



# SIGMA

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## REPORT

# CORRUPTION RISK ASSESSMENT OF THE PUBLIC PROCUREMENT SYSTEM IN JORDAN

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# EXECUTIVE SUMMARY

## I. BACKGROUND TO THE REVIEW

Public procurement is one of the key means by which public money is spent. Public procurement refers to the purchase by governments and state-owned enterprises of goods, services and works. Public procurement is estimated to account for 12% of gross domestic product (GDP) and 29% of general government expenditure in OECD<sup>1</sup> countries in 2013, around EUR 4.2 trillion<sup>2</sup>.

This substantial portion of taxpayers' money requires that governments carry out public procurement procedures efficiently and with high standards to ensure high-quality service delivery and to safeguard public interest. Public procurement constitutes an important market for the private sector and may influence the structure of a country's economy. Its effects are highly visible to citizens and it plays an important role in determining their level of trust in the government. However, this is an area in which risks of misspending and corruption are high.

Public procurement stakeholders should be aware of all corruption risks, and they should promote and preserve the integrity of the public procurement system in all stages of the procurement cycle, from procurement planning through awarding of the contract to contract management. Integrity, which refers to the consistent application of values, principles and norms, is a cornerstone of good governance and is critical for maintaining trust in government. Therefore, a coherent and comprehensive integrity system should form the basis for any effort to curb corruption in public procurement.

Ensuring adequate transparency in the public procurement system at all stages of the procurement cycle is also of vital importance. Transparency supports numerous good governance goals, such as ensuring fair competition, and provides a means for stakeholders to evaluate the functioning of the system as a whole.

The professionalism of the staff involved in making decisions related to public procurement procedures is also essential for good management, prevention of misconduct, compliance and monitoring. Officials need technical expertise to carry out internal evaluations. Staff training on various aspects of the public procurement cycle and recognition of procurement as a profession can help raise awareness on, and commitment to, good practices and integrity.

Additionally, the 2015 OECD "Recommendation on Public Procurement"<sup>3</sup> 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."

Having considered the above-mentioned factors, the Jordan Integrity and Anti-Corruption Commission (JIACC) requested OECD/SIGMA to conduct a review of the public procurement system in the Hashemite Kingdom of Jordan ("Jordan" hereafter). The main objective of the review was to map the possible corruption risks in the public procurement system and to develop recommendations for improvement of the system, with special focus on enhancing transparency and integrity, and also to develop corruption risk mitigation and treatment strategies.

<sup>1</sup> Organisation for Economic Co operation and Development

<sup>2</sup> OECD (2015), *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)

<sup>3</sup> OECD (2015), "OECD recommendation of the Council on Public Procurement", <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>

The review aims at the implementation of one of the envisaged actions of the Action Plan for the implementation of the National Anti-Corruption Strategy 2013-2017 of Jordan<sup>4</sup>.

The JIACC established a project team for the corruption risk assessment exercise involving representatives of the Audit Bureau (AB), the Government Tenders Department (GTD), the Joint Procurement Department (JPD) and the General Supplies Department (GSD).

The methodology used for the review was tailored to Jordan's political, regulatory, institutional and procedural contexts, while also being in line with international standards and the experiences of other countries.

During the review exercise, the OECD/SIGMA review team, together with the JIACC project team, had several meetings with the relevant stakeholders in the Jordanian public procurement system. The first two fact-finding interviews were held on 7 December 2015, while the main fact-finding mission was organised for 7-12 February 2016. In addition, to collect more information, two surveys were prepared, one for the public sector and another for the private sector, which contained relevant requests for information on corruption risks in public procurement procedures. The findings of the report were validated during a working session with the JIACC and the project team on 15 and 16 May 2016, and on a second working session on 26 July 2016. The draft report was sent back for a final fact-checking in early September 2016. The report was finalised based on the comments received during the fact-checking exercise.

There has been close co-operation between the JIACC and the SIGMA team as well as a satisfactory level of commitment of all the parties involved. A joint effort was made by SIGMA and the JIACC project team during the fact-finding meetings, preparation of surveys, analysis of information, and drafting of this report.

However, the review team faced a lack of statistical information regarding the most important characteristics of the national public procurement system, including the size of the national public procurement market. There is no designated institution for collecting this information, or more generally for the function of policy making regarding the public procurement system in Jordan. As there is currently no institution in charge of collecting procurement-related information, substantial statistical information is almost non-existent.

This report reveals that there are many challenges ahead and much room for improvement in the various aspects of the procurement system overall. Most of them require changes to the legislative framework, but some could be implemented without legislative intervention.

Meetings and surveys conducted among the main stakeholders of the procurement system confirmed the findings of the report, namely the need for legal and institutional reform of the public procurement system.

## II. KEY FINDINGS

*The Executive Summary summarises key points and conclusions in a way that acquaints readers rapidly with the report. For further discussion, background information and analysis please refer to Chapters 4, 5 and 6.*

For a functional public procurement system, the following four elements are essential:

- legislation on public procurement (in line with international good practices and standards)
- an institutional set-up for public procurement functions, with clear distribution of roles, tasks and responsibilities among the different institutions
- operational capacity which ensures that the public bodies and representatives of the private sector understand the rationale behind public procurement and the good practice of public procurement
- control and monitoring functions, which help to rectify mistakes in the system.

<sup>4</sup> Action 2.2. Implement a comprehensive Risk Assessment for sectors most vulnerable to corruption under Strategic Objective 2: Strengthening the prevention of corruption.

Procurement systems operate within a broader set of legislative, institutional and governance arrangements in every country. Even where legislation on public procurement is present and relatively well designed, implementation often suffers from shortcomings<sup>5</sup>. This review therefore focuses on the four pillars of the public procurement system:

- A. policy, legal and regulatory framework
- B. institutional framework and capacity
- C. operational capacity and market functionality
- D. control, monitoring structure and integrity mechanisms

The key findings in the four pillars are:

#### **A. Policy, legal and regulatory framework on public procurement**

- The legal and regulatory framework on public procurement in Jordan is fragmented and not unified. Without a coherent public procurement law, there are risks for weak enforceability and coverage, legal uncertainty for the bidders, insufficient protection for procurement staff, and opportunities for unjustified exemptions and discretion. The regulatory framework does not reflect international legislative models.
- There is vagueness in the rules on several important points, such as the choice of procedures and bid evaluation; this increases the risk of irregularities. Risks are further aggravated by, for example, the lack of sufficient requirements for the planning and preparation of procurements as well as the publication of procurement opportunities.
- Within the existing legislation, there are possibilities (and need) for improvement in all parts of the public procurement cycle, from the planning phase to contract execution. The legislation should be clearly drafted, principle-based and value-for-money oriented.

