

Chapter 5.

The way to competition: Measuring direct awards

This chapter focuses on the use of exceptions to public procurement procedures by the central units and regional delegations of the State's Employees' Social Security and Social Services Institute (ISSSTE) in Mexico. It analyses the frequency of directly awarded contracts and the most common grounds for not opening them to competition. The chapter provides recommendations to increase competitive tendering and highlights the importance of professionalising the ISSSTE's workforce, improving tender design and collecting consistent data.

Competitive tendering enhances transparency in the procurement process and offers opportunities for doing business with the public sector. To boost competition, procurement agents should determine the procurement strategy that best serves administrative efficiency and levels the playing field for suppliers.

Competition in public procurement means that two or more bidders act independently and engage in a contest for the opportunity to secure the procuring entity's contract by offering the most favourable terms (UNODC, 2013). It is an effective way for governments to procure good supply solutions, leverage the public sector's buying power, and get value for money while ensuring that citizens' needs are served. Competition helps lower prices, and obtain better quality goods, services and works. It is also a valuable way of promoting innovation among suppliers seeking to roll out new, improved solutions.

The OECD *Recommendation of the Council on Public Procurement* encourages countries to facilitate access to procurement opportunities for potential competitors. In particular, the recommendation mentions that:

...competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement, such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers. (OECD, 2015)

The ISSSTE's own commitments towards suppliers provide that it will promote free competition for all interested candidates in its procurement procedures.¹

For all those reasons, it is worth looking at strategies for broadening the pool of potential suppliers and increasing competition for public contracts. Such strategies include facilitating bids from all over the country in public procurement procedures, encouraging the participation of small and medium-sized enterprises (SMEs), and opening up public procurement markets to foreign competition.

The ISSSTE's frequent use of exceptions to competitive tendering

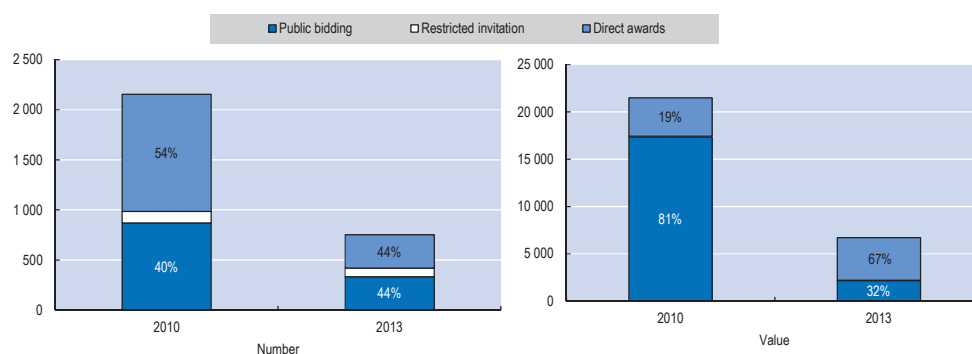
The Mexican procurement legal framework establishes the use of three distinct procurement procedures:

- Public tendering (also known as “open tendering”), where public bodies call for suppliers to bid and the best offer is chosen.
- Invitations to at least three suppliers, also known as “restricted invitations”. Several suppliers who meet certain prerequisites are preselected and the contract is awarded to the supplier who has the best bid.
- Direct awards, where a contract is awarded to a supplier without competition. Contracts are may be directly awarded when public tendering or restricted invitations are unsuccessful, when the value of a contract is lower than the established thresholds, or when the use of “exceptions” to public bidding is authorised.

The preference for the first approach is set out in the Mexican Constitution and restated in the Law on Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, LAASSP*) in order to guarantee the best available conditions for price, quality, financing, opportunity and related requirements.

When comparing the type of procurement procedure used for goods and services between 2010 and 2013, the proportion of direct awards by the ISSSTE decreased from 54% to 44%. However, when measured in value, direct awards are more used. While in 2010 public bidding was the prevalent procedure, accounting for 81% of the value of all contracts awarded competitively, two-thirds of the contracts were awarded directly in 2013 (Figure 5.1).

Figure 5.1. Number and value of the ISSSTE's contracts for goods and services by procurement procedure



Note: Values up to June 2013.

Source: Secretaría de la Función Pública, Informe de Labores y de ejecución, 2011 y 2013, www.funcionpublica.gob.mx/index.php/temas/informes/informes-de-labores-y-de-ejecucion.html (accessed 15 October 2014).

A closer look at direct awards may help to understand why the ISSSTE has come to use them so widely, why the number of exceptions to public tendering has increased and ways to reduce them.

Article 41 of the LAASSP provides 20 possible exceptions to public biddings. Of those 20, the ISSSTE's central level and delegations used the following ones in 2013:

- Article 41. Fr. I: There are no technically reasonable alternative goods or services or substitutes products or services. There is only one potential supplier in the market, or the supplier has ownership, licensing or other exclusive rights, or copyright or art is being purchased.
- Article 41. Fr. II: The social order, the economy, public services, sanitation, safety or the environment in any area or region of the country is altered or threatened as a result of accident or *force majeure*.
- Article 41. Fr. III: Carrying out a public tendering procedure would occasion significant costs or losses.
- Article 41. Fr. V: An unplanned event or *force majeure* makes it impossible to obtain goods or services through competitive tendering within the time required –

in that event, the value of the contract or the number of items being purchased is limited to the minimum.

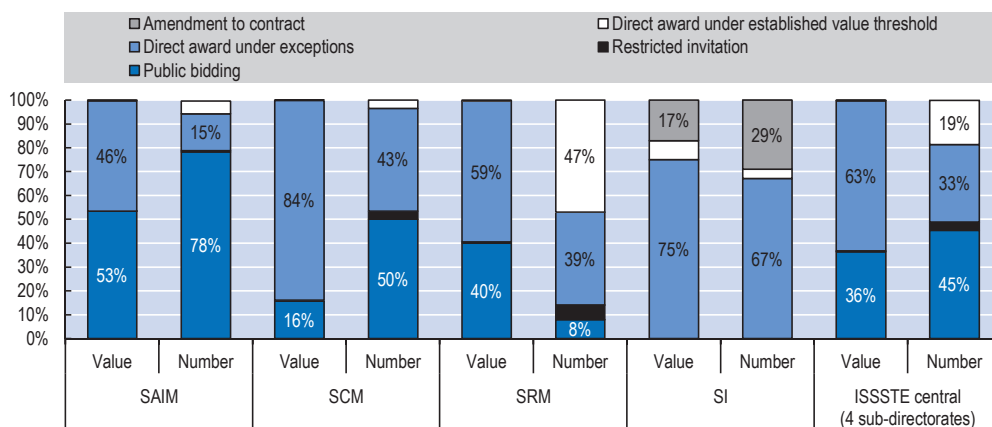
- Article 41. Fr. VI: A rescinded contract allows the second best supplier to be contracted.
- Article 41. Fr. VII: A public tendering was unsuccessful.
- Article 41. Fr. VIII: For the purchase or lease of a sole brand.
- Article 41. Fr. IX: Perishable goods, grains or food products are to be procured.
- Article 41. Fr. XI: For leases or services offered by rural or marginalised urban communities.
- Article 41. Fr. XIV: Services can be provided by a single specialist or technician.
- Article 41. Fr. XV: For the maintenance of goods for which it is not possible to determine the extent, the quantities or specifications.
- Article 41 Fr. XX: Specific contracts result from framework agreements.

Article 42 of the LAASSP also states that is possible to award contracts directly when the amount covers too few goods or the value is below an established threshold to warrant a competitive bidding process.

