

### *Chapter 3*

## **Promoting complementary policy objectives through Petróleos Mexicanos' procurement**

*This chapter assesses how PEMEX is promoting complementary policy objectives such as supporting the participation of small and medium sized enterprises, promoting environmental considerations and social responsibility. It further suggests what PEMEX can do to foster improvements in the field of green policy and social objectives.*

## The relevance of diminishing SMEs in the Mexican economy

This chapter looks at how Petróleos Mexicanos (or PEMEX) has been using its substantial buying power in the marketplace and how it can leverage the procurement process to actively promote complementary policy objectives. While efficiency and cost effectiveness are among the primary objectives of public procurement, governments increasingly use this purchasing power as a policy lever to support various secondary objectives such as green growth, promotion of locally sourced or innovative goods and services, or giving preference to small and medium-sized enterprises (SMEs).

The OECD Recommendation on Public Procurement (hereafter, the “OECD Recommendation”) encourages a balanced approach towards achieving governmental objectives through the use of public procurement (OECD, 2015a). The OECD recognises that the delivery of goods and services in an economical and efficient manner as the primary procurement objective, while promoting other methods in pursuit of secondary policy objectives such as sustainable green growth, the development of SMEs, innovation, standards for responsible business conduct or broader industrial policy objectives. The decision to pursue secondary policy objectives in public procurement will vary by government and the needs of citizens, but the OECD Recommendation identifies steps that should be taken whenever such objectives are pursued (see Box 3.1).

### Box 3.1. The OECD Recommendation on Public Procurement on secondary policy objectives

5. **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:

1. **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.
2. **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.
3. **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 (2015a), “Recommendation of the Council on Public Procurement”, [www.oecd.org/corruption/recommendation-on-public-procurement.htm](http://www.oecd.org/corruption/recommendation-on-public-procurement.htm)

SMEs constitute more than 90% of all established businesses worldwide and are a key driver for economic growth and development. In Mexico, SMEs represent over 99% of formal enterprises and contribute to providing 34.7% of gross domestic product (GDP) and seven out of ten formal jobs in the country.<sup>1</sup> SMEs in Mexico are still very significant to the labour market but their contribution to the overall GDP has diminished in the last five years by one-third. As in many other countries, the importance of SMEs to the Mexican economy and the labour market cannot be underestimated. However, most SMEs in Mexico are restricted because of limited access to capital or financing. When faced with excessive administrative burdens, SMEs are more likely to make illegal payments in order to circumvent the burden. UNIDO and UNODC (2007) states that SMEs are more susceptible to bureaucratic corruption than larger companies. In addition, SMEs are also more susceptible to administrative corruption due to the fact that they often lack the time and resources necessary to be informed about complex regulations and requirements, making illegal payments to cover up mistakes or avoid overly bureaucratic procedures more likely. Therefore, a large corporation such as PEMEX should make use of variety of measures at their disposal to encourage SME participation in public procurement and enable SME participation through capacity development, limit corruption risks affecting SMEs and reduce bureaucracy (OECD, 2015a).

It has been more than five years since the Mexican government began to pursue complementary policies through public procurement. From the start, PEMEX had a major role to play in following the federal complementary policies established by the Ministry of Economy (Secretaría de Economía). With the changes made to the legal framework in 2014 and again in 2015 the consequent transformation of PEMEX into a state productive enterprise (*empresa productiva del Estado*) has resulted in it no longer falling under the definition of a public agency for the development of national industry. Hence, PEMEX is no longer required to abide by the Law of Acquisitions, Leasing and Services of the Public Sector (LAASSP) or the Law of Public Works and Related Services (LOPSRM). On 10 June 2015 PEMEX published their general procurement provisions for PEMEX and its subsidiary productive companies (EPS), after having been approved by the PEMEX Board of Directors. The reform envisages that PEMEX will now be able to contract goods and services in a more commercially oriented environment, its contracts fully governed by commercial law. These new general contracting provisions, which are now in effect, have replaced the former administrative contracting provisions issued by the PEMEX Board of Directors in 2008.

It is too early to tell how the new legal framework will impact the procurement processes of PEMEX and its subsidiaries companies. The reform envisages that PEMEX will now be able to contract goods and services in a more commercially oriented environment. The new legal framework does not make a distinction between suppliers regarding the size of companies and, even better, it allows for the participation of consortia, which means that SMEs can now participate jointly. Despite the new legal framework, the principles and best practices recommended need to be adhered to and PEMEX should stand firm on not lessening its effort towards supporting complementary objectives.

