

Reforming Public Procurement in Lebanon

Briefing Note - March 2020

I. SITUATION OF PUBLIC PROCUREMENT

Lebanon has an outdated and fragmented public procurement system. It suffers from a scattered legal framework and overlapping institutional mandates, with considerable capacity gaps, resulting in inefficiencies and high risks of corruption.

The **quality** of the procurement system is **below average** as compared to the rest of the world and to a number of MENA countries.

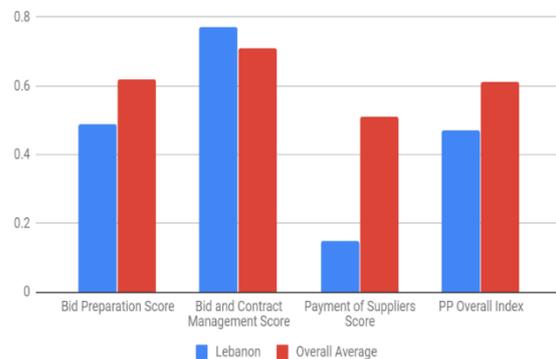
At the CEDRE Conference, the Government of Lebanon committed to **undertaking essential sectoral and cross-sectoral reforms**, including fighting corruption, modernizing the public sector and public finance management.

Public procurement is one of the main cross-sectoral reforms the Government of Lebanon has committed to in order to improve fiscal governance and the quality of public services, encourage investment inflows, and strengthen accountability and transparency. It was also reiterated by the consecutive statements of the International Support Group (ISG) for Lebanon in December 2019 and January 2020.

Indeed, public procurement reform is key to curbing corruption as 57% of bribery cases detected worldwide are procurement related transactions¹. In Lebanon, corruption and the inadequate supply of infrastructure are among the top problematic factors of doing business. The country's rank on competitiveness decreased from 80th in 2018 to 88th over 141 economies in 2019². Lebanon also ranks low on doing business (143/190)³.

Accounting for **13% of budget expenditures** by central government (excluding debt and reserves), and **4% of the Gross Domestic Product** (around US\$2 billions) at the central level⁴, public procurement is a key policy instrument to ensure value for money. A modern Public Procurement is thought to achieve **savings of around US\$ 500 million** on yearly basis, allowing for more fiscal space to finance public investments and for enhancing service delivery to citizens.

Lebanon and Overall Average Public procurement Regulation Scores



The PP Overall Index is the Procurement life cycle overall score, average of scores of 3 sub-categories defined above.

Source: World Bank (2017), Benchmarking Public Procurement

¹ OECD (2014), *OECD Foreign Bribery Report*

² World Economic Forum, *Global Competitiveness Report 2019*

³ World Bank (2020), *Doing Business Report*

⁴ Institut des Finances Basil Fuleihan (2014), *Professionalizing Public Procurement in Lebanon: Diagnostic Review and a Vision Forward*

II. GOVERNMENT COMMITMENT TO PROCUREMENT REFORM

The official commitment to public procurement reform was reiterated in the **Ministerial Declarations** of both Hariri Government (2019) and Diab Government (2020), where the latter “.....commits to pursue efforts undertaken by the Ministry of Finance to reform the public procurement apparatus including finalizing the MAPS II exercise, validating and adoption of its recommendations and work towards immediate adoption of a modern public procurement law in consultation with various stakeholders.” (Section 2, Article 5).

In 2019, the former Minister of Finance has mandated the **Institut des Finances Basil Fuleihan** (decision 109/1, dated March 4th, 2019) to:

1. Draft the new public procurement draft law;
2. Conduct an evidence-based diagnostic of the public procurement system, using MAPS II instrument (Methodology for Assessing Procurement Systems developed by OECD), in collaboration with the World Bank (WB) and the Agence Française de Développement (AFD);
3. Update the standard bidding documents developed by the Ministry of Finance in 2013 under WB financing;
4. Elaborate practical recommendations to advance public procurement reform.

1. A Modern Public Procurement Law

A team composed of national policy strategists, procurement specialists, legal experts and economists worked on **drafting the new public procurement draft law for Lebanon**.

Technical assistance by OECD-SIGMA experts was solicited to accompany the drafting process and provide policy advice.

These efforts are informed by and based on:

- Review of previous draft procurement laws;
- Evidence and data collected through the implementation of MAPSII;
- 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.

In September 2019, the Minister of Finance **submitted a first draft of the public procurement law**, prepared by the Ministry’s team of experts, **to the Council of Ministers**.

In February 2020, **MPs Michel Moussa and Yassin Jaber submitted an enhanced version of the draft law to the General Secretary of the Lebanese Parliament**. On March 4, 2020, a special parliamentary committee was formed to study and discuss the proposed draft law, chaired by MP Yassin Jaber.

This draft was the fruit of a condensed **peer review process by national and international experts**, from the World Bank, OECD, OECD-SIGMA, MAPS experts, in addition to procurement experts at the Institute of Finance and legal experts from the private sector.

Secondary legislation, guidelines and training will follow to ensure a sound entry-into-force of the law once approved.

Progress to date – Draft Law



Legend:  Completed  In progress  Not initiated

2. MAPS II Assessment

In June 2019, the Ministry of Finance launched the implementation of the **Methodology for Assessing Procurement Systems – MAPS II**, with the support of the World Bank and the Agence Française de Développement.

The assessment falls **within the international requirements** to establishing a modern and sound public procurement system in Lebanon. MAPS II is an **international methodology** developed by the OECD to assessing procurement systems worldwide. It aims at identifying the **strengths, weaknesses and gaps** of the Lebanese procurement system, and providing recommendations to prioritize reform actions.

