

Fighting bid rigging in Mexico: A review of CFE procurement rules and practices



HIGHLIGHTS • WWW.OECD.ORG/DAF/COMPETITION

Highlights from the 2018 OECD review of procurement rules and practices of CFE in Mexico

The Mexican Electricity Federal Commission (*Comisión Federal de Electricidad*, CFE) is at a key juncture in its long history. The 2013 reform of the energy sector opened the activities of generation and sale of electricity to private investments, pushing CFE to seek further efficiencies and cost savings to respond to the increasing competition that it will be facing in the near future from domestic and foreign competitors.

In 2015, a first report was issued by the OECD to analyse the public procurement regulations applicable to CFE and its internal practices. The 2015 CFE report provided recommendations on how to fight bid rigging and make procurement procedures more competitive.

In view of the adoption of a new procurement regime, CFE has once again asked the OECD to analyse if its procurement regime is aligned with the recommendations of the 2015 CFE Report. This report takes into account data available to the OECD until 31 July 2017.

1. Fight against bid rigging

Public procurement policies help public buyers achieve value for money. Such policies should include guidance to public procurement officials to design competitive tender procedures and enable the detection of illegal collusive agreements among bidders. The OECD has, for a long time now, helped countries, and public entities in them, design competitive public procurement processes and set up methods to detect collusive agreements.¹ The Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement, and the Guidelines which this Recommendation includes, are pioneering instruments in the fight against bid rigging based on international best practices.²

Bid rigging is a serious and widespread risk affecting public procurement around the world costing millions of dollars to taxpayers. Concrete case studies have shown that when firms collude, the cost of goods and services can increase by 20%.³ This percentage may even be higher: for example, in Mexico, COFECE has calculated that the Mexican Institute of Social Security, IMSS, was paying an overcharge of 57.6% for human insulin as a result of collusive practices in the pharmaceutical sector.⁴ More recently, COFECE has established that the health sector has been paying an overcharge of at least 174, 8 million MXN for latex gloves as a result of a bid rigging scheme that took place between 2009 and 2015.⁵ Bid rigging cartels harm directly public resources and, therefore, the economy of a country in general.

¹ www.oecd.org/competition/bidrigging

² <http://oe.cd/recfbr>

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

⁴ www.cofece.mx/cofece/attachments/article/37/IMSS_Evaluacion_ex-post.pdf

⁵ <https://cofece.mx/sanciona-cofece-a-cinco-empresas-proveedoras-de-guantes-de-latex-por-coludirse-en-licitaciones-publicas-del-sector-salud/>

2. Key findings

This report shows that CFE's procurement regime takes into consideration bid rigging risks. However, further efforts need to be made in order to make CFE's procurements more competitive. The report contains recommendations to CFE on how to achieve this objective.

Some of the most salient findings of the report are that the criteria for choosing to conduct a full-fledged market investigation do not take into account bid rigging risks or the level of competition, CFE uses many exceptions to open tender procedures and the exceptions to the use of electronic procedures should be limited. The OECD recommendations address these and other issues related to CFE's procurement regime.

3. Key recommendations

Relying on appropriate information before designing a tender procedure

The OECD recommends the use of full-fledged market investigations, in particular when the level of competition is low or past collusive behaviour has been observed. It is also suggested to ensure the independence of the new CFE market investigation unit in order to allow this unit to define the scope of market research and produce better outcomes.

The report also recommends issuing a guide establishing the principles for conducting market investigations and obtaining information from the largest number of sources possible.

Defining requirements clearly and avoiding predictability

In line with the recommendation issued in 2015, the report recommends that CFE limits the use of split awards to exceptional circumstances, in particular where there is real concern about security of supply. In any case, CFE should avoid disclosing its intention to split the award of a contract before the offers have been submitted.

It is also recommended that CFE's technical units help defining the tender terms, in particular when needs are complex or technical.

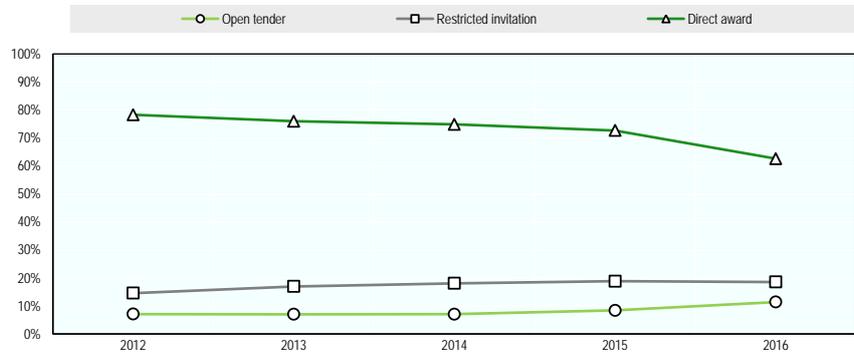
Reducing communication among bidders

CFE has designed a declaration of integrity and lack of legal impediments that all bidders are obliged to sign and that takes into consideration violations of the competition law. The OECD, however, recommends enriching and developing this declaration using the declaration of integrity and non-collusion proposed by COFECE.

