

Chapter 4

Enhancing the integrity and transparency of the procurement process in the NAICM project

World experience has shown that infrastructure projects are particularly prone to corruption due in part to the large sums involved and the complexity of the sector. The construction of the new airport of Mexico is not exempt from this risk, yet no comprehensive strategy has been put in place by Mexico to prevent corruption in the construction of the airport.

Despite recent measures implemented by the Mexican Government to promote integrity in the public sector and reinforce the fight against corruption, much more needs to be done within Grupo Aeroportuario de la Ciudad de México S.A. de C.V. (GACM), the entity responsible for constructing the airport. This puts at high risk the credibility and effectiveness of the project.

This chapter assesses the vulnerability to corruption of the GACM and its procurement processes and provides policy options and good practices from OECD countries to mitigate risks and prevent corruption in the construction of the airport.

Awareness of corruption risks is essential for the success of the construction of the airport

Infrastructure projects are particularly prone to corruption and mismanagement

The infrastructure sector is particularly vulnerable to corruption and undue influence due to the extent of public officials' discretion over the investment decision, the multiple stages and the large sums of money and stakeholders involved, including elected and non-elected public officials, lobbyists, civil society organisations, trade unions, regulators, contractors, consultants, engineers and suppliers.

The public investment cycle is vulnerable to corruption in all its forms and at different phases, taking the form of undue influence or capture of the investment project by specific interests, conflict of interests or bribery. The needs assessment phase and the selection of the projects is a crucial step since it sets the tone for the whole construction project and can potentially open opportunities for corruption at later stages. It is particularly harmful because it can divert public funds towards projects with little social utility and with low return, and favours new constructions at the expense of maintenance (Kenny, 2009).

The project design phase and the implementation or execution phase often see corruption in the form of bribery (to influence the development of the bidding documents, to obtain a contract, etc.), favouritism towards certain bidders, conflicts of interest, fraud, collusion or cartels. In this context, public procurement is recognised as one of the government activities that is most vulnerable to corruption, given the close interactions between public and private agents with relatively high levels of discretion as well as important financial implications.

The steps following the actual contract award are as vulnerable to corruption as the previous phases of the cycle and it is essential to have mechanisms in place to make sure that the contract is implemented properly, without changes in costs or level of quality. Corruption during the project execution or implementation phase can result in poor quality infrastructure and substandard construction that will require extra maintenance costs at later stages, or in the near future, and hence significantly reduces the economic rate of return (Kenny, 2009).

Lastly, the evaluation phase can also be a fertile ground for corrupt practices to cover up any previous abuses and frauds. During this phase, contractors, evaluators and public officials can misrepresent activities and results through discrepancies in financial reporting; non-compliance with financial or non-financial standards and terms and substandard performance.

Corruption incurs high costs and has a significant impact on society

Corruption is difficult to measure and quantify and, similarly estimating the costs of such practices remains a challenge. Corruption in the construction sector is significant and costly; it has been estimated that the global average cost of corruption in infrastructure - solely due to bribery - ranges between 5% and 20% of the investment (Kenny, 2009). Transparency International, the OECD and the American Society of Civil Engineers estimate the costs of corruption to be between 10% and 30 % of investment in public infrastructure (Hawkins, 2013). According to another estimation, "annual losses in

global construction through mismanagement, inefficiency and corruption could reach USD 2.5 trillion by 2020” (COST, 2012).

Corruption indeed comes at a high cost. Direct costs include bribe transfers, higher expenses, scarcity of essential services, lower quality and misallocations of public funds (OECD, 2015). When there are bribe payments involved in the investment process, those paying the bribes seek to recover the cost of the bribe through inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work or using inferior materials. One of the common consequences of corruption in the infrastructure sector is the purchase of lower quality material to compensate for the part of the budget used to bribe officials. In the most extreme situations, building infrastructure of lower quality can have fatal consequences, such as the collapse of a building or a bridge. Less dramatic consequences of low-quality infrastructure are the daily nuisance of a road that is too narrow. Poor-quality material comes with high costs in the long term, as maintenance will be required earlier and more regularly.

One of the most serious consequences of corruption in infrastructure is the selection of “white elephants” projects during the appraisal phase. “White elephants” serve to describe very costly infrastructure projects that have no particular social use and often come with negative return rates (Wells, 2015).

Furthermore, the costs of inefficient spending on public infrastructure are not only economic. Evidence of waste of public resources can cost governments dearly in terms of lost credibility and trust on the part of citizens. Governments are entrusted with spending taxpayers’ money efficiently and allocating it for the economic and social welfare of the economy and society. Given the increasingly tight fiscal space faced by many governments, infrastructure spending decisions that are not based on strict need assessment and cost-benefit analysis could harm not only governments’ budgets, but also the confidence of citizens in public institutions.

Promoting integrity in the procurement cycle thus contributes to reducing overall costs of construction and operation, and to encouraging efficient investment. Acknowledging these risks, Mexico has recently reinforced its legal framework to counter corruption, especially during the procurement process.

Recent efforts to counter corruption under the Mexican legal framework

The Mexican legal framework applicable to public procurement 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). Although, both of them include various requirements and rules to structure and guide public procurement activities, they do not specifically address integrity and corruption risks.

The administrative sanction of public servants who take part in corrupt practices is covered mainly by the Federal Law on Administrative Responsibilities of Public Servants (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, LFRASP). The LFRASP aims to enhance the legality and integrity of public servants’ performance of their administrative duties by establishing the administrative faults, the procedure for taking legal action, and the modality and degree of sanctioning to be

applied to public servants. Specifically, the LFRASP prohibits procurement officials from:

- contracting with any person who performs a public function, or with any company in which such a person participates
- contracting with any person that has been prohibited from holding a job, position or commission in the public administration
- intervening in any situation which may create any personal or business-related conflict of interest
- participating in any act or procedure where integrity might be compromised
- exercising any form of influence peddling to former public servants, up to one year after they conclude their public function
- inhibiting whistleblowing or the filing of a complaint. (OECD, 2013a).

In addition, and related more specifically to the procurement process, Mexico adopted the Federal Anti-Corruption Law on Public Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas, LFACP*), which directly addresses issues of corruption and fraud in public procurement (Box 4.1).

Furthermore, in early 2015, the President of Mexico issued a series of Executive Orders to strengthen public sector integrity focused primordially on preventing and managing conflict of interest, including the disclosure of potential conflict of interest of the public servant and his/her family member in their yearly asset declaration. The Executive Orders also require the issuances of a Code of Ethics for all public servants of the Federal Government (see Table 4.1 in the next section) and guidance¹ for public procurement officials when interacting with suppliers (*Protocolo de actuación de los servidores públicos en contrataciones públicas*); the creation of a classification and registry for procurement officials,² the certification of procurement officials, the online publication of sanctioned suppliers; increased collaboration with chambers of commerce; an online “one-stop shop” (*ventanilla única*) for transactions with government to reduce potential opportunities for bribery; and the creation of a Special Unit on Ethics and Conflict of Interests Prevention (*Unidad Especializada en Ética y Prevención de Conflictos de Interés*).

Box 4.1. The Federal Anti-Corruption Law on Public Procurement (LFACP)

The Federal Anti-Corruption Law on Public Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas*, LFACP) was adopted in June 2012 and provides the following provisions to addresses issues of corruption and fraud in public procurement:

- Penalties and liabilities on both Mexican and foreign individuals and entities for infringing the law during their participation in any federal procurement process, applying to other related professions that may have an influence on the integrity of the public procurement process (including but not limited to public servants).
- Mexican individuals and entities involved in corruption in international business transactions are equally liable.
- Acts such as influence, bribery, collusion, shams, omission, evasion, filing false information, and forgery are considered infringements (Article 8).
- Penalties for violation of the law include fines and legal disqualification (*inhabilitación*) from the pertinent working sector for periods ranging from three months to eight years for individuals and three months to ten years for entities (Article 27).
- Pleading guilty and co-operating in the investigation reduces the sanctions up to 50%, if the plead takes place within 15 working days following the notification of the administrative disciplinary proceedings (Articles 20 and 31).
- Whistleblowers identities must remain confidential (Article 10).

Source: OECD (2013), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264197305-en>.

The governance of integrity policies in Mexico

The governance of integrity policies in Mexico is going through a period of significant change. This is mostly due to an Anti-corruption Decree entered into force in May 2015 (*Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de combate a la corrupción*) which entailed a Constitutional reform.

Most notably, the revised version of its Article 113 introduces Mexico's National Anti-corruption System (*Sistema Nacional Anticorrupción*), which is framed as the co-ordination mechanism for all the authorities of any governmental level in charge of anti-corruption policies and the control of public funds.

The reform established two new institutional actors which will engage in the fight against corruption: firstly, the Anti-corruption Prosecutor Office (*Fiscalía Especializada en Combate a la Corrupción*), whose head will be nominated by the Senate; secondly, a Citizen Participation Committee (*Comité de Participación Ciudadana*) consisting of five citizens who have been distinguished for their contribution to transparency, auditing or the fight against corruption.

At the same time, the anti-corruption reform expands the mandate of two existing institutions, e.g. the Federal Administrative Justice Tribunal (*Tribunal Federal de Justicia*

Administrativa) and the Federal Supreme Audit Institution (*Auditoría Superior de la Federación or ASF*). The new Federal Administrative Justice Tribunal will be also in charge of settling disputes between the Public Administration and individuals, as well as of imposing sanctions on public officials for serious administrative responsibilities (Article 109[3]).

The reformed Article 113 of the Constitution also defines the organisation of the National Anti-corruption System, whereby a Co-ordination Committee (*Comité Coordinador*) will bring together the following actors: the Federal Supreme Audit Institution, the Federal Ministry of Public Administration (*Secretaría de la Función Pública*), the Federal Administrative Justice Tribunal, the Federal Judicial Council (*Consejo de la Judicatura Federal*), the Anticorruption Prosecutor Office, the National Institute of Transparency, Access to Information and Data Protection (*INAI-Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos*) and the Citizen Participation Committee. The Co-ordination Committee will be responsible for establishing co-ordination mechanisms, designing comprehensive policies, managing relevant information, and elaborating an annual report in relation to the overall activity on the fight against corruption and the control of public resources.

Promoting openness and a culture of integrity

The GACM needs to create a culture of integrity

A major public infrastructure project managed with integrity and efficiency can send a strong signal to the public that the Government spends taxpayers money efficiently, takes their concerns seriously and is committed to improve integrity standards. Yet, despite Mexico's ongoing reinforcement of its anti-corruption legal and policy framework, the GACM does not actively promote a culture of integrity and has not put in place specific anti-corruption and integrity measures and programmes in its procurement function beyond what is required by the Federal Law and federal dispositions. At interviews with GACM procurement officials they showed a strict focus on legal compliance with limited awareness of corruption risks and tools and mechanisms to mitigate such risks.

GACM would benefit greatly from raising awareness of corruption and promoting a culture of integrity particularly in its procurement processes. The benefits are threefold: economic, on the organisation's morale and externally with society.

Evidently, a strong organisational culture of integrity that successfully prevents corruption is beneficial from an economic perspective. It contributes to reducing the costs of operations since the potential costs incurred from engaging in corruption are multiple: *i*) the actual costs of bribery; *ii*) the staff-time required to maintain certain connections; *iii*) the risk of legal sanctions incurred; and *iv*) the risk of reputational damage that could dissuade future suppliers from collaborating with the organisation. Yet, corruption also has a negative effect on the personnel's well-being. Recent research finds that bribery's most significant impact on organisations is its negative effect on employee morale and other studies indicate that bribery affects employee morale even in cases where no-one outside of the organisation ever found out (Forbes, 2013). Conversely, clear ethical standards and practices improve employees satisfaction by fostering trust among employees who can feel confident that their organisation will quickly and consistently act upon verified or proven unethical behaviour, encourage team members to speak up about their concerns and commit to clear and fair standards applicable to all (CEB, 2015).

