

# **4**

## **Ensuring integrity and accountability in public procurement in the State of Mexico**

---

This chapter analyses the system for ensuring the integrity and accountability of public procurement processes in the State of Mexico, the existing integrity policies and the legal framework to establish how effective they are at mitigating the risk of corruption and managing conflicts of interest during the public procurement cycle. The chapter also discusses the risk management strategies and tools available in the State of Mexico to identify and address corruption and fraud risks and adapt control activities effectively in order to ensure the proper function of the public procurement system. Finally, it assesses the measures implemented to actively engage the private sector and civil society in promoting integrity in public procurement and the courses of action that suppliers can take to challenge procurement decisions during tender procedures and contract execution.

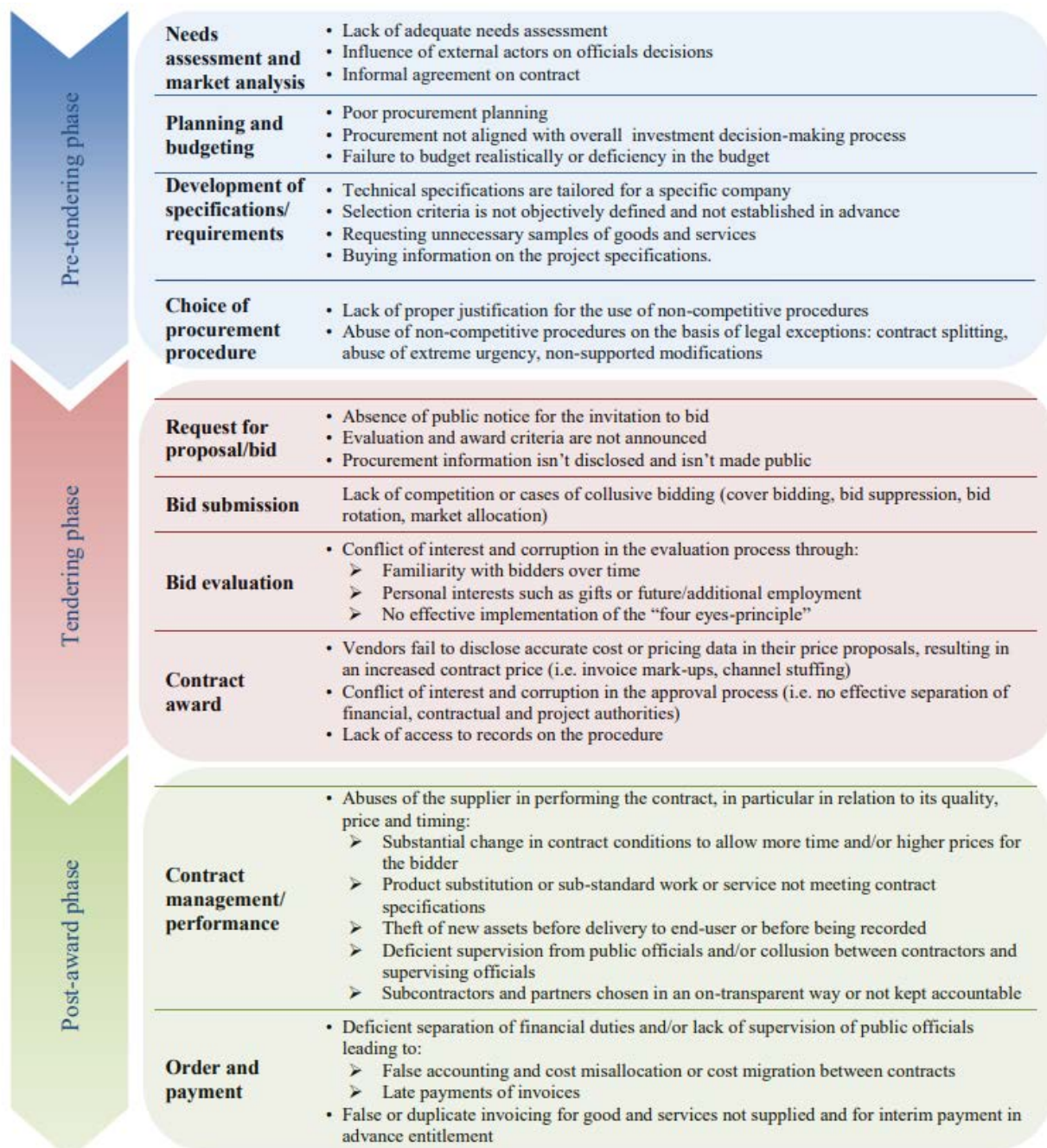
---

Public procurement is one of the government activities most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public servants and businesses, and the multitude of stakeholders.

Various types of corrupt acts may exploit these vulnerabilities, such as embezzlement, undue influence in the needs assessment, bribery of public officials involved in the award process, or fraud in bid evaluations, invoices or contract obligations. In many OECD countries, significant corruption risks arise from conflicts of interest in decision-making, which may distort the allocation of resources through public procurement. Moreover, bid rigging and cartelism may further undermine the procurement process (OECD, 2016<sup>[1]</sup>).

Integrity risks affect all stages of the procurement cycle, as they exert different kinds of pressure at every step – from needs assessment to execution, contract management and evaluation (see Figure 4.1).

Figure 4.1. Integrity risks throughout the public procurement cycle



Source: (OECD, 2016<sup>[1]</sup>).

Corruption in public procurement can both occur at the national and subnational levels. On the one hand, decentralisation may narrow the scope for corruption, in line with the assumption that politicians and public servants at local levels are more accountable to the citizens they serve. Voters may be better able to discern the quality of their leadership and the results they deliver. Likewise, local politicians and civil servants can be more in touch with specific needs and contexts of their constituencies. However, greater opportunities and fewer obstacles to corruption may be at play at the subnational level, due to weaker governance capacity (through for example less developed auditing functions, limited legal expertise or low

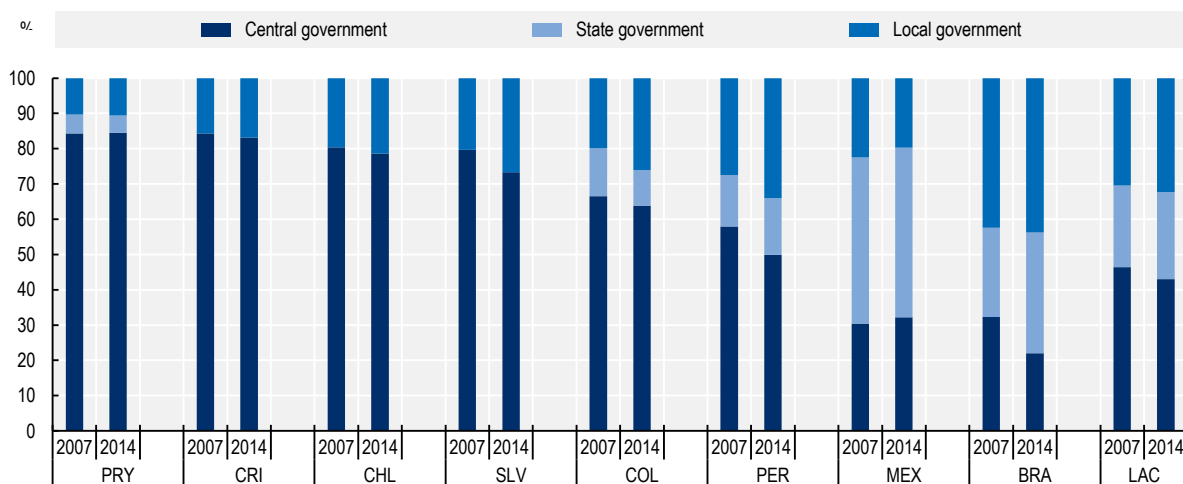
IT capacity) or closer community contacts between public officials and business representatives (OECD, 2016<sup>[11]</sup>).

In fact, previous OECD public procurement reviews in Mexico's federal states (i.e., Nuevo León and Sonora) found many opportunities to further integrity and internal control in public procurement. For example, while integrity policies and frameworks have been adopted by many federal states, very few guidelines and tools have been specifically developed for procurement officials. State governments are often unaware of the integrity risks present in public procurement and hence lack the tools to map such risks and apply mitigation measures. Issues such as conflicts of interest have been further regulated but the implementation of such rules is work in progress and still has to demonstrate effectiveness in preventing misbehaviour.

This chapter analyses the State of Mexico integrity policies and the legal framework it applies to public procurement operations. The chapter highlights recent developments and emphasises areas where further efforts are needed. Specifically, it discusses ethics frameworks, corruption risk mapping, disclosures and management of conflicts of interest, as well as integrity training and awareness programmes. It also addresses the key role of the private sector in these issues and the importance of making extensive the integrity standards to all stakeholders in the procurement cycle. Finally, the chapter assesses these issues against the key principles of the OECD *Recommendation on Public Procurement* (OECD, 2015<sup>[12]</sup>) and the initiatives taken in the context of establishing the anti-corruption system of the State of Mexico (*Sistema Anticorrupción del Estado de México y Municipios*, SAEMM).

In Mexico, public procurement represents 5.2% of GDP and 70% of this activity is carried out at the sub-national level, as described in Figure 4.2. Public procurement activities in the State of Mexico accounted for nearly MXN 71 968 million in 2019, which represents 24.7% of the expenditures budget of the state. Spending on public procurement in the State of Mexico is concentrated in the areas of health, public safety, social development, and education, as illustrated in Table 4.1.

**Figure 4.2. Share of general government procurement in selected Latin American countries by level of government, 2007 and 2014**



Source: (OECD, 2017<sup>[3]</sup>), "Share of general government procurement by level of government, 2007 and 2014", in Public procurement, OECD Publishing, Paris, <https://doi.org/10.1787/9789264265554-graph110-en>.

**Table 4.1. Main institutions spending in public procurement in the State of Mexico, 2019**

Institution	Public procurement budget, millions (MXN)	Percentage of the total budget of the institution
Health Institute of the State of Mexico (ISEM)	10 254	3.5
Institute for Social Security of the State of Mexico and Municipalities (ISSEMYM)	9 125	3.1
Ministry of Social Development	7 030	2.4
Ministry of Public Safety	7 397	2.5
Ministry of Finance	5 035	1.7
Integrated Education Services of the State of Mexico	4 307	1.5

Source: Information provided by the Government of the State of Mexico.

The OECD *Recommendation on Public Procurement* highlights the importance of safeguarding integrity in the public procurement system.

#### Box 4.1. The OECD Recommendation on Public Procurement (integrity)

##### The Council:

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

To this end, Adherents should:

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

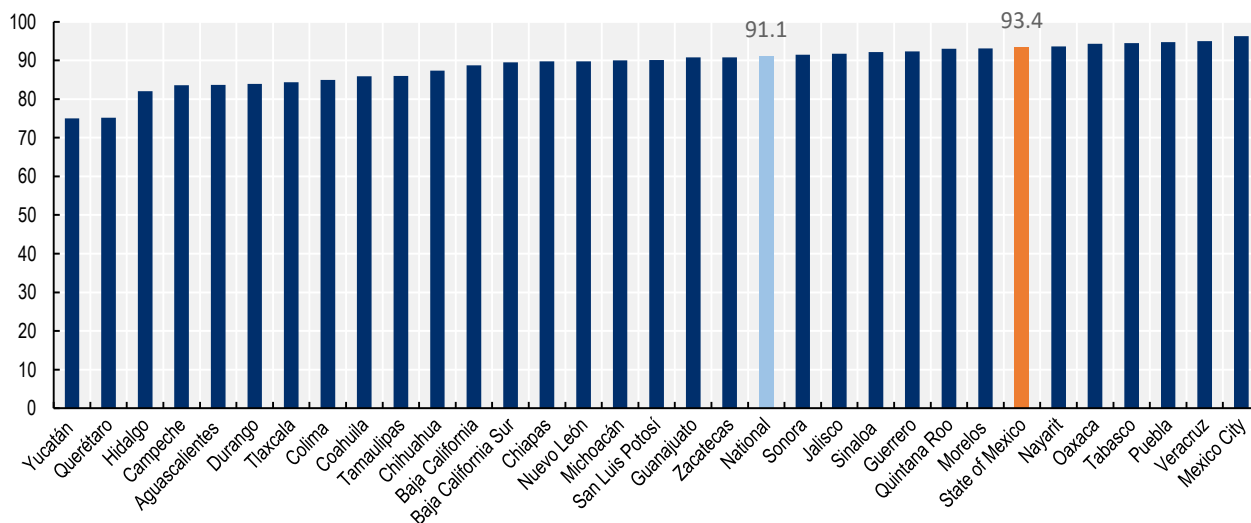
Source: (OECD, 2015<sup>[2]</sup>).

Maintaining the integrity of the procurement system requires, amongst others, the following features:

- Procurement procedures are transparent, and promote fair and equal treatment of bidders;
- public resources linked to public procurement are used in accordance with intended purposes;
- procurement officials' behaviour is in line with the public purpose of their organisations; and
- systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny (OECD, 2018<sup>[4]</sup>).

Safeguarding integrity has been a major concern for the public in the State of Mexico for some time. According to a survey published by the National Statistics and Geography Institute (*Instituto Nacional de Estadística y Geografía*, INEGI) in 2017, corruption was identified by 57.5% of the state population as the second major problem, just behind public safety and crime (78.6%). A high percentage of citizens perceive that corruption is taking place in the state. In fact, the percentage of citizens who report government corruption is frequent or very frequent in the State of Mexico surpassed the percentage of citizens who perceived corruption as frequent or very frequent at the national level in Mexico (93.4% vs 91.1%), as shown in Figure 4.3.

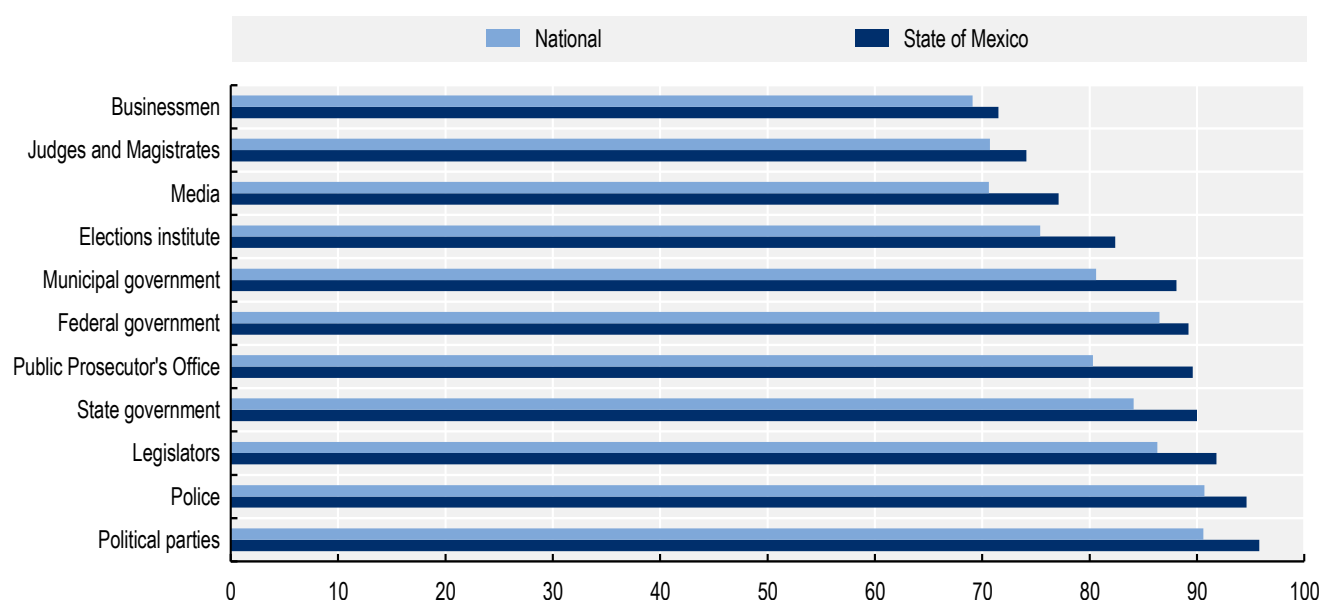
**Figure 4.3. Perception on how frequent corruption is by federal state in Mexico**



Source: (INEGI, 2017<sup>[5]</sup>).

The results of a survey on government quality by INEGI in 2017 show that corruption of political parties, police, legislators, and the state government are the main integrity problems perceived by citizens (see Figure 4.4).

**Figure 4.4. Perception of corruption in the State of Mexico by sector**



Source: (INEGI, 2017<sup>[5]</sup>).

In this context and in compliance of the Constitution, the General Law on the National Anticorruption System and the General Law of Administrative Responsibilities, the State of Mexico was one of the first federal entities to set up a local anticorruption system, aligned with the one established at the national level in May 2015.

#### 4.1. Policy framework to promote integrity in public procurement

The State Development Plan 2017-2023 establishes four pillars (social, economic, territorial, and public safety) and three horizontal axis (gender equality, capable and responsible government, and connectivity and technology for good government). The axis on capable and responsible government identifies five elements to develop: i) Greater transparency and permanent accountability; ii) preventing and fighting corruption through the effective operation of the SAEMM; iii) good governance based on dialogue and social peace; iv) balanced public finances; and v) public management by results and permanent evaluation.

Objective 5.5 of the axis on capable and responsible government consists of promoting transparent and accountable government institutions. Strategy 5.5.5 refers specifically to public procurement: Ensuring that state government institutions comply with transparency regulations relative to procurement and contracts.

Objective 5.6 mandates the implementation of the SAEMM, which mirrors the reforms establishing the National Anti-corruption System (*Sistema Nacional Anticorrupción*, NACS). The NACS was approved at the federal level in May 2015 through the publication of a decree modifying several articles of the Mexican Constitution, the enactment of the General Law of the National Anti-Corruption System and seven secondary laws. On 30 May 2017, the State of Mexico government published in its Official Gazette (*Periódico Oficial "Gaceta del Gobierno"*) the Law of the SAEMM. The SAEMM sets out the principles, general basis, public policies, and procedures to co-ordinate state and municipal authorities in preventing, detecting and punishing administrative offences and acts of corruption, as well as auditing, controlling public resources, transparency and accountability, in line with the NACS.

#### **4.1.1. The State of Mexico, through collaboration of the relevant institutions, could balance the rules-based approach of some provisions by recognising the limits of excessive controls and prompting ethical reasoning by procurement officials**

Under the policy framework described above, the State of Mexico developed rules and tools to advance ethics in the public service. Firstly, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities was aligned with the national framework to regulate administrative responsibilities of public servants, namely with the General Law for Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, LGRA). Subsequently, on 2 April 2019, the Code of ethics for public officials of the executive power and auxiliary bodies was published. Previously, on 23 September 2015, in compliance with the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, the State Executive issued the Protocol for public servants intervening in public procurement or granting licenses, permits, authorisations or concessions (hereafter, “the Protocol”).

The Code of Ethics establishes fifteen principles to be followed by all public servants: legality, honesty, loyalty, impartiality, efficiency, economy, discipline, professionalism, objectivity, transparency, accountability, merit-based competition, effectiveness, integrity, and equality. Likewise, it dictates the values to be observed by public servants of the state administration: public interest, respect, consideration of human rights, non-discrimination, gender equality, cultural and environmental preservation, co-operation, and leadership. In Chapter IV, Rules of Integrity, Article 8 establishes that state ministries and auxiliary bodies should incorporate rules of integrity, within their attributions on public conduct, public information, procurement, licences, permits, authorisations, concessions, government programmes, services, human resources, real estate management, evaluation, internal control, administrative procedure, permanent performance with integrity, co-operation with integrity and adequate behaviour.

