

Public Procurement Law 244 / 2021 Enhancing Transparency and Accountability in Public Procurement

SEPTEMBER 2021





Sessions on the Public Procurement Law 244/2021

Six topics covering the main features of the Law:

1. Enhancing Transparency and Accountability
2. Encouraging competition and SMEs participation
3. Public Procurement for Sustainable development
4. Regulatory Function in Public Procurement: The role and responsibilities of the new Public Procurement Authority
5. Review and complaints in Public Procurement: Towards an efficient system and the mandate of the new Review and Complaints Authority
6. E-procurement and Open data

Outline

-
- **01** Public Procurement and the high cost of corruption
 - **02** The new Public Procurement Law 244/2021

SECTION 1

**Public Procurement and the high
cost of corruption**

What is Public Procurement?

- Goods
- Works
- Services

Tax Payers'
Money



Best Value
for Money



The high cost of corruption

- Although the costs of corruption are difficult to measure, due to its clandestine nature, **corruption in public procurement has an enormous negative impact on government spending.**
- This leads to governments paying an artificially high price for goods, services and works because of market distortion.
- Various studies show that an **average of 10 - 25% of a public contract's value may be lost to corruption.** Applying this percentage to the total government spending for public contracts, it is clear that hundreds of billions of USD are lost to corruption in public procurement every year (UNODC).
- **Corruption in public procurement isn't just about money.** It also **reduces the quality of work or services; it can cost lives and erodes trust in the State.**
- Also, corruption in public procurement **undermines competition in the market and impedes economic development, opportunities for growth and recovery especially for developing countries.**

MENA region lagging behind the global average for companies that expect to give gifts to secure contracts.

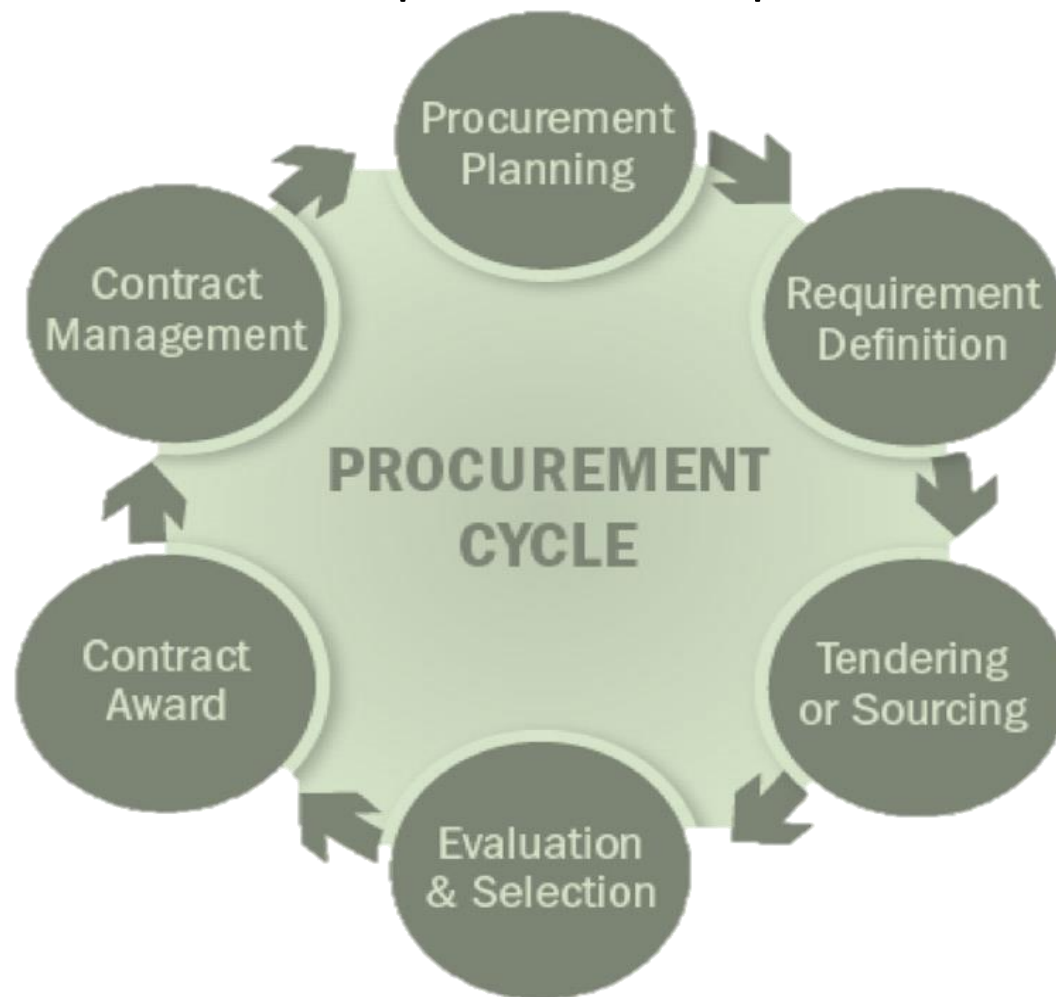
Percentage of companies surveyed about dealing with government that:



