



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 28, 2022

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Public Procurement Law regulating e-procurement, a reform tool for Lebanon

Diana Najib Bou-Ghanem

DBA Candidate at Beirut Arab University
Director of Telecom Sites and Equipment
Email diananbg@gmail.com

Abstract. Between 2019 and 2021, the public procurement systems in Lebanon was under study as a first step to undergo a critical reform process. This process was topped with the issuance of the Public Procurement Law number 244 on July 2021. There are great hopes built on this law since it has been long waited for and the prospects on its success are high. It is based on eight principles: integration, transparency, competitiveness, efficiency, accountability, integrity, professionalism, and sustainability and local development. The law creates a regulatory agency, an independent body to handle complaints, encourages SMEs and local industry among other benefits. The objective of this paper is to define the effectiveness and validity of the new Law and e-procurement stipulated in the new Law and how is it a tool for reform that enhances transparency integrity and efficiency in the new Lebanese procurement system. The Methodology in this paper is a qualitative literature review and document analysis of existing reports from the Lebanese official entities and international bodies that took part in the assessment and preparation of the new Public Procurement.

Keywords. Public Procurement Law, e-Procurement, Reform, Corruption, Crisis, Lebanon,

1. Introduction

Managing resources and assets effectively is very important for the social and economic welfare. In light of long-term public projects, and due to current economic crisis and pandemic, increase in cost of public services, adding to that the growing public distrust in the government use of public money, public authorities and decision makers are forced to accept change and look for alternative methods in public procurement. World yearly spending on infrastructure (telecommunications, transportation, water, and power) is USD 2.5 trillion, with an estimate of 3.3 trillion to meet future annual need. [1]

The quality of infrastructure in Lebanon is among the poorest worldwide. In the World Bank 2018 index [2] Lebanon ranks 130 of 137 in terms of its infrastructure. This poor ranking is a result of low public spending and high debt, and lack of long terms budget planning. The report also found that economic sustainability is not realized due to costs encountered during the lifetime of the facility where there is a need to apply Life Cycle Cost Analysis (LCCA). The LCCA tool leads to the best development path for creating and preserving sustainable infrastructure while still ensuring a cost-effective project. With a challenging environment, Lebanon Institute of Finance led a courageous to reform the national procurement system.

According to the Assessment of Public procurement system [3] that was led by Lebanese Institute of Finance using the “Methodology for Assessing Procurement Systems” (MAPS), Lebanon is facing many challenges, including an influx of refugees’ influx and skilled worker out-flux, increase in debt, and weak capacity in public institutions. Lebanon is in crisis characterized by deep and long growth stagnation. The Lebanese currency is depreciating fast leading to continuous depletion of foreign reserves and banking capital controls, this is all leading to hyperinflation. Revenue collection is decreasing; businesses are shutting down, leading to bigger budget deficit. The poverty level is expected to increase sharply. Widespread corruption and bad public services have triggered a countrywide unrest since October 17, 2019. Lebanese are demanding more transparency in public money management, asking for recovery of misused public funds, and applying financial governance reforms to address economic, financial, and social problems.

This paper studies the newly enacted public procurement Law on July 2021 [4] and how it is considered a reform tool specifically the e-procurement regulation. Section 2 states the research objective and methodology. Section 3 reviews literature from around the world related to procurement as a reform tool with focus on e-procurement. Section 4 discussed the MAPS process that led to the Law and the new Law with its reform approach and pillars. Section 5 discusses the e-procurement in general and Lebanon’s case in light of the new Public Procurement Law and its promised implementation. Section 6 concludes the paper with remarks on whether enacting the Law is enough and what are the steps to complement it.

