

# Stocktaking report on MENA Public Procurement Systems



# Stocktaking Report on MENA Public Procurement Systems

MENA-OECD NETWORK ON PUBLIC PROCUREMENT



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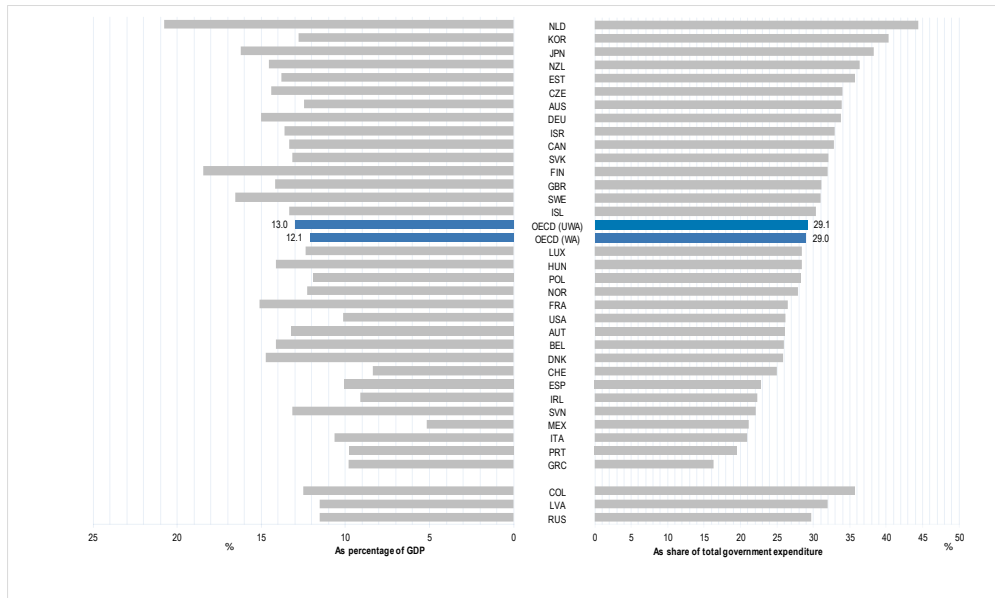
## *Introduction*

The Organisation for Economic Co-operation and Development (OECD) defines procurement as “the process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner” (OECD, 2015).

Public procurement is a key economic activity of governments; it’s also one of the largest government spending activities in any country, representing nearly 13%, on average, of gross domestic product (GDP) and 29% of government expenditure in OECD member countries. In the European Union, public procurement represents 14% of the GDP (European Commission, 2016). For Middle East and North Africa (MENA) region countries, this share is around 18% (OECD, 2013) (see Figure 0.1).

Public procurement is a crucial pillar of strategic governance and services delivery for governments. Because of the sheer volume of spending it represents, well-governed public procurement can and must play a major role in promoting public sector efficiency and establishing citizen trust. Well-designed public procurement systems also contribute to achieving pressing policy goals such as environmental protection, innovation, job creation and the development of small and medium-sized enterprises. For these reasons, the OECD Council adopted in February 2015 the “Recommendation on Public Procurement” (hereinafter the “OECD Recommendation”; see Annex A), as the new policy instrument to help governments tackle these challenges. This Recommendation ensures the strategic and holistic use of public procurement. It provides a 21<sup>st</sup> century reference for modernising procurement systems and can be applied across all levels of government and state-owned enterprises. It addresses the entire procurement cycle, while integrating public procurement with other elements of strategic governance, such as budgeting, financial management and additional forms of services delivery.

Figure 0.1. General government procurement as percentage of GDP and as share of total government expenditures, 2013



Note: Data for Chile and Turkey are not available. Colombia and the Russian Federation: 2012 rather than 2013. Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

Source: OECD (2015b), *Government at a Glance 2015*, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en).

Many MENA countries have been recently engaged in improving their public procurement systems, including by modernising their procurement policies and institutional frameworks, developing guidelines and building procurement professional capacity.

The Deauville Partnership initiative aims to assist Arab countries in transition to develop sound governance structures through home-grown reforms, and to support targeted actions to establish effective and transparent national governance systems. The MENA-OECD Network on Public Procurement was established in September 2012 to achieve the aims of the Deauville Partnership initiative with regard to the adequate utilisation of public procurement.

The second annual meeting of the MENA-OECD Network on Public Procurement, held on 8-9 October 2013 in Rabat, Morocco, focused on developing an inventory of procurement systems in the six MENA Deauville Partnership countries: Egypt, Jordan, Libya, Morocco, Tunisia and Yemen.

A questionnaire, prepared by the OECD (see Annex B), was distributed to representatives of the four MENA countries present at the meeting in Rabat: Libya, Morocco, Tunisia and Yemen. These four countries provided comments and answers to the questionnaire during the meeting. Egypt and Jordan were not represented at the meeting, and responded by mail. The gathered information is included in this report and aims to provide a baseline to:

- check aspects of country systems against the OECD Recommendation
- identify current MENA procurement reforms
- identify areas of common interest to guide the activities of the MENA-OECD Network on Public Procurement.

The questionnaire was divided into six sections:

- Section 1: The legal framework in the MENA countries and the law(s) governing procurement.
- Section 2: Management of the procurement process, including procurement entities and their role, procurement procedures and tools for professionalisation of the procurement workforce.
- Section 3: Transparency, including access to information, clarifications and debriefing.
- Section 4: Review and control, including processes to challenge contract awards, authorities and institutions of control.
- Section 5: Integrity, including red flags and rules on conflicts of interest.
- Section 6: Moving forward with reforms.

At the time, the questionnaire was structured in this way as it took into account the existing 2008 OECD “Recommendation for Enhancing Integrity in Public Procurement”, replaced last year by the aforementioned 2015 OECD Recommendation of the Council on Public Procurement. In order to address these prevailing changes, this report was updated at the end of 2015, taking into account the framework of the new OECD Recommendation, while also considering the information available on line from different sources.



## *References*

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- OECD (2015a), “Recommendation of the Council on Public Procurement”, [www.oecd.org/corruption/recommendation-on-public-procurement.htm](http://www.oecd.org/corruption/recommendation-on-public-procurement.htm).
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## *Section 1*

### **Legal framework**

Facing the challenges of strengthening a public procurement system begins with a detailed assessment of the current state of the system, starting with the legal framework. In this section, countries identified laws relevant to public procurement, whether and what serves as the main procurement law, and the date of most recent changes to the law. Additionally, the legal status of particular policy areas within the six Middle East and North Africa (MENA) region Deauville Partnership countries (Egypt, Jordan, Libya, Morocco, Tunisia and Yemen) is outlined. The section concludes with a reporting of the nature of stakeholder outreach utilised in updating procurement laws, and a report of focus areas for ongoing reforms.

#### **Applicable public procurement laws and reforms**

The laws and regulations listed in Table 1.1 are applicable to goods, services and public works in Libya, Morocco, Tunisia and Yemen. However, the national procurement law does not always apply to all the public entities. For instance in Egypt, it does not apply to state-owned enterprises (SOEs).

