



MAPS

Methodology for Assessing
Procurement Systems

Lebanon

Assessment of the public procurement system Volume I - Main report

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The World Bank Group



Agence Française de Développement



Government of Lebanon



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Acronyms

AFD	Agence Française de Développement
ASC	Assessment Steering Committee
CDR	Council for Development and Reconstruction
CEDRE	Conférence Economique pour le Développement, par les Réformes et avec les Entreprises
CIB	Central Inspection Board
CIP	Capital Investment Plan
CoA	Court of Accounts
CoM	Council of Ministers
CPI	Corruption Perception Index
CSB	Civil Service Board
CSO	Civil Society Organization
CTB	Central Tender Board
EBRD	European Bank for Reconstruction and Development
EDL	Electricité du Liban
EU	European Union
FDI	Foreign Direct Investment
GAFTA	Greater Arab Free Trade Area
GCC	Gulf Cooperation Countries
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GPA	Agreement of Government Procurement
GPP	Global Procurement Partnership
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
IOF	Institut des Finances Basil Fuleihan
ISF	Internal Security Forces
LBP	Lebanese Pound
LPA	Lebanese Petroleum Authority
MAC	Multi-Stakeholder Advisory Committee
MAPS	Methodology for Assessing Procurement Systems
MDB	Multilateral Development Bank
MDG	Millennium Development Goals
MENA	Middle East and North Africa
MOET	Ministry of Economy and Trade
MoF	Ministry of Finance
MOIM	Ministry of Interior and Municipalities
MP	Member of Parliament

MTDF	Multi-Donor Trust Fund
MTF	Marrakech Task Force
NFP	National Focal Point
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OGERO	Organisme de Gestion et d'Exploitation de l'ex Radio Orient
OMSAR	Office of the Minister of State for Administrative Reform
OPR	Operational Procurement Review
PAL	Public Accounting Law
PEFA	Public Expenditure and Financial Accountability
PIMA	Public Investment Management Assessment
PM	Prime Minister
PPP	Public-Private Partnership
PPR	Public Procurement Reform
SBD	Standard Bidding Document
SC	State Council
SDG	Sustainable development goal
SFG	Strengthening Financial Governance
SIGMA	Support for Improvement in Governance and Management (EU and OECD)
SME	Small and Medium Enterprises
SOE	State-owned enterprises
SPP	Sustainable Public Procurement
TAG	Technical Advisory Group
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNHCR	United Nations High Commissioner for Refugees
USD	United States Dollar
VNR	Voluntary National Review
WB	World Bank

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Executive Summary

Country context and public procurement challenges

Lebanon faces a confluence of challenges, including an influx of refugees, an outflow of high-skilled workers, increasing internal and external debt, and a lack of capacity within public institutions. It finds itself in a protracted crisis characterized by deep and long growth stagnation. Existing pressures on public finances were further exacerbated in 2018 by the continuous repercussions of the Syrian refugee crisis, the protracted domestic political crisis and the adoption of a new salary scale bill for the public sector in 2017, as well as by increased geopolitical tensions. The Lebanese lira is depreciating fast in a context of depleting foreign reserves and tight banking capital controls, driving the country into a hyperinflation spiral. The budget deficit is projected to widen sharply as revenue collection is collapsing and businesses are shutting down. The poverty level is expected to reach 52% in 2020. Austerity measures, failed public services and widespread corruption, have triggered countrywide unrest in Lebanon as of October 17, 2019. Citizens are asking for the recovery of misused public funds, for more transparency in the management of public money and for the immediate implementation of financial governance reforms to address paramount financial, economic and social challenges.

Public procurement is one of the main cross-sectoral reforms that the Government of Lebanon committed to at the “Conférence économique pour le développement, par les réformes et avec les entreprises” (CEDRE) held in Paris in April 2018, in order to improve fiscal governance and the quality of public services, encourage investment inflows, and strengthen accountability and transparency. Public procurement accounts for an average of 20% of central government expenditure and 6.5% of the Gross Domestic Product (thus, around USD 3.4 billion in 2019) at the central level. A coherent and clear public procurement system in line with international standards and based on sound legal and institutional foundations is thought to improve competitiveness of the economy, attract quality service providers, strengthen accountability and transparency and achieve savings on yearly basis, allowing for more fiscal space to finance public investments and for enhancing service delivery to citizens. As a result, it would considerably contribute to helping resolve the current economic and financial crisis and create the basis for the implementation of the Government’s vision for economic recovery and sustainable development.

Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. The legal framework is old (1959/1963), fragmented (various laws, decrees, decisions), and does not conform with international standards and guidelines. The institutional framework is weak with overlapping mandates and gaps in stakeholders’ roles. The policy and regulatory functions of the system are inexistent, and the complaints review mechanism is weak and inefficient. Consequently, the quality of the procurement system is below average (48/100) compared to the rest of the world and to a number of MENA countries. Several national efforts to reform public procurement were attempted in the past fifteen years, but failed to achieve desired results due to the absence of national leadership. In July 2018, the Minister of Finance formed a Task Force of experts from the public and private sectors to follow up on the implementation of the CEDRE recommendations.

MAPS assessment

In this context, the Ministry of Finance solicited the support of the World Bank in conducting a full assessment of Lebanon's public procurement system using the Methodology for Assessing Procurement Systems (MAPSII). The current version of the MAPS analytical framework is constituted by four pillars with the following contents:

- (i) Legal, Regulatory and Policy Framework
- (ii) Institutional Framework and Management Capacity
- (iii) Procurement Operations and Market Practices, and
- (iv) Accountability, Integrity and Transparency.

The pillars contain a total number of 14 main indicators and 55 sub-indicators covering the full range of public procurement principles, policies and practices, in turn subdivided into sub-indicators, each one composed by a number of assessment criteria which represent internationally accepted principles and practices of good public procurement. The assessment has reviewed the actual situation, compared it with the assessment criteria and described it accordingly, identified gaps, examined the underlying reasons for them and, on that basis, prepared recommendations for the further improvement of the public procurement system.

The main objective of the MAPS assessment has been to support the Government of Lebanon in its efforts to improve the quality and performance of the public procurement system and provide policy and decision makers with evidence –based findings and recommendations towards well founded reforms. In turn, a good public procurement system contributes to raising the effectiveness of public expenditure, ensuring timely and quality delivery of public services, encouraging the participation of the private sector to public bids, and enhancing trust of investors and the international community.

With the support of the World Bank and the Agence Française de Développement (AFD) in the Framework of the Global Procurement Partnership – Multi-Donor Trust Fund (GPP-MDTF), this MAPS assessment has been carried out by an assessment team, composed of a lead international consultant and a senior local consultant, supported by a national coordination team of leading staff members of the Institute of Finance (in its capacity as the National Focal Point), and working in close cooperation with specialists in the Beirut offices of the World Bank and the AFD. The assessment team has been supported with premises and administrative assistance at the Institute of Finance. The assessment's field work started in July 2019. It was suspended between October and November 2019 due to large civil protests as of October 17, 2019, and then again late February 2020 because of the COVID-19 pandemic outbreak, which also delayed the remaining assessment activities. They were nevertheless successfully concluded by June 2020. After the finalization of the initial draft report, internal quality control and corresponding revisions have been followed by a validation phase involving key stakeholders in Lebanon as well as external reviewers.

A main challenge encountered in the process has been the lack of effective access to complete and accurate data for describing and analyzing the actual practices and outcomes in the public procurement system. For this reason, it has not been possible, in particular, to systematically identify, retrieve, sample and review procurement plans, tender documents, tender opening reports, evaluation reports, contracts concluded, contract amendments, complaints and their resolutions in the way normally required by the methodology. Nevertheless, inputs from review of regulations and other records, stakeholder workshops, interviews with the competent authorities and an enterprise survey provided sufficient data to inform the assessment and support drafting of the preliminary report during the period February – July 2020.

Main findings and recommendations

Tabular overview of compliance with evaluation criteria

A first overview of findings of the MAPS assessment is given in the tables below. The tables present a comparison between the public procurement situation in Lebanon and the evaluation criteria under the indicators and sub-indicators in the MAPS assessment.

Assessment Result Summary: number of assessment criteria met, by pillar

Color Codes:

Criterion Substantially Met – Green

Criterion Partially Met – Yellow

Criterion Substantially Not Met – Red

Criterion Not Applicable - Grey

MAPS Pillar	Criteria Substantially Met	Criteria Partially Met	Criteria Substantially Not Met	Criteria Not Applicable	Total
Pillar I: Legal, Regulatory, and Policy Framework	9	27	30	1	67
Pillar II: Institutional Framework and Management Capacity	0	18	30	7	55
Pillar III: Public Procurement Operations and Market Practices	0	8	18	0	26
Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System	2	18	42	0	62
Total	11	71	120	8	210
Percentage	5%	34%	57%	4%	100%

Assessment Result Summary: level of compliance with assessment criteria, by sub-indicator

Color code:

Criteria substantially not met	Criteria partially met	Criteria substantially met
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Please note that this table summarizes the situation for ease of reference. Consequently, a sub-indicator which is now indicated as being in partial compliance may contain one assessment criterion which is not at all met and another one that may be fully met. Appendix 12 presents further details of the level of compliance for each individual assessment criterion under each sub-indicator.

Pillar I		Pillar II		Pillar III		Pillar IV	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		4(b) Financial procedures and the procurement cycle		9(b) Selection and contracting		11(b) Adequate and timely access to information by the public

Pillar I		Pillar II		Pillar III		Pillar IV	
	1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory function		9(c) Contract management		11(c) Direct engagement of civil society
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications		5(c) Organisation, funding, staffing, and level of independence and authority		10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement
	1(f) Evaluation and award criteria		5(d) Avoiding conflict of interest		10(c) Key sectors and sector strategies		12(c) Enforcement and follow-up on findings and recommend
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities and formal powers of procuring entities				12(d) Qualification and training to conduct procurement audits
	1(h) Right to challenge and appeal		6(b) ., 6(c) Centralized procurement body: not applicable			13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of procurement information supported by IT technology			13(b) Independence and capacity of the appeals body	
	1(j) Electronic Procurement		7(b) Use of e-Procurement			13(c) Decisions of the appeals body	
	1(k) Norms for safekeeping of records and electronic data.		7(c) Strategies to manage procurement data			14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices etc.
	1(l) Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice and assistance	14(b) Provisions on prohibited practices in documents			
2. Implementing regulations and tools support the	2(a) Implementing regulations to define processes and procedures			8(b) Recognition of procurement as a profession			14(c) Effective sanctions and enforcement systems

	Pillar I	Pillar II	Pillar III	Pillar IV
legal framework.	2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system	14(d) Anti-corruption framework and integrity training
	2(c) Standard contract conditions			14(e) Stakeholder support to strengthen integrity in procurement
	2(d) User's guide or manual for procuring entities			14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) Sustainable Public Procurement (SPP)			14(g) Codes of conduct / codes of ethics and financial disclosure rules
	3(b) Obligations deriving from international agreements			

The below narrative presents the main findings and recommendations, grouped under the four pillars of the methodology. The current situation for each of the sub-indicators used in the methodology are summarized, with the corresponding recommendations in *italics*. Chapter 3 provides a detailed analysis of the situation and the gaps and offers further recommendations for improvement.

Findings and recommendations for Pillar I - Legal, Regulatory and Policy Framework:

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards.

The existing legal, regulatory and policy framework for public procurement in Lebanon is constituted by a patchwork of legal instruments, some of which are very general in character while others are detailed but often limited in scope, and specific to the point of being unduly restrictive. The applicable primary legislation is mainly constituted by the Public Accounting Law (PAL), issued in 1963 and the Tender Regulation, issued in 1959. It regulates a wide range of aspects of public financial management and includes a number of provisions of mostly general character applicable to public procurement. However, it is not universally applicable to all procuring entities and allows for a number of exceptions, some of them quite vaguely defined.

Scope of application and coverage of the legal and regulatory framework: There is no unified, coherent, clear and simple set of laws and regulations covering all essential aspects of public procurement and applicable to all contracting entities and to all types of public contracts for goods, works and services.

Prepare and adopt a comprehensive, modern public procurement law and complement it by a full, harmonized range of secondary legislation, applicable to all procuring entities.

Procurement methods: There is no other approach than open tendering for competitive award procedures, therefore contracting entities cannot optimize their procurement approach taking into consideration the size and complexity of the contract and the position of the supply market; existing laws and regulations do not provide clear and comprehensive guidance on key elements of the procurement procedures.

Introduce a comprehensive range of procurement procedures, proportionate to the nature and value of the contracts to be concluded. Formalize guidance for the use of the available procurement procedures.

Right to challenge and appeal: The existing regulations for handling public procurement complaints at the preparation and award stages do not ensure timeliness and quality of review and resolution.

Review and revise the approach to handling complaints, to ensure timely review and resolution by an independent institution.

Electronic procurement: There is no e-procurement system in place and access to public procurement information is limited;

Raise transparency, improve administrative efficiency and reduce costs by introducing e-procurement as well as clear and simple administrative routines for handling public procurement operations.

Implementing regulations to define processes and procedures; model procurement documents for goods, works, and services; standard contract conditions; user's guide or manual for procuring entities:

A number of laws require implementing regulations which are not always prepared on time or with sufficient detail. Officially endorsed regulations, materials relevant to secondary legislation, standard documents, guidance notes and other tools are incomplete. No governmental institution is officially and clearly assigned to lead the preparation, dissemination and updating of existing documents/materials. The use of existing standard documents is not compulsory, and it is not known to what extent, how and by whom they are used.

Standardize and formalize guidance for the preparation and use of notices, requirements and specifications, timelines, selection and award criteria and their use, forms of contract and contract management.

Sustainable public procurement: The legal and policy frameworks applicable to public procurement do not include or reflect sustainable development policies and do not support their application. Regulations and guidance materials contain limited provisions for incorporating social or environmental aspects in requirements, specifications and selection and award criteria.

Introduce key principles of sustainability in public procurement and implement measures to ensure its applicability in the public procurement legislation.

Develop, adopt and apply regulations and guidance material to incorporate social and environmental aspects in requirements, specifications and selection and award criteria, e.g. the use of environmental standards and life cycle costing.

Obligations deriving from international agreements: There is lack of clear alignment between the existing Lebanese legislation and the provisions related to public procurement in international agreements of which Lebanon is a member, such as the UN Convention Against Corruption.

Align the public procurement legislation for conformity with the relevant provisions of the UN Convention Against Corruption and of other international agreements ratified by Lebanon.

Findings and recommendations for Pillar II: Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and the management systems of the public sector. It evaluates the effectiveness of the procurement system in discharging the obligations prescribed in the law, without gaps or overlaps.

The institutional framework for public procurement in Lebanon is formed by the procuring entities: ministries, autonomous public institutions, municipalities and unions of municipalities, and other public bodies, as well as by a number of Government institutions, most of them involved with control and oversight across the various stages of the public procurement process. This institutional framework is incomplete and incoherent. In particular, the current framework lacks a policy making and regulatory function, a review and complaints mechanism that adequately meets the need for speed and competence, and an enabling environment for e-procurement, in particular for ensuring that procurement related information and data are systematically generated and made freely accessible.

The links between public procurement and other aspects of public financial management are weak and ineffective. The financial regulations do not allow procurement to be carried out in a regular manner over the fiscal year. Procuring entities are not clearly defined as such and their roles, responsibilities and organization are not comprehensively regulated with respect to the particular requirements of public procurement. The public procurement system is limited in terms of its potential for development and improvement. Except for the provision of training, though with limited resources, there is a lack of strategies and programs to build the broader capacity of procuring entities. Procurement is not recognized as a profession, hence corresponding positions and job descriptions are lacking.

Procurement planning and the budget cycle; financial procedures and the procurement cycle: Procurement planning and preparation is not well regulated, and practices vary widely. Financial regulations do not anticipate an acceptable timeline to ensure a competitive procurement process is complete. Only weak monitoring mechanisms to evaluate procurement outcomes are put in place in order to correct financial planning and management.

Improve the integration of public procurement into public financial management in order to improve procurement management, reduce duplication, and deliver goods and services more efficiently, by developing medium term budgeting and amending financial regulations to ensure continuity of competitive procurement during the transition from one fiscal year to the next.

Improve monitoring of use of funds during contract implementation and raise the transparency of the process.

Complement external audit by introducing systematic own ex-post evaluation conducted by the contracting authority on its public procurement operations. The self-evaluation will focus on

procurement outcomes compared with objectives and on administrative performance, with feed-back into financial and procurement planning.

Status and legal basis of the normative/regulatory institution function; responsibilities of the normative/regulatory function; organization, funding, staffing, and level of independence and authority; avoiding conflict of interest: Key functions of public procurement policy management are not clearly defined, nor assigned to competent authorities in a comprehensive and coherent manner.

In the public procurement law, define clearly the various central functions (e.g., policy, regulation, advice, information, training; complaint resolution) in the public procurement system, allocate them to specific entities to avoid gaps and overlaps as well as conflicts of roles, and give these entities adequate resources for the purpose.

Definition, responsibilities and formal powers of procuring entities: There is no sufficient definition of procuring entities for determining and applying roles and responsibilities with respect to public procurement. The organizational set-up and the distribution of roles and responsibilities for public procurement within procuring entities is not clearly regulated, and many high-level entities do not have a procurement department.

Define procuring entities by law, in a way that helps determine which procurement regulations are applicable to them, and how. Institutionalize a general obligation for procuring entities to have a dedicated unit for public procurement within their organizational structure, with clearly defined functions and responsibilities, in addition to staffing and allocated resources adequate for the purpose.

Centralized procurement body: The legal framework for joint or centralized procurement is incomplete and vague, and there is no central purchasing body.

Regulate joint and centralized procurement in a clear, comprehensive and coherent manner and take steps for creating one or several central purchasing bodies as may be appropriate.

Publication of public procurement information supported by information technology: There is no unified, nationwide system for publishing procurement information by electronic means.

Set up a national electronic platform for mandatory publication of procurement notices of all procuring entities) and for facilitating access to public procurement information and tender documents.

Use of e-procurement: There are no national regulations, institutions or systems in place for carrying out any aspects of e-procurement.

Develop a comprehensive concept for introduction and management of e-procurement in all its various aspects and stages; consult widely and take decisions; and set aside resources for implementation.

Strategies to manage procurement data: Public procurement data is not systematically collected, compiled, analyzed and disseminated as needed for ensuring transparency and supporting evidence-based policy making.

Define the needs and procedures for collection, management and analysis of data on public procurement, with due consideration of other public financial management needs and of the general need for transparency and accountability in the public sector; adopt corresponding regulations and assign roles, responsibilities and resources to the competent authorities, in line with other measures for public administration reform.

Training, advice and assistance: There is no official capacity building strategy, nor one for providing guidance in response to queries, and there are no obligations to use the public procurement training currently available.

Using existing analyses and reports, update the assessments of skills and training needs, determine appropriate measures for closing existing gaps, by developing, adopting and implementing a capacity building strategy, including means for providing ad-hoc advice (e.g. Help-Desk function). Establish and implement a policy rendering public procurement training mandatory for all concerned stakeholders across the public sector.

Recognition of procurement as a profession: Procurement is not recognized as a profession and there is no official job description or qualification requirements specific to public procurement.

Building on existing drafts, revise and adopt standard job description and qualification requirements for public procurement officials at different levels, and regulate and monitor their application; formally recognize the profession so defined in the Lebanese civil service.

Monitoring performance to improve the system: There are no mechanisms in place for evaluating public procurement performance or for using such information as a basis for strategy development and decision making. There is no formal, official strategy for the development of the public procurement system and no clearly assigned responsibility for preparing and maintaining one.

Systematize the collection and use of aggregated data on public procurement performance. Using the MAPS assessment report as a basis to develop, adopt, implement and monitor a national strategy for the development of the public procurement system, after clearly assigning responsibilities and allocating resources for this purpose.

Findings and recommendations for Pillar III: Procurement Operations and Market Practices

Pillar III focuses on how the procurement system in a country operates and performs in practice. It looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing particular procurements (procuring entity). In addition, it looks at the supply market as one means for raising the quality and effectiveness of public procurement.

The public procurement operations and the market practices in Lebanon present a very fragmented and unclear picture. Available information shows shortcomings at all stages of the procurement cycle. Planning and preparation of procurement often fails to state the objectives in a way that would allow the outcomes of the operations to be evaluated. Procurement plans are not systematically prepared and published. Therefore, the market is not well informed about planned procurement at a sufficiently early stage.

The procurement methods are limited, with open and restricted tendering being the only fully competitive procedure foreseen in the legislation. Budgetary constraints often require delaying or accelerating procurement at the beginning and the end of the fiscal year. As a result, the most appropriate, competitive award procedures are not always used. Weak capacities in contract management and cumbersome administrative procedures mean that the receipt of goods and works and the payment of invoices often takes time.

The private sector faces a number of obstacles to participate in public procurement, leading to a lack of trust in the system and reduce the level of participation. As a result, procuring entities fail to get

the benefit of wide, active competition and relatively few enterprises are able to successfully use the opportunities in the public procurement market.

Planning; selection and contracting; contract management:

- Data on the performance of the public procurement system is missing. Existing information on public procurement is not thoroughly analyzed and the assignment of responsibilities for analysis is not clear.
- The effectiveness of public procurement in terms of the level to which original objectives are achieved is difficult to evaluate at all levels: contract level, procuring entity level, and the national level.
- There are no means in place for monitoring and managing public procurement performance.
- Public procurement practices show great variation and fragmented approaches, and errors and omissions frequently occur when public procurement is carried out.

Ensure data on all steps of the procurement cycle for public contracts is accessible free of charge on a unique website, a central electronic platform, in a format that facilitates data extraction and analysis.

Establish a facility for analyzing public procurement data and making it available to support evidence-based policy making.

Require objectives and intended results to be clearly formulated and recorded during planning and referred to during systematic, compulsory evaluation of contract execution and outcomes.

Develop and apply approaches for planning, preparation, execution and evaluation of public procurement operations from a performance point of view.

Issue guidelines and provide hands-on training for procuring entities on procurement planning, including needs analysis, market research, choice of approaches and procedures, preparation and publication of procurement plans, as well as on contract management, and make the use of standard forms and tools mandatory.

Dialogue and partnerships between public and private sector: There is a lack of trust between the demand and the supply sides of the public procurement market. There are no effective mechanisms for public-private sector dialogue and mutual information on public procurement related subjects.

Instill a paradigm shift towards a win-win situation between the public and the private sector.

Institute a standard and formal mechanism/process for regular consultations between the public and the private sector on issues related to procurement policy and practice.

Private sector's organization and access to the public procurement market: There are numerous practical barriers to the public procurement market, especially for SMEs and new entrants.

Identify the nature, origin and modalities of all the barriers facing enterprises, especially SMEs, for successfully participating in public procurement.

Key sectors and sector strategies: There is a lack of understanding of the role of public procurement in the economy and of the opportunities to incorporate it in development policies.

Carry out a comparative study of the demand and supply side of the public procurement market in Lebanon and use the findings to inform development policy.

Findings and recommendations for Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a public procurement system to operate with integrity, to have appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and to have appropriate measures in place to address the risk of corruption. It also covers the role of civil society as part of the control system.

A high degree of transparency and active engagement of civil society play an important role in promoting integrity in public procurement, as has been demonstrated in many countries. Data on public procurement performance in Lebanon is scarce and spread out in many different places. As a result, all interested parties, in particular civil society, find it difficult to access, compile and analyze comprehensive, pertinent and reliable information. In turn, this makes it more difficult, costly and time consuming to identify and point out problems and to identify opportunities for improvement.

The system for control and audit is composed of numerous institutions. They are supposed to carry out a wide range of interventions aimed at ensuring the probity of public procurement operations. However, there are significant gaps and overlaps in the system. In practice, the procedures applied often add considerably to the time and cost of carrying out procurement, in addition to corruption risks. They are also not effective and efficient in reducing the level of fraud and corruption and in ensuring that prohibited practices are punished.

Enabling environment for public consultation and monitoring; direct engagement of civil society: There are no policies, regulations and practices that enable and promote civil society participation.

Develop and institutionalize mechanisms for enhanced consultation with civil society, both when policies are developed or amended and in the case of specific procurement projects or operations.

Adequate and timely access to information by the public: Information on what actually happens in public procurement is missing or very difficult to identify and access.

Increase the level of transparency by making all procurement related information comprehensive and easily accessible and free of charge through electronic platforms.

Legal framework, organization and procedures of the control system; coordination of controls and audits of public procurement: There are gaps and overlaps in the approaches. Procedures for ex-ante control significantly delay and complicate public procurement, while creating additional administrative costs. There is no internal audit system in place. Performance audits are not carried out.

Eliminate gaps and overlaps in regulations and conflicts of roles among oversight institutions and other entities involved in public procurement, eliminate redundant control steps, put relatively greater emphasis on procurement risk prevention rather than on correction actions.

Develop a policy for internal audit as well as a properly resourced plan for its successive introduction in all procuring entities at central and local levels of government.

Shift the focus from formal compliance with procedures to the achievement of intended results in ways that improve value for money.

Enforcement and follow-up on findings and recommendations: There is no effective follow-up and enforcement of the findings and recommendations actually made by internal and external control and audit functions, neither in the individual nor in the general case. There is no proper data base of

publicly accessible recommendations and decisions by the Court of Accounts, nor does the Court of Accounts itself have a system for ensuring the coherence of its rulings. While the rulings of the State Council are binding, their observance is not systematically monitored, and they are not regularly and effectively enforced.

Develop simpler, efficient and effective means for follow-up and enforcement of findings and recommendations of oversight bodies, with vigorous measures to ensure that obligations are met and that appropriate sanctions are meted out when merited. Publication of those actions is to be observed.

Once they have been issued, immediately publish all decisions, recommendations and reports of the Court of Accounts on a website accessible free of charge, with a searchable data base of machine-readable documents that also would serve the case management needs of the Court of Accounts.

Process for complaints and appeals; independence and capacity of the review body; decisions of the review body:

- There is no review body specifically designated to resolve public procurement complaints, and the existing possibilities for access to justice do not meet basic requirements of speed and quality of reviews and decisions.
- There is no timeframe to review the complaints filed at the State Council, and rulings are often issued too late to have an impact on the procurement procedure and its outcome.
- There are conflicts of roles within the Court of Accounts (ex-ante control; examination of complaints; external audit) and the State Council (advisory vs. jurisdictional roles; investigation vs. adjudication), creating a lack of independence and impartiality of decisions taken.
- There is no common, searchable data base of the public procurement cases adjudicated by the various existing institutions currently handling complaints and related matters.

Establish an efficient complaints system to enhance early responsiveness, implement timely and effective corrective measures and allow adequate and timely reporting on the number and nature of complaints.

Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties; provisions on prohibited practices in procurement documents; secure mechanisms for reporting prohibited practices or unethical behavior; codes of conduct/codes of ethics and financial disclosure rules: There is a lack of regulatory and institutional measures for helping ensure integrity in public procurement and in public administration in general.

Complete the general regulatory and institutional anti-corruption framework by thoroughly revising or replacing the illicit enrichment law, with focus on effective asset declarations and prevention of conflicts of interest and elimination of abusive use of its provisions, and by establishing the National Anti-Corruption Commission at the earliest, with the necessary resources. Take measures for the effective and efficient implementation of the anti-corruption laws.

Stakeholder support to strengthen integrity in procurement; anti-corruption framework and integrity training: Civil society does not have the means to monitor the situation and to support decisive action for addressing any deficiencies identified, with particular focus on public procurement

Create an enabling and supportive environment for civil society to contribute to the monitoring and prevention of fraud and corruption, especially in public procurement.

Effective sanctions and enforcement systems: Because of a general lack of access to information, it is not possible to monitor the incidence of fraud and corruption and the measures taken to prevent and sanction it.

Ensure that data on accountability, integrity and transparency are generated, published, compiled and made accessible, and monitor its use for preventing, identifying and sanctioning prohibited practices.

Next steps

This draft final report will be subject to further peer review within the MAPS Global Team at the World Bank. The finalized draft report will also be submitted to the MAPS TAG (Technical Advisory Group, a team of international experts representing the multilateral development banks and development partners) for final quality review and endorsement.

At the national level, in order to keep the momentum and push forward the public procurement reform agenda, there is an urgent and important need to:

- put in place the necessary coordination mechanisms for public procurement policy development and implementation, in consultation with interested development partners;
- develop a national strategy and action plan for public procurement reform in Lebanon, building on the consultative process already in place during MAPS;
- officially adopt the national strategy by the Government of Lebanon;
- set up the political, financial and technical mechanisms to execute the strategy and monitor its proper implementation.

1 Introduction

1.1 Context and rationale of the assessment

Lebanon faces several challenges, including an influx of refugees, an outflow of high-skilled workers, increasing internal and external debt, and a lack of capacity within public institutions. It finds itself in a protracted crisis characterized by deep and long growth stagnation.

Existing pressures on public finances were further exacerbated in 2018 by the continuous repercussions of the Syrian refugee crisis, the protracted domestic political crisis and the adoption of a new salary scale bill for the public sector in 2017, as well as by heightened geopolitical tensions. The Lebanese pound is depreciating fast in a context of depleting foreign reserves and tight banking capital controls, driving the country into a hyperinflation spiral. The budget deficit is projected to widen sharply as revenue collection is collapsing and businesses are shutting down. The poverty level is expected to reach 52% in 2020.

Austerity measures, failed public services and widespread corruption have triggered countrywide unrest in Lebanon as of October 17, 2019. Citizens are asking for the recovery of misused public funds, for more transparency in the management of public money and for the immediate implementation of financial governance reforms to address paramount financial, economic and social challenges.

In 2018, three international conferences were organized that sought to rally international support for Lebanon's institutions and attract foreign investments to shore up the sluggish economy and the deteriorating public services. During the "Conférence économique pour le développement, par les réformes et avec les entreprises" (CEDRE) held in Paris in April 2018, the Government of Lebanon presented its Vision for Stabilization and Development in Lebanon, based on four pillars: (1) increasing the level of public and private investment; (2) ensuring economic and financial stability through fiscal adjustment; (3) undertaking essential sectoral reforms and cross-sectoral reforms, including fighting corruption, modernization of the public sector and public finance management; (4) developing a strategy for the reinforcement and diversification of Lebanon's productive sectors and the realization of its export potential.

Public procurement is one of the main cross-sectoral reforms that the Government of Lebanon committed to at the CEDRE, in order to improve fiscal governance and the quality of public services, encourage investment inflows, and strengthen accountability and transparency.

Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. The legal framework is old (1959/1963), inadequate, fragmented (various laws, regulations, decrees, decisions), and does not conform with international standards and guidelines. The institutional framework is weak with overlapping mandates and gaps in stakeholders' roles. Some functions are weak or inexistent (such as policy function and complaints mechanisms). Consequently, the quality of the procurement system is below average (48/100) compared to the rest of the world and to a number of MENA countries¹. Several national efforts were undertaken and failed to achieve desired results.

¹ World Bank (2017), *Benchmarking Public Procurement Report*

Public procurement accounts for an average of 20% of expenditures by central government for the period 2010 - 2020 ² (excluding procurement done by autonomous public institutions and municipalities and unions), and 6.5% of the gross domestic product (thus, around USD 3.4 billion in 2019)³.

A coherent and clear public procurement system in line with international best practices and based on sound legal and institutional foundations is thought to improve competitiveness of the economy, attract quality service providers, strengthen accountability and transparency⁴ and achieve savings on yearly basis, allowing for more fiscal space to finance public investments and for enhancing service delivery to citizens.

Public procurement is a complex, whole-of-government reform, but key to enhancing fiscal governance and attracting public investment. It is key to budget integration and consolidation of public finances into a clear medium-term framework that allows government to better assess fiscal implications, forecast future financial needs, manage budget uncertainties, and ensure all commitments are visible in the medium and long term.

In June 2018, a first national consultative exercise took place on the occasion of the Forum on “Public Procurement for Resilience and Sustainable Growth”, organized by the Ministry of Finance in collaboration with eight partner organizations and with the participation of 310 experts, specialists and practitioners from the public sector, the business community and the civil society. The Forum discussed Lebanon’s capacity to advance its procurement agenda to meet development challenges and analysed links with domestic policy reform, institutional capacity, economic growth, competitiveness, governance and regulation, sustainable development, project management and capacity development. It looked at the successful experiences of Chile, France, Portugal, Tunisia and Ukraine and at the guidelines and recommendations of international organizations, in particular at the Agence Française de Développement, the European Bank for Reconstruction and Development, the European Union, the EU-OECD SIGMA Initiative, the International Growth Center, the International Monetary Fund, the United Nations Development Programme, and the World Bank. Recommendations of the Forum laid the foundation for a roadmap for modernization based on identified challenges.

In July 2018, a Task Force was formed by the Minister of Finance, comprising experts from the public and private sectors to follow up on the implementation of the Forum’s recommendations. The task Force was in charge of (1) reviewing the draft procurement law and providing recommendations for improvement, (2) revising and updating the Standard Bidding Documents developed by the Ministry of Finance in 2013 in view of their adoption by the Council of Ministers and (3) proposing concrete actions based on the conference’s recommendations.

In November 2018, based on the Forum’s recommendations and the Government of Lebanon’s request for support in reviewing the draft procurement law as part of the public procurement reform identified as one of essential reforms by CEDRE, the World Bank suggested to conduct a full assessment of Lebanon’s public procurement system using the Methodology for Assessing Procurement System (MAPS), an internationally recognized analytical tool, to identify strengths and

² Calculations were made based on the Lebanese Ministry of Finance Annual Reports (2010-2019) and based on planned expenditure in the 2020 Budget Law.

³ Calculations of GDP were made based on the Lebanese Ministry of Finance Annual Reports (2010-2018) and on the Ministry’s estimations for 2019 and projections for 2020, as indicated in the Government’s Reform Program (April 2020).

⁴ Around 57% of bribery cases detected are public procurement transactions. Lebanon ranks 28/100 on the Corruption Perception Index (137/180).

weaknesses in the system and prioritize concrete reform actions⁵. The Ministry of Finance solicited support from the World Bank's and the Agence Française de Développement in applying the MAPS⁶. In December 2018, the World Bank extended its support to the Government of Lebanon for this initiative⁷. In February 2019, the Minister of Finance appointed Ms. Lamia Moubayed Bissat, President of the Institut des Finances Basil Fuleihan (IOF) under the Ministry of Finance, as the National Focal Point (NFP), to take the lead in coordinating and managing the process⁸ (refer to letters in Appendices 1, 2, 3 and 4). The assessment concept note (refer to Appendix 9) was drafted in May 2019 and finalized after the MAPS kick-off session. It was then submitted for review and cleared by the MAPS Global Team and the TAG.

A national Assessment Steering Committee (ASC) was formed, composed of 15 public administrations and oversight agencies (refer to Appendix 5), and a stakeholder group composed of more than 70 entities from the public and private sectors as well as civil society was mobilized and consulted throughout the assessment (refer to Appendix 6).

The MAPS assessment in Lebanon is supported through the Global Procurement Partnership Multi-Donor Trust Fund (GPP MDTF), to which both the World Bank and the Agence Française de Développement (AFD) are contributing. In complementarity with the MAPS assessment, the Ministry of Finance started working on three reform measures:

- i. drafting a new modern public procurement law;
- ii. reviewing and upgrading standard bidding documents; and
- iii. conducting an institutional mapping to clarify roles and responsibilities of public procurement stakeholders.

Throughout its work, the MAPS assessment team has liaised with those engaged in these other reform efforts and has provided preliminary inputs to their work. The outputs of the MAPS assessment will, in particular, provide the Government of Lebanon with evidence-based strategic recommendations paving the way towards drafting a national strategy for public procurement reform, in view of its adoption by the Council of Ministers. It will also provide guidance for the finalisation and adoption of the draft public procurement law and of related secondary legislation, as well as for other related policy reform actions and tools that will be detailed at the strategy level.

1.2 Objectives of the assessment

Against the background of the situation outlined above, the main objective of the MAPS assessment is to support the Government of Lebanon in its efforts to improve the quality and performance of the public procurement system. In turn, better public procurement is intended to contribute to raising the effectiveness of public expenditure, ensuring timely and quality delivery of public services, encouraging the participation of the private sector to public bids, and enhancing trust of investors and the international community.

In order to achieve these objectives, the assessment will:

- i. identify strengths and weaknesses in the current legal and institutional frameworks and in the way they function
- ii. identify substantial gaps that negatively impact the quality and performance of the system

⁵ World Bank Letter to Minister of Finance, dated 1 November 2018

⁶ Letter of Minister of Finance to the World Bank, dated 13 November 2018

⁷ World Bank Letter to Minister of Finance, dated 6 December 2018

⁸ Letter of Minister of Finance no. 298/S1, dated 6 February 2019

- iii. provide a comparative analysis against MAPS standards, and
- iv. suggest recommendations for reform.

By laying the foundation for a national strategy and action plan for procurement reform, the Government of Lebanon would be better able to meet its policy objectives of improving efficiency in public services delivery, increasing public trust, contributing to creating jobs and enhancing the standard of living of the people in Lebanon, while achieving value for money with transparency, fairness and good governance.

