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Advancing efficiency throughout the whole procurement cycle

Taking into account the significant volume that public procurement represents for the State of Mexico, this chapter identifies the opportunities to advance efficiency throughout the procurement cycle, not only from the point of view of the legal framework, but also looking at the practices of public entities. Several obstacles to competition and supplier participation in procurement limit the efficiency of the system. Focusing on quality in the contract award stage would also increase value for money. Not least, this chapter looks at how the State of Mexico could make better use of the opportunities provided by strategic public procurement to support its policy goals. It concludes with recommendations to enhance the efficiency of the public procurement system.

Since 2015, the government of the State of Mexico has been reforming its public procurement Law (*Ley de Contratación Pública del Estado de México y Municipios*, LCPEMyM) with a view to enhance the overall efficiency of public procurement. Part of the reform effort was dedicated to the streamlining of procurement procedures and introducing an e-procurement platform. These reforms have put the State of Mexico on a path towards greater transparency and efficiency of the procurement process.

While efficiency has been at the heart of the State of Mexico's reform effort in recent years, significant opportunities remain for increasing the efficiency of its procurement system. Indeed, efficiency is relevant in all aspects of public procurement, from the legal and policy framework, to the daily practices of procurement officials. Incidentally, the *OECD Recommendation on Public Procurement* emphasises the optimisation of efficiency at all stages of the public procurement cycle. Using this OECD Recommendation as the guiding principle, this chapter assesses the procurement system of the State of Mexico in light of the efficiency of current public procurement practices.

Specifically, this chapter highlights aspects of the legal and policy framework that have an impact on efficiency. Namely, it explores issues surrounding exceptions to public tendering and obstacles foreign suppliers face when accessing public procurement markets in the State of Mexico.

Furthermore, the chapter analyses efficiency-related dimensions throughout the procurement cycle, identifying opportunities to improve the efficiency of public procurement in key different stages, from market analysis to contract award. Competition is a key element throughout the chapter, given the importance of competitive tendering as a way of achieving better value for money. Furthermore, this chapter focuses on market analysis and market engagement practices as a driver for increased efficiency. In addition, going beyond price-only during tender evaluation is a critical dimension to the overall efficiency of the procurement process.

Finally, this chapter highlights the importance of a strategic approach to public procurement, in order to support policy goals that are relevant in the State of Mexico, such as promoting local SMEs and sustainable procurement.

5.1. A legal and policy framework conducive to efficiency in the public procurement system

Efficiency is associated with implementation of sound procurement procedures that generate savings and value for money. The concept of efficiency is understood broadly and encompasses the legal and policy framework of procurement. In fact, setting a legal and policy framework is vital to drive efficiency throughout the procurement process. The legal framework defines provisions regarding the use of competitive procedures, openness, transparency and access to public tenders, which contribute to the efficiency of procedures.

Ensuring that efficiency is reflected in the State of Mexico's procurement framework is essential to achieve the overarching goal of delivering value for money to citizens. The following section will discuss which areas of the legal framework could further drive efficiency in the State of Mexico.

Box 5.1. Options for increased efficiency in the OECD Recommendation of the Council on Public Procurement

The Council:

VII. RECOMMENDS that Adherents develop processes to drive **Efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

i. Streamline the public procurement system and its institutional frameworks. Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.

ii. Implement sound technical processes to satisfy customer needs efficiently. Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract

iii. Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

Source: (OECD, 2015^[1])

5.1.1. The legal framework at state level limits international tenders with potential repercussions on competition

As discussed in Chapter 1, public procurement activities in the State of Mexico are regulated by different legal frameworks depending on whether federal or state funds apply. As a general rule, if procurement activities are financed with federal funds, the applicable law is the federal 'Law for Acquisitions, Leasing, and Services of the Public Sector'¹ and its Bylaws². Conversely, if local funds are being used for the procurement procedure, the public procurement legal framework of the State of Mexico needs to be followed.

Both the federal and the state legal frameworks establish that there are two different kind of tenders depending on the bidders' nationality. If the bidder is a Mexican company, the tender is consider a *national* one; conversely, if the bidder is a foreign company, the tender is considered *international*.

In the State of Mexico, the Public Procurement Law of the State of Mexico and Municipalities (LCPEMyM) restricts international tenders for goods and services. International tenders are only allowed when the good or service is not available in the country or when international treaties make it compulsory³.

Similar restrictions for international suppliers apply at federal level. Namely, the Federal Procurement Law distinguishes two types of international tenders; the first one is under the coverage of international treaties. An example of such an international treaty is the Free Trade Agreement signed between the European Union and Mexico; this agreement establishes the openness of the Mexican Federal market to foreign suppliers (See Box 5.2). The second type is the so-called open international tender, in which both national and foreign suppliers can participate in the procedures. This tender can only be launched if a national

tender has been declared void, or if it is linked to specific stipulations about external loans granted to the federal government.

Box 5.2. EU-Mexico Free Trade Agreement

Current EU-Mexico Agreement

One of the main objectives of this modernised Free trade agreement is to have progressive and reciprocal liberalisation of goods and services between Mexico and the Member States of the European Union.

This modernised agreement includes a chapter on public procurement, which establishes the openness for European suppliers to the Mexican federal market. This agreement allows European suppliers to participate into Mexican tenders and vice versa.

Future steps

The Mexican Government confirmed its commitment to include the Mexican States in the coverage of the Government Procurement Chapter. The Federal Government began consultations in January 2018 with the Mexican States. This action intends to cover state-level entities like the ministries of public works, mobility/transport, health and/or education.

Source: (Mexican Government and the European Union, 2000^[2])

Restricting access to foreign companies as a policy is typically designed to favour the domestic economy. Incidentally, the State of Mexico Development Programme (2017-2023) emphasises public procurement as a measure to strengthen the business and service sectors. Contracting authorities are encouraged to implement specific programmes to promote the participation of local suppliers in the state's procurement procedures (Gobierno del Estado de Mexico, 2018^[3]).

However, the implications of this provision can be far-reaching. By restricting access to public tenders for international companies, the State of Mexico is limiting competition in its own procurement markets, with potential repercussions on value for money and the efficient use of resources. As discussed in Chapter 3 on centralisation, participation in public contracts is often low, meaning that suppliers do not face competitive pressure to provide value for money.

During the fact-finding mission, state government officials raised the issue with the OECD experts that no or few international tenders were carried out with state-owned resources. This underscores the fact that current competition for tenders in the State of Mexico is mostly addressed at the local level, thereby foregoing potential competition from abroad.

Since contracting authorities cannot go beyond the limits of the law, a reform of the law should be envisaged to provide greater flexibility towards international tenders, which could help increase the number of suppliers and, at the same time, enhance competition.

Other states in Mexico, according to their respective legal frameworks, have found a more flexible and welcoming strategy to advance competitiveness in their procurement cycles. For instance, just as established in federal regulations, the State of Nuevo León's legal framework establishes that international tenders are allowed when a national tender has been declared void, or when it is stipulated by contracts financed with foreign credits granted to the Federal Government (Art. 29-III)⁴. At international level, many countries have opened their public procurement markets to international trade by signing the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO). Mexico, however, is not part of the signatories of this Agreement.

It should be noted that a less restrictive regime applies to international tenders for public works. In fact, the Twelfth book of the Administrative Code of the State of Mexico, which sets the rules for procurement of public works, establishes that contracting authorities can allow for the participation of foreign companies that meet their needs. However, contracting authorities first need to establish, by market research, that no national company is able to deliver the requested works.

5.1.2. The use of exemptions to open tenders may further undermine competition and efficiency

The State of Mexico's legal framework states that all tender procedures should be open in order to encourage competition. This principle reflects one of the essential goals of public procurement, namely generating value for money. However, the procurement legal framework allows the possibility to use certain exceptions to this general rule. Having exceptions to the obligation of conducting competitive procurement procedures is a common feature. Indeed, the use of non-competitive procedures (e.g. direct award) may be justified in exceptional circumstances, e.g. whenever time is critical. For instance, in case of a natural disaster, the public administration is required to respond at once and it cannot afford to undergo a full procurement procedure.

