

Chapter 13

Ensuring integrity throughout IMSS' public procurement cycle

This chapter highlights the risk of corruption in the pharmaceutical and health care sector. It describes the efforts made by Mexico and the Mexican Institute of Social Security (IMSS) to fight corruption and wrongdoing in procurement. The chapter also discusses the need for IMSS to complement its current discipline-based management with a value-based strategy. Various tools and mechanisms are outlined to strengthen prevention, detection, monitoring and management of corruption risks (e.g. red flags, transparency in the price of medicines and enhanced whistleblowers' protection) in IMSS' procurement and distribution activities.

Introduction

Public procurement is the government activity most vulnerable to waste, fraud and corruption. This is due to its complexity, the size of the financial flows it generates, and the close interaction between the public and the private sectors. Experience has shown that the health sector is particularly vulnerable to corruption, especially in relation to the supply of drugs and medical equipment. In Mexico, the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social* – IMSS) is the largest single public purchaser of pharmaceuticals and other medical supplies. Hence, the risks of fraud, abuses and corruption are latent. Indeed, recent anecdotal cases of corruption in the procurement function of IMSS show that anti-corruption mechanisms were inefficient.

IMSS has recently taken an effective proactive approach against bid-rigging through collaboration with the Federal Competition Commission (*Comisión Federal de Competencia* – CFC) and the OECD, including building its capabilities. However, safeguarding the integrity of the procurement process and preventing corruption in IMSS is generally perceived as the entire responsibility of the Internal Control Office (*Órgano Interno de Control* – OIC), the operational extension of the SFP located within each federal public entity. There is no evidence of an anti-corruption programme currently being in force. Participation of procurement staff in a preventive, on-going process appears to be limited. In addition, the procurement legal framework does not appear to provide the necessary tools to properly prevent and combat corruption in public procurement. A value-based strategy combined with the existing discipline-based approach could further strengthen integrity in IMSS procurement processes.

Awareness of corruption risks

Corruption risks in public procurement in the pharmaceutical sector are particularly high and can have significant impacts

Pharmaceutical expenditure and drug procurement account for 20-50% of public health budgets in developing countries (Chène, 2009). Moreover, the pharmaceutical industry is one of the least competitive. Therefore, the amount of money concerned, the lack of structural competition and the intrinsic risks of corruption in procurement processes make of the procurement of medicines a high-risk area of corruption. Specifically, weak governance systems and lack of transparency expose countries to higher corruption risks in the regulation, selection, procurement, promotion, distribution and sales of essential medicine (Chène, 2009).

The impact of corruption in the pharmaceutical sector is highly relevant as it has a three-fold impact:

- *Health impact*: the government capacity to provide access to good-quality essential medicines is reduced by the waste of public resources through the purchasing of expensive or non-essential products.
- *Economic impact*: public sector procurement agencies waste the budget by purchasing over-priced products instead of good-quality, less-expensive versions of the same product. Funds may be mismanaged, which impacts national health budgets and contributes to shortages of medicines.
- *Government image and trust impact*: inefficiency and lack of transparency reduce the credibility of public institutions and affect public perception and confidence on the government capacity (WHO, 2006).

Corruption can occur at any stage of the process, distorting decisions on the selection of the process (direct award rather than public tendering), type and volume of supplies needed, purchase prices and selection criteria. Vian (2002) identifies some of the corruption risks under different types of procedures as follows:

- Open tender: Corruption can occur when confidential information on different supplier' bids is selectively disclosed, allowing particular bidders inside information.
- Direct awards: Corruption may arise when the assessment of quality and reliability are unfair and influenced by bribes.
- Limited invitation: There may be opportunities for extortion and bribery during the back-and forth price discussions with firms.

Common corruption practices on the procurement of the health sector mostly include collusion¹ and bribes to public officials, and can result in severe financial losses for the buying organisation. A recent investigation of the CFC revealed bid-rigging practices among some suppliers to IMSS. As a result of that investigation, six pharmaceutical companies (as well as several individuals who had acted on behalf of such companies) were fined in January 2010 for a total of MXN 152 million (approximately USD 12 million), the maximum amount allowed by the competition law applicable at the time in Mexico (OECD, 2012).