1.3 Assessment methodology and challenges

For carrying out the work, an assessment team was set up, composed of a lead international consultant and a senior local consultant, both appointed by the World Bank, supported by a national coordination team of leading staff members of the Institute of Finance (in its capacity as the National Focal Point), and working in close cooperation with specialists at the Beirut offices of the World Bank and the AFD. The assessment team has been supported with premises and administrative assistance at the Institute of Finance.

The assessment team has compiled and reviewed relevant documentation, held working meetings with the national ASC and stakeholder groups and collected inputs, interviewed procuring entities concerned, and carried out an enterprise survey. Appendix 10 contains a list of the primary and secondary legislation used for the assessment. Appendix 11 lists other reference documents that have been consulted. Based on the findings, the assessment team has drafted the present report which has been reviewed and validated by the relevant stakeholders and the competent authorities.

The main issue encountered in the process was the lack of effective access to complete and accurate data for describing and analyzing the actual practices and outcomes in the public procurement system. Even when documents exist, they are not easily accessible. Scattered information is archived only in hard copies, spread across all the Government level authorities and institutions carrying out key public procurement functions as well as the large number of procuring entities. The information is not systematically retrieved and compiled. There is no central repository of any statistical information that would allow getting an overview of the public procurement system. Notices are only required to be published in the media. Few procuring entities possess and make use of electronic systems for managing public procurement and publishing notices.

For this reason, it has not been possible to systematically identify, retrieve, sample and review procurement plans, tender documents, tender opening reports, evaluation reports, awarded/signed contracts, contract amendments, complaints raised and corresponding decisions in the way expected under the methodology. As a consequence, it has not been possible to find data for most of the quantitative indicators foreseen to be used.

An online enterprise survey has nevertheless been carried out. The survey aimed to:

- seek feedback from contractors, suppliers and consultants' experience with public procurement in Lebanon
- better understand and assess the reasons that may encourage or discourage firms from participating;
- Determine their experience with the complaints' mechanisms;
- Identify firms' perceptions regarding fraud and corruption risks in procurement and its impact on competitiveness; and

- Overall, how to improve the dialogue and partnerships between the Government and private sector through awareness and training.

The respondents to the enterprise survey represent a wide range of enterprises of various size, geographical location and field of business. Nevertheless, their number is not large enough and significantly representative to allow firm conclusions to be drawn about the situation of the business community in general. Nevertheless, the information obtained complements and generally supports the findings of the qualitative analysis. A summary of the survey’s results is included in Appendix 7.

The procurement assessment has been guided by the current version of the MAPS analytical framework⁹, constituted by four pillars with the following contents:

- (v) Legal, Regulatory and Policy Framework
- (vi) Institutional Framework and Management Capacity
- (vii) Procurement Operations and Market Practices, and
- (viii) Accountability, Integrity and Transparency.

The pillars contain a total number of 14 main indicators covering the full range of public procurement principles, policies and practices, in turn subdivided into sub-indicators, each one composed by a number of assessment criteria which represent internationally accepted principles and practices of good public procurement. The assessment reviews the actual situation, compares it with the assessment criteria and describes it accordingly, identifies any gaps, examines the underlying reasons for them and, on that basis, prepares recommendations for the further development of the public procurement system.

In line with the methodology, the collection, compilation and analysis of the information needed for the assessment has been carried out in three main steps:

Steps	Assessment activity
Step 1	<ul style="list-style-type: none"> • Review of the system applying assessment criteria expressed in qualitative terms. • Preparation of a narrative report providing detailed information related to this comparison (actual situation vs. assessment criteria) and to any reforms in the process of preparation or implementation.
Step 2	<ul style="list-style-type: none"> • Review of the system applying a defined set of quantitative indicators (using at least the minimum set of quantitative indicators defined in the methodology). • Preparation of a narrative report detailing the findings of this quantitative analysis.
Step 3	<ul style="list-style-type: none"> • Analysis and determination of substantive or material gaps (gap analysis). • Sub-indicators that exhibit a “substantive gap” need to be highlighted in order to stress how important it is to address them in order to improve the quality and performance of the system. • In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main objectives of public procurement and that cannot be mitigated directly or indirectly through the system.

⁹ See further <http://www.mapsinitiative.org/methodology/>.

MAPS implementation has been carried out by the assessment team during the period June 2019 – July 2020 (refer to Appendix 8). Key milestones of the assessment are the following:

- March – May 2019: Inception phase (concept note preparation, recruitment of consultants, ASC composition)
- June 20 - 21, 2019: Kick-off meeting and introductory guidance session with ASC members.
- July - August 2019: Introductory working meetings with the ASC to get familiar with the methodology requirements, identify references documents and collect sources of information. Preliminary responses to indicators were collected by ASC members.
- October 1 - 2, 2019: Focus groups to introduce MAPS methodology to stakeholder groups from the public and private sectors and civil society
- October 14 - 17, and November 29, 2019: Working meetings with stakeholder groups
- December 3 - 5, 2019: First assessment workshop with stakeholder groups
- December 2019 – January 2020: Collection of information from stakeholder groups and preliminary analysis
- January 28 - 30, 2020: Second assessment workshop with ASC
- February 2020: Finalization of qualitative input collection
- February - March 2020: Implementation of the enterprise survey and analysis of results
- March - July 2020: Drafting assessment report and validation with ASC members

On October 17, 2019, Lebanese citizens' protests began and roads closed, causing the interruption of normal workflow in the country. The security situation and unrests lasted for 4 weeks, which delayed the implementation of the assessment until order was restored by the second half of November 2019.

Drawing on the findings from input gathering, stakeholder workshops, interviews with the competent authorities and the enterprise survey, drafting of the preliminary report was done principally during the period February – June 2020. Additional delays were encountered due to the effects of the COVID-19 pandemic, preventing the team from holding regular meetings with various stakeholders and complementing information from different sources. Despite the COVID-19 lockdown, the assessment in Lebanon continued in consultation with the ASC and remotely with the MAPS consultants. Challenges were mitigated by committed assessment and national coordination teams, and the sense of urgency that the Government has for completion of MAPS in order to ratify the proposed public procurement law.

Following the three assessment steps indicated above and the finalization of the initial draft report, internal quality control and corresponding revisions were followed by the full translation of the draft report into Arabic and a validation phase involving key stakeholders in Lebanon as well as external reviewers.

2 Analysis of Country Context

2.1 Political, economic and geostrategic situation of Lebanon

1. **The Republic of Lebanon is a democratic parliamentary republic located at the east coast of the Mediterranean, with a total area of 10,452 square kilometers and is classified as high middle-income country.** The total population of Lebanon increased by more than 38 percent between 2010 and 2019, rising from 4.9 million to 6.8 million including influx of 1.5 million displaced Syrians. Lebanon became an independent republic on November 22, 1943. It is a founding and active member of the United Nations (1945) and of the League of Arab States (1945). Located in the least peaceful region in the world, Lebanon is continuously exposed to political and security shocks. Following a civil war (1975-1990) that had a devastating impact on the country's political stability, economic situation and social cohesion, the Taef Agreement (1989)¹⁰ laid the foundation to Lebanon's second republic bringing constitutional changes that redistributed governing powers between Lebanese religious communities. The political power in place is the result of parliamentary elections in which citizens elect 128 members of Parliament that in turn has the power to nominate a Prime Minister and to elect the President of the Republic. The latest Parliamentary elections were held in May 2018. The electoral system is based on the principle of direct election and proportional representation of a total of 18 religious groupings, split between Christians, Muslims and other religious minorities. The confessional system of governance in place is estimated to cost Lebanon 9% of its GDP per year (World Bank, 2015) and has left country much vulnerable to external influence, turmoil, and instability.¹¹
2. No census of the population of Lebanon has been made for a number of years, with the last official **estimation being 3,759,100 residents (2008)¹². The estimation made in 2018 by the United Nations World Population Prospects exceeds 6.8 million, counting all residents regardless of their legal status or citizenship¹³.** Lebanon has long been a land of asylum for neighboring countries and since the Syrian war of 2011, the country is hosting the largest number of refugee per capita. The number of displaced Syrians in Lebanon is estimated at 1.5 million, of which about 1 million are registered by UNHCR¹⁴. In addition, there are close to 0.5 million¹⁵ Palestinians as refugees in Lebanon. Although the number of displaced Syrians has become stable since 2017, it remains a drain on the country's resources and its degraded infrastructure. The Syrian displaced persons crisis is estimated to have cost Lebanon more than USD 18.15 billion since 2011, in terms of economic activity decline, pressure on public finances and deterioration of public services¹⁶.

¹⁰ The Taef Agreement ended the civil war in Lebanon. It was negotiated in Taef, Saudi Arabia, in September 1989 and approved by the Lebanese Parliament on 4 November 1989.

¹¹ World Bank (2015), *Lebanon: Promoting Poverty Reduction and Shared Prosperity; A Systematic Country Diagnostic*

¹² The latest official statistics issued by the Presidency of the Council of Ministers, Central Administration of Statistics (CAS) was in 2008; <http://www.cas.gov.lb/images/PDFs/Lebanon-Figures-2008.pdf>

¹³ World Bank Data / United Nations World Population Prospects

¹⁴ Population data by UNHCR; <http://popstats.unhcr.org/en/overview#>. Discrepancy in numbers is due to the fact that many Syrian displaced families did not register at the UNHCR, as well as many other Syrian families who used to stay and work in Lebanon before the Syrian war started.

¹⁵ www.unrwa.org

¹⁶ World Bank (2017), *Preliminary Findings of the Economic and Social Impact Assessment of the Syrian Conflict on Lebanon*

3. **Its historical geographic location in the region, at the crossroads of several corridors from the East to the West, marked the country with several important roles**, including (1) a mediator and transit to and from Arab countries; (2) a coastal local and regional trading hub through its numerous ports and developed marine/land trade activities; (3) being at the gate to the East, leading to a policy of openness transformed the country into a commercial and cultural hub; (4) moderate weather and beautiful natural landscapes, made Lebanon a popular tourist destination in summer and winter; (5) with leading banking services, Lebanon became a center for an attractive commercial banking for Arabs and Foreigners with a total assets exceeding 350% of GDP in 2015; (6) higher than average rain water that can be managed, stored and exported; and (7) one of the leading countries in the region in its potential for education and healthcare services.
4. **Since the end of the civil war in October 1990, until 2018, Lebanon's economy grew at a moderate pace, but with high volatility with frequent shocks. Since the early nineties, Lebanon's economic model has been characterized by a high reliance** on import of goods and livestock (the trade balance recorded a deficit of USD 15.5 billion in 2019¹⁷), tourism, real estate services and on remittances sent by an active diaspora. Remittances, estimated to around 13% of the country's GDP in 2019, contribute largely to investments in education and health of Lebanese households thereby supporting human development and the skills of the next generation. Between 1997 and 2011, the services sector accounted for 74% of GDP, the industrial sector for 9% and the agricultural sector for 5.6% of GDP on average. Given its dominant share of the Lebanese economy, the deceleration in growth observed in the services sector since 2011 dragged growth down significantly. The weakness of the labor market is characterized by low qualified jobs creation for foreign labor forces and a continued brain drain of Lebanese skilled workforce to neighboring markets (Gulf countries, Africa).
5. However, **this economic model based on short-term capital inflows, sizable deficits and a growing public debt that peaked at more than 170% of GDP and consumed almost 50% of domestic revenues in 2019**, coupled with strong state elite capture, have led the country to accumulate chronic structural deficiencies. Despite several attempts aiming at reviving the economy, among which the most recent were the launching of oil and gas exploration in 2019, the expansion of free zones in Tripoli and the Port of Beirut and the enactment of the law on PPP¹⁸, growth prospects were persistently hampered by the absence of political will to reform public sector governance and to contain the fiscal and trade deficits.
6. In terms of **economic competitiveness, Lebanon was ranked 88th out of 141 countries on the World Economic Forum's Global Competitiveness Index of 2019¹⁹, and 142nd out of 190 countries as per the World Bank's 2020 Doing Business indicator**, performing below the MENA region average²⁰. Corruption and inadequate infrastructure to supply public services remained among the top problematic factors of doing business. Finally, with a score of 28/100, Lebanon ranked **137th out of 180 countries in Transparency International's Corruption Perception Index 2019²¹**. On the Open Budget Survey of 2019²², **Lebanon scored 6/100 on transparency, 0/100 on participation, and 18/100 on budget oversight**.

¹⁷ Investment Development Authority of Lebanon (IDAL),

https://investinlebanon.gov.lb/en/lebanon_at_a_glance/lebanon_in_figures/trade_performance

¹⁸ Law on Public-Private Partnership, no. 48/2017

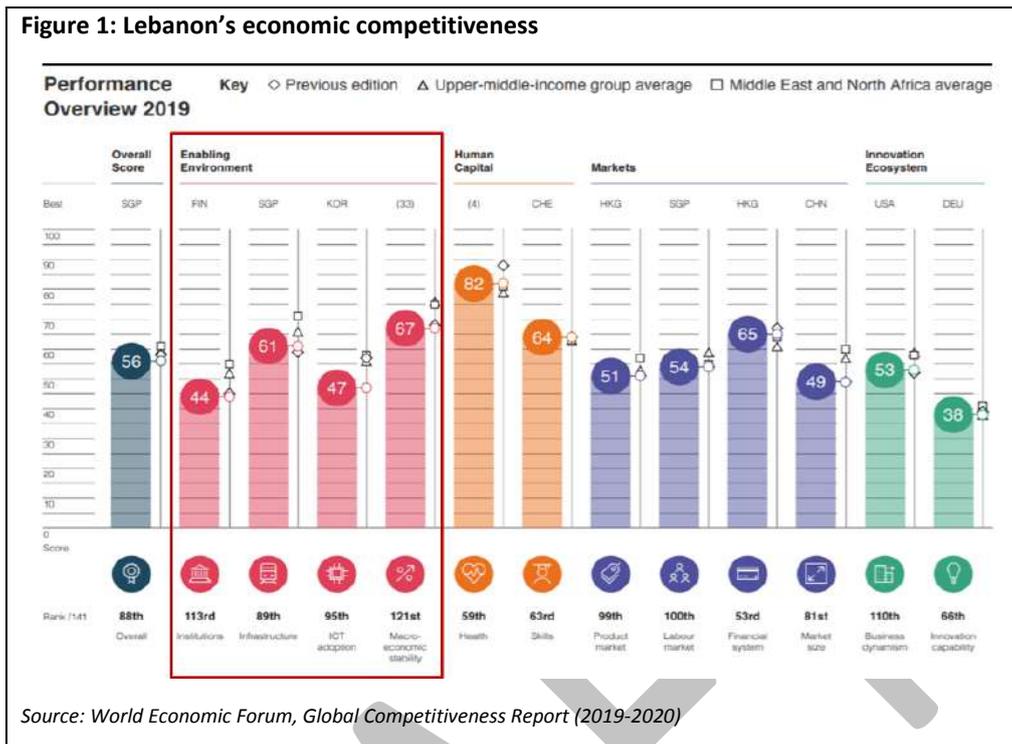
¹⁹ World Economic Forum (2019), *Global Competitiveness Report*

²⁰ World Bank (2020), *Doing Business Report*

²¹ Transparency International (2019), *Corruption Perception Index*

²² International Budget Partnership, (2019), *Open Budget Survey: Lebanon*

Figure 1: Lebanon's economic competitiveness

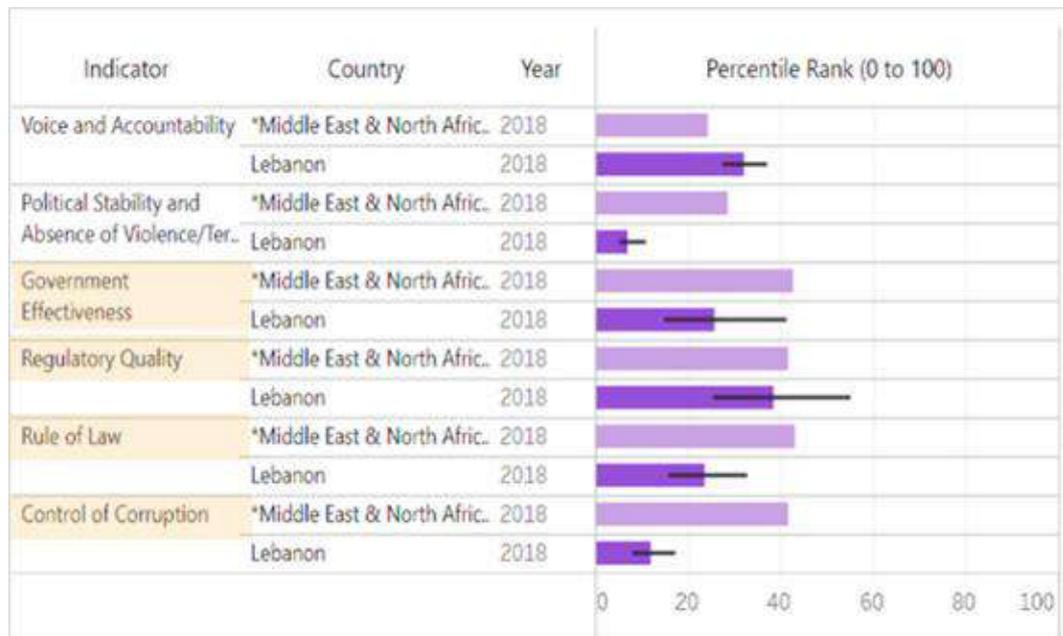


7. **Given its low performance on a wide range of economic and governance indicators, and its inability to reform and implement the roadmap committed to at CEDRE Conference (April 2018), Lebanon is facing one of the most acute economic, financial and social crisis of its recent history since late 2019.** In October 2019, popular unrests erupted across the country against long-time failures in governance and public service delivery and widespread corruption, as well as worsening socio-economic conditions. In March 2020, the Government of Lebanon defaulted for the first time on Lebanon's sovereign debt for USD 1.2 billion Eurobond interest and announced plans to negotiate with creditors to restructure its entire debt. This has led to dramatic developments including the economy contracting by more than 12% in 2020, a sudden stop of capital inflows, large shortages in US dollars and the development of several parallel exchange rates in face of the official peg²³, ad hoc capital controls and a potent liquidity crisis. It has also led to a devastating humanitarian and social impact with around 50% of the Lebanese population expected to fall into poverty²⁴, rising unemployment, and hyperinflation with prices of food products increasing by 190% from a year earlier driven by the currency shock. By mid-2020, the Lebanese middle class is expected to have lost approximately two-thirds of its purchasing power, bringing further imbalances to the system and further social disruption. The budget deficit is projected to increase sharply as revenue collection is collapsing and businesses are shutting down.

²³ The currency exchange rate had been fixed at LBP 1,507 for one US Dollar since 1999 by the Central Bank of Lebanon

²⁴ The Lebanese Government's Financial Recovery Plan, <http://finance.gov.lb/en-us/EventPdfs/English/The%20Lebanese%20Government's%20Financial%20Recovery%20Plan.pdf>

Figure 2: Lebanon's Governance Indicators (2018)



Source: World Bank, *Worldwide Governance Indicators (2018)*

8. The situation in the country is further compounded by the outbreak of the **COVID-19 pandemic** and subsequent lockdown measures, which pose further pressure on the economic downturn, social vulnerabilities, and rising unemployment, notably among the youth²⁵.
9. **In response to this multifaceted crisis, the Government is seeking an international financial rescue package with the international community and notably with the International Monetary Fund** with the aim to backstop the recession, create the conditions for a rebound, protect the most vulnerable and restore confidence. To this end, it has approved in 2020 a Recovery Plan that includes a series of structural reforms aimed at addressing fiscal, financial and economic imbalances, including public procurement reform²⁶.
10. It is important to note that **the international community's support to Lebanon has accompanied the various phases of its recent post-war history. Three international conferences were hosted by France (Paris I in 2001, Paris II in 2002, and Paris III in 2007) to rally the support of Lebanon's international partners to rebuild the economy.** The conferences raised international aid amounting respectively USD 500 million (Paris I), USD 4.2 billion (Paris II) and USD 7.6 billion (Paris III), in addition to USD 980 million raised at the Stockholm conference which was held after the Israeli war of August 2006. Finally, **the Conférence Economique pour le Développement par les Réformes et avec les Entreprises (CEDRE) was held in Paris in April 2018**, on the occasion of which the international community pledged once again USD 11 billion in terms of aid for Lebanon, but conditioned it to the achievement of strict reform measures, among which the most important were

²⁵ World Bank estimates, November 2019, URL: <https://www.worldbank.org/en/news/press-release/2019/11/06/world-bank-lebanon-is-in-the-midst-of-economic-financial-and-social-hardship-situation-could-get-worse>

²⁶ The Lebanese Government's Financial recovery Plan, <http://finance.gov.lb/en-us/EventPdfs/English/The%20Lebanese%20Government's%20Financial%20Recovery%20Plan.pdf>

the electricity sector reform, public procurement reform and the independence of the judiciary, as voiced in the subsequent statements of the International Support Group for Lebanon²⁷.

11. **At the level of international obligations, Lebanon signed free trade agreements with its major trading partners;** namely the European Union (EU), the EFTA States (Switzerland, Lichtenstein, Norway, Iceland) and the Gulf Cooperation Countries (GCC); and a full establishment of the Greater Arab Free Trade Area (GAFTA) was achieved in 2005. The Government of Lebanon adopted the Euro-Mediterranean Charter for Enterprise in 2004 and launched the integrated SME Support Programme.
12. **Lebanon is not yet a member of World Trade Organization.** Efforts for Lebanon's accession to the organization began in 1998, and negotiations started in 2002 but have not led yet to the completion of accession procedures.
13. **Lebanon ratified the United Nations Convention against Corruption (UNCAC) in 2009.** Lebanon is a founding member of the Arab Network for Enhancement of Transparency and Corruption Combat. The rules generally accepted in international law and the international conventions which were ratified by Lebanon on the basis of a corresponding law and which entered into force, are an integral part of the domestic law of the Republic of Lebanon and take precedence over any contrary provisions in domestic law.

2.2 The public procurement system and its links with the public finance management and public governance systems

14. **In Lebanon, public procurement is estimated to constitute approximately 20% of government expenditures** (excluding debt service and reserves) **and 6.5% of the GDP, at the central level only, i.e. ministries** (excluding public autonomous institutions, municipalities and unions of municipalities)²⁸. Hindered by the unavailability of data on public procurement, the estimation of its size was done based on reported expenditures data by the Ministry of Finance (2010-2019) and on budget data for 2020. The actual size of public procurement in government expenditures is expected to increase with the potential widening of fiscal space for public investment and capital expenditures (capital expenditure does not exceed 2% in 2020 budget)²⁹.

²⁸ Institut des Finances Basil Fuleihan (2020), *Economic estimates of the size of public procurement in Lebanon*, URL: <http://www.institutdesfinances.gov.lb/publication/economic-estimates-of-the-size-of-public-procurement-in-lebanon/>

²⁹ 90% of budgeted expenditures are allocated to salaries and wages (50%), debt interests (24%) and transfers to current expenditures (16%), in addition to 8% allocated as transfers to Electricité du Liban (Source: Institut des Finances Basil Fuleihan, Citizen Budget 2020, URL: <http://www.institutdesfinances.gov.lb/publication/citizen-budget-2020/>)

Figure 3: Estimated size of public procurement (2010-2020)



Source: Institut des Finances Basil Fuleihan, Economic estimates of the size of public procurement in Lebanon (2020)

15. **Amid its size in the economy, the current public procurement system is undermined by several structural challenges**, obstructing its contribution to sound fiscal governance, proper public money management, accountability and the efficient delivery of services to citizens. The quality of the procurement system is below average (48/100) as compared to the rest of the world and to a number of MENA countries³⁰.
16. **Public procurement is governed by a set of scattered regulations found in various antiquated laws and decrees**, mainly in the Public Accounting Law (PAL) (Decree no. 14969 of 1963) and the Tender Regulation (Decree no. 2866 of 1959), in addition to a number of special provisions targeted at municipalities, public institutions, and military and security entities. The fragmentation of the legislative framework has created loopholes that have given a number of public entities, especially public institutions that have specific bylaws allowing for alternative procurement methods, the opportunity to develop and follow their own set of procurement rules³¹.
17. **The institutional framework of public procurement is composed of various stakeholders concerned directly with control and oversight** across the various stages of process among which are:
 - the Ministry of Finance (MoF) controlling expenditures prior to tender procedures, at the level of ministries;
 - the Court of Accounts (CoA) ensuring systematic ex-ante (in central administrations, selected large municipalities - 70 out of more than 1,000 municipalities across Lebanon -

³⁰ World Bank (2017), Benchmarking Public Procurement, URL: <http://documents1.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>

³¹ The PAL allows municipalities, public enterprises and autonomous public agencies to follow their own regulations in a number of cases. Moreover, the Army has the right to follow a set of special rules for procurement in the case of a need for secrecy that applies under necessary and exceptional reasons.

- and selected public institutions) and limited ex-post audit³² not exceeding 100 procurement projects annually³³;
- the Central Inspection Board (CIB) ensuring ad-hoc inspection in case of reported financial malpractice;
 - the Central Tender Board (CTB) in charge of centralizing and carrying out the procurement process for goods and works on behalf of ministries, for amounts exceeding LBP 100 million (equivalent to USD 66,666)³⁴, and/or reviewing tender documents, bid openings and evaluations which estimated value exceed LBP 100 million;
 - the State Council (SC) is the appeal body dealing with appeals submitted by potential bidders, suppliers/contractors and third parties;
 - the Ministry of Interior and Municipalities (MOIM) controls municipal procurement.
18. **The current institutional framework lacks clear delineation of roles and responsibilities of the above stated institutions.** Overlaps and capacity gaps, inefficiencies and higher corruption risks, are observed and further analyzed throughout the assessment report. The current framework also lacks a regulatory function of the procurement system, a review and complaints mechanism, procurement performance information/data, and private sector competition.
19. **At the level of human resources and capacity building, there is no stand-alone procurement profession with clear competencies and job description in the Lebanese civil service.** Procurement is implemented by a wide range of professions across public administration with no mandatory training in place. Since 2008, the Institut des Finances Basil Fuleihan (IOF)³⁵ – Ministry of Finance has provided continuous, specialized and certified training to practitioners and developed, with the support of a World Bank Post-Conflict Trust Fund, a procurement manual and five standards bidding documents (SBDs) in an attempt to standardize procedures and practices across public sector. Also, the Office of the Minister of State for Administrative Reform (OMSAR) provided, since 2017, trainings to practitioners and contributed to developing of SBDs in the context of an EU-funded project.
20. **In 2012, the Government of Italy supported the Government of Lebanon through a “Capacity building in Public Procurement” project,** implemented by the Institut des Finances Basil Fuleihan (IOF). A Country Diagnostic Review³⁶ was conducted to assess the importance of public procurement in the overall public financial management framework, define its legal and institutional frameworks and map its characteristics and practices, in addition to a training needs assessment with a medium-term professionalization strategy for procurement practitioners. The diagnostic served as foundation to initiate capacity building and awareness-raising on international standards and good practices and launch a national dialogue around the need for public procurement reform.

³² Ex-post audit may include public institutions that are not subject to the ex-ante audit of the Court of Accounts such as the CDR, the EDL, etc

³³ Institut des Finances Basil Fuleihan (2014), *Professionalizing Public Procurement in Lebanon: Diagnostic Review and A Way Forward*, URL: <http://www.institutdesfinances.gov.lb/publication/professionalizing-public-procurement-in-lebanon-diagnostic-review-and-a-vision-forward/>

³⁴ Based on the exchange rate of US\$ 1 = LBP 1,507

³⁵ The Institut des Finances Basil Fuleihan is an autonomous public institution operating under the tutelage of the Lebanese Minister of Finance, URL: <http://www.institutdesfinances.gov.lb/about-the-institute/>

³⁶ Institut des Finances Basil Fuleihan (2014), *Professionalizing Public Procurement in Lebanon: Diagnostic Review and A Vision Forward*, URL: <http://www.institutdesfinances.gov.lb/publication/professionalizing-public-procurement-in-lebanon-diagnostic-review-and-a-vision-forward/>

21. In parallel, **the World Bank supported efforts aimed at strengthening the mandate of the Central Tender Board** and supported the development of a central portal for publishing notices and contract awards as well as provided continuous training in procurement through its investment operations. However, significant areas in the public procurement ecosystem remain in need of reform.
22. **The few international assessments conducted over the years confirmed the fragmentation and need for overhaul of the procurement system.** The Country Procurement Assessment conducted by the World Bank in 1994 revealed low scores in bid preparation and bid submission, extremely low scoring in bid opening and evaluation and in payment to suppliers; however, fairly high score was recorded at the level of contract management and securities. It also highlighted substantial delay in resolving and rendering decisions on complaints. Similarly, the Public Investment Management Assessment conducted by the IMF in 2018 noted the need to strengthen oversight functions, ex-post audits and the overall public procurement framework, in addition to several deficiencies of the procurement system that was not catering for the timely and quality delivery of services nor encouraging private sector participation.

2.3 National policy objectives and sustainable development goals

23. **At the CEDRE conference (2018), Lebanon presented to the international community its “Vision for Stabilization, Growth and Employment” and a Capital Investment Plan (CIP)** which feasibility was assessed by the World Bank. The assessment report outlined that better public investment management and strengthening of the procurement process were critical to the successful delivery of the CIP, in particular to the sectors (transport, water and irrigation, waste water, electricity, telecom, solid waste, infrastructure for tourism and industry) that affect the economic development of the country, to Lebanon’s fiscal consolidation efforts, and to the improvement of the confidence of international investors, both private and public.
24. In 2014, a **Strategy for Small and Medium Enterprises (SMEs) in Lebanon was developed by the Ministry of Economy and Trade (MOET), in collaboration with the United Nations Development Program (UNDP)**³⁷. SMEs in Lebanon constitute 93 to 95% of enterprises and employ 51% of the working population but suffer from multi-fold challenges related to the current legal framework, access to finance, access to new markets, unfair competition, among others. The strategy didn’t include clear orientations and measures to foster SMEs competition through the public procurement market. **Progress on the implementation of this national strategy has not been reported. The MOET is currently working on a draft Competition law to submit to the Council of Ministers.**
25. **At the level of fighting corruption, national policy efforts have resulted in enactment of consecutive legislations that impacts public procurement as well:** Law on Access to Information (no. 28 of 2017), Law on Protection of Whistleblowers (no. 83 of 2018), Law on Anti-Corruption (no. 175 of 2020). Public procurement is also one of the seven pillars tackled in the National Strategy on Anti-Corruption (2020-2025), adopted by the Council of Ministers in May 2020³⁸.

³⁷ Ministry of Economy and Trade (2014), Lebanon SMEs Strategy, https://www.economy.gov.lb/public/uploads/files/6833_5879_4642.pdf

³⁸ Council of Ministers Decision no. 7, dated May 12, 2020.

26. **Lebanon has not yet adopted a national policy for sustainable development**, but instead, ministerial declarations and inter-ministerial initiatives are taking place aligned to the Millennium Development Goals (MDGs) set in the year 2000 and subsequently to the Sustainable Development Goals (SDGs) agreed upon in 2015.
27. **In 2018, Lebanon confirmed its commitment to the 2030 Agenda and submitted to the United Nations its first Voluntary National Review (VNR) report³⁹**. A national committee was established by the Council of Ministers to oversee and guide the roll-out of the SDGs.
28. Despite the challenges raised by fiscal and trade deficits, the high debt burden and slow economic growth, **the VNR highlighted “Lebanon’s determination to mobilize resources needed for implementing the 2030 Agenda**. Strengthening the country’s international partnerships as well as those with the private sector are considered essential. Connections with the large Lebanese diaspora, as evidenced by Foreign Direct Investments (FDIs) and remittances, are part of Lebanon’s characteristics and constitute a crucial aspect of the Lebanese economy.” However, no progress was reported since the first VNR submission.
29. Sustainable Public Procurement (SPP) is considered as a key component of Goal 12 of the 2030 Agenda and national efforts were undertaken since 2010 to promote SPP. In 2010-2012, in collaboration with the United Nations Environment Program (UNEP), Lebanon was identified as Pilot country for the Marrakech Task Force (MTF), in the aim to develop a national action plan for Sustainable Public Procurement. The action plan was developed by the Institut des Finances Basil Fuleihan in its capacity as national focal point. In 2015, the plan on SPP was integrated within the National Action Plan for Sustainable Consumption and Production in the Industrial Sector in Lebanon, led by the Lebanese Ministry of Environment and UNEP, and then adopted by the Council of Ministers. The implementation of the plan didn’t take place due to shortage of funds. In 2015-2019, the Institute, representing Lebanon, was member of the Multi-Stakeholders Advisory Commitment (MAC) of the 10-Year Framework Program on SPP, an initiative of UN Environment to promote SPP as part of SDG 12.

2.4 Public procurement reform in Lebanon

30. **Despite some donor support, initiatives to reform public procurement remained scattered, with no political champion appointed over the past 20 years to lead on this critical area of financial governance reform**. For a long time, public procurement was looked at as an administrative function rather than a catalyzer of growth, able to achieve primary and secondary development objectives for the Government.
31. **National efforts to draft a new procurement law started in 2001**. In 2012, the Council of Ministers submitted to Parliament a draft public procurement law (decree no. 9506, dated 12/12/2012) prepared by OMSAR, and partially discussed in the “Administrative and Justice” parliamentary committee (2015-2016), but was later put on hold.
32. **Other efforts were made to reform procurement practices**. In 2008, with the aim to standardize procedures, the World Bank (WB) supported the Ministry of Finance to develop and disseminate standard bidding documents (SBDs) for goods, works and services, in line with the current legal framework and with international good practices, but the use of the SBDs has not been made mandatory to date.

³⁹ <https://sustainabledevelopment.un.org/content/documents/19624LebanonVNR2018.pdf>

33. **Reforming public procurement was also a sub-component of the World Bank’s project entitled “Lebanon-Strengthening Fiscal Governance Project (SFG)”**, in line with its Systematic Country Diagnostic (P151430) and Country Partnership Framework for Lebanon FY17–FY22 (Report No. 94768–LB). This project aims to improve budget transparency, cash management, public debt management, as well as the Ministry of Finance e-services, and the efficiency of public procurement.
34. **Serious commitment by the Government to reform was made at CEDRE conference (2018) to restore the trust of investors and of the international community.** A national momentum for public procurement reform was gradually formed through a consultative process started in June 2018 on the occasion of the first national forum on “Public Procurement for Resilience and Sustainable Growth” organized by the Ministry of Finance in collaboration with eight partner organizations⁴⁰. Following this national milestone, the Minister of Finance committed to procurement reform as a key component of sound financial governance, and appointed an Experts’ Task Force, composed of subject-matter experts from the public and private sectors, to work on the implementation of the forum’s recommendations, and in particular to draft a new and modern procurement law, and to conduct an assessment of the procurement system and work towards the official adoption of SBDs.
35. **The Government of Lebanon’s commitment to public procurement reform was reiterated in the Ministerial Declaration of successive governments of Prime Minister Saad Hariri (January 2019)⁴¹ and Prime Minister Hassan Diab (February 2020)⁴². It was also reflected in the Government of Lebanon’s Financial Recovery Plan that considered procurement reform as a policy instrument to “promote a new integrated, sustainable and inclusive growth model” and committed to approving a public procurement law by the Parliament⁴³.**
36. **To embark on the reform process with solid grounds, data and evidence on the status of the procurement system, its strengths and weaknesses were needed.** To this end, the Government of Lebanon, represented by the Minister of Finance, addressed to the World Bank, in 2018, an official request for assistance to conduct the present MAPS assessment.
37. **Upon the World Bank’s approval, the Minister of Finance mandated in 2019 the Institut des Finances Basil Fuleihan (IOF) as National Focal Point (NFP) to take the lead in coordinating and managing the MAPS process.** The implementation of MAPS, supported by the World Bank and the Agence Française de Développement (AFD) through the Global Procurement Partnership- Multi-Donor Trust Fund (GPP-MDTF), started in June 2019. This marked the

⁴⁰ Agence Française de Développement (AFD), the Association of Lebanese Industrialists (ALI), the European Bank for Reconstruction and Development (EBRD), the UN Economic and Social Commission for Western Asia (UN-ESCWA), the joint EU-OECD Support for Improvement of Governance and Management (SIGMA), the Tender Board of Lebanon, the World Bank, and the 10 Year Framework of Programme on Sustainable Consumption and Production-10 YFP).

⁴¹ Ministerial declaration of PM Saad Hariri Government, January 2019 (Article 4 “Structural Reforms”: “*The modernization of the public procurement legal framework and the preparation of Standard Bidding Documents to enhance transparency in public procurement*”).