Recent research shows that a strong integrity culture reduces personnel misconduct by almost 70% (CEB, 2015).

Moreover, promoting a strong culture of integrity is not only beneficial internally; it can also have a significant impact on society as a whole. Major infrastructure projects, such as the new airport of Mexico, are highly visible and provide the opportunity for the Government to showcase an innovative and “clean” approach that benefits the public interest.

Setting common standards and norms

Corruption and wrongdoings can be the result of intentional dishonest behaviour, but it is often a consequence of ignorance of the laws and norms or the corollary of an institutional culture. Thus setting clear standards for the conduct expected by public officials is a necessary first step. Codes of conduct have proven to be instrumental in promoting integrity in any organisation as they provide a clear benchmark for acceptable behaviour and ethical standards against which personnel and the institution itself can be held accountable. A code of conduct can be seen as a sort of contract among employees within the organisation, as well as a statement to third parties about the ethical standards to expect and respect (CCAB, 2014).

In Mexico, according to the agreement which aims to issue the Code of Ethics for civil servants of the Federal Government, integrity rules for the exercise of public functions, and general guidelines to foster integrity of public servants and to implement permanent measures to encourage their ethical behaviour, through the Ethics Committees and the Prevention of Conflicts of Interest (*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, y los Lineamientos generales para propiciar la integridad de los servidores públicos y para implementar acciones permanentes que favorezcan su comportamiento ético, a través de los Comités de Ética y de Prevención de Conflictos de Interés*, DOF: 20/08/2015³), every entity must apply to its public servants the Code of Ethics for Public Servants of the Federal Government (*Código de Ética de los servidores públicos del Gobierno Federal*) and have among others, a code of conduct and an Ethics Committee. Indeed, the GACM in its Organisation Manual included the 2012 Code of Ethics for Public Servants of the Federal Government and the GACM code of conduct. The GACM code of conduct was sent by email to all GACM personnel on the 1st July 2015, after its approval by the Ethics Committee. Yet, according to the guidelines mentioned above, the code of conduct should be published on line and printed. As of September 2015, the GACM Code of Conduct cannot be found on line. In addition, the GACM could not provide information on how the code of conduct was developed nor if GACM public officials participated in its creation.

In addition, the existing code of conduct remains extremely general, stating what is expected from public officials in general terms mentioning the organisation’s values and standards (similar to the ones on the code of ethics) and does not address specific situations, for example, of conflict of interest, what to do in case of bribery. The code of conduct does not make a specific reference to public procurement or to regulate and/or limit the use of confidential information (Table 4.1).

Table 4.1. **Public servants of the Federal Government code of ethics and GACM code of conduct**

Code of ethics for public servants of the Federal Government	Code of conduct
<p>Constitutional principles that all public servants must observe in the course of their job, office, commission or function:</p> <p>1) Legality Public servants do only what the rules expressly provide them and at all times they subject their actions to what the laws, regulations and other legal provisions attribute to their job, position or commission, so they know and comply with the provisions regulating the exercise of their functions, powers and duties.</p> <p>2) Honesty Public servants are conducted with honesty without using their job, office or commission to obtain or seek to obtain any benefit, advantage or personal gain or for third parties, or seek or accept compensation, benefits, grants, gifts or gifts of any person or organisation because they are aware that this compromises their duties and the exercise of any public office involves a high sense of austerity and commitment to service.</p> <p>3) Loyalty Public servants respond to the confidence that the State has given them; They have an absolute commitment to serving society and satisfy the interests of the collective needs over individual, personal or outside the general interest and welfare interests.</p> <p>4) Impartiality Public servants give to citizens and the general population the same treatment, no privileges or preferences are granted to organizations or people, nor allow influences, interests or undue prejudice affect their commitment to make decisions and perform their duties objectively.</p> <p>5) Efficiency Public servants act according to a service culture results-oriented, trying at all times better performance of its functions to achieve institutional goals according to their responsibilities and through responsible and clear use of public resources, eliminating any undue ostentation and discretion in their application.</p> <p>Values that must precede all public servants in the performance of his/her job, office, commission or functions:</p> <p>1) Public interest Public servants act always seeking maximum attention to the needs and demands of society above interests and benefits, outside the collective satisfaction.</p> <p>2) Respect Public servants are conducted with austerity and without ostentation, and provide a dignified and cordial treatment to all people in general and their colleagues, superiors and subordinates, considering their rights, so that encourage civil dialogue and the co-ordinated implementation of instruments that lead to understanding, through efficiency and public interest.</p> <p>3) Respect human rights Public servants respect human rights, and in the scope of their powers and competences, they guarantee, promote and protect them in accordance with the principles of: Universality which states that human rights belong to everyone; interdependence meaning that human rights are closely linked to each other; indivisibility meaning that human rights are complementary and inseparable, and progressivity providing that human rights are constantly evolving and under no circumstances justify a setback in their protection.</p>	<p>In the performance of their duties, GACM public officials should behave in accordance with the following:</p> <p>1. Obligation to align his/her performance to the regulatory framework applicable to the mission and vision of the organisation, within a framework of social responsibility.</p> <p>2. Provide assistance to citizens, guided by the principles of respect, effectiveness and dedication to service.</p> <p>3. Perform their duties efficiently and effectively to achieve the objectives that have been determined.</p> <p>4. Frame their actions within the principles of transparency and accountability.</p> <p>5. They will manage with efficiency and honesty the resources that have been allocated exclusively to achieve the goals of the GACM.</p> <p>6. Perform his/her duties honestly, without using his/her position to have gratification, benefit, advantage or privileges.</p> <p>7. Promote an environment of communication, respect and equality in which everyone can develop holistically, without being subject to discrimination.</p> <p>8. Continually seek innovation of processes and activities to provide better service and do his/her job more effectively.</p>

Code of ethics for public servants of the Federal Government	Code of conduct
<p>4) Equality and non-discrimination Public servants provide services to all persons without distinction, exclusion, restriction or preference based on national or ethnic origin, colour, culture, sex, gender, age, disability, social status economic, health or legal, religion, physical appearance, genetic characteristics, immigration status, pregnancy, language, opinions, sexual preference, identity or political affiliation, marital status, family status, family responsibilities, language, criminal or any other reason backgrounds.</p>	
<p>5) Gender equality Public servants, in the scope of their powers and competences, ensure that both women and men have access to the same conditions, possibilities and opportunities for public goods and services; programmes and institutional benefits, jobs, posts and government commissions.</p>	
<p>6) Cultural and ecological environment Civil servants in developing their activities prevent the involvement of the cultural heritage of any nation and the planet's ecosystems; take an iron will to respect, protection and preservation of culture and environment, and in the exercise of their functions and in accordance with its powers, promote in society the protection and conservation of culture and the environment, as the main legacy for future generations.</p>	
<p>7) Integrity Public servants always act in a consistent manner with the principles to be observed in the performance of an employment office, commission or function, convinced the commitment to adjust their behaviour to prevail in their performance, an ethic that responds to the public interest and generate full assurance of their behaviour towards everyone with whom it is linked or observe their actions.</p>	
<p>8) Co-operation Public servants work together and foster teamwork to achieve common objectives of government plans and programs , thus generating a total vocation of public service for the benefit of the community and citizens' trust in their institutions</p>	
<p>9) Leadership Public servants are guide, example and promoters of the Code of Ethics and Integrity Rules; they encourage and applied in the performance of their duties the principles that the Constitution and the law impose them, as well as those additional values that for their importance are intrinsic to the public service.</p>	
<p>10) Transparency Public servants in the exercise of their functions protect personal data under their custody; they favour the principle of maximum disclosure of public information, diligently attending access requirements and providing documentation that they generate, obtain, acquire, transform or preserve; and the scope of its competence, proactively disseminate government information, as an element that generates value to society and promotes open government</p>	
<p>11) Accountability Public servants assume fully their responsibility to society and its authorities that derives from the exercise of their job, office or commission, by informing, explaining and justifying their decisions and actions, and are subject to a system of penalties and evaluation and public scrutiny of their duties by the citizenship.</p>	

Source: Code of Ethics for Public Servants of the Federal Government available at http://dof.gob.mx/nota_detalle.php?codigo=5404568&fecha=20/08/2015 and the *Manual de Organización de la Empresa de Participación Estatal Mayoritaria Denominada Grupo Aeroportuario de la Ciudad de México*, S.A. DE C.V.

The GACM could redraft its current code of conduct taking into account that it will need to: *i)* outline to GACM personnel and partners what is expected of them in terms of conduct; *ii)* contribute to reinforcing integrity in the organisational culture by setting new norms; and *iii)* provide a disciplinary framework to sanction deviant behaviour. For instance, a comprehensive code of conduct could include:

1. clear mission of the organisation, as well as its values and principles and the linkages with standards of professional conduct
2. visible guidelines on probity
3. clear definitions on what constitutes a corruption risk
4. guidelines on how public servants could deal with the ethical dilemmas, prejudices and grey areas that are encountered in everyday work
5. sanctions for integrity breaches, including administrative, disciplinary and criminal.

Furthermore, acknowledging that procurement officials bear an important responsibility in maintaining integrity and ensuring a proper use of public funds, the GACM could develop specific standards for procurement officials, for example through a specific code of conduct, as is practice in other OECD countries, such as Canada (Box 4.2) or Spain (Box 4.3).

Box 4.2. Code of conduct for procurement in Canada

The Government of Canada is responsible for maintaining the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

The Code of Conduct for Procurement will aid the Government in fulfilling its commitment to reform procurement, ensuring greater transparency, accountability, and the highest standards of ethical conduct. The Code consolidates the Government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations the Government has of its employees and its suppliers.

The Code of Conduct for Procurement provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.

The Code reflects the policy of the Government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the Federal Government's measures on conflict of interest, post-employment measures and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This Code is intended to summarise existing law by providing a single point of reference to key responsibilities and obligations for both public servants and vendors. In addition, it describes vendor complaints and procedural safeguards.

The Government expects that all those involved in the procurement process will abide by the provisions of this Code.

Source: Public Works and Government Services Canada (PWGSC), *The Code of Conduct for Procurement*, www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndet/contexte-context-eng.html (accessed 17 June 2015).

Box 4.3. Principles and code of conduct for procurement in Spain

With the aim of contributing to excellence in administrative activities within the area of procurement, the Office for Supervision and Evaluation of Public Procurement has compiled in this code the basic principles and good practice that have already been integrated into the day-to-day activities of the ministries of the Administration of the *Generalitat of Catalonia* and the entities that form part of its public sector. New content for establishing the code of conduct and recommendations is also contained, contributed by the Working Group for the Promotion and Improvement of Procurement Processes, constituted within the Consultative Board on Administrative Procurement of the *Generalitat of Catalonia*, the Anti-Fraud Office of Catalonia, the Catalan Competition Authority, the Association of Secretaries, Mediators and Treasurers of the Catalan Local Administration, as well as business and trade union organisations. The aim of the Code is to consolidate the code of ethics in procurement as part of the culture and values of procurement bodies. The good procurement practice included in the Code is structured in the following sections:

1. the specifying of the basic principles and ethical values that must govern the procurement process
2. the identification of specific conduct of interest with a view to drawing up the guidelines to follow in a variety of possible real specific circumstances
3. the specifying of especially interesting contractual practices
4. the raising of awareness, training and the monitoring of the ethical commitment.