Table 1.1. Legal framework and applicable public procurement laws in six MENA countries

Country	Applicable legislation	Number and year	Name and scope	Main procurement law	Last reform
Egypt	Law	No. 89, 1998	Organisation of tenders and bids	✓	Draft law under way
	Decree	No. 1367, 1988	Executive Decree		
	Decree	No. 33, 2010	Introduction of electronic means in public procurement		
Jordan	Supplies Act	No. 32, 1993	Goods and services (covers governmental entities under budget law)	There is no unified central procurement law applicable to all government	Recently prepared draft of unified legislation
	Joint procurement by law	No. 91, 2002	For medicine and medical supplies		
	Law	No. 71, 1986	Public works and services		
	Instructions	No. 1, 2008	Regulation of tendering procedures and participating conditions		
Libya	Regulation	No. 563, 2007	Administrations contracts (central and regional contracts)	✓	
Morocco	Decree	No. 2-12-349, 2013	Public procurement National Scope	✓	
Tunisia	Law	No. 73-81, 1973	Public accounting code		
	Law	No. 89-9, 1989	Institutions and public enterprises		
	Decree	No. 1039, 2014	Public procurement National Scope		
Yemen	Law	No. 23, 2007	Public procurement	✓	Draft amendment under way
	Regulations	2009	Executive regulations		

Source: Egypt: [www.egypt.gov.eg/english/laws/default.aspx](http://www.egypt.gov.eg/english/laws/default.aspx) (accessed on 2 April 2016); Jordan: [www.gsd.gov.jo/DetailsPage/LegislationDetails.aspx?ID=25](http://www.gsd.gov.jo/DetailsPage/LegislationDetails.aspx?ID=25) (accessed on 2 April 2016); Libya: [www.erc.org.ly/pdf/Decision/563-1.pdf](http://www.erc.org.ly/pdf/Decision/563-1.pdf) (accessed on 2 April 2016); Morocco: [www.marchespublics.gov.ma/pmmp/IMG/pdf/Decret\\_MP\\_Francais\\_BO-2.pdf](http://www.marchespublics.gov.ma/pmmp/IMG/pdf/Decret_MP_Francais_BO-2.pdf) (accessed on 2 April 2016); Tunisia: [www.marchespublics.gov.tn/onmp/documents/liste-documents.php?lang=fr&URLref\\_categorie=2](http://www.marchespublics.gov.tn/onmp/documents/liste-documents.php?lang=fr&URLref_categorie=2) (accessed on 2 April 2016); Yemen: [www.hatcyemen.org/documents/law/section.php?SECTION\\_ID=146](http://www.hatcyemen.org/documents/law/section.php?SECTION_ID=146) (accessed on 2 April 2016).

## Secondary policy objectives

The 2015 OECD “Recommendation on Public Procurement” (hereinafter the “OECD Recommendation”) insists on the importance of developing an appropriate strategy for the integration of secondary policy objectives in public procurement systems. Moreover, the use of those objectives should be balanced against the primary policy objectives.

By way of example, Table 1.2 sets out a summary of the availability of special provisions to encourage the participation of small and medium-sized enterprises (SMEs), of national enterprises and green procurement in the six MENA countries.

**Table 1.2. Special provisions to encourage the participation of SMEs and national enterprises, and green procurement in six MENA countries**

Country	Encourage SMEs' participation	Encourage national enterprises' participation	Encourage green procurement
Egypt	Yes	Yes	No
Jordan	No	Yes	No
Libya	No	No	No
Morocco	Yes	Yes	Yes
Tunisia	Yes	Yes	Yes
Yemen	No	Yes	Yes

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

### *SMEs' participation*

Morocco and Tunisia each reserve 20% of the annual estimated value of public procurement to SMEs. The Moroccan decree of 20 March 2013, which took effect at the beginning of 2014, also requires reserving parts of subcontracts to SMEs. Egypt encourages the participation of SMEs through allowing direct agreements with SMEs, as an exception to competitive tendering.

### *National enterprises' participation*

Special provisions encouraging the participation of national enterprises exist in several countries. The Moroccan decree of 20 March 2013 implements a preference for national enterprises on work contracts and studies by treating an acceptable foreign bid as though it is priced 15% higher, and the application of this process is announced in the tender documents.

In Jordan, there is a similar 15% (by value) preference to national enterprises, as per Article No. 12/1 of Act 32 (1993). Yemeni law includes a preference for local products in cases where their characteristics are identical to those of foreign products. The Tunisian public procurement law also allows for national preferences, with a price preference of up to 10% for national suppliers or suppliers offering domestic goods and services. In Egypt, there are similar provisions with a percentage of 15%.

Tunisian legislation encourages the participation of national enterprises through stipulations that technical specifications must be defined by reference to national standards or to other equivalent reference documents. Moreover, allotment is mandatory when it favours participation of national enterprises. Procurement is required to encourage the participation of national enterprises or promote technical, financial or social advantages and benefits. In the case of international tenders in Tunisia, tender specifications are required to include a provision for national subcontracting, so that foreign bidders entrust the delivery of products or equipment and the execution of services to local providers when there are local enterprises that can fulfil the need. The same applies to contracts for studies: Tunisian study firms included in a public list should be involved depending on the nature and purpose of the study. Additionally, in Tunisia, tender specification must take into consideration the capacities of the entrepreneurs, service providers and consultants and they should not have any provisions that could eliminate or exclude a national enterprise.

Egypt issued recently Law No. 5/2015 on the preference of domestic products. The national industrial sector should have at least 40% of the value of any project (including public procurement). This law also established a “committee of preference of Egyptian products”.

### ***Green procurement***

Morocco encourages green procurement through the decree on public procurement, which requires that procurement comply with the rules for the protection of the environment. In Yemen, public contract award criteria must take into account the environmental protection in urban projects studies that specify the environmental impact studies and environmental hazards management during the execution of the contract are foreseen.

Tunisia also encourages strongly green procurement through the decree on public procurement. Tender specification must include sustainable procurement aspects: environmental and social aspects taking into account global sustainable goals. In the majority of the countries all those provisions apply only when possible.

### **Specific regulation for public-private partnerships (PPPs)**

In 2010, FEgypt issued Law No. 67, which organises private sector participation in infrastructure projects and public services and utilities.

In 2014, Jordan issued Law No. 31/2014 in 2014 on PPPs aiming to encourage the participation of the private sector.

Morocco issued Law No. 86-12 on PPPs in December 2014 and its implementing decree No. 2-15-45 was published in June 2015.

In November 2015, the Tunisian Parliament adopted the PPP law designed to promote transparency, efficiency and effectiveness of public spending, and to help the Government of Tunisia meet its public policy objectives.

Yemen took up the work of developing a PPP law in 2012. The Drafting Committee produced the first draft in August 2013. The law is awaiting Parliament approval.

### **Consultation with stakeholders for modification of procurement law(s)**

The OECD recommends developing and following a standard process when formulating changes to the public procurement system. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner.

Five of the six respondent countries indicated that stakeholders are consulted for modifications to procurement laws, and four of those five indicated whether such consultation is systematic or more limited. Table 1.3. presents these results and the stakeholder groups identified as participants to the consultations.