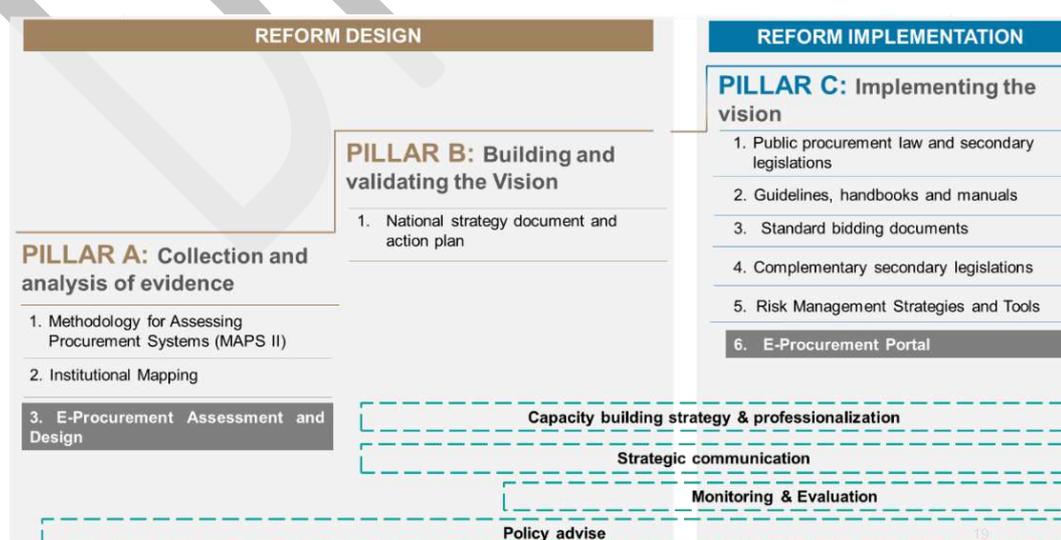
⁴² Ministerial declaration of PM Hassan Diab, February 2020 (Section 2, Article 5 “... to pursue efforts undertaken by the Ministry of Finance to reform the public procurement apparatus including finalizing the MAPS exercise, validating and adopting its recommendations, and working towards immediate adoption of a modern public procurement law in consultation with various stakeholders”).

⁴³ The Lebanese Government’s Financial recovery Plan, <http://finance.gov.lb/en-us/EventPdfs/English/The%20Lebanese%20Government's%20Financial%20Recovery%20Plan.pdf>

beginning of a wide consultative and participatory process to procurement reform, providing an innovative example to public policy design in recent Lebanon.

38. In a complementarity effort to this evidence-based and participatory assessment aiming at informing the Government of Lebanon of the level of performance of its procurement system, laying the foundation for a strategic vision of procurement reform, **the Ministry of Finance/IOF worked in 2019 on drafting a new modern public procurement law.** This was done based on a methodology that took into consideration previous draft procurement laws; international standards inspired from the UNCITRAL Model Law on Public Procurement (2011) and the OECD Recommendation of the Council on Public Procurement (2016); review of other Arab countries newly adopted procurement laws (Jordan, Egypt, Palestine and Tunisia); evidence and data collected through the implementation of MAPS, and technical guidance and policy advice from the OECD-EU SIGMA Joint initiative. A first draft law was presented at the Council of Ministers in September 2019. Peer review of this first draft law took place with the support of the OECD-EU SIGMA Joint initiative and the World Bank.
39. **In February 2020, the draft law was submitted to the Lebanese Parliament** by MPs Michel Moussa and Yassin Jaber. A special parliamentary committee was formed to study and discuss the proposed draft law in consultation with national stakeholders. Meetings of the parliamentary committee started in June 2020.
40. **Beside the draft law review process, an institutional mapping to clarify roles and responsibilities of public procurement stakeholders, at the central and local levels, was conducted** with the support of the World Bank, in an effort to address existing overlapping mandates and capacity gaps in line with the draft law.
41. **An attempt was done to identify procurement reform components over a 5-year term.** They are subject to undergoing discussions with concerned national policymakers, stakeholders and the donor community, in preparation for a national strategic plan based on the MAPS recommendations, that would benefit from a continuous support of the World Bank and AFD through bilateral and multilateral channels.

Figure 4: Identified Procurement Reform Components



Source: Institut des Finances Basil Fuleihan, *Public Procurement Reform (2020)*

3 Assessment

This chapter of the main report presents and discusses the findings of the assessment in relation to each of the pillars and indicators. It is based on the qualitative review of the system and the application of quantitative indicators as defined in the MAPS methodology. It describes the main strengths and weaknesses and identifies the areas that show material or substantive gaps and require action to improve the quality and performance of the system. Substantial gaps are classified into categories by the risk they may pose to the system if not addressed, and actions are recommended to address these weaknesses.

Back-up materials and documentation in support of this analysis are given in the appendices to this main report. The assessment team has used the guidance and assessment criteria as given in the Methodology for Assessing Procurement Systems (MAPS 2018). A detailed overview of how the actual situation compares with each of the 210 assessment criteria is found in the tables in Appendix 12.

3.1 Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

A consolidated list of applicable laws and regulations is given in Appendix 10.

3.1.1 Summary findings under Pillar I:

The existing legal, regulatory and policy framework for public procurement in Lebanon partly reflects generally accepted principles but is not complete and coherent. It is constituted by a patchwork of legal instruments, some of which are very general in character while others are detailed but often limited in scope, and specific to the point of being unduly restrictive. In addition, a wide range of clauses within the texts are ambiguous and therefore open the door for wide interpretations that are not in line with international standards.

The applicable primary legislation is mainly constituted by the Public Accounting Law (PAL), issued in 1963. It regulates a wide range of aspects of public financial management and includes a number of provisions of mostly general character applicable to public procurement. However, it is not universally applicable to all procuring entities and allows for a number of exceptions, some of them quite vaguely defined. As a consequence, various procuring entities in Lebanon have to follow different sets of public procurement related laws and regulations, with no single, clear, simple and uniformly applicable set of basic principles, policies, procedures and practices. In turn, this leaves the door open to variations in the implementation of existing rules and difficulties to enforce good practice. This then creates uncertainties and risks that discourage participation by prospective tenderers and the use of sound judgement for achieving best value for money by procuring entities, while reducing the possibility to effectively sanction bad practices. It also complicates the preparation and use of standard documents and guidelines and thereby the training of public procurement officials and the strengthening of the capacity of the procuring entities.

With regard to secondary legislation, the most comprehensive and specific item is the Tender Regulation issued in 1959. This regulation is reflecting the principles and policies set out in the PAL; however, it is not universally applicable. Some general-purpose standard documents have been drafted by the Institute of Finance and OMSAR, but their use is not mandatory, while some procuring entities have their own, specific documents and procedural regulations. Guidance materials and tools are inexistent, and no authority is assigned with responsibility for preparation, dissemination and updating of such guidance tools.

The range of procurement methods is narrower than in international practice. They are described and prescribed in the PAL but not with enough detail and clarity to ensure their uniform application. Open tendering is the default procedure for high value contracts (above LBP 100 million), with requests for proposals allowed for smaller contracts. Single sourcing/direct agreement is subject to certain conditions set out in the PAL. Subject to prior agreement by the Council of Ministers, it is occasionally used also in other cases.

In open tendering, each procuring entity has to publish its invitations to tender in the press, including the Official Gazette. However, there is no requirement to advertise electronically and there is no central website or the like that would give consolidated access to all current notices. Requests for proposals are usually only addressed to a small number of enterprises, identified by the procuring entity. The period for submitting tenders is short compared to international practice, with a minimum of 15 days in normal cases, reduced to five days for urgent procurement.

There are no general conditions for participation in tendering, although the tender documents have to include the qualification requirements and grounds for exclusion that apply in the individual case. For some procurement of works, contractors have to be classified into different categories in advance, and only those so 'pre-classified' are allowed to participate. A margin of local preference margin of 10% is applied on a list of goods made in Lebanon as adopted by the Council of Ministers.

The PAL requires tender documents to be clear and comprehensive enough to allow relevant and adequate tenders to be prepared. The few minimum requirements stated allow procuring entities to largely draft details as they deem fit. There are no regulations describing the process or the mechanism of clarifications to the tender documents. The PAL has provisions regulating the submission and receipt of tenders and requires the evaluation process to be confidential.

If other award criteria than price are intended to be used, the PAL prescribes that they must be clearly set out in the tender documents. Apart from this, selection and award criteria are not regulated in detail. In most cases, the lowest price offered is the only award criterion used. Tender opening and evaluation reports have to be prepared but are not published. On the other hand, tenderers may attend the tender opening session, at which basic information about the tenders received is read out.

Complaints against procurement decisions by procuring entities can be submitted to the State Council, on conditions set out in its by-law, and its decisions are subsequently published. However, there is no entity specifically in charge of resolving public procurement complaints and no generally applicable legal provisions about the rights of tenderers or other interested parties to submit such complaints.

Policies and procedures for sustainable public procurement appear to be little developed, although the actual situation in this respect is not well known. It may happen that such policies and procedures are covered in internal circulars or decisions, but these are not often made public.

The management of public contracts is not covered in any laws or regulations specific to public procurement, except for a requirement for procuring entities covered by the PAL to set up a

committee for the receipt of goods, works and services. There are no dispute resolution mechanisms that are specific to public contracts,

E-procurement is not regulated in any law or regulation and there are no institutions or systems in place for this purpose.

Record keeping is regulated, mainly for audit purposes, and includes specific provisions on public procurement records.

Public procurement by utilities is not specifically regulated, except in the form of the bylaws etc. of the entities themselves. A law on public-private partnerships was adopted in 2017. It includes general principles related to public procurement. In the absence of enabling regulations and dedicated institutions, it is not yet applicable in practice.

Obligations with respect to public procurement deriving from international agreements, e.g. Lebanon's accession to the UN Convention Against Corruption, are becoming reflected in the legislation, for example in the recently adopted anti-corruption laws. However, the commission in charge of applying these laws has not yet been appointed, and thus the laws are not put into effect. The main reason for this is that in many cases, the accession of Lebanon to a treaty or convention came after the adoption of national law on the subject.

3.1.2 Substantial gaps under Pillar I:

- There is no unified, coherent, clear and simple set of laws and regulations covering all essential aspects of public procurement and applicable to all contracting entities and to all types of public contracts for goods, works and services;
- There is no other approach than open tendering for competitive award procedures, therefore contracting entities cannot optimize their procurement approach taking into consideration the size and complexity of the contract and the position of the supply market;
- Existing laws and regulations do not provide clear and comprehensive guidance on key elements of the procurement procedures;
- The existing regulations for handling public procurement complaints at the preparation and award stages do not ensure timeliness and quality of review and resolution;
- Limited possibilities for wide publication of procurement notices are limiting the information of interested bidder of business opportunities;
- There is no e-procurement system in place and access to public procurement information is limited;
- A number of laws requires implementing regulations which are not always prepared on time or with sufficient detail;
- Officially endorsed regulations, materials relevant to secondary legislation, standard documents, guidance notes and other tools are incomplete;
- No governmental institution is officially and clearly assigned to lead the preparation, dissemination and updating of existing documents/materials;
- The use of existing standard documents is not compulsory, and it is not known to what extent, how and by whom they are used;
- The legal and policy frameworks applicable to public procurement do not include or reflect sustainable development policies and do not support their application;
- Regulations and guidance materials contain limited provisions for incorporating social or environmental aspects in requirements, specifications and selection and award criteria;

- There is lack of clear alignment between the existing Lebanese legislation and the provisions related to public procurement in international agreements of which Lebanon is a member, such as the UN Convention Against Corruption.

3.1.3 Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

The indicator covers the different legal and regulatory instruments established at varying levels: constitution, national laws, decrees by the Council of Ministers, regulations issued by executive entities, etc.

- **General findings under Indicator 1**

The legal framework of public procurement in Lebanon comprises several legal texts, many of them outdated, and with a number of gaps, overlaps and contradictions which make their application difficult. Thus, unlike other countries, there is not yet a single public procurement law applicable to all public entities though efforts are being to draft one.

The Public Accounting Law (PAL), promulgated by decree of 30 December 1963, is the main regulatory document. In addition to regulating many other aspects of public financial management, the PAL stipulates competitive tendering as the main approach for public procurement⁴⁴. However, the procedures and methods foreseen by the PAL are limited and give little flexibility to adapt the approach to the needs of each contract. It mentions the possibility to use award criteria other than the price, but without any details or description or conditions on such use, and this option is largely ignored and very little practiced by procuring entities.

The PAL, including its public procurement related provisions, applies to public funds of the State, municipalities, and public institutions affiliated to the State, as well as the funds of other public entities⁴⁵. Various other contracting entities, such as smaller municipalities, autonomous public agencies, the Lebanese army and security forces have their own public procurement regulations based on the provisions of the PAL. There is thus a wide range of regulations and procedures applicable to various kinds of procuring entities, and a generally applicable set of public procurement policies and practices remain missing.

The tendering process is further detailed in the Tender Regulation (Decree 2866 of 16 December 1959). It applies to all tenders undertaken by public administrations (ministries), except the tenders of the Ministry of National Defense, the Internal security Forces and General Security⁴⁶. In addition, the Tender Regulation and the PAL stipulate that all open tenders of goods and works over the threshold of 100 million LBP are done by the Central Tender Board.

There is no e-procurement system in place. The formal requirements for transparency are not effective in practice. There is no systematic generation, compilation or analysis of public procurement data. Practices in public procurement and the actual application of laws and regulations therefore remain unclear.

⁴⁴ PAL, Art. 121-1

⁴⁵ PAL, Art. 2

⁴⁶ Decree 2866, Art. 1

Summary gaps and recommendations for Indicator 1

No.	Substantive gaps / Red flags	Risk	Recommendations
1.1.	There is no unified, coherent, clear and simple set of laws and regulations covering all essential aspects of public procurement and applicable to all procuring entities and to all types of public contracts for goods, works and services	High	Prepare and adopt a comprehensive, clear public procurement law and, to the minimum extent necessary, complement it by a full, harmonized range of items of secondary legislation, applicable to all procuring entities
1.2.	There is no option for competitive award procedures other than open tendering, so procuring entities cannot optimize their procurement approach based on the size and complexity of the contract and the position of the supply market	High	Introduce a comprehensive range of procurement procedures, proportionate to the nature and value of the contracts to be concluded
1.3.	Existing laws and regulations do not provide clear and comprehensive guidance on key elements of the procurement procedures	High	Standardize and formalize guidance for the use of the available procurement procedures and for notices, requirements and specifications, timelines, selection and award criteria and their use, forms of contract and contract management
1.4.	The existing regulations for handling public procurement complaints at the preparation and award stages do not ensure timeliness and quality of review and resolution	High	Review and revise the approach to handling complaints, to ensure timely review and resolution by an independent institution
1.5.	Limited possibilities for wide publication of procurement notices to inform bidders about business opportunities; no e-procurement system is in place and access to public procurement information is restricted	High	Raise transparency, improve administrative efficiency and reduce costs by introducing e-procurement as well as clear and simple administrative routines for handling public procurement operations

Sub-indicator 1(a) – Scope of application and coverage of the legal and regulatory framework

There are several legal texts⁴⁷ regulating public procurement but provisions within the texts are not comprehensive, nor coherent. Provisions related to public procurement are scattered in different regulations and directives applicable to several procuring entities individually.

The current legal framework is not comprehensive and consistent: while the PAL includes detailed provisions and procedures for procurement of goods and works, procurement of services is regulated by one single provision (Art. 150) that allows single sourcing of consultancy services without any competition nor a ceiling for the contract value for which to use this method. In addition, regardless of applicable regulations, some public funds can be spent simply by decision of the Council of Ministers⁴⁸ without using a competitive approach.

Law 48/2017 (the PPP Law) establishes the partnership between the Public and Private sector, but lacks corresponding implementing regulations. It does not explicitly address procurement aspects of PPP operations. There is no reference in the PPP law to the current public procurement regulations, therefore it is unclear if existing legal public procurement provisions may be

⁴⁷See list in Appendix 10

⁴⁸ PAL, Art. 147-12

applicable. Concessions are regulated through laws adopted by Parliament on a case-by-case basis, with reference to Clause 89 of the Constitution.

Laws are published in the official gazette, which is not available free of charge. The bylaws of some public institutions, including aspects related to public procurement, are confidential and are not published. Other bylaws are published in publications specifically dedicated to certain official entities, and reaching them requires specific procedures. Laws applicable to municipalities are accessible; however, decisions of the municipal councils are not published in all municipalities, and also not all decisions of the Council of Ministers. In addition, many public procurement related internal circulars issued within public administrations and institutions are not published which raises the issue of lack of transparency; only the officials involved have access to all relevant information. This situation opens the door for the possibility of changing the procedures continuously with each such internal circular.

Sub-indicator 1(b) – Procurement methods

This sub-indicator assesses whether the legal framework includes: i) a clear definition of the permissible procurement methods; and ii) the circumstances under which each method is appropriate. The legal framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate.

Procurement methods are clearly described in the PAL⁴⁹. However, the use of these methods is not clearly described in a manner ensuring its use in a coherent and structured manner. As a result, the corresponding practices of contracting entities are not the same entities. In particular, the justifications⁵⁰ for using single sourcing (such as direct agreement with a particular provider of goods, works or services) is subject to several interpretations and therefore fail to prevent the abusive use of this method, in particular the Council of Ministers having the right to allow procurement to be carried out without any competition.

The PAL considers the open tender as the primary method of procurement, with request for quotation being possible to use for smaller contract values⁵¹ as well as in certain other well-defined cases⁵². Municipalities that do not apply the PAL are required to follow the Accounting Ordinances Decree 5595 of 1982 which has more restrictive conditions for the use of requests for quotations.

The range of defined public procurement procedures and methods is thus very limited and does not include methods commonly used in other countries. As an example, the conditions and the procedures related to restricted tenders (with prequalification) are not mentioned in the PAL and the use of framework agreements is not foreseen in this Law. This means that there are few or no options to use the procedure that is best adapted to the particular requirements of each tender. There is therefore no flexibility to ensure a balanced application of the internationally recognized governing principles of public procurement.

The principle of value for money is not referred to in the Law. However, the principles of competition, transparency and fairness are introduced in a few tender documents⁵³, though their use is not

⁴⁹ PAL, Art. 121 ff.

⁵⁰ PAL, Art. 148, with its application now limited by decree no. 9/2017 of the Council of Ministers

⁵¹ Under 100 million Lebanese pounds

⁵² PAL, Art. 145

⁵³In particular, standard documents proposed by the Institute of Finance - Ministry of Finance (2009), and by the Office of the Minister of State for Administrative Reform (2018), but these have not been officially adopted for general use.

mandatory for all procuring entities. In parallel, these principles are applied in practice by the Tender Board⁵⁴ and the Court of Accounts when processing or auditing public procurement contracts.

There is a general requirement in the PAL not to split an expenditure into several contracts with a view to get below the threshold for competitive procedures or without giving a valid technical or financial justification⁵⁵. Nevertheless, division into lots is a common practice when the procuring entity considers that it is justified because of the nature of the goods, works and services concerned and the circumstances of implementation.

As currently regulated, open tendering may be considered to be in line with basic international standards for competitive procedures. However, the provisions are quite general and allow many exceptions to be made on conditions which are not very clearly and comprehensively described. There is also a lack of supporting documentation in the form of standard documents and guidelines.

Sub-indicator 1(c) – Advertising rules and time limits

This sub-indicator assesses whether: i) the legal framework includes requirements to publish procurement opportunities as a matter of public interest and to promote transparency; ii) there is wide and easily accessible publication of business opportunities; and iii) there is adequate time provided between publication of opportunities and the submission date, consistent with the method and complexity of the procurement, to prepare and submit proposals.

The PAL requires advertising open tenders in the Official Gazette and in at least three local newspapers. Autonomous public institutions that follow their own bylaws typically advertise in local newspapers and on their website (if any), but many of them do not advertise in the Official Gazette. In requests for quotations, direct invitations are sent to potential tenderers identified in advance by the procuring entity. There are no regulations about electronic advertising and there is also no common electronic platform where all procuring entities can post their notices. It remains at the sole discretion of the procuring entity to publish notices on its website. Some public institutions do this systematically, others not. Many small municipalities do not even have their own website yet.

In principle, prospective tenderers have access to advance information about upcoming procurement opportunities when the contracting entities send their yearly procurement plans to the Tender Board. This has to be done no later than two months after the publication of the national budget. In return, the Tender Board consolidates all procurement plans and publishes one General Procurement Plan in the Official Gazette and in five local newspapers. For open tenders, there is a general requirement for the invitation to be published no later than 15 days before the deadline for submission. However, if considered necessary or in the case of re-tendering, this deadline may be reduced to no less than five days. There are thus no provisions requiring the deadline for submission to be adapted to the nature and value of the contract or the position of the supply market, nor to the procurement method.

While tender notices must be published in the Official Gazette, it is not available free of charge⁵⁶. As a result, many potential tenderers are discouraged from using it for consulting the tender notices issued. Also, considering the publication cost, notices are restricted to very basic information and local newspapers are often selected based on the cost of placing an advertisement rather than on selecting a widely spread newspaper to reach as many potential tenderers as possible. The lack of information in tender notices is also a result of the absence of any specific requirements in the

⁵⁴ Tender Regulation, Art. 17

⁵⁵ PAL, Art. 123

⁵⁶ The electronic version costs LBP 550,000 per year (as indicated at <https://jo.pcm.gov.lb/>), while the print version would cost LBP 240,000.

PAL regarding the form and content of the notice. It is thus often not possible for prospective tenderers to come to an informed decision whether to participate or not based only on the information in the notice; instead, they would have first to procure and review the full tender documents.

Sub-indicator 1(d) – Rules on participation

This sub-indicator assesses the policies that regulate participation and selection, to ensure that they are non-discriminatory.

Contracting entities have a general right to set conditions for participation. However, there is no general requirement for non-discrimination and no details are provided in the PAL on the conditions of participation, neither in terms of minimum qualifications required nor relative to any grounds for exclusion. There are thus no binding rules or conditions to be applied, neither for pre-qualification (as the first step in a restricted tender) nor for post-qualification (when reviewing qualifications etc. once the tenders have been opened). On the other hand, for works contracts, several institutions have their own rules and conditions regarding qualification requirements and grounds for exclusion, as is the case of e.g. the Ministry of Public Works, the Ministry of Energy and Water, the Council for Development and Reconstruction, and the Armed Forces. This is in application of what may be called “pre-classification” of contractors, as opposed to “pre-qualification”. The applicable decree⁵⁷ sets out general requirements for the classification of contractors in different categories according to a number of specific criteria. As indicated in each of the tender documents in question, only officially categorized / classified contractors are eligible to participate.

A preference margin of 10 % for locally manufactured goods is applied for a number of goods listed in decrees issued by the Council of Ministers based on proposals from the Minister of Economy and Trade⁵⁸. There are other obstacles to participation in tenders, such as:

- Contractors may have to be officially pre-classified as mentioned above in order to bid in works contracts;
- Heavy and time-consuming administrative processes and the significant paperwork required may hinder the participation of potential bidders, especially those with limited administrative resources;
- Lack of fixed deadlines to formally accept goods delivered and significant delays in payments limit participation in public procurement to enterprises with abundant access to financing.

Except that they must not be debarred (see further below) or bankrupt, there are no general provisions for how eligibility and capability of tenderers should be determined. Qualification requirements and grounds for exclusion from participation as well as the manner to demonstrate compliance with these requirements may be included in the tender documents on the initiative of the contracting entity. In addition, specific decrees and bylaws related to particular procuring entities specify such requirements. In those cases, eligibility is required to be demonstrated by e.g. extracts from the criminal register, non-bankruptcy certificates, and the like. There is a debarment system in place, but it is not clearly and comprehensively regulated. Debarment decisions are not transparent, there is no centrally held and widely accessible list of debarred enterprises, nor a defined procedure

⁵⁷ Decree 9333/2002 on classification of contractors

⁵⁸ Article 131 of PAL

to debar an enterprise, and the law does not detail any other, legal consequences for the debarred enterprise, nor the possibility to appeal against a debarment decision.

There are no provisions regulating the participation of state-owned enterprises in public procurement on fair and equitable competitive conditions.

Sub-indicator 1(e) – Procurement documentation and specifications

The sub-indicator assesses the degree to which the legal framework specifies the content of procurement documents, to enable suppliers to understand clearly what is requested from them and how the procurement process is to be carried out.

The PAL requires to have clear specifications and terms of reference to allow bidders to submit relevant and adequate proposals. The minimum content is described in Article 126 but without any further guidance, which provides the relevant administration full discretion in setting its own rules, and requirements within the generally stipulated terms.

The PAL is silent on the subject of performance or functional specifications: it neither prohibits nor requires their use. Contracting entities can adopt such approaches and reflect them in tender documents.

The PAL is not clear regarding technical regulations and standards in public procurement. However, tender documents may include references to technical regulations and standards without any contradiction with the PAL. The Lebanese institution for norms and standards (LIBNOR) issues norms and standards but their use is not mandatory.

The PAL and the Tender Regulation do not include provisions on request for clarifications and how it should be handled by the contracting entities. Some tender documents allow requests for clarifications depending on the issuing institution. Despite the absence of applicable regulations, some contracting entities, such as the Ministry of Education, including agencies have adopted the World Bank and United Nations good practice of allowing tenderers to request clarifications and communicate in writing within specified deadlines, with answers provided to all tenderers known to have acquired the tender documents or who have been invited to tender.

Sub-indicator 1(f) – Evaluation and award criteria

This sub-indicator assesses: i) the quality and sufficiency of the legal framework provisions in respect to the objectivity and transparency of the evaluation process; and, ii) the degree of confidentiality maintained during the process, to minimize the risk of undue influences or abuse.

There is no explicit requirement for evaluation criteria to be objective and relevant to the subject matter of the contract. The PAL states⁵⁹ the “evaluation criteria” as mandatory information to be included in the tender documents “whenever the Contracting Authority intends not to award the tender based on the least price, provided that those criteria are clear and detailed, and assigned weights when necessary”.

The use of both price and non-price criteria is foreseen by the PAL, but life cycle costs are not mentioned and value for money is not a generally applicable requirement. A few contracting entities, like the Council for Development and Reconstruction, regularly combine price with other criteria. Most contracting entities are not even aware of the possibility to use other criteria or even simply neglect it and therefore usually use price only.

⁵⁹ PAL, Art. 126

The use of quality as the main criterion when procuring consulting services is not mentioned in the law.

The generally applied principle is that evaluation information is not disclosed publicly, nor are the discussions of the evaluation committee. On the other hand, during bid opening sessions, some information, like prices offered, is given to those present and recorded in the minutes. When the award is based on pass or fail criteria and then lowest price, it is common, established practice of the Tender Board to carry out opening, evaluation and award in one single session, in the presence of tenderers, who are then free to take note of the information provided. Where technical proposals need thorough evaluation, the bid opening session is held after the deadline for submission of proposals and the date of the financial evaluation session is announced at the end of the session. Only those bidders who pass the technical evaluation attend the financial evaluation session.

Sub-indicator 1(g) – Submission, receipt and opening of tenders

This sub-indicator assesses how the legal framework regulates the reception of tenders and tender opening.

The PAL contains provisions about tender opening; however, not detailed enough to be of practical use. The Tender Regulation, which regulates the Tender Board processes, includes detailed such provisions. It states that tender opening should be made on the day following the deadline for submission. Some institutions which are not subject to the Tender Regulation, like the CDR and some municipalities and unions of municipalities, set the tender opening session right after the deadline for submission, that is, on the same day.

The PAL and the Tender Regulation both require⁶⁰ that tender opening and evaluation proceedings should be set out in a signed tender opening and evaluation report. These reports must be retained and held available for audit by the Court of Accounts. However, they are not made publicly available.

The Tender Regulation includes detailed provisions⁶¹ on reception and safekeeping of tenders. The PAL only includes more general and less detailed provisions⁶². The prices offered are typically disclosed during tender opening and recorded in the minutes. There are general provisions⁶³ regarding the confidentiality of tenders but nothing specific.

The disclosure of specific, sensitive information is not covered by any public procurement regulations, except regarding information related to state security as well as specific conditions in the Army's tender documents. Tender documents may also include such provisions to be observed by tenderers in case they receive such information from the contracting authority in order to be able to prepare a tender.

Provisions regarding the submission and receipt of tenders are also set out in the regulations or bylaws of some procuring entities, as is the case for e.g. the CDR and the ISF. The typical approach is there for the method of submission to be clearly noted in the tender documents, requiring two envelopes, one technical and one financial, in an anonymous, larger envelope. Tenders not complying with the legal requirements or the tender document conditions are then rejected.

⁶⁰ PAL, Art. 135; Tender Regulation, Art. 35

⁶¹ Tender Regulation, Art. 22-30

⁶² PAL, Art. 128 and 129

⁶³ Tender Regulation, Art. 40

Sub-indicator 1(h) – Right to challenge and appeal

The purpose of this indicator is to assess whether the legal framework establishes: i) the right to challenge decisions or actions and to appeal; ii) the matters that are subject to review; iii) the time frame for such reviews; and iv) the different stages in the review process.

There are no provisions in the PAL regarding the right to challenge decisions or actions taken by the procuring entity; however, nothing prevents tenderers or other interested parties from complaining directly to the contracting entity, going to court or seizing⁶⁴ the State Council in its capacity as the administrative court, or raising the matter with the Central Inspection.

The State Council is the only competent entity to deal with public procurement complaints. Although its attributions and competencies are not specific to public procurement, it has the capacity e.g. to suspend,⁶⁵ if requested, the award decision. There is no review body set up for the particular purpose of reviewing complaints in public procurement, contrary to the practice in many other countries where specific review bodies have been set up in order to quickly resolve complaints received from tenderers or other interested parties (in particular, content of tender documents, specifications, selection and award criteria, evaluation and award decisions). Apart from the State Council bylaw, there are no general provisions specific to public procurement regulating how, and by whom complaints may be submitted and how they would be handled.

There is no timeframe specified to submit complaints, or any other provisions regarding the deadlines for resolving the complaints, except for what is stated in the bylaws of the State Council. It is noted that reviews often take a very long time before decisions are made.

Complaints are not published; but the State Council's decisions are published.

The State Council is judicial in character. Its decisions can be challenged but not at a higher level, only by filing an appeal to the State Council itself.

Sub-indicator 1(i) – Contract management

The purpose of this sub-indicator is to assess whether the legal framework establishes the following: i) functions and responsibilities for managing contracts; ii) methods to review, issue and publish contract amendments in a timely manner; requirements for timely payment; and iv) dispute resolution procedures that provide for an efficient and fair process to resolve disputes during the performance of the contract.

The PAL only stipulates⁶⁶ that the reception of the equipment, works and services has to be done by a special committee established for this purpose in the procuring entity to which the PAL applies. It identifies the committee responsible but without providing any detail about the official status or roles of those who are in charge of contract management in general. There are no other legal provisions specific to the management of public procurement contracts.

For amendments of contracts, the PAL allows⁶⁷ a procuring entity *“to increase or decrease an expenditure which has already been committed, provided that all necessary documents are attached to the amendment request”*. No other provisions regulating contract amendments in public

⁶⁴ Decree 10434/1975 promulgating the State's Council Bylaw, Art. 61-2

⁶⁵ Decree 10434/1975 promulgating the State's Council Bylaw, Art. 77

⁶⁶ PAL, Art. 139

⁶⁷ PAL, Art 39

procurement exist, and the applicable regulations appear to be lacking measures to ensure economy or adequate competition.

Dispute resolution during contract execution is not mentioned in public procurement regulations, except in the bylaws of a few contracting entities, like the armed forces. Contract conditions normally refer to the Lebanese courts being competent to resolve disputes. A law on arbitration exists, but alternative dispute resolution mechanisms are rarely used.

The final outcome of a dispute resolution process is enforceable in principle. However, in practice, suppliers and contractors may find it difficult to enforce a decision against the State.

Sub-indicator 1(j) – Electronic procurement (e-Procurement)

This sub-indicator assesses the extent to which the legal framework addresses, permits and/or mandates the use of electronic methods and instruments for public procurement.

The applicable public procurement laws and regulations do not include any provisions on e-procurement. There is no e-procurement system, and no relevant regulations. Law 81/2018 regulates communications by electronic means, but without any executive decrees giving effect to it. In the general absence of e-procurement systems and regulations, procurement is not done electronically.

Sub-indicator 1(k) – Norms for safekeeping of records, documents and electronic data

The ability to look at implementation performance depends on the availability of information and records that track each procurement action. This information is also important for the functioning of both internal and external control systems, as it provides the basis for review.

There are no specific provisions regulating safekeeping of public procurement records. Other than the tender opening and evaluation report, and the acceptance report upon delivery, which are required by the law, there are no requirements for these documents to be made available to the public.

However, there are regulations requiring documents to be retained during a certain period of time, mainly for audit purposes. As an example, the bylaw of the Court of Accounts stipulates that it needs to keep all audited public procurement documents for a period of 15 years. In other institutions, the duration varies according to the type and nature of the document⁶⁸. The law⁶⁹ on the National Archives states a general obligation to keep hard copies of all records, but without any further detail and without reference to any electronic archiving. Judicial and audit bodies have the right to inspect and retrieve any documents they may require in the discharge of their duties. This creates an obligation of the contracting authority to keep the documents in order to be able to present them upon such demand.

There are no security protocols in place to protect public procurement records.

Sub-indicator 1(l) – Public procurement principles in specialized legislation

This sub-indicator assesses whether public procurement principles (e.g. competitive procedures, transparency, fairness, value-for-money decisions) and related laws apply across the entire spectrum of public service delivery as appropriate.

There are no public procurement regulations specific to utilities, except in the form of the bylaws etc. of the utilities themselves. A law on PPPs was adopted in 2017, including general principles related to

⁶⁸ See e.g. Internal Security Forces Instructions No. 359/1995

⁶⁹ Law 162/1999, Art. 5

procurement, but the lack of implementing decrees means that it is not yet applied. The applicability of the procurement provisions of the PAL to PPPs is not clear. The PPP law itself is not clear in terms of policy and practice for award of PPP contracts, including concessions, and for handling of related complaints.

- **Substantive gaps and their underlying reasons**

The main gap in the legal and regulatory environment is the absence of a unified, coherent, clear and simple set of laws and regulations covering all essential aspects of public procurement and applicable to all contracting entities.

The currently applicable laws and regulations are not specific to public procurement and have gaps in various aspects. They allow exceptions with no solid justification, require great administrative efforts for their application, include contradictory provisions, do not clearly and effectively apply essential principles like suitability of purpose, value for money, transparency and integrity, and fail to reflect modern methods and approaches like e-procurement, centralized purchasing and use of framework agreements.

Several attempts have been made to introduce a comprehensive public procurement law, however, despite the obvious advantages of having a well-regulated public procurement system to meet the citizens' needs and ensure good use of scarce public funds, the political consensus was never met to adopt and implement such legislation. Since the beginning of 2019, renewed efforts were made to draft and adopt a new public procurement law. Through its preliminary findings and recommendations, the current MAPS assessment has provided additional inputs to this draft law.

Open tendering is required to be used as the default competitive procedure. Other methods are not foreseen by the legislation, hence it is not possible to procure using any other, internationally widely used, procedure based on the size and complexity of the contract and the position of the supply market.

Although the legislation gives the possibility to use other evaluation criteria than price, there are no regulations setting out how this may be done, and no officially endorsed guidance notes available for this purpose.

- **Recommendations**

Based on the above, the main recommendations for Indicator 1 are as follows:

- a) To prepare and adopt a comprehensive, clear public procurement law;
- b) To complement this law by a full, harmonized secondary legislation;
- c) To introduce a comprehensive range of procurement procedures, proportionate to the nature and value of the contracts to be procured, and provide clear guidance for its use;
- d) To raise awareness on transparency, improve administrative efficiency and reduce costs by introducing e-procurement as well as clear obligations to make procurement information freely accessible on a central website; and
- e) To develop administrative procedures to handle public procurement, and to do this in the context of a general public administration reform.

A number of further, specific gaps will also need to be addressed, as proposed in the table here below.

