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

SEPTEMBER 2021
Six topics covering the main features of the Law:

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

01 Public Procurement and the high cost of corruption

02 The new Public Procurement Law 244/2021
SECTION 1

Public Procurement and the high cost of corruption
What is Public Procurement?

- Goods
- Works
- Services

Tax Payers’ Money

Best Value for Money
The high cost of corruption

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

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

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

Pre-tendering Phase

Procurement Planning

Requirement Definition

Tendering or Sourcing

Evaluation & Selection

Contract Award

Contract Management

Post-tendering Phase

Tendering Phase
Public Procurement as a major risk area for corruption
Public Procurement as a major risk area for corruption

**Question 1:**
What are the areas of corruption risks in PP
The procurement Cycle

- Procurement Planning
- Requirement Definition
- Tendering or Sourcing
- Evaluation & Selection
- Contract Award
- Contract Management

1. Post-tendering Phase
2. Pre-tendering Phase
3. Tendering Phase
Public Procurement as a major risk area for corruption

Pre-Tender Phase

- TORs - دفاتر الشروط
- Specifications setting - وضع المواصفات
- Qualification - الشروط التاهلية
- Choice of procurement method - اختيار طريقة التعاقد
Public Procurement as a major risk area for corruption

Tender Phase

- Announcement - مدة الاعلان
- Bid Opening - جلسة فتح العروض
- Evaluation of Tenders - تقييم العروض
Public Procurement as a major risk area for corruption

Post-Tender Phase

- Variations - التعديلات على العقد
- Acceptances - الاستلام
Public Procurement as a major risk area for corruption

Common
RED FLAGS
of
corruption
Red Flags of corruption

Pre-tendering red flags

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

**Tendering red flags**

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

Post-Award red flags

- Use of questionable agents or subcontractors (Corruption)
- Continued acceptance of poor quality goods or works (Corruption)
- Delivery of poor quality goods, works or services (Failure to meet contract specification)
- Questionable contract amendments (change orders) (Changes in contract to increase price, corruption)
- Questionable invoices (False inflated or duplicated invoices, corruption)
- Payment of unjustified high prices (False inflated or duplicated invoices, corruption)
 SECTION 2

The new Public Procurement Law No 244 dated 19 July 2021
Public Procurement accounts for 20% of central Government expenditures

- Governments are the largest buyers in economies, offering opportunities to enhance competition and ensure development.

- International reports and global government data show that low-income countries have the highest share of public procurement in GDP (14.5%) followed by upper-middle income countries (13.6%) (1). It represents 14% of GDP in the EU (2).

- In Lebanon, procurement accounts on average 20% of central government’s expenditures and 6.5% of GDP at central level (excluding public institutions and municipalities), an estimate of US$3.4 billions (2019) (3).

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.

PP volume is expected to shrink as a result of decreasing government expenditures and expected contraction of GDP.
Public Procurement: A pillar of good governance

- Public procurement is a key pillar of structural reforms to enhance fiscal governance and attract public investments in infrastructure especially in post-crisis & recovery period.

- Control of corruption is a priority: 57% of bribery cases detected are public procurement transactions (1). Lebanon ranks 25/100 on the Corruption Perception Index (149/180) (2).

- The current legal framework does not conform with international standards and guidelines. It is outdated (1959/1963) and fragmented (various laws, decrees, decisions, etc); some functions (complaints mechanisms) are inefficient (3,4).

- URGENT need for a clear and coherent Public Procurement system (not only a law) in line with international standards (UNCITRAL Model Law 2011, EU Guidelines 2014, OECD Guidelines 2016, etc.)

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

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1. OECD (2014), Foreign Bribery Report
2. Transparency International (2019), Corruption Perceptions Index
3. MAPS II preliminary results, 2019
4. Institut des Finances Basil Fuleihan (2014), Professionalizing Public Procurement in Lebanon
5. World Bank, Worldwide Governance Indicators, 2018
Public Procurement reform is at heart of the fight against corruption in Lebanon, giving a strong positive signal of trust to citizens, investors and the donor community.