**Table 1.3. Stakeholders participating to consultation for the modification of procurement laws in five MENA countries**

Country	Consultation conducted?	Participants to consultation
Egypt	No information available	Suppliers Industry associations Civil society Chambers of Commerce Federation of Construction and Building Contractors Egyptian universities/academia
Jordan	Sometimes	Suppliers Government entities
Morocco	Systematically	Suppliers Industry associations Civil society International partners Public*
Tunisia	Systematically	Industry associations Civil society Government entities/academia
Yemen	Systematically	Suppliers Industry associations Civil society

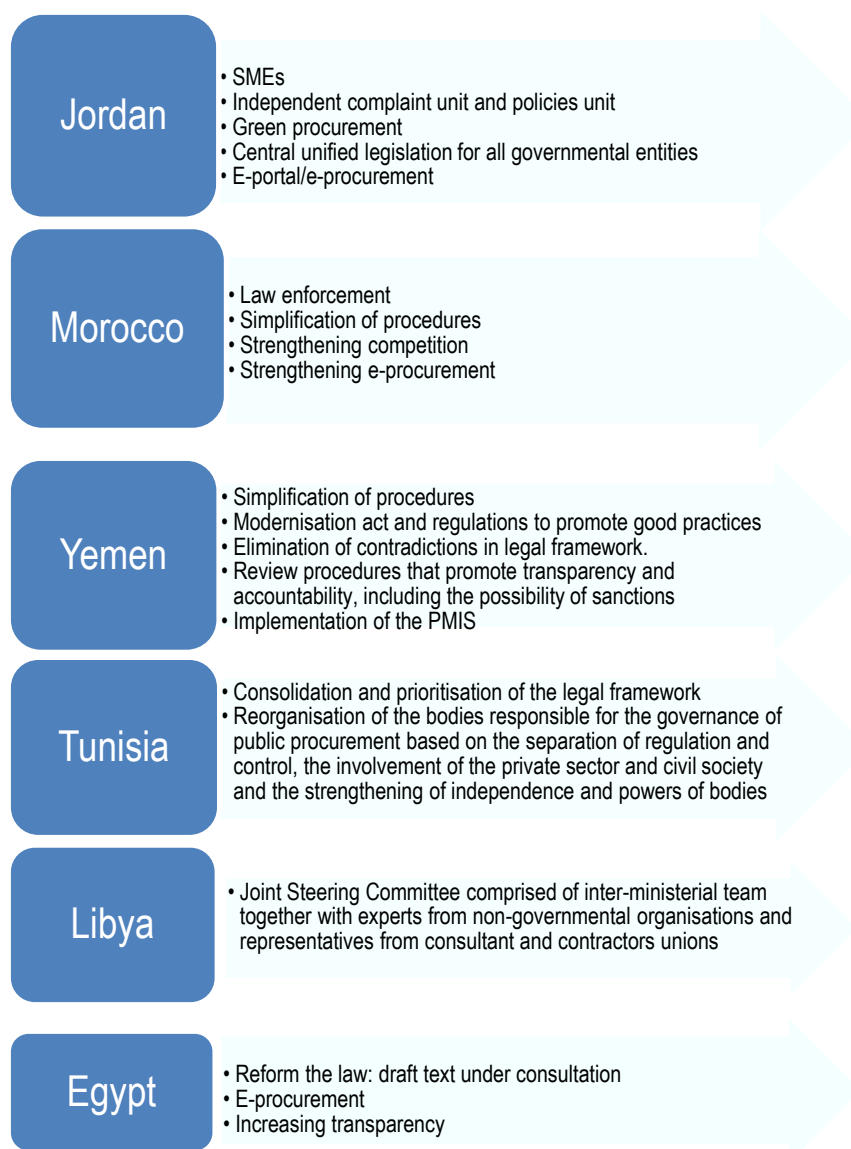
*Note:* \*In Morocco, the drafts are published on line to collect comments from the general public.

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

### Ongoing procurement reforms in MENA countries

Procurement reforms are underway in all six respondent MENA countries. Figure 1.1 presents the areas subject to reform, as identified by the respondents.

Figure 1.1. Ongoing procurement reforms in six MENA countries



Source: Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).





## *Section 2*

### **Management of the procurement process**

The 2015 OECD “Recommendation on Public Procurement” (hereinafter the “OECD Recommendation”) recognises the importance of processes to encourage efficiency throughout the procurement cycle by streamlining the public procurement system and implementing sound technical processes as well as developing and using tools to improve procurement procedures. Moreover, public procurement should be integrated into the overall public finance management and budgeting. It requires that “governments should link public procurement with financial management systems to foster transparency and accountability as well as improve value for money.” The OECD Recommendation also encourages countries to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively, ensuring that procurement officials meet high standards of knowledge, skills, and integrity, and recognise officials who work in the area of public procurement as a profession. This section includes an analysis of the six participating Middle East and North Africa (MENA) country responses on these subjects.

#### **The existence of a central procurement agency**

The existence of a central procurement agency can be an efficient way to reduce duplication and achieve greater value for money. Four MENA countries have central departments responsible for procurement: Egypt, Jordan, Tunisia and Yemen.

In Egypt, the primary role of the central agency is to develop procurement policy and centralise purchasing.

In Jordan, the central agencies develop procurement policy and conduct centralised purchasing.

In Tunisia, the main institution is HAICOP (*Haute instance de la commande publique*); it is made up of two structures, the higher commission for control and audit of public procurement and a follow-up and monitoring

committee for public procurement. This body is responsible for developing procurement policy and TUNEPS, the e-procurement platform.

In Yemen, there are two authorities: the High Tender Committee, which executes and monitors high-value public procurement and the High Authority of Tender Control, which proposes public procurement policies and regulation and monitors all procurement independently of value.

### Public procurement process

In terms of procedures, open procedures is the general rule for all MENA countries. However, direct award and limited procedures can be used in specific cases. Concerning the use of framework agreements, Morocco and Tunisia have included provisions in their national laws; Egypt added similar provisions in the draft law.

The use of direct award in MENA countries can depend on a financial threshold, or on the goods and services, or it can depend on a specific situation such as urgency and emergency. For the last case, justification is required if a procurement entity intends to use a non-competitive procurement procedure.

Some MENA countries reported a financial threshold below which the law does not apply. The threshold in Jordan is JOD 5 000 and in Yemen, YER 100 000. In Tunisia, there exist thresholds depending on the nature of the procurement:

- TND 200 000 for works
- TND 100 000 for studies and the provision of goods and services in the information and communication technology (ICT) sector
- TND 100 000 for the provision of goods and services in other sectors
- TND 50 000 for the other studies.

Procurement for which the value is lower than the above amounts are subject to competition through consultation, without following the specific procedures for public procurement through written procedures, based on transparency, ensuring efficiency and good management of public money.

In other countries such as Morocco, good and services for which the law does not apply are clearly provided for in the law.

Moreover, countries identified the following items as part of their procurement process:

- **Price reference systems:** Egypt, Jordan (partially), Libya (exists, but is not adequate or transparent and is out of date).
- **Market/feasibility studies:** Egypt, Jordan (partially), Morocco, Tunisia and Yemen.
- **Consultation** with the private sector on new products: Jordan (partially).

### Tools available to professionalise the procurement workforce

The existence of dedicated and regularly updated tools is key to ensuring that procurement officials meet high professional standards for knowledge, practical implementation and integrity.

In this respect, and given the importance of capacity building, the OECD developed a road map on how to develop a procurement strategy (OECD, forthcoming). Table 2.1 lists the tools available in the six respondent MENA countries.