Specific gaps and corresponding recommendations for Indicator 1

No.	Specific gaps/shortcomings	Specific recommendations
1.a)	Laws not comprehensive, clear and coherent	Revise and adopt the draft new public procurement law, in a way that includes all key aspects of public procurement, with minimum reference to any other, subsequent implementing decrees, and ensure that a full, harmonized range of secondary legislation is available when the public procurement law enters into force
1.b)	No requirements for competitive procurement of services	Include a requirement for competitive procurement of services, with guidance on the importance of quality of service and how to reflect it
1.c)	Possibility for direct agreement (instead of using competitive procedures) by simple decision of the Council of Ministers	Abolish the provisions allowing direct agreement (instead of using competitive procedures) to be used by simple decision of the Council of Ministers; instead, include restrictive conditions for using direct agreement in the public procurement law
1.d)	Lack of clearly applicable procurement regulations for PPPs, including concessions	Regulate PPPs, including concessions, with award procedures and handling of complaints harmonized with the public procurement law
1.e)	Regulations and decisions are not always published nor accessible or available free of charge	Generalize obligations to publish regulations and decisions free of charge, in an easily accessible manner, abiding by the law on Access to Information no. 28/2017 among other applicable laws
1.f)	There is not a sufficiently wide range of procurement procedures available, described sufficient detail and with conditions and guidance for their use	Expand the range of procurement procedures, in line with international practice, and complement them with conditions and guidance for their use
1.g)	Provisions on advertising are deficient. There is no national website for procurement notices; publishing notices in media outlets is not free of charge; and the minimum content required is not clearly prescribed	Create a unique central website, accessible free of charge, for mandatory publication of procurement notices with links to tender documents; regulate the form and time limit for publication and the minimum required content for the notices; provide access to all public procurement regulations, guidance notes and standard documents on the same website
1.h)	Time limits are short and not based on the nature and complexity of the contracts	Set clear time limits, in particular for submission of tenders or requests for participation, with provisions regulating the above according to the nature, value and complexity of the contract and any other relevant circumstances
1.i)	Rules on participation (qualification requirements and grounds for exclusion) are rudimentary	Set clear rules on participation, with emphasis on clarity, simplicity, proportionality and effectiveness
1.j)	There is a lack of detail and clarity in the regulations covering procurement documentation, and there are no appropriate, diversified standard documents, with guidelines for their use	Update and complement existing procurement documents and mandate their use, while providing the necessary flexibility to adapt these documents to the specificities of the contract and other relevant circumstances

No.	Specific gaps/shortcomings	Specific recommendations
1.k)	Provisions allowing the use of evaluation and award criteria other than price lack detail and guidance	Develop comprehensive rules, guidance and training material for the use of award criteria other than the price, emphasizing on value for money and sustainability; and complement it with the necessary training
1.l)	Submission, receipt and opening of tenders are not uniformly, comprehensively and effectively regulated	Clarify and simplify rules on submission, receipt and opening of tenders, to be coherent with the use of electronic means for transmission, safekeeping and distribution, ensuring the confidentiality of the process as well as full transparency of the relevant decisions
1.m)	Handling of public procurement complaints is not regulated in a way that ensures its timeliness and quality	Review and revise the approach to handling complaints to be resolved in a timely, competent manner by an independent body
1.n)	Responsibilities for contract management in public procurement are not regulated and the provisions regarding amendments are general and permissive	Develop comprehensive rules, guidance and training material on contract management enforcing contractual performance and full transparency on the use of funds; and complement it with the necessary training
1.o)	E-procurement is absent	Develop and implement an e-procurement strategy (see further Indicator 7.); as a start, electronic means should be utilized for documentation and communication
1.p)	Lack of rules regulating the safekeeping of and access to procurement records	Set clear rules for safekeeping and access by the public the procurement records based on the principles of transparency, completeness and integrity of data, harmonized with corresponding provisions applicable in public administration in general
1.q)	There are no particular public procurement policies or rules for utilities	Regulate procurement by utilities in ways as similar to those for procuring entities in general, while giving them the additional flexibility that may be necessary for e.g. ensuring security of supply

3.1.4 Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

- **Findings**

There are specific decrees and other secondary legislation that regulate particular aspects of the procurement cycle, but with limited applicability. Many are not up to date and some are contradictory. In general, primary legislation is often drafted and issued in ways that require one or several corresponding, implementing regulations in order for the law itself to become effective or to be sufficiently clear ensuring uniformity, and coherent interpretation and application. In the absence of such implementing regulations, the law runs the risk of remaining unenforceable, or its application can be subject to widely varying interpretations.

There is also a lack of suitable standard documents and guidelines to use by contracting entities and to inform the business community and the general public on how public procurement should be carried out.

Summary gaps and recommendations for Indicator 2

No.	Substantive gaps / Red flags	Risk	Recommendations
2.1.	Several laws require implementing regulations which are not always prepared on time or lack details	High	Reduce the need for primary legislation to be accompanied by implementing regulations, and ensure that any secondary legislation that may nevertheless be required is prepared and adopted in parallel with the corresponding primary legislation
2.2.	Standard documents, guidance materials and other tools are incomplete; no governmental institution is officially and clearly assigned to lead the preparation, dissemination and updating of such documents	High	In the public procurement law, clearly assign responsibilities for preparation, dissemination and updating of standard documents, guidelines and other tools to a suitably competent institution
2.3.	The institutions that have already taken initiatives to prepare standard documents and guidance materials have only had limited resources for their wider dissemination	High	Allocate resources to a designated institution for developing standard procurement documents and guidance notes; ensure that availability free of charge on one central electronic platform or website
2.4.	The use of existing standard documents is not compulsory, and it is not known to what extent, how and by whom these are used	High	Monitor the use and enforce the proper application of standard documents

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

This sub-indicator aims at verifying the existence, clarity, accessibility and comprehensiveness of regulations to the law that further detail and clarify its application.

The PAL is supplemented by decrees of the Council of Ministers, in addition to separate decrees on specific topics or for specific agencies. However, in the absence of a coherent, comprehensive public procurement law, there is obviously no complementary and comprehensive secondary legislation in conformity with primary law.

The executive decrees, regulations and bylaws are inconsistent, incomplete, in many cases outdated, and are not accessible in one single outlet. There is also no periodic updating and revision of the currently applicable laws and regulations, and the responsibility to do the necessary updates is not defined.

Sub-indicator 2(b) – Model procurement documents for goods, works and services

This sub-indicator covers the existence and contents of model procurement documents or, if not complete, standard elements and templates that may serve similar purposes.

The current legal framework does not mention nor imposes the use of any standard documents, except for specific institutions like the Army⁷⁰ and as elsewhere regulated in specific decrees with limited applicability. Nevertheless, such documents have been prepared by several institutions on their own initiative but mostly for their own internal use, without official endorsement at higher level

⁷⁰ As set out in Decree No. 11574, dated 30 December 1968

and without obligation for others to use them. Some entities that have prepared and use such standard documents are the Institute of Finance, Office of the Minister of State for Administrative Reform (OMSAR), the Ministry of Defense and the Council for Development and Reconstruction (CDR). Some references to standard technical specifications and contractual clauses are found in the currently applicable regulations but there is no consistent and comprehensive set of such clauses.

Consequently, there is no systematic updating of standard documents, and corresponding responsibilities have not been assigned.

Sub-indicator 2(c) – Standard contract conditions

This sub-indicator focuses on standard contract conditions for public sector contracts covering goods, works and services, including consulting services that set the basic provisions that will be included in a contract with the government.

There are no standard forms of contract that must be used in public procurement. There are also no particular conditions or clauses that would have to be included in the procurement contracts be concluded. There is no legal obligation to include the form of contract in the tender documents issued, and it is also not common practice to do so.

Sub-indicator 2(d) – User’s guide or manual for procuring entities

This sub-indicator covers the existence of a user’s guide or manual for procuring entities.

An officially mandated, unified public procurement manual does not exist. Nevertheless, comprehensive ones has been drafted by the IOF as well as by OMSAR and the Tender Board. There is no systematic updating of a unified user manual, and corresponding responsibilities have not been assigned.

- **Substantive gaps and their underlying reasons**

Officially endorsed regulations, secondary legislation, standard documents, guidance material and other tools are incomplete or do not exist, and responsibilities for the preparation, dissemination and update of them have not been clearly assigned.

Some institutions have already taken initiatives to prepare standard documents and guidance material, but these institutions lack the resources for wider dissemination. Currently, the use of the existing standard documents is not mandatory and it is not known to what extent, how and by whom these documents are used.

- **Recommendations**

The public procurement law should be drafted in such a way that its provisions can be directly applied without the need for any implementing regulation or the like. In order to close the gap with respect to other implementing regulations and tools supporting the legal framework, it would be necessary to

- a) reduce the need for primary legislation to be accompanied by implementing regulations, and ensure that any secondary legislation that may nevertheless be required is prepared and adopted in parallel with the corresponding primary legislation,
- b) clearly assign responsibilities for preparation, dissemination and updating of standard documents, guidelines and other tools to suitably competent institutions,
- c) make available the resources necessary for this purpose, and

- d) monitor the use and enforce the proper application of any such document.

3.1.5 Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

- **Findings**

Because of the weakness or absence of horizontal policy objectives, such as sustainability, and of any corresponding legal or institutional framework, there are also no such objectives or provisions reflected in public procurement legislation or practices.

Public procurement related provisions in international agreements to which Lebanon is a party are only partly matched by corresponding provisions in existing laws and regulations.

The legal framework for public procurement does not clearly reflect the higher policy objectives of the country.

Summary gaps and recommendations for Indicator 3

No.	Substantive gaps / Red flags	Risk	Recommendations
3.1.	The legal and policy framework applicable to public procurement do not include or reflect sustainable development policies and do not support its application	Medium	Introduce key principles of sustainability in public procurement and implement measures to ensure its applicability in the public procurement legislation
3.2.	Regulations and guidance material contain only very limited provisions for incorporating social or environmental aspects in requirements, specifications and selection and award criteria	High	Develop, adopt and apply regulations and guidance materials to incorporate social or environmental aspects in requirements, specifications and selection and award criteria, e.g. the use of environmental standards and life cycle costing
3.3.	There is a lack of clear alignment of the existing legislation with the public procurement related provisions in international agreements to which Lebanon is a party, in particular the UN Convention Against Corruption and the International Covenant on Civil and Political Rights	Medium	Align the public procurement legislation for conformity with the relevant provisions of the UN Convention Against Corruption and of other international agreements ratified by Lebanon

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

Following up on more general information gathered in the analysis of the country context (Section II of this report), this sub-indicator assesses whether (i) the country has adopted a policy and an implementation plan to implement Sustainable Public Procurement (SPP) in support of national policy objectives and (ii) the legal and regulatory framework includes provisions on the inclusion of sustainability criteria in public procurement.

Despite the adoption by Lebanon, together with other UN Member States, of the UN's Sustainable Development Goals in 2015, where Target 12.7 of Goal 12 requires to “promote public procurement practices that are sustainable, in accordance with national policies and priorities”, there is no national SPP policy in place, hence no officially adopted SPP implementation plan. The IOF has carried out an assessment⁷¹ of the possibilities for incorporating environmental and social sustainability criteria in public procurement and made proposals including an action plan to implement such criteria. The legal and regulatory framework may be considering introducing sustainability (i.e., economic, environmental and social criteria) at all stages of the procurement cycle, given the possibility set out in the PAL to apply evaluation criteria other than price and the absence of any legal requirement that would impede the use of SPP. There are no legal provisions requiring a well-balanced application of sustainability criteria, and value for money is not explicitly mentioned among the aspects to be considered in public procurement.

Sub-indicator 3(b) – Obligations deriving from international agreements

Based on the general information for the country context chapter, this indicator assesses (i) the existence of procurement related provisions in binding international agreements and ii) the consistent reflection of those obligations in national procurement laws and regulations.

The obligation to introduce and apply a significant number of good public procurement principles and policies is clearly established in Art. 9 of the United Nations Convention Against Corruption⁷², to which Lebanon acceded on 22 April 2009. Until now, few of these obligations have been clearly and consistently adopted in laws and regulations or have been reflected in public procurement policies.

Another international agreement of importance for public procurement is the International Covenant on Civil and Political Rights (ICCPR)⁷³, which Lebanon acceded to on 3 November 1972. Its Art. 19 covers the right to access to information. The competent UN body has reaffirmed⁷⁴ that this article requires that the parties to the covenant should proactively put in the public domain Government information of public interest and should make every effort to ensure easy, prompt, effective and practical access to such information. However, in Lebanon, this requirement is not yet met with respect to public procurement information.

- **Substantive gaps and their underlying reasons**

The legal and policy frameworks applicable to public procurement do not support the sustainable development of the country and reflect existing, international obligations only to a limited extent.

The failure to adopt SPP principles may reflect a general lack of awareness or knowledge of the issues being faced as well as a pressure to address other political, social and economic problems that may have appeared as more urgent, but not necessarily more important.

There is lack of clear alignment of the existing legislation with the public procurement related provisions of Article 9 of the UN Convention Against Corruption and with the requirements for access to information set out in Article 19 of the International Covenant on Civil and Political Rights. This inconsistency would have the same reasons as those set out under Indicator 1 regarding the general gaps in the legal and regulatory framework.

⁷¹Institut des Finances Basil Fuleihan (2011), *Review of the Public Procurement Legal Framework in Lebanon – Possibilities for Incorporating Environmental and Social Sustainability Criteria*

⁷² See https://www.unodc.org/pdf/corruption/publications_unodc_convention-e.pdf

⁷³ See <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷⁴ See <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

- **Recommendations**

Measures to introduce and apply key principles of SPP are necessary. However, it is recommended to have them as part of and aligned with general measures for raising the sustainability of environmental, social and economic development of the country.

Review the public procurement legislation and other applicable laws as well as the institutional framework in order to ensure full conformity with the relevant provisions of the UN Convention Against Corruption, the International Covenant on Civil and Political Rights and other international agreements.

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3.2 Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and the management systems in place the public sector.

Pillar II evaluates the effectiveness of the procurement system in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses whether: i) it is adequately linked with the country's public finance management system; ii) institutions are in place in charge of necessary functions; and iii) the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Summary findings under Pillar II:

The institutional framework for public procurement in Lebanon is constituted by the procuring entities: ministries, autonomous public institutions, municipalities and unions of municipalities, and other public bodies, as well as by a number of Government level institutions, most of them concerned with control and oversight across the various stages of the public procurement process⁷⁵. This institutional framework is incomplete and incoherent. Some institutions overlap with others in their roles and responsibilities, while several key functions are not clearly assigned to a competent, duly resourced authority. In particular, the current framework lacks a policymaking and regulatory function, a review and complaints mechanism that adequately meets the need for speed and competence, and facilities for e-procurement, in particular for ensuring that procurement related information and data are systematically generated and made freely accessible.

The links between public procurement and other aspects of public financial management are weak and ineffective. The financial regulations do not allow procurement to be carried out in a regular manner over the whole of the fiscal year. The yearly budget law is not always issued in a timely manner. This affects the procurement cycle resulting in non-competitive procedures towards the end of the year in order to execute the year budget. Not all procurement plans are clear and comprehensive and easily accessible and there is little transparency regarding economy and efficiency in the actual use of funds for public procurement.

Procuring entities are not clearly defined as such and their roles, responsibilities and organization are not comprehensively regulated with respect to the particular requirements of public procurement. The CTB carries out procurement of larger value contracts on behalf of ministries but the possibility for joint or centralized procurement is not developed in the legal framework. There is no central purchasing body that could aggregate demand from several authorities and no enabling conditions for setting up one (e.g. e-procurement regulations and systems, use of framework agreements).

There is no coherent, comprehensive system for publishing procurement information and documents in a freely and easily accessible manner, nor for collecting, analyzing and disseminating public procurement data, or for supporting the different stages of the public procurement process by electronic means.

Finally, the public procurement system is limited in terms of its potential for development and improvement. Except for the provision of training, though with limited resources, there is a lack of strategies and programs to build the broader capacity of procuring entities. Procurement is not recognized as a profession, hence corresponding positions and job descriptions are lacking. Public procurement data is incomplete, difficult to access and of poor quality. In addition to the lack of data,

⁷⁵ See the list in Section 2.2. of the country context chapter

there are no clear policies and practices on how to monitor and evaluate public procurement performance. Consequently, there are limited opportunities for evidence-based reforms, both at the national level and at the level of the individual procuring entities.

3.2.1 Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

- **Findings**

Procurement planning is weak and there is little integration of public procurement with other aspects of public financial management.

Public procurement has been affected by the failure of adopting a state budget for a number of years. In addition, the public procurement system suffers from unclear, incomplete and incoherent application of public financial management regulations. Procuring entities find it difficult to plan, budget, prepare and carry out public procurement in a regular and systematic manner. Existing financial regulations and practices delay the process of public procurement at the beginning of each year as elaborated under sub-indicator 4(a) below. They also make it difficult to take the time needed for using competitive procurement procedures towards the end of the year, because of the restrictions of the annual budget that require the allocated budget to be used in the same year. The rush to pay, for the same reason, sometimes leads to the disbursement of funds before full and satisfactory performance by the contractors.

Summary gaps and recommendations for Indicator 4

No.	Substantive gaps / Red flags	Risk	Recommendations
4.1.	Weak procurement planning and preparation	High	Provide clear regulations and enhanced guidance materials and training for procurement planning and preparation, in application of good international practice
4.2.	Financial regulations do not anticipate an acceptable timeline to ensure a competitive procurement process is complete	High	Develop medium term budgeting and redraft financial regulations so as to facilitate a steady pace of competitive procurement across the transition from one fiscal year to the next
4.3.	Weak monitoring mechanisms to evaluate procurement outcomes in order to correct financial planning and management	High	Improve monitoring of use of funds while they are being spent, and raise the transparency of the process; complement by introducing systematic own ex-post evaluation conducted by the contracting authority on its public procurement operations. The self-evaluation will focus on procurement outcomes compared with objectives and on administrative performance, with feed-back into financial and procurement planning

Sub-indicator 4(a) – Procurement planning and the budget cycle

This sub-indicator covers the preparation and use of procurement plans and how it links with budgeting and expenditure management.

The PAL⁷⁶ and the Tender Regulation⁷⁷ govern the preparation of annual procurement plans. Each procuring entity sets its own annual procurement plan based on its needs. All plans are submitted to the CTB before 1st of September. It then consolidates⁷⁸ these into one Annual Procurement Plan and publishes it in the Official Gazette and five major local newspapers before 1 October. The CTB also publishes it on its website. This General Procurement Plan is reviewed once the State Budget is adopted in Parliament, and then re-organized for a period of one year, starting from the first of May and ending at the end of April of the following year. The reviewed General Procurement Plan is then republished according to the following: 1) each procuring entity reviews its part and notifies the CTB of the proposed amendments, before 15 March; 2) the CTB re-consolidates⁷⁹ the General Procurement Plan and publishes it again in the same way that it was published the first time, before 15 April.

Therefore, the process has suffered a lot from the absence of adopted State Budget for 11 consecutive years (from 2006 till 2016, included), which hindered the process of preparation, sharing with the CTB, and publication of the Plan. However, the obligation to submit procurement plans to the CTB and the other elements of the process described above only apply to those procuring entities which have to use the services of the CTB and to those contracts which have to be procured by the CTB (above LBP 100 million). Other procurement is done locally by the respective ministry, in practice with multiple derogations from the law.

In addition to that, the process faces, in practice, several problems. As an example, some public administrations prepare only very basic plans or submit the plans too late. If circumstances change during the year, there are special procedures⁸⁰ for how and when to amend the procurement plans that have been submitted. Delaying/postponing the date of launching the procurement needs approval from the Central Inspection Board. Launching a procurement in advance requires⁸¹ the approval of the Council of Ministers.

In practice, procurement planning is carried out differently from an institution to another. At the ministries level, there is not a single approach to procurement planning to ensure that each ministry's procurement needs are fully accounted for. The responsibility for procurement planning is also not systematically assigned to a specific department. At the municipalities level, the common practice is for each department to set out its needs, including specifications and quantities for all the required procurement. These departmental needs are then consolidated into an annual plan before the end of the year. The annual procurement plan is based on the allocated budget of the procuring entity. The budget typically reflects the preceding year's spending rather than a combination of estimated budget and actual needs for the next year.

If procuring entities do not fully utilize their annual budget, they will be penalized by receiving a reduced budget, therefore they try to fully use the budget before end of fiscal year. Consequently, they try to expedite the procurement process by using a reduced timeline to process procurement, using less competitive procedures, and even direct contracting (mutual agreements). As a result, the

⁷⁶ PAL, Art. 122

⁷⁷ Tender Regulation, Art. 4, 5 and 6

⁷⁸ Tender Regulation, Art. 4

⁷⁹ Tender Regulation, Art. 5

⁸⁰ Tender Regulation, Art. 5

⁸¹ Tender Regulation, Art. 5

principle of value for money is not fully satisfied, in addition to increased risk of evading the universal public procurement principles of competition and transparency.

The Ministry of Finance relies on medium-term fiscal and economic expectations for the preparation of the annual budget. Some public institutions with a significant procurement volume, like the Council for Development and Reconstruction (CDR), can then establish both annual and multi-annual procurement plans that reflect requirements set by the Council of Ministers. However, in practice, other procuring entities have limited resources to carry out their own medium-term budgeting and corresponding procurement planning.

Municipalities are required by law to have a monitoring mechanism to report on budget execution and procurement plan implementation. This requirement is without specificities, and there is no evidence to what extent it is systematically put into practice. Other public institutions and ministries, including the Ministry of Finance, do not have an efficient mechanism in place for systematic reporting on budget execution and procurement plan implementation. In practice, if exceptionally in place, the monitoring mechanism is set by the decision makers and not by laws or decrees. Again here, there is no evidence of how this approach works in practice.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

This sub-indicator assesses whether budget laws and financial procedures adequately support the procurement process, i.e., the preparation and timely solicitation and award of contracts, contract execution and timely payments.

Budgeting and disbursement regulations are not fully clear and coherent, and practices vary. The public accounting rules⁸² clearly state that no engagement of funds is done unless those funds are available within the budget. For practical purposes, “engagement of funds” corresponds to contract signature. This means that, in principle, it should be possible to launch procurement and to advertise procurement opportunities before the required budget is allocated for the purpose, and up until the signature of the contract. Budget funds would thus not always have to be made available before launching the procurement process. This possibility is contradicted by other legal provisions, i.e.: (i) the Central Tender Board must ensure availability of funds before reviewing any tender document; (ii) municipalities must meet requirements for prior review and approval before they can start procurement. Any delays in this process mean that it becomes difficult to start procurement early in the year. In parallel, procuring entities feel compelled to disburse the funds before the end of the fiscal year. The possibility to budget and spread expenditure over several years is not clear.

In practice, this often leads to delays in procuring items needed during the first half of the fiscal year and to a rush to conclude contracts, receive deliverables and process payments before the end of the fiscal year. Consequently, it indirectly encourages use of direct contracting instead of competitive open tendering, and to process payments without any accepted deliveries. An example is the use of “reconciliation contracts”. This is a practice used by the procuring entities when a contract is about to be completed, but for some reason (justified later by the procuring entity), time does not allow for an open procedure. The procuring entity agrees with the supplier or contractor to continue its service, and at the end of the year a “reconciliation contract” is signed with the supplier or contractor.

Terms of payment are listed in the contract or referred to in the tender documents and included in the contract. The administrative procedures to be followed when handling invoices appear to be

⁸² PAL, Art. 57; Decree 5595/82 for municipalities which are not subject to the PAL

comprehensive and coherent. As a means to prevent misuse of funds, the PAL forbids full payment of the contract unless it is properly executed. Some exceptions to this requirement⁸³ are anticipated in the PAL: in the case of the procurement of works, an advance payment is allowed up to a certain limit (percentage of the contract value and ceiling). In practice, both procuring entities and suppliers and contractors note that payments are frequently delayed. This includes cases when the competent authority has issued a payment order on time but disbursement from the Ministry of Finance is delayed.

Prior review and approval practices in municipalities

Municipalities face a number of requirements for prior review and approval before they can launch procurement of a public contract.

There are several preparatory steps that they should observe, with deadlines for the supervisory authorities involved:

- Review and approval of tender documents by the competent authority (mayor, regional authority, etc.): up to 30 days
- Ex-ante review and approval by the Court of Accounts (applicable only to municipalities under the CoA audit (less than 10% of the total number of municipalities) and for contracts above the thresholds of LBP 75 million for goods and works and LBP 25 million for consultancy): up to ten days in normal cases, extendable by up to five days
- Review and approval by the General Controller: up to five days in normal cases, extendable by up to five days
- Approval by the competent authority (mayor, regional authority, etc.) of the engagement of funds: up to 30 days

The urban planning or technical departments of the Union of Municipalities will also set timelines for reviewing the files and their technical specifications and for estimating costs in certain specific cases. In addition, no time period is applied for the municipal council to convene for approval of the tender documents and the engagement of funds..

The process is complex and time consuming, and requires considerable administrative efforts. Unfortunately, some municipalities try to address this problem by slicing the procurement into smaller contracts under the pretext of urgent needs. Likewise, the practices in the municipalities at the beginning of the year and at the end of the year are similar to those described for the ministries in the sense that, in the absence of planning, they tend to divide their procurement into small contracts. In fact, below the threshold of LBP 20 million they do not have to prepare a tender and seek approval of the award. Below LBP 75 million they can just make several requests for proposals and in that way avoid the obligation to send the tender documents to the Court of Accounts for prior approval. This, contradicts the essence and meaning of the applicable regulations and thus violates the law. In addition, the use of small contracts procured with less competitive procedures often leads to higher unit costs and less value for money.

⁸³ PAL, Art. 137

- **Substantive gaps and their underlying reasons**

Procurement planning is not systematically done in a comprehensive, regulated manner. There is no enforcement of the obligation stated by the Tender Regulation to submit procurement plans to the Central Tender Board's within the deadlines stated in the law. Reasons for this lie in the lack of financial and procurement skills and capacity as well as of clear regulations, guidelines and tools. In the absence of procurement as a profession, most staff need training in basic procurement skills: development of procurement plans, procurement risk assessments, market and feasibility studies, determination of appropriate selection and award criteria, tender document preparation, evaluation and award procedures, and contract management.

In practice, the current yearly budget cycle is inflexible and limits the possibility to plan and execute public procurement in a medium-term perspective. As a result, procuring entities cannot keep a steady, regular pace of procurement work over the course of each year, leading to peaks and troughs in the workload and to gaps in the possibility to regularly fill recurrent needs for goods and services. Contracts can be concluded only when funds have been made available but these then have to be disbursed by the end of the year⁸⁴. As a result, procurement typically starts late and has to be completed in a rush, making it difficult to follow proper procedures and to ensure continuity and quality of supply as well as adequate and transparent use of public funds. This high seasonality of demand also strongly strains the financial situation and the delivery capacity of suppliers, particularly SMEs.

Spending and disbursement regulations are clear, with deadlines for each phase, but their application in practice is not uniform. This leads to a mismatch between contractual obligations, their performance, and disbursements. In addition, the focus of both regulations and current practices is mainly on administrative and financial compliance, with less consideration of procurement outcomes and administrative efficiency.

- **Recommendations**

Provide clear and comprehensive guidelines and tools for uniform procurement planning prior to the start of the fiscal year and for its incorporation in public budgets; monitor their application; and enforce the use of established good practices.

Design a medium-term budgetary framework that allows procurement to be carried out as a regular, continuous process that can start prior to start of fiscal year and can be a multiyear exercise if needed, with matching regulations for invoice handling and disbursements.

Improve the monitoring of the use of funds while they are being spent. Complement it by regular ex-post evaluation of procurement outcomes. This evaluation should include if and how the actual outcomes meet the initial objectives and the actual needs, as well as the administrative performance during the procurement cycle. Use the findings of the evaluations as feed-back into financial planning and organizational development.

Specific gaps and corresponding recommendations for Indicator 4

No.	Specific gaps/shortcomings	Specific recommendations
4.a)	Procurement plan regulations are not complemented by guidance materials, leading to deficiencies in their form and contents	Draft, publish and disseminate guidance materials for procurement planning, with practical examples, and use them in the training of procurement officials

⁸⁴ Except for the cases stipulated in the PAL, Art. 114 and 116

No.	Specific gaps/shortcomings	Specific recommendations
4.b)	Procurement plans are not always clear and comprehensive enough to serve their purpose, nor submitted on time	Monitor the submission and publication of procurement plans, keeping plans updated as needed, and consider sanctioning late or incomplete submissions
4.c)	Procurement plans are not possible to publish on a single, central website, and many public administrations lack usage of their own websites, if any, for publishing procurement plans and notices	Create a central website for publishing all procuring entities' procurement plans, notices and other documents, as a complement to or replacement for current publication requirements, and require each public administration to have its own website and to use it for publishing the same items
4.d)	The yearly budget cycle and the corresponding, weak development of medium-term planning and budgeting risk inciting procuring entities to use non-competitive procedures or to unduly manipulate running contracts, delivery records and payment requests towards the end of the fiscal year	Adjust the financial/budget regulations so as to (i) allow contracts to be concluded at any time in the year as necessary for timely supply of goods, works and services, and (ii) give enough time to carry out, competitive procedures even if they start late in the year and to make corresponding deliveries and payments possible in the following fiscal year, as may be appropriate
4.e)	Monitoring and reporting on use of funds during the year is underdeveloped	Develop good practices and corresponding regulations for expenditure monitoring and contract management, and consider ways of publishing information on the progress of procurement contract implementation
4.f)	Regulations for reporting on budget execution and procurement plan implementation are incomplete, and practices vary	Institute systematic ex-post evaluation of procurement performance, with feed-back into internal procedures and public financial management; develop corresponding procedures and guidance materials; and monitor their application

3.2.2 Indicator 5. The country has an institution in charge of the normative/ regulatory function

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organizations. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

- **Findings**

The institutional framework for carrying out key public procurement functions has been presented in Chapter 2, Analysis of Country Context. It is incomplete and fractioned, with numerous gaps and overlaps in the current set-up. The responsibilities for public procurement policy making and corresponding finalization of primary legislation are not allocated to a specific entity with commensurate authority and resources. Responsibilities are not clearly assigned to one or several entities with corresponding capacity and without conflicts of roles. This concerns, in particular, key

procurement roles such as monitoring and reporting; preparation of guidelines, standard forms and templates and other items of secondary legislation; training and capacity development strategies and their implementation; centralized purchasing; and international relations, including harmonization with established, good international practice. There is also no clear responsibility assigned for developing and maintaining various e-procurement functions. These would typically include publication of notices and other means for ensuring that public procurement planning, execution and follow-up are fully transparent, such as dissemination of standard bidding documents; publication of tender documents; e-systems to carry out procurement ; and collection, compilation, analysis, safe-keeping and dissemination of all kinds of public procurement data.

No entity is currently in charge of supervising the whole public procurement system. The different entities (stakeholders) involved in the system are executing their own mandates related to public procurement. This results in overlaps and malfunctions and thus increases the risk of inefficiencies and corruption. Normal procurement operations thereby often become more complicated and time consuming than should be necessary and do not offer the intended benefits of improved integrity, efficiency, transparency, value for money and economy. In particular, there is a lack of fair, effective and efficient investigation of possible cases of fraud and corruption and, if such cases have been duly established, no efficient sanctions are systematically applied.

Summary gaps and recommendations for Indicator 5

No.	Substantive gaps / Red flags	Risk	Recommendations
5.1.	Key functions of public procurement policy management are not clearly defined, nor assigned to competent authorities in a comprehensive and coherent manner	High	In the public procurement law, clearly define the various central functions (e.g., policy, regulation, advice, information, training; complaint resolution) in the public procurement system; allocate them to specific entities in a manner that avoids gaps and overlaps as well as conflicts of roles; and give these entities adequate resources and authority for the purpose

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

This sub-indicator examines the regulatory framework that governs the assignment of key public procurement functions to various agencies.

The legal and regulatory framework does not specify the normative/regulatory functions related to public procurement in any single, harmonized item of legislation. No corresponding, formal powers are assigned to any appropriate authorities. As a consequence, there are no specialized units, within the government, to undertake the normative/regulatory functions related to public procurement. In practice, the Ministry of Finance has taken several initiatives to restructure and regulate public procurement, including the definition and distribution of key roles and responsibilities at national level. However, these initiatives have not yet led to the adoption of any overarching regulations covering the whole range of central public procurement functions.

On the other hand, several individual institutions have procurement related functions as part of their statutory responsibilities, such as the allocation of the review function to the State Council.

Central public procurement functions: a brief overview

Core functions: Central public procurement functions that are normally regulated by national law. These functions therefore need to be dealt with at central government level. They comprise primary policy and legislative functions, secondary policy and regulatory functions, international coordination functions, and monitoring and compliance assessment functions.

Supplementary functions: All central public procurement functions other than core functions can be classified as supplementary functions. It should be emphasized that for the functionality of a public procurement system, these supplementary functions are no less important than core functions. They may be exercised by centrally located procurement bodies within a public procurement structure, but they are just as often shared or provided by various bodies within the public procurement structure or in the wider public administration as well as by bodies in the private sector. Supplementary functions comprise advisory and operations support, publication and information, professionalization and capacity strengthening, and development and procurement co-ordination.

Adapted from SIGMA's Public Procurement Policy Brief no. 26; see <http://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-26-200117.pdf>

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

This sub-indicator examines the key public procurement functions and their actual distribution between agencies, identifying any gaps or overlaps.

The law does not provide for a specific entity or entities to provide advice to the procuring entities. Nevertheless, the Court of Accounts has the right to provide recommendations when it audits procuring entities. In practice, the Central Tender Board also provides advice to the procuring entities who ask for it.

Provisions for drafting procurement policies are not found in current applicable laws. Similarly, there are no legal provisions for proposing changes or drafting amendments to the legal and regulatory framework for public procurement. Nevertheless, public procurement is a key component of public financial management reform. It is therefore considered as the one specific area where the government could improve good governance and service delivery, rationalize public expenditures and maximize value for money. Since 2008, the Ministry of Finance has shifted from a traditional, reactive approach to public procurement to a more strategic one. A transparent procurement system, within a well-functioning public financial management system, has been seen as a key means for ensuring competition, sustainability, value for money, and effective oversight. The Lebanese Government's commitment to structural reforms includes the modernization of public procurement (CEDRE conference, Paris, April 2018). The Ministry of Finance therefore launched a public procurement reform process in early 2019 that was also reflected in the Ministerial declarations of the two consecutive Governments (2019 and 2020). The MAPS assessment is taking place within this framework. A new public procurement law has been drafted and is sent to Parliament, early 2020, for discussion at the parliamentary committee concerned.

Public procurement monitoring is not consistently regulated. Nevertheless, monitoring of one or the other particular aspect of public procurement forms, part of the general duties of several institutions. The Court of Accounts carries out ex-ante and ex-post control of ministries and public institutions. The Ministry of Finance carries out control of expenditure by other ministries through the "expenditure controllers". The Ministry of Interior and Municipalities carries out control of expenditure by Municipalities through the "general controllers". The Central Tender Board monitors all the

procurement that it carries out on behalf of ministries, as per the applicable laws (above the defined thresholds).

Centralization, dissemination and provision of accessibility of public procurement information is not mandatory for any entity. There is also no entity that has been mandated to centrally manage statistical data related to public procurement. However, the Central Tender Board publishes on its own website some statistical data related to all procurement that it carries out.

The Central Tender Board publishes yearly reports on its own procurement activities. The Court of Accounts includes public procurement in its annual reports to Parliament. Other public procurement reporting is not systematic and is done on ad-hoc basis, if at all.

No particular institution is officially responsible for developing initiatives for improving the public procurement system and supporting implementation in central administrations, public institutions and municipalities. However, a few entities, such as the Ministry of Finance and OMSAR, have taken such initiatives. A few examples as follows: (i) the current MAPS assessment coordinated by the Institute of Finance (IOF) under the Ministry of Finance, (ii) the identification of knowledge and skills gaps of public procurement officers conducted by the IOF⁸⁵, (iii) the provision of continuous training and certification programs by IOF and OMSAR (see next item below), (iv) the review of the scope for sustainable public procurement (IOF) and contributions to the preparation of a new public procurement law in line with international standards and principles (IOF on behalf of the Ministry of Finance).

The regulatory framework does not address the need to provide tools and documents to support training and capacity development. No institution is officially dedicated to this task. Nevertheless, two major institutions, the IOF and OMSAR include such activities on their own initiative. However, there is no systematic co-ordination between the two institutions regarding these activities. As part of its yearly work plan, the Institute of Finance provides dedicated, continuous training for public procurement officials in all public sector entities (military/security, in particular the ISF and the Lebanese Army; central/local level of government; public administrations/institutions/SOEs). The IOF runs corresponding certification programs for public procurement officials. It also organizes regular workshops dedicated to the private sector, in particular SMEs, in line with the Ministry of Finance policy to encourage them to participate in public contracts. OMSAR has also trained public procurement practitioners in the framework of the implementation of a project for modernizing public procurement in Lebanon funded by the EU.

The current institutional framework does not include any designated role for supporting the professionalization of public procurement. The Institute of Finance took the initiative to establish a competency framework and job description for public procurement⁸⁶ and to develop and deliver specialized training and certification programs.

In the absence of e-procurement in the legal framework, no institution in Lebanon is officially nominated or assigned to the task of designing and managing centralized online platforms and other e-procurement systems. For that same reason, some national efforts to prepare the ground for e-procurement could not lead to any concrete results yet. Under the project “Modernization of PP in Lebanon” (2013-2018), financed by the EU and implemented by OMSAR, a platform for e-procurement

⁸⁵ Institut des Finances Basil Fuleihan (2014), *Professionalizing Public Procurement in Lebanon; Diagnostic Review and A Vision Forward*, <http://www.institutdesfinances.gov.lb/publication/professionalizing-public-procurement-in-lebanon-diagnostic-review-and-a-vision-forward/>

⁸⁶ Idem

was developed for public procurement under the responsibility of the Central Tender Board. However, only some initial components are currently undergoing testing on a pilot basis.

Sub-indicator 5(c) – Organization, funding, staffing, and level of independence and authority

This sub-indicator covers the standing, independence and resources of the agency or agencies in charge of key public procurement functions, especially the normative/regulatory ones.

In the absence of any clearly assigned responsibility for holding the normative/regulatory function of the public procurement system, there is no corresponding entity in place. Consequently, it is not possible at present to describe the authority, independence, organization and staffing of any such existing entity. However, the public procurement law under preparation includes provisions on this topic.

Sub-indicator 5(d) – Avoiding conflict of interest

This sub-indicator reviews the measures to address possible conflicts of interest or roles in the exercise of key public procurement functions, especially the normative/regulatory ones. It is thus related to sub-indicator 14(a) on legal provisions that define fraudulent, corrupt and other prohibited practices and associated responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

There is no system in place to address the question of conflict of interest or roles between the central government institutions that now, in practice, carry out central public procurement functions. There is thus a lack of harmonization of the different initiatives taken by some institutions for addressing shortcomings in, e.g. the preparation of manuals and standard documents, the provision of training, and regulatory development.