The Public Procurement Law 244/2021 (dated 19 July 2021) comes in line with continuous national efforts to enhance transparency and accountability.

It complements other laws adopted in recent years:
- Law on Access to Information 28/2017
- Law on Protection of Whistleblowers 83/2018
- Law on Anti-Corruption and Establishment of National Anti-Corruption Authority 175/2020
- Law on Illicit Enrichment and Asset Declaration 189/2020

Public procurement is also one of the 7 pillars of actions of the National Strategy on Anti-Corruption (2020)
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
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<tr>
<th>Chapter</th>
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| **Chapter 1** | General provisions | - Definitions
- Scope of Application
- Language
- Currency
- Etc… |
| **Chapter 2** | General rules related to the procurement process | The chapter presents general rules for the preparation, conduct and implementation of procurement |
| **Chapter 3** | Procurement methods | The law describes 7 methods, 3 of them are new:
- 2-stage tendering
- Request for proposal for consulting services
- Framework agreement |
| **Chapter 4** | Electronic procurement | The chapter contains special provisions that pave the way for the gradual implementation of electronic Procurement |
| **Chapter 5** | Professionalization and Capacity Building | Professionalizing public procurement through:
- Recognizing it as a specific profession within Lebanese civil service organizational structure
- Mandatory training |
| **Chapter 6** | Public procurement governance | Details roles and mandates of procurement stakeholders:
- Public Procurement Authority
- Review and complaints Authority
- Tender and acceptance committees
- Contracting authorities |
| **Chapter 7** | Complaints proceedings | The chapter details the mechanisms for the review and remedies system in the pre-contractual phase |
| **Chapter 8** | Integrity and sanctions | The chapter promotes integrity through:
- Transparency: mandatory publication
- Integrity: by identifying contradicting actions and assigning adequate sanctions
- Control: by introducing internal control, in addition to external control |
| **Chapter 9** | Tansitory Provisions | - Ongoing procurement
- Cancellation of previous contradictory laws
- Entry into force |
Public Procurement Law 244/2021: 8 Guiding Principles

- Efficiency & competition
- Accountability
- Integration
- Sustainability
- Transparency
- Professionalization
- Inclusiveness
- Integrity
Public Procurement Principles

- Integration
- Transparency
- Efficiency
- Competition
- Accountability
- Professionalization
- Integrity
- Sustainability
- Local Development
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.

5. Transparency

Chapter 8: Integrity and accountability

Article 109: Transparency

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.
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 5: Capacity Building

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, (…)
7. Integrity

Chapter 8: Integrity and accountability

Article 111- Internal Audit
1. By decision of the head of administration thereof, one or more officers of the procuring entity shall be assigned to internally audit the execution of all the provisions of this Law and the secondary legislation thereof, in accordance with the size of the procuring entity and the number and value of the contracts it concludes.
2. (…)

Article 112: Sanctions
1. In addition to the sanctions provided for in this Law and other laws, including the Penal Code, the following sanctions shall be applied:
   I – Criminal Sanctions (…)
   II – Disciplinary and financial sanctions
   III – Financial penalties
   IV – Abuse of the right to appeal
Clear mechanisms for supervision and control, at all procurement steps, which deal with objections and complaints within short deadlines, linked to a progressive system of complaints and appeals, that start by banning contract signature and may go to freezing procurement procedures.
Central Electronic Platform

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

- **Conflict of Interest**
  - تضارب المصالح
  - undue advantage in return for performing or failing to perform an act in violation of laws

- **Fraud**
  - الاحتيال
  - embezzlement or misappropriation by a public official

- **Bribery**
  - الرشوة

- **Collusion**
  - التواطؤ

- **Extortion**
  - تهديد
Pillars of the Law 244/2021

1. Governing all proc. Entities
   Central & open data

2. Monitoring & oversight (CoA, CI, PPA, Private sect., CSOs)

3. Review & Complaints Mechanism
Follow the Public Procurement Reform

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