

Assessing Public Procurement Practice in Guatemala - 2017

General Description of the Public Procurement System

X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Comment: The General Directorate of State Acquisitions -DGAE- is the only authority for public procurement, the unit that belongs to the Vice Ministry of Fiscal Transparency and Acquisitions of the State of the Ministry of Public Finance, responsible for facilitating the procurement processes of the public sector. Its functions are to act as the governing body of the Public Sector Contracting and Acquisitions System and at the same time to regulate, coordinate and administer the State Contracting and Procurement Information System "GUATECOMPRAS" (<http://www.guatecompras.gt>); Design, manage, regulate and implement policies aimed at the development of GUATECOMPRAS; Establish procedures for the proper application of legislation on public procurement; Coordinate the purchase modality by open contract; And Decide the destiny of the privative funds of the Direction, for the strengthening, development and modernization of the systems, processes and procedures of public acquisitions; Periodically train public sector entities on procedures for public procurement; Certify the officials or employees, public responsible for the acquisitions, for the entities subject to the PPL; Require all public sector entities, through the GUATECOMPRAS system, their annual purchasing schedule, for their optimization and development of statistics and their modifications; Standardize the contracting processes of public entities; Generate and maintain updated statistics, for public access (Art. 15, Decree 57-92).

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Comment: Tenders are electronic. The electronic and digital information that must be published in the system shall include but shall not be limited to: calls to submit offers, receipt of offers, clarifications, disagreements, answers, modifications, offers, awards, contracts and their modifications, variations or extensions, surety bonds and any document that supports the acquisition file until the completion of the acquisition process. No public official shall limit, alter or restrict the public information that the GUATECOMPRAS system must contain.

The obligated subjects in accordance with the PPL, will publish in the GUATECOMPRAS system the information that the current regulations establish as mandatory requirements, in the terms established in the norms, regulatory dispositions and the respective resolutions. The use of electronic forms is mandatory in all public procurement processes (Art. 4 bis, Decree 57-92).

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

Comment: The Public procurement system has a main website <http://www.guatecompras.gt> which is mandatory in all procurement processes; but there is also the website to the registry of suppliers which was recently created <https://rgae.gob.gt>.

X. If there is a register of suppliers, what is the number of registered suppliers in it?

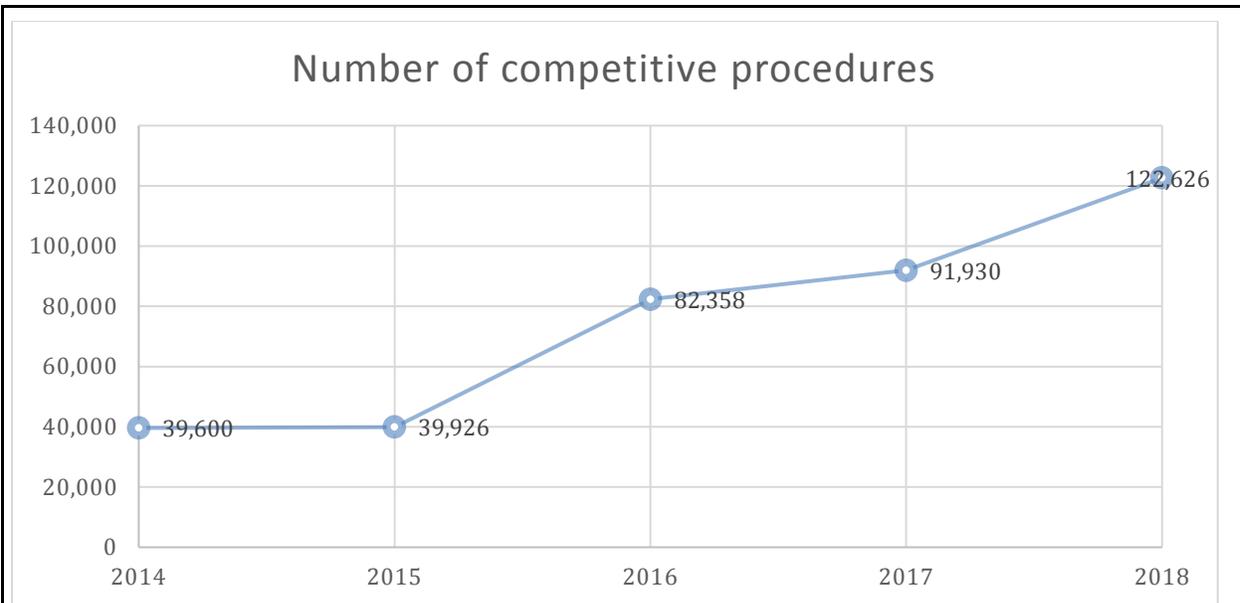
If possible, please provide a comparison with several (at least 5) previous years?

Comment: Until November 2018 there was no unified registry of state suppliers, with the reforms that were made to the contracting law by means of decree 9-2015, establishing the creation of the General Registry of State acquisitions. This registry is still in the process of unifying the databases that existed. One of them was the Guatecompras registry that contained all Guatemalans who have a tax identification number (NIT), around 8 million people. The second record that existed was that of prequalified works of the Ministry of Communications where according to the latest updated data for September 2018 there were a total of 1,273 prequalified companies. Finally, the Secretariat of Planning and Programming of the Presidency -SEGEPLAN- operates the Registry of Prequalified Consultants based on Article 72 of Decree 57-92, Law on Government Procurement, with a total of 3,072 pre-qualified qualified consultants.

X. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

Comment:



2018:

- Lease or Acquisition of Real Estate (Art.43 paragraph e) 2,651
- Leases for Quotation (Art.43 clause d) 69
- Leases by Public Bidding (Art.43 clause d) 3
- Direct purchase with electronic offer (Art. 43 LCE Section b) 103,292
- Open Contract (Art. 46 LCE) 14
- Quotation (Art. 38 LCE)- 5,465
- Public Tender (Art. 17 LCE) -1,566
- Procedures regulated by article 54 LCE 9,547

2017:

- Lease or Acquisition of Real Estate (Art.43 paragraph e) 2,389
- Leases for Quotation (Art.43 clause d) -36
- Leases by Public Bidding (Art.43 clause d) -5
- Quotation (Art. 38 LCE) -5,526
- Donations (Art. 1 LCE) 28 39,852,401.83
- Public Tender (Art. 17 LCE)- 1,528
- Procedure Regulated by Art. 54Bis (Reverse Electronic Auction)- 2
- Procedures regulated by article 54 LCE 2,555

2016

- Direct purchase with electronic offer (Art. 43 LCE Section b) 76,771
- Open Contract (Art. 46 LCE) 13
- Quotation (Art. 38 LCE) -4,490
- Donations (Art. 1 LCE) 6
- Public Tender (Art. 17 LCE) -879
- Procedure Regulated by Art. 54Bis (Reverse Electronic Auction) -1
- Procedures regulated by article 54 LCE 198

2015

- Direct purchase with electronic offer (Art. 43 LCE Section b) 34,078

- Open Contract (Art. 46 LCE) 9
- Quotation (Art. 38 LCE) -4,200
- Donations (Art. 1 LCE) 31
- Public Tender (Art. 17 LCE) -753
- Procedures regulated by article 54 LCE 855

2014

- Direct purchase with electronic offer (Art. 43 LCE Section b) 32,643
- Open Contract (Art. 46 LCE) 5
- Quotation (Art. 38 LCE) -4,787
- Donations (Art. 1 LCE) 43
- Public Tender (Art. 17 LCE) -1,053
- Procedures regulated by article 54 LCE 1,069

X. What is share of public procurement in the country's GDP?

Comment: In 2018 the spending in public procurement was Q [22,658,127,367.23](#) in 2018 which represents a **11.6%** of a GDP of Q.262,623,000,000.30 (https://www.banguat.gob.gt/cuentasnac/pib2001/3.1_Gasto_constante.pdf).

X. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

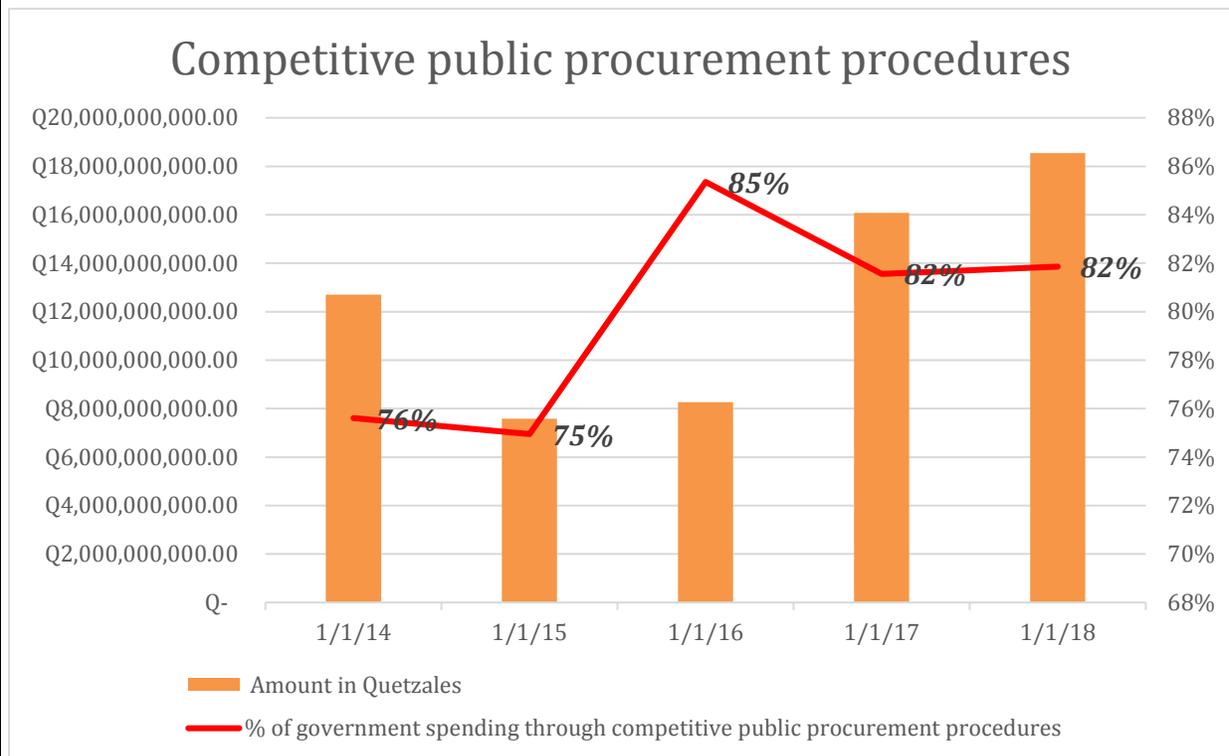
Comment: There is no monetary threshold for single source procurement.

Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment:



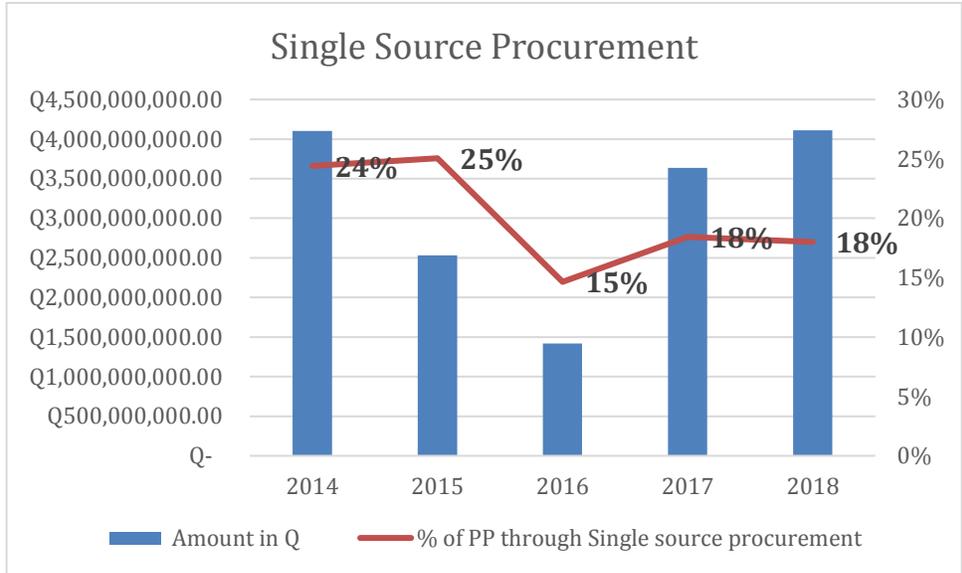
X. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of

this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

Comment:

This first data includes all non-competitive procurement process:



X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? _____

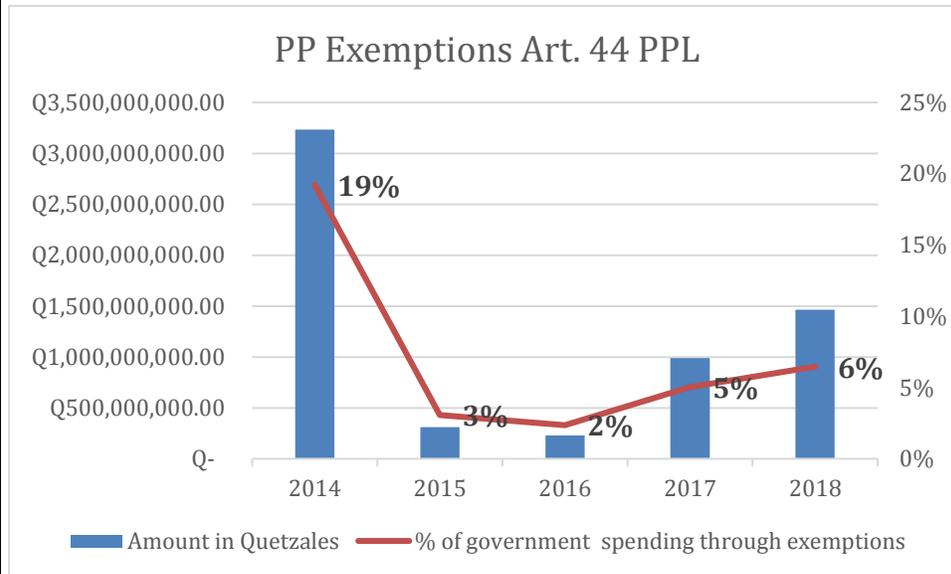
Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Comment: N/A