While these principles, values and rules are applicable for all public servants, Integrity Rules in codes of conduct refer specifically to public officials managing procurement, licenses, permits or concessions. It mandates that public servants performing such activities should behave transparently, legally and impartially, guiding their decisions by the interests of society and ensuring the best conditions to fulfil the state responsibilities. It provides examples of how this mandate is broken:

- Failing to declare potential conflicts of interest and business transactions with businesses or individuals listed in the Registry of suppliers and service providers of the Government of the State of Mexico.
- Failing to apply the principle of equity and fair competition that should prevail in procurement procedures.
- Asking for prerequisites different from those strictly necessary to provide public services, leading to excessive and unnecessary costs.
- Establishing conditions in the calls for tender leading to an advantage or differentiated treatment for bidders.
- Favouring bidders by accepting their compliance with tendering requirements when there is really lack of compliance, simulating compliance or allowing compliance out of time.
- Favouring suppliers relative to their compliance with the requisites for requests for quotes.
- Unduly disclosing information about bidders participating in a procurement process.
- Being partial in the selection, award, withdrawal or cancellation of a contract stemming from a procurement procedure.
- Influencing the decisions by public servants to favour a particular bidder in procurement procedures.
- Failing to apply fines to bidders, suppliers and contractors that infringe regulations.



- Sending e-mails to bidders, suppliers or contractors from personal accounts instead of institutional ones.
- Meeting bidders, suppliers or contractors outside of institutional premises, except for onsite inspections.
- Failing to comply with the Protocol when interacting with the private sector.
- Receiving, directly or through relatives up to the fourth grade, government contracts from the entity in which one works.
- Hiring advisory or professional services with individuals or organisations in which one has a personal interest or participation, or with relatives up to the fourth grade.

The Protocol aims to establish general guidelines that should be observed by procurement officials in their interactions with private individuals and companies to prevent corruption and ensure that public decision-making is not taken captive by private interests. It is applicable to all procurement officials registered in the Information System of Public Servants of the State of Mexico (*Sistema Informático de Registro de Servidores Públicos del Estado de México*, SIRESPM), managed by the Ministry of Control (*Secretaría de la Contraloría*, SECOGEM). Indeed, SECOGEM, through its internal control bodies (*Órganos Internos de Control*, OIC) deployed in ministries and auxiliary bodies of the state public administration, is responsible of monitoring compliance, while both the Ministry of Finance and SECOGEM are responsible for its implementation. The protocol follows a similar instrument implemented at the federal level and published in the Official Gazette on 20 August 2015. Such a federal instrument was assessed by OECD in a previous review (OECD, 2017<sup>[6]</sup>) and, indeed, the State of Mexico protocol replicates many of its shortcomings.

Some of the main rules established in the protocol are the following:

- Contact with private individuals and companies by public institutions should take place only through public officials. During procurement procedures, there will be no personal interactions, except for those necessary to carry out the process, as established by law.
- If public procurement officials become aware of wrongdoing by other public servants or private individuals or companies, they should report it to the OIC.
- During procurement procedures, bidders will submit a statement (*manifiesto*) disclosing their business, personal, or family relationships, as well as potential conflicts of interest, with senior public servants (Governor, ministers, legal counsellor, attorney general, deputy ministers, heads of unit, etc.) and those intervening in procurement procedures, including their wives, partners, and relatives up to the second degree.
- Contact with private individuals and companies should only take place in official premises and through official means, preferably, in written form (paper-based or electronically). In case of phone calls or meetings, the conversations will be taped or videotaped, so the public official will inform beforehand that the conversation will be recorded.
- In the case of meetings, they should be agreed previously and the public official should inform his boss. At least two procurement officials should be present in the meeting and the OIC should appoint one of its officials to participate as well. At the end of the meeting, the minutes will describe the contents of the discussions and it will be signed by the participants.
- Procurement officials will abstain from sharing information regarding deliberative processes, analyses and assessments, until a resolution is formally issued.

In addition to the elements mentioned above, the Ministry of Finance, which serves as a centralised purchasing body, issued its own Code of Conduct, published on 30 August 2019. This code dictates the principles and values to be observed by the ministry's officials and builds on the mandate of the Agreement of the executive to issue the Ethics Code for Public Officials of the State of Mexico, and the Guide to

develop codes of conduct and integrity rules in the ministries and auxiliary bodies of the State of Mexico. It includes specific provisions on the responsibility and expected behaviours of procurement officials.

While the Protocol addresses some of the main risks of interactions between procurement officials and the private sector, it has weaknesses that may hamper its potential to achieve the intended effect (i.e., positively influencing the behaviour of public servants) and may even be counterproductive. In fact, the Protocol would benefit from a more balanced approach between rules and values, as there is a limit to what can be achieved from traditional controls and sanctions. The Protocol is rules-based, minimising a more values-based approach which could lead to negative consequences for motivation and commitment of public servants under the belief that they are intrinsically considered as corrupt.

#### **Box 4.2. Rules-based versus values-based approaches**

Public integrity refers to the consistent alignment of, and adherence to, shared values, principles and norms for upholding and prioritising the public interest in the public sector. Fostering integrity therefore relates to encouraging desired behaviour over undesired behaviour, including – but not limited to – corrupt practices. Several approaches can be taken to promote these desired behaviours, including a compliance/rules-based approach and a values-based approach. A compliance-based approach includes attention to prevention through establishing enforceable standards, often in laws, regulations, and codes of conduct, as well as providing education, training, and counselling on these standards. This approach ultimately provides for a range of enforcement mechanisms based on the severity of the misconduct. A values-based approach aims to inspire integrity through raising awareness of ethics, public-sector values, and the public interest, and adherence to codes of ethics or guiding principles.

International experiences show that integrity policies are most successful when these two approaches are combined and well balanced, with the exact relative importance, as well as the actual shape of both approaches, depending on the social, political and administrative context and on the history of the organisation concerned. After interviewing government stakeholders, this review finds that a better balance must be struck in the State of Mexico to create a “culture of integrity”, shifting away from an overwhelming rules-based approach.

Source: (OECD, 2017<sup>[6]</sup>).

The protocol also states the rules which are easy to evade or hard to enforce. For example, recording conversations between public servants and private individuals or companies could be avoided by having them in person and off site, which in itself is also forbidden. Even the requirement to favour written communications can be averted through informal communications. Likewise, the requirement to have two procurement officials and an OIC representative in meetings does not fully impede the possibility of colluding to benefit a particular bidder in response to a bribe. In other words, rules in themselves are not enough to hinder corrupt behaviour. However, they should be complemented by raising awareness of public servants and private representatives about the importance of integrity in public decision-making and service delivery and by the interiorisation of public service values.

Mexico as a country, including its federal entities, suffers the consequences of previous integrity failures in the form of excessive formal controls, which hinder flexibility and innovation in the public service. As documented in previous OECD reviews (see, for example, (OECD, 2018<sup>[7]</sup>), this leads to procurement officials worrying more about compliance with regulations than generating value for money. The tone and content of the Protocol reinforces the idea that public servants are inherently corrupt and should be distrusted. Too many controls may damage intrinsic motivations to behave ethically, such as commitment to the public interest or to the institution. Such motivations are necessary as no rule is infallible and, as discussed above, the rules dictated by the protocol may not be so difficult to evade. This does not mean

controls should be eliminated, but they should certainly be balanced with values, principles, and other intrinsic motivations public servants may have.

Another potentially controversial practice is the application of reliability tests (*evaluaciones de confianza*) upon those whose main functions include supervising public works. The Administrative Code of the State of Mexico (12<sup>th</sup> Book, Chapter IX) establishes that public servants supervising public works will be subjected to reliability tests performed by SECOGEM's Unit for Reliability Testing (*Unidad Estatal de Certificación de Confianza*) upon recruitment, reincorporation, promotion and permanence.

Furthermore, an approach leaning excessively towards control may hinder market engagement activities of procurement officials. Public institutions need to have a sound understanding of the nature, size and composition of the supply markets from which they purchase goods and services. Procurement officials need to keep up to date with new ideas and developments, as well as emerging technologies, to be better placed to create value-for-money. They can do so through several activities throughout the procurement cycle, all of them requiring interactions with market agents, such as trade shows, "meet the buyer" events, meeting with industry chambers and debriefing suppliers (New Zealand Government Procurement Branch, 2015<sup>[8]</sup>). While such interactions should indeed be regulated and subject to control items, they should also be subjected to behaviour principles and values, allowing procurement officials the flexibility to reach out to markets with clear objectives and protocols.

An alternative approach to balance controls is by facilitating ethical reasoning of procurement officials. SECOGEM, in collaboration with the Co-ordination Committee of the SAEMM and other relevant institutions, could develop case studies, checklists, and practical manuals illustrating typical ethical dilemmas of procurement officials and prompting them to solve such situations applying not only the rules, they cannot foresee every possible scenario, but also the values contained in the Code of Ethics and the codes of conduct. *The Ethics, probity and accountability in procurement manual*, developed by the Government of Queensland, Australia, provides a good reference for illustrating ethical dilemmas (see Box 4.3).

### Box 4.3. The Ethics, probity and accountability in procurement manual in Queensland, Australia

The following excerpt from the Ethics, probity and accountability in procurement manual describes how procurement officials in Queensland should act in situations where they risk committing unethical behaviour. The example below details what officials should do when they receive an invitation to a seminar from a supplier:

“Attendance by a procurement officer at a public seminar offered by a potential supplier is unlikely to create a conflict of interest. However, the officer must not discuss confidential matters relating to the tender process, and must not use the tender process to obtain a discount on any registration fee. Officers directly involved in the tender process should inform the tender management team as well as their own manager, and gain approval for their attendance at the seminar, which should be fully documented.”

Source: (The State of Queensland, 2019<sup>[9]</sup>).

## 4.2. Management of conflicts of interest by public procurement practitioners

### 4.2.1. The State of Mexico should develop its framework to manage conflicts of interest with a shared definition, practical illustrations, and systematic training for procurement officials

The current institutional framework in the State of Mexico involves a network of actors in charge of preventing, investigating and sanctioning corruption acts – as well as solving conflicts of interest and ethical dilemmas. SECOGEM and its different administrative units are responsible for promoting best practices and internal monitoring. They are also responsible for investigating acts, omissions or behaviours by public servants to determine administrative responsibilities SECOGEM has jurisdiction per the Organic Law of the Public Administration of the State of Mexico (*Ley Orgánica de la Administración Pública del Estado de México*, LOAPEM) and the Internal Bylaws of SECOGEM (*Reglamento Interior de la Secretaría de la Contraloría*), amongst other secondary regulations. However, such jurisdiction only extends to ministries and entities of the state public administration – not to municipalities. Nonetheless, SECOGEM has attributions to intervene at the municipal level, when authorised by law, regarding state transfers.

The Internal Bylaws of SECOGEM currently in force were approved and published in November 2018. Among the reforms, two new units were created: the Unit on Public Procurement Policies and the Unit on Corruption Prevention. On the one hand, the Unit on Public Procurement Policies has the following attributions:

- Providing preventive advice to ministries, auxiliary bodies and municipalities relative to public procurement processes financed with state resources.
- Verifying, directly or through the OICs, that the registry of procurement officials contains all the information established by law.
- Reviewing and assessing compliance with the Protocol.
- Receiving the reports by social witnesses, as well as their suggestions and proposals to strengthen the transparency and impartiality of public procurement.

On the other hand, the Unit on Corruption Prevention has the following responsibilities, among others:

- Analysing and suggesting measures to support ministries and auxiliary bodies in preventing, detecting and hindering administrative faults and corruption.
- Requesting information and documents to ministries, auxiliary bodies and OICs to produce analyses on anticorruption in the state public administration.
- Developing and proposing policies, guidelines, criteria, indicators, strategies and other general tools relative to ethics, integrity rules, prevention and hindering administrative faults and corruption and prevention of conflicts of interest for public servants of the ministries and auxiliary bodies of the State of Mexico.
- Proposing the Ethics Code for the public servants of the State of Mexico, communicating its content and verifying compliance with it.
- Issuing an opinion upon request about the realisation of conflicts of interest by public servants of the state public administration.
- Requesting information and documents to ministries and auxiliary bodies in order to issue an opinion about the realisation of a conflict of interest.
- Issuing general statements and recommendations to prevent corruption and conflicts of interest in the public service.
- Collecting, analysing, and assessing information to produce analyses relative to ethics, integrity and prevention of corruption and conflicts of interest in the ministries and auxiliary bodies of the government of the State of Mexico.
- Coordinating, keeping a record, and following up the recommendations issued by the Ethics Committees.
- Designing and promoting communication, training and raising awareness programmes relative to ethics, integrity and prevention of corruption and conflicts of interest.

The integrity framework of the State of Mexico mandates the creation and maintenance of an Ethics Committee in each ministry and auxiliary body of the state administration to analyse and advise on public servants' compliance with integrity rules, per the Ethics Code for Public Officials of the State of Mexico and the Codes of Conduct. Since then, the Ethics Committees has borne the responsibility of providing support to the integrity system by ensuring that public servants and citizens are informed of the state government's ethics rules. Its nine members occupy an honorary position with voting rights, eight of them elected by peers, representing different levels of the hierarchy and one serving as the president of the committee (the minister or head of agency), who is a permanent member, and whose role is merely advisory. While its decisions are non-binding, the opinions and suggestions given should enhance integrity in the State of Mexico public sector. This is an example of another initiative where the State of Mexico followed the policy established at the federal level.

According to the Agreement mentioned above, the Ethics Committees have the following attributions:

- Drafting and approving its annual working plan during the first trimester of each year. The working plan should include specific objectives, goals and activities.
- Monitoring implementation and compliance with the Code of Ethics and the Integrity Rules.
- Participating in the drafting, review and update of the corresponding code of conduct and oversee its implementation and compliance.

The Ethics Committees can receive reports of violations of the Code of Ethics, the Integrity Rules, and the corresponding Code of Conduct. If confirmed, the Ethics Committees should refer the case to the corresponding OIC.

The framework for the management of conflicts of interest is elaborated in the table on the following page.

**Table 4.2. Regulatory framework addressing conflicts of interest in the State of Mexico**

Regulation	Description
LGRA	It defines conflict of interest as a situation affecting the impartial and objective performance of public servants due to personal, family or business interests. It establishes the obligation for public servants to declare such situations through a standardised template.
Law of Administrative Responsibilities for the State of Mexico and its Municipalities	It follows the definition by the LGRA. It establishes the obligation for public servants to declare such situations and inform the hierarchical superior, who should instruct him on how to behave in case he cannot abstain from intervening in a specific situation entailing a potential conflict of interest.
Agreement of the executive to issue the Ethics Code for Public Officials of the State of Mexico, the integrity rules and the general guidelines to foster integrity through the Ethics Committees	It defines conflict of interest as the incompatibility between the public duties and the private interests of a public official and materialises when the public interest is unduly influenced by a different interest, economic or personal, leading the public official to pursue its own interest or that of a third person. It establishes the principles and rules for the operation of Ethics Committees.
Protocol for public servants intervening in public procurement or granting licenses, permits, authorisations or concessions	It regulates the potential interactions between procurement officials and private agents. It establishes that private individuals and companies should disclose potential conflicts of interest stemming from personal, family or business relationships with senior officials and those involved in procurement operations.
Code of Conduct of the Ministry of Finance	It states that a conflict of interest materialises by offering, giving, requesting, accepting, or receiving, directly or through a third party, money, commissions, incentives, donations or real state creating a personal or an institutional commitment to be retributed. It establishes ministry's officials will abstain from intervening in cases leading to personal, family or business benefits for themselves or his family members, up to the fourth degree.

Source: Information provided by SECOGEM.

A basic and shared definition of conflict of interest is critical, as it helps public servants determine objectively whether they can execute their duties and functions in situations where there appears to be a conflict of interest, but this is not or may not be the case. The definition adopted by the State of Mexico should label the situation above as an “apparent conflict of interest” – which could be as serious as having an actual conflict. Since potential or apparent conflicts of interest are not listed in the State of Mexico regulations, detection and enforcement may be difficult. Whichever approach the State of Mexico adopts in its framework for the management of conflicts of interest however, it is important to ensure that it clearly defines the concept in its legislative framework as related to public procurement.

The OECD report *Managing Conflict of Interest in the Public Service: OECD guidelines and country experiences* makes a distinction between actual, apparent and potential conflict of interest in various situations. The OECD defines a conflict of interest as a clash between the public duty and private interests of a public official, in which the public official has private-capacity interests that could improperly influence the performance of his or her official duties and responsibilities. An actual conflict of interest is a direct conflict between a public official's current functions and his private interests. An apparent conflict of interest occurs when a public official's private interests could improperly influence the performance of his duties, but this is not, in fact, the case. A potential conflict of interest encompasses, on the other hand, a situation in which a public official has private interests which could create a conflict of interest if the official becomes involved in the future (OECD, 2004<sub>[10]</sub>). The framework to manage conflicts of interest in the State of Mexico

does not distinguish between these three types of conflict of interest. OECD data shows that 85% of member countries have a specific definition of conflicts of interest for public procurement officials in their regulatory frameworks (OECD, 2019<sup>[11]</sup>). The definitions used by other OECD countries, such as Canada or New Zealand, could be a good reference for the State of Mexico.

#### Box 4.4. Definitions of conflict of interest used in Canada and New Zealand

##### Canada

Canada's Conflict of Interest Act (S.C. 2006, co., sq.) states that "a public office holder is in a conflict of interest when he exercises an official power, duty or function that provides an opportunity to further his private interests or those of his relatives or friends or to improperly further another person's private interests" (Article 4). In addition, Article 5 specifies the general duty expected of public servants. "Every public office holder shall arrange his private affairs in a manner that will prevent the public office holder from being in a conflict of interest." While the Conflict of Interest Act is primarily aimed at elected and other senior officials, the Treasury Board Code of Values and Ethics applies this definition and similar responsibilities to every public servant in government.

##### New Zealand

The definition of conflict of interest is tailored to targeted groups, such as public servants, ministers or board members of crown companies. Nevertheless, these definitions contain common features. For example, they all cover actual and perceived conflicts of interest, as well as direct and indirect conflicts. In addition to the general definitions developed for these targeted groups, other documents list possible types of situations where conflicts of interest arise, together with concrete practical examples.

- Public servants: "Conflicts of interest are defined as any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationships with the public, clients, or ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual's private interests (e.g. company directorships, shareholdings, offers of outside employment).
- Ministers: "Conflicts of interest can arise because of the influence and power they wield – both in the individual performance of their portfolio responsibilities and as members of Cabinet. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as actual conflict of interest in establishing what is acceptable behaviour. A conflict of interest may be pecuniary (that is, arising from the Minister's direct financial interests) or nonpecuniary (concerning, for example, a member of the Minister's family) that may be either direct or indirect" (Cabinet Manual).
- Members of the Board of Crown Companies: Conflict of interest is defined as a situation in which a board member is "party to, or will or may derive a material financial benefit from" a transaction involving his or her company (The Companies Act 1993, Part VIII, Sections 138 and 139).

Source: (OECD, 2004<sup>[10]</sup>).