Central units and delegations both make use of direct awards

The ISSSTE's central units account for approximately 90% of the value of all of the tenders it issues through centralised procurement of goods and services. Those goods and services are medicines, medical supplies, gases used for clinical reasons in hospitals, and such non-clinical goods and services as uniforms and clothing, IT goods and services, and vehicles. In 2013, according to data provided by the ISSSTE, 63% in value of the ISSSTE's central procurement contracts were awarded directly through exceptions to public bidding (Figure 5.2).

Figure 5.2. Types of procurement procedure used by central units, 2013



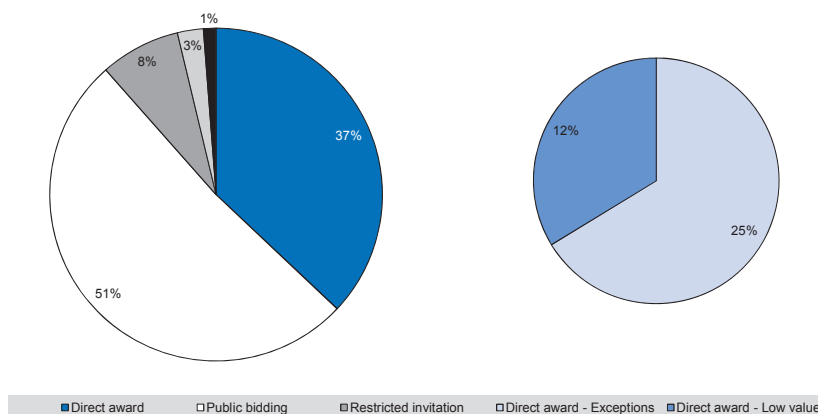
Notes: SAIM: Sub-Directorate of Medical Supplies (*Subdirección de Abasto de Insumos Médicos*); SCM: Sub-Directorate of Conservation and Maintenance (*Subdirección de Conservación y Mantenimiento*); SRM: Sub-Directorate of Materials and Services (*Subdirección de Recursos Materiales y Servicios*); SI: Sub-Directorate of Infrastructure (*Subdirección de Infraestructura*).

Source: Author's calculation based on data provided by the ISSSTE.

Some exceptions can be explained by the nature of the products the ISSSTE seeks to acquire – e.g. a patented medicine where only one supplier holds the right to sell it – by medical emergencies or epidemics, or by market opportunities for purchasing directly from one supplier only.

In 2013, delegations, too, awarded 37% in value of all procurement contracts through direct awards (Figure 5.3).

Figure 5.3. Procurement procedures used by the ISSSTE’s delegations in terms of value, 2013

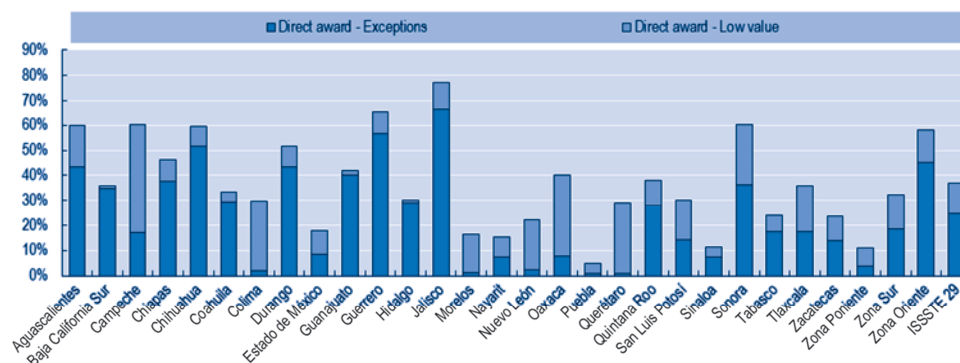


Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte) – information was either not provided or provided in a format that did not allow calculation.

Source: Author’s calculation based on data provided by the ISSSTE.

Although 51% in value of contracts were awarded through public tenders, 37% of direct awards is nevertheless a high share. For instance, 8 delegations out of the 29 for which data were available used direct awards in more than 50% of procurements (Figure 5.4).

Figure 5.4. Proportion of direct awards by ISSSTE under the terms of Article 41 of the LAASSP (exceptions) and Article 42 (low value), in terms of value, by delegation 2013



Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte) – information was either not provided or provided in a format that did not allow calculation.

Source: Author’s calculation based on data provided by the ISSSTE.

Figure 5.4 shows that, for example, the Puebla Delegation – the one with the lowest number of direct awards – awarded only 5% of its contracts directly, while the figure for Jalisco was 77%.

Of the total of 37% of contracts awarded directly by delegations, low value accounted for 12% of them. Article 42 of the LAASSP states that low value contracts may represent up to 30% of all procurement contracts. However, Campeche (43%) and Oaxaca (33%) both exceed that threshold.

It is recommended that the ISSSTE analyse the reasons for the divergence of the use of direct awards among the delegations. A thorough examination of the reasons for using exceptions would help assess whether the facts of each case warranted them. In interviews with stakeholders – who include the ISSSTE’s central units and delegations as well as external bodies, like the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) – the OECD found that direct awards can sometimes be explained by the ISSSTE’s inadequate planning, both in forecasting needs for goods and services as well as in timing the procurement process, and its lack of market intelligence on the availability of products and services and Mexican suppliers’ capacity to meet requirements. Such shortcoming can be remedied by improving planning processes and market intelligence levels, in accordance with the recommendations made in Chapters 2 and 3 and in the action plans proposed in those chapters’ annexes.

Direct awards are principally justified using six exceptions

As Figures 5.2 and 5.3 show, 25% of delegations’ contracts and 63% of the ISSSTE’s central level contracts were directly awarded in 2013 through the use of exceptions to public tenders in accordance with Article 41 of the LAASSP.

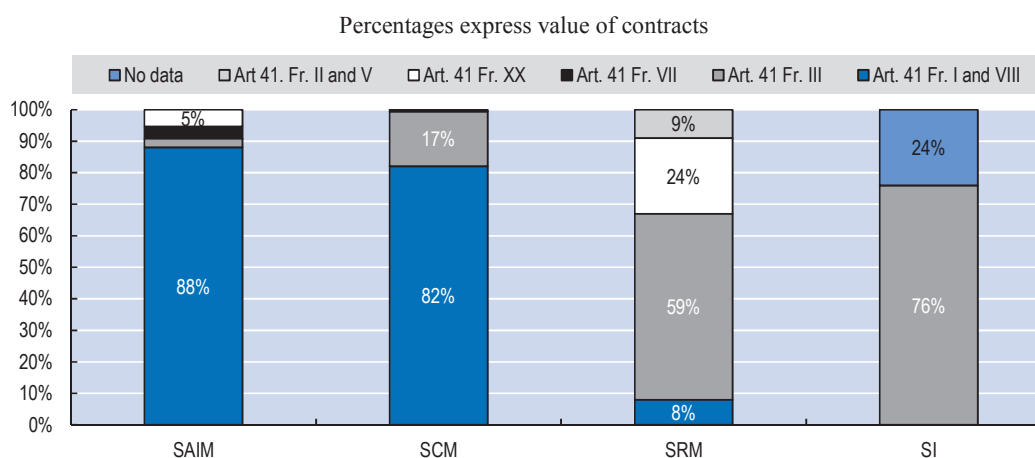
The Goods, Leasing and Services Committee (*Comité de Adquisiciones, Arrendamientos y Servicios*, CAAS) is in charge of reviewing and authorising the use of exceptions to public tendering at the central level. Similar subcommittees are in place in delegations. The CAAS should carefully examine the frequency of exceptions and the reasons for using them by drawing on the insights afforded by the OECD data analysis below.