With the creation of the Ethics Committee in Procurement of the *Generalitat of Catalonia*, made up of representatives from the ministries and entities of the *Generalitat of Catalonia* and belonging to the Presidency Department, a follow up and a continuous updating of the Code in the Administration of the *Generalitat* and the entities of its public sector will be carried out.

Source: Principles and Code of Conduct for Procurement, Codi de principis i conductes recomanables en la contractació pública,

http://transparencia.gencat.cat/en/indicadors/contractacions_serveis/contractacio/codi_de_principis_i_conductes_recomanables_en_la_contractacio_publica/ (accessed 17 June 2015).

Investing in training and guidance

Adopting a code of conduct has a communicational aspect as it sends a strong signal that the organisation is committed to observing the highest standards of integrity and that ethical behaviour is expected from all employees (Transparency International, 2014a). Yet, adopting a code of conduct and ethical standards is a necessary step but not a sufficient one. Without support and training, an organisation risks making its code an empty and largely useless tool. Ethics or integrity training for public officials, and procurement officials in particular, can raise awareness and develop knowledge of, and commitment to, the critical elements of a culture of integrity in public organisations.

Management's support for integrity training is key to its success and provides strong motivation for the staff. Such support should be demonstrated by the actions of the leadership that sets the example and allocates adequate resources to the training. Ethics training should be designed to fit the needs of the target audience and should be as practice-oriented as possible to help participants understand the principles, the values and the grey zones (OECD, 2013b).

As of September 2015, the GACM has not provided any training on the code of conduct or on ethical standards for its staff or its procurement officials. This creates a significant integrity knowledge gap in GACM. The GACM could thus provide specific training for procurement officials on integrity, ethics and anti-corruption tools following the practice in other OECD countries, such as Germany (Box 4.4) and France (Box 4.5).

Box 4.4. Integrity training in Germany

The Federal Procurement Agency is a government agency which 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 is 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. Another part of the training deals with how to behave when these situations occur; for example, by encouraging them to report it (“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 not only induction training but also ongoing 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 the 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 difficulties in the Agency. Due to a high level of specialisation, many officials cannot change their organisational unit, their knowledge being indispensable for the work of the unit. In these cases alternative measures such as intensified (supervisory) control are being taken.

Source: Federal Procurement Agency, Germany.

Box 4.5. Specialised training for public procurement in France

The Central Service of Corruption Prevention, an inter-ministerial body attached to the Ministry of Justice in France has developed training material for public procurement to help officials identify irregularities and corruption in procurement. Below is a case study excerpted from the training material, which illustrates the challenges faced by various actors at different steps of the procedure. It also highlights the difficulty of gathering evidence on irregularities and corruption.

Issue at stake

Following an open invitation to bid, an unsuccessful bidder complains to the mayor of a commune accusing the bidding panel of irregularities because his bid was lower than that submitted by the winning bidder. How should the mayor deal with the problem?

Stage 1: Checking compliance with public procurement procedures

The firm making the complaint is well known and is not considered “litigious”. The mayor therefore gives its claim his attention and requests the internal audit service to check the conditions of award of contract, particularly whether the procedure was in compliance with the regulations (the lowest bidder is not necessarily the best bidder) and with the notices published in the official journal. The mayor learns from the report prepared by the bidding committee that although the procedure was in accordance with the regulations, the bid by the firm in question had been revised upwards by the technical service responsible for comparing the offers. Apparently the firm had omitted certain cost headings which were added on to its initial bid.

Stage 2: Replying to the losing bidder

The mayor lets the losing bidder know exactly why its bid was unsuccessful. However, by return post, he receives a letter pointing out that no one had informed the company of the change made to its bid, which was in fact unjustified since the expenditure which had purportedly been omitted had in fact been included in the bid under another heading.

Stage 3: Suspicion

The internal audit service confirms the unsuccessful bidder’s claim and points out that nothing in the report helps to establish any grounds for the change made by the technical service. It also points out that it would be difficult for an official with any experience, however little, not to see that the expenses had been accounted for under another heading. The mayor now requests the audit service to find out whether the technical service is in the habit of making such changes, whether it has already processed bids from the winning bidder and if contracts were frequently awarded to the latter. He also requests that it check out the background of the officials concerned by the audit. Do they have experience? Have they been trained? Do they have links with the successful contractor?

Could they have had links with them in their previous posts? What do their wives and children do? Examination of the personnel files of the officials and the shares of the company which won the contract fail to find anything conclusive: the only links between the officials or their families and the successful bidder are indirect.

Stage 4: Handing the case over to authorities of the Ministry of Justice

Having suspicions, but no proof, the mayor hands over information so that investigations can begin. The investigators now have to find proof that a criminal offence (favouritism, corruption, undue advantage, etc.) has been committed and will exercise their powers to examine bank accounts, conduct hearings, surveillance, etc. The case has now moved out of the domain of public procurement regulations and into the domain of criminal proceedings.

Box 4.5. Specialised training for public procurement in France (*continued*)

Conclusion

Unable to gather any evidence and with no authority to conduct an in-depth investigation or question the parties concerned, the mayor makes the only decision that is within his power, which is to reorganise internally and change the duties of the two members of staff concerned. However, he must proceed cautiously when giving the reasons for his decision so as to avoid exposing innocent people to public condemnation or himself to accusations of defamation while the criminal investigation is in progress.

The mayor also decides that from then on the report by the technical services to the bidding committee should give a fuller explanation of its calculations and any changes it makes to the bids, as well as systematically inform bidders of any changes.

Source: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264027510-en>.

Strengthening the governance of integrity within GACM

According to the General Guidelines for the Establishment of Permanent Actions to Ensure Integrity and Ethical Behaviour of Public Officials while Performing their Duties, both the code of ethics and the code of conduct should be developed between public officials and the GACM Ethics Committee.

The General Guidelines provides that each Mexican entity must create an Ethics Committee composed of the Director of Administration (*Oficial Mayor*) as the head of the Committee, an Executive Secretary, and public officials. These public officials should be elected by the employees and they must have at least a year of service at the moment of the election. The GACM General Director must determine the number of public officials to be elected and their hierarchical level depending on the entity's structure. The Ethics Committee is the body for consultation and advice in charge of assisting on the development, implementation and enforcement of the code of conduct. The Ethics Committee held its first session on 1st July 2015, where among other things the code of conduct was approved.

An ethics committee as in the United Kingdom (Box 4.6) would be an essential step towards strengthening the integrity architecture of GACM.

Having a group of employees or even a single identified member of personnel in charge of maintaining the standards, monitoring implementation, organising trainings, communicating about the code of conduct and about corruption risks is an additional safeguard against corruption and misconduct. The GACM could as quickly as possible increase the visibility and awareness the Ethics Committee to have a better dissemination and enforcement of the code of conduct and subsequent adaptation of norms to new risks.

Box 4.6. Committee on Standards in Public Life, United Kingdom

The Committee on Standards in Public Life is an advisory non-departmental public body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: “to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The Committee on Standards in Public Life (CSPL) advises the Prime Minister on ethical standards across the whole of public life in the United Kingdom. It monitors and reports on issues relating to the standards of conduct of all public office holders.

The Committee is a standing Committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit that area and monitor whether and how well its recommendations have been put into effect.

Source: Committee on Standards in Public Life, www.gov.uk/government/organisations/the-committee-on-standards-in-public-life (accessed 13 June 2015).

Establishing conflict of interest policies for public officials, bidders, and suppliers

Public infrastructure projects, such as the new airport of Mexico, need to serve the public interest and citizens expect individual public officials involved in such projects to perform their duties with integrity, in a fair and unbiased way. Thus, officials need to ensure that their private interests and affiliations do not compromise their decision making, for example in the award of contracts.

The GACM has not developed any specific policy to identify and manage conflict of interests of its officials, which creates a significant risk of decisions being taken in the interest of individuals and not in the best interest of the project and the public interest. A comprehensive conflict of interest policy following, for example, the OECD Guidelines for Managing Conflict of Interest in the Public Service would be of great benefit.

Furthermore, the GACM could also develop a Procurement Management Framework that lists situations which would be considered as a conflict of interest, and provides guidance on the steps to follow (Box 4.7).

Box 4.7. 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.

It also lists situations which would be considered as a material conflict of interest of a staff in relation to a company submitting a tender including: *i*) a significant shareholding in a small private company which is submitting a tender; *ii*) 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; *iii*) having a relative who is involved in the preparation of the tender to be submitted by a company; *iv*) exhibiting a bias or partiality for or against a tender (e.g. because of events that occurred during a previous contract); *v*) a person, engaged under a contract to assist DPTI with the assessment, assessing a direct competitor who is submitting a tender; *vi*) regularly socialising with an employee of tenderer who is involved with the preparation of the tender; *vii*) having received gifts, hospitality or similar benefits from a tenderer in the period leading up to the call of tenders; *viii*) having recently left the employment of a tenderer; or *ix*) considering an offer of future employment or some other inducement from a tenderer.

Source: Procurement Management Framework. Confidentiality and Conflict of Interest, PR115, http://dpti.sa.gov.au/data/assets/pdf_file/0015/114351/PR115Confidentiality_and_Conflict_of_Interest.pdf, (accessed 16 June 2015).

Moreover, in the initial phase of the procurement process, conflict of interest verification could go beyond procurement officials, and can be applied to bidders as well. This will help to limit the risk of corruption and favouritism in the procurement process. The GACM could check any potential conflicts of interest before the procurement process begins and bidders could disclose any potential conflict of interest they may have with the contracting organisation or with the other bidders (Box 4.8).

Box 4.8. Financial disclosures and conflicts of interest: State of Illinois, United States

The Financial Disclosures and Conflicts of Interest form ("form") must be accurately completed and submitted by the vendor, parent entity(ies), and subcontractors. There are nine steps to this form and each must be completed as instructed in the step heading and within the step. A bid, offer, or proposal that does not include this form shall be considered non-responsive. The agency/university will consider this form when evaluating the bid, offer, or proposal or awarding the contract. The form is divided into eight steps as follows:

- Step 1. Supporting documentation submittal
- Step 2. Disclosure of Financial Interest or Board of Directors
- Step 3. Disclosure of lobbyist or agent

Box 4.8. Financial disclosures and conflicts of interest: State of Illinois, United States (*continued*)

- Step 4. Prohibited conflicts of interest
- Step 5. Potential conflicts of interest relating to personal relationships
- Step 6. Explanation of affirmative responses
- Step 7. Potential conflicts of interest relating to debarment and legal proceedings
- Step 8. Disclosure of current and pending contracts.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the disclosure is no longer accurate, then disclosing entities must provide an updated form. Separate forms are required for the vendor, any parent entity(ies) and any subcontractors.

Source: Financial Disclosures and Conflicts of Interest, State of Illinois, **Error! Hyperlink reference not valid.** (accessed 13 June 2015).

In order to avoid conflict of interest and ensure the integrity of the GACM's procurement processes, the Minister of Transport and Communication (SCT) has developed the following template documents:

- *Declaration of possible conflict of interest:* This document must be presented and signed by the public official in charge of the procurement procedure.
- *Survey on anti-corruption practices for the contracts on public works:* This document needs to be completed and signed by the bidder. It includes questions on the knowledge on anti-corruption legal framework; if investigations and/or sanctions have been applied to the bidder; the existence of internal anti-corruption policy and if the bidder paid bribes to participate in the bid.
- *Template for the declaration of integrity:* This document must be signed by the bidder.