Implementing appropriate measures to prevent apparent and potential conflicts of interest is as important as implementing measures to manage actual conflicts of interest. For example, State of Mexico authorities should be particularly vigilant of cases in which potential bidders are former public servants or when newly hired public servants have experience in the private sector (for instance, in the construction industry). This practice, of working with actors who are closely linked to the sector in which procurement will occur, is

known as a “revolving door”, and is not fully anticipated by the state law. “Revolving door” practices increase the risk of integrity breaches and opportunities for conflicts of interest.

In this regard, the regulatory framework in the State of Mexico needs to be more specific. For example, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, in its Article 76 states that private agents are forbidden to hire individuals who served in the public sector during the previous year and who possess information that will benefit their market position or provide an advantage vis-à-vis its competitors. This practice is defined in the law as “unduly hiring a former public official” (*contratación indebida de ex servidores públicos*) and also stipulates a sanction for the public official. However, sharing information is not the only potential integrity risk for a former procurement official now working in the private sector. For example, he may also want to take advantage of his insider relationships to influence an award decision or the selection of a direct award over a public tender.

Elaborating and further developing the conflict of interest rules also applies for gifts. While the Law of Administrative Responsibilities for the State of Mexico and its Municipalities forbids public servants to receive any kind of gift, there might be situations, for example a protocolary gift, in which it might be hard for procurement officials to refuse receiving the gift. The main point, even beyond the actual cost of the gift, is the extent to which receiving the gift might jeopardise the impartiality and objective judgement of a procurement official or the extent to which it may create the will to reciprocate. A very strict approach completely forbidding gifts may lead to cynical behaviour in which the public official not only fails to comply with the regulation, but also is unaware of the impact on his judgement. The OECD toolkit *Managing Conflict of Interest in the Public Sector* proposes a checklist for public servants to reflect on the potential implications of a gift. This prescriptive checklist reduces the potential for confusion to four simple tests, arranged under a mnemonic – GIFT (genuine, independent, free and transparent) – to make the tests easier to remember. Each element of the GIFT mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes (see Box 4.5).

#### **Box 4.5. Gifts and gratuities checklist**

##### **Genuine**

Is this gift genuine, in appreciation for something I have done in my role as a public official, and not requested or encouraged by me?

##### **Independent**

If I accept this gift, would a reasonable person have any doubt that I could be independent in doing my job in the future, especially if the person responsible for this gift is involved or affected by a decision I might make?

##### **Free**

If I accept this gift, would I feel free of any obligation to do something in return for the person responsible for the gift, or for his family, or friends or associates?

##### **Transparent**

Am I prepared to declare this gift and its source, transparently, to my organisation and its clients, to my professional colleagues, and to the media and the general public?

Source: (OECD, 2005<sup>[12]</sup>).



### 4.3. Accountability and monitoring concerning sanctions on suppliers

#### 4.3.1. SECOGEM could give better visibility to the registry of blacklisted companies and expand its functionalities

According to the Organic Law of the Public Administration of the State of Mexico, Article 38 Bis, XI, SECOGEM has the responsibility of monitoring compliance of duties by suppliers and contractors, requiring them the information relative to their activities. Indeed, the Law on Public Procurement of the State of Mexico and its Municipalities also establishes in Article 74 that SECOGEM will manage a registry of the individuals or businesses in the following situations:

- Suppliers or service providers who incurred in delays in the delivery of goods or services, as a result of their own fault;
- Those who had a contract rescinded, as a result of their own fault;
- Those who provided false information or behaved in bad faith in any stage of the process to award a contract, its formalisation, execution or during the process of filing a complaint (*inconformidad*);
- Those who have established contracts violating the statements of this Law, as demonstrated with information held by OICs.

SECOGEM, specifically the General Directorate of Administrative Responsibilities, gathers the information from ministries and auxiliary bodies to put together this registry and shares it with them. Ministries and auxiliary bodies should inform SECOGEM, within the first five working days of each month, about the individuals and businesses subject to an “administrative sanctioning process” (*procedimiento administrativo sancionador*) as a result of one of the situations listed above. The officials in charge of procurement of goods, services, leasing, public works and related services as well as the heads of OICs of ministries and auxiliary bodies of the executive, the Office of the Attorney General of the State of Mexico, administrative tribunals, auxiliary bodies and state public funds (*fideicomisos públicos estatales*) are all responsible for informing SECOGEM.

The information is kept in the Registry of barred and sanctioned companies, suppliers and contractors (*Registro de empresas, proveedores y contratistas objetados y sancionados*). It also includes information on companies and individuals barred from procurement procedures or sanctioned by the Federal Ministry of Public Administration (SFP) or by other federal states.

The information is public and available at [www.secogem.gob.mx/EmprObj/BoletinPublico.asp](http://www.secogem.gob.mx/EmprObj/BoletinPublico.asp). The user can search for a company by sanction (barred from participating in procurement procedures, fines, objected, and compensating administrative process or *procedimiento administrativo resarcitorio*<sup>1</sup>), by company name, or by activity (industry, commerce, services and others). The information provided by the system for each company includes its full denomination, number of deed, tax number, notification date, the irregular situation and the authority that reported it. In some cases, more information is available, including the exclusion date and the follow up to the case (challenges, court rulings, etc.).

The registry is not easy to find on the Internet. SECOGEM could give it more visibility by creating links from the entry point of its own webpage ([www.secogem.gob.mx](http://www.secogem.gob.mx)), the e-procurement platform COMPRAMEX or the website of the Government of the State of Mexico ([www.edomex.gob.mx](http://www.edomex.gob.mx)). Such “bad publicity” for blacklisted companies would in itself create incentives for good behaviour from suppliers.

Likewise, SECOGEM could expand the functionalities of the registry to make it more useful for procurement officials. For example, it could provide the option to download documents containing resolutions sanctioning companies so that procurement officials could have complete information on the irregular situation leading to sanctions and the implications for future procurement procedures. Debarment policies have been developed in many countries although rules differ across jurisdictions and international organisations (see Box 4.6). Furthermore, the registry could go beyond being a blacklist to become a

source of information on supplier performance. It could incorporate information on contract performance so that procuring authorities could identify risks when awarding a contract to a specific company. Additionally, SECOGEM could migrate the registry to an open data format to improve accessibility and the possibility to use the data to identify trends and patterns useful for decision-making.

#### Box 4.6. Debarment policies applied in public procurement

Integrity violations of companies may lead to permanent or temporary exclusion from public procurement. In line with European Union legislation, there are mandatory debarment rules in place in EU Member States, according to which, bidders against whom final court convictions for corruption have been handed down are excluded from future tenders. In EU Member States, laws contain debarment provisions and contracting authorities have cross access to their internal debarment databases. Multilateral Development Banks have developed an Agreement for Mutual Enforcement of Debarment Decisions and made public the list of companies and individuals ineligible to participate in their tendering processes.

The 2009 OECD *Anti-Bribery Recommendation* calls on Parties to the OECD *Convention on Bribery of Foreign Public Officials in International Business Transactions* to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials”.

While debarment has gained significant terrain in the last decade, particularly as a device in the fight against corruption and a tool to restore trust in government procurement, there is a lack of solid theoretical underpinning for these rules, and its efficiency continuous to be discussed, in terms of access, competition and value-for money principles, amongst others.

Source: (OECD, 2016<sup>[1]</sup>), and (Hjelmeng, 2014<sup>[13]</sup>), “Debarment in Public Procurement: Rationales and Realization”, in G.M. Racca and C. Yukins, *Integrity and Efficiency in Sustainable Public Contracts*, [www.researchgate.net/publication/265550163\\_Debarment\\_in\\_Public\\_Procurement\\_Rationales\\_and\\_Realization](http://www.researchgate.net/publication/265550163_Debarment_in_Public_Procurement_Rationales_and_Realization), consulted on 5 November 2019.

Article 87 of the Law on Public Procurement of the State of Mexico and its Municipalities dictates that any individual or company, national or foreign, is liable when participating in procurement procedures in the following cases:

- Commits, offers or delivers money or any other benefit to a public official so that he carries out or abstains from an action related with his duties in order to obtain a benefit or an advantage;
- Carries out actions in order to obtain an undue benefit or advantage in the public procurement process;
- Carries out actions or omissions in order to participate in procurement procedures even though it is barred by an administrative resolution or a legal instrument;
- Carries out actions or omissions in order to evade requisites or rules in public procurement or pretends to comply with them;
- Intervenes on its behalf, but for the benefit of third parties barred from procurement procedures, so that such third parties get, partially or in full, the benefits of the procurement;
- Obliges a public official to subscribe, provide, destroy or deliver a document or a good in order to obtain a benefit or advantage;

- Promotes or uses its influences, economic or political power, real or fictitious, on a public official in order to obtain a benefit or advantage; and
- Files false or altered information or documents in order to obtain a benefit or advantage.

The individuals and companies which participate in the situations described above can be fined with the equivalent of 300 to 300 000 times the daily value of the Measurement and Update Unit (*Unidad de Medida y Actualización*, UMA)<sup>2</sup> in force at the time.

In addition, the Law of Administrative Responsibilities for the State of Mexico and its Municipalities, Article 68, defines the actions by private individuals or companies related to serious administrative offenses, namely bribery, illicit participation in administrative procedures, trying to influence or capture an authority, using false information, obstructing investigations, collusion, irregular use of public resources and unduly hiring a former public official. Applicable sanctions for individuals include economic fines equivalent to one or two times the benefits obtained or, when no benefit is obtained, from 100 to 150 000 times the daily value of the UMA; a temporary bar from participating in procurement of goods, leasing, services and public works for no less than three months and no more than eight years; and compensation of damages to the public finances of the state, municipality or public entity.

Likewise, for businesses sanctions include economic fines equivalent to one or two times the benefits obtained or, when no benefit is obtained, from 1 000 to 1 500 000 times the daily value of the UMA; a temporary bar from participating in procurement of goods, leasing, services and public works for no less than three months and no more than ten years; suspension of economic activities for no less than three months and no more than three years; dissolution of the society; and compensation of damages to the public finances of the state, municipality or public entity.

#### 4.4. Engaging the private sector and civil society to strengthen integrity in the procurement function

Public procurement can benefit from partnerships between government institutions and the private sector to advance integrity. Integrity is required to allow governments, on the one side, and businesses and citizens, on the other, to engage in a mutually responsive way thus rendering the public procurement system more accountable and ensuring value-for-money. In this sense, low levels of integrity and accountability in public procurement can jeopardise the effective use of public funds.

Preventing integrity breaches requires the active engagement and efforts from the government, the private sector and civil society, due to their complexity. Civil society and businesses can play an oversight and monitoring role in public procurement. By serving as a mechanism for direct social control on government activities, civil society and the business community can further integrity in government activities and restore public trust.

##### **4.4.1. The Government of the State of Mexico should partner with the business community to develop and advance an agenda for business integrity in procurement activities**

Currently, the State of Mexico does not have an agenda or programme to promote business integrity. This is an area of opportunity, particularly as there are already some programmes established by the Federal Government (SFP, see Box 4.7) and business chambers, such as the Business Co-ordination Council (*Consejo Coordinador Empresarial*, CCE) and the Mexican Chamber of the Construction Industry (*Cámara Mexicana de la Industria de la Construcción*, CMIC). Furthermore, advancing integrity in public procurement is an important preventive action given the fact that the LGRA and the Law of Administrative Responsibilities for the State of Mexico and its Municipalities establish sanctions for businesses that

participate in acts of corruption and consider that businesses with an integrity programme could benefit from milder sanctions.

#### Box 4.7. The Business Integrity Registry of the Ministry of Public Administration (SFP)

The registry consists on a distinction for those businesses that actively commit to comply with ethical standards by engaging their employees and suppliers. The objective is to provide positive incentives to promote business integrity and advance preventive measures and standards. The first stage for the implementation of the registry includes the development of an IT platform and legal reforms. The second stage consists on the implementation of the distinction for business that participate in procurement procedures.

##### Business integrity as described in the LGRA

Article 25 of the LGRA establishes that a programme of business integrity should include, at least, the following elements:

- A clear and complete organisation and procedures manual, establishing the functions and responsibilities of each area, the chain of command and leadership in all the organisation;
- A published and socialised code of conduct, including systems and mechanisms for implementation;
- Adequate and effective systems for control, audit and surveillance to constantly and periodically assess compliance with the integrity standards by all the organisation;
- Adequate systems to report wrong-doing, both internally and to the corresponding authorities, as well as disciplinary procedures and concrete consequences for those who behave violating internal rules or Mexico's legislation;
- Adequate systems and processes to train staff on the integrity measures;
- Human resources policies preventing hiring individuals that may create an integrity risk for the company; and
- Mechanisms that ensure transparency and disclosure of interests.

In order to facilitate business take up, SFP launched in June 2017 the Model Business Integrity Programme (*Modelo de Programa de Integridad Empresarial*), which was developed together with business associations. The model is a good example of translating legal provisions into concrete and practical guidance for the private sector by providing concrete examples on what each element of the Business Integrity Programme entails and including good practices from the private sector.

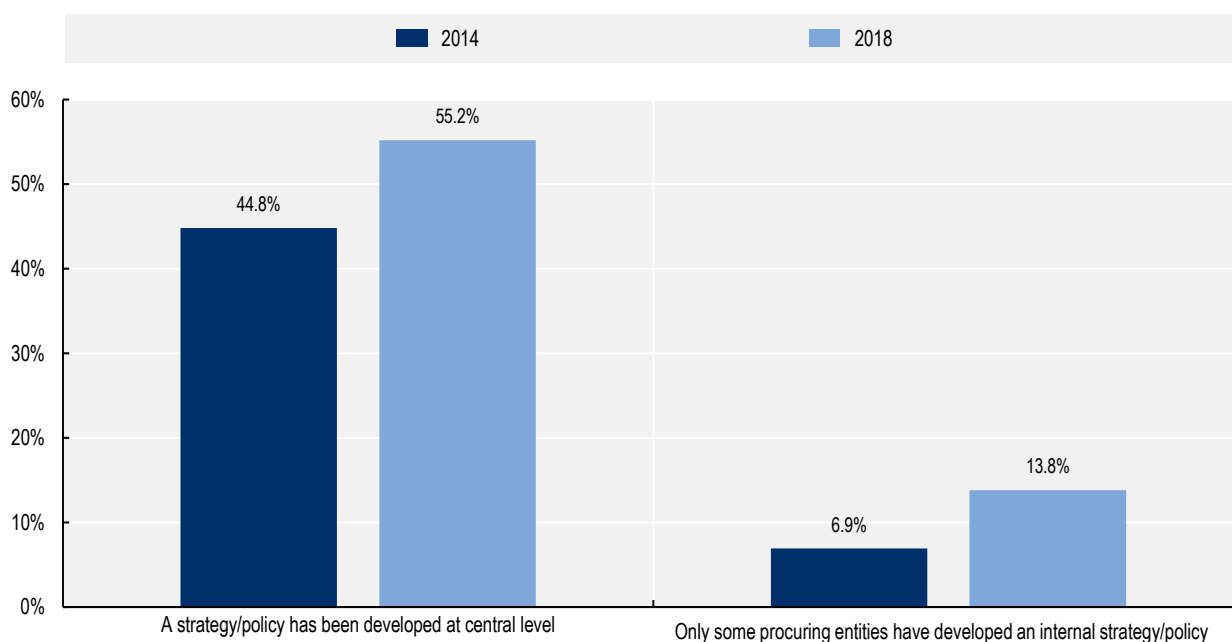
Source: SFP (2017), *Modelo de Programa de Integridad Empresarial*, [https://www.gob.mx/cms/uploads/attachment/file/272749/Modelo\\_de\\_Programa\\_de\\_Integridad\\_Empresarial.pdf](https://www.gob.mx/cms/uploads/attachment/file/272749/Modelo_de_Programa_de_Integridad_Empresarial.pdf) and <https://www.gob.mx/sfp/articulos/funcion-publica-lanza-padron-de-integridad-empresarial>, consulted on 5 November 2019.

While a business integrity programme, such as the one established at the federal level, would definitely be a step in the right direction for the State of Mexico, it is also important to reflect on how the verification process would work. It would be advisable that the government of the State of Mexico does not conduct any verification. Instead, SECOGEM could set guidelines on what to consider for an effective verification. International practices illustrate that policy guidance can direct companies to obtain independent third-party assurance. For example, in the UK Adequate Procedures Guidance, the Ministry of Justice suggests that organisations consider obtaining external verification or assurance of their anti-bribery system. Similarly, under the Government of Canada's Integrity Regime, in order to be reconsidered eligible for bidding following debarment, companies are required to provide certification from an independent third

party that integrity measures have been implemented. However, in Mexico there is still not a well-developed market for this kind of certification. Consequentially, SECOGEM could invite business chambers and universities to support the effort to devise a basic verification system while the market develops.

Businesses that apply an integrity programme could also be rewarded in procurement procedures. For example, the State of Mexico could advance reforms of procurement regulations to establish that, in a situation where two bids get the same score, the bid from the company with a business integrity programme gets the contract. Alternatively, during assessments based on points and percentages, companies that implemented a business integrity programme could get extra points towards the final score. In this way, the State of Mexico could leverage public procurement strategically to advance business integrity, just like 69% of OECD countries use it to promote, for example, responsible business conduct (see Figure 4.5).

**Figure 4.5. Existence of a strategy or policy to pursue responsible business conduct through public procurement**



Source: (OECD, 2019<sup>[11]</sup>).

In any case, developing an agenda for business integrity should necessarily be a joint effort between the state government and the business community, with other stakeholders also considered to provide feedback (i.e., academia).

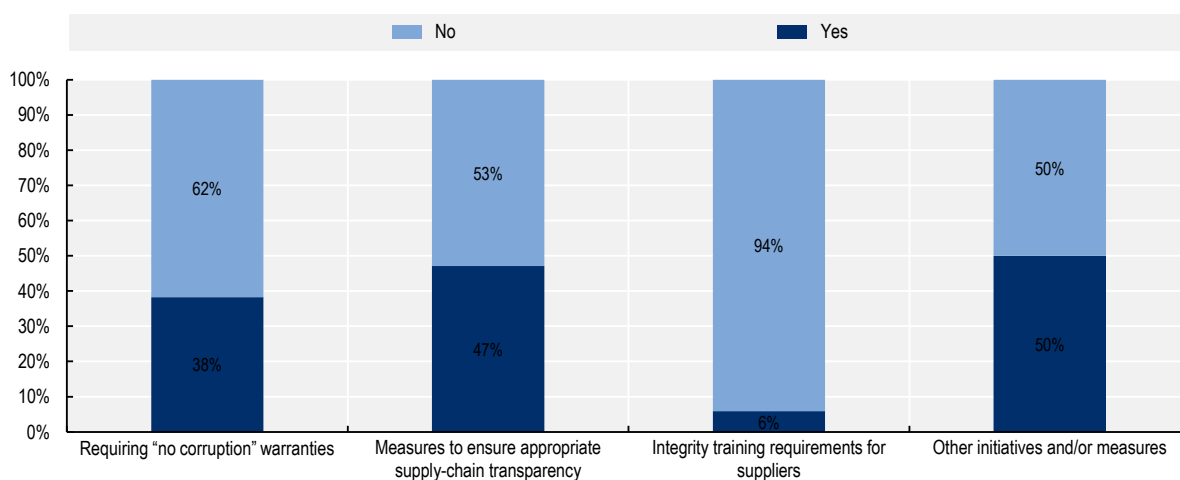
#### **4.4.2. The Government of the State of Mexico could advance other measures to promote business integrity, such as integrity pacts, anticorruption clauses and supply-chain transparency**

The OECD *Recommendation on Public Procurement* underlines the need to develop requirements for internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring. It stresses the need for procurement contracts to contain "no corruption" warranties and measures to verify the truthfulness of suppliers' commitments that they have not and will not engage in corruption in connection with the contract. According to the OECD Recommendation, such programmes

should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training for supplier personnel.