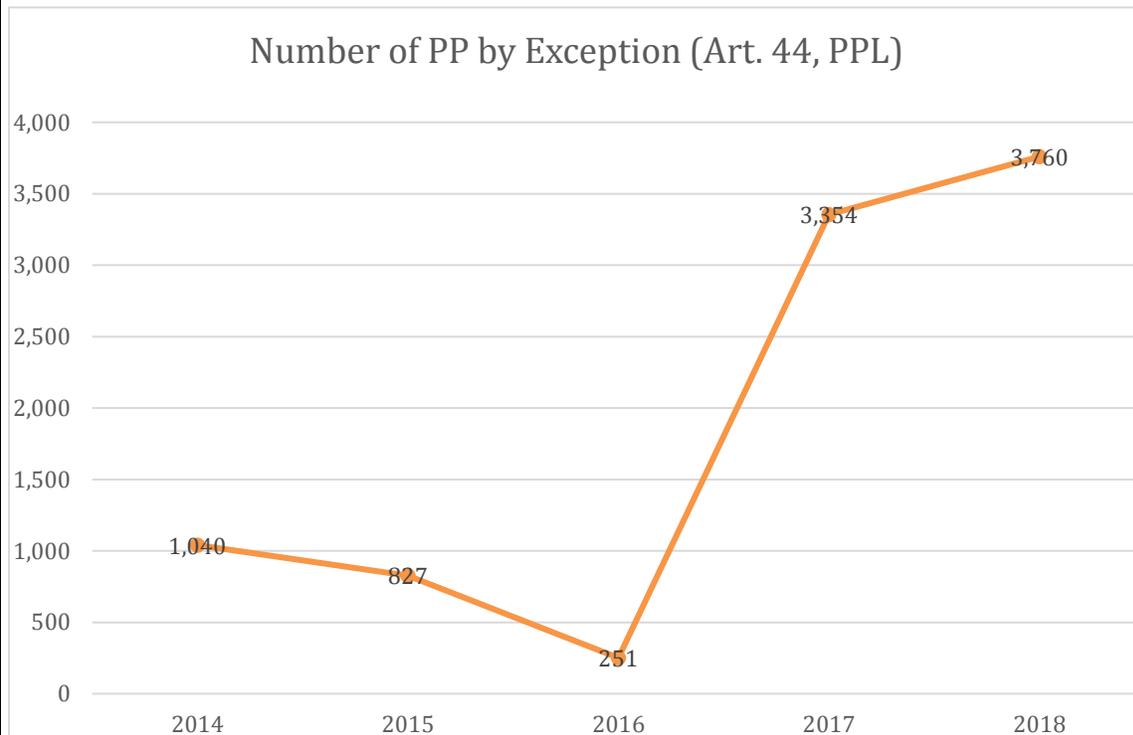
X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : ___ share: ___

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Volume and share of exemptions 2014- 2018:



Number of procurement process that were noncompetitive exemptions:



The states of calamity are decreed by the executive and approved by the Congress based on the Constitutional Law of public order and the PPL specified in Article 44 paragraph a) That, the bidding or the quotation in the hiring in dependencies and public entities, according to the procedure established

in the regulations of this Law, the acquisition of goods, supplies, works and services essential to solve situations derived from the states of exception declared in accordance with the Law of Public Order, which have caused the suspension of public services or that such suspension is imminent; On June 4, 2018, the Government of Guatemala presented to the Congress of the Republic, Government Decree 1-2018, declaring a state of public calamity in three departments for the tragedy caused by the eruption of the Fire Volcano. This may be one of the explanations for which the number of purchases by exception was raised in 2018.

Another circumstance is that the year 2019 is an election year so it applies in subparagraph f) where it specifies that: f) The Supreme Electoral Tribunal may, during the fiscal year in which elections and popular consultation processes take place, directly, the public acquisitions directly linked to the realization of these events. "

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: _____ share: _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: N/A

Competitiveness

X. What is the average number of bidders? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

Comment: There is no information register for the average number of bidders per year, the only information available is the TOP of Suppliers Awarded by Entity and Buyer Unit, List of Adjudications by Tax Identification Number of Provider, List of Tax Identification Number of Suppliers by Range of Amounts and Year, List of Offers Submitted by Tax Identification Number of Provider, List of Contracts Subscribed by Tax Identification Number of Provider.

If you check the bids one by one manually you could make an estimate average of bidders, usually in most bids there between 2-4 bidders.

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? _____

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

Comment: This information is not available.

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? ____

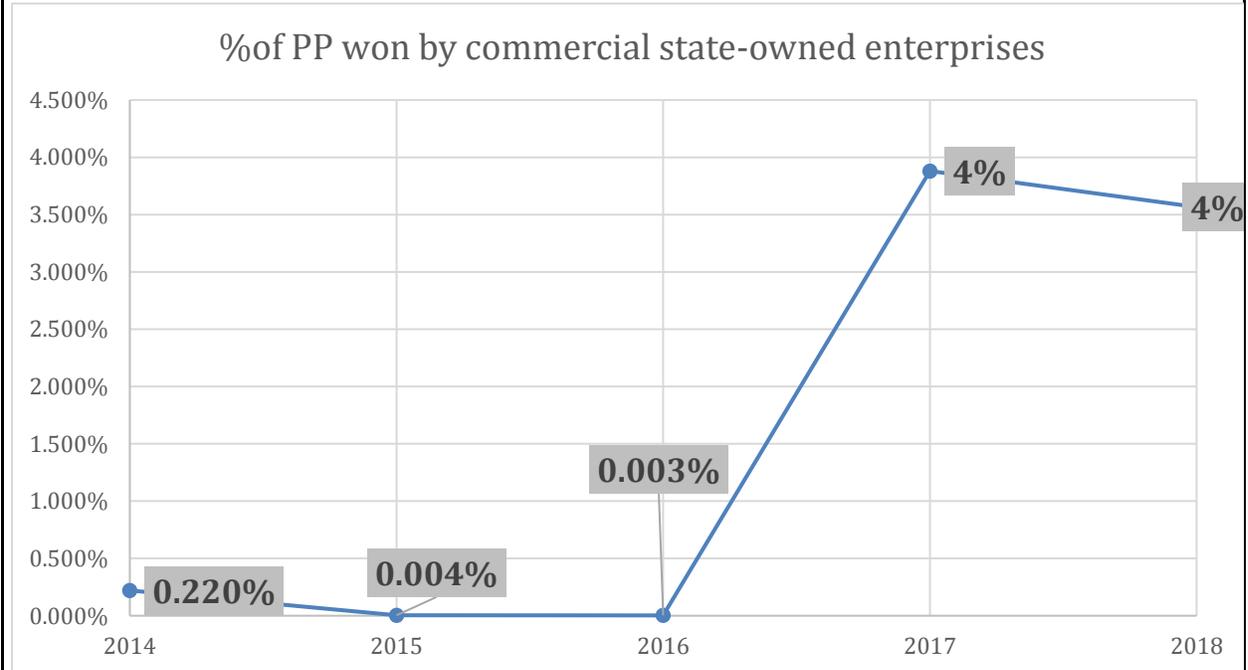
If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

Comment: This information is not available.

