

Chapter 5. Fostering stakeholder engagement in the procurement of health services at IMSS

Openness should be a critical feature of public procurement for reducing waste, preventing corruption and restoring trust. It should not only be required in laws and regulations, but should also be part of the culture of integrity and the accountability practices of public organisations. This chapter discusses the steps taken by IMSS to ensure transparency and stakeholder participation in public procurement within the framework of Mexico's transparency regulations. These steps include improving consultation processes when amending procurement regulations; initiatives to enhance supplier engagement so as to upgrade competition and transparency in tenders; and mechanisms to facilitate citizen participation in public procurement activities, for example as social witnesses and observers. The chapter concludes with recommendations for IMSS to strengthen still further its mechanisms for stakeholder engagement and to take transparency to a stage where citizens can benefit from systematised and consistent information.

Stakeholder engagement and transparency in procurement procedures help to create a level playing field for suppliers and achieve value for money. In addition, they can be critical for fostering competition in public procurement and opening channels for civil society participation. Indeed, scrutiny by civil society organisations, the media, and the wider public of procurement operations creates positive incentives for public officials and complements government accountability and control mechanisms.

The Recommendation of the OECD Council on Public Procurement outlines specific principles when dealing with transparency and stakeholder participation (Box 5.1). Since the publication of the previous OECD public procurement review of IMSS (OECD, 2013^[1]), the institution has made continuous efforts to reach out to the main stakeholders of its procurement activities. These initiatives are reviewed and assessed throughout this chapter.

Public procurement carries a high risk of integrity failures. This is so not only because of the interaction between the public and the private sectors in procurement operations, but also because of the amounts involved. In fact, the OECD *Foreign Bribery Report* (OECD, 2014^[2]) found that 57% of cases of foreign bribery were related to obtaining public procurement contracts, based on data from the 427 foreign bribery cases that have been concluded since the entry into force of the OECD Anti-Bribery Convention in 1999.¹

Furthermore, openness should be a critical feature of public procurement in the pursuit of reducing waste, preventing corruption and restoring trust. Openness should not only be required in laws and regulations, but should also be part of the culture of integrity and the accountability practices of public organisations (Box 5.2; and see Chapter 7).

This chapter reviews the legal requirements for transparency in procurement, as well as the provisions for involving stakeholders in defining procurement regulations, and involving suppliers in the procurement system. The chapter concludes with recommendations for further improving transparency and access to information policies, for improving consultation surrounding procurement regulations, and for strengthening the role of social witnesses and observers.

Box 5.1. Principles for transparency and stakeholder participation in the Recommendation of the OECD Council on Public Procurement

Adherents are recommended to ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle. To this end, Adherents should:

- i) Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships;
- ii) Allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses; and
- iii) Ensure visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle to allow (a) stakeholders to understand government priorities and spending, and (b) policy makers to organise procurement strategically.

Adherents are recommended to foster transparent and effective stakeholder participation. To this end, Adherents should:

- i) Develop and follow a standard process when formulating changes to the public procurement system. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner;
- ii) Engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets. Effective communication should be conducted to provide potential vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender specifications by better understanding market capabilities. Such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing. Such interactions should also be adapted to ensure that foreign companies participating in tenders receive transparent and effective information; and
- iii) Provide opportunities for direct involvement of relevant external stakeholders in the procurement system with a view to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained.

Source: (OECD, 2015_[3]).

**Box 5.2. Principles for transparency and stakeholder engagement in the OECD
Recommendation on Public Integrity**

Adherents are recommended to encourage transparency and stakeholders' engagement at all stages of the political process and policy cycle to promote accountability and the public interest, in particular through:

- a) promoting transparency and an open government, including ensuring access to information and open data, along with timely responses to requests for information;
- b) granting all stakeholders – including the private sector, civil society and individuals – access in the development and implementation of public policies;
- c) averting the capture of public policies by narrow interest groups through managing conflict of interest situations, and instilling transparency in lobbying activities and in the financing of political parties and election campaigns; and
- d) encouraging a society that includes “watchdog” organisations, citizens groups, labour unions and independent media.

Source: (OECD, 2016^[4]).

Meeting transparency and access-to-information requirements for public procurement

IMSS should consider establishing a centralised quality control function for the information disclosed in different sources, while implementing the Open Contracting Data Standard format. This would reduce the potential for inconsistencies among different platforms.

IMSS is required by law to proactively disclose relevant procurement-related information. Mexico has about two decades of experience in working on freedom of information regulations. The 2002 Federal Law on Transparency and Access to Government Public Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*) was the first to establish the duty of public entities of the federal government to disclose information proactively and upon request by individuals. This initiative was reinforced in 2007 when access to information became a constitutional right in Mexico.

More recently, in May 2015, Congress issued the General Law on Transparency and Access to Public Information (*Ley General de Transparencia y Acceso a la Información Pública*, LGTAIP), which requires even more information items to be disclosed proactively, many of them having to do with public procurement. Indeed, the LGTAIP is explicit about the procurement-related information that should be disclosed. This includes the outcome of procedures of direct awards, restricted invitations and public tenders, including the public versions of the files and the awarded contracts containing the information described in Table 5.1.

