

Chapter 2

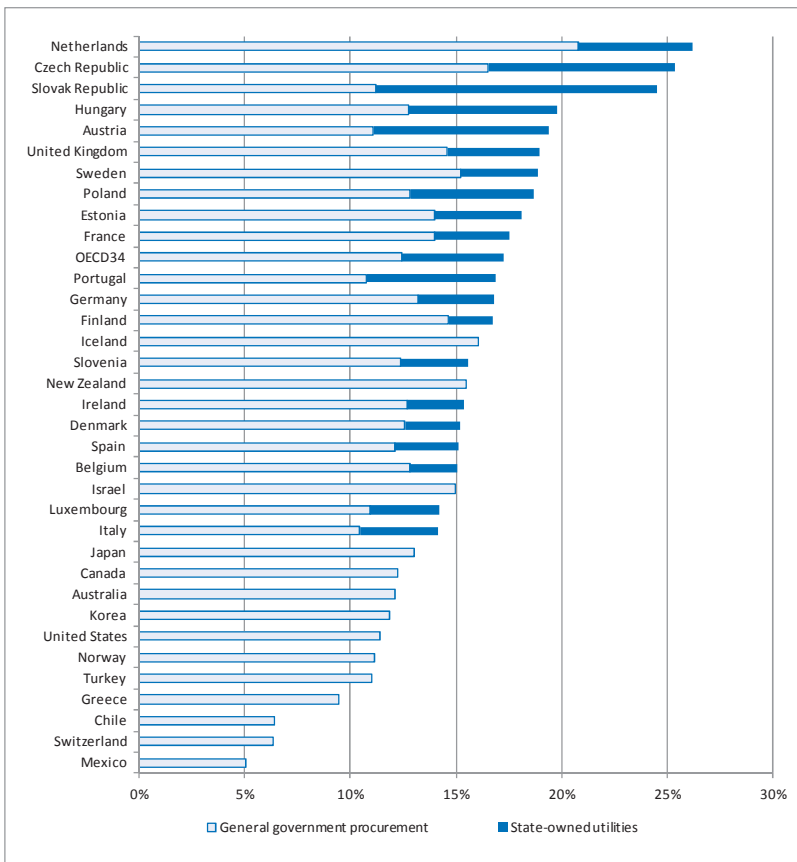
Enhancing Integrity in Public Procurement: A Risk Area

Public procurement represents 18% of Tunisia's GNP and almost 35% of the State's budget. This area was particularly affected by corruption during the previous regime. The government was therefore forced to react immediately after the Revolution to make the public procurement system more transparent and efficient. A new Decree governing public procurement was adopted on 14 January 2011. This chapter examines the existing mechanisms for enhancing the transparency and integrity of public procurement in Tunisia, and proposes additional measures the Tunisian authorities could consider implementing.

Public procurement: a risk area

Public procurement is among the sectors most exposed to waste, fraud, and corruption, because of its complexity, the size of the cash flows it generates, and the close interaction between the public and private sectors. It accounts for about 12% of the GNP in OECD countries, and a bit more in Middle East and North African (MENA) countries.

Figure 2.1. **General government and state-owned utilities procurement in selected OECD countries as a percentage of GDP (2008)**

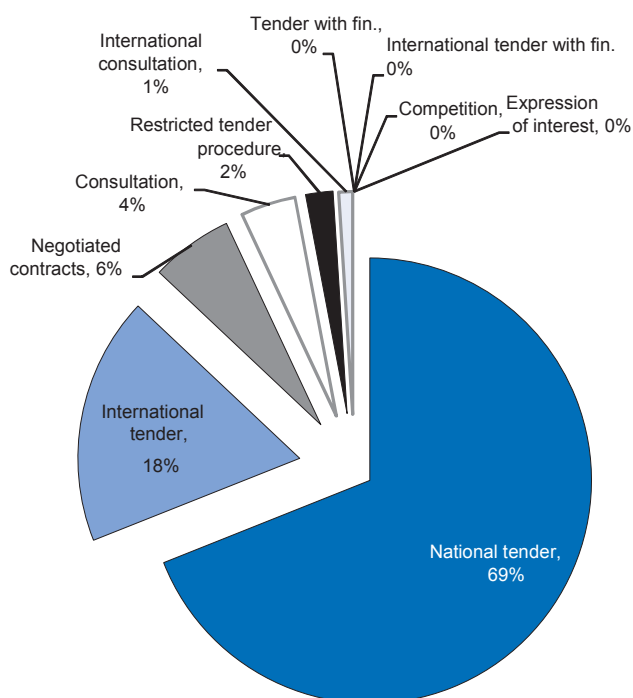


Note : The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris. doi: dx.doi.org/10.1787/gov_glance-2011-en.

Public procurement is a major economic issue in Tunisia since it accounts for about 18% of the country's GNP and almost 35% of the State budget. Sixty-nine percent of the total number of public contracts are awarded by invitation to tender.

Figure 2.2. **Number of public contracts awarded by type of competition**



Source : National Observatory of Public Procurements, Tunisia, www.marchespublics.gov.tn, last update: Tuesday, 26 June 2012.

However, the National Commission for Investigating Cases of Corruption and Embezzlement has identified public procurement as an area that was particularly exposed to corruption under the former regime despite its use of competitive procurement process. The High Commission of Public Procurements and other supervisory bodies have identified a certain number of recurrent problems in Tunisia's public procurement process in Tunisia:

- tender specifications tailored for a particular company;

- the systematic interference of the President of the Republic in the awarding of contracts without necessarily taking into account the opinion of the High commission of public procurements;
- abusive use of contract amendments to modify the turnaround time for contract delivery.

OECD countries, for their part, have noted the same type of risks in their own procurement cycles. Indeed, their experience shows that risks of fraud, embezzlement, and corruption can exist throughout the entire public procurement cycle, whether:

1. during the definition of requirements, a phase particularly susceptible to public interference;
2. during the awarding phase, especially in cases of exceptions to competitive tendering;
3. during contract management and payment. Fewer transparency measures apply to this phase since it is generally not subject to regulations on public procurements.

In this perspective, the OECD developed in 2008 its OECD Principles for Enhancing Integrity in Public Procurement, which aims to promote transparency, good governance, prevention of misconduct, accountability, and oversight in the public procurement process.

Overview of the public procurement legal framework

The regulation of public procurements is governed by many different legal texts, dating back to the decree of 25 July 1888 on the formalities governing the invitations to tender for public works contracts. The Public Accounting Code enacted on 31 December 1973 outlines, in its articles 99 to 118, 251, and 234, the general principles governing public procurement for the State, local authorities, and administrative establishments. Article 105 of this law stipulates that public procurement procedures will be set by decree. The first decree to apply article 105 of the Public Accounting Code was published on 27 July 1974 (Decree No. 74-754). In 1989, upon the publication of a new law on state enterprises (1 February 1989), another decree repealed the old one and laid out the entire set of rules governing the awarding, delivery and oversight of public contracts for government and state enterprises (Decree No. 89-412 of 22 April 1989).

Box 2.1. OECD Principles for Enhancing Integrity in Public Procurement Transparency

Transparency

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.
2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

Good management

3. Ensure that public funds are used in public procurement according to the purposes intended.
4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

Prevention of Misconduct, Compliance, and Monitoring

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.

Accountability and Control

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from potential suppliers in a fair and timely manner.
10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

Source: OECD (2009), *OECD Principles for Integrity in Public Procurement*, OECD Publishing. doi: 10.1787/9789264056527-en.

In 2002, a comprehensive reform of the public procurement system was conducted through the adoption of Decree No. 2002-3158 of 17 December 2002, which defines the procedures for public procurement contracting, awarding, and delivery, as well as the prerogatives of the procurement commissions.

This decree was modified nine times¹, including after the Revolution of 14 January 2011. Indeed, an emergency decree was adopted on 23 May 2011 (Decree No. 2011-623) to make public procurement procedures more flexible, promote transparency, speed up the completion of projects, and assign more responsibility to public purchasers, all in the name of reviving economic activity in Tunisia. These successive reforms have contributed to creating a situation of legal instability that hinders public purchasers and bidders from fulfilling their duties.

