

Chapter 8.

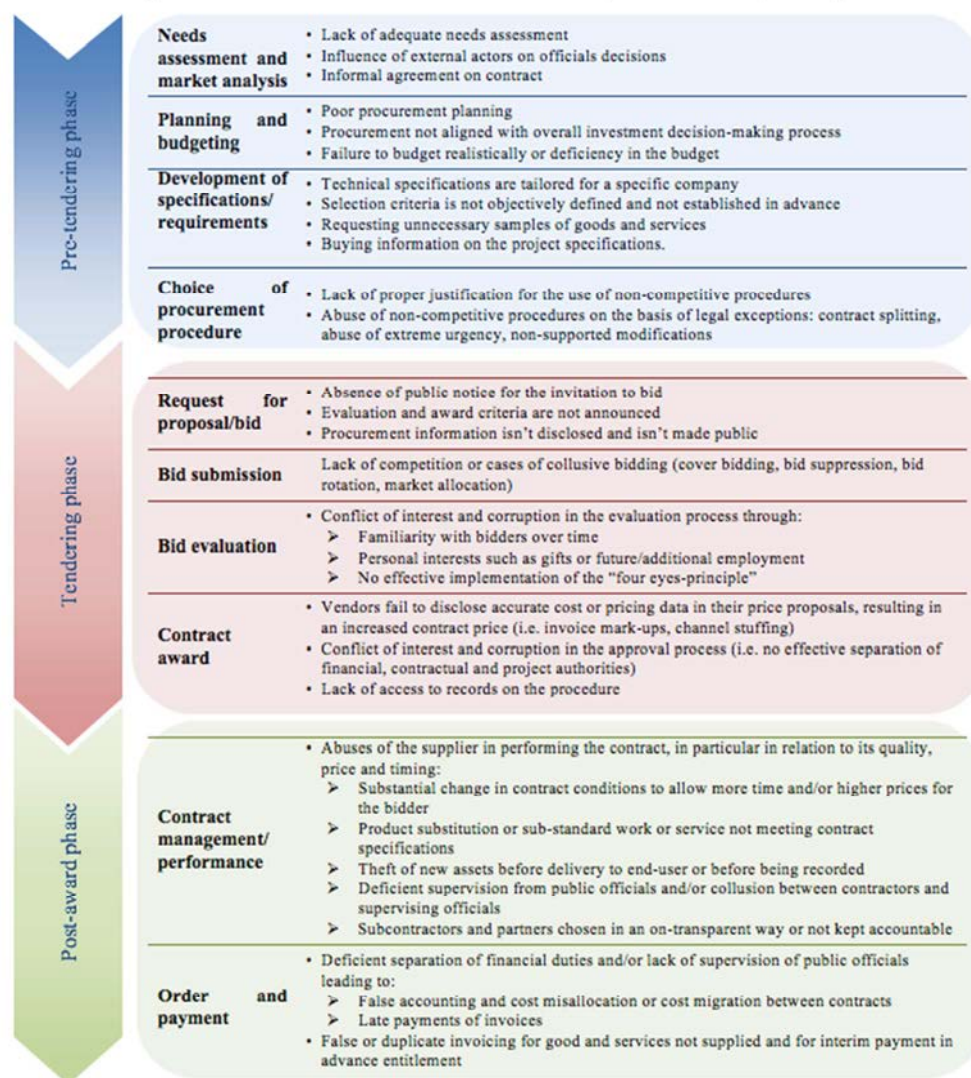
Clean public procurement in Mexico: Ensuring integrity and value for money

In line with the OECD Recommendation of the Council on Public Procurement, this chapter assesses whether Mexico has developed effective general standards for public procurement procedures, and implemented procurement specific safeguards in order to preserve integrity in public procurement. It looks specifically at newly developed initiatives, such as the Protocol of Conduct for Public Servants in Public Procurement and the Registry of Public Procurement Officials. It also describes the complaints and sanctions system in place in order to contest procurement decisions and denounce possible corruption cases. The chapter analyses levels of transparency of public procurement processes and the application of e-procurement solutions. Finally, it evaluates how external stakeholders, such as private sector representatives and civil society organisations, are involved in the public procurement system with a view to increasing its transparency and integrity.

Introduction: Corruption risks in public procurement

Positions and activities in the public sector differ in terms of the potential integrity risks involved. Some sectors or officials, such as those in justice, tax and customs administrations, audit, inspection or public procurement, may operate with higher potential risks of conflict of interest and corruption. Public procurement is particularly vulnerable to integrity violations due to the high complexity of activities, the close interaction between the public and private sectors, and the large volume of transactions. Every year, governments spend large sums of public money on procurement contracts. In 2013 alone, for instance, it is estimated that OECD countries spent about 12% of their GDP and 29% of government expenditure on public procurement, which is estimated to be around EUR 4.2 trillion (OECD, 2015a). Unethical practices can occur in all phases of the public procurement cycle, however, each phase may be prone to specific kinds of integrity risks (see Figure 8.1 below).

Figure 8.1. Corruption risks associated with the different phases of the public procurement cycle



Source: OECD (2016a), *Preventing Corruption in Public Procurement*, OECD, Paris, www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf.

The OECD Recommendation on Public Procurement (OECD, 2015b) aims to address risks in public procurement. The Recommendation, which is composed of 12 integrated principles (see Figure 8.2 and Box 8.1), outlines some essential measures to be implemented in order to ensure high integrity in the public procurement system and to fight corruption related to public procurement processes. This chapter assesses the strengths and weaknesses of the Mexican federal public procurement framework against the OECD Recommendation, and the extent to which the framework identifies and mitigates inherent corruption risks. It is organised into five sections covering several principles of the OECD Recommendation that include integrity, accountability, transparency and participation (for more information, please refer to Annex 8.1). The five sections are: 1) preserving public integrity through general standards of conduct and procurement specific safeguards; 2) supporting the implementation of new integrity standards with the necessary awareness-raising and capacity-building initiatives; 3) ensuring accountability throughout the public procurement cycle, including appropriate complaint and sanction process; 4) enhancing transparency and the disclosure of information around public procurement processes; and 5) fostering transparent and effective stakeholder participation.

Figure 8.2. The 12 integrated principles of the OECD Recommendation on Public Procurement



Source: OECD (2015b), *Recommendation of the Council on Public Procurement*, OECD, Paris, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

Box 8.1. The contribution of the 12 principles of the OECD Recommendation to the fight against corruption

1. **Transparency:** The public disclosure of information around public procurement processes contributes to identifying and decreasing cases of mismanagement, fraud and corruption.
2. **Integrity:** Effective managing of conflict of interest in the public service and in post-public employment, which can lead to undue influence and "capture", are necessary to prevent fraud and theft.
3. **Access:** Access to procurement opportunities for potential competitors of all sizes, including the limited use of exceptions to competitive tendering (direct awards, accelerated procedures, etc.), increases competition and decreases corruption risks.
4. **Balance:** Public procurement can be used to achieve secondary policy objectives, such as the development of small and medium-sized enterprises and standards for responsible business conduct, which have the potential to strengthen integrity and fight corruption in the framework of public procurement processes and beyond.
5. **Participation:** Participation, including the provision of opportunities for direct involvement of relevant external stakeholders in the procurement system, increases transparency and integrity and reduces the risks of corruption in public procurement processes.
6. **Efficiency:** Efficiency, by reducing waste, reduces the vulnerability to corruption since funds are better accounted for and used for the intended purposes.
7. **E-procurement:** E-procurement tools facilitate access to public tenders and improve the transparency of public procurement processes and the accountability of procurement officials, which contributes to mitigating the risks of corruption inherent to procurement processes.
8. **Capacity:** More capable procurement officers are better able to comply with procedures and ensure that they are applied fairly and effectively to avoid corruption.
9. **Evaluation:** The collection of consistent, up-to-date and reliable information and the use of data on prior procurement can facilitate the identification of corruption cases, as well as collusion.
10. **Risk management:** Risk management systems contribute to identifying and addressing threats to the proper functioning of the public procurement system, including risks of fraud, misuse of public funds or corruption.
11. **Accountability:** Oversight and control mechanisms help to reinforce accountability throughout the procurement process. An effective complaint system contributes to identifying and sanctioning cases of corruption related to public procurement operations. If appropriately used, complaint systems may also reinforce risk management strategies and contribute to building a culture of integrity among procurement officials.
12. **Integration:** The visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle, contributes to the transparency of the public procurement system and can reduce the risk of corruption.

OECD (2015b), *Recommendation of the Council on Public Procurement*, OECD, Paris, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

Preserving integrity in public procurement through high standards of conduct and procurement specific safeguards

Mexico's framework for the federal public procurement system is based primarily on the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) and the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios relacionados con las Mismas*, LOPSRM). Both of these laws include various requirements and rules to structure and guide public procurement activities; however, neither specifically addressed integrity and corruption risks.

Until now, the administrative sanctioning of public servants who take part in corrupt practices has been covered mainly by the Federal Law on Administrative Responsibilities of Public Servants (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, LFRASP). With the approval of the new General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, LGRA), which will come into effect in July 2017, the LFRASP will be supplanted (see Chapter 3 for more detailed information on the LGRA). The LGRA will also supplant the Federal Anti-Corruption Law on Public Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas*, LFACP), adopted in June 2012, which directly addresses corruption and fraud in public procurement. A key feature of the new LGRA is that it holds the character of a general law, and will therefore apply beyond the federal level to public procurement officials across the country.

