowed the Nuevo León to seek and include best practices, many of which are those recommended by the OECD. These best practices are included below. Additionally, this law has recently (2014) approved of its implementing regulations (RLAACSEN) that allow for further interpretation of the law and its particular processes.

State of Mexico

The existence of implementing regulations for LCPEMM is a good practice because it allows for reduced discretionary interpretation of the law. In this way, it complements the existing legal framework by identifying clearer responsibilities of public servants and providers during the procurement process. Additionally, the State of Mexico approved of specific guidelines for the procurement process in 2013 (*Políticas, Bases y Lineamientos*, POBALINES). These guidelines describe the more specific considerations that public servants must take into account when purchasing goods, hiring services or contracting leasing arrangements. In order to guarantee the consistency of the procurement process, the process has an ISO-9000 certification.

Coahuila

Coahuila has had a number of reforms and amendments that are relevant to the procurement process in recent years (most notably, those regarding transparency, prevention in corrupt practices and the responsibilities of public servants). This intense activity is an example of effective coordination and collaboration between the two branches of government and reflects real interest on behalf of the State to improve the legal framework.

Morelos

Morelos has a new Administrative Code that elaborates and clarifies the basic processes and regulations established by their procurement law, allowing for better legal certainty for everyone involved.

d. Control

The area of control has seen important developments in the last years in the five states. The Procurement committees impartial to requiring areas and the specialized agents and clear-cut uses defined for market research of Nuevo Leon; the independent market research and realistic price estimations of State of Mexico; and the video recording and broadcasting of tender procedures of Coahuila, are good examples of advances in the area of control.

Nuevo Leon

Procurement committees in Nuevo León have an odd number of participants, therefore reducing the likelihood of stalemates in the decision making process. Additionally, it is notable that the requiring areas are not allowed to vote in committees, and are only allowed to voice their opinions. This makes the committees more independent from the requiring areas when considering the ideal (pro-competitive) type of procurement design.

The Central Procurement Unit uses its “Negotiators”—specialized agents in either goods or services—to carry out its market research. This specialization allows for a better understanding of price schemes in the local markets (because the center their attention to local providers) and makes the calculation of reference prices independent from the requiring areas, which increases the likelihood of unbiased estimations. The contents of market studies are specified in the implementing regulations of the procurement act. The implementing regulations specify the expected outcomes of market research. That is to say: when to combine goods into single or multiple batches, it should identify substitutes, establish an acceptable price and the maximum reference price, it should also enable decision makers to decide if it is fitting to use reverse auctions, and, in general the best procurement design that may elicit the best purchasing conditions.

State of Mexico

Market research is independent from the requiring areas. That is, a specialized unit of the DGRM carries out this research. This allows for a better understanding of price schemes in local and foreign markets. The contents of market studies are specified in the implementing regulations

of the procurement act. Additionally, the DGRM allows for the outsourcing of market studies (and financial guarantees) to specialized firms. This significantly increases the accuracy of price estimations (and appropriateness of financial guarantees) for goods and services.

Coahuila

The government of Coahuila has, for the past five years, broadcasted all of its tender proceedings and posted the videos on the internet. This practice increases transparency and provides accessible evidence to participants of the proceedings. This in turn may reduce the number of disagreements and complaints because the videos allow disgruntled parties to review the proceedings before filing complaints.

e. Accountability

The area that needs for greater improvement is the area of accountability and integrity. A new constitutional reform has passed through Congress in the last few weeks that create a new National Anti-Corruption System, which will renovate the whole system of integrity in Mexico.

However, some advancement is evident in this Report. The whistleblower program and the Anti-Corruption Unit in Nuevo Leon are a good start to create a new culture of responsibility and integrity in Public Procurement.

Nuevo Leon

Another singularity of Nuevo León is the existence of a specific law created to protect whistleblowers. As a consequence, there are clearly defined mechanisms for whistle blowing and specific mechanisms for protecting individuals that take the risk to do so. The existence of such a legal framework is unseen in other states or, even, at the Federal level.

A new unit was created within the Ministry of Oversight and Transparency to attend to any complaints or whistle blowing carried out by individuals against the government agencies. This new Unit complements the functions of the Ministry through different activities that include priority investigations and simulated users.

Table 18. **Best Practices in public procurement in five states**

State/Principle	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
Aguascalientes	E-procurement platform Accessible and transparent information of providers by the Supplier registry	Multiyear programming. It enables procurement officials to foresee potential opportunities for consolidation and the use of economies of scale Use of Consolidated purchases schemes	Procurement process is more specific and allows for clear-cut responsibilities and task Certainty of payments to suppliers Consolidated purchases	