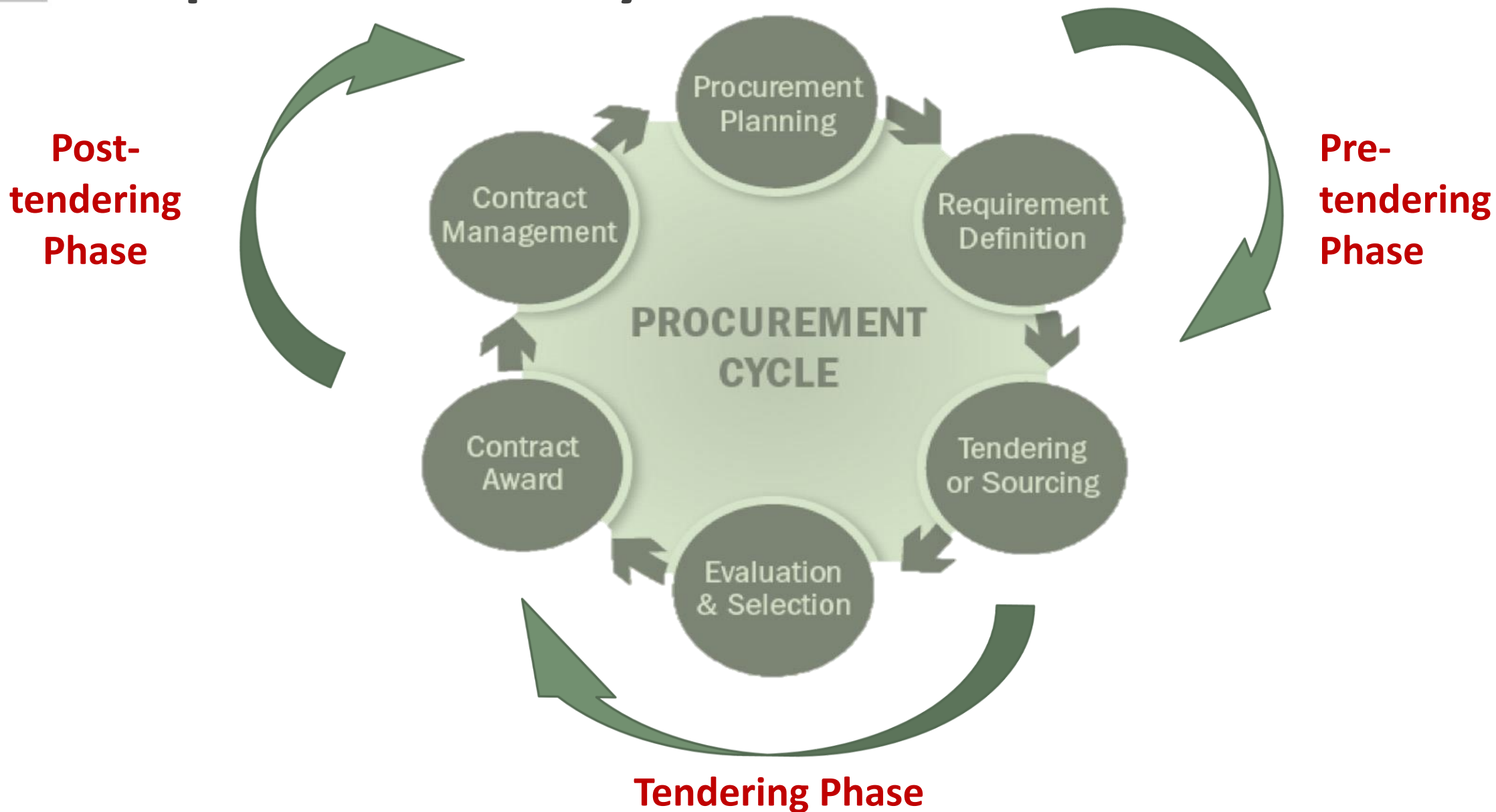
Source: [World Bank Enterprise Surveys](#)

The procurement Cycle

To understand corruption in public procurement, it is important to understand the procurement process