Mexico's federal government has undergone a series of reforms aimed at strengthening its public integrity system, including reinforcing integrity standards for public procurement officials. These reforms started in early 2015 with the issuance of a series of executive orders by the President of Mexico (February 2015). Those orders (eight actions in total) primarily focus on preventing and managing conflict of interest. They also include the following four initiatives regarding the management of public procurement processes:

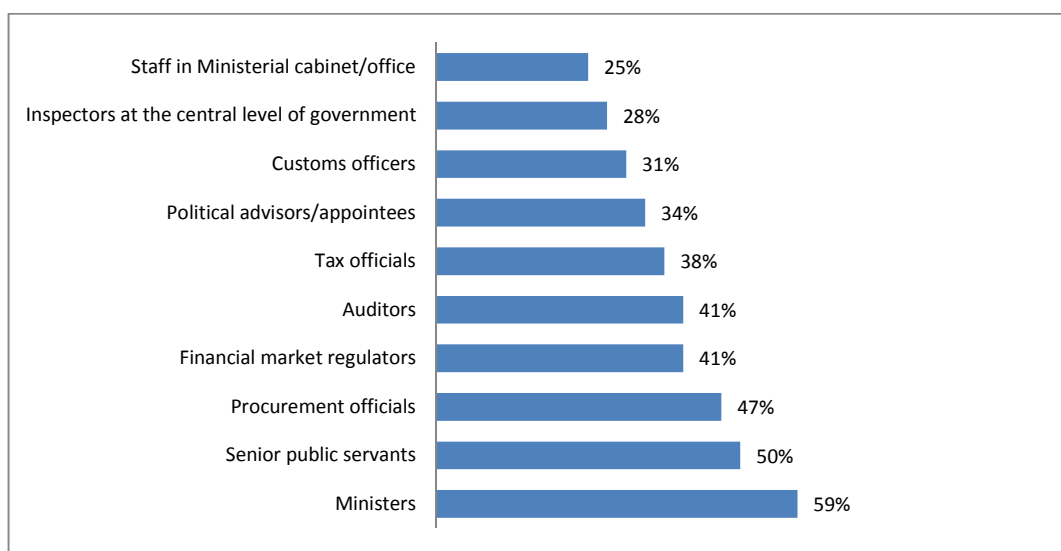
- **A protocol of conduct for public servants in public procurement**, and on the granting and extension of licenses, permits, authorisations and concessions (*Acuerdo por el que se expide el protocolo de actuación en materia de contrataciones públicas, otorgamiento y prorrogación de licencias, permisos, autorizaciones y concesiones*). This is included in the General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*).
- **A registry of federal public administration public servants involved in public procurement processes** (*Registro de servidores públicos de la Administración Pública Federal que intervienen en procedimientos de contrataciones públicas*), including classification according to their level of responsibility and their certification.
- **An online publication of sanctioned suppliers**, specifying the reason of the sanction.
- **Increased collaboration with the private sector** to reinforce transparency in procurement procedures and decision making, and to reinforce integrity through the involvement of citizens in the identification of vulnerable processes and

procedures, and the development of co-operation agreements with chambers of commerce and civil society organisations.

Mexico should ensure that specific provisions related to public procurement are being included in the codes of individual line ministries, which are required to update their organisation’s codes according to the new Ethics Code and Rules of Integrity.

According to the OECD Recommendation, adherents should require high standards of integrity for all stakeholders in the procurement cycle. It suggests that standards embodied in integrity frameworks or codes of conduct applicable to public-sector employees (such as managing conflict of interest, disclosure of information or other standards of professional behaviour) be further expanded (e.g. through integrity pacts). The Recommendation also recommends tailoring general integrity tools to the specific risks of the procurement cycle as necessary (OECD, 2015b). According to the 2014 OECD Survey on Management of Conflict of Interest, specific conflict-of-interest policies and/or rules have been developed for procurement officials in 47% of OECD countries (see Figure 8.3), which is slightly less than for senior public officials (50%) and ministers (59%).

Figure 8.3. Development of conflict-of-interest policy/rules for particular categories of public officials in OECD countries



Source: 2014 OECD Survey on Management of Conflict of Interest.

In Mexico, 17 specific provisions were included in the Mexican Ethics Code and Rules of Integrity (*Código de Ética y reglas de Integridad*) for officials working in public procurement (paragraph 3), out of 12 domains (see Chapter 3). Those provisions include specific rules for public officials involved public procurement processes, requiring that they act in a transparent, impartial and legal way, making decisions based on the needs and interests of civil society and providing the best procurement conditions for the state (see Box 8.2). The Ethics Codes and Rules of Integrity have been complemented by a guide to identifying and preventing conduct that could constitute a conflict of interest for public officials (*Guía para identificar y prevenir conductas que puedan constituir*

conflicto de interés de los servidores públicos). This guide provides a list of nine high-risk processes, which include those related to public procurement and public works, as well as a table to analyse the risks according to those areas.

Box 8.2. Mexican Ethics Code and Rules of Integrity: Provisions related to public procurement

Public contracts, licenses, permits, authorisations and concessions

The public servant who participates in public contracting or in granting and providing extensions to licenses, permits, authorisations and concessions, on the grounds of their employment, position, commission or function or through subordinates, needs to behave with transparency, impartiality and legality; orient decisions towards the needs and interests of the society, and guarantee the best conditions for the state.

This rule encompasses the following, non-exhaustive, list of forbidden behaviours:

- Omit to declare, in accordance with the applicable provisions, the possible conflicts of interest as well as particular business and commercial links with persons or organisations registered in the Single Registry of Contractors for the Federal Public Administration.
- Fail to apply the principle of equal competition that should prevail among participants in public procurement processes.
- Formulate requirements differently from those strictly necessary for the fulfilment of the public service, causing excessive and unnecessary expenses.
- Establish conditions in the invitations or calls for tenders which confer advantages or provide a differential treatment to certain bidders.
- Favour certain bidders by considering that they meet the requirements or rules foreseen in the invitations or calls for tender when they do not; simulating the fulfilment of them or contributing to their temporary fulfilment.
- Help suppliers to fulfil the requirements foreseen in the requests for quotes.
- Provide undue information about individuals involved in public procurement processes.
- Be partial in the selection, designation, contracting, and, as the case may be, removal or termination of the contract, in the framework of public procurement processes.
- Influence decisions of other public servants in order for one participant to benefit from the public procurement processes or from the granting of licenses, permits, authorisations and concessions.
- Avoid imposing sanctions on bidders, suppliers and contractors who violate applicable legal provisions.
- Sending e-mails to bidders, suppliers, contractors or concessionaires through personal e-mail accounts or accounts which are distinct from the institutional e-mail.
- Meet with bidders, suppliers, contractors and concessionaires outside the official buildings, except for the proceedings related to on-site visits.
- Request unsubstantiated requirements for the granting and providing of extensions to licenses, permits, authorisations and concessions.

Box 8.2. Mexican Ethics Code and Rules of Integrity: Provisions related to public procurement (cont.)

- Give inequitable or preferential treatment to any person or organisation in the framework of granting and extending licenses, permits, authorisations and concessions.
- Receive or request any type of compensation, offering, treat or gift in the framework of granting and providing extensions to licenses, permits, authorisations and concessions.
- Fail to observe the protocol of action in matters of public contracting and providing extensions to licenses, permits, authorisations, concessions and their extensions.
- To be a direct beneficiary, or through relatives up to the fourth degree, of government contracts related to the agency or entity that directs or to which are directed the services.

Source: Ministerial Order for Mexico's Ethics Codes and Rules of Integrity, DOF-20-08-2015, (Acuerdo ACUERDO que tiene por objeto emitir el Código de Ética de los servidores públicos del Gobierno Federal, las Reglas de Integridad para el ejercicio de la función pública,) www.dof.gob.mx/nota_detalle.php?codigo=5404568&fecha=20/08/2015.

As discussed in Chapter 3, individual line ministries are currently in the process of revamping their specific codes of conduct as per the new Integrity Rules set out in 2015 by the Ministry of Public Administration (*Secretaría de Función Pública*, SFP) and now in the new LGRA. However, little attention has been paid in these codes as to how they specifically target procurement personnel (or other high-risk positions in their organisations) and are aligned with the protocol. In line with the recommendation of Chapter 3, new ministerial codes would need to involve public procurement officials in order to strengthen the sense of ownership and its values throughout individual line ministries.

In relation with the Public Procurement Protocol, Mexico could adopt a more values-based approach, rather than emphasising controls, by considering removing the Protocol's requirements for systematic audio and videotaping of conversations, and by providing clearer guidance for procurement officials on how to manage conflict-of-interest situations.

As mentioned above, Mexico introduced a new code of conduct specifically for public procurement officials, the Protocol of Conduct for Public Servants in Public Procurement (hereafter, the Public Procurement Protocol or the Protocol), which seeks to specifically target conflict-of-interest situations for public procurement dealings. The Protocol applies to all public servants involved in public procurement and in the granting or providing of extensions to permits, licenses and concessions, including for international commercial transactions. It includes general rules regarding contact with private individuals, the organisation of meetings, on-site visits, public events, as well as deliberate procedures. The Protocol is completed with a Manifest (*Manifiesto que podrán formular los particulares en los procedimientos de contrataciones públicas, de otorgamiento y prorroga de licencias, permisos, autorizaciones y concesiones*). The Manifest is for individual persons to declare or deny any businesses, work, personal or family links or relationships of consanguinity or affinity to the fourth degree with public servants specified in the Protocol. The Manifest will be discussed further in the last section of this chapter.

While the Protocol is a specialised code of conduct targeted specifically at public procurement officials, and is an important step towards ensuring a risk-sensitive management, there are currently several aspects of the Protocol that weaken its potential to achieve the desired impact, and that could even lead to undesired consequences. It could, for instance, benefit from a more balanced approach. There is a limit to the benefits of control and sanctions, and balancing rules-based and values-based approaches is considered crucial (OECD, 2009a). The Protocol, however, is based almost exclusively on rules, while neglecting values. It could even lead to undesired consequences, as the current Protocol may undermine officials' motivation and engagement in their workplace if they receive the impression that little trust is placed in them or, worse, that they are inherently corrupt. The OECD Recommendation emphasises the importance of not creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community (OECD, 2015b).

The Protocol also includes some stipulations and requirements that are difficult to enforce because they are too easy to circumvent in practice. For instance, the taping of phone calls and the videotaping of meetings can simply be avoided by meeting outside the administration offices and working time. Although the Protocol urges the use of primarily written communications and to write minutes of meetings with the private sector, this does not impede informal oral communications and agreements on corrupt deals while complying with maintaining a flow of written formal communications. Requiring the presence of at least two public servants during meetings (the four-eyes principle) to mitigate risks of corruption should at least be complemented with a rotation of teams to mitigate the risk of collusion between public servants. While the four-eyes principle is considered good practice and has been used widely (see Box 8.3), it has been recently challenged (Lambsdorff, 2015; Schikora, 2010; Li et al. 2015; Charness and Sutter, 2012), as research suggests that it may, on its own, be ineffective at containing corruption. Solely relying on the four-eyes principle may even lead corruption to increase, as teams tend to act more selfishly than individuals, which can favour the establishment of corrupt networks. Responsibility can also be more easily diffused and provide public servants the possibility to rationalise their corrupt behaviour through excuses.

Box 8.3. The four-eyes principle: Tappan Zee Bridge Project, New York State

The four-eyes principle is a requirement that two individuals review and approve an action before it can be taken. For the construction of the Tappan Zee Bridge in the State of New York, several teams were set up to ensure respect of the four-eyes principle and the fairness of the selection process during the procurement phase:

- A Procurement Management Team, comprised of a team of public and private employees, responsible for directing the overall evaluation and selection process.
- A Legal Team, comprised of public and private legal advisors to conduct a legal pass/fail analysis of aspects of the proposals and provide guidance throughout the procurement process.
- A Financial Team to perform a financial pass/fail review and a net present value analysis of the price proposals.
- A Price Reasonableness Team to conduct reviews of each of the proposals and provide recommendations to the BRSC regarding the reasonableness of the pricing for each of the proposals.

