

Public Procurement Law 244 / 2021 Enhancing Competition and participation of Small & Medium Enterprises in Public Procurement

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قانون الشراء العام في لبنان رقم 2021/244 تحفيز المنافسة في الشراء العام ومشاركة المؤسسات الصغيرة والمتوسطة

الثلاثاء ٢٨ أيلول ٢٠٢١
9 صباحاً حتى 2 من بعد الظهر
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بمشاركة



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Sessions on the Public Procurement Law 244/2021

Six topics covering the main features of the Law:

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

Objectives

1. Capture the strategic role of public procurement as instrument for economic recovery and sustainable growth
2. Better understand challenges faced by SMEs in accessing the procurement market in Lebanon
3. Get exposed to the new Public Procurement Law no. 244/2021 and its principles towards efficient and transparent competition

Outline

-
- **Session 1** **The Economic Approach to Public Procurement**

 - **Session 2** **The Public Procurement Law 244/2021: Principles and provisions encouraging competition**

SESSION 1

The Economic Approach to Public Procurement

Governments are largest buyers in an economy

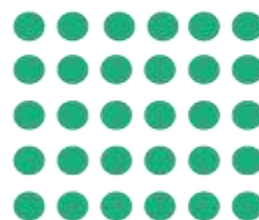
Governments are the largest buyers offering opportunities to enhance competition and ensure development.

Public procurement represents:

- 12% of GDP in OECD countries
- 14% in the European Union
- 15% of GDP in MENA countries
- 63% spent at the sub-national level

Public procurement impacts many areas of public service delivery:

Share of procurement spending³



30%

Health



17%

Economic affairs



12%

Education



10%

Defence



10%

Social protection



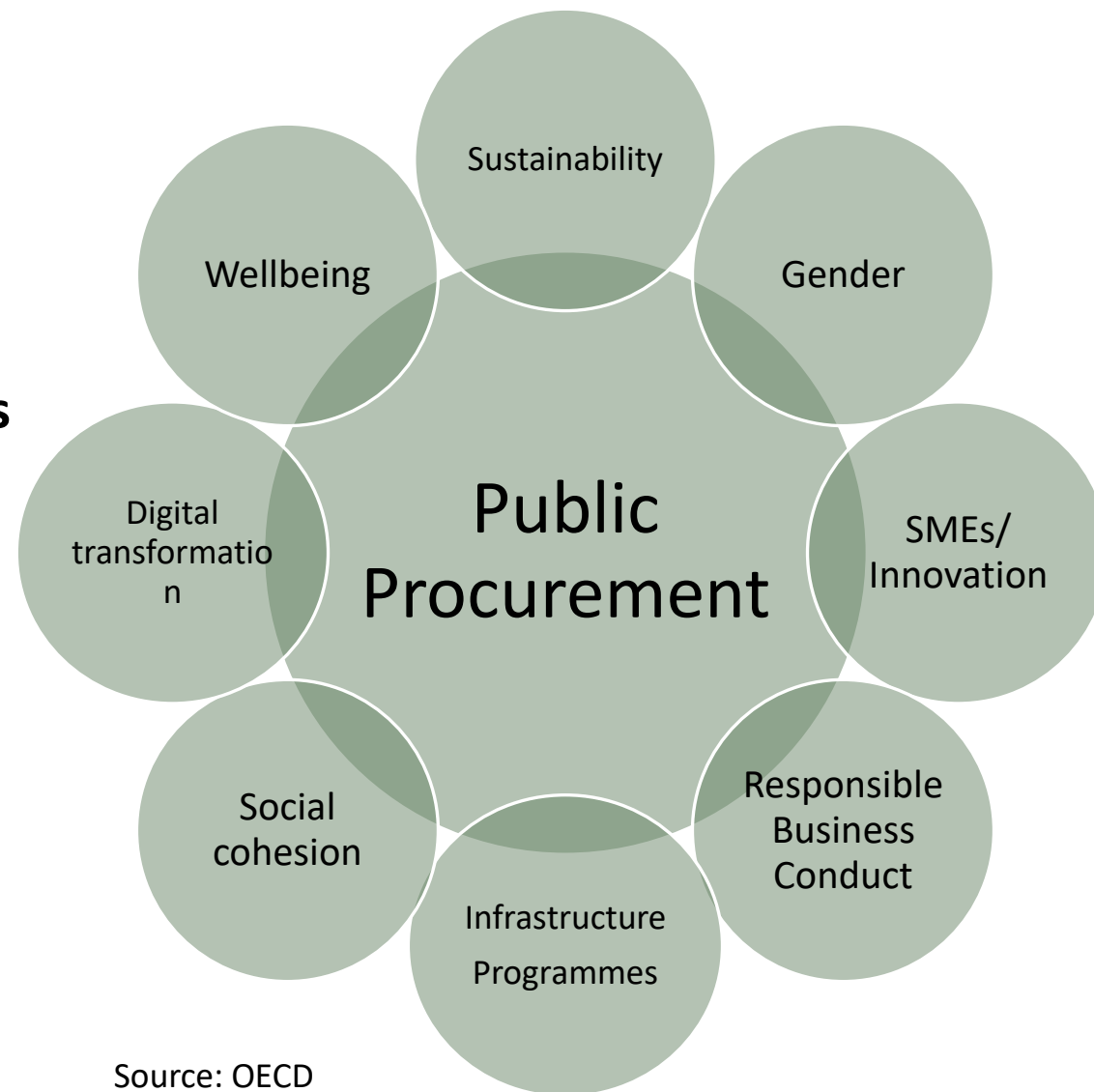
9%

General public services

Why public procurement matters?

- Meet **primary policy objectives**: Respond to users' needs while ensuring value for money - delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner
- Contribute to **complementary policy objectives** such as:
 - ✓ sustainable green growth
 - ✓ development of small and medium enterprises
 - ✓ Innovation
 - ✓ standards for responsible business conduct or broader industrial policy objectives
 - ✓ women-led businesses