#### **B. Institutional framework and capacity**

- The institutional framework is characterised by unclear policy-making and co-ordination functions. An institution for policy development and legislative strategies in public procurement does not exist. A number of important functions, which are usually covered by this type of institution, are therefore missing from the procurement system. In consequence, there is a lack of valid statistical information and analyses.
- There is no strategy paper on the development of the public procurement system.
- Proper co-operation among the main stakeholders has not been established.
- Regular training of members of the various tender, technical and receiving committees does not exist.
- A strategic approach and capacity-building for the entire public procurement system is needed.

#### **C. Operational capacity and market functionality**

- Without valid statistical information, it is impossible to provide appropriate analyses of the public procurement market in Jordan. Based on interviews and surveys, the public procurement system can be described as having the following main characteristics:
  - Lowest price criteria are almost exclusively used.
  - There are three state institutions in charge of different aspects of central procurement, and the main tasks within the contracting authorities are carried out by members of different committees (tender, technical, receiving and special committees).
  - There is a lack of recognition of the procurement profession and the support provided to procurement officials is unsatisfactory.

<sup>5</sup> For further details, see SIGMA (2016), *The Principles of Public Administration: A Framework for ENP Countries*, OECD Publishing, Paris, pp. 45-49.

- Various institutions that are currently involved in monitoring have highlighted several issues:
  - In terms of compliance, there is an excessive division of contracts and use of variation orders<sup>6</sup>.
  - As regards efficiency, the situation is characterised by lack of planning and the use of disproportionate requirements concerning, for example, bidder qualifications.
  - Contract management is problematic due to lack of resources for ensuring performance monitoring and technical dialogue.
  - Knowledge of the members of the committees should be increased, as well as the quality of tender documentation/technical specifications.

#### **D. Control, monitoring structure and integrity mechanisms**

- The monitoring of compliance and efficiency suffers from the lack of a dedicated institution in charge of public procurement.
- An effective and independent complaint review procedure is missing from the system.
- The external audit tends to focus on compliance rather than on performance of procurement operations, and a high number of procedural deficiencies have been identified.

### **III. RECOMMENDATIONS**

The main integrity risk areas within the Jordanian procurement system are mapped and discussed in this report. A number of observable integrity risks stem from the lack of a coherent legal framework, insufficient operational capacity and professionalism, and deficiencies in the procurement process.

Any national strategy and action plan for mitigating integrity risks in public procurement needs to be discussed in the overall context of the public procurement system. Corruption and fraud in public procurement cannot be isolated from the other parts of the society, but act usually as a mirror of the overall situation in a country. Joint mobilisation of all the key stakeholders is necessary to reform the political, administrative and business culture and practices in a country.

Enhancing integrity in public procurement requires a systematic and coherent approach. To promote transparency and integrity in public procurement, Jordanian authorities could consider:

1. The establishment of a central institution for policy-making functions in the area of public procurement (or entrusting an already existing institution with this function).
2. Rationalisation of the current legislative and regulatory framework: developing and adopting a coherent, sound and modern public procurement law.
3. Introducing clear policy and rules on the preparation of procurements, especially with the aim of minimising the issue of variation orders (modification of the contracts during their implementation phase).
4. Strengthening the rules on conflict of interest and code of conduct both in public and private sectors.
5. Supporting and investing in the professionalisation of procurement functions by developing a national training strategy in public procurement.
6. Providing capacity building for the private and public sectors in public procurement.
7. Introducing effective remedies (complaint mechanisms) for challenging procurement decisions to build bidder confidence in the integrity and fairness of the procurement system.

<sup>6</sup> A variation order is issued during the implementation phase of the contract to amend it.

*(The Executive Summary here gives only the list of the recommendations. For further details and background information, please consult Chapter 7.)*

To ensure efficient and effective management of the identified risks and implementation of the recommendations, establishment of a follow-up committee is recommended (or the mandate of the project group established for this review should be extended for this purpose).

Designing an action plan for implementation of the above-mentioned recommendations would also be an important next step. The Action Plan should identify the concrete actions required for implementation of the recommendations, with time limits and types of necessary resources indicated.

The follow-up committee should also monitor implementation of the Action Plan and report on progress to the Prime Minister.

# 1. INTRODUCTION

## 1.1 Background to the Review

The main aim of this review is to conduct a corruption risk assessment of the public procurement system in Jordan based on a methodology tailored to the country's political, regulatory, institutional and procedural contexts, while also being in line with international standards and the experiences of other countries.

The public procurement corruption and integrity risk assessment is used as a diagnostic tool to identify governance weaknesses and/or corruption risks in Jordan's public procurement system.

The current review is aimed at the implementation of one of the envisaged actions of the Action Plan for implementation of the National Anti-Corruption Strategy 2013-2017 of Jordan<sup>7</sup>. SIGMA received a request from the JIACC to assist them in implementing the mentioned action.

SIGMA and the JIACC made a joint effort in working on the methodology, collecting information, preparing the surveys, analysing the available information in the Jordanian public procurement system and identifying the corruption risks. The work has been conducted with the active participation of the JIACC staff and other involved stakeholders. The JIACC set up a project committee, inviting representatives of the AB, the JPD, the GTD and the GSD.

For a functional public procurement system, the following four elements are essential:

- legislation on public procurement (in line with international good practices and standards),
- an institutional set-up for public procurement functions<sup>8</sup> with clear distribution of roles, tasks and responsibilities among the different institutions,
- operational capacity which ensures that the public bodies and representatives of the private sector understand the rationale behind public procurement and the good practice of public procurement,
- control and monitoring functions<sup>9</sup>, which help to rectify mistakes in the system.

Even where legislation on public procurement is present and the institutional set-up is relatively well designed, implementation in practice often suffers from shortcomings. This review therefore focuses on the main pillars of the public procurement system:

- policy, legal and regulatory framework
- institutional framework and capacity
- operational capacity and market functionality
- control, monitoring structure and integrity mechanisms

The review of these pillars focuses on the corruption risks in the procurement system (specifically from the perspective of transparency and the integrity of the procurement system). The aim of the review is to identify the weaknesses/gaps in the Jordanian procurement system as indicators of risks for potential corruption. The scope of the review does not cover the whole procurement system: only procurements at the central governmental level, but not the practices of local governments.

<sup>7</sup> Action 2.2. Implement a comprehensive Risk Assessment for sectors most vulnerable to corruption under Strategic Objective 2: Strengthening the prevention of corruption.

<sup>8</sup> These functions would typically include a long-term policy framework, primary legislation, secondary policies and regulations, international co-operation, oversight and monitoring, advisory and operational support, publication and information, professionalisation and capacity building, operational development and capacity building. For further details, see SIGMA (2013), "[Organising central public procurement functions](#)", Public Procurement Brief No. 26, OECD Publishing, Paris.

<sup>9</sup> SIGMA (2013), "Monitoring of public procurement", Public Procurement Brief No. 27, OECD Publishing, Paris.



The outcome of the review is this report, which presents the main corruption risks and identifies recommendations for mitigating those risks. This report also discusses the prioritised activities needed for mitigation of the main identified risks.