The 2011 decree on public procurement

The 2011 decree was introduced by the transitional government in the aftermath of the 14 January 2011 Revolution for the purpose of meeting, in the short term, the requirements imposed by international aid, and to lay the foundations for a more comprehensive reform of the public procurement system.

The decree governs public contracts awarded by the State, local authorities, administrative establishments, and State enterprises for the completion of works, service provision, and studies. Contracts for public service concessions, contracts of association, consortium agreements, subcontracting agreements, and assistance contracts between the public purchaser and other partners, towards the completion of a public or a private order, do not constitute a public contract. In addition, sales contracts (orders passed between third parties and the government or a state enterprise), as well as purchases made on the basis of a simple purchase order within fixed limits are not considered “public contracts”.

The objectives of this decree are:

1. To bring Tunisian law on public procurement more in line with international standards.
2. To introduce temporary provisions that make it possible to speed up procedures (shortened times, administrative streamlining, relaxed ex-ante control, increased responsibility of public purchasers). Thus, for example, the new decree provides for a single opening of (technical and financial) bids, as well as for the suppression of ex-post control for public contracts below a certain threshold.

3. Establish measures to enhance transparency in the entire public procurement cycle, such as the mandatory publication of calls for tenders.

The core innovations introduced by the May 2011 Decree include, in particular:

- increases in the maximum thresholds for the High Commission of Public Procurements;
- requirements that public purchasers publish on the Internet the contracts awarded;
- recognition of the right of appeal on the part of stakeholders before the signing of a contract, and a change in both the appeal procedure and the procedure for publishing investigations and legal decisions.

While this reform fosters transparency, the temporary provisions that make it possible to speed up the procedures are not strictly established. Indeed, the decree defines exceptions to competitive tender procedures as follows:

Public contracts are awarded, after competitive bidding, through calls for tenders. Yet, they can be exceptionally granted by way of extensive consultation or by way of negotiated contracts, without requiring an authorization by decree or executive order beforehand. Such exceptions, which should be justified and required by the specific nature of certain procurements, do not affect the obligation to respect principles of transparency and equal opportunity (art. 3).

Note: The experiences of OECD countries have shown that in order to avoid all risks of corruption, it is essential to define as specifically as possible the conditions under which the public administrator can suspend the rules of competitive bidding. To guarantee a level-playing field, exceptions should be strictly defined in public procurement regulations, especially with regard to the following elements:

- the value and strategic importance of the contract;
- the particular aspect of the contract that justifies the absence of genuine competition, because of, for instance, exclusive rights;
- the confidentiality of the contract, in the name of protecting State interests;

- exceptional circumstances, for example, extreme emergencies.

A recent review of the progress made in OECD countries indicates that, since the adoption of recovery plans responding to the financial and economic crisis, the proliferation of fast-track procedures intended to accelerate the allocation of public funds have increased risks to integrity. Conversely, the excessive regulation and rigidity of public procurement procedures can be counterproductive when they lead to limited competition and high procedural costs. It is impossible to reduce ex-ante controls without increasing waste, fraud and corruption unless other risk mitigation mechanisms have been put into place. One can, for instance, establish fast and efficient review and redress mechanisms, a risk assessment of public procurement, specific training on integrity and stricter transparency rules (see the United States experience in Box 2.2).

Box 2.2. Mitigating risks in fast-track procedures (United States)

In the United States, The Council of Inspectors General on Integrity and Efficiency provides an independent authority to foster improvements and collaboration among the Offices of Inspectors General in the United States. In 2009, the Council led the development of tools for audit to identify fraud and abuse in procurement. In particular a contract risk assessment tool was developed by the Contracting Committee of the Federal Audit Executive Council to mitigate risks linked to the increase of procurement spending associated with the 2009 Reinvestment and Recovery Act, which had forecasted USD 787 billion in public spending.

The excel-based tool is intended to serve as a tool to assist auditors in identifying high-risk contracts meriting audit attention. Its use may be particularly appropriate when contract volumes exceed available audit resources, and the audit organisation must decide which contracts to review. The worksheet instructs individuals to assign a risk value to 12 risk factors, using information that is readily available in department/agency and government-wide contract databases. The risk factors were chosen as those that were most critical based upon the collective experience of committee members, but can be easily modified based on each organisation's views on risk. The first five risk factors relate to size, nature, and type of contract. The remaining factors range from contractor performance to personally identifiable information considerations. Each risk is assigned a weight by internal audit staff based on their judgment of the relative importance of each factor – these can be substantiated by qualitative considerations. The product of the risk weight and risk factor generates a composite score to aid risk.

Box 2.2. Mitigating risks in fast-track procedures (United States) (cont.)

The U.S. Department of Justice has also sought to mitigate risks to integrity by launching a targeted initiative aiming at detecting fraudulent financing requests made under the recovery package. As part of this initiative, public purchasers, civil servants in charge of allocating subsidies, private businesses, as well as auditors and public investigators have been trained to detect signs of collusion and fraud. Furthermore, government agencies have received help to investigate cases of alleged collusion and fraud and to sanction them. Throughout the country, thousands of public purchasers and officials empowered by the federal government and the federated states to grant subsidies have received training from their respective divisions. Consumers, private businesses, and public institutions can report suspicions of misconduct and get information on competition law on the website: www.justice.gov/atr/public/criminal/economic_recovery.htm.

Source: OECD (forthcoming), *OECD Public Governance Reviews: Review of the United States Federal Public Procurement System*, OECD Publishing.

Ensuring implementation and enforcement of the law: towards a more active participation of concerned parties

The discrete reforms on public procurement have created legal instability that confuses public purchasers and bidders about the rules by which they must abide.

Furthermore, during the field mission, some institutions informed the review team that they were not consulted about the formulation of the 2011 Decree, due to the urgency to enact the reform immediately after the Revolution.

Moreover, certain provisions introduced by the 2011 Decree have not yet been entirely adopted within public institutions. This is, for instance, the case for the creation of internal purchasing committees.

It is therefore crucial that the High Commission of Public Procurements, and more particularly, the National Observatory of Public Procurements, raise the awareness of stakeholders about the new procurement procedures.

In order to strengthen the legitimacy of the reforms and to guarantee their actual implementation, the government should develop mechanisms to involve the different actors, including those of the private sector, in the development of reforms related to the public procurement process.

To this end, the government should, based on the experiences of other countries, for example, identify the various degrees of participation of the various stakeholders, and determine which actors are the most concerned by

certain reforms and should therefore be systematically consulted. Public involvement in government activities can vary considerably, in terms of:

- Awareness-raising and information: the government may go beyond simply informing the public on its activities, and facilitating access to information (access to public archives, official bulletins, websites, etc.).
- Consultation: the government may consult with the public on policy development and implementation. It is crucial that the private sector be systematically involved in the development of future rules governing the public procurement process.
- Active Participation: citizens are invited to actively participate in defining the policy-making process and the content of policies. The active participation of a civil society actor may be a means to exercise oversight of specific public procurement areas that are especially vulnerable to corruption due to the amounts of money at stake. (see Box 1.4 on Mexico's experience).