State/Principle	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control	
Coahuila	Open Government standards in the website	Direct awards that require price estimations	Effective coordination and collaboration between Congress and Executive branch to improve the legal framework of procurement process.	Video recording and broadcasting of tender procedures and posting the videos on the internet. Spaces for citizen oversight	
	Broadcasting services included in the supplier registry	Internal procurement system linked with warehouses			
	Greater transparency requirements in public procurement	Pre-Budget Annual Procurement Programme			
Morelos	A Transparency Law with a proactive system of disclosure of key information on public procurement	Consolidated purchases are used with a regular basis	New Administrative Code that elaborates and clarifies the basic processes and regulations established by their procurement law		
	Electronic Suppliers Registry		The Procurement Act as well as its bylaw are specific about market studies.		
Nuevo Leon	Most procurement proceedings are electronically held.	Consolidated purchases are used with a regular basis	Electronic Reverse Auctions (ERAs) and a virtual market	Procurement committees have an odd number of participants.	
	Face-to-face proceedings are only an exception, rarely authorized.	The framework agreements are part of the procurement tools	Conditions for reverse auctions (OSDs)	Central Procurement Unit uses its "Negotiators" to carry out its market research.	
	Well-designed and fully functional Electronic Public Procurement System	Commensurable evaluation criteria and independent evaluators	10-day limit for submitting proposals	Different types of offenses (serious and non-serious)	The contents of market studies are specified in regulations.
		Direct awards that require price estimations		Different types of financial guarantees	Existence of a specific whistle-blowers protection law.
		Elaborate planning requirements for procurement		Pro-competitive requirements for joint bids and subcontracting	A new unit, Anti-corruption Unit, to attend to any complaints or whistle blowing carried out.
		Procurement committees impartial to requiring areas		Certificates of Independent Bid Determination and statement of integrity	Well-defined rules for Social Witnesses.
				Specialised agents and clear-cut uses defined for market research	Procurement law drafted with the support of organised civil society and observed by the competition authority
			Streamlined registration of providers		

State/Principle	Transparency	Good management	Prevention of misconduct, compliance and monitoring	Accountability and control
State of Mexico	The COMPRAMEX system for procurement is user-friendly and shows great potential for reducing expenses and greater transparency.	Consolidated purchases are used with a regular basis	<p>Use of Reverse auctions</p> <p>Complements the existing legal framework by identifying clearer responsibilities of public servants and providers during the procurement process.</p> <p>Regulating bylaw and administrative guidelines</p> <p>Evaluation and assessment system for implementing regulations</p> <p>Streamlined registration of providers</p>	A specialized unit carries out the market researches. This unit is independent from the requiring areas.

Chapter 5

Recommendations and Proposals for Action

This report reviewed the public procurement process in five local-level governments. Highlighted procurement practices that can be considered as best practices so that other states can emulate them and identify areas of opportunity to improve the efficiency and quality of local-level procurement.

A main conclusion identified in the study is the need to State governments to change their vision about public procurement to transit from an administrative function to a strategic one. In order to accomplish this, they should prioritise working in three transversal public policies linked with Public Procurement: regulatory policy, competition and integrity. Public procurement must be addressed as a cycle of measures designed to ensure three major objectives: efficiency, integrity and the possibility to advance other secondary objectives: SMEs, innovation, etc.

The key topics identified as limitations for efficient public procurement in State governments are the following: the lack of strategies to identify and manage integrity risks throughout the public procurement cycle; the low degree of implementation or functionality of electronic public procurement systems; the lack of continuous training and professionalization of staff in charge of public procurement; high degree of discretionarily of public servants in the application of the public procurement regulatory framework; lack of coordination of state governments with the national authority on economic competition in public procurement, and lack of systems of indicators on public procurement processes for their ongoing evaluation. Those limitations represent improvement areas on the procurement process in the State governments.

In this sense, although it is notable that state governments are beginning to move and make progress in adopting new tools for efficiency on public procurement process, it is also true that it is necessary to speed up and give continuity to the adoption of the best practices of public procurement governance, as well as to align public procurement strategies for support other policy goals, as secondary objectives, such as environmental, sustainability objectives, efforts to supports SMEs.

This chapter presents a series of general recommendations for states to improve the governance of public procurement. These recommendations are divided into three sections: Regulatory policy in public procurement, competition policy in public procurement and integrity policy in public procurement. Recommendations are also given for each of the five states analysed in the study.

Regulatory Policy in Public Procurement

The objective of regulatory policy is to ensure that regulations are in the public interest. An effective regulatory policy supports economic development as well as the rule of law, helping policy makers to reach informed decisions about what to regulate, whom to regulate, and how to regulate. As an integral part of effective public governance, regulatory policy also helps to shape the relationship between the state, citizens, businesses and civil society (OECD, 2011e).

The task of improving regulatory decision-making has a number of dimensions. A range of tools must be deployed in a consistent and mutual supporting manner if systemic quality assurance is to be the result. The essential tools include regulatory impact analysis, the consideration of regulatory alternatives, administrative simplification, ensuring regulatory transparency and ex post evaluation (OECD, 2011e).

