



## Toward a fair tender process

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All laws need to be updated regularly to ensure better service. But, most importantly, we need to have the will to implement regulations. Laws can't be ratified as if they were part of folklore. One example of this is the freedom of information law. This law was ratified recently but it has now become more difficult to obtain information. Another example is the law on illegal wealth accumulation that was ratified in the 1990s. Until today, nobody has been prosecuted for this. This means that either all wealth accumulation has been legal, or that the law has not enabled us to reach the truth. Today's laws need to be updated to achieve their stated goals. But even in their current state, we can find the truth if we have the will to implement the laws.

### FLAWS IN REQUIREMENTS

Small and medium enterprises (SMEs) can participate in tenders despite the difficulties of the current system. Monopolies are prohibited according to our laws, and this encourages SMEs to participate in tenders. Drawing up bidding documents according to the interests or status of a particular company is also prohibited by law, yet if we were allowed to fully implement this regulation, we would further encourage the participation of SMEs. The bidding documents for any project are prepared by the relevant public sector body. The Tenders Administration checks and controls these bidding documents to see if they are suitable and if they allow competition. For example, in the bidding documents for contracts related to cleaning offices, requiring ten years' experience is not normal and is not a condition imposed by any law. If it were, what would be required for a bid to build an airport? A lifetime's experience? This is totally mistaken logic.

### INCONSISTENT CONDITIONS

If the Tenders Administration expresses an objection, it is told that it shouldn't be talking to a minister like that. But in a state where the rule of law prevails, the minister, public sector employees, and all citizens should abide by the law. Doing otherwise takes us back to a feudal system. All countries have standardized bidding documents to facilitate the participation of multiple companies. Conditions are standardized for the same kinds of projects, and all ministries and administrations must follow them. In our

country, this is not the case. We do not have nor do we follow standardized conditions. For example, the conditions of a contract for cleaning the offices of the Ministry of Education might require five years' experience, whereas those for the Ministry of the Interior might require ten years' experience. Why? Is it because we want the cleaning to be superior for the Ministry of the Interior? Such conditions restrict competition as they necessitate higher bidding costs, as the prices for the same service will need to differ. A central committee must be in charge of State tenders and set out

standardized conditions for basic tasks and situations, then explain them to providers. Bidding documents for all bids would be the same for basic recurring conditions, while they would contain additional specific conditions tailored to the job.

### FIGHTING CORRUPTION

Rumors always abound around public tenders, alleging they are all corrupt, and that the outcome has been decided in advance. This creates an atmosphere of disappointment and disillusionment for companies intending to apply, especially SMEs. This needs to change. Interested companies should not hesitate to apply for any tender ... especially for those we're told have been decided in advance. If, afterward, a company thinks it was treated unfairly, it should submit an appeal to the judiciary. This is the process if, for example, a provider wins a tender and the public institution (the buyer) cancels it without valid reasons. Even if the judiciary decides against it due to political intervention, the private company should insist on participating in the bidding process the next time around. This is the best way to fight corruption. This is our State and we, the private and public sectors, have to deal with it and help improve it, because eventually corruption will hurt all of us, including the corrupt.

### OPENNESS

The public sector in general should take a different approach toward the private sector. When I was appointed to the Tenders Administration in 2012, coming from the Court of Audit, I was told not to talk openly to any provider because doing so would raise questions about my relationship with the provider and cast doubt on the integrity of the tender. But I believe corruption and bribery depend on the official and could occur anywhere, including in total

secrecy, without open contact. I believe the director of the Tenders Administration should talk to all bidders and understand their concerns and problems, in order to find a solution. This is my job. When I was appointed to this post, I allowed non-winning bidding companies to file an administrative complaint at the end of each tender to better understand the situation. We also have a cultural problem. Institutional work and legal pathways have been totally lost. The Institut des Finances Basil Fuleihan (IoF) plays a major role in dealing with such issues, organizing training sessions and publishing specific booklets, like the SMEs guide. The IoF also sends employees abroad for additional training. All concerned institutions, including the IoF, the Tenders Administration, the Court of Audit, the private sector, and syndicates, should play their respective roles.

#### **STANDARDIZATION**

The Tenders Administration has been laboring to try to implement international standards, so that it can come up with the best terms of reference to help SMEs. We are ready to suggest more incentives and a better fiscal system for these enterprises, in order to enable them to participate more effectively. But we need the approval of lawmakers. For instance, providers' basic documents should not be submitted again and again at each tender. Instead they should be submitted once a year. Our job as the Tenders Administration is to facilitate procedures, to guide, and to ensure equal opportunities for small, medium, and large companies. This would help the economy and counter monopolies, which have catastrophic implications for the economy.

#### **THE WINNING TICKET**

The Cabinet can spend hours negotiating bidding conditions (terms of reference for a bid). This does not happen anywhere else in the world. It is not the Cabinet's job to do this. Its role is to set out the broader policies. Things could change for the better if we started to implement small steps in the bidding process. For example, let's say we find that strangely, in some bidding results, many companies have submitted exactly the same financial offer. In this case, according to the regulations, the winner must be decided via a lottery. How could multiple companies submit exactly the same offer? This happens when the relevant public institution gives the wrong price estimate for a project and says that in the financial offers, bidding companies are not allowed to make more than a 20 percent reduction to this figure. The bid is then sent to the Tenders Administration as is. But the problem is that the initial evaluation of the project is wrong, so many companies will be able to submit a bid at the lowest amount. If all companies can bid for the project at 20 percent below the estimate, this means that the estimate was not realistic. If the Tenders Administration has no control over the pricing, as is the case now, we will always reach the same old result. We already sent memos to the ministries and told them about this issue, and we have posted the results of tenders on



the administration's website, following the principle of transparency. Sometimes two directorates in the same ministry will provide different estimates for the cost of a ton of iron. This forces us to have a third party to control the pricing and the allowed percentage reduction. The State should always have a clear and accurate idea

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about the cost of its projects, first of all in order to be able to contain public spending. Forcing ministries and administrations to accurately price their projects and giving a supervising authority the right to check prices is essential in the fight against corruption.

#### **THE RIGHT FORMULA**

I also hope we can start choosing the winning offers following the equation: 70 percent for the technical part and 30 percent for the financial part. This is the case in many countries. But in the absence of independent controls, and with the full power in the hands of the ministers and their advisors, there will always be a huge risk of mismanagement. The preferential elements in each bid should be tangible and calculable, otherwise we will always have to adhere exclusively to the financial part to make a decision. At the end of some road construction projects, we were shocked to see that the company had been paid the entire amount and the road had not been constructed yet, but nobody had undertaken any checks. As civil society, as judges, and employees, we have a duty to confront and fight corruption, to talk about it, and to speak out about it. Transparency is the enemy of corruption. Light is the enemy of corruption. Corruption thrives when one person imposes their will and others keep quiet.

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