As underlined in this report, corruption and fraud in public procurement cannot be isolated from other parts of the society, but usually mirror the overall situation in a country. There is a need for joint mobilisation and zero-tolerance from all key stakeholders in the society to reform the political, administrative and business culture and practices related to public procurement. Enhancing integrity in public procurement requires a systematic and coherent approach to ensure that any action plan is consistent with and does not contradict the policy goals of efficiency and “value for money” in public procurement.

## **1.2 Methodology**

The methodology was tailored to Jordan’s political, regulatory, institutional and procedural contexts while also being in line with international standards and the experiences of other countries. Regarding international standards, references are made in particular to the United Nations (UN) and the OECD instruments concerning anti-corruption as well as the United Nations Commission on International Trade Law (UNCITRAL) model law on public procurement and the Directives of the European Union on public procurement.

The methodology is not based on self-assessment by the Jordanian authorities, but on a SIGMA-led review, which included mission(s) to Jordan, interviews with the members and staff of the main stakeholders, collection and analysis of relevant legislation, internal regulations, reports, sample decisions, studies and surveys. The methods used are largely qualitative and are based on an analysis of the relevant legislation supported by interviews with relevant stakeholders, circulation and processing of surveys addressed to contracting authorities and economic operators, and quantitative analysis of statistical data to assess corruption risks in public procurement procedures.

For the purposes of this review, a corruption risk assessment is defined as an exercise undertaken to identify factors associated with, contributing to, or facilitating corruption in the procurement system. Corruption is to be understood as referring primarily to any situation in which a public position is being misused for private gain. The key issue is the intention of private gain and the consequential abuse of trust inherent in a public position<sup>10</sup>. In terms of approach, the distinction between corruption and other irregularities is not likely to make a great difference. Nearly any legislative or institutional shortcoming can be exploited for corrupt intentions.

This risk assessment therefore broadly addresses legislative and institutional shortcomings that increase the risk of irregular behaviour, and ultimately focuses on those shortcomings that particularly trigger corruption risks. The specific definition of corruption based on intent is used to establish that it would not be reasonable or helpful to characterise any irregular behaviour as corrupt.

This Report is the outcome of the joint activities of the SIGMA and JIACC teams. The JIACC team participated in the meetings during the fact-finding mission, and provided useful comments about the content of this Report. The final report will be presented to the JIACC and the relevant Jordanian public procurement institutions in November 2016 in Amman.

<sup>10</sup> Many types of behaviour can be characterised as being irregular, but not corrupt because the private-gain intention is lacking. Irregularities may result from protectionism for policy reasons, without any inducement from private parties (i.e. to stimulate local employment and tax revenue). Or, they may be caused by sheer lack of knowledge or excessive caution.

### **1.3 Acknowledgements**

The OECD/SIGMA review team wishes to express its sincere thanks to all who contributed to the review process for being so generous with their time and for providing the team with the opportunity to have open and professional discussions. This report would not have been possible without the support of the JIACC. Its members and staff fully supported the review.

The team also wishes to express thanks to the staff of other institutions and organisations for their valid contributions, especially to the representatives of those institutions which were involved in the project team set up by the JIACC, such as the Audit Bureau, the Joint Procurement Department, the General Supplies Department and the Government Tenders Department.

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## 2. INTEGRITY RISK ASSESSMENT IN PUBLIC PROCUREMENT – AN INTERNATIONAL OVERVIEW

### 2.1 Sources for defining good international practices

All governments at the central or local level need to procure supplies, services and works to satisfy the needs of citizens and to carry out their institutional functions, such as national defence, law enforcement, health protection and education. These government activities are generally referred to as public procurement (or government procurement). Procuring entities spend taxpayers' money, thereby acting as public agents representing public interests. In this context, governments are expected to acquire supplies, services and works on the basis of the best value for money.

Public procurement is a major risk area for corruption, for two main reasons. A large share of public money, paid by taxpayers, is spent through public procurement. In addition, public procurement is highly vulnerable to corruption and bribery because of the close interaction between public officials and the private sector, and due to the high potential gains from bribery.

International agreements, policies, guidelines and handbooks that set standards and address cross-border issues play a key role in anti-corruption efforts. Corruption is a wide-ranging and widespread phenomenon, at the local, national and international levels; while it is a bigger problem in some countries than in others, no country is immune to corruption or the risk of corruption. Whether on a grand or small scale, corruption poses challenges to society and to the public policies of government. Across the world, governments, businesses and civil society are addressing this problem as it becomes increasingly understood that corruption offends democratic values and threatens society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes quality of life and allows organised crime, terrorism and other threats to human security to flourish<sup>11</sup>.

International anti-corruption experiences also provide a general framework for shaping national public procurement legislation. The key international instruments that are referred to in this report are:

- the EU Directives on public procurement<sup>12</sup>;
- the OECD Recommendation on Public Procurement (2015)<sup>13</sup>;
- the United Nations Convention against Corruption (UNCAC)<sup>14</sup>;
- the UNCITRAL Model Law on Public Procurement<sup>15</sup>;
- the World Trade Organisation Agreement on Government Procurement (GPA)<sup>16</sup>;
- the Council of Europe's framework against corruption<sup>17</sup>.

<sup>11</sup> Annan, K.A. (2004), "Foreword", in *United Nations Convention against Corruption*, UN, New York.

<sup>12</sup> Such as Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors; and Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, [http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/index\\_en.htm](http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/index_en.htm).

<sup>13</sup> <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>; this Recommendation replaced the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement.

<sup>14</sup> See UNODC (United Nations Office on Drugs and Crime) (2009), *Technical Guide to the United Nations Convention Against Corruption*, UN, New York, Chapter II on preventive measures and Article 9 on public procurement and management of public finances, [http://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf); Jordan signed the UNCAC on 9 December 2003 and ratified it on 24 February 2005. The implementing legislation – Law No. 28 of 2004 – was adopted by the Parliament on 8 June 2004 and published in the Official Gazette on 1 August 2004.

<sup>15</sup> UNCITRAL (United Nations Commission on International Trade Law) (2014), *UNCITRAL Model Law on Public Procurement*, UN, New York.

<sup>16</sup> World Trade Organization (WTO), *Revised Agreement on Government Procurement* (Annex to the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012 [GPA/113]), [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

*Identifying and Reducing Corruption in Public Procurement in the EU*<sup>18</sup>, a study prepared for the European Commission is used in this report for the statistical information regarding corruption in the European Union.

## 2.2 Definition and different concepts of corruption

In this report, corruption refers primarily to any situation in which a public position is being misused for private gain. The key issue is the intention of “private gain” and the consequential abuse of trust that is inherent in a public position.<sup>19</sup> In terms of the approach of this review, the distinction between corruption and other irregularities is not likely to make a great difference. Nearly any legislative or institutional shortcoming can be exploited for corruptive intentions. Corruption in public procurement includes, in addition to bribery, any other relevant misconduct in the public and private sectors (e.g. conflict of interest, favouritism, nepotism, cronyism, market rigging, etc.).