2. Research Objective and Methodology

Since the October 2019 uprising, public opinion shifted towards lack of transparency and against a long rooted institutionalized corrupt system in the Lebanese public administration. Thus, the eyes went to the reform of the public procurement that is described to be fragmented, inefficient and corrupt. Its quality is below average and it accounts for 20% of public expenditures and 6.5% of GDP. The reform was a major prerequisite and milestone in the Cedre conference of 2018 [3]

In the Cedre conference of 2018, the Lebanese Government promised major reforms to the public procurement sector, and then followed by a promising Capital Investment Program [2] (CIP). All of that requires a solid legal procurement system instead of the old one.

The legal framework governing public procurement was contradictory which allowed for system abuse. The old regulations of public procurement dated back to the years 1959 and 1963, Decree No. 14969/1963 on Public Accounting and Decree No. 2866/1959 on Public Tenders. This lack of proper Laws and regulations led to the decline in procurement quality and to lots of contradictory legal views on public procurement and to inefficient contracts.

Preparing for a new legal framework, Bassel Fleihan Institute of Finance at the Ministry of Finance was commissioned with the task to assess the procurement system and prepare the new draft Law and legislations in coordination with Members of the Lebanese Parliament headed by MP Yassin Jaber. The new draft Law is based on the MAPS methodology that concluded its assessment on July 2020 [3]

The draft Law is aligned with international standards UNCITRAL Model Law on Public Procurement (UNCITRAL reference) and is a step towards a better public procurement system, as it advances the procurement regime dating back to the 1960s. It was adopted on 30 June 2021 by the Lebanese Parliament and published in the Official Gazette on 29 July 2021 as Law 244/2021 on Public Procurement. Articles 66 to 71 of this Law stipulated the Electronic procurement system that is necessary and is one of the pillars of e-government. [5]

The objective of this paper is to define the effectiveness and validity of the new Law and e-procurement stipulated in the new Law and how is it a tool for reform that enhances transparency integrity and efficiency in the new Lebanese procurement system.

The Methodology in this paper is a qualitative literature review and document analysis of existing reports from the Lebanese official entities and international bodies that took part in the assessment and preparation of the new Public Procurement Law.

3. Literature Review

This section reviews some relevant literature on public procurement and e-procurement Laws and regulations as a tool for reform.

The UNCITRAL 2011[6] revised Model Law was designed to contribute to the establishment of a harmonized and modern legal framework for public procurement. This model should promote economy, efficiency and competition in procurement and, fosters integrity, confidence, fairness and transparency in the procurement process

The UNCITRAL revised Model Law [6] is said to contribute to the establishment of a harmonized and modern legal framework for public procurement. This model should promote economy, efficiency and competition in procurement and, fosters integrity, confidence, fairness and transparency in the procurement process

OECD: Recommendation of The Council on Public Procurement Agrees that E-procurement [7] refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process, and recommends

- An adequate degree of transparency at all stages of procurement cycle in the public procurement system.
- To preserve the integrity of the public procurement system through general standards and safeguards.
- To facilitate access to procurement opportunities for potential competitors of all sizes.
- To foster transparent and effective stakeholder participation.
- To develop processes to drive efficiency throughout the public procurement cycle
- To improve the public procurement system by harnessing the use of digital technologies to support appropriate e-procurement innovation throughout the procurement cycle.
- To develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively
- To drive performance improvements through evaluation of the effectiveness of the public procurement system at different levels of the government
- To integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle
- To apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including complaint and sanctions processes
- To support integration of public procurement into overall public finance management, budgeting and services delivery processes

ADL 2020 paper [8][7] on “Public procurement transformation in the GCC region – post-COVID-19 era” they suggested that a procurement excellence function in line with international best practices be developed in the GCC in the form of an integrated procurement framework allowing public procurement to be more agile and effective. They suggest that three necessary elements to be considered for a successful transformation: (1) a strong procurement

strategy derived from the public entities' vision and mission. (2) A well-functioning operating model for the procurement function (including organizational design, processes, procurement templates, and technology). This includes among other matters the next generation procurement that will replace non-value-generating activities with automation (including AI) and enable business functions to act autonomously. (3) Country-specific requirements particularly related to local content and which could greatly impact the procurement function. ADL states that this helps GCC boost their transformation and create greater value for entities they serve, governments and the region.