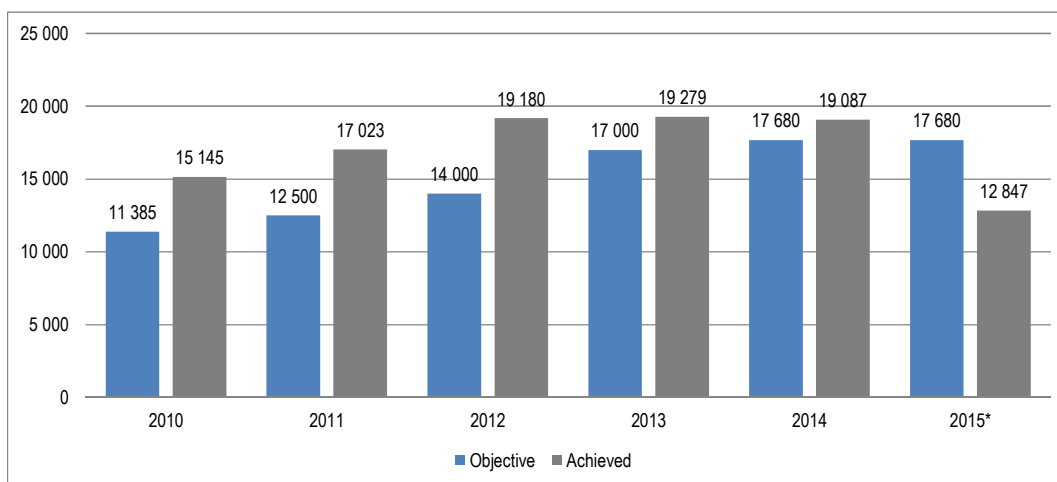
### **The need for a holistic strategy to enhance SME participation**

In 2009, the Mexican Ministry of Economy established a plan to promote the development of local SMEs, partly through participation in public procurement. As such, the Ministry of Economy set specific annual goals for each federal entity to award

contracts to SMEs. According to the Law for Development of the Competitiveness of SMEs, the planning and implementation of policies and actions to promote the competitiveness of SMEs should encourage agencies and entities of the federal government to gradually acquire the minimum of 35% for all goods, services and public works procured. Even though PEMEX has a new legal framework, the company continues to participate in governmental programmes regarding acquisitions from SMEs such as Programa de Compras de Gobierno from the Ministry of Economy. The programme is automatically renewed each year by the ministry and is relevant in order to quantify the purchases from SMEs. Through this programme PEMEX commits to a certain annual goal of acquisitions from SMEs and presents the results on a monthly basis. Due to the legislative reforms PEMEX is promoting a reassessment of the plan in order to reflect the changes of the oil and gas industry in Mexico.

The federal government, through the Ministry of Economy has been responsible for establishing the appropriate policy for the energy industry. In 2010, the Mexican public administration entities generally achieved or exceeded the proposed goal for domestic content. For several years PEMEX has surpassed the target set by the ministry, sometime by nearly 80%. Among all subsidiaries, REF (Refinación) purchases the most from SMEs, followed by PEP (Exploración y Producción) and CORP (Corporativo). The target set by the Ministry of Economy for PEMEX in 2015 was MXN 17 680 million; at the end of November PEMEX had spent MXN 12 847 million (see Figure 3.1). For the first time the company did not achieve the federal goal for SMEs purchases.

Figure 3.1. **Objective for purchases from SMEs set by the Ministry of Economy for PEMEX, and the actual purchases made for 2010-14 in MXN millions**



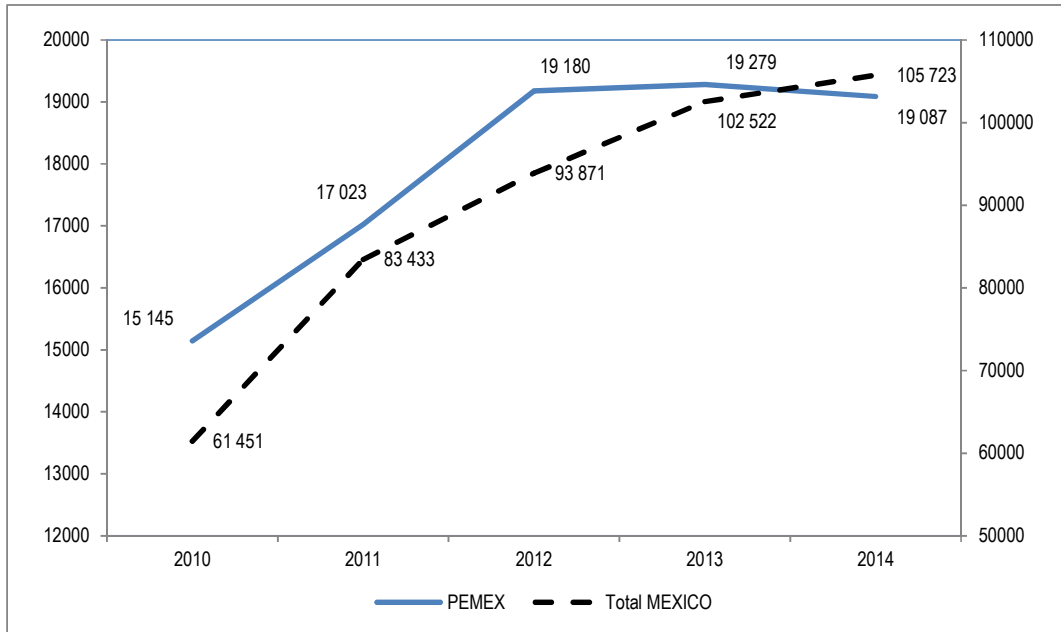
Note: \*As of November 2015.

Source: Based on information provided by PEMEX.

Of the total government procurement expenditures for SMEs in Mexico, PEMEX accounts for approximately 20%, which has been the trend in recent years (see Figure 3.2). Furthermore, public procurement and supply operations through different procurement methods (open competition, direct awards or restricted invitations) granted to SMEs by PEMEX amounted to about 5% of the total purchases made by the company in 2014 and 3.5-4% in 2015. Declining crude oil prices, energy reforms, focus on

productivity and concerns about the capability of SMEs to deliver were possible explanations offered by PEMEX officials for declining SMEs purchases during the OECD fact-finding mission. The purchases are focused on specialised products and SMEs in Mexico in general lack the necessary skills and the capital to deliver.