Although, these documents represent a step forward to promote integrity among public officials and businesses, as of September 2015, they are still under discussion and should be extended to all contracts, not only to public works. It is important that these documents are ready before the opening for proposals. They should become mandatory and be made publicly available.

Effective prevention of corruption is not only influenced by the controls and policies implemented in an organisation, but also by its culture and prevention efforts. Active involvement and commitment from public servants is imperative to maintain an environment that stimulates integrity and rejects wrongdoing.

An open organisational culture that can foster internal reporting and facilitate the detection of wrongdoing

Given the high risks involved in the construction of the airport, the GACM could benefit from maximising opportunities to detect wrongdoing. Encouraging internal reporting can prevent and deter corruption and avoid significant losses in the project. Experience has shown, however, that those who report wrongdoing are not welcome in most organisations and are subject to reprisals by managers and colleagues. The risk of reprisals following a disclosure can be high in organisations where a reporting environment is not encouraged.

Whistleblowers take on high personal risk and can be victims to a range of retaliatory measures, such as dismissal, professional marginalisation, demotion, medical testing or examination, and transfer or reassignment. Whistleblower protection should be provided to all who carry out activities relevant to an organisation's mission. To encourage whistleblowing, there should be availability of safe and clear reporting channels and well known through the organisation, along with clear rules and procedures as well as a description of the protection provided for reporting officials to facilitate disclosures. Importantly, in addition to raising awareness about the procedures and channels involved in the disclosure process, it is essential to establish what constitutes a protected disclosure and to maintain a high degree of confidentiality throughout (Box 4.9).

Box 4.9. Disclosable conduct as defined by the Australian Public Interest Disclosure Act 2013

The Australian Public Interest Disclosure Act 2013 defines disclosable conduct as conduct (in Australia or in a foreign country) that contravenes the law, that constitutes maladministration, that is an abuse of public trust, that results in wastage of public money, public property, money of a prescribed authority, property of a prescribed authority, or conduct that results in danger (or a risk of danger) to the health or safety of one or more persons or the environment. In addition, disclosable conduct also includes when a public official abuses his or her position as a public official and conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

Source: Australia's Public Interest Disclosure Act 2013 Part 2 Division 2 Section 29.

If the personnel feel comfortable speaking up and confident that management will act on their disclosures and not retaliate, the lines of communication can flow better, which in turn, can foster innovation and mitigate risk-management pitfalls (CEB, 2015). Mechanisms may consist of hotlines or electronic reporting systems that ensure confidentiality as established in Austria (Box 4.10). The GACM could assess the possibility of discussing with its public personnel which channels will provide confidence to report wrongdoing.

Box 4.10. Whistleblower hotline in Austria

In March 2013, the Ministry of Justice set up a whistleblower hotline on the homepage of the Public Prosecutor's Office against Corruption and White Collar Crime. As of September 2013, approximately 590 notifications were sent to the platform. Only 53 of those notifications were not relevant. The whistleblower hotline has a test phase of two years.

The Federal Ministry of Justice's whistleblowing website enables investigators from the Public Prosecutor's Office against Corruption and White Collar Crime (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*; WKStA) to get in direct contact with whistleblowers, with the anonymity of the latter being assured. In that event, the whistleblower is entitled to decide whether he/she would like to remain anonymous or to identify him/herself to the investigators.

Source: Transparency International (2013), "Whistleblowing in Europe", www.transparency.de/fileadmin/pdfs/Themen/Hinweisgebersysteme/EU_Whistleblower_Report_final_web.pdf, p. 25; Shoneherr (2013), *Austria: Whistleblower Hotline is Launched Online*, www.schoenherr.eu/knowledge/knowledge-detail/austria-whistleblower-hotline-is-launched-online/.

Protecting organisations from irresponsible and unethical whistleblowing – such as false reporting or reporting as a result of spite or competitiveness between colleagues – is equally essential, as the continuous misuse of reporting could damage the reputation and career of public servants. As such, the GACM could implement training and programmes education on the notion of integrity and the purpose of reporting to encourage the correct use of these mechanisms and prevent misuse.

The GACM Internal Control Office (OIC) is responsible for providing advice, guidance and protection to people who report wrongdoing or having witnessed conflict of interest situations and integrity breaches, yet, as explained further in the chapter, the GACM does not have its own OIC, which constitutes a major gap.

Empowering the Internal Control Office

A strong and strategic Internal Control Office is urgently needed

Internal control and auditing in infrastructure projects such as the construction of the airport of Mexico is essential because of the high corruption risks associated with these activities. Just as corruption risk mapping and management, internal control and audits contribute to the general understanding of the risk environment in which the project operates and provide the necessary tools to protect the project from those risks. Both preventive and detective controls can examine the financial situation, the performance of the entity and the compliance to laws and norms.

As other entities of the Mexican Federal Government, GACM's internal control functions are subject to the rules set by the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP). SFP is responsible for defining the internal regulations of the Government, including federal entities' internal audit and control procedures, to ensure compliance with regulations on planning, budgeting, financing and investment. From this perspective, it organises and co-ordinates the governmental control and evaluation system to ensure that internal control methodologies are standardised and streamlined across federal entities and to designate the head of the OIC in each entity.

Despite the key role of the OIC to ensure transparency and integrity in the process and continuous improvements in the GACM, only at the beginning of October 2015 the GACM OIC was appointed. Previously, the GACM was under the OIC of the Ministry of Transport and Communications. During this time, the extent of its involvement was unclear and not significant. During the fact-finding mission, it was explained that for example, there was not a yearly audit plan defined. However, the GACM has been audited by the external auditor appointed by SFP on the financial statements and by ASF on the financial processes and the contracts carried out in 2014.

The OIC is important not only to ensure the integrity of the procurement process but also to guarantee that the GACM processes and procedures are adequately carried out and tailored to the specificity of the project. Due to this specificity, it is important that the OIC plays the role of an advisory body which supports GACM's procurement unit in striving for greater effectiveness and efficiency in their activities. Previous evidence from Reviews of the Mexican procurement systems in various entities suggests that the lack of communication and audits based on compliance rather than performance hinders the public official potential to innovate.

In this aspect, to move from compliance to performance and reduce the public officials' resistance to use allowed but no common procurement instruments, the GACM procurement units and the OIC could work closely with the SFP's *Mesa de acompañamiento*. SFP's *Mesa de acompañamiento* is carried out by the Regulatory Unit on Goods, Public Works, Services and Federal Assets (*Unidad de Normatividad de Adquisiciones, Obras Públicas, Servicios y Patrimonio Federal, UNAOPSPF*). The activity is intended as an interactive, preventive, multidisciplinary and specific consultancy process that takes place throughout the steps of a public procurement process (i.e. planning, programming, budgeting, negotiation, spending, and/or execution). The choice of the project is subject to the project's amount, strategic importance, presumption of lack of transparency and fairness, past discretion in similar processes, as well as its national and international impact. The objective is to review all the steps of the project's development and propose and implement improvements to strengthen the transparency, impartiality and legal provisions of every step of the procurement process. Although it was explained during the fact-finding mission the limited capacity of the SFP to carry out this type of activity, the GACM could explore a way of collaborating and working together with the SFP in order to carry out the activity for GACM's more complex procurements.

Integrity of the procurement process reduces corruption risks in all phases of the cycle

Integrity in public procurement is crucial to ensure that the construction project is adequately managed and meets the highest quality standards. A lack of integrity during the public procurement process is an obstacle to market competition, raises costs for the administration, directly affecting public expenditures and therefore taxpayers' resources (OECD, 2009). There is a number of corruption risks associated with the different stages of the procurement cycle (Table 4.2).

Table 4.2. Corruption risks associated with the different stages of the procurement cycle

Risks of the pre-tendering phase	Needs assessment	<ul style="list-style-type: none"> • Lack of adequate needs assessment • Influence of external actors on officials' decisions • Informal agreement on contract
	Planning and budgeting	<ul style="list-style-type: none"> • Poor procurement planning • Procurement not aligned with overall investment decision-making process • Failure to budget realistically or deficiency in the budget
	Development of specifications/ requirements	<ul style="list-style-type: none"> • Technical specifications are tailored for a specific company • Selection criteria is not objectively defined and no established in advance • Requesting samples of goods and services that can influence • Buying information on the project specifications.
Risks of the tendering phase	Choice of procurement procedure	<ul style="list-style-type: none"> • Lack of procurement integrity for the use of non-competitive procedures • Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
	Request for proposal/bid	<ul style="list-style-type: none"> • Absence of public notice for the invitation to bid • Evaluation and award criteria are not announced • Procurement information is disclosed and made public
	Bid submission	<ul style="list-style-type: none"> • Lack of competition or cases of collusive bidding: <ul style="list-style-type: none"> – cover bidding – bid suppression – bid rotation – market allocation
	Bid evaluation	<ul style="list-style-type: none"> • Conflict of interest and corruption in the evaluation process through: <ul style="list-style-type: none"> – familiarity with bidders over time – personal interests such as gifts or future/additional employment – no effective implementation of the “four eyes-principle”
	Contract award	<ul style="list-style-type: none"> • Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing) • Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities) • Lack access to records on the procedure
Risks of the post-award phase	Contract management/ performance	<ul style="list-style-type: none"> • Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing: <ul style="list-style-type: none"> – substantial change in contract conditions to allow more time and/ or higher prices for the bidder – product substitution or sub-standard work or service not meeting contract specifications – theft of new assets before delivery to end-user or before being recorded – deficient supervision from public officials and/or collusion between contractors and supervising officials – subcontractors and partners chosen in an on-transparent way or not kept accountable
	Order and payment	<ul style="list-style-type: none"> • Deficient separation of financial duties and/or lack of supervision of public officials leading to: <ul style="list-style-type: none"> – false accounting and cost misallocation or cost migration between contracts – late payments of invoices – false or duplicate invoicing for good and services not supplied and for interim payment in advance entitlement

Mapping and mitigating corruption risks in the procurement process

Assessing corruption risks is a preventive exercise that serves to identify weaknesses within the system that could create opportunities for corruption to occur. Corruption risk mapping serves to identify the level of potential risk, to inform anti-corruption strategies and to address weak areas in a governance system. Developing a corruption risk map at an early stage of a project can save both resources and time by allowing management to implement measures to protect the project from corruption and help employees respond quickly and efficiently to potential cases (Control Risks, 2011). Preventing corruption *a priori* is more cost-efficient and less time-consuming than having to handle corruption and misconduct *a posteriori*.

The risk map developed and provided by the GACM does not include corruption as a risk. The risk map does not identify or address corruption or other integrity breaches such as contract splitting, bid rigging, improper use of exceptions, inadequate bid evaluation or tailored specifications. As a consequence, the GACM has not put in place red flags or alert mechanisms that may help to timely detect wrongdoing.

The GACM has not conducted a mapping of corruption risks, thus it could develop a corruption risk map of the organisation and its processes in order to identify the positions of officials that are particularly vulnerable, the activities in the procurement cycle where risks can arise, and the specific projects at risk due to the value and complexity of the procurement. The GACM could base its risk map on the checklist of potential risks in the public works, goods and services procurement process carried out by the government of Tasmania in Australia (Box 4.11).