In his 2010 paper [9] on Lebanon case of public procurement reform, (refer to SAAD) SAAD suggested that the way forward is to complete an in-depth analysis after the issuance of the regulations and decrees. Hence, after that, a new challenge is expected to start in the setting of thresholds, domestic preference margins, standard documents, e-procurement framework, and mechanisms of Linkage. In practice, and based on the new Law 244/2021 the way forward proved to be the other way around since the in depth analysis took place prior to issuance of any legislation, it is rather the cornerstone and the right justification to the issuance of the new Law and the complementary legislations.

Anthony 2018 paper [10] titled "The Use of e-procurement in South African Public Procurement Law: Challenges and Prospects" concluded that regulating e-procurement will not only ensure legal certainty, but also ensure the promotion of transparency and competition. It also states that the mineralization of human intervention in the e-procurement process will minimize corruption and ensure that bidders are fairly treated. However, they propose that e-procurement should only be utilized on smaller value government contracts.

The Thesis paper of Medawar 2020 [11] titled "Life Cycle Cost Analysis: A Decision Tool for Public Procurement Award", listed the set of legislations that comprise the legal framework of procurement in Lebanon that is applicable till August 2022 that is the date the new procurement Law 244/2021 comes into force:

| | |
|---|---|
| Legislative Decree 14969 of December 30, 1963 | The Public Accounting Law constitutes the foundation of Lebanon's organizational and institutional framework for public procurement |
| Decree of May 20, 1942 | The General Terms of Reference for Public Works Contractors |
| Decree 2460 of November 9, 1959 | The Regulations of the Central Inspection Board |
| Decree 2866 of December 16, 1959 | The Bidding System |
| Decree 11573 of December 30, 1963 | The Administrative Terms of Reference for Army Works |
| Decree 13221 of June 28, 1963 | The publication of the Annual Procurement Plan |
| Decree 3688 of January 25, 1966 | The Prequalification of Contractors |
| Decree 8117 of August 29, 1967 | The Disbarment from Participating in Public Bids |
| Decree 11574 of December 30, 1968 | The Administrative Terms of Reference for Army Supplies |
| Decree 14601 of May 30, 1970 | The Terms for Acceptance of Completed Public Works with Some Minor FLaws or Defects |
| Decree 10434 of June 14, 1975 | The State Consultative Council |
| Decree 2868 of April 16, 1980 | The Administrative Terms of Reference for Internal Security Forces Supplies |

| | |
|----------------------------------|---|
| Decree 82 of September 16, 1983 | The Legislative Decree on the organization of the Court of Audit |
| Decree 9333 of December 26, 2002 | The Classification of Contractors and Consultants |
| Decree 10515 of July 23, 2003 | The Identification of National Goods Benefiting from Preference in Public Tenders |

The paper recommended to change the old and obsolete procurement laws in Lebanon and alternatively implement the PPP law and revise the current laws to take into consideration additional clauses that would ensure an efficient procurement system.

Hardy paper of 2008 [5] explore how public e-procurement policies are translated into practice. Public e-procurement, as an information system (IS) tool enables innovation in government. The paper concluded that e-procurement does not have a unitary identity or discrete associations but rather consists of multiple stakeholders and representations that manifest differently in varying situations and contexts. This makes us think that having a good text in place does not materialize except with stakeholders' involvement.

Saastamoinena 2018 paper [12] on "E-procurement and SME involvement in public procurement of innovations" stated that current public procurement policies in the European Union (EU) seek to improve small and medium sized enterprises' (SMEs) access to public procurement, and emphasize public procurement of innovations (PPI) and aim to promote a switch to e-procurement. However, many information and communication related barriers impede SME access to public sector contracts. The paper concluded that enhancing the information sharing functions of e-procurement systems could be instrumental in attracting SMEs to provide innovative products and services to public projects.