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? ____

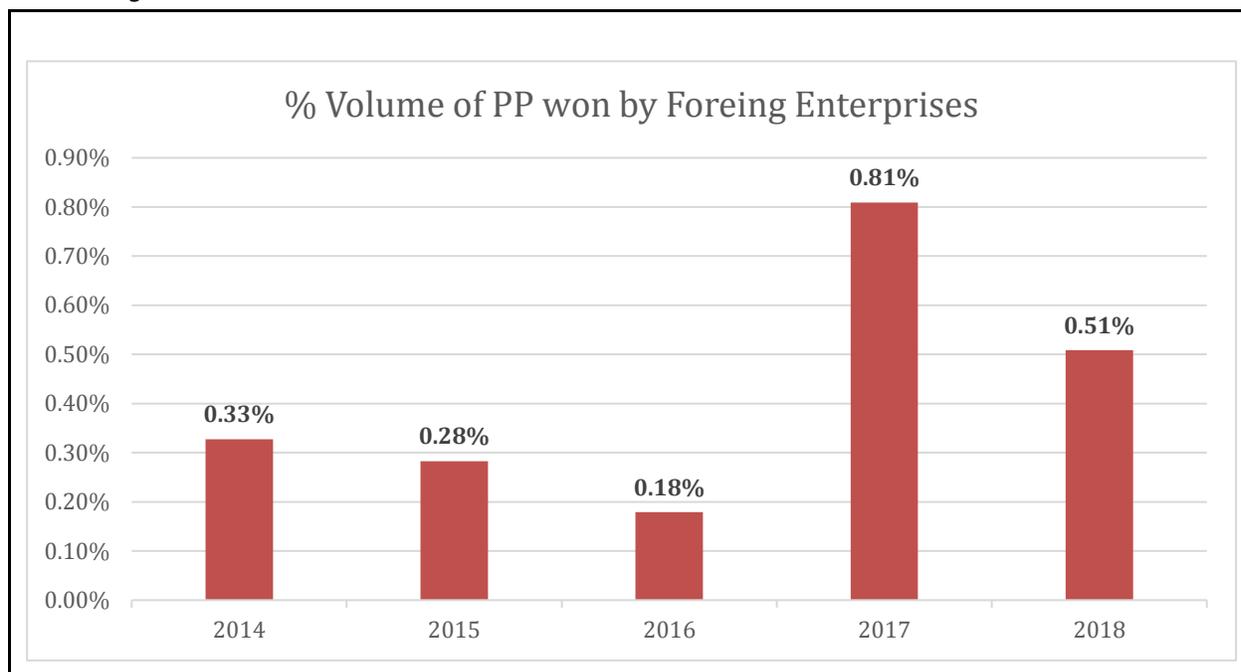
Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

Comment:



X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.



X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? _____

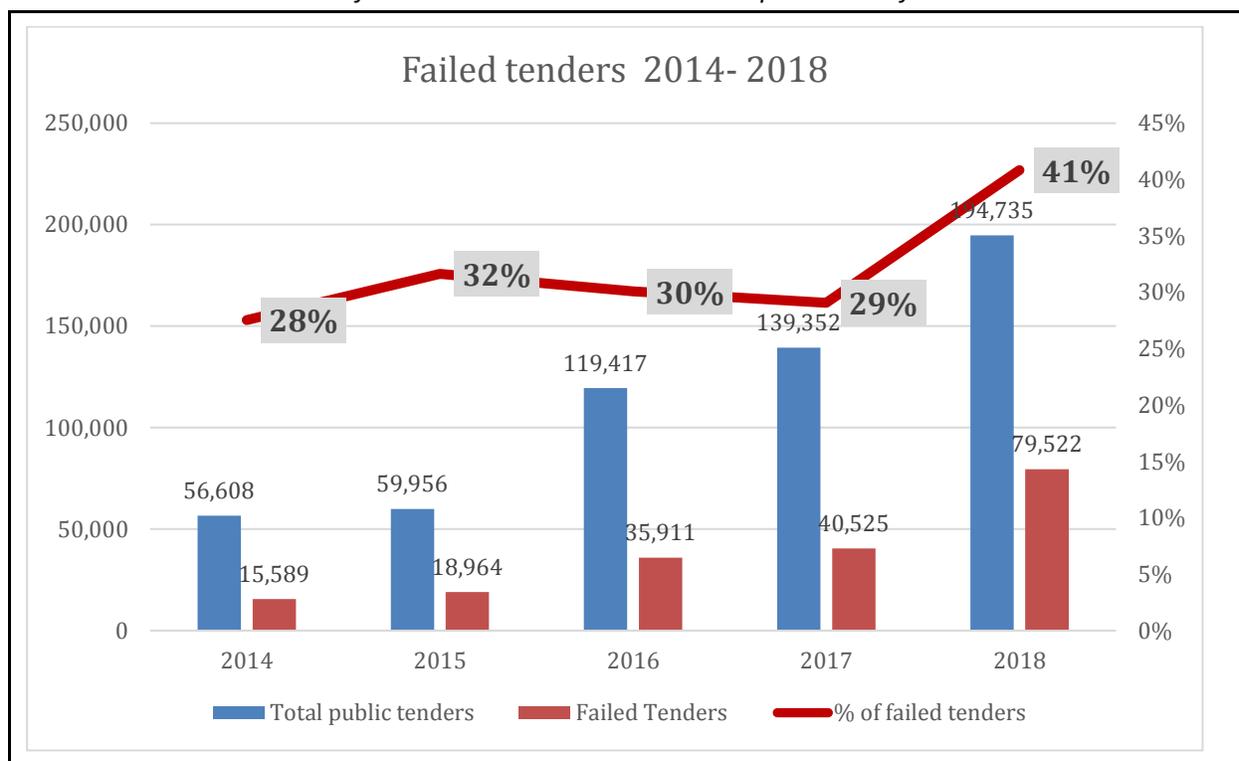
If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This information is not available.

Efficiency

X. What is the share (%) of failed tenders in the total number of tenders? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.