Box 4.11. Tasmania’s (Australia) checklist of potential risks in the goods and services procurement process

The Tasmanian government developed a checklist of potential risks in the procurement cycle that is composed of 11 parts:

1. identifying the need and planning the purchase
2. developing the specification
3. selecting the purchasing method
4. purchasing documentation
5. inviting, clarifying and closing offers
6. evaluating offers
7. selecting the successful tenderer
8. negotiations
9. contract management
10. evaluating the procurement process
11. disposals.

Box 4.11. Tasmania’s (Australia) checklist of potential risks in the goods and services procurement process (*continued*)

For instance, these are the risks identified for the first phase:

Risk	Likely consequences	Action
Understatement of the need	Purchase of unsuitable product or service Money wasted Need not satisfied	Analyse need accurately
Overstatement of the need	Greater expense Poor competition	Analyse need accurately Use functional performance requirements
Misinterpretation of user needs	Totally unacceptable purchase or not most suitable product or service Time lost Increased costs Possible downtime	Improve consultation with users Obtain clear statement of work and definition of need
Insufficient funding	Delay in making the purchase Additional costs for re-tender	Obtain appropriate approvals before undertaking process Improve planning
Impractical timeframe	Inadequate responses from tenderers Reduced competition Delivery schedule not met	Improve forecasting, planning and consultation with users Improve communication with potential tenderers
Probity issues	Increased procurement costs Misuse of resources Most suitable product not obtained Unethical conduct	Implement best practice policies, guidelines and practices Maintain ethical environment Improve training of personnel Put suitable controls and reviews in place Consider using a probity adviser Improve communication with potential tenderers

Source: Tasmanian Government, “Checklist of potential risks in the goods and services procurement process”, www.purchasing.tas.gov.au/buyingforgovernment/getpage.jsp?uid=07CC4222E4F10F00CA256C8D007F9FC6.

Once the risk map has been designed, the GACM could use a system of red flags. These are standardised warning signs that stretch over the whole procurement cycle and that assist in the detection of wrongdoing in a timely manner, avoiding significant delays between the time when the wrongdoing occurs and when it is noticed. The GACM could benefit from the red flags identified by the World Bank and by the Chartered Institute of Public Finance and Accountancy (Box 4.12).

Box 4.12. Examples of red flags for procurement corruption

World Bank red flags of fraud and corruption in procurement

1. Complaint from bidders or other parties
2. Multiple contracts below procurement threshold
3. Unusual bid patterns
4. Seemingly inflated agent fees
5. Suspicious bidder

Box 4.12. Examples of red flags for procurement corruption (continued)

6. Lowest bidder not selected
7. Repeated awards to the same contractor
8. Changes in contract terms and value
9. Multiple contract change orders
10. Poor quality works and/or services

Chartered Institute of Public Finance and Accountancy red flags

- Physical losses
- Manipulation of data
- Incomplete management/audit trail
- Budget overspends
- Unusual invoices (e.g. format, numbers, address, phone, VAT number)
- Duplicate/photocopy invoice
- Round sum amounts invoiced
- Sequential invoice numbers over an extended period of time
- Non-declaration of interest/gifts/hospitality
- No process identifying risks (e.g. risk register)
- Unusual relationship with suppliers
- Photocopied documents
- IT-controls of audit logs disabled
- IT-login outside working hours
- Vague description of goods/services to be supplied
- High number of failed IT logins
- Favoured customer treatment
- Interest/ownership in external organisation
- Lack of supporting records
- Unusual increases/decreases

Source: World Bank, “Most common red flags of fraud and corruption in procurement”, http://siteresources.worldbank.org/INTDOII/Resources/Red_flags_reader_friendly.pdf; OECD (2013), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264197305-en>.

Furthermore, the GACM could develop an integrity plan to facilitate the development of mitigation strategies following the mapping of specific corruption risks and thus ensure that all parties involved in the process are aware of existing integrity risks and mechanisms as well as their own responsibilities (Box 4.13).

Box 4.13. Australia's procurement probity plans

Australia's Procurement Transformation Division has developed a procurement guidance document that provides that a probity plan should be prepared before the commencement of each procurement process and forms part of procurement planning documentation. It should identify the probity risks and related management strategies for the procurement, including the role and responsibilities of each stakeholder in responding to those risks. Where the procurement is part of a broader project, the probity plan should be agreed with the project's governing body and management.

As part of the probity plan, a description should be provided of the probity services that are to be sourced, including whether a probity auditor and/or probity advisor is to be engaged, and the scope and nature of the probity services that will be delivered. All members involved in the procurement, or project, including the steering committee, advisors and other project stakeholders should be aware of arrangements put in place to preserve the probity of the process and should be provided with a copy of the probity plan.

Box 4.13. Australia’s procurement probity plans (continued)

In those procurement situations where more than one agency is involved in different elements of the procurement process, it is essential that the roles and responsibilities in relation to probity be addressed within the probity plan to ensure that accountabilities are clear and that governance practices are in place. The responsibility for probity remains with the agency to which funds have been appropriated. Where this agency engages service providers (Government or private) to engage in procurement activities on its behalf, it should require those providers to meet its (the agency’s) responsibility and particular requirements regarding probity. However, this does not transfer the responsibility for probity to the service provider, which remains with the agency.

Source: Procurement Transformation Division (2014), “Procurement guidance - Use of probity auditors and advisors in procurement”, www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideProbityAuditorsAdvisors.pdf (accessed 19 June 2015).

The GACM could use additional tools to avoid integrity risks during the procurement process***Social witnesses and social observers***

One way to face corruption risks is to create an interactive relationship with civil society through which they can take part in policy making and carry out a “direct social control” on government activities. In this context, Mexico is one of the first OECD countries to have introduced such controls through the involvement of so-called “social witnesses” in the procurement processes, who are legally required to participate in all stages of public tendering procedures above certain thresholds. In 2015, these thresholds are MXN 350 million (approximately USD 23 million) for goods and services and MXN 710 million (approximately USD 47 million) for public works.⁵

Social witnesses are elected by SFP through public tendering and when a federal entity requires the involvement of a social witness, 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 must subsequently be published on the Mexican federal e-procurement platform (CompraNet).

Social witnesses may also participate in public tendering procedures below the legal threshold, direct award procedures and restricted tendering if it is considered appropriate by SFP. During the field mission, GACM indicated that they were currently using social witnesses below the legal threshold - above MXN 100 million, approximately USD 6.5 million in the case of public works - as a way to promote public scrutiny and ensure the integrity of the process. However, this procedure is not institutionalised and is used on an ad hoc basis. The Public Works Procurement Manual of GACM only makes reference to the use of social witnesses in relation to the thresholds established by law. As of September 2015, the GACM has used 4 social witnesses for procedures ranging between USD 1.2 million and USD 6.6 million. This lack of institutionalisation may open the door to discretion in the decision as to whether to include or not a social witness in procurement procedures below the legal threshold. In addition, this initiative has only been applied to public works; it may be worthwhile to extend it to the procurement of

goods and particularly services. The GACM could establish in its procurement manuals the mandatory involvement of social witnesses or clear rules to define whether or not it is necessary to include social witnesses below the legal thresholds.

Furthermore, along with the use of social witnesses as a way for civil society to participate, GACM has established other useful instruments such as the use of so-called “social observers” to participate in tender procedures. Higher education institutions, schools or professional institutes, are now invited by the GACM to participate in the elaboration of the tender documents independently of the participation of one or more social witnesses. For this, GACM has created a memorandum of agreement with different higher education institutions and industrial associations such as the Engineering Institute of the National Autonomous University of Mexico (*Instituto de Ingeniería de la UNAM*). GACM also reports that in the near future they will enter into a similar agreement with the Society of Alumni of the School of Engineering of the National Autonomous University of Mexico (*Sociedad de Egresados de la Facultad de Ingeniería de la UNAM*).

Involving the private sector

Wrongdoing and breaches of integrity are sometimes a two-way street where not only public officials are involved. The role of the private sector is critical to maintaining the integrity of the process. In this sense, the Mexican procurement law provides that bidders under public tendering procedures must sign a declaration of integrity and provide a written statement that they are not subject to any conditions under the law preventing them from being awarded a contract. However, the declaration is not made public. A simple way to reinforce this tool would be for the GACM to publish the signed declarations of bidders on its website. The SCT has recently developed a template Declaration of Integrity, however as of September 2015 the template has not yet been put in place.

Although the GACM does not have the leading role in Mexico in developing integrity and accountability standards for businesses, it could engage with certain suppliers to explore ways to encourage them to develop their own standards and programmes to enhance integrity in their relationship with GACM, e.g. through mechanisms similar to the US Construction Industry Ethics and Compliance Initiative (CIECI), (Box 4.14).

Box 4.14. The Construction Industry Ethics and Compliance Initiative in the United States

The Construction Industry Ethics and Compliance Initiative (CIECI) is a non-profit private association that brings together more than 50 companies in the US construction industry to establish a process for the industry to promote integrity and ethical conduct.

The construction industry is the United States' largest industry, ranging from building contractors who construct homes, schools, hospitals, sky scrapers and shopping centres to the heavy construction industry that builds power plants, highways, bridges, airports, dams, water treatment facilities and the like. Vast and diverse, the construction industry consists of architect/engineers, contractors and subcontractors who tend to specialise. The essential goals of the initiative are the advancement of organisational cultures that encourage and support ethical behaviour and compliance with the law, and the sharing of best ethical and compliance practices within the industry.

Box 4.14. **The Construction Industry Ethics and Compliance Initiative in the United States** (*continued*)

The Initiative requires each signatory company to pledge to follow six core ethical principles, to adhere to these principles, and to participate in an Annual Best Practices Forum to discuss best ethical and business conduct practices among its members and with representatives from government and other organisations. The core principles are:

- Each member shall have and adhere to a written Code of Business Conduct. The Code shall establish high ethical values and compliance with the law applicable to the US construction industry.
- Each member shall train its personnel as to their personal responsibilities under the Code.
- Each member commits itself to work together toward maintaining open competition in the industry, free of conflicts of interest and undue influences.
- Each member shall be responsible for sharing best ethical and compliance practices in implementing the principles with others.
- Each member shall participate in the Annual Best Practices Forum.
- Each member, through participation in this Initiative, shall be accountable to the public.

Source: Construction Industry Ethics and Compliance Initiative, www.ciecinitiative.org/Faqs (accessed 18 June 2015).

Bidding documents standardisation

Another way to promote integrity in the procurement process is to standardise all bidding documents and procurement documentation to ensure predictability and systematic treatment. If non-standard bidding documents are used instead, it opens the door to manipulation and leads to opaque decision making (Transparency International, 2006). Considering that the tender documents cannot be standardised due to the complexity of the project and the specificity of works, goods and services that the GACM needs to procure, as far as possible other documents need to be standardised, such as bidding letters, template forms for the technical and economic proposals, statements of integrity as the ones currently being developed by SCT, etc.

The two-envelope approach

Furthermore, the GACM could implement the two-envelope approach to ensure that procurement decisions are taken according to the set criteria. During a bidding procedure using a two-envelope approach, bidders submit two sealed envelopes simultaneously, one with the technical proposal and the other with the economic proposal. Only the technical proposals are opened at the date and time indicated in the bidding document. The economic proposals remain sealed and are held in custody by the buyer (Asian Development Bank, 2015). The advantage of this approach is that the buyer can evaluate bids based solely on the technical requirements and proposals, without having any information about the cost. This excludes inadequate bids from the beginning, which

contributes to ensuring good quality infrastructure and makes the competition fairer. This approach is used for example in the Slovak Republic (Box 4.15).