Box 8.3. The four-eyes principle: Tappan Zee Bridge Project, New York State
(*cont.*)

- A Technical Evaluation Team to evaluate the technical strengths and weaknesses of each proposal.
- A Value Assessment Team comprised of engineers and other professionals from both the public and private sectors, to assemble all of the reports for each proposer, and where feasible, use the accumulated reports to quantify the technical strengths and weaknesses of each proposal.
- A Blue Ribbon Selection Committee to present a non-binding recommendation to the Selection Executives.
- A Bridge Design Aesthetic Team, comprised of artists and architects, to review the proposed bridge designs and assist in the evaluation process.
- A group of selection executives comprised of the members of the Major Projects Committee of the Thruway Authority's Board, to review the selection and findings of the BRSC. The ultimate determination to award a contract was made by the full NYSTA Board.

Source: Thacher Associates (2013), Tappan Zee Hudson River Crossing Project; Report of the Independent Procurement Integrity Monitor, www.newnybridge.com/documents/int-monitor-report.pdf.

As mentioned, rules-based protocol measures could trigger undesired consequences, similar to that suggested by research on the four-eyes principle. The tone and content of the Protocol seem to create or reinforce an environment where public servants feel distrusted and are fearful of committing errors. This atmosphere may lead to a failure to comply with regulations for fear of facing corruption charges.¹ The hidden costs of control are well known and well researched (e.g. Falk and Kosfeld, 2006; Lambsdorff, 2015; Anechiarico and Jacobs, 1996). For instance, incrementing controls can lead to the crowding-out of intrinsic motivation for honesty; in other words, with heavier control, people tend to feel distrusted and switch to a purely rational way of decision making. If external incentives favour undesired action after the cost-benefit analysis, the individual will be much more likely to misbehave (Schulze and Frank, 2003). Taken together with the previous observation that many of the controls brought forward in the Protocol are actually easy to elude, such crowding-out of intrinsic motivation can be particularly problematic, as public servants may become more likely to agree to corrupt deals as they do not feel a moral obligation (positive reciprocity) towards their employers and the public interest. While this does not imply that control and sanctions have to be eliminated, it does provide an argument for designing them in a more balanced way.

To some extent, the measures may also create scope for blackmailing public servants who have failed to comply with the Protocol without bad faith. If a public servant committed an error, or may even have been induced to commit an error by a private company in a procurement process, this knowledge can be used as a threat to extort favours or contracts. This threat is always a credible option where private companies can expect lower sanctions and public servants are facing strong sanctions. An example from Germany shows that this risk is not hypothetical (see Box 8.4).

Box 8.4. The risk of blackmailing

At a court in the city of Bochum, Germany, an employee of the road construction authority confessed to accepting bribes for contracts relating to marking roads. Beginning in 1987, and lacking business experience, he passed on names of competing firms in a public tender. After this incident, he received an envelope filled with Deutsche Mark (DM) 2 000 from the private firm who obtained the favour. “Suddenly I knew that I had begun to be at his mercy,” was the statement given in court and the justification for why he afterwards became entrapped in this corrupt relationship.

Source: Lambsdorff (2002), and Westdeutsche Allgemeine Zeitung/Cityweb, February 10, 1998: “Mit jedem Gefallen tiefer in den Sumpf.”

The current Protocol does not provide guidance on how public procurement officials can and are expected to react when faced with typical ethical dilemmas and conflict-of-interest situations that could arise in public procurement processes. Mexico could therefore consider complementing the current rules-based Protocol by guidance based on principles, values and ethical reasoning (Boxes 8.4 and 8.5, and recommendations in Chapter 3). The guide on conflicts of interests already has a strong focus on procurement processes, on which the SFP could elaborate.

Box 8.5. Conflict-of-interest management during tender evaluation in Australia

The Government of South Australia’s Department of Planning, Transport and Infrastructure (DPTI) addresses ways to address potential and material conflict-of-interest situations during the procurement process through the Procurement Management Framework. It states that the DPTI staff member should notify the evaluation Panel Chairperson as soon as they notice any apparent conflict-of-interest situation. Even though a potential conflict of interest will not necessarily preclude a person from being involved in the evaluation process, it is declared and can be independently assessed.

The framework also lists situations that would be considered as a material conflict of interest of a staff member in relation to a company submitting a tender including: 1) a significant shareholding in a small private company submitting a tender; 2) having an immediate relative (e.g. son, daughter, partner, sibling) employed by a company which is tendering, even though that person is not involved in the preparation of the tender and winning the tender would have a material impact on the company; 3) having a relative who is involved in the preparation of the tender to be submitted by a company; 4) exhibiting a bias or partiality for or against a tender (e.g. because of events that occurred during a previous contract); 5) a person, engaged under a contract to assist DPTI with the assessment, assessing a direct competitor who is submitting a tender; 6) regularly socialising with an employee of tenderer who is involved with the preparation of the tender; 7) having received gifts, hospitality or similar benefits from a tenderer in the period leading up to the call of tenders; 8) having recently left the employment of a tenderer; or 9) considering an offer of future employment or some other inducement from a tenderer.

Source: Government of South Australia (2016), *Procurement Management Framework. Confidentiality and Conflict of Interest*, PR115, http://dpti.sa.gov.au/_data/assets/word_doc/0016/162322/PR115_Confidentiality_and_Conflict_of_Interest_-_Procurement_Procedure.docx (accessed 01 June 2016).

While the Public Procurement Registry is a positive first step to identifying which officials are involved in the public procurement process, Mexico should now leverage this registry to better identify integrity risks in this area.

Following the series of executive orders by the President, Mexico created a Registry of Public Servants of the Federal Public Administration who are involved in public procurement processes and other high-risk processes in terms of corruption. It aims to serve as a basis for the identification and classification of public procurement officials, according to their level of responsibility, by the entities of the federal public administration, the Supreme Audit Institution (*Procuraduría General de la República*) and the Office of the Presidency of the Republic (*Oficina de la Presidencia de la República*). According to the executive orders of the President of Mexico, public officials listed in the registry are obliged to get adequate certifications in order to ensure their integrity and performance. The registry, which is being published on the SFP's website, is also a tool to keep citizens informed about the public servants involved in public procurement and other high-risk processes (such as the granting and extension of licenses, permits, authorisations and concessions).

To aid in developing and implementing the registry, the SFP has developed a guide for the identification and classification of responsibility levels of public officials of the federal public administration (*Guía para la identificación y clasificación de los niveles de responsabilidad de los servidores públicos de la Administración Pública Federal*). On 25 October 2016, the website listed a total of 15 372 public servants involved in public procurement processes and other high-risk processes, 11 802 of whom are public procurement officials² The listed public servants are classified along the following levels of responsibility: attention or processing (*atención or tramitación*) and resolution (*resolución*) of processes. The guide also specifies the object of responsibility, such as: justification for the use of exceptions and single-source procurement, calls for proposals and requests for quotations, evaluation of submissions, contract award, and contract management. The registration is undertaken via the electronic Registry of Public Servants of the Federal Government (*Registro de Servidores Públicos del Gobierno Federal, RUSP*).

In order for the registry to be used and relevant, it first needs to be updated on a regular basis, in particular as it is meant to include staff working on issues related to public procurement on an ad hoc as well as permanent basis. According to the SFP, the registry will be updated according to the calendar of the Human Resource Policy Unit of the ministry (*Unidad de Política de Recursos Humanos de la Administración Pública Federal, UPRHAPF*).

In order for the information to be helpful to fight against corruption and decrease conflict-of-interest cases, the information contained in the registry must be cross-checked with the asset declarations (*declaración de situación patrimonial*) and interests declaration (*declaración de intereses*) of public procurement officials included in the registry. Cross-checking such information would ensure that all public procurement officials, including those who take care of procurement on an ad hoc basis, have filled in their asset declarations and their interests declarations. Moreover, specific integrity risks could be identified among public procurement officers, according to their level of responsibility. This could be one of the roles of the new Specialised Unit for Ethics and Prevention of conflicts of interest (*Unidad Especializada en Ética y Prevención de conflictos de interés, UEEP*) of the SFP, in co-operation with the SFP's Public Procurement Unit. The latter may also want to identify and monitor the public servants

responsible for managing the processes and making final decisions (processing and resolution of processes according to the levels specified in the guidance note), given that this can increase the risk of fraud.

Mexico also needs to take into account the risks of publishing registry information, including names, of staff involved in public procurement processes, as this could be used by suppliers to bribe public servants in relation to a specific public procurement process.

Supporting implementation of new integrity standards with awareness raising and capacity building

Mexico should ensure the implementation of new initiatives, such as the Public Procurement Protocol and the Public Procurement Registry, through adequate communication strategies and tailored advice.

As stressed in Chapter 3, a protocol or a code alone cannot guarantee ethical behaviour, but it can offer written guidance on expected behaviour by outlining the values and standards to which public procurement officers should aspire. To be effectively implemented, adequate communication strategies, including awareness-raising activities, should be developed. A clear communication strategy to raise awareness regarding integrity policies, as well as available tools and guidance, makes use of different existing and innovative channels of communication. It should also target internal stakeholders (public procurement officials) and external stakeholders (the private sector, civil society organisations and individuals). External communication of the relevant codes of conduct can support key stakeholders in their commitment to integrity. The role of external actors, in particular users of public services and the private sector, is critical to maintaining the integrity of government operations.

The objectives, content and usage of the Public Procurement Protocol and the Public Procurement Registry could be communicated to the public procurement workforce; and manuals and guidelines could also be created to help public procurement officials understand and apply the new provisions. Given that the Protocol was also included in the LGRA and will be applicable to all Mexican states as of July 2017, communications should target not only public procurement officials at the federal level, but should also take into account the future needs of officials working at the state level. The SFP must raise awareness with HRM and procurement units about the Registry, and set out procedures for regularly updating and maintaining the database. As specified in the Public Procurement Protocol, the SFP, particularly the UEEP, is also in charge of providing advice to contracting authorities regarding the implementation of the code. The communication strategy needs to cover the specific provisions included in the Mexican Ethics Code and Rules of Integrity for officials working in the domain of public procurement. In the framework of this communication strategy, Mexico should continuously recognise public procurement as a high-risk area.