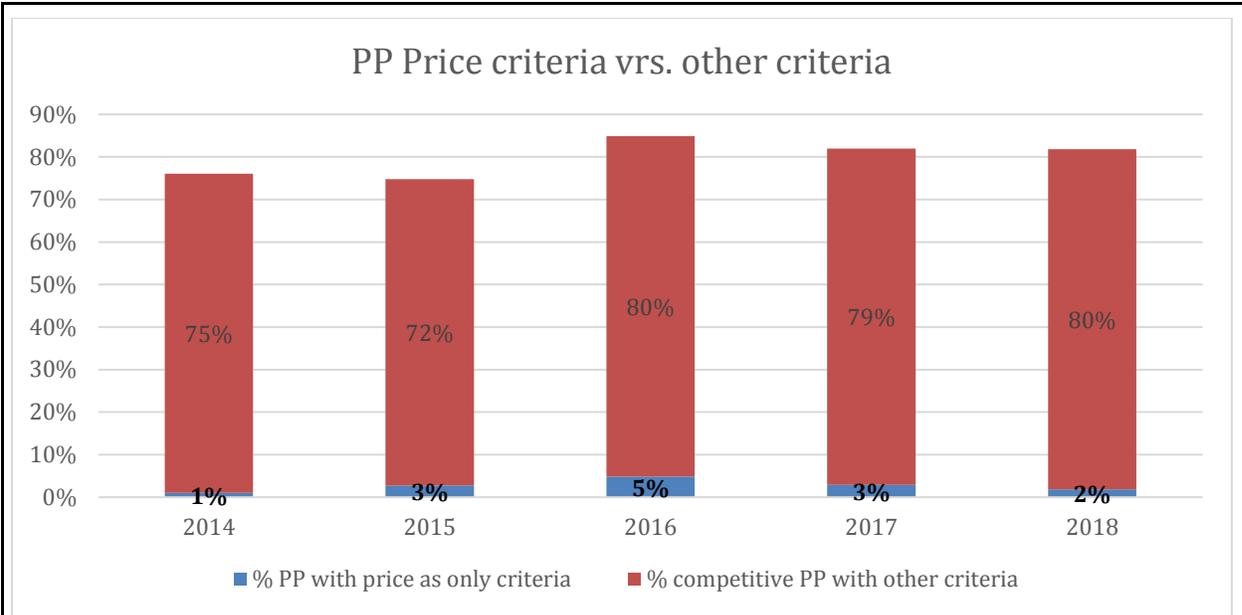
X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? __

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This information is not available.

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? ____

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.



The modalities of purchase in which the price is the only criterion is the Open Contract (Article 46, PPL) and the Reverse Electronic Auction (Article 54 bis, PPL). This last modality was incorporated into the reforms of decree 9-2015 and only 3 public acquisitions have been made for this modality.

X. What is the share (%) of non-executed contracts in the total number of contracts? ____

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Comment: Information on contracts is not available to the public.

Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment: The dispute settlement mechanism that is regulated by the PPL is the nonconformities, People who are dissatisfied with any act that contravenes the procedures regulated by the PPL, its regulations or the regulations of the registries, can present their nonconformities through Guatecompras.

The non-conformities related to the award of the Board can only be presented within a period of five (5) calendar days, after the publication of the award in GUATECOMPRAS. Any person with a Tax Identification Number can present a nonconformity as a "provider". People who belong to an entity comptroller of Guatecompras can also present nonconformities. In addition to the Comptroller General of Accounts may also be entities comptrollers of Guatecompras civil society organizations, the media, chambers and others.

The user supplier or controller enters Guatecompras, once inside the system, he exposes in writing the reasons for the disagreement and optionally attaches proof or support documentation. For each disagreement that is presented, an electronic file is generated that is linked to a certain contest or to a specific purchasing entity.

When the nonconformist finishes writing the nonconformity, a notice of the same is sent instantaneously and automatically by email to all the users of the entity receiving the nonconformity, the nonconforming entity, the comptrollers and the administrator of the Guatecompras system. A copy is also sent to the subscribers of the different newsletters. Additionally, nonconformities can be seen by anyone who enters the portal.

In the electronic file of the disagreement is then incorporated the response of the entity receiving the nonconformity, the comments that could make other users who express interest in the file, the writings of the parties and other documents that are part of the record of the nonconformity.

The receiving entity of the nonconformity can: (a) accept totally or partially the nonconformity and in this case correct its actions; or (b) reject the nonconformity. In both cases the response is informed through Guatecompras.

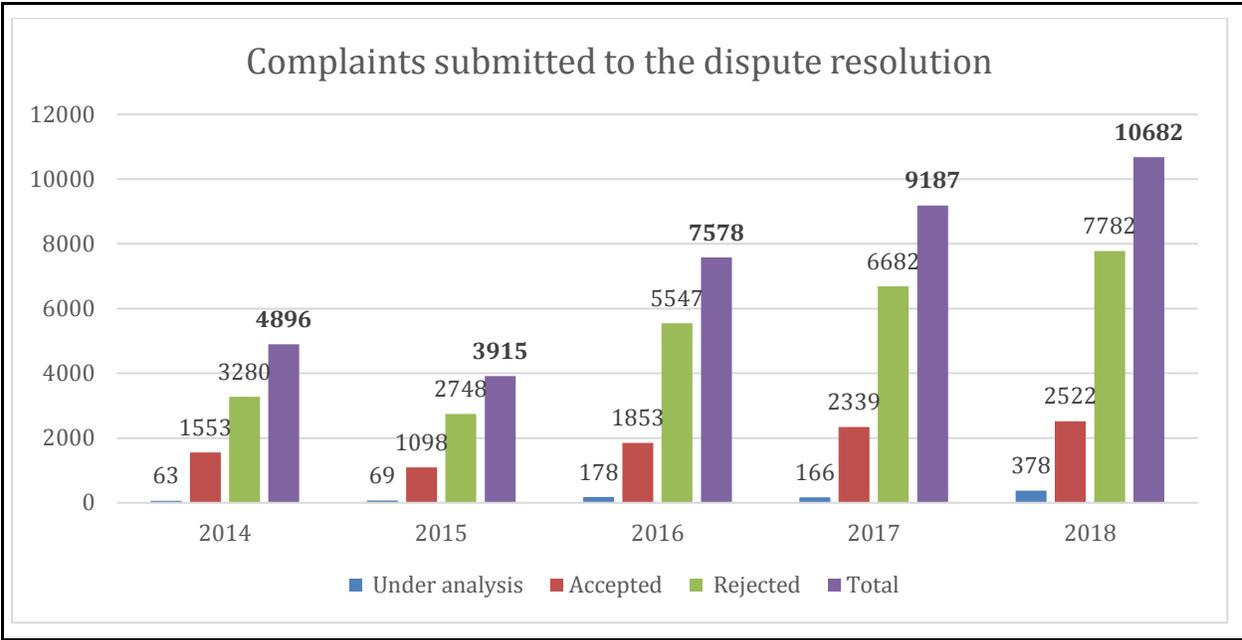
The record of the disagreement cannot be deleted or altered by any person. If a person makes an error in submitting a writing, the way to amend it is adding the correct letter indicating that the previous one is left without effect. Both writings remain in the system for an unlimited time.

The major problems with nonconformities is that by the PPL the entities that are running the tender are obliged to answer, but the answers usually are superficial and most of them do not take actions, some are just mere protocol answers. And the vast majority are rejected.