The actors in the reform process

The Public Procurement Commission: ensuring its independence

The Tunisian system is characterised by the existence of several procurement commissions that examine the legality of the tendering, procuring, awarding, and implementation procedures for transactions above certain fixed thresholds:

1. The High Commission of Public Procurements, placed under the supervision of the Prime Minister, is composed of four specialised committees (Building, Communication and Computer Technologies, Raw Materials, Miscellaneous Orders), a Follow-Up and Petition Committee, as well as the National Observatory of Public Procurements;
2. The Departmental Procurement Commission, which is chaired by the relevant minister or his representative;
3. The Regional Procurement Commission, chaired by the governor of the region or his representative;
4. The Communal Procurement Commission, chaired by the president of the municipal council or his representative;

5. Internal Procurement Commissions that have been created within each state enterprise.

In matters of public procurement for the State, local authorities, administrative establishments, and public non-administrative establishments, the jurisdictional thresholds of the procurement commissions, as set by the Decree No. 2011-623 of 23 May 2011, are as follows:

Table 2.1. Jurisdictional thresholds of the procurement commissions for public contracts awarded by the state, local authorities, administrative establishments and public non-administrative establishments

Object	Local/Communal Procurement Commission	Regional Procurement Commission	Departmental Procurement Commission	High Procurement Commission
Work	Up to TND 2 million	Up to TND 5 million and up to TND 7 million for projects of regional scope	Up to TND 10 million	Over TND 10 million
Provision of capital goods and services	Up to TND 400 000	Up to TND 1 million	Up to TND 4 million	Over TND 4 million
Provision of computer supplies and hardware	Up to TND 200 000	Up to TND 1 million	Up to TND 4 million	Over TND 4 million
Software and computer services	Up to TND 200 000	Up to TND 500 000	Up to TND 2 million	Over TND 2 million
Studies	Up to TND 150 000	Up to TND 200 000	Up to TND 300 000	Over TND 300 000
Pre-surveys for internally-controlled work	Up to TND 2 millions	Up to TND 5 millions	Up to TND 7 millions	Over TND 7 millions

Table 2.2. Jurisdictional thresholds of the procurement commissions for public contracts awarded by state enterprises

Object	State Enterprise Procurement Commission	High Commission of Public Procurement
Works	Up to TND 10 million	Over TND 10 million
Provision of capital goods and services	Up to TND 7 million	Over TND 7 million
Provision of computer supplies and hardware	Up to TND 4 million	Over TND 4 million
Software and computer services	Up to TND 2 million	Over TND 2 million
Studies	Up to TND 300 000	Over TND 300 000

Tunisia's past experience demonstrates that it is important to reinforce the role of the High Commission of Public Procurements to ensure that the executive power will no longer be able to disregard its opinions. In addition, the proliferation of commissions contributes to making the system excessively complex and can lead to a dilution of responsibilities.

Note: Whatever model is chosen, the most important point is to guarantee the independence of the authorities in charge of determining compliance with the rules governing public procurement. In effect, political interference in the awarding of public contracts prevailed in Tunisia under the former regime, and it is therefore necessary to provide the High Commission of Public Procurements with the means to safeguard its independence, particularly by making its opinions binding and public. The decisions of the High Commission of Public Procurements should be mandatory for both public managers and public authorities.

The National Observatory of Public Procurements: reforming the database

A National Observatory of Public Procurements was created in 2002 within the High Commission of Public Procurements. Its mission is to:

- create an information system to collect, process, and analyse public procurement data;
- follow-up on the assessment of public purchases, purchase procedures, the study of the economic and social impact of public procurement;
- improve public procurement regulation and propose any measure capable of doing so;

- regulate public procurement;
- assist public purchasers through training programmes;
- publish calls for tenders online (it has its own website: *www.marchespublics.tn*).

The Observatory does not exactly have an oversight role for public procurement, but rather, it aims at training and informing public purchasers and the private sector so as to familiarise them with new procedures.

Its role is also to disseminate objective and reliable data on public procurement with in the interest of improving access to information. Yet, some representatives of the private sector have told us that the Observatory does not always play its role of supporting public purchasers and, above all, the private sector.

Civil society actors also indicate that the Observatory does not provide public procurement data that would enable an overall assessment of the progress that had been in the effort to enhance the system's transparency and integrity. Indeed, even if the 2011 Decree requires calls for tenders to be published on the public procurement portal, the information that is available on the website is incomplete and irregularly updated. Hence, among the first measures the Observatory should consider for bringing about greater transparency is to ensure that calls for tenders and the opinions of the procurement commissions are systematically published.

The Italian example (see Box 2.3) presents the database that the Authority for the Supervision of Public Contracts has developed to reinforce its oversight role in public procurement.

The Observatory should be able to assess the performance of the public procurement system through indicators informed by data collected. The Italian example (Box 2.3) suggests that certain elements could be taken into account in order to detect irregularities in the public procurement process, which may represent signs of embezzlement and corruption (for instance, signs of excessive rebates given).

Box 2.3. Database on public procurement in Italy

In Italy, the Authority for the Supervision of Public Contracts has been established by Law No. 109/1994, with the aim of supervising public contracts in order to grant compliance with principles of transparency, rightfulness, and competition among operators in the public procurement market. The Authority is responsible for enforcing the law by delivering an identification code to public procurement payments. Guidelines are also available to promote conformity with the law.

The Authority for the Supervision of Public Contracts has created a national database on public procurement, as ordered by Law No. 136/2010. This database ensures the collection and processing of data on public procurement, in order to provide indications for the supervising departments and to address the regulating activity towards rules of transparency, simplification and competition. In addition to collecting data, it also provides market analysis. More specifically, it collects and assesses data on the following issues:

- the structural characteristics of the market of public procurements and its evolution. Statistics about number and value of awarding procurements are grouped by localization, procurement entities, awarding procedures; the different typologies of procurement are periodically published.
- conformity with the criteria of efficiency and value for money during the procurement process. Changes of the earlier contractual conditions are recorded in the database of the Authority.
- dysfunctions and anomalies of the market that are detected through the following measures: i) signs of excessive tendering rebates, with respect to the average rebates; ii) the number of bids to be presented in each awarding procedure; iii) the localization of awarded companies with respect to the localization of contracting authority. Similarly, the database is an important instrument for supporting the SOAs certifying activity, with reference to the procedures of verification of the requirements prescribed by art. 17 of D.P.R. 34/2000 (and following modifications).

The database of building industry companies (casellario informatico) and the declarations provided by economic agents about the capacities expended by other entities are incorporated, among other elements, into the National database on public procurement.

The Authority has improved its performance thanks to the quality of the data provided by the Database on public procurement. In particular, it has reinforced its oversight and supervisory role, which has enabled it to offer guidance on the measures that need to be adopted in order to foster transparency, streamlining, and competition throughout the entire public procurement process, and, perhaps most significantly, during the phases preceding and following the calls for tenders.

Source : OCDE (2012), “Progress made in Implementing the OECD Recommendation on Enhancing Integrity in Public Procurement”, internal working document, OCDE, Paris, www.oecd.org/gov/ethics/combined%20files.pdf.

In addition to this data on integrity risks in public procurement, the experience of OECD member countries shows that data collection should also make it possible to assess the efficiency of the system. Thus, the Observatory could provide performance indicators, such as:

- the average duration, as well as the cost of planning and preparing a call for tenders;
- the percentage of annual participation in tenders;
- the number of contracts awarded to small- and medium-sized businesses, and the percentage this represents of the total number of awarded contracts;
- the number of claims and petitions, etc.

Box 2.4. Establishing performance indicators in procurement: The Chilean experience

The Public Management Improvement Programme (Program de Mejoramiento de Gestión) is a national programme – run by the Directorate of Budgets of the Ministry of Finance – with the aim of achieving measurable improvement in key aspects of public management. In particular, the programme focuses on the following: human resources, customer assistance, planning and implementation, internal auditing, financial management and quality of service. Public procurement is identified as a priority area for the programme, and objectives established for this area also figure prominently in the domain of financial management. The public procurement component of the management improvement programme specifies key performance indicators, and establishes rewards at the individual and organisational levels. In order to bestow greater recognition upon the procurement function through adequate salaries and thereby improve capacity, the programme incorporates performance-based incentives. Thus salary increases are tied to achievement of PMG goals. Performance indicators, among others, include:

- The rate of acquisitions made by way of an emergency purchase process;
- The share of the budget reserved for acquisitions made through public calls for tenders; and
- The difference between the number of acquisitions set in the annual purchasing plan and the actual number made during the year.

Source : OCDE (2007), Integrity in Public Procurement: Good Practice from A to Z, OECD Publishing. doi:[dx.doi.org/10.1787/9789264027534-en](https://doi.org/10.1787/9789264027534-en).

The example of Chile (see Box 2.4) illustrates the types of indicators that have been included in the national programme for improving public management in order to measure the performance of public procurement.