In order to preserve integrity in public procurement, it is critical to work with external actors, in particular the private sector. The results of the 2018 OECD *Survey on Public Procurement* show that, consistent with the overarching guidance provided in the key principles, there are initiatives being pursued to promote integrity among suppliers (see Figure 4.6). In Australia, for example, the Commonwealth Procurement Rules allow entities to exclude tenderers on the grounds of bankruptcy, insolvency, false declaration or significant deficiencies in the performance of any substantive requirement or obligation under prior contract. In Latvia, the contracting authority can exclude a candidate or tenderer (or their subcontractor where a value threshold of 10% of the total value of the contract is met) from participation in a procurement procedure in certain circumstances including tax debts, as outlined in the legislation.

**Figure 4.6. Measures to promote integrity among suppliers in OECD and selected countries**



Source: (OECD, 2019<sup>[11]</sup>).

As mentioned in the introduction to this chapter, the public procurement cycle involves multiple actors, and therefore integrity is a requirement for all of them. Both the public and private sectors are responsible for taking measures to preserve integrity. Private companies often have their own integrity system in place, and many countries engage with private sector actors to instil integrity in public procurement. For example, standards applicable to public sector employees may be expanded to private sector stakeholders through integrity pacts.

Integrity pacts are one way of preserving the integrity of public procurement systems. They consist of agreements between the government entity offering a contract and the companies bidding for it, that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. Following OECD recommendations (OECD 2012), the State of Mexico made it mandatory for participants in tenders to sign a Certificate of Independent Bid Determination (CIBD). These signed documents are important deterrents of anticompetitive practices and bind legal representatives of firms to penalties and sanctions included in the anti-trust frameworks to increase the likelihood of competitive tenders. This instrument is a good practice and is recommended by the OECD *Guidelines on Fighting Bid Rigging*, as it makes firms' legal representatives aware of, and directly accountable for, unlawful behaviour. In order to reinforce this tool, the signed declarations of bidders could be published in COMPRAMEX or any other website aimed at promoting integrity.

As discussed before, integrity risks are present at every stage of the procurement cycle. To minimise these, the State of Mexico could consider extending the scope of CIBDs so that the bidder states that it has not engaged in anti-competitive conducts with other bidders (i.e., by exchanging bid information related to their offers or by discussing the bid strategy) and it will not engage in other forms of corrupt behaviour (i.e., bribery, providing false documents and information), turning them into far-reaching integrity pacts addressing all the stages of the procurement cycle, from bid preparation to contract execution.

**Table 4.3. Examples of the use of integrity pacts in various countries**

Countries	Description
Germany	An integrity pact was implemented for the construction of the Schönefeld International Airport in Berlin, a project worth EUR 2.4 billion
India	Integrity pacts are an essential part of the Draft National Anticorruption Strategy. The Central Vigilance Commission (CVC) issued Directive 008/CRD/013 on the implementation of integrity pacts as “standard operating procedures” in procurement contracts of any major government department
Indonesia	Integrity pacts were adopted and applied in local government contracts in up to 20 districts
Italy	Integrity pacts were introduced mainly at the municipal level in the Milan City Council
Korea	The Korean pact model emphasises whistleblower protection and an ombudsman system to carry out independent external monitoring
United Kingdom	Integrity pacts were adopted and implemented mainly in the defence sector

Source: (OECD, 2015<sup>[14]</sup>).

#### **4.4.3. SECOGEM should advance the process of reform of the social witness programme applied in the State of Mexico**

Civil society oversight is a commonly used tool to further integrity in public procurement. It can not only play a role of scrutiny and monitoring, but also in increasing the transparency of government activities, and, as such, help restore public trust in government. The regulatory framework in the State of Mexico could be used to establish the obligation or opportunity for the government to consult with the public during the procurement planning process (e.g. prior to large-scale or environmentally or socially sensitive procurements). In some countries, citizens are –under clearly specified conditions and subject to signing a statement of confidentiality –permitted or encouraged to act as observers in procurement proceedings. Hence, the State of Mexico could consider empowering citizens to be officially involved in the monitoring of procurement performance and contract completion.

The Administrative Code of the State of Mexico (First Book, Title X) establishes the “social witness”, which is a mechanism to engage civil society in procurement procedures that imply serious risks of corruption or opacity due to their complexity, impact or the amount of resources involved. The social witness has the right to provide comments and opinions in procurement procedures and drafts a report at the end of his intervention with suggestions to improve transparency, efficiency, effectiveness and impartiality. Such a report must be made public on the webpage of the contracting authority. If the social witness identifies any irregular situation, he has the duty to promptly notify SECOGEM. In fact, SECOGEM keeps the record of the results of the interventions by social witnesses.

In order to engage a social witness, the procurement must entail actions or works with high social impact, a significant amount of resources, have significant influence on economic or social development, a growth strategy at the municipal, regional or state level, or a strong imperative to increase transparency. The contracting authority, when requesting the participation of a social witness, must explain which of the previous categories they are related to.

An individual or organisation interested in serving as a social witness must register with the Committee for the Registration of Social Witnesses (*Comité de Registro de Testigos Sociales del Estado de México*,

CRTSEM), composed by the Autonomous University of the State of Mexico (*Universidad Autónoma del Estado de México*, UAEM) and the Institute for Transparency and Access to Public Information of the State of Mexico and its Municipalities (*Instituto de Transparencia y Acceso a la Información Pública del Estado de México y Municipios*, INFOEM), which keeps a registry of social witnesses and makes it public on their websites (<http://www.testigossociales.org.mx/TestigosSociales/#tesSocRegis>). The registration is valid for one year and can be extended year upon year for up to four years, depending on the performance of the social witness.

The application to become a social witness should include a written request, CV, document attesting that the interested person or individual has not been sentenced for a crime, a statement indicating the following: that the interested individual is not a public official and was not so during the last year, that he has not been barred from public service and that he will abstain from participating in procurement procedures in which he may have a conflict of interest, and an attestation of participation in the training determined by the CRTSEM.

The CRTSEM has five members, who are public servants from UAEM or INFOEM:

- The President, who is appointed alternatively by INFOEM and UAEM;
- Two members appointed by INFOEM; and
- Two members appointed by UAEM.

The contracting authority requesting the participation of a social witness must establish a contract indicating the scope of his work and the corresponding compensation, in line with the quotas established by the CRTSEM (see Table 4.4 for the quotas established for 2019).

**Table 4.4. Quotas paid by contracting authorities to social witnesses during 2019**

Estimated procurement amount (thousand MXN)	Quota per process (MXN, excluding taxes)
From 150 000 to 1 000 000	38 077.54
From 1 000 001 to 30 000 000	44 805.19
From 30 000 001 to 60 000 000	52 231.45
From 60 000 001 to 100 000 000	59 419.26
From 100 000 001 to 150 000 000	66 127.89
From 150 000 001 to 200 000 000	74 274.10
From 200 000 001 to 250 000 000	81 461.90
From 250 000 001 onwards	88 889.33

Source: INFOEM website, <http://www.testigossociales.org.mx/TestigosSociales/#cuotas>, consulted on 6 November 2019.

Among other tasks, the social witness can participate in the drafting and review of the call for tender, clarification meetings, inspections of the sites for installation or construction, the events to receive and open bids, assessment of technical and economic proposals, award meetings and contract formalisation. Therefore, their work concentrates mainly on the tendering phase, with some participation in the pre-tendering phase, but no involvement in the post-tendering stage. This was identified as a risk in a study to take stock of the experience of social witnesses at the federal level (SFP and USAID, 2018<sub>[15]</sub>). There is indeed an opportunity to widen the scope of the involvement of social witnesses to include the pre-tendering (i.e., reviewing market analyses, award criteria, technical specifications) and the post-tendering stage (i.e., contract management, social audits, delivery of goods, services or works, closure of the contract and payment).

As of 6 November 2019, there were 21 individuals and one organisation (a bureau of accountants) in the registry of social witnesses. The registry includes contact information and the field of procurement expertise (goods, services or public works), as well as degrees in the case of individuals, where



accountants, lawyers and public administrators prevail. During 2018, social witnesses produced 53 reports out of their engagement in procurement procedures. Interestingly, the institutions whose procurement operations were most observed by social witnesses were the Elections Institute and the State Legislature, while the entity consolidating common purchases of the central public administration, the Ministry of Finance, only used them six times (see Table 4.5).

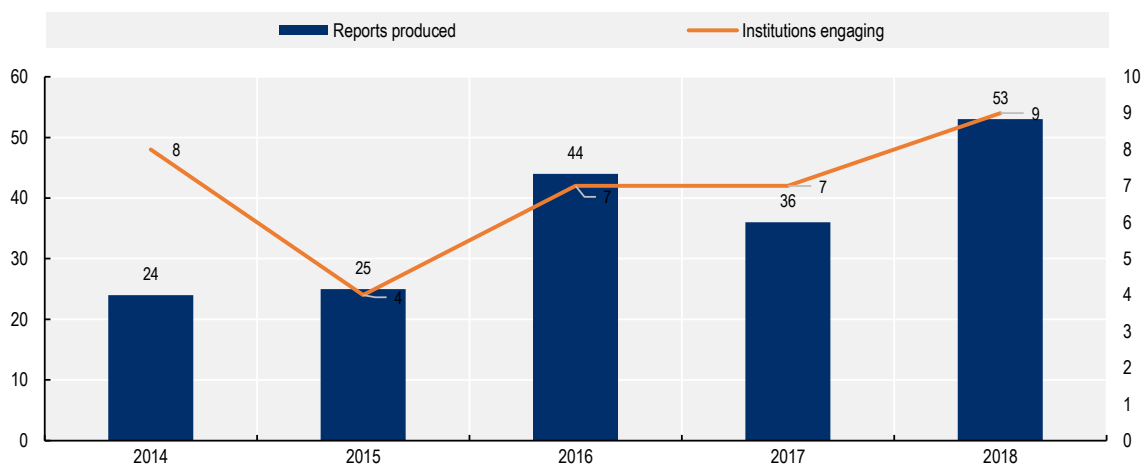
**Table 4.5. Number of reports produced by social witnesses during 2018**

Institution	Number of reports by social witnesses
Legislative Branch	14
State of Mexico SAI (OSFEM)	1
Ministry of Finance	6
Ministry of Social Development	1
Ministry of Justice and Human Rights	1
Integrated Educational Services of the State of Mexico	6
ISSEMYM	2
Elections Institute of the State of Mexico (IEEM)	17
Massive Transport System and Funicular of the State of Mexico (SITRAMYTEM)	5
TOTAL	53

Source: INFOEM and UAEM (2018).

In perspective, the use of social witnesses increased during the period 2014-2018 in terms of reports produced, except in 2017, and also in terms of the number of institutions engaging them, except in 2015 and 2017 (see Figure 4.7).

**Figure 4.7. Use of social witnesses by number of reports produced and institutions engaging them during 2014-2018**



Source: INFOEM website, <http://www.testigosociales.org.mx/TestigosSociales/#comite>, consulted on 6 November 2019.

Social witnesses are also used at the federal level, in a programme managed by SFP. Even though there is evidence of significant benefits from it, there are also opportunities highlighted by the OECD and other institutions.

The social witness programmes managed at the federal and state level have some similarities, but also important differences. First, while the federal programme is managed by the control authority (SFP), including the registration, training, and assessment of the work by social witnesses, at the state level the responsibilities are shared between UAEM, INFOEM and SECOGEM. It is said that charging UAEM and INFOEM with the registration of social witnesses is to keep them at arm's length from the institutions of the executive branch of government. However, the control institutions (SFP and SECOGEM), as a result of the nature of their work, might be better placed to assess and develop the expertise of social witnesses in terms of integrity risks. Secondly, the federal regime establishes clear thresholds over which a procurement process must necessarily engage a social witness.<sup>3</sup> The State of Mexico regulations are rather vague in this sense, as they do not establish a clear threshold. Third, the compensations paid to social witnesses vary significantly. At the federal level, the compensation is based on the work hours required from the social witness and a payment per hour determined after a market study carried out by SFP. As their payments are fixed in UMAs, some entities consider they can be quite onerous (SFP and USAID, 2018<sup>[15]</sup>). While a high compensation might provide an incentive for more individuals and organisations to become a social witness, it may also move public entities to avoid their participation, particularly given the lack of a clear threshold.

The differences described above give an insight into some of the reforms needed for the social witness scheme of the State of Mexico. Furthermore, the independence of social witnesses, might be jeopardised by the fact that the contracting authority, whose procurement procedure the social witness is observing, hires and pays him. The social witness might feel intimidated or uncomfortable criticising the job of an entity that is hiring and paying him. The entity might even apply some direct or indirect pressures to hinder the witness' job, for example, delaying their payments. The budgetary pressure that the social witness programme may exert may also lead contracting authorities to avoid them in an attempt to cut costs. In order to prevent these situations and strengthen the independence of social witnesses, reforms could be advanced so that social witnesses are hired by SECOGEM or INFOEM, rather than by the contracting authority.

In addition to setting clear thresholds for the engagement of social witnesses, there could be random appointments for specific procurement procedures. These could include not only public tenders, but also restricted invitations and direct awards, where social witnesses could review, for example, the justification to carry out a non-competitive process or to modify contracts during the execution of works and services.

In the past, the OECD has noted that social witnesses at the federal level may be quite knowledgeable about the engineering of public works or specific markets, but not about integrity risks (OECD, 2018<sup>[4]</sup>). The State of Mexico should be aware of this risk and provide permanent and systematic training for social witnesses. SECOGEM, with its expertise on control activities and public ethics, could lead the work to prepare tailored training programmes for social witnesses to be able to identify and recommend actions to mitigate integrity risks. Another weakness observed at the federal level is that the same social witness may participate in several processes involving the same procuring institution, creating the risk of familiarity with procurement officials and business agents. SECOGEM, INFOEM and UAEM should strive to address this risk, which is exacerbated at the state level by the limited number of social witnesses, by rotating social witnesses so as to avoid this familiarity, which may lead to conflicts of interest.

The Annual Report 2018 by CRTSEM concludes that even though there are a growing number of applications to become social witness, there are also a significant number of social witnesses who quit or did not request the extension of their registrations (INFOEM and UAEM, 2018). The report does not provide an explanation for these trends and, therefore, INFOEM, UAEM and SECOGEM could work together to analyse and explain this behaviour. One potential explanation might be that social witnesses do not perceive that their work is appreciated or at all useful. In this case, the three institutions could launch a campaign to widely communicate the programme and the benefits it has delivered for the State of Mexico. As part of this campaign, there could be an annual report or a website to follow up on feedback from social witnesses and the improvements stemming from their suggestions.

#### **Box 4.8. The reform on social witnesses being prepared by the State of Mexico**

The State of Mexico, through SECOGEM, is preparing a reform on the functioning of social witnesses, which was drafted after consultation with UAEM and INFOEM. The reform proposal is under analysis at the Ministry of Justice and Human Rights (*Secretaría de Justicia y Derechos Humanos*), which has to review and clear it before sending it to the State Legislature.

The reform proposes the creation of two committees, one for the registration of social witnesses, which would incorporate SECOGEM alongside UAEM and INFOEM, and another to appoint social witnesses, which would be led by SECOGEM and incorporate the participation of either business chambers or the Citizen Participation Committee of the SAEMM. The registration committee would call a public process to recruit social witnesses annually or depending on need.

The reform also aims to strengthen the profiles of social witnesses by requiring a minimum experience of five years dealing with procurement matters. This need was identified by SECOGEM as it observed that the reports by social witnesses often do not make any relevant recommendations and quite frequently are “copy-paste” versions of previous reports. However, SECOGEM has no authority to sanction social witnesses in such cases.

Likewise, the reform would require social witnesses to prepare interim reports in each stage of the procurement process, in addition to the final report.

In summary, the reform would align the State of Mexico practice for social witnesses with the federal programme.

Source: Information provided by SECOGEM.

#### **4.4.4. The State of Mexico could explore alternative mechanisms for civil society engagement in procurement procedures and public works, such as integrity monitors, social contracts and social participation frameworks**

As opposed to social witnesses, who concentrate on one phase of the cycle, the integrity monitor is particularly relevant for public works and follows the entire process, including tendering, 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 thus reduces such risks. The State of Mexico could explore the possibility of nominating an integrity monitor who can follow the entire procurement cycle for the next major work of infrastructure, as used during the Tappan Zee Bridge Project in the United States (see Box 4.9).

#### Box 4.9. The integrity monitor in the 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, it was decided to retain an independent procurement integrity monitor for the project. The Governor's office and the New York State Thruway Authority (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](http://www.newnybridge.com/documents/int-monitor-report.pdf) (consulted on 6 November 2019).

There are additional mechanisms for more profound engagements that the State of Mexico could explore, such as community monitors, social contracts, and social participation frameworks (OECD, 2015<sup>[14]</sup>).

- Community monitors observe progress and the quality of public works. They can be useful for creating trust among stakeholders, but need to be properly trained.
- Social contracts are designed to clarify and capture stakeholder commitments. These are co-signed by the leading agency and representatives of users, contractors, local governments, and congressmen during the implementation phase of public works. The contracts reflect the agreed roles that emerge from dialogue processes. They illustrate not only the adherence of the leading agency to social participation principles, but also the contributions of each stakeholder towards public works, as well as roles and behaviours of each party that contribute implicitly to fighting corruption and to enhancing the governance environment. Social contracts can also be complemented with bilateral agreements between the leading agency and the parties.
- A social participation framework (SPF), when applied, is set up from the outset of a public works project. The SPF is used during project preparation and continued throughout its cycle. The SPF contemplates three components: participation, communication, and transparency and accountability. The overall main objectives of the SPF are: i) guaranteeing a broad participation of the different stakeholders aiming at, amongst other objectives, establishing their roles and responsibilities in realistic and fair terms; ii) creating awareness of the importance of expenditures and mechanisms for maintenance to preserve the project's condition; iii) disseminating the project's objectives and achievements; and iv) increasing the public works transparency and accountability throughout their cycle.

Currently, the State of Mexico applies social control techniques (*contraloría social*) through a Control and Surveillance Citizen Committee (*Comité Ciudadano de Control y Vigilancia*) where citizens volunteer to monitor and prevent corruption in public works.

## 4.5. Review, challenge and remedy system

### 4.5.1. The State of Mexico could make challenge processes more accessible for bidders by allowing electronic filing and providing the necessary information in tender documents

An accountable public procurement system provides bidders with the opportunity to claim for the review of procurement processes and challenge award decisions, as established in the *OECD Recommendation on Public Procurement* (OECD 2015b).

To be effective, a remedy system must be well designed, capable of offering protection, accessible to suppliers, uncomplicated, inexpensive and efficient in processing cases. Any stakeholder, including unsuccessful tenderers, who believe that the public procurement process has been conducted in violation of relevant laws must have access to effective review and remedy mechanisms. These mechanisms build confidence in the system among businesses. They also increase the overall fairness, lawfulness and transparency of the procurement procedure.

It is important for suppliers to have remedies available to enforce procurement rules. If suppliers have remedies, they can be motivated to monitor procurement procedures and require that procurement rules be followed so that their chances of being awarded a contract are not unlawfully diminished. Thus, remedies both enhance the lawfulness of procedures and encourage competition. In order for remedies to be effective, they must be:

- Clear and straightforward (i.e. understandable and easy to use);
- Available to all economic operators wishing to participate in a specific contract award procedure without discrimination, in particular on the grounds of nationality; and
- Effective in preventing or correcting instances of unlawfulness on the part of suppliers or public authorities.