Table 13.1. **Types of corruption in the health sector procurement**

Area or process	Types of corruption and problems	Indicators or results
• Construction and rehabilitation of health facilities	<ul style="list-style-type: none"> • Bribes, kickbacks and political considerations influencing the contracting process • Contractors fail to perform and are not held accountable 	<ul style="list-style-type: none"> • High cost, low quality facilities and construction work • Location of facilities that does not correspond to need, resulting in inequities in access • Biased distribution of infrastructure favouring urban- and elite focused services, high technology
• Purchase of equipment and supplies, including drugs	<ul style="list-style-type: none"> • Bribes, kickbacks and political considerations influence specifications and winners of bids • Collusion or bid rigging during procurement • Lack of incentives to choose low cost and high quality suppliers • Unethical drug promotion • Suppliers fail to deliver and are not held accountable 	<ul style="list-style-type: none"> • High cost, inappropriate or duplicative drugs and equipment • Inappropriate equipment located without consideration of true need • Substandard equipment and drugs • Inequities due to inadequate funds left to provide for all needs

Source: Vian, Taryn (2002) for USAID and MIS, “Sectoral Perspectives on Corruption: Corruption and the health sector”, November, summary.

Bribes can also occur at any stage of the medicines supply chain. In procurement, they can manifest in: *i)* bribery of public officials to gain a monopoly position at the tendering stage or providing procurement contracts; *ii)* not holding accountable suppliers who fail to deliver; or *iii)* by gratuitous payment to a person made for referral business (WHO, 2008).

Common weaknesses among countries include a lack of guidelines on conflicts of interest for all functions across pharmaceutical systems (WHO, 2010) and lack of transparency on the methods used to determine the volume of drugs needed. Furthermore, the difficulty of monitoring price and quality of drug products often materialises in poor management, frequent stock-outs and overstocks of other medicines (CGDEV, 2006).

Furthermore, health sectors often lack the management skills to write the technical specifications, supervise competitive bidding and monitor and evaluate contract performance. If the specifications are too vague, there is more discretion for procurement officers to open

the door for bribes to influence the selection. If they are too narrow or strict, they may limit competition, becoming a sort of “tailor-made” call for tender.

The low awareness of the risks of corruption among IMSS procurement officials could be reversed by a dedicated campaign. However, there appears to be no awareness-raising campaign in IMSS, specifically targeting the risks of corruption in the procurement process. In order to encourage awareness of those risks and enhance integrity in the procurement process, IMSS could develop such a campaign, taking into account the aforementioned elements. Raising awareness is the first stage in developing a fully-fledged strategy against corruption.

Corruption prevention under the Mexican legal framework

The Mexican legal framework regulating integrity of the procurement function in IMSS has some limitations

The Mexican legal framework applicable to public procurement in IMSS includes the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público – LAASSP*), the Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios relacionados con las Mismas – LOPSRM*) and the Federal Anti-Corruption Law on Public Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas – LFACP*) passed in June 2012. With the inclusion of the LFACP, the legal framework now directly addresses issues of corruption, and fraud, thus enhancing integrity in the procurement process. However, the scope of the legal framework is limited with regards to monitoring the procurement process. Furthermore, it does not compel procuring agencies to include references to fraud and corruption, conflict of interest and other unethical behaviour in the tendering documentation.

The criminalisation of public servants who partake in corrupt practices is covered in other applicable laws such as the Federal Law on Administrative Responsibilities of Public Servants (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos – LFRASP*) and the Federal Penal Code. The LFRASP aims to enhance the legality and integrity of public servants' performance of their administrative duties. This law establishes the administrative faults, the procedure to take legal action, and the modality and degree of sanctioning to be applied to public servants. It also establishes the responsibilities for Mexican federal entities to set up special units where complaints can be filed, and to take permanent preventive actions to ensure legislative compliance.