The OECD *Recommendation on Public Procurement* (OECD, 2015^[4]) envisages the existence of exceptions and establishes that the rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition. Furthermore, the OECD recommends that competitive (open) procedures be the standard method for conducting procurement. It suggests this as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances warrant limitations to competitive tendering, such exceptions should be limited, pre-defined and should require appropriate justification. In addition, these limitations should be subject to adequate oversight taking into account the increased risk of corruption.

The legal framework for goods and services in the State of Mexico establishes the possibility to award a tender procedure by means of exception. Specifically, the law foresees two types of exceptions to an open tender, namely restricted invitation and direct award (Articles 27 and 43 of the LCPEMyM). Restricted invitation can be carried out under two circumstances. First, whenever an open tender has been declared void. Second, when the total sum of operations carried out under this exception does not exceed the thresholds established by the Expenditures Budget of the Government of the State of Mexico for the corresponding fiscal year. Direct award can be carried out under the exceptions defined in article 48 of LCPEMyM (see Box 5.3) or under the threshold established for direct award (*contratos pedidos*) (Table 5.1).

Table 5.1. 2020 Expenditure Budget of the Government of the State of Mexico

Threshold for direct award and restricted invitation

Authorised budget of the procuring entity (MXN pesos)	Direct award - maximum amount of each operation (MXN pesos)	Restricted Invitation- maximum amount of each operation (MXN pesos)
0-6,500,000	150,000.00	400,000.00
6,500,000-13,000,000	175,000.00	600,000.00
13,000,000-19,500,000	200,000.00	800,000.00
19,500,000-26,000,000	250,000.00	1'000,000.00
Above 26,000,000	500,000.00	1'500,000.00

Source: State of Mexico's 119 Decree which establishes the amounts for 2020 of the Expenditure Budget of the Government

Compared to international practice, the number of exceptions defined in article 48 of the LCPEMyM is relatively high. In addition, the current drafting of the law presents a number of exceptions that are ambiguous and may lead to misinterpretation. For instance, the exception III. “*Services that require special expertise, techniques or equipment, or the acquisition of used goods or special characteristics that can only be provided/supplied by a single person*” provides room for subjective interpretation. Similarly, exception V. “*There are circumstances that may cause significant losses or additional costs to the treasury*” appears difficult to evaluate objectively.

Finally, exception X. “*The State or the municipalities can meet the payment obligation in a deferred manner, without involving an additional financial cost or one that is less than the market cost*” does not meet the standard of limited and pre-defined exceptions.

Having many exceptions diminishes the openness of procurement opportunities to competition and therefore they should be limited to specific circumstances, in which competition is not suitable. Furthermore, if the exceptions are discretionary, there is a higher risk of abuse of the system. In addition, subjective exceptions make it difficult for oversight authorities to determine whether the direct award is justified or not. In conversation with OECD experts, this emerged as a challenge for controlling entities.

Despite the relatively high number of exceptions in the law, contracting authorities of the State of Mexico, as a good practice, need to support the use of exceptions with a formal justification. These justifications are not public; however, they are open to the public upon request.

It should be noted that the practice of having an elevated number high of exceptions to the tender procedures is quite common in Mexico: the State of Nuevo Leon, for example, presents around 20 exceptions, the State of Aguascalientes provides 14 exceptions and the State of Coahuila 24 exceptions.⁵

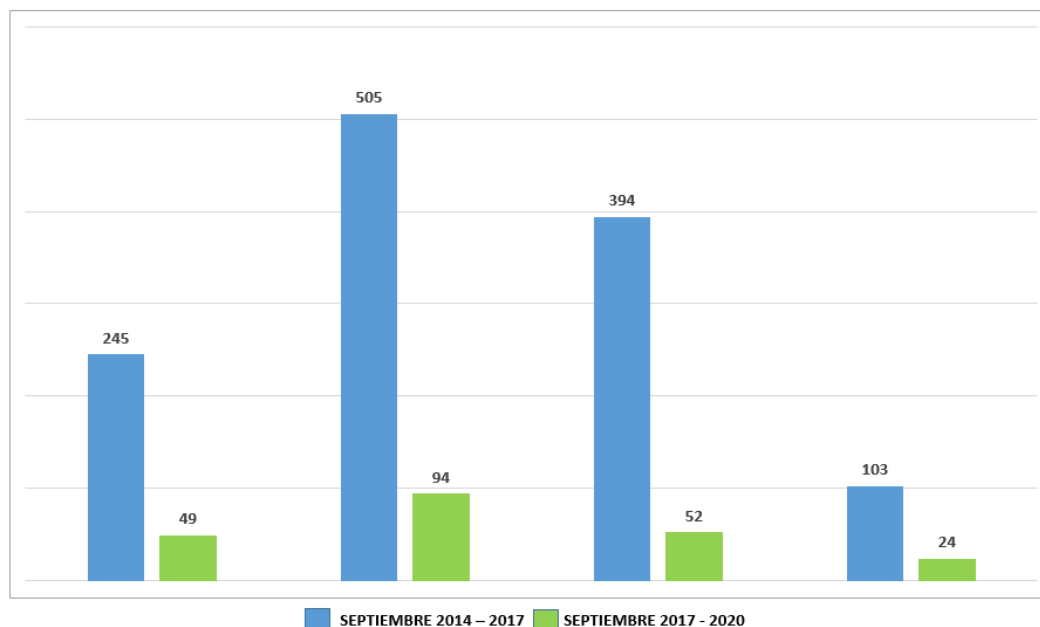
In contrast, the practices in neighbouring countries like Colombia, their legal framework states eight cases to use the exception of direct award, which are clear and consistent (OECD, 2016^[5]). Moreover, New Zealand’s Procurement Rules establish ten specific cases in which the authorities could use a closed competitive process or a direct source process (Rule 14) (Ministry of Business, 2019^[6]).

The availability of exceptions may not only be problematic from a legal point of view, but also in practice. In fact, once exceptions are available, they tend to be used. For instance, during the period 2014-2017 in the State of Mexico, there was a trend of high use of direct awards through exceptions in its procurement procedures. In fact, in 2016 direct awards accounted for 47.3% of the total value of procurement expenditure. This implies that a very significant amount of procurement expenditure was not subject to competition.

However, during the period 2017-2020, there is a decreasing trend, reducing the use of direct awards significantly, in terms of number of procedures. This positive trend is showed in Figure 5.1.

In order to continue this decreasing trend and assure proper competition during the tenders, the LCPEMyM and its Bylaws could be reformed to limit the possibilities of using exceptions and further detail the situations in which their use would be justified.

Figure 5.1. Use of Direct Awards by the Ministry of Finance (number of procedures)



Source: Information provided by the Ministry of Finance

Box 5.3. Direct award exceptions for goods and services according to Article 48 of the Public Procurement Law of the State of Mexico and Municipalities

The Ministry, entities, administrative courts and municipalities may acquire property, lease movable and immovable property and contract services, through direct award, when:

- I. The acquisition or service can only be made with a certain person, because of its nature. For instance, works of art, ownership of patents, registrations, specific trademarks, copyrights or other exclusive rights.
- II. The acquisition or lease of a property can only be made with a certain person, as it is the only property available on the real estate market that meets the characteristics of size, location, services and others required by the authorities.
- III. Services that require special expertise, techniques or equipment, or the acquisition of used goods or special characteristics that can only be provided/supplied by a single person.
- IV. The acquisition of goods, leases or services is urgent because the social order, health, public safety or environment of an area or region of the State is at risk; public services are paralyzed; the programs or actions are in support of the population to meet urgent needs, or some similar cause of public interest.
- V. There are circumstances that may cause significant losses or additional costs to the treasury.
- VI. Information of a confidential nature may be compromised for the State or municipalities, for reasons of public safety.