Applying regulatory policy to public procurement advances transparency in the development of its legal framework¹, allows the participation of relevant stakeholders, and guarantees the effectiveness and efficiency of the measures adopted. To achieve this, it is recommended that state governments undertake the following recommendations:

- State governments should adopt as an ex-ante review process the regulatory impact analysis (RIA) of the proposals of laws, regulations, manuals and other general administrative acts related to the regulation of public procurement.
- The ex-ante review process via the RIA should be conducted by the regulatory improvement state commission. This regulatory improvement process should include a public consultation in which the potential suppliers and public institutions, among other stakeholders directly involved in the public procurement cycle should be invited to participate and provide information and their experiences.
- Administrative simplification programmes within public procurement is an element that brings efficiency to the process. In this sense, the public procurement authority in coordination with the regulatory improvement authority at the state level, should promote a revision and simplification of the formalities related with the public procurement process, as well as the adoption of mechanisms to measure administrative burdens and the implementation of administrative simplification programs. Some formalities related with public procurement to be reviewed, could be the following: formalities for registration in the suppliers' register, formalities for signing the contract, for delivering the goods or services purchased by the state, and for monitoring, closing or cancelling the contract, among others.
- State regulatory improvement authorities in coordination with the national competition authority (COFECE) should design and implement technical cooperation agreements with the aim of reviewing and giving a competition technical opinion on regulatory projects related to public procurement. COFECE's opinion aims to prevent procurement regulations from imposing unnecessary entry barriers or promoting anti-competitive practices on public procurement market.

¹ For example: laws, regulations, guidelines, methodologies and other regulations measure related with public procurement.

- It is recommended that the formalities related to public procurement be registered in the state or municipal registry of formalities as well. The enrolment of the formalities into the state/municipal formalities registry can be done for those regular and systematic formalities contained in the public procurement regulations, which requirements and other characteristics do not change with each tender or purchase process.

Competition Policy in Public Procurement

Competition promotes efficiency, helping to ensure that goods and services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, improved quality, increased innovation and higher productivity (OECD, 2009c). Public procurement is the process of purchasing goods or services by the public sector and is aimed to ensure the best value for public money. Public procurement involves the expenditure of large sums of public money, and given its magnitude, can impact on the structure and functioning of competition in a market more generally (OECD, 2011d). The competition concerns arising from public procurement are largely the same concerns that can arise in an “ordinary” market context: the reaching of collusive agreements between bidders during the tender process or across tenders (OECD, 2011d). And with the particularity that in public procurement the amounts are larger than in the private sector and, therefore, the incentives and the probability of collusion are greater. Given the above, coordination between the competition authority and the public procurement units is necessary in order to ensure competitive public procurement processes. In this sense, some recommendations to get competitive tenders by state governments, are listed below:

- State governments should generate administrative and technical cooperation agreements with the national competition authority (COFECE) to ensure economic competition on public procurement processes.
- Procurement units of state governments should establish protocols for action for procurement authorities to carry out complaints, reports and warnings to COFECE about any suspicious behaviour or any violation to the Federal Competition Act on public procurement issues.
- COFECE should develop and publish technical guidelines on the basic principles for promoting competition in public procurement processes. A guide that could be useful for procurement practitioners is how to do market research in public procurement, since this is key to understand market dynamics and collusion patterns, which in part has an impact on the design of the bidding processes through which competition can be promoted or restricted.
- COFECE and state governments should develop a capacity building strategy and coordinate permanent trainings regarding competition on public procurement.
- State governments should reduce entry barriers to the local public procurement sector and open access to national and international suppliers.
- Public procurement authorities should design and implement mechanisms to report collusion or anti-competitive practices in local (state and municipal) public procurement processes. Also, they should disclose those “reporting mechanisms” among suppliers via the terms of reference of tenders and other communication channels.

- Procurement authorities should include in the tender documents an “anti-collusion clause” in which: 1. the suppliers/bidders be warned that procurement authorities will take the necessary actions to prevent bid rigging. 2. the supplier/bidder warrants that their tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, and 3. suppliers/bidders disclose their subcontracting, mainly.

Integrity in Public Procurement

OECD (2009b) defines Integrity on public procurement as the use of funds, resources, assets, and authority, according to the intended official purposes, to be used in line with public interest. Also, points out that a “negative” approach to define integrity is useful to determine an effective strategy for preventing integrity violations’ in the field of public procurement. Some integrity violations identified are the following ones: corruption including bribery, “kickbacks”, nepotism, cronyism and clientelism; fraud and theft of resources, for example, through product substitution in the delivery which results in lower quality materials; conflict of interest in the public service and in post-public employment; collusion; abuse and manipulation of information; discriminatory treatment in the public procurement process; and the waste and abuse of organisational resources. For this reason, procurement authorities should instil a culture of integrity throughout the entire public procurement cycle, from the needs assessment to contract management and payment. To achieve integrity on public procurement cycle, some recommendations are enlisted below.

I. Transparency

Procurement authorities of State governments should provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers, as well as maximise transparency in competitive tendering and take caution measures to enhance integrity, in particular for exceptions to competitive tendering OECD (2009b). For getting the above, State governments should:

- Disclose information on procurement opportunities as wide as possible in a consistent, timely and user-friendly manner, using the same channels and timeframe for all interested parties (OECD, 2009b).
- Design an explicit strategy to increase the number of suppliers in order to guarantee a competitive procurement process.
- Create a cooperation agreement with the aim of exchanging *Supplier Registries* information among states.
- Developing “user manuals” of public procurement procedures, which specify criteria for using different types of procurement procedures and describing how to use them. The user manuals have to be disclosed freely and maintained available in the web.
- The Ministry of Public Administration (SFP) should create, organise and disclose a national supplier database to which all State governments have access.

- Adopt the Open Contracting Data Standard (OCDS) in all the public procurement cycle, as a tool to promote transparency and for allow diverse users a depth analysis of procurement data.