Specifically for the procurement function, the LFRASP stipulates the following prohibitions for procurement officials:

- prohibition from contracting with any person who performs a public function, or with any company in which such person participates;
- prohibition from contracting with any person that has been prohibited from holding a job, position or commission in the public administration;
- abstaining from intervening in any situation which may create any personal or business-related conflict of interest;
- prohibition from participating in any act or procedure where integrity might be compromised;
- prohibition from exercising any form of influence peddling to former public servants, up to one year after they concluded their public function; and
- prohibition from inhibiting whistle-blowing or the filing of a complaint.²

Moreover, important legal reforms were made to enhance integrity in public procurement procedures. The LFACP, signed by the Mexican President on 9 June 2012, outlines changes to reinforce the position of Mexican entities to combat corruption in procurement by including the following:

- Penalties and liabilities to both Mexican and foreign individuals and entities for infringing the law during their participation in any federal procurement process, applying to other related professions that may affect integrity in the public procurement process; including but not limited to public servants. Mexican individuals and entities incurring in corruption in international business transactions are equally liable (Article 9).
- Acts such as influence, bribes, collusion, shams, omission, evasion, filing false information, and forgery are considered infringements among others (Article 8).
- Penalties for violation of the law consist of fines and legal incapacitation (*inhabilitación*) from the pertinent working sector for periods ranging from 3 months to 8 years for individuals and 3 months to 10 years for entities (Article 27).
- Pleading guilty and co-operation in investigation diminishes sanctions up to 50%, if the plead takes place within 15 working days after the following the notification of the administrative disciplinary proceedings (Articles 20 and 31).
- Identities of whistle-blowers shall remain confidential (Article 10).

In addition, amendments have been proposed to the Federal Penal Code (*Código Penal Federal*), enhancing protection of whistle-blowers and their families. It focuses on maintaining the confidentiality of the whistle-blower's identity, reassigning them another position in the public service, and diminishing the sanctions in case of confession of collaborative felonies.

Similarly, there is an initiative to reform the LFRASP to stimulate whistle-blowing by increasing the liability and sanctions for public servants who inhibit it, allowing anonymous reporting, and preventing suspension of public servants subject to an investigation procedure. Finally, the General Administrative Manual on Acquisitions, Leases and Services outlines integrity as a main principle to observe in procurement procedures.

Prevention through a value-based strategy

IMSS could change the culture within the organisation by adopting a preventive approach through a value-based strategy combined with the existing compliance-based approach

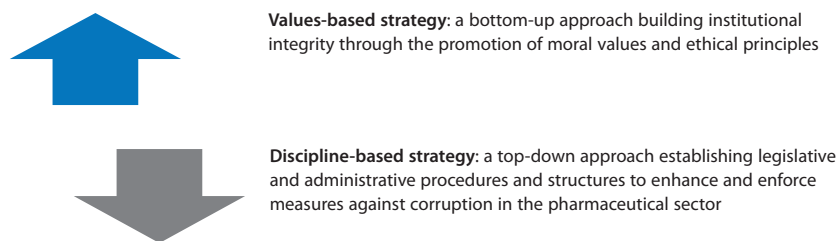
Combating corruption and promoting good governance in the pharmaceutical sector requires a long-term strategy for action. According to the OECD Principles for Integrity in Public Procurement (OECD, 2009), four key elements need to be in place to enhance integrity and foster corruption prevention, namely: *i*) transparency; *ii*) good management; *iii*) prevention of misconduct, compliance and monitoring; and *iv*) accountability and control.

Since April 2011, IMSS has been employing the so-called Reliability System (*Sistema de Confiabilidad*) to determine the high operational risk posts that may be the source of nepotism and corruption. The introduction of this system has been a step forward in enhancing the human resources function and assessment of candidates. It includes a psychometric exam and interview to assess candidates' competencies and skills, using a points system to determine the compatibility between the post and the candidate.

However, there is no evidence of a comprehensive anti-corruption programme currently in force in IMSS. Also, participation of procurement staff in a preventive, on-going corruption-preventive process appears to be limited. At this time, safeguarding the integrity of the procurement process and preventing corruption is perceived to be the responsibility of OIC, who must investigate and sanction such occurrences. Hence, integrity enhancement essentially relies on a corrective approach based on sanctions.