- VII. There are extraordinary or unforeseeable circumstances arising from risk or disaster. In this case, the acquisition, lease and service shall be limited to what is strictly necessary to deal with such an eventuality.
- VIII. A contract has been terminated due to causes attributable to the supplier or that the person who, having won a bidding process, does not attend the signing of the contract within the term established in this Law.
- In these cases, the Secretariat, the entity, the administrative court or the city council may award the contract to the bidder who has submitted the solvent proposal closest to the winner and so on. In any case, the price difference shall not exceed ten percent, with respect to the winning proposal.
- IX. A restricted invitation procedure has been declared void.
- X. The State or the municipalities can meet the payment obligation in a deferred manner, without involving an additional financial cost or one that is less than the market cost,
- XI. The amount of the operation does not exceed the amounts established in the State Government Expenditure Budget for the corresponding financial year. In the case of real estate leases, the amount of the operation shall be understood as the monthly rent.
- XII. Goods are produced by cooperatives, rural production, collective interest, social solidarity, companies and associations with social purposes, whose object is not predominantly profit, produced in the State of Mexico and acquired directly from them.

Source: (State of Mexico, 2013^[7])

5.2. Increased competition is needed to drive efficiency throughout the procurement cycle

Competition is an essential element to drive efficiency in procurement procedures. A competitive process leads to better prices and higher quality goods and services (including innovation), yet these outcomes can only occur when the bidders genuinely compete. Therefore, governments should ensure broad access to public procurement markets, in order to promote competition and ultimately achieve value for money.

The current situation in the State of Mexico presents challenges regarding the level of competition in procurement. During the fact-finding mission, low levels of competition was raised as an issue. As discussed in Chapter 3 on centralisation, the Ministry of Finance faces low participation and limited competition in its tenders, with on average less than two bidders participating to a tender. Low participation in procurement also affects other entities, such as auxiliary bodies and municipalities.

According to an OECD analysis of fifty procedures from different municipalities, it emerged that 75% of the analysed tenders had low participation, with either only one or two bids.⁶ Similarly, low participation in tenders was recorded for auxiliary bodies: 52% of the tenders had between one and two bids⁷.

Several factors play a role in limiting the participation of suppliers throughout the procurement cycle. As a starting point, contracting authorities often lack a clear overview of the market, and a related strategy to engage with suppliers and maximise their participation. In addition, good communication with suppliers is a lever for strengthening participation in tenders. A useful example of improving engagement with suppliers, and therefore boosting participation, is the creation of new communication channels between the contracting authorities and market players.

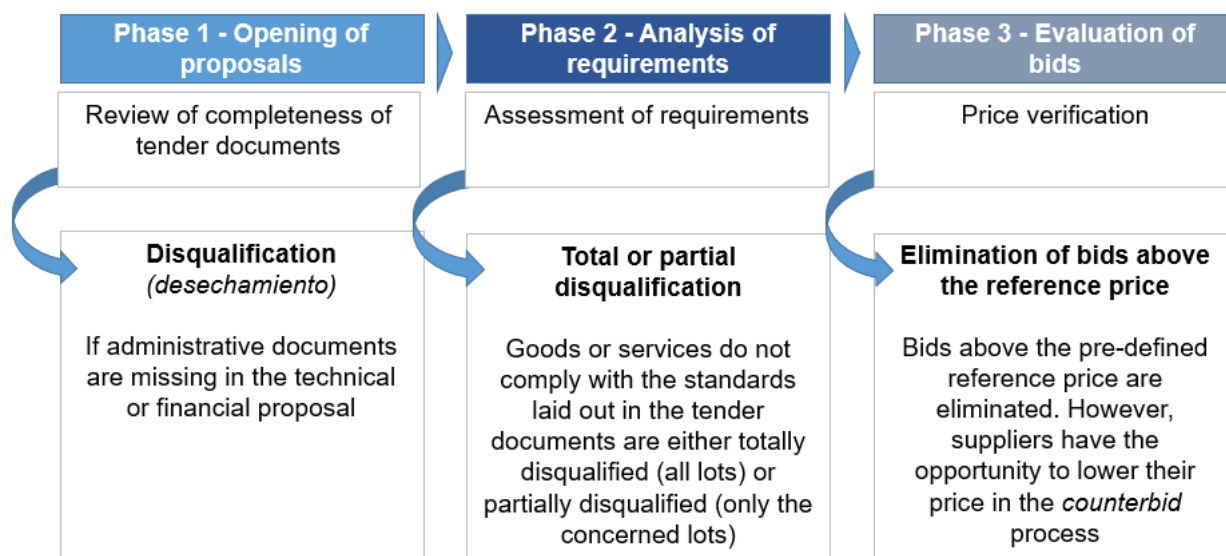
Furthermore, procurement practices are currently set up in a way that leads to high rates of disqualification of suppliers. In turn, competition is reduced throughout the various phases of the cycle. This includes the lack of robust market research leading to bids that overshoot the reference price, unclear or restrictive requirements for administrative disqualification (*desechamiento*), and restrictive disqualification practices for not meeting technical or financial requirements. These factors will be further analysed in the following section.

In fact, many of the suppliers who actually submit a tender do not make it to the end of the procurement process, as they are often disqualified along the way. There are three steps that can lead to disqualification, as shown in Figure 5.2.

First, administrative disqualification occurs when a supplier fails to meet administrative requirements. Second, suppliers could be disqualified for failing to meet technical requirements. Third, disqualification happens when the economic offer is above the so-called reference price, i.e. the contracting authorities' budget ceiling. In all these steps, suppliers are frequently disqualified, further reducing the number of viable bids and related competition.

In an attempt to reduce the high disqualification rates that lead to low competition, more channels should be developed to improve communication between suppliers and procurement officials. Since the current Protocol may limit the possibility to interact with suppliers, a reform that adds new flexible ways should help overcome such limitations. For instance, a reform could specify the conditions for contracting authorities to meet with suppliers in the pre-tendering stage to clarify questions, explain procedures in more detail, or learn more about specific needs, not least inefficiencies result from the so-called *counterbid* process. Suppliers are provided with a short amount of time to decide whether to reduce their prices. However, there is no standard format for this process, with each authority deciding on an ad-hoc basis how to conduct the counterbid.

Figure 5.2. Potential steps of disqualification throughout the procurement cycle



Given that each entity has the discretionary power to decide how much time they will give during the counterbid process, this presents a lack of clarity for suppliers, leading to confusion. The development of a standard document could help overcome this issue. For instance, the Government of the State of Mexico could add an article to the POBALINES indicating some minimal standards to follow during this procedure, taking into account features such as the number of lots and the volume or the total amount of the procedure.

The following section will explore factors that limit competition and efficiency in the procurement cycle. It should be noted that the focus of this analysis lies on procurement for goods and services, as it concentrates on the application of the Public Procurement Law of the State of Mexico and Municipalities, which governs procurement of goods and services.

5.2.1. Conducting market analysis and market engagement to broaden the pool of suppliers

As discussed above, low supplier participation in public procurement is a generalised issue that needs to be addressed by contracting authorities in the State of Mexico. The starting point for improving the efficiency of public procurement in the State of Mexico is to increase bidders' participation. One step towards expanding the pool of suppliers is to focus more on market analysis and market engagement. This would allow contracting authorities to have a better overview of which suppliers are left out and could therefore be brought into the procurement process.

An essential aspect to carry out a successful procurement procedure is related to sound market analysis. Market analysis gives insight into the size, shape and competitiveness of a given market, as well as providing accurate information on a product, e.g. technical and functional features, quality elements and price. This information is then used to design the procedure that maximises value for money.

In fact, market research is a mandatory process as per public procurement rules throughout the State of Mexico. According to Article 17 of the Bylaws, one of the main focuses of the market research is to determine the so-called reference price of goods, works and services. Additional objectives of the market research include determining the existence of goods or services, in the quantity and quality required, as well as verifying the existence of suppliers or service providers, knowing the price prevailing in the market and choosing the purchasing method to be used.

The reference price mentioned above is calculated as an average of at least three offers received and represents the maximum ceiling for a procurement procedure. Above this price, the bidder is automatically disqualified. The practice of determination of the reference price is discussed further in this section.

The fact contracting authorities are mandated to conduct market research, differs from most OECD countries, and represents in itself a positive element. Through this legal obligation, public buyers are aware of the need to carry out market research, which may not be universally the case, especially for infrequent buyers. However, as defined by law, market analysis in the State of Mexico is understood in a narrow sense. The main objective is to obtain the reference price without taking into account broader considerations that can be valuable throughout the procurement process.