Figure 3.2. The total amount of government operations assigned to SMEs and the amount procured by PEMEX in 2010-14 in MXN millions



Source: Based on answers provided by PEMEX.

PEMEX developed a supplier development strategy in 2009 based on the 2008 PEMEX Law. The strategy was comprised of two main themes: 1) policies for national content and support to SMEs in the procurement process; and 2) sustainable development of suppliers and supply chains in order to strengthen the capacity of the domestic industry. The strategy is no longer in place, but it was developed due to the fact that PEMEX was the only oil company operating in Mexico. With the new Hydrocarbons Law the general principles of the government’s suppliers development strategy that PEMEX now follows, is based on the fact that it is a productive state enterprise. Furthermore the new legislation led to new programmes like the National Productivity Council, the Hydrocarbons Consultative Board and the new Fideicomiso.

In the PEMEX strategy, a target was set that by the last quarter of 2009, PEMEX would be requesting a minimum of 10% local content purchasing for projects with major integrated contracts, pursuant to the provisions of free trade agreements. The Ministry of Economy defines such projects as public works. The average local content requested in international public tenders held under the coverage of Free Trade Agreements, for contracting public works in PEMEX rose steadfastly from 10% in 2011 to 18% in 2013, but then dropped to 13% in 2014.

The policies for national content defined by the federal government encourage the participation of SMEs in PEMEX’s operations as contractors or suppliers of PEMEX.

This is so PEMEX can meet the minimum established limit for local content that should be incorporated into their supply chains by national companies, of which many are SMEs. There are no specific procedures in place dedicated to SMEs but there is a point system in place that encourages suppliers to commit to subcontract part of their work to SMEs. The point system works in favour of participants who are said to belong to an SME or are committed to subcontract part of their work to SMEs. In Korea, certain measures have been put in place to increase public purchases from SMEs (see Box 3.2).

### Box 3.2. Support for SMEs in Korea

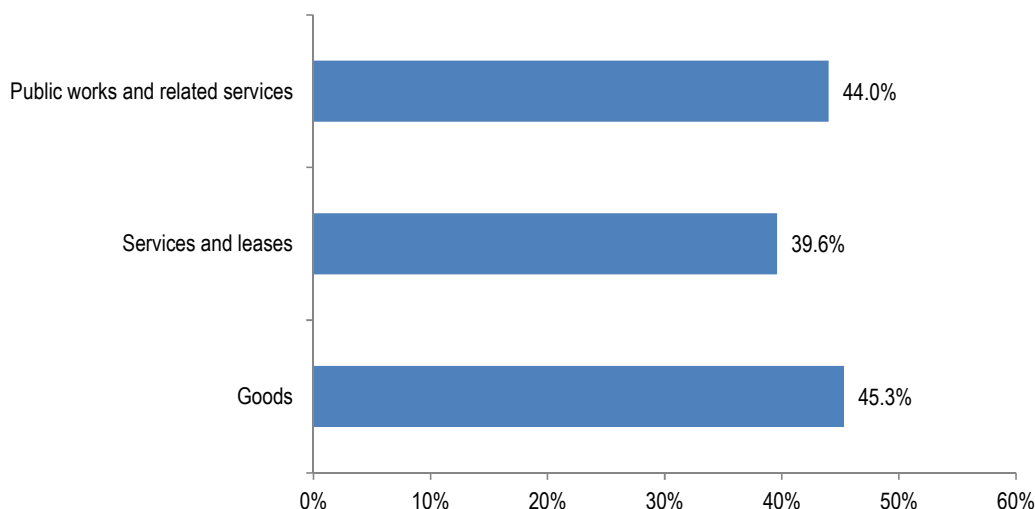
Support for SMEs in Korea is a strong priority, given the make-up of the economy. There are approximately 3.3 million SMEs in Korea, while there are only 2 900 large businesses: SMEs make up 99.9% of Korean businesses. Public Procurement Service (PPS) implements the government's policies for increasing public purchases from a variety of types of entities, including small and medium-sized businesses, local businesses, women-owned businesses and other social enterprises.

- The legal basis of support of SMEs requires the heads of public institutions to provide small and medium-sized businesses with increased opportunities to receive orders when they intend to make procurement contracts for goods, services and construction works.
- A recent change, which took effect on 1 January 2015, now defines SMEs solely in terms of sales volume (either annual or average). In addition to the criteria for being included as an SME, there are specific factors that can exclude an enterprise from SME status, including total assets exceeding USD 423.8 million.
- A business must be deemed independent in ownership and business operation (not a subsidiary of a large enterprise) with respect to the relevant laws and regulations.
- Article 4 of the Enforcement Decree of the Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of their Markets sets an annual purchasing goal for SME-manufactured products of 50% or more of total purchasing value.
- An SME set-aside programme is run in co-operation with the Small and Medium Business Administration (SMBA). Under this programme, SMBA designates specific products for SMEs, and currently there are 207 products with this designation. For these products to be designated as competitive products, only SMEs that directly manufacture such products are invited to participate in competitive tenders.

Source: OECD (2016), *The Korean Public Procurement Service: Innovating for Effectiveness*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249431-en>.

