

Why Reform Public Procurement?



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Acknowledgments

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Preface

This report provides a concise practical overview on key issues encountered in reforming public procurement systems and the wider development purpose such reforms serve. It is an outgrowth of the World Bank conference in Amman, Jordan, on June 5–7, 2012, “Towards Better Governance and Public Sector Performance in MENA: Harnessing Regional Public Procurement Reform Efforts.” The conference highlighted the various efforts of governments in the Middle East and North Africa (MENA) region to reform public procurement.

The conference examined procurement reform issues from four key development

perspectives: governance and social accountability, service delivery, private sector development and trade, and capacity development. Those perspectives are particularly pertinent to citizen demands across the MENA region. People want more equal economic opportunity and development, more say in government decisions, a more responsive and effective public sector, and an end to corruption. That is one of the main reasons why regional governments should enhance transparency, participation, and social accountability in public sector management. Reforming and modernizing public procurement is a major arena for such aspirations.

What reforming public procurement can mean for development

The Middle East and North Africa (MENA) region faces unprecedented governance challenges, with citizens demanding transparency, accountability, and a greater say in their governments. It also needs to improve the efficiency of managing public finances. The challenges can be viewed as opportunities for real change and fundamental improvements, and public procurement reform lies at the heart of this opportunity. It can be a catalyst for improving public policy and engaging civil society and other stakeholders.

In this context, public procurement reform becomes an important tool for strengthening and supporting governance reforms and better public sector performance across the region. It is one of a government's most effective tools for sustainable public sector reform. It is at the core of translating public

policy into tangible results for citizens, delivering essential services, and implementing projects and programs. Further, public procurement reform can contribute directly to improving a country's business, investment, and social environments.

The report looks at public procurement and its contributions to:

- Governance and social accountability.
- Service delivery.
- Private sector development and trade.
- Capacity development.

For each, the report spells out the interactions with public procurement, the challenges, and the core actions and recommendations.

Public procurement for governance and social accountability

At the heart of good governance lies effective public financial management, which is linked to multistakeholder engagement, political accountability, effective checks and balances, and decentralization and local participation.

Three pillars of effective and successful governance are increasing value for money, improving public service delivery, and creating an enabling environment for private sector-led growth. Public procurement, with links to all three pillars, is thus an essential element of governance reforms. Making up between 15% and 20% of GDP, it contributes to greater competitiveness by stimulating trade and fostering foreign direct investment.

While good public procurement is a prerequisite for economic growth and effective public investment, poor governance of public procurement systems can turn public investments into major political and economic liabilities, hinder development goals and outcomes, and result in additional costs and waste public funds. Procurement systems can thus be viewed

as promoting good governance and instilling reforms in governance systems. A good procurement system that features transparency, accountability, and stakeholder participation can be a practical tool for carrying out effective governance reforms (box 1).

Social accountability is an approach to governance that promotes inclusive and accountable government through civil society organizations (CSOs) and citizen participation. Through it, government institutions and services account publicly for their performance, enabling weaknesses in governance, including corruption, to be exposed and remedied. If it is inclusive and participatory, social accountability in MENA can build trust between government actors and citizens.

Public procurement is an essential governance arena, and the way it is executed reflects the level of social accountability. Likewise, approaches to governance that incorporate citizen participation can engender more relevant, responsive, and effective government policies, budgets, and services.

BOX 1

GOVERNANCE AND PUBLIC PROCUREMENT REFORMS IN MOROCCO

With the goal of modernizing procedures and increasing transparency, the government of Morocco recently produced a new draft Decree on Public Procurement. Some of the challenges involved unifying, simplifying, and clarifying public procurement procedures across public institutions, local communities, and architectural services. Others involved promoting fair competition, enhancing transparency and ethical management, upgrading systems through a web portal, developing a disputes settlement mechanism, considering environmental

performance and protection, supporting small and medium enterprises, and encouraging local employment.

While big steps have been taken to reform the governance and legal framework for public procurement, implementing reform will require building the capacity of all stakeholders, developing information technology, communicating and exchanging experiences with international partners, and including civil society and the private sector as partners in reform.