Panduranga paper on 2016 [13] describes Transparency in Public Procurement through E-Procurement in India. It plays a vital role in the socio-economic development of a country. The researcher argues that Transparent Public Procurement is quite essential for judicious utilization of the taxpayers' money. Lot of efforts has been made by the Government of India to enhance transparency in Public Procurement and that Technology is widely used in bringing the transparency in governance. The paper states the difference between e-publishing and e-procurement and describes some functions of central procurement portal as follows:

- Online registration of procurement entities and vendors
- Tender creation and publishing
- Publishing of corrigendum and pre-bid meeting decisions
- Online bid submission, resubmission, and withdrawal of bids
- Online tender opening
- Publishing technical and financial evaluation
- Award of the contract

The Paper of Harper 2016 [14] about public procurement reform in Latin America and Caribbean has shown that having a public procurement agency is absolutely critical for the reform process, having the public procurement agency also impact the public sector performance. The agency is responsible for policy and monitoring and balance goals like combatting corruption, promoting transparency, value for money, effectiveness and efficiency. It doesn't help to have only an office with mere administrative functions and no strategic mandate, focusing only on transactions, is not going to be able to or have the incentives to advocate for deep and sustained reforms. The paper mentions that it is also critical to have a supportive environment for reform, effective regulations, strong institutions, and a political

context that supports reforms. A reform that is carried out in isolation, without these factors will not be successful.

The paper of William-Elegbe [15] about WB influence in Public procurement reform in African shows this clear influence on developing countries, and uses its tool to review the procurement system and make proper recommendations. However, the paper states that the implementations of these recommendations may seem successful but in reality merely maintains the status quo or, worse, giving new opportunities for rent-seeking

The paper of WB 2014 [16] about Morocco states that the country still faces many challenges in improving its public procurement system. SMEs are being hurt due to significant payment delays to contractors, leading to SMEs being inhibited from entering or staying in the public market. The World Bank is working with the Government of Morocco GoM to to devise Public Procurement Reforms. The GoM is developing a reform implementation strategy to address the specific factors affecting reform and determine suitable interventions.

4. Public Procurement Law

The MAPS stands for Methodology for Assessing Public Procurement Systems. It [3] provides an assessment of the state of public procurement in Lebanon and was prepared by the Lebanese Institute of Finance. Its objective is to identify strengths, weaknesses and corruption risks. It helps public actors to move towards better and more transparent practices. The latest MAPS report was published in July 2020. The Agence Française de Développement (AFD) and the World Bank (WB) provided their expertise and resources to help IOF in preparing this document. It is worth mentioning that the consultative approach of IOF really proved to be fruitful where they invited all stakeholders (Ministries, public organizations, State owned enterprises, municipalities and local authorities) for brainstorming and awareness sessions that eventually contributed to a complete and trust worthy MAPS report. This also led to the new report and its subsequent draft Law to be supported by all these stakeholders. The MAPS report provides valuable information, guidelines, and act as a first step to reform and meeting the condition to obtain financial assistance from the international community. [17]



Lebanon checked 11 out of the 210 criteria for evaluation adopted by the Organization for Economic Cooperation and Development (OECD) and the WB. The report stated that there are no standardized and clear complaint procedures, there is limited access to information opening the door to nepotism and abuse of power, there is much overlapping roles of control entities, and numerous exceptions to procurement rules, lack of competition, leading to conflict of interest, collusion and corruption. [3]

Assessment Result Summary: number of assessment criteria met, by pillar

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

Assessment Result Summary: level of compliance with assessment criteria, by sub-indicator

Please note that this table summarizes the situation for ease of reference. Consequently, a sub-indicator which is now indicated as being in partial compliance may contain one assessment criterion which is not at all met and another one that may be fully met.