The Hydrocarbons Law establishes that the minimum average percentage of local content in exploration and extraction of hydrocarbons will gradually increase, from 25% in 2015 to at least 35% in 2025; these objectives will be reviewed every five years. This percentage will be different for deep and ultra-deep water activities, which will be set by the Ministry of Economy. PEMEX and all operators within the hydrocarbons industry that conduct this type of activity in Mexico must contribute to achieving these goals. PEMEX has achieved results in increasing SME participation and national content. With a calculated national content level of 42.4% for 2012 to 2014, it has gradually increased since 2009-11, when it was 40.5% (see Figure 3.3).

Figure 3.3. Level of local content in PEMEX procurement in 2012-14



Source: Information provided by PEMEX.

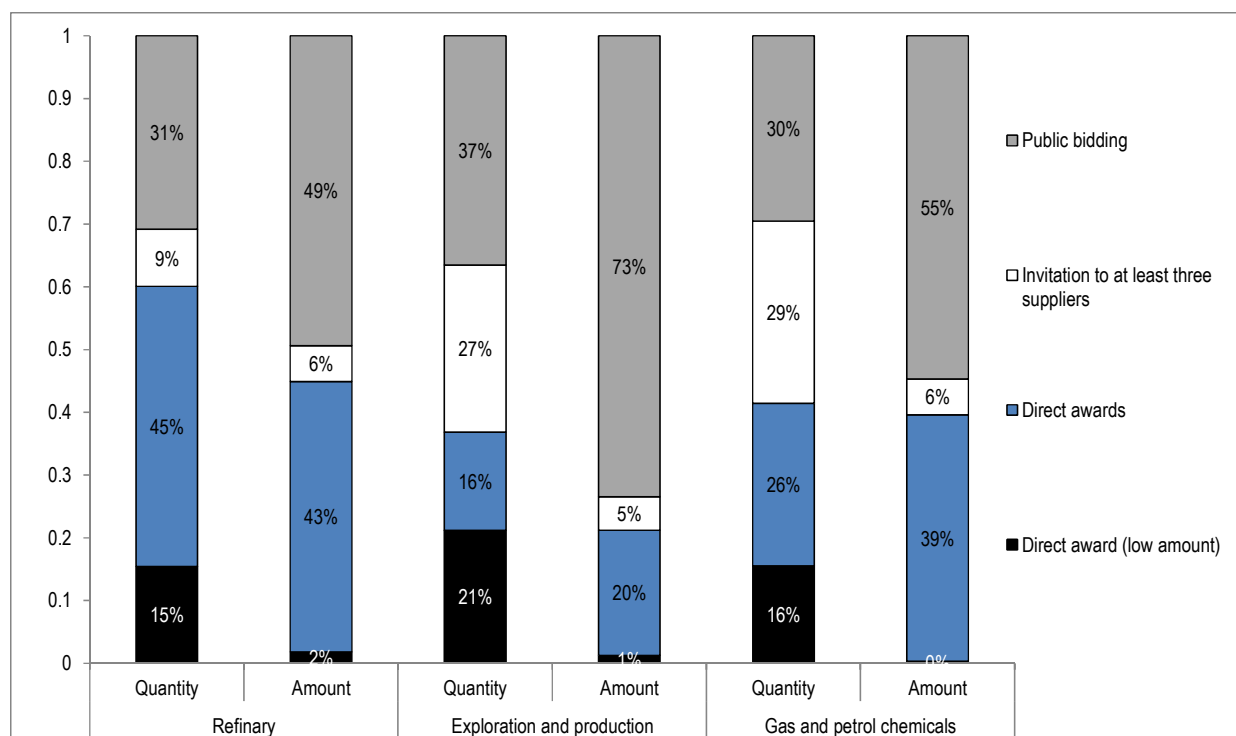
Even though PEMEX has been one of the largest public entities in Mexico to procure from SMEs, the total amount was only about 5% of PEMEX's total procurement in 2014. It is not clear whether SMEs are to a large extent used as subcontractors to larger corporations that are working for PEMEX. Better data on subcontractors could provide a better overall picture of the amount of financial resources spent by PEMEX on SMEs and national content. It is important for PEMEX to acquire more detailed information from their contractors on the use of SMEs as subcontractors, but as it stands the company is not able to do so. During the OECD fact-finding mission, a PEMEX official referred to a proposal allowing PEMEX to include or count SMEs that are being subcontracted by primary contractors. The changes made to the regulatory framework in 2014-15 exclude direct statues committed to SMEs. The strategy that was developed in 2009 and the good intentions to improve on this front seem to have slowed down since 2011. The strategy and legal statues concerning the matter of national content and SMEs needs to be evaluated and clear goals should be set for the participation of SMEs.

In 2009 PEMEX and NAFIN created the Public Trust to Promote Development of National Suppliers and Contractors for the State Oil Industry to help SMEs access funding. Since 2014 the Public Trust has not been operating. A new trust has been established following the induction of the new legal framework. PEMEX and other companies competing with PEMEX can now seek funding on equal terms from this new fund. During the five-year period of the Public Trust some 11 projects were funded involving 235 companies. The support in technical assistance amounted to MXN 24 640 403.

Data available from PEMEX indicates that the company is displaying increased competition in its procurement activities for goods, services and leases. The subsidiaries presented in Figure 3.4 indicate that both the number of contracts made by public bidding and the total value awarded is growing. There is still a significant level of PEMEX contracts recorded as being awarded directly to selected suppliers, but a relatively high proportion of them are derived from low amounts (Article 42).