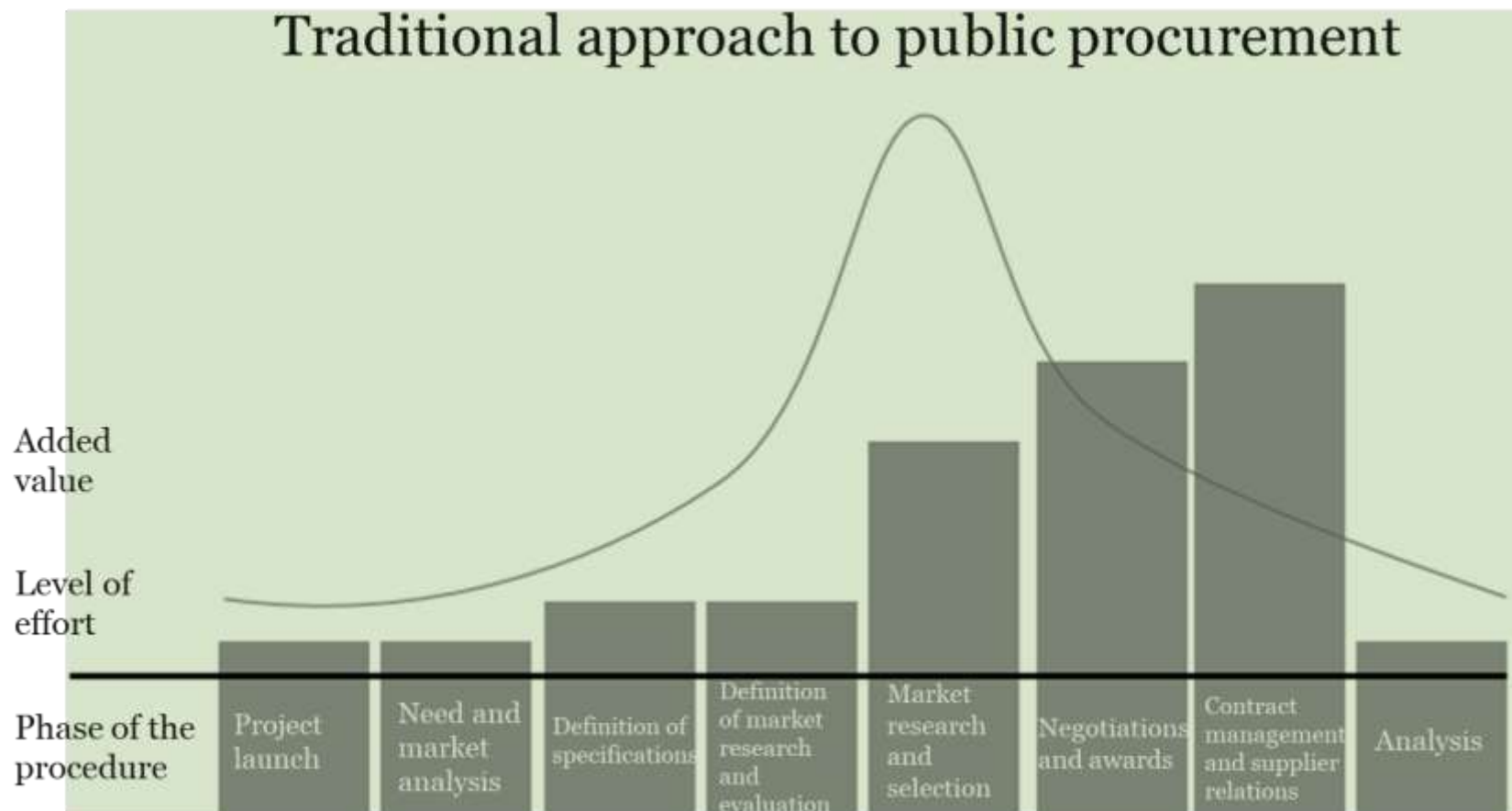
which governments is increasingly pursuing for better economic and social outcomes



Source: OECD

Traditional v/s strategic approach

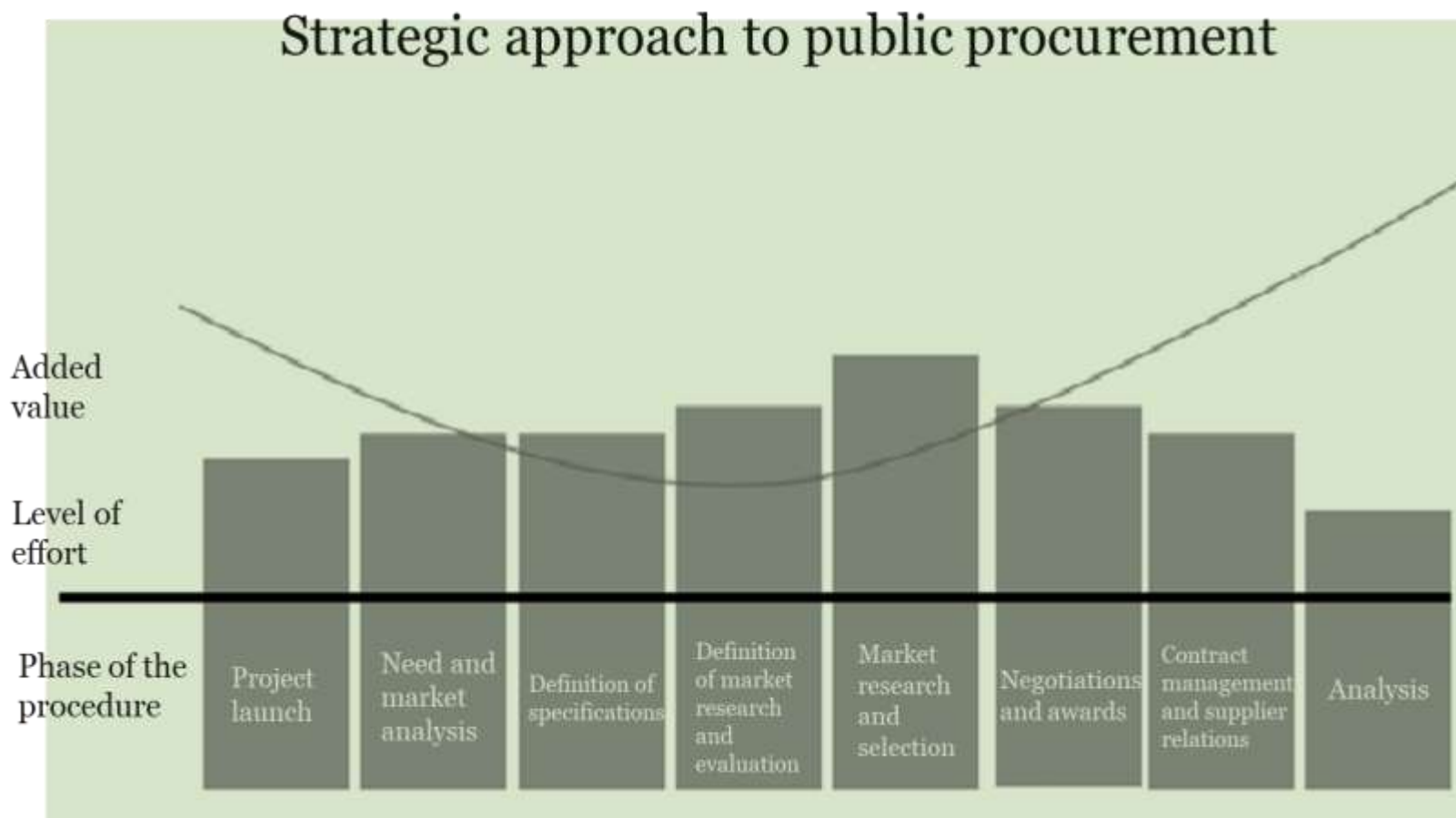
- Limited time is spent on planning and preparation.
- Focus is usually on the "approaching the market" phase.
- Due to insufficient analysis in the planning stages, increased levels of effort are required for contract and contract relationship management (amendments, claims).