II. Good Management

State governments should ensure that public funds are used in public procurement according to the purposes intended, in addition to ensure that procurement officials meet high professional standards of knowledge, skills and integrity (OECD, 2009b). To comply with this, State governments should:

- Develop a “comprehensive public procurement system” that includes a number of modules, among which the following could be indicated: formalities and services related to public procurement register; supplier register; catalogue of products and services required; product stocks and their expiration dates; technological tools for risk analysis and risk management in public procurement; repository of market studies carried out over time; module for the development of public procurement processes for goods, services and public works, claims and complaints module; contract management and module of indicators and evaluation of tenders. Depending on the type of user, the accesses to each module could be determined.
- Connect the comprehensive public procurement system with the overall financial management system to ensure that procurement activities are conducted according to plans and budgets, and that all necessary information on public procurement is made available and tracked (OECD, 2009b).
- Be able to adapt to new techniques and technologies that are developed over time, as part of a cycle of continuous improvement. The public servants in charge of public procurement must keep attentive on these innovations in order to promote their implementation in the short or medium term.
- Procurement authorities should require a statement of integrity or “Integrity Pact”, where potential suppliers assure their commitment to behave honestly in the various stages of the bidding and refrain from behaving contrary to the Law. This statement of integrity or “Integrity Pact” should also be understood as an agreement between a government or government department with all tenderers for a public sector contract that neither side will pay, offer, demand, or accept bribes, or collude with competitors to obtain the contract or while carrying it out. In case of breach, the contract terms and conditions include the possibility of cancellation of contract, forfeiture of bond, liquidated damages and debarment (OECD, 2009b).
- Implement a permanent capacity building system for procurement officials, for entry-level as well as for more experienced procurement officials to ensure that officials involved in public procurement have the necessary skills and knowledge to carry out their responsibilities as professionals: and with efficiency and integrity and keeping abreast of evolutions on the topic.
- Review the regulatory framework for public procurement to analyse whether current practices have the appropriate legal basis, or whether what is established in the legal framework requires adjustments because it is obsolete or incomplete.

III. Prevention of misconduct, compliance and monitoring

State governments should put mechanisms in place to prevent risks to integrity in public procurement; encourage close co-operation between government and the private sector to maintain high standards of integrity, in all the stages of the recruitment cycle, and provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly (OECD, 2009b). To accomplish these, Mexican procurement authorities on states should:

- Always privilege the use of public tendering and avoid the use of direct awards. Exceptions to the use of public tendering must be clearly regulated and authorized by a unit that reviews the proper functioning and legality of public procurement processes. The technical justifications for the use of a procedure that is not public tendering, as well as the authorizations for such a procedure, must be public and available to any interested party.
- Elaborate a “corruption risks map” associated with the entire public procurement cycle. This map should identify the positions of officials who are vulnerable, activities in the procurement where risks arose in the past, and the particular projects at risk due to their value or complexity (OECD, 2009b).
- Design a strategy of risk management and develop indicators in order to serve as red flags, as well as for detection and sanctioning of misconduct.
- Once the strategy of risk management has been implemented, develop studies to identify, evaluate and quantify the risks and opportunity costs of public procurement in a systematic manner.
- Design and issue a guide for the elaboration of market research, in order to increase the effectiveness of market studies.
- Settle evidence-based and performance-based monitoring mechanisms as a rule.
- Promote the use of public tenders and establish stricter criteria for the use of direct award mechanism on public procurement.
- Establish in the legal framework of complaints and claims in public procurement processes, the figure of “anonymous reporting” as an option that the whistle-blower can use, where appropriate.
- A symptom of a healthy public procurement system involves payment to suppliers within the time stipulated in contracts or regulations. Since the evidence getting during this study is not consistent, it is recommended that State governments generate and make public reliable statistics regarding the time to make payments of suppliers.
- Develop an Integrity and Ethics Code for procurement practitioners. All the public servants involved in the procurement cycle should know it and be trained on it.
- Have a legal framework with specific sanctions to violations of public procurement integrity rules. This legal framework should be clear, transparent and available to all.
- Adopt the centralised purchases mechanism and generate the appropriate legal framework. The products and services² that usually should be bought by centralised purchases and

² The products and services covered by a central purchase system could be in the following areas: Health care (e.g.

will have the following characteristics: it should be purchased frequently throughout the public administration, be of common interest, be technically straightforward or standardised, or be highly technical and commercially complex.

- Develop a business model for centralised procurement. One of the schemes that could be considered are the creation of a central purchasing unit which “serve internal departments with procurement services, including the award of framework agreements and the provision of advisory services to users” (OECD, 2011c).
- Reform the state procurement legal framework in order to include some legal figures of centralised purchases, such as the following: include the option of “consolidated procurements”³ among public entities within states and municipal governments and among neighbouring states and/or municipalities, as well as the figure of “frameworks agreements”⁴.
- Be aware of and have the capacity to prevent and handle the risks involved in centralising public procurement, such as: 1. market concentration and development of monopolistic structures and 2. unnecessary commercial risks.
- Central purchase unit should have a great deal of co-ordination with government entities, in order to satisfy its demands and the demands of all potential users, purchasing the products or services with the specifications required. The failure to do so could create a financial problem for the central purchase unit, which might be tempted, to buy products similar but not specifications required and in order to recover costs, to sell the products at a price below the going market price, creating further problems of unfair competition with private suppliers (OECD, 2011c).
- Develop market studies systematically to design and decide the most efficient procurement process according to the market structure, in order to prevent monopoly-building in the supply market and ensure a diversified and competitive market structure.