Figure 3.4. Type of competition procedure used by PEMEX subsidiary bodies

% total number and value of goods, service and lease contracts, 2014-15



Source: Information provided by PEMEX.

Moreover, payments from PEMEX are sometimes late, which further serves to undermine smaller companies with lower cash flows. A mechanism should thus be put in place that prioritises payments to SMEs since late payments can seriously affect the cash flow of a company and its survival in the market. There is no specific protocol that prioritises payments to SMEs; the same overall guidelines and payments can take up to 180 days according to conditions 4.18 of the Treasury General guidelines. It is important to look at the promotion of small local businesses as something that has a positive impact on the supply chain through diversification of supply. These are some of the immediate issues that PEMEX needs to address, but there are others that should be addressed that relate to the further advancement of tools and processes.

### The need for a robust green procurement policy

Green procurement is defined as the process through which a contracting authority procures goods, services or works that have reduced environmental impact throughout their life cycle when compared to other alternatives in the market (European Commission, 2008). It is traditionally associated with the procurement of energy-efficient vehicles or equipment, recycled materials or waste reduction (Box 3.3). However, for environmental considerations to comply with the best-value principle, it must take into account all the associated costs to the life-cycle costs – including operation, ownership, maintenance, and disposal – and not only upfront costs. Efforts should be made to account for environmental externalities into the overall cost of the good or service to the community,



and not just the financial cost to the procuring agency. OECD countries are increasingly adopting green policies in their procurement function.

### Box 3.3. Products most commonly acquired through green public procurement

There are certain similarities in countries promoting green procurement:

- **Construction, renovation and maintenance of public buildings:** Low resource consumption (energy, water, raw materials, landscape) throughout their whole life cycle, use of recycled materials, waste management, etc.
- **Transport:** Type of vehicles (hybrids, electric), reduction of fossil fuels and increase of biofuels, CO<sub>2</sub> emission limits for new vehicles, training courses for drivers, use of bicycles for short administrative tasks, etc.
- **Office equipment and office supplies:** Energy efficiency, using computers, copiers, printers, monitors and other equipment meeting the standard ENERGY STAR; two-sided printing in order to reduce paper consumption; use of recycled paper or of virgin fibre paper coming from sustainably managed forests (FSC or equivalent label).
- **Cleaning:** Cleaning products “highly biodegradable”, “free from hazardous substances”, or not impairing water quality, etc.
- **Services:** Messenger enterprises with reduced fossil fuel use in vehicles, printer enterprises with ISO 14001 certification, etc.

*Source:* Based on US Environmental Protection Agency web site, [www.epa.gov/](http://www.epa.gov/) in OECD (2013a), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264197480-en>.

For a period there was a common belief among countries that green policies were expensive, especially in times of fiscal consolidation. However, greener products and services are less costly to public agencies, in terms of life-cycle costs, than less green products. The vast majority of OECD member countries use public procurement now as a tool to implement policies or strategies to foster secondary policy objectives. In fact, 26 OECD member countries have developed strategies or policies to support green public procurement, SMEs and innovative goods and services (see Table 3.1). Many countries are realising that when they consider the social externalities, green products and services generally have less long-term total social costs. It was not until recently that Mexican authorities developed a federal green procurement policy.

Table 3.1. Development of strategic public procurement by objective in selected OECD member countries and partner economies

	Green public procurement	Support to SMEs	Support to innovative goods and services
Australia	●	●	●
Austria	●	○	●
Canada	◆◆	●	●
Chile	◆◆	◆◆	●
Denmark	○	●	●
Estonia	○	○	○
Finland	●	◆	◆
France	◆◆	◆◆	◆◆
Germany	●	●	●
Greece	◆◆	●	○
Hungary	◆	●	●
Ireland	●	●	●
Italy	◆	◆	◆
Japan	●	●	●
Korea	●	●	●
Luxembourg	◆◆	◆◆	◆
Mexico	●	●	●
New Zealand	◆◆	◆◆	◆◆
Norway	■	◆◆	◆◆
Poland	●	●	●
Portugal	●	◆	◆
Slovak Republic	○	○	○
Slovenia	◆◆	●	●
Spain	◆◆	◆◆	◆◆
Sweden	◆◆	●	●
Switzerland	◆◆	◆◆	◆
United Kingdom	●	●	●
United States	●	●	◆◆
Brazil	◆◆	◆◆	●
Colombia	◆	●	●
OECD29			
◆ A strategy / policy has been developed by some procuring entities	13	10	10
● A strategy/policy has been developed at a central level	24	23	20
■ A strategy / policy has been rescinded	1	0	0
○ A strategy/policy has never been developed	2	3	3

Source: OECD (2015b), *Government at a Glance 2015*, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en).

PEMEX green procurement was limited to the requirements stipulated in the LAASSP as well as the PEMEX Act in order to ensure environmental sustainability. There appears to be no link between PEMEX policies for the preservation of the environment and achievement of sustainable development and the use of green procurement. PEMEX has not developed and implemented its own green procurement policy to support its sustainable development efforts. Despite the positive steps taken by the Mexican government in recent years, progress has been negligible. There is still no green procurement policy in place. Nevertheless, PEMEX has considered jointly designing a policy of that nature with the sustainable development unit. This will be based on the Energy Reforms, which require PEMEX to reflect, in contractual terms,

participants to focus on green issues while promoting the generation of value and the advantage of being socially responsible within a competitive environment.