“Private gain” must be interpreted widely, to include gains accrued by an economic actor’s close family members or friends, company, political party and in some cases an independent organisation or charitable institution in which the economic actor has a financial or other interest. Private gains in most instances take the form of bribes and kickbacks. A “kickback” typically occurs when a company that wins a public contract “kicks back” a bribe to the government official(s) who influenced the awarding of the contract (voluntary or under duress) to that company. Generally, the kickback is a percentage of the contract, and in a highly corrupt environment it becomes an added cost that all bidders must take into consideration when bidding for public contracts.

A corrupt case of public procurement should be considered as any case in which, at some stage in the procurement process, any power has been abused for private gain. In a non-corrupt case of public procurement, nowhere in the procurement process has any power been abused for private gain.

## 2.3 Typical corruption risks during the public procurement process

Corruption can take place at any stage of the procurement process. The first step to prevent it is to take the risk of corruption seriously and to understand the potential risks at every step, from the early needs assessment to completion of the contract’s tasks. Risks of corruption are often linked to the lack of transparency, in particular the inconsistent distribution of information to bidders, unclear reasons for the choice of a procurement procedure, unjustified use of a non-competitive procedure, unclear evidence of suitability and evaluation criteria, or an unjustified award decision.

Another problem is that the staff and management involved in the procurement are not always adequately trained, and may thus lack the necessary professionalism to carry out adequate planning, budgeting and risk management. Insufficient accountability and control mechanisms may also result in mismanagement. It might be unclear what the procurement officer is accountable for, or the officer’s supervision of a firm’s performance may be unsatisfactory.

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<sup>17</sup> Council of Europe anti-corruption instruments: Criminal Law Convention on Corruption (ETS 173), Civil Law Convention on Corruption (ETS 174), Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), Resolution (97) 24 Concerning Twenty Guiding Principles on the fight against Corruption, Rec(2000)10E of 11 May 2000 on Codes of Conduct for Public Officials, Rec(2003)4 of the Committee of Ministers to member states on Common Rules against Corruption in the Funding of Political parties and electoral campaigns, and Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers.

<sup>18</sup> PwC and Ecorys (2013), *Identifying and Reducing Corruption in Public Procurement in the EU*, study prepared for the European Commission, PwC EU Services, Brussels.

<sup>19</sup> The relatively broad definition (“abuse of public office for personal gain”) is applied by, for example, the UNDP and covers, not least, various situations involving bribery; see <http://www.pogar.org/publications/finances/anticor/Corruption-and-Development-Primer-08e.pdf>

Unfortunately, there are number of other negative connotations related to public procurement, which makes public procurement stand out as an extremely corruptive area of public administration. This reputation, founded on experiences in various countries and regions of the world, proves that actions and initiatives to help other institutions fight this problem are needed.

A wide variety of factors can increase the level of corruption risk in public procurement, including the size of a contract, complexity of the related technology, its connection with a corruption-prone sector, the presence of excessive administrative discretion, a lack of review and remedies procedures, lack of financial controls, restricted access to information, time pressures, lack of knowledge and experience, and conflicts of interest.

Basic corruption risks in this report are divided into three main categories<sup>20</sup>:

- pre-tender stage risks,
- tender stage risks, and
- post-tender stage risks.

**The pre-tender stage** includes decisions about the scope of governmental needs, i.e. which supplies, services or works are to be purchased. To this end, procurement officials need to identify the relevant technical requirements to determine what exactly will be sought from the private sector and when. The pre-tender stage also includes structuring the contracting process; the most basic question is whether to establish a tender competition or award the contract on a non-competitive basis. Procurement personnel generally follow a pre-existing regulatory structure to determine how the process will work, including the time frames for bidding, the stages in the process, the number of eligible bidders, any applicable restrictions or exceptions from the normally applicable procedures, and what communications systems are available between the procuring entity and the potential bidders.

The pre-tender stage also involves budgeting. In general, a competitive process mitigates many of the integrity risks connected with non-competitive procedures, such as the favouring of friends and family or the bribing of decision-makers. Competitive bidding is not an absolute guarantee against mismanagement and corruption, but competition may increase the openness and transparency of the process and, thus, create pressure to explain irregularities such as low-quality results, changes in the contract and abnormally high prices.

Corruption risks during this stage are particularly linked to the approval of unnecessary items (under- or overestimated); low-quality or overly luxurious purchases; purchases that are not truly needed in the near future; or supplies that would be delivered only once they are no longer required.

Further corruption risks at this stage are linked with cost estimates of the supplies, services or works to be purchased. Costs can be estimated on the basis of past procurements or on other relevant forecasting methods. Cost estimates must be realistic and should already take into account possible variations in the contract over time. Procuring entities must approve the required budget in a timely manner and verify that the needed funds are available.

Complex projects such as large-scale infrastructure or complex information technology projects have to be prepared with particular attention.

<sup>20</sup> OECD (2008), *Enhancing Integrity in Public Procurement: A Checklist*, OECD Publishing, Paris, <http://www.oecd.org/gov/41760991.pdf>

The typical corruption risks in the pre-tender stage are:

- Using non-competitive procedures without adequate justification or in breach of the requirements.
- Using non-competitive procedures due to legal loopholes, such as splitting a contract into smaller lower-value pieces so that competitive bidding is not required, declaring an unwarranted emergency, or prolonging existing contracts without sufficient justification.
- Evaluating suppliers without a prior tender process, possibly because decision-makers have a private agenda for choosing a particular firm (the risk is that the best potential bidder is overlooked).
- Tailoring bidding documents, technical specifications or terms of reference to fit one company, so that competition is either restricted or not possible.
- Making bidding documents or terms of reference unnecessarily complex to hide corrupt actions and complicate effective monitoring.
- Failing to define selection and award criteria objectively.
- Failing to establish selection and award criteria in advance.
- Pre-qualifying or shortlisting certain firms because they have offered bribes and not because of their qualifications and experience.

**The tender stage** includes the invitation to tender, which means choosing which bidder will become the contract partner by evaluating the actual tender and the tenderer, and awarding a contract based on established terms and conditions for how the supplies, services or works are to be provided. It includes all conditions or limitations that relate to the award. Some steps are common to both competitive and non-competitive processes. In both cases, potential providers must be evaluated and a justified award decision has to be made. However, in a competitive tender process, a pre-qualification round for bidders may also be used and the way tendering parties are invited should be carefully planned.

Tenders may be evaluated on only the pre-disclosed requirements and criteria. The evaluation of bids should be carried out, as a rule, not by a single individual but by a committee with the relevant technical and economic experience. If the evaluation is done by one individual only, the resulting decisions should be reviewed and approved by that individual's superior.

