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Reforming Public Procurement in Lebanon : Towards sound financial governance, economic recovery, and restoration of trust

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Background

Public procurement reform is a whole-of-government reform highlighted in the Ministerial Declarations of both Hariri (2019) and Diab Governments (2020)¹ and in the Lebanese Government's Financial Recovery Plan (April 2020)². **It is one of the conditionality of international aid to be channeled to support the economic recovery of Lebanon.** Following the CEDRE conference (April 2018), it was reiterated by the International Support Group for Lebanon (ISG) on the occasion of the Paris meeting (December 2019) and across its consecutive statements.

Following the Port of Beirut explosion on August 4, 2020, the international community, on the occasion of the "International Conference on Assistance and Support to Beirut and the Lebanese People" held on August 9, 2020, **recalled the urgent need to reform public procurement**, among key structural reforms, to address the deepening crisis, strengthening governance and accountability, and restoring confidence in State institutions. It was also stressed in the French roadmap as one of the most urgent economic and financial reforms that Lebanon is called to advance on.

The **Ministry of Finance committed to procurement modernization**, giving a strong signal of trust to both the private sector and the donor community. The Minister of Finance mandated the **Institut des Finances Basil Fuleihan**³ to lead on this exercise⁴. A **vision** was set for 2019 - 2023 founded on:

- **An evidence-based diagnostic using MAPS II instrument** (*Methodology for Assessing Procurement Systems developed by OECD*).
- A **participatory, consultative and inclusive process** engaging concerned stakeholders from public sector, business community, civil society and involving high-quality local expertise and international technical and policy advise.
- A **multi-layered reform**, touching operations of government institutions, roles and prerogatives of oversight and control agencies, local and international suppliers, and society at large.
- **Enhanced coordination between the government and donor community**, to ensure alignment with international standards and complementarity with government commitments.

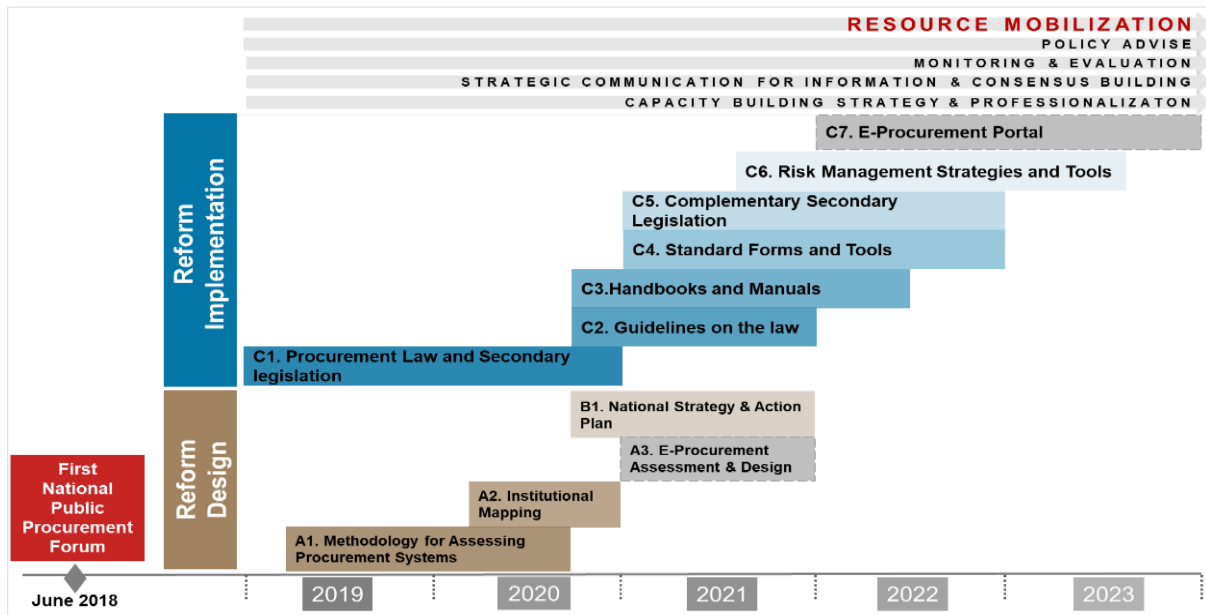
¹ The Diab government declaration commits "... to pursue efforts undertaken by the Ministry of Finance to reform the public procurement apparatus including finalizing the MAPS II exercise, validating and adopting its recommendations, and working towards immediate adoption of a modern public procurement law in consultation with various stakeholders." (Section 2, Article 5).