Communication on the Mexican Ethics Code and Rules of Integrity, the Public Procurement Protocol and the Public Procurement Registry should include external actors, including users and providers of federal public services. Emphasis should be given to their rights and duties to abide by the rules. As specified in Chapter 3, a growing trend in OECD member countries is to communicate throughout the private sector the values and ethics that officials must adhere to. In the case of Mexico, potential suppliers have to be made aware of the Manifest targeted at individual persons to declare or deny any businesses, work, personal or family links or relationships of consanguinity or affinity to

the fourth degree with public servants specified in the Protocol. As suggested in Chapter 3 of this review, the new integrity standards and codes could be attached to requests for proposals and calls for applications, or mailed to all vendors. This could be conducted through the advisory board of private sector representatives to the national anti-corruption system (NACS, see Chapter 2). Raising awareness externally about public officials' integrity commitments is a pre-requisite to fostering the participation of citizens in public procurement processes, strengthening accountability, and increasing institutional trust (see section on participation below).

Mexico should further foster a culture of integrity amongst procurement professionals by developing a clear integrity capacity strategy and by implementing tailored training programmes for public procurement officials.

According to the Recommendation, integrity training programmes need to be developed for the procurement workforce, both public and private, to raise awareness of integrity risks, such as corruption, fraud, collusion and discrimination; and to develop knowledge on ways to counter these risks and foster a culture of integrity to prevent corruption (principle of integrity). The Recommendation also underlines the need to ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools, for example, sufficient staff in terms of numbers or skills, recognition of public procurement as a specific profession, certification and regular training, and integrity standards for public procurement officials (OECD, 2015b). As stressed in Chapter 3, HRM is particularly relevant in promoting and ensuring integrity. Public ethics and the management of conflict are about directly or indirectly changing the behaviour of an organisation's human resources, and therefore HRM policies are part of the problem and the solution to promoting integrity in the public administration, including among public procurement officials.

Against this background, and as recommended in Chapter 3, Mexico could consider developing a clear integrity capacity-building strategy for the public administration, including public procurement officials. The capacity strategy should include a certification system for public servants, at least for those listed in the Registry of Public Servants of the Federal Public Administration who are involved in public procurement processes and other high-risk processes in terms of corruption. It should be aligned with the levels of responsibilities defined in the guide for the identification and classification of the responsibility levels of public officials of the Federal Public Administration (see above), and specific training should be proposed in order for public servants to get certified. The strategy should give clear guidance on which training needs to be taken and how often, and which tests need to be passed by public servants in order for the certification system to be effective. Such a strategy would strengthen the integrity of public officials and contribute to professionalising the workforce and increasing its performance, as experienced in the case of Canada (see Box 8.6).

Box 8.6. The Canadian Certification Programme for the Federal Government Procurement and Materiel Management Communities

In today's rapidly changing environment, the Canadian Federal Government's Procurement and Materiel Management Communities have become a more knowledge-based profession, with an emphasis on a strategic advisory role. In an environment where accountability is foremost, it is essential that practitioners demonstrate that they possess the advanced skills and knowledge required to function effectively and efficiently.

The programme is managed by the Acquired Services and Assets Sector (ASAS) Communities Management Office (CMO) in the Treasury Board Secretariat. The CMO provides strategic direction and central leadership for the collaborative development and implementation of strategies, programmes and initiatives to support capacity building, community development and the professional recognition of the Federal Government Procurement, Materiel Management and Real Property Communities.

When the certification programme was launched in 2006, it received national and international recognition as the federal government's first ever Certification Programme for Procurement and Materiel Management specialists. What binds together the procurement and materiel management communities is their responsibility for the lifecycle management of assets, from assessment and planning of requirements throughout acquisition until disposal. As a consequence of this shared responsibility, the communities have many common competencies, learning goals and knowledge requirements.

Certification provides the increased professional recognition for the communities and offers a professional designation to formally acknowledge a practitioner's level of achievement. Procurement specialists can acquire certification as a Certified Federal Specialist in Procurement, Level I and II, and those in materiel management can acquire certification as a Certified Federal Specialist in Materiel Management Level I. Both designations are based on the Federal Government Procurement and Materiel Management Communities Competency Suite. A competency describes an employee's proficiency in a particular job function in terms of knowledge, skills and abilities. Each competency has a definition, a proficiency level and behavioural indicator statements.

The certification programme is designed to evaluate a candidate's experience and knowledge in the federal government context, thereby distinguishing it from designations of external certifying bodies. In addition to developing technically proficient communities, the programme focuses on ensuring capacity in leadership competencies.

Source: OECD (2016b), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264252103-en>.

In the framework of the development of the integrity capacity strategy for the public administration, including public procurement officials, Mexico could consider developing and implementing tailored training programmes for public procurement officials. According to the SFP's website (including its Activities Report for 2015-2016), training on public procurement has been developed, including on the use of the e-procurement system CompraNet, the evaluation of submissions, and the development of market studies. However, analysis of the list of available training courses for public procurement officials has shown that there is no specialised training for public procurement officials on managing integrity and corruption risks. There are also no training videos for public procurement officials on integrity. Training could be developed with guidance from the UEEP (see above), as well as the National School of Government Professionalisation (*Escuela Nacional de Profesionalización Gubernamental*). Specific training should be

included in the framework of the induction training developed for new employees, and specific courses should be developed to present the new provisions and tools (the latter could, for instance, be implemented through e-learning solutions). In Germany, specific integrity training has been developed for public procurement officers (see Box 8.7).

Box 8.7. Integrity training in Germany

The Federal Procurement Agency is a government agency that manages purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the Federal Ministry of the Interior. It is the second largest federal procurement agency after the Federal Office for Defence Technology and Procurement.

The Procurement Agency has taken several measures to promote integrity among its personnel, including support and advice by a corruption prevention officer (Contact Person for the Prevention of Corruption), the organisation of workshops and training on corruption, and the rotation of its employees.

Since 2001, it has been mandatory for new staff members to participate in a corruption-prevention workshop. They learn about the risks of getting involved in bribery and the briber's possible strategies. They also learn how to behave when these situations occur; for example, they are encouraged to file a report ("blow the whistle"). Workshops highlight the central role of employees, whose ethical behaviour is an essential part of corruption prevention. About ten workshops took place with 190 persons who provided positive feedback concerning the content and the usefulness of the training. The involvement of the agency's Contact Person for the Prevention of Corruption and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency. In 2005, the target group of the workshops was enlarged to include ongoing as well as induction training for the entire personnel. Since then, six to seven workshops are being held per year at regular intervals, training approximately 70 new and existing employees per year.

Another key corruption prevention measure is staff rotation after a period of five to eight years in order to avoid prolonged contact with suppliers, as well as improve motivation and make the job more attractive. However, the rotation of members of staff still meets with difficulty in the agency. Due to a high level of specialisation, many officials cannot change their organisational unit, as their knowledge is indispensable for the work of the unit. In these cases alternative measures, such as intensified (supervisory) control, are being taken.

Source: OECD (2016b). *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264252103-en>.

In order to preserve public integrity, Mexico should publicise risk management strategies and raise awareness and knowledge of them within the procurement workforce and with other stakeholders.

Risk management tools can map, detect and mitigate corruption risks and preserve public integrity throughout the public procurement cycle. According to the OECD Recommendation, adherents should develop specific risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts, including potential mistakes in the performance of administrative tasks and deliberate transgressions, and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible. Adherents should also publicise risk management strategies, for instance, systems of red flags or whistleblower programmes, and raise awareness and

knowledge among the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks (OECD, 2015b). The importance of risk management is also stressed in the OECD Recommendation on Public Integrity, which calls on adherents to ensure a strategic approach to risk management that includes assessing risks to integrity (e.g. fraud and corruption) and addressing control weaknesses. This involves building warning signals into critical processes, as well as effective monitoring and a quality assurance mechanism for the risk management system (OECD, 2017).

As noted in Chapter 6, the SFP in Mexico has developed a specific risk management process (*Administración de Riesgos Institucional*, ARI). In November 2016, it also published a new methodological and implementation Manual of Internal Control System (*Acuerdo por el que se emiten las Disposiciones y el manual Administrativo de Aplicación General en material de Control Interno*, MAAG-CI), which describes the risk management methodology and related activities that aim to identify, assess and mitigate corruption risks. It also states that organisations should focus on processes vulnerable to corruption, such as financial and budgetary issues, public procurement, investigations and sanctions. However, so far it seems that public officers dealing with public procurement within the SFP and contracting authorities are not aware of this new risk management strategy, and that they are consequently not implementing it at the federal level. Interviews undertaken in the framework of the fact-finding mission also suggest that the SFP has not implemented any specific awareness-raising or capacity-building programmes around risk management, including corruption risks, that are targeted at contracting authorities and public procurement officers.

Against this background, and in line with the recommendations included in Chapter 6, Mexico should publicise risk management strategies and raise awareness and knowledge among the procurement workforce and other stakeholders about the risk management strategies. The SFP needs to accompany its new risk management framework with an effective awareness and capacity-building programme around risk management in general, and with a specific module on risk management for fraud and corruption. In particular, the SFP should provide specialist and specific training for high-risk functions, including public procurement, and for different staff groups, such as those responsible for audit, finance, public procurement or investigations. In order to ensure the proper implementation of the Manual of Internal Control System, and facilitate its application within public procurement, Mexico may also want to provide public procurement officers with specific tools or templates. The SFP could, for instance, develop a specific checklist identifying the risks linked to public procurement activity, in particular the corruption risks (see Figure 8.1). The SFP could also develop specific guidance on how the five internal control components (control environment, risk assessment, control activities, information and communication and monitoring) can link with the public procurement process; and provide a checklist for contracting authorities to verify that the five components are being taken into account in their daily activities and that the risks are evaluated and mitigated (see Table 8.1).

Table 8.1. Leveraging internal control over the procurement cycle

Internal Control components	Tailor made linkages with the procurement process
Control environment	Are there clearly defined ethics requirements and professional certifications for those employed in the procurement units?
Risk assessment	Has the entity assessed areas of vulnerabilities in the procurement procedures?
Control activities	Are there effective controls in place to mitigate the identified procurement risks?
Information and communication	Are deficiencies in the procurement process communicated and remediation activities shared?
Monitoring	Is the procurement process linked with indicators and the monitoring system to document its efficiency and effectiveness, as well as implementation of corrective actions?

Source: OECD Secretariat.

Ensuring accountability throughout the public procurement cycle, including appropriate complaint and sanction processes

Mexico could consider strengthening the timeliness and trustfulness of its review and remedies system in order to ensure that procurement decisions can be contested and possible corruption cases denounced.