The typical corruption risks in the tendering stage are:

- Decision-makers being biased due to corruption in the evaluation process.
- A lack of standard methodology for the content of tender notices.
- Unclear definitions of the selection criteria, making the selection process subjective instead of objective.
- A lack of a review and remedies system.
- Rights and obligations of the employees in the contracting authorities not being defined.
- The procedure for changing technical specifications or tender documentation not being specified.

**The post-tender stage** (often referred to as contract management) refers to the administration of the contract to ensure effective performance. Further interactions of many kinds between the successful bidder and government authorities continue during the course of contract performance, e.g. regarding benchmarks, changing orders, payment schedules, licensing and permits. In other words, this stage entails the highly important job of monitoring, managing and finally auditing the level of contract fulfilment. Especially in negotiations on large and complex projects, a change in the contract conditions may be requested after the contract has been awarded. Alerting management of the procurement project in the post-award phase is necessary to ensure that such changes (for example, conditions, schedule or prices) do not open the door to corruption.

To reduce the risk of unauthorised “quality” or price changes, frequent and unannounced controls and external monitoring should be carried out until the project is finalised. There should be a threshold for how much change in price or quality is allowed. If the threshold is exceeded, the project should automatically be put under monitoring by the highest level of authority involved. The rules for contract change orders should be clear and established in the original contract, and should be part of national legislation.

Typical corruption risks in the post-tendering stage include:

- Attempts to re-negotiate the contract after the contract has been awarded, but before it has been signed. For example, the contractor may press for significant revisions to the contract to allow a longer time frame for delivery and/or higher prices for products or services. Such a renegotiation can make the whole tender process useless and non-transparent.
- Delivery by the winning contractor of a product of lower quality or different specifications than stated in the contract. The products, services or works agreed upon in the contract may be replaced with inferior substitutes, perhaps in an effort to compensate for bribery expenses.
- Public officials intentionally not providing supervision; as a result, sub-standard supplies, services and works are not detected.
- Annexes to the signed public procurement contract being drawn up, in which the price, quality, quantity or time of delivery are changed, usually to benefit a private company and not the public.
- Collusion between a corrupt company and a corrupt supervising official, leading to price increases, often through the above-mentioned changes in the contract.

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The above-mentioned corruption risks are typical for public procurement procedures in any country, but every country has its own specificities which have to be recognised and highlighted. Specific corruption risks for the Jordanian public procurement system are explained and highlighted in Chapters 5 and 6.

### 3. THE IMPACT OF CORRUPTION IN PUBLIC PROCUREMENT

#### 3.1 Conclusions of international inquiries on costs and other negative effects of corruption

Public procurement is estimated to account for 12% of GDP and 29% of general government expenditure in OECD countries in 2013, or around EUR 4.2 trillion<sup>21</sup>. This means that billions of euros are spent every year for the purposes of public procurement. How much value is lost due to corruption is difficult to measure because of its clandestine nature. However, it is obvious that corruption has an enormous negative impact on the quality of public governance and public spending. Losses are incurred particularly because corruption undermines market competition and impedes economic development. Where corruption is widespread, governments pay artificially high prices for supplies, services and works because of the market distortion. The European Union estimates that corruption costs its Member States EUR 120 billion every year<sup>22</sup>. At an anti-corruption seminar in Göteborg on 5 March 2013, the then EU Commissioner, Ms. Malmstrom, indicated that “in public procurement, studies suggest that up to 20% to 25% of the public contracts’ value may be lost to corruption”.

A sound and transparent public procurement system is based on rules, encourages competition, promotes transparency, strengthens accountability, and is economic and efficient. The underlying assumption behind these principles governing public procurement is that the process should be free from acts and behaviours that negatively affect the functionality of the public procurement system. Any compromise in integrity will result in excess costs and other negative effects on the functionality of the system. Non-integrity acts in public procurement include bid collusion, kickbacks and conflicts of interest. The main problem and challenge is that corrupt and fraudulent practices are a hidden phenomenon, difficult to identify and even more difficult to measure and cost-calculate.

A recent study prepared for the European Commission<sup>23</sup> provides a methodology that could be valuable for the purpose of this report. The study attempts to measure the direct costs of corruption in certain sectors and for specific product and service areas while omitting the indirect costs and effects, such as on public institutions and the environment, psychological costs, and costs to civil society. The public loss as a result of corrupt acts is analysed on the basis of two components:

- *Ineffectiveness*, which means that the project does not (or not fully) reach its objectives. The procurement generates lower value than intended or even negative public value (waste).
- *Inefficiency*, which means that the outputs of the project are not in line with the inputs. Supplies and services are procured at excessive prices or at inferior quality at similar prices.

The econometric methodology is formed around the assumption that public procurements which are corrupt differ in character from procurements that are “clean”. A set of red flag indicators (27) was produced and used in the study. The red flag indicators provide information on the chance of corruption being present, with more red flags indicating a higher chance of corruption. A number of clear, grey and corrupt cases were identified by applying these red flag indicators. A corrupt case was defined as a case with a final legal ruling or with strong indications of being corrupt. A grey case was defined as a case with weaker indications of being corrupt – for which no explicit evidence was presented by the opposing side. Cases with no (reliable) indications of being corrupt were treated as clean cases.

<sup>21</sup> OECD (2015), *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)

<sup>22</sup> EC (European Commission) (2014), “Report from the Commission to the Council and the European Parliament: EU anti-corruption report”, EC, Brussels, [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf)

<sup>23</sup> PwC and Ecorys (2013), *Identifying and Reducing Corruption in Public Procurement in the EU*, study prepared for the European Commission, PwC EU Services, Brussels.



The conclusion of the study is that corrupt and grey cases turned out to have very similar characteristics, and differed markedly from the clean cases. On the basis of the review, it was determined which combination of red flags proved to be the strongest predictors for a high probability of corruption in a procurement case. It further confirmed that corrupt/grey procurement cases perform less efficiently than clean procurement, although clean procurement may also suffer from efficiency concerns. More than two-thirds of the performance problems in corrupt/grey cases can be attributed to corruption. The overall direct costs of corruption in the five sectors studied constituted 2.9% to 4.4% of the overall procurement value of the sectors included. The sectors with the most integrity risks included construction work for motorways, railway track equipment, waste water treatment projects, airport runway construction and urban/utility construction.

The conclusion of the study “Identifying and Reducing Corruption in Public Procurement in the EU” was that effective detection and prevention of corruption is possible if administrative data on tenders, bidders, projects and contractors are collected and stored in a structured way and are accessible for controls, investigations and analyses. The lack of procurement statistical data is a problem in most countries. Relevant and reliable procurement data and statistics are necessary for the use of red flag indicators as well as for measuring the performance of public procurement, both from macro and micro perspectives.