Table 2.1. **Tools available to professionalise the procurement workforce in six MENA countries**

Country	Procurement training	Certification/licensing	Integrity guidelines	Formal job descriptions for procurement agents	Other
Egypt	Yes		Codes of conduct specifically for procurement officials		
Jordan	Yes	Partially	Yes	Partially	
Libya	Yes (new reform)	Yes (new reform)	Yes (new reform)	Yes (new reform)	
Morocco	Yes		Yes	Yes	Code on General Status of Public Service
Tunisia	Yes			Yes	
Yemen	Yes (very limited)		Yes; Integrity guidelines are clearly mentioned in several articles of the executive regulations of 2009		

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

## *References*

OECD (forthcoming), *Roadmap: How to Elaborate a Procurement Capacity Strategy*, OECD Publishing, Paris.

### *Section 3*

## **Transparency and integrity**

Transparency provides support for numerous good-governance goals, including ensuring fair competition, assisting small and medium-sized enterprises (SMEs) in accessing procurement opportunities, and providing a means for stakeholders and policy makers to evaluate the functioning of the system as a whole. For this reason, the 2015 OECD “Recommendation on Public Procurement” (hereinafter the “OECD Recommendation”) encourages governments to “promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the procurement cycle.” Recognising the importance of transparency, both in terms of audience and in terms of scope, the OECD Recommendation continues, “Governments should allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information.”

In terms of integrity of the public procurement system, a first key step is to ensure that the individuals entrusted with making public procurement decisions are selected on their merits and held to high ethical standards. Additionally, the OECD Recommendation emphasises that governments “should implement general public sector integrity tools and tailor them to specific risks of the procurement cycle as necessary” but also “develop risk assessment tools to identify and address threats to the proper function of the public procurement system.”

This section examines which information is available to the public and to interested bidders in a variety of situations, and which integrity indicators and legal provisions are implemented in the six respondent Middle East and North Africa (MENA) countries.

### **Information in tender notices**

Table 3.1 presents a summary of the information available in tender notices in the six respondent MENA countries.

Table 3.1. Information available in tender notices in six MENA countries

	Egypt	Jordan	Libya	Morocco	Tunisia	Yemen
Information on the nature and quantity of goods or services	✓	✓	✓	✓	✓	✓
Terms of supply or service delivery, including deadlines	✓	✓	✓	✓	✓	✓
Procurement method used	✓	✓	✓	✓	✓	✓
Qualification criteria	✓	✓	✓	✓	✓	✓
Evaluation criteria	✓	✓		✓	✓	✓
List of documents to be submitted with the bid	✓	✓		✓	✓	✓
Timeframe for submitting the bid	✓	✓	✓	✓	✓	✓
Model agreement	✓	✓		✓		✓

Source: Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

### Clarifications to bidders and information available to bidders

Concerning clarifications to bidders, in all six countries, bidders may ask questions. A response is required in Jordan, Morocco, Tunisia and Yemen. In Libya, the response is not mandatory. For Morocco and Yemen, the response is sent to all bidders.

Table 3.2 lists the documents and information available to all bidders and by which means of communication. However, as described in the section below on central procurement websites, in many MENA countries the information is accessible on line.

Table 3.2. **Information available to all bidders, and means of communication, in six MENA countries**

	In person	Via email	Via regular mail	Phone or fax
Procurement laws and regulations	Yes	Yes	Yes	Yes
Egypt	✓			
Jordan	✓	✓	✓	✓
Libya		✓		
Morocco <sup>1</sup>	✓	✓	✓	✓
Tunisia	✓	✓	✓	✓
Yemen		✓		
Future procurement plans	Yes	Yes	Yes	Yes
Egypt <sup>2</sup>				
Jordan <sup>2</sup>				
Libya	✓			
Morocco	✓	✓	✓	✓
Tunisia	✓	✓	✓	
Yemen	✓			
Tender notice	Yes	Yes	Yes	Yes
Egypt	✓			
Jordan	✓	✓	✓	✓
Libya	✓			✓
Morocco	✓	✓	✓	✓
Tunisia	✓	✓	✓	
Yemen	✓			
Tender documents	Yes	Yes	Yes	Yes
Egypt	✓		✓	
Jordan	✓			
Libya	✓			
Morocco	✓	✓	✓	✓
Tunisia	✓	✓	✓	
Yemen	✓			
Contract award decisions	Yes	Yes	Yes	Yes
Egypt	✓			
Jordan	✓			
Libya	✓			
Morocco	✓	✓	✓	✓
Tunisia	✓	✓	✓	
Yemen	✓			

1. In Morocco, all documents are published on line.

2. Information unavailable for Egypt and Jordan.

Source: Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).



In Jordan, Tunisia and Yemen, suppliers have to sometimes pay a fee to have access to the tender documents or to be allowed to bid. Moreover, in Jordan, suppliers need a professional license.

### Debriefing unsuccessful bidders

Information provided to unsuccessful bidders includes:

- Detailed explanation for rejecting the application: Egypt, Jordan, Morocco, Tunisia.
- Name of the successful bidder: Jordan, Morocco, Tunisia, Yemen (plus bid amount).
- Date of the award: Jordan, Morocco, Tunisia, Yemen.
- Other: In Libya, an informal debriefing session is held with all bidders.
- For Morocco, the information is published in the public procurement portal.

Information is provided to unsuccessful bidders as follows:

- In writing: Morocco, Yemen. In Tunisia, the public purchaser must announce the results of the procurement process to the public on a notice board. The name of the contractor is also published on line on the procurement website.
- In debriefing session with all bidders: Egypt, Libya.
- In debriefing session with each bidder alone: Jordan.

In Egypt, when the technical evaluation of the bid is separated from the financial one, tenderers that are rejected in the technical evaluation are excluded from the financial evaluation. Decisions of the technical evaluation must be published for a minimum of one week before the opening of the financial proposals.

### Central procurement websites, online access to procurement laws and online documents

Free access to public procurement information such as institutional frameworks, laws and regulations, through an online portal or website for all stakeholders is an important first step to ensure an adequate degree of transparency of the public procurement system. Table 3.3 provides the

central procurement websites as identified by the respondent MENA countries.

**Table 3.3. Central procurement websites identified in five MENA countries**

Country	Procurement law	E-portal	Information on the results of the tenders
Egypt	<a href="http://www.etenders.gov.eg">www.etenders.gov.eg</a>	<a href="http://www.etenders.gov.eg">www.etenders.gov.eg</a>	<a href="http://www.etenders.gov.eg">www.etenders.gov.eg</a>
Jordan	<a href="http://www.gsd.gov.jo">http://www.gsd.gov.jo</a> <a href="http://www.gtd.gov.jo">www.gtd.gov.jo</a> <a href="http://www.jpdc.gov.jo">www.jpdc.gov.jo</a>		<a href="http://www.gsd.gov.jo">www.gsd.gov.jo</a> <a href="http://www.gtd.gov.jo">www.gtd.gov.jo</a> <a href="http://www.jpdc.gov.jo">www.jpdc.gov.jo</a>
Morocco	<a href="http://www.marchespublics.gov.ma">www.marchespublics.gov.ma</a>	<a href="http://www.marchespublics.gov.ma">www.marchespublics.gov.ma</a>	<a href="http://www.marchespublics.gov.ma">www.marchespublics.gov.ma</a>
Tunisia	<a href="http://www.marchespublics.gov.tn">www.marchespublics.gov.tn</a>	<a href="http://tuneps.tn">http://tuneps.tn</a>	<a href="http://www.marchespublics.gov.tn">www.marchespublics.gov.tn</a>
Yemen	<a href="http://www.hatcyemen.org">www.hatcyemen.org</a> <a href="http://htb.gov.ye">http://htb.gov.ye</a>		<a href="http://www.hatcyemen.org">www.hatcyemen.org</a> <a href="http://htb.gov.ye">http://htb.gov.ye</a>

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

Libya does not have any central procurement websites.