Indeed, market research should not be limited to price aspects, but also take into account functional characteristics of goods, services or works, delivery conditions and product life. Furthermore, the contracting authority should gain a good understanding of market conditions and potential suppliers focusing on what general solutions are available in the market. Key dimensions to be covered during the market research phase are listed in Figure 5.3.

Knowing the market and available products is essential to generate value for money from procurement contracts. Only by knowing the market, the public buyer can design the specifications that reflect quality. Furthermore, market analysis allows adapting the tender to the conditions of the market. For instance, the size of lots may depend on whether the tender targets SMEs in a specific market, or similar considerations. With respect to competition, having a view of the market also gives insight into what kind of participation is expected for a given tender.

Figure 5.3. Objectives of market analysis

Dimensions to be explored in the market analysis phase



Source: OECD, Presentation during Workshop in the State of Mexico

Many of the OECD countries have developed market analysis guides to support contracting authorities in the task of drafting relevant market studies (OECD, 2019^[8]). The State of Mexico has also developed a practical guide called 'Procedures of authorisation and registration of market studies in the SICAPEM', which indicates all the steps to follow, the tools and definitions to use throughout the market research process. Moreover, the State of Mexico's practical guide includes the following tools to conduct market research:

- Review of historical prices;
- Mystery shopper: technique in which the analyst acts like any other customer to compare prices with suppliers;
- Browse web pages;
- Field research; and
- Market segmentation: technique that consists on making a total division of the market based on a specific product to analyse.

However, contracting authorities frequently resort to a market analysis based on three quotations requested from suppliers, exposing themselves to certain risks. Even if suppliers who were approached for a quotation are chosen arbitrarily and are not aware that others have been invited to this procedure, there is a risk of inflated quotations, pre-arrangements and collusive practices.

Other countries recommend extensive market research practices that take into account several market dimensions. For instance, Box 5.4 shows how the State of Queensland in Australia developed an specific guide for the analysis of the market that takes into account several dimensions, notably competitive dynamics in the market.

Box 5.4. State of Queensland (Australia) guide for market analysis

The State of Queensland (Australia) has developed a specific guide for market analysis. Referring to Porter's five strengths to build a structured approach to market analysis and understand competitive dynamics, this guide incorporates elements of procurement marketing to help contracting departments build an optimal procurement strategy. It includes detailed sections on market structure, competitive dynamics between suppliers, supply chains and alternative products (goods or services), among others.

Source: (State of Queensland Government, 2018^[9])

In addition to desk-based market analysis, it is also valuable to consult potential suppliers in order to be able to draft specifications and tender documents adapted to the reality of the market (structure, availability of goods, suppliers), as well as to solicit interest from them. Indeed, engagement with the private sector helps reduce the information gap for the authorities and collect more recent and reliable market information. As discussed in Chapter 1, currently the market research carried out by the State of Mexico's officials does not include dialogue or market engagement with suppliers. This approach is influenced by the Protocol restrictions that procurement officials of the State of Mexico should follow. However, procurement officials can carry out the so-called "verification visit" to confirm that the required structure or availability is in place. On the contrary, establishing contact with suppliers is often viewed with suspicion.

Nevertheless, market dialogue is as important as market research for adjusting the purchasing strategy of the contracting entity. In particular, in the context of low participation from suppliers, raising awareness to suppliers about upcoming tenders is essential. However, regarding fair competition for the suppliers, it is necessary for contracting services to communicate fairly and transparently with potential suppliers in order not to give undue advantage to one or more of them (OCDE, 2019^[10]).

There are a number of ways in which the authorities can improve market analysis through dialogue with potential suppliers and in turn, raise the level of competition and efficiency of public procurement processes. These are detailed in Chapter 1. Introducing such measures will likely enhance the quality of the tender preparation process, as contracting authorities receive direct feedback on what the market is able to deliver, and at what price.

For instance, the Mexican Federal Government publishes preliminary versions of tender specifications (*pre-bases*) on its COMPRANET e-platform in advance of a call for tender in order to gather comments from economic operators (OECD, 2018^[11]). Another important element within the engagement with the private sector is to alert potential suppliers to general information on future procurement opportunities. For instance, according to the information given by the Government of Mexico City, the *Tianguis Digital* platform has a notification system, which sends a message to already-registered suppliers about bidding procedures in real time.

The practice of meeting with suppliers is quite common in many OECD countries, for example in New Zealand, Italy and Greece. Sometimes this takes the form of organised meetings between several public purchasers and interested suppliers for specific product categories (OECD, 2018^[11]). Such meetings could shape a specific procurement strategy for the future, for instance showing how technical requirements and award criteria could be used in future procedures. This could also help to target new pool of suppliers and reducing market concentration.

5.2.2. Limit disqualification (*desechamiento*) due to missing administrative requirements

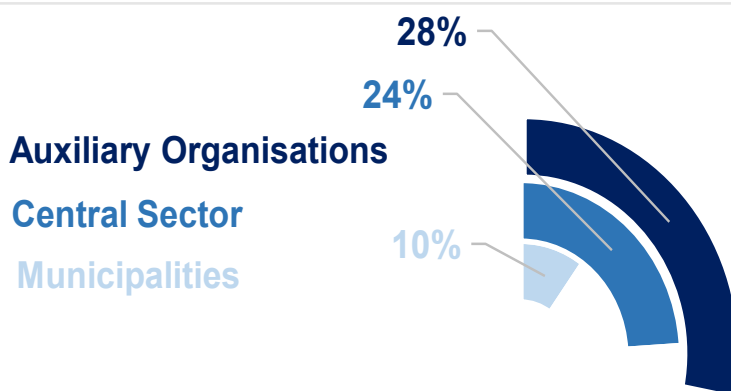
Another source of inefficiency lies in the frequent disqualifications that occur at the early stage of the procurement procedure. Losing suppliers in the procurement process is costly, considering the effort required by the supplier to submit a bid. As such, contracting authorities need to pay careful attention to reduce disqualification at this stage. This would allow them to receive more bids and thereby increase competition in their tenders.

In the State of Mexico, suppliers need to be present in the presentation and opening of proposals held by the contracting authority. The Bylaws of the LCPEMyM establishes that procurement officials must call upon every supplier to hand the envelopes containing their technical and financial proposals.

First, the procurement official will verify that all the technical proposals comply with the documents requested in the rules of procedure. If the suppliers do not comply with all the requested documents for the technical proposal, they are eliminated (*desechamiento*) before the opening of their financial proposals. Second, officials will proceed with the review of the financial proposal and will withdraw the bids that do not comply with all the documents before even evaluating them. According to Article 86 paragraph VII of the Bylaws of the LCPEMyM, the act of withdraw (*desechamiento*) needs to be properly justified by procurement officials.

The OECD analysed a sample of tenders that were extracted from COMPRAMEX. This analysis consisted of an in-depth review of 150 separate goods and services procedures, including 50 from the central sector, 50 from auxiliary bodies and 50 from municipalities. The following Figure shows that the three main sectors often eliminated bids due to lack of compliance with the requested documents at the very early stage of the procedure. Although conducted on a small sample, this analysis suggests that *desechamiento* is very common in the State of Mexico, particularly for procurement by auxiliary organisations and by the central sector. High levels of *desechamiento* undermine the efficiency and competition of the procurement system in several ways. First, from a suppliers' perspective, it represents a waste of resources, as the supplier has invested in the preparation of a bid, but has no opportunity of success as they are disqualified. From a contracting authority's perspective, high levels of disqualification reduce the participation to the tender, and thereby diminish competition and related value for money.

Figure 5.4. *Desechamiento* among ministries, auxiliary organisations and municipalities



Source: OECD COMPRAMEX analysis 2019

Furthermore, the analysis of COMPRAMEX procedures showed that often elimination of proposals occurred in response to common errors made by suppliers. Box 5.5 shows a list of the documents commonly forgotten by suppliers, which led to their exclusion from a procurement procedure.