The International Budget Partnership estimates that developing countries spend \$820 billion a year on procurement-related transactions. But procurement is one of the government functions most prone to corruption. According to Transparency International, up to a fifth of the value of government contracts may be lost to corruption. Active citizen engagement in monitoring procurement and advocating for better performance can aid in preventing and detecting corruption in public procurement, improving the delivery of public services, increasing the efficiency of public financial management, and enhancing government accountability.

Citizens can engage in public procurement at different stages. Civil society can become a key contributor to the policy debate and reform process in all areas of government responsibility, including public procurement.

Stakeholder participation in monitoring procurement practices and implementation is a natural complement to a participatory reform process. It allows nonstate actors to observe government performance, to give feedback, and to demand accountability from the government. In a constructive dialogue, a government responsive to stakeholder inputs closes the social accountability loop.

The procurement cycle is fruitful ground for the participation of qualified CSOs—from planning all the way to implementation. In the competitive bidding stage, CSOs can ensure adequate notices and equal opportunity. In the bid submission and evaluation stage, they can advise entities to revise the selection criteria to ensure fair bidding and public

dissemination of these criteria. In the contract implementation stage, they can oversee implementation to guarantee proper budget execution and project standards—and create local coalitions for monitoring contracts.

Underpinning all this is access to information, the cornerstone for vibrant citizen involvement in public procurement reforms. Governments need to systematically collect information on procurement in real time. They also need to disclose and disseminate information to citizens to maximize citizen access to publicly held information. That would allow local CSOs to actively monitor public sector activities through public hearings, social audits, procurement monitoring, and independent budget and policy analysis (box 2).

Core actions and recommendations for fostering social accountability in public procurement include:

- Foster an enabling environment for qualified CSOs and citizens to monitor public procurement systems. Actions include enhancing legal frameworks to allow information sharing with all stakeholders.
- Institutionalize and formalize CSO participation in public procurement mechanisms.
- Develop CSO competencies to monitor the procurement cycle, provide feedback, and hold authorities accountable.
- Develop parliaments' capacities as the main oversight institution for public spending.

In the Philippines, the Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA-EAP) and the Philippines Department of Education (DepED) created a joint website that hosts an interactive map of an estimated 8,000 of the country's 44,000 public elementary and high schools. The purpose: to monitor the delivery of supplies and services to the schools.

The interactive website, CheckMySchool.org, provides users from the community with access to information on each school's budget, enrollments, teaching staff, textbooks, test

scores, and other relevant data. Users can monitor and post comments and feedback regarding these services via email, text, or social media forums. Under the agreement with ANSA-EAP, the DepED reviews these comments and acts on confirmed issues. An example is a classroom repair project, worth \$113,000, that was continued immediately due to feedback from CheckMySchool.

The initiative shows that citizen engagement can be a key ingredient to improving service delivery and holding public officials accountable.

Public procurement for service delivery

Public procurement is central to the delivery of public services, results, and performance. Used as a strategic tool to enhance government performance and the quality of services, it requires a multifaceted approach for reform. Public procurement systems should be measured not merely by formal compliance with procedures but also by the achievement of development and other policy objectives.

Four core elements of procurement programs can have a direct positive bearing on public service delivery, results, and performance:

- Consolidation, completion, and harmonization of the legal framework to provide enhanced guidance on proper implementation of public procurement—and to avoid the inefficiencies and diminished service results that can stem from a deficient and outdated legal framework.
- Well-structured and well-managed procurement systems featuring appropriate procurement structures within procuring entities, an effective policy and oversight function, skilled human resources in procurement units, and a balanced mix between centralized and decentralized elements.
- Professionalization of the procurement workforce, essential for an effective, modern public procurement system, including capacity building and development.
- Modernization and application of procedures that promote more effective and responsive public procurement systems. Critical steps include qualification assessment, bid evaluation, and contract administration. Other tools and procedures include

framework agreements, e-procurement, and practitioners' tools.

