

Public Procurement Reform in Lebanon

Public Procurement Law

244 / 2021

AUGUST 2021



Objectives

Article 1: Objectives of the law

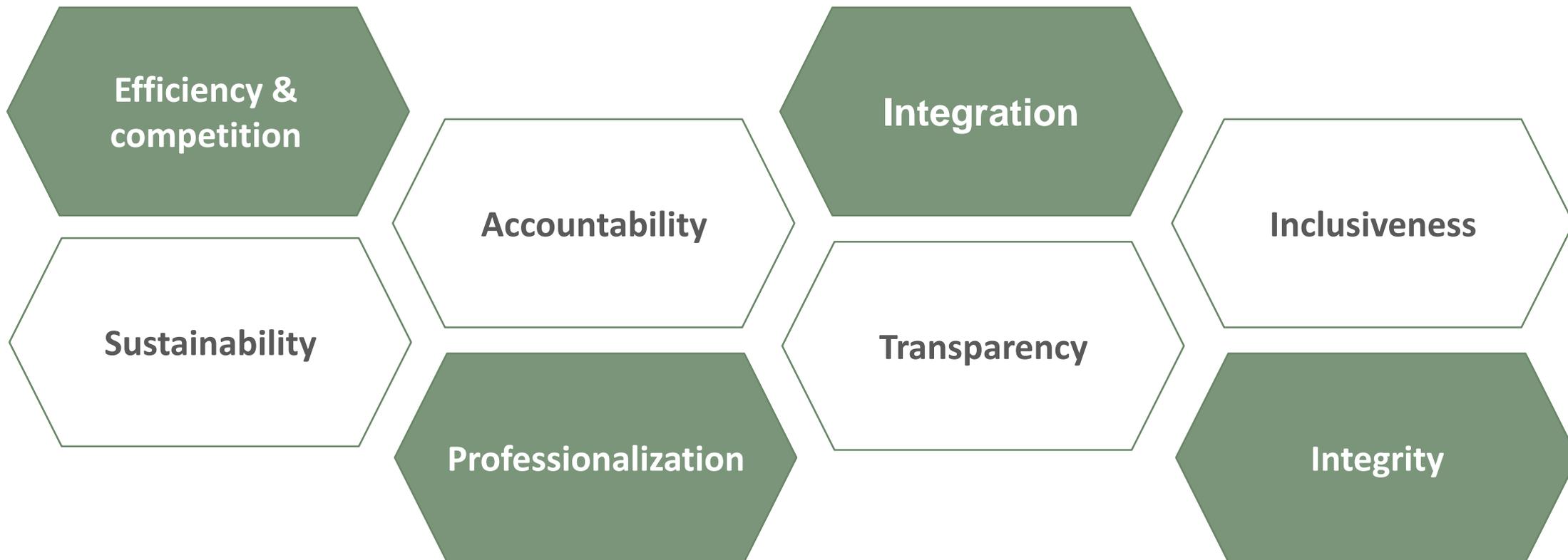
- Application of competitive proceedings as a general rule;
- Providing for equal opportunities to participate in public procurement;
- Providing for the fair, equal and equitable treatment of all bidders and contractors;
- Integrity, public aspect and professionalism of the procurement proceedings, in such a way to enhance control and accountability;
- Promoting the local economy development, national employment and production, based on the best value for spending public funds

Procurements shall be subject to:

- Good Governance rules, and
- Take into consideration the requirements of sustainable development



8 Guiding Principles



8 Guiding Principles

Inclusiveness

The law provisions are applied to all public administrations, institutions and bodies that procure to ensure its own needs or provide services to citizens at all levels

Integration

Procurement planning and integration within the national budget by encouraging medium-term budgeting to improve the designing and planning of the procurement cycle.

Accountability

Implementation of clear oversight mechanisms that include developing new effective frameworks for review and complaints, within specific deadlines for action taking, in addition to appropriate penalty measures.

Efficiency and competition

Competitive methods are the general rule and standard way in public procurement, to secure equal and fair opportunities for all potential bidders, and fight corruption.

Integrity

Define integrity and conflict of interest and determine the types of penalties that affect public and private sector employees according to the types of violation.

Transparency

Data must be published on the central electronic platform, to facilitating access to information and data.

Professionalization

Allocate professional human resources and continuously train them to maintain a high level of expertise and integrity

Sustainability

Mainstream sustainable development in its economic, social and environmental dimensions, while ensuring balance with primary policy objectives of public procurement.