Box 5.5. Proposals disqualification (*desechamiento*): Common suppliers' mistakes

Frequent mistakes by suppliers that led to disqualification included the absence of:

- the certificate of quality of the required good;
- the original or certified copy of the power of attorney (issued by a notary public) to represent the company is not submitted;
- the original letter from the manufacturer of the required good.

Additional mistakes consisted of:

- the envelope of the technical proposal was not addressed to the Government of the State of Mexico, Ministry of Finance and General Directorate of Material Resources;
- the warranty period for the required goods was not indicated;

Source: (OECD COMPRAMEX analysis 2019)

As detailed in the box above, disqualification is often linked to mistakes that could easily be prevented. In fact, some of the commonly missing information or documents could be replaced with the suppliers' certificate of the State of Mexico. This certificate is issued by the Ministry of Finance and, according to the Bylaws of the LCPEMyM, is valid for one year and proves that the suppliers who hold it meet all the requirements established by the Ministry. In addition, it allows the holder to participate in the procurement procedures with the benefit of replacing the presentation of the documents indicated in paragraphs I, II, III, IV, V and VI or article 32 of the Bylaws. In order to obtain this certificate, suppliers must submit an application with the information showed in Box 5.6.

Box 5.6. Submission of documents in order to get the Suppliers' Certificate according to Article 32 of the Bylaws of the Public Procurement Law of the State of Mexico and Municipalities

Required documents to obtain the Suppliers' Certificate:

- I. Constitutive certificate and its last modification, in the case of legal persons; or birth certificate, in the case of natural persons;
- II. Tax Identification Card and Registration in the Federal Taxpayers' Registry, indicating the current tax address, as well as the main activity at the time of the registration application;
- III. Power of attorney of the legal representative, issued by a Notary Public;
- IV. Official identification of the owner or legal representative;
- V. Annual tax return for the immediately preceding fiscal year or financial statements for the last fiscal year, issued by a registered public accountant under the terms of the Federal Fiscal Code; or bank statements, indicating the movements made and the balance at the end of the month preceding the date of application for registration, in the case of newly established companies.
- VI. Financial statements for the month immediately prior to the date of application for registration, accompanied by the professional certificate of the public accountant who issues them;
- VII. Two recent colour photographs of the owner or legal representative; and
- VIII. Letter of commitment to verify and update documents.

Source: (The State of Mexico, 2013^[12])

By focusing on reducing the number of disqualified proposals, the State of Mexico would contribute to greater participation in public tenders, ultimately increasing competition among suppliers. This requires a number of initiatives, particularly focusing on awareness about the suppliers' certificate.

As a starting point, suppliers need to be aware of the benefits that the certificate could bring to them at the moment of the tender. The State of Mexico could raise suppliers' awareness to motivate them to acquire the above-mentioned certificate, in order to reduce the amount of documents at the presentation of proposals. With this measure in place, the opening of proposals could take less time and be more effective. Importantly, more suppliers would have a chance to submit a valid bid, giving more options of goods or services for the contracting authorities. Once the value of the certificate is well understood by potential suppliers, another step to take could be its digitalisation. This could help suppliers and contracting authorities in terms of reducing administrative burdens and processing.

In addition, it is crucial that suppliers correctly understand the information that the contracting authorities are asking from them. Misunderstanding of the documents could lead to less interest to bid or wrong documents delivered at the proper time. In order to assure the correct understanding, the State of Mexico could focus on developing more ad hoc communication channels, for instance, training workshops for suppliers, half-day seminars and pre-recorded tutorial videos through the COMPRAMEX platform, to show suppliers how to respond appropriately to a tender to avoid common mistakes. The establishment of this dialogue could be very beneficial in tackling this common issue and maximising the efficiency of the procedure.

Reducing the occurrence of partial or total disqualification due to formalistic errors

Another obstacle to participation in the procurement procedure refers to the total or partial disqualification that occurs after the *desechamiento*. Having verified administrative requirements, the contracting authority proceeds with verifying technical requirements of the bids submitted. While there are fewer suppliers eliminated at this second stage, compared to the first one, a relatively high share of suppliers do not comply with either the technical or the financial requirements.

Namely, based on the sample of 150 procedures 17.3% of bids were eliminated at this stage. Once again, the reasons for disqualification can be minor and often formalistic in nature. For instance, if suppliers submit inconsistent prices in their bids, this can lead to disqualification. Similarly, an error in calculating various totals can lead to disqualification at this stage.

Overall, the State of Mexico should limit the opportunity for formalistic errors to lead to severe consequences such as disqualification, in particular in the context of low levels of participation. Contracting authorities could review their request for proposals in light of common mistakes and try to simplify the procedure by going through a reform of the existing framework or streamlining the language in the rules as much as possible to prevent similar types of errors. Alternatively, contracting authorities could invest in the standardisation of requirements or train suppliers as mentioned before.

5.2.3. Inefficiencies related to the Counterbid (Contraoferta)

A specificity of the public procurement system in the State of Mexico is in the so-called counterbid process, which is defined in the Bylaws of the LCPEMyM (article 2 paragraph X): ‘Procedure in which the bidders can reduce the price of their economic proposals, so that the new price they offer is within the reference price, which has been determined by the area responsible for carrying out the market study’.

After the qualitative evaluation of both technical and financial proposals, the procurement official will announce the remaining suppliers for which prices are within the reference price. As discussed above, this price is determined during the market research procedure by the Ministry of Finance’s Market Research Directorate. This reference price determines the ceiling for suppliers’ offers (See Box 5.7), meaning that any offers above the reference price are automatically discarded unless suppliers offer to lower their prices in the counterbid process.

Box 5.7. Determination of the reference price according to Article 18 of Bylaws of the Public Procurement Law of the State of Mexico and Municipalities

The reference prices shall be determined based on an average of at least two quotations from manufacturers, distributors or traders and chambers of commerce in the sector concerned. These quotations must be obtained by writing, by electronic means available, or through a price survey. They should take into account the same conditions about quantities, times and places of delivery of the goods or provision of the services, the form and terms of payment, the technical characteristics of the goods or services, and any other conditions applicable and allowing for an objective comparison.

Source: (The State of Mexico, 2013^[12])

While not as common as *desechamiento* and disqualification, this practice also contributes to the inefficiency of the procurement cycle in the State of Mexico. In the sample of 150 procedures analysed, 12% of tenders resulted above the reference price, and therefore triggered a counterbid. The relatively high share of tenders in which the reference price was overshoot may indicate that market research is not robust.

Beyond this, the non-disclosure of the reference price could contribute to inefficiencies in the procurement cycle. Namely, the fact that the budget ceiling is not disclosed from the onset of the procedure represents a hurdle for potential suppliers. If their offered prices are not within the market price and the supplier does not have the capacity to reduce the price during the counterbid procedure within the granted period, its offer is automatically rejected and the offered goods or services void.

To avoid this situation, contracting authorities in the State of Mexico could, in some procedures, disclose the reference price in the call for tender or in the rules of procedure. The disclosure of the reference price could also take into account the specific characteristics of the market, for instance, the size of it. By doing so, the State of Mexico would give more clarity and perspective to the suppliers, before establishing their prices for the goods or services offered. Moreover, the disclosure of the reference price could enhance the efficiency of the procedure. If the contracting authorities adopt this measure, only suppliers whose prices are within the market price will submit their proposals, saving time spent on the counterbid.

It should be noted, however, that there are some risks related to the disclosure of the reference price, in particular related to bid rigging. Indeed, disclosing the budget ceiling could spur suppliers to unlawfully coordinate and inflate prices accordingly (see discussion on bid rigging in Chapter 3 on centralisation). At the same time, the non-disclosure of the reference price is an ingrained practice and public buyers may be resistant to changing their established methods. Thus, contracting authorities need to weigh the advantages and disadvantages based on their particular circumstances. If many tenders were void due to the fact that the reference price is overshoot, this would speak in favour of disclosure. Another option for contracting authorities could be to run a pilot for a limited time, in which the reference price is disclosed. The results of this pilot phase could support decision-making for future action.