- **Substantive gaps and their underlying reasons**

Central functions in the public procurement system are not yet defined in any policies or laws. These functions are also not assigned to any particular entity in the current system. These functions are not performed at all, or only partly in cases when existing entities have taken initiatives to fill the gaps, even in the absence of any binding or guiding regulations.

- **Recommendations**

Clearly define the various central functions in the public procurement system; allocate them to specific entities in a manner that avoids gaps and overlaps as well as conflicts of roles; and give these entities adequate resources for the purpose.

Specific gaps and corresponding recommendations for Indicator 5

No.	Specific gaps/shortcomings	Specific recommendations
5.a)	No regulations require a specific entity or entities to provide advice to the procuring entities, and there is no harmonization of the advice currently provided by some institutions	Determine the advice on public procurement that may need to be given to procuring entities, without prejudice to their responsibility for proper application of the law, and assign responsibility and resources for providing such advice to a suitably competent entity
5.b)	The responsibility for policy making and the drafting of corresponding primary legislation on public procurement is not clearly assigned	Regulate the responsibility for public procurement policy-making and legislation and allocate corresponding resources to an entity designated for the purpose

No.	Specific gaps/shortcomings	Specific recommendations
5.c)	Several institutions now prepare proposals for revisions to laws and regulations but this process is not regulated	Formalize the rules and procedures for reviewing and amending the regulatory and institutional framework for public procurement, in harmony with applicable policies for public consultations, and assign responsibilities and resources accordingly
5.d)	Monitoring of public procurement is largely limited to compliance and financial aspects; it is not regulated or organized in a coherent manner and is little used for evidence-based policy making	Determine the needs to regularly and comprehensively monitor the functioning of the public procurement system and assign responsibility for this to a competent authority and ensure that the outputs of the monitoring are put to good use for policy making and public procurement management
5.e)	Apart from the requirement to publish procurement plans and certain notices in the Official Gazette and other printed media, there is no general obligation for public procurement information to be centralized and made widely and freely accessible, no entity has been given the responsibility to do so, and there is no corresponding website or the like	Designate a competent entity to create a dedicated website for publication of notices and other procurement information, oblige procuring entities to submit corresponding information, and verify compliance
5.f)	There is no entity mandated to centrally manage statistical data on public procurement and make it accessible free of charge	In line with the set-up for monitoring procurement and making procurement information available, assign responsibility for managing procurement statistics to a competent authority with adequate skills and resources
5.g)	Apart from reporting by the Central Tender Board and the Court of Accounts within their field of competence, there are no formal requirements for official reporting on how the public procurement system is working, on the base of which lessons learned and identified actions are put in place.	Establish a mandatory yearly reporting on public procurement (likely for the attention of the Council of Ministers and Parliament for ministries, and to the Ministry of Interior and Municipalities for municipalities and unions of municipalities), and ensure that adequate mechanisms are in place for effective action plans based on the findings and recommendations
5.h)	Although some institutions develop, use and disseminate reference documents and materials for supporting public procurement training and operations, the regulatory basis for this work is incomplete and there is no effective coordination among institutions of these activities	Clearly define the responsibility for managing public procurement training, including, as appropriate, preparation and dissemination of materials and training and certification of trainers or training institutions, and allocate needed resources
5.i)	Although a proposed competency framework and job descriptions for public procurement have been drafted, there is not yet any legal or institutional basis for the professionalization of public procurement	Define typical roles and responsibilities of officials engaged in public procurement, revise and adopt the draft competency framework and job descriptions proposed for the purpose
5.j)	There is no legal or institutional basis for policy making on e-procurement, nor for the development, introduction and management of online platforms and other e-procurement systems	Draw lessons from recent e-procurement initiatives, e.g. at the Central Tender Board; assign responsibility and resources for developing a clear and comprehensive e-procurement policy to a suitably competent authority; and, once a policy has been adopted, assign responsibility and resources for its implementation

3.2.3 Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralized procuring entity exists.

- **Findings**

The regulatory framework does not clearly and specifically define public entities with respect to their public procurement roles and responsibilities. It is therefore sometimes difficult to determine which entities are subject to which public procurement regulations. There are no provisions for defining, in a uniform manner, typical roles and responsibilities of procurement staff and other government officials involved in public procurement. There are also no provisions for delegating such procurement authority within a public entity. As a consequence, the internal organization and approaches for carrying out public procurement vary between public entities. In turn, this makes it more difficult to achieve economy, effectiveness and efficiency in carrying out public procurement and to build capacity for the purpose.

The notional advantages of centralizing certain public procurement have been little reviewed and are not widely known and recognized. Legal provisions for centralized procurement of goods, works and services of common use are not clear and comprehensive. There are no complementary regulation of methods and approaches essential for allowing centralized procurement to be successfully carried out. This applies in particular to e-procurement and the use of framework agreements. The Central Tender Board carries out procurement on behalf of ministries whenever the value of the procurement exceeds LBP 100 million. However, it does not fulfil the function of a central purchasing body in the sense of aggregation of procurement for several procuring entities and the use of framework agreements for this purpose. Thus, at present, there is no central purchasing body serving the common needs of several procuring entities.

Summary gaps and recommendations for Indicator 6

No.	Substantive gaps / Red flags	Risk	Recommendations
6.1.	There is no definition of procuring entities sufficient for determining and applying their roles and responsibilities with respect to public procurement	High	Define procuring entities by law, in a way that helps determine which procurement regulations are applicable and how
6.2.	The organizational set-up and the distribution of roles and responsibilities for public procurement within procuring entities is not clearly regulated, and many high-level entities now lack a corresponding department	High	Institutionalize a general obligation for procuring entities to have a dedicated administrative unit for public procurement within its organizational structure, with clearly defined functions and responsibilities, in addition to staffing and allocated resources adequate for the purpose
6.3.	The legal framework for joint or centralized procurement is incomplete and vague, and there is no central purchasing body	High	Regulate joint and centralized procurement in a clear, comprehensive and coherent manner, and take steps for creating one or several central purchasing bodies as may be appropriate, after reviewing and determining the needs and the opportunities for doing so

Sub-indicator 6 (a) – Definition, responsibilities and formal powers of procuring entities

This sub-indicator examines how procuring entities and their roles and responsibilities are defined and regulated.

The notion of ‘procuring entity’ or ‘contracting authority’ is not defined in the legal framework. Correspondingly, when these expressions are used in the present report, they do not refer to any entity with an officially defined status with respect to public procurement. Instead, the expressions merely refer to any Lebanese entities spending public funds or performing a public service and carrying out procurement for this purpose. The absence of such a notion and of corresponding definitions makes it difficult to clearly determine if and to what extent any public or private entity may need to apply public procurement regulations.

The responsibilities and competencies of procuring entities with respect to public procurement are not specifically defined with reference to any such formal status. They therefore remain unclear, except as regulated either by the PAL or the decree⁸⁷ setting out the “Principles of Accounting in municipalities and federations of municipalities”.

There is no specific, legal requirement for procuring entities to establish a designated, specialized procurement function with the necessary management structure, capacity and capability. In fact, ministries have no designated public procurement units. However, a number of public institutions are administratively and financially independent of their supervisory authority (usually, a custodian ministry). Their bylaws or statutes may contain provisions regarding the set-up of their administrative unit(s) in charge of carrying out public procurement.

Decision making authority for public procurement is broadly regulated by PAL⁸⁸, when applicable. Other provisions are scattered in different laws and decrees, in addition to the PAL. There is no standard process for such delegation that is adopted in all institutions. The regulatory framework also includes scattered notions of administrative and judicial accountability. However, their applicability to public procurement decisions is not explicitly regulated and may not always be enforceable. The PAL allows delegation of authority with reference to monetary thresholds only but does not impose it. Other possibly relevant aspects for delegating authority, like the nature or complexity of the procurement or the risks involved, are not addressed in the PAL. There may still be a certain possibility for any entity to, individually, consider such aspects when delegating authority⁸⁹ to sub-divisions and their managers. However, there is a lack of an administrative culture where authority is delegated to those best placed to exercise it, while responsibility remains at the most senior level. There is also a lack of measures to systematically build the capacity of staff and ensure that they are able to carry out their duties. In fact, if a subordinate official makes mistakes, it would now often be the result of the failure of higher ranking officials to properly engage, train, guide and supervise him or her, and it would be senior management that should be held responsible.

Sub-indicator 6 (b) – Centralized procurement body

This sub-indicator covers the existence, regulation and organization of centralized procurement.

⁸⁷ Decree no. 5595, issued 22 August 1982

⁸⁸ PAL, Art. 133, 148 and 151

⁸⁹ In application of PAL, Art. 151

Joint procurement, centralized procurement and framework agreements

Although widely practiced in other parts of the world, joint procurement, centralized procurement and the use of framework agreements are little known in Lebanon. These three approaches all serve the purpose of aggregating public procurement demand and reducing the number of procedures needed, in order to better use scarce public procurement know-how, limit administrative costs, obtain better prices, and facilitate delivery and use of the goods, works and services procured.

“Joint procurement” is when two or more procuring entities agree to jointly carry out specific procurement activities, whether occasionally or repeatedly. This is usually done in one of three ways:

- several procuring entities jointly prepare common technical specifications and other tender documents, while each procuring entity then conducts a separate procurement procedure;
- several procuring entities jointly conduct one procurement procedure for the whole of their aggregated needs;
- several procuring entities entrust one of them to conduct one procurement procedure on behalf of itself and all the others.

“Centralized procurement” is when an entity set up for the purpose (often referred to as a “central purchasing body” or CPB) conducts procurement on a permanent basis in one of the following forms:

- acquisition of goods or services intended to cover the needs of several procuring entities, with the CPB acting as a wholesaler by purchasing items in its own name, storing the items, and reselling them to the procuring entities;
- the award of public contracts or the conclusion of framework agreements for items needed by many or all of the procuring entities, with the CPB aggregating demand and acting as an intermediary for the award of the contracts or agreements to be used by the procuring entities.

In addition, a CPB may also carry out other, related activities in support of its main operations:

- provide technical infrastructure (e.g. specialised procurement expertise, e-procurement platforms) to help procuring entities carry out their own procurement;
- advise on how to design and carry out public procurement operations;
- prepare and manage procurement procedures on behalf of an individual procuring entity (as in the case of the CTB which, however, lacks all the other typical characteristics of a central purchasing body).

A **“framework agreement”** is an agreement between one or several procuring entities and one or several providers that establishes the terms and conditions for supply, works or service contracts to be awarded during a given period (usually no less than one year and no more than four years), in particular with regard to requirements and specifications, price (or the conditions for determining the price) and delivery conditions (typically including an estimate, without obligation, of the total quantity expected to be procured). Once concluded, using the type of procedure that is appropriate, given the nature of the items and their total estimated value, the framework agreement allows the participating procuring entities to make a simple request (“call off”) for delivery of a particular quantity, on the conditions agreed, and on short notice.

These characteristics make framework agreements very useful for joint and centralized procurement. However, their use must not, in any way, be restricted to those cases: any procuring entity may find it advantageous to use this approach, especially for standard specification items that are frequently needed but in quantities and at times that are not always easy to determine in advance.

There is no centralized procurement function in charge of consolidated procurement, framework agreements and specialized procurement. However, the potential benefits of establishing such a function have been considered in Lebanon. Corresponding articles are being drafted to be incorporated in the new draft public procurement law under preparation. The establishment of a well-functioning centralized purchasing body would nevertheless be lengthy, if and when the new law is enacted. There is also no broad consensus on how centralized procurement should be carried out in order to maximize the potential benefits from this approach. Many complementary aspects are little developed or entirely missing, such as e-procurement rules, procedures and systems, and policies and practices for using framework agreements.

In the absence of any body carrying out centralized purchasing and of any current legislation on the topic, questions of status, funding, responsibilities, authority, organization and staffing are not applicable.

- **Substantive gaps and their underlying reasons**

The PAL and certain other laws and decrees regulate the conduct of public procurement procedures to some extent. However, there is no global definition of procuring entities. The mandates of existing public entities are not uniformly and comprehensively regulated with respect to their public procurement functions and to the organization and execution of such functions.

There is no centralized purchasing body in place and the current legal framework does not foresee it. It also does not regulate related matters that are indispensable to the proper functioning of such a body, in particular e-procurement and the use of framework agreements.

- **Recommendations**

Define procuring entities and regulate the principles for how they should organize and carry out public procurement.

Draft enabling legislation for joint and centralized purchasing, complement it with specific regulations for centralized purchasing bodies and promote and support the establishment and development of such entities.

Establish the procurement function in the Lebanese civil service (central and local levels) with related job competencies and job descriptions at all levels

Specific gaps and corresponding recommendations for Indicator 6

No.	Specific gaps/shortcomings	Specific recommendations
6.a)	The notion of 'procuring entity' or 'contracting authority' is not defined in the legal framework	Define procuring entities reflecting their status of public authorities or of entities providing public services on a non-commercial basis and regulated by public law; with attention to the particular needs of utilities
6.b)	Responsibilities and competencies of procuring entities with respect to public procurement are not defined with reference to their status as procuring entities	Define the responsibilities and competences of procuring entities with reference to their status as entities carrying out public procurement
6.c)	There is no requirement for any entity carrying out public procurement to have any particular unit or function set up for this purpose, and many do not have a unit designated for public procurement	As a complement to definitions of procuring entities and of their responsibilities and competences as such, set out principles and policies for how procuring entities should organize their public procurement activities, and share good practice examples

No.	Specific gaps/shortcomings	Specific recommendations
6.d)	There are no specific rules for how issues of authority and accountability should be dealt with in public procurement, and existing, general rules are not applied to public procurement in a coordinated, harmonized way	Determine policies for guiding the handling of issues of authority and accountability in public procurement, linking them as appropriate to other measures for administrative development and professionalization of public procurement
6.e)	There is no clear and comprehensive policy on joint or centralized public procurement, and little knowledge and understanding of the key considerations that should drive such a policy	Update and complement analytical work on centralized procurement already carried out, consult widely with all authorities concerned, the business community and the general public, and seek agreement on the way forward for introducing centralized procurement; to draft and adopt enabling legal provisions on joint and centralized procurement
6.f)	Aspects complementary to centralized procurement and necessary for its success, such as e-procurement and rules for using framework agreements, are not adequately covered in the current regulatory and institutional framework	Ensure that legislation and institutional development for the introduction of e-procurement and for enabling the use of framework agreements duly consider the needs of joint and centralized procurement

3.2.4 Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

- **Findings**

It is only to a very limited extent that Lebanon has any systems to

- publish procurement information,
- efficiently support the different stages of the public procurement process through application of digital technologies, and
- manage data for analyzing trends and performance of the entire public procurement system.

There are nevertheless some procuring entities that have worked on putting such systems in place for their own operations. They have done so in order to promote competition and thereby obtain more advantageous tenders, raise the level of transparency, and facilitate the planning, preparation, award and management of public contracts.

The absence of a well-regulated information system means that there is a great scarcity of readily accessible data. It is therefore hardly possible to get a clear and correct picture of how the public procurement system is performing. Consequently, the basis for evidence-based policy making is very weak. There is little access to data that would allow cases of fraud and corruption to be identified and pursued.

Summary gaps and recommendations for Indicator 7

No.	Substantive gaps / Red flags	Risk	Recommendations
7.1.	There is no unified, nationwide system for publishing procurement information by electronic means	High	Set up a national electronic platform for mandatory publication of procurement notices of all procuring entities) and for facilitating access to public procurement information and tender documents
7.2.	There are no national regulations, institutions or systems in place for carrying out any aspects of e-procurement	High	Develop a comprehensive concept for introduction and management of e-procurement in all its various aspects; consult widely and take decisions; and allocate resources for implementation
7.3.	Public procurement data is not systematically collected, compiled, analyzed and disseminated as needed for ensuring transparency and for supporting evidence-based policy making	High	Define the needs and procedures for collection and management of data on public procurement, with due consideration of other public financial management needs and of the general need for transparency and accountability in the public sector; adopt corresponding regulations and assign roles, responsibilities and resources to the competent authorities, in line with other measures for public administration reform

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

The objective of this sub-indicator is to determine:

- i) the existence and capacity of the procurement information system in the country
- ii) the accessibility of the information system
- iii) the coverage of the information system
- iv) whether the system provides one-stop-service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

Publication requirements for procurement notices exist (see sub-indicator 1(c) – Advertising rules and time limits). Procurement plans have to be published (see sub-indicator 4(a) – Procurement planning and the budget cycle). Other public procurement information, such as indicative notices, tender documents, contract award notices and contract execution reports is not published in media of wide circulation and availability. The available information is not complete or helpful. There is thus no readily accessible information that would allow authorities, businesses and citizens to understand the procurement processes and requirements. There is also no possibility to monitor outcomes, results and performance and take corresponding action. The law on the right to access information gives the opportunity in principle to access data but applies in practice only to individual cases.

In particular, there is no electronic system available on the national level that would allow procuring entities to publish information in a clear, uniform and easily accessible manner. Nevertheless, a few initiatives were launched in certain public institutions. Advertisements on the website of the procuring entity itself are published by, for example, CTB, CDR, EDL, ISF or on the OMSAR website. The trial operation to establish a centralized online portal⁹⁰ is being tested on a pilot basis at the Central Tender Board.

⁹⁰ The portal www.ppma.gov.lb is still under construction and testing

There is no system for publishing more comprehensive information in each phase of the procurement cycle. Elements like the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details are only partly available. Tender documents may be accessible on the websites of major procuring entities but not in a systematic manner and not through any nation-wide system. Even when information is published on a website, it is usually not accessible in an open and structured, machine-readable format; often just in the form of a scanned document which cannot be searched.

Since the law lacks general provisions regarding the publication of procurement information using electronic means, there are also no particular provisions defining the responsibility for the management and operation of such a nationwide system. In the few procuring entities which do use electronic means for publishing procurement information, the responsibilities for this are regulated internally.

Sub-indicator 7(b) – Use of e-procurement

This sub-indicator assesses:

- i) the extent to which e-procurement is currently used in the country's public sector,
- ii) the capacity of government officials to manage and use e-procurement systems, and/or
- iii) the existence of a country strategy to implement e-procurement.

E-procurement is not used nor progressively implemented in Lebanon. Electronic signatures as used in e-commerce worldwide are not yet applied in Lebanon. No e-procurement readiness assessments have been made. The Government has not prepared any roadmap or strategy specific to e-procurement. There are few indications that Government officials have capacity to plan, develop and manage e-procurement systems, and to manage interfaces with other related systems. In fact, it should be easy for procuring entities to check if a tenderer falls under any grounds for exclusion, such as condemnations for corruption or other prohibited practices or failure to have paid taxes. At present, given the non-interoperability of the systems, procuring entities are unable to verify eligibility of tenderers with respect to cases of corruption with other agencies, or clearance with respect to taxes dues, etc.

Only a few procuring entities use their own websites for publishing procurement related information. Many public institutions and municipalities do not have a website. Even those that have a functional website may not always have the capacity for publishing electronic advertisements, despite the fact that this constitutes the easiest and simplest act of the e-procurement process.

Suppliers would often lack the means and the ability to participate in a public procurement market increasingly dominated by digital technology. This applies in particular to micro, small and medium-sized enterprises but not to the major companies and those working in high-tech sectors. Bids are still submitted in hard copy in the traditional way, by hand, by post or by courier. Electronic submission of bids is not acceptable, because the applicable laws do not anticipate such possibility and the administrative Information Technology infrastructure is not in place.

No significant progress has been made with preparation of a roadmap for e-procurement. The pilot project at the CTB is still operating in a pilot mode. It can now only host the CTB's own notices and bidding documents. The e-procurement platform that was developed, in the framework of the EU-funded project on "Modernizing PP in Lebanon", and implemented by OMSAR is in its early stages.

Some complementary initiatives are being taken by a few major procuring entities. The ISF have a strategic plan to adopt an information system and electronic communications and documentation at

all their departments. The IOF has worked with the General Security on the introduction of some initial e-procurement steps, like the publication of notices and bidding documents.

Sub-indicator 7(c) – Strategies to manage procurement data

This sub-indicator examines the collection, quality and use of public procurement data.

There is no national system in operation for collecting data on the procurement of goods, works and services using electronic means. In the absence of a national system, no data for the entire procurement process are collected, let alone analyzed. It is therefore simply not possible to analyze trends, levels of participation, efficiency and economy of procurement and compliance with requirements. It is also difficult to determine the completeness, precision and reliability of the information that nevertheless may be available from individual institutions. In addition, sharing experiences among entities is difficult and not exercised. There are no means to collect, compile and disseminate price information among procuring entities. Means to verify past performance of suppliers, contractors or service providers under contracts with other procuring entities are not currently available.

- **Substantive gaps and their underlying reasons**

Despite a few isolated and limited initiatives, the major, substantive gap under Indicator 7 is the complete absence, of regulations, institutionalization and systematic generation, collection, dissemination and analysis of public procurement data at national level.

- **Recommendations**

Implement an efficient information system at national level. It should enable the publishing of procurement plans, advertisements, contracts awards, contract management (including amendments, deliveries and payments), as well as complaints and corresponding decisions, and allow free access to and analysis of all such data.

Ensure that any data on public procurement is generated by each procuring entity as soon as any transaction (planning, preparation, publication, submission, evaluation and award, contracting, complaints handling, contract management, evaluation) is carried out, and that it can then be transmitted or otherwise made readily accessible. This should be done in a way that allows easy overview and detailed examination of both individual cases and the performance of the public procurement system as a whole. It should also be compatible with the application of the right⁹¹ to access to information.

Specific gaps and corresponding recommendations for Indicator 7

No.	Specific gaps/shortcomings	Specific recommendations
7.a)	Apart from the publication of procurement plans and notices in printed media, there is limited availability of information on any other aspects of public procurement operations	Expand the range of public procurement information that should be publicly accessible, in line with related measures for raising the general level of transparency about the activities of all public sector entities.

⁹¹ Law No. 28 of 10 February 2017

No.	Specific gaps/shortcomings	Specific recommendations
7.b)	There is no electronic system at national level for the publication of public procurement information, and no authority or institution has been assigned to prepare and set up one	Designate a competent authority to create a dedicated platform for publication of notices and other procurement information, obligate procuring entities to submit corresponding information, and verify compliance
7.c)	Details of individual public procurement operations are not easily accessible	Clarify the right ⁹² to access to information as applied to the preparation, award and execution of public procurement contracts, and ensure that this information becomes easily accessible free of charge
7.d)	E-procurement is not used and there are no specific plans for its introduction	Assess e-procurement needs, opportunities and threats; consult widely with all authorities concerned, the business community and the general public; adopt a roadmap for introducing e-procurement, including interfaces with other public systems; and assign corresponding responsibilities and resources
7.e)	The competent national authorities have limited skills and capacity to plan, develop and manage e-procurement systems	In the short term, seek highly qualified external advice and, in the medium term, develop the knowledge, skills and resources of the competent authorities and their staff to ensure proper, longer term management of e-procurement
7.f)	Procuring entities have often limited or no skills and resources for engaging in any aspect of e-procurement, sometimes not even for preparing and submitting or publishing notices and tender documents	Assess the readiness of procuring entities to actively engage in e-procurement and prepare and execute corresponding capacity building programs, linking up with other measures for public administration reform and capacity building
7.g)	With the exception of some larger enterprises and high-tech firms of varying size, many local enterprises have limited skills and resources for making good use of the business opportunities offered by e-procurement	Assess the readiness of economic operators to actively engage in e-procurement and prepare and execute corresponding capacity building programs, linking up with other measures for raising the competitiveness of local enterprises,
7.h)	There is no national system in operation for collecting data on the procurement of goods, works and services using electronic means, nor for the analysis and dissemination of such data.	Set up an electronic system for collecting data on public procurement and clarify the obligations of procuring entities to record and submit such data, in close coordination with the measures taken for ensuring the publication of procurement information by electronic means and for carrying out analysis etc. of public procurement information,
7.i)	The quality of existing public procurement data is low	Analyze the completeness, precision, reliability and timeliness of public procurement data that may be available from procuring entities, including e.g. price and performance information, and take measures to improve and monitor the quality of such data

⁹² Id.

3.2.5 Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programs are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognized as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

- **Findings**

Some public institutions design, develop and deliver capacity building for public procurement officials and for officials engaged in related public administration work. However, these efforts do not yet match the needs. Among the reasons for this are the large number of often small procuring entities with limited resources and the scarce resources of the said institutions. There is also very limited recognition of public procurement as a profession and procurement officials do not have a specific recognized status. There is no clear, generally applicable competency frameworks nor job descriptions related to staff who are carrying out public procurement. Only some public institutions with independent administrative and financial status have procurement officers with job descriptions.

Training and advice are mostly general and there are limited possibilities to receive competent, specific information and advice on a case by case basis. Exceptionally, a few major procuring entities, i.e. the armed forces, have helpdesks to address issues raised by prospective tenderers and other interested parties, or have within their structure a unit/department as a procurement help desk. In addition, the Institute of Finance has the capacity to provide advice and coaching.

The capacity building institutions mentioned above are engaged also in reviewing the performance of public procurement and in providing recommendations for enhancement. However, this is mostly done on an ad-hoc basis, funded by grants received for the purpose, rather than done in a systematic and regular manner with needed resources allocated. The lack of comprehensive, reliable data and of analytical resources limit the possibilities for evaluation and thus for noting observations and identifying conclusions that could serve as a solid basis for evidence-based policy making.

The shortcoming is worsened by the absence of clearly defined responsibilities for regular, strategic planning and development of the public procurement system and the lack of corresponding institutions with allocated resources made available for this purpose. Nevertheless, recent initiatives to prepare a public procurement strategy have been undertaken by the Ministry of Finance, in response to international recommendations and to the Government's commitment to structural reforms, including public procurement. Together with improved data generation, this should lead to an institutionalization of public procurement strategy development, implementation and monitoring and evaluation.

Summary gaps and recommendations for Indicator 8

No.	Substantive gaps / Red flags	Risk	Recommendations
8.1.	There is no official capacity building strategy, nor one for providing guidance in response to queries	High	Using existing analyses and reports, update the assessments of skills and training needs, determine appropriate measures for closing existing gaps, by developing, adopting and implementing a corresponding capacity building strategy, including means for providing ad-hoc advice (e.g. Help-Desk function)
8.2.	There are no obligations to use the public procurement training currently available	Medium	<i>Establish and implement a policy rendering public procurement training mandatory for all concerned stakeholders across the public sector</i>
8.3.	Procurement is not recognized as a profession and there are no official job descriptions or qualification requirements specific to public procurement	High	Building on existing drafts and international know-how, revise and adopt standard job descriptions and qualification requirements for public procurement officials at different levels, and regulate and monitor their application; in addition to formally recognizing the profession(s) to be defined within the civil service board regulation.
8.4.	There are no mechanisms in place for evaluating public procurement performance or for using such information as a basis for strategy development and decision making	High	Develop the internal audit function in procuring entities, introduce systematic ex-post evaluation (including the publication of findings and of measures taken) of all public procurement operations, and systematize the collection and use of aggregated data on public procurement performance
8.5.	There is no formal, official strategy for the development of the public procurement system and no clearly assigned responsibility for preparing one	High	Use the MAPS assessment report as a basis to develop, adopt, implement and monitor a national strategy for the development of the public procurement system, after clearly assigning responsibilities and allocating resources for this purpose

Sub-indicator 8(a) – Training, advice and assistance

The purpose of this sub-indicator is to verify existence of permanent and relevant training programs for new and existing staff in government procurement. See also the following sub-indicators: 8(b) Professionalization of the procurement function; 10(a) Programs to build capacity in the private sector; 11(a) programs to build the capacity of civil society; and 14(d) Integrity training programs for the procurement workforce.

The Institute of Finance, the National Institute for Administration and OMSAR have taken initiatives for substantive training programs. The IOF considers the public procurement related training programs as one of its main missions within the public financial management framework. In collaboration with the Chartered Institute for Procurement and Supply (CIPS) in the United Kingdom, it has dedicated certification programs addressed to practitioners and specialists since 2013. Other institutions and parties also provide public procurement related training. The program to support the public procurement system led by OMSAR and funded by the European Union is an example, in the context of which a set of procurement topics were covered such as tender document preparation, market research, procurement of goods, works and services, and strategic procurement, among

others, all based on EU regulations and practices. Also, the Lebanese American University has launched a special diploma related to administration and accounting for municipalities, that currently includes a module covering the current legal framework and practices of municipal procurement including procurement methods, preparation of tender documents, and control and oversight processes. Although commercially based, it could usefully complement other training more specifically aimed at public procurement.

Some current public procurement training initiatives:

1. ENA (Ecole Nationale d'Administration du Liban) delivers administrative training to public officials promoting and developing their career. This type of training includes some aspects of public procurement but the ENA does not deliver specialized public procurement training.
2. OMSAR (Office of the Minister of State for Administrative Reform) is a government entity that leads the transformation to a citizen-centric and performance-oriented public sector by promoting and deploying innovative modern policies and methodologies that develop the Lebanese administration and engage citizens through good governance. This Ministry of State delivered a series of training programs on public procurement over three years under a project funded by the EU.
3. LAU (Lebanese American University) is a private university. It delivers a special diploma in municipal finance to municipalities, where municipal procurement constitutes a component. However, this diploma is not free of charge, contrary to the case of OMSAR and IOF trainings.
4. IOF is the leading training agency in public financial management, especially public procurement, delivering specialized training in this field since over 10 years. It has developed customized training programs for many audiences (public procurement officers, public procurement strategists and decision makers, members of tender committees, security agencies, etc.). In addition, it is the only training institution that has offered certified training courses in public procurement to public officials. All those programs are delivered free of charge for public sector participants. In addition, the IOF has tailored hands-on workshops for SMEs. These various public procurement training programs are part of the IOF's annual offer. In addition, IOF also offers technical assistance and coaching in public procurement to public entities.

The above programs constitute individual initiatives. There is no official policy guiding training needs evaluation and training activities at the national level. In 2012, the IOF designed customized trainings based on training needs assessments at all levels. This program led to a medium-term training strategy tackling practitioners, specialists and decision makers. Institutions which provide training programs lack sufficient and continuous funding resources to ensure the continuity of the programs and the sustainability of the training results.

There is no centralized, routine evaluation of training programs at the national level and no harmonization and coordination among institutions of their training initiatives and activities.

An advisory service or help desk function to resolve questions from procuring entities, suppliers and the general public does not exist at the national level. The legal, institutional, technical and human infrastructure required to implement such a function is not available at present. On the other hand, the Internal Security Forces and the General Security have a procurement unit or department assigned to respond to any request concerning tenders when received, and the Lebanese Army has a specific bureau that replies to requests for clarifications related to its procurement activities. Also, the Central Tender Board provides support for the entities asking for it. Some procuring entities or private

companies may seek advice or clarification from the Institute of Finance. The responses are provided depending on the level of expertise needed and available for addressing the request.

There is no officially adopted, national strategy for developing the capacity of key actors involved in public procurement. In 2014, the Institute of Finance carried out a comprehensive study of the capabilities of the public procurement stakeholders in Lebanon. A report was issued in two languages, Arabic and English, describing the existing capabilities and the necessary training required to develop the capacities and skills⁹³. Earlier, the Institute of Finance drafted a strategy for training in public procurement, which was required in the Paris III 2007 road map of the Ministry of Finance. Subsequently, the IOF has been delivering a corresponding series of training courses, though not mandatory. The IOF also delivers training of trainers in public procurement.

Sub-indicator 8(b) – Recognition of procurement as a profession

The purpose of this sub-indicator is to determine whether procurement is recognized as a profession in the country's public service.

At present, Lebanon's public service authority (the Civil Service Board, CSB) does not recognize procurement as a profession. There are no corresponding definitions applicable to its relevant professional levels. Current regulations require procuring entities to create, on an ad hoc basis, "tender committees" and "acceptance" or "reception" committees and specify their respective role. However, these committees are not "functions" within the Lebanese civil service. On the other hand, in practice, procurement tasks are carried out in cooperation between the above-mentioned committees and the accounting officer of the entity. Some entities have formalized this administrative arrangement in their official, organizational structure. However, proper focus on the public procurement function in any procuring entity would require at least some selected members of the committees and their support staff to have public procurement as their officially recognized, primary professional duty.

Appointments and promotions in the public sector should be based on applicable laws and regulations. There is little evidence whether this is systematically done on a competitive basis and based on qualifications and professional certification. In particular, the absence of any defined roles or functions of public officials in the field of public procurement means that there is no regulatory basis for how to handle corresponding appointments and promotions. A holistic nationwide system for evaluation of staff performance with respect to public procurement does not exist.

Sub-indicator 8(c) – Monitoring performance to improve the system

This sub-indicator examines the extent to which the performance of the public procurement system is measured, and measures are taken to improve it.

A national system to measure public procurement performance does not exist in Lebanon. After each individual audit, the Court of Accounts issues recommendations or decision on how to improve future procurement operations that may have been covered by the review. Some administrations consider those decisions and recommendations, but others do not. The law does not stipulate any liability or consequence on administrations who are not complying with the recommendations.

The Court of Accounts has to submit official reports to Parliament, although none has been published since 2014. Reports may include "recommendations" for action, but are not binding to procuring

⁹³Institut des Finances Basil Fuleihan (2014), *Professionalizing Public Procurement in Lebanon; Diagnostic Review and A Vision Forward*, <http://www.institutdesfinances.gov.lb/publication/professionalizing-public-procurement-in-lebanon-diagnostic-review-and-a-vision-forward/>

entities. “Decisions”, on the other hand, are issued on a case-by-case basis, after audits etc. are carried out. An ex-ante control decision may identify the problem that a particular condition limits participation or that a certain technical specification limits competition. However, this does not necessarily lead to any corresponding changes in the handling of the case by the contracting authority. As a result, it is also not sufficient for systematically discontinuing such bad practices in other cases. In practice, if the contracting authority disagrees with the decision of the Court of Accounts, it may seek exceptions from the Council of Ministers. A favorable response then overrides decision of the Court of Accounts.

No established requirements or practices are in place to monitor the performance of a contractor (and of the authority itself) during contract implementation. Similarly, no ex-post evaluations of the performance of individual procurement contracts are conducted, and none for evaluating the performance of the authority in doing procurement to ensure value for money, transparency and economy when serving citizens while carefully managing scarce public funds. The internal audit function is weakly developed for this purpose.

Strategic policy making for public procurement is not institutionalized. There is no entity assigned to develop, implement, monitor and adjust existing strategies or action plans related to the longer term development of public procurement. The responsibilities for this are not clearly defined in the applicable laws and regulations, other than what the mandate of the Institute of Finance requires it to work with in this respect. As a result, the procuring entities cannot share experiences in order to improve the administration and develop the public procurement system. In some cases, procuring entities have taken their own initiatives for revising their internal policies and procedures. In this situation, no national strategic plans have been put in place to improve the public procurement system, except the recent initiatives taken by the Ministry of Finance seeking to address identified shortcomings. On the other hand, the present MAPS assessment is intended to provide the basis for a national public procurement reform strategy.

- **Substantive gaps and their underlying reasons**

There are no officially adopted, up-to-date national strategies and programs in place to develop the capacity of procurement staff, nor to provide guidance and advice in response to queries from various actors involved in public procurement.

Procurement is not recognized as a profession in Lebanon’s public service. There is no nationally established job description or requirements for qualifications and competencies necessary for performing public procurement related tasks.

There are no mechanisms in place to evaluate the performance of procurement operations and the public procurement system, or to develop strategic plans to continuously improve it.

Behind these shortcomings lies an absence of clearly defined responsibilities and their assignment to specific entities with necessary resources. In turn, this reflects an apparent, longstanding lack of focus or interest in these questions from decision makers. The Ministry of Finance, as a result of the Government commitment to structural and financial governance reforms, and in response to solicitations from international development partners, has taken the initiative to undertake required reform.

- **Recommendations**

Assign to a competent entity the task to make an updated assessment of capacity building needs and, on this basis, to prepare and implement a national capacity building strategy in public procurement,

monitor its outcome and adjust it accordingly, while engaging in this process all of the stakeholders concerned.

Create an advisory function for answering all the queries related to public procurement and the application of relevant laws assign it to the relevant entity while providing necessary funding.

Develop job description and qualification requirements for officials with public procurement related roles and responsibilities. Take steps to ensure that they are used by procuring entities when they engage, train and promote staff. As a further step, consider professionalization of the positions within the civil service.

After assessment of the objectives, opportunities and risks involved, set up a national public procurement strategy, including a multi-annual plan. Make it mandatory to execute the plan, and regularly monitor and update it.