#### Box 4.10. The OECD Recommendation on Public Procurement (accountability)

##### The Council:

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

To this end, Adherents should:

iii) Handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrongdoing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.

Source: (OECD, 2015<sup>[2]</sup>).

The Law on Public Procurement of the State of Mexico and its Municipalities (Articles 90 to 94) and the Administrative Code of the State of Mexico (Twelfth Book) establish the administrative challenge called *instancia de inconformidad* (INI). INI is the procedure to challenge acts or decisions in a public tender or restricted invitation, including the call for tender, the event to present and open bids, inspections, clarification meetings, the bid assessment and the award. SECOGEM (General Directorate for Administrative Responsibilities) is in charge of processing the corresponding INI.

The INI should be filed in written form within 10 working days of the publication of the award decision and it should include:

- The name of the person who files it;
- The address in the State of Mexico to receive notifications;
- The reason for the challenge, tender or restricted invitation number, and if applicable, the name of the work, good or service awarded;
- The date of the award event or publication;
- Description of the events supporting the challenge, under oath;
- If possible, the legal instruments trespassed;
- Evidence; and
- The request to suspend the process being challenged, if applicable.

Although filing an INI in electronic form is anticipated in the Law on Public Procurement of the State of Mexico and its Municipalities, in practice the procedure must be completed in written form. By allowing bidders to submit INIs electronically, the State of Mexico could make the challenge procedure more accessible and less demanding in terms of administrative burden.

The INI can only be filed by the bidders participating in or invited to the procurement procedure. They can request the suspension of the award if they provide a guarantee for damages incurred on public finances. The guarantee must be equivalent to the amount of the contract. However, the awarded bidder can also provide a guarantee (*contragarantía*) for the same amount to avoid the suspension. In the case that an INI is filed, the contracting authority may request the suspension of the award if it considers that failing to do so will cause more damages to the public finances.

Once SECOGEM has all the required documents and information, a resolution will be issued within 30 working days. Resolutions are not public. 51 INIs were filed in the period 2016-2018, which is 17 per year on average, and 14 during 1 January-5 April 2019. It would seem as the number of INIs during 2019 will be higher than the average of the previous three years, but still low relative to the number of procedures undertaken. There is not enough information available to provide an explanation for the number of INI, but the State of Mexico could carry out focus groups with suppliers to better understand whether the process is accessible enough. To put the situation in context, lack of complaints is not the norm in Latin America. Two recent reviews carried out by the OECD in Colombia and Peru found that, in both countries, public procurement complaints per year numbered in the hundreds.

After the resolution, there is still a second instance before the Tribunal of Administrative Justice of the State of Mexico (*Tribunal de Justicia Administrativa del Estado de México*, TJAEM), in case the person who filed the INI is not satisfied. This second challenge must be filed in written in the corresponding regional court (*Sala Regional*) of the TJAEM within 15 days of notification of the resolution on the INI.

The State of Mexico provided the OECD with templates of calls for tender from several auxiliary bodies, namely CAEM, IMIFE, ISEM, SEIEM and SITRAMYTEM. Although the wording slightly differs, all the templates include a brief section indicating to bidders that they may challenge award decisions through an INI filed before SECOGEM or the OIC. However, such sections could be more precise for bidders, for example, by describing the required information that INIs should include or at least by referring bidders to a website with further information. Tender documents and award statements (*actas de fallo*) could be more explicit and describe more thoroughly the alternatives for bidders to challenge award decisions.

The possibility to challenge award decisions through INI is also communicated by SECOGEM through brochures and posters, which are distributed and announced in the ministries and auxiliary bodies that carry out procurement activities, as well as in SECOGEM's website ([www.secogem.gob.mx/inconformidades](http://www.secogem.gob.mx/inconformidades)).

***4.5.2. The State of Mexico could explore non-adversarial methods for conflict resolution during the execution of contracts providing review alternatives that might be less costly and burdensome than traditional legal means***

Currently, SECOGEM, specifically the General Directorate for Investigations, is in charge of receiving and managing reports and complaints by suppliers relative to lack of compliance in contracts by ministries and auxiliary bodies. The regulatory framework for public procurement in the State of Mexico does not anticipate alternative (non-adversarial) methods for dispute resolution during contract execution. These can be good alternatives to the traditional legal mechanisms as they can be less burdensome and provide faster solutions. The procurement regulations in the State of Nuevo León, for example, do anticipate alternative methods (see Box 4.11).

### Box 4.11. Alternative dispute resolution mechanisms during contract execution in Nuevo León

According to Nuevo León's public procurement legislation, contracting parties can agree to use negotiation or mediation as a dispute settlement mechanism to resolve their distinct interpretations of the execution of contracts. Such dispute settlement mechanisms may be agreed upon in the contracts themselves, or in an independent agreement. In any case, dispute settlements must agree to the following:

- The stage of negotiation or mediation, as well as an agreement of the time period when this negotiation will take place;
- the parties agree to conduct bargaining or mediation procedures in good faith;
- the applicable laws shall be those of the state;
- negotiations or mediations must be carried out in Spanish;
- the agreement resulting from the negotiation or mediation shall be binding to both parties.

The parties to a contract may also agree to an arbitration procedure to resolve disputes about compliance with the contract in terms of the provisions of the Law of Alternative Methods for Conflict Resolution of the State of Nuevo León. The use of negotiation, mediation or arbitration are not mutually exclusive, nor do they restrict the actions of the parties in cases of possible invalidity of acts of authority, violation of human rights or crimes. The arbitration procedure may be agreed upon in the contract itself or in an independent agreement. With the alternative non-adversarial method (negotiation or mediation), one or more service providers intervene in a dispute, without the authority to decide on the basis of the agreement that could be reached. These providers are not permitted to issue a judgment or sentence, but will facilitate communication between the participants in the conflict. The purpose of the process is that these providers take control of the case and arrive at a solution.

The conciliation and the mediation processes in Nuevo León have several stages. They generally start with the two parties trying to resolve an issue among themselves. If that does not work, a third party is brought in, but its role and authority can vary. If the disagreement continues, the matter can be brought to arbitration.

For arbitration in public works, the alternative non-adversarial method, regulated by the Code of Civil Procedures of the State, is applied. In this case, one or more providers of alternative methods (who are called arbiters) issue a definitive and mandatory award for the participants in the conflict, in order to finalize it.

Despite the legal possibility to apply such alternative methods, there is no data available about the frequency of cases going to mediation or arbitration relating to issues arising during the execution of public procurement contracts. The alternative methods have been used rarely, according to government information. Hence, the effectiveness of the process is unknown, as is any impact these procedures may have had on works in progress.

Source: (OECD, 2018<sup>[7]</sup>).

In Peru, there is an institutional arbitration system managed by the Government Procurement Supervising Agency (*Organismo Supervisor de las Contrataciones del Estado*, OSCE), which specialises in dispute settlement in public procurement. It is autonomous and governed by both its own regulations and by the legislative decree establishing norms for arbitration (see Box 4.12).



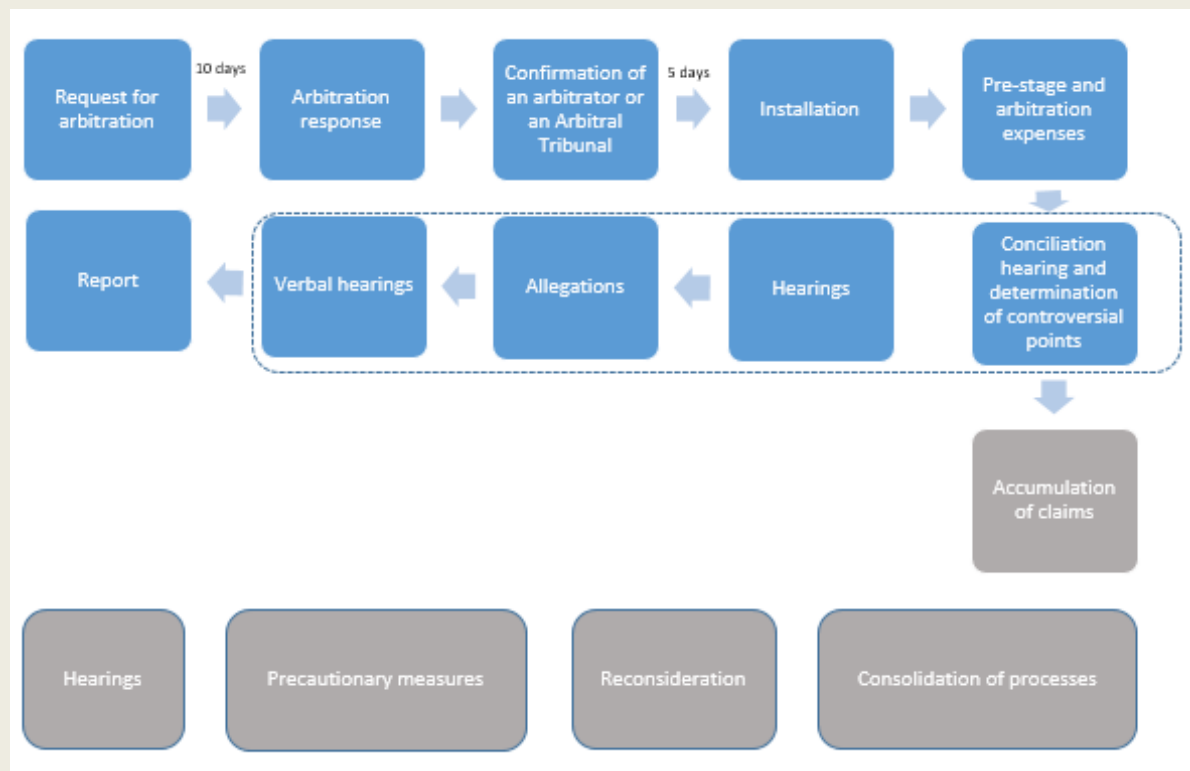
### Box 4.12. Arbitration in public procurement in Peru

The SNA-OSCE (National Arbitration System) is responsible for organising and administering institutional arbitration proceedings in Peru, with the objective of settling disputes that occur during the execution of contracts, in accordance with the regulatory framework between contractors and public entities. SNA-OSCE only organises and administers those arbitration proceedings where parties mutually agree to, as well as those that by legal mandate should be administered, in accordance with the following assumptions:

- If the contract does not include an arbitration agreement, the clause referring to institutional arbitration will refer to SNA-OSCE as the body responsible for such an assignment;
- If the arbitration agreement does not make reference to a determined arbitration institution, it is understood that the arbitration shall be carried out under the responsibility of SNA-OSCE;
- In case the arbitration agreement indicates that the organisation and administration of the arbitration shall fall to any of the functional authorities of the SNA (National Arbitration System), it will be understood that the SNA-OSCE shall be in charge of such assignment.

Additionally, there are arbitration institutions in the private sector that also administer and organise institutional arbitration.

The figure below illustrates how the arbitration proceedings work:



Source: (OECD, 2017<sup>[16]</sup>).

If the State of Mexico were to explore alternative mechanisms for dispute resolution during contract execution, it would have to clearly define its role in the mediation, conciliation and arbitration processes. The State of Mexico would have to clarify whether it would purely be a supervisor or also a mediator. Then,

information about the recurrence to mediation and conciliation would need to be gathered by a unit within government (i.e., within SECOGEM). Furthermore, the government could benefit from keeping a list of unresolved cases that go to court, as a proxy of the effectiveness of alternative methods. Such alternatives would also be useful for infrastructure as public works contracts tend to be more complicated, given the risks involved in such projects. In addition, financial commitments are usually significantly higher in public works contracts.

#### **4.6. Risk management and internal control to identify and address integrity risks in public procurement**

Public procurement systems are essential for public organisations to achieve their objectives effectively while making best use of the scarce resources available. The complexity of these systems has been reduced thanks to the incorporation of computer systems, which can range from a simple electronic dashboard system to more advanced transactional ones. Electronic processing of procurement processes has gained in efficiency by using uniform regulations for various organisations, improving speed, simplifying procedures and securing transparency that facilitates both internal and external control of processes.

The State of Mexico has made efforts to improve the efficiency and transparency of its procurement system through administrative regulation, policy guidelines, and the implementation of an e-procurement system. The Ministry of Finance administers COMPRAMEX, a tool that improves the transparency of calls for tender worth millions of pesos per year in goods and services that the State of Mexico requires for the fulfilment of its objectives, plans and policies. Meanwhile, the control, risk management and auditing of public procurement has made progress thanks to the operation and support of SECOGEM, and to the activity of the OICs regarding control and auditing. However, there is no clear and direct link between the management of the procurement system and the internal control function, understood as a process and a system aimed at achieving the objectives of the Government of the State of Mexico. In other words, risk management should still be linked with public procurement in each ministry or body and the internal control system should be implemented comprehensively in the respective departments. This separation affects a series of key elements that should be treated as a clear opportunity for improvement.

The OECD Council has made recommendations on public procurement, stressing the need to promote transparency, integrity, accessibility, participation, efficiency, use of technologies, effectiveness, risk management, accountability and the integration of public procurement with public finance. In addition, the Council has made recommendations concerning public integrity, focused on the highest level of commitment on the part of staff to integrity, institutional responsibility, the strategic approach to risk mitigation, standards of conduct and a culture of integrity, leadership, meritocracy and transparency, a framework of risk control and management, external oversight and control and stakeholder engagement.

Public procurement represents a quarter of the budgetary resources of the State of Mexico and has a decisive impact on the delivery of services to the state's population and on citizen satisfaction. Oversight of the system and its operations is a duty of the state authorities and a real requirement when it comes to accountability to citizens. In this framework, the internal control system, risk-based management and the role of internal audit are central aspects of any effective effort to implement a governable, efficient and transparent public procurement system.

The State of Mexico can adopt the recommendations of the OECD Council on public integrity and public procurement, by introducing legal reforms and implementing public policies that facilitate inter-institutional co-ordination and the creation and use of effective tools, digital and otherwise, designed to actively and productively fulfil the functions of management and control of public procurement.

Taking into account the OECD recommendations, this section addresses the challenges and opportunities facing the State of Mexico in terms of control, risk management and auditing applied to public procurement.

The *OECD Recommendation of the Council on Public Procurement* is a fundamental guide that emphasises supervision and control, co-ordination and sufficiency of resources.

#### **Box 4.13. The Recommendation of the Council on Public Procurement (accountability and risk management)**

##### **The Council:**

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

To this end, Adherents should:

iv) Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are coordinated, sufficiently resourced and integrated.

The Recommendation also emphasises the importance of controlling the management of the entire procurement cycle based on risk.

XI. RECOMMENDS that Adherents integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle.

To this end, Adherents should:

i) Develop risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.

ii) Publicise risk management strategies, for instance, systems of red flags or whistle-blower programmes, and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.

Source: (OECD, 2015<sup>[17]</sup>).

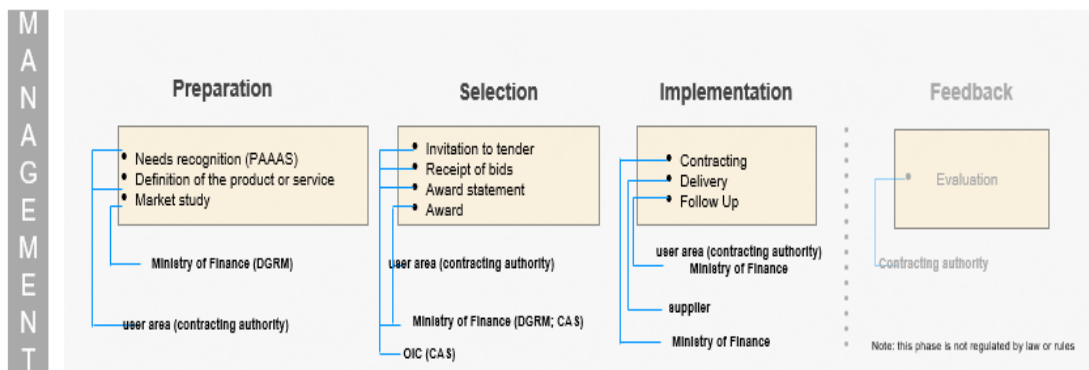
The State of Mexico has taken steps in recent years to standardise and modernise the state procurement system, with a special emphasis on the activity of the Ministry of Finance and the General Directorate of Material Resources (DGRM), while also strengthening the institutional and the state regulatory framework in the area of control, supported in particular by SECOGEM and its OICs in the ministries and auxiliary bodies. Many of the reforms concern the activity and co-ordination of these institutions of the Government of the State of Mexico.

COMPRAMEX is an e-procurement system that is still operating on a limited basis in terms of transactionality and that records the total resources allocated to procurement procedures. The DGRM has more than 500 officials dedicated to operating the system, which provides a concentration of the purchasing power of the State of Mexico and that decisively contributes to implementing its policies of reducing public spending, austerity and efficiency. However, as mentioned previously, auxiliary bodies and municipalities can also carry out their own contracting processes when they do not voluntarily choose to do so through the DGRM.<sup>4</sup> Furthermore, procurement financed through federal funds follows different

procedures from those financed through state funds, which adds complexity to the set of operations involving the procurement system.

The following figure summarises the main actors in the management of the procurement process for a public tender managed under the centralised scheme (i.e., through the DGRM).

**Figure 4.8. Main participants in the management of the public procurement process under the centralised scheme**



Internal controls also help organisations achieve their most important objectives and maintain and improve their performance. The Government of the State of Mexico is implementing an internal control system, following the approach of the Integrated Internal Control Framework (*Marco Integrado de Control Interno*, MICI), based in turn on the Committee of Sponsoring Organizations of the Treadway (COSO), which allows organisations to effectively and efficiently develop internal control systems that adapt to their contexts, mitigate risks to acceptable levels, and support decision-making and governance. COSO helps to design and implement an effective internal control system, whether for private or public institutions. This should be applied and implemented throughout the state administration.

The Integrated Framework allows organisations to focus on three aspects of internal control:

- **Operational objectives:** this refers to the effectiveness and efficiency of the operations carried out by the organisation, including the objectives of operational and financial performance, and the protection of assets against losses;
- **Reporting objectives:** this refers to internal and external financial and non-financial reporting and may encompass reliability, punctuality, transparency or other terms established by regulators, recognised standard setters, or organisational policies; and,
- **Compliance objectives:** aimed at compliance with the laws and regulations to which the organisation is subject.

#### Box 4.14. The five integrated components of internal control (adapted from COSO)

**Control environment.** The control environment is the set of standards, processes and structures that provide the basis for implementing internal control throughout the organisation. The board and senior management set the tone at the top of the organisational hierarchy on the importance of internal control, including expected standards of conduct, while the management reinforces expectations at different levels of the organisation.

**Risk assessment.** Each entity faces a range of risks from external and internal sources. Risk is defined as the possibility of an event occurring and negatively impacting on the achievement of objectives. Risk assessment involves a dynamic and iterative process to identify and assess risks to the achievement of objectives. Risk assessment forms the basis for determining how risks will be managed. A precondition for risk assessment is the setting of objectives at different levels of the organisation.

**Control activities.** Control activities are the actions established through policies and procedures that help to ensure that management directives are carried out to mitigate the risks to achieving objectives. Control activities are carried out at all levels of the entity, at several different stages within business processes and in the technological environment. They may encompass a range of manual and automated activities, such as authorisations and approvals, verifications, balances and reviews of organisational performance.