Another fact that could affect the efficiency of the procedure is the way in which contracting entities carry out counterbids. In fact, there is no standard approach to conduct a counterbid with each authority deciding independently how to set up the process. For instance, the Ministry of Finance typically gives 10 minutes for suppliers to reduce their prices, while auxiliary bodies and municipalities could give up to 48 hours. As mentioned before, this discrepancy could bring confusion to bidders, and leave them unprepared to provide an alternative price within a short period of time. It could also lead them to favour contracting authorities that provide more time during the counterbid process. The establishment of guidelines in the POBALINES could help overcome this issue.

5.3. Achieving efficiency through focus on quality in the procurement process

When considering the efficiency of a public procurement system, it is key to take into account the results that procurement achieves, i.e. whether any given procurement procedure delivers value for money for its final beneficiary. In other words, whether the procurement is fit for purpose, and delivers the goods and services that users have requested and actually need. Ensuring these outcomes requires a focus on several quality-related dimensions throughout the procurement process.

To achieve greater efficiency in public procurement, the State of Mexico could focus on enhancing the quality of procurement procedures conducted. This entails ensuring the bid is designed in a way to best respond to the needs of the final beneficiary. By focusing on quality, contracting authorities ensure that taxpayers' money is well spent and value for money is achieved.

This section looks at three key areas of the bid preparation, where contracting authorities can ensure that quality is reflected: needs analysis, drafting of technical specifications and finally, definition of award criteria.

5.3.1. Needs analysis should go beyond procurement planning

To achieve the benefits of efficient procurement, the first step that needs to be ensured is a clear overview of the needs of the final beneficiary. To this end, buyers should spend time on understanding these needs in a structured way, through a thorough needs analysis. This stage should not be limited to analysing the quantities of goods and services required, but it should also be about understanding the needs in terms of performance and functionalities expected.

However, in the State of Mexico, needs analysis is often conflated with annual procurement planning. According to the LCPEMyM, there is a legal obligation for all ministries and auxiliary bodies to prepare an annual plan based on the State of Mexico's Development Plan (*Plan de Desarrollo del Estado de México*), the regional plans and taking into account the austerity measures established in the corresponding Expenditures Budget. The annual procurement plans are to be uploaded to the COMPRAMEX system before 31 January of the current tax year. Article 9 of the LCPEMyM contains information and characteristics that the annual plans must include; however, every agency, ministry or municipality uses a different format for their procurement plans, and not all of them comply with the required information. Furthermore, not all the plans are available in the COMPRAMEX platform for public consultation.

The publication of procurement plans is an important practice that gives visibility to the market about upcoming procurement opportunities. Lack of transparency can have a negative impact on the level of participation of the potential suppliers in purchasing opportunities and therefore on the level of competition.

For instance, the state of Aguascalientes has a multiyear programming that enables procurement officials to foresee potential opportunities for consolidation and the use of economies of scale. Indeed, it is a tool for achieving goals and objectives for the State Development Plan (OECD, 2015^[13]). Furthermore, international best practice foresees the development of a standardised format of procurement planning programmes. The benefits of this would undoubtedly be the harmonisation of the presentation of economic operators, as well as the certitude that all plans would offer the same level of relevant, sufficient and homogeneous detail. (OCDE, 2019^[10]). The State of Mexico could develop a standard format for the annual procurement programme to ensure compliance with transparency obligations relating to procurement planning (See Chapter 1).

While important, procurement planning is not a substitute for an in-depth analysis of the needs related to the procurement of a good or service. Through procurement planning, the contracting authority identifies its aggregate needs, while the needs analysis defines the specific features for a single procurement procedure. In fact, the purchasing entity, particularly the user areas, needs to invest a significant amount of time in understanding the requirements of contracting authorities to gather sufficient information on what the best solutions to meet the underlying needs are. To go beyond gathering basic needs from a procurement plan, the procurement officials of the DGRM can expand existing interviews with each user area to further engage for more direct feedback on procurement requests.

5.3.2. Technical specifications: drafting of specifications reflecting needs and market analysis

The technical specifications are regulated in the rules of procedure (*Bases de Licitación*) of each process. According to the POBALIN-060, the contracting authority is the one that drafts the technical specifications and the approval is the responsibility of the requiring entity (i.e., the users). These entities have up to 48 hours to make changes to the technical specifications. According to the Bylaws, the tender documentation should be in Spanish and contain the technical specifications with a generic description of the goods or services, including presentation, unit of measure, quantity and, if applicable, specific information about maintenance, technical assistance and training; list of spare parts to be offered, as well as applicable standards. It also contains the specifications regarding clarification meetings, opening of proposals, applicable qualification criteria and reasons of possible disqualification. Furthermore, the tender

documents detail all elements after the award, such as contract characteristics, invoices, sanctions and reasons for suspension, among others.

The contracting authorities typically carry out a narrow market analysis, which enables them to draw up technical specifications. As mentioned before, the market study usually determines whether a specific product exists, what the maximum sale price is for the future purchase, and characteristics of available goods or services in the market. More efforts could be done to upgrade market study in the State of Mexico, in order to have clear and adapted technical specifications. Special attention should be given, not only regarding the solutions, such as alternative solutions to the goods, but also taking into account the market structure, for instance, the structure of the supply chain in order to identify the producers.

Apart from the technical specifications that each procedure must present, some goods and services need to have a technical opinion from different ministries in order to be validated. The POBALIN number 59 shows this list of goods and services (see Chapter 1, Table 1.2).

5.3.3. Using award criteria to enhance quality

Award criteria are used to evaluate the different offers by bidders and to award the contract to the best offer. Internationally there are two types of award criteria, which are used to award contracts. First, the lowest price criterion, in which the contract is awarded to the lowest-priced offer. In this criterion, the only factor that is taken into account is price (OECD, 2011^[14]).

On the other hand, there is the Best-Price Quality Ratio (BPQR) criterion, which takes into account other criteria in addition to or other than the price, such as quality, delivery time and after-sales services. This criterion presents various advantages, particularly when the contracting authority is seeking for the best quality of products.

The legal framework in the State of Mexico allows for quality consideration in the evaluation of bids with the so-called 'points and percentages' award criteria (*puntos y porcentajes*). The second method for awarding bids is via the so-called binary award criterion. Both types of award criteria are explained in Box 5.8 below.

Box 5.8. Award Criterion for goods and services for the State of Mexico

(a) In the binary award criterion, only those suppliers who meet the requirements set by the convenor and offers the lowest price will be awarded; and

(b) The points and percentages award criterion, should establish:

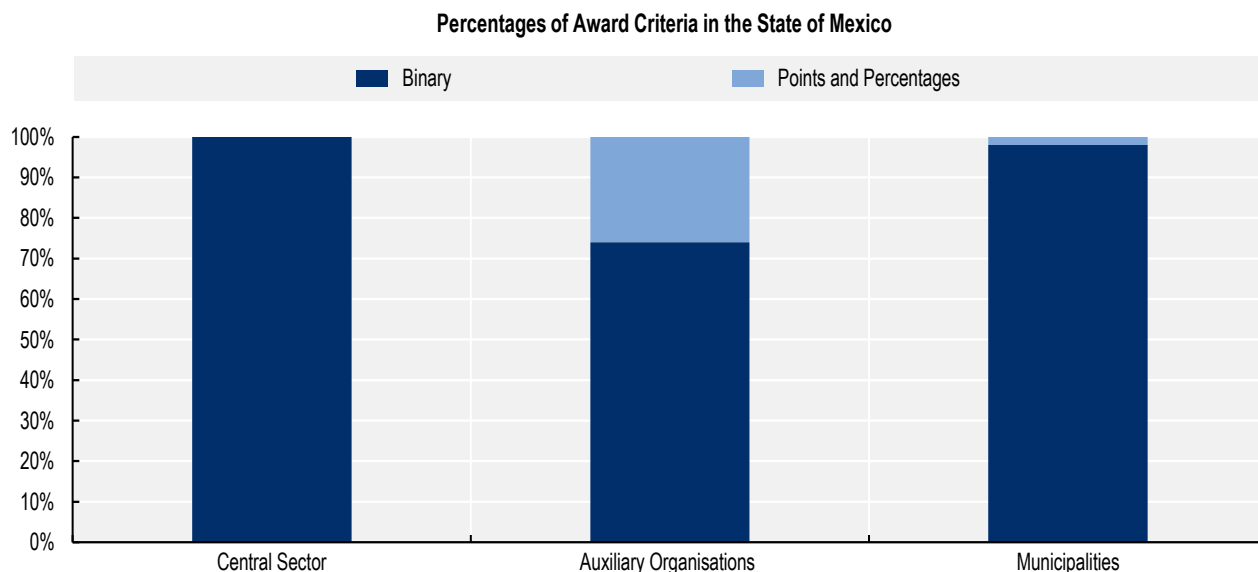
- items and sub-items of the technical and economic proposals;
- the numerical or weighting score that can be achieved or obtained in each;
- the minimum score or percentage that bidders must obtain in the evaluation of the technical proposal to continue with the evaluation of the financial aspects; and
- the ways in which the bidders must accredit compliance with the aspects required by the convenor in each item or sub-item in order to obtain a score or weighting.