IV. Accountability and control

State governments should establish a clear chain of responsibility together with effective control mechanisms; handle complaints from potential suppliers in a fair and timely manner and

ambulances, diagnostic equipment, services for managing health care equipment); Fuel (for heating and transport) and electricity; Office goods/equipment (printers, photocopiers, PCs, servers, software); Transportation (car purchase and rental); Facility management (for offices, hospitals); Telecommunications (networks, mobile phones, landline phones, telephone exchanges); Furniture (for offices, schools, universities); Insurance and financial services (credit cards); Food (foodstuffs, meal tickets), (OECD, 2011c).

³ “A consolidated purchase occurs when an institution decides to buy larger volumes of the same product(s) to meet the demand from different parts of its organisation through one procurement procedure instead of organising many tenders. The purpose of consolidation is to increase administrative efficiency and obtain better prices because of the larger volumes purchased” (OECD, 2015a).

⁴ “A framework agreement (FA) is an agreement with one or more economic operators for the supply of goods, services and, in some cases, works, the purpose of which is to establish the terms governing contracts to be awarded by one or more contracting authorities (CA) during a given period, in particular with regard to maximum price, minimum technical specifications and, where appropriate, the quantities envisaged. [...] An FA differs from a conventional contract. It is an umbrella agreement for the future supply of goods and services and, as opposed to individual contracts under such agreements, does not itself order the actual goods and services. When concluding a framework agreement, the quantities and delivery times are usually described in broad terms or (in particular in the case of quantities) left open [...] The objective of an FA is to deliver goods and services to the public administration, through the rationalisation of the public procurement process and leveraging the power of demand, supply and CPBs. (OECD, 2014b)

empower civil society organisations, media and the wider public to scrutinise public procurement (OECD, 2009b). To accomplish these, Mexican procurement authorities on states should:

- Include in their legal frameworks of public procurements the option to conduct a public consultation to suppliers and end-users in the drafting of terms of references on tenders (pre-bases), provided that the number of participants is sufficiently large and representative, and that the results are reviewed in light of market analysis done by the procuring authority to provide objective analysis (OECD, 2009b).
- Encourage the establishment of transparent and reliable complaints and claims mechanisms during the public procurement process. These mechanisms must be adequate, specific and systematic for public procurement processes and not just general and dispersed.
- Develop protocols for receiving and handling complaints and claims in public procurement processes. The protocols should promote the action of procurement practitioners no matter when the complaint or report is received. Protocol must guide the action of them before, during and after of public procurement cycle. These protocols must be properly linked to public procurement state laws and regulations.
- Cultivate a culture of integrity in public procurement is necessary to adopt and implement, at the same time, efficient mechanisms for dealing with complaints and denunciations and a whistle-blower protection policy. The purpose of the latter is to ensure the integrity of those who decide to report acts of corruption in public procurement processes, and avoid reprisals against them, particularly in the workplace as well as with the aim to promote the reporting of such acts.
- A whistle-blower protection policy may be adopted from a specific state law or it could be included as a section of the state procurement law.
- Include into the legal framework the figure of social witness as a mechanism for citizen participation on public procurement.
- Designing and developing an information system that allows the identification of average payment times, types of purchase procedures used (bidding, direct award, or restricted invitation), amount of the purchase, product or service granted, awarded supplier, among other elements or characteristics of the public procurement process that are useful to generate evidence and reliable statistics to monitor the performance and standards of public procurement in the State governments. (*Accountability and control*)

Specific recommendations of Public Procurement by Case Study

State of Aguascalientes

The authorities of the State of Aguascalientes in addition to the previous recommendations, should take the following specific proposal for action:

- Include calls for tender, not only in SISAI-Infomex and “Hoy se Compra”, but also in the electronic website of the Oficialía Mayor. (*Transparency*)
- Reform the Public Procurement Act of the State of Aguascalientes in order to require the inclusion and publication of the terms of reference at the same time of publishing the

“calls for tenders”, and not only two days before clarification meetings. This is important because the legal framework establishes that the terms of reference should contain the information of clarification meetings that must be carried out, the place and date established, as well as the amount of financial guarantee, if required. (*Transparency*)

- Design and implement a permanent training programme in public procurement for public servants and procurement practitioners, as well as registered or potential suppliers, among other relevant procurement stakeholders. (*Good management*)
- Including in the state’s public procurement legal framework the option to use reverse auctions or offer with subsequent discounts (OSD). (*Prevention of misconduct, compliance and monitoring*)
- Reforming the legal framework for public procurement of the State of Aguascalientes, in order to incorporate the possibility to participate in public procurement procedures for suppliers from other states, as well as international suppliers, even when the source of resources is local. (*Prevention of misconduct, compliance and monitoring*)
- Developing information systems and indicators on public procurement processes to ensure transparency and accountability of the government procurement process, as well as establishing internal and external controls to help in making procurement more efficient. (*Accountability and control*)
- Including the figure of social witness within the legal framework of public procurement of the state, as a mechanism for citizen participation on public procurement. (*Accountability and control*)