Note: The Observatory could, following the examples of Chile and Italy, reform the information system in order to make it possible in the medium term to:

- measure the performance of the public procurement system;
- indicate the possible risks of corruption and embezzlement (for example, the abusive use of exceptions to competitive bidding);
- use this information to reform the system on the basis of weaknesses that have been identified.

Purchasing commissions: towards the professionalisation of public purchasers

The High Commission of Public Procurements initiated the project of the May 2011 Decree in an effort to respond rapidly to the challenges facing Tunisia in the aftermath of the revolution.

The Decree of 2011 effectuated some changes to the institutional framework, including, most notably, the establishment of purchasing commissions to work with public purchasers who will award contracts in amounts not to exceed thresholds set by the relevant procurement commissions.

All procedures for publishing calls for tenders, and opening and examining bids should abide by the provisions governing public procurement for these purchasing commissions.

This measure will attribute more responsibility to the public purchaser and help to make the system more effective and rapid. However, since public purchasers lack both specific training and certification, they are not necessarily equipped to effectively carry out their missions.

Therefore, it is first necessary to make sure that these purchasing commissions become veritable sources of expertise within public institutions in matters related to public procurement. These members should not exercise other duties, but, rather, should be recognized as being specialized civil servants.

Two-thirds of OECD member countries have identified public purchasers as constituting a wholly distinct professional sector. Countries

considering the awarding of contracts as a specific profession generally issue formal job descriptions for public purchasers. An increasing number of countries have established certification or professional licensing programmes for these purchasers (for example, Australia, Canada, Chile, the United States, Ireland, New Zealand, the Slovak Republic, and Switzerland). The case of Canada offers a long-running experience of efforts to create a community of qualified public purchasers who are publicly recognised as such (Box 2.5).

Building upon the efforts already made by the National Observatory of Public Procurements, which has established a certification system for instructors only, a more comprehensive system covering all public purchasers could be developed.

Box 2.5. Canada’s professional development and certification programme

The community of public purchasers coordinated the programme with the objective of improving standards of professionalism and increasing public recognition of the training and technical know-how behind their occupational skills in materiel and real property management. The responsibility for managing the life-cycle of assets – from the evaluation and planning of needs during the entire acquisition stage until their elimination – serves as the glue holding the community together. The presence of this shared responsibility has led the community to develop common competencies, training objectives, and required skills. A singularly important characteristic of professional development and certification is the explicit recognition of this community and the creation of a profile of key competencies and training mechanisms. The program has two main aspects:

- Professional development: involving a profile of basic competencies and self-evaluation tools available on the web, as well as a programme of course studies and other training activities aimed at strengthening and acquiring specific skills. The profile of competencies describes the 4 main categories of competencies and the 22 competencies and the behavioural indicators associated with them, divided into 3 levels of competence.
- Certification: including the Standard for Competencies, the Certification Programme Manual, and the request for certification and the Maintenance Manual.

Box 2.5. Canada's professional development and certification programme (*cont.*)

There are a certain number of organisations within the federal government that play a critical role in the management and provision of the Certification:

- The Treasury Board, which is responsible for supervising and managing the whole process of professional development and certification.
- The Standards Council of Canada plays three roles: it facilitates the registration and supervision of candidates as they make their way through the Programme of certification; it conducts testing in order to determine who is eligible to take the exam; it deals with the organization and programming of the exam, and is responsible, with the aid of an independent panel, for certifying candidates.
- The Canada School of Public Service provides a certain number of courses that are required to take on order to be certified.
- Also, The Public Works and Government Services of Canada offers specific courses on public procurement that are recommended for certification.

Source: Website of the Treasury Board of Canada Secretariat, www.tbs-sct.gc.ca/pd-pp.

Moreover, one possible course of action could be to re-establish a specialized programme of study within the Tunisian National School of Administration. In the meantime, the Observatory has indicated that it would publish online the most frequently asked questions (FAQ) during the training programme so as to develop a body of information civil servants can access in order to draw lessons about their experiences.

If certain pitfalls, however, are to be avoided in the process of putting these commissions in place, it is important to:

- maintain a clear separation of responsibilities (between the definition of needs, the awarding of contracts, and making of payments); and
- make certain that warning mechanisms are in place in cases of contract splitting, so as to ensure that contracts remain below the thresholds determined by the appropriate commissions.

The High Commission of Public Procurements and the National Observatory of Public Procurements must assume advisory and support functions for the purchasing commissions to help them overcome the potential challenges they will face.

Note: The granting of greater responsibility to public purchasers cannot be effectively achieved without raising the standards of professionalisation within the whole public purchaser community. The OECD Principles highlight the importance of ensuring that civil servants in charge of awarding contracts meet high standards in terms of their training, competences, and integrity. To make this so, the Tunisian government could consider granting civil servants working in the area of public procurement a truly distinct professional status. The public authorities should also make sure to regularly update the competencies of such civil servants so as to take into account changes in regulations, management, and technology.

The private sector: a key partner

To ensure a regular exchange of information between the public and private sectors

As mentioned earlier, the private sector is a key partner of the government in the area of public procurement. Yet, like public administrators, those in this sector need to be informed about recent reforms to be able to adhere to them. For example, the private sector lacks access to the kind of training that would enable businesses to respond to calls for tenders in conformity with the latest regulations.

In addition to the development of specific training resources for the private sector, the Tunisian government has not established a regular dialogue with the private sector. This dialogue could lead to:

- A systematic association of private sector representatives to develop and examine policies and regulations governing public procurement. This would better assure that proposed norms are well understood by the two parties and reflect their expectations.
- The publication of plans (annual or multiannual) detailing the needs foreseen by the government in terms of goods and services.
- The opportunity for businesses to study innovative solutions to help the public authorities understand how different markets function, to adapt to them, and to take advantage of the possibilities they create.

Promoting the participation of SMEs in public procurement

Small- and medium-sized enterprises (SME) are central to the private sector and a privileged partner for the government since they contribute to economic and social development, as well as to local job creation. As such,

the Tunisian government grants them with certain privileged conditions to facilitate their participation in public procurement. In effect, Decree No. 2011-623 of 23 May 2011 stipulates that the public purchaser “reserves annually up to 20% of the estimated value of contracts in works, goods, services, and studies to small- and medium-sized enterprises (art. 6).”

To ensure a level-playing field, certain countries have also adopted measures directly targeting SMEs, which suffer from comparative disadvantages when they participate in calls for tenders. Thus, preferences are extended to SMEs in such countries as Australia, South Korea, the United States, and France. In the United States, 23% of direct contracts and 40% of sub-contracts are set aside for SMEs (Box 2.6).

Box 2.6. The Small Business Act in the United States

The Small Business Act was adopted in 1953, establishing the Small Business Administration (SBA). The activities of the SBA involve five key areas of operation: financial aid, aid for supply, management assistance, and disaster and regulatory assistance. The Small Business Act stipulates that each federal agency must possess an annual objective for promoting “the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.”

In 1996, in conformity with chapter 15(g) of the Small Business Act, Congress moved to facilitate the access of small businesses to public contracts by obligating the federal government to allocate 23% of the total estimated value of its procurements to these enterprises.

Businesses founded by women also benefit from these conditions. Five per cent of the total value of contracts attributed by the federal government are earmarked for businesses owned by women.

The SBA also offers other services such as training and a platform for exchanging ideas on the challenges encountered by businesses participating in its development programme called Minority Enterprise, as well as loan services to SMEs.

The actual implementation of these initiatives is verified regularly by the Office of Federal Contract Compliance Programmes.

Source: OECD (forthcoming), *OECD Public Governance Reviews: Review of the United States Federal Public Procurement System*, OECD Publishing.

The role of enterprises in promoting codes of conduct

Enterprises need to become more involved in reforms oriented around strengthening their codes of conduct, especially with regard to their interactions with the government. However, the Tunisian Union for

Industry, Commerce and Handicrafts (UTICA) has indicated that efforts in this direction have already begun.

OECD member countries and private sector representatives have recognised in the establishment of the “Principles of Corporate Governance” in 2004 that “the corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.” Numerous enterprises today thus incorporate approaches to reinforcing codes of conduct and ethics into their activities.