Table 5.1. The information to be proactively disclosed regarding procurement contracts

Direct awards	Restricted invitation or public tender
Bid proposal submitted by the participant	Call for tender and its legal basis
The legal basis to carry out the process	Name of the participants or invitees
Authorisation for the direct award	The awarded bidder and justification
If applicable, the quotes considered, specifying the suppliers and the prices	Invitations issued
The name of the company or individual awarded the contract	The award decision
The requiring and the purchasing units	The contract and its annexes, if applicable
Number and amount of the contract, date, and time for delivery or execution	Surveillance and oversight mechanisms
Surveillance and oversight mechanisms	Budget code
Progress reports (physical and financial) of the works or services awarded	Origin of the resources
Completion agreement	Contractual modifications, including objective and date
Payment	Progress reports (physical and financial) of the works or services awarded
	Completion agreement
	Payment

Source: (Government of Mexico, 2015_[5]).

This freedom of information regime is applicable to IMSS. In fact, as detailed in Table 5.2, during the period October 2015-September 2016, IMSS was the institution whose information was the most consulted in the Transparency Duties Portal (*Portal de Obligaciones de Transparencia*, POT).² Although the information consulted is not necessarily procurement-related, data show that 15.3% of the cases throughout the federal public administration were looking for information on contracts (INAI, 2016_[6]).

Table 5.2. Ministries and entities whose information was most consulted in the Transparency Duties Portal

October 2015-September 2016

Ministry/Entity	Times consulted	% of total
IMSS	1 806 271	5
Revenue Service (SAT)	1 598 166	4.5
Ministry for the Environment and Natural Resources (SEMARNAT)	1 105 191	3.1
Ministry for Transport and Communications (SCT)	1 040 926	2.9
Ministry of Finance and Public Credit	1 029 705	2.9

Source: (INAI, 2016_[6]).

The LGTAIP empowers citizens to request specific information that has not been proactively disclosed. Data across Mexico's Public Administration illustrate that the number of requests for information has increased substantially in the past four years (from 109 406 in 2013 to 202 365 in the period encompassing the fourth quarter of 2015 and the third quarter of 2016).

The response to a citizen's request can be either positive (e.g. information is disclosed and provided to the requester) or negative (e.g. information is not disclosed, either because it was non-existent, reserved, or confidential). When disclosed, the information can be provided by electronic means or on paper. During 2016, citizens filed 33 038 information requests; in 89% of the cases, IMSS provided the information that was requested. In 11% of the cases, information was not provided.

Besides the POT and the duty to answer individual information requests, entities in the federal public administration, including IMSS, have to disclose procurement-related information on several other platforms, including the e-procurement portal CompraNet and in SIPOT, a new portal being developed by the National Institute for Transparency, Freedom of Information, and Personal Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, INAI) to facilitate compliance with the expanded requirements of the LGTAIP. On top of that, IMSS publishes information on the Mexican Government's Open Data portal (datos.gob.mx) and on its own websites.

CompraNet provides free information and no previous registration is required to consult it. It includes information on tender procedures, contract awards history, and challenges (*inconformidades*) filed with the procuring entity's Internal Control body. These items of information refer to ongoing and completed tenders. All the consolidated tenders are, in fact, managed through CompraNet, which also includes information on the procurement process (e.g. annual procurement programmes on acquisitions, leases and services, calls for tender and its amendments, minutes of the clarification meetings, and the reports of social witnesses).

In 2011, IMSS created the Procurement Portal (*Portal de Compras del IMSS*, <http://compras.imss.gob.mx>). The portal was created with the intention of enhancing transparency and improving the understanding of IMSS expenditures. It presents IMSS procurement activities in a user-friendly manner, and provides a full picture of how, on what and why IMSS spends its resources, as well as the benefits achieved through these activities. It also includes information on what was procured by delegations and highly specialised medical units (*Unidades Médicas de Alta Especialidad*, UMAEs).³

The portal contains information directed to suppliers and potential suppliers and the wider public. For example, some of the useful information for suppliers includes the most purchased goods by IMSS, the annual procurement plan, frequently asked questions, and suppliers who sold the most to IMSS. Potential suppliers can benefit from information on how IMSS procures, how to sell to IMSS, and how to register in the IMSS suppliers' catalogue. Likewise, the general public can find the reports by social witnesses who observe tender procedures (described later in this chapter), and the regulations applicable to IMSS procurement. There are also various categories of general statistics regarding IMSS procurement. To increase transparency further, IMSS could include additional information, such as contract modifications and a list of contracts awarded to each supplier.

In addition to providing important information to suppliers and the general public, the portal functions as a knowledge tool for IMSS's various purchasing units, including the decentralised ones (i.e., the delegations and UMAEs).⁴ For example, the Procurement Portal has a section on suppliers who have failed to comply with contracts. This information could be used by the purchasing units to assess the risks of working with specific suppliers.