The procurement Cycle



Public Procurement as a major risk area for corruption

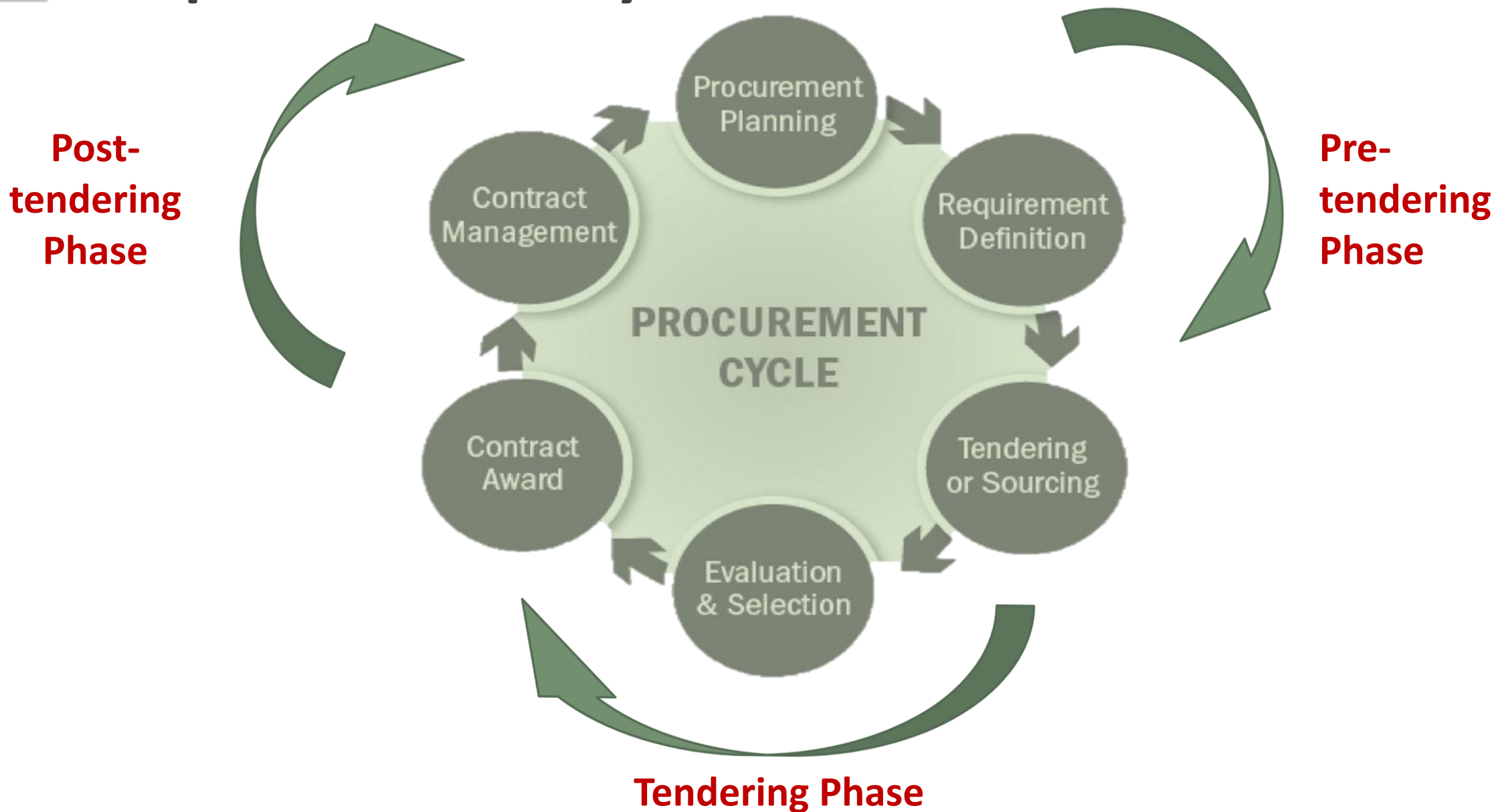


Public Procurement as a major risk area for corruption

Question 1:
What are
the areas of
corruption
risks in PP



The procurement Cycle



Public Procurement as a major risk area for corruption

Pre-Tender Phase

- دفاتر الشروط - TORs
- Specifications setting - وضع المواصفات
- الشروط التأهيلية - Qualification
- Choice of procurement method - اختيار طريقة التعاقد



Public Procurement as a major risk area for corruption

Tender Phase

- Announcement - مدة الاعلان
- Bid Opening - جلسة فتح العروض
- Evaluation of Tenders - تقييم
العروض



Public Procurement as a major risk area for corruption

Post-Tender Phase

- Variations - التعديلات على العقد
- Acceptances - الاستلام



Public Procurement as a major risk area for corruption



Red Flags of corruption

Pre-tendering red flags

- Purchase of unnecessary or inappropriate items (Corruption)
- Manipulation of procurement thresholds
- Unreasonable prequalification requirements
- Ambiguous, incomplete or misleading contract specifications
- Contract specifications are too narrow or too broad

Red Flags of corruption

Tendering red flags

- Failure to make bidding documents available
- Short or inadequate notice to bidders
- Unusual bidding patterns (Collusive bidding)
- Apparent connections between bidders (Collusive bidding)
- Bidder not listed in business or telephone directories (Collusive bidding)
- Multiple contract awards to the same company (Corruption)
- Qualified companies fail to bid (Excluding qualified bidders, collusive bidding)
- Rotation of winning bidders (Collusive bidding)
- Unreasonably high bids (Collusive bidding)
- Unreasonably low bids (Unbalanced bidding, corruption)
- Non-transparent bid-opening procedures (Manipulation of bids, excluding qualified bidders, corruption)
- Disqualifications that are poorly supported (corruption)
- Winning bid is very close to budget or estimate (corruption)
- Long unexplained delays in contract award

Red Flags of corruption

Post-Award red flags

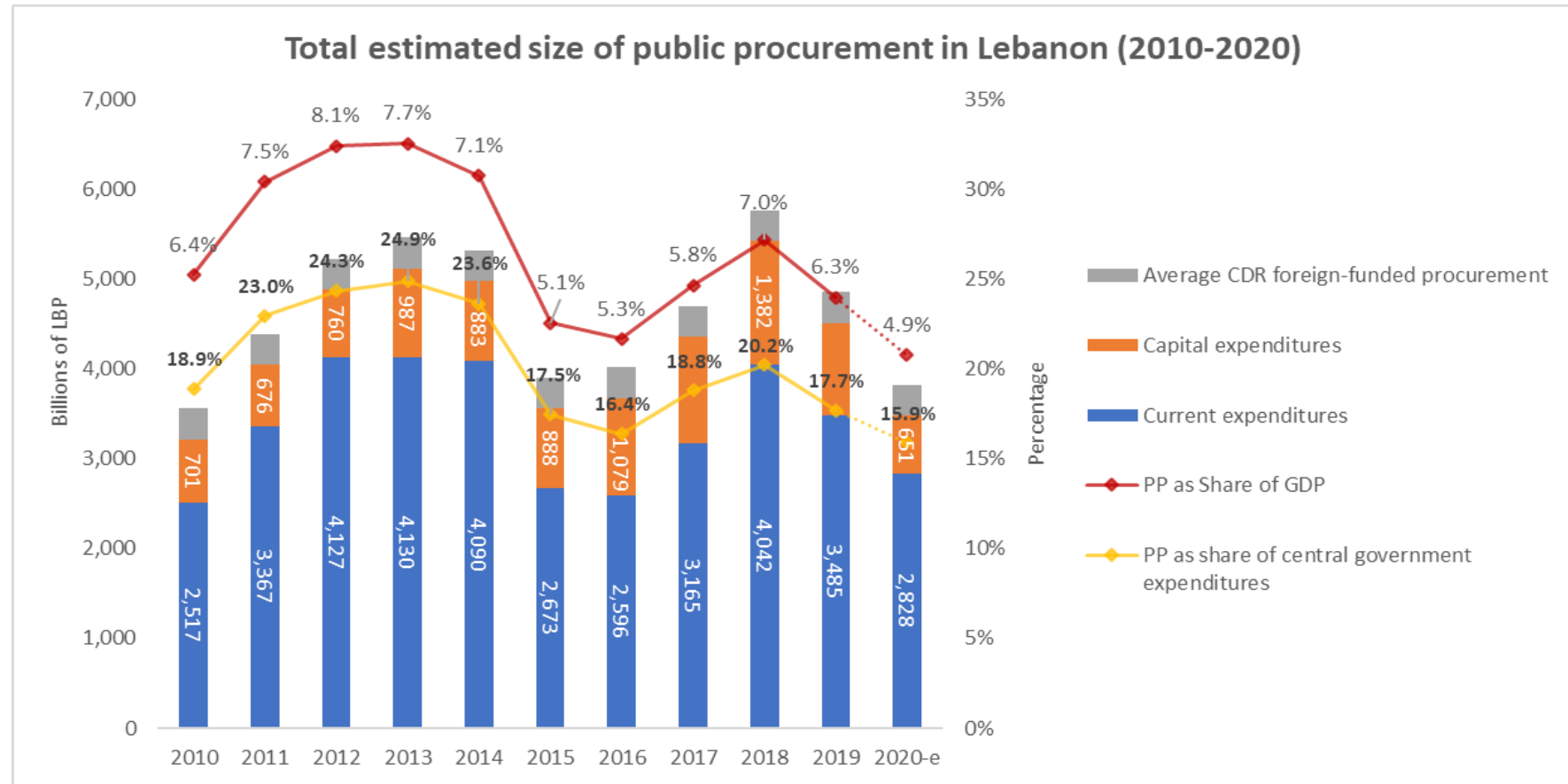
- Use of questionable agents or subcontractors (Corruption)
- Continued acceptance of poor quality goods or works (Corruption)
- Delivery of poor quality goods, works or services (Failure to meet contract specification)
- Questionable contract amendments (change orders) (Changes in contract to increase price, corruption)
- Questionable invoices (False inflated or duplicated invoices, corruption)
- Payment of unjustified high prices (False inflated or duplicated invoices, corruption)