Effective prevention of corruption is not only influenced by the controls and policies implemented in the organisation, but also by its culture. While enhancing the implementation of the national legal framework, promoting awareness on the potential for corruption in medicines procurement systems and its impact on the health system functioning is highly relevant for building national capacity for sustaining good governance (WHO, 2010). Raising awareness of the risks and impacts of corruption and the need to pursue appropriate counter measures entails a culture of prevention within the institution. Active involvement and commitment from public servants is imperative to maintain an environment that stimulates integrity and rejects corruption. As such, the discipline-based strategy currently present in Mexico and in IMSS needs to be complemented with a values-based strategy (Figure 13.1).

Figure 13.1. **Good governance in the pharmaceutical sector**



Source: Based on World Health Organization (2010), *Good Governance for Medicines. Progress Report for 2010*, WHO Press, Geneva, www.who.int/medicines/ggm/en/.

The performance of a national assessment on transparency and vulnerability of the medicines procurement system and regulatory framework is a first step to tackle down corruption. The second one is to develop and implement, via a consultative process, national ethical frameworks promoting good governance in the public pharmaceutical sector. This should be followed by a third step to socialise such a framework through training national officials on good governance principles in the sector (WHO, 2006). Enforcement activities and community education should be combined with the adopted anti-corruption strategies.

The Chilean experience on reforming their drug and medical supply system is a helpful example on how to shift from a rules-based system to one grounded in transparency and good incentive structures. The main element of the reforms were: *i)* introducing electronic bidding for pharmaceuticals; *ii)* reform of the government-run system to change its mandate to procurement agent for hospitals and other providers who define drug priorities; and *iii)* information dissemination and clear understanding that pharmaceutical procurement would be under scrutiny. The reform reduced the asymmetries between the providers and procurers of pharmaceuticals. It produced clear and fair rules resulting in bids from a broader spectrum of companies and lower prices for government hospital and clinics, accounting an overall saving of pharmaceutical purchases of USD 4 million (CGDEV, 2006).

As discussed above, integrity enhancement is considered in IMSS to be related to the imposition of sanctions through a corrective approach rather than preventive. Attempts

to promote integrity in a non-corrective, non-prosecuting manner are therefore limited. Improving communication with the personnel targeting the prevention of corruption could help change the culture at IMSS. Opening new channels of communication within employees as well as towards OIC could enhance participation in the process. Appropriate training on the importance of prevention to tackle corruption could assist in implementing an on-going process of involvement and commitment to ensure the integrity of the public function (Box 13.1).

Box 13.1. Integrity training in Germany

The Federal Procurement Agency is a government agency which manages purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the Federal Ministry of the Interior. It is the second largest federal procurement agency after the Federal Office for Defence Technology and Procurement. The Procurement Agency has taken several measures to promote integrity among its personnel, including the support and advice by a corruption prevention officer, workshops and training dealing with corruption and rotating its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. With the help of a prosecutor from the district prosecution authority, they learn about the risks of getting involved in bribery and the briber's possible strategies. Another part of the training deals with how to behave when these situations occur, for example, by encouraging them to report it ("blow the whistle"). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. In 2005, the target area of the workshops was enlarged to include not only induction training but also on-going training for the entire personnel. The involvement of the Agency's "Contact Person for the Prevention of Corruption" and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency.

Another key corruption prevention measure is rotating staff after a period of five to eight years in order to avoid prolonged contact with suppliers, as well as improve motivation and make the job more attractive. However, rotating staff members is still difficult in the Agency. Due to a high level of specialisation, many officials cannot change their organisational unit, their knowledge being indispensable for the work of the unit.

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

IMSS could strengthen the content and uptake of its Code of Ethics

At the individual level, core values provide guidance for the judgment of public servants on how to perform their tasks in daily operations. A code of conduct puts the values and ethical standards into effect (Box 13.2). IMSS has a code of ethics in place stating the core values of the institution as the expected conduct of the public servants. However, it neither provides specific guidelines for behaviour. It also does not assist public servants in dealing with situations of conflict of interest, bribery or influence peddling. Similarly, there is no formal procedure on the specific conduct that is deemed appropriate when interacting with suppliers. While general verbal suggestions are made to public servants on avoiding close contacts with suppliers, no specific guidelines are in place to monitor or report improper relationships.

