

Chapter 2

Ensuring high quality regulations for ISSSTE's procurement processes

This chapter provides an overview of the regulatory framework that applies to the procurement activities of the Mexican State's Employees' Social Security and Social Services Institute (ISSSTE). It also presents recent efforts made at the federal level to increase the clarity and efficiency of that regulatory framework. Finally, it describes how consultations, as well as ex ante and ex post Regulatory Impact Assessments (RIA), can be implemented by ISSSTE in the development and revision of internal instruments used to regulate its procurement function.

Introduction

Procurement processes in Mexico’s public institutions are regulated by a set of primary and secondary rules that provide the framework for buying goods and contracting services. These institutions face a challenging dilemma: preventing the incidence of corruption and guaranteeing integrity while keeping the process flexible and simple. The State’s Employees’ Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, ISSSTE), like many other public institutions in Mexico, is struggling to strike the right balance.

Despite the scope of the challenge, overcoming it is absolutely essential to modernise ISSSTE’s procurement processes. Procurement rules should not be so strict that they inhibit innovation and public agility,¹ but they must provide safeguards to guarantee a level playing field for bidders, allowing savings in public spending and facilitating access to quality goods and services.

High quality regulation of ISSSTE’s procurement processes will not come without a deliberate effort. It can only be the result of careful design of the flow of regulations and systematic review of the normative framework. These features depend on the deployment of regulatory tools not yet fully implemented in ISSSTE such as *ex ante* impact analysis, public consultation and *ex post* evaluation. In fact, in order to achieve a robust regulatory governance system, ISSSTE must work on the different stages of the regulatory governance cycle, from design and *ex ante* assessment to implementation and *ex post* analysis.

The regulatory framework applicable to ISSSTE’s procurement processes

ISSSTE procurement activities are regulated by numerous primary and secondary rules

ISSSTE’s procurement processes are regulated by a set of normative instruments ranging from the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*, CPEUM) to a series of primary laws, bylaws, codes, decrees, agreements, rules and manuals. Article 134 of the CPEUM establishes the general framework and main criteria to follow for public sector acquisitions:

The acquisitions, leasing, and transfers of all types of goods, services of any kind, and the contracting of public works that they [the Federation, states, municipalities and the Federal District] undertake will be adjudicated or carried out through public biddings on the basis of public notices, so that proposals are freely presented in a closed envelope, which will be opened publicly, so that the State can have the best conditions in terms of price, quantity, financing, opportunity and other relevant circumstances.

When the biddings referenced in the last paragraph are not ideal to ensure these conditions, laws will establish the basis, procedures, rules, requisites and other criteria to prove the economy, effectiveness, efficiency, impartiality and integrity that ensure the best conditions for the State.

The principles established in the CPEUM are then more specifically regulated by a set of normative instruments lower down the hierarchy, some of which are applicable to the federal public administration as a whole, while others are specific to ISSSTE, as shown in Table 2.1.

Table 2.1. Regulatory instruments applicable to ISSSTE's procurement processes

General regulatory instruments	ISSSTE specific
<p>Primary laws:</p> <ul style="list-style-type: none"> • Law on Acquisitions, Leasing and Services of the Public Sector (<i>Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público</i>, LAASSP) • Federal Law on Budgeting and Financial Responsibility • Federal Law on the Administrative Responsibilities of Public Servants • General Law on Health (concerning the supplies catalogue for the Ministry of Health and the institutional catalogue of health supplies, Articles 28-31) <p>Bylaws (reglamentos):</p> <ul style="list-style-type: none"> • Bylaws of the Law on Acquisitions, Leasing and Services of the Public Sector • Bylaws of the federal Law on Budgeting and Financial Responsibility <p>Codes:</p> <ul style="list-style-type: none"> • Federal Civil Code • Federal Code of Civil Procedures <p>Decrees:</p> <ul style="list-style-type: none"> • Expenditures Budget of the Federation (issued annually) <p>Agreements:</p> <ul style="list-style-type: none"> • Agreement to establish criteria for the use of electronic communication means for the submission of proposals in response to public biddings issued by ministries and agencies of the federal public administration, as well as for the filing of complaints • Agreement to issue several guidelines concerning acquisitions, leasing and services, as well as public works and related services <p>Rules:</p> <ul style="list-style-type: none"> • Rules to carry out international public biddings under the framework of the free trade agreements signed by Mexico <p>Manuals:</p> <ul style="list-style-type: none"> • Administrative Manual for General Application concerning acquisitions, leasing and services of the public sector 	<ul style="list-style-type: none"> • Policies and Guidelines concerning ISSSTE's Acquisitions, Leasing and Services (<i>Políticas, bases y lineamientos en materia de adquisiciones, arrendamientos y servicios</i>, POBALINES) • ISSSTE's General Organisation Manual • Manual to integrate and operate ISSSTE's Committee on Acquisitions, Leasing and Services • Manual to integrate and operate ISSSTE's decentralised Subcommittees on Acquisitions, Leasing and Services • Procedures Manual for ISSSTE's Delegations concerning the following processes: identification of annual needs of medicines and medical supplies, authorisations to buy medical supplies in a decentralised manner, supply of consumer goods, acquisition of consumer goods by public bidding and restricted invitation, drafting contracts and modifications, information and control of acquisition transactions by the regional or state delegation, international contracts, and urgent supply of medicines and medical supplies of the basic list of products. • Procedures manual of each regional hospital and the National Medical Centre "20 de Noviembre"

Source: Information provided by ISSSTE.