For effective public procurement systems, it is essential that reforms focus on creating a complete, multifaceted, and integrated system that encompasses all four core elements.

The effectiveness of procurement systems is also contingent on their integration with other related systems and reform initiatives (such as public finance management reforms and e-government initiatives). Fragmentation of systems—for public investment management, for budgeting, and for public procurement—leads to weak delivery mechanisms, increased costs, poor performance, cost and time overruns, a lack of competition, and underfunded maintenance.

Some MENA economies have taken serious steps toward reforming their procurement systems (such as updating and consolidating legal frameworks in Jordan, Morocco, Tunisia, West Bank and Gaza, and the Republic of Yemen). Others are at various stages of addressing the fragmentation and incompleteness of their public procurement systems.

Key regional challenges include:

- The lack of integration of national legal frameworks and the multiplicity and fragmentation of laws and systems.
- The weakness of the essential procedures of public procurement systems (such as unclear content and institutional hierarchy), which results in poor and sometimes no enforcement of operational and procedural requirements.
- The large gaps among the laws, the regulations, and the applications of

public procurement processes—a tremendous hindrance to the efficiency of public procurement.

- The lack of professionalization of public procurement, which results in low capacity, high turnover, and implementation deficiencies.
- A lack of transparency and accountability, which hinders audits, complicates handling complaints, and undermines assigning responsibility for operational errors and mistakes.
- Difficulty in introducing modern tools to public procurement systems—such as e-procurement.

Core actions and recommendations for more effective service delivery through public procurement include:

- Adopt a systematic approach to procurement reform.
- Increase transparency and access to information to improve oversight and procurement performance in service delivery.
- Adopt a strategic approach to implementing e-procurement for improved service delivery (box 3).

BOX 3

INTRODUCING E-PROCUREMENT IN CHILE

An evaluation of public procurement systems in Chile in 2002 revealed multiple rules among public agencies, low installed capacity, little attention to contracting management, scarce incentives for improvement particularly in terms of savings, limited transparency, high operational costs, and extended contract delivery times. E-procurement was conceived as an excellent solution to tackle most of these areas, if not all. So, starting from scratch, Chile introduced it in stages, with the following milestones:

- *Electronic trading platform.* Installation of an electronic trading platform, which allows free access to the system (www.chilecompra.cl).
- *Management skills.* Extensive education and training (for buyers and suppliers) to maximize the potential of electronic commerce and effective participation in the public market.
- *Policy and corporate supply management.* Reform in this area included publishing 100% of procurement and contract processes, having objective and precise evaluation criteria,

consulting service suppliers' records, and making it easy to reach resolutions.

- *ChileCompra Express.* Information on procurement processes is freely available to all stakeholders and the public.
- *National registry of providers.* This provided an official electronic registry of subcontractors.

In addition to contributing to economic growth through efficient cost-saving policies and methods, the e-procurement system established trust in its integrity and accountability to citizens. On a wider scale, digitizing the government procurement system meant that domestic companies, particularly small and medium enterprises, would have to think digitally, enhancing competitiveness and openness to global markets.

Direct benefits of the introduction of e-procurement in Chile include doubling small and medium enterprise participation in public procurement activities, enhancing efficiency, and reaping financial savings of around 3.5% (\$230 million).

Public procurement for private sector development and trade

Transparent and accountable public procurement systems have the power to catalyze private sector development by opening access to business opportunities, improving the business and investment environment, enhancing competition, and promoting economic growth.

The largest challenge facing the MENA region remains the conduct of fair, transparent, and competitive multistage bidding. The absence of fair and transparent bidding hinders competition due to the high transaction costs incurred by bidders. Other relevant challenges include raising the technical standards of project preparation, management, and execution.

These challenges can deter private participation in public procurement, particularly for small businesses that may opt out due to unclear bidding procedures. An open and fair multistage bidding process can help reduce the risk of collusion, ensure the facilitation of higher value projects, and give small businesses the chance to participate. Another challenge is the lack of adequate planning and preparation with the requisite technical, legal, and financial transaction advisors.