Box 13.2. Adopting and implementing a code of ethics for public procurement in Italy

Consp is a company entrusted with information technology activities for Italy's Ministry of the Economy and Finance (MEF). It is also responsible for the e-procurement system. It has recognised that public procurement is highly exposed to conflicts of interest and corruption, and has thus introduced a Code of Ethics. This Code of Ethics sets standards for Consip's personnel as well as anyone who co-operates with the company, including employees, consultants, suppliers, the Ministry of Economy and Finance and other stakeholders. It provides general standards of behaviour which must be respected in activities with Consip.

The Code of Ethics contains several provisions for standards of behaviour in the following areas:

- general rules on ethics and behaviour and on relations with suppliers and stakeholders;
- conflict of interest;
- gratuities;
- interaction with the public administration, civil society, politics and the media;
- confidentiality of information and documentation.

The Code has put in place internal controls to evaluate the compliance with the Code and verify periodically that corporate procedures, organisation and management of the company are in conformity with existing laws and regulations. To support compliance and application of the Code, the Office of Compliance was established with the following functions:

- communication and interpretation of the Code;
- verification of the effective application of the Code, and in case of violations;
- recommendations of appropriate measures to comply with existing laws and regulations;
- information to the Heads of departments in case of inappropriate behaviour in order to allow adopting adequate measures.

Source: OECD (2006), "Transparency in Public E-Procurement: The Italian Perspective", OECD Papers, Vol 5/10, OECD Publishing, Paris, http://dx.doi.org/10.1787/oeed_papers-v5-art36-en.

IMSS could benefit from strengthening its code of ethics in order to specify guidelines and procedures to prevent unethical or corrupt practices. A more detailed description of the standard of conduct expected from procurement officials – specific restrictions and prohibitions in particular – helps ensuring that officials' private interests do not improperly influence the performance of their duties and responsibilities. Potential conflicts of interest can relate, for example, to personal, family or business interest, gifts and hospitality, or disclosure of information (OECD, 2007). IMSS could take advantage of modernising its code of ethics and re-defining the standards of behaviour expected from IMSS public servants.

IMSS could further promote an integrity-prone environment by encouraging reporting of corruption

The risk of corruption is substantially higher in organisations where reporting misconduct and corruption is neither encouraged nor protected. Facilitating the reporting of misconduct can substantially help monitor compliance and detect misconduct. A clear set of rules and procedures for public servants to follow, as well as protection should be available to reporting officials. An organisational environment which is perceived as safe stimulates reporting,

as public servants feel free to report irregularities with sufficient confidence that their job, physical integrity or family would not be compromised by doing so. A reporting environment could be promoted by implementing mechanisms that encourage reporting and assure public servants confidentiality of their identities and that no retaliation will be taken against them.

Although the LFACP has improved the legal framework by defining wrongdoings (Article 8 and 9) and sanctions (Article 27) to be applied in a timely manner, and emphasises maintaining the confidentiality of the whistleblower's identity providing a solution for retaliation, the law still does not explicitly prohibit retaliation. In IMSS, reporting is stimulated through the use of mailboxes. However, concerns have been raised by IMSS during the OECD interviews in Mexico about these mailboxes and about the non-existence of a real reporting environment. Furthermore, mistrust exists on the outcome of reporting.

Furthermore, IMSS raised concerns about public servants' ideas about reporting and on the approach they take towards it. Anonymous reporting is possible at IMSS and will lead to an investigation. Some misuses have however been reported, some public servants using such reporting to prejudice other colleagues with whom they have personal conflicts. This significantly reduces the efficiency and validity of this mechanism. Mistrust therefore exists and no effective mechanism is currently in place for reporting fraudulent, corrupt, or unethical behaviour.

An integrity-prone environment could be promoted in IMSS by implementing mechanisms that encourage reporting while assuring confidentiality and protection against retaliation. Specific practices could be adopted within IMSS to guarantee whistle-blowers' protection. Communication should be improved within IMSS in order to resolve personal conflicts under the appropriate channels. Training and education on the notion of integrity and the purpose of reporting could be adopted by IMSS to modify the organisational culture in the organisation. The whistle-blowing protection mechanism should ensure protection from victimisation and retaliation. At the same time, it should protect public servants from irresponsible and unethical whistle-blowing that could damage their reputations and careers due to false allegations (WHO, 2006).