Table of content

Chapter 1 General provisions

- Definitions
- Scope of Application
- Language
- Currency
- Etc...

Chapter 2 General rules related to the procurement process

The chapter presents general rules for the preparation, conduct and implementation of procurement

Chapter 3 Procurement methods

The law describes 7 methods, 3 of them are new:

- 2-stage tendering
- Request for proposal for consulting services
- Framework agreement

Chapter 4 Electronic procurement

The chapter contains special provisions that pave the way for the gradual implementation of electronic Procurement

Chapter 5 Professionalization and Capacity Building

Professionalizing public procurement through:

- Recognizing it as specific profession within Lebanese civil service organizational structure
- Mandatory training

Chapter 6 Public procurement governance

Details roles and mandates of procurement stakeholders:

Chapter 7 Complaints proceedings

The chapter details the mechanisms for the review and remedies system in the pre-contractual phase

Chapter 8 Integrity and sanctions

The chapter promotes integrity through:

- Transparency: mandatory publication
- Integrity: by identifying contradicting actions and assigning adequate sanctions
- Control: by introducing internal control, in addition to external control

Chapter 9 Tansitory Provisions

- Ongoing procurement
- Cancellation of previous contradictory laws
- Entry into force

8 Guiding Principles

1. Inclusiveness

The law provisions are applied to all public administrations, institutions and bodies that procure to ensure its own needs or provide services to citizens at all levels



8 Guiding Principles

2. Planning and integration

Promoting medium-term planning and integration with budgets in order to improve the design and planning of procurement cycle.

Article 11: Procurement Planning

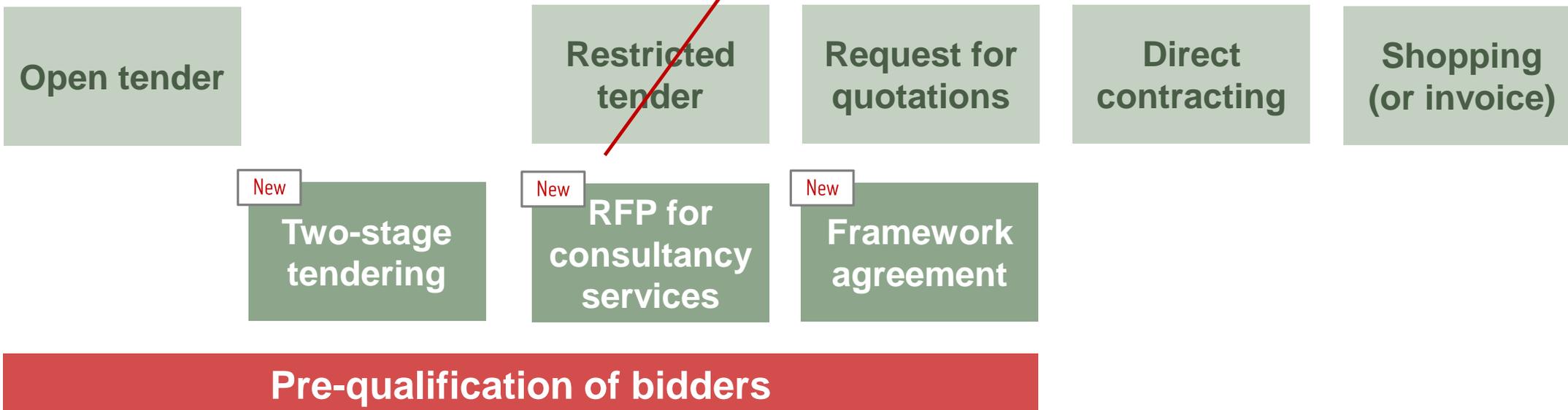
1. The provisions of this article apply to procurements projects with an estimated value exceeding one billion Lebanese Pounds. This value can be modified by a recommendation of the Public Procurement Authority and by a decree issued by the Council of Ministers.....(...)
2. The procuring entity shall determine its needs and prepare its annual plan for the coming year while engaging its general expenses, in accordance with the appropriations required in the draft budget. The annual procurement plan shall be prepared on the basis of a unified form and procedures set by the Public Procurement Authority. A plan can be annual or multi-annual in case it involves projects that require scheduling commitments in a medium or long term framework, provided that they contain at least the following information:
 - a. The subject matter of the procurement;
 - b. The nature of procurement (supplies, works or services);
 - c. The source of funding and the estimated value by tranches, where the announcement thereof can be made and included in the general budget;
 - d. A brief description of the project requiring the procurement;
 - e. The procurement method; (...)