**Information and communication.** Information is necessary for the entity to carry out its internal control responsibilities in support of the fulfilment of its objectives. Internal communication is the way that information spreads throughout the organisation, flowing up, down and through the entity. It enables staff to receive a clear message from senior management that control responsibilities must be taken seriously.

**Monitoring activities.** Evaluations are used to determine if each of the five components of internal control are present and operating correctly. Evaluations can be continuous and integrated into the processes, or separate and carried out periodically, varying in scope and frequency. The findings are evaluated based on standards, and any deficiencies are reported to management and the board of directors, as appropriate.

Source: COSO.

The most recent regulatory milestones in the implementation of the Integrated Framework were the publication, on 14 November 2016 in the Government's Official Gazette, of the Administrative Manual in the field of Internal Control for Ministries and Auxiliary Bodies in the Public Administration of the State of Mexico (*Manual Administrativo en materia de Control Interno para las Dependencias y Organismos Auxiliares en la Administración Pública del Estado de México*), updating the state regulatory framework on internal control; the publication, in the Federation's Official Gazette, on 3 November 2016, of the Agreement by which the Provisions and the Administrative Manual of General Application in the Field of Internal Control are issued" (*Acuerdo por el que se emiten las Disposiciones y el Manual Administrativo de Aplicación General en Materia de Control Interno*); which is the predecessor in the Federation of the "Agreement by which the Minister of Control issues the provisions and the administrative manual on internal control for ministries and auxiliary bodies of the Government of the State of Mexico" (*Acuerdo por el que el Secretario de la Contraloría emite las Disposiciones y el Manual Administrativo en Materia de Control Interno para las Dependencias y Organismos Auxiliares del Gobierno del Estado de México*), published on 4 September 2017. This is an ongoing implementation process, which has completed the regulatory stage and has put in place the structures for the operation of the system in ministries and auxiliary bodies. The process of implementing the regulations and technical guidelines has begun and, in

some cases, the application of the model is underway. From a general perspective, the internal control system of the ministries and auxiliary bodies presents different levels of development.

An important component for the implementation of internal control in the State of Mexico is the existence of a State Development Plan, together with institutional, sectoral, and special programmes, which, although not part of the internal control system, are necessary pre-existing conditions for its operation. Without defining clear objectives for state performance, internal control cannot function properly. Likewise, the State of Mexico Government is subject to laws that define public values, the general principles of administration, and desirable and undesirable behaviours. These include the General Law of Administrative Responsibilities and the General Law of the National Anticorruption System, published on 18 July 2016, as well as the Law of the Anticorruption System of the State of Mexico and Municipalities and the Law of Administrative Responsibilities of the State of Mexico and Municipalities, published on 30 May 2017.

A valuable factor of the implementation of the Institutional Internal Control System (*Sistema de Control Interno Institucional*, SCII) is the role of SECOGEM, which enables the organisation of internal control and its process of implementation, through proposal, advisory, training and co-ordination activities. Implementation of the new system in ministries and auxiliary bodies has been supported by SECOGEM, which has provided the tools for regulation, diagnosis and management of the system to the institutional heads and management bodies, and has supported them through the OICs. The OICs are units located in each of the ministries and auxiliary bodies, and are for internal auditing as well as processing, verification and resolution of cases of administrative responsibility established by law.

As mentioned above, from a general perspective, the internal control systems of the ministries and auxiliary bodies present different levels of development. Despite the fact that the State of Mexico still lacks information of demonstrated and consolidated quality on the level of maturity of the various elements of the system in public institutions, there is a certain consensus that in general the most developed element is the so-called Control Environment and that the least developed elements are Risk Management, Control Activities, and Information and Communication. This situation is typical of an implementation process in its early phases, which involves technical complexities and initial resistance.

Risk assessment is central to COSO, since it focuses on the importance of prevention, anticipating the probability of internal and external events that affect the achievement of organisational objectives, and establishing measures to avoid, mitigate or accept such adverse events. Every public and private entity has to confront various types of risk. COSO defines risk as the possibility of an event occurring and negatively impacting on the achievement of objectives (COSO 2013 Internal Control Framework). From this angle, risk assessment involves a dynamic and iterative process to identify and assess them. The risks of achieving these objectives throughout the entity are considered in relation to established risk tolerance. As such, risk assessment forms the basis for determining how risks will be managed in order to achieve the intended objectives. Regarding public procurement, the internal control system and risk management in particular are vital elements for good performance, but their level of implementation of the internal control system and risk management are tasks that remain pending.

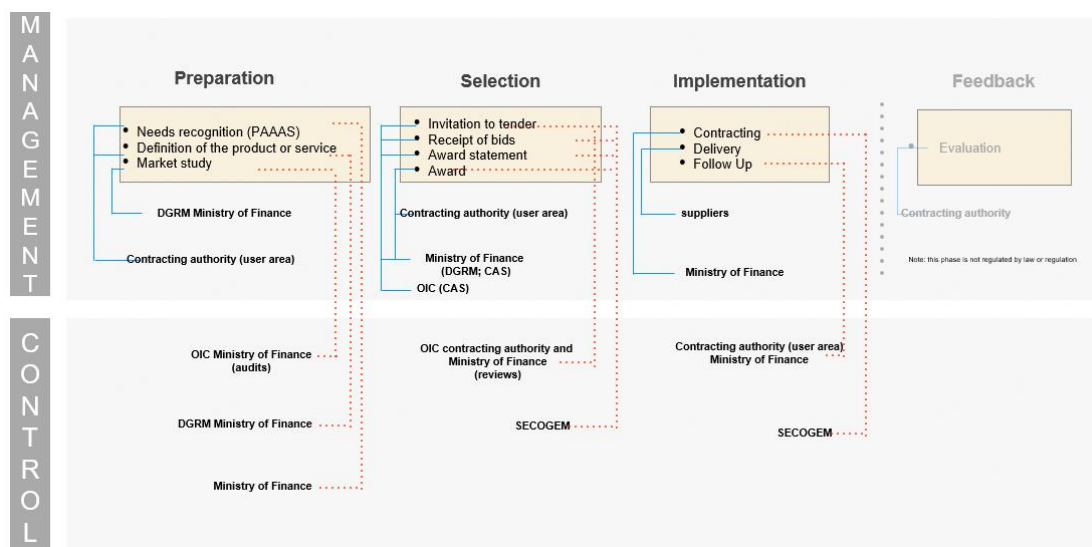
The internal audit function of the State of Mexico Government is carried out by the OICs, which functionally and technically depend on SECOGEM, providing services to each ministry and entity at the state level, according to mainly the LOAPEM and the Internal Bylaws of SECOGEM, which are in force since 22 November 2018. The OICs are autonomous in the execution of their tasks and belong to SECOGEM's functional structure. The government's internal audit function operates as an internal-external audit structure, which both supports the institutional heads and depends on SECOGEM. This design has advantages from the perspective of independence and co-ordination, as well as disadvantages with regards to collaborating and creating trust with the rest of the administration. Regarding public procurement, OICs carry out routine control tasks as part of contracting processes and auditing actions to groups of procurement processes, which in itself generates control risks, as will be explained later.

As mentioned, the institutional internal control system of the Government of the State of Mexico is still in the process of being implemented, and includes a series of actors with roles and responsibilities of various kinds, both at the state level and at the institutional levels. This set of factors means that, despite the progress made, especially at the regulatory and institutional level, significant challenges still remain for the governance, efficiency and transparency of the public procurement system. These challenges are closely related to the vision and culture of control, the effective incorporation of risk management tools into procurement and the design and practices of internal audit and control in the State of Mexico.

#### 4.6.1. The Government of the State of Mexico should go beyond mere compliance in its internal control tasks to identify and mitigate risks of corruption and fraud

As has been observed, about 25% of the State of Mexico's budget is allocated to public procurement, which is executed by 108 public institutions of the State Government, with the procurement of certain categories of goods and services used throughout the public administration being concentrated in the DGRM, while others are purchased directly by the ministries and auxiliary bodies. As in other states in Mexico, state regulations apply to procurement operations that are financed exclusively by state or municipal resources, while federal regulations apply when any amount of federal funds is used to pay for acquisitions. There is both a centralised and decentralised scheme in the state public administration that adds complexity to co-ordination and control operations. Regulatory and institutional complexity and the administration of significant annual volumes of resources are risks inherent to the function of the Ministry of Finance, and constitute a strategic risk factor for the Government of the State of Mexico. A simplified view of the procurement process and the agents of control, according to current legislation, are set out in the figure below.

**Figure 4.9. Management and control of procurement procedures under the centralised scheme**



According to figures from the Ministry of Finance, during the period 2016-2018, the procurement of goods and services through public tender by the DGRM amounted to 52% in terms of the number of contracts, and 63% in terms of the value of such contracts; in 2019 they amounted to 78%. This is a positive sign of progress and shows that it is possible for public tenders to become widespread as the favoured procurement method. However, according to the data provided by the Ministry of Finance, a significant number of public tenders and restricted invitations are declared void due to lack of qualified offers. This may be due to weak communication between the procurement system and the market, or a sign of the risk of abuse of non-competitive methods. For example, in 2018, 17.24% of restricted invitations for the

purchase of goods were declared void due to a lack of acceptable bids, while for services this occurred in 10.34% of cases. Considering that public tendering is the method that best guarantees the efficiency of the result and transparency and control of the process, and that e-procurement systems can help to achieve the objectives of austerity and greater efficiency, it is necessary for the Government of the State of Mexico to take measures to ensure that these results become more reliable and sustainable over time.

Access to information on the system by external and internal actors is still of low significance to control. While COMPRAMEX can be said to be in line with state regulations, the system is not fully publicly accessible to suppliers or relevant stakeholders, other than public servants. It is still no more than an electronic whiteboard that does not permit integration, and offers only restricted access to the data it contains, even by other state institutions. This electronic system is not accessible for the broader spectrum of stakeholders who would provide improved and effective control of procurement processes. The limited information available to procurement system participants (suppliers, market, civil society, public decision-makers, researchers), including to public servants with financial, legal and audit control functions, weakens decision-making and internal and external controls. Strengthening access by control authorities to procurement information may require establishing agreements between, on the one hand, the Ministry of Finance and other spending agencies and, on the other hand, SECOGEM.

A related aspect that weakens control over procurement is the poor level of interaction with the market, which is necessary to understand the value it brings to government performance. In the best case scenario, social witnesses in the State of Mexico may eventually acquire the capacity to observe sectoral purchases, but it is unlikely they will do so in relation to risks of corruption and fraud. This weakness of control by external actors means that internal control and auditing should play a more significant role in preventing risks, especially risks to integrity.

COMPRAMEX is making progress in its coverage, which is a step in the right direction, but nevertheless in 2018 COMPRAMEX registered about 40% of procurement expenses, leaving approximately 60% still in the hands of auxiliary bodies. Even in ministries, where control is usually stronger than in auxiliary bodies, evaluations of the level of maturity of the internal control system are not applied to the procurement system itself, but only as a possible unit to be considered in the identification and evaluation of risk together with others, as occurs with the DGRM in the Ministry of Finance. On the other hand, an examination of a sample of documents on risks and institutional risk management 2018-2019 suggests that in general they do not include public procurement processes in particular. Exceptionally, some identify risks arising from inadequate procurement processes, establishing formal corrective and mitigating measures that do not address the cause of the problem or that have little effective impact. Out of a sample of administrative audits carried out on procurement by DGRM in 2017 and 2018, it is clear that they are aimed at formal compliance with the legal provisions and in almost all cases yielded no findings, which implies that they are not being useful to spot management failures in the procurement cycle (from planning to the delivery of goods and services). The strong administrative focus of procurement management and audits in the State of Mexico may also be affected by the “control paradox.” This describes the cultural process by which compliance-focused organisations comply with orders and rules out of fear of sanction, which generates a dynamic of mistrust that reinforces the controls, thereby making acts of control mere formalities completed only out of the need to comply. In this sense, procurement officials may be more concerned with mere normative compliance than with creating value for money.

The Government of the State of Mexico should consider that public procurement is one of the government activities most exposed to the risks of corruption and fraud. The governance of the procurement function should also advance effective internal control and integrity, balancing control practices with organisational dynamics that foster responsible autonomy. It would also be advisable for the State of Mexico to implement cross-cutting international standards and recognised tools for internal control, risk management and auditing, as well as international commitments for the prevention of corruption in public procurement, such as those set out in the *United Nations Convention against Corruption*, signed in Mérida in 2003, and to incorporate specific tools that make it easier for managers and supervisors to identify risks of corruption



and fraud in their everyday tasks. In an initiative to increase trust in the public sector, the State of Mexico should make an additional effort and implement good internal and external control practices, beyond what is strictly required by law. Decision-making and dissemination of reforms, spending efficiency, and control are central to defining the expectations of the procurement system for citizens.

#### ***4.6.2. The Government of the State of Mexico should deepen the implementation of institutional internal control systems, especially in the areas relative to public procurement***

Public procurement is more efficient and better aligned to the legal framework when the organisations participating in it have strong internal control systems that are based on risk management. The Government of the State of Mexico is implementing an institutional internal control system throughout the administration, following the approach of the Integrated Internal Control Framework, based on COSO, which has the following five elements: Control Environment, Risk Management, Control Activities, Information and Communication, and Monitoring.

The internal control system of ministries and auxiliary bodies of the State of Mexico presents different levels of development. Within this context, the component of the system with the highest level of maturity is Control Environment, expressed in the legal norms, policies and instructions issued by the authority. The component with the lowest level of maturity is Risk Management. This presents an incipient level of implementation due both to cultural challenges and to deficiencies in the practical application of methodologies to identify, describe, evaluate, respond and monitor risks, and in the application of consistent measures to address and mitigate identified risks, including integrity risks.

In the public procurement system, this state of affairs is expressed in the solid framework of rules and policies, along guidelines for austerity and the fight against corruption. It also promotes a simplified vision of procurement, as a series of administrative operations framed in the different stages of the process. This administrative vision of procurement focuses control on verifying compliance with the legal, formal and procedural steps and requirements (typical of a healthy control environment) and often makes it difficult to visualise procurement as a management challenge of a systemic nature, with multiple stakeholders and aimed at addressing public needs. On the contrary, control should be conceived as an ongoing activity of the various units involved in the procurement process and at their respective decision levels, aimed at ensuring compliance with organisational objectives through efficient and transparent management. The State of Mexico should accelerate and deepen the use and evaluation of institutional internal control systems, and especially those relative to procurement processes. To achieve this, it should seriously address a series of challenges and opportunities.

First, the procurement system in general, and COMPRAMEX in particular, should be subject to performance evaluations. According to the information provided by various institutions, including the Ministry of Finance and SECOGEM, the Government of the State of Mexico does not have reports on the results, strengths, weaknesses, opportunities and areas of reform relative to the procurement system to facilitate strategic decision making. Nor does it have a dedicated performance framework to measure efficiency of the procurement system. The institutional control environment is weakened to the extent that the state government lacks comprehensive reports on the system, and does not disclose to staff and suppliers its expectations on the performance of the procurement system in each institution, including integrity expectations. These evaluations can even be more comprehensive and incorporate various areas of reform, as this review does. Indeed, this review aims to provide an accurate diagnosis of the results of the reforms implemented in recent years and, above all, to identify gaps that the system still presents with respect to international best practices, as well as a series of actions that may contribute to close them.

Second, it is advisable that the senior management of the state government institutions reiterates an attitude of control, and communicate this constantly within their organisations. This is known as “tone from the top,” which reflects the leadership and commitment of the administrative bodies (the government) and

the management (the heads of ministries and entities). The Government of the State of Mexico should continuously ensure that the senior management of each entity, as well as the intermediate managers, are aware of the systemic nature of internal control, the impact of the control measures of a unit, or their omission, on the rest of the organisational units and on institutional results, and the need to systematically apply internal control mechanisms in procurement processes. Likewise, it should strengthen resources to make risk control and management more effective. To achieve this, the Government of the State of Mexico should require and enforce accountability of institutions and their senior management, vis-à-vis the government and the population, and carry out the reorganisation of control resources necessary to strengthen their management results.

From an organic perspective, within ministries and entities, a consistent effort should be made so that the members of the Institutional Control and Performance Committees (*Comités de Control y Desempeño Institucional*, COCODIs) fully understand their functions and the expected results of their work, with special attention on procurement and services provided to the population. COCODIs in ministries are chaired by the head of the institution and made up of the heads of the programming and budget, finance, legal affairs and information technology directorates, together with the co-ordination of internal control and the head of the information, planning, programming and evaluation unit (the composition may vary slightly depending on whether it is a sectorised entity or not). The objective of the Committees is to contribute to the timely fulfilment of institutional goals and objectives and the improvement of budget programmes, analysing significant variations in the plans and results, and the fulfilment of the institution's programmes. In this sense, they are one of the collegiate bodies of greatest value for decision-making on direction, co-ordination and control in each institution. At the same time, COCODIs are in charge of identifying and analysing risks, as well as determining preventive measures and monitoring control strategies and actions. In the State of Mexico there is an insufficient understanding and appropriation of the control work by the COCODIs and their members, despite the important role they play in institutional performance. COCODIs bring together key managers for planning, control and performance, but in many cases the importance of the internal control system, or of risk management, is not fully understood. Likewise, COCODIs do not include the heads of executive areas, which may contribute to the lack of appropriation of control by those who direct the areas that lead to results, resulting in insufficient coherence between the "action" of the organisation and the "control" of it. COCODIs often significantly delegate their analyses and decisions on the advice provided by OICs, increasing the disconnection between management and control. In this regard, COCODIs could improve their understanding of the technical aspects of risk control and management by regularly integrating institutional areas linked to performance, in order to strengthen their decision-making on control, thereby transferring responsibility for control in executive areas to those who manage those areas.

COCODIs, and the heads of institutions, should regularly consider public procurement among their key processes and, in the case of ministries and auxiliary bodies with the highest volume of procurement, include it permanently as a key process whose internal control will be strengthened, and for which risk analysis and management will be carried out. This would be a first step for each institution to systematically identify procurement risks, including integrity risks, take appropriate mitigation and corrective measures, and report and communicate the events and results to management and the governing boards. COCODIs are a body of central importance in defining operational and control objectives of the system and procurement processes in each institution, and on that basis they could contribute to improving the performance of public procurement. Meanwhile, institutional staff, and especially those in the units and functions regarding procurement, should be aware about the role they play and the expected results of their performance in the task of control, at their respective organisational levels.

Likewise, it is necessary that the Government of the State of Mexico adopts measures that favour the achievement of results in procurement, by gaining cross-cutting knowledge of the internal control system of public contracting in the government in general, and in ministries and entities in particular. Likewise, it should use this knowledge for decision-making on measures to strengthen internal control. In this sense,

it is necessary that ministries and entities, including the DGRM, with the technical support and guidance of SECOGEM, ensure that they accelerate further effective development of the elements of an institutional internal control system, and in particular with regards to the procurement process. Regarding the SCII in general, efforts should be directed towards strengthening the following elements in particular:

- risk identification and management;
- control activities relative to risks at their various organisational levels and processes; and,
- information and communication of activities for management decision-making.

Regarding the procurement system, it is necessary to carry out an evaluation of the level of maturity of the internal control system throughout the process, engaging the various institutional management and control stakeholders. This systemic evaluation of a complete process of operations throughout the administration will help identifying critical areas for development, and guiding control efforts and resources. The evaluation results should give rise to a medium-term plan to strengthen the internal control system for public procurement in the State of Mexico.