While IMSS is required by law to proactively disclose relevant procurement-related information, there is a risk of inconsistency between the different platforms (i.e., CompraNet, SIPOT, IMSS Procurement Portal, datos.gob.mx). Although this is not a problem exclusive to IMSS, different transparency requirements impose a heavy burden on the public officials who have to process and upload information in the various platforms and under different formats. There is also a risk of inconsistency in the information disclosed, creating confusion and distrust among stakeholders. An initiative

led by the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) aims to standardise these requirements by following the Open Contracting Data Standard (OCDS). In fact, the Mexican Government launched its Open Contracting Portal in November 2017. By starting to work under this standard now, IMSS will be prepared for when it becomes a formal requirement. In the meantime, IMSS could set up a team in the Transparency Unit to control the quality of information and verify consistency among different platforms. Indeed, the implementation of the OCDS and quality control could be parallel efforts to make the best use of human resources.

Improving consultation processes to amend public procurement regulations

As a measure of good practice, create an internal policy to subject IMSS's procurement-related rules to the regulatory quality requirements and controls established in the Federal Law of Administrative Procedure (LFPA), but which are currently not necessarily applicable to IMSS.

IMSS has been a reference for procurement reform, making sustained efforts to improve procurement practices. As such it would benefit from institutionalising a policy allowing stakeholders to comment on draft regulations on procurement. Early regulatory consultation would be in line with consultations carried out for the actual procurement processes (held before even the publication of draft calls for tender). This policy would be consistent with wider transparency and openness practices, beyond those required by law, and would support other strategies for creating trust among suppliers and other stakeholders.

In Mexico, regulatory consultation (i.e. consulting stakeholders on the contents of draft regulations) is strongly influenced by the requirements formally established in two separate pieces of legislation. First, the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*, LFPA) sets out specific public consultation requirements as an integral part of the Regulatory Impact Assessment (RIA) process applicable to draft primary and secondary regulations.⁵ Second, transparency legislation has established more general consultation requirements that are independent of the RIA process. In particular, this law requires all regulatory proposals to be published on the website of the relevant ministry or regulatory agency.

The RIA process provides important public consultation opportunities, as well as relevant safeguards to ensure that adequate account is taken of comments received from stakeholders. In particular, the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER) publishes all draft RIA as soon as they are received, as well as its own comments on the draft RIA and all inputs received from stakeholders. This generalised publication of a wide range of RIA-related documentation is good practice among OECD countries. Importantly, publication of COFEMER's response to the draft RIA provides stakeholders with additional information that can potentially allow them to participate more effectively in the process. For example, by highlighting weaknesses in the analysis, this material may assist stakeholders to identify data or other materials they possess which could be fed into the analysis to enhance its quality. More generally, the publication of all stakeholder comments on the proposal provides the basis for a more detailed dialogue on its merits among interested parties (OECD, 2014_[7]).

The draft RIA is required to be open to consultation for at least 20 working days; in practice, however, much longer consultation periods appear to be the norm. This reflects,

in part, the need for COFEMER to undertake its initial analysis of the RIA document and publish its response. Consequently, the process provides extensive opportunities for stakeholder input.

It is always a possibility that procurement-related regulations only impose compliance costs for government institutions, but not for private individuals. In such a case, an exception may be requested. For example, COFEMER exempted the State Employees' Social Security and Social Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, ISSSTE) Procurement Guidelines (also known as POBALINES) from the RIA process in October 2011 on this basis.⁶

In light of the possibility of exceptions to the regulatory quality controls, it would be convenient for IMSS to establish an internal protocol to subject itself systematically to the regulatory impact process when developing new procurement rules, even in cases where there are no compliance costs beyond those to be managed internally by the institute. By doing so, IMSS would not only subject itself to the control and the expertise provided by COFEMER, but it would also benefit from the wide open and sophisticated consultation RIA process, allowing stakeholders to access more information on the draft procurement regulations IMSS wants to advance and hence facilitating their more effective engagement.

Institutionalise early regulatory consultation (pre-RIA) for the reform or development of procurement rules

Consultation can play different roles at the various stages of the regulatory process. Extended post-RIA consultation, while of substantial value in its own right, is not a complete substitute for pre-RIA consultation. The OECD has previously noted an evolving tendency in member countries to adopt different forms of consultation in combination, to improve its overall performance. This reflects growing understanding of the strengths and weaknesses of different consultation strategies and of the fact that they are suited to specific circumstances and to different stages in the consultative process. As consultation is tending to begin much earlier in the policy-making process, it is increasingly common for it to be conducted in several stages, with different mechanisms employed at different times. In the Mexican context, it has been noted that post-RIA consultation is often very much oriented towards technical issues. This is a result of the fact that a proposed regulation is well advanced in its development by the time the draft RIA has been published. Hence, there might not be much room to modify a draft regulatory proposal once it reaches COFEMER (OECD, 2014^[7]).

COFEMER does support effective consultation by actively distributing the draft RIA to key stakeholders and soliciting their inputs in many cases. However, while consultation on the draft RIA is extensive, and is one of the strengths of Mexico's impact assessment process, there is no formal requirement for consultation to be conducted prior to its publication. While the adoption of transparency regulations appears to have significantly expanded the amount of consultation undertaken by public entities overall, there are also wide divergences in practice. While some entities undertake substantial pre-RIA consultation, others do not, preferring to use the RIA process as their main consultation vehicle.