² The Government's Financial Recovery Plan considers public procurement modernization as one of the key reforms to "promote a new integrated, sustainable and inclusive growth model" and commits to approving a law by the Parliament (Section D, Part 4).

³ The Institute is an autonomous public institution working under the tutelage of the Lebanese Minister of Finance.

⁴ Decisions no. 109/1 dated March 4, 2019 and no. 199/1 dated June 9, 2020.

This vision was also aligned with **Lebanese citizens' increased demand**, since October 17, 2019, for transparency in public money management and the immediate implementation of reforms.



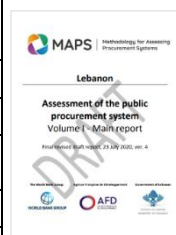
Progress To Date

MAPS ASSESSMENT (2019-2020)

Falling **within the international requirements** for a modern procurement system in Lebanon, the MAPS assessment was conducted with the support of the World Bank and the Agence Française de Développement (in the framework of Global Procurement Partnership-GPP) from June 2019 to July 2020, in consultation with **more than 100 national stakeholders** from the public and private sectors and civil society.

The **MAPS report provides, for the first time in Lebanon, evidence on the level of performance of the procurement system**, according to four pillars⁵, laying the foundation for a strategic reform vision.

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



The **MAPS report is being reviewed** by the GPP Secretariat, to be followed by the Technical Advisory Group (TAG) review and clearance.

⁵ MAPS Draft Assessment Report (July 2020): http://www.institutdesfinances.gov.lb/wp-content/uploads/2020/07/Volume-I-MAPS-Assessment-report-LB-2020-Ver4-final-revised-draft_FINAL-2.pdf

Key recommendations of the MAPS assessment are shaped by pillar:

Pillar 1 - Legislative, Regulatory and Policy 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, with standardization of related guidance.
3. Review the approach to handling complaints, to ensure timely review and resolution by an independent institution.
4. Raise transparency, improve efficiency and reduce costs by introducing e-procurement.
5. Assign responsibilities for preparation and dissemination of standard documents and guidelines, allocate resources, ensure their availability free of charge on a central electronic platform, and monitor their use.
6. Introduce key principles of sustainability in public procurement, through regulations and guidance.
7. Align procurement legislation with the relevant provisions of international agreements ratified by Lebanon.

Pillar 2 – Institutional Framework and Management Capacity

1. Improve the integration of public procurement into public financial management.
2. Improve monitoring of use of funds during contract implementation and raise the transparency.
3. Complement external audit by introducing systematic own ex-post evaluation by the contracting authority.
4. In the procurement law, define the various central functions and allocate them to specific entities with resources.
5. Institutionalize an obligation for procuring entities to have a dedicated unit for public procurement within their organizational structure, with defined functions and responsibilities, with staffing and resources.
6. Regulate joint and centralized procurement in a clear, comprehensive and coherent manner.
7. Set up a national electronic platform for mandatory publication of procurement notices.
8. Develop a comprehensive concept for introduction and management of e-procurement.
9. Define the needs and procedures for collection, management and analysis of data; adopt corresponding regulations and assign responsibilities and resources to the competent authorities.
10. Assess skills and training needs, and develop, adopt and implement a capacity building strategy.
11. Establish and implement a policy rendering procurement training mandatory to all stakeholders.
12. Revise and adopt job descriptions and qualification requirements for procurement officials and formally recognize the profession in the Lebanese civil service.
13. Systematize the collection and use of aggregated data on public procurement performance.
14. Develop, adopt, implement and monitor a national strategy to reforming the public procurement system.

Pillar 3 - Procurement Operations and Market Practices

1. Ensure that data on the procurement cycle is accessible free of charge on a central electronic platform.
2. Assign responsibility to a competent authority for analyzing data and making it available.
3. Require objectives and intended results to be clearly formulated and recorded during planning.
4. Develop and apply performance-based approaches for planning, preparation, execution and evaluation.
5. Issue guidelines and provide hands-on training for procuring entities.
6. Instill a paradigm shift towards a win-win situation between the public and the private sector.
7. Institute a standard and formal mechanism for consultations between the public and the private sector.
8. Identify the nature, origin and modalities of all the barriers facing enterprises, especially SMEs.