The PEMEX Act created the Environmental and Sustainability Committee for the purpose of assisting PEMEX in the implementation of, and compliance with, policies for the preservation of the environment and achievement of sustainable development. However, PEMEX does not have a policy on green procurement, nor has it developed a directory or a catalogue of green products. The new legislation doesn't prevent PEMEX from being more proactive, but there is a lack of direct encouragement in the new legislation. The 2012 Guidelines on Acquisitions, Leasing and Services (Políticas, Bases y Lineamentos en Materia de Adquisiciones, Arrendamientos e Servicios, or POBALINES) gave PEMEX a clear mandate for the use of natural resources and to respect national and international green standards. However, no information or data is available to assess whether PEMEX complied with those requirements. The POBALINES are no longer in place but PEMEX is currently working on developing indicators as part of a total assessment model.

In order to achieve successful implementation of a green procurement policy, it is necessary to consider measurement and capacity building. Indicators and information on contracts establishing environmental performance as the basis for bid evaluation and contract are necessary to measure the level of take-up of the policy. Furthermore, procurement officers need to be provided with specific guidance on how to incorporate environmental considerations into their procurement activities. PEMEX could do more to institutionalise and conduct proactive capacity-building efforts. PEMEX's progress in green procurement will be dependent on the market's capacity to deliver green products, which is a further challenge for PEMEX if there is not a satisfactory supply, although PEMEX could aim to promote the creation of this kind of supply. There are good examples from South American countries that PEMEX can benefit from on how to incorporate social and environmental criteria for awarding contracts into its procurement process. It is now, for example, compulsory to have award criteria that takes into consideration national industries and disabled people in Colombia,<sup>2</sup> (see Box 3.4).

#### Box 3.4. Incorporating social and environmental criteria in Colombia

The government of Colombia has had a strong social focus in the past in creating incentives in regulations for the support of SMEs, national industry and disabled people. More recently the government decided to promote green procurement by setting environmental objectives.

The National Development Plan (Plan Nacional de Desarrollo para Todos) 2010-14 prioritises sustainable production and processes and optimal use of natural resources. To promote these objectives, in 2012 the Colombian Ministry of Environment collected information on environmentally sustainable public procurement and selected five products (coffee; printed materials including books, maps and publications; lightbulbs; paper; and mining materials) on which it is conducting market research in order to arrive at environmental procurement targets (e.g. product specifications, selection criteria).

Alongside such market research, the Ministry of Environment has issued 15 guidelines on how to include green criteria in procurement, 5 of which include life-cycle analysis of products. The likelihood of success of such green procurement projects will to an extent depend on the adoption of adequate monitoring mechanisms to assess their progress and results.

Source: OECD (2013b), *Colombia: Implementing Good Governance*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264202177-en>.

There are policies or guidelines on procurement activities that promote innovation. They are to a certain extent encouraged by Article 78 of the PEMEX Act, which allows for, in cases where the procedure of open competition is not the ideal method to ensure the best conditions available, the company being able to choose to use other procedures that may be, among others, restricted invitation or direct award. Every time the company decides to use other procedures, they refer to a specific article. Also, in Article 13, Section IV of the PEMEX Act, strategic alliances and partnerships with individuals or companies is encouraged. The promotion of innovation of the procurement and supply of PEMEX is permitted according to the new legislation, but more guidance for procurement officials is needed, as there is little information available on whether this approach is ever used. There is a need to make the innovation programme much more visible to PEMEX staff and the public.

### Towards social objectives through social responsibility

It is important to distinguish between different complementary policy objectives in procurement, like environmental or social objectives. Complementary environmental policy goals might include the promotion of recycled materials, environmental disposal plans, or low-polluting goods and services. Complementary social policy objectives might include, on the other hand, the procurement of goods and services that favour a specific minority or gender (see Box 3.5). PEMEX's approach to environmental or social objectives seems to be based on the social responsibility approach. However, it should be clear what is meant by achieving social and environmental objectives through public procurement and social responsibility through public procurement, as these two approaches are distinct. Targeting social responsibility through procurement is not uncommon; in Norway there is an Action Plan for Environmental and Social Responsibility in Public Procurement.<sup>3</sup>

In Mexico, the procurement legal framework only makes reference to providing preference in bidding proceedings to disabled persons or companies that employ disabled persons (at least 5% of total employees for at least six months of employment).<sup>4</sup> There is no data available on the number of contracts awarded to businesses employing people with disabilities. Given that the pursuit of social objectives was inherent in PEMEX's legal framework (LAASSP), the company could still aim to apply the preference for disabled persons provided by the LAASSP. Despite these legal changes, it is important for PEMEX to set high goals and develop its own social objectives (health-related) that could be pursued through its procurement process.

Information gathered during the OECD fact-finding mission to Mexico indicates that PEMEX is encouraging social responsibility where the aim is to enhance the contribution that PEMEX can make to improving social and environmental conditions, including labour and other human rights within communities. This is implemented through projects like the foundation of PACMA (Support Program for Communities and the Environment), whose objective is "*Creating an investment program for the welfare and quality of life of those living in oil-producing areas.*" The provisions of PACMA are of a general and mandatory nature for suppliers or contractors of PEMEX, and under certain conditions the amount and term, which might be 1-2% of the total contract amount, will go to support the community and environment (see Box 3.6).

