

Mexico

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156. Policy objectives on government procurement are spelled out in the Industrial Policy and Foreign Trade Programme (PPICE), which supports greater participation of the national industry in government procurement. The PPICE proposes to promote strategic alliances, supported by the national development banks, to allow national suppliers and buyers to establish direct interactions and the joint formulation of objectives and project planning. The authorities expect those alliances to increase the profitability of construction and industrial firms, improve quality, lower the price of projects and increase the participation of domestic suppliers in public procurement.¹

157. The basic legal framework for government procurement is defined in Article 134 of the Constitution, which establishes that the public purchase of goods and services must, in general, be undertaken through public tenders involving sealed offers. These guidelines are implemented through various laws, mainly the Law on Public Procurement and Works, Regulations to the Law on Purchases, Leasing and Supply of Services Relating to Movables/Property, Regulation to the Law on Public Works, and the specific chapters on government procurement included in the free-trade agreements concluded by Mexico. The Law on Public Procurement and Works (LAOP) of 30 December 1993, abrogating previous legislation on the matter, defines government procurement as including state expenditure on and execution, preservation, maintenance and control of goods, services and construction services contracted by federal government entities, including ministries, administrative departments, decentralized agencies and government enterprises. The public procurement procedures provided for in the LAOP are described in Box III.1.

¹SECOFI (1996), p. 83.

Box III.1: Public procurement procedures

The LAOP provides for two types of procurement procedures: (i) public tendering in which all interested suppliers may participate, and (ii) restricted invitations under which an entity may contract suppliers individually either by invitation of at least three suppliers or by a direct award of the contract. Restricted invitations may be used, *inter alia*, for contracts relating to the protection of patents or copyrights; consulting services involving confidential information; and purchases made with a view to commercial resale by government-owned retail stores. Public entities may use restricted invitations when the estimated value of the contract does not exceed an amount specified annually in the federal budget for each entity.

No registration, nationality or residence prerequisites for participating in tenders are imposed on suppliers; lists or registers of approved suppliers are not used.

Public invitations to tender are published (in Spanish) in the Official Journal and in domestic newspapers; restricted invitations are not published. Tenders financed entirely or partly by foreign credits are published according to the guidelines of the credit institution. Offers must be submitted in writing in sealed envelopes. Time-limits of at least 40 days following the date of publication of a tender invitation are allowed in relation to submissions of international bids for purchases, leasing, services and public works, and with respect to domestic tenders for public works. The time-limit for domestic tenders for purchases, leasing and services is at least 15 calendar days following the publication of the tender; this period may be reduced in cases of urgency justified by the purchasing entity. Parties participating in tenders must provide bid security and guarantees.

Contracts are awarded on the basis of the lowest price among the bids meeting the specified technical requirements. The criteria applied to the evaluation of tenders are defined in the invitation to tender and the bidding conditions; entities are not permitted to negotiate the provisions contained in the bidding conditions. Tenders must be submitted in two sealed envelopes: one containing the documentation to identify the bidder and a description of the required technical specifications of the product or service in question, and the second containing the price bid together with the bid security document. The envelope containing the price bid is opened only for tenders whose technical characteristics have been found to meet the specified requirements. All bids are opened in the presence of the participants.

The contracting agency must supply the non-winning bidders, in writing, with the reasons for the non selection of their bid. Within 72 days following the date of the award, the contracting agency must publish in the Official Journal the identity and details of the winning bid. Complaints against the award of a contract may be lodged with Ministry of Comptrollership and Administrative Development (SECODAM).

158. Government procurement legislation does not establish quantitative preferences for national over foreign suppliers or goods, since only national suppliers and domestic goods may participate in national public tenders. National suppliers are defined as enterprises or natural persons incorporated under Mexican legislation; domestic goods are those containing at least 50 per cent of domestic content.² International tenders, i.e. those in which domestic and foreign bidders may participate, may only be used where they are mandatory under international agreements; if market research by the tendering agency shows that there are no appropriate national suppliers; when the resources are obtained through foreign credits; or when the contract is specifically covered by international agreements. Moreover, the LAOP stipulates that foreign suppliers may be refused the right to participate in international tenders when an agreement has not been concluded with their country of origin, or that country does not grant reciprocal treatment to Mexican suppliers.