In order to realise the benefits of early consultation, including measuring the potential acceptance of reforms or new rules and identifying undesired potential outcomes, IMSS would benefit from establishing pre-RIA consultation as a standard practice.

Engaging suppliers in the procurement system

Start the supplier engagement process earlier and make it more systematic, even involving the other institutions participating in the consolidated tenders. This would allow suppliers' suggestions to have a real impact on tender processes and procurement strategies.

Good governance of public procurement entails inclusiveness and participation. Consultation and dialogue with relevant stakeholders can help identify opportunities for improvement, bottlenecks in processes, and risks (including integrity risks). Allowing the participation of stakeholders in the procurement system not only helps to improve processes, but also adds a layer of scrutiny to safeguard integrity and advance transparency. Furthermore, wide opportunities for dialogue may help spot collusion risks and improve tender design to maximise competition.

During 2016, IMSS organised several meetings with business chambers. These meetings allowed the chambers to express their concerns before launching the annual consolidated tender. The meetings took place every week and allowed the chambers to raise issues in the contractual relationships stemming from the consolidated tender. These comments led to adjustments in the calls for tender and delivery conditions. Furthermore, feedback received from suppliers led IMSS to move the consolidated tender for 2017 forward by one month, an improvement that was praised by the industry.

Monthly meetings with business associations also take place during the bidding period and every two months once contracts have been awarded. Participants include the following business organisations:

- Industry Chambers Confederation (*Confederación de Cámaras Industriales*, CONCAMIN)
- Mexico's Employers Confederation (*Confederación Patronal de la República Mexicana*, COPARMEX)
- Business Co-ordination Council (*Consejo Coordinador Empresarial*, CCE)
- National Chamber of the Pharmaceutical Industry (*Cámara Nacional de la Industria Farmacéutica*, CANIFARMA)
- National Association of Medical Supplies Distributors (*Asociación Nacional de Distribuidores de Insumos para la Salud*, ANDIS)
- Confederation of National Chambers of Commerce, Services, and Tourism (*Confederación de Cámaras Nacionales de Comercio, Servicios y Turismo*, CONCANACO-SERVYTUR).

Formal dialogue between IMSS and potential suppliers also takes place through the clarification meetings as part of the bidding process. Clarification meetings can either be physical meetings or held on line. All tenders should include at least one clarification meeting, but there can be more. The minutes of the clarification meetings are public and displayed on paper in the IMSS offices and electronically on CompraNet.

On 20 July 2017, IMSS launched the Strategy to Advance Competition in Public Tenders, which aims to facilitate participation by the largest number of bidders in the market and to upgrade procurement conditions in terms of price and quality for IMSS. The strategy is based on two pillars:

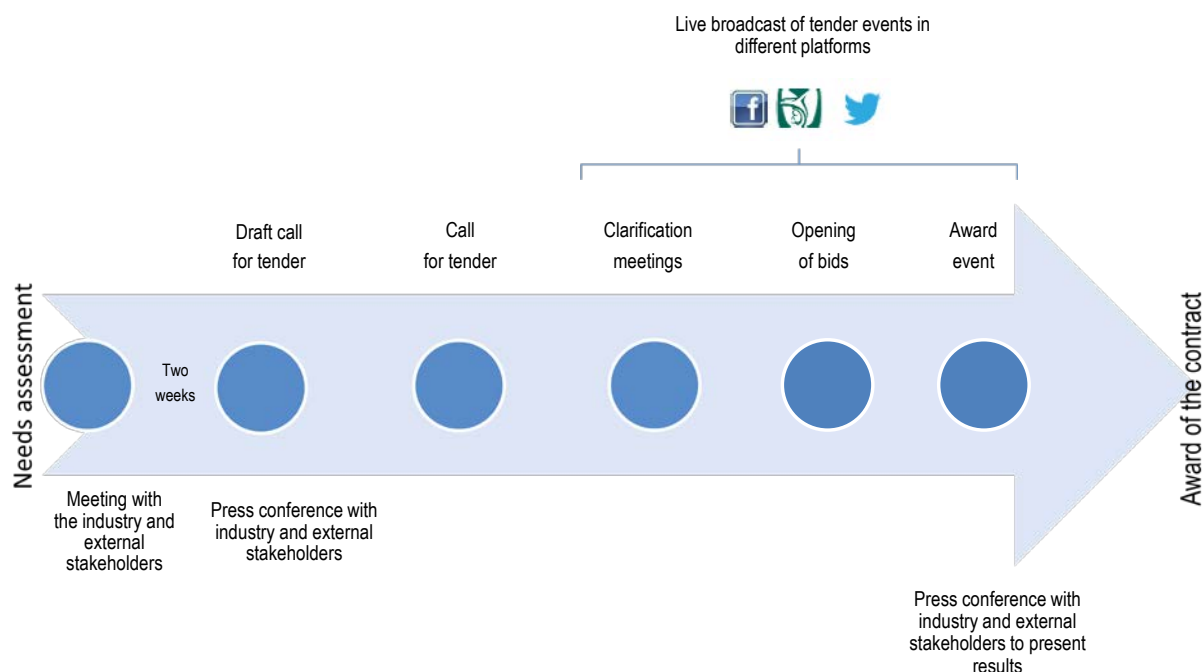
1. Strengthening the tender processes carried out by IMSS (to be described in the next section).
2. Protocol for carrying out priority tenders.