Maximising the potential participation of genuinely competing bidders

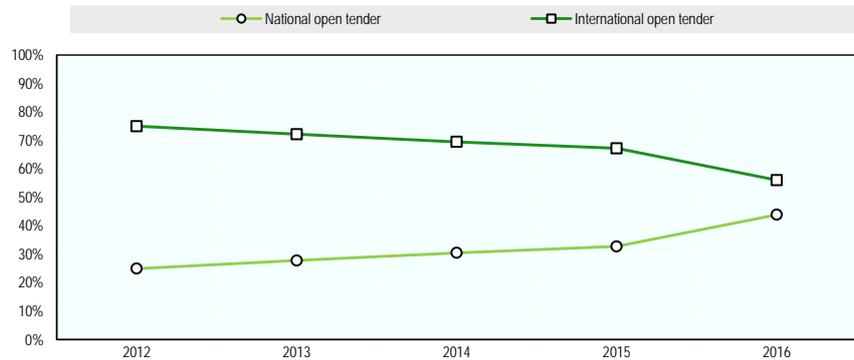
The report shows that direct awards have been used extensively from 2012 to 2016. The OECD recommends limiting the use of exceptions to public tenders.

Use of different types of contractual procedures (by volume), 2012-2016

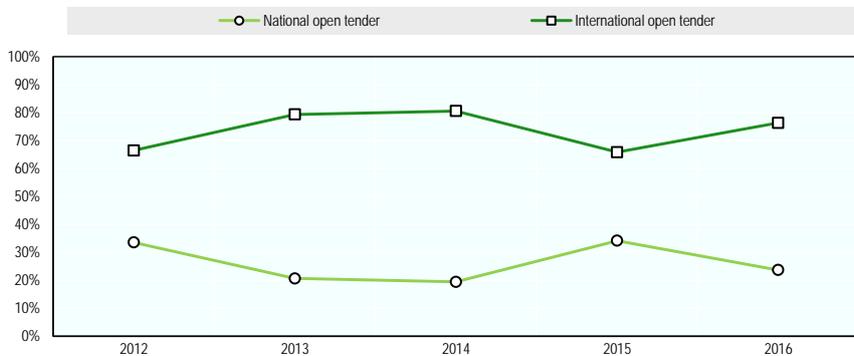


The report also shows that between 2012 and 2016 the number of international open tenders has been declining over time. CFE should pay attention to this, and further encourage the use of international open tenders.

Use of international and national open tenders (in terms of volume), 2012-2016



Use of international and national open tenders (in terms of value), 2012-2016



The OECD also recommends that CFE maximises the use of electronic procurement procedure and that uses competitive procurement procedures for framework agreements.

Raising awareness among procurement officials

Professional training is important to strengthen procurement officers' awareness of competition issues in procurement. In fact, CFE requires procurement officers to be trained on bid rigging.

The OECD recommends that CFE develops a mechanism allowing CFE procurement officers to report bid-rigging suspicions anonymously. CFE should also provide the procurement officers with financial incentives to report bid rigging.

The report also suggests that CFE creates a database containing procurement information that allows analysis of the data; and grant access to this database to competition authorities.

Finally, CFE should consider the possibility of rejecting offers from bidders who have been convicted of bid rigging when the relevant market's characteristics allow for this.

OECD-MEXICO partnership to Fight Bid Rigging in Public Procurement

Bid rigging involves groups of firms conspiring to raise prices or lower the quality of the goods or services offered in public tenders. Although illegal, the anti-competitive practice is widespread and continues to cost governments and taxpayers billions of dollars every year across the world. The OECD Guidelines for Fighting Bid Rigging in Public Procurement aim to make bid rigging more difficult for contractors and help government officials identify suspicious bidding.

In 2011, Mexico has partnered with the OECD to improve its procurement practices and step up its fight against bid rigging.

Since then, many were the Mexican agencies to seek the OECD's help in analysing their procurement practices:

- IMSS (2011)
- Government of the State of Mexico (2012)
- ISSSTE (2013)
- CFE (2015, 2018)
- and PEMEX (2017)

More about the OECD-Mexico partnership to fight bid rigging at oe.cd/fbrmex

Other reports on Fighting Bid Rigging in Mexico

OECD (2017), A review of the procurement rules and practices of PEMEX in Mexico, <http://www.oecd.org/daf/competition/OECD-PEMEX-review-2016.pdf>

OECD (2015), The CFE report 2015, www.oecd.org/daf/competition/fighting-bid-rigging-mexico-cfe-report-2015.htm

OECD (2013), State's Employees' Social Security and Social Services Institute (ISSSTE) report, www.oecd.org/daf/competition/mexicoissste2013.htm

OECD (2012), The State of Mexico (Gobierno del Estado de México, GEM) report, www.oecd.org/daf/competition/fightingbidrigginginpublicprocurementinmexicogemreport--2012.htm

OECD (2011), Mexican Institute for Social Security (IMSS) report, www.oecd.org/daf/competition/fightingbidrigginginpublicprocurementinmexico2011.htm

Related materials

OECD Guidelines for Fighting Bid Rigging in Public Procurement <http://oe.cd/gfbr>

OECD Council Recommendation on Fighting Bid Rigging in Public Procurement <http://oe.cd/recfbr>