Source: OECD

Traditional v/s strategic approach

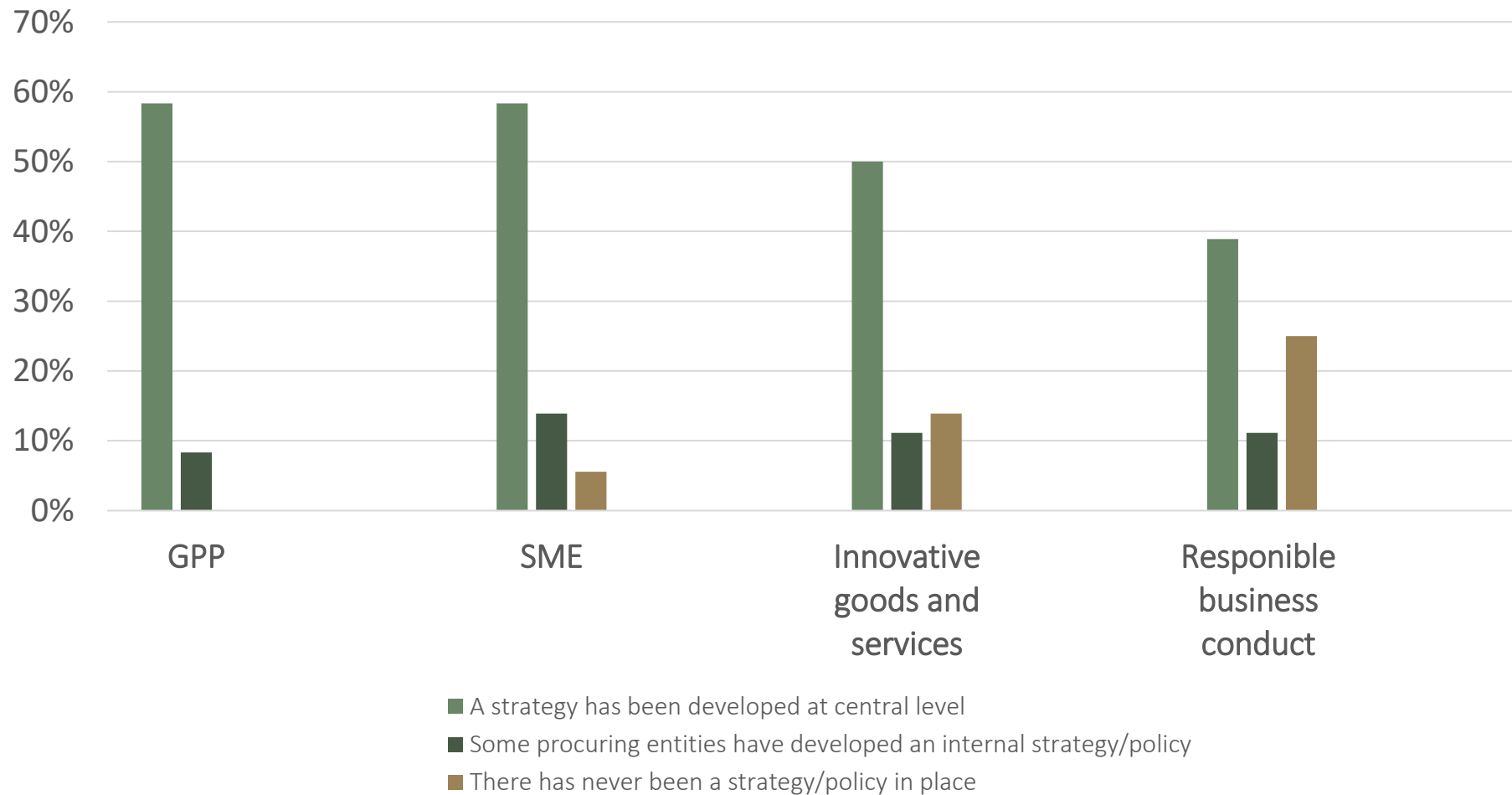
- The time needed to plan, research and analyse adds significant value to the identification of solutions that will meet the needs.
- Less time is spent **solving problems** and more time is spent **assessing the quality of delivery and identifying opportunities for improvement**.
- A strategic approach offers **greater added value**.



Source: OECD

Achieving policy objectives through procurement

Countries increasingly use procurement to achieve broader policy objectives (% of OECD countries)



Source: OECD, 2016

Lebanon lagging behind MENA countries

Country	Encourage SMEs Participation	Encourage National Enterprises Participation	Encourage Green Procurement
Egypt	Yes	Yes	No
Jordan	No	Yes	No
Libya	No	No	No
Morocco	Yes	Yes	Yes
Tunisia	Yes	Yes	Yes
Yemen	No	Yes	Yes
Lebanon	No	Yes	No