Pillar 4 - Accountability, Integrity and Transparency

1. Develop and institutionalize mechanisms for enhanced consultation with civil society.
2. Increase transparency by making information accessible, free of charge through electronic platforms.
3. Eliminate gaps and overlaps in regulations and conflicting roles among oversight institutions and other entities involved.
4. Develop a policy for internal audit and a properly resourced plan for its introduction in all procuring entities.
5. Develop simpler, efficient and effective means for follow-up and enforcement of findings and recommendations of oversight bodies. Publication of those actions is to be observed.
6. Once 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.
7. Establish an efficient complaints system to enhance early responsiveness, implement timely and effective corrective measures and allow adequate and timely reporting.
8. Thoroughly revise or replace the illicit enrichment law and establish the National Anti-Corruption Commission, with necessary resources. Ensure efficient implementation of the anti-corruption laws.
9. Create an enabling environment for civil society to monitor and prevent fraud and corruption.
10. Ensure that accountability, integrity and transparency data are generated, published, compiled and made accessible, and monitor its use.

INSTITUTIONAL MAPPING (2020)

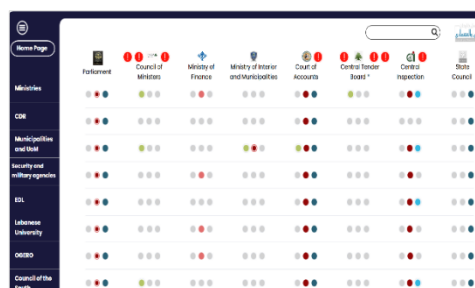
To better understand the weaknesses of the institutional framework, an **in-depth institutional mapping of procurement stakeholders** was conducted with the support of the World Bank (March – June 2020).

The **mapping report** presents procurement stakeholders’ roles and mandates coupled with a SWOT analysis, and in-depth study of overlaps in current practices after review of scattered laws, procedures and practices. The report proposes recommendations and scenarios for a modern institutional set-up, in line with the new public procurement law.

Based on current legislation, the **iPlan tool** was developed. It features diverse type of stakeholders’ interventions for control and oversight of procurement operations at the level of ministries, autonomous public institutions and municipalities. It also spots gaps and overlaps, from planning to audit, that are currently causing inefficiencies and high corruption risks, leading to a degraded quality of the system.

This exercise provides **evidence and in-depth analysis on policy options and tools grounded in international standards**, and adapted to the Lebanese context, to guide national dialogue on procurement reform in general, and on the new draft law in particular.

In order to be successful, recommendations would need to be addressed **in a clear, coordinated, well-resourced and carefully implemented manner, in consultation with all concerned stakeholders.**



PUBLIC PROCUREMENT DRAFT LAW (2019-2020)

In February 2020, MPs Michel Moussa and Yassin Jaber **submitted the draft public procurement law to the General Secretary of the Lebanese Parliament**⁶. On March 4, 2020, a **special parliamentary committee** was formed, to study and discuss the new proposed draft law, chaired by MP Yassin Jaber, with the membership of MPs Alain Aoun, Elias Hankash, Amin Cherri, Anis Nassar, Paula Yacoubian, Jihad Al Samad, Samir El Jisr, Farid El Boustany, Faysal El Sayegh, and Nicolas Nahas.

Prior to launching in-depth discussions in committee, a **launching event** took place on June 2 at the Parliament, in the presence of public agencies, oversight bodies, business community and international community representatives. The Institut des Finances Basil Fuleihan exposed the rationale behind public procurement reform and the draft law methodology and principles, which were positively welcomed and clearly reiterated by participants.

Three separate **consultation meetings**, with representatives of public administrations, oversight bodies, and the business community, followed in June aiming at gathering their preliminary comments on the draft law.