Specific gaps and corresponding recommendations for Indicator 8

No.	Specific gaps/shortcomings	Specific recommendations
8.a)	There is little coordination of the various training activities currently undertaken, and the analytical basis is incomplete	Update and complement existing training needs assessments and course evaluation findings, and ensure that they become suitably reflected and mainstreamed in training programs that form part of a broader capacity building strategy, with clear distribution of roles, responsibilities and resources for public procurement training
8.b)	There is no advisory service or help desk function to address questions from procuring entities, suppliers and the public	Complement the publication of information, guidance notes and training materials on a central website by setting up a corresponding advisory function (not necessarily in one single institution) harmonized with other initiatives while avoiding conflicts of roles
8.c)	There is no officially adopted, national capacity building strategy	Assess the full range of capacity needs for successful development of public procurement, including aspects like staff skills and resources, administrative procedures, management philosophy and approaches, e-procurement related needs and links to other aspects of public financial management. Develop a capacity building strategy, including an action plan for its implementation, harmonized with other measures for public administration reform
8.d)	Public procurement is not recognized as a profession and there are no officially adopted job descriptions or positions	In parallel with the regulation of the role of a dedicated procurement unit in any procuring entity, define the typical functions and positions within such a unit and develop and adopt corresponding job descriptions and qualification requirements; until then, ensure that the tasks of key officials in charge of public procurement tasks are officially recognized as primary professional obligations
8.e)	There is no regulatory basis or established practice for ensuring that appointment, evaluation and promotion of staff in charge of public procurement fully reflects their duties and performance in this particular respect	Develop principles and policies for engagement and management of public procurement staff based on their skills and performance in this particular field

No.	Specific gaps/shortcomings	Specific recommendations
8.f)	The performance of public procurement is not regularly and systematically monitored and evaluated, neither at the level of individual contracts nor at the level of the individual procuring entity nor at the national level	Ensure that the measures taken for developing the collection and analysis of public procurement data duly include a wide range of performance aspects, and strengthen the role of internal audit in improving practices in each procuring entity
8.g)	The findings and recommendations actually provided by supervisory authorities that at least partly cover public procurement are not systematically applied for improving the performance of the system, neither in the individual nor in the general case	Clarify the obligations to follow any “recommendations” or “decisions” issued by oversight authorities, monitor their implementation and sanction any failure to comply
8.h)	There is no official strategy or the like for the development of public procurement, and there is no clear responsibility for developing one	Clearly assign responsibilities for the development and management of public procurement reform strategies, assign corresponding resources and make good use of the findings of the present MAPS assessment

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3.3 Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing particular procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

The analysis under Pillar III is based on information provided orally at workshops and confirmed in writing by representatives of the major stakeholders as well as on the results of a survey among economic operators. The data collected in this survey is not statistically representative of the situation and the opinions of the business community at large but nevertheless provides valuable confirmation of the observations made by the stakeholder representatives.

On the other hand, it has not been possible to review any sample of procurement cases that would normally be required for e.g. evaluation criterion (j) under sub-indicator 9 (b), nor any contracts as needed for the proper evaluation of sub-indicator 9 (c). This is because no contracting authority was willing and able to prepare and submit any such set of cases, nor to make it possible for the assessment team to review them on site. One of the reasons for this is that the law⁹⁴ on access to information is not yet being applied in accordance with its terms.

3.3.1 Summary findings under Pillar III:

The public procurement operations and the market practices in Lebanon is very fragmented and unclear. Available information shows shortcomings at all stages of the procurement cycle.

Planning and preparation of procurement often fails to state the objectives in a way that would allow the outcomes of the operations to be evaluated. Such ex-post evaluations of how the procurement objectives have been met are also rare, in any case. The initial analysis of the needs to be met by the envisaged procurement is not always matched by a corresponding analysis of the possibilities for the supply market to meet them, compromising the selection of an appropriate procurement strategy. Procurement plans are not systematically prepared and published. Therefore, the market is not well informed about planned procurement at a sufficiently early stage. As a result of insufficient planning and preparation, procuring entities fail to have the benefits of wide, active competition.

The choice of procedures is limited, with open and restricted tendering being the only fully competitive procedure foreseen in the legislation. Budgetary constraints often require delaying or accelerating procurement at the beginning and the end of the fiscal year. As a result, the most appropriate, competitive award procedures are not always used. Weak capacities in contract management and cumbersome administrative procedures mean that the receipt of goods and works and the payment of invoices often takes time, even when deliveries are completed in an acceptable manner.

In parallel, the private sector finds it difficult in practice:

- to learn about business opportunities in public procurement;
- to learn about and understand the requirements and the procedures;
- to mobilize enough resources for preparing tenders with all supporting documentation required;

⁹⁴ Law no. 28/2017, in force from 16 Feb. 2017

- to ensure the required cash flow to deliver on time and;
- to have payments processed on time.

All of this leads to lack of trust in the system and reduce the level of participation.

There is no regular, comprehensive compilation and analysis of public procurement data across the governmental institutions. What little data exists at the level of a few institutions is difficult or impossible to collect in practice. In addition, there is a lack of regulations for the publication of notices and of a country-wide, easily accessible system. There is also no institution in charge of collecting and analyzing data and reporting on findings. The recently ratified law on access to information is useful and important; however, it does not provide any quick, easy and reliable access to public procurement related information.

Judging from the little evidence available, practices vary widely between procuring entities. Here, among the underlying reasons, one may mention (i) lack of a comprehensive, unified regulatory framework for public procurement, (ii) lack of specialized staff with public procurement knowledge and skills, and (iii) general weaknesses in public administration skills and procedures related to planning, budgeting, execution and monitoring. Contributing factors have also been the frequent delays and uncertainties regarding the state budget, specifically until 2017, and the social and economic pressures stemming from an influx of refugees and the complicated political situation.

3.3.2 Substantial gaps under Pillar III

- Data on the actual workings of the public procurement system is missing
- Existing information on public procurement is not thoroughly analyzed and the assignment of responsibilities for analysis is not clear
- The effectiveness of public procurement in terms of the level to which original objectives are achieved is difficult to evaluate at all levels: contract level, procuring entity level, and the national level
- There are no means in place for monitoring and managing public procurement performance
- Public procurement practices show great variation and fragmented approaches, and errors and omissions frequently occur when public procurement is carried out
- Lack of trust between the demand and the supply sides of the public procurement market
- No effective mechanisms for public-private sector dialogue and mutual information on public procurement related subjects
- Numerous practical barriers to the public procurement market, especially for SMEs and new entrants
- Lack of understanding of the role of public procurement in the economy and of the opportunities to incorporate it in development policies

3.3.3 Indicator 9. Public procurement practices achieve stated objectives.

The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

- **General findings under Indicator 9**

As noted under Pillar I, planning, selection, awarding, and contract management procedures are not fully and comprehensively regulated. Practices vary considerably among the procuring entities. Even if any particular authority would typically have established some internal routines for managing and carrying out public procurement, they may not always be properly documented, monitored and enforced. This explains the findings, based on the limited data available, that, except for a few large, well organized and managed procuring entities, practices are often characterized by ineffective, inconsistent, ad-hoc approaches.

It is therefore very difficult to find a clear link between the objectives – to the extent that they have been clearly formulated at all – behind the procurement plans, the way procurement is prepared and carried out, and the outcomes of the public procurement processes. Similarly, it is difficult to determine if and to what extent public procurement is or may be used to serve broader policy objectives.

Summary gaps and recommendations for Indicator 9

No.	Substantive gaps / Red flags	Risk	Recommendations
9.1.	Data on the current public procurement system is incomplete	High	Ensure data on all steps of the procurement cycle for public contracts is easily accessible, at no cost, on a central website, in a format that facilitates data extraction and analysis
9.2.	Existing information on public procurement is not thoroughly analyzed and the assignment of responsibilities for analysis is not fully clear	High	Assign responsibility to a competent authority for analyzing public procurement data and making it available to support evidence-based policy making
9.3.	The effectiveness of public procurement, in terms of the level to which original objectives are achieved, is difficult to evaluate at all levels, namely: contract level, procuring entity level, and the national level	High	Require objectives and intended results to be clearly formulated and recorded during planning and referred to during systematic, compulsory evaluation of contract execution and outcomes
9.4.	There are no means in place for monitoring and managing public procurement performance	High	Develop and apply performance-centered approaches for planning, preparation, execution and evaluation of public procurement, covering both particular contracts and the general public procurement performance of a contracting authority, and provide corresponding guidance and training
9.5.	Public procurement practices show large variation and fragmented approaches by procuring entities, leading to frequent errors and omissions when public procurement is carried out	High	Issue guidelines and provide hands-on training for procuring entities on procurement planning, including needs analysis, market research, choice of approaches and procedures, preparation and publication of procurement plans, as well as on contract management, and make the use of standard forms and approaches mandatory

Sub-indicator 9(a) – Planning

Sub-indicator 9(a) assesses whether a thorough needs analysis has been conducted, followed by market research, to inform the development of optimal procurement strategies, in particular for

major procurement. It evaluates whether the desired results have been defined and if this entailed economic and/or environmental or social impacts aligned with national policy objectives.

The recognition of needs in a broad sense certainly lies behind requests for and approvals of budgets. On the other hand, statements collected during the assessment indicate that the more specific, line-by-line identification of budgetary requirements is usually made with reference to the previous year's expenditures. In addition, particularly for works, budgeting may be based on progress to date and tasks remaining under contracts that require continuity of funding. However, generally established procedures and practices as well as guidance materials are not well developed. More detailed analysis of the particular needs and the possibilities for the markets to meet those needs are not systematically looked into in an orderly manner, except in a few well organized procuring entities. Even here, the limited choice of award procedures means that the possibilities for 'proactive identification of optimal procurement strategies' are virtually non-existent.

The local supply market is limited. It is expensive, complicated and difficult to learn about and analyze what is offered on the international market. Contracting authorities may think that they have a limited choice to meet the needs. In principle, this should incentivize procuring entities to more frequently and systematically carry out market consultations. This would enable them to understand not only the possibilities (often greater than expected) but also the limitations of the supply market. This would also help them raise the business community's awareness of the public sector's needs and the opportunities to develop better business. However, such market consultations are still very rare and there is a lack of policies and practices for doing so in a fair, transparent, effective and efficient manner.

Each year, the CTB publishes⁹⁵ its General Procurement Plan, based on inputs from the different procuring entities it serves. Apart from this exception, procurement plans are often prepared only to a limited extent. The procurement plans are also not systematically published with easy access. They are prepared with few details after the national budget is approved or when there is clarity about the funds likely to become available. From the evidence collected, it looks like the main purpose of the procurement plans is to helping schedule the procurement activities during the year. There seems to be lack of awareness about the objective of having a procurement plan, such as to inform the business community about upcoming tendering opportunities, and thus increase the level of participation and competition. When procuring entities do not prepare and publish clear and complete procurement plans, the needs and value for money will not be met completely. The procurement plans that are actually prepared typically do not include an analysis of the needs and a clear statement of the corresponding, desired outcomes. It is then also very difficult at a later stage to determine if, when and how the desired results have actually been reached.

Cost estimate is essential to do procurement in order to determine the best procurement method and approach based on the value of the contract and the applicable thresholds, and also to ensure that funds are available. Overestimation of the costs may lead to a higher budget than strictly necessary for the purpose, and it is notorious that procuring entities are usually eager to use up the budget available, e.g. by making a contract amendment to increase the number of items to be delivered. Overestimation of the costs may therefore lead to unnecessary purchases and waste of public funds. Underestimation may lead to tenders being submitted and contracts initially concluded at prices below actual costs, particularly if bidders are colluding with the procuring entity, followed by excessive renegotiations and price increase during contract implementation as well as difficulties in mobilizing the corresponding, additional funds, if such additional funds can be found at all. Underestimation of

⁹⁵ <http://www.ppma.gov.lb/bids/program/2019>

the costs may also reflect inappropriate efforts to get below the value thresholds for competitive procedures. However, there are no well-established rules setting out which data should be used to estimate the contract value.

There is little evidence that the objectives to be served by the contract to be procured, the capacity and resources of the procuring entity's public procurement staff and the opportunities and limitations in the supply market are proactively used for selecting the best procurement approach, as a key step in the preparation process. The procurement approach would typically set out the type of procedure, the timeline of the process, the requirements and specifications in the tender documents, the selection and award criteria, the form of contract, and the management arrangements for the whole process until the end of the ex-post evaluation of the outcomes.

There are no comprehensive, universally applicable standards in Lebanon for the form and contents of tender documents. In practice, unless one of the existing standard documents (see next paragraphs) is used, their form and contents and the level of clarity and detail vary considerably from one procuring entity to another. Procuring entities do not systematically include clear and detailed descriptions of the requirements and criteria and the procedures for bid submission, receipt and opening. As a result of having several forms of the tender documents, tenderers may be uncertain about the requirements, take longer time to understand each procuring entity's document, and prepare and submit a tender that is as competitive as possible. Some prospective tenderers may even decide not to participate at all because of such uncertainties. Likewise, procuring entities may find it difficult to properly evaluate the tenders received, to award the contract to the best placed, fully qualified tenderer, and in that way to ensure that the requirements will be fully met and that the ensuing contract can be enforced.

Only some procuring entities (Lebanese Army, the Internal Security Forces and the Lebanese Petroleum Administration) have adopted their own general bidding documents and use them, as do large municipalities and federations of municipalities. However, only in the case of the Army, the ISF and the LPA, standard documents have been formally adopted and required to be used by virtue of decrees issued by the Council of Ministers.

The IOF (in 2009, with a revised version in 2013) and OMSAR (in 2018) have developed standard bidding documents that can be used at national level, but its use is not compulsory. The documents prepared by the IOF were disseminated to all public administrations and institutions. They remain available online on the IOF website, in MS Word format for ease of use. As a complement to its five standard bidding documents (Goods, Small Goods, Works, Small works, Consultancy services), the IOF has also developed a procurement manual that describes how to use them. It has also been disseminated across the public sector and trained administrations and institutions on. These documents were developed based on the existing legal framework and in line with international good practices⁹⁶. Four standard bidding documents were developed by OMSAR: three documents based on the procurement method used (open tender, request for proposals, purchase against invoice) and one for consultancy services. They have not yet been widely disseminated but are available on the OMSAR website⁹⁷.

When preparing tender documents that are of engineering or technical nature, municipalities that do not have an engineer in their teams are required⁹⁸ to ask for the non-binding opinion from the Urban

⁹⁶ Accessible on <https://bit.ly/2VHVB94>

⁹⁷ Accessible on <https://www.omsar.gov.lb/Procurement-Tenders/Standard-Bidding-Documents>

⁹⁸ Advisory opinion of the Court of Accounts no. 50/2018 dated 2 July 2018 on "The prerogatives of the General Directorate of Urban Planning in controlling municipalities"

planning directorate on the form and contents of the tender documents. The tender documents of municipalities also have to be certified, under the jurisdiction of the District Commissioner for contracts of less than LBP 80 million and under the competence of the Regional Governors for contracts of higher amounts.

There is a lack of clear policies and of corresponding guidelines and procedures for procurement planning and preparation. Procurement officials and practitioners also show a lack of knowledge and skills in procurement planning and preparation. Sustainability criteria are not regularly used⁹⁹, even if applicable regulations allow it. Particular approaches like life cycle costing are rarely applied in the planning and preparation stage. They are used even less often when setting award criteria and using them during the evaluation of tenders. Instead, the lowest price remains the main award criterion. Nevertheless, among the exceptions to the general state of affairs, the Lebanese Petroleum Administration uses sustainability criteria and CDR uses performance-based specifications for wastewater treatment plants.

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency and fairness in selecting suppliers, including the quality of procurement documents and process efficiency.

The PAL provides for five different procedures stated in the PAL: open tendering, restricted tendering, request for proposals/quotations, direct contracting (or mutual agreement) and purchase against invoice (or shopping). The procedural provisions in the PAL mainly cover open tendering, which remains the default procedure for higher value contracts. Restricted tendering is not clearly defined and also not supported by any procedural guidance. Restricted tendering (with prequalification, as in international practice) is therefore very rarely used, mainly for large or complex contracts with international financing.

For works contracts, several institutions have their own rules and conditions regarding qualification requirements and grounds for exclusion, as is the case of e.g. the Ministry of Public Works, the Ministry of Energy and Water, the Council for Development and Reconstruction, and the Armed Forces. This is in application of what may be called “pre-classification” of contractors, as opposed to “pre-qualification”. The applicable decree¹⁰⁰ sets out general requirements for the classification of contractors in different categories according to a number of specific criteria. As indicated in each of the tender documents in question, only officially categorized contractors are eligible to participate.

Although the choice of award procedures is quite limited, the procurement method adopted has always to be justified in the records of the procuring entity. The justification has to be based on the provisions in the PAL and with respect to the clauses concerning the relevant procurement method. This is especially important when single source procurement (direct contracting) is used. In current practice, some procuring entities, especially autonomous public institutions (OGERO, for example), have their own accounting bylaws and are not subject to the provisions of the PAL. They often proceed to direct contracting in a more flexible manner, after receiving the formal approval of the supervising minister, without submitting any relevant justification. The possibility, in principle, to do so as an exception to open tendering is set out¹⁰¹ in the PAL. However, a practice is being followed where some procuring entities get a one-time decision from the Council of Ministers allowing them to do direct

⁹⁹ <http://www.institutdesfinances.gov.lb/publication/review-of-the-public-procurement-legal-framework-in-lebanon-possibilities-for-incorporating-environmental-and-social-sustainability-criteria/>

¹⁰⁰ Decree 9333/2002 on classification of contractors

¹⁰¹ PAL, Art. 147

contracting for the whole year. The current extent and the consequences of these practices remain difficult to determine because of the lack of publicly available data.

Only the participating tenderers are explicitly allowed to attend the bid opening sessions. The legislation is silent about the right for other interested parties to be present. In practice, only some bidders attend the opening. The confidentiality of the evaluation process is appropriately required by law but, as reported by Steering Committee members, leakage of information related to the evaluation process happens frequently because of a serious lack of accountability. Standard practice is for the award to be made to the tenderer having submitted the lowest responsive bid. Only few procuring entities adopt and apply non-price criteria, which are then required to be clearly identified and presented in the bidding documents.

Although the bidding documents may contain provisions for the publication of the contract awards, the PAL does not impose it and there is no clear, standardized procedure for the purpose. Some larger procuring entities publish award results on their websites. The CTB publishes a brief description about the procurement, the name of the supplier/contractor and the contract amount. The law¹⁰² on access to information imposes the publication of contract awards exceeding LBP 5 million but this law has not yet been implemented.

Sustainability considerations are not included in any contracts, in practice, except for some contracts where the bidding documents include such criteria as part of the contracting authority's requirements. The practice is thus limited to exceptions presented in the bidding documents, such as the disposal of oils and chemical residues. They may also have been included in the contract as a condition required by an environmental impact assessment, as sometimes done during the preparation of high risk projects.

The conditions of contract include the penalties that the bidder will bear in case of e.g. delays in execution. However, they typically do not mention any incentives to bidders for exceeding defined performance levels and there is no manual on the methods of application of such incentives. Incentives related to exceeding expected performance are thus rarely applied, but penalties or disincentives are regularly applied upon default or poor performance by the contractor.

On the other hand, there are mostly only few or no sanctions foreseen for the case when the contracting authority fails in its duties as party to the contract. Frequently, such failures relate to the obligation to carry out reception and acceptance of deliveries in a timely manner and to pay corresponding invoices on time (many enterprises complain about frequent, long delays in this respect). Other reported failures occur with respect to the employer's obligations to make it possible for the contractor commence execution, e.g. by provision of site access/possession and various permits in the case of works contracts.

The evaluation and award process is often unpredictably long. There is also a significant disparity between different procuring entities. However, the actual extent of this problem, the reasons behind it, the full consequences of it and the possible means for improving the situation are difficult to determine in the absence of clear, relevant evidence. Among the reasons for the long time often taken for evaluation and award one may mention changes of the decision making members in the contracting authority, non-responsiveness of the tenders received, receipt of only one tender (in cases when this would require the tender to be cancelled and the procedure to be restarted), the time spent on prior review by the Court of Accounts, changes in the requirements, or lack of funds.

¹⁰² Law no. 28/2017

Even when the award decision has been taken, the contract is often signed with considerable delay. In this context, it should be noted that the tenderer is bound by the tender submitted for the whole period of tender validity. However, there is an abusive practice of setting specific conditions in the tender documents conditions which give the tenderer only three to five days to confirm the withdrawal of the tender after the expiry of its validity. If this is not done on time, the tender cannot be withdrawn again. In this way, the tenderer practically remains bound by the tender for an unlimited period of time.

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost and other conditions stated in the contract, for the efficient and effective delivery of public services.

It has not been possible to examine individual contracts as would have been needed to determine if they have been implemented on time. However, concurring statements by both procuring entities and economic operators indicate that delays frequently occur in the delivery of goods, works and services.

In principle, inspection and quality checks of items delivered are required to be done according to the reception and acceptance process described in the PAL and in applicable secondary legislation, and as set out in e.g. the Code of Obligations and Contracts. It may also be necessary to apply the contractual provisions intended to guarantee the delivery of the required goods, works and services. In some cases, inspection is made at the manufacturer's premises, and in some other cases, by an accredited third party institution. The purpose of such inspections is typically to make sure that delivered goods are functional, in compliance with the required specifications, and that they are free of defects. If the goods or the works are not compliant with the specifications, there should be no reception and in many cases penalties apply.

However, in practice, some contracts do not include the necessary details, sometimes not even a deadline, for delivery. Some purchasing entities, particularly smaller ones, lack specialized committees or staff members officially in charge of the reception and acceptance of goods or works. Violations and non-compliance may only be noted, without leading to any penalties. A lack of supervision at the level of the contracting authority during the execution of the contracts and upon final commissioning is also frequent.

A particular problem seems to be that even when reception procedures are properly carried out and delivery has been made as required in the contract, the corresponding confirmation to the supplier is often issued with considerable delay, if issued at all, which prevents the supplier from issuing the corresponding invoice; alternatively, the supplier issues a partial invoice for the items delivered but acceptance remains considerably delayed. In fact, there are no official regulations and mostly no contract conditions setting a clear deadline for confirming receipt of any items delivered or for accepting (or not, on well justified grounds) any invoices issued. There are also no corresponding penalties or other consequences if procuring entities do not handle such obligations in a timely and diligent manner.

Due to lack of data, the extent to which invoices are paid in a timely manner could not be assessed. As mentioned above, concurring information from numerous sources indicates that invoices are often cleared for payment with some delays. Further delays are thereafter recorded in the internal processing of the cleared invoices, until corresponding payment orders are issued by the competent service of the contracting authority. Disbursements are not made directly by the contracting authority except in the case of public institutions with financial autonomy. Whenever disbursements are not

made directly, but through the Ministry of Finance, additional delays are reported until the funds are effectively transferred to the account of the supplier. This is despite explicit provisions in the PAL specifying deadlines for each step of the payment process within the Ministry of Finance.

As a result, it is becoming as a practice for participating tenderers to increase their prices in order to compensate for the expected delays. In addition, many prospective tenderers do not even envisage participating unless they have ample access to financing on favorable terms or expect to be able to speed up payments by special means. The above situation affects negatively the principles of efficiency, integrity, and value of money in public procurement.

Applicable regulations allow contracts to be amended. However, the required procedures are lengthy and may generate additional delays in the execution of the contracts. In turn, this may create new needs for further contract amendments. Reliable data on how contracts amendments are handled in practice is not available. Anecdotal evidence provided by the stakeholder representatives indicates that amendments are frequent, also for increasing the contract value well above the original amount or in disregard of any applicable regulations. Among the reasons for this are the delays in execution mentioned above, varying needs (often simply reflecting bad planning), miscalculations in the original estimate of the quantities required, or intentional reductions of the officially estimated contract value in order to escape any applicable monetary thresholds.

There is currently no official system in place for generating or using procurement statistics. However, a performance-based assessment system is prepared at OMSAR in coordination with the Central Inspection. The system is currently being tested by OMSAR and the Ministry of Education and Higher Education as pilot administrations.

Except for the possible right to attend tender openings (or, rather, the lack of any prohibition from doing so), there are no specific opportunities for direct involvement of external stakeholders in the public procurement procedures. An exception would be in the oil and gas sector, because of the relevant laws and regulations that provide for such involvement, as implemented by the Lebanese Petroleum Administration.

Similarly, specific detailed data on the completeness and accuracy of procurement records is missing, because of the difficulties in accessing the contract files at the procuring entities. Nevertheless, the consulted authorities confirm that, as a matter of regular practice, procurement files are archived by contract, including all corresponding proceedings starting from the date of advertisement until final acceptance is carried out. The main reason for this is the generally observed obligation to keep all such documents available for audit by the Court of Accounts. On the other hand, procuring entities not subject to the requirement to retain documents in view of possible audits usually do not keep comprehensive archives.

It should be noted that all procurement files are usually in hard copy only, due to lack of regulations and systems for electronic archiving. Also, in the absence of uniform, binding, detailed provisions, the practices of document management and archiving vary between authorities.

- **Substantive gaps and their underlying reasons**

With respect to the actual ability of public procurement practices to achieve stated objectives, a major gap is constituted already by the lack of readily accessible data on how public contracts are prepared, awarded and managed, for what purposes, at what cost, using which procedures and award criteria, with what timeline, and by which suppliers, contractors and service providers.

A closely related gap is constituted by the frequent absence or weak formulation of the objectives behind public procurement operations and of the specific benefits that the goods, works and services procured are intended to bring, as well as the lack of corresponding evaluation during and after the procurement cycle. Even when data is available, it is very difficult to compare the actual outcomes with the original objectives and in that way assess the performance of the parties involved and of the procurement operation as such, and then take corresponding measures to improve performance.

In between, there are also gaps in the execution of the different steps in the procurement cycle, from planning to contract management including preparation of tender documents, evaluation of tenders and award of contracts. In turn, the shortcomings mentioned seem to be provoked by weaknesses in or the absence of applicable regulations, lack of standard documents and forms for planning, preparation, tendering, evaluation, contract management, evaluation and reporting, as well as absence of procedural guidelines and management systems, lack of staff with adequate capacity and experience; and deficiency of appropriate supervision, monitoring and enforcement of the proper implementation of public procurement rules and contractual obligations.

- **Recommendations**

Reflecting the gaps mentioned, the main recommendations would be for the following:

- ensure that data on public contracts, from identification of needs to the final evaluation of the outcomes of the procurement in question, is generated, saved and made accessible to all stakeholders concerned, on a central platform, for analysis both in the particular and the general case
- Assign responsibility to a competent authority for analyzing this data and making it available to support evidence-based policy making
- develop and apply performance-centered approaches for planning, preparation, execution and evaluation of public procurement, covering both particular contracts and the general public procurement performance of a contracting authority, and provide corresponding guidance and training

In the short term, several of the shortcomings identified could also be addressed by the following:

- issuing guidelines and providing hands-on training for procuring entities on procurement planning, including needs analysis, market research, selection of approaches and procedures, and preparation and publication of procurement plans, as well as on contract management
- making the use of the standard forms and templates for procurement planning, tendering and contract management mandatory for all procuring entities, at the central and local levels,

Gaps and corresponding recommendations under Indicator 9 are set out in greater detail in the following table:

Specific gaps and corresponding recommendations for Indicator 9

No.	Specific gaps/shortcomings	Specific recommendations
9.a)	Procurement planning is often considered as an administrative formality rather than a mean to manage the procurement process and ensure that the needs identified are met and that the objectives of the authority are reached	Set basic, universally applicable requirements for the form and contents of a procurement plan and their harmonization with the available budgets; provide guidance materials about their purposes and their use throughout the procurement cycle, with good practice examples; incorporate them in training activities; and monitor the development of better planning practices

No.	Specific gaps/shortcomings	Specific recommendations
9.b)	Not all procurement plans are widely published, prohibiting the private sector to be prepared and informed about business opportunities, resulting in low competition	Require all public procurement plans, including subsequent amendments, to be published in a way that makes them widely and freely accessible on a central website in addition to the websites of the particular procuring entities
9.c)	Some elements of the planning process are little developed, such as the identification of needs and requirements and the determination of what is reasonable to expect from the supply market in terms of quality, quantities, performance and costs of goods, works and services	Complementing the general measures for improving the preparation and use of procurement plans, define good practices for market consultations and issue corresponding policies, guidance materials and good practice examples; incorporate them in training activities; and monitor their use in practice
9.d)	There are no well-established rules for estimating the contract value	Define general principles for cost estimation in primary legislation, prepare guidance materials and deliver training for the purpose, and monitor the adequacy of cost estimate in the future
9.e)	Even if the legislation allows the use of other award criteria than price and the incorporation of sustainability considerations, the lowest price remains the dominant award criterion	Encourage a stronger focus on value for money in public procurement, providing guidance and training in the use of e.g. quality and life cycle cost considerations when setting and using selection and award criteria
9.f)	Direct contracting as an exemption from the general obligation to use open tendering is reported to remain a widespread practice, but there is a lack of reliable, comprehensive data	Review and compile information from all possible sources on the nature and extent of direct contracting in cases when competitive procedures would normally have been required. Publish such information, and analyze it in order to take appropriate measures for reducing the use of this practice
9.g)	Standard tender documents are required to be used by few procuring entities and the form and contents of the tender documents issued by different authorities vary widely in form, contents and quality.	Revise existing standard documents and supplement them as seen appropriate; require their systematic used (with some flexibility for customization); provide corresponding guidance and training; and monitor their use.
9.h)	Conditions of contract may be lopsided in favor of the contracting authority to the extent that a contractor finds it very difficult or impossible to enforce e.g. timely payment of invoices or to get adequate compensation in case of delay or failure by the contracting authority in meeting its (other) obligations under the contract	Review the conditions of the contracts currently used, revise them with a view to ensure a well-balanced distributions of rights and obligations between the parties and of the means to enforce performance (this may be complemented by a wider range of alternatives for dispute resolution); add other forms of contract if necessary, and clearly regulate their use
9.i)	The evaluation, award and contracting process is often unpredictably long, and frequent, delays are reported to occur in the delivery and reception of items procured, the acceptance of invoices and the payment process, but the absence of significant amount of data does not allow to accurately assess the nature and extent of the problem	Require the detailed timing and contents of the different steps in the procurement cycle to be systematically recorded and reported; analyze the cases of unexpectedly long or short procurement processes or the time taken for deliveries, invoicing and payments; and use the information to design measures to help ensure timely evaluation and award using proper procedures as well as timely, effective and efficient contract management, including payments

No.	Specific gaps/shortcomings	Specific recommendations
9.j)	The procedures for contract amendments are complicated and their application is not transparent	Clarify and simplify the rules for contract amendments, putting a low ceiling on any increase of the contract value (in particular, so as to ensure that major changes require renewed, competitive procurement); require full transparency about all amendments; and monitor them as part of other procurement monitoring
9.k)	The possibilities for external stakeholders (such as civil society, third party monitoring, etc.) to observe or to participate in at least some procurement procedures are not clearly regulated, except in few special cases.	In consultation with all parties concerned, seek broad agreement on appropriate principles for stakeholder's participation (such as civil society, third-party monitoring, etc.) in public procurement, determine and issue corresponding policies and procedures, and monitor their implementation
9.l)	Except when so explicitly required, e.g. for audit purposes, procurement records are not systematically prepared, made accessible and archived, and existing provisions for document handling do not cover the use of electronic means for the purpose	Determine the form and contents of procurement records to be prepared as well as rules for their safekeeping and publication, in ways that facilitate their generation at the time of the corresponding procurement actions. The provisions for records keeping should align with other legal provisions (such as the law on Access to information) and administrative procedures.

3.3.4 Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

- **General findings under Indicator 10**

The public procurement supply market in Lebanon is not as well functioning as would be desirable. In some sectors, there are few or no domestic enterprises, while in many other sectors only few of the larger enterprises, much less of SMEs, regularly participate in public procurement. The following underlying reasons for such weak market response were identified:

- (i) Around 95% of enterprises in Lebanon are small and medium-sized enterprises (SMEs)¹⁰³. In principle, many of them could meet the procuring entities' demands for goods, works and services. However, these SMEs have limited administrative and financial resources, and hence, hesitate to spend time on preparing tenders running the risk of delays in project implementation and payments if awarded;
- (ii) Lack of trust in the public procurement system refrains many enterprises from participating in public tenders;
- (iii) Some enterprises seem inclined to compete based on other factors than the quality, price and other conditions of the items offered;
- (iv) Contracting authorities do not always identify their needs and consider the situation in the market in such a way that their requirements and specifications maximize competition. They also fail to reassure the supply market of their ability to fairly and

¹⁰³ Ministry of Economy and Trade (2014), *Lebanon SMEs Strategy: A Roadmap to 2020*

- transparently evaluate the tenders received, to award the contract to the best evaluated firm, and to competently manage the contract and pay on time;
- (v) The regulatory framework for public procurement is also not conducive to broad participation of the private sector, in that it is widely perceived as unclear, incomplete and incoherent and that the details of its application are not always predictable.

Based on the above, the lack of trust of the business community in the public procurement system discourages participation.

The general business environment has room for improvement, as illustrated by the World Bank's Doing Business report for 2020, where Lebanon is ranked as number 143 out of 190 countries. In particular, there is a shortage of features like information and training, advisory support and financial facilities that would help enterprises, in particular SMEs, to more widely and actively participate in public procurement and to raise their level of competitiveness.

Summary gaps and recommendations for Indicator 10

No.	Substantive gaps / Red flags	Risk	Recommendations
10.1.	Lack of trust between the demand and the supply sides of the public procurement market	High	Instill a paradigm shift towards a win-win situation between the public and the private sector
10.2.	No effective mechanisms for public-private sector dialogue and mutual information on public procurement related subjects	High	Institute a standard and formal mechanism/process for regular consultations between the public and the private sector on issues related to procurement policy and practice
10.3.	Numerous practical barriers to the public procurement market, especially for SMEs and new entrants	High	Identify the nature, origin and modalities of all the barriers facing enterprises, especially SMEs, for successfully participating in public procurement
10.4	Lack of understanding of the role of public procurement in the economy and of the opportunities to incorporate it in development policies	High	Carry out a comparative study of the demand and supply side of the public procurement market in Lebanon, and use the findings to inform development policy

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

This sub-indicator reviews whether there are forums for dialogue between the government and the private sector.

There are no established mechanisms for allowing and encouraging an open public procurement dialogue between the public and the private sector. Nevertheless, efforts have been made by some institutions to establish a dialogue with civil society on limited subjects.

88% of enterprises are reported to have inadequate capacity to participate in public procurement¹⁰⁴. To address this problem, the IOF in collaboration with the World Bank and the Ecole Supérieure des Affaires (ESA Business School) developed a specialized training program targeting SMEs in Lebanon in 2015. It remains available for those who are interested in participating. It is aimed at building their capacities in public procurement in order to support them in accessing the public procurement

¹⁰⁴A survey was conducted by the World Bank in 2012-2013 to identify the obstacles facing SMEs in entering the public procurement market; it showed that inadequate capacity of SMEs to participate, delayed payments and fragmentation and gaps in the public procurement legal framework are the top 3 obstacles that inhibit SMEs' access to public contracts in MENA Countries.

market. No other program is known to be in place for building the capacity of SMEs to successfully participate in public procurement. Nevertheless, over 20% of the respondents to the enterprise survey carried out as part of the assessment, mentioned that they had participated in some capacity building program or information session organized for the benefit of the private sector.

A user-friendly guide on public procurement was designed by the IOF in collaboration with the World Bank and disseminated to SMEs in Lebanon. The intention was to help them access information on procurement opportunities, understand the Lebanese regulatory framework, prepare a successful bid and, where applicable, negotiate with the contracting authority¹⁰⁵. An infographic video was produced by the IOF to increase the reach of information on the subject and to raise the awareness of a large number of SMEs¹⁰⁶.

On the other hand, there is a lack of information and guidance for procuring entities to help them increase the level of participation of SMEs. Important topics that would be useful to cover for this purpose would be the importance and advantages of wider SME participation, the nature and origin of the barriers they are facing at present, and the various measures that could be taken to improve the situation.

The Ministry of Economy and Trade, in collaboration with the United Nations Development Program (UNDP), developed and launched a strategy¹⁰⁷ for SMEs in Lebanon in 2014. The strategy states that “one of the objectives is to get an informed overview of SMEs for provisions of quotas for government contracts and procurement”. However, there is no evidence that this objective has been met and more measures may need to be envisaged.

Out of the 500 outreached enterprises, 23 enterprises responded to the survey carried out during the MAPS assessment. Further details on the survey can be found in Appendix 7. Despite the small number of respondents and the difficulty in drawing firm conclusions about the situation and the opinion of the business community in general, the assessment could conclude as follows about the nature and extent of any dialogue with the private sector on the below results

Two-thirds of the respondents replied that the Government communicates with the business community about changes in the legal framework for public procurement “rarely” or “not at all”. Nevertheless, forty-four per cent (44%) responded that it is always or mostly easy to follow changes in the legal framework and seventy per cent (70%) stated that they have the necessary resources. On the other hand, only twenty-two per cent (22%) knew about any capacity building or information sessions on public procurement organized for the private sector and had participated in those held by the IOF.

Sub-indicator 10(b) – Private sector’s organization and access to the public procurement market

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country.