Criteria substantially not met
 Criteria partially met
 Criteria Not Applicable

This report paved the way to its recommendations that is in line with international standards and include:

- Establish a centralized body to manage and supervise all decentralized procurement activities and acts like a regulator of national procurement that involves public money;
- establish an independent body to handle complaints, and set a clear timeline;
- eliminate the conflicts of roles of the Court of Accounts and the State Council;
- Introduce the possibility to suspend immediately the procurement process when a complaint is submitted and introduce a standstill period to prevent a contract from being concluded and entered into force before a decision is taken based on a complaint against the award decision.

Conclusively, the draft public procurement Law was proposed to the Lebanese Parliament in February 2020.

The new public procurement system that is created by the Law is based on the universality of all public transactions. The new system is planned to be in line with international standards and based on legal and institutional foundations. It is predicting to achieve yearly savings of around USD 500 million, according to a study conducted by Basil Flueihan Institute of Finance.[3]

Lebanon new Law 244/2021 [4]is designed in a way to align with international standards specifically the Model of the United Nations Commission on International Trade Law (UNCITRAL 2011), [6]and the benchmarking and comparative research of neighbouring Arab

countries procurement regulatory frameworks, covering Tunisia (2014), Palestine (2014), Egypt (2018), and Jordan (2019) [3]. The Law integrates public procurement within the Public Finance Management Cycle and advocates for multi-year budgeting, which ensures strategic visibility of financial flows. It encourages and favours local economic development through encouraging and incentivising the participation of SMEs, national production, and resource optimization. [4]

Lebanon new public procurement Law 244/2021 [4] is based on eight principles that are a subset of [6] UNCITRAL 12 principals. These eight principles are integration, transparency, competitiveness, efficiency, accountability, integrity, professionalism, and sustainability and local development. [4]

- *Integration*: The Law applies to all administrations, institutions, bodies, and agencies that deal with public funds and its usage and expenditure.

- *Transparency*: Ensures for all public procurement operations, and all stakeholders have access to all the data and information electronically. Most documents related to procurement procedures would be published and made free to access to all.

- *Competitiveness*: use competitive procedures to conduct in order to fight corruption

- *Efficiency*: is ensured by rationalizing public spending and guaranteeing value for money together with providing good quality of public services; builds efficient relationships and collaborations among stakeholders and regains trust between private and public sector.

- *Accountability*: control mechanisms overseeing throughout the whole cycle, and creating a system for appropriate complaint and effective processes using not only penalties but also judiciary actions.

- *Integrity*: is guaranteed by using digital methods (e-procurement) to reduce and counteract conflict of interest and corruption.

- *Professionalism*: ensures that human resources working on or involved in all stages of procurement are well trained to meet high professional standards and have the capacity to implement the Law efficiently and effectively.

- *Sustainability and local development*: Align public procurement with the Sustainable Development Goals (SDGs) in their economic, social, environmental dimensions and in line with the eight objectives of the Law.

This reform that is created by the new Law, aims at providing more clarity and flexibility and ensuring more efficiency, better Evaluation and monitoring, professional risk management and accountability, while guaranteeing that a better quality of service is delivered to the citizens. It also meets the demands for a transparent process of public money expenditure.

5. E-procurement

Electronic procurement is stipulated in Articles 66-71 of 244/2021 [4]. It goes without saying that e-procurement is a necessary step and major pillar towards the e-government. The Law 244/2021 stipulates that a central electronic platform for e-procurement is to be developed as a central tool and repository for all public procurement activities. The centralized platform requires the mandatory publishing of information on all procurement projects. The platform also allows free access to all stakeholders and decision makers allowing for better-informed decisions by the government and more competitive market and fairness to the private sector and SMEs.