### Box 3.5. The promotion of women's businesses in the United States

The US government instituted a women-owned small business (WOSB) contracting programme, as part of the administration's broader commitment to increasing competition in the award of federal contracts to women, socially and economically disadvantaged persons and veterans. The new regulations set forth procedures authorised by the Small Business Act to help ensure a level playing field on which WOSBs can compete for federal contracting opportunities, while helping achieve the existing statutory 5% goal. The regulations entered into force on 4 February 2011 with the SBA charged with implementing and administering the programme. Some 83 industries are identified in which WOSBs are under-represented or substantially under-represented in terms of the award of federal contracts. The rule removes the requirement, set forth in a prior proposed version that each federal agency must certify that it had engaged in discrimination against women-owned small businesses in order for the programme to apply to contracting by that agency. The rule allows women-owned small businesses to self-certify as "WOSBs" or to be certified by third-party certifiers, including government entities and private certification groups. At this stage, it is too early to assess the impact of the new programme. However, it has been praised by stakeholders and women's organisations and represents a proactive trend in the US federal procurement strategy.

*Source:* Based on US Small Business Administration web site, [www.sba.gov/offices/headquarters/oed/resources/3690](http://www.sba.gov/offices/headquarters/oed/resources/3690) in OECD (2013a), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, <http://dx.doi.org/10.1787/9789264197480-en>.

### Box 3.6. The objectives of the Support Program for Communities and the Environment (PACMA)

PACMA offers support in seven basic areas (health, safety, infrastructure, equity, environmental protection, education and productive projects) and contributes to mitigating risks in the non-technical operations of PEMEX in communities.

The implementation of programmes, projects and actions have the following benefits:

1. helps build a climate of collaboration or mutual understanding with residents, authorities, institutions and organisations located in the vicinity of oil installations
2. facilitates compliance with the operational goals of PEMEX and its subsidiary companies production
3. prevents impacts that could conflict with environmental stakeholders
4. assists the government in social development
5. links to other sustainable development programmes
6. allows for harnessing the potential of the oil industry to promote social development to their areas of influence
7. gives greater room for manoeuvre and negotiation with key environment entities.

PACMA establishes the participation of all stakeholders, promoting programmes, projects and specific actions, with financial support from suppliers and contractors of PEMEX, which is mandatory for them.

*Source:* Based on information provided by PEMEX.

PEMEX considers secondary objectives when designing and drafting the documentation and the contract, including requirements, evaluation criteria and weighting, which are reflected in the annex called “Support Program for Communities and the Environment” (PACMA), “S 4 2 a”, which states the need to promote environmental protection as an explicit recognition of the social and environmental responsibility of PEMEX. The corporate social responsibility reflects well in the considerations relating to the environment that are integrated into PEMEX’s open competition documentation. Depending on the nature and complexity of the procurement, certain aspects of industrial safety, occupational health and environmental protection are listed and used as part of the evaluation criteria. In accordance with the internal regulations there are minimum environmental requirements that need to be met by suppliers or contractors, its staff and its subcontractors, in order to prevent incidents and accidents at PEMEX facilities. Such obligations are clearly defined at the early stages of the publication of tenders, but they are not subject to assessment; however, failure to comply with those requirements can have consequences ranging from making deductions to payments or to termination of contracts.

The PACMA reflects the strategy of top management, which is to make “PEMEX a more competitive business, transparent to remain the pillar for national development ... consolidating efforts of corporate social responsibility that includes a social policy focus to reconcile the industry growth aspirations with that of increasing well-being in communities, through public and private social responsibility.” In addition to this, PACMA conforms to the mandate of Article 25 of the Constitution in which it is stated that, “When national economic development with social responsibility, the public sector, the social sector and the private sector ...” just as (the state) “may participate by themselves or with the social and private sectors, according to the law, to promote and organise the priority areas of development,” further it may “provide conditions for the development of the private sector to contribute to the development national economic...”.

The objective of PACMA is to create a set of programmes, works and/or actions, which contribute to, obtain, expand and consolidate the social license to operate (LSO), allowing human development, generating productive capacities, addressing social gaps and forging a long-term sustainable development projects in the communities located within the areas of influence of PEMEX. The PACMA projects have to last for more than a year and have a budget of over MXN 100 million, for the offshore projects budget needs to exceed MXN 300 million. A technical committee comprised of PEMEX personnel and outside stakeholders collegially decides which project to support.

For this, PEMEX provides the basis for the implementation of the PACMA strategy and commitment to sustainable development, basing its strategy on:

- a generation of projects having favourable and sustainable social impact in nearby communities where there is extraction and production
- a consolidation of a sustainable model that integrates economic, environmental and social operation
- development of specific and measurable actions for the population, emphasising the benefit of vulnerable groups and support to women.

With the new PEMEX regulation the company is working towards becoming a “socially responsible company”. The new Hydrocarbon Law requires assignees like PEMEX to develop impact assessments and management plans for all contracts relative to oil extraction. These requirements were not part of the previous legal framework.

Furthermore, the new legal framework seems to encourage PEMEX to do more to achieve social objectives as it requires the company to carry out social impact analysis in every contract relating to the distraction of oil. These requirements were not a part of the previous PEMEX legal framework.