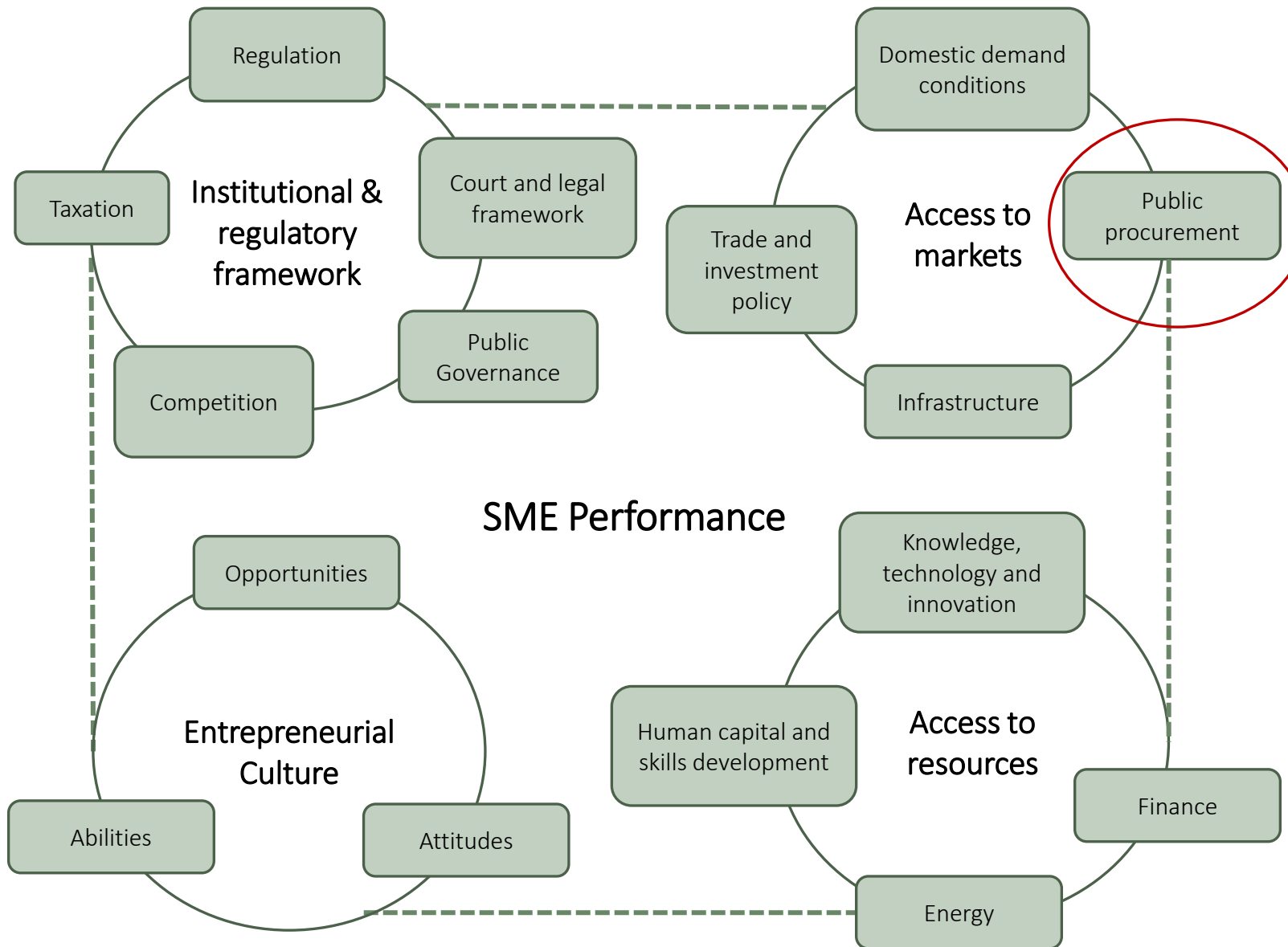
As per current practices

Source: OECD, 2016

SMEs' contribution to the economy

- Globally, SMEs form **the backbone of economies worldwide** and are often the primary focus of economic policies.
- They constitute over **2/3 of EU GDP**.
- SMEs are **responsible for ~ 86 % of employment** opportunities in developing countries. Responsible for **60 - 70%** of net job creation in OECD member countries.
- An **innovation hub**: One reason may be that in small companies there is little organizational or hierarchical overhead, and new ideas can be tested spontaneously without being subjected to long approval procedures.
- A **booster for sustainability**: Innovative SMEs play a pivotal role in the eco-industry and clean tech markets (UK and Finland: SMEs represent respectively over 90% and 70% of clean technology businesses)

Public procurement as part of a wider government policy effort to foster SME performance



Source: OECD

Barriers to SMEs' participation in public procurement

PRE-BIDDING

Insufficient access to information on business opportunities in public procurement

Narrow pre-qualification criteria, placing too much emphasis on past experience or firm size

Uncompetitive bidding processes

Difficulties due to very large contracts

Quality and the 'understandability' of information provided is limited

SELECTION

Preference for large bidders with long track records

Institutionalized discrimination

Preference for lowest price, not for value

APPLICATION

Excessive bureaucracy and documentation requirements

Excessive requirements of financial guarantees (i.e. bid security deposit) & certification requirements

Lack of time to prepare bids

Lack of capability in writing a formal bid proposal

Unclear selection criteria – how best to meet government's needs unclear

POST-SELECTION

Absence of rationale for awards

Payment terms are not complied with (i.e. delayed payments)

Unsuitable payment terms offered

Lack of feedback from public buyers for future learning

Difficulty in business complaints being heard and addressed



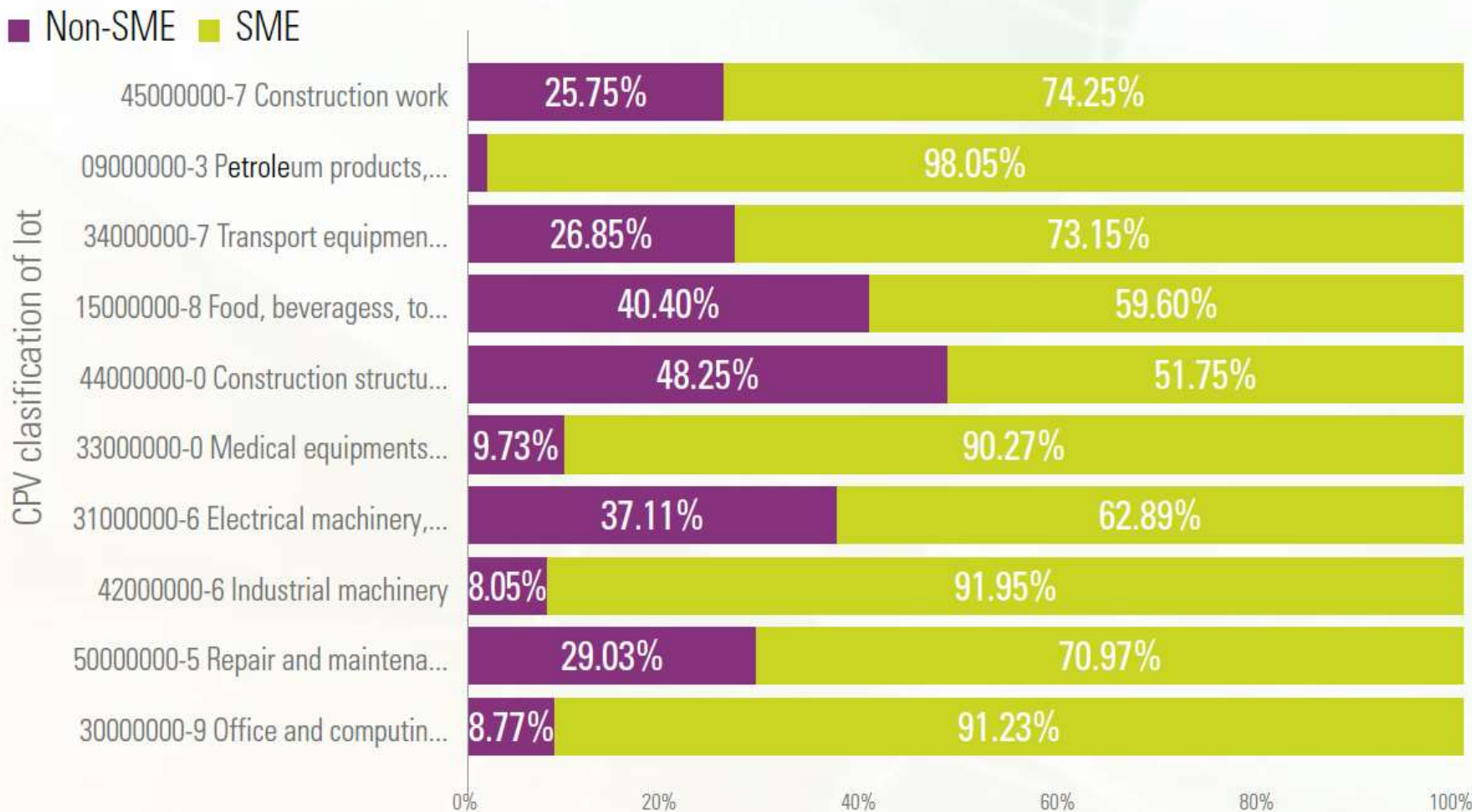
Practices supporting SMEs access

Common good practices in Chile, Denmark, Latvia and Poland

- Division of contracts into lots
- Ensuring prompt payments to suppliers
- Avoid overly restrictive selection criteria
- Subcontracting in large government contracts
- Awareness raising initiatives; specialized helpdesk
- Training to SMEs on how to tender effectively
- Workshops and events dedicated to SMEs ('Meet the buyer')
- Online register of pre-qualified suppliers and contractors

Removing barriers to entry: the Case of Ukraine (1)

SME and CPV by Awarded bid (total)



In 2016, data shows that although SMEs are eager to participate in all procurement categories, **the highest participation is in categories – for example agriculture, farming, fishing, forestry – where it could be argued the barriers to entry are at their lowest.**

80% of SMEs participating in micro and low value tenders and being awarded 71,76% of micro and low contracts, with a total value of € 0,43 bn.

Removing barriers to entry: the Case of Ukraine (2)

Figure 10: Bid amount and savings by SME / Non-SME



Source: bi.prozorro.org

In 2016, the **increased use of competition in micro and low value contracts** underpinned by the splitting of contracts into lots resulted in a high number of micro and small-sized enterprises participating in public sector competitions.

The consequence of this level of participation was the lowering of prices and greater levels of savings achieved for the Ukraine public purse.