The use of exceptions at the central level

At the central level, the most widely used exceptions are Fr. I (no alternative goods, a single supplier in the market, exclusive rights, works of art) and Fr. VIII (a sole brand) of Article 41 of the LAASSP. The Infrastructure Sub-Directorate also uses Fr. III (a public tendering procedure occasions significant costs and/or losses, as shown in Figure 5.5).

According to data received by the OECD (Figure 5.6), the Sub-Directorate of Conservation and Maintenance (*Subdirección de Conservación y Mantenimiento*, SCM) has used three exceptions to public bidding in the past three years: Article 41 Fr. I, Fr. III and Fr. VII (unsuccessful public tendering) of the LAASSP. Fr. I is the most commonly used exception: the ISSSTE used it to purchase goods and services inherent to its activities, such as medical gases and rent infrastructure for its medical units. Between 2011 and 2013, the SCM’s use of exceptions remained steady, with just a slight increase in 2013.

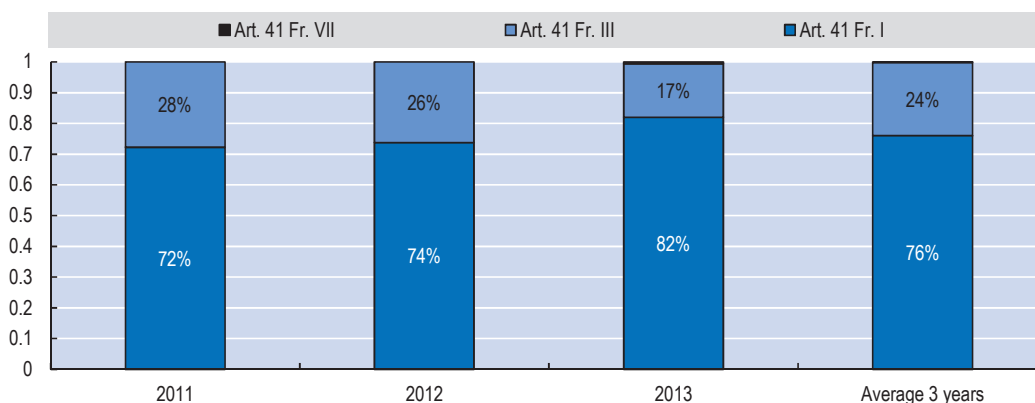
Figure 5.5. Exceptions to public bidding used by the ISSSTE's central level, 2013



Notes: Sub-Directorate of Medical Supplies (*Subdirección de Abasto de Insumos Médicos*); SCM – Sub-Directorate of Conservation and Maintenance (*Subdirección de Conservación y Mantenimiento*); SRM – Sub-Directorate of Materials and Services (*Subdirección de Recursos Materiales y Servicios*); SI – Sub-Directorate of Infrastructure (*Subdirección de Infraestructura*).

Source: Author's calculation based on data provided by the ISSSTE.

Figure 5.6. Use of exceptions to public bidding by the Sub-Directorate of Conservation and Maintenance in terms of value



Source: Author's calculation based on data provided by the ISSSTE's Sub-Directorate of Conservation and Maintenance (*Subdirección de Conservación y Mantenimiento*, SCM).

The SCM generally procures medical gases and related equipment and services from large companies, as they have the capacity to deliver. It explains that it awards contracts directly to large suppliers because they:

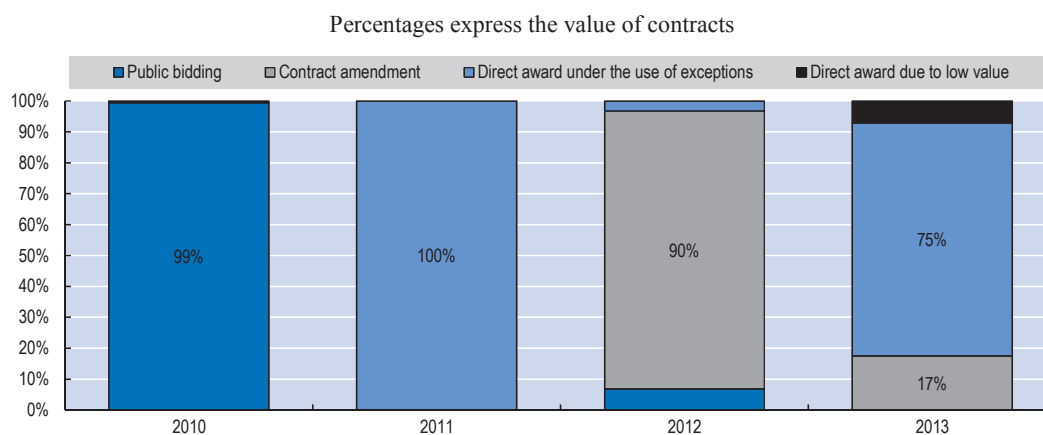
- hold the exclusive rights over the brands of equipment installed in the ISSSTE's buildings (Philips, Siemens, etc.)
- provide replacement parts and service equipment installed in the ISSSTE
- are specialised and can respond in a timely manner

- comply with technical regulations; have technical, operational and financial capacity, the necessary infrastructure and trained personnel; take adequate safety measures; and provide preventive and corrective maintenance services
- have the necessary safety equipment and know-how to handle gas and related tools and containers.

Furthermore, when the servicing period for equipment procured by directly awarded contract expires, the SCM puts the maintenance contract out to public tender.

In 2010, the Infrastructure Sub-Directorate – whose duties include procuring the ISSSTE’s comprehensive medical services – awarded 99% of its tri-annual comprehensive medical services contracts through public bidding (Figure 5.7). In 2013, though, it decided to award them directly as there was not enough time for a competitive bidding procedure due to internal administrative changes in the ISSSTE. Nevertheless, the ISSSTE sought to widen the supplier base for its comprehensive medical services and negotiate savings. It finally awarded its contracts directly to small companies that had previously worked as sub-contractors to the big ones. It thus managed to increase the number of its suppliers from three in 2011 to more than six in 2013 and secure significant savings.

Figure 5.7. Use of exceptions to public bidding by the Sub-Directorate of Infrastructure



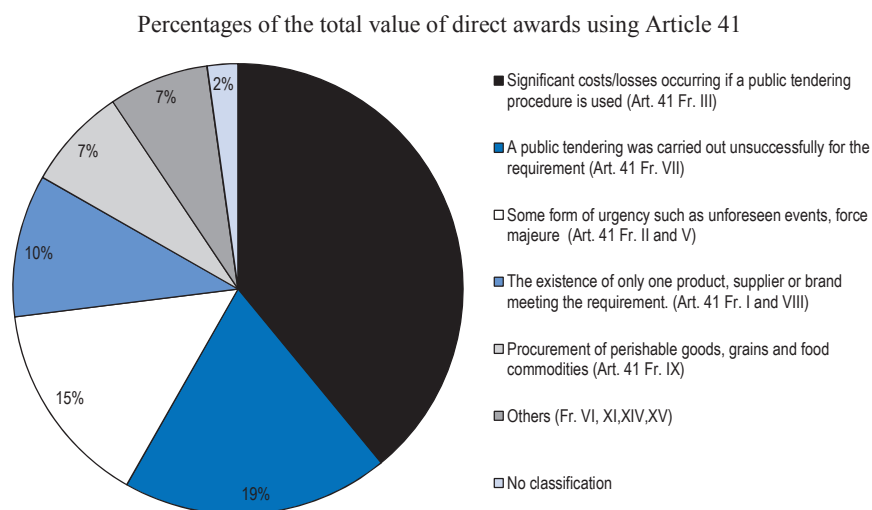
Source: Author’s calculation based on data provided by the ISSSTE.