The protocol establishes higher standards than those required by law for tenders that have been classified as a priority using the following criteria:

- Social impact: tenders with a high impact due to the type of good or service to be purchased.
- Adjustments in the call for tender: tenders whose terms have been adjusted relative to previous processes in order to increase participation.
- Size: tenders exceeding MXN 500 million.

The protocol starts by identifying those tender processes at risk of being subject to external pressures. The whole process of these tenders is public and involves stakeholders at every stage. As of July 2017, IMSS had identified eight priority processes for goods and services and five for works which will be subject to the protocol during 2017. The implementation of the protocol consists of the following steps (see Figure 5.1):

- A meeting is organised with external stakeholders, including business chambers and civil society organisations, two weeks before the publication of the call for tender. During these meetings, IMSS staff explain the tender process and, if it differs from previous processes, explain the reasons why.
- The call for tender is published on CompraNet for ten working days.
- A press conference is held the day of the publication of the call for tender and the day of the award of the contract. These press conferences involve external stakeholders, such as business chambers and civil society organisations.
- Clarification meetings, opening of bids, and the award event are broadcasted on several platforms (IMSS's own platform, Twitter, and Facebook).

Figure 5.1. IMSS's protocol for carrying out priority tenders

Source: Information provided by IMSS.

While the business community has praised the dialogue established with IMSS, it has also indicated some shortcomings. For example, it has asked IMSS to reconsider the design of the meetings envisioned in the protocol, as they are mainly informative and take place at the very end of the pre-tender stage, which reduces opportunities for IMSS to improve the process and the capacity of the business chambers to influence positively the tender strategies, establish technical conditions for the national market, or participate in the market research carried out by IMSS.

In this sense, IMSS could further systematise these meetings, for example by providing a calendar and timely notification of each meeting and by recording the agreements reached on a control board, where their fulfilment can be monitored and tracked. This would address industry concerns over the follow up of the issues identified by the business community. Briefing meetings aimed at the supplier community could take place earlier, even during the needs assessment stage. In this way, IMSS would help suppliers and business chambers engage more effectively and would keep them motivated to participate.

In addition, in the specific case of consolidated tenders, IMSS could involve the other procuring institutions in the discussions with suppliers (i.e., ISSSTE; PEMEX; the ministries of health and defence; the Navy; the institutes of health; and the federal states), particularly when there are problems linked to their own purchases. For example, the industry complains about delayed payments by some of these institutions and, while IMSS has offered to mediate and even excluded some federal states from participating in the 2017 consolidated tender due to their lack of commitment to addressing the problem, it would be helpful to have these institutions at the table to address and prevent future issues.

IMSS could improve integrity by starting every meeting with the business community and civil society organisations by providing information on the anti-corruption sanctions applicable to businesses in the National Anti-corruption System (NACS) and the requirements of the Protocol for Procurement Officials' Behaviour.

Mexico's newly established National Anti-corruption System (NACS), signed into law on 18 July 2016, consists of a package of laws – eight in total – marking a turning point in Mexico's approach to anti-corruption policies. One of the declared objectives of the NACS, and particularly of the General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, LGRA) is to strengthen enforcement mechanisms for investigating and sanctioning integrity breaches by public officials and firms under both administrative and criminal jurisdictions. Therefore, the LGRA establishes sanctions for private individuals and businesses who participate in corrupt behaviour (Box 5.3).

In a similar vein, the Protocol for Procurement Officials' Behaviour⁷ (*Protocolo de actuación en materia de contrataciones públicas, otorgamiento y prórroga de licencias, permisos, autorizaciones y concesiones*) establishes rules for contact between business agents and public officials in charge of procurement activities, as well as those responsible for issuing licenses, permits, and concessions. Likewise, the Protocol establishes the mechanism for business agents to declare links or relationships with senior public officials or those in charge of procurement activities.

As a preventive measure, IMSS could use the meetings envisioned in the IMSS protocol for priority tenders to inform the business community and potential suppliers about the sanctions established in the LGRA for businesses who participate in corrupt behaviour and the rules to follow when in contact with procurement officials. In addition, IMSS could also inform these audiences about other regulations, such as those applicable to conflicts of interest and gifts, as well as the channels for reporting wrongdoing. Finally, IMSS could help to disseminate the Agreement for Transparency and Ethical Principles for Suppliers⁸ in these meetings, as it has been signed by the main business chambers who work with IMSS (CONCAMIN, COPARMEX, ANDIS, CANIFARMA, CONCANACO-SERVYTUR, and CCE).

Box 5.3. Managing corrupt behaviour by private individuals, businesses and procurement officials

Article 81 of the General Law on Administrative Responsibilities establishes the administrative sanctions to be applied to private individuals and businesses for participating in corrupt behaviour.

Sanctions for private individuals can range from:

- economic sanctions, which could double the benefits realised
- temporary exclusion from tender processes for goods, leasing, services, or public works, for a period between three months and eight years
- the need to pay compensation for damages to the public entities.