A small number of companies may be competitive by international standards, ready and willing to participate in public procurement. However, SMEs constitute around ninety-five per cent (95%) of the enterprises, until recently (prior to the COVID-19 lockdown and the latest financial crisis) employing more than half of the working population. Many companies do not have enough capacities and resources to successfully participate in public procurement and many also simply lack trust in the

¹⁰⁵ Institut des Finances Basil Fuleihan (2016), *SMEs Guide to Public Procurement*, <https://bit.ly/3d0YMOK>

¹⁰⁶ <http://www.institutdesfinances.gov.lb/publication/public-procurement-business-opportunities-for-smes/>

¹⁰⁷ See https://www.economy.gov.lb/public/uploads/files/6833_5879_4642.pdf

public procurement system. In particular, as described in presentations¹⁰⁸ done by the IOF early 2020, SMEs mentioned the following problems related to public procurement, in percent of the respondents polled:

- Inadequate capacity to participate: 88%
- Delayed payments: 75%
- Legal fragmentation and gaps: 63%
- Inadequate access to information: 63%
- Difficulties in forming joint ventures: 63%
- Burdensome guarantee requirements: 57%

There are few or no constraints formally inhibiting private sector's access to the public procurement market. However, findings from the MAPS assessment indicate that a number of other barriers exist in practice, especially as faced by SMEs:

- The time, cost and efforts needed to monitor procurement plans (if published at all) and tender notices, and to identify corresponding business opportunities, in the absence of a centralized system for the publication of public procurement information;
- The lack of simplified competitive procedures for simple procurement transactions;
- The absence of standard tender documents;
- The weak capacity of many procuring entities in preparing requirements and specifications that match the market offer, and in setting and applying corresponding, pertinent selection and award criteria;
- The heavy workload due to multiple administrative requirements and the paperwork required for preparing and submitting tenders, especially in the absence of an e-procurement platform;
- The frequent delays in payments to contractors and suppliers, compounded by a lack of access to corresponding financing;
- The difficulties in competing with large companies which have established a dominating position in the public procurement market;
- The weak possibilities to lodge complaints about decisions by procuring entities and have them addressed in a speedy, competent and predictable manner.

Further illustrations of the situation are found in the results of the enterprise survey carried out during the present MAPS assessment (see Appendix 7), as follows. Here, it should be noted that the survey was carried out before the recent deterioration of the financial situation.

Less than half of the respondents answered that they would have adequate access to finance as needed in order to meet delivery obligations under a public procurement contract. This share is likely to have decreased much further in the wake of the latest economic developments. The respondents proposed a range of possible measures, including greater transparency and fairness of tendering and evaluation, reduction of the amount of the guarantees required, and more timely payments.

Only a quarter of the answers indicated that procurement procedures and the conditions for participation make it easy enough to participate in public procurement, including for low value contracts. This is despite the fact that 44% found that there is usually a useful division of contract into lots. Approximately, two-fifths of the respondents found that conditions of contract contribute to a fair distribution of risks between the parties, especially the risks linked to contract implementation.

¹⁰⁸ Public Procurement Reform in Lebanon, Roadmap 2019-2023, slide 13; as retrieved from <http://www.institutdesfinances.gov.lb/wp-content/uploads/2020/06/Leb-Public-Procurement-Reform-June2020-ENG-DC-FINAL.pdf>

Only 30% considered that payment conditions are fair and reasonable and around 20% had their invoices paid on time as required by the contract.

Two thirds did not find that there is an effective mechanism for resolving contractual disputes between the parties after the contract is signed.

Again, the suggestions made for improving the situation were broadly the same as those for helping address the problems of financing.

Sub-indicator 10(c) – Key sectors and sector strategies

This sub-indicator reviews to what extent the Government examines the country's supply market from a public procurement point of view.

There is no evidence of any public policy or strategies or of any research for identifying key sectors for public procurement and for taking steps to raise their competitiveness. There are few or no analyses of these markets, and the possible risks and opportunities that may be associated with certain sectors are not assessed in a systematic and coordinated manner. There is also no systematic engagement of the private sector for the purpose of supporting any broader procurement policy objectives.

- **Substantive gaps and their underlying reasons**

The smooth and mutually beneficial functioning of the public procurement market is hampered by a lack of trust between the public sector, on the demand side, and the private sector, on the supply side.

Despite the efforts made by few institutions, a major gap in the functioning of the public procurement market is the absence of structured mechanisms for dialogue and partnership between the public and the private sector. This problem is compounded by lack of research, analysis, capacity building and support aimed at facilitating wider participation by the private sector.

The result is a lack of knowledge and mutual understanding of the possibilities and constraints facing the parties engaged in public procurement. Many procuring entities have limited insights in the business environment of the private sector, the problems faced by enterprises in public procurement, and the measures that could be taken to facilitate and promote wider participation and more effective competition among tenderers under transparent, fair and equitable conditions. Likewise, the private sector often lacks understanding of what is possible and not possible in public procurement, and also what would be their responsibilities and rights. There is a lack of interest or trust in doing business with the State. This is due to several barriers: a public market relatively closed to new players and controlled by monopolistic powers in place, delayed payments, inadequate access to information, and limited knowledge of procedures and absence of standardized forms and procedures. In turn, the weakness of the public-private dialogue makes it more difficult to identify and execute well targeted measures to address these challenges and thereby help build trust in the current operational public procurement system, so that both the procuring entities and the business community can benefit from wider participation and better competition.

The gaps found in the regulatory and institutional framework and described in Pillars I and II are a reason for the above. Another important underlying factor is the low incidence of open and inclusive engagement by the public sector and the business community in matters of common interest. In turn, both factors reflect long-standing, divisive issues of more political nature.

- **Recommendations**

In the field of public procurement, the gaps identified would call for the following main measures:

- a) Introduce a paradigm shift towards a win-win situation between the public and the private sector: the public sector could meet its needs efficiently and access innovative, responsive and flexible SMEs, and SMEs could have better access to new markets and increase their opportunities for growth;
- b) Institute a formalized mechanism for regular consultations between the public and the private sector on all issues of policy and practice in public procurement;
- c) Identify the nature, origin and modalities of all the barriers facing enterprises, especially SMEs, preventing them from successfully participating in public procurement;
- d) Carry out a comparative study of the demand and supply side of the public procurement market in Lebanon and use the findings to identify and carry out longer term measures for raising the level of participation and competition, linking these with other, broader measures for economic and social development.

In addition, more specific measures could usefully be taken in the shorter term in order to achieve some quick wins

- c) Make data on private sector participation, procurement proceedings and the execution of contracts more widely accessible and set up facilities for analyzing and acting on this data from the point of view of private sector performance and the functioning of the supply market for public procurement;
- d) Increase awareness raising, information and training for private sector participants, using such occasions for gathering additional information on what is functioning or not in the public procurement system;
- e) Actively include public procurement considerations in the on-going development and implementation of policies for industrial and regional development and other development initiatives of economic or social nature;
- f) Clarify the responsibilities of the parties regarding deliveries, their verification and acceptance as well as corresponding invoicing and payments. Monitor and enforce the observation of good practices in this respect, in particular time limits to be respected.

As a complement, a number of specific gaps and corresponding recommendations are listed in the table below for ease of reference.

Specific gaps and corresponding recommendations for Indicator 10

No.	Specific gaps/shortcomings	Specific recommendations
10.a)	There is no public policy or actions taken by the public sector to encourage an open dialogue on public procurement with the private sector	In cooperation with all stakeholders concerned, raise awareness of the importance and advantages of public-private sector dialogue on public procurement, devise possible approaches that would serve the purpose, create a corresponding, enabling regulatory and institutional framework, and establish and maintain regular consultations along the lines agreed
10.b)	There is only very little provision of information and training aimed at building the capacity of the private sector, especially SMEs, to identify business opportunities in public procurement and to participate successfully	Expand the provision of public procurement related information and training for SMEs by adding resources for the purpose and involving more entities, including the business organizations

No.	Specific gaps/shortcomings	Specific recommendations
10.c)	Contracting authorities have little knowledge and understanding of the barriers that SMEs are facing and of the measures that could be taken to make it easier for them to successfully participate in public procurement, and there is a lack of information and training for procuring entities on this subject	Identify approaches for enabling and promoting SME participation in public procurement that could be used by procuring entities, and provide corresponding information and training
10.d)	The public procurement market is hardly covered in the current SME strategy, and no measures have been taken to proactively address the barriers facing SMEs in reaching the public procurement market	Analyze the obstacles to SME participation in public procurement and incorporate a full range of measures for addressing them in an update of the SME strategy (or in any other strategy for the same purpose); ensure that the measures are duly taken; and monitor their execution and results
10.e)	There is no evidence of any national policy for identifying and supporting the development of sectors of importance for public procurement.	Analyze the demand for goods, works and services in public procurement as well as the corresponding capacities and potentials in the supply markets; identify opportunities to draw benefits from eliminating any mismatches; and use the findings when developing and implementing economic policies

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3.4 Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a public procurement system to operate with integrity, to have appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and to have appropriate measures in place to address the risk of corruption. It also covers the role of civil society as part of the control system. This Pillar reviews these aspects of the procurement system and the governance environment in order to ensure that they are defined and structured to contribute to integrity and transparency.

Summary findings under Pillar IV:

Significant levels of government transparency and active engagement of civil society play an important role in promoting integrity in public procurement, as has been demonstrated in many countries. Data on public procurement in Lebanon is scarce and scattered. As a result, all interested parties, in particular civil society, find it difficult to access, compile and analyze comprehensive, pertinent and reliable information. Consequently, it is difficult, costly and time consuming to spot issues and identify opportunities for improvement. The lack of organized and targeted consultations discourage a serious engagement of the civil society. In addition, there is a widespread perception that authorities in general lack both interest and commitment to observations and suggestions coming from civil society.

The system for control and audit includes a significant number of public institutions. They are expected to carry out corrective interventions aimed at ensuring the probity of public procurement operations. However, there are significant gaps and overlaps in the system. In practice, the applied procedures often add considerable time and cost when processing procurement. In addition, the procedures in place are not effective and efficient in terms of reducing fraud and corruption and ensuring accountability.

3.4.1 Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society has a strong potential to act as a safeguard against inefficient and ineffective use of public resources, to enforce competitiveness and fairness in public procurement, to improve contract performance, and to ensure objectives are fully met. Governments are increasingly empowering the citizens to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring and oversight.

- **Findings**

Despite a very vibrant civil society focused on social safety nets, the environment for public consultations and monitoring, and for civil society contributions to the development of the public procurement system is very weak. There are no legal provisions or any mechanisms in place for regular public consultations when policies and procedures are developed or amended. Recent initiatives to engage all relevant stakeholders have been taken in the particular case of implementing MAPS assessment and preparing the new public procurement law, but this has been done without any generally applicable legal and institutional basis. Civil society organizations have limited possibilities to monitor and influence public procurement policies and practices as well as the proceedings for public contracts. This reflects a lack of capacities and resources, free of charge and easy access to information on all aspects of public procurement. Citizens have little knowledge, proficiency and

understanding of public procurement and of the possibilities, means and advantages of monitoring it. A limited source of information, and opportunities are provided for raising awareness and training. The civil society contributions had a minimal impact in some specific cases related to the policies, decisions and actions of the authorities concerned. Rare consultations on public goods are conducted. The inclusiveness of civil society that was observed under the MAPSII assessment and in the drafting of the public procurement law are remarkable instances.

Summary gaps and recommendations for Indicator 11

No.	Substantive gaps / Red flags	Risk	Recommendations
11.1.	There are no policies, regulations and practices that enable and promote civil society participation	High	Develop and institutionalize mechanisms for enhanced consultation with civil society, both when policies are developed or amended and when public contracts are procured
11.2.	Lack of information on public procurement performance	High	Increase the level of transparency by having procurement related information more comprehensive, and easily accessible through electronic platforms

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

This indicator assesses the following:

- i) whether a transparent and consultative process is followed when changes are formulated to the public procurement system,
- ii) whether programs are in place to build the capacity of civil society organizations to support participatory public procurement, and
- iii) whether effective feedback and redress mechanisms are in place for matters related to public procurement.

With only a few exceptions, the legal framework does not refer to the participation of the civil society in policymaking. There is a considerable gap between the drafters of new laws and the population or authorities targeted or concerned. There are no regulations, institutions or practices in place for holding any kind of public consultations on new policies and laws. The absence of any mechanisms for meaningful participation of civil society is likely one of the reasons for the citizens’ lack of trust in new legislation and the system as whole.

However, there is one important exception that could serve as an example for further development of public consultations: the current work on drafting a new public procurement law by the IOF. Since early stages of preparation, regular consultations have been held with all the various stakeholders concerned, including civil society. Draft texts have been reviewed and comments from stakeholders have been duly considered. Experience from other countries shows that this approach is likely to lead to wide understanding and less resistance to the law, once enacted. In turn, this is likely to improve the quality of its application by the parties involved in all stages of the public procurement process and, finally, to secure better value for money of the items procured, more timely contract awards and deliveries, lower administrative costs, and greater transparency and integrity.

Some consultations also have taken place in specific sectors, e.g. water management, electricity supply and oil and gas exploration, where the inputs from civil society have been taken into account. Some involvement of media was ensured, but there is little evidence that this approach is effective for obliging the authorities to take substantive issues into account.

Programs to build the capacity of relevant stakeholders to understand, monitor and improve public procurement, are mainly conducted and delivered by the IOF. Training sessions, workshops and conferences are conducted also for representatives of civil society. However, most of the trainings aim at improving the public sector capacity, without allowing key players to deeply understand the public procurement system gaps, monitor and rectify them.

Budgets for training are in general limited. The lack of financial resources results in a lack or absence of training, especially at the level of municipalities. These do not always have the necessary resources of their own to conduct regular capacity building programs. The main exception to this is the capacity building programs for municipalities financed by foreign donors, such as the United Nations. Procuring entities are thus focusing on training only their own officials and no other stakeholders (prospective tenderers and civil society) are considered.

Sub-indicator 11(b) – Adequate and timely access to information by the public

This sub-indicator covers the right of the public to access information. Complementary aspects have been highlighted in the following sub-indicators:

- The laws, regulations, and policies governing public procurement are published and easily accessible to the public at no cost (sub-indicator 1(a));
- All stakeholders have adequate and timely access to information in each phase of the public procurement process related to specific procurements (in accordance with legal provisions protecting specific sensitive information) and access to other information that is relevant to promote competition and transparency (sub-indicator 7(a));
- Free access to this information is preferably provided through a centralized online portal and open data standards (sub-indicator 7(a)).

Not all stakeholders have adequate and timely access to all relevant information. As a result, the pre-conditions for effective, useful participation are not met. As an example, tender notices have to be published in the Official Gazette (not free of charge nor readily accessible) and in three local newspapers. Among the many newspapers which are not all widely distributed, the selection ends up on the basis of the cost for publishing rather than on the coverage. This means that, in practice, it is almost impossible to get a complete overview of all procurement procedures that are advertised. As a result, many prospective tenderers do not learn about the business opportunities and civil society finds it difficult to identify and select those procedures that merit particular attention. Access to information is also limited because of the difficulties in accessing procurement records describing the various stages of the process.

International best practice would require that all such information is available on or through a single, central website, accessible free of charge. However, none exists in Lebanon for the moment. In the absence of such a website, few civil society organizations and individual citizens have tried to use the recently ratified Law 28/2017 on access to information. Among other provisions, it explicitly grants access to information about contract awards above the threshold of LBP 5 million (though the basis for setting this threshold is not clear). The access to information law has been written and adopted, with provisions that do not need implementing regulations. Nevertheless, important, recent efforts to obtain public procurement information in this way have failed. The Council of Ministers has not yet established the oversight body that would enable the effective implementation of the law. Also, the Council for Legislation & Consultation rendered its opinion No 951/2018 dated 4 December 2018 in which it expressly limited the access to information by adding more conditionality, mainly the following one: “Requests that include a large volume of required information and documents, especially when they are formulated in a general way and are not specific, and do not include sufficient

details that enable the employee to extract information with little effort; are considered abusive to the use of the right to access to information.”

Sub-indicator 11(c) – Direct engagement of civil society

This sub-indicator assesses (i) the extent to which the laws, regulations, and policies enable the participation of citizens in terms of consultation, observation, and monitoring and (ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.

There are no legal provisions which explicitly allow citizens to participate in the various steps of the public procurement operations. Nevertheless, some public institutions, including some larger municipalities, have occasionally allowed or invited civil society and the business community to participate in the planning and preparation phase. Recently, an initiative was taken, led by the High Council for Privatization and Partnership (HCPP) with a group of CSOs, with the aim to establish an Audit committee. It would act in a monitoring and advisory capacity with focus on the fairness and transparency of PPP projects, notably at the level of public procurement. However, the initiative did not progress enough to identify lessons learned. One of the few observations made was that such highly technical areas of expertise would require a substantive effort by the Lebanese CSOs to build their capacity in the field.

Tenderers are normally allowed to attend the bid opening sessions. As is the practice in e.g. the Central Tender Board (CTB), it happens that also evaluation and award are done in the same session. In this way, the attending tenderers, but no other interested parties, have access to additional information. However, this would appear to be contrary to the generally recognized principle that the evaluation process (but not its outcome!) should be kept confidential.

Civil society representatives are usually not invited to attend. It is only in exceptional cases that the president of the CTB has allowed them to attend. Civil society also does not have any legal right to participate in contract management and completion stages or to monitor contract execution. Nevertheless, since the 2018 CEDRE conference and following the October 2019 civil protests, civil society in Lebanon has made efforts to monitor key procurement operations, despite the scarcity of publicly available information. This has been done both at the earlier stage of tendering and during contract execution. The intention has been to spot malpractices and highlight inefficiencies and lack of transparency, and to advocate for an efficient and sound system to curb corruption. Also, local investigative journalism is facilitating the access of public to information and shedding lights on procurement irregularities across public sector, calling for transparent and accountable practices.

- **Substantive gaps and their underlying reasons**

The main gaps with respect to transparency and civil society engagement in public procurement lie in the lack of or difficult access to information, as well as in the absence of regulations and practices that enable and promote civil society participation. There is no single access point that would make it easy to identify and review relevant procurement notices and related information. The procurement proceedings for individual contracts are difficult to obtain and examine. The legal framework does not foresee and facilitate civil society participation. Even when exceptionally allowed by some leading institutions, the inputs from those consultations that actually take place are not always duly considered.

This seems to reflect the absence of any tradition of wide, active and constructive civil society participation and a weak recognition of its advantages and importance. In fact, better civil society participation would help ensure the quality and pertinence of policymaking and policy

implementation. The involvement of the civil society would also increase the level of understanding, and thus decrease resistance to new public procurement policies, regulations or decisions that may apply to public contracting.

- **Recommendations**

As previously mentioned, one main recommendation is to increase the level of transparency by having all procurement related information more comprehensive and easily accessible free of charge, so that it becomes easier for civil society to constructively contribute to improving integrity in public procurement.

The second main recommendation is to develop and institutionalize mechanisms for enhanced consultation with civil society, both when policies are developed or amended and when procurement projects are undertaken.

Some further recommendations for addressing other gaps identified are given in the table below.

Specific gaps and corresponding recommendations for Indicator 11

No.	Specific gaps/shortcomings	Specific recommendations
11.a)	CSOs have limited skills and resources to understand and monitor public procurement and contribute to its improvement	Expand the provision of public procurement related information and training for CSOs
11.b)	There is little evidence of participation by citizens in consultations on public procurement and in monitoring it	In addition to a wider access to information, prepare easily understandable information material on public procurement addressed to the general public, and take measures to raise public awareness on its importance and possibilities and duties to monitor it
11.c)	There is little evidence that inputs, comments and feedback from civil society are duly taken into account by the authorities concerned	Record all substantive inputs received from civil society, indicate if and how they have been reflected in decisions and practices, and keep this information easily accessible
11.d)	The law on access to information is not yet fully applied	Unless and until comprehensive public procurement information is available by other means, ensure that Law 28/2017 on access to information is fully applied also for information requests concerning public procurement

3.4.2 Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations.

- **Findings**

External audit is mainly performed by the Court of Accounts, which is responsible for ex-ante control and ex-post audit of higher value contracts. Particular autonomous public institutions should have their accounts audited by external private sector auditors¹⁰⁹. The internal audit function is not

¹⁰⁹ As per article 73 of the Budget Law of 2001, dated 28 June 2001

regulated, nor has it any institutional organization or job descriptions in the Lebanese public administration. Other types of administrative oversight and control are exercised through:

- Expenditure controllers, employed by and reporting to the Ministry of Finance but attached to the ministries and institutions, and performing ex-ante control over budgeted/planned expenditures, prior to their commitment, to ensure the availability of funds, the proper budget line assignment for the transaction, and its compliance with the applicable laws and regulations;
- General controllers, employed by and reporting to the Ministry of Interior and Municipalities but attached to around 50 municipalities, and performing tasks similar to those of the expenditure controllers;
- Government commissioners, delegated by the Council of Ministers to perform internal financial control for selected autonomous public institutions (i.e.: CDR and Régie Libanaise des Tabacs et Tombacs);
- The Central Inspection Board with its various inspectorates (academic, engineering, financial, etc.) has the mandate to carry out financial inspections on their own initiative or based on indications from whistleblowers;
- Financial controllers (auditors) at the Ministry of Finance;
- The Parliament during public hearings or through the parliamentary committees.

There is no comprehensive, harmonized legal framework for the control and audit system. The roles and responsibilities of the bodies involved are in some cases redundant, overlapping and conflicting, with few exceptions using traditional control methods. Their findings and recommendations are often not made public timely and openly and are not addressed systematically. The recommendations made are therefore not effective in rectifying problems in particular procurement cases and also fail to enhance/correct policies, practices and institutions for preventing occurrence of such problems.

The overlapping roles of the supervisory bodies in charge of control and audit and the multitude of controls strongly dilute the responsibility of the procuring entities and create uncertainty about who should be held accountable: the practical effect seems to be that if something untoward is done, there is always someone else who can be blamed and, in the end, not much is done about it. At the same time, the repeated review of the same files and actions by several external controllers delays procurement and creates additional administrative costs, with no significant, additional benefits.

Summary gaps and recommendations for Indicator 12

No.	Substantive gaps / Red flags	Risk	Recommendations
12.1.	There is no effective follow-up and enforcement of the findings and recommendations made by internal and external control and audit functions	High	Develop simpler, more efficient and effective means for follow-up and enforcement of the findings and recommendations of oversight bodies,, with more vigorous measures to ensure that obligations are met and appropriate retributions are imposed when merited. Publication of those actions is to be observed.
12.2.	Overlaps in the approaches and procedures for ex-ante control significantly delay and complicate public procurement, while creating additional administrative costs	High	Eliminate gaps and overlaps in regulations and conflicts of roles among institutions, eliminate redundant control steps, put relatively greater emphasis on preventing measures; and delineate and clarify the responsibilities of the concerned institutional stakeholders

No.	Substantive gaps / Red flags	Risk	Recommendations
12.3.	There is no internal audit system in place	Medium	Develop a policy for internal audit as well as a properly resourced plan for its successive introduction in all procuring entities
12.4.	Performance audits are not carried out	High?	Shift the focus from formal compliance with procedures to the achievement of intended results in ways that improve value for money, especially in the audits performed by the Court of Accounts
12.5	There is no proper data base of publicly accessible recommendations and decisions by the Court of Accounts, nor does the CoA itself have a system for ensuring the coherence of its rulings	High	Once issued, immediately publish all decisions, recommendations and reports of the Court of Accounts on a website accessible free of charge, with a searchable data base of machine readable documents that also would serve the case management needs of the CoA

Sub-indicator 12(a) – Legal framework, organization and procedures of the control system

This sub-indicator assesses

- i) whether the country's laws and regulations provide for a comprehensive control framework,
- ii) whether the institutions, policies and procedures as defined in the law are in place and operational, and
- iii) whether the existing control framework adequately covers public procurement operations.

The control and audit legal framework is outdated, incoherent with several gaps and overlaps, and with a diversity of approaches and practices. It uses considerable administrative resources while complicating and delaying procurement proceedings, failing to effectively ensure probity in public procurement. The oversight system does not include any periodic risk assessments nor controls tailored to risk management.

Complex, overlapping and time consuming control procedures

Above certain thresholds, public contracts for line ministries must be processed by the Central Tender Board on behalf of the beneficiary ministry, from the announcement of the tender till the evaluation of proposals and recommendation for award. The CTB has been set up for this purpose, with corresponding resources, skills and experience in all aspects of public procurement. It also has various internal control mechanisms with the purpose to ensure that preparation and evaluation are carried out fairly and equitably, in full application of the regulations in force. Its role ends with the recommendation for the award of the contract. The full procurement file, including the evaluation report, is then sent back to the beneficiary ministry.

The procurement process then continues in the ministry with the usual steps: control of the file by the Expenditure Controller of the Ministry of Finance, then transmission of the file to Court of Accounts for its statutory ex-ante control (which essentially duplicates the checks of the Expenditure Controller), and return of the file, together with any decisions by the Court of Accounts, to the beneficiary ministry. Only then can the minister sign (or decline to sign) the contract, and is responsible for the subsequent management of the contract.

Faced with this administrative complexity, line ministries have often felt inclined to escape the role of the CTB (even above the thresholds) by means of obtaining a decision from the Council of Ministers allowing the ministry itself to carry out the procurement, even by direct agreement. Sometimes, the same approach has also been taken when the Court of Accounts has issued a decision that the ministry does not agree with.

Mechanisms are usually in place, in each public authority, to regulate decision making and control spending in general. In ministries, a prior internal review of procurement decisions is performed by the resident expenditure controller assigned by the Ministry of Finance. This control essentially covers broad aspects, in particular the availability of funds and the regularity of budget lines assignments, without covering the appropriateness, efficiency and feasibility of the procurement carried out. Internal control mechanisms specific to the different phases and objectives of the procurement process are not regulated, neither by law nor, in most cases, by any corresponding internal regulations. Internal audit as defined internationally is not yet regulated or adopted in the institutions. It is nevertheless practiced in a limited number of public institutions, mainly with respect to investment activities¹¹⁰. There is also a new reform project currently under implementation aiming at introducing an internal audit function, at the administrative level only, at the Revenue Directorate at the Ministry of Finance.

External audit of government entities is carried out by the Court of Accounts, Lebanon's Supreme Audit Institution, applying its audit through two types of reviews: ex ante and ex post, in an uneven manner depending on the government entity. Autonomous public institutions, for example, are subject to ex post audit only, while public administrations (or ministries) are subject to both ex ante and ex post audit. The audits by the CoA are mainly in the form of compliance audits that verify the availability of funds and the legality of the procedure. To date, the CoA does not carry out performance audits. In practice, the Court of Accounts systematically carries out ex-ante controls. Mainly because of lack of resources (judges and controllers) at the CoA, ex-post controls are done only occasionally and after receiving a claim or complaint.

¹¹⁰ As per article 73 of the Budget Law 2001

As for the municipalities, less than 10% are subject to audit by the CoA. Another 10% or less are subject to the external control of the General Controller. The General Controller is an employee of the Ministry of Interior and Municipalities assigned with the task of controlling the accounts of the municipalities. In addition, municipalities submit quarterly accounting reports to the Court of Accounts.

Decisions made by the CoA are mainly related to its ex-ante control. These decisions are limited to the particular contract being procured and are issued to the procuring entity before contract signature. In most cases, procuring entities abide by these decisions. However, if the procuring entity does not agree with the decision, the minister concerned would then seek a decision by the Council of Ministers overriding the decision of the CoA. Beside decisions, the CoA issues recommendations. The recommendations are not formally binding and therefore not systematically applied by the procuring entities.

The CoA does not have a well working case management system with a comprehensive database of past decisions and recommendations, fully searchable and with documents stored in machine readable formats. Consequently, the CoA itself is not able to ensure the proper coherence of its decisions or rely on precedents. The CoA does not publish its recommendations and decisions in a timely manner. Thus, on the one hand, an external, interested party is not able to rely on lessons learnt to correct future actions and, on the other, CoA activities are not adequately exposed to external scrutiny.

External audit by the Court of Accounts should, first of all, lead to corrective measures by the audited authorities. As acknowledged by the Court of Accounts itself in its annual report, the procuring entities do not analyze the reports and often do not follow the recommendations made. The absence of accountability of the procuring entities that do not abide by the recommendations is one reason why the latter are often ignored. There is no clear process that ensures adequate follow up by the parties concerned in order to guarantee that the findings and recommendations of the Court of Accounts are considered. The Court of Accounts prepares annual audit reports and submits them to the Parliament. These reports are also published in the Official Gazette and on the COA's website, but often after a long time (the latest published is 2015 report). In addition, these reports are not systematically reviewed and there is no evidence that these reports have implied any corrective measures. Normally, the annual report submitted to Parliament should result in a number of measures. Measures are either related to particular procurement cases explicitly mentioned, or addressing systemic regulatory or institutional problems. There is little evidence that the process is operating properly.

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, coordinated, sufficiently resourced and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

A generally applicable manual for internal controls procedures does not exist. In some autonomous public institutions (i.e.: CDR), such written procedures exist. The decree establishing the CDR defines the department that undertakes the internal controls and the communication between the different departments, including the financial department. However, the decree has not been published so it cannot easily serve as an example for other authorities.

There is neither a manual nor any standard procedures in place for audits, but only legal provisions regarding the legality of expenditures. Matters like the identification of risks and the review approach are based on the experience and the personal efforts of the audit body staff. In principle, as well as in

practice, the focus is on financial compliance audits and the legality of operations, while performance audits are not yet carried out.

The annual external audits carried out by the Court of Accounts include the auditing of procurement. The audits are done only on a sample basis of authorities subject to external audit by the CoA. However, there are no criteria for the selection of the sample. In practice, it usually includes specific procurements on which there have been complaints. In addition, ex-ante controls are being done systematically for contracts above the threshold of LBP 75 million for works and goods and LBP 25 million for consulting services. However, the requirement for such ex-ante controls is applicable only to ministries and some municipalities (less than 10% of their total number). Autonomous public institutions, for example, are not subject to ex-ante control by the CoA.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time.

The actual situation with respect to follow-up and enforcement of audit findings is not fully clear. There are no statistics regarding the ratio of recommendations that have been accepted and implemented compared with those that have been issued. There is also no readily accessible evidence whether and how there has been any identification, follow-up and possibly sanctions when recommendations made have not been followed. The General Controllers and the Expenditure Controllers should all notify the Court of Accounts and its general prosecutor about irregularities discovered. However, there is no evidence of how these irregularities have been addressed, if at all. There are no other regulations or systems in place to follow up on the implementation of audit recommendations. However, some procuring entities have introduced internal procedures for ensuring that recommendations are followed.

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

The general conditions for employment of auditors at the Court of Accounts include a requirement to have a bachelor's degree in accounting and auditing and to be knowledgeable about the PAL. To ensure that auditors and controllers have the qualifications required, other measures are being taken, though often on an ad-hoc basis. These measures may include formal training and on-the-job training by experienced senior colleagues. Auditors in the Court of Accounts are selected based on the by-laws and regulations of the Court.

- **Substantive gaps and their underlying reasons**

The most significant gap in the control and audit system is the apparent lack of effective follow-up and enforcement of the findings and recommendations made by internal and external control and audit functions. In addition, the overlaps in the approaches and procedures for ex-ante control (for example, the control by the Expenditure Controller and the ex-ante control by the Court of Accounts) significantly delay and complicate public procurement, while creating additional administrative costs. Further significant gaps are constituted by the absence of internal audits and of performance audits, the absence of a proper database of publicly accessible recommendations and decisions by the Court of Accounts.

In turn, these shortcomings reflect a lack of clarity and consensus about the purposes of the control and audit functions, a corresponding presence of gaps and overlaps in the regulatory and institutional

framework, and a weak culture of accountability in public administration, especially for high-level decision makers. As applied to public procurement, the control and audit system concern has thus room for improvement with respect to its focus; to its approaches and methods; to the formal qualifications, skills, experience and status of controllers and auditors; and to the transparency of the findings and recommendations made and of the measures taken.

- **Recommendations**

The effectiveness and efficiency of the control and audit system would benefit from general measures useful as well for improving public administration in general:

- a) harmonization of the legal and institutional framework – eliminating gaps and overlaps in regulations and conflicts of roles among institutions;
- b) more transparency to ensure information about the operations of any authority are easy to access and to understand;
- c) greater accountability – stronger and clearer obligations for authorities to report and inform, to clarify and explain, and to be answerable for the outcomes of their decisions and actions;
- d) stronger focus on the responsibility of the procuring entities to properly apply good practice (while ensuring that they have the necessary resources to do so), and on holding them accountable for this, rather than relying on overlapping, disruptive and ineffective ex-ante controls which dilute the responsibilities while causing delays and creating additional costs;
- e) greater emphasis on preventing problems than on correcting them – ensuring proper implementation, without intrusive, time consuming, ineffective and inefficient external controls at every step; but rather by improved training, supervision, management and better application of lessons learned;
- f) shift of the control and audit approach from formal compliance with procedures to the achievement of intended results, with transparency, economy, efficiency and effectiveness;
- g) stronger enforcement - more vigorous measures to ensure that obligations are met and that appropriate sanctions are meted out when merited;
- h) a corresponding shift of resources from ex-ante control to ex-post audit and enforcement;
- i) changes to management approaches and practices – in particular, making sure that responsibility stays at the top while authority is delegated to those best placed to exercise it.

Applied more specifically to the control and audit system, this could mean:

- h) developing a common understanding of what constitutes good public procurement and of which criteria should then be applied when carrying out control and audit;
- i) wider and more timely publication of and easier access to findings and recommendations as well as information about follow-up;
- j) greater attention to public procurement outcomes and performance and to ways of improving performance in public procurement;
- k) more use of risk-based approaches for both control and audit, avoiding unnecessarily delays in the procurement process;
- l) development of corresponding approaches, standard procedures, manuals, and training materials for controllers and auditors working with public procurement;
- m) taking measures to develop the skills, experience and status of controllers and auditors: more specific qualification requirements when recruiting, regular assessment of staff performance and of training needs, provision of corresponding supervision and training, independence of auditors, and the absence of conflicting interests.

The following table sums up several specific recommendations to address the mentioned shortcomings.

Specific gaps and corresponding recommendations for Indicator 12

No.	Specific gaps/shortcomings	Specific recommendations
12.a)	The level of effective accountability is quite low	Create stronger and clearer obligations for authorities to report and inform, to clarify and explain, and to be responsible for the outcomes of their decisions and actions
12.b)	Entities and operations to be audited or otherwise controlled are not selected in an efficient way	Formalize the ways of selecting entities and operations to be audited or otherwise controlled, with the emphasis on risk-based approaches
12.c)	The independence and authority of the CoA are compromised, and its key decisions are made ineffective through the practice of getting different, overriding decisions by the Council of Ministers, particularly in important and controversial cases	Discontinue the practice of simply overriding CoA decisions by a decision of the Council of Ministers
12.d)	CoA decisions and recommendations are not coherent, including cases when two contradictory decisions have been given on the same subject	Put a case management system in place for the CoA, with routines for ensuring that relevant, past cases and rulings are systematically identified and considered when dealing with new audit cases
12.e)	Recommendations by the CoA are often not followed and there are no mechanisms for enforcing them.	Develop a mechanism for systematic follow-up of the CoA's recommendations and decisions, with measures for sanctioning any failure to abide by them, and with full transparency of what is being done in this respect
12.f)	There are many weaknesses in the criteria, the approaches and the means for engaging, training, managing and promoting auditors	Develop the skills, experience and status of controllers and auditors: more specific qualification requirements when recruiting, regular assessment of staff performance and of training needs and provision of corresponding supervision and training; reinforce the independence of auditors and prevent conflicts of interests

3.4.3 Indicator 13. Procurement appeals mechanisms are effective and efficient

Pillar I covered aspects of the appeals mechanism as it pertains to the legal framework. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system. Its focus is on the review system, that is, on the body or bodies reviewing and ruling on complaints against decisions, actions or inactions by procuring entities before a contract is signed and on how this process is working. Disputes between the parties arising once a contract has been signed would normally be resolved in accordance with applicable contractual law. They are therefore not reviewed in the context of the MAPS assessment.

- **Findings**

Until a public contract has been signed, tenderers, prospective tenderers or any other interested party can raise concerns about tender documents or tender evaluation directly with the contracting authority in question. If this approach is not sufficient to the party who raised concerns, there is no

other regulatory or institutional mechanism that allows formal complaints to the contracting authority's decisions to be handled in a clear, unified, speedy, independent, unbiased and competent manner. There is no timely, effective and efficient complaints mechanism for complainants and other interested parties to refer to. There is the possibility to file a formal complaint with the State Council, which is the sole court competent for the purpose. Complainants can also flag any problems to the Central Inspection Board, which can investigate and inspect as appropriate. The file would be then transferred to the CoA's general prosecutor for action. The Court of Accounts itself can also be directly referred to as an oversight body. However, none of the above are specialized in public procurement and none of these means fully meets the combined requirements for celerity, specificity and quality in their resolution that are essential for good public procurement. Tenderers have doubts about the independence of the bodies concerned, and the remedies available are limited in their scope and effects. Decisions made are not systematically monitored and complied with. Decisions are not widely published in a timely manner. There are no records accessible of past cases and decisions so, as a consequence, the mentioned institutions are not always consistent in their rulings. For this reason, neither procuring entities nor economic operators have effective access to any case law that could guide their actions. As a result, the business community has little trust in the system and often refrains from filing complaints even in cases of obvious disregard or faulty implementation of existing rules and regulations.

Unless the specific conditions of contract state otherwise, once a contract has been signed, the State Council handles¹¹¹ disputes between the parties related to the execution of the contract.

In international practice, the usual approach for a review system is to entrust the handling of complaints to either the courts or an independent specialized review body. Given an apparent lack of trust in the courts to handle complaints in a timely and competent manner, the preliminary drafts of a new public procurement law for Lebanon foresee the creation of a new independent review body. However, this law remains a draft until finalized and ratified, and only then could such a body be created and start working.