In Morocco, for example, the General Confederation of Moroccan Companies (CGEM) has worked in collaboration with the government to establish standards of good governance within enterprises. The Moroccan Code of Good Corporate Governance Practices that came out of this effort thus developed out of a broad consensus of private and public sector actors. This Code divides the principles of good governance into four categories: i) the responsibilities of the governance body; ii) the rights of shareholders and associates, and their fair treatment; iii) the transparency and the dissemination of financial information; iv) the role of stakeholders and their fair treatment. The partnership between the private sector and the Moroccan government was extended even further with the establishment of an Integrity Pact for each sector. The Integrity Pact represents the commitment of operators in a given sector to limiting and preventing risks of corruption. Its objectives consist of the following: i) prevent all forms of corruption in the sector; ii) establish high standards of ethics and good governance; and iii) develop specific action plans.

Principles of transparency and integrity throughout the entire procurement cycle

On the whole, legislative and institutional reforms of the procurement system in Tunisia have aimed at enhancing the transparency and flexibility of procedures. Nonetheless, an examination of the different steps composing the procurement process demonstrates that there are still some challenges to be overcome, especially in the interest of striking a balance between enhancing transparency and increasing efficiency.

Needs assessment, planning and budgeting

The experience of OECD member countries shows that the risks of corruption or embezzlement exist at every step of the procurement cycle, even in pre-bidding.

Needs assessment, procurement planning, and budgeting: allocating public funds for the uses intended

Table 2.3. **Risks in pre-bidding in OECD countries**

Pre-bidding	Risks identified
Needs assessment, planning and budgeting	<ul style="list-style-type: none"> – The lack of adequate needs assessment, deficient business cases, poor procurement planning. – Failure to budget realistically, deficiency in the budget. – Procurements not aligned with the overall investment decision-making process in departments. – Interference of high-level officials in the decision to procure. – Informal agreement on contract.
Definition requirements	<ul style="list-style-type: none"> – Technical specifications: <ul style="list-style-type: none"> – Tailored for one company; – Too vague or not based on performance requirements. – Selection and award criteria: <ul style="list-style-type: none"> – Not clearly and objectively defined; – Not established and announced in advance of the closing of the bid; – Unqualified companies being licensed, for example through the provision of fraudulent tests or quality assurance certificates.
Choice of procedure	<ul style="list-style-type: none"> – Lack of procurement strategy for the use of non-competitive procedures based on the value and complexity of the procurement which creates administrative costs. – Abusive of non-competitive procedures on the basis of legal exceptions through: <ul style="list-style-type: none"> – Contract splitting on the basis of low monetary value contracts; – Abuse of extreme urgency; – Abuse of other exceptions based on a technicality or exclusive rights, etc.; – Untested continuation of existing contracts.
Time frame for bid preparation	<ul style="list-style-type: none"> – A time frame that is not consistently applied for all bidders, for example, information disclosed earlier for a specific bidder. – A time frame that is not sufficient for ensuring a level playing field.

Source: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris. doi: [dx.doi.org/10.1787/9789264027510-en](https://doi.org/10.1787/9789264027510-en).

Needs assessment

Article 9 of the 2002 Regulatory Decree on procurement stipulates that:

- Services for which a public contract is awarded must exclusively meet the nature and the scopes of the needs to be met. Their technical specifications should be determined before any competitive tendering or any negotiation can take place.
- These specifications should be defined in such a manner as to guarantee the quality of the public contract and to promote domestic production.

Specifications should be based on intensive studies so as to give a precise idea of the nature and scope of the needs to be satisfied. In order to ensure the quality of specifications, the same decree enabled public purchasers to submit the proposed specifications beforehand to the procurement commissions to get their opinion on them.

In the interest of simplifying procedures, the 2011 Decree, for its part, eliminated this step. Yet, supervisory bodies have indicated that the poor quality of specifications is one of the main issues hampering the procurement process. In short, public purchasers are hardly specialists in this area, and lack proper training. Specifications define the conditions under which contracts are awarded and executed, and so their poor quality can have a direct impact on the performance of suppliers.

Planning

Absent from Tunisia's public institutions is any kind of procurement planning process or programme that makes use of purchasing forecasts. What does exist, however, is a circular issued by the Prime Minister that requests that managers plan and establish purchasing programmes and forecast their overall costs. Effective planning would enable the avoidance of certain potential problems, such as the practice of cost-splitting, which is formally prohibited by 2001 Decree (Article 8), and the development of regulated markets that could be considered as anti-competitive practices.

Planning enables the formulation of a long-term strategic approach to assessing purchasing needs and managing procurement. The evaluation of needs is seldom approached in a systematic way in Tunisia. The government should force all institutions to define their purchasing needs through the use of an annual planning programme. This would make it possible, on the one hand, to identify potential framework contracts if necessary, and on the other hand, to more effectively mobilise the private sector. A proper

definition of needs will also have a positive impact on the completion of the public contract.

The public purchaser should analyse purchasing procedures in order to define objectives and target forecasts that closely correspond to the priorities of his institution and, more generally, of the government. Tools like scorecards could be used to facilitate a regular feedback of information and to make necessary adjustments. These measures would contribute to a change in attitudes within the Tunisian government, transforming its culture from one in which conformity to regulations is the sole objective to one oriented around results in which managers can evaluate the opportunity of each spending and the results derived from it.

Budgeting

In many countries, the Minister of Finance disseminates an annual policy brief for each investment programme. The brief describes the implementation process, the funding parameters, and the programme's specific objectives. A committee composed of senior government officials is organised under the chairmanship of the Minister of Finance to coordinate planning and implementation.

In order to establish a logical and transparent link between public spending and the outcome of tenders – from the Public Investment Programme (PIP) to the contracting entities – the government should consider formulating a multi-annual budget and an estimate of its spending based on PIP needs. Each ministry and contracting entity will use this financial plan as the basis for its own budgetary targets and as a support for contracting plans. This form of national exercise focused on budgetary needs and on the ministries and entities involved throughout the process requires leadership by a high-level official within the Ministry of Finance. It should also involve the officials in charge of purchasing at the national, governmental, and local levels.

A discussion bringing together civil society and the private sector could provide an opportunity to get feedback on public sector planning capacities. This will be all the more important when Tunisia moves towards establishing a result-based budgetary management system by 2016.

Moreover, the experiences of OECD member countries reveal the importance of setting up an integrated system linking the earmarking, budgeting, investment, contracting and contract management procedures, and validating them through an efficient verification system. This kind of system stands in sharp contrast with the traditional budgeting approach of compartmentalising functions, which was characterised by a lack of information on performance and financial management, as well as by a

transaction-based idea of the role of verification. New technologies can facilitate this integration of the budgeting, purchasing, and payment procedures, as the example of Dubai’s Tejari system shows.

Box 2.7. Integrating budgetary procedures, purchasing, and payment in Dubai

Dubai has established a regulation to facilitate the development of an integrated e-procurement system, Tejari. Tejari is a government-initiated, profit-driven online marketplace that enables all phases of negotiation to take place on line.

In addition, governmental departments can place their orders via an Enterprise Resource Planning system (ERP) that is linked to the accounting and invoicing system. These systems are used together in an integrated manner. All government departments dispose of a shared internal information system that gathers together available data.

With the introduction of Tejari, Dubai has benefited, in particular, from the reduced duplication of procurement functions and offices, and a more unified and user-friendly procurement system that consolidates budget, purchasing and payment processes on line.

Source : OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: [dx.doi.org/10.1787/9789264027510-en](https://doi.org/10.1787/9789264027510-en).

Specifications

Article 9 of the 2002 Decree governing public procurement provides that:

1. Services for which a public contract is awarded must correspond exclusively to the nature and scope of the needs to be met. Their technical specifications should be determined before any competitive tendering or negotiation can take place.
2. These specifications should be defined in such a manner as to guarantee the quality of the public contract and to promote domestic production.

In order to ensure the quality of specifications, the same decree enabled public purchasers to submit proposed specifications to procurement commissions beforehand to obtain their opinion on them.

In the interest of streamlining procedures, the 2011 Decree has eliminated this step. Yet one of the problems identified during verifications is that the specifications do not meet expectations in terms of quality.