Review and remedy mechanisms contribute to increasing the overall fairness, lawfulness and transparency of the procurement procedure and support its integrity. They also build confidence among businesses and facilitate competition in local public contract markets. Review and remedy systems serve a procurement oversight function by providing means to scrutinise the activities of government procurement officials, to enforce their compliance with procurement laws and regulations, and to correct their improper actions. They provide an opportunity for bidders to contest the process and verify the integrity of the award (OECD, 2013). The OECD Recommendation suggests handling complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrongdoing and build the confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaint system are dedicated and independent review and adequate redress (OECD, 2015b).

Mexican procurement laws, including the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP), provide a mechanism for challenging the key acts in the pre-award stage, such as the call for tender, opening of proposals, and the award decision. The system includes specific conditions and timeframes for raising a formal complaint, as well as defined enforcement authorities and mechanisms. According to Article 65 of the LAASSP, complaints regarding the call for tender can be raised by any supplier who has a manifest interest in participating in a procurement process; only parties that have submitted a bid are allowed to challenge the opening of the proposals and the award of the contract. Complaints can be submitted either in writing directly to the SFP or electronically through CompraNet, the e-procurement system of the Mexican Federal Government (Article 66 of the LAASSP). The decision-making process results in

remedies that are relevant to correcting any irregularity in the procurement process. To ensure the impartiality of review mechanisms, authorities independent from the contracting authorities rule on the review decisions. Complaints are therefore addressed to the Internal Control Office (*Órgano Interno de Control*, OIC), an operational extension of the SFP located within each federal public entity, but independent (see more information in Chapter 6). According to Article 73 of the LAASSP, once a complaint has been resolved, the decision must be made public in CompraNet (OECD, 2013). Suppliers may choose to settle a complaint through the conciliatory mechanisms carried out by the SFP (Article 77 of the LAASSP). When problems arise regarding the interpretation of clauses (Article 80 of the LAASSP), suppliers may ask for a commercial arbiter that follows the proceedings of the Commercial Code (*Código de Comercio*).

In order for the review and remedies system to be used and to support the denouncement of corruption, it needs to be trusted and timely. Even though the Mexican review and remedy system is considered independent and comprehensive, analysis has shown that it is not always timely. According to the World Bank Benchmarking Public Procurement results for 2016 (World Bank, 2016), the legal time to review is 21 days, whereas the time in practice is 90 days. The length of the procedures can discourage suppliers from raising a complaint. Mexico could consider evaluating the time needed for all the steps that have to be undertaken by the review body to render a decision, identify the steps which need particular attention, and take corrective actions to ensure that the time limits are being respected.

For corruption to be denounced easily, it is important that all relevant stakeholders have the possibility to denounce potential corruption cases. In the framework of the LAASSP, not all suppliers have the possibility of denouncing key acts in the pre-award stage, such as the call for tender, opening of the proposals and the award decision. A supplier who suspects a corrupt action, and as a result decides not to take part in the call for tender, does not have the possibility to denounce a potentially corrupt case. In this case, the supplier only has the possibility to inform the SFP of an irregularity through the online form available on CompraNet (*Portal de quejas y denuncias*), see below.

Some suppliers may not have an incentive to request a suspension of the procurement process, given that the suspension is costly. According to Article 70 of the LAASSP, a financial warranty equivalent (of between 10 and 30% of the approved budget for the procurement procedure) is necessary when a supplier requests a suspension. Furthermore, a party wishing to avoid the suspension may offer a counter warranty equivalent to the same amount given by the supplier requesting the suspension. This new requirement can increase the cost for suppliers of filing a complaint. However, complaints can be filed without requesting suspension and the procedure remains inexpensive (OECD, 2013).

Mexico should ensure a system of effective and enforceable sanctions for government and private-sector procurement in relation to public procurement processes.

In order to support accountability throughout the public procurement system, systems of effective and enforceable sanctions for government and private-sector procurement participants need to be developed. According to the OECD Recommendation, sanctions should be in proportion to the degree of wrongdoing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community (OECD, 2015b).

As stated in Chapter 7, as well as in the introduction of this chapter, Mexican procurement laws, including the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP), include various provisions on administrative infringements and sanctions (Articles 59 to 64 of the LAASSP). The latter cover the sanctions to be applied to bidders and suppliers, including fines (*multas*) and exclusions (*inhabilitaciones*), as well as the criteria according to which sanctions have to be defined. The LAASSP, as well as the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios relacionados con las Mismas*, LOPSRM), specify that the administrative sanctioning of public servants who take part in corruption practices are mainly covered by the Federal Law on Administrative Responsibilities of Public Servants (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, LFRASP), which will be replaced by the new LGRA in July 2017. As described in Chapter 7, both laws aim to enhance the legality and integrity of public servants' performance of their administrative duties by establishing the types of administrative offences, the procedure for taking disciplinary action, and the modality and degree of sanctioning to be applied to public servants (OECD, 2015c). However, the LGRA will also apply to bidders and suppliers. It remains unclear how the entering into force of the LGRA will impact the public procurement laws mentioned above.

Mexico has initiated an online publication of sanctioned suppliers, which specifies the reason for the sanction, through the directory of sanctioned suppliers and contractors (*Directorio de Proveedores y Contratistas Sancionados*). This complements the registry of sanctioned public officials (*Sistema de Registro de servidores públicos sancionados*). The new directory includes individuals and entities sanctioned (*multados*) by the SFP or by the OICs in the framework of public procurement processes at the federal level or state level when they involved federal resources (according to Article 59 of the LAASSP). It also includes individuals and entities that have been excluded (*inhabilitados*) from public procurement permanently or temporary (according to Article 60 of the LAASSP). On 26 October 2016, the number of sanctioned and excluded suppliers was 1 236 (and the number of sanctioned 321). Following the publication of the executive orders, the directory specifies the reason for the sanction or exclusion, the amount of the sanction, and the length of the exclusion. Since then, users have the possibility to search for sanctioned suppliers according to ministries and entities (or directly according to supplier and contractor). The specificity of the current list of sanctioned and/or excluded suppliers is that it shows all the suppliers that have once been sanctioned and/or excluded, i.e. they are not deleted from the list once the sanction has been paid or once the temporary exclusion from public procurement has ended.

The publication of sanctioned suppliers contributes to increasing the transparency of the public procurement system and has the potential to fight against corruption and increase/restore trust in government procurement. Public procurement officials and citizens should use the information to the maximum when managing and/or monitoring public procurement processes. The database can also be used for analysing trends in the type of sanctions, and linking them to specific ministries and/or entities. At the same time, Mexico needs to ensure that suppliers and contractors included in this list have the possibility of undertaking self-cleaning measures, and provide them with full rights to participate in future public procurement processes once the fine or penalty has been paid and once the exclusion period has ended. It needs to be ensured that companies are not being disadvantaged in future public procurement processes based on the information included in the list. As stressed in the OECD report *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, it would also be necessary for the SFP to seek an opinion from the Mexican competition authority (*Comisión Federal de Competencia Económica*, COFECE) about the competitive consequences of exclusions, and abide by its opinion. Agencies that depend on goods and services provided by the convicted companies and individuals should also be sought out (OECD, 2015d). Two websites existed at the time of preparation of this review: one page starts with sanctioned suppliers and contractors ("*proveedores y contratistas sancionados*") and the other with directorate of sanctions ("*directorio sancionados*"). Mexico needs to ensure that it publishes only one list of sanctioned suppliers in order not to confuse users.

Box 8.8. Debarment policies in public procurement

Integrity violations of companies may lead to permanent or temporary exclusion from public procurement. Debarment/exclusion policies have been developed in many countries and organisations, but rules differ across jurisdictions and international organisations, and there is significant variation in the specific grounds for debarment (e.g. Hjelmeng and Soreide, 2014). In line with European Union (EU) legislation, there are mandatory debarment/exclusion rules in place in EU Member States, according to which, bidders against whom final court convictions for corruption have been handed down are excluded from future tenders. In EU Member States, laws contain debarment provisions and contracting authorities have cross access to their internal debarment databases. Multilateral Development Banks have developed an Agreement for Mutual Enforcement of Debarment Decisions and made public the list of companies and individuals ineligible to participate in their tendering process. The 2009 OECD Anti-Bribery Recommendation calls on Parties to the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials” (OECD, 2016a). While the debarment/exclusion has gained significant terrain in the last decade, particularly as a device in the fight against corruption and a tool to restore trust in government procurement, there is a lack of solid theoretical underpinning for these rules, and its efficiency continuous to be discussed, in terms of access, competition and value-for money principles, amongst others. The length of debarment and the impact of self-cleaning measures (such as the collaboration with investigators and the provision of information about the offence) on the promotion of public trust in government procurement are particularly discussed (e.g. Hjelmeng and Soreide, 2014).

Source: OECD (2016a), *Preventing Corruption in Public Procurement*, OECD, Paris, www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf.

Hjelmeng, E. and T. Soreide (2014), “Debarment in Public Procurement: Rationales and Realization”, in G.M. Racca and C. Yukins, *Integrity and Efficiency in Sustainable Public Contracts*, www.researchgate.net/publication/265550163_Debarment_in_Public_Procurement_Rationales_and_Realization.

Enhancing transparency and the disclosure of information around public procurement processes

Mexico should continue ensuring an adequate degree of transparency of the public procurement system in all stages of the procurement cycle, by using and further developing the e-procurement system CompraNet.

Integrity and transparency of public procurement systems are closely linked. Transparency and the disclosure of information around public procurement processes contribute to identifying and decreasing cases of mismanagement, fraud and corruption, and are therefore key accountability mechanisms for integrity. The OECD Recommendation on Public Integrity encourages transparency and stakeholder engagement at all stages of the political process and policy cycle to promote accountability and the public interest. This can be achieved by, for instance, promoting transparency and an open government and granting all stakeholders – including the private sector, civil society and individuals – access to the development and implementation of public policies and encouraging a society that includes “watchdog” organisations, citizens groups, labour unions and independent media (OECD, 2017). Transparency is also one of the principles of the OECD Recommendation on Public Procurement, which calls on adherents to ensure an adequate degree of transparency of the public procurement system at all stages of the procurement cycle. It also recommends that adherents improve public procurement systems by harnessing the use of digital technologies to support appropriate e-procurement innovation throughout the procurement cycle. Those technologies are powerful tools to ensure transparency and integrity (OECD, 2015b). Excessive and unnecessary transparency may facilitate anti-competitive agreements (OECD, 2015d).