In Egypt, a circular issued by the Minister of Finance (No. 11/2015) obliges all the contracting entities subject to the public procurement law to use the e-portal.

Yemen has chosen to have a procurement management system (PMSI) rather than an e-procurement platform for the moment. The introduction of e-procurement would require a change in the procurement law and needs more investment in terms of infrastructure. Moreover the Yemeni suppliers are not able to answer in an electronic environment. The PMSI is a first step towards e-procurement.

Table 3.4 sets out the nature of procurement documents available on line in five of the six respondent MENA countries.

**Table 3.4. Procurement documents available on line in five MENA countries**

Documents in websites	Egypt	Jordan	Morocco	Tunisia	Yemen
Procurement laws and regulations	✓	✓	✓	✓	✓
Future procurement plans			✓	✓	
Tender notices	✓	✓	✓	✓	✓
Contract award decisions	✓	✓	✓	✓	✓
Post award contract modifications			✓		

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

E-submission is considered a key indicator of the level of e-procurement adoption in a specific country. Only Morocco and Tunisia have platforms with this functionality.

### **Integrity indicators in public procurement and legal provisions**

Red flag indicators in procurement - to detect possible acts of fraud and/or corruption - were not identified in four respondent MENA countries. Egypt identified a process by which a contract can be annulled upon proof of manipulation on the part of the contractor in dealing with the contracting authority or obtaining the contract. Morocco is using red flag indicators via its website, such as type of procedures, number of candidates requesting bidding documents, degree of concentration of suppliers.

In Tunisia, there is a draft law on the Independent Constitutional Agency for Good Governance and Fight against Corruption. This institution will be responsible for mapping corruption risk, establishing red flag indicators, and receiving and controlling asset disclosure by public procurement officials.

In Yemen, there is a special law on asset disclosure beginning at the Director General level and also applicable to public procurement evaluation committee members.

In the new Moroccan decree on public procurement, there are provisions on conflicts of interest and obligation for declaration of assets by public procurement officials.

Public officials involved in the procurement process in Egypt, Libya, Morocco, Tunisia and Yemen are obliged to report any misconduct (e.g. conflict of interest, bribery, failure to comply with procedures). In October 2011, Morocco adopted a law on witness and whistleblower protection. Similar provisions exist in Yemen in Article 27 of the Anti-Corruption Law of 2006. The Tunisian draft law introduces measures for protecting witnesses and experts.

## *Section 4*

### **Accountability and risk**

As noted in the Introduction, well-governed public procurement can and must play a major role in promoting public sector efficiency and establishing citizen trust. That is the main reason why governments should apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes in a fair, timely and transparent way. The 2015 OECD “Recommendation on Public Procurement” (hereinafter the “OECD Recommendation”) guides countries in the establishment of clear lines for oversight of the public procurement cycle and in developing a system of effective and enforceable sanctions. Moreover, countries should ensure that internal controls, external controls and audits are co-ordinated, sufficiently resourced and integrated.

#### **Possibility to challenge the contract award decision**

Establishing effective courses of action for challenging the contract award decision is key to building trust and confidence for all stakeholders.

It is possible to challenge the contract award decision within a specific deadline in the six respondent Middle East and North Africa (MENA) countries, though the period varies. In Egypt, the period is seven days; in Jordan, it is two to four days. In Morocco and Tunisia, the period is five days; in Yemen, it is ten days.

As stated in Article 169 of the Public Procurement Decree, in Morocco suppliers can notify or seek redress from the contracting authority first, as a prerequisite to file a complaint against a procurement process. This is optional in Egypt, Tunisia and Yemen, and is not required in Jordan and Libya. For instance, in Jordan, complaints are submitted first to the tender committee. In Yemen, the results of the challenge of the contract award decision are published on line.

## Review bodies and mandatory application of their decisions

At least one review body was identified in the six respondent MENA countries (Table 4.1). The OECD Recommendation emphasises the importance of handling complaints in a fair, timely and transparent way, as well as of having an effective complaints system.

Table 4.1. Procurement review bodies in six MENA countries

Review bodies	<b>Jordan</b>
	Supreme Court of Justice
	<b>Libya</b>
	Court
	Diwan of audit (audit body)
	<b>Morocco</b>
	Administrative court
	Markets committee
	<b>Tunisia</b>
	Court of justice
Administrative court	
<i>Comité de suivi et d'enquête des marchés publics</i>	
<b>Yemen</b>	
High authority for procurement control	
Court	
Yemeni Institute of Arbitration	
<b>Egypt</b>	
Administrative court	

Source: Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

The decisions taken by the review bodies are binding for Egypt, Jordan, Morocco and Tunisia. None of the six countries imposes a fee to file a complaint.

## Internal controls within contracting authorities and financial threshold

Internal controls within contracting authorities exist in the six respondent MENA countries, as follows:

- **Jordan** (no financial threshold)
- **Libya** (through the Tendering Committee and no financial threshold)
- **Morocco** (no financial threshold)
- **Tunisia** (with no financial threshold)

- **Yemen:** USD 1 160 000 (for urban works) and USD 270 000 000 (for consulting).

### Audit institutions and control by other institutions

The supreme audit institutions review procurement activities for performance and compliance, as presented in Table 4.2.

Table 4.2. **Role of audit institutions in reviewing procurement activities for performance and compliance in six MENA countries**

	Performance (delivery) audits	Compliance audits
Egypt	Yes	Yes
Jordan	Yes	Yes
Libya	Yes	Yes
Morocco	Yes	Yes
Tunisia	Yes	Yes
Yemen	Yes	Yes

*Source:* Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

Additionally, respondent countries identified other institutions in charge of controlling and checking procurement activities:

- **Egypt:** Central Auditing Organisation and Administrative Control Authority
- **Jordan:** Anti-Corruption Commission
- **Libya:** Tendering Committee
- **Morocco:** General Inspectorate of Finance, General Inspectorate for Public Administration and General Inspections Departments
- **Tunisia:** the High Commission of Public Procurement for *a Posteriori* Control; the Committee of General Control of Public Services and the Committee of General Financial Control
- **Yemen:** the Ministry of Finance, the Committee for High Value Public Procurement and the High Authority for Tender Control, the High Tender Committee.



## *Section 5*

### **Moving forward**

#### **Current public procurement challenges faced by MENA countries**

Middle East and North Africa (MENA) region countries are improving their public procurement systems by modernising their procurement policies and institutional frameworks, developing procedural guidelines and building professional procurement capacity.

- **In Egypt**, the main current challenges are to adopt a new public procurement law and to complete the e-procurement system.
- **In Jordan**, there is weak infrastructure and the need for unified legislation, green procurement and an e-procurement platform to enhance transparency.
- **In Libya**, legal skills and substantial knowledge of procurement practices and procedures can be improved. The current political situation may not help to put in place fundamental changes. Legislative reform is also a challenge.
- **In Morocco**, the capacity of both public and private sectors to manage and conduct public procurement is the main challenge.
- **In Tunisia**, there is need for professionalisation of the procurement workforce, specialisation of control and audit bodies, good governance, decentralisation and training of public purchasers. Challenges with regard to the use of the electronic platform and challenges related to corruption/integrity also exist.
- **In Yemen**, clear sanctions in the law, enforcement of court decisions and the capacity of public procurement workforce in both public and private sectors are needed. The current political situation may not help to put in place fundamental changes.