The acquisition of medicines, medical supplies and equipment is centralised through consolidated purchases via public tendering, limited competition amongst a few suppliers or direct purchases. In cases of shortage, state and regional delegations, as well as regional hospitals and the National Medical Centre (*Centro Médico Nacional, CMN*) “20 de Noviembre”, carry out limited direct purchases of medicines and supplies, which is why their procedures manuals are included in the ISSSTE-specific regulatory instruments.

In addition to the normative instruments listed in Table 2.1, there are other rules that apply to public works carried out by ISSSTE. Some of these rules apply across the federal public administration, such as the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*), its bylaws and the *Administrative Manual for General Application concerning Public Works and Related Services (Manual Administrativo de Aplicación General en Materia de Obras Públicas y Servicios Relacionados con las Mismas)*; while others are ISSSTE-specific, such as the Policies and Guidelines concerning ISSSTE’s Public Works and Related Services (*Políticas, bases y lineamientos en materia de obras públicas y servicios relacionados con las mismas, POBALINES*).

Although this description is not exhaustive (there are other normative instruments regulating ISSSTE’s procurement and public works activities), it illustrates the complexity of the regulatory framework applicable to economic transactions undertaken by the institute. This framework regulates the different stages of the procurement process, such as planning, programming, budgeting, acquisition and control.

Addressing the risk of regulatory failure

High quality regulation inside government creates positive spillovers and allows innovation and productivity

Regulation inside government (RIG), or regulations that apply to internal government activities, is receiving increasing attention from the academic and public sectors. As Hood et al. (1999) acknowledge, “The regulation of business, and especially regulation of the privatised utilities, has attracted much attention from both policymakers and academics...Less commonly discussed are analogous processes of ‘regulation’ within the public sector”.

Red tape usually accumulates over many years. In some cases, regulatory requirements were never appropriate; in others, they ceased to be appropriate as circumstances changed. Excessive regulation diverts scarce taxpayer funds from the delivery of government programmes. Costs incurred from red tape include extra time, paperwork and capital outlays, which deflect management’s attention from its core activities. Operationally, excessive regulation can result in confusion about objectives and processes, decrease productivity and innovation, and adversely affect employees’ job satisfaction. Regulatory burden also creates higher risks of public officials circumventing the rules. The overall result is poor outcomes for public servants, the government, taxpayers and the public. Furthermore, as the Australian Management Advisory Committee (2007) put it, “a public service that over-regulates itself will probably end up over-regulating citizens”.

While RIG and regulations applied to businesses have similarities, there are also important differences. In terms of similarities, both businesses and public organisations are subject to regulations. “Just as a business firm is exposed to a set of different

regulators-auditors, inspectors, licensing bodies, competition and fair-trading authorities, so a typical public organisation faces a collection of waste-watchers, quality police, sleaze-busters, and other regulators”. Another similarity is that it is widely recognised that poor regulation, whether for government or business activities, has negative consequences, while high-quality regulation creates positive spillovers. “Command and control styles of regulatory intervention can produce unintended effects or even reverse effects through functional disruption of the system being regulated” (Hood et al., 1999).

One of the obvious differences concerns the reasons to study the effects of overregulation. Businesses have a clear motivation to perform, which is to be profitable. From the public policy point of view, at least in market economies, businesses ought to be freed from the excessive burdens of regulation so that they can be competitive and create jobs. In government, motivations and objectives are not that unambiguous and straightforward. In any case, it is clear that the objective of RIG simplification is not to free resources to create jobs in public administrations (Hood et al., 1999). Streamlining RIG may have other objectives, such as promoting agility, clarifying responsibilities, targeting resources, improving the efficiency and effectiveness of public programmes, maintaining fiscal sustainability, upgrading public service delivery, and strengthening multi-level co-ordination and accountability, among others.

Despite these differences, there seems to be consensus that there is a case to improve RIG. RIG may lead public servants to concentrate on complying with burdensome requirements instead of effectively delivering public programmes and services. In this sense, it may render the public administration unable to react timely to specific events (i.e. a natural disaster or an economic crisis) or to adapt to changing circumstances (i.e. incorporating ICT into its processes). It may also create a risk-averse culture among public servants, inhibiting innovation and productivity. This is indeed the case in ISSSTE and most, if not all, other Mexican government entities. In addition, excessive RIG may create confusion about what procedures and formalities to follow in processes such as procurement. However, it is also clear that RIG, when properly designed, is needed to improve accountability and transparency, limit the discretion of public servants and prevent corruption. The issue is not to fully eliminate RIG, but to achieve the right balance between control and performance. In other words, it is not about “deregulation” *per se*, but about “regulatory governance”.