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)? __

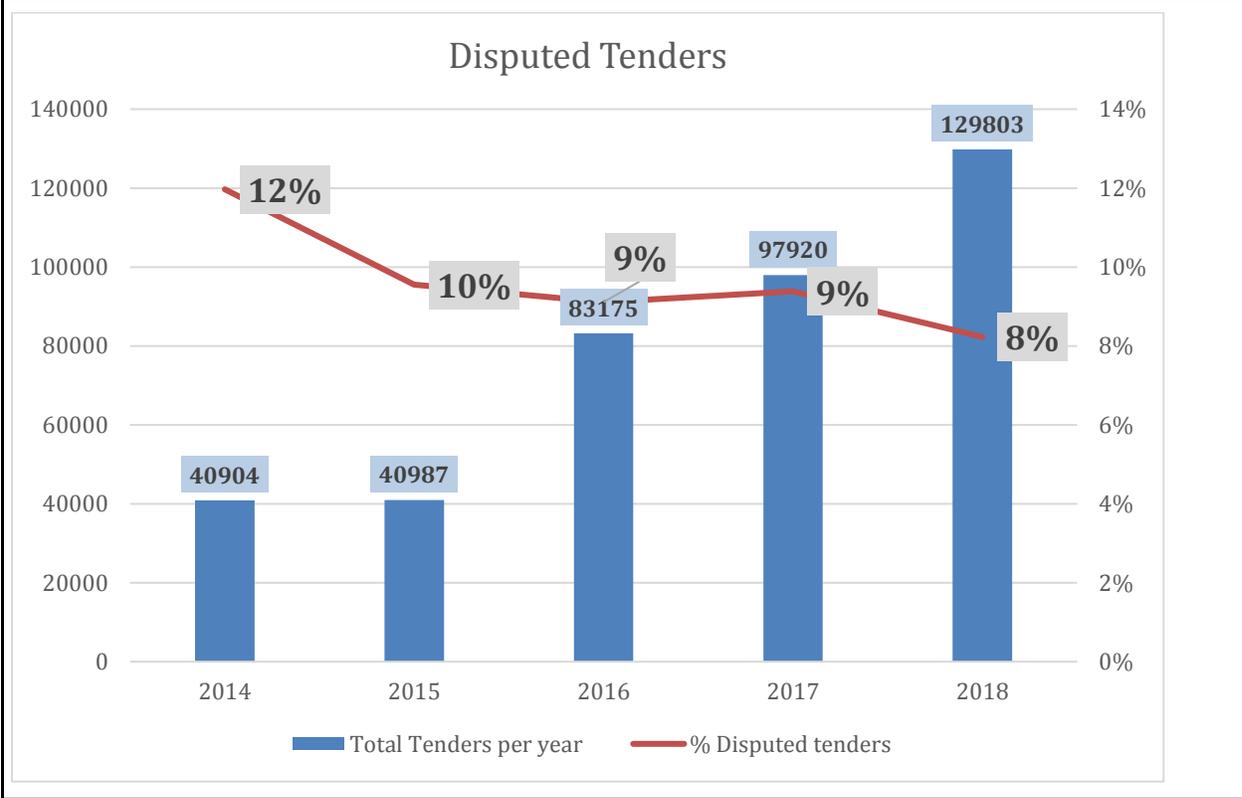
If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment:



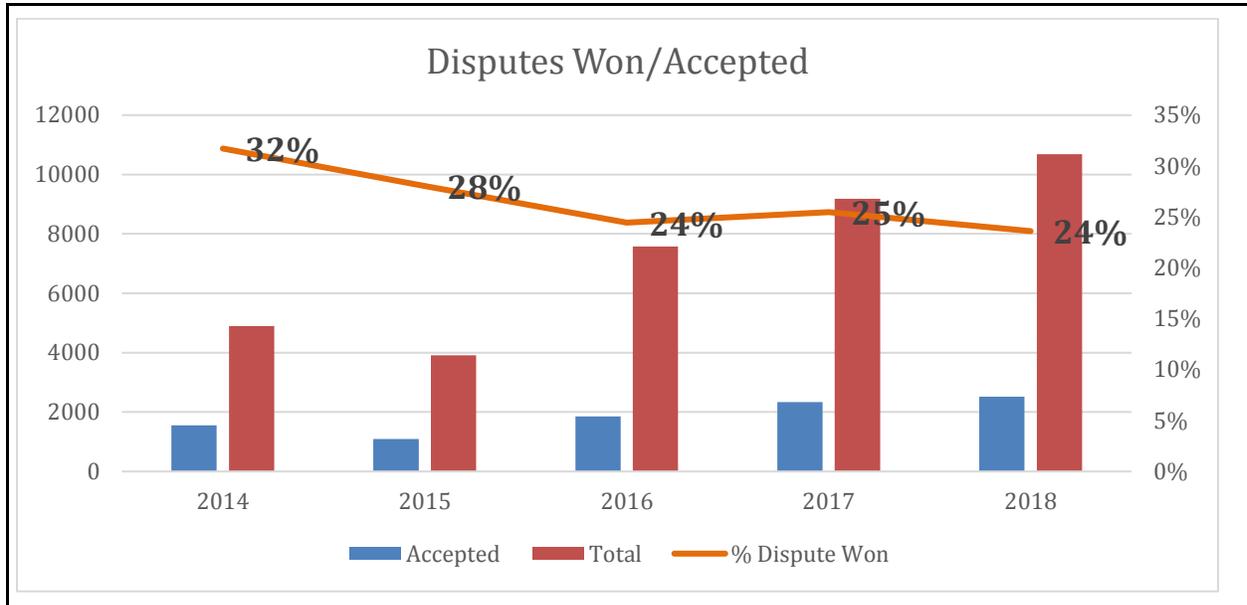
X. What is the share (%) of disputed tenders in the total number of tenders? ____

If possible, please provide an analysis of this data point in 2-3 sentences.



X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? ____

If possible, please provide an analysis of this data point in 2-3 sentences.