The risk of corruption largely depends on the volume and complexity of particular procurements. Larger procurements are often most vulnerable, as bribes are frequently demanded and paid as a percentage of the relevant public contract’s value. It is also a fact that certain sectors are more vulnerable to corruption than others. Many corruption scandals in recent years have occurred in connection with public works contracts, infrastructure projects, defence procurements, contracts in the oil and gas sectors, and contracts in the health care sector (especially contracts for pharmaceuticals and medical devices).

### **3.2 Types of costs and types of negative effects**

The relevant study on the cost of corruption in public procurement estimated that the direct public loss encountered in the corrupt/grey cases that were analysed amounts to 13% of the overall budgets concerned. The overall share of budget losses tends to be higher in smaller projects than in larger ones; however, overall amounts lost are obviously greater in large projects. Such direct public losses are due to the inadequate performance of projects and can be caused by cost overruns, implementation delays and/or loss of effectiveness (including inferior quality and questionable usefulness)<sup>24</sup>. In other types of corruption costs, the cost of overruns and delays in implementation are usually the highest.

Cost overruns (either at the time of the contract award or through additions to the initial contract) occurred in 53% of the corrupt/grey cases, amounting to 22% of the total average budget volume concerned.

Implementation delays affected 30% of the corrupt/grey cases, and the related loss is estimated to be 6% of the total budgets concerned. The average cost of delay per project affected represents 9% of the total budget of an average project.

An overall 47% of the corrupt/grey cases that were analysed encountered some form of effectiveness issues, e.g. they did not meet their original objectives or were no longer considered useful. A total of 32% of the cases experienced issues of effectiveness and an estimated 3% of the total analysed budget is considered lost. Not all of the above losses are necessarily due to corruption; however, it is highly problematic to isolate corruption from other causes. Corruption is a root problem that influences other problems, including those of a technical, economic, institutional and project management nature.

<sup>24</sup> PwC and Ecorys (2013), *Identifying and Reducing Corruption in Public Procurement in the EU*, study prepared for the European Commission, PwC EU Services, Brussels.

Corruption has a number of negative effects which are not financial but could be even more dangerous for society in general. The most common negative effect is the lack of respect for national legislation. When corruption is present, national legislation is usually not clear and transparent, so people will respect the provisions of legislation on paper but not in real business situations. A number of other negative effects are linked with corruption: decrease in foreign investment that affects the quantity, quality, cost and profitability of the investments; delays in economic growth of the national economy; undermining of a country's tax structure and its revenue collection capacity; negative effects for firms' growth, productivity, investment patterns and efficiency; negative effects on human development and wealth distribution; and long-term detrimental impact on the governance environment.

One of the consequences of corruption is increased distrust among different state institutions and between the public and private sectors. Distrust among parties is the most difficult obstacle to avoid for an efficient public procurement system. Distrust implies the confident expectation that another individual's motives, intentions and behaviours are sinister and harmful to one's own interests. It may arise due to differences in group membership: individuals identify with and are positively attached to their in-groups, yet assign negative stereotypes to out-group members and may view them with suspicion and hostility (public administration versus private sector in public procurement). Distrust can also arise as the direct result of personal experiences between individuals: in public procurement, for example, from the poor execution of contracts and the cancellation of signed agreements. Moreover, there is a propensity for some stakeholders to retain information as leverage for power and influence, rather than considering it a common wealth that should be functionally shared. In the interdependent relationships between the private sector and public administration, this distrust often engenders a sense of fear and the anticipation of discomfort or danger. Distrust has also been linked to lower job satisfaction, commitment and motivation, and overall poor execution of agreed activities. Once entrenched, distrust forms a powerful frame for subsequent events in the relationship, so that even good-faith efforts by any party to restore a positive business relationship are met with scepticism and suspicion. The result is a business environment in which every move of the other person is interpreted as additional evidence to justify the initial decision to distrust him/her. This distrust not only inhibits co-operation in the business relationship, but may also result in retaliation that causes the conflict to escalate and the situation to become even worse.

The negative consequences of corruption have to be exposed to society so that all participants of corrupt activities are aware of the effects that these activities have on society and the state administration in general. A procurement system should be a point of public- and private-interest synergy, ensuring that procurement is functioning on the principle of best value for money. Being responsible for spending taxpayers' money, public sector representatives, through transparent work in public procurement, should be a guarantee of legal certainty – not the opposite.

## **4. REVIEW OF THE JORDANIAN PUBLIC PROCUREMENT SYSTEM**

The following review is based on the approach described under Section 1.1. It focuses on the four pillars of the public procurement system:

- Pillar A: The Policy, Legal and Regulatory Framework
- Pillar B: The Institutional Framework and Capacity
- Pillar C: Operational Capacity and Market Functionality
- Pillar D: Control, Monitoring Structure and Integrity Mechanisms

The review under Pillar A includes the various phases of the public procurement process outlined in Section 2.3. Risks are typically created when procedures or requirements are too vague, or when such procedures and requirements are completely missing.

### **4.1 Pillar A – The Policy, Legal and Regulatory Framework on Public Procurement**

#### **4.1.1. General overview of the legal background**

Jordan has a long tradition of regulating public procurement: the first legislation was introduced in the 1920s. Legislation on public procurement is divided into separate by-laws for supplies and works and for the supply of medicine and medical equipment to the health sector. Institutionally, this is reflected in the three different Government entities – the GTD, the GSD and the Joint Procurement Department (JPD) – in charge of applying the by-laws.

Coverage of services that are not accessory to works or supplies contracts appears to be lacking. Current procurement legislation typically draws a distinction between goods/supplies, works/construction and services for the purpose of applying different thresholds as well as other variations in the way these different subject matters are regulated. There is no global definition applicable; however, according to good practices, goods/supplies may involve certain services required in connection with installation. The concept of works will inevitably involve a number of services concerning design and construction. Services as a separate category may be defined in a residual way as any other subject matter which is not goods/supplies or works, and may include various advisory services and physical services, such as cleaning or transport. The point has been made that services in general are normally considered covered by Jordanian legislation. This is, however, difficult to deduce from the existing legislation which is explicitly limited to supplies and works-related services.

The system in Jordan is otherwise centralised concerning contracts of higher value, for which the three entities (GTD, GSD and JPD) manage the required tenders. There are several threshold levels, and at the lower thresholds the possibility for contracting to be done at lower administrative levels is greater. As contract value is important for application of the rules, having no requirements for calculating the value of contracts is definitely a basic weakness.

A further general observation is that the management of tenders is built around a system of evaluation committees that are fairly closely regulated in terms of composition and mandate. In such cases, it is important legislatively to make clear that the ultimate responsibility lies nevertheless with the procuring entity, so as to avoid situations in which liability for incorrect procedures is left solely with the individual officials involved.

The three sets of laws and accompanying regulations provide a quite detailed framework for many aspects of the procurement procedure. This is definitely the case for tender opening, for which a number of standard forms have been developed for use throughout the process. This obviously strengthens overall transparency.