Use of exceptions at the local level

In 2013 and in order of how often they were used, Fr. III, VII, II, V, I and VIII of the LAASSP Article 41 accounted for 73% of delegations’ direct awards (Figure 5.8).

According to data provided by the ISSSTE, most delegations – 20 out of 29 – used Fr. III (public tendering creates significant costs and/or losses) as the grounds for direct awards. It represented 39% of the total value of all direct awards. Fr. VII (unsuccessful public tender), with 19%, was the next most often used exception.

Figure 5.8. Exceptions to public bidding used by delegations, 2013

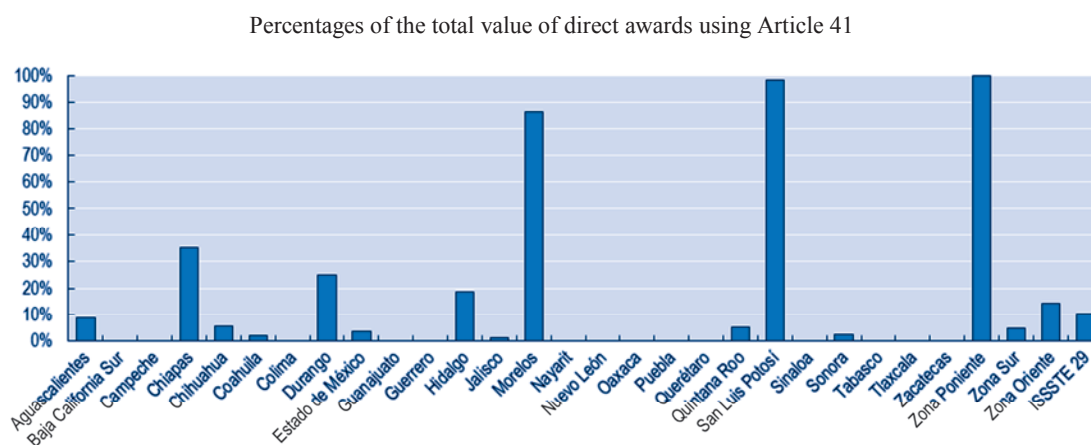


Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte). These delegations did not provide information or provided it in a format that did not allow calculation.

Source: Author’s calculation based on data provided by the ISSSTE.

Fr. I and Fr. VIII of the LAASSP both provide “sole” grounds – sole supplier and sole brand – for resorting to direct awards (Figure 5.9).

Figure 5.9. Delegations’ use of sole source/brand exception (Fr. I and Fr. VIII), 2013



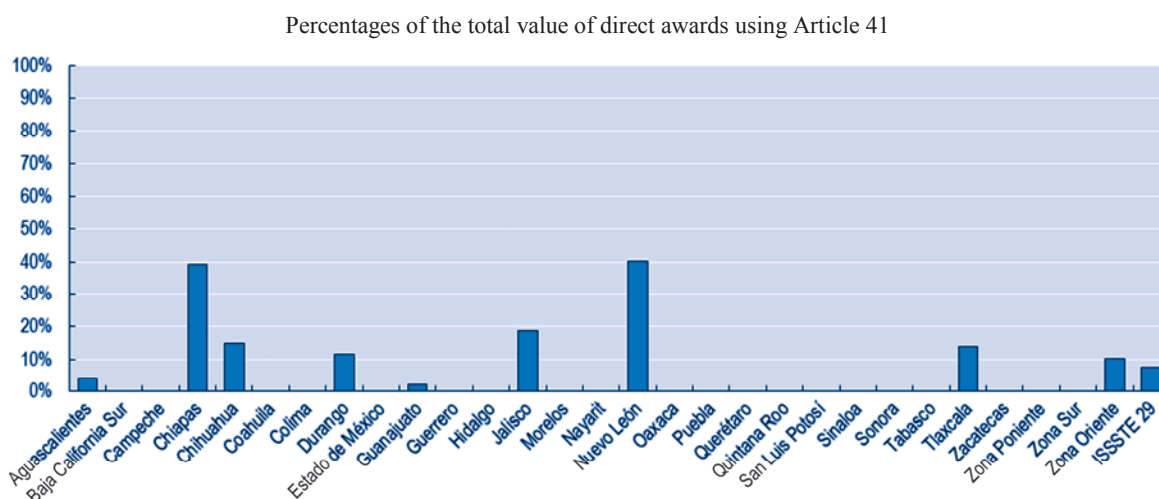
Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte). These delegations did not provide information or provided it in a format that did not allow calculation.

Source: Author’s calculation based on data provided by the ISSSTE.

The Zona Poniente Delegation appears to have awarded all of its directly awarded contracts in 2013 using the sole-supplier exception in Fr. I of LAASSP Article 41.

Exception Fr. IX of the LAASSP allows direct awards for perishable goods, grains and food products to meet the needs of hospitals and day care centres (Figure 5.10). Some delegations argue that they have to award contracts directly to suppliers operating in the same state in order to ensure that foodstuffs are fresh and in good condition. While delivery by local suppliers makes sense, explanations for not using a call for tender are not sufficient because delegations can establish framework agreements or multi-year contracts for the provision of such goods. Contracts for perishable goods could be centralised at the regional level, depending on suppliers' geographical proximity and the type and quantities of perishables needed. Delegations that are located close to each other could make economies of scale.

Figure 5.10. **Delegations' use of the perishable goods exception (Fr. IX), 2013**



Note: No data were available for six delegations, namely Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte. These delegations did not provide information or provided it in a format that did not allow calculation.

Source: Author's calculation based on data provided by the ISSSTE.

The use of Fr. II and V may reflect poor planning that can be remedied

Several delegations expressed concerns about the length of competitive procurement procedures. Some claimed that six months could pass between the time the winning bidder was announced and the actual signature of the contract. Such delays often stem from the fact that delegations may not use existing model contracts, but constantly (re)design contracts and ask the ISSSTE's Legal Directorate or their own legal department to review them. Recently, the Legal Directorate has created some model contracts that are being used by the delegations.

The time it takes to legally review a newly drafted contract depends on its quality and whether it needs light or substantive editing. Another factor is the workload of the Legal Directorate; there have actually been even a couple of reported instances of suppliers delivering without a signed contract in order to cover a supply emergency. And when contracts use models, the Legal Directorate still reviews them. Delays are thus caused by the replication of reviews of documents that are very similar.

Contract models should, first of all, be reviewed for their accuracy, user-friendliness and responsiveness to the commercial needs of buyers (ISSSTE delegations) and suppliers. Second, they should be updated where necessary and, third, used by all procurement units – including central ones, without requiring any modifications or check by the Legal Directorate. In the case of reasonable and justified commercial concerns that necessitate amendments to the standard contract terms, only the amendments should be vetted and approved by the Legal Directorate.

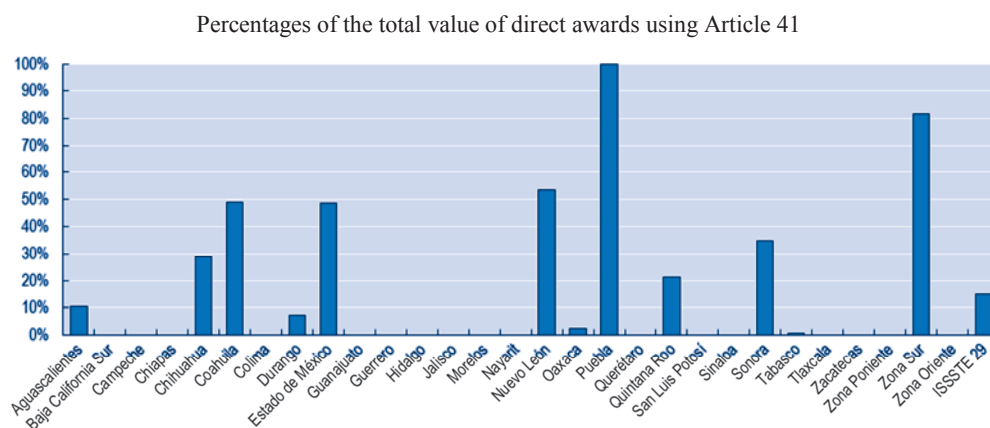
One example of a model contract for tender documents that may be used for procuring a range of goods and services comes from the NHS in the United Kingdom. The NHS “Terms and conditions for the supply of goods and the provision of services” “provides the core ‘DNA’ for all other sets ... of contracting terms and conditions” (NHS, 2014).