SECTION 2

**The new Public Procurement Law
No 244 dated 19 July 2021**

Public Procurement accounts for 20% of central Government expenditures

- **Governments are the largest buyers in economies**, offering opportunities to enhance competition and ensure development.
- International reports and global government data show that **low-income countries have the highest share of public procurement in GDP (14.5 %)** followed by **upper-middle income countries (13.6%)** (1). It represents **14% of GDP in the EU** (2).
- **In Lebanon**, procurement accounts on average **20% of central government's expenditures and 6.5% of GDP at central level** (excluding public institutions and municipalities), an estimate of **US\$3.4 billions** (2019) (3)..



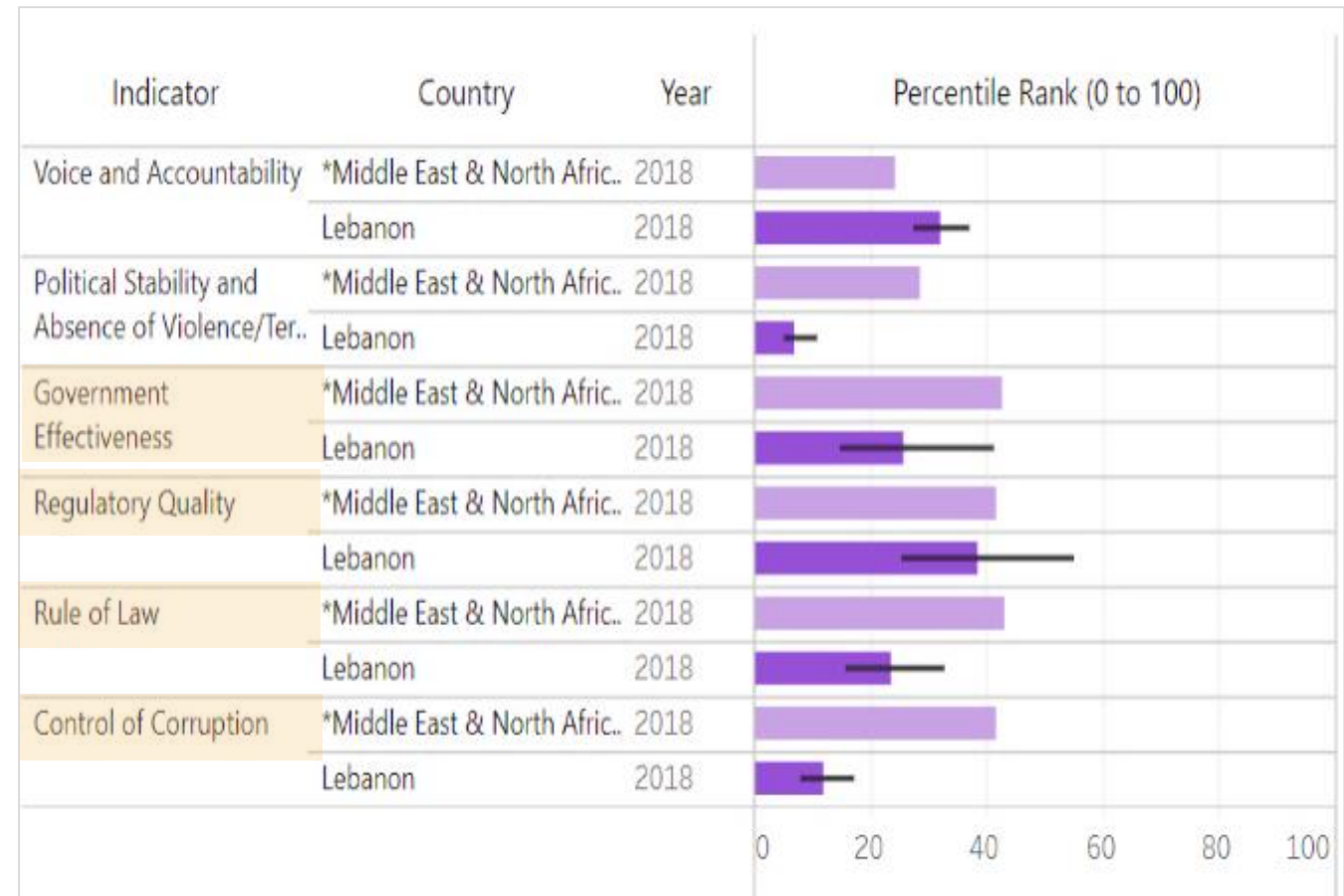
PP volume is expected to shrink as a result of decreasing government expenditures and expected contraction of GDP

1. World Bank (2017), Benchmarking Public Procurement Report
2. United Nations, One Planet Network
3. Institut des Finances Basil Fuleihan, recent calculations based on MOF data sources.