Despite the risk of regulatory overlap, the Administrative Manuals of General Application developed by the Ministry of Public Administration and the POBALINES updated by ISSSTE have helped decrease uncertainty

The Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) has led efforts to streamline RIG applicable to the federal public administration, which has had a positive impact on procurement activities. In 2009 and 2010, SFP moved to eliminate excessive and unjustified procedures applicable to federal public entities through the drafting and publication of manuals. This initiative, known as the Guillotine of Administrative Regulations, led to the elimination of 67% of all internal government regulations, reducing them from more than 14 000 to less than 5 000. More than 600 procurement regulations were eliminated through that process.

SFP developed and published nine subject-specific manuals with which all federal public organisations must comply. Working teams, which included representatives of different federal public organisations, were set up to prepare and develop each administrative manual. The production of these documents was co-ordinated by SFP, and

included the participation of various Internal Control Offices (*Órgano Interno de Control*, ICO), which carried out the review and controlled the design and development of the administrative manuals. Approximately 400 officials from 64 federal public organisations, SFP and ICOs, were directly engaged in the process. Moreover, the manuals benefited from additional consultation with approximately 150 federal public organisations.

The resulting manuals address procurement, public works, human resources, financial resources, material resources, information and communication technologies, transparency, auditing and control. They aim at providing a standardised and unique framework to guide the actions of public officials in each subject area. In August 2010, the development of these manuals coincided with the publication of a presidential agreement instructing all federal public organisations to refrain from issuing regulations in the areas covered by the manuals. The same agreement also requires public organisations to compile an inventory of their internal rules and to remove those that are opposed to the manuals. The agreement gives SFP the authority to monitor compliance with its provisions.

By eliminating duplicative and overlapping rules, and establishing a clear and unique internal regulatory framework, the manuals seek to minimise the use of resources for internal government activities, while increasing the quality of public goods and services, as well as the effectiveness of the federal public administration's agencies.

In the case of ISSSTE, there is a marked discrepancy in public servants' perception concerning the degree to which they clearly identify which regulatory instruments apply to a specific acquisition transaction. While the officials of most procurement areas stated that the regulatory framework is clear, some did have reservations. The ICO considers regulations to be clear and that public servants know how to apply them, but that there is sometimes a lack of planning and control, which results in compliance gaps.

The central Material Resources and Services Sub-directorate,² for example, reported wide dispersion in the ways user areas request them to purchase goods. Such lack of uniformity may be related to confusion created by regulatory overlaps or by a lack of familiarity with the most frequent procedures set by specific norms, particularly the recently issued ones that have not been sufficiently diffused. For example, in different interviews, ISSSTE officials expressed that the *Administrative Manual for General Application concerning Acquisitions, Leasing and Services of the Public Sector (Manual Administrativo de Aplicación General en Materia de Adquisiciones, Arrendamientos y Servicios del Sector Público, MAAG Acquisitions)*, which was published in the *Official Gazette (Diario Oficial de la Federación, DOF)*³ on 9 August 2010, has not been sufficiently diffused internally among user areas.

Despite the fact that ISSSTE's officials agree that greater diffusion of the manual would be useful, they did report some benefits derived from it. First, the MAAG Acquisitions is credited with having established homogeneous formats and procedures by aligning the regulatory requirements of the different normative instruments. In fact, several areas mentioned that they have already spent several months aligning their formats and procedures with the standard established by the manual. Second, it simplifies the lives of public servants by clearly establishing references to the LAASSP and its bylaws, and by defining criteria for auditing. This benefit was also acknowledged for the *Administrative Manual for General Application concerning Public Works and Related Services (Manual Administrativo de Aplicación General en Materia de Obras Públicas y*

Servicios Relacionados con las Mismas, MAAG Public Works) in relation to the Law on Public Works and Related Services, and its bylaws.

Officials also repeatedly pointed out some manuals' weaknesses, particularly that they do not address some common situations and that some procedures are established with little room for flexibility, disregarding the specifics that acquisitions and public works transactions may have in all of the public administration's agencies. This claim might be particularly relevant for ISSSTE, given the specific conditions that apply to the management of medicines and medical supplies. There were also claims that there is room to review the assignment of responsibilities established by the manuals in relation to other normative instruments.

In response to identified manuals' weaknesses and the fact that ISSSTE cannot modify them unilaterally, the institute's management decided to review the POBALINES that apply to both acquisitions and public works, in order to take account of ISSSTE-specific conditions. There is general consensus that this revision was due since previous POBALINES basically repeated what was established in the laws and bylaws. Public servants agree that the revised POBALINES successfully address some of the weaknesses of the manuals and provide more details for specific procedures. The Administration Directorate also regarded this effort as part of a wider policy to reduce discretion and increase transparency in procurement processes. Both sets of POBALINES were published in the DOF on 2 March 2012.

In summary, while there is a risk of regulatory overlap given the high number of normative instruments applicable to ISSSTE's acquisitions processes, the manuals and the POBALINES have helped reduce uncertainty and improve clarity. The manual is already being applied by ISSSTE and is well underway to being embedded in its acquisitions processes. For example, the Medical Supplies Sub-directorate reported that it started applying the manual in February 2012, using templates such as the results of the market research, the summary of the notice for a public tender, the minutes of clarification meetings held to respond to questions of potential bidders, the minutes of the presentation and opening of proposals received, the checklist to assess proposals, and the contract award decision. Despite notable progress and the achievements already accomplished, there is a window of opportunity in the diffusion and training in the use of these regulations.