Another positive aspect is a draft law that is being considered for the purpose of unifying the above-mentioned public procurement laws, and introducing e-procurement is also being considered. However, it was not possible for the purpose of the review to analyse this draft. It is also clear that while e-procurement may entail various advantages in terms of transparency and integrity of the procurement process, this depends very much on the concrete design of the system.

The three sets of laws are reviewed from the point of view of integrity: lack of integrity is assumed to represent a corruption risk. Where appropriate, references to solutions identified in various international good practices will be provided. One result of the review is identification of a number of cases in which the essential problem is that vague rules leave a lot of discretion to the various committees. It could be argued that such discretion poses less of a problem in a centralised environment with greater potential for control. However, a tightening-up of the rules is a preferable solution in the long term to promote integrity on all levels regardless of the size of contracts.

An initial general point is that the three by-laws should be unified under one law. This would ensure common rules in cases for which there is no reason to have differences in the by-laws concerning supplies and works. Except for the possible need to react in cases of urgency, there is presumably no reason to have a separate law for medical supplies. Common rules would facilitate application and monitoring, and minimise the risk of irregularities.

The following analysis shows that certain issues which should be regulated in the same manner are nevertheless subject to different rules. A notable example is the different rules applied to objections to the procuring entity. The Supplies rules specify detailed obligations and procedures concerning, for example, bid opening, evaluation and contractual issues. These are areas for which the Works rules should be equivalent.

#### **4.1.2. Works by-law**

For the Works by-law No. 71 of 1986 and the associated regulation (Works Tender Instruction of 01 March 1987), the following shortcomings have been identified:

- The by-law allows the use of negotiated and single-source procedures (direct award) in a number of cases, including urgency. The use of direct award is according to good international practices, always limited to avoid abuse of the wide discretion that the procedure by its nature allows. The cases allowed by the by-law are reasonably limited in most respects, although the urgency situation, for example, could be qualified to exclude cases in which the urgency is due to circumstances within the control of the procuring entity. However, the possibility according to Article 19 to reissue a tender as a direct award procedure seems too broad and would, for example, allow direct award in cases in which an open procedure did not produce “reasonable” prices or in which a “proper” number of bidders did not participate.
- The by-law takes point of departure in a prohibition against changing the scope of the work (Article 22). Nevertheless, the provision allows wide scope for issuing variation orders, provided that approval has been obtained at the Government or lower (GTD) level, or even by the supervising engineer depending on the value of the additional works. For the sake of transparency, the normal solution is to allow variation orders within a global limit that cannot be transgressed even by the Government. The wide use of variation orders in practice, and the uncertainties that this creates on the market for construction, confirms that this deserves to be examined further. The problem is accentuated by the fact that neither the Works by-law nor tender instruction includes any rules preventing a complete change of the tender documents, including for award criteria.

- The Works by-law leaves the detailed tender procedures to be regulated in the above-mentioned Works Tender Instructions issued by the Minister (see Article 32 of the by-law).
- A striking feature is the absence of an official gazette for publication of procurement notices. According to Article 8 of the Instructions, there is merely an obligation to publicise in at least two local daily newspapers. In most jurisdictions, it has been found appropriate for the convenience of bidders and for the sake of efficient monitoring to have publication done via an official gazette. This reduces the risk of tenders being “hidden” to give advantage to a certain bidder. In recent years the official gazette has effectively been replaced by an official web portal. Several countries allow all stakeholders free access to the tender notices through an online portal. Furthermore, there would normally be requirements regarding the content of publicised notices for the sake of transparency. In many cases, such measures have had the effect of reducing costs and delays for procuring entities.
- Article 15 concerning criteria for award mentions no specific criteria (such as lowest-price, most economically advantageous tender [MEAT]). In addition, there is no requirement that such criteria be set in advance or publicised. These are important requirements according to good international practices. In most jurisdictions, the requirements go so far as to prohibit any change in award criteria during the tender process. The requirements thereby preserve the identity of the contract and prevent undue adjustments in the interests of individual bidders.
- International sources concerning public procurement highlight the importance of minimum time limits for the various phases of the tender process, especially the time allotted for expressing interest or submitting bids. Such minimum time limits measured from verifiable points in time – for example the day of publication of a tender notice – contribute to ensuring equal access for bidders and preventing favouritism. Minimum time limits should normally be of a reasonable length, and the rule in Article 8 (C) does not make entirely clear what the minimum is. The provision operates with two seven-day limits for bid submission to be calculated from different points in time. Time limits require clear and precise rules.
- In the case of the restricted procedure, Article 8 (E) allows the tender invitation to be amended and requires in such cases that this be done at least one week before the date for bid submission. As mentioned earlier, with neither the Works by-law nor regulation preventing a complete change of the tender documents, even for award criteria, this opportunity to amend the scope of the tender allows room for undue favouritism of individual bidders.
- Article 14 (4) explicitly prohibits bidders from influencing the Technical Committee. It may not be a problem in practice, but an anti-corruption rule of this kind should be more general to cover not just the competitive phase but should apply to anyone involved in the procurement process on the public side. Otherwise, the provision could be understood as allowing influencing during the planning phase, as well as of any stakeholders other than members of the Technical Committee.

#### **4.1.3. Supplies Act and Supplies Tender Instruction**

The rules concerning supplies (except medical supplies) consist of the Supplies Act No. 32 of 1993 and Tenders Instruction No. 1/2008 issued on the basis of the Act and including detailed procedural rules in the same manner as for works. The Supplies Act also allows the use of less competitive procedures (request for proposals and direct purchasing) under fairly vague conditions (Article 15 of the Act). Most of the cases justifying these procedures do not differ from international good practices (urgency, only non-compliant bids, low-value contracts), but the risk of irregularities increases because of the vague formulations and the absence of valuation rules. Other cases in which direct purchasing can be used are less typical. Examples are the purchasing of spare parts and scientific material when there is not necessarily only one possible supplier, as well as maintenance and repair services when the needs are not known in advance. The additional following comments can be made regarding other provisions of the Act:

- Article 9 is intended to establish general principles concerning competition and value for money. However, the formulations are so vague and conditional that the provision has no value as a tool for interpreting the more detailed rules of the Act. This again compromises the capacity of Act to prevent irregularities.
- Article 14 limits the opportunities to include products from abroad. This problem of national discrimination raises questions in relation to the WTO Government Procurement Agreement. In any case, it is clear that protectionism leads to market situations in which it is easier to get away with corruption.