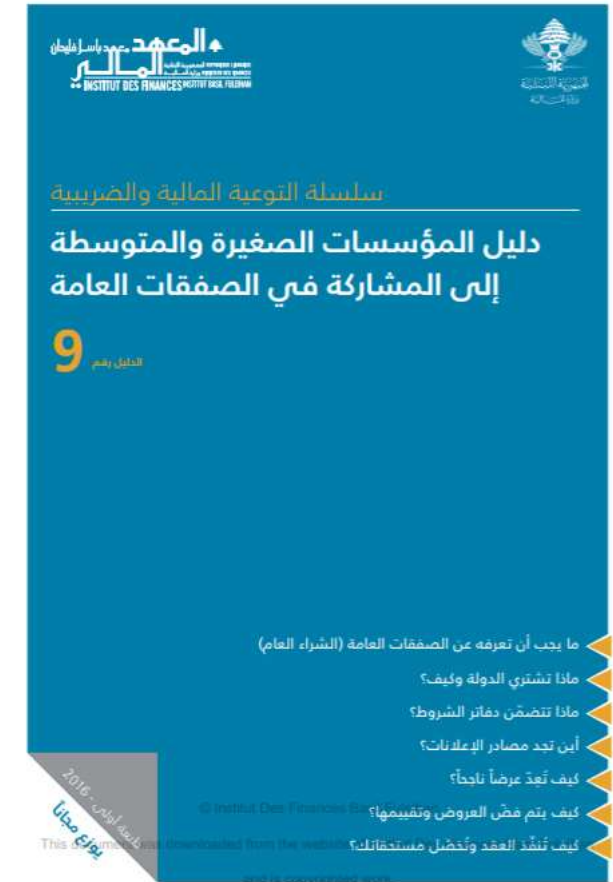
Mechanisms accelerating the achievement of policy objectives

■ Training and capacity for the market

- ✓ Making documentation or guidance focused on the policy area available online
- ✓ Providing capacity building programs and workshops for suppliers to help new entries into the public procurement marketplace
- ✓ Developing dedicated call centres for addressing questions

■ Training and capacity building for public officials

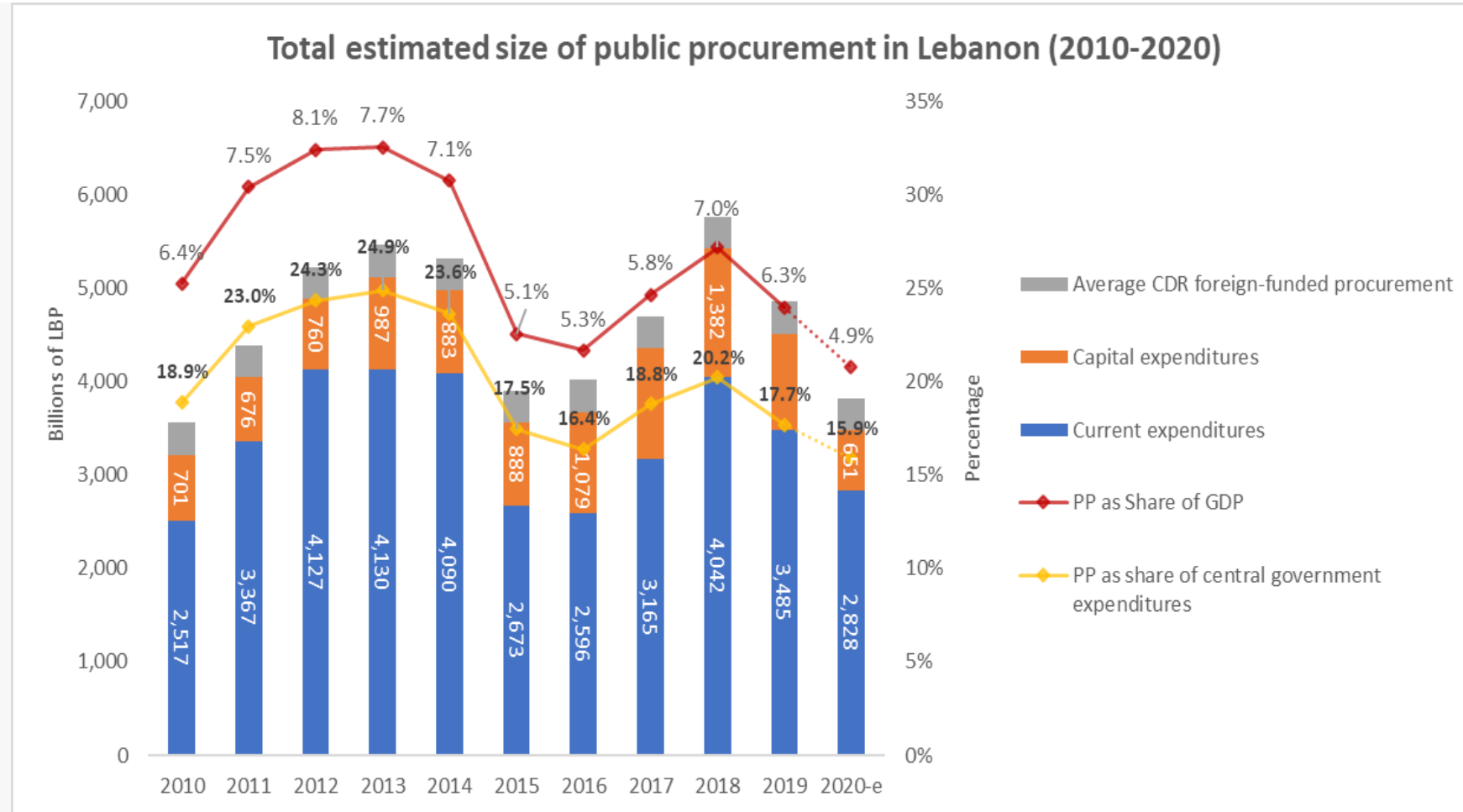
- ✓ Making documentation or guidance focused on the policy area available online
- ✓ Providing capacity building programs and workshops for public officials on existing mechanisms to enhance the strategic use of public procurement





LEBANON: Public Procurement accounts for 20% of central Government expenditures

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



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

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



LEBANON: Challenging economic situation & business environment



- **The quality of the procurement system is poor** (48/100) as compared to the rest of the world and to a number of MENA countries (1).
- **PP practices do not conform with standards** of sustainability covering the economic, social and environmental considerations (2,3).
- **Narrow fiscal space for public investment, not exceeding 2% in 2020 Budget**, due to high expenditures on personnel cost, interest payments & foreign debt.
- **State elite capture. Exacerbating corruption** (CPI ranking 149/180)
- **Government digitization and access to information is scarce**; Lebanon ranks 99/193 in terms of e-Government development (4).
- A weakening **economic competitiveness, ranking 88/141** + Impediments to **Doing Business, ranking 143/190** due to notable deficiency in infrastructure & institutions (4)