IMSS could manage potential conflicts of interest in its procurement activities through implementing specific standards and procedures

The interaction between procurement officials and suppliers is always a source of concern in the procurement function and one of the areas of highest risk of corruption in procurement. For that reason, a number of OECD countries require procurement officials to declare their assets and potential conflicts of interest. In Mexico, public servants are obliged to declare their assets when taking-up and quitting a public position, as well as annually while exercising it.³ Upon the public servants' approval, the assets declaration may be publicly disclosed.⁴ As stated earlier, conflicts of interest are regulated by the LFRASP which obliges public servants to abstain from intervening in any situation which may arise any personal or business-related interest.⁵

Procurement staff in IMSS communicated to the OECD that there is no formal procedure outlining appropriate conduct for interacting with suppliers. It seems that, in general, verbal suggestions are made to public servants on avoiding close contact with suppliers. With the exception of what is necessary for the proper development of the procurement process, procurement agents are recommended not to interact with suppliers, for example, through sharing personal telephone numbers, meeting privately with suppliers, accepting gifts, etc. Nevertheless, no specific procedure or guidelines are in place for monitoring or reporting improper relationships.

However, well-defined integrity standards and conflict of interest rules do not preclude the possibility of regular, structured dialogue between procurement officials and industry. The OECD Principles for Integrity in Public Procurement (OECD, 2009) highlights the importance of this dialogue between the public and private sector so as to keep up-to-date with market developments and achieve the best outcomes at a reasonable price. Therefore, IMSS would benefit from encouraging specific kinds of interaction with industry and suppliers, using a clear set of rules on integrity and management of conflicts of interest. IMSS could develop specific guidelines for procurement officials to identify and manage conflicts of interest and set up a mechanism by which officials can obtain advice and support in case of doubts.

It is essential for IMSS to develop mechanisms to monitor risks of corruption

At this time, there is no formal mechanism for monitoring risks of corruption in IMSS, neither red flags nor alert mechanisms to assist procurement officials in detecting and tackling corruption in a timely manner during the procurement process. Deviations from IMSS standard procedures indicate a potential “red flag”. However, such irregularities in the procurement procedure are generally only detected through audits performed by the OIC, whose conclusions may lead to sanctions against faulty public servants. No alternative mechanisms or red-flags are in place which allow for the rapid detection of a corrupt practice so that action can be promptly taken.

Public servants’ awareness could be raised by identifying potential risks of corruption and developing alert mechanisms which explicitly typify potential corruption activities, such as an unusual inflation of costs, bypass of controls or strange arrangements with a particular supplier. IMSS could develop specific guidelines detailing potential “red flags” for each stage of the procurement procedure. These red-flags would assist the public servants on preventing, identifying, monitoring, mitigating and reporting possible corrupt activities (Box 13.3).

Box 13.3. Red flags for procurement corruption

Recognising the risk of procurement corruption through “red flags” helps to prevent and detect it. Examples of “red flags” are:

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

Source: Chartered Institute of Public Finance and Accountancy (CIPFA) Better Governance Forum (2011), “Procurement Fraud Briefing”, Chartered Institute of Public Finance and Accountancy, London.

Specific integrity risks with medicines

Increasing transparency in the price of medicines reduces the risk of corruption

Experience in OECD countries has shown that an additional way for IMSS to prevent corruption is through enhanced transparency in the price of medicines in the organisation, including price of patented medicines negotiated in the whole Mexican health care sector. A key element for transparency in pharmaceutical procurement is to make price information publicly available. Having access to the prices paid by drug procurement agencies and distributors provides a standard against which to measure other procurements. Oversight and scrutiny can take place if the agency procures drugs at very different prices than those publicised, creating a deterrent for bribes and kickbacks that inflate the cost. For example, the United States' of America Supply Chain Management System established an online catalogue of prices for items procured under long-term supply contracts negotiated for anti-retrovirals and other commonly needed products, directly promoting price transparency to deter corruption (Vian, 2010).