X. What share of decisions of the Dispute Resolution Board have been taken to courts? ____

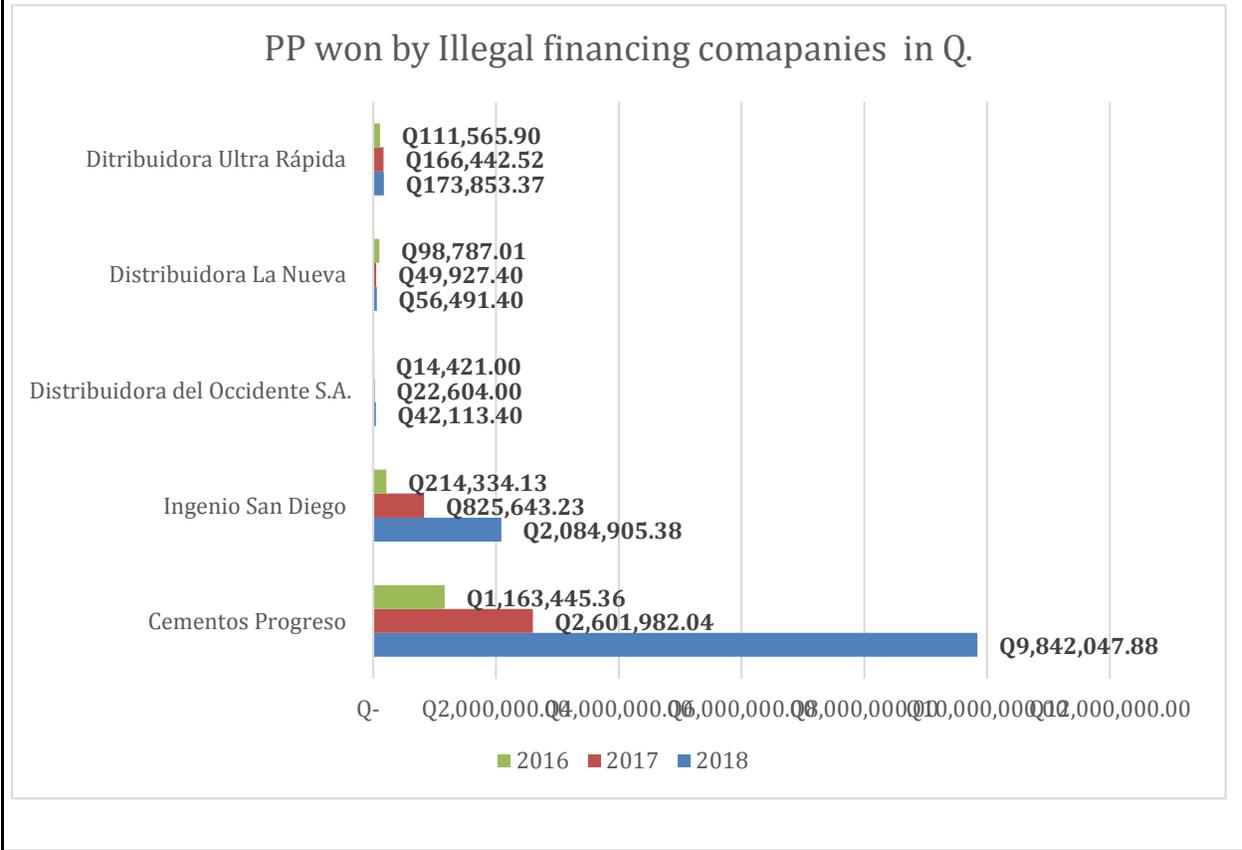
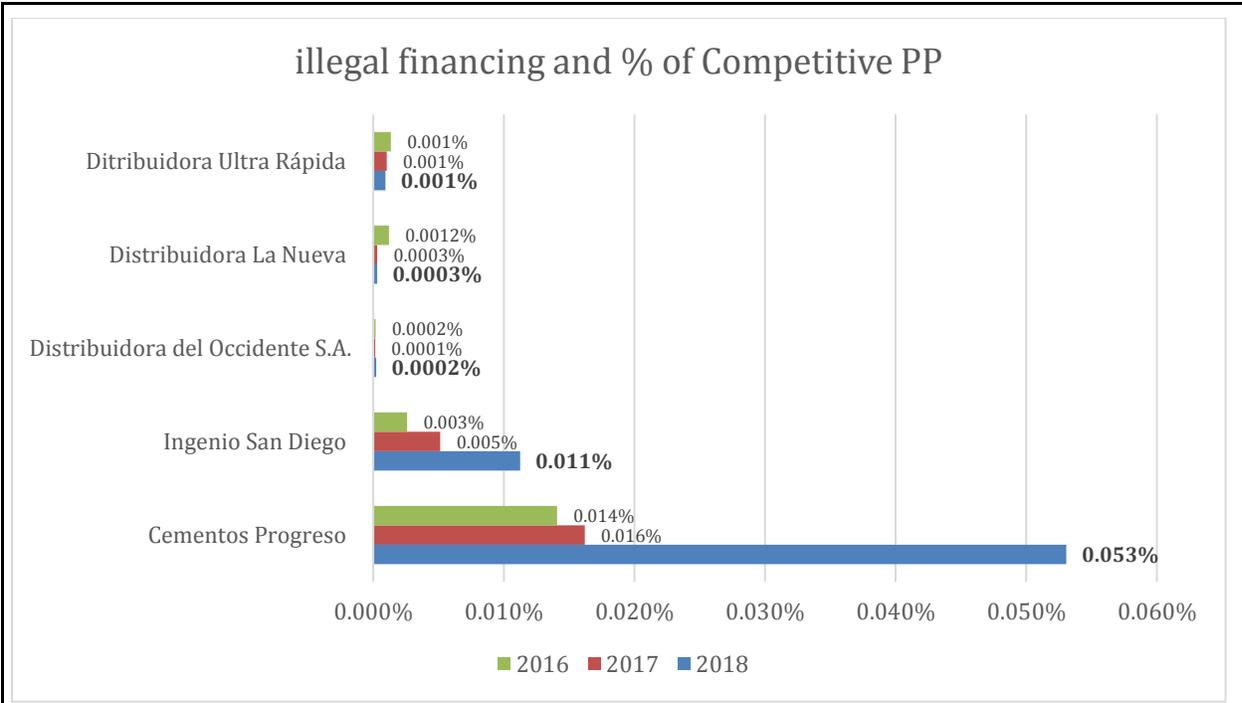
If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This information is not available. Most of the disputes are not taken to courts.

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

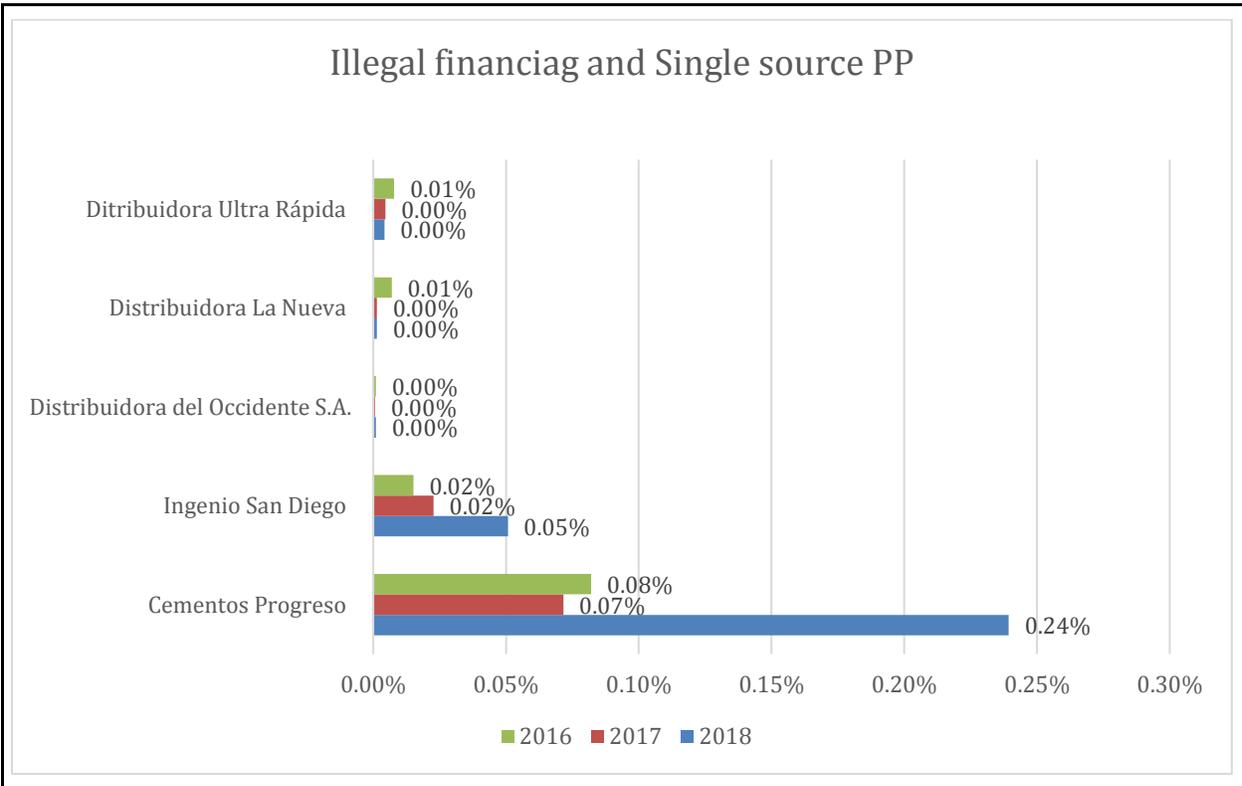
If possible, please provide an analysis of this data point in 2-3 sentences.