Box 4.15. Two-envelope system used in the bids submission phase in the Slovak Republic

Two substantial amendments to the Act No. 25/2006 Coll., on Public Procurement became effective in 2013. In the bids submission phase of the procurement cycle, the one-stage tender process has been replaced by a two-stage tender, involving a “two-envelope system”.

Bids in the tenders are to be submitted in two parts: the “Criteria” part contains the offer with respect to the award criteria, i.e. in most cases only the price; while the “Other” part contains all other documentation and information related to the bid. The “Other” part is opened first and only after evaluation of whether the selection criteria (e.g. technical equipment) have been met can the “Criteria” part of all submitted bids be opened and evaluated. Generally, such a two-stage process should ensure that the price does not influence the technical evaluation of the bid.

Source: “Substantial changes in public procurement in Slovakia”, www.schoenherr.eu/knowledge/knowledge-detail/slovakia-substantial-changes-in-public-procurement-every-detail-counts/ (accessed 18 June 2015).

The four-eyes principle

A standard practice to encourage collective decisions in the procurement process is the four-eyes principle, or the two-person rule. It requires that at least two people take part in any decision making. It should apply to all phases of the procurement cycle, and beyond, from the needs assessment to the design of projects and selection of bidders. The four-eyes principle limits public officials’ discretionary power, ensures a certain level of deliberation and protects public officials from suspicion. The GACM could implement the four-eyes principle as carried out during the construction of the Tappan Zee Bridge Project, New York State, United States (Box 4.16).

Integrity monitor

Going beyond internal practices, there are initiatives that encourage all parties to a bidding process to make a mutual pledge under the oversight of an observer who would later monitor compliance. Guaranteeing oversight and preferably in the long term is an efficient way to prevent mismanagement and reassure the public that state funds are put to good use. Including an integrity monitor in a large infrastructure project allows for a comprehensive and constant oversight of the construction and management.

**Box 4.16. Four-eyes principle used in the Tappan Zee Bridge Project,
New York State, United States**

The “four-eyes” principle is a requirement that two individuals review and approve some 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 the 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 legal advisors, both public and private 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 regarding the reasonableness of the pricing for each of the proposals.
- A Technical Evaluation Teams 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: “Report of the Independent Procurement Integrity Monitor”, www.newnybridge.com/documents/int-monitor-report.pdf (accessed 19 June 2015).

As opposed to social witnesses who concentrate on one phase of the cycle, the integrity monitor follows the entire process, including procurement, contract management, fiscal oversight, records compliance and onsite construction monitoring. Corruption and mismanagement can stem from lack of information and internal communication. An integrity monitor following the entire process would thus contribute to reducing such risks. The GACM could explore the possibility of designating an integrity monitor who can follow the entire procurement cycle, as used during the Tappan Zee Bridge Project (Box 4.17).

Box 4.17. Integrity monitor, Tappan Zee Bridge Project, New York State, United States

In order to counter the corruption risks associated with the Design-Build model of the Tappan Zee Bridge project, it was decided to retain an independent procurement integrity monitor for this project. The Governor’s office and the NYSTA determined to address the tension between the need, on the one hand, for confidentiality in the evaluation of the proposals and negotiations with the proposers versus, on the other hand, the need for transparency in the decisions surrounding the expenditure of public funds, by having an independent firm, outside of the procurement process itself, monitor compliance with the controls governing that process.

The objectives of the integrity monitor included process evaluation, process enhancements and compliance monitoring. In order to achieve these ends, it was entitled to: *i)* obtain and review selected documentation relating to integrity and security of the procurement process; *ii)* make recommendations for enhancements of the process to appropriate personnel; *iii)* perform monitoring through: unannounced attendance at meetings selected on a random basis; review of documents produced by the procurement process; interview with those involved in process; physical observation of compliance with all critical security/integrity-related controls; communication with appropriate personnel as to any issues found so as to facilitate immediate remediation; and *iv)* prepare a final report.

Source: Thacher Associates, “Tappan Zee Hudson River Crossing Project: Report of the Independent Procurement Integrity Monitor”, www.newnybridge.com/documents/int-monitor-report.pdf (accessed 19 June 2015).

Safeguarding the integrity of the whole procurement process including in outsourced services and subcontracting

When an organisation invests in its integrity framework, it is essential to develop mechanisms to ensure that the standards it has set for itself apply to all its contractors and subcontractors as well, so as to guarantee that the reputation and image of the organisation will not be tarnished by the behaviour of contracted partners.

Making sure that all partners involved in a project maintain high integrity, transparency and accountability standards is highly beneficial for the organisation and is essential to preventing corruption risks that would reflect badly on the public administration. Requiring contracted partners to apply the same norms and ethical standards creates a level playing field that allows for better and clearer collaboration and facilitates management.

Consultants and advisors might specifically face a number of ethical dilemmas in the course of their relationship with their clients. The particular nature of their work may very well put confidential and privileged information at their disposal, which may be misused.

There is a risk of conflicts of interests occurring and of creating a dependency between consultants and clients, which could compromise the integrity of the consultancy services and introduce a bias in the selection of future consultants (Transparency International, 2011).

Due to the limited capacity of the GACM and the short timeframe to carry out the procurement processes, a great number of activities are being outsourced. For instance, the GACM has outsourced staff that have no legal or labour obligation with the GACM; consultancy firms may advise on the design or revision of tender documents; and most probably, contractors will subcontract part of their activities.⁶

It is thus of outmost importance, that while entering in contractual relationships with consultants and other partners, particularly in connection to the procurement process, GACM makes sure its internal integrity mechanisms apply to them as much as it applies to GACM personnel. Alternatively, special integrity mechanisms could be developed specially for them as carried out by the US House of Representatives (Box 4.18).

Box 4.18. 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 to 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, shows, etc.

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, obtain some basic financial information on the individual's source of income, the type of income and the rate at which he is compensated, the identity of each client for whom he is providing services, 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 monitoring of the consultant's compliance with conflict of interest rules.

Source: U4 (2011), "Examples of integrity agreements for consultants and advisors", U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, Bergen, Norway, www.u4.no/publications/examples-of-integrity-agreements-for-consultants-and-advisors (accessed 22 June 2015).

In addition, the GACM code of conduct can be applicable to all those involved in the procurement process as it is the practice in Queensland, Australia (Box 4.19) or include specific provisions in the consultancy agreements, such as: *i)* confidentiality; *ii)* prevention of bribery; *iii)* declaration of interest; and *iv)* a declaration of ethical commitment, as is the case in Hong Kong (Box 4.20).

Box 4.19. Code of Conduct for the Queensland (Australia) Public Service

Application

This code applies to employees of Queensland public service agencies. Public service agencies are defined under the Public Sector Ethics Act 1994 as:

- a department
- a TAFE institute or statutory TAFE institute
- the administrative office of a court or tribunal
- an entity prescribed by regulation.

For the purposes of this document only, employees (other than judicial officials), are defined as:

- any Queensland public service employee whether permanent, temporary, full-time, part-time or casual
- any volunteer, student, contractor, consultant or anyone who works in any other capacity for Queensland public service agency.

The code applies at all times when we are performing official duties including when we are representing the Queensland Government at conferences, training events, on business trips and attending work-related social events.

Source: www.psc.qld.gov.au/includes/assets/qps-code-conduct.pdf (accessed 13 June 2015).

Box 4.20. Ethical commitment clauses for inclusion in consultancy agreements: Hong Kong's ICAC Best Practice Checklist

Hong Kong's Best Practice Checklist aims at providing organisations with a user friendly and step-by-step procedural guide, with recommendations on safeguards to minimise corruption risks, for the employment of consultants and monitoring of their services. Organisations are expected to adapt the recommended safeguards to suit their organisational structure, resources, risk exposures, and any statutory requirements applicable to the works projects.

Ethical commitment clauses for inclusion in the consultancy agreements have four major areas of focus, including: *i)* confidentiality; *ii)* prevention of bribery; *iii)* declaration of interest; and *iv)* a declaration of ethical commitment.

- The confidentiality clause commits the consultant not to disclose information such as the terms of the agreement or any report, document, specification, software, data, etc., to outsiders, whether they are furnished by the employer or generated by the consultant.
- The prevention of bribery clauses require consultants to prohibit their directors, agents, sub-contractors or staff involved in the agreement from offering, soliciting or accepting any advantage as defined in the Hong Kong's Prevention of Bribery ordinance. Consultants should also caution their staff from soliciting or accepting excessive hospitality, entertainment or inducement that may compromise their impartiality in relation to the assignment.

**Box 4.20. Ethical commitment clauses for inclusion in consultancy agreements:
Hong Kong’s ICAC Best Practice Checklist (*continued*)**

- The declaration of interest clause commits the consultant to declare in writing any conflict of interest or potential conflict between their personal/financial interest and their duties in connection with the agreement.
- The declaration of ethical commitment clauses consist of a declaration of compliance with the confidentiality and prevention of bribery clauses in a form provided by the contracting authority when requesting payment of services. Payment can be withheld until the consultant submits the signed declaration.

The checklist provides sample forms that can be adopted or adapted where applicable. It includes sample codes of conduct with report forms on gifts received, declaration of conflict of interest, sample probity, anti-collusion and debarment clauses as well as declaration forms on compliance.

The checklist can be found here: www.icac.org.hk/filemanager/en/Content_1031/manworkconsult.pdf.

Source: U4 (2011), “Examples of integrity agreements for consultants and advisors”, U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, Bergen, Norway, www.u4.no/publications/examples-of-integrity-agreements-for-consultants-and-advisors/ (accessed on 22 June 2015).

Enhancing transparency and access to information in the construction of the new airport

Going beyond the law: Proactive disclosure of public procurement and project information

Proactive disclosure of procurement and project information and documents promotes a culture of openness around the project and ensures that procedures and decisions may be widely monitored, commented upon and influenced by relevant stakeholders. Conversely, lack of transparency or selective information can hide corruption and manipulation, and is increasingly perceived as doing so. Knowing about the rationale behind an infrastructure project as well as the level of budget allocation and technical specificities can help the public better understand the Government’s choice. Therefore, transparency should be seen as an opportunity to enhance trust and get buy-in for the project.

Giving the public a clear and consistent channel to access information could strengthen public trust in GACM’s various projects. In Mexico, the law makes the proactive disclosure of information mandatory for a wide range of areas including on the structure of the entity and its procurement. In 2007, Mexico entrenched access to information as a fundamental right through constitutional amendments. The National Institute of Transparency, Access to Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos*, INAI)-former IFAI-was established by law to effectively guarantee citizens’ access to information. INAI also ensures that information is proactively published and disseminated. According to INAI data, between January and September 2015, the GACM has received 80 requests for information, 10% of which have been appealed.

These numbers reflect the fact that the GACM has taken its obligation regarding transparency seriously. In this light, the Transparency and Accountability Unit at the GACM should perform the following functions:

- collect and disseminate the information of the “Portal of transparency obligations”, and encourage the administrative units to update it regularly
- receive and process requests for access to information
- assist citizens in the development of applications and, in case, orient them towards the departments, entities or any other body that might have the information they request
- perform the internal procedures of each unit or entity, necessary to deliver the requested information, in addition to performing the notifications to citizens
- enable the public servants of the unit or entity as are necessary, to receive and process requests for access to information
- keep a record of the applications for access to information, their results and costs.