Specifications indicate the conditions under which the public contracts are awarded and executed. They include, among other elements:

- The General Conditions of Contract establishing the administrative provisions applicable to all contracts of the same nature.
- The General Recommendations establishing mostly the technical provisions applicable to all contracts of the same nature.
- The Special Conditions of Contract establishing the administrative provisions specific to each contract and indicating, as a matter of obligation, the articles of the General Conditions of Contract which may be waived or from which a specific contract deviates.
- The Technical Specifications establishing the technical provisions specific to each contract and necessarily indicating the articles of the General Recommendations that may be waived or from which these Technical Specifications deviate.

The General Conditions of Contract and the General Recommendations are made applicable by executive order of the Prime Minister after consultation with the High Commission of Public Procurements.

Note: In the process of transition towards assigning public purchasers with greater responsibilities and streamlining procedures, it is essential to ensure that public purchasers dispose of the right tools to prepare specifications meeting the appropriate needs (for example, reference database, appropriate training).

In addition, Article 4 of the 2011 Decree indicates that “specifications must not favour any particular bidder.” Moreover, the 2002 Decree stipulates that the definition of specifications must be based on intensive studies in order to precisely define the qualitative and quantitative aspects of the needs to be met.

Yet, in practice, public purchasers are not necessarily aware of the necessity to manage the risks of patronage and corruption that exist in the specification preparation process. For example, if private engineering and design agencies can assist public purchasers in define the specific needs and the capacity of entrepreneurs, producers, and service providers to meet them, one should be sure to ascertain that the said agencies are not themselves bidders.

The experiences of OECD member countries reveal that in order to ensure the objectivity of specifications, it is important that they be:

- Based on clear needs. Providers and end users may be consulted during the process of defining specifications as long as the participants in such consultations are numerous and representative enough, and the results are examined against a market analysis conducted by the public procurement authority to enable greater objectivity.
- Written in such a way as to avoid any form of bias. In particular, they must be precise and complete, without being discriminatory (no exclusive brands, or descriptions of branded products). It is essential to avoid any form of specification that favours a specific product or service.
- Written according to the intended results. They should focus on the goal rather than on the means to reach it, so as to encourage innovative solutions and the best use of public spending.

Public procurement

Transparency and equal access to information for bidders

The 2002 Decree clearly stipulates that public procurement is governed by the following principles:

1. equal opportunity for all bidders;
2. transparent procedures;
3. competition.

These principles have been upheld by the various reforms that have been introduced following, in particular, the 2011 Decree. Thus, Article 3 reaffirms that “public contracts are awarded, after competitive bidding, through calls for tenders.”

Yet, some public contracts can be awarded, on an exceptional basis, by way of extensive consultation or by way of negotiated contracts, without requiring an authorisation by decree or executive order beforehand, as was obligated by the 2002 Decree. Such exceptions, which should be justified and required by the specific nature of certain procurements, do not affect the obligation to respect principles of transparency and equal opportunity.

The High Commission of Public Procurements has nonetheless indicated to the review team conducting the field mission of December of 2011 that negotiated contracts represent a small proportion of the total number of public contracts (about 6-7%).

In order to enhance transparency, the Decree also required that the contract notification be published in the press and on the National Observatory of Public Procurements web portal at least 20 days before the bidding deadline. Yet, to expedite the entire process, the time required for publication of the contract notification has been shortened in comparison with the time specified in the 2002 Decree. The contract notification must include:

- the subject of the contract;
- the place where the specifications and, when applicable, the sale prices, are made publicly available;
- the place and final date for reception of bids;
- the place and date of the commission meeting to open the bids;
- the duration for which bidders remain bound by their offers;
- the type of necessary supporting documents to provide for references and professional and financial guarantees;
- the selection criteria for successful bidders, other than those stipulated in the rules.

As mentioned above, small- and medium-sized enterprises possess certain benefits, such as being exempted from providing the provisional guarantee for their participation, as well as enjoying the 20% quota of the total estimated contract value that is reserved for them. Small- and medium-sized enterprises are categorised as such on the basis of their overall sales and level of investment, with a maximum amount of the contract to be awarded to them.

However, the private sector indicates that certain problems hinder the implementation of these provisions:

- Formalities and procedures that remain ponderous despite the streamlining efforts launched by the 2011 Decree;

- Lack of transparency in the publication of tender outcomes. Indeed, even if the 2011 Decree stipulates that outcomes be published, the private sector has noted that, in practice, this is not done systematically.

Note: In the interest of enhancing transparency and competition between potential suppliers, it is essential for the Tunisian government to ease the formalities and procedures for registering companies. Moreover, the experiences of OECD member countries show that it is important to provide suppliers the opportunity to submit their bids electronically, which may make the submission process easier. To this end, the dematerialisation of public contracts constitutes a major project of the Tunisian government, as exemplified in Morocco’s experience (see Box 2.8).

Box 2.8. Expediting the administrative files of potential suppliers: The experience of Morocco

Morocco has developed a Supplier Database geared towards simplifying public purchasing procedures. In effect, the companies registered in the database will no longer need to furnish the basic documents for the establishment of their administrative file, other than the provisional guarantee. Rather, the General Treasury of the Kingdom will perform the verification of documents as companies register themselves in the database, which will provide public purchasers with an updated list of all potential suppliers.

This initiative takes shape out of the broader project launched by the General Treasury of the Kingdom in January 2007 (www.marchespublics.gov.ma) aimed at dematerialising the public procurement process. However, to achieve this objective, Morocco has opted for a three-stage approach (over the period between January of 2007 and the first half of 2010) for activating the different features of its electronic procurement platform:

- Stage 1: The online activation of the public procurement portal and Database so as to ensure the publication and tracking of public expenditures (January 2007 - March 2009).
- Stage 2: The establishment of a dematerialised procurement platform and Supplier Database with the objective of facilitating electronic filing (1st semester of 2010).
- Stage 3: The establishment of e-procurement markets (2nd semester of 2010).

Source : Moroccan Portal for Public Procurements, www.marchespublics.gov.ma.

Dematerialisation

Dematerialisation facilitates the access of bidders to information (contract notices), ensures transparency in the public procurement process (publication of the outcomes of tenders), makes it possible to collect data on public procurement, and finally, enables electronic bid submission.

Contract notices and the outcome of tenders are published on the *www.marchespublics.gov.tn* platform that was created by the High Commission of Public Procurements. However, while these functions are clearly established, the website is not regularly updated and some information is missing. It is therefore urgent to update such data, and to make the transmission of information by public institutions mandatory and systematic.

The website also enables access to decrees and other rules governing public procurement. This information is published in its entirety, alongside a description of the main actors in the public procurement system. Some data on contracts also exists, but because it generally does not specify the time periods associated with them, it does not enable one to measure the performance of the system.

Moreover, bidders lack the opportunity to submit their bids on the website. In a second phase, Tunisia would like the platform to become a real electronic procurement platform. The Observatory has told the review team that collaboration with South Korea is under way to better understand the features of their electronic procurement platform. This collaboration will aim to support Tunisia in the creation of its own electronic procurement platform to be named TUNEPS. This platform will first cover a few pilot ministries and public institutions before being expanded to encompass the entire Tunisian public sector. During the international conference on “Strengthening the Integrity Framework and Preventing Corruption” on 13-14 February 2012, Chile and Italy presented their electronic procurement platforms, which could constitute two additional models for Tunisia (Box 2.9). Useful lessons can be drawn from the comparison between the Chilean and the South Korean platforms.

Box 2.9. The different uses of electronic platforms: The cases of Chile and South Korea

Chile's electronic procurement platform (www.chilecompra.cl) has managed to effectively integrate the different systems governing the different phases of the procurement cycle. This system has guaranteed an extremely high level of transparency to all stakeholders, mainly through the production of accurate data on public procurement. It has also promoted the investigation of the conditions for awarding contracts, thereby strengthening the overall integrity of the Chilean system.