Training on procurement regulations and requirements can help close the compliance gap

Public officials interviewed agreed that training has been insufficient to facilitate the adoption of the requirements established by the manuals dealing with acquisitions and public works. This is a mistake that should not be repeated with the more recent POBALINES. Despite the fact that the Autonomous National University of Mexico (*Universidad Nacional Autónoma de México*, UNAM) and SFP have offered courses attended by ISSSTE staff involved in procurement, there is nothing like a systematic programme to train and update officials on the normative framework that regulates their functions. Furthermore, there is limited participation in the existing courses, which does not seem to be due to lack of interest, but rather to the intense procurement activity and tight deadlines. Regulation in any field is dynamic and may change frequently, which requires public officials to be attentive to them and stay up to date in their training. The institutional training programme in the area of human resources could be leveraged to

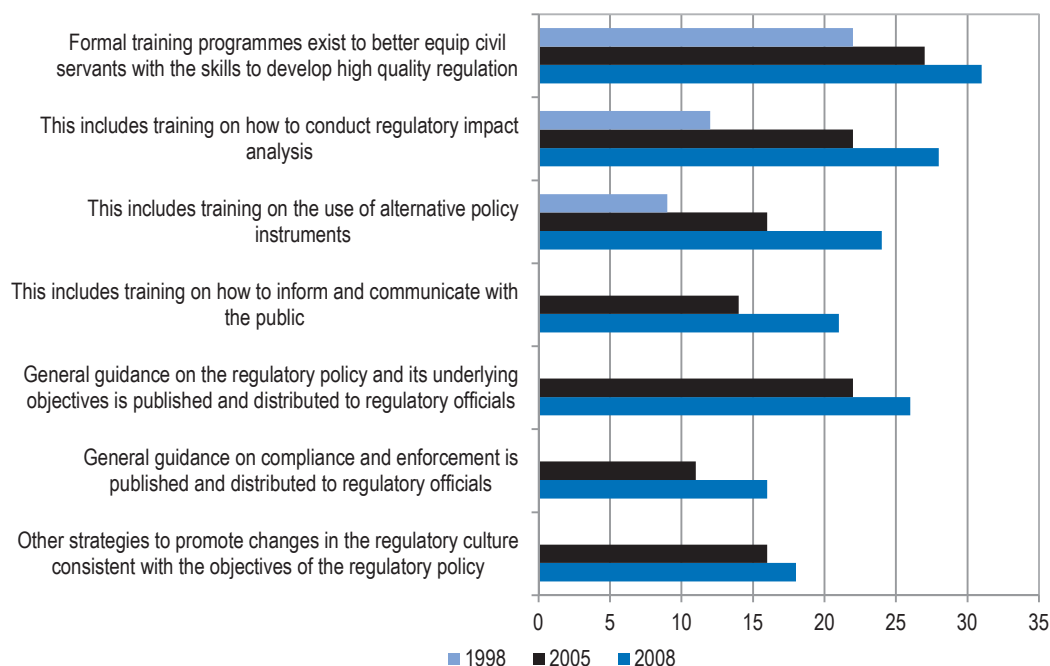
incorporate formal and systematic training on the regulatory framework for procurement activities.

Not only could training be strengthened, but, as discussed in Chapter 1, the exchange of good practices for solving common problems during procurement processes could be increased as to promote their adoption throughout the organisation. This could be achieved through more informal mechanisms, such as discussion groups, roundtables, quality circles, etc.

An additional instrument that can be used to facilitate the adoption of the manuals and POBALINES is quality certifications. In fact, the Public Works Sub-directorate reports that the transition was facilitated by the fact that it has documented its processes to comply with the requirements of ISO9000. Currently, it has certified the processes of contracting and project closure, including final payments, for public works and associated services (*finiquito de obra y servicios*).

Better informed and trained public officials can help close the compliance gap with the regulatory framework for procurement, as reported by the ICO. The activities to be carried out to train ISSSTE officials in the use of the manuals can also be leveraged for the diffusion of other normative instruments, such as the POBALINES. Continuous training and capacity building have the potential to significantly improve ISSSTE’s regulatory culture (see Figure 2.1 on the scope of regulatory training in OECD countries).

Figure 2.1. Training in regulatory quality skills in OECD countries (1998, 2005 and 2008)



Notes: The sample includes 31 jurisdictions for 2008 and 2005. For 1998, 27 jurisdictions are included as no data was available for the European Union, Luxembourg, Poland or the Slovak Republic.

Source: OECD (2008), “OECD Regulatory Indicators Questionnaire”, Questions 13 a), a(i), a(ii), a(iii), b(i), b(ii), and c), OECD, Paris, www.oecd.org/dataoecd/53/61/44679112.pdf, accessed 4 October 2013.