As well as delays attributable to redundant, but avoidable, legal reviews, issues pertaining to planning and budget allocation issues (explained in detail later in this section) further limit lead procurement time. Indeed, the time left to run a full competitive procedure may sometimes be so short that it compels procuring entities to resort to direct awards and use exceptions to competitive tendering related to emergency or cases of *force majeure* (Article 41, Fr. II and Fr. V of the LAASSP) (Figure 5.11).

“Emergency” purchases tend to take place at the end of the fiscal year when the ISSSTE’s units try to spend still-unspent monies, as they cannot carry them over into the next fiscal year. Such a practice, also found in other procurement agencies around the world, is a pseudo-emergency. Yet it enables procurers to award contracts directly when only open bidding would otherwise be possible (Kühn and Sherman, 2014).

Delegations admit that they use the grounds of emergency when they do not have enough time to carry out a public tender or respond in a timely manner to the needs of the beneficiaries. The Coahuila Delegation also mentioned that it availed itself of the emergency exception to commission equipment maintenance services and procure medicines when those acquired centrally were insufficient and medical needs had to be urgently met.

Figure 5.11. Delegations’ use of emergency and *force majeure* exceptions (Fr. II and Fr. V), 2013



Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte). These delegations did not provide information or provided it in a format that did not allow calculation.

Source: Author’s calculation based on data provided by the ISSSTE.

During the OECD fact-finding mission, stakeholders like the SFP and the supreme audit institution (*Auditoria Superior de la Federación*, ASF) stated that the ISSSTE's procurement planning processes were not well enough organised to allow the time to prepare and carry out a competitive procurement procedure. Some respondents also hinted that public servants were not used to planning but to working on a last-minute basis. Delegations know full well, for example, that the Annual Procurement Programme (*Programa Anual de Adquisiciones, Arrendamientos y Servicios*, PAAAS) has to be ready by 31 January each year. However, they do not draw up procurement plans that reflect their real current needs, but reuse previous ones that they modify slightly before submitting. The practice is due as much to habit as well as to understaffing or the lack of thorough data.

Room for improvement in budget allocation, procurement planning and payment approval

Feedback collected during the fact-finding mission revealed that the timing and manner of budget allocation is a recurrent challenge in the delegations. They do not have readily available funds, so, each time they want to procure, they must submit a request for endorsement of their “budget sufficiency” proving that they can commit the money corresponding to the purchase.

The contracting process, set out in the “General Procurement Manual”, was adopted in 2010 by the SFP to help public bodies comply with the LAASSP (Table 5.1). This manual requires them to request “budget sustainability” (*solvencia presupuestal*) before submitting a purchase request (*requisición de compra de bienes o servicios*, RCB).

Table 5.1. **The contracting process set out in the “General Procurement Manual”**

Sub-process	Templates ¹
Elaboration of purchase request (<i>requisición de compra de bienes o servicios</i> , RCB).	– Purchase request form for an existing contract (FO-CON-01) – Verification of stock (FO-CON-02)
Involves evaluating needs based on the approved PAAAS, verifying existing contracts (including multi-year contracts and framework agreements), assessing current levels of stock, conducting market research, selecting a procurement procedure, choosing the selection criteria and procurement tools, obtaining budget sustainability (<i>solvencia presupuestal</i>) and the elaboration of the RCB.	– Purchase request (RCB) (FO-CON-03) – Request for market research (FO-CON-04) – Market investigation results (FO-CON-05)
Carry out selected procurement procedure	– Calendar for tender procedures (FO-CON-06)
– public tender	– Summary of public tender solicitation (FO-CON-07)
– restricted invitation	– Clarification meeting (FO-CON-08)
– direct award	– Checklist for reviewing offers (FO-CON-09) – Minutes of the presentation and opening of offers (FO-CON-10) – Results of the technical evaluation (FO-CON-11) – Results of the economic evaluation (FO-CON-12)
Award contract	– Minutes of award decision (FO-CON-13)
Sign contract	
File contract	

Note: 1. Format available at: www.funcionpublica.gob.mx/index.php/ua/sracp/uncp/General_Procurement_Manual.html (accessed 14 September 2014).

Source: *Manual Administrativo de Aplicación General en Materia de Adquisiciones, Arrendamientos y Servicios del Sector Público*.

A number of delegations feel that it takes too long to have their “budget sustainability” endorsed. The result is delays in starting the procurement procedure, which in turn prompts delegations to resort to direct awards to save time. The Programming and Budgeting Sub-Directorate pointed out, however, that procurement units can start planning without their “budget sustainability” endorsement, as long as they obtain it before the tendering process (the request for bids) has officially begun. Clear guidelines from the ISSSTE’s central level to the delegations on this issue would be very helpful.

In addition to the complexity of the budget sustainability procedure, delegations reported that the SSSTE’s budget allocation did not guarantee that their request will be met. As explained in Chapter 2, the budget granted to the ISSSTE may be less than requested – it depends on adjustments made by the Ministry of Finance when drawing up the budget, on approval by Congress of the total federal expenditure budget in November and on other related factors. The lower the amount of funds approved for the ISSSTE, the lower the budget allocated to delegations. Delegations believe that budgets are attributed primarily according to the size of the delegation and, in particular, the number of beneficiaries that it covers. The ISSSTE confirms that the budget is indeed allocated according to:

- the number of beneficiaries
- how the budget has evolved historically
- priority projects or programmes directly approved by the Director of the ISSSTE.

However, data on beneficiaries are not reliable, patients’ census reports may be inaccurate and allocation decisions may contain elements of randomness.² While automated data collection would improve matters (Chapter 2), delegations should also provide as much pertinent information as possible to the Programming and Budgeting Sub-Directorate when it puts together its budget request to the Ministry of Finance.

Delegations realise that it is possible – and probable – that their budget requests will not be granted in full. They could, therefore, adjust their planning accordingly, as did the Zona Poniente Delegation. It reduced its number of directly awarded contracts between 2011 and 2013 which, according to OECD interviews, was the result of good planning – it had a plan B in place, whereby it relinquished low-priority action and focused on priority ones should the total budget requested not be granted.

The ISSSTE could draw on the example of the Zona Poniente Delegation and regularly check on the percentages and reasons for the emergency and *force majeure* exceptions, used more by the delegations than by the central level. In parallel, it could meet with delegations to identify good practices for improving procurement planning and management. Good practices should be disseminated internally and externally (see Chapter 2).

Not only can the budgetary process delay the start of a tendering process (although it is possible to start planning procurements before receiving the budget), payment may also slow things down because of the *cuenta cero* (zero available cash) system. Under the system, the Programming and Budgeting Sub-Directorate must first approve all payments made by delegations (who must provide invoices). Only once it has received the funds it requested can a delegation pay its supplier.