#### Box 4.15. Colombia Compra Eficiente and evaluation of the internal control system

*Colombia Compra Eficiente* is the public procurement programme of the Colombian State. It considers the permanent evaluation of its internal control and risk management as an objective of its procurement system, carrying out internal control evaluations on an annual basis, and publishing its results on its website so that they are accessible to all interested parties.

These reports contain the conclusions of the internal control evaluations of the strategic administration processes, financial management, human resource administration, contract and legal management, among others, and in each case propose internal control recommendations that affect the procurement system. The public character of these reports ensures periodic accountability for the internal control system of the public procurement governing body in Colombia, and a higher level of external citizen control, thereby strengthening the legitimacy of the institution.

By way of example, the report for the second half of 2019 concluded, among other things, that:

- “After evaluating the profiling worksheet of the Strategic Direction process and its procedures, it was observed that these documents do not cover in detail the activities to be carried out in order to fulfil the defined objective. For example, the budget planning procedure does not identify the existing relationship with the budget management procedure led by the General Secretariat to delimit the administration of the budget without determining whether they are operating and/or investment resources. Similarly, it was observed that controls are not adequately designed and they are not applied in a permanent manner. The documentary management of the process does not present the traceability that supports the development of the value chain.”
- “The Strategic Direction process was not observed to have updated the assessment and treatment of its risks, meaning that these are not being managed, circumventing the provisions of paragraph ‘f’ of Article 2 of Law 87 of 1993 and dimension No. 7 of the Integrated Planning and Management Model, and creating uncertainty about the fulfilment of the process objectives by not identifying deviations in a timely manner.”

The same report made recommendations, including the following:

- “Analysing the pertinence of preparing a working plan for the redesign of the organisation’s Model for operations by process, harmonised with the functions established for the ANCP-CCE and in compliance with its central purpose, mission and vision, which allows the creation of the value chain to satisfy the needs and interests of users.
- In order to strengthen risk management within the entity, updating the risk policy regarding aspects such as: Risk appetite and tolerance, and frequency of risk monitoring in accordance with assessments, among other relevant aspects; as well as the procedure defined in the strategic direction process, in order to obtain a greater degree of maturity regarding this aspect.”

Source: <https://www.colombiacompra.gov.co/colombia-compra/informes-de-gestion/informes-de-control-interno>.

A valuable measure that would help complementing efforts to increase the level of maturity of the SCII is internal accessibility to information systems and the opening up of data on procurement in order to allow analysis, control and external supervision by civil society. A basic measure to strengthen control and auditing is the opening up of as much useful information as possible to all interested parties, together with unrestricted access to data by internal units of the State of Mexico, such as SECOGEM, the OICs of each ministry and entity, and the procurement and analysis units of each institution. Furthermore, the use of open contracting data is already a good practice internationally that should be applied to the modernisation

of the system and its regulations. This would open the door to a greater breadth of control, where data analysis, technology and third parties would reinforce control conditions towards efficient and transparent management.

#### ***4.6.3. Facilitating the development of a risk culture and providing technical resources to identify integrity risks would help the Government of the State of Mexico to anticipate and improve accountability in public procurement***

Management of integrity risks in procurement is another aspect where the State of Mexico could take steps to strengthen its results. Risk analysis and management is above all a preventive tool that makes it possible to anticipate and take corrective or mitigation measures. It is systemic in nature and contributes to good procurement planning, management and control. A good risk map is capable of detecting the main operations affected by risks, including integrity risks, while identifying the risk points, practices and actors. In this way, it is possible to take action before the anticipated events occur. In addition, an adequate risk management plan decisively contributes to achieving institutional results and goals.

The experience of the ministries and entities of the State of Mexico shows that the implementation of risk management in officials' own routines is an ongoing process, and one that requires more resources. On the one hand, many public organisations do not yet fully understand the importance of risk analysis and how it relates to their functions, identifying routine risks or relying too heavily on the experience of OICs. On the other hand, these organisations still lack resources for awareness-raising and training for the units and leaders in charge of identifying risks and mitigation measures, who have experience in their respective areas but are unaware of the best techniques and good practices to deliver and use information on risks for the management of their areas. The State of Mexico Government can take advantage of existing specialised tools for training and technical assistance on risk management. Mexico's Superior Audit Office (*Auditoría Superior de la Federación*, ASF) has, for example, a Public Sector Risk Self-Assessment Guide, based on national legislation, international best practices and COSO 2013 guidelines. The guide focuses on conceptual and concrete aspects of risk management methodology, addressing techniques for identifying risks and adding tools consistent with the state's methodological arrangement. This type of resources should be used with the officials responsible for procurement processes, at various levels, to enrich the assessment and management of risks.

Risk management is a preventive and systemic concept that seeks to anticipate the use of management and control resources to avoid possible adverse events, backing the achievement of mission objectives at each level of the state organisation. The State of Mexico would also benefit from adopting internal guidelines and allocating resources that promote the awareness-raising, dialogue and training work by SECOGEM and the Ministry of Finance for the units responsible for procurement, including the DGRM. Indeed, procurement systems in different countries share many challenges and the units in charge often face similar weaknesses and opportunities. This is no different to what happens in the institutions of the State of Mexico. Operational, financial, legal and reputational risks are constant in public procurement, yet are not usually found in the risk maps of the ministries and entities.

In this sense, it is necessary for the State of Mexico Government to ensure that the risk maps and the programmes for the treatment of risks deal comprehensively with the risks of such an important area of management as procurement. Specifically, greater appropriation and use of risk maps by the COCODIs would be useful, and even more so if they prepare their own public procurement risk maps. Procurement risk analyses should incorporate data from a large set of operations allowing the assessment of financial, legal, political, sector and reputational risks, among others. Co-ordination between the Ministry of Finance and SECOGEM is essential to implement such a measure with technical support and a results-oriented approach.

Another aspect that should be strengthened is incorporating integrity risks of procurement into risk maps. In this regard, the risk maps prepared by the institutions, especially those where procurement is significant

in amount or in their contribution to results, should consider the possibility of fraud and corruption risks in procurement. Fraud and corruption-related practices in procurement usually consider great variety in different countries, and include, for example:

- bribery and bribe-taking, in the preparation, contracting and delivery phases, including supervision;
- embezzlement and misappropriation of public funds, whether as an internal or internal-external practice;
- fraud and bid-rigging;
- simulation of procurement operations, payment or fulfilment of contracts;
- falsification of documents to prove conditions for participation or fulfilment of the contract;
- theft of purchased material goods or their redirecting to other purposes or users;
- illegal sale of state property, such as medicines and school supplies;
- sustained extension or undue increase in the amount of contracts;
- improper use of reserved or privileged information to access business opportunities or contracts in unduly favourable conditions;
- directing contracts;
- capture of technical regulations on goods and services; and
- improper award of contracts for the purposes of political finance

SECOGEM, in co-ordination with the Ministry of Finance and the Administration and Finance Units in auxiliary bodies, should make efforts to modify the risk culture in institutions and the technical understanding of risks in procurement. Risk maps, including integrity risks, are frequently prepared without including a key step for ensuring the quality of such maps: a discussion and consensus about the meaning of risk. An essential methodological component of a risk map is that it is produced collectively by people with experience in the organisation and its operations and it should be consistent with the goal of identification and analysis. In this sense, a risk consists on the probability that a threat may adversely affect the achievement of objectives. The absence of a common understanding of risk, adapted to the reality of the organisation, may lead to confusion in the risk identification carried out by institutional managers, between the possibility that adverse events occur and currently existing adverse events, or even with the current commission of crimes within the organisation itself. Hence, the real understanding of the notion of risk influences the result of the collective preparation of the risk map. Under such conditions, risks could be omitted in the belief that to recognise them would be to report a mistake, fault or crime carried out by a colleague or official; while risks (forecasts of a future event based on experience) could also be confused with current events. The identification of risks is based on the organisational experience of the past operation of the entity and its environment, and does not refer to events that are currently occurring in procurement processes, but rather to the probability that this will occur in the future. Its preventive and systemic nature separates it from reporting current inefficiencies and irregularities, and it is aimed at decision-making relative to control measures to avoid or mitigate risks that may affect organisational objectives. SECOGEM should play a decisive role in raising awareness, understanding and finally applying a notion of risk that invites public servants to recognise risks; this includes techniques aimed specifically at contextualising and understanding integrity risks in various forms, as applied to public procurement.

In this same vein, the procurement and control processes in the State of Mexico include various stakeholders, mainly the contracting organisations, the DGRM, the OICs and SECOGEM. Due to the compartmentalised nature of the management of the procurement process, not all participants in diagnoses and mitigation measures fully understand the variety of risks, including integrity risks, that may exist throughout the entire chain of operations, ranging from the detection of a need up to the evaluation of compliance with the contract and its results, as well as the various stakeholders involved. In this regard, the risk maps and the measures included in the Risk Management Work Programmes (*Programas de Trabajo de Administración de Riesgos*, PTAR) should ensure their quality through a process of greater

inclusion of stakeholders in their discussion and approval, as well as through clear communications about the measures to adopt. This higher quality should also be ensured in monitoring the control measures relative to procurement processes. In this sense, the State of Mexico should make sure that those responsible for preparing risk maps and the recipients of plans and reports fully understand what the risk involves, the types of risk that should be identified, especially integrity risks, and the pertinence of the control, follow-up and monitoring measures.

It is necessary to improve the information and evidence on integrity in procurement for decision-making on reforming and improving the system. The responses to the OECD questionnaire on public procurement suggest a significant point, namely that none of the ministries and entities consulted have detected irregular activities in public purchases between 2016 and 2018. In other words, despite the fact that the State of Mexico has the LCPEMyM, which organises and regulates the public procurement process, assigns management, interpretation and control responsibilities, and explicitly establishes prohibitions and incompatibilities, and that it carries out thousands of purchasing operations each year; it does not have records detecting integrity failures, such as those referred to in Article 87 of the LCPEMyM, over that period of time, by ministries and entities, including the Ministry of Finance.

International experience shows that irregularities, such as fraud and corruption, are common in public procurement, and that their scope will depend on market practices, the culture of values and legality, and the institutional strength of public organisations. In fact, the OECD found that 57% of the international bribery cases, identified between February 1999 and June 2014 in signatory countries to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, were related to obtaining public contracts (OECD, 2014<sup>[18]</sup>). The State of Mexico would improve its decision-making if it carried out an independent and specific evaluation of the risks of fraud and corruption in public procurement, taking into account the characteristics of the market, the organisational culture of the State Government, and institutional capacities, in order to identify opportunities for improvement.

An additional high-impact measure is establishing closer co-ordination of the activities for control, analysis and exchange of information about contracts between SECOGEM, OSFEM, SFP and the Superior Audit Office (ASF), in order to implement coordinated control plans, leverage training resources and share information about control and risks in public procurement. This may require setting up cooperation agreements to exchange information on procurement among SECOGEM, ASF, SFP and OSFEM.

#### **4.6.4. The Government of the State of Mexico should promote the appropriation of control by public servants and the proper use of the audit function, adopting the model of the three lines of defence**

Based on the interviews carried out about the control system in the State of Mexico during the fact-finding mission, among the ministries and auxiliary bodies there is a gradual, although still insufficient, appropriation of the control task by the staff and executives responsible for management tasks. The heads of unit and senior management levels are moving-to varying degrees-from a conception of control based on the OICs, where these bodies have the central or sole responsibility for implementing control tools, to one in which the administrators assume responsibility for control. At the same time, many officials responsible for mission areas lack a technical approach to risks and are unaware of the importance of identifying risks in a timely manner. Meanwhile, an attitude of self-censorship persists in public servants towards recognising adverse situations in their own areas of work, which increases the difficulty in noticing errors, inefficiencies and irregularities. Internal control is an inherent function of the management and direction of organisations. As such, the State of Mexico would strengthen its management by enhancing the appropriation of control by managers and staff of the ministries and entities.

Another aspect of the problem is the active participation of OICs in managing the control of procurement procedures, which is a factor that may affect their impartiality in their internal audit function. It would be beneficial to ensure that OICs neither carry out tasks belonging to the management, nor those that pertain

to the units in charge of implementing the internal control system, such as the contracting units or the DGRM. One way to do this is by reducing their interventions in procedures potentially subject to audit, such as procurement, supervision and inspection processes. In this regard, it is worth evaluating reforming or clarifying Article 49 of the Law on Administrative Responsibilities of the State of Mexico and Municipalities, which assigns supervision tasks of the execution of public procurement procedures to the Ministry of Control and the OICs. Supervision is a task pertaining to line managers, and must be carried out by them or by the control systems or mechanisms, to ensure that managers and heads are responsible and accountable for the control tasks pertaining to their positions. Likewise, it would be beneficial to reduce or eliminate the engagement of OICs in verification actions that fall outside the independent nature of the audit function, such as the so-called inspections, especially when they relate to procurement procedures.

In addition, it is important not to lose sight of the fact that the OICs, by participating in the committees and meetings throughout the procurement process, are a direct part of it, carrying out first-line of control activities. This type of direct participation is not typical of units that carry out tasks of investigation, sanction, and even less of auditing, since it creates conditions that may reduce impartiality in the execution of their own tasks, especially in the case of internal audits. In accordance with generally accepted auditing standards, internal audit is usually an advisory unit, located at the highest level, independent of the first line, which makes impartial judgments based on audit techniques. Its tasks must be free from any potential conflict of interest, and participating as an OIC in different phases of the procurement process leads to less impartial conditions in the event that it has to investigate processes and impose sanctions, especially when auditing. In this sense, it is advisable to reform Articles 43 and 44 of the Bylaws of LCPEMyM, which establish the participation of a representative from the corresponding control body in the Committees for Acquisitions and Services.

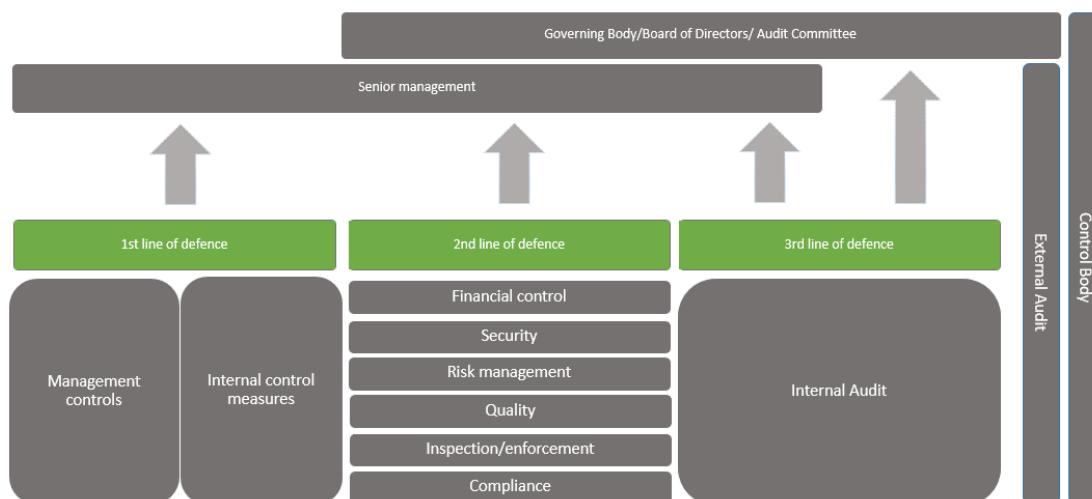
The International Organisation of Supreme Audit Institutions (INTOSAI) agreed on international standards for supreme audit institutions and in the International Standards of Supreme Audit Institutions 1 (ISSAI 1) approved criteria for auditing standards focused on upholding independence in the external auditing of public administration. Although these criteria, contained in the Lima Declaration, are aimed at ensuring greater independence of the public bodies for external control, their norms are also valid to promote the independence of the internal audit function with respect to managers. According to ISSAI 10, on the independence of Supreme Audit Institutions (SAIs), these “should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organisations that they audit,” and also “should ensure that their personnel do not develop too close a relationship with the entities they audit, so they remain objective and appear objective.” Along these same lines, the General Government Internal Audit Council, an advisory body to the President of Chile, has asserted that “to guarantee objectivity, internal auditors should not get involved or participate in line activities, make management decisions in the entity, or engage in any activity that results in a real or potential conflict of interest when issuing opinions and recommendations” (Technical Document No. 101, Structure and Functioning of the Internal Government Audit Units and Coordination with CAIGG, CAIGG, 2018).

In fact, the problem also stems from Article 36 of the Internal Bylaws of SECOGEM, which establishes that “ministries and auxiliary bodies will provide, in their jurisdictions and according to their budgets, the resources required by OICs to fulfil their duties”. This goes against the principle of financial and administrative autonomy set forth in ISSAI 10.

The Three Lines of Defence Model is an acknowledged and valuable tool to improve the organisation of control. Its adaptability to the characteristics of each organisation makes it easy to understand and apply in different contexts. According to this model, three separate groups (or lines of defence) are needed within the organisation to effectively manage risk and control, where the board and senior management provide the guidelines and advice. The figure below explains the separation of tasks at the different levels of management and control.



**Figure 4.10. The Three Lines of Defence Model**



**Box 4.16. The Three Lines of Defence Model**

The model helps improve the understanding of risk management and control by defining roles and responsibilities. The underlying concept of the model is that under the supervision and guidance of senior management and the board three separate groups (or lines of defence) are needed within the organisation to effectively manage risk and control.

The responsibilities of each of the groups (or “lines”) are:

1. Taking ownership of and managing risk and control (first-line operational management).
2. Supervising risk and control in support of management (senior management implements risk, control and compliance functions).
3. Provide independent assurance to the board and senior management regarding the effectiveness of risk management and control (internal audit).

Each of the three lines has a different function within the general framework of governance of the organisation. When each fulfils its assigned role effectively, the likelihood of the organisation succeeding in achieving its overall goals increases.

All members of an organisation have some responsibility for internal control, but to help ensure that essential tasks are performed as intended, the model provides clarity on specific roles and responsibilities. When an organisation has properly structured the three lines, and they operate effectively, there should be no gaps in coverage, no unnecessary duplication of effort, and thus a greater likelihood that risk and control are effectively managed. The board will have more opportunities to receive objective information regarding the organisation’s most significant risks, and also on how senior management is responding to those risks.

The functions within each of the lines of defence will vary from one organisation to another, and some functions could be merged or split between the lines of defence. For example, in some organisations, parts of a compliance function in the second line might be involved in designing controls for the first line, while other parts of the second line might focus primarily on monitoring such controls.

In general, in the ministries and auxiliary bodies of the State of Mexico, the three lines of defence model is technically unknown. However, auditors understand the need for a separation of roles and seek to contribute to promoting appropriation of control in the first and second lines of defence. In the State of

Mexico, the first line of defence should be made up of public servants and areas directly managing procurement operations in each of the ministries and auxiliary bodies. Those officials should appropriate risk and help define the design and execution of the institution's controls to respond to such risks.

The second line is designed to support management, contributing knowledge, excellence in processes and management oversight, along with the first line, helping ensure effective risk management and control in procurement. It would be beneficial to separate the functions of the second line of defence in ministries and auxiliary bodies from the first line of defence, while remaining under the control and guidance of the management. The second line should essentially consist of a supervisory or surveillance function over the units involved in the organisation's procurement processes and that directly manage risks.