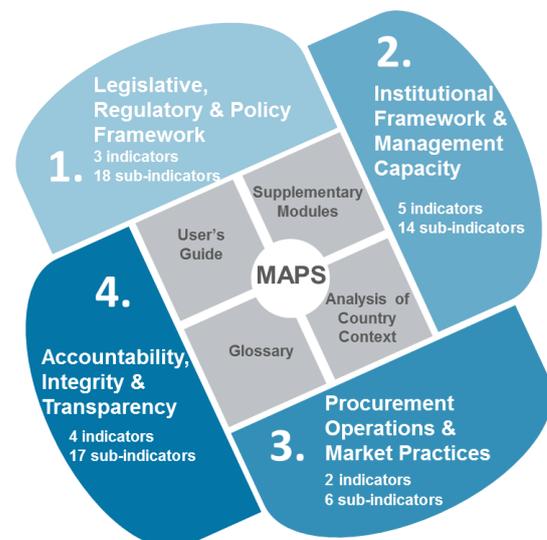
It tackles 4 pillars:

1. The Legislative, Regulatory and Policy Framework
2. The Institutional Framework and Management Capacity
3. Procurement Operations and Market Practices
4. Accountability, Integrity and Transparency

Two international experts, mobilized by the partner organizations, are facilitating the evaluation process and ensuring its alignment with the methodology's requirements and guidelines.

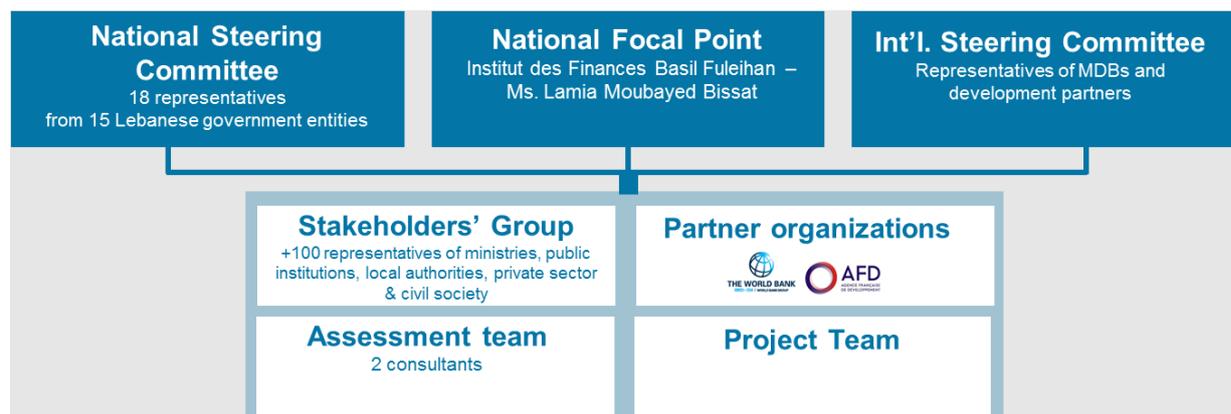
A **national steering committee**, composed of 18 representatives from 15 Lebanese public administrations and oversight bodies, is facilitating access to needed information.

A **stakeholders' group** of more than 100 institutions from the public and private sectors and the civil society, are being consulted throughout assessment and validation workshops.



Source: www.mapsinitiative.org

A **final assessment report with recommendations** is expected in the first half of 2020.



3. Standard Bidding Documents

A **main drawback** of public procurement in Lebanon is the **absence of nationally binding standardized bidding documents (SBDs)**. This shortcoming complicates procurement operations, increase costs, reduces competition and trust, and limits the access of new economic operators to this 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 line 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 the public sector.

They were submitted to the Prime Minister Office in 2009 but no action was taken since.

In light of a modern public procurement law and of the MAPS II recommendations, the Ministry of Finance intends to launch a consultation process with other concerned

stakeholders namely the Court of Audit, State Council, Central Inspection Board, the Tender Board, line ministries, OMSAR, public institutions and municipalities, etc. in order to **upgrade the SBDs and test them in view of their mandatory adoption by Government**. Making the use of SBDs mandatory across public sector can take place through secondary legislation (decree) followed by the deployment of large scale programs for capacity building and the issuance of explanatory guides and notes.



III. SUPPLEMENTARY AREAS OF REFORM IDENTIFIED BY MAPS II EXERCISE

1. Institutional Mapping

The MAPS II exercise showed clearly the **weaknesses of the public procurement institutional framework** in Lebanon. It suffers from **overlapping mandates**, with **considerable capacity gaps**, resulting in **inefficiencies** and **high risks of corruption**.

This commands a **detailed institutional mapping exercise of procurement stakeholders** to clarify roles, mandates, prerogatives and structures and proposed modern scenarios, at the legal and institutional levels, in line with the new public procurement law.

Progress to date – Institutional Mapping



Legend:  Completed  In progress  Not initiated

2. National Strategy

A **national strategy** to modernize public procurement is currently non-existent.

The MAPS II exercise will lay the foundation for a **national vision and medium to long term strategy** informed by evidence and defining policy objectives, benchmarks, indicators, and advocacy to guide and evaluate the progress and ensure that this critical reform has enough elements of success.

The strategy will be **developed and submitted to the Council of Ministers for adoption**.

Progress to date – National Strategy



Legend:  Completed  In progress  Not initiated

3. Capacity Building Strategy

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

The MAPS II exercise will lay the foundation for a **national vision for capacity building and the professionalization of the public procurement workforce**, to better prepare and sustain modernization efforts and meet international standards.

A **strategic vision**, including a competencies framework to guide recruitment, career development, and capacity building, in addition to an action plan for professionalization, will be **developed and submitted to the Council of Ministers for adoption**.

Progress to date – Capacity building strategy



IV. TIMELINE (2019-2023)