8 Guiding Principles

3. Efficiency and competition

Competitive procedures are the general rule to secure efficiency, equal and fair opportunities for all bidders, fight corruption, limit mutual agreements and introduce new and modern procurement methods.

Procurement Methods proposed in Chapter 3 of the law 244/2021



8 Guiding Principles

3. Efficiency and competition

Competitive procedures are the general rule to secure efficiency, equal and fair opportunities for all bidders, fight corruption, limit mutual agreements and introduce new and modern procurement methods.

Open tender	New Two-stage tendering	New RFP for consultancy services	New Framework agreement	Request for quotations	Direct contracting	Shopping (or invoice)
It is the general rule for competitive procedures	The procuring entity assesses that dialogue with bidders is needed to improve certain aspects of the subject matter of the procurement and to formulate them with the required accuracy in accordance with article 17 of this Law, and obtain the most satisfactory solution to its procurement needs	A detailed and customized procurement method for consultancy services	Used when: <ul style="list-style-type: none"> ▪ The need for the subject matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time. ▪ The need for may arise on an urgent basis during a given period of time. 	A method based on simplified procedures for procurement projects of relatively low value	It is the exception and has its strict conditions, for ex: <ul style="list-style-type: none"> ▪ Due to a catastrophic and unexpected event, ▪ The requirements of security or national defense to preserve their confidential nature 	A method used for low-value procurement

8 Guiding Principles

4. Sustainability

Considering the sustainable development goals with their economic, social and environmental dimensions, in balance with the primary objectives of public procurement.



Chapter 2: General Rules

Chapter 1 Article 1

Article 15: Sustainability and development policies

Where possible, procuring entities shall adopt sustainable public procurement to direct the procurement power of the State towards sustainable supplies and services with a view to minimize the environmental impact and achieve the economic and social objectives set forth in international agreements and in accordance with national priorities, while ensuring a balance between the potential benefits and achieving the best value of spending public funds in such a way as to provide incentives to SMEs, local production and national expertise.

Where possible, bidding shall be made on the basis of lots, and the bidding documents shall specify the number and nature of such lots or groups and the requirements for participation in a lot or group of the procurement and the manner in which the contract is awarded, for the purpose of guaranteeing social and economic benefits. The sustainable public procurement rules and policies shall be set by decrees issued by the Council of Ministers, based on the proposal of the minister(s) concerned.

Article 16: Domestic preferences

Contrary to any other provision, proposals containing supplies or services of national origin may be given a ten (10) percent ratio preference over proposals containing foreign supplies or services. Preference shall be given to proposal components of national origin. National supplies and services and the specifications thereof required to benefit from such preference are determined according to the rules of origin.

It is forbidden to include, in the bidding documents or pre-qualification documents, provisions that exclude supplies/goods manufactured in Lebanon or Lebanese consulting and intellectual services if such supplies or services are available and the quality thereof meet the technical requirements.

8 Guiding Principles

5. Transparency

Procurement data must be published on the central electronic platform, to facilitate access of all concerned stakeholders, while preserving confidentiality wherever indicated in the draft law provisions.

Chapter 8: Integrity and accountability

Chapter 1

Chapter 2 and 3

Chapter 5

Article 109: Transparency

Definitions

procurement proceedings

CB

1. The contracting authorities shall adopt a mandatory publication policy whereby they shall announce their plans and the details of execution thereof, including the progress of the procurement process, awarding proceedings, contract, result of acceptance, execution and final value of the procurement, in accordance with the provisions of this Law and the secondary legislation thereof.
2. The contracting authorities shall use all means of publishing available to announce the aforementioned information, including the conventional means such as the official gazette and local newspapers, or the modern means such as websites. Publishing shall be mandatory on the central electronic platform of the Public Procurement Authority and the website of the procuring entity, if any.
3. Only what is of a confidential nature shall be prohibited from publishing, pursuant to Article 6 of this Law.
4. Public procurement data, at all levels in accordance with the provisions of this Law, shall be consolidated in a central database created for this purpose at the Public Procurement Authority, as part of the central electronic platform. This database shall be accessible free of any charges to the public and to all stakeholders under Article 6 of this Law.
5. Access to public procurement information shall be made possible free of any charges through the central electronic platform at the Public Procurement Authority and the websites of the procuring entities.