Performance Overview 2019

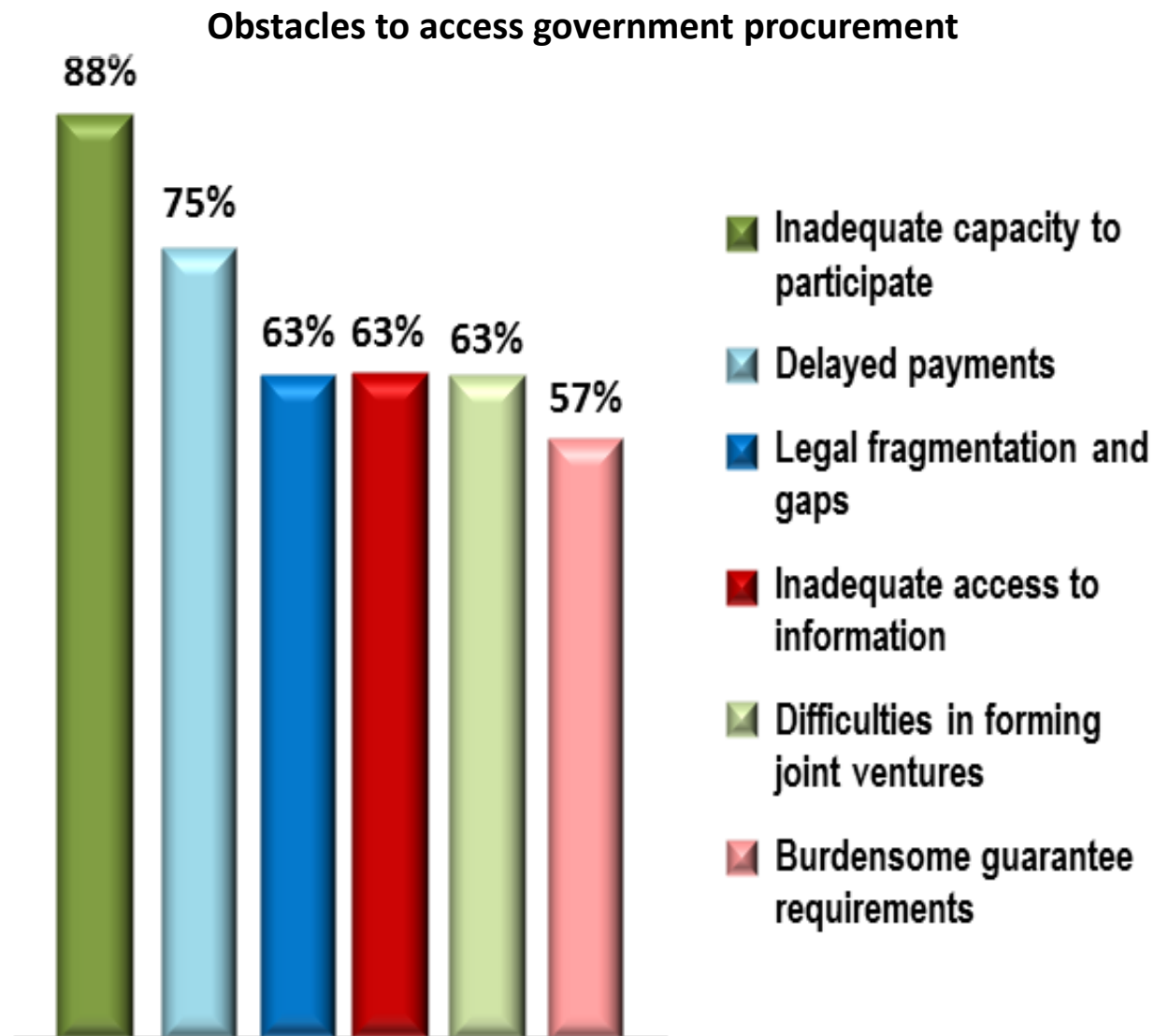
Key ◇ Previous edition △ Upper-middle-income group average □ Middle East and North Africa average



1. World Bank (2017), Benchmarking Public Procurement Report
2. MAPS II preliminary results, 2019
3. Institut des Finances Basil Fuleihan (2014), Professionalizing Public Procurement in Lebanon
4. World Economic Forum, Global Competitiveness Index (2019)

LEBANON: Procurement as opportunity for SMEs

- In Lebanon, SMEs constitute more than **95% of enterprises**, and employ **51% of the working population**.
- SMEs are key for dynamic **local economies** emerging through innovation, more job creation.
- **Efficient public procurement** limits companies' access to non-competitive advantages.
- Companies' involvement in non-competitive interests **reduces job creation capacity by 9.4% in given sector**.
- Companies linked to political **interests limit the ability of other economic operators to grow, develop, innovate and create jobs**.





LEBANON: Negative perception of PP by private sector

MAPS Assessment results

PRACTICES

- 56.5% consider that **contracts do not contribute to fair distribution of risks** between parties
- 70% consider that **payment conditions are not fair a& reasonable**
- 70% consider that **online PP information & transparency in the procurement process are key requirements** to access markets

COMPLAINTS

- 65% consider that the **complaints system is not reliable and unfair**
- 65% said there is **no effective mechanism for resolving contractual disputes** after contract signature
- 60% of companies that do not file a complaint consider that a **complaint against a contracting authority is not worthwhile due to lack of trust** in a fair and reliable complaints review system

TRANSPARENCY

- 95% consider that an **e-procurement system is effective** to reducing corruption in PP
- 90% consider that **compulsory publication** of all awards, contracts and contract amendments is key for transparency in PP





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SMEs and competition challenges



Hanane SAAB - Co-owner, CEO of Pharmamed

- Co-owner, CEO and Managing Director of Pharmamed.
- Selected by Forbes 2014 to be among most powerful 200 Arab Women. Was a member of the MENA Jury for Cartier Women Initiative Award (CWIA), and President (2012-2015).
- Founding member of the Lebanese League for Women (LLWB) and its President from (2007-2013), a board member of Arab International Women Forum (AIWF) (2012 to date), a founding and board member of the MENA Business Women Network (MENA BWN) and its vice president(2008-2014).
- She was included in 2018 among 50 women in the American University of Beirut (AUB) publication “Women at AUB”.
- Member of Lebanese Pharmaceutical Importers Association (LPIA)
- Member of Lebanese Order of Pharmacy.



Nadim DAHER – Board member of Lebanese Business Leaders Association (RDCL)

- Nadim Daher is a Certified Public Accountant (LACPA member), Tax and Financial advisor.
- Holding a Master's degree in Audit & Consulting from the Paris business school (ESCP-EAP), a Diploma in International Financial Reporting (DipIFR) from the ACCA (London) and a BA in Finance and Management control from the University Paris-IX Dauphine.
- Worked in France at Ernst & Young in Audit and Corporate Finance for 8 years before coming back to Lebanon in 2004 where he is currently the managing partner of the audit & consulting firm DAHER & PARTNERS.
- Board member of the Lebanese Association for Taxpayers' Rights (ALDIC) and treasurer of the Lebanese Business Leaders Association (RDCL).