At the federal level, Mexico has implemented several good practices suggested by the 2015 OECD Recommendation on Public Procurement. Since 1997, the SFP in Mexico has been developing its e-procurement information system, CompraNet. Since June 2011, the registration of procedures and procurement documents on CompraNet has been mandatory for every governmental agency, federal or state level, that uses the federal budget for its procurement procedures and that exceeds a value threshold of 300 days of minimum wage. CompraNet contains historical information (from June 2010) about procurement procedures and leases and services. According to Article 2 of the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP), CompraNet provides the following information: the annual procurement programme, the supplier’s registry, the social witness registry, the list of sanctioned suppliers, the calls for tenders (and restricted invitations) and their modifications, the records of clarification meetings, the records of submissions and opening of proposals, the social witnesses’ testimonials, data related to the contracts and addenda, the direct awards and the resolutions and instances of disagreement. It is free to access (OECD, 2015d). CompraNet also includes an online form which gives the opportunity to the general public to inform the SFP of irregularities (*Portal de quejas y denuncias*).

CompraNet allows for strengthened integrity and transparency, as well as for increased access, efficiency, evaluation and accountability of the Mexican public procurement system. The adoption of digital processes serves to enhance the integrity of the public procurement system as face-to-face interactions and other opportunities for potential corruption are reduced through the centralised and automatic transfer of data

between systems. In order to assure integrity, as well as business continuity and privacy, e-procurement tools need to be modular, flexible, scalable and secure (OECD, 2015b). While the Mexican e-procurement system is considered secure, and while the system is continuously updated in order to include technical innovations, Mexico may want to continue developing the system, taking into account international best practices (see Box 8.9). Transparency is secured through real-time disclosure of tender notices, bidding details and results, awarding information and contracting information. This information fosters fair and open competition and accountability given that it can be used by the general public to track the history of each transaction.

Box 8.9. Korean e-procurement system: Innovations to fight against corruption

In Korea, a notable improvement has been made in the transparency of public procurement administration since the early 2000s through the introduction of a fully integrated, end-to-end e-procurement system called KONEPS, which is mandatory for all public organisations.

To support integrity, KONEPS operates digital encryption and decryption based on public key infrastructure (PKI) encryption, and utilises time-stamping to prevent access to bidding prior to authorised bidding times. In order to further address the concern that illegal practices and collusive acts could be caused by borrowed e-certificates, Korea introduced "fingerprint recognition e-bidding" in 2010. In the fingerprint recognition e-bidding system, each user can represent only one company by using a biometric security token. Fingerprint information is stored only in the concerned supplier's token, thus avoiding any controversy over the government's storage of personal biometric information. By July 2010, it was applied in all tenders carried out via the e-procurement system by local governments and other public organisations for procuring goods, services and construction projects.

As a further innovation, PPS (Public Procurement Service) implemented a virtual desktop application to ensure the safety of the e-bidding environment. Going beyond the need to protect KONEPS itself, the adoption of the virtual personal computer system is designed to address the concern that the security environment varies among users, and that procurement data, such as bidding information, could be vulnerable to interception via malware prior to transmission to KONEPS. By downloading and utilising the virtual PC environment, tender officials and participating bidders create a logical separation between the physical PC being used to run the system and the virtual PC environment that is used to operate KONEPS and transmit data. This is accomplished through a complete simulation of the PC environment, including the encrypting key bid information, which is run independently from the physical PC. Operating KONEPS through the virtual PC system provides an additional efficiency benefit, as the system is optimised for KONEPS and can be used on any system capable of installing the virtual PC system, eliminating the need to address differences in user hardware. Overseen and managed by the National Computing and Information Agency, mandatory use of the enhanced virtual security system is now in place for all tender notifications through KONEPS. As of July 2015, 94% of participating bidders are using the enhanced system, and plans are underway to expand to those bids still published by individual end-user entities.

These developments have led to an increase in public trust in the procurement process. The National Integrity Commission of Korea conducts a regular integrity survey of public entities, and the integrity index for PPS rose by 27.2% between the launch of KONEPS in 2002 and 2005.

Source: OECD (2016c), *The Korean Public Procurement Service: Innovating for Effectiveness*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249431-en>.

In order for the e-procurement system to contribute to integrity and transparency of public procurement systems, e-procurement tools should be simple to use and appropriate to their purpose, and consistent across procurement agencies (OECD, 2015b). Mexico provides regular training for the use of CompraNet, particularly since the system has become compulsory. Mexico needs to ensure that public procurement officials know how to manage the platform, and that suppliers and civil society representatives know how to use it to ensure access to public tenders, as well as monitor public procurement processes by external stakeholders. Regular training is being proposed to private sector representatives for free (and advertised on the CompraNet website), and 48 sessions were implemented in 2016. In addition to the proposed training, Mexico has developed a user-friendly guide to support the use of CompraNet (*Guía de apoyo para consultar información en CompraNet*), as well as a specific webpage dedicated to bidders.

Data on public procurement processes generated through the CompraNet system can and should be used by Mexico to measure the performance of the public procurement system (OECD, 2015e). This is one of the objectives of CompraNet-im, the public procurement information and market intelligence module (*modulo de información e inteligencia de Mercado para las contrataciones publicas*). The module includes information on public procurement annual workplans, public procurement processes, contracts, suppliers and contractors, as well as performance indicators on public procurement processes (65 in total). Access to the information is free and does not require any username and password. The information contained in this module contributes to the transparency of public procurement information, including for external stakeholders. While updating and developing the module, Mexico may want to ensure that published data is meaningful for stakeholder use (OECD, 2015e), and easy to understand.

CompraNet-im could also provide or link to more information on the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle in order to allow: 1) stakeholders to understand government priorities and spending; and 2) policy makers to organise procurement strategically (OECD, 2015e). Linkages between CompraNet-im and the Budget Transparency Portal (*Transparencia Presupuestaria*) could, for instance, be developed. Within the Budget Transparency Portal, including the module on public works (*Obra Publica Abierta*), information could be provided on the amount procured, as well as information on the suppliers and contractors. Providing these linkages between budgets and public procurement processes can foster participation and strengthen accountability and integrity.

The Focused Transparency (*Transparencia Focalizada*) report, last published on 13 December 2016, summarises meaningful and easy to understand data on: the number and amount of public procurement contracts according to procurement methods (for the last six years); the number and amount of contracts according to the procurement category (goods, works, services, etc.); the number and amount of public procurement processes that have been taken electronically; national and international procurement processes; and the participation of small and medium-sized enterprises (SMEs) in public procurement processes. The data presented in this report is comprehensive, but could be accompanied by background information to make it easier for external stakeholders to understand and interpret.

Mexico should ensure the integration of the future national e-platform of the NACS with the e-procurement system CompraNet in order to avoid overlaps and to allow for the cross-checking of public procurement data with other relevant information.

As mentioned in Chapter 2, the President of Mexico has promulgated the General Law of the National Anti-Corruption System (*Ley General del Sistema Nacional Anticorrupción*), which establishes the institutional and governance arrangements for the new national anti-corruption system (NACS). This General Law of the NACS establishes the national digital platform (*Plataforma Digital Nacional*), still to be developed, that will include: a database of asset, conflict of interest, and tax declarations as per the Law on Responsibilities; a database of public officials involved in public procurement contracts; a database of sanctioned public officials and individuals; information and communications system of the National Anti-corruption System (NACS) and the National Auditing System (NAS); a database of public complaints related to corruption (both administrative and criminal); and a database of public procurement contracts. At the same time, Mexico has been working to improve its framework on transparency and access to information through a major reform that creates the national transparency system, led and co-ordinated by the National Institute for Transparency and Access to Information (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, INAI), as well as national transparency platform (*Plataforma Nacional de Transparencia*).

Given that the national digital platform aims to include a database of public officials in public procurement contracts (the Registry of Public Servants of the Federal Public Administration involved in public procurement processes) and a database of public procurement contracts, Mexico needs to ensure that it is integrated with the e-procurement information system CompraNet, which already includes data related to contracts and addenda (see above). In the development of the platform, Mexico needs to avoid duplications and ensure user-friendliness. As suggested in Chapter 2, harmonising and aligning IT systems and databases would allow for interconnectivities. This would facilitate co-operation between entities and aid in monitoring and auditing activities. When applicable, the platform should be linked with e-procurement information systems at the state level.

Mexico needs to work towards the implementation of the Open Contracting Data Standard on public procurement, according to commitments made by the President of Mexico in 2015 and 2016.

In addition to the development of CompraNet, Mexico has committed itself to implementing the Open Contracting Data Standard (developed by the Open Government Partnership, OGP), in the area of public procurement. This commitment was made by President of Mexico during the OGP Summit (Mexico City, 27-29 October 2015), and was reiterated at the 2015 International Anti-Corruption Day celebrated on 9 December 2015, and during the Anti-corruption Summit (London, 12 May 2016). Mexico committed itself to "work towards the implementation of the Open Contracting Data Standard on public procurement starting with major infrastructure projects as an early priority, including the new Mexico City International Airport (*Nuevo Aeropuerto Internacional de la Ciudad de México*, NAICM), in accordance to Mexican regulations" and "explore the implementation of contracting in health and pharmaceutical procurement" (Commitments of the Government of Mexico to the London Anti-

Corruption Summit). Mexico also became a founding member of the Contracting Alliance 5 (C5) together with Colombia, France, Ukraine, and the United Kingdom, and chairs the alliance as of December 2016. This alliance is a network of countries seeking to effectively implement the Open Contracting Data Standard (OCDS) to eliminate corruption in public procurement processes. This commitment is currently being included in the draft reform of the regulation related to the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) and the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios relacionados con las Mismas*, LOPSRM), in line with the commitments of the Government of Mexico at the London Anti-Corruption Summit.

As stressed by the OECD's *Open Government Data Review of Mexico: Data Reuse for Public Sector Impact and Innovation*, the Mexican government has not only laid the foundations for greater social oversight and civic audit of the government's activities and public expenditure, it also aims to enable a more transparent and egalitarian competitive climate in the country, thus building a basis for the creation of open data values such as civic engagement, public accountability and economic development (OECD, 2016d). The implementation of the OCDS has the potential to foster public sector transparency and fight corruption and nepotism in public procurement processes by following an open-by-default approach during the entire contracting process. It can also strengthen accountability by providing additional data to the general public on public procurement processes, in particular large processes such as the NAICM. It is in line with the OECD's High-Level Principles for Integrity, Transparency and Effective Control of Major Events and Related Infrastructures, which confirm that large events and large infrastructure projects are more likely to be exposed to the risk of misuses and misappropriations of public funds, frauds, corruption, collusion and illegality in general. The Principles stress that openness towards the public can help to address civil society's demands for information and reduce possible tensions, and it also involves a social control by the civil society. Finally, it recommends the well-highlighted publication of data in open format and in a standardised way, e.g. on websites, so that information is easily accessible and effectively reusable by stakeholders (OECD, 2015f).