Public procurement—and international treaties

International treaties that address public procurement play a significant role in enhancing the investment climate—by improving competitiveness and introducing reciprocity to the procurement negotiation table.

International treaties can address transparency, competition, and corruption in public procurement in the form of bilateral trade investment

treaties, which cover investments and contract execution between two parties, bilateral trade agreements, and treaty instruments that cover access to government contracts—such as the Government Procurement Agreement (GPA-WTO), EU Directives, and COMESA procurement instruments. Perhaps the most salient of these agreements is the GPA-WTO, creating a platform for promoting international trade by negotiated opening of procurement markets of GPA member states to bidders from other member states (box 4).

Public-private partnerships

Public-private partnerships (PPPs) present additional means of private participation beyond those in traditional forms of procurement. PPPs are long-term contracts (5–30 years) between a public entity and a private company or consortium. The private company undertakes to provide a public service on the basis of a concession, or to invest in, construct, and operate public infrastructure facilities. PPPs can go a long way to alleviate the burden governments face when funding investment in public infrastructure projects. Key to the success of any partnership between a private and public entity are identifying, appraising, planning, and preparing projects with the requisite technical and legal advisors.

The impacts of public procurement reforms can be seen from the bidding all the way through to the implementation of a PPP project. For instance, reforms that focus on adequate legal and policy frameworks enhance the market's appetite for bidding on and financing PPP projects, translating into higher participation and healthier competition. And a transparent, multistage bidding

Jordan's unified procurement by-law, prepared with the collaboration and support of the World Bank, awaits review and ratification by the prime minister's office. The new by-law has provisions for all types of government procurement with several key reform features. It separates policy and regulatory functions from operational functions through an independent procurement policy and oversight unit. It creates a mechanism to handle complaints through appointed committees. It unifies clauses that control the same tasks. And it modifies the thresholds of the procuring committees when necessary.

After joining the World Trade Organization in 2000, Jordan began negotiating accession to the Government Procurement Agreement (GPA).

A national negotiation team was created to coordinate negotiations with the GPA secretariat. In July 2000 Jordan became an official observer to this agreement. Negotiations are still ongoing as some issues remain pending, such as special treatment of small and medium enterprises in the bidding process, offsets, thresholds, reciprocity, and after sale service.

For the reform process to continue, the Jordanian public sector needs a national capacity-building program for procurement professionals focusing on implementing procurement legislation, handling complaints, rolling out an e-procurement system, preparing contracts, and conducting technical and financial analysis.

process can allow for a short-listing stage, solicitation of proposals, negotiation with bidders, and evaluation and weighting of technical, financial, and commercial bids. Such a process enhances bidder confidence and offers all bidders a fair playing field for the best proposal to win.

The success of PPP projects depends on a robust legal framework to reduce risk for the public and private sectors, as well as for an informed public, the users of the service or facility. Such a legal framework is characterized by its attention to conflicting laws, clear and enforceable property and land rights, nondiscriminatory permitting processes, adequate protection of the environment, fair labor laws, and a clear mechanism for regulating the public-private relationship. Other considerations include contractual arrangements for risk sharing, project monitoring, reporting by the project company, mechanisms for tariff setting, rules for billings and collections, dispute resolution, sovereign immunity, and protections for project

revenue. Also necessary is having the capacity to identify and properly assess the feasibility and desirability of potential PPP projects.

Core actions and recommendations for facilitating private sector development and trade include:

- Accelerate the adoption and alignment of MENA countries to international trade treaties, which serve as tools for public procurement reform and economic growth.
- Establish legal and institutional frameworks that support effective PPPs and promote economic growth, particularly through the stimulation of small and medium enterprise participation.
- Develop capacities across stakeholder groups (including public officials and the private sector) to enhance market competitiveness and support successful PPP agreements.

Capacity development for public procurement

Most MENA countries suffer from weak capabilities and competencies in public procurement. The weaknesses are largely attributable to the poor quality of training programs, the low capacity of trainers, the selection of the wrong people to attend trainings, the high turnover of competent practitioners, and rigid and obstructive organizational settings that do not permit implementing what has been learned.