## Main areas for improvement and/or possible reforms to address public procurement challenges

Although procurement systems are improving in most MENA countries, countries identified areas for improvement and possible reforms to enhance transparency, integrity and efficiency (see Table 5.1). Nevertheless, all countries will have to work on all the listed areas.

Table 5.1. Main areas for improvement and/or possible reforms to address public procurement challenges, as identified by six MENA countries

Improvements and/or reforms per country	Egypt	Jordan	Libya	Morocco	Tunisia	Yemen
Enhancing transparency in procurement		•	•	•	•	•
Improving the professionalisation of the public procurement function	•	•	•	•	•	•
Preventing and detecting irregularities and corruption in procurement		•	•	•	•	
Strengthening accountability and control mechanisms		•	•	•	•	•
Support government policy goals		•	•	•	•	

Source: Country responses to the 2013 OECD “MENA Countries Stocktaking Questionnaire” (see Annex B).

## Communication strategy on procurement reforms

Countries described their communication strategies to disseminate information regarding reforms. In Egypt, the target audience for the communication strategy on the procurement reforms includes civil society, unions, chambers of commerce and universities. In Morocco, training days, brochures and other material are used; targeted audiences are all public procurement sectors. In Tunisia and Yemen, the target audiences are government authorities concerned with public procurement, the private sector (suppliers, contractors, consultants) and civil society organisations.

## The use of the country procurement system in donor-funded procurement procedures

Jordan, Tunisia, Morocco and Yemen use their country’s procurement systems in donor-funded procurement situations. Morocco uses its system in African Development Bank projects as of January 2014. Yemen reported

use with funds from the Arab Fund for Economic Development and the Saudi Fund for Development.

### Training needs preferences

While not formally included in the questionnaire, participants at the first annual meeting of the MENA-OECD Network on Public Procurement discussed particular training needs preferences. Table 5.2 presents these needs.

Table 5.2. **Procurement training needs and preferences, identified by four MENA countries**

	Procurement training needs and preferences
Libya	Procurement structure definition Data collection, management and distribution Developing control procedures for e-procurement
Morocco	Identification of procurement needs Sustainable procurement Professionalisation Measures of integrity in public procurement Audit and control Payment to suppliers Fraud and illegal practices/cartels detection Litigation
Tunisia	Training of trainers and e-learning Professionalisation of public purchasers, managers and control bodies Audit and control Analysis of purchasing needs Execution of contracts and financial sanctions (penalties) Pre and post-contractual remedies
Yemen	Development of public procurement regulatory policies Training on public procurement policies Paperless procurement Audit and control

## *Annex A*

### **OECD Recommendation of the Council on Public Procurement**

THE COUNCIL,

**HAVING REGARD** to Article 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the Recommendation of the Council for Improving the Quality of Government Regulation [[C\(95\)21/FINAL](#)], the DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [[DCD/DAC\(96\)11/FINAL](#)], the Recommendation of the Council on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service [[C\(98\)70](#)], the Recommendation of the Council on Improving the Environmental Performance of Public Procurement [[C\(2002\)3](#)], the Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Sector [[C\(2003\)107](#)], the Recommendation of the Council on OECD Guidelines on Corporate Governance of State-Owned Enterprises [[C\(2005\)47](#)], the Guiding Principles for Regulatory Quality and Performance [[C\(2005\)52](#) and CORR1], the OECD Best Practices for Budget Transparency, the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [[C\(2007\)23/FINAL](#)], the Policy Framework for Investment [[C\(2006\)68](#)], the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [[C\(2010\)16](#)], the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [[C\(2009\)159/REV1/FINAL](#)], the OECD Guidelines for Multinational Enterprises [[C/MIN\(2011\)11/FINAL](#)], the Recommendation of the Council on Regulatory Policy and Governance [[C\(2012\)37](#)], the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [[C\(2012\)86](#)], the Recommendation of the Council on Fighting Bid Rigging in Public

Procurement [[C\(2012\)115](#)], the Recommendation of the Council on Effective Public Investment Across Levels of Government [[C\(2014\)32](#)], and the Recommendation of the Council on Digital Government Strategies [[C\(2014\)88](#)];

**HAVING REGARD** to the growing interest in the governance of public procurement to achieve efficiency and economy, and to foster secondary policy objectives, since the adoption of the Recommendation of the Council on Enhancing Integrity in Public Procurement [[C\(2008\)105](#)], which this Recommendation replaces;

**NOTING** that the legislation in a number of Member and non-Member countries also reflects other international legal instruments on public procurement and anti-corruption developed within the framework of the United Nations, the World Trade Organisation or the European Union;

**RECOGNISING** that the efficient and effective public procurement of goods, services and works is vital to the core purposes of government, including infrastructure investment and the delivery of essential services to citizens;

**RECOGNISING** that public procurement is a key economic activity of governments that is particularly vulnerable to mismanagement, fraud and corruption;

**RECOGNISING** that efforts to enhance good governance and integrity in public procurement contribute to an efficient and effective management of public resources and therefore of taxpayer's money;

**RECOGNISING** that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") share a common interest in improving economy and efficiency and in preventing risks to integrity throughout the public procurement cycle, starting from needs assessment until payment and contract management;

**CONSIDERING** that the 2013 report *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008* monitored the implementation of the Recommendation of the Council on Enhancing Integrity in Public Procurement [[C\(2008\)105](#)] and identified key challenges faced by countries to improve public procurement systems and areas for improvement [[C\(2012\)98](#) and [C\(2012\)98/CORR1](#)];

On the proposal of the Public Governance Committee in co-operation with the Competition Committee and the Working Group on Bribery in International Business Transactions, and in consultation with other competent OECD committees:

**I. AGREES** that, for the purpose of the present Recommendation, the following definitions are used:

- **E-procurement** refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process;
- **Integrity** refers to the use of funds, resources, assets and authority, according to the intended official purposes and in a manner that is well informed, aligned with the public interest, and aligned with broader principles of good governance ;
- **Primary procurement objective** refers to delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner;
- **Public procurement** refers to the process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner;
- **Public procurement cycle** refers to the sequence of related activities, from needs assessment, through competition and award, to payment and contract management, as well as any subsequent monitoring or auditing;
- **Secondary policy objectives** refers to any of a variety of objectives such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives, which governments increasingly pursue through use of procurement as a policy lever, in addition to the primary procurement objective.

**II. RECOMMENDS** that Adherents ensure an adequate degree of **Transparency** of the public procurement system in all stages of the procurement cycle.

To this end, Adherents should:

- i) **Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle**, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process.

Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships.

- ii) **Allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information** notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses.
- iii) **Ensure visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle** to allow (i) stakeholders to understand government priorities and spending, and (ii) policy makers to organise procurement strategically.

**III. RECOMMENDS** that Adherents preserve the **Integrity** of the public procurement system through general standards and procurement-specific safeguards.

To this end, Adherents should:

- i) **Require high standards of integrity for all stakeholders in the procurement cycle.** Standards embodied in integrity frameworks or codes of conduct applicable to public-sector employees (such as on managing conflict of interest, disclosure of information or other standards of professional behaviour) could be expanded (e.g. through integrity pacts).
- ii) **Implement general public sector integrity tools and tailor them to the specific risks of the procurement cycle as necessary** (e.g. the heightened risks involved in public-private interaction and fiduciary responsibility in public procurement).
- iii) **Develop integrity training programmes for the procurement workforce**, both public and private, to raise awareness about integrity risks, such as corruption, fraud, collusion and discrimination, develop knowledge on ways to counter these risks and foster a culture of integrity to prevent corruption.