Public Procurement: A pillar of good governance

- Public procurement is a key pillar of structural reforms to enhance fiscal governance and attract public investments in infrastructure especially in post-crisis & recovery period.
- Control of corruption is a priority:** 57% of bribery cases detected are public procurement transactions (1). Lebanon ranks 25/100 on the Corruption Perception Index (149/180) (2).
- The current legal framework does not conform with international standards and guidelines.** It is outdated (1959/1963) and fragmented (various laws, decrees, decisions, etc); some functions (complaints mechanisms) are inefficient (3,4).
- URGENT need for a clear and coherent Public Procurement system (not only a law) in line with international standards (UNCITRAL Model Law 2011, EU Guidelines 2014, OECD Guidelines 2016, etc.)**

Lebanon ranks below the MENA region on key governance indicators (5)



- OECD (2014), Foreign Bribery Report
- Transparency International (2019), Corruption Perceptions Index
- MAPS II preliminary results, 2019
- Institut des Finances Basil Fuleihan (2014), Professionalizing Public Procurement in Lebanon
- World Bank, Worldwide Governance Indicators, 2018



Anti Corruption efforts

- Public Procurement reform is at heart of the fight against corruption in Lebanon, **giving a strong positive signal of trust to citizens, investors and the donor community.**
- The **Public Procurement Law 244/2021** (dated 19 July 2021) comes in line with continuous national efforts to enhance transparency and accountability.
- It complements **other laws adopted in recent years:**
 - ✓ Law on Access to Information 28/2017
 - ✓ Law on Protection of Whistleblowers 83/2018
 - ✓ Law on Anti-Corruption and Establishment of National Anti-Corruption Authority 175/2020
 - ✓ Law on Illicit Enrichment and Asset Declaration 189/2020
- Public procurement is also **one of the 7 pillars of actions of the National Strategy on Anti-Corruption (2020)**

Public Procurement Law 244/2021 Objectives

Article 1: Objectives of the law

- Application of competitive proceedings as a general rule
- Providing for equal opportunities to participate in public procurement;
- Providing for the fair, equal and equitable treatment of all bidders and contractors;
- Integrity, public aspect and professionalism of the procurement proceedings, in such a way to enhance control and accountability;
- Promoting the local economy development, national employment and production, based on the best value for spending public funds

Procurements shall be subject to:

- good Governance rules, and
- take into consideration the requirements of sustainable development



Public Procurement Law 244/2021 : Table of content

Chapter 1 General provisions

- Definitions
- Scope of Application
- Language
- Currency
- Etc...

Chapter 2 General rules related to the procurement process

The chapter presents general rules for the preparation, conduct and implementation of procurement

Chapter 3 Procurement methods

The law describes 7 methods, 3 of them are new:

- 2-stage tendering
- Request for proposal for consulting services
- Framework agreement

Chapter 4 Electronic procurement

The chapter contains special provisions that pave the way for the gradual implementation of electronic Procurement

Chapter 5 Professionalization and Capacity Building

Professionalizing public procurement through:

- Recognizing it as specific profession within Lebanese civil service organizational structure
- Mandatory training

Chapter 6 Public procurement governance

Details roles and mandates of procurement stakeholders:

- Public Procurement Authority
- Review and complaints Authority
- Tender and acceptance committees
- Contracting authorities

Chapter 7 Complaints proceedings

The chapter details the mechanisms for the review and remedies system in the pre-contractual phase

Chapter 8 Integrity and sanctions

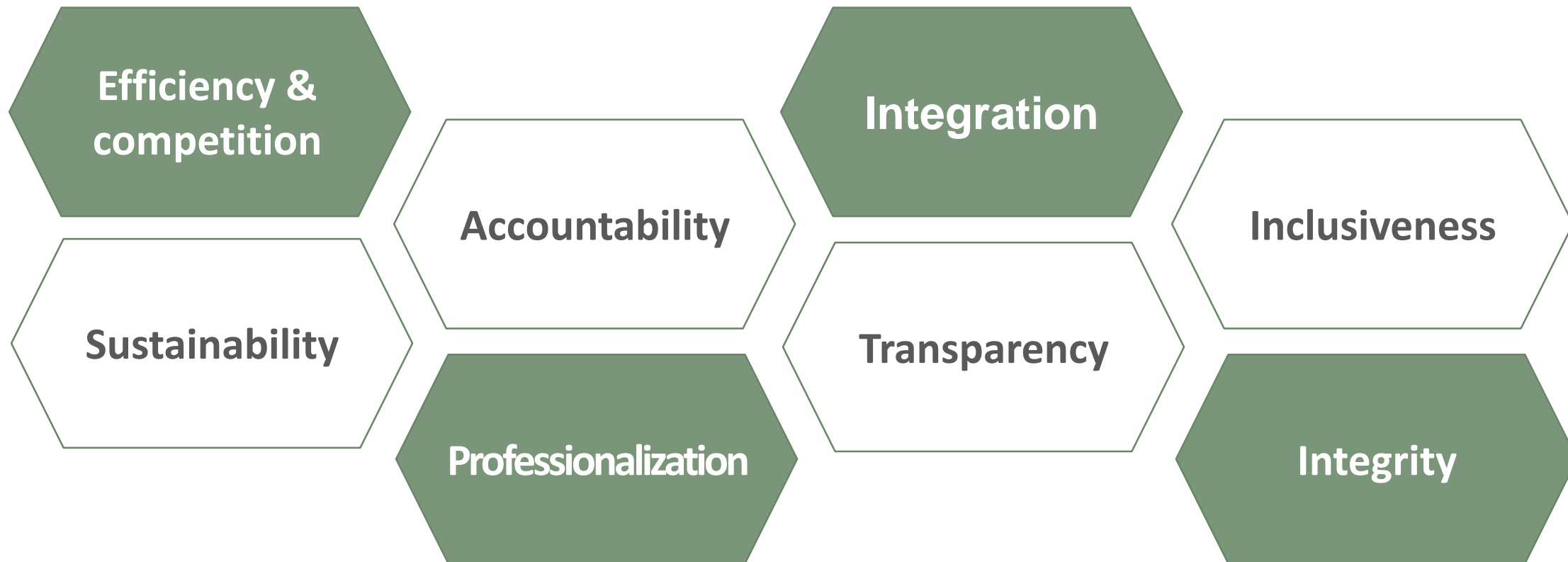
The chapter promotes integrity through:

- Transparency: mandatory publication
- Integrity: by identifying contradicting actions and assigning adequate sanctions
- Control: by introducing internal control, in addition to external control

Chapter 9 Tansitory Provisions

- Ongoing procurement
- Cancellation of previous contradictory laws
- Entry into force

Public Procurement Law 244/2021 : 8 Guiding Principles



Public Procurement Principles



Public Procurement Law 244/2021 : 8 Guiding Principles

5. Transparency

Procurement data must be published on the central electronic platform, to facilitate access of all concerned stakeholders, while preserving confidentiality wherever indicated in the draft law provisions.

Chapter 8: Integrity and accountability

Chapter 1

Chapter 2 and 3

Chapter 5

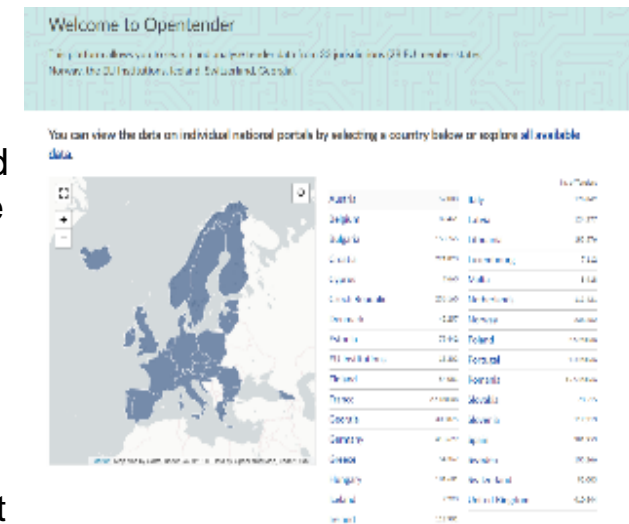
Article 109: Transparency

Definitions

procurement proceedings

CB

1. The contracting authorities shall adopt a mandatory publication policy whereby they shall announce their plans and the details of execution thereof, including the progress of the procurement process, awarding proceedings, contract, result of acceptance, execution and final value of the procurement, in accordance with the provisions of this Law and the secondary legislation thereof.
2. The contracting authorities shall use all means of publishing available to announce the aforementioned information, including the conventional means such as the official gazette and local newspapers, or the modern means such as websites. Publishing shall be mandatory on the central electronic platform of the Public Procurement Authority and the website of the procuring entity, if any.
3. Only what is of a confidential nature shall be prohibited from publishing, pursuant to Article 6 of this Law.
4. Public procurement data, at all levels in accordance with the provisions of this Law, shall be consolidated in a central database created for this purpose at the Public Procurement Authority, as part of the central electronic platform. This database shall be accessible free of any charges to the public and to all stakeholders under Article 6 of this Law.
5. Access to public procurement information shall be made possible free of any charges through the central electronic platform at the Public Procurement Authority and the websites of the procuring entities.



Public Procurement Law 244/2021 : 8 Guiding Principles

7. Integrity

Defining integrity and conflict of interest and determining the types of sanctions that affect public and private sector employees to degrees that fit with the type of violation

Chapter 1: Definitions

Chapter 2 and 3: procurement proceedings

Chapter 5: Capacity Building

Chapter 7: Challenge proceedings

Chapter 8: Integrity and accountability

Article 110: Integrity

5.(...) The contracting authority shall require from all contractors thereof to commit to the highest ethical and good citizenship standards, (...)

In order to achieve this obligation, the bidders and the contractors shall avoid the following practices:

- a. "Corruptive practices", which means offering, receiving or soliciting anything of value, whether directly or indirectly to influence the work of a public official in the procurement process or in the execution of the contract;
- b. "Fraudulent practices", which means the misrepresentation or omission of facts to influence the procurement process or the execution of the contract;
- c. "Collusive practices", which means any plan or arrangement between two or more bidders with the aim of offering prices at false and non-competitive levels;
- d. "Coercive practices" which means harming or threatening to harm people or their property,.... (...)

Public Procurement Law 244/2021 : 8 Guiding Principles

7. Integrity

Defining integrity and conflict of interest and determining the types of sanctions that affect public and private sector employees to degrees that fit with the type of violation

Chapter 8: Integrity and accountability

Article 111- Internal Audit

1. By decision of the head of administration thereof, one or more officers of the procuring entity shall be assigned to internally audit the execution of all the provisions of this Law and the secondary legislation thereof, in accordance with the size of the procuring entity and the number and value of the contracts it concludes.
2. (...)