### A new landscape for complementary objectives

When designing and promoting complementary policies for public procurement, PEMEX needs to balance the benefits and potential costs of such policies as they can carry the risk of trading off integrity and value for money. By putting more emphasis on complementary criteria in tender evaluation the significance of value for money will be diminished. This can increase complexity, costs and risks in the procurement cycle by increasing demands placed on suppliers, procurement officers and systems of monitoring and evaluation. More countries and companies are now including economic, environmental or social considerations in the procurement process while ensuring that procurement decisions remain fair and transparent. Apart from programming such complementary policies into the evaluation mechanism, one of the ongoing difficulties lies in monitoring the implementation of the contract by contractors and subcontractors, who often operate across borders. There is also the issue of value for money and transparency that need not be traded off directly with complementary policy objectives. For example, by considering whole of life-cycle costs, more environmentally conscious decisions are ensured whilst also promoting more sound long-term financial management practices. Furthermore, one of the main challenges faced by all countries that promote complementary goals through public procurement is the development of performance indicators that are appropriate for assessing the success of applying complementary criteria in a public procurement regime.

On the three key topics - SMEs, green procurement and social objectives - steps have been taken by PEMEX in recent years to initiate more projects on sustainable development, and PACMA is a good example of what the company is doing. The changes in the legal framework do not prohibit PEMEX from doing business with SMEs; however, the competitive environment can lead PEMEX to move away from contracting SMEs if they are not competitive. The size of small contracts that PEMEX is making would by most standards be considered quite high, i.e. the “small” contracts do require companies with a certain level of capacity to be able to fulfil requirements.

During the OECD fact-finding mission, PEMEX officials understood that the total value of SMEs was decreasing, but there were also concerns that SMEs with the necessary knowledge and expertise might not exist. PEMEX has worked closely with industrial chambers and associations in order to inform their supply chain about the most relevant changes in the legislation. PEMEX has organised workshops for the new registry and conferences about the new procurement model. An effort has been made in the electronic media to update and make more transparent the information available for the public in general, mainly for suppliers. However, despite this commitment from the company, the economic environment does not seem favourable for SMEs. How the combined effects of the new legal framework and the current situation of tumbling oil prices and widespread deflationary forces affect the SMEs in Mexico in the long term is uncertain. It seems likely though that the falling price of oil will require PEMEX to be even more competitive, which may mean fewer SMEs will be contracted.

## Proposals for action

The transformation of PEMEX into a state enterprise production has had an impact on how the company now approaches complementary objectives. Overall the legal environment seems to be more conducive to secondary objectives while the current economic situation is not. There is room for improvement: there is a need for a green policy, more direct actions to achieve social objectives, and steps needed to refocus PEMEX's SMEs strategy. The promotion of SMEs has not progressed since 2012, which could have a serious impact on small businesses in Mexico.

In order to further promote complementary policy objectives through its procurement, PEMEX could consider the following:

- PEMEX could develop a strategy that addresses the challenges that the company is now confronted with in the new environment with a view to enhancing SME competitiveness.
- PEMEX could set out incentives in regulations for the support of SMEs, national industry and disabled people, for example by benefiting primary contractors that are subcontracting to these industries.
- PEMEX could be more proactive in gathering data on SMEs being subcontracted by primary contractors.
- PEMEX could set up a framework for measuring results of the strategies/policies to use procurement to support socio-economic or environmental objectives. Part of that framework should include assessments of the extent to which public procurement is used in practice to support socio-economic or environmental objectives compared to other methods.
- PEMEX could support SMEs through a broad range of programmes. For example by designating specific products as competitive products; then only invite SMEs that directly manufacture such products to take part in competitive tenders.
- PEMEX could define a number of categories that allow for preferential purchasing of products with new technology. Products manufactured by newly developed technology would be evaluated and awarded certification, which allowed preferential purchasing.
- PEMEX could more forcefully apply various procurement mechanisms to promote complementary policy objectives, such as:
  - proactively publishing yearly forecasts of contracts of interest for targeted companies (based on complementary policy objectives)
  - setting aside lots specifically for target organisations (based on complementary objectives)
  - developing systems that ensure prompt payment to small and medium-sized suppliers
  - reducing the value of performance bonds required to obtain a contract
  - providing quality feedback to participants.



- PEMEX could support sustainable growth and promote innovation by developing a policy on green procurement to reduce the negative environmental impacts and environmental cost of public procurement.
- PEMEX could develop guidelines on how to better understand social impact procurement; to identify potential suppliers in Mexico and to develop a procurement process that assesses both financial and social value. This could help PEMEX achieve social objectives.

## Notes

1. Information gathered during the OECD fact-finding mission.
2. Benefits for enterprises that hire handicapped persons (Law 361 of 1997 – Article 4.2.5.5); see [www.secretariassenado.gov.co/senado/basedoc/ley/1997/ley\\_0361\\_1997.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/1997/ley_0361_1997.html).
3. For more information, see [www.regjeringen.no/en/dokumenter/Environmental-and-Social-Responsibility-/id476600/](http://www.regjeringen.no/en/dokumenter/Environmental-and-Social-Responsibility-/id476600/).
4. LAASSP, Article 14.

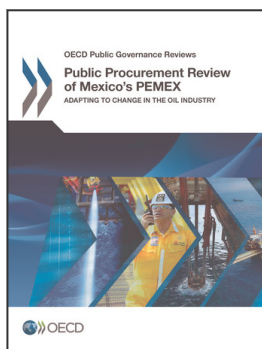
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