SESSION 2

**Public Procurement Law
No. 244 dated 19 July 2021**

Public Procurement Law 244/2021



Public Procurement Law 244/2021 Objectives

Article 1: Objectives of the law

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

Procurements shall be subject to:

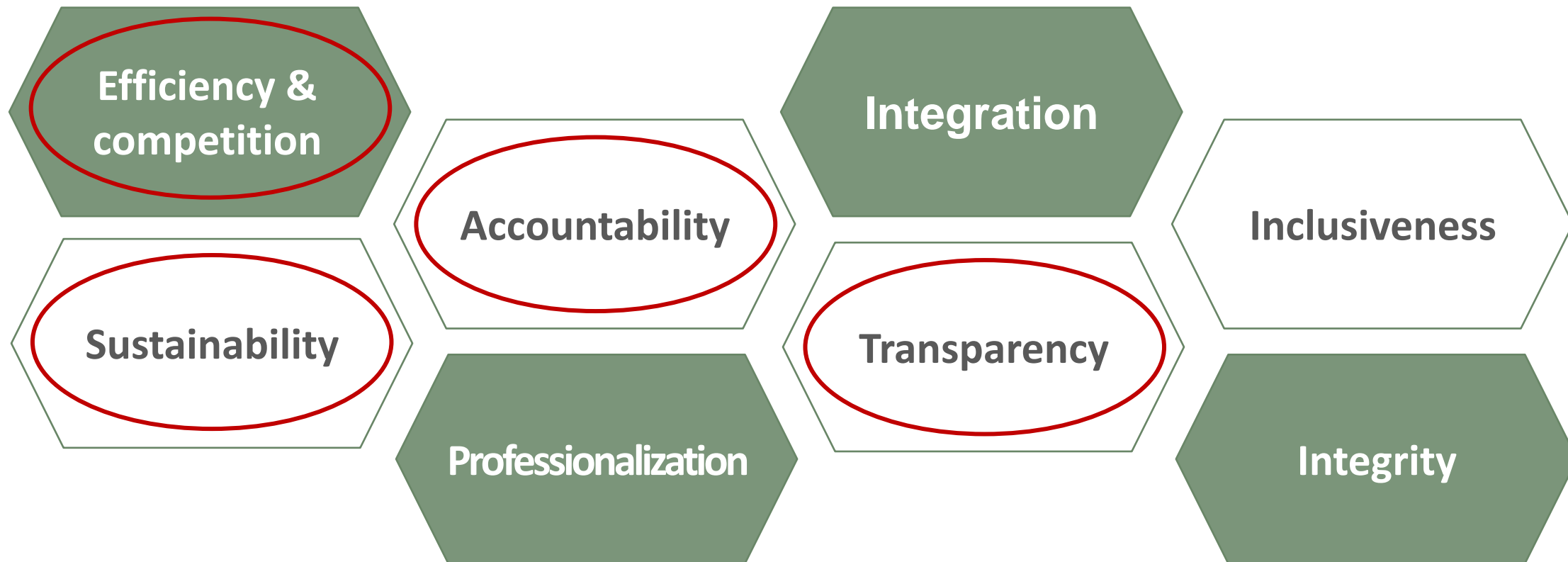
- good Governance rules, and
- take into consideration the requirements of sustainable development



Public Procurement Law 244/2021 : Table of content

<p>Chapter 1 General provisions</p> <ul style="list-style-type: none"> ▪ Definitions ▪ Scope of Application ▪ Language ▪ Currency ▪ Etc... 	<p>Chapter 2 General rules related to the procurement process</p> <p>The chapter presents general rules for the preparation, conduct and implementation of procurement</p>	<p>Chapter 3 Procurement methods</p> <p>The law describes 7 methods, 3 of them are new:</p> <ul style="list-style-type: none"> ▪ 2-stage tendering ▪ Request for proposal for consulting services ▪ Framework agreement 	<p>Chapter 4 Electronic procurement</p> <p>The chapter contains special provisions that pave the way for the gradual implementation of electronic Procurement</p>	<p>Chapter 5 Professionalization and Capacity Building</p> <p>Professionalizing public procurement through:</p> <ul style="list-style-type: none"> ▪ Recognizing it as specific profession within Lebanese civil service organizational structure ▪ Mandatory training
<p>Chapter 6 Public procurement governance</p> <p>Details roles and mandates of procurement stakeholders:</p> <ul style="list-style-type: none"> ▪ Public Procurement Authority ▪ Review and complaints Authority ▪ Tender and acceptance committees ▪ Contracting authorities 	<p>Chapter 7 Complaints proceedings</p> <p>The chapter details the mechanisms for the review and remedies system in the pre-contractual phase</p>	<p>Chapter 8 Integrity and sanctions</p> <p>The chapter promotes integrity through:</p> <ul style="list-style-type: none"> ▪ Transparency: mandatory publication ▪ Integrity: by identifying contradicting actions and assigning adequate sanctions ▪ Control: by introducing internal control, in addition to external control 	<p>Chapter 9 Transitory Provisions</p> <ul style="list-style-type: none"> ▪ Ongoing procurement ▪ Cancellation of previous contradictory laws ▪ Entry into force 	

Public Procurement Law 244/2021 : 8 Guiding Principles





Public Procurement Law 244/2021 : 8 Guiding Principles

1. Inclusiveness

The law provisions are applied to all public administrations, institutions and bodies that procure to ensure its own needs or provide services to citizens at all levels

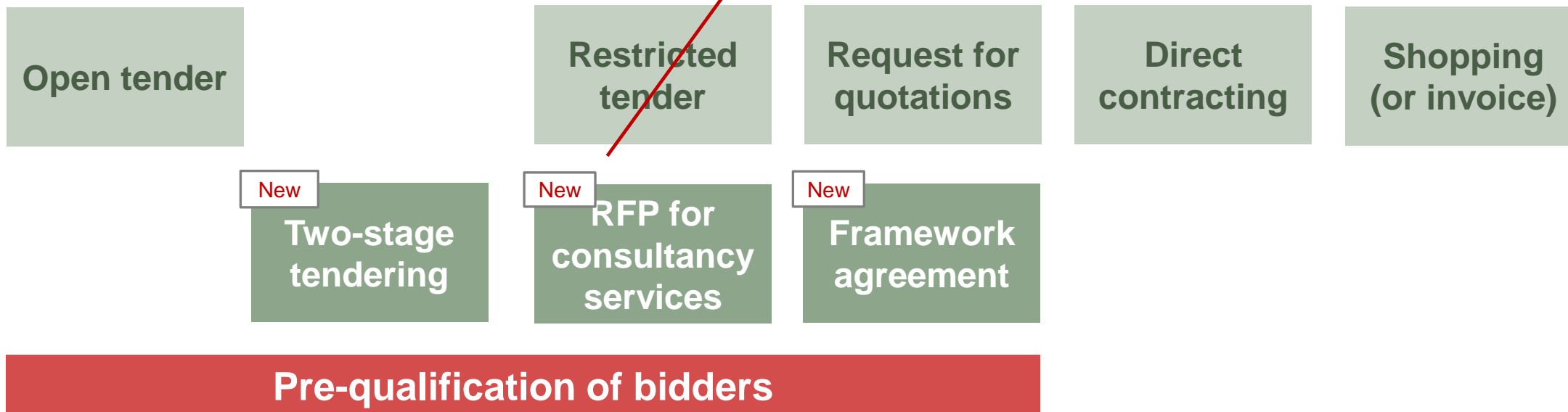


Public Procurement Law 244/2021 : 8 Guiding Principles

2. Efficiency and competition

Competitive procedures are the general rule to secure efficiency, equal and fair opportunities for all bidders, fight corruption, limit mutual agreements and introduce new and modern procurement methods.

Procurement Methods proposed in Chapter 3 of the law 244/2021



Public Procurement Law 244/2021 : 8 Guiding Principles

3. Transparency

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

Chapter 8: Integrity and accountability **Chapter 1** **Chapter 2 and 3** **Chapter 5**
Article 109: Transparency **Definitions** **procurement proceedings** **CB**

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



Public Procurement Authority

Current role and functions of the Central Tender Board

For procurement > LBP 100 million in ministries:

1. Compose tender committees
2. Control bidding documents
3. **Non-binding recommendations**
4. Manage bidding process, tender opening and evaluation sessions.

