

Reforming Public Procurement in Lebanon

Briefing Note - April 2020

I. OVERVIEW

Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. As a consequence, the quality of the procurement system is **below average (48/100)** compared to the rest of the world and to a number of MENA countries¹.

The outdated legal framework (1959/1963) does not conform with international standards and guidelines. It is fragmented (various laws, decrees, decisions, etc) and some functions (complaints mechanisms) are inexistent. Several national efforts did not lead to a modern legal framework.

Public procurement reform is a whole-of-government reform highlighted in the Ministerial Declarations of both Hariri (2019) and Diab Governments (2020) and in the draft of the Lebanese Government reform program (April 2020)².

Procurement reform is one of the conditionality of the CEDRE conference (2018). It was highlighted by the International Support Group for Lebanon (ISG) on the occasion of its meeting in Paris on December 11, 2019, and in its Joint Statement issued on January 23, 2020 following the formation of the Diab Government.

Accounting for **20% of government expenditures** (excluding debt and reserves; excluding public institutions and municipalities)³ and **6.5% of the Gross Domestic Product** (around US\$3.4 billions), on average at central level⁴, public procurement is a key policy instrument to ensure value for money.

Public procurement policy framework is at the heart of the public financial management. It is key to **budget integration** and consolidation of public finances into a clear medium-term framework that allows government to better **assess fiscal implications**, forecast future financial needs and ensure all commitments are visible in the medium and long terms.

Procurement integration in budget is key to achieving greater efficiency and cost savings, to provide greater fiscal space and flexibility, to assess, monitor, and to manage fiduciary risks, budget uncertainties, inefficiency and corruption.

A coherent and clear Public Procurement system, in line with international standards and based on sound legal and institutional foundations, is thought to achieve **savings of around**

¹ World Bank (2017), *Benchmarking Public Procurement Report*

² The current government declaration commits “.... to pursue efforts undertaken by the Ministry of Finance to reform the public procurement apparatus including finalizing the MAPS II exercise, validating and adoption of its recommendations and work towards immediate adoption of a modern public procurement law in consultation with various stakeholders.” (Section 2, Article 5).

³ Calculated based on effective government expenditures at central level of government. Transfers to EDL to purchase gas and fuel are included.

⁴ The calculation of public procurement’s annual size is based on the Ministry of Finance’s Public Finance Reports for on-budget financing, and on Council for Development and Reconstruction data (CDR progress report, 2018) for donor-funded financing. Procurement share in GDP was estimated based on Ministry of Finance data.

US\$500 million on yearly basis, allowing for more fiscal space to finance public investments and for enhancing service delivery to citizens.

The Ministry of Finance committed to procurement modernization, giving a strong signal of trust to both the private sector and the donor community. This reform is key to integrating financial governance.

In 2019, the Minister of Finance mandated the **Institut des Finances Basil Fuleihan** to be the National Focal Point for this exercise (*decision 109/1, dated March 4, 2019*) and invited 14 institutions to be part of the transformation process based on the four following pillars:

1. **An evidence-based diagnostic** of the public procurement system, using MAPS II instrument (*Methodology for Assessing Procurement Systems developed by OECD*), in collaboration with the World Bank (WB) and the Agence Française de Développement (AFD);
2. **Drafting a new public procurement law** in line with UNCITRAL Model Law (2011), EU Guidelines (2014) and OECD Guidelines (2016);
3. **Preparing standard bidding documents** based on previous documents prepared by the Ministry of Finance in 2013 under WB financing, by OMSAR under EU financing and more recently by the Ministry of Education under WB financing;
4. Elaborate **practical recommendations** to advance public procurement reform and create around it a theory of change.

II. PROGRESS OF PUBLIC PROCUREMENT REFORM

1. MAPS II Assessment

In June 2019, the Ministry of Finance launched the implementation of the **Methodology for Assessing Procurement Systems – MAPS II**, with the support of the World Bank and the Agence Française de Développement.