State of Coahuila

The authorities of the State of Coahuila in addition to the previous recommendations, should take the following specific proposal for action:

- Publish and give free and open access to the “calls for tenders” and to the terms of reference (pre-bases) of public tenders (*Transparency*)
- Although Article 43 of the LAACSEC stipulates that participants may submit their proposals electronically, in practice this does not happen. This limits the public procurement in Coahuila because the requirement of physical presence of suppliers during purchasing processes. So, it is convenient for procurement state authority to develop the systems and technologies necessary for the full and proper implementation of the provisions established in the Act. (*Transparency*)
- Including in the state’s public procurement legal framework the option to use reverse auctions or offer with subsequent discounts (OSD). (*Good management*)
- Issuing the state procurement bylaw. The issuance of a legal regulation, rather than the issuance of multiple manuals on the topic, gives procedural economy and regulatory strength to the legal public procurement framework, rather than the issuance of multiple manuals. It is recommendable that the By-law specifies responsibilities of each entity participating in procurement processes. (*Prevention of misconduct, compliance and monitoring*)

- In order to improve competition and efficiency on public procurement, it would be advisable to establish as an obligation in law to carry out, systematically, market studies before the call for tenders. Market studies provide valuable information about characteristics and behaviour of supply and demand from certain goods and services. *(Prevention of misconduct, compliance and monitoring)*
- Coahuila should implement a register of suppliers sanctioned for misconducts regarding procurement procedures, in order to incentive integrity in public procurement. *(Prevention of misconduct, compliance and monitoring)*
- Given procurement committee experience, it would be advisable that it could have a function to give an opinion of the need to purchase or other procurement issues. This opinion should be non-binding, since the budget and public procurement process is responsibility of the Coahuila's government institutions and not of the procurement committee. However, the opinion should be public and should be made available to any interested person or group. *(Accountability and control)*
- Promoting compliance of the state regulations on public procurement by municipalities. ASEC in cooperation with SEFIR could design an indicator to measure municipalities' compliance with public procurement regulations, as well as with other characteristics of public procurement procedures of interest on its evaluation and improvement. *(Accountability and control)*
- Assuring the inclusion of the figure of social witness within the reform of the legal framework of public procurement of the state, as a mechanism for citizen participation on public procurement. *(Accountability and control)*

State of Morelos

The authorities of the State of Morelos in addition to the previous recommendations, should take the following specific proposal for action:

- Publish and give free and open access to the “calls for tenders” and to the terms of reference (pre-bases) of public tenders. *(Transparency)*
- In order to facilitate suppliers' understanding regarding public procurement processes, it is recommended for the State of Morelos to develop “user manuals” of public procurement procedures. This will strength transparency in procurement processes. *(Transparency)*
- Incorporating in the state's public procurement legal framework the option to use reverse auctions or offer with subsequent discounts (OSD). *(Good management)*
- In order to monitor public procurement procedures, it would be advisable to generate and make public a reliable statistics system regarding the key characteristics of the state public procurement procedures, even those which are financed with state funds and those with federal funds. *(Prevention of misconduct, compliance and monitoring)*.
- In Morelos' procurement legal framework there is no restriction of the maximum number of clarification meetings to be held face-to-face. Even though clarification meetings are important in order to give suppliers relevant information of the tender, and vice versa suppliers give feedback to the procurement unit regarding the terms of reference of

the tender, it is important to reduce the possibility of communication among potential bidders. In this sense, in order to avoid some risks of collusion among bidders or risks of corruption among bidders and procurement practitioners, Morelos should restrict explicitly the number of clarification face-to-face meetings and can introduce a remote modality of clarification meetings with the characteristic that participants' names are kept anonymous. *(Prevention of misconduct, compliance and monitoring)*

- Incorporating the figure of social witness within the legal framework of public procurement of the state, as a mechanism for citizen participation on public procurement. *(Accountability and control)*
- Reviewing supplier payment policies established in contracts, terms of references or regulations and those in practice to identify discrepancies and make changes to the regulatory framework, when appropriate. *(Accountability and control)*
- Designing and developing an information system by UPAC that allows the identification of average payment times, types of purchase procedures used (bidding, direct award, or restricted invitation), amount of the purchase, product or service granted, awarded supplier, among other elements or characteristics of the public procurement process that are useful to generate evidence and reliable statistics to monitor the performance and standards of public procurement in the state. *(Accountability and control)*

State of Nuevo León

The authorities of the State of Nuevo León in addition to the previous recommendations, should take the following specific proposal for action:

- Explore how the public procurement regulatory framework can be aligned with secondary policy goals. *(Good Management)*
- Adopt more advanced methods for carrying out market studies in order to improve markets competition related with government procurement, as a secondary objective. *(Good Management)*
- Integrate risk management strategies throughout the public procurement cycle *(Prevention of misconduct, compliance and monitoring)*
- Promoting the use of “framework agreement” on consolidated purchases. *(Prevention of misconduct, compliance and monitoring)*
- Designing and developing an information system by Centralised Procurement Unit that allows the identification of average payment times, types of purchase procedures used (bidding, direct award, or restricted invitation), amount of the purchase, product or service granted, awarded supplier, among other elements or characteristics of the public procurement process that are useful to generate evidence and reliable statistics to monitor the performance and standards of public procurement in the state. *(Accountability and control)*
- Create a monitoring, reviewing and reporting of risks tools and mechanisms into its procurement processes. *(Accountability and control)*