Regulatory consultation and *ex ante* impact analysis

ISSSTE's recent experience in updating its POBALINES illustrates the strengths and weaknesses of the processes by which it issues internal regulations. In terms of strengths, the process of updating the POBALINES included consultation with ISSSTE officials via the Committee for Internal Regulatory Improvement (*Comité de Mejora Regulatoria Interna*, COMERI). As for weaknesses, it is clear that ISSSTE does not apply any form of *ex ante* impact assessment to internal regulation proposals; consultation with external stakeholders could also be improved.

ISSSTE could develop a culture of public consultation to improve the quality of internal regulations

Regulatory consultation may have different objectives, such as collecting empirical information for analytical purposes and for complementing impact assessments, as well as for better understanding issues such as the acceptability of different policies. Consultation provides information to determine practicability and to design compliance and enforcement strategies. Since consultation is a cost-effective source of data, it is increasingly being used in OECD countries, such as by New Zealand in the recent review of its procurement regulation (Box 2.1).

ISSSTE could achieve several benefits from making internal consultation a formal requirement during processes to issue regulation applicable to its procurement activities:

- Consultation can potentially identify in a timely manner situations in which a problem has been poorly understood and does not, in fact, merit any regulatory intervention.
- Problems in terms of the acceptability of a regulatory proposal may be identified at an early stage and taken into account more effectively in the process.
- Engagement with the target populations of internal regulations can help identify additional tools (regulatory or non-regulatory) to address policy objectives, potentially yielding more effective responses.

Different consultation techniques exist, including informal inquiries, circulation of regulatory proposals for comment, public notice and comment, hearings and advisory bodies, among others. The different consultation mechanisms are not mutually exclusive; in fact, “there is an evolving tendency to combine different forms of consultation to improve its overall performance. This reflects growing understanding of the strengths and weaknesses of the different consultation strategies and of the fact that they are therefore suited to different specific circumstances and to different stages in the consultative processes” (OECD, 2002).

As mentioned above, the initiative to update the POBALINES included an internal consultation that relied on the COMERI. The objective of the COMERI is to “update the legal-administrative framework that regulates the operations of the institute by simplifying, deregulating, and/or remedying normative issues so that ISSSTE can adapt rapidly to economic, technological, and social change and facilitate the achievement of outcomes, as well as simplifying the management of the benefits and services it provides”.⁴

Box 2.1. Consultation process in procurement regulatory reform in New Zealand

In 2009, the New Zealand Cabinet initiated the Government Procurement Reform Programme to reform procurement policy and practice of the State sector. The agenda for the programme has four major themes:

- achieving cost savings;
- building procurement capability and capacity;
- enhancing New Zealand business participation; and
- improving governance, oversight, and accountability.

An important initiative under this programme is the update of the Mandatory Rules on Procurement (“the Rules”) introduced in 2006. The purpose of this update is to:

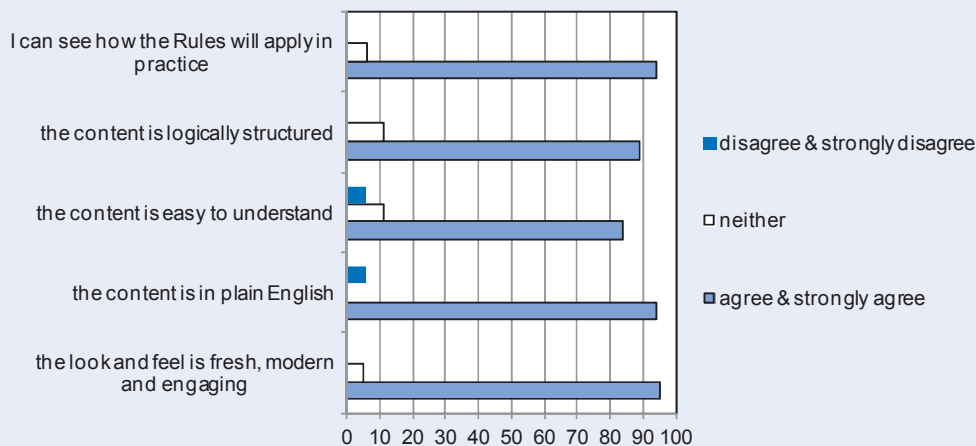
- bring the Rules into line with international benchmarks, including the standards set out in the WTO Government Procurement Agreement;
- draft the Rules in plain English and refresh their format as to make them easier for both agencies and suppliers to understand and use.

Significant consultations with covered agencies and the marketplace took place throughout the review process. In February 2012, agencies were invited to suggest areas of potential improvements to the Rules. Recommendations received were considered in the preparation of the draft new Rules.

In September 2012, agencies and businesses were invited to provide feedback on the draft new Rules through online surveys that closed on 12 October 2012. Responses were received from 44 agencies and 72 businesses. Among others, the survey showed that:

- 85% of businesses and more than 90% of agencies thought the new description of the rules are in plain English;
- more than 80% of agencies and 70% of businesses thought they are easy to understand.

Agency responses: Quality and readability



Using additional feedback received through the survey, a new draft version was developed to further strengthen the quality and readability of the Rules. Following additional consultation from departments, the final Rules are expected to be presented to Cabinet in February 2013.

Source: New Zealand Procurement website www.business.govt.nz/procurement, accessed on 22 January 2013.