Since June 18, 2020, the **draft law is being thoroughly studied and discussed in parliamentary committee**, with the regular participation of key stakeholders, namely the Central Inspection Board, the Central Tender Board, the Court of Audit, the State Council, the Ministry of Justice, the Ministry of Interior and Municipalities, OMSAR, and the Council for Development and Reconstruction, where progress is being closely monitored by the international community. This effort is expected to be completed in October 2020, followed by the transfer of draft law to the General Assembly for voting.

The review and enhancement process of the draft law takes into consideration the **substantive feedback received from the parliamentary committee members, and from 15 public agencies, oversight bodies and the private sector**, namely the ministries of Finance, Defense, Interior and Municipalities, and Public Works, in addition to the Lebanese Army, the Court of Audit, the Central Tender Board, the State Council, OMSAR, the Higher Council for Privatization and PPP, the Council for Development and Reconstruction, the Council of South, the Syndicate of Contractors, the Chamber of Commerce and Industry in South Lebanon, the Rassemblement des Dirigeants et Chefs d'Entreprises Libanais.

During **more than 75 working hours** to date, the committee **completed the first reading of the draft law**; A second reading has started to integrate enhancements advised by committee members. The experts' team is working on enhancements tackling chapter 6 on "Governance of public procurement" detailing the roles and mandates of the regulatory body, the complaints commission, the tender and acceptance committees and the procuring entities, and chapter 7 on "The Review mechanism".

This process is also observing the **alignment with the eight principles of public procurement** on which the draft law is founded, inspired by the OECD twelve principles: comprehensiveness, integration, accountability, effectiveness and competition, integrity, transparency, professionalization, and sustainability.

The draft law was **prepared by a team composed** of national policy strategists, procurement specialists, legal experts and economists. **Technical assistance by OECD-SIGMA experts** accompanied the drafting process and provided policy advice.

The first draft of the public procurement law was presented to the Council of Ministers' Reform Committee back in September 2019. It was **peer reviewed twice by national and international experts**, from the World Bank (Simeon Sahaydachny, Luis Prada, Sepehr Fotovat, Lina Fares), OECD-SIGMA (Piotr-Nils Gorechi) and MAPS Lead Expert (Daniel Ivarsson). National procurement experts, legal experts from the private sector, and members of MAPS national Steering committee also provided feedback. The translation of the draft law into English took place in two stages, with the support of the World Bank, allowing international peer reviews to take place and enhancements to be reflected.

⁶ Public Procurement Draft Law (February 2020): <http://www.institutdesfinances.gov.lb/wp-content/uploads/2020/06/PP-Draft-Law-Feb2020-english-translation-WITH-RL.pdf>

The drafting and review process was based on:

- Review of previous draft procurement laws;
- Evidence and recommendations of the MAPS exercise;
- The UNCITRAL Model Law on Public Procurement (2011);
- Recommendations of the OECD Council on Public Procurement (2016);
- Benchmarks with procurement laws recently adopted in the Arab region, namely Jordan (2019), Egypt (2018), Palestine (2014), and Tunisia (2014);
- The input of national experts, policy strategists and subject-matter specialists, economists, legal experts, the private sector and civil society;
- Technical guidance of OECD-SIGMA experts.



Towards a strategic vision for public procurement reform

To ensure a sound and efficient implementation of the draft law once enacted, there is an urgent need to mobilize resources for the launching of pending reform components:

E-PROCUREMENT ASSESSMENT (2020-2021) - Pending

E-procurement is a powerful tool to ensure transparency and integrity in public procurement.

As part of the reform design process, an **e-procurement assessment** of legal, institutional and infrastructure capacities would help get an informed vision for future e-procurement design and implementation.

The assessment would result in an **e-procurement diagnostic** with in-depth review of current available platforms, infrastructure and potential capability, along with **recommendations** for potential e-procurement scenarios in line with the new legal and institutional frameworks.

NATIONAL STRATEGY AND ACTION PLAN (2020-2021)

A national strategy to modernize public procurement is currently inexistent.

Based on the MAPS recommendations, there is an **urgent need for a unified, widely shared and formally adopted vision of public procurement reform**, in order to ensure national ownership and sustainability of the process. A **national strategy and action plan** shall be formulated at the inter-ministerial level while ensuring a dynamic coordination mechanism with concerned stakeholders, then submitted to the Council of Ministers for adoption.