Source: (The State of Mexico, 2013^[12])

Even though the State of Mexico's legal framework establishes two criteria to award bids according to the nature and specific characteristics of the goods and services, the analysis of the procurement practices showed that the binary criterion, i.e. lowest price, was by far the most used criterion for a sample of tenders analysed. Figure 5.5 shows the outcomes of this analysis in terms of percentages about the use of the

award criteria in the three analysed sectors in the State of Mexico. This analysis is consistent with the discussions held during the OECD fact-finding mission, where officials confirmed the prevalent use of the lowest price criterion. Overall, contracting authorities have limited experience with points and percentages, and make use of it only in select complex cases.

Figure 5.5. Use of binary criterion in the State of Mexico (%)



Source: OECD analysis of COMPRAMEX data

Although, in theory, the contracting authorities seem to be aware of the benefits of the Best Price-Quality Ratio (BPQR) criterion, in practice it is clear that they do not tend to take advantage of it. Indeed, going beyond the lowest price would allow contracting authorities to reward offers that best meet their needs regarding several quality-related dimensions, such as functional characteristics, design types, environmental and social characteristics, after-sales services and delivery terms. Depending on the context, one or more of these dimensions may be most relevant. With appropriate award criteria, the contracting authority can prioritise those quality aspects that most respond to its needs.

Designing award criteria is a complex task, particularly if there is little use of this type of method. Often procurement officials prefer to use the same methods that have been used in the past because they perceive that this strategy does not put them at risk of a challenge. However, it also means that contracting authorities are foregoing significant opportunities to design efficient procurement procedures that deliver value for money.

In recent years, good practice has spread across Latin America and more countries seem to adapt their procurement laws with other criterion other than price only (See Box 5.9).

Box 5.9. Latin American practices enhancing quality of goods

In Peru

tender evaluations can be based on price and other criteria established by the entity in the tender documentation. The competition criteria established by their new legislation are referred to as: 1) the environment; 2) social goals; 3) improvements to the technical requirements; 4) delivery terms; 5) the experience of key staff, and more.

In Colombia

open tenders are evaluated using three criteria: 1) economic; 2) technical; and 3) the nationality of goods and services offered. Economic points are awarded according to the price of the bid. As for technical points, the procuring entity must allocate points based on the quality, delivery time or sustainable sub-criteria. Up to 20% of points must be given to bids of goods and services whose origin is Colombia or one of its trading partners, following the rules set in trade agreements.

Source: (OECD, 2017^[15]) (OECD, 2016^[5])

Even though the BPQR criterion presents various advantages, it is not recommended to use it for all procurement procedures. The use of the lowest price criterion (lowest price bid), besides the advantage of simplicity and rapidity, may be relevant in the case of purchases of highly standardised products with pre-established characteristics.

As mentioned before, the established award criteria in the State of Mexico are either the binary or the points and percentages. The points and percentages criterion is outlined in the Manual POBALINES (Agreement setting the Policies, basis and guidelines relative to acquisitions, leasing and services of the ministries, auxiliary bodies and administrative tribunals of the executive branch of the State of Mexico), in which its scoring rules are detailed, too.

Table 5.2. Points and percentages award criterion for contracts in the State of Mexico

POBALINES-064

	Award Criteria	Score
Technical criterion	Technical characteristics of the goods and services	20-35 points
	Suppliers capability	5-10 points
	Suppliers' experience and expertise in the market	5-10 points
	Contract execution performance	5-10 points
Financial criterion	Price	Maximum 50 points

Source: (The State of Mexico, 2013^[16])

Despite the fact that POBALINES provide guidance on the use of points and percentages, the use of criteria that offer best value-for-money (optimum combination between the various cost-related and non-cost related criteria) is still limited. This indicates that procurement officials need more clarity on the benefits of focusing on quality during contract award. At the same time, the available guidance in the POBALINES may not be sufficiently developed. In fact, by providing a 'one-size-fits-all' framework it may even reduce the incentives for making use of quality criteria, as procurement officials do not have sufficient flexibility to reflect their own needs when conducting a procedure. To tackle this issue, POBALINES could include a

specific section on the development of the BPQR criteria focused not only in the price, but also on the quality of the goods or services.

5.4. Strategic public procurement as driver for efficiency

Increasingly, public procurement is being recognised as a lever to pursue complementary policy objectives, going beyond the traditional role of public procurement in delivering goods, services and works to the public administration. In fact, governments across the OECD are harnessing the power of public procurement to support strategic goals. This is exemplified by the development national strategies to achieve complementary policy objectives through public procurement. These new policy objectives tend to include (but are not limited to), supporting innovation, developing small and medium enterprises, green considerations, inclusion of vulnerable groups and other societal challenges.

Indeed, the 2015 *Recommendation of the OECD Council on Public Procurement* highlights the importance to include complementary objectives in public procurement procedures (See Box 5.10).

Box 5.10. The 2015 Recommendation on Public Procurement – Balance principle

V. RECOMMENDS that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be balanced against the primary procurement objective.

To this end, Adherents should:

- i) Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.
- ii) Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.
- iii) Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: (OECD, 2015^[4])

There are several benefits that governments experience by introducing complementary policy objectives, such as: innovative solutions (construction, mobility, health, safety, IT services aging), achievement of sustainability goals (water quality and waste, deforestation, greenhouse gas emissions), and support of SME and social policy goals, among others. Depending on the government priorities, one or more of these dimensions can be tackled with public procurement. In recent years, across OECD countries there has been an upward trend in the policies that address green public procurement and responsible business conduct. Furthermore, the majority of OECD countries have implemented a policy or a strategy that focuses on SMEs' access to public procurement (OECD, 2019^[17]). Specifically, twelve Latin American and

Caribbean (LAC) countries, including Mexico, have also followed the international good practices by developing policies that foster SMEs participation in public procurement procedures. For instance, Brazil, Chile, Colombia or Costa Rica have developed a central level policy to support SMEs (OECD, 2020^[18]).

A key advantage of moving towards a strategic approach to public procurement means that tenders are no longer evaluated purely based on cost. As discussed above, moving away from lowest price brings a broader dimension of quality to public procurement. As a result, procurement may take into account costs over the life cycle and lead to better environmental performance. Similarly, suppliers have more opportunity to innovate and provide value for money through an improved product or service.

While many countries are increasingly active in promoting the strategic use of public procurement, there are also several challenges in implementing this approach. Namely, strategic public procurement requires advanced skills as well as an overall enabling environment conducive to greater experimentation. Procurement officials need to be aware of market developments and design procurement documents that reflect this knowledge. They need to be able to identify products and services aligned to sustainable or innovative solutions. Support structures, guidelines and tools can be helpful for practitioners that wish to implement strategic public procurement.

In the State of Mexico, the adoption of complementary objectives remains low and awareness regarding the potential of public procurement in this field is limited. Indeed, during the OECD fact-finding mission, procurement officials demonstrated little familiarity with the topic of strategic public procurement and how it can be implemented. Furthermore, many of the practices needed to successfully carry out strategic procurement are at early stage. For instance, market knowledge and market engagement are rarely practised, thereby making it difficult for procurement officials to request products that push the market towards a new standard. Not least, price remains the predominant award criterion.