Notwithstanding the merits of this consultation, ISSSTE would benefit from making internal consultation a systematic and formal requirement for issuing internal regulations, including on acquisitions. Furthermore, it would also benefit from experimenting with different consultation mechanisms in order to build on their respective strengths and to address the limitations that consultation via COMERI may have. Using several consultation mechanisms can open the process to a wider range of officials and obtain more opinions. Additionally, ISSSTE could establish guidelines for this kind of internal consultation, addressing criteria such as the ones discussed in the Code of Practice on Consultation of the United Kingdom (Box 2.2).

Box 2.2 Public consultation in the United Kingdom

The United Kingdom has a long-standing tradition of consultation. Currently, the legal instrument that establishes this framework is the Code of Practice on Consultation (“the Code”), published in 2000 and revised in 2004 and 2008. The Code applies to all central government departments and those agencies which have a close relationship with a parent department. With a few exceptions, such as emergency legislation or tax, consultation takes place in all policy areas and must follow the Code. Public justification must be provided if the Code is not applied.

The 2008 revision of the Code consisted of a programme of 20 stakeholder events around the United Kingdom to exchange views on how the government consults and where improvements could be made. Stakeholders expressed negative views on the consultation process, such as poor organisation on access to information, lack of transparency and responsiveness to stakeholders’ opinions, and a need for an independent quality monitoring of government consultations. In response to these concerns, the Code of Practice on Consultation was updated, taking into account the following criteria:

- **When to consult:** formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration of the consultation exercise:** consultations should normally last for at least 12 weeks with consideration given to longer timelines where feasible and sensible.
- **Clarity of scope and impact:** consultation documents should be clear about the process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises:** consultation should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- **The burden of consultation:** keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.

Source: OECD (2010), Better Regulation in Europe: United Kingdom 2010, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264084490-en>, accessed 4 October 2013.

Finally, in addition to internal consultation, there is scope to subject internal regulations applicable to procurement activities to external scrutiny particularly that of stakeholders involved in these activities. ISSSTE has already developed some experience in this regard, as it promotes participation by suppliers, business associations, chambers and the public in the drafting of tender rules (*bases de licitación*) via the publication of draft rules on the institute’s webpage, where stakeholders can provide comments and suggestions. This experience should be leveraged to develop a culture of public

consultation for all of ISSSTE’s internal regulations, but particularly for those applicable to procurement.

ISSSTE could apply a simplified regulatory impact assessment to the process by which it establishes its internal regulations

The OECD “Recommendation of the Council on Regulatory Policy and Governance” states the following concerning *ex ante* impact analysis:

Integrate Regulatory Impact Assessment into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach (OECD, 2012a).

Ex ante impact assessment practices should be proportional to the significance of the regulation and include cost-benefit analyses that consider the impacts of regulation, including the distributional effects over time, identifying who is likely to benefit and who is likely to bear the costs.

Ex ante assessment policies should require the identification of a specific policy need and the objective of the regulation. In line with the OECD “Recommendation on Competition Assessment” (OECD, 2009), they should assess, among others, the extent to which the regulations create barriers unduly restraining market activities and competition and address them by adopting more pro-competition alternatives. Likewise, they should include a consideration of alternative ways to address public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments, to achieve policy goals. The “no action” option should always be considered. *Ex ante* assessment should, in most cases, identify approaches likely to deliver the greatest net benefit, including complementary approaches such as through a combination of regulation, education and voluntary standards.

Regulatory impact assessment (RIA) should, as much as possible, be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within an adequate timeframe to gain input from stakeholders and assist in political decision making. Good practice involves using the RIA as part of the consultation process. In any case, RIA implementation should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use.

Currently, ISSSTE does not carry out any kind of impact assessment on its internal regulation proposals and, as said, its consultation practices are limited and not standardised. While adopting a full-fledged RIA would be beneficial, it would take some time to develop the skills necessary to carry it out appropriately. ISSSTE could rely on the items addressed by the RIA templates developed by the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER) and contained in the *RIA Manual*, published in the DOF of 26 July 2010. These items include:

- problem definition and general objectives of the regulation;
- alternatives to regulation;
- impact of the regulation;

- enforcement and implementation;
- assessment of the draft regulatory proposal;
- public consultation.

ISSSTE should also start developing training and guiding materials based on the expertise of other institutions, such as COFEMER.

An intermediate step could be to develop a simpler impact assessment, particularly for those regulations that may not impose major burdens to procurement officials and processes. The government of British Columbia, Canada, for example, replaced the RIA for a “regulatory criteria checklist” (RCC) in 2001. The RCC is very simple and includes questions in 11 different categories: reverse onus, cost-benefit analysis, competitive analysis, streamlined design, replacement principle, results-based design, transparent development, time and cost of compliance, plain language, simple communications, and sunset review/expiry principle (Box 2.3). While the RCC was basically developed to capture the impact of draft regulations on business, using the criteria in an adapted version can be useful for ISSSTE to analyse the impact of draft internal regulations on its own officials and external stakeholders (i.e. suppliers). Furthermore, the use of a simpler tool can set the ground to develop a regulatory quality culture and introduce a more sophisticated RIA.