8 Guiding Principles

6. Professionalization

Allocating professional human resources and continuously training them to maintain a high level of integrity and expertise

Chapter 5: Professionalization and Capacity Building

Article 72: Professional Training

1. Public procurement officers shall be subjected to mandatory annual training run by the Ministry of Finance – Institut des Finances Basil Fuleihan.
2. The training shall be coordinated with the Ecole Nationale d'Administration (ENA) and other stakeholders while maintaining the principles of synergy and complementarity of roles between various institutes and training centers responsible for the development of building capacities at the national level, and encouraging the cooperative approach with centers of knowledge including but not limited to, universities, research centers or policy centers.
3. Part of the training may be addressed to the private sector.
4. The training shall include programs to enhance the integrity of procurement officials, in public and private sectors, to raise awareness about the risks of lack of integrity, such as corruption, fraud, collusion, discrimination, and the sanctions therefor, and to develop knowledge about ways to confront such risks.
5. Regular training shall include administrative and financial judges in charge of the implementation of this Law, upon the approval of the head of the State Council and the head of the Court of Audit.
6. The training shall include supporting the implementation of the Sustainable Development Goals.

Article 73: Job description

1. Public procurement shall be included as a specific profession within the Lebanese public service organizational structure. Secondary legislation shall define the qualifications frameworks, skills, professional experience, conduct, job description, recruitment and promotion conditions of the procurement personnel, as defined by the Public Procurement Authority in coordination with the Civil Service Board, in addition to providing motivational and competitive career options based on merit.
2. A public procurement unit shall be created in the organizational structure of the procuring entity. Such structure may be modified, as appropriate. This unit shall be responsible for procurements in accordance with the provisions of this Law, and shall consist of personnel trained in conformity with the provisions of the abovementioned Article 72. The number of staff of such unit and the skills thereof shall be appropriate with the size and type of the procurement executed by the procuring entity.
3. The staffing of the procurement unit shall be determined by a decree issued by the Council of Ministers upon the proposal of the competent authority.
4. The procuring unit can seek technical advice, when required, from the Public Procurement Authority, or request the opinion thereof on a specific subject related to procurement.

8 Guiding Principles

7. Integrity

Defining integrity and conflict of interest and determining the types of sanctions that affect public and private sector employees to degrees that fit with the type of violation

Chapter 1: Definitions

Chapter 2 and 3: procurement proceedings

Chapter 5: Capacity Building

Chapter 7: Challenge proceedings

Chapter 8: Integrity and accountability

Article 110: Integrity

5.(...) The contracting authority shall require from all contractors thereof to commit to the highest ethical and good citizenship standards, (...)

In order to achieve this obligation, the bidders and the contractors shall avoid the following practices:

- a. "Corruptive practices", which means offering, receiving or soliciting anything of value, whether directly or indirectly to influence the work of a public official in the procurement process or in the execution of the contract;
- b. "Fraudulent practices", which means the misrepresentation or omission of facts to influence the procurement process or the execution of the contract;
- c. "Collusive practices", which means any plan or arrangement between two or more bidders with the aim of offering prices at false and non-competitive levels;
- d. "Coercive practices" which means harming or threatening to harm people or their property,.... (...)

8 Guiding Principles

7. Integrity

Defining integrity and conflict of interest and determining the types of sanctions that affect public and private sector employees to degrees that fit with the type of violation

Chapter 8: Integrity and accountability

Article 111- Internal Audit

1. By decision of the head of administration thereof, one or more officers of the procuring entity shall be assigned to internally audit the execution of all the provisions of this Law and the secondary legislation thereof, in accordance with the size of the procuring entity and the number and value of the contracts it concludes.
2. (...)