- MAPS II is an **international methodology**, developed by the OECD, for assessing procurement systems worldwide.
- It aims at identifying the **strengths, weaknesses and gaps** of the system, and providing recommendations to better prioritize reform actions.
- It falls **within the international requirements** to establishing a modern and sound public procurement system in Lebanon.
- **This evidence-based and participatory assessment will inform the Government of Lebanon of the level of performance of its procurement system and the challenges faced, laying the foundation for a strategic vision of procurement modernization**

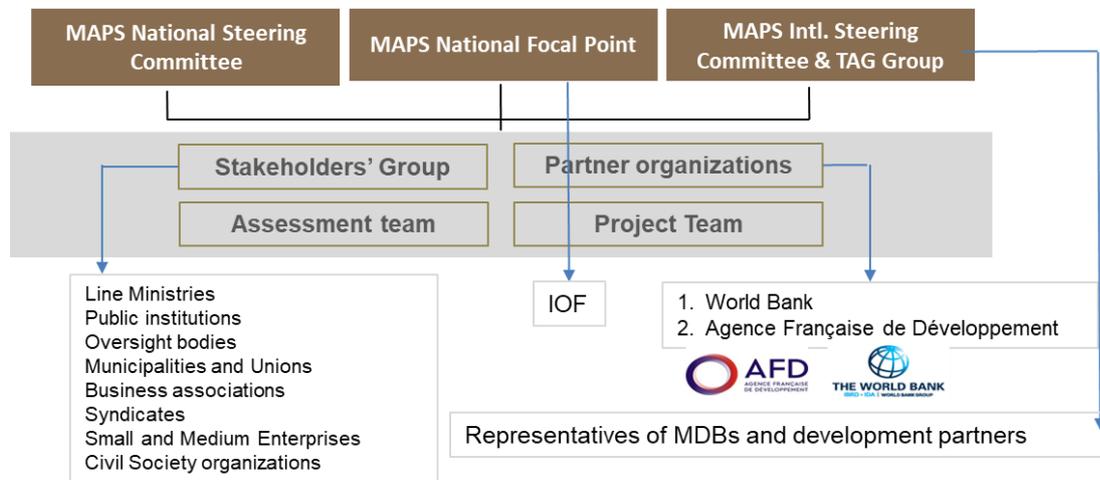
MAPS tackles 4 pillars:

- **Pillar 1-** Legislative, Regulatory and Policy Framework (**3** indicators and **18** sub-indicators)
- **Pillar 2-** Institutional Framework and Management Capacity (**5** indicators and **14** sub-indicators)
- **Pillar 3-** Procurement Operations and Market Practices (**2** indicators and **6** sub-indicators)
- **Pillar 4-** Accountability, Integrity and Transparency (**4** indicators and **17** sub-indicators)

The Methodology is based on:

- Qualitative assessment: Indicators' matrix, in-depth interviews
- Quantitative assessment
- Case studies
- Gap analysis
- Findings and recommendations

MAPS Governance structure is as follows:



National Steering Committee composed of 18 representatives from 15 government institutions, is facilitating access to needed information, providing substantive input and reviewing the findings:

1. Ministry of Finance - Institut des Finances Basil Fuleihan – National Focal Point
2. Court of Audit
3. State Council
4. Central Inspection Board
5. Central Tender Board
6. Ministry of Defense - Directorate General of Administration
7. Ministry of Defense - Lebanese Army
8. Ministry of Interior and Municipalities - General Security
9. Ministry of Interior and Municipalities - Internal Security Forces
10. Ministry of Interior and Municipalities - Local authorities
11. Ministry of Education and Higher Education
12. Ministry of Public Health
13. Ministry of Public Works and Transport
14. Council for Development and Reconstruction
15. Office of the Minister of State for Administrative Reform

Two international experts, mobilized by the partner organizations, are facilitating the evaluation process and ensuring its alignment with the methodology's requirements and guidelines.