As of October 2016, the Airport Group of Mexico City (*Grupo Aeroportuario de la Ciudad de Mexico*, GACM) had uploaded 208 contracts in open data format onto the national web portal to meet the new legislative requirements and commitments within the OGP. Mexico is thus one of the pioneers and supporters of open contracting, which constitutes a first step towards abiding by its commitment to strengthened transparency and open contracting.

In this effort, the GACM followed the open contracting standards regarding information items and the format in which they should be published. Users can directly access the information of these contracts in the datos.go.mx portal, or through the GACM website. As a next step, the GACM needs to streamline the data to make it more intelligible for the average citizen on an ongoing basis. Full transparency implies presenting data in different formats suitable for different stakeholders. For example, data can be presented in a plain, aggregated, and simplified format for the average citizen, while being available in disaggregated formats with sufficient detail for technical analysis, evaluation, and participation. Full transparency also implies making information on project planning and implementation available on a timely and accurate basis to permit analysis, evaluation, and monitoring by relevant stakeholders. To achieve these objectives, the GACM should ensure that all relevant contract information, from the early stages of the award process to the final implementation, is made available in real time in

order to update stakeholders and website users effectively. The GACM and the Office of Digital Strategy of the Presidency could allow for an easier visualisation of the evolution of the project and related contracts.

In line with the commitments of the President, Mexico should apply the OCDS to other major infrastructure projects. To do so, Mexico may want to set up criteria for the identification of these projects according to complexity and risk levels, including: the total cost and budget of the project, size and number of resources, duration and (technology) scope, stakeholders and level of scrutiny of the general public. The lessons learnt from the NAICM should be taken into account when applying the OCDS to other large projects. Mexico would also need to continue exploring the implementation of open contracting in health and pharmaceutical procurement, according to the commitment made during the London Anti-Corruption Summit in May 2016.

Fostering transparent and effective stakeholder participation

Mexico should further engage with the private sector to decrease corruption risks in the framework of public procurement by proper implementation of the co-operation agreements, and statements of integrity and the Manifest.

In order to preserve the integrity of the public procurement system, it is critical to work with external actors, in particular the private sector. The public procurement cycle involves multiple actors, and therefore integrity is not a requirement for public officials alone. As specified in Chapter 2, both the public and private sectors are responsible for taking measures to preserve integrity. Private companies often have their own integrity system in place, and many countries engage with private sector actors to instil integrity in public procurement. For example, integrity standards applicable to public sector employees may be expanded to private sector stakeholders through integrity pacts. The OECD Recommendation on Public Procurement underlines the need to develop requirements for internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring. It stresses the need for procurement contracts to contain "no corruption" warranties and measures to verify the truthfulness of supplier's warranties that they have not and will not engage in corruption in connection with the contract. According to the OECD Recommendation, such programmes should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training for supplier personnel (OECD, 2015b).

In the framework of the President's 2015 executive orders, the SFP was mandated to increase collaboration with the private sector in relation to transparency and the fight against corruption, as well as the active participation of citizens in the identification of vulnerable processes and procedures, through the development of co-operation agreements with chambers of commerce and civil society organisations. Since the publication of the executive orders, Mexico has signed several co-operation agreements with chambers of commerce such as the Business Co-ordinating Council (*Consejo Coordinador Empresarial*, CCE) and the Mexican Chamber of Construction Industry (*Cámara Mexicana de la Industria de la Construcción*, CMIC); and has started discussions on potential joint actions with the International Chamber of Commerce (*Cámara Internacional de Comercio*, ICC) and the Mexican Centre for Philanthropy (*Centro Mexicano para la Filantropía*, CEMEFI).

These potential joint actions constitute first steps to strengthening integrity and transparency in public procurement processes. The willingness of the chambers of

commerce to collaborate with the Mexican states demonstrates the interest of the private sector in fighting corruption. However, Mexico needs to ensure the proper implementation of the joint actions included in the co-operation agreements: diagnostics, statistics and other relevant information need to be shared; good practices in terms of transparency and the fight against corruption need to be identified and communicated; sector-specific initiatives, such as the initiative to strengthen the monitoring of public works, need to be promoted; and forums of dialogues on issues related to integrity, public ethics and the prevention of conflicts of interest need to be facilitated. In order to do this, Mexico needs to ensure the effective monitoring of co-operation agreements by the SFP, either the UEEP or another general directorate. In addition, Mexico would need to further engage with the private sector to decrease corruption risks in the framework of public procurement, as mentioned above.

Integrity pacts are one way of preserving the integrity of public procurement systems. They are essentially agreements between the government agency offering a contract and the companies bidding for it that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. Mexico has included such pacts in the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP), Article 29, section 9. According to the law, contracting authorities require suppliers to provide a statement of integrity (*declaración de integridad*), which makes clear that the supplier is not subject to any conditions under the law preventing it from being awarded a contract. However, the declaration is not made public. This instrument is good practice and is recommended by the OECD Recommendation on Public Procurement and the OECD Guidelines on Fighting Bid Rigging as it makes firms' legal representatives aware of and directly accountable for unlawful behaviour (OECD, 2015d). In order to reinforce this tool, the signed declarations of bidders could be published on CompraNet or any other Mexican website aimed at strengthening transparency and fighting against corruption (see above). Referring to the OECD report, *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*, it would be beneficial to extend the commitment so that the bidder states that it has not engaged in anti-competitive conducts with other bidders (e.g. by exchanging bid information related to their offers or by discussing the bid strategy).

Mexico recently introduced a new tool as part of the Public Procurement Protocol (see previous section of this chapter), the Manifest (*Manifiesto que podrán formular los particulares en los procedimientos de contrataciones públicas, de otorgamiento y prorroga de licencias, permisos, autorizaciones y concesiones*), which is for individual persons to declare or deny any businesses, work, personal or family links or relationships of consanguinity or affinity to the fourth degree with public servants specified in the Protocol. According to the Protocol, these individual persons are invited to fill in a manifest each time they are involved in public procurement processes, grants or extensions of concessions, as well as the grants and extensions of licenses, permits and authorisations. Each individual person is supposed to fill in the manifest online (www.manifiesto.gob.mx) and can update it anytime. According to the Protocol, public procurement officials need to verify any relevant information in the system and follow-up on any apparent conflict of interest, using the advice of the Specialised Unit for Ethics and the Prevention of Conflict of Interest, if necessary.

While the initiative of creating such a Manifest is an important step towards identifying conflict-of-interest situations, the mechanisms introduced by the Protocol

could be improved. First, it would be more efficient to request suppliers, bidders, etc. to fill in the Manifest only in the case of potential, real and apparent conflict. In order to do so, the Manifest should provide a clear definition of conflict of interest (specifying the three types above) in line with relevant codes and standards (see Chapter 3). The codes and standards should be complemented by a specific guide to help public procurement officers, internal control bodies, suppliers, bidders, etc. in the operationalisation of the system. A frequently asked questions section could be created, as well as a focal or contact point in charge of advising public servants and external actors. At the time of drafting the review, the website was not yet working and no information was available on the objectives and implementation of the Manifest on the SFP's website.

In addition to the statements of integrity and the Manifest, Mexico could also envisage making the new Ethics Code and Rules of Integrity (or at least part of them) subject to consultants, such as in the case of the US House of Representatives (see Box 8.10). As stressed in the OECD Recommendation, the preservation of integrity of the public procurement system requires integrity training for supplier personnel. Therefore, Mexico may also include the supplier's needs in its future integrity capacity-building strategy for the public administration (see above) by developing and proposing specific training on issues related to integrity and the fight against corruption in the framework of public procurement processes. These training and/or information actions could be developed and undertaken jointly with the chambers of commerce with whom the SFP has signed co-operation agreements (see below). Mexico could further engage with certain suppliers to explore ways of encouraging them to develop their own standards and programmes to enhance integrity and fight corruption, including in the framework of subcontracts.

Box 8.10. US House of Representatives' ethics clauses for consultants

Beyond integrity clauses integrated into consultant agreements, some organisations recommend that consultants be considered as employees and as such require that they abide by the organisation's code of conduct and overall ethical rules and regulations.

The US House of Representatives, for example, subjects consultants to the House's ethical clauses, including those pertaining to gift acceptance, undue influence exerted on the consultant, discrimination, etc. (US House of Representatives Committee on Ethics, n.d.). Consultants are required to execute an oath of confidentiality before receiving access to classified information. In addition to these rules, consultants are also prohibited from engaging in certain lobbying activities, such as lobbying the contracting committee on any matter. Consultants are also subject to the House's gift rules governing the acceptance of anything having monetary value, such as services, travels, meals, tickets, sporting events, and shows.

While the House's rules do not require consultants to file public financial disclosure statements given the short term nature of their services, the Ethics Committee strongly recommends that each committee, before entering into a consulting contract, obtains some basic financial information on the individual's source of income, the type of income and the rate at which he/she is compensated, the identity of each client for whom he/she is providing services, and the nature and value of any investment and liability held by the individual that could be affected by the services provided to the committee. These recommendations are intended to allow for the monitoring of the consultant's compliance with conflict-of-interest rules.

Source: OECD (2015c), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264248335-en>.

Mexico needs to ensure that dialogues with suppliers and business associations are subject to due fairness, transparency and integrity safeguards by avoiding any face-to-face clarification meetings in the tendering process.

The OECD Recommendation stresses the need to foster transparent and effective stakeholder participation in public procurement processes. It suggests that adherents should engage in transparent and regular dialogue with suppliers and business associations to present public procurement objectives and assure a correct understanding of markets. According to the Recommendation, such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing (OECD, 2015f). Dialogue in the framework of active procurement processes need to be designed in order to ensure integrity, fight corruption and reduce possibilities of bid-rigging and collusion. This echoes the OECD Guidelines for Fighting Bid Rigging in Public Procurement (OECD, 2009b), which suggests, for instance, inviting interested suppliers to dialogue with the procuring agency on the technical and administrative specifications of the procurement opportunity, and to avoid bringing potential suppliers together by holding regularly scheduled pre-bid meetings.

According to the Mexican public procurement legal framework, contracting authorities shall hold at least one clarification meeting for public tendering (Article 33 of the LAASSP). During the clarification meeting, public officials of the requiring and contracting areas should respond to bidders' questions and keep records of the meeting, which are to be made public on CompraNet (Article 33 Bis of the LAASSP). Any number of clarification meetings can be scheduled, as long as the last clarification meeting is held at least six days before the bid opens. Clarification meetings can take three forms: face-to-face, electronic and mixed. The mixed procedure means that both face-to-face and electronic submissions are accepted. Face-to-face and mixed clarification meetings can be a facilitating factor for bid rigging, as they bring together competitors interested in the same contract opportunity. Electronic meetings reduce this risk to the minimum (OECD, 2015d). Against this background, Mexico should explore the possibility of modifying the applicable procurement legislation. This would mean that clarification meetings are optional, and subject to electronic responses being provided to all potential bidders through CompraNet (OECD, 2013).