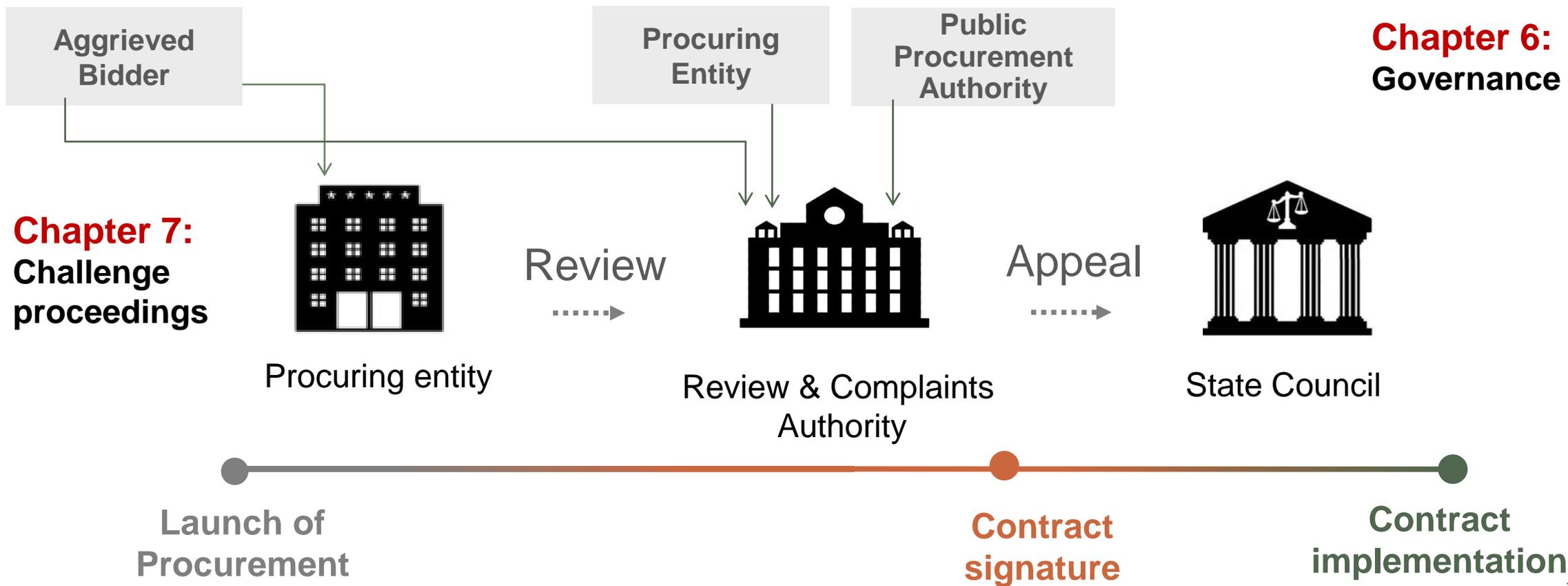
Article 112: Sanctions

1. In addition to the sanctions provided for in this Law and other laws, including the Penal Code, the following sanctions shall be applied:
 - I – Criminal Sanctions (...)
 - II – Disciplinary and financial sanctions
 - III – Financial penalties
 - IV – Abuse of the right to appeal

8 Guiding Principles

8. Accountability Review and complaints system

Clear mechanisms for supervision and control, at all procurement steps, which deal with objections and complaints within short deadlines, linked to a progressive system of complaints and appeals, that start by banning contract signature and may go to freezing procurement procedures



Central Tender Board / Public Procurement Authority

Current role and functions of the Central Tender Board

For procurement exceeding LBP 100 million in ministries:

1. Compose tender committees
2. Control bidding documents
3. **Non-binding recommendations**
4. Manage bidding process, tender opening and evaluation sessions.

Role and functions of the Public Procurement Authority

New

The Public Procurement Authority shall undertake, in coordination with the different relevant administrations, the organization, supervision, control and development of the quality management of public procurement.

Its tasks include but are not limited to:

1. **Proposing public policies** related to public procurement
2. **Promote principles of openness, competition & transparency** through:
 - Managing and operating the central electronic platform.
 - collect the annual procurement plans received from the procuring entities in a standardized form issued by the Public Procurement Directorate, classify and duly publish such plans on the electronic portal.
 - publish, in accordance to procedures, all announcements and notifications related to procurements and procurement proceedings on the central electronic platform
3. Possibility to **stop procurement procedures** in case of inefficiencies.
4. **Regulating the framework agreements** referred to in this law.
5. **Consolidating data related to public procurement operations**, at all levels, in its central database
6. **Taking, maintaining and publishing exclusion decisions** in a public record of exclusion
7. **Proposing standard documents and forms for public procurement procedures**, including bidding documents

Public Procurement Law 244/2021 – Modern governance

A new PP system

Launch a public procurement authority to ensure the organization, supervision, control and development of the quality management of public procurement, in coordination with the different relevant administrations. It shall manage and operate the central electronic platform, make suggestions for the improvement of implementation, and the amendment of laws and regulations, and address inefficiencies.