GUIDELINES ON THE PROCUREMENT LAW (2020-2021) - Pending

Guidelines are intended to explain and facilitate the understanding of the new procurement law objectives and how the provisions are designed to achieve those objectives, in addition to commentary on article by article. The **guidelines are intended to enhance the effectiveness of the law** as tool for modernizing the public procurement system.

HANDBOOKS AND MANUALS (2020-2021) - *Pending*

User-friendly and customized explanatory handbooks and manuals are key instruments for the efficient and transparent implementation of the new public procurement law and related procedures. These tools shall be directed at different categories of procurement practitioners, economic operators and the civil society to ensure sound procurement practices, increase market competition and enhance transparency and accountability.

STANDARD FORMS AND TOOLS (2021-2022) - *Pending*

A **main drawback is the absence of nationally binding standardized tools**, which complicates operations, increases costs, reduces competition and trust, and limits access to procurement market.

In 2008, the **Ministry of Finance – Institut des Finances Basil Fuleihan developed 5 standard bidding documents (SBDs)** reflecting best practices and balanced conditions of contracting. This exercise, conducted by national experts with guidance and oversight from WB experts, was financed on a WB PCF grant. The SBDs were reviewed by representatives of ministries and public institutions, experts from the Ministry of Finance, the Court of Audit, OMSAR and the private sector. They were tested, revised and disseminated across public sector, then submitted to the Prime Minister Office in 2009 but no action was taken since.

In **light of the new public procurement law and the MAPS recommendations**, the Ministry of Finance intends to launch a consultation process with all concerned stakeholders to **develop and test new standard forms and tools** in view of their **mandatory adoption by Government**. Making their use mandatory through secondary legislation (decree) will be followed by the deployment of large scale capacity building programs.

COMPLEMENTARY SECONDARY LEGISLATION (2021-2022) - *Pending*

Complementary secondary legislations are **key regulatory instruments enabling an efficient entry-into-force of the public procurement law**, while ensuring that guiding principles are respected.

A set of secondary legislations shall be developed covering the implementation of the new public procurement law provisions, the new institutional set-up, the capacity building process and the insurance of high standards of integrity and transparency.

RISK MANAGEMENT STRATEGY AND TOOLS (2022-2023) - *Pending*

Mismanagement and corruption risks are high across the procurement cycle and at different levels of procuring entities. Addressing these risks has never been considered in the current system.

To efficiently identify and mitigate procurement risks, a strategy with implementation tools shall be developed, accompanied with awareness raising to procurers and decision-makers on their respective roles.

E-PROCUREMENT PORTAL (2021-2023) - *Pending*

Based on the e-procurement assessment results, the development of an **e-portal for public procurement that allows the collection, analysis, provide free access and use of data** for decisions makers and concerned stakeholders is a key milestone to advance reform, ensure sound implementation of the procurement law, in line with international standards.

CAPACITY BUILDING STRATEGY AND PROFESSIONALIZATION (2020-2023) - *Pending*

A stand-alone procurement profession is currently inexistent in government.

The MAPS exercise laid the foundation for **establishing the procurement profession and for the development of a national vision for capacity building and professionalization** of the public procurement workforce, to better prepare and sustain reform efforts and meet international standards.

A **capacity building strategy and action plan**, including competency frameworks to guide recruitment, career development, and capacity building, shall be developed and submitted to the Council of Ministers for adoption.

HOW TO SUPPORT THIS ESSENTIAL REFORM?

Donor community, private sector and civil society **have a critical role** in contributing to this reform process by:

1. **Capitalizing** on efforts lead by the Institut des Finances to **gain recognition among policy makers for the significance and strategic importance** of public procurement reform.
2. **Advocate** to sustaining the political will, ownership and consensus for the endorsement of the draft procurement law and secondary legislations by the Parliament and the implementation of the various components critical to its success.
3. **Raise awareness, maintain dialogue and access to information** on this whole-of-government reform, while addressing the concerns of concerned stakeholders.
4. **Encourage** a dynamic coordination with the business community in particular to promote the reform vision approach and harmonize efforts.
5. As such, **public consultations with policy makers, the business community and civil society** would tackle various facets of an efficient, competitive and transparent system for economic recovery.
6. **Provide much needed technical and financial resources** to implement the reform vision components.