Nevertheless, some provisions in the Bylaws and guidance (POBALINES) of the State of Mexico recognise the role of public procurement for achieving complementary policy goals, notably for the promotion of local SMEs as well as sustainability. In fact, the law foresees preferential treatment for an SME if there are two equal bids (Article 87 paragraph IV of the Bylaws). Moreover, the POBALINES state that when evaluating bids within the award stage, extra points must be given to SMEs⁸ (POBALIN-064).

The attention dedicated to SME participation in public procurement is reflected by the fact that the Ministry of Finance keeps track of contracts awarded to SMEs (see Table 5.3. Awarded contracts for SMEs (Ministry of Finance of the State of Mexico))

Table 5.3. Awarded contracts for SMEs (Ministry of Finance of the State of Mexico)

SMEs support	2016	2017	2018	TOTAL
Percentage	1.54%	1.92%	8.66%	12.12%
MXN pesos	\$21,737,347.10	\$21,737,347.10	\$21,737,347.10	\$21,737,347.10

Source: Information provided by the State of Mexico's Ministry of Finance

Since 2017, with the update of the POBALINES, green procurement was introduced in the State of Mexico. In fact, contracting authorities are required to include sustainable considerations regarding the care and preservation of the environment (See Box 5.11). While including sustainability requirements is an important first step towards green and strategic procurement, it is also important to follow up on the compliance with these requirements through measurement or policy evaluation.

Box 5.11. (2017) Reform of the POBALINES – New sustainable provisions

POBALIN-062 TER. Procurement of sustainable goods and services

The units and auxiliary bodies through their administrative units or equivalent must contemplate within their annual acquisition programme, the use of sustainable goods and services at the rate of a minimum of 5% of the total goods and services, in order to contribute to the care and preservation of the environment.

In the case of purchases of electronic equipment, they must verify compliance with the current Official Mexican Standards for energy efficiency.

The paper purchased for office use, must be made with a minimum of 50% recovered paper fibres and obtained under a post-consumer or pre-consumer recycling and bleaching process free of chlorine or otherwise paper made from controlled wood, which must have the appropriate certificates.

The purchase of wood, wood furniture and office supplies made from wood must have the corresponding certificates issued by the Ministry of the Environment and Natural Resources, which guarantee the origin and sustainable management of forest products.

Source: (The State of Mexico, 2013_[16])

Strategic public procurement is also used to support the local economy, in line with the priorities of the State Development Plan, which encourages the participation of local suppliers in state procurement procedures (Gobierno del Estado de Mexico, 2018_[3]). Namely, as per the Bylaws, contracting authorities must specify that, in equal circumstances, they will give preference to individuals or legal entities that own the certificate of the State of Mexico's company (*empresa mexiquense*). Regarding award criteria, the contracting authorities could establish additional price percentage (no more than 5%) to the owners of this certificate.

Even though the State of Mexico introduced policy initiatives regarding the inclusion of environmental aspects and SMEs participation, currently there is no control or assessment of practices in place. Thus, it could consider introducing a mechanism for follow up, which in turn could allow them to determine the impact of these policy initiatives. In addition, as further discussed in Chapter 6, joint efforts between the contracting authorities and the Institute for Professionalisation of Civil Servants of the State of Mexico could be put in place. This would allow to develop further knowledge among procurement officials on how to use and draw benefits from strategic public procurement.

The State of Mexico is advancing through the implementation of complementary objectives; the next steps to take could be to develop an appropriate strategy to determine which complementary policy objectives can be pursued and how they can be integrated in the practices of contracting authorities (OECD, 2019_[19]).

Proposals for action

Since 2013, the LCPEMyM has been reformed with a view to enhance transparency and efficiency throughout the procurement cycle and introducing the IT instruments to systematise public procurement procedures. Even though this implementation is a major advance, they are still key stages of the public procurement process that need to be upgraded. The following recommendations aim to be used as a lever to strengthen efficiency throughout the public procurement cycle.

Strengthening the pre-tender stage

The state of Mexico would benefit from strengthening the pre-tender procurement stage carried out by the contracting authorities.

- Needs analysis

The State of Mexico could review the compliance of the obligation of contracting authorities to publish the annual plan. Fostering this practice, the State of Mexico's government would avoid transparency issues and the participation gaps. Furthermore, the government of the State of Mexico should develop a standard format for the annual programme.

- Market research

In practice, contracting authorities should go beyond the objective of establishing a reference price. The aim is to get the best value for money. Moreover, a good understanding of the technical specifications is essential to conduct an in-depth market study, for this reason the market research guidelines, developed by the Ministry of Finance, could also address the technical and regulatory specifications.

Establishing of broader opportunities to foster supplier participation to procurement

- Open state-funded tenders to international bidders

The articles of the LCPEMyM relative to international tenders should be reformed to enable the Ministry of Finance to grant international tenderers access to state-funded procedures. Participation is a key action that advance the possibilities for the contracting authorities to have a larger pool of goods and services. Openness would also ensure more competition among bidders.

- Foster dialogue with suppliers

Dialogue between suppliers and authorities during procurement procedures could improve market analysis and thus the efficiency of the system, as contracting authorities could get a better understanding of the market and better preparation of tender documents. The creation of new channels of communication with the market could be envisaged in a reform of the Protocol. Besides, the State of Mexico could consider using its electronic procurement system for consultations with suppliers to establish questionnaires and announce meetings with suppliers (*expo*), in order to reduce information gaps.

- Creation of a notification system within COMPRAMEX

Low participation in tenders could be generated by various causes, such as high barriers to participation, lack of market engagement or limited attractiveness of contracts. Raising awareness among potential suppliers could reduce this participation gap, thus elevating the number of suppliers to have more competition. The State of Mexico could develop a notification system within the COMPRAMEX platform to send future opportunities to registered suppliers.

Establishing the appropriate award criteria

- The Government of the State of Mexico would benefit from encouraging contracting authorities to make greater use of the price/efficiency ratio method using several selection criteria, as provided for in the regulatory framework (points and percentages), especially when the needs of the contracting services have a degree of complexity.
- Using quality-related award criteria also allows contracting authorities to include strategic aspects in the tender, such as support to SMEs, environmental issues, or innovative goods.
- Establishing a section in POBALINES dedicated to instructing and guiding procurement officials in the strategic use of public procurement.

Reconsidering the list of situations when using direct award

To provide guidance to contracting authorities about when they can apply direct award or not, the State of Mexico could detail the specific scope of the situations included in Article 48 LCPEMyM. In addition, a reform of this article is desirable to modify the list of exceptional situations and reduce it as much as possible, as well as to clarify such situations and maximise competitive tendering.

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Notes

¹ <http://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/ley/vig/leyvig192.pdf>

² <http://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/rgl/vig/rglvig106.pdf>

³ Art. 31

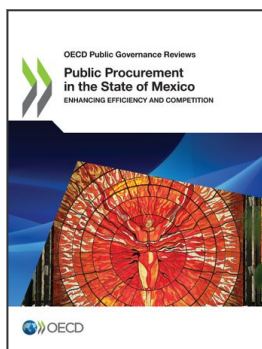
⁴ Law on acquisitions, leasing and contracting of services of the State of Nuevo Leon, Article 29 paragraph III

⁵ Article 42 of the Procurement Law of the State of Nuevo León

⁶ COMPRAMEX data analysis of 50 procedures from 2016 to 2018, of the following municipalities: Amecameca, Atlacomulco, Chalco, Chicoloapan, Huixquilucan, Lerma, Metepec, Nezahualcóyotl, Tenango del Valle, Tepotzotlán and Toluca

⁷ COMPRAMEX data analysis on 50 procedures from 2016 to 2018 of the following Auxiliary Bodies: ISEM (Instituto de Salud del Estado de México), CAEM (Comisión del Agua del Estado México), IMIFE (Instituto Mexiquense de la Infraestructura Física Educativa), SITRAMyTEM (Sistema de Transporte Masivo y Teleférico del Estado de México)

⁸ Manual POBALINES of the State of Mexico, POBALIN-064



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