- iv) **Develop requirements for internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring.** Public procurement contracts should contain “no corruption” warranties and measures should be implemented to verify the truthfulness of suppliers’ warranties that they have not and will not engage in corruption in connection with the contract. Such programmes should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training requirements for supplier personnel.

**IV. RECOMMENDS** that Adherents facilitate **Access** to procurement opportunities for potential competitors of all sizes.

To this end, Adherents should:

- i) **Have in place coherent and stable institutional, legal and regulatory frameworks**, which are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. These frameworks should:
- 1) be as clear and simple as possible;
  - 2) avoid including requirements which duplicate or conflict with other legislation or regulation; and
  - 3) treat bidders, including foreign suppliers, in a fair, transparent and equitable manner, taking into account Adherents’ international commitments (e.g., the Agreement on Government Procurement within the framework of the World Trade Organization, the European Union Procurement Directives, and bilateral or multilateral trade agreements).
- ii) **Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need**, to ensure that:
1. specific tender opportunities are designed so as to encourage broad participation from potential competitors, including new entrants and small and medium enterprises. This requires providing clear guidance to inform buyers’ expectations (including specifications and contract as well as payment terms) and binding information about evaluation and award

criteria and their weights (whether they are focused specifically on price, include elements of price/quality ratio or support secondary policy objectives); and

2. the extent and complexity of information required in tender documentation and the time allotted for suppliers to respond is proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.
- iii) **Use competitive tendering and limit the use of exceptions and single-source procurement.** Competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement, such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers.

**V. RECOMMENDS** that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be **Balanced** against the primary procurement objective.

To this end, Adherents should:

- i) **Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities**, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.
- ii) **Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems.** For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.



- iii) **Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives.** The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

**VI. RECOMMENDS** that Adherents foster transparent and effective stakeholder **Participation**.

To this end, Adherents should:

- i) **Develop and follow a standard process when formulating changes to the public procurement system.** Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner.
- ii) **Engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets.** Effective communication should be conducted to provide potential vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender specifications by better understanding market capabilities. Such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing. Such interactions should also be adapted to ensure that foreign companies participating in tenders receive transparent and effective information.
- iii) **Provide opportunities for direct involvement of relevant external stakeholders** in the procurement system with a view to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment

and other legal obligations in the procurement process are maintained.

**VII. RECOMMENDS** that Adherents develop processes to drive **Efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

- i) **Streamline the public procurement system and its institutional frameworks.** Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.
- ii) **Implement sound technical processes to satisfy customer needs efficiently.** Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract.
- iii) **Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money,** including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

**VIII. RECOMMENDS** that Adherents improve the public procurement system by harnessing the use of digital technologies to support appropriate **e-Procurement** innovation throughout the procurement cycle.

To this end, Adherents should:

- i) **Employ recent digital technology developments that allow integrated e-procurement solutions covering the public procurement cycle.** Information and communication technologies should be used in public procurement to ensure

transparency and access to public tenders, increasing competition, simplifying processes for contract award and management, driving cost savings and integrating public procurement and public finance information.

- ii) **Pursue state-of-the-art e-procurement tools that are modular, flexible, scalable and secure** in order to assure business continuity, privacy and integrity, provide fair treatment and protect sensitive data, while supplying the core capabilities and functions that allow business innovation. E-procurement tools should be simple to use and appropriate to their purpose, and consistent across procurement agencies, to the extent possible; excessively complicated systems could create implementation risks and challenges for new entrants or small and medium enterprises.

**IX. RECOMMENDS** that Adherents develop a procurement workforce with the **Capacity** to continually deliver value for money efficiently and effectively.

To this end, Adherents should:

- i) **Ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools**, for example, sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system.
- ii) **Provide attractive, competitive and merit-based career options for procurement officials**, through the provision of clear means of advancement, protection from political interference in the procurement process and the promotion of national and international good practices in career development to enhance the performance of the procurement workforce.
- iii) **Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce**. The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement

knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems.

**X. RECOMMENDS** that Adherents drive performance improvements through **Evaluation** of the effectiveness of the public procurement system from individual procurements to the system as a whole, at all levels of government where feasible and appropriate.

To this end, Adherents should:

- i) **Assess periodically and consistently the results of the procurement process.** Public procurement systems should collect consistent, up-to-date and reliable information and use data on prior procurements, particularly regarding price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight and could guide future procurement decisions.
- ii) **Develop indicators to measure performance, effectiveness and savings of the public procurement system** for benchmarking and to support strategic policy making on public procurement.

**XI. RECOMMENDS** that Adherents integrate **Risk** management strategies for mapping, detection and mitigation throughout the public procurement cycle.

To this end, Adherents should:

- i) **Develop risk assessment tools to identify and address threats to the proper function of the public procurement system.** Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.
- ii) **Publicise risk management strategies**, for instance, systems of red flags or whistle-blower programmes, and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.

**XII. RECOMMENDS** that Adherents apply oversight and control mechanisms to support **Accountability** throughout the public procurement cycle, including appropriate complaint and sanctions processes.

To this end, Adherents should:

- i) **Establish clear lines for oversight of the public procurement cycle** to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of authority for approval of spending and approval of key procurement milestones is well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.
- ii) **Develop a system of effective and enforceable sanctions** for government and private-sector procurement participants, in proportion to the degree of wrong-doing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community.
- iii) **Handle complaints in a fair, timely and transparent way** through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.
- iv) **Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are coordinated, sufficiently resourced and integrated** to ensure:
  1. the monitoring of the performance of the public procurement system;
  2. the reliable reporting and compliance with laws and regulations as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals;

3. the consistent application of procurement laws, regulations and policies;
4. a reduction of duplication and adequate oversight in accordance with national choices; and
5. independent *ex-post* assessment and, where appropriate, reporting to relevant oversight bodies.

**XIII. RECOMMENDS** that Adherents support **Integration** of public procurement into overall public finance management, budgeting and services delivery processes.

To this end, Adherents should:

- i) **Rationalise public procurement spending by combining procurement processes with public finance management** to develop a better understanding of the spending dedicated to public procurement, including the administrative costs involved. This information can be used to improve procurement management, reduce duplication, and deliver goods and services more efficiently. Budget commitments should be issued in a manner that discourages fragmentation and is conducive to the use of efficient procurement techniques.
- ii) **Encourage multi-year budgeting and financing to optimise the design and planning of the public procurement cycle.** Flexibility, through multi-year financing options – when justified and with proper oversight – should be provided to prevent purchasing decisions that do not properly allocate risks or achieve efficiency due to strict budget regulation and inefficient allocation.
- iii) **Harmonise public procurement principles across the spectrum of public services delivery, as appropriate, including for public works, public-private partnerships and concessions.** When delivering services under a wide array of arrangements with private-sector partners, Adherents should ensure as much consistency as possible among the frameworks and institutions that govern public services delivery to foster efficiency for the government and predictability for private-sector partners.