The Argentinean experience is also relevant on the effect of publicising hospital procurement prices to constrain corruption. The beginning of the adoption of data collection showed a fall on the prices and on its dispersion. However, further analysis demonstrated that prices fell in anticipation that they would be reported and not as consequences of procurement officers learning from the information. The Argentinean case also sheds light on the fact that the impact of information by itself is insufficient to deter corruption if there are no investigations, reprimands or additional scrutiny when a hospital is overpaying for certain supplies. If there are no incentives for efficiency or integrity, procurement officers become used to reporting prices with the confidence that no further consequences will exist for poor or negligent performance (Savedoff, 2010).

IMSS could adopt a strategy to enhance transparency in medicine's prices in its procurement processes. Moreover, IMSS could explore benchmarking those prices with other Mexican health entities such as the State Workers Institute for Social Security and Services (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado – ISSSTE*) and Mexican Petroleum (*Petróleos Mexicanos – PEMEX*).

Furthermore, country benchmarking of prices – i.e. comparing the prices paid by IMSS with global median prices paid for identical products – is a helpful tool to assess adequate pricing and act in consequence. Experience demonstrates that the collection and publication of prices should lead to investigations and the corresponding sanctions in case of irregularities. There will be no deterrence of corruption if there is no accountability or concrete action in response to the facts evidencing corruption. Transparency and accountability could be reinforced by increasing the levels of reporting compliance, improving the reliability and accuracy of the collected data and assuring consistent, reliable access to disclosed information in a practical format (Vian and Waning 2010). The exchange of information with other buying organisations further improves the quality and efficiency of such a benchmark. However, careful assessment should take place to determine if public disclosure of such information may facilitate collusion between the suppliers, in which case, the information should not be released outside appropriate collaborating buying organisations.

There are risks of misappropriation in IMSS' drugs distribution system

Once drugs have been procured, they must be efficiently delivered through the supply chain to the ultimate consumers. Cost-effective strategies should be employed to safeguard drug supply and avoid diversion focus on physical protection and security. Risk analysis should be performed for dispatch and transportation. Emphasis should be added

on information management to detect diversion of supply from public to private channels (Vian, 2010). Around the world, due to under-financed and badly managed systems, poor record keeping and ineffective monitoring and accounting mechanisms, large quantities of drugs and medical supplies are stolen from central stores and individual facilities, and diverted for resale for personal gain in private practices or in the black market.

Stolen medicines are a severe situation for IMSS. There have been 222 complaints to the public prosecutor for theft of drugs, surgical instruments and material. The Federal Superior Audit (*Auditoría Superior de la Federación*) has received several reports of shortages and illegal sale of anti-retroviral medicines.⁶

Experience shows that during the distributional phase, a useful strategy to tackle corruption in drugs supply is to help detect the diversion of the drugs through batch monitoring. Each product delivered from the manufacturer to the warehouse is assigned a unique code identifying the channel of distribution (either public or private). Suspected leaks in supply can be investigated by tracing the batch number and checking that the distributional channel is the correct one, evidencing leakage. IMSS could secure its distribution of medicines by creating such a mechanism. It could also make the messages printed on the drug packaging stronger, for example by using “Health sector product, not for sale. If you have paid for this item, it was stolen.” This type of public-private collaboration to deter drug diversion could assure IMSS increased access to public services by reducing theft of public supplies. This way, manufacturers also assure their regular non-discount, market prices (Vian, 2010).

Promoting industry and suppliers' own integrity standards and programmes enhances integrity in their relationship with IMSS

Evidently, in most cases of corruption in public procurement, suppliers play a crucial role. Therefore, it is essential that anti-corruption measures address that side of the responsibility. The Mexican procurement legal framework has a limited scope concerning suppliers' potential role in fraud and corruption. They do not define responsibilities, accountabilities, and sanctions for suppliers that engage in fraudulent or corrupt practices. Sanction of private parties is limited to administrative faults during the procurement procedure rather than tackling corruption. In other words, the legal framework mainly verifies suppliers' compliance with the procurement laws and regulations rather than combating corruption. It focuses on the supplier's administrative faults and omissions, which may lead to a suppliers' temporary debarment (up to five years) from participating in public tender procedures.