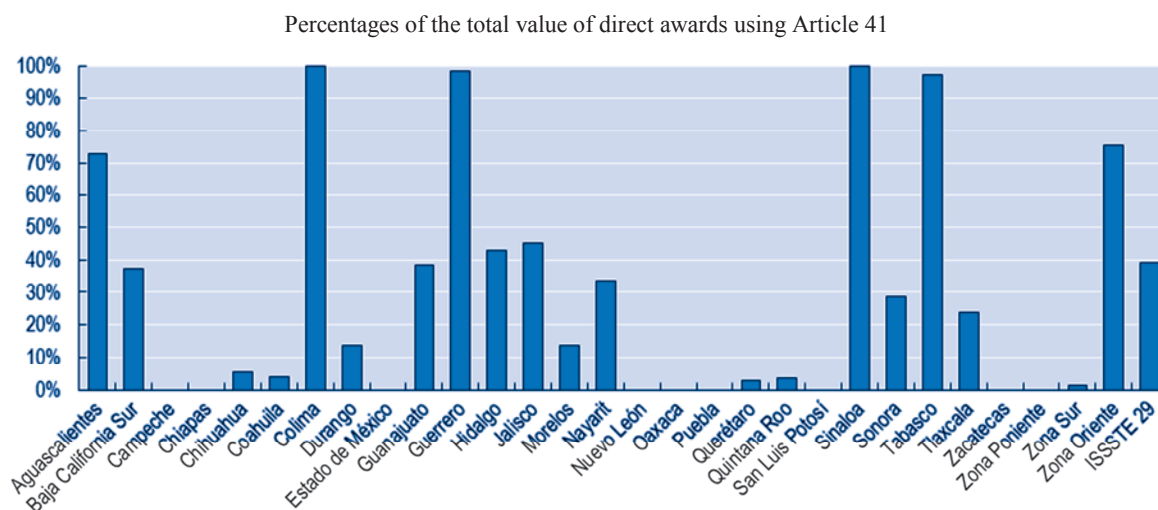
Delegations used to have autonomous budgets. The *cuenta cero* system was put in place by the ISSSTE's central level to control units' expenditure and ensure that suppliers are paid in a timely manner and that funds are used efficiently. The largest delegations – like those of the State of Mexico, Zona Norte and Oriente – agree that the measure has contributed to better organised, more timely payments, since it obliges delegations to plan payment more effectively. However, other delegations have argued that *cuenta cero* has restricted their capacity to face emergencies, as approvals can be lengthy and squeeze the timeframe for directly contracting and paying suppliers. According to the Programming and Budgeting Sub-Directorate, approval generally takes 72 hours but can be as long as 5 days at the end of the year, when requests from delegations under pressure to use the unspent part of their budgets flow in.

Although the *cuenta cero* system applies to the payment of suppliers, and not contracting *per se*, a clarification of the timelines and procedures involved in approving and transferring funds to delegations would be helpful.

Direct awards may stem from the complexity of the law

Article 41, Fr. III states that a contract may be directly awarded if a public tender creates significant costs and/or losses. It accounts for an average of one-third of the total value of direct awards (Figure 5.12).

Figure 5.12. Delegations' use of the Fr. III exception, 2013



Note: No data were available for six delegations (Baja California Norte, Michoacán, Tamaulipas, Veracruz, Yucatán and Zona Norte). They did not provide information or provided it in a format that did not allow calculation.

Source: Author's calculation based on data provided by the ISSSTE.

Some delegations make use of Fr. III as follows. If during the market intelligence phase a procurement unit finds that a supplier's price is higher than the price obtained in a previous public tender, it may award the contract directly to the supplier who had offered the lower price. However, competition is one of the principles of the Mexican procurement legal framework which does not encourage direct awards and admits them only in exceptional cases. Open competitive bidding should be the rule, particularly as market intelligence only provides an indication of price. Indeed, stakeholders interviewed

by the OECD (who included suppliers) mentioned that suppliers may deliberately quote a high price in response to the request for estimates phase of market research. They do so as not to lower the procurement reference price and avoid being pressured into making even lower bids when the actual procurement process gets underway.

A further incentive for awarding contracts directly is the complexity of Mexican procurement rules. To comply with them, procurement officers have to follow several administrative procedures at once. They are sometimes tempted to save themselves time, bureaucracy and inconvenience by directly awarding contracts to suppliers whom they already know and have proven themselves in previous bids.

Clear guidelines, possibly from the SFP and perhaps with added guidance from the ISSSTE, would help shed light on how Fr. III should and should not be used.

The ISSSTE can overcome challenges

Full-time, skilled staff and training to support effective competitive procurement procedures

As Chapter 3 pointed out, the ISSSTE's market research can be perfunctory and not afford a full overview of markets. Not all delegations feel equipped to carry out market research and sometimes they try to avoid it. The shortfalls of market intelligence are exacerbated by the ISSSTE's limited staff and skills capacity and the absence of appropriate training. Central directorates, the ISSSTE's internal control body and delegations all highlight low staffing and skills levels and the fact that that procurement staff are overburdened with paperwork and therefore not wholly dedicated to the procurement activity.

According to information provided by the ISSSTE for the first OECD review, approximately 600 officials work in procurement. The fact that some units are reportedly understaffed suggests that the problem is one of poorly planned and distributed staffing across the organisation. The fact-finding mission for this report found that staffing decisions are taken at the central level on the basis of proposals from the delegations, but without any real communication between the delegations and the Administration Directorate on staffing needs and priorities. Furthermore, there is little provision for transferring or reallocating staff to the units where they are needed the most, which prevents any results-oriented distribution or efficient management of human resources.

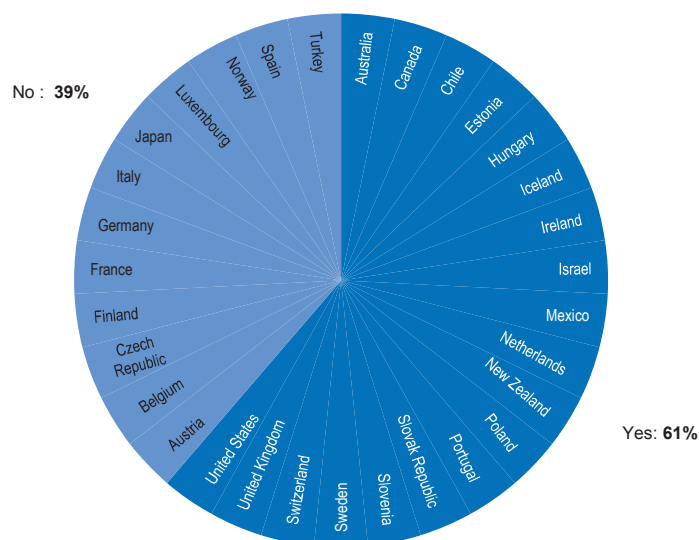
Like many other OECD countries, Mexico suffers from a shortage of full-time procurement officers that are exclusively dedicated to public procurement activities and not to other administrative tasks, and that are recognised as specialised professionals (Figure 5.13).

Staff could be distributed more effectively on the basis of good and open communication between human resources departments and areas in need of support from people with a grasp of procurement. It would also be possible to improve the knowledge and skills of procurement staff through continuous training.

To date, procurement training has been provided chiefly by Ministry of Public Administration (SFP), especially on the use of the Mexican e-procurement system, Compranet. The classroom training takes place in Mexico City, while local training is still relatively limited, although the SFP does have plans to bring in-person courses to different cities. The ISSSTE provides some training to personnel involved in procurement planning. Nevertheless, its internal control body, central units and delegations concur that

trainings should be increased and enhanced since “those that exist are limited to detailing what is stated in the procurement law and regulations but do not provide examples or guidance on operational problems or challenges such as price negotiation or market research”³.