Summary gaps and recommendations for Indicator 13

No.	Substantive gaps / Red flags	Risk	Recommendations
13.1.	There is no independent body specifically designated to review public procurement complaints, and the currently available mechanisms do not meet basic requirements of speed and quality of reviews and decisions	High	Unless and until the courts can handle public procurement complaints with the necessary speed and quality, establish an independent review body in line with international good practice, with the required authority and resources
13.2.	The State Council has no defined time limit for taking a decision on complaints it has received, and decisions are often issued too late to have any impact on the procurement procedure and its outcome	High	Set a clear and short timeline for handling complaints, and ensure that enough resources and required skills are allocated to issue decisions within the set deadlines

¹¹¹ Law of 14 June 1975 establishing the State Council, Art. 60 and 61

No.	Substantive gaps / Red flags	Risk	Recommendations
13.3.	The existing conflicts of roles within the Court of Accounts (ex-ante control; examination of complaints; external audit) and within the State Council (advisory vs. jurisdictional roles; investigation vs. adjudication) create a lack of independence and impartiality of decisions taken	Medium	Eliminate the conflicts of roles within the Court of Accounts and the State Council as appropriate for preventing both the reality and the appearance of a lack of impartiality and independence of the rulings made, e.g. by eliminating the ex-ante control role of the Court of Accounts and preventing State Council judges from both investigating and adjudicating the same case
13.4.	While the decisions of the State Council are binding, enforcement is not observed	High	Establish a transparent system for monitoring the implementation of the State Council's decisions, including decisions on public procurement complaints, and give the State Council the necessary authority for the enforcement of its decisions and the prevention of administrative silence
13.5	There are no accessible database or records on public procurement cases reviewed by the various existing institutions now handling complaints and related matters	Medium	Ensure that all complaints filed and corresponding decisions are published with no delay on a website accessible free of charge and with full search options

Sub-indicator 13(a) – Process for challenges and appeals

This sub-indicator looks at the process that is defined for dealing with challenges or appeals and sets out some specific conditions that provide for fairness and due process.

A prospective tenderer who is dissatisfied with any aspects of the tender documents, considering for example that the technical specifications are biased or that the award criteria are unclear, can always request the procuring entity to clarify the matter or to change the tender documents.

If this approach does not resolve the issue, a formal complaint would need to be filed with the appropriate authority. However, the legal and institutional framework does not mandate any specific entity to do the initial examination of complaints against the public procurement actions or decisions of a procuring entity made before the signature of a public contract. In Lebanon, such complaints would in principle have to be lodged with the regional administrative courts, supposed to be in charge of adjudicating administrative cases in the first instance, with the State Council serving as the second instance administrative court, in charge of adjudicating appeals against the decisions of the first instance administrative courts. However, those first instance courts have not yet been established and started operating, so the State Council is now both the first and the last instance for dealing with formal public procurement complaints, with no possibility of appeal to a higher instance against its decisions.

There is also no single, standard procedure for filing and handling public procurement complaints. Each of the different bodies potentially seized with the case – the State Council (see further below), the Court of Accounts or the Central Inspection Board - has its own procedure. If a formal complaint is made to the State Council, this has thus to be done in the manner defined by its by-laws.

The decisions of the State Council are rendered with consideration of the evidence and investigations submitted by parties as well as any other relevant evidence.

The State Council has a specific mechanism for urgent review of complaints made before contract signature. However, as reported in meetings held by the MAPS assessment team, there have been less than ten such cases in ten years. The judge assigned to the case will review the complaint and will have a certain deadline for doing so. This does not by itself stop the public procurement procedure and the procuring entity may sign the contract while the judge is still looking into the complaint. If this happens, the judge has no more the right to continue and the complaint can then be transferred then to the State Council as a normal court case.

Once a contract has been signed and entered into force, it has evidently become very difficult or impossible to change a wrongful award decision. At present, however, there are no arrangements for ensuring that complaints against the contract award decision not only can be made but also will be addressed before the contract is signed. In many other countries, this is made possible by a combination of two measures. First, all contract award decisions would normally have to be published immediately. Second, the contract would not be allowed to be signed until a certain time (often ten days – the “stand-still” period) after the publication of the award decision.

Until the State Council rules in favor or against a complaint, there are no interim measures which may be put in place to prevent further damage to the complainants. In international practice, such measures would normally include suspension of the procurement processor or the implementation of any decision taken by the contracting authority. In particular, it would typically not be allowed to sign the contract until the complaint has been resolved. One exception to this would be the possibility for the review body to nevertheless decide to allow the contract to be signed for reasons of an overriding public interest. In that case, other remedies than setting aside the award decision would have to be available for sanctioning the contracting authority if the complaint is upheld.

Sub-indicator 13(b) – Independence and capacity of the appeals body

This sub-indicator assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest.

The Court of Accounts is involved in procurement transactions through its ex-ante control of contracts of a value above LBP 75 million for goods and works and LBP 25 million for consulting services. This constitutes a conflict of interest with respect to its possible later review of the same operation, whether it is seized by the Central Inspection Board or other competent party concerning an alleged misdemeanor or it carries out external audit of the authority in question. In that situation, the position it has taken in its ex-ante control may prevent it from exercising adequate independence in its later review or audit of the same operation.

Likewise, there may be grounds for concerns about the possible lack of impartiality of the State Council or, at least, about the apparent conflict of interest because of the dual roles of the State Council, (i) in its double capacity as an advisory and a jurisdictional body and (ii) in its practice of appointing a “rapporteur” in charge of investigations during administrative proceedings who may then also participate in adjudicating the case at hand. The first dual roles of the State Council (advisory and jurisdictional) can be fairly mitigated by simple means, i.e.: restrain a judge who has provided opinions on some administrative decisions or other matters from acting in his jurisdictional capacity on the same subject. In the case of the “rapporteur”, the judge mandated to investigate a case, e.g., a public procurement complaint, might also be one of the judges assigned to ruling on the case that he has investigated. This possibility of a biased opinion in adjudicating the case may be aggravated by the fact that, although the decisions and actions of the “rapporteur” can be appealed against, then again the same person may be part of the decision on the appeal. International practice would require that the two roles be separated. However, no arrangements to this effect are known to be in place.

At the State Council, timeframes for the handling of public procurement complaints are defined for the preparatory phase (exchange of memoranda, investigations, etc.). Once the case is submitted for final decision, the State Council is not limited by any timeframe, because neither its Statutes nor the law nor any other regulations impose any deadlines for rendering decisions. When its deliberations have been concluded, it will then nevertheless have to announce its decision in a public hearing within three months.

The State Council may decide on several remedies. It has the right to impose sanctions and to revoke administrative acts. However, this applies to public administration matters in general and there are no particular provisions or practices specifically tailored to public procurement.

The State Council's decisions are binding to all parties. When its decisions are not executed, it can impose additional, coercive sanctions. In addition, any official who prevents or delays the implementation of a State Council decision is subject to a fine. On the other hand, there is little evidence of any systematic monitoring of whether and how authorities abide by its decisions, and these are not regularly and effectively enforced.

The State Council has adequate financial and administrative resources. However, it partly lacks the skills and competences needed to undertake its functions properly.

Sub-indicator 13(c) – Decisions of the appeals body

This sub-indicator examines the decisions of the review body and what happens once they have been taken.

Decisions of the State Council are based on the relevant information at hand. The investigating judge (the "rapporteur") has a wide range of means available to review a case. This may include appointing experts, hearing witnesses, requesting reports and records from those concerned, with little or no limitations except for a general obligation to respect the rights of defense and to conduct the investigation impartially. The judge will then, issue a report which summarizes the case as well as the facts and legal issues that should be resolved. The parties can review the report and comment on it in writing. The decision is then taken by a panel composed by three members of the State Council, including the "rapporteur".

The State Council has the authority, in principle, to apply remedies that may include e.g. suspension of the procurement procedure. However, there is no evidence of any practice applying such interim measures to safeguard the interests of the complainant or to otherwise prevent a contract from being signed before a complaint is resolved. The lengthy timeline, shown in practice, to rule on a case would in any case unduly delay the contracts and jeopardize the objectives of the procurement, creating additional problems for all concerned.

When filing complaints with the State Council, the complainant can also claim compensation. The decisions of the State Council concerning a complaint normally do not include other corrective measures, for example, modification of technical specifications, or revision of contract award.

The enterprise survey carried out included some questions about public procurement complaints and their handling (see further Appendix 7). Slightly more than a quarter of the enterprises who had participated in a public tender had made a formal complaint against a contracting authority decision or action. Among these, 87% did not have the impression that the system is reliable and fair, and only 25% found that the decision that was issued in the case was clear, and coherent with other decisions in similar cases.

Among those who had not made a complaint, only one third found that the actions or decisions of the procuring entities were fair and reasonable and that there was no reason to make a complaint. Two thirds thought that the actions or decisions of the procuring entities were wrong but did not believe that the system for reviewing complaints was fair and reliable enough to make it worthwhile making a complaint, or simply had no trust in the system.

Out of all the respondents, almost two thirds considered that the system rarely or never works in a fair, transparent and predictable manner. Greater transparency, and greater professional competence of procuring entities and the review body, were advised as major measures to improve the situation.

- **Substantive gaps and their underlying reasons**

The most evident gap in the system for challenges and appeals in public procurement is the absence of any specific regulatory and institutional set-up that would allow complaints against contracting authority decisions to be handled in a clear, unified, speedy, independent, unbiased and competent manner.

A related, substantive gap is the absence of any single, searchable database of the public procurement cases adjudicated by the various existing institutions now handling complaints, and the resulting lack of clear case law on the application of laws and regulations in force.

- **Recommendations**

The main requirements for an effective and efficient review system are for complaints to be reviewed rapidly in an unbiased manner by highly capable decision makers, for these to have the right and ability to prescribe appropriate remedies, and for those remedies to become effective without delay. This would likely require the creation of a separate, dedicated review body for public procurement complaints. Any dedicated, first instance complaints review body that may be set up for this purpose should comply with international best practice as reflected in e.g. the GPA, Art. XVIII, and the EU's Remedies Directives¹¹².

Concurrently, complaints made, corresponding decisions and remedial actions should all be published in one outlet easily accessible free of charge.

Specific gaps and corresponding recommendations for Indicator 13

No.	Specific gaps/shortcomings	Specific recommendations
13.a)	In the absence of the first instance administrative courts, the State Council is both the first and the last instance for procurement complaints, without any possibility to appeal its decisions	Unless and until a specific review body is set up for public procurement, or the first instance administrative courts provided for in the legislation become able to quickly and competently handle public procurement complaints, reinforce the capacity of the State Council to rapidly take well founded decisions on public procurement complaints
13.b)	If a complaint is made to the State Council but no decision is rendered before the contract is signed, the case is dropped	Ensure that all valid complaints are addressed on time

¹¹² Remedies directive for the public sector (Directive 89/665/EEC), remedies directive for the utilities sector (Directive 92/13/EEC), both substantially modified by Directive 2007/66/EC

No.	Specific gaps/shortcomings	Specific recommendations
13.c)	Although possible in principle, no interim measures are usually taken for suspending the procurement process and contract signature before the complaint is resolved	Introduce the possibility to briefly suspend the procurement process when a complaint is made and introduce a standstill period to prevent a contract from being concluded before a decision is taken on a complaint against the award decision

3.4.4 Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

- **Findings**

A comprehensive legal framework for combatting corruption has been recently developed, but implementation is still not yet initiated. The members of the key implementing agency (the National Anti-Corruption Commission) of the national strategy for combatting corruption have not been nominated and the agency is not yet in place. The anti-corruption laws recently ratified, in May 2020, are not yet effective. The law on illicit enrichment is no longer compatible with the three new anti-corruption laws but still effectively prevents the asset declarations from being used for intended purposes. There are also no clear, comprehensive regulations for preventing and identifying conflicts of interests in general. As a result, the legal and institutional framework does not yet adequately support integrity in public procurement.

Anti-corruption provisions specific to the public procurement system can hardly be found in existing legislations and rarely implemented. There is little information available on actual cases of fraud and corruption in public procurement and on the measures taken for prevention, identification and sanctions. In addition, there are no mechanisms or any supporting environment to encourage civil society's contribution to improving integrity in public procurement.

Little efforts are made to prepare codes of conduct and to establish a system for financial declarations by public sector employees. These efforts did not result in any effectively managed systems, with the exception of few institutions. Even in these cases, there is nothing specific to public procurement.

Lack and inaccessibility of integrity related information makes it difficult to monitor either the incidence of fraud and corruption or the preventive and corrective measures taken. Nevertheless, the little data available indicates that only an extremely small share of actual cases of fraud and corruption are properly identified, reviewed and sanctioned.

Summary gaps and recommendations for Indicator 14

No.	Substantive gaps / Red flags	Risk	Recommendations
14.1.	There is a lack of regulatory and institutional measures to ensure integrity in public procurement and in public administration in general	High	Complete a general regulatory and institutional anti-corruption framework by thoroughly revising or replacing the illicit enrichment law, with focus on effective asset declarations and prevention of conflicts of interest, and by establishing the National Anti-Corruption Commission at the earliest, with the necessary resources and taking measures for the effective and efficient implementation of the anti-corruption laws
14.2.	Civil society does not have the means to monitor practices in public procurement and to support decisive action for addressing identified deficiencies , with particular focus on public procurement	High	Create an enabling and supportive environment for civil society to contribute to the monitoring and prevention of fraud and corruption, especially in public procurement
14.3.	Lack of access to information makes it difficult to monitor the incidence of fraud and corruption and measures taken prevention and correction	High	Ensure that data on accountability, integrity and transparency are generated, published, compiled and made accessible , and monitor its use for preventing, identifying and sanctioning prohibited practices

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties

This indicator assesses the existence of legal provisions that define fraudulent, corrupt and other prohibited practices and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

Lebanon acceded to the United Nations Convention against Corruption (UNCAC) on 22 April 2009, with entry into force on 22 May 2009. Several of its provisions were reflected into the national Anti-Corruption Law ratified on 5 May 2020. This law includes an official definition of corruption and determines penalties for bribery. The Penal Code includes also general definitions related to fraud, bribery, abuse of power, embezzlement, and failure in public duty, and foresees penalties in case of fraud and corruption. A number of other laws include some related definitions as well. However, fraud, corruption and other prohibited practices are not defined in the context of public procurement and it is not always evident if and how the other, existing definitions may apply in that particular context.

The current legal framework does not include definitions of conflict of interests. It also does not include provisions on cooling-off periods in case of employment in a position which would create a conflict of interest with respect to the previously held position. The only exceptions are for the governor and vice-governors of the Central Bank, in addition to the members of the LPA.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict of interest and unethical behavior, as defined in the law in the procurement and contract documents.

There are no clear and comprehensive definitions of prohibited practices in public procurement and there is no obligation to include such definitions in the bidding documents. The PAL does not indicate, in clear and concise provisions, what is required and what is not required in terms of addressing issues of fraud or corruption or other prohibited practices in the bidding documents. Despite the absence of any specific requirements in the legislation, the bidding documents actually used by a number of procuring entities often include provisions on accountability and prohibited practices. Examples of this are the National Bidding Documents prepared by the Institute of Finance under the Ministry of Finance, the bidding documents used by the CDR and the Ministry of Education and Higher Education, as well as the Standard Bidding Documents prepared by OMSAR. Evaluation committee members are typically not required to sign declarations of impartiality and absence of conflicts of interest, except in a few procuring entities which implement donor-funded projects.

Sub-indicator 14(c) – Effective sanctions and enforcement systems

This indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken.

There are general provisions for alleging cases of fraud, corruption or other prohibited practices. However, there is no clear evidence that the system for reporting is systematically applied and reports are consistently reviewed and followed up. Available evidence indicates that the existing laws and regulations on fraud and corruption are not being enforced. Many alleged cases are not being pursued and very few sanctions are meted out.

The PAL¹¹³ and decrees 67/8117 and 80/2868 provide measures and cases for the exclusion of the bidders who violate the provisions of the bidding documents, after warning them. However, the exclusion system is not applied systematically and it happens that a bidder is not excluded despite having committed a violation. Also, the decision of exclusion is neither published nor circulated to other procuring entities, so no means are provided to systematically apply the exclusion decision.

In the enterprise survey carried out (see further Appendix 7), questions were asked about corruption and anti-corruption measures. Only one respondent admitted to having offered bribe to an official in charge of procurement or to anyone else in order to get a public contract. Other responses, though, nevertheless pointed to the prevalence of problems in this respect. Among the suggestions made for combatting corruption in public procurement, the following measures were mentioned most frequently: greater transparency, including through compulsory publication of procurement information and the use of e-procurement; and improved procedures for reporting irregularities as well as for stricter enforcement. These measures would then need to be accompanied by corresponding awareness raising and capacity building.

Sub-indicator 14(d) – Anti-corruption framework and integrity training

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programs that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

A national anti-corruption strategy with seven pillars was approved by the Council of Ministers in May 2020. One of the seven pillars is dedicated to anti-corruption measures in public procurement. The new Anti-corruption Law adopted in May 2020¹¹⁴ includes provisions to establish a National Anti-

¹¹³ PAL, Art. 140

¹¹⁴ Law no. 175/2020

corruption Commission. This commission would investigate allegations of corruption in the public sector, refer cases to the judiciary system, and oversee the enforcement and compliance of the Anti-corruption Law as well as other laws fighting corruption, notably the Access to Information Law and the Whistleblower Protection Law. This commission has not yet been established and members have not been appointed.

There is no mechanism in place to identify and mitigate corruption risks in public procurement, or in public administration in general. There are also no special measures for the detection and prevention of actual cases of fraud and corruption in public procurement.

National statistical data on fraud and corruption is not available. Information on corruption related legal proceedings and convictions is difficult to find and to compile. Some institutions are taking internal measures to this effect. As an example, at the Internal Security Forces, the Director General issues a monthly report including all crimes and behavioral violations including the measures taken against the officers concerned. This report is circulated within all sectors and departments at the ISF.

Special integrity training programs for the public administration are offered by OMSAR and the IOF. However, in current practice, procurement officials are not often among those receiving such training. Those trained are only rarely assigned to positions where they can apply their knowledge and skills to the particular case of public procurement. Also, some CSOs working on transparency and governance, in partnership with the public sector, conduct and deliver special awareness programs and trainings related to transparency and anti-corruption in the public procurement sector.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

This indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. Such a favorable influence on integrity in public procurement may be demonstrated by the existence of respected and credible civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control.

Several civil society organizations are actively interested and engaged in supporting integrity in public procurement. However, very few have successful interventions and in general, various systemic impediments prevent these organizations from being strong and credible enough to be effective in performing social audit and control. Still, the role of civil society organizations as a third-party observer and monitor is expanding, despite the fact that there is no general, enabling environment for civil society organizations, in particular in public procurement field. Among the few exceptions is the oil and gas sector, where specific legislation encourages their participation, intervention and contribution. Civil society is thus making some efforts to shape and improve integrity in public procurement, e.g. by offering training and having a reporting mechanism in place for alleged cases of fraud and corruption. However, the CSOs have had little success in bringing prohibited practices to justice so far.

There is no clear evidence that suppliers and business associations actively support integrity and ethical behavior in public procurement. In general, compliance procedures and practice are not applied in most enterprises. On the contrary, some dominating, well established suppliers to the public sectors are known to have shared interests with public sector decision makers in engaging in non-competitive behaviors. In the absence of any legislation to prevent conflicts of interest, there is a widely published practice of a back-and-forth of leading businessmen and high officials between the private and the public sector and indications of strong business interests of many politicians and high officials.

The findings of the enterprise survey carried out (see further Appendix 7) indicate that only around 20% of the respondents were aware of any CSO actively involved in monitoring practices in public procurement. On the other hand, 80% agree that CSO participation in public procurement monitoring could be useful, mainly because the greater level of transparency would be expected to put greater pressure on officials to act professionally and with integrity.

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behavior

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt or other prohibited practices or unethical behavior; and ii) whether such legislation and systems provide for confidentiality and the protection of whistle-blowers.

There are no well-functioning, secure, independent, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior. The Whistleblower Protection Law¹¹⁵ established a protection regime that benefits any natural or legal person who would denunciate to the National Anti-Corruption Commission any past, present or future act related to corruption. This protection mechanism is quite solid, but the law has not yet been applied. The main reason is the failure to create the National Anti-Corruption Commission, appoint its members and allocate necessary resources for carrying out its duties.

Sub-indicator 14(g) – Codes of conduct/codes of ethics and financial disclosure rules

This sub-indicator examines the presence and use of codes of conduct and other measures to ensure integrity in public procurement.

General codes of conduct for government officials, applicable also to public procurement function, have been drafted but not yet binding. In particular, in 2013, under an EU funded project, OMSAR developed a Code of ethics in public procurement. However, this code was not adopted by the Council of Ministers and is therefore not binding. On the other hand, some institutions like the ISF have developed their own, internal codes of conduct applicable to their own staff, including those working in public procurement. For the few cases when a code of conduct is applicable, violations may expose staff to criminal liability.

New and modern laws related to accountability of decision-makers imposing financial disclosure obligations, are being drafted. This practice has already a long history. The first law¹¹⁶ on illicit enrichment, adopted already in 1953, required certain state employees and public service providers to declare their assets. However, this law and all subsequent iterations have never been effectively implemented. The most recent version of the law was adopted in 1999. However, it has a number of shortcomings which severely limit its effectiveness for addressing fraud and corruption in public procurement and in public administration in general:

- assets and revenues to be declared are not defined in a sufficiently clear and unambiguous way
- conflicts of interest arising from shareholdings in commercial enterprises are not clearly identifiable
- only a limited number of officials are covered
- declarations only have to be filed upon taking up office and when leaving office, not during tenure

¹¹⁵ Law No. 83 of 10 October 2018

¹¹⁶ Legislative Decree No. 38 of 18 February 1953 (Law “On Illicit Enrichment”)

- declarations have to be submitted in sealed envelopes and must remain confidential; anyone who discloses their contents is liable to prosecution
- declarations are not checked upon submission, and there is no methodology for verification
- oversight is supposed to be carried out by 11 different entities that receive the declarations, but without any harmonized, effective approaches prescribed for the purpose
- there is no common, readily accessible data base with the declarations submitted
- the sanctions foreseen are essentially for procedural violations; illicit enrichment itself is not punishable

In addition, complaints about the accuracy of a declaration requires a deposit which is retained if the complaint is not upheld. However, such a complaint would imply that someone has likely broken the obligation to keep the declaration confidential or that information about its contents has been obtained by illicit means, and this by itself exposes the claimant to the risk of being prosecuted. In addition, if the complaint is not upheld, the complainant also runs the risk of being accused of false accusation and being sued for defamation. It is not clear if the Whistleblower Protection Law and the actions of the National Anti-Corruption Commission will prevent these risks.

A further malpractice related to the illicit enrichment law has been its use as the basis for legalizing collusion between a procuring entity and a supplier or contractor as well as the related failure to use prescribed procedures for public procurement. The process starts with a verbal agreement between a public administration and a company to provide some goods, works or services, without any procurement procedure or any signed documents. After delivering the items agreed and ensuring that this delivery is properly documented, the company requests payment. The authority agrees to pay and a contract is signed to this effect. When applicable, it is submitted to the Court of Account for its ex-ante control. If the contract is not approved already at this stage, the company complains to the State Council, requesting compensation with the argument that if the authority does not pay, it becomes guilty of illicit enrichment at the expense of the company. After receiving evidence of what the company has actually delivered, the State Council would then typically agree for the company to be paid.

Ethics and anti-corruption related training, partly covering also existing codes of conduct, is offered by OMSAR and the IOF. The IOF training covers all topics related to public procurement, including integrity. A diploma for the administration of municipalities is provided by the Lebanese American University and it includes sessions related to the code of conduct.

- **Substantive gaps and their underlying reasons**

Lack of regulatory and institutional measures for helping ensure integrity in public procurement and in public administration in general, is a major substantive gap.

There is also a lack of access to information and of an enabling environment that would allow civil society to monitor practices and to support decisive action for addressing any deficiencies identified. Some CSOs do cover public procurement but mostly as a small part of their wider focus area.

There is a lack of clear, strict requirements for integrity as set out in e.g. compulsory codes of conduct.

Prevention and mitigation of conflicts of interest are not well addressed in the legal and institutional framework; the requirements for asset declarations are ineffective and partly counterproductive.

Provisions for whistleblower protection are not yet effective.

Even identified cases which appear to be contradictory to existing legal requirements and good practice, rarely are subject to proper investigation, prosecution and effective sanctions or other remedies.

With reference to similar situations in other countries, elite enterprises and some key decision makers prevent wide participation and effective competition in public procurement.

- **Recommendations**

Reflecting the substantive gaps mentioned, the main recommendations are the following:

- a) Develop the general regulatory and institutional anti-corruption framework by establishing the National Anti-Corruption Commission with no delay, and allocating the necessary resources and taking other measures for the effective and efficient implementation of anti-corruption laws;
- b) Complement the general integrity framework by specific regulations and other measures to ensuring accountability, integrity and transparency of public procurement;
- c) Ensure that data on accountability, integrity and transparency are generated, published, compiled centrally and made accessible regarding both specific cases and general situation, and monitor its use to prevent, identify and sanction prohibited practices;
- d) Create an enabling and supportive environment for civil society to contribute to the monitoring and prevention of fraud and corruption, especially in public procurement.

With respect to public procurement, this is likely to require the following, more specific measures:

- e) As a complement to general provisions for promoting integrity, prepare clear definitions of fraud, corruption and other prohibited practices as well as cases of conflicts of interest in public procurement; include these in applicable regulations and reflect them as appropriate in tender documents;
- f) Define accountability and set out the responsibilities of the parties concerned in such a way that penalties in cases of fraud, corruption or other prohibited practices properly target those responsible, recognizing that this is often likely to be senior management, as much as or more than any individual employee;
- g) Ensure that conflicts of interest are systematically identified and that measures are taken to prevent them and to penalize those who may have hidden them;
- h) Provide standards and guidance to procuring entities and economic operators and their staff in the form of codes of conduct and related tools and training;
- i) Refine existing mechanisms, and develop new ones if necessary, to identify and mitigate risks of fraud and corruption;
- j) Make arrangements to ensure that possible cases of fraud, corruption or other prohibited practices can be reported under conditions that duly protect whistle-blowers, and that such reports are properly followed up;
- k) Ensure that mechanisms for investigating possible cases of fraud, corruption or other prohibited practices are effective and efficient, observing requirements for due process, and that confirmed cases are duly prosecuted, and that penalties or other sanctions are meted out;
- l) Generate and publish data on fraud, corruption or other prohibited practices in public procurement as well as on measures taken to prevent and sanction them.

For ease of reference, some specific gaps and recommendations are also summed up in the following table.

Specific gaps and corresponding recommendations for Indicator 14

No.	Specific gaps/shortcomings	Specific recommendations
14.a)	There is a lack of clear, strict requirements for integrity as set out in e.g. compulsory codes of conduct	Revise existing draft codes of conduct, ensure that public procurement is adequately covered, and make the adoption and application of them compulsory
14.b)	Existing anti-corruption legislation and institutions may have gaps or may otherwise be difficult to apply with respect to the particularities of public procurement	Review the general integrity framework and complement it, as may be needed, by specific regulations and other measures for ensuring accountability, integrity and transparency of public procurement; and reflect them as appropriate in tender documents
14.c)	Conflicts of interest, their prevention and mitigation are not well addressed in the legal and institutional framework	Ensure that conflicts of interest can be systematically identified and that measures can be taken to prevent them and to penalize those who may have hidden them
14.d)	The law on illicit enrichment effectively discourages whistleblowing, may therefore be in contradiction with the whistleblower protection law, lacks obligations to submit yearly asset declarations, criminalizes their disclosure and thereby prevents them from being used for their purpose	Redraft the law on illicit enrichment in harmony with the three recent anti-corruption laws, expand its coverage, ensure that all declarations become public and that their examination is effective
14.e)	Provisions for whistleblower protection are not yet effective, and there is also no systematic, effective follow-up of cases that have been reported	Make arrangements for ensuring that possible cases of fraud, corruption or other prohibited practices can be reported under conditions that duly protect whistleblowers, and that such reports are properly followed up

4 Consolidated Recommendations

The following sections sum up the various recommendations made for improving public procurement in Lebanon, with particular focus on the areas where major gaps and shortcomings have been identified. In order to be successful, these recommendations, detailed below by pillar, will need to be addressed in a clear, coordinated, well-resourced and carefully implemented manner. To this end, there is an **urgent need for a unified, widely shared and formally adopted vision of public procurement reform in Lebanon, in order to ensure national ownership and sustainability of the reform process, with clear definition of roles and responsibilities among the respective stakeholders, and clear and measurable objectives for the short, medium and long term.**

This vision needs to be formulated and detailed in a national strategy document and action plan for public procurement reform, with risk mitigation approaches and a set of performance indicators, to be developed and approved by the Executive as part of the Government of Lebanon's commitment to this cross-sectoral structural reform for economic recovery of the country. It will be the main instrument sustaining the political will, ownership and consensus for the speedy endorsement of new procurement legislation by Parliament and of the required executive decrees by the Government, following consultations with concerned stakeholders.

The development and approval of a national strategy for public procurement reform shall reflect the strong government commitment to working towards achieving MAPS assessment recommendations, towards a modern legal framework of public procurement. It must also highlight the need for an adequate institutional framework and needed secondary legislation to ensure direct and proper implementation of the law. It shall also reflect the need to provide a set of guidelines on the law, technical guidance and user friendly tools, adopt a strategic vision of capacity building with clear professionalization processes and approaches targeting the stakeholders in the system, as well as a centralized electronic platform allowing for better planning, competition, open data, transparency and control and oversight across the system.

The mechanism for the development of the national strategy will have to engage policy and decision makers at the inter-ministerial level to ensure a dynamic coordination mechanism, and must be based on what is available in terms of the approach for national consultations in the country. The consultative and participatory process established for the MAPS assessment and for the work on the new public procurement law constitutes an ideal base for the next phases.

The following specific recommendations of MAPS assessment are organized by pillar:

4.1 Pillar I: Legislative and Regulatory Framework

1. Prepare and adopt a comprehensive, modern public procurement law and complement it by a full, harmonized range of items of secondary legislation, applicable to all procuring entities.
2. Introduce a comprehensive range of procurement procedures, proportionate to the nature and value of the contracts to be concluded.
3. Standardize and formalize guidance for the use of the available procurement procedures and for notices, requirements and specifications, timelines, selection and award criteria and their use, forms of contract and contract management.

4. Review and revise the approach to handling complaints, to ensure timely review and resolution by an independent institution.
5. Raise transparency, improve administrative efficiency and reduce costs by introducing e-procurement as well as clear and simple administrative routines for handling public procurement operations.
6. Reduce the need for primary legislation to be accompanied by implementing regulations and ensure that any secondary legislation that may nevertheless be required is prepared and adopted in parallel with the corresponding primary legislation.
7. In the public procurement law, clearly assign responsibilities for preparation, dissemination and updating of standard documents, guidelines and other tools to a suitably competent institution(s).
8. Allocate resources to a designated institution for developing standard procurement documents and guidance notes; ensure that availability free of charge on one central electronic platform or website.
9. Monitor the use and enforce the proper application of standard documents.
10. Introduce key principles of sustainability in public procurement and implement measures to ensure its applicability in the public procurement legislation
11. Develop, adopt and apply regulations and guidance materials to incorporate social and environmental aspects in requirements, specifications and selection and award criteria, e.g. the use of environmental standards and life cycle costing.
12. Align the public procurement legislation for conformity with the relevant provisions of the UN Convention Against Corruption and of other international agreements ratified by Lebanon.

4.2 Pillar II: Institutional Framework and Management Capacity

1. Improve the integration of public procurement into public financial management in order to improve procurement management, reduce duplication, and deliver goods and services more efficiently, by developing medium term budgeting and amending financial regulations to ensure continuity of competitive procurement during the transition from one fiscal year to the next.
2. Improve monitoring of use of funds during contract implementation, and raise the transparency of the process.
3. Complement external audit by introducing systematic own ex-post evaluation conducted by the contracting authority on its public procurement operations. The self-evaluation will focus on procurement outcomes compared with objectives and on administrative performance, with feed-back into financial and procurement planning.
4. In the public procurement law, define clearly the various central functions (*e.g., policy, regulation, advice, information, training; complaint resolution*) in the public procurement system, allocate them to specific entities to avoid gaps and overlaps as well as conflicts of roles, and give these entities adequate resources for the purpose.

5. Define procuring entities by law, in a way that helps determine which procurement regulations are applicable to them, and how.
6. Institutionalize a general obligation for procuring entities to have a dedicated unit for public procurement within their organizational structure, with clearly defined functions and responsibilities, in addition to staffing and allocated resources adequate for the purpose.
7. Regulate joint and centralized procurement in a clear, comprehensive and coherent manner, and take steps for creating one or several central purchasing bodies as may be appropriate.
8. Set up a national electronic platform for mandatory publication of procurement notices of all procuring entities) and for facilitating access to public procurement information and tender documents.
9. Develop a comprehensive concept for introduction and management of e-procurement in all its various aspects and stages; consult widely and take decisions; and set aside resources for implementation.
10. Define the needs and procedures for collection, management and analysis of data on public procurement, with due consideration of other public financial management needs and of the general need for transparency and accountability in the public sector; adopt corresponding regulations and assign roles, responsibilities and resources to the competent authorities, in line with other measures for public administration reform.
11. Using existing analyses and reports, update the assessments of skills and training needs, determine appropriate measures for closing existing gaps, by developing, adopting and implementing a capacity building strategy, including means for providing ad-hoc advice (e.g. Help-Desk function).
12. Establish and implement a policy rendering public procurement training mandatory to all concerned stakeholders across the public sector.
13. Building on existing drafts, revise and adopt standard job descriptions and qualification requirements for public procurement officials at different levels, and regulate and monitor their application; then formally recognize the profession so defined in the Lebanese civil service.
14. Systematize the collection and use of aggregated data on public procurement performance.
15. Use the MAPS assessment report as a basis to develop, adopt, implement and monitor a national strategy for the development of the public procurement system, after clearly assigning responsibilities and allocating resources for this purpose.

4.3 Pillar III: Procurement Operations and Market Practices

1. Ensure data on all steps of the procurement cycle for public contracts is accessible free of charge on a unique website, a central electronic platform, in a format that facilitates data extraction and analysis.
2. Assign responsibility to a competent authority for analyzing public procurement data and making it available to support evidence-based policy-making.

3. Require objectives and intended results to be clearly formulated and recorded during planning and referred to during systematic, compulsory evaluation of contract execution and outcomes.
4. Develop and apply approaches for planning, preparation, execution and evaluation of public procurement operations from a performance point of view.
5. Issue guidelines and provide hands-on training for procuring entities on procurement planning, including needs analysis, market research, choice of approaches and procedures, preparation and publication of procurement plans, as well as on contract management, and make the use of standard forms and tools mandatory.
6. Instill a paradigm shift towards a win-win situation between the public and the private sector.
7. Institute a standard and formal mechanism/process for regular consultations between the public and the private sector on issues related to procurement policy and practice.
8. Identify the nature, origin and modalities of all the barriers facing enterprises, especially SMEs, for successfully participating in public procurement.
9. Carry out a comparative study of the demand and supply side of the public procurement market in Lebanon and use the findings to inform development policy.

4.4 Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

1. Develop and institutionalize mechanisms for enhanced consultation with civil society, both when policies are developed or amended and in the case of specific procurement projects or operations.
2. Increase the level of transparency by making all procurement related information comprehensive and easily accessible and free of charge through electronic platforms.
3. Eliminate gaps and overlaps in regulations and conflicts of roles among oversight institutions and other entities involved in public procurement, eliminate redundant control steps, put relatively greater emphasis on procurement risk prevention rather than on correction actions.
4. Develop a policy for internal audit as well as a properly resourced plan for its successive introduction in all procuring entities at central and local levels of government.
5. Shift the focus from formal compliance with procedures to the achievement of intended results in ways that improve value for money.
6. Develop simpler, efficient and effective means for follow-up and enforcement of findings and recommendations of oversight bodies, with vigorous measures to ensure that obligations are met and that appropriate sanctions are meted out when merited. Publication of those actions is to be observed.
7. Once they have been issued, immediately publish all decisions, recommendations and reports of the Court of Accounts on a website accessible free of charge, with a searchable

database of machine-readable documents that also would serve the case management needs of the Court of Accounts.

8. Establish an efficient complaints system to enhance early responsiveness, implement timely and effective corrective measures and allow adequate and timely reporting on the number and nature of complaints.
9. Complete the general regulatory and institutional anti-corruption framework by thoroughly revising or replacing the illicit enrichment law, with focus on effective asset declarations and prevention of conflicts of interest and elimination of abusive use of its provisions, and by establishing the National Anti-Corruption Commission at the earliest, with the necessary resources. Take measures for the effective and efficient implementation of the anti-corruption laws.
10. Create an enabling and supportive environment for civil society to contribute to the monitoring and prevention of fraud and corruption, especially in public procurement.
11. Ensure that data on accountability, integrity and transparency are generated, published, compiled and made accessible, and monitor its use for preventing, identifying and sanctioning prohibited practices.

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