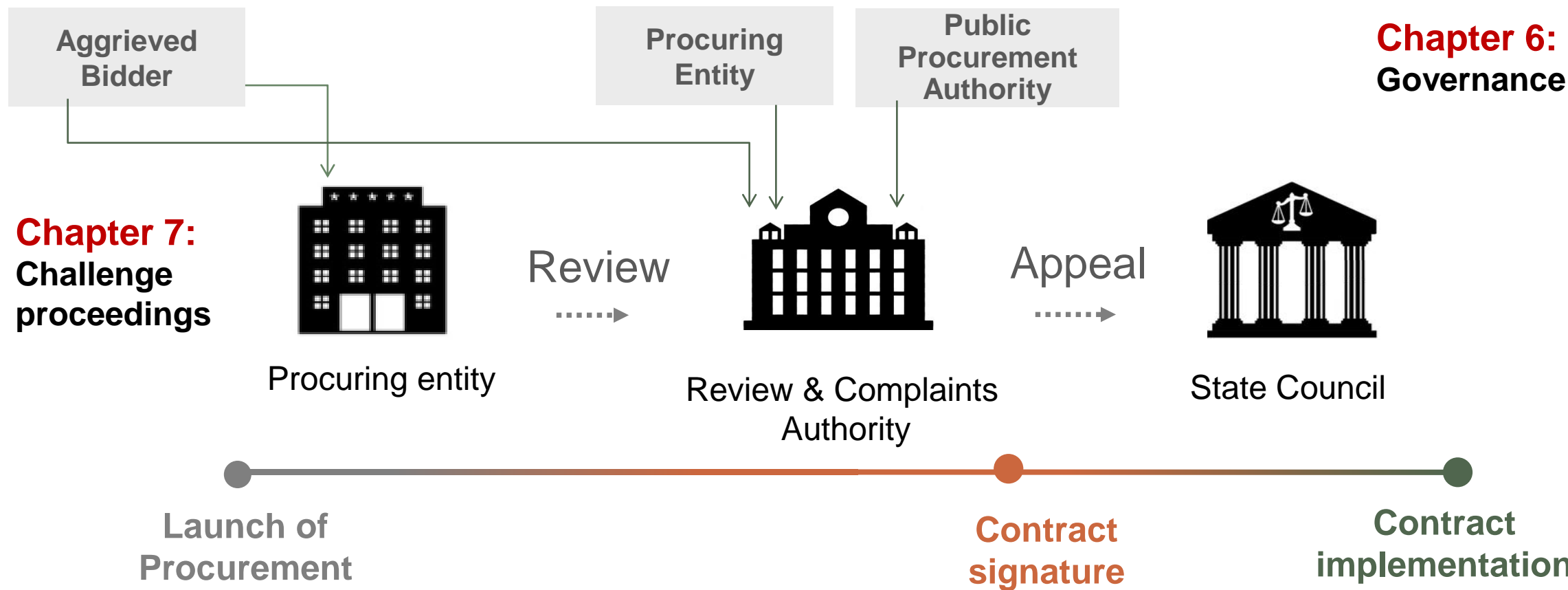
Article 112: Sanctions

1. In addition to the sanctions provided for in this Law and other laws, including the Penal Code, the following sanctions shall be applied:
 - I – Criminal Sanctions (...)
 - II – Disciplinary and financial sanctions
 - III – Financial penalties
 - IV – Abuse of the right to appeal

Public Procurement Law 244/2021 : 8 Guiding Principles

8. Accountability Review and complaints system

Clear mechanisms for supervision and control, at all procurement steps, which deal with objections and complaints within short deadlines, linked to a progressive system of complaints and appeals, that start by banning contract signature and may go to freezing procurement procedures



Central Electronic Platform

- **Digital technologies** are being increasingly adopted by countries to achieve standardisation and consistency, which speed up the public procurement process.
- **E-procurement is powerful tool** contributing to greater transparency, efficiency, and effectiveness in public spending by enabling more open, innovative and accountable public entities.
- Public Procurement Law 244/2021 stipulates **the creation of a central electronic platform** to compile, structure, analyze and allow free & systematic access to procurement data, and **prepare the ground for future e-procurement.**
- The efficient functioning of the central electronic platform is one of the main success factor of the procurement reform in Lebanon, allowing:
 - ✓ **Private sector** to easily access procurement opportunities and increase its participation to the market
 - ✓ **Civil society and citizens at large** to monitor government spending and outcomes through open data and visualization