Figure 5.13. OECD countries that recognise procurement as a specific profession, 2010



Source: OECD (2013a), *Government at a Glance 2013*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2013-en.

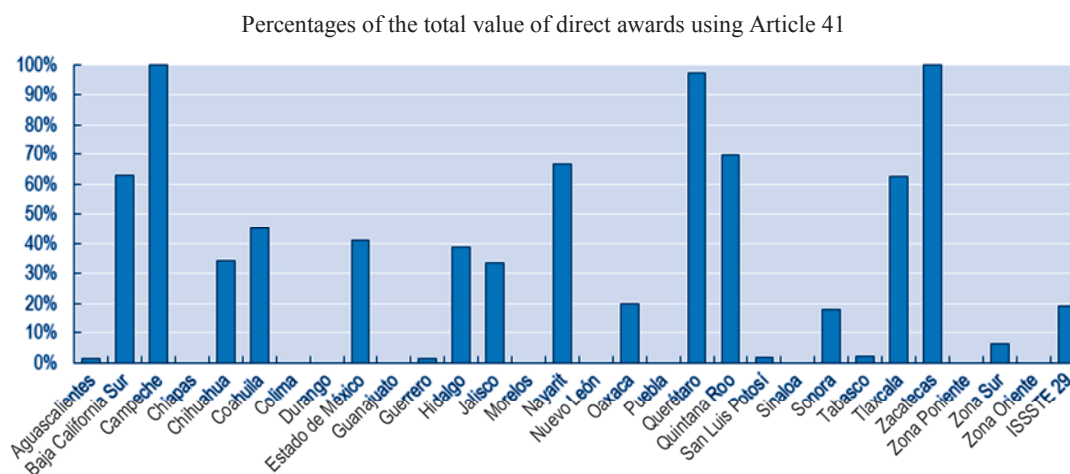
The SFP is developing training that goes beyond Compranet and offers procurement officials operational information. The ISSSTE could benefit from training initiatives currently led by the SFP and tailor them to its own needs, implementing ISSSTE-specific internal capacity building, like workshops, conferences, online courses and webinars. The dissemination of materials for the purposes of such capacity-building activities and resources is as vital as the activities and resources themselves, since they materials will ensure knowledge transfer and sustainability of results.

Experienced procurers from central areas and delegations could do the training, focusing on practical issues related to planning, budgeting and ways of avoiding overreliance on direct awards. ISSSTE-specific training courses could also be prepared and conducted in conjunction with international organisations or training bodies, or leading Mexican universities and institutes. The ISSSTE has co-operation agreements with the Autonomous National University of Mexico (*Universidad Nacional Autónoma de México*) and the National Polytechnic Institute (*Instituto Politécnico Nacional*) on procurement good practices and could develop courses and materials with them.

Streamlined, functional specifications could reduce reliance on exceptions

Under the terms of Article 41, Fr. VII of the LAASSP, a contract may be awarded directly if a competitive bid was unsuccessful and as long as its terms and requirements remain unchanged. During the OECD fact-finding mission, it was reported that public tenders may be unsuccessful because the bids received do not meet the terms of the tender documents or because no bid is received. The ISSSTE’s delegations make use Fr. VII as shown in Figure 5.14.

Figure 5.14. Delegations' use of the unsuccessful bid exception (Fr. VII), 2013



Source: Author's calculation based on data provided by the ISSSTE.

The OECD's first public procurement review of the ISSSTE found that that specifications were restrictive (OECD, 2013c) and sometimes difficult for suppliers to meet. They may be one reason for unsuccessful procedures. Another reason may be that the ISSSTE's *Institutional Catalogue of Healthcare Supplies* is not updated in a timely manner, leading some ISSSTE areas to request products that no longer exist.

Specifications should be as open as possible and based on functional and performance terms rather than solely on technical descriptions in order to encourage effective competition (OECD, 2008). The importance and difficulty of adequately translating an organisation's needs into clear functional or performance characteristics are often underestimated, not only by user areas but by procurement units as well. Nonetheless, functional requirements – which focus on results and not on compliance with rigid tender terms – can greatly contribute to achieving the best value and reducing the number of tender procedures that are declared unsuccessful and lead to direct awards. Moreover, functional requirements allow potential suppliers to offer valid alternatives, thereby increasing the level of competition, promoting innovation and offering better supply conditions.

During the first OECD procurement review of the ISSSTE, delegations reported that drafting specifications is challenging, as requesting areas identify their needs late and there is little time to analyse demand requests and supply solutions and to draft, in consequence, effective specifications. Matters are compounded by a lack of knowledge of the various solutions available on the market – which links back to the need to improve market intelligence in the ISSSTE – and the inadequate guidance in drafting tender specifications.

In order to translate needs into specifications that serve the institute's goals, procurement agents should describe them in functional terms. Practical tools (such as checklists, best practices and templates) and training in how to prepare specifications would help. For standard goods and services, a clear description, which ensures that what is bought is what was needed, may suffice. To that end, the ISSSTE could consider putting in place a regular update of the *Institutional Catalogue for Healthcare Supplies*.

Standardised technical specifications for the most common products would also be helpful as long as it was regularly updated to keep pace with the supply market.

Consistent data across the ISSSTE could reduce the use of exceptions

As detailed above, to reduce the extensive use of exceptions to public tendering, the ISSSTE should regularly monitor the use of exceptions in order to identify persistent problems and opportunities to improve procurement planning and management.

Currently the ISSSTE lacks the tools to consolidate data rapidly and accurately into organisation-wide statistics and reports and to take action accordingly. The ISSSTE's procurement units use different codes and formats, which are sometimes inconsistent even within the same unit. For example, it emerged during fact-finding for this review that few delegations were able to provide the information in the format requested. The spreadsheets provided by the delegations exhibited significant disparities in the value of contracts awarded over the period 2011-13 and the use of exceptions to public tendering. Also, several codes sometimes designated the same exception.

In order to ensure the compatibility of procurement data and facilitate their consolidation, the ISSSTE could consider limiting and harmonising the number of codes used in the various procurement units. For example, standard tools like spreadsheets with harmonised, fewer codes and formats and basic functionalities that prevent or highlight deviations from the established standards would strongly improve the efficiency and effectiveness of the data collection process.

The ISSSTE could consider implementing a standardised classification model for identifying products (that matched the codes used by manufacturers, retailers or service providers). For example, the McKinsey report, "Strength in unity" (Ebel et al., 2012), identified recurrent savings of USD 4.9 million and USD 8.1 million for a 600-bed trust based on full implementation of global GS1 standards⁴ (NHS, 2013).

Table 5.2. **Examples of codes used to designate the exceptions**

Adjudicacion Directa Artículo 41	Article 41 – no classification
Adjudicacion Directa Artículo 41 Fr. I	
Adjudicación Directa Art. N°41 Fr. I	Article 41-Fr. I
Adjudicacion Directa Art. N° 41 Fr. I	
Adjudicacion Directa Artículo 41 Fracc III	
Adjudicacion Directa Artículo 41 Fr. III	
Adjudicacion Directa Artículo 41 Fr. III	
Adjudicacion Directa Art. N° 41 Fr. III	Article 41-Fr. III
Adjudicacion Directa 41 Fr. III	
Adjudicacion Directa 41 Fracc III	
Adjudicacion Directa Art. N°41 Fr. III	
Adjudicacion Directa Art. N°41 Fr. V	
Adjudicacion Directa Artículo 41 Fr. V	Article 41-Fr. V
Adjudicacion Directa Art. N° 41 Fr. IIv	
Adjudicacion Directa Artículo 41 Fr. VII	Article 41-Fr. VII

Source: Based on information provided by the ISSSTE.