Mexico should continue providing opportunities for the direct involvement of relevant external stakeholders, including civil society, by strengthening the efficiency of its social witnesses programme.

Creating a culture of openness in the public sector does not only come from proactive disclosure of information, but is also achieved through the involvement of citizens, experts and civil society in the policy-making process through forms of "direct social control". The OECD Recommendation recommends the provision of direct opportunities for the direct involvement of relevant external stakeholders in the procurement system with a view to increasing transparency and integrity while assuring adequate scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained (OECD, 2015b). These opportunities can be, for instance, provided through social witnesses, usually members of a non-governmental organisation (NGO) who are invited to observe one or several parts of the procurement process. Social witnesses have the opportunity to raise concerns about corrupt behaviour and provide recommendations for increasing the integrity of the process. 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 its accountability, legality and transparency (OECD, 2015d).

As the General Law of the NACS provides a strong role for civil society within the governance of the system, the public procurement system provides civil society opportunities to participate in public procurement processes. Mexico is one of the first OECD countries to introduce social witnesses (*testigos sociales*), who have been required to participate in all stages of public tendering procedures above certain thresholds since 2009. At the federal level, these thresholds are Mexican Peso (MXN) 350 million (approximately USD 23 million) for goods and services and MXN 710 million (approximately USD 47 million) for public works in 2015. Social witnesses may also participate in public tendering procedures below the legal threshold, as well as direct award procedures and restricted tendering, if considered appropriate by the SFP. Social witnesses are selected by the SFP through public tendering (*Convocatoria pública para la selección de personas físicas y morales a registrar en el padrón público de testigos sociales*) and selected witnesses enter a pool (*Padrón Público de Testigos Sociales*) for a period of three years. Their names are published online. As of October 2016, the SFP had registered 25 social witnesses for public procurement projects: six civil society organisations and 19 individuals. Social witnesses get certified and their performance is evaluated by the ministry (unsatisfactory performance potentially results in their removal from the registry). They also get certified and compensated for their services. When a federal entity requires the involvement of a social witness, the SFP designates one from the preselected pool. Following their participation in procurement procedures, social witnesses issue a final report providing comments and recommendations on the process. These reports are made available to the public through CompraNet.

As mentioned in the OECD *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, the SFP notes that “the monitoring of the most relevant procurement processes of the federal government through social witnesses has had an impact on improving procurement procedures by virtue of their contributions and experience, to the point that they have become a strategic element for ensuring the transparency and credibility of the procurement system”. An OECD-World Bank Institute study (2006) indicates that the participation of social witnesses in the procurement processes of the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE) created savings of approximately USD 26 million in 2006, and increased the number of bidders by over 50% (OECD, 2013). The social witness programme is considered good practice and is in line with the OECD Recommendation on Public Procurement. Mexico should nevertheless take into account the risk of corruption within this programme. There is a risk of social witnesses being bribed, and the risk is increased given that the names and contact details of social witnesses are being published online and are easily accessible. In order for the social witness programme to be effective, Mexico may want to develop some specific training courses for social witnesses. As suggested in the OECD report, *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*, the SFP should ensure the hiring of individuals and entities with the background and experience that enable them to provide expert procurement advice to public procurement officials. Training courses for social witnesses that focus on bid rigging and competition issues should be designed (OECD, 2015d). The SFP may want to ensure that the related guides

(*Guía anual de acciones de participación ciudadana*) and good practice examples are being updated.

It remains unclear what actions Mexico has undertaken following the series of executive orders of the President of Mexico in 2015, which foresaw increased collaboration with the private sector in relation to transparency and the fight against corruption, but also with citizens in the identification of vulnerable processes and procedures, through the development of co-operation agreements with chambers of commerce and civil society organisations. Mexico may want to follow-up on these commitments, or make clear what it has undertaken so far in terms of implementation. The social witness programme, as well as the development of an online form which gives the general public the opportunity to inform the SFP of irregularities (*Portal de quejas y denuncias*), could be mentioned as two initiatives.

Summary of proposals for action

In order to ensure the implementation of the new public procurement law, the following actions could be undertaken by Mexico:

Preserving public integrity through general standards of conduct and procurement specific safeguards

- Mexico should ensure that specific provisions related to public procurement are being included in the codes of individual line ministries, which are required to update their own organisation's codes according to the new Ethics Code and Rules of Integrity.
- In relation to its Public Procurement Protocol, Mexico could adopt a more values-based approach rather than emphasising controls, by considering removing the Protocol's requirements for systematic audio and videotaping of conversations, and by providing clearer guidance for procurement officials on how to manage conflict of interest situations.
- While the Public Procurement Registry is a positive first step to identifying which officials are involved in the public procurement process, Mexico should now leverage this registry to better identify integrity risks in this area.

Supporting the implementation of new integrity standards with the necessary awareness-raising and capacity-building initiatives

- Mexico should ensure the implementation of new initiatives, such as the Public Procurement Protocol and the Public Procurement Registry, through adequate communication strategies and tailored advice.
- Mexico should further foster a culture of integrity amongst procurement professionals by developing a clear integrity capacity strategy and by implementing tailored training programmes for public procurement officials.
- In order to preserve public integrity, Mexico should publicise risk management strategies and raise awareness and knowledge of them among the procurement workforce and other stakeholders.

Ensuring accountability throughout the public procurement cycle, including an appropriate complaint and sanction process

- Mexico could consider strengthening the timeliness and trustfulness of its review and remedies system in order to ensure that procurement decisions can be contested and possible corruption cases denounced.
- Mexico should ensure a system of effective and enforceable sanctions for government and private-sector procurement in relation to public procurement processes.

Enhancing transparency and the disclosure of information around public procurement processes

- Mexico should continue ensuring an adequate degree of transparency of the public procurement system in all stages of the procurement cycle, by using and further developing the e-procurement system CompraNet.
- Mexico should ensure the integration of the future national e-platform of the NACS with the e-procurement system CompraNet in order to avoid overlaps and to allow for the cross-checking of public procurement data with other relevant information.
- Mexico needs to work towards implementing the Open Contracting Data Standard on public procurement, according to commitments made by the President of Mexico in 2015 and 2016.

Fostering transparent and effective stakeholder consultation

- Mexico should further engage with the private sector to decrease corruption risks in the framework of public procurement, by proper implementation of the co-operation agreements with the private sector, as well as the statements of integrity and the Manifest.
- Mexico needs to ensure that dialogue with suppliers and business associations is subject to due fairness, transparency and integrity safeguards by avoiding face-to-face clarification meetings in the tendering process.
- Mexico should continue providing opportunities for the direct involvement of relevant external stakeholders, including civil society, by strengthening the efficiency of its social witness programme.

Notes

- 1 Reportedly, Mexico is currently considering introducing polygraph tests. Due to growing scepticism regarding its validity (“Most psychologists and other scientists agree that there is little basis for the validity of polygraph tests.” <http://www.apa.org/research/action/polygraph.aspx>) and the potential negative consequences as explained in this section, Mexico should reconsider introducing this measure, carefully balancing its potential costs and benefits.
- 2 <http://reniresp.funcionpublica.gob.mx/ppcapf/consulta/informacion.jsf>.

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Protocol of Conduct for Public Servants in Public Procurement, the granting and extension of licenses, permits, authorizations and concessions (*Acuerdo por el que se expide el protocolo de actuación en materia de contrataciones públicas, otorgamiento y prorrogos de licencias, permisos, autorizaciones y concesiones*), DOF 20-08-2015 www.dof.gob.mx/nota_detalle.php?codigo=5404567&fecha=20/08/2015 Accessed 24 October 2016.

Registry of Public Servants of the Federal Public Administration who are involved in public procurement processes (*Registro de Servidores públicos de la Administración Pública Federal que intervienen en procedimientos de contrataciones públicas, el otorgamiento de licencias, permisos, concesiones y autorizaciones, así como en la enajenación de bienes muebles de la administración pública federal y en la asignación y emisión de dictámenes en materia de avalúos y justipreciación de rentas*)

<http://reniresp.funcionpublica.gob.mx/ppcapf/consulta/informacion.jsf> Accessed 24 October 2016.

Annex 8.1.

The integrity, accountability, transparency and participation principles of the OECD Recommendation of the Council on Public Procurement (2015)

The integrity principle

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

To this end, Adherents should:

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

The accountability principle

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

To this end, Adherents should:

- i) **Establish clear lines for oversight of the public procurement cycle** to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of authority for approval of spending and approval of key procurement milestones is well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.
- ii) **Develop a system of effective and enforceable sanctions** for government and private-sector procurement participants, in proportion to the degree of wrong-doing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community.
- iii) **Handle complaints in a fair, timely and transparent way** through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.
- iv) **Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are co-ordinated, sufficiently resourced and integrated to ensure:**
 1. The monitoring of the performance of the public procurement system.
 2. The reliable reporting and compliance with laws and regulations as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals.
 3. The consistent application of procurement laws, regulations and policies.
 4. A reduction of duplication and adequate oversight in accordance with national choices.
 5. Independent ex-post assessment and, where appropriate, reporting to relevant oversight bodies.

The transparency principle

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

To this end, Adherents should:

i) Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships.

ii) Allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses.

iii) Ensure visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle to allow (i) stakeholders to understand government priorities and spending, and (ii) policy makers to organise procurement strategically.

The participation principle

RECOMMENDS that Adherents foster transparent and effective stakeholder participation.

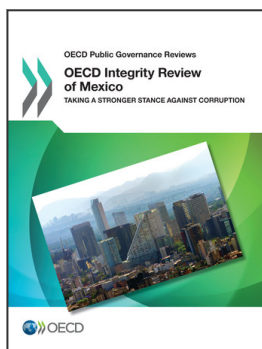
To this end, Adherents should:

i) Develop and follow a standard process when formulating changes to the public procurement system. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner.

ii) Engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets. Effective communication should be conducted to provide potential vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender specifications by better understanding market capabilities. Such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing. Such interactions should also be adapted to ensure that foreign companies participating in tenders receive transparent and effective information.

iii) Provide opportunities for direct involvement of relevant external stakeholders in the procurement system with a view to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained.

OECD (2015), *Recommendation of the Council on Public Procurement*, OECD, Paris, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.



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