Sanctions for businesses include:

- economic sanctions, which could double the benefits realised.
- temporary exclusion from tender processes for goods, leasing, services, or public works, for a period of between three months and 10 years
- suspension of business activities for a period of between three months and three years
- closure of the business entity
- the need to pay compensation for damages to the public entities.

Source: (Government of Mexico, 2016^[8]) (Government of Mexico, 2017^[9]).

Encourage greater feedback in the post-award stage through new communication channels, such as debriefings for suppliers and opinion surveys.

Unsuccessful tenderers may want to know why their bids failed. The OECD recognises that verbal debriefing after a contract has been awarded is good practice, and is commonly used in many member countries to engage with the market and expand the supply base. Adequate debriefings with suppliers provide a valuable opportunity for both parties to benefit from the process. Verbal debriefings can improve the relationship with suppliers and the quality of their offers while providing IMSS with valuable insights (Box 5.4). However, verbal debriefings must be used judiciously and be guided by a clear framework in order to reduce any associated risks (i.e. integrity risks) and costs. A debriefing can also be made available to the successful bidder as a first step in establishing a sound working relationship and setting a precedent for constructive feedback.

When IMSS awards a contract, a public meeting is organised in the case of paper-based or mixed tenders. Bidders can participate in this meeting, during which a minute is drafted. The award is also published on CompraNet the same day it is issued. Those bidders who do not participate in this meeting are sent the award statement. However, IMSS has no regulatory framework for debriefing unsuccessful bidders. Indeed, such debriefings are not a common practice in Mexico's public administration, as it is not required by the acquisitions or the public works laws. There are also no procedures for debriefing meetings with suppliers, although businesses may approach IMSS officials and ask about issues or request feedback (OECD, 2017^[10]).

In order to increase the benefits of debriefings, while mitigating any potential risks, IMSS should develop guidelines to establish a clear framework to guide them. The amount of information that can be conveyed will vary according to the circumstances of the particular contract, but IMSS could give a broad indication of the reasons for the decision (e.g. either related to financial or technical aspects) and provide information on where bidders ranked in the tender list.

Box 5.4. The benefits of debriefing

Debriefing is beneficial to bidders by:

- helping them to rethink their approach in order to make future bids more successful
- offering targeted guidance to new or smaller companies to improve their chances of doing business in the public sector
- providing reassurance about the process and their contribution or role
- providing a better understanding of what differentiates public sector procurement from private procurement.

That dialogue can also assist IMSS by:

- identifying ways to improve subsequent solicitation processes, including the associated communication
- making sure best practice and guidance are updated to reflect any relevant issues that have been highlighted
- encouraging better bids from suppliers in the future
- getting a better understanding of how that segment of the market thinks, enhancing market intelligence
- helping establish a reputation as a fair, open, and ethical buyer with whom suppliers will want to do business in the future
- potentially reducing the number of challenges (*inconformidades*).

Source: (OECD, 2017^[10]).

As well as debriefing meetings, IMSS could use surveys to solicit the opinions of suppliers once tender processes are over. In fact, as discussed in Chapter 4, although the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) runs surveys to assess the performance of procurement procedures and the status of payments to suppliers, these are applied throughout the public administration, not only in IMSS. While IMSS could use the data from these surveys as a benchmark for the public administration, it could also develop a more focused survey for its own needs, as occurs for example in PEMEX (see Chapter 4).

Ensuring citizen participation in the procurement system

Make the participation of social witnesses more effective, by making it an internal rule to respond to social witnesses' reports and provide feedback to SFP on previous witnesses and experiences, while also suggesting measures to address the weaknesses identified by the OECD.

Citizen participation is defined as a citizen action that influences or seeks to influence policy decisions, or as an action that incorporates the demands and values of citizens into public administration services. Given the integrity risks present in procurement operations, it is considered good practice for governments to involve representatives of civil society, academics or end-users in scrutinising the integrity of the procurement process. Direct social control mechanisms encourage their involvement as external observers of the entire procurement process or of key decision-making points.

The *Strategy to Advance Competition in Public Tenders*, and particularly its first pillar (strengthening the tender processes carried out by IMSS, see above), includes several measures to facilitate citizen participation in public procurement:

- Strengthening the monitoring mechanisms for procurement: this consists of greater transparency over the prices achieved in tender processes. The aim is to allow IMSS officials and the Internal Control Body (*Órgano Interno de Control*, OIC) to carry out a permanent comparison and detect deviations. It also aims to provide enough information to motivate participation and competition in tender processes. It includes the participation of social witnesses (described below).
- Implementation of 10 good practices for procurement at the central and delegation levels: this consists of implementing good practice beyond what is required by law. These include a Strategy to Advance Transparency in Procurement in Delegations and Highly Specialised Medical Units (*Unidades Médicas de Alta Especialidad*, UMAEs). These good practices include widening the scope of market research, electronic reporting of all procurement operations, and live broadcast of tender events on IMSS platforms, Facebook and YouTube.
- Permanent participation of external stakeholders to advance transparency: this consists of creating networks of public and private stakeholders to observe IMSS's tender processes. SFP, the OECD, and the United Nations Office on Drugs and Crime (UNODC) are permanently invited to participate. Furthermore, IMSS is working with Mexican Transparency (*Transparencia Mexicana*) so that it not only observes priority tenders, but also some other tenders chosen randomly.