In addition, the unit puts forward to the Information Committee the internal procedures to ensure greater efficiency in the management of the access to information requests. This does not exist, however, inside the GACM. Due to the specificity of the project and the national security dimension, some information will not be publicly available. This unit together with the Information Committee could proactively establish guidelines on what kind of information will be disclosed. These guidelines could be published on the GACM website and could explain the main provisions of the Federal Transparency and Access to Government Public Information Act in plain language, especially that which is related to confidential information.

It may be helpful to consider the Guide to Open Government 2.0 (OGP, 2013) which establishes that an organisation should identify the core classes of information to be disclosed, including:

- *Contracts*, including licenses, concessions, permits, grants or any other document exchanging public goods, assets, or resources (including all annexes, schedules and documents incorporated by reference) and any amendments.
- *Related documents* such as pre-studies, standard bid documents, performance evaluations, guarantees, and auditing reports.
- *Key pieces of information concerning contract formation*, including the planning process, method of award, scope and specifications for each contract, criteria for evaluation and selection, bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify, any conflicts of interest uncovered or debarments issued, results of the evaluation, including the justification for the award, and the identity of the contract recipient and any statements of beneficial ownership provided.
- *Information related to performance of the contract*, including subcontracting arrangements, schedules and milestones, status of implementation, dates and amounts of stage payments made or received, service delivery and pricing, arrangements for ending contracts, final settlements and responsibilities, risk assessments, including environmental and social impact assessments, assessments of assets and liabilities of government, provisions in place to ensure appropriate

management of ongoing risks and liabilities, and appropriate financial information regarding revenues and expenditures, such as time and cost overruns.

Furthermore, in February 2015, the INAI and the GACM worked together in a programme to “Ensure transparency and access to information in the infrastructure project known as the new international Airport of Mexico City”. Although, the Programme was never formalised the GACM and/or the INAI are working among others on the following actions:

- INAI provide training to public servants and citizens through its online platform and workshops.
- The GACM website will be able to transmit online the opening of bids
- Implementation of a request for information scorecard
- Implementing a model document for the management of Transparency and Access to Information networks. To respond to this action, recently the GACM hired an expert on managing archives.
- Implement a working group in which officials of the different entities comprising the airport sector participate. They meet upon request of the SCT.
- Publication of the asset declaration of the senior management of the institutions involved in the process of building the NAICM in order for citizens to be aware of changes on the assets of the top decision-makers. This has been a difficult action to be implemented as does not have reached consensus in the public administration.

Providing citizens with access to information is an important yet often time-consuming task. Offering access to information thus requires adequate financial and human resources to allow for a dedicated service with sufficient staff to fulfil the task. The GACM could consider reinforcing its structure to be able to keep up to its transparency and access to information requirements.

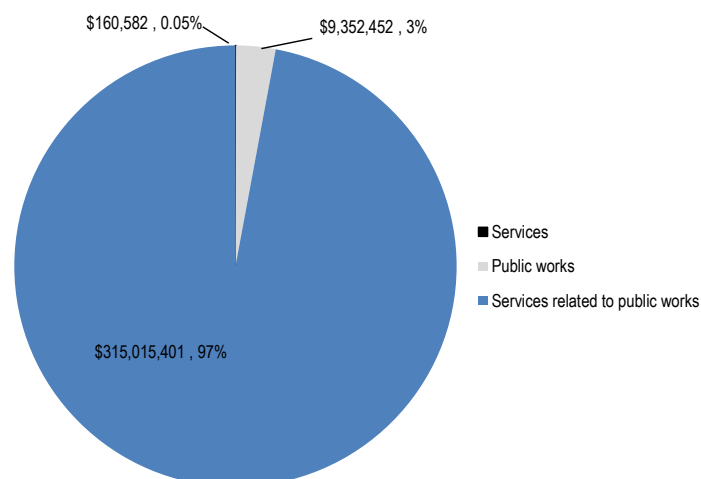
The public procurement information provided in the GACM website is insufficient

Although the GACM has been disclosing information, the quality and availability of data on its procurement processes remains uneven, therefore making access to easily understandable, up-to-date and complete information difficult for citizens and suppliers. While GACM has taken an important step forward by making a considerable amount of information publicly available and has advanced on this front since the beginning of the project, areas for improvement remain.

The GACM has published what has been procured (Figure 4.1). It seems that this information only relates to the construction of the airport *per se* and not on other related activities of the GACM. According to this information, no contracts were awarded for goods, while the annual plan for goods and services may indicate the contrary (see www.aeropuerto.gob.mx/gacm/programas-anales.php). In addition to what is procured, GACM is currently publishing a list of contracts and suppliers. As of September 2015, only nine contracts and nine suppliers were published. Yet, when compared to the Mexican federal e-procurement platform (CompraNet), at least 83 contracts have been concluded.⁷ The discretion in the publication of contracts lowers the perceived transparency of the project. The GACM could, as a consequence, publish all the

procurement information not only related to the airport but also to the functioning of the GACM.

Figure 4.1. Snapshot of GACM procurement information (USD)



Note: The calculation in USD was based on USD 1≈MXN 17.05, as of 28 September 2015.

Source: Extracted from the GACM website, www.aeropuerto.gob.mx/gacm/que-se-ha-comprado.php (accessed 28 September 2015).

In addition, the GACM could publish procurement information by the type of procedure used in terms of numbers and in terms of value, as is normally carried out in many OECD countries (Box 4.5). Moreover, to avoid any misinterpretation, the GACM could consider providing clear definitions of the procurement procedures and the most common exceptions to public bidding that are foreseen.

Furthermore, the GACM website provides information about future procurements or procurement plans. However, this information, in PDF format, does not provide a clear timeframe for the procurement of goods and it is not possible to view the ongoing processes or how the procurement processes are conducted in relation to the procurement plans. The GACM could consider publishing the procurements plan in a usable format that can allow distinguishing from what was already procured, what is currently being procured and what will be procured in the future.

Although CompraNet may provide most of this information, it has been evidenced from previous OECD reviews that often CompraNet does not provide all the information related to the procurement process and that it is not considered to be very user friendly by internal and external users. CompraNet experiences technical difficulties in uploading or downloading information, making the process slow and inefficient. In this regard, GACM could proactively publish, on its webpage, all the relevant information, such as annual procurement programmes, tender procedures (solicitation documents, minutes of the clarification meetings and of the opening of tenders), contract awards history, modification to contracts and formal complaints (*inconformidades*), as carried out for example by New York City (Box 4.21).

Box 4.21. Checkbook NYC

In July of 2010, the New York City Comptroller's Office launched Checkbook NYC, an online transparency tool that for the first time placed the City's day-to-day spending in the public domain. Using an intuitive dashboard approach that combines a series of graphs and user-friendly tables, Checkbook NYC provides up-to-date information about the City's financial condition.

The website provides information about:

- budget
- revenue
- spending
- contracts
- payroll
- sub vendors.

Information can be found under contracts, including detailed information on contracts, contract modification, vendors, award methods and more.

Contracts include information on the contracting agency, prime supplier, current amount of the contract, original amount and how much has been spent to date.

CONTRACT ID	PURPOSE	CONTRACTING AGENCY	PRIME VENDOR	CURRENT AMOUNT	ORIGINAL AMOUNT	SPENT TO DATE
CT185620050034130	PUBLIC UTILITY	DEPARTMENT OF CITYWIDE ADMINIST...	NEW YORK POWER AUTHORITY	\$7.19B	\$7.19B	\$5.80B
CT100220060028251	FUNDING AGREEMENT	MAYORALTY	MTA BUS COMPANY	\$3.12B	\$1.04B	\$2.66B
CT182720141400213	MANAGEMENT, TRANSPORTATION A...	DEPARTMENT OF SANITATION	COVANTA SUSTAINABLE SOLUT...	\$2.86B	\$2.86B	\$4.89M
CT100220070029782	HUDSON YARDS SUPPORT & DEVELO...	MAYORALTY	HUDSON YARDS INFRASTRUCTURE CO	\$1.83B	\$1.83B	\$0.00
CT106920141428608	CHANGE OF OWNERSHIP OFFICE...	DEPARTMENT OF SOCIAL SERVICES	VANDERBILT ASSOCIATES OWNER LP	\$1.71B	\$1.71B	\$10.36M

Information on contract modification includes, among other things, the percentage between the original contract amount and the current amount, as well as how much the contract has been modified.

Top 5 Contract Amount Modifications *Number of Contract Modifications: 4,435*

CONTRACT ID	PURPOSE	CONTRACTING AGENCY	PRIME VENDOR	CURRENT AMOUNT	ORIGINAL AMOUNT	SPENT TO DATE	DOLLAR DIFFERENCE	PERCENT DIFFERENCE
CT100220060028251	FUNDING AGREEMENT	MAYORALTY	MTA BUS COMPANY	\$3.12B	\$1.04B	\$2.66B	\$2.08B	200%
CT100220040015984	FUNDING AGREEMENT	MAYORALTY	DORMITORY AUTHORITY...	\$556.88M	\$120.00M	\$533.46M	\$436.88M	364.07%
CT182697B4876	AGREEMENT TO PROVIDE...	DEPARTMENT OF ENVIRO...	NYS ENV FACILITIE...	\$410.30M	\$79.60M	\$374.54M	\$330.70M	415.46%
CT185620020005358	BUILDING LEASE	DEPARTMENT OF CITYWI...	59 MAIDEN LANE ASSO...	\$587.68M	\$297.98M	\$188.88M	\$289.70M	97.22%
CT18269236727	DESIGN OF THE CROTON...	DEPARTMENT OF ENVIRO...	METCALF & EDDY OF N...	\$299.50M	\$44.23M	\$288.57M	\$255.27M	577.19%

Source: Checkbook NYC, official New York City website, www.checkbooknyc.com/contracts_landing/status/A/yeartype/B/year/116 (accessed 22 June 2015).

Lastly, to proactively disclose documents and data in a timely manner without having to incur excessively high costs, there needs to be a routine system of data collection that is easy to use and that makes data accessible to analyse. The OGP (2013) suggests the following:

- Where feasible, contracting information should be digitised and made available to the public on an online portal.
- Structured formats such as structured XML and inclusion of all relevant metadata allows for user- friendly searching and access.
- Digital information should be retained and made available in perpetuity.
- Where possible, use non-proprietary software applications.

Where possible, citizens should have the ability to subscribe to services to alert them of certain types of contracting developments through the use of email, SMS text, or other technologies. GACM’s website can also be an important instrument to promote civil society scrutiny of the project

Social scrutiny or social accountability mechanisms, such as community monitoring, contribute to improving the quality and performance of a given project. They help empower local groups and enhance public participation, thanks to channels made for citizens to voice their concerns, provide constructive feedback, and flag wrongdoings and abuses (Transparency International, 2013b).

Allowing for social scrutiny contributes to strengthening the ties between citizens and their local or central government, which can have positive implications for reinforcing democratic governance. By constructing these linkages, social scrutiny can help improve the focus of public investment project, monitor the performance of the administration and promote responsive governance. Social scrutiny tools have the benefit of making the needs of the most vulnerable groups visible. More generally, it helps improve government transparency, and expose abuses and corruption (UNDP, 2010).

GACM could take into account that proactive disclosure of information cannot only be on information on public procurement. It can provide citizens and other stakeholders with necessary information about the whole project. During the fact-finding mission, complaints were raised about the lack of information on the project. For instance, the website could reach the actual construction stage and allow the public to monitor the advancement of work through photos and videos, as in the case of the Tappan Zee Hudson River Crossing Project in New York (Box 4.22).