Comment:
 The Public Prosecutor's Office (MP) and the International Commission Against Impunity in Guatemala (CICIG) presented the investigation of the FCN-Nación illegal financing case, the current government, in which the anonymous contributions received by the FCN-Nación party were revealed. part of another group of entrepreneurs. Of the companies identified in this research, the% analysis is done in terms of the value of the contracts that were given to these companies that illicitly financed the current government party of 2016-2018.



X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?



Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

There is a section in Guatecompras that is called statistical information, where there is a limited list of information on public procurement in which the search variables are pre-established. That is the only information that can be downloaded in bulk in the formats: CVS, XLSX and XML.

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

The problem with data quality here in Guatemala is that there is no control mechanisms, to ensure data quality is maintained. The problem is that each purchasing unit uploads the documents without necessarily having an open data format. Many times, the documents are in pdf or in an image format where the text cannot be used. Neither are compiled, so to search for documents you have to access

different sections in the same contest in Guatecompras.

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents							
Type of document	Is this information required to be public by law?	Is this information publicly available?	Is the database complete?	Electronic	Machine-readable *	Free of charge	Exact format
PPL documents	YES	YES	YES	YES	YES	YES	Word
Annual public procurement plans	YES	YES	NO	YES	NO	YES	Image
Notices of intended procurement	YES	YES	YES	YES	NO	YES	PDF
Amendments to tender documentation	YES	YES	NO	YES	NO	YES	PDF
Tender candidate applications	YES	YES	YES	YES	NO	YES	WEB Page
Bids	YES	YES	YES	YES	NO	YES	PDF
Tender commission decisions	YES	YES	YES	YES	NO	YES	SCANNED PHOTO
Information on subcontractors	NO	NO	NO	NO	NO	N/A	N/A
Procurement contracts	YES	YES	YES	YES	NO	YES	SCANNED PHOTO
Contract amendments	YES	YES	YES	YES	NO	YES	SCANNED PHOTO

Contract performance information	NO	NO	NO	NO	NO	N/A	N/A
Payment receipts	NO	NO	NO	NO	NO	N/A	N/A
Inspection and quality control reports	NO	NO	NO	NO	NO	N/A	N/A
Complaints	YES	YES	YES	YES	NO	YES	PDF
Dispute resolutions	YES	YES	YES	YES	NO	YES	PDF
Internal and external audit reports	NO	NO	NO	NO	NO	N/A	N/A

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment: Not all entities submit documents in the same format, it is important to say that most documents of the contracting process are in PDF or scanned image. Only the statistics section is the one that contains data in CVS and XML format, which has the data compiled according to certain pre-established variables of the contracting at a general but not specific level.

X. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

The registration of information on public procurement processes is available only from 2004 onwards.

Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: Deficiencies in the use of the Guatecompras system by the institutions of the central government administration, decentralized and autonomous entities.

Recommendation: It is necessary that the Comptroller General of Accounts of the Nation take action to make all obligated subjects comply with using the Guatecompras system, but also deepen the quality control with which it is being used.

2.

Gap: Difficulty on the part of the governing institutions to finish implementing the transitory articles of the reforms of 2015 (Decree 9-2015) and the entities to be able to make purchases based on this new regulation.

Recommendation: That the Ministry of Public Finances provides both the governing entity and the purchasing entities with training and human and capital resources to be able to enforce what is in the law. This was accompanied by an internal and external oversight body that was solely responsible for ensuring the proper transition and compliance with the reforms.

3.

Gap: The lack of a civil service system in most public institutions, which, among other things, translates into a high turnover of human resources; the practices of nepotism and the low offer of formal training in the subject, create spaces for improvisation in procurement processes to which the efficient use of the Guatecompras system does not escape.

Recommendation: Reforms to the civil service legislation that allows to strengthen the capacities of human resources, especially in terms on the public procurement

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge: Strengthen the newly created Register of State Suppliers, to guarantee transparency and

improve the efficiency of public contracting processes.

Recommendation: To verify all the documents of previous registers and make sure that all the companies and individual consultants that enter this new register have all the legal documents needed, that they do not have any impediment or prohibition to participate in public tenders and that all this information could be verify by independent persons and by civil society in open data formats.

2.

Challenge: Guatemalan State entities to buy and contract using modalities other than direct purchase and exceptions, entities suffer severe dependence on both of these modalities.

Recommendation: The public contracting system has recently been reformed, in the light of several major cases of corruption and yet, it has been seen that this is not the only solution, apart from the specific law for public procurement, it should consider comprehensive reform and structural system, including the civil service.

3.

Challenge: Serious weakness of the servants and public officials responsible for applying the current law to purchases and hiring in Public procurement processes.

Recommendation: The vast majority of public officials and employees responsible for procurement require a serious and in-depth training program on the application of the law, the use of digital platforms, including the registration of suppliers and Guatecompras, as well as the importance of publication in open data format

X. What are the 3 major strengths / successes of the country's public procurement system as a whole? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

The creation of the General Registry of Acquisitions of the State (RGAE), address attached to the Ministry of Public Finance and which will be responsible for the registration of individuals and companies that want to provide goods and services to the State through Guatecompras

2.

The incorporation of the modality of purchase of the electronic auction, which facilitates that the processes are competitive in real time

3.

The Ministry of Public Finance (Minfin) with Government Agreement 112-2018 updated the organic regulation to comply with the reforms to PP Law and created the Vice Ministry of Fiscal Transparency and Acquisitions.