State of Mexico

The authorities of the State of Mexico in addition to the previous recommendations, should take the following specific proposal for action:

- Publish and give free and open access to the “calls for tenders” and to the terms of reference (pre-bases) of public tenders. (*Transparency*)
- Generating through the internal electronic system (*Sistema Integral de Administración Pública, SICAPEM*) systematic and measurable indicators to evaluate the efficiency of procurement strategies, for example, goods in stock, expiration date, stock quantity, vendors who can supply the product, and so on. (*Good management*)
- Reform the state legal framework of public procurement to include a “framework agreement” figure for consolidated purchases. (*Good management*)
- Reform the legal framework of public procurement with the aim to reduce the restrictions for international tenders and open the market to the opportunity of guaranteeing a better value for money. (*Good management*)
- Encourage the use of electronic public tenders, in order to consolidate the COMPRAMEX system and make electronic public tenders a common practice in state public procurement processes. (*Accountability and control*)
- OSFEM in cooperation with the Ministry of Oversight should promote compliance of the state regulations on public procurement by municipalities via the design of a municipal indicator which measures public procurement regulations compliance by these ones, as well as other characteristics of public procurement procedures. (*Accountability and control*)
- Designing and developing an information system to allow the identification of average payment times, types of purchase procedures used (bidding, direct award, or restricted invitation), amount of the purchase, product or service granted, awarded supplier, among other elements or characteristics of the public procurement process that are useful to generate evidence and reliable statistics to monitor the performance and standards of public procurement in the state. (*Accountability and control*)

References

- Albano, Gian Luigi and Sparro, Marco, Flexible Strategies for Centralized Public Procurement (August 10, 2010). *Review of Economics and Institutions*, Vol. 1, No. 2, Fall 2010. Available at SSRN: <https://ssrn.com/abstract=1887791>
- Connor J. & Bolotova Y. (2006). Cartel overcharges: Survey and meta-analysis. *International Journal of Industrial Organization* Volume 24, Issue 6, November 2006, Pages 1109-1137. <https://doi.org/10.1016/j.ijindorg.2006.04.003> CIDE (2014) *Métrica de la Transparencia*. Web site: <http://www.metricadetransparencia.cide.edu/>
- COFEMER (2012) Challenges and perspectives of the regulatory management system in mexican states [*Retos y Perspectivas del Sistema de Gestión Regulatoria en las Entidades Federativas*], Federal Commission for Regulatory Improvement / LATIN-REG, and Special Commission for the Competitiveness of the LXI Legislature of the Chamber of Deputies.
- IMCO (2014). Budget information index [*Índice de Información Presupuestal*].
- Jacobzone, S., et al. (2007), “Regulatory Management Systems Across OECD Countries: Indicators of Recent Achievements and Challenges”, OECD Working Papers on Public Governance, No. 9, OECD Publishing, Paris, <https://doi.org/10.1787/5kmjr1g0n8bq-en>
- OECD (1997/1999). *OECD Convention on combating bribery of foreign public officials in international business transactions*. OECD Publishing, Paris. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>
- OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264027510-en>.
- OECD (2008), *Enhancing Integrity in Public Procurement: A Checklist*. OECD Publishing, Paris, <http://www.oecd.org/gov/41760991.pdf>.
- OECD (2009a). *Guidelines for Fighting Bid Rigging in Public Procurement*. OECD Publishing, Paris, <http://www.oecd.org/daf/competition/cartels/42851044.pdf>.
- OECD (2009b). *OECD Principles for Integrity in Public Procurement*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264056527-en>.
- OECD (2009c) *OECD Recommendation of the OECD Council on Competition Assessment*. OECD Publishing, Paris. <http://www.oecd.org/daf/competition/OECD-Recommendation-Competition-Assessment.pdf>.