Box 4.22. Tappan Zee Bridge video-camera monitoring

Public involvement is an integral part of the transportation planning process. Accordingly, the goal of the public and agency involvement programme for the Tappan Zee Hudson River Crossing Project is to ensure open, collaborative, and meaningful public and agency participation throughout the process. The project has its own website where the public can keep up to date on the project, where all non-confidential information is made available to the public and where advancement of work can be observed live through construction cameras.

Source: <http://newnybridgegallery.com/webcam.php> (accessed 14 June 2015).

Furthermore, webpage complaint mechanisms are increasingly recognised as a valuable tool to promote government accountability. Complaint mechanisms give citizens channels to provide feedback and submit complaints to public bodies in order to improve their work and services. Public institutions must consider a few key principles when designing complaint mechanisms, such as transparency, independence, accountability, accessibility, safety and user-friendliness (Transparency International, 2014b).

Making the complaint mechanisms look quite informal and accessible is a key to success, as it reduces potential user intimidation while still allowing public officials to have access to feedback on public services and policies. Making it simple for people to give feedback and empowering them to report mismanagement and abuse, without having to escalate it into a formal complaint mechanism can create a powerful feedback loop for public services. To be as user-friendly as possible, these feedback channels should be set up around what people already use and like (e.g. mobile phones, markets, prayer groups, schools). Technology opens up new avenues through which citizens can give their views, such as using SMS, and online social media channels (OGP, 2013).

Currently, under the GACM webpage there is a link to file a complaint; however, the user is redirected to the SFP webpage describing the procedure to follow. It is stated that the complaint can be done through email, postal mail, in person or by phone. Once this is done the complaint is directed to the OIC of the entity. The GACM OIC's and the SFP could work together to develop a complaint template that will be posted in the GACM website for suppliers and citizens to make their complaints on line. The GACM could follow the example of New York State Office of the Inspector General and have the template in different languages (Box 4.23). The complaint could arrive directly at the GACM OIC email address and could include a follow-up number for the user to follow up his/her complaint.

Box 4.23. Online complaint form, New York State, Office of the Inspector General

The Inspector General's Office is entrusted with the responsibility of ensuring that the state government, its employees and those who work with the state meet the highest standards of honesty, accountability, and efficiency.

It has created an online complaint form to report allegations of misconduct in state government. The complaint form is created to have as much information as possible on:

- Who is engaging in misconduct?
- Which state agency is involved?
- What wrongdoing occurred?
- When did it happen?
- Are there witnesses to the misconduct that we can contact?
- What laws or agency regulations have been violated?

The form also asks for information about the complainer, but he/she can request confidentiality. In addition, also the complainer can provide information about the documentation in his/her possession that relates to his/her complaint. The form is available in other six languages including French, Spanish, Chinese and Russian.

Source: New York State, Office of the Inspector General, "Online complaint form", <http://ig.ny.gov/content/on-ine-complaint-form> (accessed 22 June 2015).

Proposals for action

To enhance the integrity and transparency of its public procurement processes, GACM could consider taking the following actions:

- The GACM could promote a culture of integrity through:
 - raising awareness of corruption risks among its personnel, particularly among those involved in the procurement process
 - amending its code of conduct, taking into account that it will need to: *i)* outline to GACM personnel and partners what is expected of them in terms of conduct; *ii)* contribute to reinforcing integrity in the organisational culture by setting new norms; and *iii)* provide a disciplinary framework to sanction deviant behaviour
 - developing specific standards for procurement officials, for example through code of conduct for GACM procurement officials
 - ensuring that its code of conduct is known and create one code of conduct for all those involved in the procurement process including consultants, outsourced personnel and subcontractors
 - providing training for procurement officials on integrity, ethics and anti-corruption tools
 - increase the visibility and awareness of the Ethics Committee to have a better dissemination and enforcement of the code of conduct and subsequent adaptation of norms to new risks
 - developing a comprehensive conflict of interest policy, including the development of a Procurement Management Framework that lists situations which would be considered as a conflict of interest and provides guidance on the steps to follow
 - checking any potential conflicts of interest before the procurement process begins and allowing bidders to disclose any potential conflict of interest they may have with the contracting organisation or with the other bidders
 - assessing the possibility of discussing with its public officials which channels will provide confidence to report wrongdoing
 - implementing training and education on the notion of integrity and the purpose of reporting to encourage the correct use of reporting mechanisms and prevent misuse
 - engaging with groups of suppliers to explore ways to encourage them to develop their own standards and programmes to enhance integrity in their relationship with the GACM.
- The GACM OIC:
 - could ensure it does not only perform a control role but also serves as an advisory body for GACM management and procurement units to achieve greater effectiveness and efficiency of the procurement process.

- GACM procurement units and the OIC could work closely with the GACM internal control committee and the SFP's *Mesa de acompañamiento* to ensure efficient and transparent procurement procedures.
- The GACM OIC's and the SFP could work together to develop a complaint template on the GACM's website to allow suppliers and citizens to make complaints on line.
- The GACM could avoid integrity risks during the procurement process by:
 - Developing a corruption risk map of the organisation and its processes in order to identify the positions of officials that are particularly vulnerable, the activities in the procurement cycle where risks can arise, and the specific projects at risk. This will also allow the GACM to:
 - use a system of red flags following the development of a risk map
 - develop an integrity plan to facilitate the development of mitigation strategies following the mapping of specific corruption risks and thus ensure that all parties involved in the process are aware of existing integrity risks and mechanisms as well as their own responsibilities.
 - Continue with the involvement of civil society experts through the inclusion of social observers in key procurement procedures.
 - Reducing in its procurement manuals the threshold for the mandatory use of social witness for the procurement of public works, goods and services; as well as including in its procurement manuals other conditions under which a social witness needs to be included.
 - Developing standard bidding documents for the technical and economic proposals, statement of integrity, and disclosure forms for current commitments and financial situation.
 - Implementing the two-envelope approach to ensure that procurement decisions are taken according to the set criteria.
 - Implementing the four-eyes principle to limit public officials' discretionary power and ensure a certain level of deliberation and the protection of the public officials from suspicion.
 - Exploring the possibility to designate an integrity monitor that can follow all the procurement cycle.
 - Ensuring that its existing internal integrity mechanisms are known by and applicable to consultants, outsourced personnel and subcontractors as much as it applies to GACM personnel, through for example a code of conduct.
- The GACM could improve the transparency of its procurement activities by:
 - ensuring that it has the needed resources, structure and capacities to perform these functions
 - publishing all the procurement information not only related to the airport but also to the functioning of the GACM

- publishing procurement information by the type of procedure used in terms of numbers and in terms of value
- providing clear definitions of the procurement procedures and the most common exceptions to public bidding that are foreseen
- proactively establishing and publishing online guidelines in plain language on all the information disclosed
- publishing procurement plans in a usable format that can allow distinguishing from what was already procured, what is currently being procured and what will be procured in the future
- proactively publish, on its webpage, all the relevant information such as annual procurement programmes, tender procedures (solicitation documents, minutes of the clarification meetings and of the opening of tenders), contract awards history, and modification to contracts
- publishing the signed declarations of bidders on its website.

Notes

1. For more information, see http://dof.gob.mx/nota_detalle.php?codigo=5404567&fecha=20/08/2015
2. For more information, see <http://reniresp.funcionpublica.gob.mx/ppcapf/consulta/consultaGeneral.jsf>.
3. For more information, see http://dof.gob.mx/nota_detalle.php?codigo=5404568&fecha=20/08/2015.
5. The amount equals to 5 million days of daily minimum wage at Mexico D.F for goods and services and 10 million days of daily minimum wage at Mexico D.F for public works. The 2015 daily minimum wage in Mexico D.F is MXN 70.10, approximately USD 4.60.
6. Article 63 Section II of ROPSRM states that proposals which commit to subcontract part of the public works to SMES should receive points or percentages: “*a los licitantes que se comprometan a subcontratar MIPYMES para la ejecución de los trabajos que se determine en la convocatoria a la licitación pública, se les otorgaran puntos o unidades porcentuales de acuerdo a los lineamientos señalados en el párrafo anterior.*”
7. This estimation was based on only those procedures that had all the information, including the type of procedure used, as of 28 September 2015.

References

- Asian Development Bank, (2015), *Bidding Procedures*. www.adb.org/site/business-opportunities/operational-procurement/goods-services/bidding-procedures
- CCAB, (2014), *Developing and implementing a code of ethical conduct*, www.ccab.org.uk/PDFs/Code_Guidance_final_SG_Amends2.pdf
- Corporate Executive Board, CEB, (2015), *Why integrity pays*, www.executiveboard.com/exbd/legal-risk-compliance/integrity-capital/index.page.
- Control Risks, (2011), *Assessing corruption risks*, https://www.controlrisks.com/~media/Public%20Site/Files/Our%20Thinking/risk_assessment_published.pdf
- Construction Sector Transparency Initiative, COST, (2012), *Press Release*. www.constructiontransparency.org/documentdownload.axd?documentresourceid=8.
- Forbes. 2013. *The Real Cost Of Bribery*. www.forbes.com/sites/hbsworkingknowledge/2013/11/05/the-real-cost-of-bribery/
- Hawkins J, (2013), *How to Note: Reducing corruption in infrastructure sectors. Evidence on Demand*, www.engineersagainstopoverty.org/documentdownload.axd?documentresourceid=4.
- Kenny C, (2009), “Measuring Corruption in Infrastructure: Evidence from Transition and Developing Countries”, *Journal of Development Studies*, 45(3), pp. 314-332.
- OECD (2015), *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264230781-en>.
- OECD (2013a), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Public Governance Reviews, OECD Publishing, <http://dx.doi.org/10.1787/9789264197305-en>.
- OECD, (2013b), *Ethics Training for Public Officials*, OECD Publishing, Paris. www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf.
- OECD, 2009, *OECD Principles for Integrity in Public Procurement*, OECD Publishing, Paris, www.oecd.org/gov/ethics/48994520.pdf.
- OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264027510-en>.
- Open Government Partnership, (2013), *Guide to Open Government 2.0*. www.ogp.org/wp-content/uploads/2013/02/Guide-to-open-government-public-contracting.pdf.

- Transparency International (2014a), “Implementing codes of conduct in public institutions”, www.transparency.org/whatwedo/answer/implementing_codes_of_conduct_in_public_institutions
- Transparency International, (2014b), *Local-level complaint mechanisms in developing countries*, www.transparency.org/whatwedo/answer/local_level_complaint_mechanisms_in_developing_countries
- Transparency International (2013a), “Whistleblowing in Europe”, www.transparency.de/fileadmin/pdfs/Themen/Hinweisgebersysteme/EU_Whistleblower_Report_final_web.pdf, p. 25.
- Transparency International (2013b), *Community monitoring of humanitarian aid and service delivery*, www.transparency.org/files/content/corruptionqas/Community-monitoring-aid-service-delivery-.pdf
- Transparency International, (2011), *Corruption Risk Assessment Topic Guide*, http://gateway.transparency.org/files/uploads/Corruption_Risk_Assessment_Topic_Guide.pdf
- Transparency International, (2006), *Handbook for curbing corruption in public procurement*. www.transparency.org/whatwedo/publication/handbook_for_curbing_corruption_in_public_procurement
- UNDP, 2010, *Fostering Social Accountability from Principle to Practice*, www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/dg-ogc-Fostering%20Social%20Accountability-Guidance%20Note.pdf
- Wells, J. (2015), “Corruption in the construction of public infrastructure: Critical issues in project preparation”, *U4 Issue* No. 8, U4 Anti-corruption Resource Centre, Chr. Michelsen Institute, Bergen, Norway.



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