In South Korea, the Korea Online E-Procurement System (KONEPS) is an integrated electronic system for public procurement that covers the entire national territory and allows the online processing of every step of the procurement cycle, from requisition to payment. Thanks to this digital system, consumer associations and companies participate in monitoring the management of public funds in the public procurement domain. The system covers all stages of the procedure, from those prior to submission to contract management to payment. For example, the procurement service publishes the specifications of tenders on KONEPS before the publication of the contract notice to encourage interested suppliers to make suggestions.

This information system can also track payments and prevent risks to integrity during this operation. The company submits an invoice and receives payment upon presentation of documents sent by an inspector of the user agency. Because the paperless payment system is connected to the finance settlement system, the user agency, the company, and the bank all have access to all of the relevant payment information. To avoid delays, payment is made online automatically within two business hours after receipt of the invoice.

Source: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: dx.doi.org/10.1787/9789264027510-en; and OECD (2010), "Conclusions of the 2nd Multilateral Meeting on Public Procurement," conference paper, Rome, 14-15 June 2010.

Execution and final settlement

Final settlement constitutes the last phase of execution of a contract. It is the responsibility of the purchaser to evaluate the execution of the contract and determine its exact amount. It represents the end of contractual obligations for the contractor. Article 121 of Decree No. 2002-3158 of 17 December 2002 states that: "Each contract must reach a final settlement that must be submitted to the competent Procurement Commission within a period not exceeding 90 days from the date of final acceptance of services

The final settlement file includes: an introductory note, the final accounts, the comparative table of forecasts and realisation, the minutes of provisional and definitive acceptance, the time limits, etc. After approval of the final settlement, the buyer releases all securities and guarantees to the contractor.

The results of investigations conducted by horizontal supervisory bodies, such as the General Audit Office of Public Services, the Finance General Controller, or the General Controller of State Domains and Land Affairs, have highlighted some notable abuses that are common during the procurement execution phase:

- Delays in the payments due to contractors and suppliers. Even if the regulations require the administration to pay amounts due within two months, in reality, excessive delays are reported for the settlement of accounts and supplier invoices.
- Delays in turnaround because of additional conditions and contingencies due to a flawed definition of requirements or because of political interference in the granting of award that does take into account the technical capabilities of the supplier to actually execute the contract.
- Delays in the final settlement of the contract and in the release of securities.

In effect, as the experiences of OECD member countries have demonstrated, this phase is particularly vulnerable to various forms of misconduct. The most common risks to integrity are due, most notably, to:

- abusive practices by the contractor in the implementation of the contract, particularly with regard to quality, price and timeliness;
- a lack of control exercised by public officials or collusion between the contractor and the official responsible for overseeing the conduct of operations;
- opacity in the selection of subcontractors and partners, and a lack of accountability of these parties;
- a lack of supervision by public agents;
- an inadequate separation of financial duties, particularly those dealing with payment.

A process of awarding contracts that is both transparent and based on competition regulated by effective internal and external auditing mechanisms is necessary to ensure the sound and timely execution of contracts. The direct participation of citizens in monitoring and verifying contract performance through the dissemination on the public procurement portal of reports on the execution of contracts and detailed descriptions of the real-time status of projects can, on the one hand, reduce risks of delay in execution, and, on the other hand, compel public purchasers to meet payment schedules. Thus, in Mexico, for example, an online portal has been put in place to monitor the progress of works contracts by locality, and to provide access to payment schedules.

Suggested course of action for Tunisia: implementing specific measures to promote integrity in public procurement

In addition to the aforementioned proposals on how to strengthen the integrity framework in the public sector, this final section offers some more specific measures that could be introduced in the domain of public procurement.

Preventing conflicts of interest

Conflicts of interest are among the primary risks to integrity in the field of public procurement. In this perspective, it is essential to develop specific ethical standards for public officials in charge of procurement.

As previously mentioned, it is first important to adopt measures at the organisational level in order to avoid potential conflicts of interest. The Tunisian government could learn from the experiences of OECD countries in guaranteeing a separation of responsibilities and skills throughout the entire procurement cycle (see Box 2.10).

In addition, procurement officials must conduct themselves in a manner that is consistent with the public service mission of their institution, and therefore must avoid situations that create conflicts of interest. Tunisia has yet to enact specific measures to prevent conflicts of interest. As was discussed in Chapter 1, Tunisia should consider developing a regulatory framework to identify, prevent, and sanction conflicts of interest.

Box 2.10. The separation of duties and competencies

- Entities: In Austria and Germany, for example, there is a separation between the administrative entities requiring specific goods and services and those who purchase them.
- Functions: in Turkey, for example, there is a clear separation between strategic planning, the monitoring of budgeting and performance, accounting and reporting, and internal auditing.
- Stages of the procurement procedure: in the United States, for example, authorisation for disbursing expenditures, approval of the main procedural steps, and recommendations for awards and payments must remain separate processes.
- Commercial and technical aspects: in the United Kingdom, for example, business assessment must be conducted separately from technical evaluation, and then the information is brought together in order to clarify the award recommendation.
- Financial aspects: ex-ante monitoring performed by financial services and the financial transaction itself should be separate operations. In particular, the tasks of authorising payment and those related to accounting cannot be entrusted to a single official (Ireland, Luxembourg, and Turkey, for example).

Source: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: 10.1787/9789264027510-en.

Specific provisions for public purchasers could be included in this framework, such as a prohibition on accepting any gift, given the risks associated with their duties. To communicate these obligations, it is also possible to develop a code of conduct or guidelines that can be adapted to the context of each public institution. In Mexico, for example, the Federal Electricity Commission (CFE), which is the supplier, producer, and distributor of public electricity, has implemented several measures to prevent conflicts of interest and strengthen the integrity of public officials (See Box 2.11).

Establish procedures to allow officials to report abuses in public procurement

The Tunisian government should seek provide public officials with the means to report abuses in public procurement. To this end, clearly defined procedures could be established for reporting misconduct. These could

include: an internal claims office, a direct hotline, an outside mediator, as well as an electronic reporting system that protects the whistleblower’s anonymity while awaiting requests for clarification.

Box 2.11. The Code of Conduct of the Mexican Federal Electricity Commission (CFE)

The CFE Code of Conduct defines the values and standards of conduct that public officials must adopt. This code is based on the Federal Code of Ethics for Civil Servants and it lists as its main values: responsibility, honesty, and respect.

It provides an overview of the attitudes and behaviour of its employees in the performance of their duties, and highlights the importance of increasing their responsibility. It also underlines the fact that honesty implies probity, transparency, and efficiency in the use of the public funds allocated to the CFE. Since 2003, an advisory board has been responsible for monitoring adherence to the code and for interpreting it. The code is periodically revised (at least once every three years).

The code prohibits employees from accepting or soliciting any type of favour, advantage, donation, or reward while performing their official duties. It also prohibits the use of CFE resources (public funds, information, or other types of resources) for personal interest, or to favour or harm any political party or association.

Source: OECD (2013), “Public Procurement Review of the Electric Utility of Mexico, Towards Procurement Excellence in the *Comisión Federal de Electricidad*”, internal document, Public Governance and Territorial Development directorate, Paris.

A law promoting the protection of whistleblowers should be implemented in Tunisia, as mentioned above. This will create a favourable environment for officials willing to report cases of misconduct. The legal framework should define wrongdoing and the appropriate sanctions to be applied in an effective, professional, and timely manner. It should also expressly prohibit any form of retaliation. In May of 2012, the Tunisian government established an alert portal (www.anticorruption-idara.gov.tn) for the purpose of exposing abuses and administrative corruption. At the initiative of the Minister for Administrative Reform, the portal allows citizens, civil servants, and businesses to anonymously report online abuses they observe in the context of their interactions with the government, as well as to follow up on the handling of these reports by the relevant authorities.

However, there is currently no legal framework in place to protect whistleblowers. Moreover, the authorities responsible for investigating cases that are reported are not listed on the portal.

One of the main problems to solve is to ensure the protection of civil servants who signal an anomaly against retaliation. This can be done by providing them legal protection, by protecting their personal data, by preserving their anonymity, and by creating a protection commission. It is also important to make certain that handling of claims is well documented and impartial so as to avoid unduly harming the reputations of people affected by the allegations.