- OECD (2011a) *G20 Anti-Corruption Action Plan Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, Paris, 2011: <http://www.oecd.org/daf/anti-bribery/48972967.pdf>.
- OECD (2011b) “Detailed Data from the 2010 OECD Survey on Public Procurement”, in *Government at a Glance 2011*, OECD Publishing, Paris, https://doi.org/10.1787/gov_glance-2011-73-en.
- OECD (2011c), “Centralised Purchasing Systems in the European Union”, SIGMA Papers, No. 47, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5kgkgqv703xw-en>.
- OECD (2011d) “Competition and Procurement”. OECD Publishing, Paris. <http://www.oecd.org/regreform/sectors/competitionandprocurement-2011.htm>.
- OECD (2011e) *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing. <http://dx.doi.org/10.1787/9789264116573-en>.
- OECD (2012a) *Whistleblower protection: encouraging reporting*. CleanGovBiz, Paris, <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>.
- OECD (2012b). *Guide to Improve the Regulatory Quality of State and Municipal Formalities and boost Mexico’s competitiveness*. OECD Publishing, Paris, <http://www.oecd.org/gov/regulatory-policy/guidetoimprovethequalityofstateandmunicipalformalitiesandboostmexicoscompetitiveness.htm>.
- OECD (2012c). *Latin American Competition Forum, Session III - Improving Effective Public Procurement: Fighting Collusion and Corruption*. Background Note. OECD. Paris. [https://one.oecd.org/document/DAF/COMP/LACF\(2016\)3/en/pdf](https://one.oecd.org/document/DAF/COMP/LACF(2016)3/en/pdf).
- OECD (2013a). *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264201385-en>.
- OECD (2013b). *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264197480-en>.
- OECD (2013c). *Public Procurement Review of the State’s Employees’ Social Security and Social Services Institute in Mexico*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264197305-en>.
- OECD (2014a), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264226616-en>.
- OECD (2014b), *Manual for Framework Agreement*. OECD Publishing and European Union. <https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf>.
- OECD (2015a). *Fighting Bid Rigging in Public Procurement in Mexico: A Secretariat Analytical Report on Compliance with OECD Standards of Procurement Legislation, Regulations and Practices in CFE*. OECD Public Governance Reviews, OECD Publishing, Paris. <http://www.oecd.org/daf/competition/FightingBidRigging-Mexico-CFE-Report-2015.pdf>.
- OECD (2015b). *Recommendation of the Council on Public Procurement*. OECD Public Governance Reviews, OECD Publishing, Paris, <https://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

-
- OECD (2016). *Preventing Corruption in Public Procurement*. OECD Publishing, Paris. <http://www.oecd.org/gov/public-procurement/publications/Corruption-Public-Procurement-Brochure.pdf>.
- The World Bank (2014), *Doing Business in Mexico, 2014. Understanding regulations for small and medium-sized enterprise*, Washington, 2014. <http://www.doingbusiness.org/~media/WBG//DoingBusiness/Documents/Subnational-Reports/DB14-Mexico-spanish.pdf>.

Annexes

Annex A. List of interviews

State	Institution
Aguascalientes	Audit Office of the State of Aguascalientes (Órgano Superior de Fiscalización del Estado de Aguascalientes, OSFEA)
	Central Administrative Office (<i>Oficialía Mayor</i>)
	Institute for Transparency (<i>Instituto de Transparencia del Estado de Aguascalientes</i>)
	Ministry for Oversight and Accountability (<i>Secretaría de Fiscalización y Rendición de Cuentas</i>)
	Ministry of Finance (Secretaría de Finanzas)
	Ministry of Health
	Ministry of Public Safety
Coahuila	State Coordination of Projects and Planning (Coordinación Estatal de Planeación y Proyectos)
	Institute for Access to Public Information of Coahuila (Instituto Coahuilense de Acceso a la Información Pública-ICAI)
	Institute of Physical Educational Infrastructure of Coahuila
	Ministry of Finance (<i>Secretaría de Finanzas, SEFIN</i>)
	Ministry of Health
	Ministry of Oversight and Accountability (Secretaría de Fiscalización y Rendición de Cuentas)
Morelos	Superior Audit Office of Coahuila (Auditoría Superior del Estado de Coahuila- ASEC)
	Institute of Public and Statistical Information (Instituto Morelense de Información Pública y Estadística, IMIPE)
	Ministry for Oversight (<i>Secretaría de la Contraloría</i>)
	Ministry of Social Development
	Ministry of Treasury (Secretaría de Hacienda)
	Superior Audit Office of the State of Morelos (Entidad Superior de Auditoría y Fiscalización del Estado de Morelos, ESAF)
Unit for Awarding Contracts (<i>Unidad de Procesos para la Adjudicación de Contratos, UPAC</i>) /Ministry of Public Administration	

State	Institution
Nuevo León	COPARMEX, N.L.
	General Audit Office (<i>Auditoría Superior del Estado de Nuevo Leon</i>)
	Ministry of Finance and Treasury (<i>Secretaría de Finanzas y Tesorería General</i>)
	Ministry of Oversight and Transparency (<i>Contraloría y Transparencia Gubernamental</i>)
	Ministry of Public Safety
	Ministry of Social Development
	Transparency and Access to Information Commission (<i>Comisión de Transparencia y Acceso a la Información del Estado de Nuevo Leon</i>)
State of Mexico	Audit Office of the State of Mexico (Órgano Superior de Fiscalización del Estado de México, OSFEM)
	Government of the State of México (Gobierno del Estado de México, GEM)
	Institute for Access to Public Information (<i>Instituto de Acceso a la Información del Estado de México</i>)
	Ministry for Oversight (<i>Secretaría de la Contraloría</i>)
	Ministry of Education
	Ministry of Finance (<i>Secretaría de Finanzas</i>)
	State Commission for Citizen Security

STRENGTHENING COMPETITIVENESS IN MEXICO
THROUGH REGULATORY IMPROVEMENT

Review of Practices of Local Public Procurement in Five Mexican States

Table of Contents

Executive Summary

Chapter 1. Introduction

Chapter 2. Public Procurement at the Federal Level in Mexico

Chapter 3. Public Procurement in Five States

Chapter 4. Best Practices in Public Procurement in Five States

Chapter 5. Recommendations and Proposals for Action