Role and functions of the Public Procurement Authority

New

The PPA shall undertake, in coordination with the different relevant administrations, the organization, supervision, control & development of the quality management of PP.

Its tasks include but are not limited to:

1. **Proposing public policies** related to public procurement
2. **Promote principles of openness, competition & transparency** through:
 - Manage and operate the central electronic platform.
 - Collect the annual procurement plans received from the procuring entities in a standardized form issued by the PPA, classify and duly publish such plans on the electronic portal.
 - Publish, in accordance to procedures, all announcements and notifications related to procurements and procurement proceedings on the central electronic platform
3. **Possibility to stop procurement procedures** in case of inefficiencies.
4. **Regulating the framework agreements** referred to in this law.
5. **Decide on the approval of use of the two-stage-tendering** method.
6. **Consolidating data related to public procurement operations**, at all levels, in its central database
7. **Taking, maintaining & publishing exclusion decisions** in a public record of exclusion
8. **Proposing standard documents & forms for PP** procedures.
9. **Prepare guidelines, manuals & comments** in relation to PP rules & procedures, give advice & assistance to procuring entities & potential bidders.
10. **Make suggestions & recommendations on means of developing and encouraging innovation in PP, motivate SMEs to participate in PP.**

Public Procurement Law 244/2021 : 8 Guiding Principles

4. Sustainability

Considering the sustainable development goals with their economic, social and environmental dimensions, in balance with the primary objectives of public procurement.



Chapter 2: General Rules

Chapter 1 Article 1

Article 15: Sustainability and development policies

Where possible, procuring entities shall adopt sustainable public procurement to direct the procurement power of the State towards sustainable supplies and services with a view to minimize the environmental impact and achieve the economic and social objectives set forth in international agreements and in accordance with national priorities, while ensuring a balance between the potential benefits and achieving the best value of spending public funds in such a way as to provide incentives to SMEs, local production and national expertise.

Where possible, bidding shall be made on the basis of lots, and the bidding documents shall specify the number and nature of such lots or groups and the requirements for participation in a lot or group of the procurement and the manner in which the contract is awarded, for the purpose of guaranteeing social and economic benefits. The sustainable public procurement rules and policies shall be set by decrees issued by the Council of Ministers, based on the proposal of the minister(s) concerned.

Article 16: Domestic preferences

Contrary to any other provision, proposals containing supplies or services of national origin may be given a ten (10) percent ratio preference over proposals containing foreign supplies or services. Preference shall be given to proposal components of national origin. National supplies and services and the specifications thereof required to benefit from such preference are determined according to the rules of origin.

It is forbidden to include, in the bidding documents or pre-qualification documents, provisions that exclude supplies/goods manufactured in Lebanon or Lebanese consulting and intellectual services if such supplies or services are available and the quality thereof meet the technical requirements.

Public Procurement Law 244/2021 : 8 Guiding Principles

5. Integrity

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

Chapter 1: Definitions

Chapter 2 and 3: Procurement proceedings

Chapter 5: Capacity Building

Chapter 7: Challenge proceedings

Chapter 8: Integrity and accountability

Article 110: Integrity

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

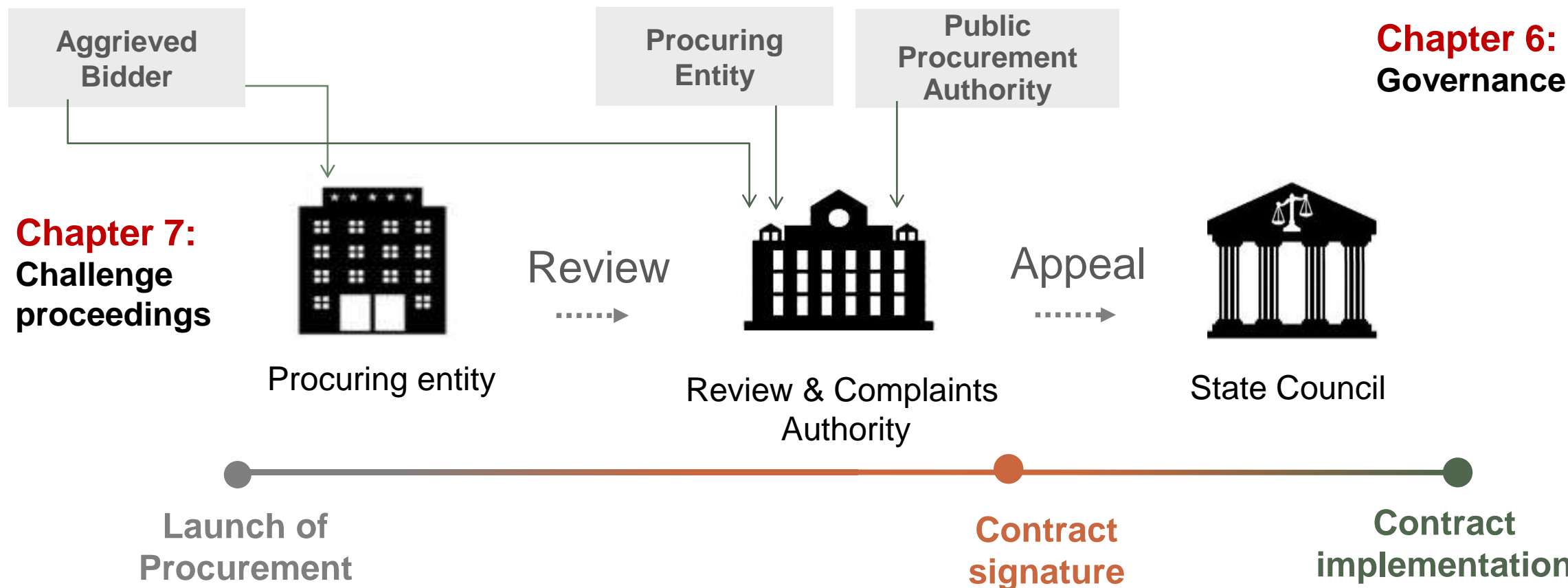
In order to achieve this obligation, the bidders and the contractors shall avoid the following practices:

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

Public Procurement Law 244/2021 : 8 Guiding Principles

6. Accountability Review and complaints system

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



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**Lebanese private
sector's perspective to
competition and
transparency in public
procurement**

LEBANON: Policies in favor of SMEs participation

The GoL may consider undertaking policies in line with PPL no. 244/2021 including:

1. Facilitate access of SMEs to **information and guidance**.
2. Provide improved **access to low-value procurement** opportunities (incl. Ads on central electronic platform to lower barriers to entry and level the informational playing field for SME participation)
3. Facilitate SMEs access, including women-led businesses, through **joint ventures and subcontracting**.
4. Give **preferential treatment to certain types of SMEs** (firms with fair labor practices or those led by or support hiring of underrepresented minority populations or women).
5. Institute a standard & formal mechanism for **regular consultations** between public and private sectors.
6. 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.
7. Include **public procurement considerations in the development and implementation of policies** for industrial and regional development.
8. Provide SMEs with a continuous **source of training and coaching** in procurement participation.

Thank you

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