However, Article 71 of Law 244/2021 states that the details of electronic procurement shall be issued in a decree by the Council of Ministers. This requirement raised the criticism of the private sector and other stakeholders and triggered a concern whether the political influence will negatively affect and delay or seize the issuance of such Decree adding another obstacle

towards implementing the Law 244/2021 in an efficient and effective manner, in other words hinder the promised reform.

6. Conclusion

Several countries went through public procurement reforms under the pressure of the World Bank and the International Community. However, having good Laws on paper without answering and adapting to the national problems and country's context does not necessarily lead to the promised reform. Therefore, the public procurement system could be dysfunctional even with an updated legal framework aligned with international standards.

Public procurement is a pillar indicator of the Lebanon's development. However, the fact that Law 244/2021 [4] is a well-drafted Law does not ensure its Lawful and effective implementation in Lebanon, as corruption is still deeply rooted and institutionalized in the socio-economic-political system. That said, Lebanon Law No. 244/2021 is an essential step towards the fight against corruption, and all the years spent and the huge collective efforts to enact it should not be wasted. Consequently, it is vital and critical to allocate all needed time hardwork and resources to issue all necessary decrees and complementary legislations related to risk management, standard bidding documents, guidelines and forms, create the agencies stated in the law and create the e-procurement platform in order to see the promised reform that is expected from the Law 244/2021 [4]

References

- [1] J. WOETZEL, N. GAREMO, J. MISCHKE: Bridging global infrastructure gaps. *Mckinsey Global Institute*. (2016).
- [2] WORLD BANK: Strategic Assessment: A Capital Investment Plan For Lebanon. *World Bank Group*. (2018).
- [3] MAPS, Lebanon Assessment of the Public Procurement System, *Institue of Fianance IOF, Ministry of Fianance in Lebanon*. http://www.institutdesfinances.gov.lb/wp-content/uploads/2021/05/MAPS-Executive-Summary-En-May2021_compressed.pdf. (2021)
- [4] LEBANON LAW NUMBER 244/2021. Public Procurement Law in Lebanon issued on July 29, 2021. *Lebanese Parliament*. (2021)
- [5] C. A. HARDY, S. P. WILLIAMS: E-government policy and practice: A theoretical and empirical exploration of public e-procurement. *Science Direct, Government Information Quarterly* 25 155–180. (2008)
- [6] UNCITRAL: Model Law on Public Procurement. *United Nations*. (2011)
- [7] OECD: Recommendation of the Council On Public Procurement. (2015)
- [8] ARTHUR D LITTLE: Public procurement transformation in the GCC region – post-COVID-19 era
- [9] Y. G. SAAD: Public Procurement Reform: Tensions, Challenges and the Road Ahead The Case of LEBANON. In: Public Procurement: Global Revolution IV Conference Proceedings, 19-20 April 2010, *The University of Nottingham, U.K.* (2010)
- [10] A. ANTHONY. The Use of e-procurement in South African Public Procurement Law: Challenges and Prospects, *Law Democracy and Development*. VOLUME 22 (2018)
- [11] Y. MEDAWAR: Life Cycle Cost Analysis: A Decision Tool for Public Procurement Award. *NDU University Thesis*. (2020)
- [12] J. SAASTAMOINENA, T. TAMMIB, H. REIJONENC: E-procurement and SME involvement in public procurement of innovations. *Inderscience Publishers*. (2018)

- [13] V. PANDURANGA: Transparency in Public Procurement through E-Procurement in India, *Journal of Internet Banking and Commerce*. (2016)
- [14] L. E. HARPER, A. C. C. RAMIREZ, J. E. M. AYALA: Elements of Public Procurement Reform and Their Effect on the Public Sector In LAC. (2016)
- [15] S. WILLIAMS-ELEGBE: The World Bank's Influence on Procurement Reform in Africa. *Academia.edu*. (2013)
- [16] WB: Public Procurement Reform In Morocco. (2014)
- [17] MAPS. Methodology For Assessing Procurement Systems. (2018)