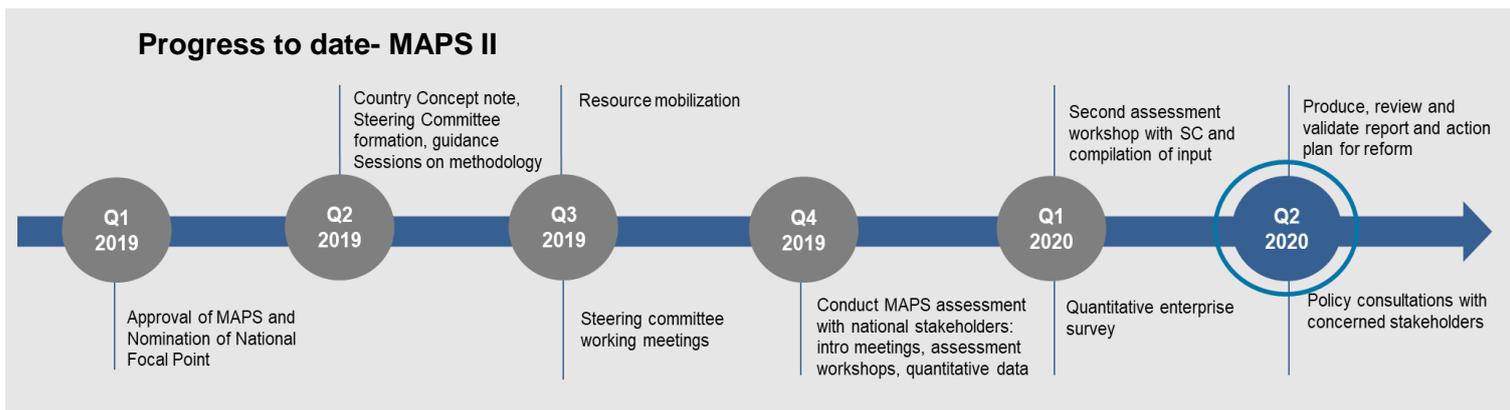
A **stakeholders' group** of more than 100 institutions from the public and private sectors and the civil society, are being mobilized and consulted throughout the process to collect their substantive input and ensure their buy-in on a proposed action plan resulting from the assessment.

MAPS Output

An **assessment report** detailing the **findings** (situational and gap analysis) and drawing the **recommendations** towards a **national action plan** for reforming the public procurement system, is being prepared by the two experts since beginning March 2020:

- A **first draft** of the report is expected to be issued by end of April 2020.
- It will be circulated for **review** by the national Steering Committee and by external reviewers from partners' organizations and the Technical Advisory Group (TAG).
- The final report **validation and adoption** is planned for June 2020.

MAPS final report will bring to the national dialogue panorama on public procurement reform in general, and on the new draft law in particular, **evidence and in-depth analysis to inform decision makers on adequate policy options and tools**, grounded in international standards and guidelines, and adapted to the Lebanese context.



2. A Modern Public Procurement Law

A team composed of national policy strategists, procurement specialists, legal experts and economists worked on **drafting the new public procurement draft law for Lebanon**.

Technical assistance by OECD-SIGMA experts was solicited to accompany the drafting process and provide policy advice.

These efforts are informed by and based on:

- Review of previous draft procurement laws;
- Evidence and data collected through the implementation of MAPSII;
- The UNCITRAL Model Law on Public Procurement (2011);
- Recommendations of the OECD Council on Public Procurement (2016);
- Benchmarks with procurement laws recently adopted in the Arab region, namely Jordan (2019), Egypt (2018), Palestine (2014), and Tunisia (2014);
- The input of national experts, policy strategists and subject-matter specialists, economists, legal experts, the private sector and civil society;
- Technical guidance of OECD-SIGMA experts.

In September 2019, a **first draft of the public procurement law** was presented to the Council of Ministers' Reform Committee.

In October 2019, **peer review of the draft law by national and international experts**, from the World Bank, OECD, OECD-SIGMA, MAPS experts, in addition to procurement experts at the Institute of Finance and legal experts from the private sector, was launched.

In February 2020, MPs Michel Moussa and Yassin Jaber **submitted the draft law to the General Secretary of the Lebanese Parliament**. On March 4, 2020, a **special parliamentary committee** was formed, chaired by MP Yassin Jaber. to study and discuss the proposed draft law.

Secondary legislation, guidelines, implementation tools and training will follow to ensure a sound entry-into-force of the law once approved.

Progress to date – Draft Law



3. Standard Forms and Tools

A **main drawback** of public procurement in Lebanon is the **absence of nationally binding standardized tools, including bidding documents**. This shortcoming complicates procurement operations, increase costs, reduces competition and trust, and limits the access of new economic operators to this market.