XIII. **INVITES** the Secretary-General to disseminate this Recommendation.

XIV. **INVITES** Adherents to disseminate this Recommendation at all levels of government, and to consider the implementation of this Recommendation in other relevant contexts, such as procurement by state-owned enterprises or procurement conducted under aid arrangements.

XV. **INVITES** non-Adherents to take account of and adhere to this Recommendation.

XVI. **INSTRUCTS** the Public Governance Committee to monitor, **in co-operation with the Competition Committee and the Working Group on Bribery in International Business Transactions, and in consultation with other competent OECD committees**, the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter.

## *Annex B*

### **MENA Countries Stocktaking Questionnaire**

Public procurement is one of the largest government spending activities in any country, representing on average almost 13% of GDP in OECD member countries. It is also vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors. For these reasons, the OECD developed in 2008 the Principles for Enhancing Integrity in Public Procurement as a policy instrument to help governments tackle these risks. The Principles are anchored in four pillars: transparency, good management, prevention of misconduct and accountability and control.

Today, MENA countries face the challenge to strengthen their public procurement systems.

The aim of this questionnaire is to provide input on the procurement systems in the MENA region and allow measuring the progress made by countries against the OECD Principles for Enhancing Integrity in Public Procurement.

#### **RESPONDENT'S DETAILS**

Country:

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Name:

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Position:

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Telephone:

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Email:

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### SECTION 1. LEGAL FRAMEWORK

1. Which is/ are the law (s) that applies/ y to public procurement in your country?

If your country does not have specific procurement legislation, please go to section 2.

Please mention name of the law, date of last reform (if relevant) and scope (central or regional).

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If you have more than one law, could you please specify the main procurement law?

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Is the same law applicable to goods, services and public works?

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Is there a financial threshold below which the law does not apply?

Yes

No

If yes, please provide the threshold and brief description of procedures below it (such as direct awards, other).

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2. Are there special provisions to encourage the participation of SMEs?

Yes  No

If yes, please describe the special provisions

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Are there special provisions to encourage the participation of national enterprises?

Yes  No

If yes, please describe the special provisions

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3. Are there special provisions to encourage green procurement?

Yes  No

If yes, please describe the special provisions

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4. Is there a specific regulation for Public Private Partnerships?

Yes  No

If yes, please describe the special provisions

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Is the revision and/or modification of the procurement law(s) subject to consultation with different stakeholders?

- Yes, systematically
- Yes, sometimes
- No

If yes, who participates in the consultation?

- Suppliers;
- Industry associations;
- Civil society;
- Other: \_\_\_\_\_

5. Is there a reform undertaken right now?

- Yes
- No

If yes, what are the main aspects of it?

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**SECTION 2. MANAGEMENT OF THE PROCUREMENT PROCESS**

6. Is there a central procurement agency?

- Yes
- No

If yes, please check the main role of the agency:

- Develop procurement policy
- Centralised purchasing

7. Could you please indicate if the following items are part of your procurement process:

- Price reference systems  
 Market/ feasibility studies  
 Consultation with the private sector on new products

8. Does a procurement entity need to justify using a non-competitive procurement procedure (direct award)?

- Yes  No

9. What are the tools available to professionalize the procurement agents?

Check all that apply:

- Procurement training;  
 Certification or licensing programme;  
 Formal job description for procurement agents;  
 Integrity guidelines (e.g. codes of conduct specifically for procurement officials);  
 Other: Please specify:

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Nothing is in place

### SECTION 3. TRANSPARENCY

10. Is the procurement law (s) accessible on line?

- Yes  No

If yes, could you please indicate the website?

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11. Does the law require the tender notice to have :

- Information on the nature and quantity of goods or services;
- Terms of supply or service delivery, including deadlines;
- Procurement method used;
- Qualification criteria;
- Evaluation criteria;
- List of documents to be submitted with the bid;
- Timeframe for submitting the bid;
- Model agreement.

12. When bidders ask clarification questions regarding tender notices, is the clarification provided to all bidders?

- Yes
- No
- Bidders are not allowed to ask questions

13. What information is provided to unsuccessful bidders?

- Detailed explanation for rejecting the application;
- Name of the successful bidder;
- Date of the award;
- No information is provided to unsuccessful bidders;
- Other:

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How does your country provide the previous information to unqualified bidders?

- In writing;
- In debriefing session with all bidders;
- In debriefing session with each bidder alone;
- No information is provided.

14. Please check if these documents can be requested:

	In person		Via Email		Via regular mail		Phone or fax	
	Yes	Fee	Yes	Fee	Yes	Fee	Yes	Fee
Procurement laws and regulations								
Future procurement plans								
Tender notice								
Tender documents								
Contract award decisions								

Does your country have a central procurement website?

Central procurement website defined here as a procurement website that centralises procurement information at one single location on the Internet, which is accessible via an online address.

Yes

No

If yes, please provide the website:

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If yes, which of the following can be found online?

Procurement laws and regulations;

Future procurement plans;

Tender notices;

Tender documents;

Contract award decisions;

Modifications to contracts; please provide information on frequency of post award contract modifications:

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#### SECTION 4. REVIEW AND CONTROL

15. Is there the possibility to challenge the contract award decision? If no, please go to question 25.

Yes  No

16. Is there a period of time for challenging the decision, following the notification of an award decision and before the signature of the contract?

Yes  No

If yes, how many days?

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17. If supplier wants to file a complaint against a procurement process, does the supplier have to notify or seek redress from contracting authority first?

Required  
 Optional  
 No

18. What are the review bodies?

Special procurement tribunal  
 Court  
 Other:

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19. Is there a fee to file a complaint?

Yes  No

If yes, please indicate the amount:

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20. Are the decisions taken by the review bodies binding?

Yes  No

21. Are there any internal controls within contracting authorities?

Yes

No

If yes, please specify if there is a financial threshold for this:

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22. Does the supreme audit institution in your country audit procurement activities?

Yes

No

If yes, please check if audits are:

Performance (delivery) audits;

Compliance audits.

23. Is there another institution in charge of controlling and checking procurement activities?

If yes please specify the institution (s):

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## SECTION 5. INTEGRITY

24. Does your country use “red flags” indicators in procurement to detect possible acts of fraud and/or corruption?

Yes

No

If yes, please describe them:

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25. Are there legal provisions that define a clear procedure to resolve a conflict of interest situation involving a public procurement official and/ or asset disclosure rules for public procurement officials?

Yes  No

If yes, please specify \_\_\_\_\_ in both cases (conflicts of interest and asset disclosure):

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26. Are public officials involved in the procurement process obliged to report any misconduct (e.g. conflict of interest, bribery, failure to comply with procedures)

Yes  No

If yes, is there a law in place to protect the reporting public official?

Yes  No

If yes, please specify:

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### SECTION 6. MOVING FORWARD

27. What are the current public procurement challenges in your country?

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28. To respond to these challenges, what would be the main field for improvement or possible reform in your country?

Please select all that apply.

- Enhancing transparency in procurement
- Improving the professionalization of the public procurement function
- Preventing and detecting irregularities and corruption in procurement
- Strengthening accountability and control mechanisms
- Support government policy goals.
- Other, please specify:

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33. Does your country have a communication strategy on the procurement reforms taking place?

- Yes  No

If yes, please specify target audience (contracting authorities, suppliers, civil society, other).

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34. Does your country use its country procurement system in donor funded procurement procedures?

- Yes  No

If yes, please state which donor agencies.

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# Stocktaking report on MENA Public Procurement Systems

## **For further information:**

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