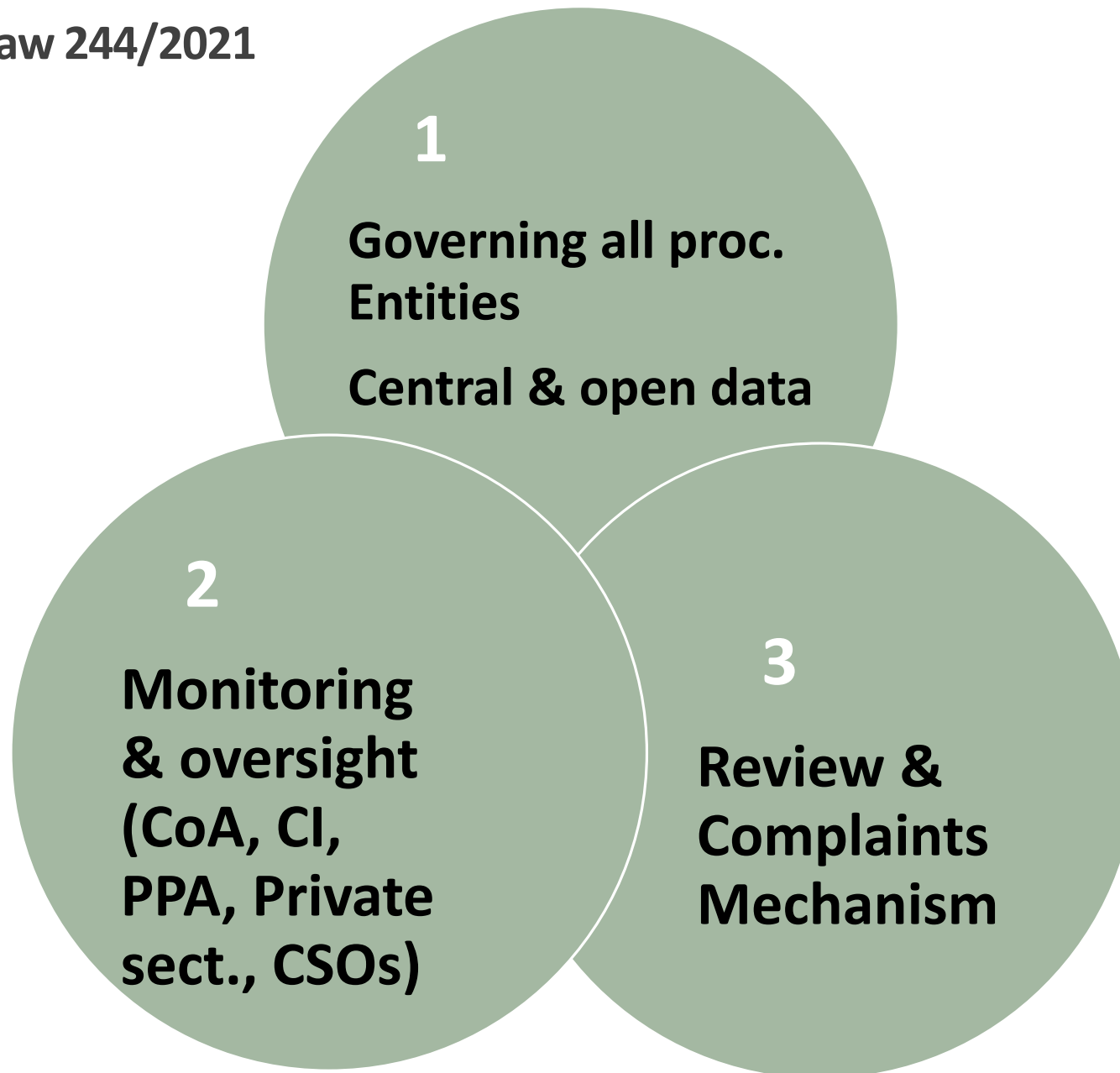


Forms of corruption





Pillars of the Law 244/2021



Follow the Public Procurement Reform

www.institutdesfinances.gov.lb/project/public-procurement-reform



Reforming Public Procurement in Lebanon

Towards sound financial governance, economic recovery, and restoration of trust

Progress report
July 2021



#ProcurementProsperity
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OUR PROJECTS

Public Procurement Reform in Lebanon

Reform | إصلاح | Public Procurement | 3

PROJECT • LEBANON

Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. As a consequence, the quality of the procurement system is below average (49/100) compared to the rest of the world and to a number of MENA countries. A coherent and clear Public Procurement system, in line with international standards and based on sound legal and institutional foundations, is thought to achieve savings, provide more fiscal space to finance public investments, allow Reability to assess, monitor, and manage fiduciary risks, budget uncertainties, and to reduce inefficiency and corruption, allowing better service delivery to citizens. Accounting for 20% of central government expenditures and 6.5% of the Gross Domestic Product (around US\$3.4 billion) on yearly average, public procurement is a key policy instrument to ensure value for money, stimulate growth, attract investors and restore trust.

The Ministry of Finance committed to procurement reform, giving a strong signal of trust to both the private sector and the donor community. The Institut des Finances Basil Fuleihan was mandated by the Minister of Finance as National Focal Point for this exercise (decision 109/1 of 04/03/2019, and decision 199/1 of 09/06/2020) and collaborates with 14 institutions as part of a transformation process based on four pillars:

1. An evidence-based diagnostic of the public procurement system, using MAPS II instrument (Methodology for Assessing Procurement Systems), in collaboration with the World Bank (WB) and the Agence Française de Développement (AFD); MAPS exercise was completed in 2020 with a full-fledged report and recommendations for reform roadmap;
2. A new public procurement law in line with UNCITRAL Model Law (2011) and OECD Guidelines (2016) was drafted in 2019. It was submitted to Parliament in February 2020 and discussed in a special Parliamentary Committee from June 2020 till May 2021. The draft law was transferred to Joint Parliamentary Committees for discussions, to be later sent to General Assembly for voting;
3. Standard bidding documents based on previous documents prepared by the Ministry of Finance in 2013 under WB financing and OMSAR under EU financing in addition to other practical tools to ensure sound reform implementation;
4. A public procurement reform strategy, for the short and medium terms, is being elaborated in collaboration with the World Bank (WB) and the Agence Française de Développement (AFD), based on MAPS assessment recommendations, draft law provisions, and on-going consultations with concerned stakeholders.

Visit our [public procurement](#) page for more information and resources.

You can also watch this series of [5 videos](#) on the reform and the new law.

Episode 1:

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Episode 1:



لماذا إصلاح الشراء العام، لماذا إصلاح الشراء العام في لبنان؟

معهد باسيل فليهان
المالي والاقتصادي
Institut des Finances Basil Fuleihan

قانون الشراء العام
لماذا إصلاح الشراء العام في لبنان؟



DATA in Tender

IPlan Public Procurement Mapping Tool

The Interactive Platform for Legal Assessment and Navigation (IPlan) was developed by Siren Associates in the framework of a World Bank funded project to assess the current institutional framework of public procurement in Lebanon.

Contact us
[institutdesfinances.gov.lb](mailto:info@institutdesfinances.gov.lb)

For safe mode download of the application press [this link](#) and follow the steps indicated in [this guide](#).

Thank you

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