Social witnesses are non-government organisations and individuals identified by SFP through a public selection process. SFP keeps a registry of approved social witnesses and evaluates their performance – unsatisfactory performance potentially results in their removal from the registry. When a federal entity requires the involvement of a social witness, it informs SFP, who designates one from the registry.

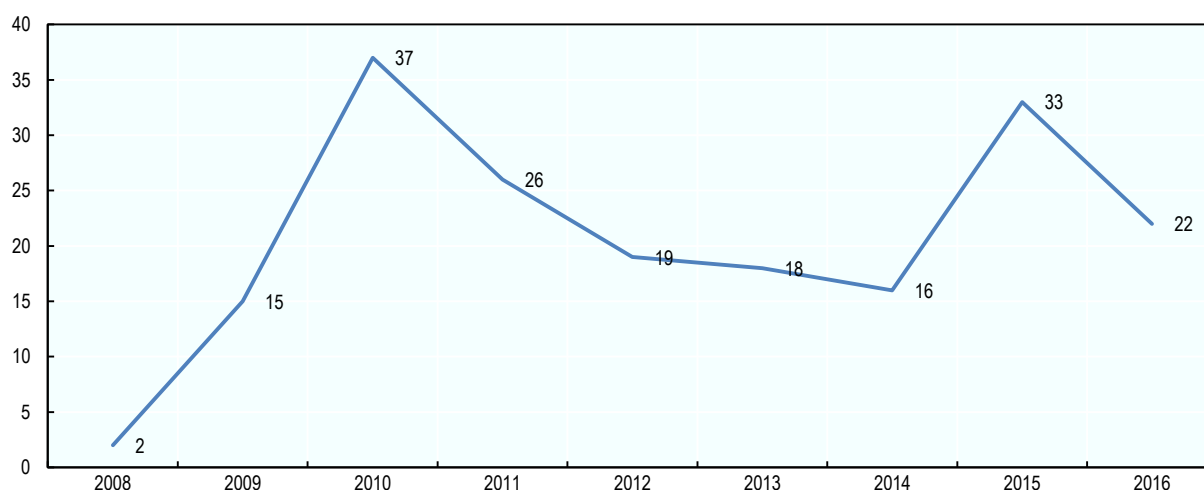
Social witnesses' functions include proposing strategies to improve transparency, impartiality and compliance with the legal framework, as well as reporting any illegal acts they may find. Their participation is required by law in public tenders whose value exceed five million days, the minimum wage applied in Mexico City⁹, as well as in other cases where SFP deems it appropriate. Indeed, IMSS could involve social witnesses even for tenders that are below the threshold when purchasing critical items or where risks are

high (e.g. based on previous experience, the composition of the market, or even in a random selection, etc.). They participate from the stages of the draft call for tender right up to the signing of the contract.

As of 16 August 2017, SFP had registered 45 social witnesses in CompraNet for public procurement projects (up from 5 in 2005): 7 civil society organisations¹⁰ and 38 individuals.¹¹ SFP notes that the monitoring of the most relevant procurement processes of the federal government by social witnesses has so improved procurement procedures through their contributions and experience that they have become a strategic element for ensuring the transparency and credibility of the procurement system. An OECD-World Bank Institute study (2006, cited in (OECD, 2017^[10])) found that the participation of social witnesses in the procurement processes of the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50% (OECD, 2017^[10]).

The use of social witnesses by IMSS increased sharply between 2008 and 2009 (Figure 5.2). Between 2008 and 2016, IMSS used social witnesses in 188 tender procedures.¹²

Figure 5.2. Number of IMSS tender procedures involving social witnesses, 2008-2016



Source: IMSS Procurement platform, <http://compras.imss.gob.mx/?P=tsociales>, accessed 16 August 2017.

At the end of a procurement process, the social witness issues a report containing his comments and recommendations. These reports are published on both CompraNet and IMSS's Procurement Portal. However, social witnesses do not have the authority to stop a procurement process or revoke a decision. They may express opinions, but do not have any influence or right to make decisions. When a social witness raises concerns over a possible corrupt action during a procurement process, their opinions and concerns are recorded in the report.

Despite the fact that social witnesses' reports are public and easily accessible, there is no evidence that IMSS provides any kind of response to these reports. Indeed, the OECD team could not find any responses either on CompraNet or on the IMSS Procurement Portal. IMSS could increase the effectiveness of the social witnesses' reports by committing to provide public answers to them. This could be done by establishing such

commitments in IMSS' internal procurement regulations and would create more incentives for IMSS officials to manage procurement processes with integrity.

In previous reviews of Mexico's institutions (i.e., PEMEX (OECD, 2017_[10]), ISSSTE (OECD, 2013_[11]; OECD, 2016_[12])) the OECD recognised the value of social witnesses, but also pointed to some potential weaknesses. For example, in interviews with some of the witnesses, it became evident that while they were experts in a relevant field (i.e., works engineering, accounting, law, etc.), they were not necessarily specialists in integrity risks. Hence, IMSS could partner with SFP and provide it with feedback to increase the expertise of social witnesses and assess their performance.