The LFACP stipulates larger fines to suppliers who partake in corruption and/or disqualifies them from participating in procurement procedures. In both situations, a maximum fine of 35% of the amount of the contract may be imposed. If the benefits earned illicitly surpass the quantity of the fine, a larger fine will be imposed reaching a maximum of 55% of the amount of the contract.

Many countries are moving the sole criminalisation of companies to inducing them to develop their own programmes to prevent corruption. For example, the Corporate Sentencing Guidelines in the United States represented a new approach to induce publicly traded companies to create ethics programmes, codes of conduct, effective training and whistle-blower systems. The incentive offered by the guidelines is that if a company is convicted of corruption, the judge must take into account the efforts the company has made to maintain integrity. This can result in a significant reduction in the civil penalties the company would have to pay. The private sector is also energetic in many parts of the world in proactively developing their own anti-corruption programmes and setting standards through self-regulation. Evidently, IMSS does not have the leading role in Mexico in

developing integrity and accountability standards for businesses. However, IMSS could engage with certain suppliers to explore ways to induce them to develop their own standards and programmes to enhance integrity in their relationship with IMSS.

Proposals for action

In order to further promote integrity and fight corruption in its procurement process, IMSS could adopt the following actions:

1. Developing an awareness-raising campaign of the risks posed by corruption in procurement, and developing a long-term strategy for combating corruption and promoting good governance in the pharmaceutical sector.
2. Strengthening its code of ethics in order to specify guidelines and procedures to prevent unethical or corrupt practices. The code could include a more detailed description of the standards of conduct expected from procurement officials when interacting with suppliers.
3. Developing specific guidelines for procurement officials to identify and manage conflicts of interests and to ensure their private interests do not improperly influence the performance of their duties and responsibilities. This may involve establishing mechanisms for officials to obtain advice and support when in doubt.
4. Improving communication with personnel regarding inadequate conduct by opening up new channels of communication within the organisation as well as with OIC (potentially through an intranet site).
5. Developing specific guidelines and tools on “red flags” to assist procurement officials in identifying, monitoring and reporting improper activities for each stage of the procurement process.
6. Providing appropriate integrity training on the importance of prevention of corruption and reporting of misconducts. This will assist an on-going process of involvement and commitment to ensure the integrity of the public function.
7. Improving communication in order to resolve personal conflicts through appropriate channels, rather than through reporting mechanisms focusing on improper practices and corruption.
8. Adopting practices and rules to protect whistle-blowing against retaliation while protecting public servants from irresponsible and unethical whistle-blowing that could damage their reputations and careers due to false allegations.
9. Adopting a strategy to enhance transparency in the price of medicines it acquires, as well as exploring benchmarking those prices against other Mexican health entities such as the Ministry of Health, ISSSTE and PEMEX.
10. Securing its distribution of medicines through batch monitoring via a unique code that identifies the channel of distribution and facilitates the investigation of stolen drugs. IMSS could also make the messages printed on the drug packaging stronger, for example by using “health sector product, not for sale. If you have paid for this item, it was stolen.”
11. Engaging with the health industry and suppliers to explore ways to encourage them to develop their own integrity standards and programmes to enhance integrity in their relationship with IMSS.

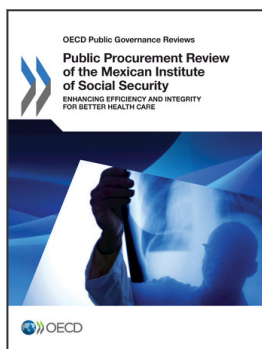
Notes

1. Supplier collusion, also known as bid-rigging, is an important integrity risk in the procurement cycle. However, it is not addressed in detail herein as it was subject to a distinct OECD review in collaboration with IMSS. The report “Fighting bid rigging in public procurement in Mexico” (OECD, 2012) provides the OECD assessment of the legislation and practices governing IMSS procurement as well as actions considered by IMSS to implement the OECD recommendations.
2. LFRASP, Article 8.
3. LFRASP, Article 37.
4. LFRASP, Article 40.
5. LFRASP, Article 8 (XI).
6. www.jornada.unam.mx/2011/02/24/sociedad/044n1soc.

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