Box 2.3. The regulatory criteria checklist of British Columbia, Canada

The Regulatory Criteria Checklist (RCC) is composed of 11 different categories, each with its respective questions:

- A. Reverse onus-need is justified
 - Has the scope of the public policy problem been assessed?
 - Is government intervention necessary to address the problem?
- B. Cost-benefit analysis
 - Is the benefit to government or external partners worth the increased cost to small business and those who must comply?
- C. Competitive analysis
 - Has the impact of the requirements on British Columbia's economic competitiveness been assessed?
 - Have the requirements been compared with other relevant jurisdictions?
- D. Streamlined design
 - Do the requirements avoid or eliminate duplication or overlap with federal or local government requirements or those of other ministries?
 - Has business process mapping been undertaken to streamline the requirements and lessen the time needed by small business to comply?
- E. Replacement principle
 - Will one regulatory requirement be eliminated for each new regulatory requirement introduced by the legislation or regulation?

Box 2.3. The regulatory criteria checklist of British Columbia, Canada (cont.)

- F. Results-based design
- Does the design reflect government's commitment to regulatory requirements that are results-based and use scientific evidence?
- G. Transparent development
- Are the requirements transparent for ease of access, understanding and compliance?
 - Has small business had the opportunity to see and comment on the proposed requirements?
- H. Time and cost of compliance
- Has the amount of time required by small business to comply been reduced?
 - Can compliance occur with existing resources of small business?
 - Have government service standards been set?
- I. Plain language
- Have the requirements been drafted in plain language and in a way that facilitates compliance?
- J. Simple communications
- Will this change be communicated?
 - Can it be described in less than one page?
- K. Sunset review/expiry principle
- Has a date been set to review the requirements to ensure continued relevancy?
 - Does the legislation or regulation contain a sunset provision for requirements to expire?

Source: García Villarreal, J.P. (2010), "Successful practices and policies to promote regulatory reform and entrepreneurship at the sub-national level", OECD Working Papers on Public Governance, No. 18, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5kmh2r7qpstj-en>, accessed 4 October 2013.

Ex post evaluation: Closing the gap

Just like in the case of *ex ante* impact analysis, ISSSTE currently does not apply any systematic tool to assess the *ex post* impact of its internal regulations (once these regulations have been in force for some time). In fact, the process of updating the POBALINES would have benefited from the use of such a tool to identify weaknesses and opportunities for improvement.

ISSSTE could establish a schedule to carry out *ex post* assessments of the normative instruments that regulate its operations, including procurement activities

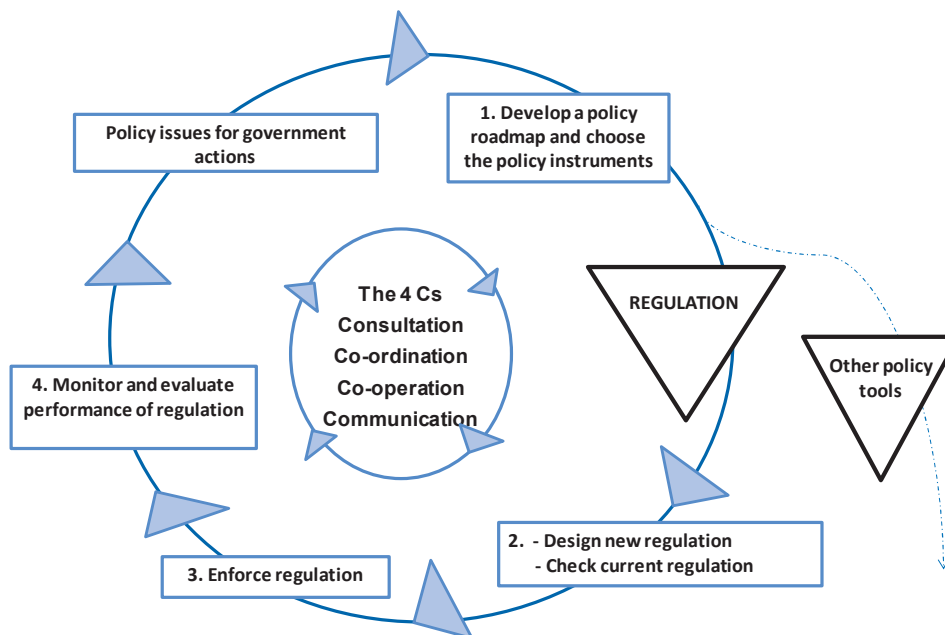
Even though ISSSTE has developed some performance indicators, such as those related to progress in the annual institutional programme of work, they do not assess whether the internal regulations, including those applicable to procurement, are actually meeting their intended objectives.

Ex post performance evaluation is a critical field to the regulatory policy cycle (see Figure 2.2). Its goal is to determine if the regulatory framework in place has achieved the

desired objectives, if the regulation was sufficiently efficient and effective in its implementation, and to what extent any (un)expected impacts of the regulatory intervention were properly addressed at the moment of conceiving the regulatory instrument. Reviewing the outcomes and results of the regulatory intervention should, therefore, be central to achieving high-quality regulation and closing the governance cycle.