In addition, it was observed that the same social witness may participate in several processes involving the same procuring institution, creating the risk of familiarity with procurement officials and business agents. IMSS should work with SFP to rotate social witnesses so as to avoid this familiarity, which may lead to conflicts of interest.

Consider strengthening the role of observers by implementing a feedback mechanism for them, for example a survey or a debriefing session at the end of the event in which they participated.

In addition to social witnesses, any individual interested in witnessing a tender event may participate as an observer. This participation is allowed to advance transparency, compliance with legal requirements, impartiality and integrity. However, the role of observers is more ad hoc and is not formally regulated. Furthermore, observers do not produce any feedback for IMSS. Hence, their impact is close to impossible to measure.

IMSS could institutionalise the role of observers by providing a clear role for their engagement. Specifically, IMSS could implement mechanisms to receive their feedback, for example, via a survey or a debriefing meeting after a tender event. Such tools could also be applied to individuals who follow the tender events through social media, so that the effectiveness of this practice can be better assessed.

Proposals for action

IMSS has advanced in establishing communication and engagement channels for suppliers and the wider public in its procurement policies and activities. This chapter has explored ways in which IMSS could increase still further the effectiveness of this engagement. The first set of recommendations focus on transparency and access to information policies, followed by other recommendations to improve consultation surrounding procurement regulations. The final section concentrates on the role of social witnesses and observers:

Meeting transparency and access-to-information requirements for public procurement

- Establish a centralised quality control function for the information disclosed in different sources, while implementing the OCDS format. This will reduce the potential for inconsistencies between different platforms.
- As a measure of good practice, create an internal policy to subject IMSS procurement-related rules to the regulatory quality requirements and controls established in the LFPA and which are currently not necessarily applicable to IMSS.

- Institutionalise early regulatory consultation practices (pre-RIA) for the reform or development of procurement rules.

Engaging suppliers in the procurement system

- While the Strategy to Advance Competition in Public Tenders is a solid step forward for supplier engagement, IMSS could start the engagement process earlier and make it more systematic, even involving the other institutions participating in the consolidated tenders. In this way suppliers' suggestions could really have an impact on tender processes and procurement strategies.
- Enhance integrity by starting every meeting with the business community and civil society organisations by providing information on the anti-corruption sanctions applicable to businesses in the National Anti-corruption System (NACS) and the requirements of the Protocol for Procurement Officials' Behaviour.
- Encourage greater feedback in the post-award stage through new communication channels, such as debriefings for suppliers and opinion surveys.

Encourage citizen participation in the procurement system

- Make the participation of social witnesses more effective, by making it an internal rule to respond to social witnesses' reports and provide feedback to SFP on previous witnesses and experiences, while also suggesting measures to address the weaknesses identified by OECD
- Strengthen the role of observers by implementing a feedback mechanism for them, for example a survey or a debriefing session at the end of the event in which they participated.

Notes

¹ Based on data from the 427 foreign bribery cases that have been concluded since the entry into force of the OECD Anti-Bribery Convention in 1999.

² The POT is a web-based portal where the federal ministries and agencies publish the information that is required to be proactively disclosed by law. It is available at portaltransparencia.gob.mx, accessed 9 August 2017.

³ Even though the Annual Procurement Plan also includes information by delegation, it is coded and hard to identify what each delegation is planning to buy.

⁴ IMSS currently has 35 delegations and 25 UMAEs.

⁵ However, in the case of primary regulations, draft bills are not subject to the regulatory quality requirements (including consultation) set out by the LFPA when they are introduced in Congress by legislators themselves or by State assemblies, only when introduced by the Federal Executive.

⁶ IMSS's POBALINES could not be found in COFEMER's website, so they were probably not even submitted for COFEMER review.

⁷ Published on 20 August 2015 and amended on 19 February 2016 and 28 February 2017.

⁸ The main objective of the agreement is to establish self-regulatory commitments to improve competition in the procurement of medicines and facilitate responsible business practices in the market.

⁹ In 2017, these thresholds are MXN 400.2 million (approximately EUR 18.6 million) for goods, leasing, and services and MXN 800.4 million (approximately EUR 37.2 million) for public works and related services.

¹⁰ Mexico's Public Procurement Academy, Engineering Academy, Mexico's Academy for Comprehensive Performance Audit, Alternative: Your possible future, Mexican Institute of Technical Audit, Citizen Control for Accountability, and Mexican Transparency.

¹¹ CompraNet website, available at www.funcionpublica.gob.mx/unaopspf/tsocial/tsocial.htm, accessed 16 August 2017.

¹² Based on the number of social witnesses' reports published in the IMSS Procurement Platform, <http://compras.imss.gob.mx/?P=tsociales>, accessed 16 August 2017.

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From:

Second Public Procurement Review of the Mexican Institute of Social Security (IMSS)

Reshaping Strategies for Better Healthcare

Access the complete publication at:

<https://doi.org/10.1787/9789264190191-en>

Please cite this chapter as:

OECD (2018), “Fostering stakeholder engagement in the procurement of health services at IMSS”, in *Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264190191-8-en>

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