The immediate benefit of using a unified product classification is that the same understanding of exactly what products are needed will be shared across the ISSSTE. If the same classification is also used by suppliers and a single nomenclature is eventually

used for all purposes and all products, then all procurement buyers and vendors will share the same understanding of needs. The issues of imprecise or inaccurate specifications, non-compliant bids and unsuccessful processes will be no more.

The absence of appropriate software prevents the efficient collection and consolidation of data. A sophisticated information management system for all procurement activities would help the accuracy, scope and timeliness of data (see Annex 2.A1). During the fact-finding for this review, the OECD found that most delegations and central areas did collect data, since they were able to provide the data requested. However, the data were not standardised or consolidated.

Information is extracted from the system and consolidated, albeit on an irregular basis. An example of such information is data on the monitoring of particular targets as part of specific initiatives. Nevertheless, data are not consistently collected in such a way as to be able to assess results over time and quickly identify, for example, positive or negative trends on the use of exceptions. The ISSSTE could gain a clearer view of what is spent, understand buying patterns and forecast supply requirements if it established a common coding system such as the NHS has done (Box 5.1).

Box 5.1. National Health Service’s procurement strategy promotes greater transparency on hospitals’ supplier expenditure

The NHS currently spends GBP 4.5 billion annually on clinical supplies and services. In 2013, it outlined a new procurement strategy which it hopes will result in GBP 1.5 billion of “procurement efficiencies” over a three-year period.

Data is at the core of the strategy which is – through the development, procurement and implementation of a single, best-in-class NHS Spend Analysis and Price Benchmarking Service – to streamline the data collection and benchmarking process and enable NHS trusts to frequently and cost-effectively compare prices across a wide range of goods and services.

Accurate master data used consistently across the supply chain provides the foundation for procurement efficiency. A common language, backed by a common messaging standard, enables trusts and their suppliers to capture and share procurement data using the same barcode-driven technology that is used by retailers and industry to eliminate errors and waste in the supply chain.

Master data provides the key to analysing and sharing procurement expenditure. Visibility of spend is essential to understanding buying patterns and forecasting supply requirements, thus enabling trusts to secure better deals from their suppliers. Benchmarking between trusts will drive lower prices, releasing savings to the front line.

The essential building block for improving data for the longer term is the adoption by both the NHS and its supplier base of GS1 as the supply chain coding standard.

As part of this strategy, the NHS will:

- mandate through contracts the use of GS1 coding for the NHS
- create a single NHS GS1 data pool for the NHS to use in its systems
- centrally invest in enabling product information management and messaging technologies
- create a single “data warehouse” for NHS procurement data
- define standards to ensure interoperability between e-procurement systems

Box 5.1. National Health Service’s procurement strategy promotes greater transparency on hospitals’ supplier expenditure (cont.)

- establish standards for datasets and classification
- put implementation support arrangements in place for trusts to draw upon.

Implementing the e-procurement strategy, which includes the adoption of GS1, will enable trusts to share, compare and be transparent with their procurement information. This will not only help to hold the public service to account, but will increase visibility of opportunities for small and medium-sized enterprises, therefore supporting the economic recovery.

The NHS will therefore explore opportunities to:

- increase transparency by requiring all providers of NHS healthcare – through the NHS Standard Contract – to publish all procurement data, including opportunities, expenditure and contracts on their websites and Contracts Finder (an online tool that helps information about contracts with the government and its agencies)
- develop, procure and implement a single, best-in-class NHS Spend Analysis and Price Benchmarking Service to streamline the data collection and benchmarking process, and enable trusts to frequently and cost-effectively compare prices across a wide range of goods and services
- implement a dashboard of procurement performance metrics to support internal management and governance, enable public reporting and facilitate the identification and exchange of good and best practices.

Source: NHS (2013), “Better procurement, better value, better care: A procurement development programme for the NHS”, National Health Service, Department of Health, Crown copyright, London, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/226835/procurement_development_programme_for_NHS.pdf (accessed 17 October 2014).

On the basis of past OECD recommendations to gather consistent procurement data and reduce reliance on direct awards (OECD, 2013b; 2013c), the ISSSTE has started to work towards these goals in a pilot data collection project. The ISSSTE’s central areas and delegations can still work together to better plan, avoid urgent requests, improve tender specifications and train procurement agents so that they can successfully carry out their tasks.

E-catalogues of products and services with standard characteristics are also helpful buying tools, in particular for purchases of small quantities. E-catalogues also allow extracting data on what is being procured by calculating types and quantities of products and services bought from them. They are used by many OECD countries. For example, the Portuguese Shared Services of the Ministry of Health developed an e-catalogue for commonly bought health products and services (Box 5.2).

Box 5.2. Portuguese Shared Services of the Ministry of Health’s e-catalogue promotes standardised purchases

The Shared Services of the Health Ministry in Portugal (Serviços Partilhados do Ministério da Saúde, SPMS) is a public entity created in 2010 which works under the Ministries of Health and Finance. Its aim is to centralise, optimise and rationalise the procurement of goods and services for the national health system of Portugal. As part of its activities, the SPMS procures health goods and services, usually through framework agreements which are made available to public buyers.

In order to allow public buyers to place purchase orders for products or services easily and even in small quantities, the SPMS has developed an e-catalogue, which covers almost all medicines which have received marketing authorisation in the European Union, as well as medical equipment like catheters, gloves, pacemakers, stents, healthcare dressings. Buyers can search the e-catalogue for a particular product or service among a predefined list of various products and services with agreed specifications and prices, place an order for it directly with the supplier and follow up on the order until product delivery. More details on the e-catalogue can be found at: www.catalogo_min-saude.pt/caps/publico/default.asp?idioma=EN.

Source: Presentations made at the OECD workshop on “Improving Public Procurement Practices in ISSSTE”, Mexico City, 2-4 September 2014, by Joana Candeias, Senior Officer at the Direction of Central Purchase of Health Goods and Services of the Shared Services of the Ministry of Health, Portugal.

Proposals for action

To reduce the use of exceptions, the ISSSTE could:

- Start in-house training by experienced ISSSTE procurement professionals to share practical ways of overcoming challenges and securing competition for contracts, strengthening current training initiatives (immediate action).
- Educate user areas (medical units) and procurement areas in the strategic importance of planning ahead for procurement processes (immediate action).
- Implement standard data collection tools common for all procurement units, like a spreadsheet with harmonised, and fewer codes and formats, as a step before introducing a comprehensive ISSSTE-wide procurement database (immediate action).
- Promote the use of functional tender requirements focused on results and not on compliance with specifications (immediate action).
- Regularly examine the use of the exceptions to competitive tendering in order to identify opportunities for curbing direct awards (immediate/medium-term action).
- Benefit from training and materials developed by the SFP and tailor them to the ISSSTE to strengthen internal capacity, possibly in conjunction with international organisations or training bodies, or leading Mexican universities and institutes with which the ISSSTE has co-operation agreements (immediate/medium-term action).
- Develop checklists and templates to facilitate the drafting of tender specifications (medium-term action).

- Regularly update the *Institutional Catalogue for Healthcare Supplies* (medium-term action).
- Consider implementing a standardised classification model for identifying products together with a classification system used by suppliers to ensure common understanding (long-term action).

Notes

1. The ISSSTE's commitments to its suppliers (*compromisos del ISSSTE con sus proveedores*), available at: www2.issste.gob.mx:8080/index.php/compromisos-issste-provedores.
2. Statement by various delegations during the fact-finding mission.
3. Statement during the fact-finding mission.
4. For more on GS1 standards, see: www.gs1.org/healthcare/standards.

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