In 2008, **the Ministry of Finance – Institut des Finances Basil Fuleihan developed 5 standard bidding documents (SBDs)** reflecting best practices and balanced conditions of contracting. This exercise, conducted by national experts with guidance and oversight from WB experts, was financed on a WB PCF grant. The SBDs were reviewed by representatives of line ministries and public institutions, experts from the Ministry of Finance, the Court of Audit, OMSAR and the private sector. They were tested, revised and disseminated across the public sector.

They were submitted to the Prime Minister Office in 2009 but no action was taken since.

In light of a modern public procurement law and of the MAPS II recommendations, the Ministry of Finance intends to launch a consultation process with concerned stakeholders namely the Court of Audit, State Council, Central Inspection Board, the Central Tender Board, line ministries, OMSAR, public institutions and municipalities, etc. in order to **develop and test new standard forms and tools in view of their mandatory adoption by Government**.

Making **their use mandatory** across public sector can take place through secondary legislation (decree) followed by the deployment of large scale programs for capacity building and the issuance of explanatory guides and notes.

Progress to date – Standard Forms and Tools



III. SUPPLEMENTARY AREAS OF REFORM IDENTIFIED BY MAPS II EXERCISE

1. Institutional Mapping

The MAPS II exercise showed clearly the **weaknesses of the public procurement institutional framework** in Lebanon. It suffers from **overlapping mandates**, with **considerable capacity and technology gaps**, resulting in **inefficiencies and high risks of corruption**.

This commands a **detailed institutional mapping exercise of procurement stakeholders** to clarify their respective roles, mandates, prerogatives and structures, and propose modern institutional scenarios, in line with the provisions of the new public procurement law.

Progress to date – Institutional Mapping



2. National Strategy

A **national strategy** to modernize public procurement is currently inexistent.

The MAPS II exercise will lay the foundation for a **national vision and medium to long term strategy** informed by evidence and defining policy objectives, benchmarks, indicators, and advocacy to guide and evaluate the progress and ensure that this critical reform has enough elements of success.

The strategy will be **developed and submitted to the Council of Ministers for adoption**.

Progress to date – National Strategy



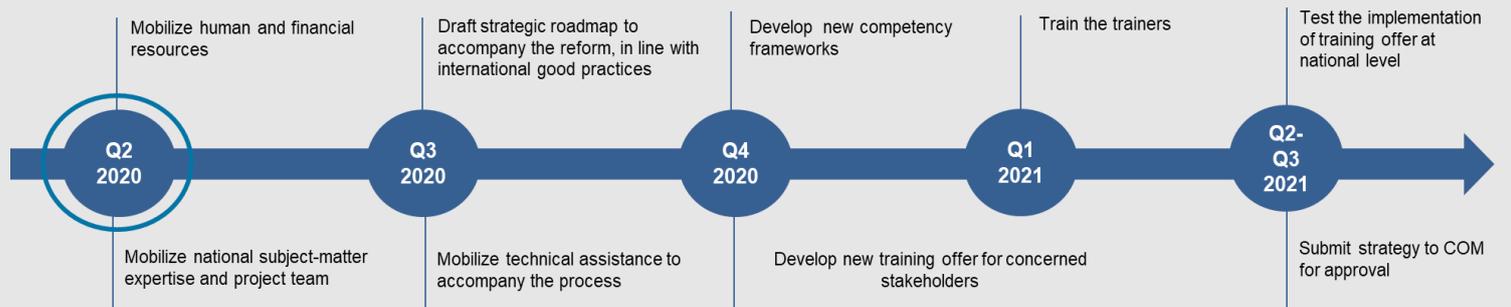
3. Capacity Building Strategy

A stand-alone **procurement profession is currently inexistent** in government.

The MAPS II exercise will lay the foundation for a **national vision for capacity building and the professionalization of the public procurement workforce**, to better prepare and sustain modernization efforts and meet international standards.

A **roadmap**, including a competencies framework to guide recruitment, career development, and capacity building, in addition to an action plan for professionalization, will be **developed and submitted to the Council of Ministers for adoption**.

Progress to date – Capacity Building Strategy



IV. TIMELINE (2019-2023)