Some wider issues also affect the effectiveness and sustainability of training efforts. One challenge is to create an enabling environment

to nurture and sustain capacity development (box 5). That environment would feature a comprehensive, complete, and harmonized legal framework, enhanced transparency and access to information for all stakeholders, and professionalization of the procurement function beyond its outdated view as clerical and administrative. A second challenge is involving stakeholders beyond procurement officials—auditors, internal control authorities, CSOs, the private sector, and the media. A third is increasing the use of standard bidding documents by regional

BOX 5

PUBLIC PROCUREMENT AND CAPACITY DEVELOPMENT IN LEBANON

Public procurement in Lebanon was not recognized as a profession, and procurement officers had limited knowledge of new trends and international good practices. But the Lebanese Ministry of Finance now views public procurement as a core component of resource management reform and a priority for holding down public spending.

The Institut des Finances Basel Fulehan has been working with the ministry as the training and capacity development body for public procurement. As a center of excellence with extensive experience supporting capacity building in public financial management at a national level, it has a participatory approach to enhance the capabilities of all stakeholders in public procurement.

The institute revealed the need for capacity development in five categories:

- *Legal knowledge.* Basic legal training is needed.
- *New procurement trends.* Lebanon is participating as a pilot country in the Marrakech Taskforce, an initiative to implement sustainable procurement policies

and practices. Only 27% of respondents were familiar with sustainable public procurement, and only 15% with green or e-procurement.

- *Planning and contract management.* Training is needed for basic skills such as market studies and procurement risk assessments.
- *Communications.* Training is needed for cooperation in working with the private sector, negotiating techniques, monitoring supplier performance, and detecting collusion.
- *Documentation, archiving, and access to information.* Only 33% of the entities publish reports on procurement activities. There is a need for training on a culture of transparency and information sharing.

The next steps for capacity development include working to develop public procurement as a profession, facilitating information and know-how transfer, joining efforts with relevant actors to position procurement strategically at a national level, and providing high-quality specialized training.

public procurement systems, so that practitioners can learn the system and develop their knowledge.

The creation and delivery of national training programs starts with defining a competency baseline for each category of public procurement staff—goods, works, and services (figure 1). This is followed by conducting a needs assessment to define the magnitude and scope of the skill deficit. Once the skill deficit is determined, training priorities can be identified, with the subsequent development of competency-based training curricula. Then the trainers should be trained and national training institutions selected. This is followed by the development of annual national training plans that consider affordability and delivery capacity. After trainings are delivered and the impacts measured, a final step is certifying procurement practitioners.

National training programs should be conducted in three stages: introductory, sector-specific, and private sector. The introductory training ensures the correct application of laws and regulations. The sector-specific training focuses on developing business process skills of managers and practitioners. And the private sector training (for suppliers,

contractors, service providers, and other stakeholders) focuses on how to compete for public procurement opportunities.

Core actions and recommendations for capacity development include:

- Foster an enabling environment as the primary driver for creating and advancing competencies at national levels. Recommendations include enhancing transparency and access to information, focusing on data collection and reporting, and professionalizing public procurement.
- Offer training programs at various levels (individual, organizational, and environmental) and to all stakeholders (practitioners, managers, decisionmakers, auditors and internal control authorities, CSOs, private sector, and the media).
- Establish a regional electronic forum to exchange ideas and lessons on public procurement reform.
- Enhance training for public procurement in the professional (practitioners and other stakeholders) and academic (inclusion in university education) settings.

FIGURE 1

STEPS FOR DEVELOPING NATIONAL PUBLIC PROCUREMENT TRAINING PROGRAMS



In sum

Why, then, reform public procurement? Because the benefits can be so substantial for every sector in society—public, private, and civil. Better public procurement can foster improved governance and social accountability. It can make service delivery more efficient and equitable. It can increase the participation of the private sector, and it can build the capacities of all stakeholders. In doing all this, public procurement reform can promote national competitiveness and boost economic development.



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