Ex post evaluation serves various purposes. Among them, it can make important contributions to redefining new interventions and improving the quality of future decisions by pointing out unintended consequences that had not been properly assessed. It can enhance transparency by opening new possibilities for stakeholders' participation in order to better understand how they have been affected by the regulation. It can bring more accountability to the regulatory process. Finally, it can contribute to reducing the risk of regulatory failure (OECD, 2012b).

Figure 2.2. The regulatory governance cycle



Source: OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264116573-en>, accessed 4 October 2013.

Since the revised POBALINES have just been issued (March 2012), there is time to plan an assessment schedule for the future. Likewise, the assessment of other regulatory instruments that have been in force for a longer period of time (i.e. five years) should be carried out to identify the effects of the regulatory interventions and whether amendments are required.

Proposals for action

The development of a strong regulatory culture within ISSSTE, one which requires quality controls and discipline throughout the different stages of the regulatory

governance cycle, calls above all for political commitment from the top level of the institute's leadership. This political commitment should translate into initiatives to apply and institutionalise different tools to the processes for producing and updating the regulatory framework applicable to procurement.

1. Increase the diffusion of recently published regulatory instruments, such as the MAAG and the POBALINES applying to both acquisitions and public works.
2. In line with the previous recommendation, provide systematic training to facilitate the adoption of the requirements set by the manuals and POBALINES. Such training for officials dealing with procurement activities can be embedded in the annual training programmes prepared by the human resources office. It should also envision training on the regulatory framework applicable to procurement as part of entry formalities for individuals hired by ISSSTE to manage these activities.
3. Promote mechanisms to share best practices on the management of the regulation applicable to procurement activities. These mechanisms can be rather informal, such as roundtables, discussion groups, blogs, etc.
4. Make internal and external consultation a formal requirement when developing or revising regulations applicable to ISSSTE's activities, including for procurement. In this sense, develop guidelines to inform officials of the different consultation methodologies that can be applied and provide guidance on issues such as when to consult, the scope and accessibility of the consultation, and the length of the consultation exercises.
5. Gradually create a culture of regulatory quality and impact assessment in the institute. On an initial basis, this could include:
 - Developing guiding manuals and training, relying on materials developed by other institutions and in co-operation with them (i.e. COFEMER).
 - Adopting a simple form of *ex ante* impact assessment, particularly for those regulations that do not imply major burdens for the stakeholders of procurement activities. An adapted version of the RCC is a feasible alternative for the short term. Regulations that imply major burdens should be subject to more comprehensive analyses.
 - Developing a schedule for *ex post* assessment of the performance of the regulatory instruments applying to procurement activities to identify the effects of normative interventions and whether amendments are required.

Notes

1. Public agility is defined as the ability to anticipate and flexibly respond to increasingly complex policy challenges.
2. The Material Resources and Services Sub-directorate does not purchase medicines or medical supplies. It is in charge of contracting recurrent services (i.e. cleaning, security, laundry, photocopies and staff transport) and purchasing goods such as clothing for medical staff and bed sheets.
3. The Official Gazette is a government body, permanent and of public interest, whose function is to publish laws, decrees, rules, agreements, orders and other acts, issued by the branches of government according to their attributions, so that they are respected and enforced.
4. Presentation of the Prosecretariat of the Management Board, www.issste.gob.mx/hjunta/comites/_14_COMITE_DE_MEJORA_REGULATORIA_INTERNA_DEL_ISSSTE.pdf, accessed 4 October 2013.

References

- García Villarreal, J.P. (2010), “Successful practices and policies to promote regulatory reform and entrepreneurship at the sub-national level”, *OECD Working Papers on Public Governance*, No. 18, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5kmh2r7qpstj-en>, accessed 4 October 2013.
- Hood, Christopher et al. (1999), *Regulation Inside Government: Waste-Watchers, Quality Police, and Sleaze-Busters*, Oxford University Press, New York.
- Management Advisory Committee (2007), *Reducing Red Tape in the Australian Public Service*, Australian Government, Canberra.
- OECD (2012a), “Recommendation of the Council on Regulatory Policy and Governance”, OECD, Paris, www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 4 October 2013.
- OECD (2012b), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264176263-en>, accessed 4 October 2013.
- OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264116573-en>, accessed 4 October 2013.
- OECD (2010), *Better Regulation in Europe: United Kingdom 2010*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264084490-en>, accessed 4 October 2013.
- OECD (2009), “OECD Recommendation on Competition Assessment”, C(2009)130, OECD, Paris, www.oecd.org/daf/competition/oecdrecommendationoncompetitionassessment.htm, accessed 4 October 2013.
- OECD (2008), “2008 OECD Regulatory Indicators Questionnaire”, OECD, Paris, www.oecd.org/dataoecd/53/61/44679112.pdf, accessed 4 October 2013.
- OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264177437-en>, accessed 4 October 2013.



From:
**Public Procurement Review of the State's
Employees' Social Security and Social Services
Institute in Mexico**

Access the complete publication at:
<https://doi.org/10.1787/9789264197305-en>

Please cite this chapter as:

OECD (2013), "Ensuring high quality regulations for ISSSTE's procurement processes", in *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264197305-6-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.