Ministry



Public Institution



Municipality



Councils & some agencies



Military & Security

Public Procurement Authority

Public Procurement Regulatory Body / Data Centralization

Court of Audit

Ex ante and Ex post audit

Ex-post audit

Ex-ante and ex-post audit less than 10%

Ex-post audit

Ex-ante and ex-post audit

Ministry of Finance

Financial Control (Expenditure Controller)
Control on expenditures

Ex-post financial oversight
(Financial controller)

Financial Control (Expenditure Controller)
Control on expenditures

Ministry of Interior and Municipalities

Financial Oversight (financial controller)

State Council

Juge de référé: Dealing with complaints before contract signature **Council Body:** Appeals after contract signature

Review & complaints Authority

Complaints handling before contract signature

Central Inspection Board

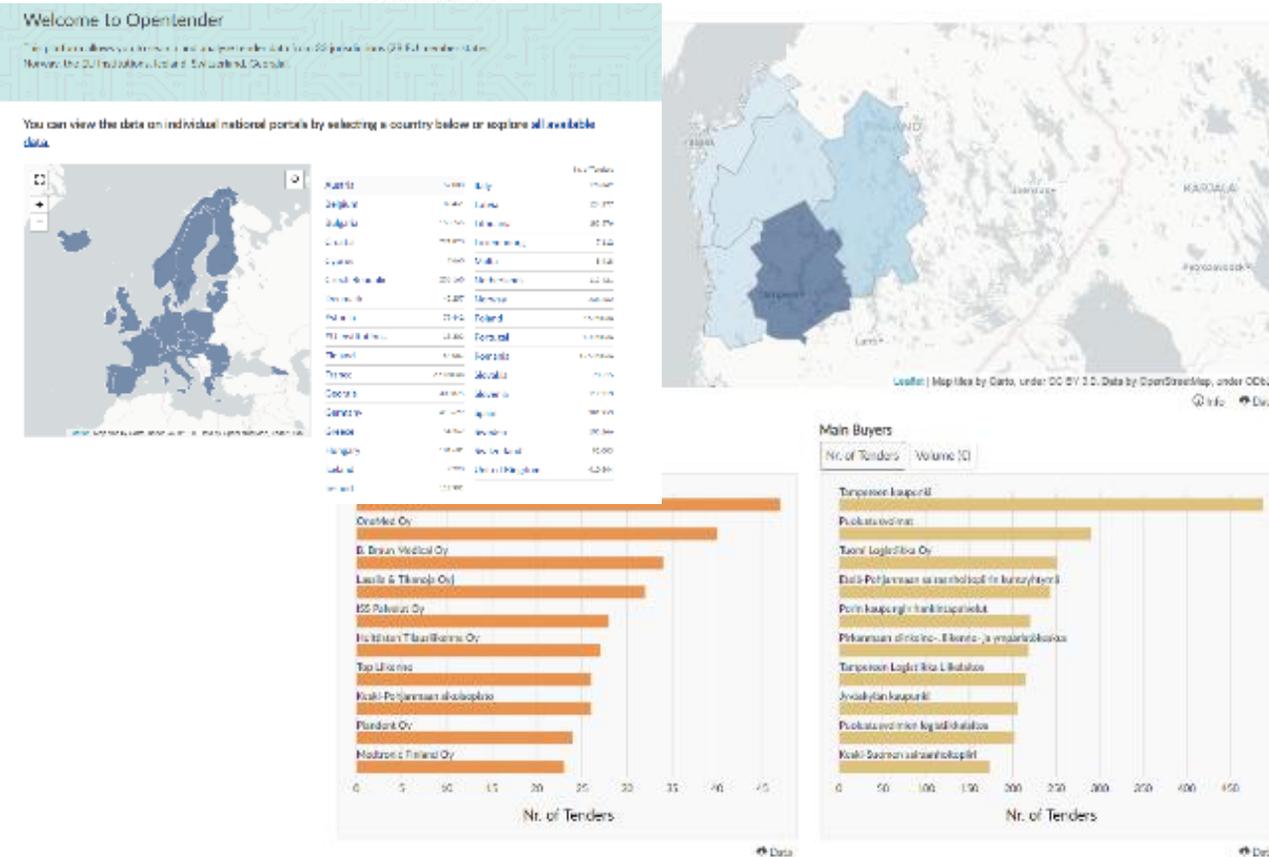
Administrative / Financial Oversight

Central electronic platform for public procurement

An e-procurement central portal through which all public procurement operations will take place, while collecting, analyzing data and making it accessible for decisions makers and concerned stakeholders.

EU Open Tender Platform www.opentender.eu

E-Procurement in Tunisia www.tuneps.tn



Thank you

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 Institut des Finances Basil Fuleihan

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