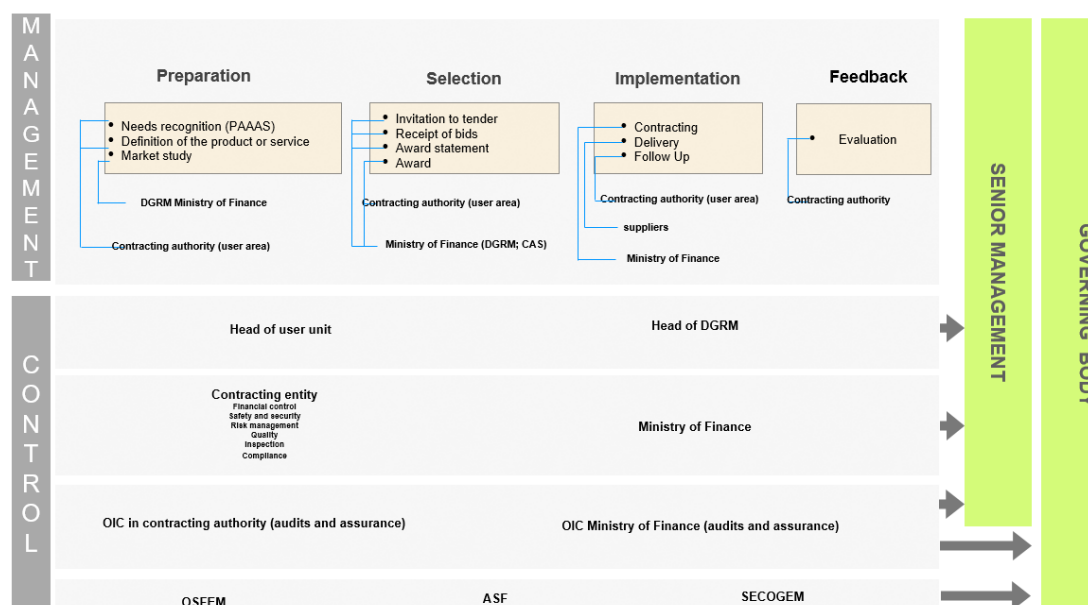
The third line of defence provides assurance to senior management and the board, confirming that the efforts of the first and second lines are consistent with expectations. Therefore, the third line of defence is not designed to perform management functions in order to protect its objectivity and independence from the organisation. In ministries and auxiliary bodies of the State of Mexico, this assurance task should be clearly established as a function of the OICs, and at the level of the State executive branch as a function of SECOGEM. It is the OICs which in their audit function should provide assurance to ministers and governing bodies about the effectiveness of risk management in the procurement process.

Along the above arguments, the State of Mexico could take some of the following measures to separate the internal audit role from the first line of control, thereby strengthening the independence of internal audit and risk appropriation by the first line:

- Reform state regulations incorporating provisions that establish clear obligations and control and verification procedures for the managers and units of the contracting ministries and entities, and the DGRM, where appropriate, regarding the legality, efficiency and transparency of the procurement processes. This means establishing control obligations for which public servants are accountable, avoiding the dispersion of responsibilities;
- Incorporate resources, mechanisms and training in procurement management policies aimed at ministries and entities for the systematic improvement of the management of public procurement, and the systemic analysis of the risks it involves. This will help the staff responsible and the management to responsibly appropriate of the processes and results that concern them, allowing accountability. The understanding of procurement should transition from the administrative vision towards a culture of permanent management evaluation, using different levels of analysis, from those aimed at evaluating individual procurement procedures and sets of procedures to the entirety of the procurement for each sector, in order to link them with expected results, accountability and citizen satisfaction;
- Strengthen control and evaluation led by SECOGEM and the OICs by applying audit techniques and procedures focused on risk areas susceptible to corruption and incorporating risk-based management audit techniques, and providing strategic recommendations for decision-making on improvements to the system. These measures should be in line with the procurement management policy, and incorporate resources, mechanisms and training for systematic improvement of the audits carried out by the OICs to procurement procedures and processes.
- Clearly identify the functions and responsibilities of operation, supervision and auditing of the procurement processes in each ministry and entity. The aim is to define, distinguish and coordinate the tasks of the procurement process, communicating management expectations and the mechanisms of responsibility and accountability at each level. To achieve this, the State of Mexico could take into account the Three Lines of Defence model in the design of procurement regulations, policies and practices, with special emphasis on strengthening internal control and the advisory and independent role of internal audit.

The following figure shows how the various functions of control are linked and distinguished under the Three Lines of Defence Model:

**Figure 4.11. Control of procurement procedures under the Three Lines of Defence model**



#### **4.6.5. The Government of the State of Mexico should take advantage of the opportunities provided by massive use of data and technology to increase the effectiveness of control**

As can be seen in Figure 4.11, the procurement system of the State of Mexico involves institutional actors that manage procurement procedures (especially contracting institutions and the DGRM) and institutional control actors (mainly SECOGEM and the OICs). According to the LCPemyM, the State Executive, through SECOGEM, is responsible for overseeing the application of procurement regulations. It is also in charge of the control and supervision of actions related to planning, programming, budgeting, execution and control of purchases, sale, leasing of goods and procurement of services in municipalities, when they are carried out fully or partially with state government funds. On its side, the Ministry of Finance must publish the information relative to centralised procurement procedures of the State Government, according to the Law on Transparency and Access to Public Information of the State of Mexico and Municipalities.

However, the OICs and SECOGEM lack access to data, systems and technologies that would enable them to properly carry out the generic control tasks assigned to them by the LCPemyM. The Ministry of Finance could allocate resources for the design, development and implementation of technological tools that, for example, automate processes for verifying compliance with bidder requirements, as well as for validating prohibitions, disqualifications and incompatibilities in procurement, including alerts about potential conflicts of interest. The Ministry of Finance OIC and SECOGEM could have their verification, analysis and auditing capacity strengthened as a result of full access to public procurement records and databases. SECOGEM could, with the support of database analysis and data mining technologies, conduct comprehensive assessments, relationship and correlation analysis and identification of relevant patterns in thousands of procurement procedures that raise warning flags for deviations and, potentially, irregularities. Such a measure would strengthen the capacities of the Ministries of Finance and SECOGEM to control procurement processes, while freeing up human resources to carry out risk-based audits of operations and strategic procurement processes. Taking such a measure would relieve SECOGEM from the burden of maintaining direct control over operations and strengthen its capacity to issue alerts and carry out strategic analysis.

At the same time, the Government of the State of Mexico could strengthen the control of procurement procedures with the application of automated verification mechanisms for prohibitions, disqualifications

and incompatibilities in procurement, such as those listed in article 74 of the LCPEMyM. Leaving aside the Registry of black-listed suppliers, which only holds limited information, as previously indicated, the ministries and entities of the State of Mexico lack mechanisms to immediately and automatically identify the existence of grounds for prohibiting the reception of proposals and entering into contracts, such as suppliers in delay, those who have entered into contracts in contravention of the law, who include public servants among their partners, who participate in expert opinions related to the procurement process, or to whom administrative compensation liabilities have been imposed. Although the Registry of blacklisted suppliers can be consulted, this check has to be carried out manually and will only identify the suppliers who have actually been sanctioned, without providing information about their performance. The control functions of this type of prohibitions, disqualifications and incompatibilities should be assigned to the contracting institutions, which would benefit from automated registries and systems. The work of the OICs, on their part, should consist on ensuring the reliability and timeliness of such systems.

Although there are formal and regulatory mechanisms to avoid contracting suppliers for which there are grounds for impediment, this does not mean that they work effectively. For example, for some of the cases indicated in the LCPEMyM, there are mechanisms for registering or disclosing sanctions, but they are not coordinated in such a way as to issue a timely alert to those in charge of managing the procurement process, or the contracting entity, warning that the bidder or supplier in question is prohibited from entering into contracts. As mentioned above, there is a Registry of black-listed companies (*Registro de Empresas y/o Personas Físicas Objetadas y Sancionadas*), in which contracting authorities and internal control bodies can record suppliers, contractors and service providers who incur in irregularities in contracts signed with ministries and auxiliary bodies of the state executive branch or with municipal governments, and this is circulated in the respective bulletin. However, there is no direct link or an application that automatically identifies bidders in the updated and aggregated databases. Another similar example would occur with compensatory administrative responsibilities (*responsabilidades administrativas resarcitorias*), since SECOGEM, through the General Directorate of Administrative Responsibilities, administers the Comprehensive System of Responsibilities (*Sistema Integral de Responsabilidades*, SIR), in which the sanctioning authorities (General Directorate of Administrative Responsibilities and the OICs) record the compensatory administrative responsibilities imposed on individuals. SECOGEM has warned in response to the OECD questionnaire that this type of automated mechanism is not foreseen in the most important regulations on the matter, such as the laws on the national and state anti-corruption system, the State Law on Administrative Responsibilities, the Administrative Code and the LCPEMyM.

In summary, and according to the responses to the OECD questionnaire about incompatibilities and prohibitions of article 74 of the LCPEMyM, it follows that:

- information systems exist to inform, either via the SECOGEM or the Ministry of Finance, about situations of incompatibility or prohibition of suppliers, such as the Registry of blacklisted suppliers and the SIR;
- some units also have useful information that allow verifying the existence of other prohibitions and incompatibilities, but that is not public knowledge or is accessed through passwords limited to certain organisational units;
- in any case, most of this information is not interconnected and is not freely accessible by any contracting unit; and
- there are incompatibilities and prohibitions that cannot be verified, as in the case of suppliers who have made improper use of privileged information or whose performance has been deficient, without necessarily incurring a sanction.

The incorporation of big data technologies and automation of operations would allow those in charge of the procurement process, along with the OICs, to get real-time verification of most of these prohibitions, both when receiving bids and when signing contracts. A technological application would do the work of consulting the updated lists of the Registry of blacklisted suppliers and the SIR, as well as other databases

that should operate in an updated manner, the existing records of companies that are bankrupt, have public servants among their partners, include people who are disqualified and participate in analyses, expert opinions and other activities related to the procurement process. These tools would simplify the review and control tasks in the process line and could be simultaneously accessible to the Ministry of Finance, SECOGEM and the contracting entities, facilitating the control of each procurement operation and allowing the strategic management of suppliers with prevention measures and risk management.

In the same way, the State of Mexico could benefit from incorporating big data tools specially designed to issue early alerts about risks or anomalous situations in procurement procedures such as, for example, the division of contracts or the abuse of restricted invitations. Most of the ministries and entities of the State of Mexico, including the Ministry of Finance, lack systems to raise alerts about the abuse of exceptional (non-competitive) procurement mechanisms, the concentration of contracts in proportionally few bidders or the existence of anomalous patterns of supply, contracting, modification and execution of contracts. Although COMPRAMEX publishes information on individual procurement operations, this information does not include free and full access to the databases of suppliers and operations, so as to facilitate the analysis of massive data sets about the acquisition of goods and services, thus limiting the possibilities of internal scrutiny and citizen control. Likewise, COMPRAMEX lacks simplified and transparent information on public works and related services.

Big data tools should be in the hands of Ministry of Finance units, other than DGRM and SECOGEM, and they should have unrestricted access to the databases of the procurement system, including financial monitoring of payments to suppliers, in order to integrate databases into systems designed to raise red flags in situations of risk in massive sets of procurement operations and ongoing contracts. The audits carried out by OICs in the different ministries and entities, including the Ministry of Finance OIC, could focus resources on high-risk procurement processes, making more strategic use of their control resources.

## Proposals for action

The State of Mexico has advanced the reforms to establish its local anticorruption system, aligned with the mandate of the National Anticorruption System. As part of this effort, SECOGEM is implementing several initiatives to embed integrity in the state public administration, including some specifically targeted at procurement officials. The Protocol, along with the Ethics Committees and the codes of ethics and conduct, are steps in the right direction. However, the State of Mexico has the opportunity to avoid some of the shortcomings incurred by the federal government and other states. Furthermore, the State of Mexico can do much more to engage external stakeholders, such as the business community and civil society, in its integrity strategies. The following recommendations aim to be helpful in creating a culture of integrity, particularly among the public procurement community.

### **Policy framework to promote integrity in public procurement**

The State of Mexico could balance the rules-based approach of some provisions, such as the Protocol for public servants intervening in public procurement, by recognising the limits of excessive controls and prompting ethical reasoning by procurement officials.

### **Management of conflicts of interest by public procurement practitioners**

The State of Mexico should develop its framework to manage conflicts of interest by providing a shared definition (including actual, apparent and potential conflict of interest), illustrating practical situations in public procurement processes (i.e., revolving door, gifts) and how they can be solved, and systematically training procurement officials.

### **Accountability and monitoring concerning sanctions on suppliers**

SECOGEM could give more visibility to the registry of blacklisted companies by linking it to its webpage and expand its functionalities so that procurement officials can use the information it contains for decision-making.

### **Engaging the private sector and civil society to strengthen integrity in the procurement function**

The Government of the State of Mexico should partner with the business community to develop and advance an agenda for business integrity, particularly when engaging in procurement activities.

The Government of the State of Mexico could advance other measures to promote business integrity throughout the public procurement cycle, such as integrity pacts, anticorruption clauses in contracts and supply-chain transparency.

SECOGEM should advance the process of reform of the social witness programme applied in the State of Mexico to strengthen the independence, expertise and wider engagement of social witnesses throughout the procurement cycle and in the different modalities beyond open public tenders.

The State of Mexico could explore alternative mechanisms for civil society engagement in procurement procedures, particularly for public works, such as integrity monitors, social contracts and social participation frameworks.

### **Review, challenge and remedy system**

The State of Mexico could make challenge processes more accessible for bidders by allowing electronic filing and providing the necessary information in tender documents (i.e., calls for tender, contracts).

The State of Mexico could explore non-adversarial methods for conflict resolution, such as conciliation, mediation and arbitration in order to provide review alternatives that might be less costly and burdensome than legal challenges.

### **Risk management and internal control to identify and address integrity risks in public procurement**

The Government of the State of Mexico should go beyond mere compliance in its internal control tasks and implement specific tools to identify and mitigate the risks of corruption and fraud.

The Government of the State of Mexico should deepen and further advance in the implementation of institutional internal control systems, especially in the areas relative to public procurement.

Facilitating the development of a risk culture and providing technical resources to identify integrity risks would help the Government of the State of Mexico to anticipate them and improve accountability in public procurement.

The Government of the State of Mexico should promote the appropriation of control by public servants and the proper use of the audit function, adopting the model of the Three Lines of Defence throughout the administration.

The Government of the State of Mexico should take advantage of the opportunities provided by the massive use of data and technology to increase the effectiveness of control.

## References

- Albano, G. and M. Sparro (2010), "Flexible Strategies for Centralized Public Procurement", [5]  
*Review of Economics and Institutions*, Vol. 1/2, <http://dx.doi.org/10.5202/rei.v1i2.4>.
- Czibik, A. et al. (2017), *Methods Paper on Fiscal Transparency Lights on the Shadows of Public Procurement Transparency in government contracting as an antidote to corruption?*, [11]  
Digiwhist, Horizon 2020, <http://digiwhist.eu/wp-content/uploads/2017/09/D3.2-Light-on-the-Shadows-of-Public-Procurement.pdf> (accessed on 14 January 2020).
- Danish Competition and Consumer Authority (2015), *Competition on public procurement through central framework agreements*, [13]  
<https://www.en.kfst.dk/media/3299/20150416-coi.pdf> (accessed on 16 January 2020).
- European Commission (n.d.), *Make better use of framework agreements*, E-library of public [7]  
procurement good practices, [https://ec.europa.eu/regional\\_policy/sources/good\\_practices/GP\\_fiche\\_16.pdf](https://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_16.pdf) (accessed on 9 January 2020).
- European Parliament, C. (2014), *DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)*, [12]  
<http://data.europa.eu/eli/dir/2014/24/oj> (accessed on 9 January 2020).
- INEGI (2019), *PRODUCTO INTERNO BRUTO POR ENTIDAD FEDERATIVA 2018*, [3]  
<https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2019/OtrTemEcon/PIBEntFed2018.pdf> (accessed on 18 February 2020).

- OECD (2019), *Government at a Glance 2019*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/8ccf5c38-en>. [1]
- OECD (2019), *Productivity in Public Procurement. A Case Study of Finland: Measuring the Efficiency and Effectiveness of Public Procurement*, <https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf> (accessed on 16 February 2020). [19]
- OECD (2019), *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/1db30826-en>. [4]
- OECD (2018), *Mexico's e-Procurement System: Redesigning CompraNet through Stakeholder Engagement*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264287426-en>. [8]
- OECD (2018), *Public Procurement in Nuevo León, Mexico: Promoting Efficiency through Centralisation and Professionalisation*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264288225-en>. [6]
- OECD (2018), *Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264190191-en>. [17]
- OECD (2017), *Public Procurement Review of Mexico's PEMEX: Adapting to Change in the Oil Industry*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264268555-en>. [16]
- OECD (2015), *RECOMMENDATION OF THE COUNCIL ON PUBLIC PROCUREMENT Directorate for Public Governance and Territorial Development*, OECD Publishing, Paris, <http://www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf> (accessed on 9 January 2020). [2]
- OECD (2014), *Manual for Framework Agreements*, <https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf> (accessed on 10 March 2020). [15]
- OECD (2012), *Fighting Bid Rigging in Public Procurement in Mexico: A Secretariat Analytical Report on Procurement Legislation, Regulations and Practices in the State of Mexico*, [https://www.oecd.org/daf/competition/GEM\\_Report\\_2012\\_English.pdf](https://www.oecd.org/daf/competition/GEM_Report_2012_English.pdf) (accessed on 16 February 2020). [9]
- OECD (2009), *GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT Helping governments to obtain best value for money*, <https://www.oecd.org/daf/competition/cartels/42851044.pdf> (accessed on 9 March 2020). [10]
- OECD (n.d.), *Handbook on Public Procurement Aggregation and Frameworks: Developing strategies – Assessment of demand and supply*. [14]
- OECD SIGMA (2011), *Central Purchasing Bodies*. [18]



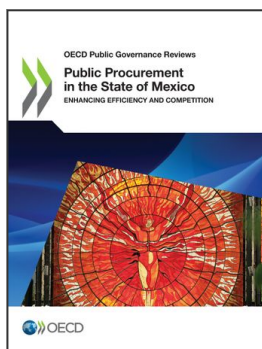
## Notes

<sup>1</sup> The compensating administrative process is regulated by the abolished Law of Responsibilities for State and Municipal Public Servants.

<sup>2</sup> The Measurement and Update Unit (UMA) is the economic reference expressed in Mexican pesos to determine payments of fees and tariffs established in federal laws and in those of federal states, as well as in the regulations stemming from them. For example, during 2018, the average daily UMA value was MXN 80.60 (approximately USD 4).

<sup>3</sup> According to the Law for Acquisitions, Leasing and Services of the Public Sector (LAASSP), the procurement of goods and services for more than 5 million UMAs (approximately MXN 400 million) must necessarily be observed by a social witness. Likewise, according to the Law of Public Works and Related Services (LOPSRM), the procurement of public works and related services for more than 10 million UMAs (approximately MXN 800 million) must also be accompanied by a social witness.

<sup>4</sup> In fact, municipalities carry out their own procurement, disregarding the source of funding, being federal, state or municipal.



**From:**  
**Public Procurement in the State of Mexico**  
Enhancing Efficiency and Competition

**Access the complete publication at:**  
<https://doi.org/10.1787/cc1da607-en>

**Please cite this chapter as:**

OECD (2021), “Ensuring integrity and accountability in public procurement in the State of Mexico”, in *Public Procurement in the State of Mexico: Enhancing Efficiency and Competition*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/3efaffb4-en>

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

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.