Note: The OECD has developed within the framework of its activities with the G20 some principles as well as a comparative study to assist countries in the establishment of a legal framework to protect whistleblowers against retaliation. This study could provide a source of good practices for the Tunisian government, which plans to develop a legal framework to protect whistleblowers.²

Recourse mechanisms

The Investigation and Follow-Up Committee within the High Commission of Public Procurements provides businesses with a system of administrative recourse. It was created by the Prime Minister in 2003. This committee is composed of a judge of the Court of Auditors and two auditors from the General Audit Office of Public Services and the Finance General Controller. Claims can be addressed to the committee during the entire public procurement cycle (notification, award, etc.). The committee can also audit awards that are already contracted or under execution.

The bidders may, within three days following the publication of the tendering outcome, lodge a petition about the results and the competing process with the Investigation and Follow-Up Committee. As soon the petition is lodged, the committee forwards a dated copy to the concerned public purchaser. The public purchaser suspends the signature of the award until he receives the Committee's opinion. The Committee shall decide on these petitions within ten business days of the date of reception of the public purchaser's response, supported by any clarification that may have been requested. The claim process is as follows: i) reception of the petition; ii) quick review; iii) drafting of a notification so that the public purchaser automatically suspends the process; iv) thorough review of the file, and final opinion submitted to the Prime Minister for his final decision.

The Committee also provides enterprises with assistance on interpreting the laws/regulations. The Committee has received a considerable number of

claims – 195 petitions in 2009, 248 in 2010, and 308 in 2011 (63% of which were valid and involved tailored technical specifications, excessively low technical bids, and short deadlines for preparing the bids). Moreover, the Committee was consulted 34 times in 2009 and 33 in 2011 about interpreting the law. The opinions of the Investigation and Follow-Up Committee are published on the website of the National Observatory of Public Procurements.

Article 5 of Decree No. 2002-3158 of December 17, 2002 stipulates that any public procurement must include provisions on dispute settlement. The settlement of disputes is done either out-of-court or in court. Out-of-court settlement is conducted by the head of the public purchaser's administration or by the concerned procurement commission (Article 85 of the Decree). Legal settlement can be initiated by any of the contracting parties who can lodge a dispute with the administrative court or submit it to arbitration.

Note: Reinforcing this recourse mechanism should be a priority. This committee should have enforceable authority to make its decisions final, whereas today it is dependent on the Prime Minister's decision and thus on outside political authority. Officials who participate in this process of re-examining contract awards must be protected from any outside pressure. Potential suppliers must have the possibility of applying to the administrative court for a re-examination of the procurement authority's final decision.

Institutional and social oversight mechanisms

Supervisory bodies

As mentioned in Chapter 1, in addition to the departmental inspections, the Tunisian government has three main supervisory bodies: the General Audit Office of Public Services, the Finance General Controller, and the General Controller of State Domains and Land Affairs. There is also the High Committee of Administrative and Financial Control which is in charge of coordinating the different programs of these supervisory bodies. In addition to their supervisory function, these institutions also fulfil an advisory role on legal documents related to the organisation and modernisation of government.

The oversight system in Tunisia raises some issues related to independence (the work orders of the supervisory bodies are determined by the executive branch), coordination, and collaboration, since the different bodies do not systematically share information and their task of providing horizontal monitoring overlaps. It seems that the history behind the creation of these bodies has led to the development of feelings of mistrust between

them. Thus, the General Audit Office of Public Services was created within the Office of the Prime Minister, while the Finance General Controller is placed under the supervision of the Ministry of Finance, the General Controller of State Domains and Land Affairs is under that of the Ministry of State Domains and Land Affairs, and the High Committee of Administrative and Financial Control is under control of the Presidency. Moreover, the State Controller monitors public spending in public establishments, and the General Service of Public Spending conducts ex-ante control on spending.

Meanwhile, the Court of Auditors conducts ex-post audits and it determines its own auditing missions.

The multiplication of these supervisory bodies may lead to redundant horizontal monitoring activities. However, the fusion of some of these bodies is currently under consideration in order to increase the efficiency of the oversight system and make sure it provides assistance to managers so as to reduce the risks of mismanagement of public funds (see Chapter 1).

As part of a comprehensive reform of public finance management that seeks to make the system more based on objectives, the oversight control will also be reformed to replace the current ex-ante control system with an ex-post system.

Note: The systematic exchange of information between internal and external supervisory bodies could also be encouraged in order to optimise the exploitation of the data generated by the different audits performed (see also Chapter 1). Finally, the frequency of audits in public procurement could also be linked to various factors, such as: the nature and scope of the risks involved, or the size and value of the public contracts, the different types of purchase, as well as the complexity, sensitive nature, and specificity of individual contracts (for example, in cases of exemption from the general rule of competitive bidding). Whatever the reform that will be put into place, it is necessary that it rationalises oversight mechanisms and gives supervisory bodies greater independence.

Public oversight

As indicated above, the government should work to create a partnership with civil society and the private sector in order to guarantee transparency and integrity in public procurement.

In addition to its participation in defining and implementing reforms related to public procurement, civil society can serve as “scrutineers” of public procurement. For instance, Mexico has adopted this approach by fostering the direct public oversight of public procurement (Box 2.12).

Box 2.12. Direct public oversight of public procurement: the “social witness” in Mexico

The “social witness” is a representative of civil society who acts as external observer during the public procurement process. In accordance with the recommendation of *Transparencia Mexicana*, Mexican public institutions inclined to do so have been able for the past few years to use this system to promote transparency, reduce the risk of corruption, and improve the overall efficiency of the process. In addition to giving public backing to the process, the social witness also gives non-binding recommendations during and after the process.

The social witness must be an honourable public figure, who is well-known and trustworthy, as well as independent from the parties involved in the bidding. He/she enjoys free access to the information and documents related to the public procurement process, and can participate in the key steps of the process. In particular, he/she can:

- verify the basis of the bid and the contract notice;
- participate as observer in all the meetings that are organised with the potential bidders to remove their possible doubts;
- receive the unilateral integrity declarations of the different parties;
- attend the submission of technical and financial bids;
- participate as observer in the meeting during which the outcome of the tender is published.

Since December of 2004, the criteria to participate as a social witness in the procurement process are strictly defined. The social witness must, among other things:

- prove that he or she is not a public official;
- prove that he/she does not have any criminal record, and that he/she has never been sanctioned or removed from the register;
- officially pledge not to participate in a public procurement likely to cause him/her a conflict of interest (because of a family or personal relation, or of a business interest, for example);
- be familiar with the legal regulations applicable to public procurement (or, at the least, undertake the training offered by the government).

The social witness is liable to sanctions if he or she violates ethical standards or discloses information on the procedure.

Box 2.12. Direct public oversight of public procurement: the “social witness” in Mexico (*cont.*)

The intervention of the social witness proved positive during the awarding of the public insurance contract by the Federal Electricity Commission (*Comision Federal de Electricidad*). The social witness’s recommendations indeed helped to improve the procurement process considerably by, notably, increasing by 50% the number of bidders, extending the tendering period, and offering more precise and clear answers to the questions the bidders asked. The government estimates that this intervention led to savings of USD 26 million on the total cost of this public contract.

The list of accredited “social witnesses” is available on the Website of the Ministry of Public Administration: www.funcionpublica.gob.mx/unaopspf/unaop1.htm.

Source: OECD (forthcoming), “Public Procurement Review of the Mexican State's Employees' Social Security and Social Services Institute: A Strong Procurement Function for a Healthy Public Service”, OECD Publishing, Paris.

Notes

- 1 Decree No. 2002-3158 of 17 December 2002 governing public procurements as modified and complemented by Decree No. 2003-1638 of 4 August 2003, Decree No. 2004-2551 of 2 November 2004, Decree No. 2006-2167 of 10 August 2006, Decree No. 2007-1329 of 4 June 2007, Decree No. 2008-2471 of 5 July 2008, Decree No. 2008-3505 of 21 November 2008, and Decree No. 2009-3018 of 19 October 2009.
- 2 The Principles and the study are available at: www.oecd.org/dataoecd/42/43/48972967.pdf.

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