159. The following government agencies have responsibility for implementing government

²Domestic goods do not include foreign goods which are simply packaged, packed, labelled, diluted in water or any other substance which does not alter their characteristics, or assembled or put together in the country.

procurement legislation: the Ministry of Finance, SECODAM and SECOFI. There is no central procurement office in Mexico: federal government agencies, state corporations and Federal States are autonomous in the planning and carrying out of public purchases.

160. The Secretariat report for the previous Trade Policy Review of Mexico noted that prior authorization from SECOFI was required for public sector imports when the purchasing entity belonged to the central government; such authorizations were automatic for goods requiring no import licences. Under the LAOP no preferences are granted either in relation to taxes, customs duties, other charges, or restrictions and formalities related to import regulations. The authorities indicated that procurement is not subject to offset provisions, such as technology transfer or countertrade requirements.

161. Data for 1994 show that state corporations account for about 80 per cent of the total value of public procurement, while ministries and other federal agencies account for the remainder (Table III.6). The national oil company, PEMEX, accounted for the largest share, almost one third of the total, followed far behind by the federal power utility, CFE. Large purchases were also made by health-related entities (the Ministry of Health, the IMSS, ISSSTE and ISSFAM) and bodies associated with the provision of telecommunications and transport services (the Ministry of Communications and Transport, the Institute of Telecommunications, Telecommunications of Mexico, FNM, and ASA).³ No data were available on purchases by sub-federal agencies or by type of procurement.

162. Mexico is not a member of the Plurilateral Agreement on Government Procurement, but the authorities indicated that Mexico was willing to consider subscribing to any new agreement on government procurement.⁴ Mexico was not a signatory to the GATT Government Procurement Agreement.

163. Provisions on government procurement are contained in the NAFTA and Mexico's free-trade agreements with Bolivia, Costa Rica, and Colombia and Venezuela (G-3). The authorities have noted that those agreements were gradually extending international disciplines and transparency to a growing proportion of Mexico's government purchases.⁵

164. Under the NAFTA, which covers only purchasing by the Federal Government, both PEMEX and the CFE were required to open up 50 per cent of their procurement contracts to competition from Canadian and U.S. companies, subject to certain exclusions; 70 per cent of PEMEX and CFE procurement contracts must be opened after eight years, and after ten years all transitory procurement restrictions must be eliminated. Except for PEMEX and CFE, Mexico may set aside from the obligations of the NAFTA procurement contracts with a global annual value of up to US\$1 billion until the end of 2002. After that date, the value of set-asides will increase to US\$1.2 billion, and Mexico may then include PEMEX and the CFE contracts. The NAFTA Agreement provides for an independent review authority, which is mandated to receive complaints, conduct enquiries and make recommendations in the event of disputes. In Mexico, SEDOCAM constitutes such authority.

³See Chapter IV for further information on these telecommunications and transport related entities

⁴See also WTO document WT/REG4/1, 23 June 1995.

⁵SECOFI (1996), p. 81-2.

Table III.6
Public procurement, 1994
(US\$ million and per cent)

	Value	Per cent
Ministry of Communications and Transport	552.5	6.7
Mexican Institute of Communications	372.8	4.5
Ministry of Health	176.2	2.1
Ministry of Agriculture	165.4	2.0
Ministry of the Navy	111.3	1.3
National Institute of Statistics, Geography and Informatics	84.2	1.0
Other Agencies	213.0	2.6
All Federal Government Agencies	1,675.4	20.2
Petróleos Mexicanos (PEMEX)	2,683.0	32.3
Mexican Institute of Social Security (IMSS)	857.9	10.3
Federal Electricity Commission (CFE)	839.7	10.1
National Council for Education Promotion	747.7	9.0
Administrative Committee for the School Construction Federal Programme	436.7	5.3
National Commission for Free Textbooks	195.4	2.4
National Railroads of Mexico	139.8	1.7
National System for the Integral Development of the Family	88.9	1.1
Paper Producer and Importer Company	70.9	0.9
National Commission for Arid Zones	61.6	0.7
Industrialized Milk (CONASUPO)	60.4	0.7
State Workers Social Security Institute (ISSSTE)	57.7	0.7
Telecommunications of Mexico	52.5	0.6
Airports and Auxiliary Services (ASA)	49.5	0.6
Social Security Institute for the Armed Forces (ISSFAM)	47.7	0.6
Other enterprises	242.0	2.9
All state-owned enterprises	6,631.4	79.8
All public procurement	8,306.8	100.0

Source: Mexican authorities.