The Supplies Tender Instruction regulates the tender procedures in more detail. The Instruction gives rise to the following comments from the perspective of integrity and risk of irregularities :

- Articles 5, 22 and 48 provide a vague and quite discretionary set of rules concerning prequalification. Article 22 presupposes that certain pre-qualification criteria concerning economic and technical capacity must be laid down in the tender documents. It is not clear, however, whether the procuring entity is obliged to strictly follow these criteria – and in any case, Article 48 does allow the procuring entity to re-evaluate and reject the winner if necessary. The intention of the provision may be to allow for flexibility in case the volume of the tender is changed during the process; however, the risk of abuse seems to outweigh any administrative advantages.
- Article 21 allows the tender committee to decide whether to rectify the error of bidders (by making a copy of the bid) in case the bidder has only submitted the original bid and omitted to enclose a copy. There seems to be no valid reason for treating bidders differently in such cases, and there is clearly scope for abuse.
- Article 36 allows the bidder to replace a product with another model “equal or better”. This provision may be abused in the many cases lacking award criteria for quality aspects (i.e. functionality, energy efficiency, etc.), for which the factors determining quality are the minimum requirements of the tender specifications. Opportunities for checking whether a product has been replaced with one of lower quality are limited, creating risk of abuse.
- Article 44 establishes a method for evaluation. The procedure seems to include evaluation of a bidder’s qualifications and bid, and the main rule appears to be that the lowest price wins, provided the bid is compliant. If not, the second-lowest bid wins, etc. If there are only non-compliant bids, it is then possible to select one “optimal” bid as the winner. The technical committee is on the other hand obliged in the technical evaluation to go beyond compliance to evaluate the availability of spare parts and maintenance services, as well as quality aspects in general. In this context, the preferential price for local products must also be factored in. The evaluation process is therefore in reality a process that examines not only price and compliance but quality aspects. This invites abuse because requirements for advance formulation of award criteria are completely lacking – i.e. bidders will not know on what basis their bids are being evaluated regarding quality, and there is wide scope for picking a preferred winner.
- In cases in which all bids are evaluated as being equally good, Article 46 allows for the winner to be the bid with “additional advantages”, which appears to include (but is not limited to) the use of national products, residence in Jordan or shortest delivery time. The role of Article 46 in relation to the already quite open-ended possibility for award criteria is not clear, but the provision confirms the intention of allowing optimal discretion.
- Article 49, on the basis of Article 44, sets out various reasons for award evaluation (lowest conformity, lower conformity, non-conformity but optimal). Especially the last option – being able to pick a non-conforming bid as winner – can give rise to abuse. However, it is also possible to award for any other reason that is compliant with the Supplies Act; what this means exactly is not clear. Since Article 49 does not in principle exclude award of a lowest-conformity bid, the scope for abuse is increasingly wide.

- Articles 47 (1) (d), 50 and 55 essentially concern the handling of non-compliant bids and allow the tender committee to decide whether the bid should be rejected. This even includes the case mentioned in Article 47 (1) (d) of an ambiguity or omission in the bid that “hinders awarding”, which must be understood as a non-compliance of a significant kind. Without the requirement of equal treatment, understood as use of the same “yardstick” on all bids, there is a risk that discretion can be unduly lenient with some bids and unduly strict with others.
- In cases in which all bids are either non-compliant or prices are considered too high, Article 58 (see also Article 62) allows – in addition to cancellation of the procedure – that bidders be “re-invited” or that direct purchasing be used. It is not clear whether direct purchasing can involve others than the bidders involved in the initial tender. In any case, the apparent possibility to proceed from one procedure to the other without obligatory cancellation of the first makes the entire process less transparent and raises the chance of irregularities. It has been mentioned during discussions with stakeholders that in these cases the initial tender is in fact cancelled, which reduces the problem to a matter of clarifying the provision.
- The possibility for registering complaints against procurement decisions, including decisions taken in the course of the tender process, is an important factor in reducing corruption risks. In this regard, it is an important shortcoming of the legislation that no such possibility exists. Articles 59-60 allow objections concerning only the initial award decision to be made to the tender committee within the very short deadline of two to four days. International practices include such a preliminary opportunity to essentially ask the procuring entity to reconsider its decision, but only as a complement to a formal system for complaints to an independent complaints body. Such a framework also includes procedural rules and clear requirements concerning where and how the decision concerning the complaint should be published.
- Article 80 concerns the right of the receiving committee to reject supplies that do not correspond to contract requirements. Unlike under the Law on Medical Supplies (see below), there are no requirements to ensure the integrity of such committees in relation to other persons involved in the procurement. Furthermore, the tender committee appears to be given the conflicting competence to nevertheless accept such supplies “against a fair reduction of the price”. Certain procedural safeguards are included, but in practice this competence opens up for negotiations after the fact and thus risk of abuse.

The Instructions are supplemented by Documents which outline the procedures between the GSD/GTD and the beneficiary department, and the establishment of technical committees under the tender committee, etc. None of the Documents include any aspects that cannot already be largely derived from the acts, by-laws and instructions reviewed above. One exception is Regulation 3/93, which establishes a certain approach for needs assessment (primary studies) in the case of computer supplies.

Also, the so-called Regulations specifically for supplies simply rephrase the various obligations of bidders and beneficiary ministries, etc., that already follow from the Supplies Act and Tender Instructions. Regulation 4/93 especially, concerning the methodology to be employed by technical committees, merely serves to confirm the wide discretion in the use of award criteria.

#### **4.1.4. Law on Medicines and Medical Supplies**

The third and final set of rules, Law No. 91 of 2002 on Medicines and Medical Supplies, establishes a centralised system for procurement of medicines and medical equipment managed by the JPD. The Law includes relatively less procedural requirements than the other sets of rules (see especially Article 13 concerning tender procedures).

In fact, the Law does not itself set any requirements for the content of the tender documents, for technical obligations, or even for the criteria to be used for selection of bidders and bids. Some of these aspects are subject to the various procedural details in Regulation 1/2006 and its amendments issued by the Board of JPD in accordance with a mandate provided by the Law. The Regulation will be subject to specific review below.

The Law does not require the invitation to bidders to be publicised. The invitation can, according to Article 17, be circulated at the discretion of the JPD. Only consulting Article 7 and 8 of the Regulation 1/2006 with amendments makes clear that publication must take place. However, publication is such an essential obligation for bidders that it should be stated in the Law itself. Regarding downstream contract management and payment procedures, Article 21 of the Law requires a recipient committee to have been appointed. A reasonable level of integrity by separation of functions is ensured by prohibiting persons from the procurement committees (tender and technical committees) to be members of the recipient committee. The integrity of the recipient committee is somewhat weakened, however, by the tender committee having the final word in cases in which the recipient has rejected delivered supplies because they do not correspond to contract requirements; see Article 23 (C).

The following comments regarding the procedural rules of Regulation 1/2006 with amendments are relevant from the point of view of integrity:

- Article 4 requires tender specifications to be “general, accurate and clear”. The term “general” is possibly intended to establish the requirement of objectivity, which according to good practices is important for ensuring integrity and non-discrimination. It would be important to clarify the requirements of this point for tender specifications. According to JPD, the medical specifications are laid down by a National Committee under the JFDA and the intention is to reach levels of objectivity. The clarification would therefore merely serve to consolidate current practice.
- Articles 5 and 25 concern a similar issue of drafting qualification criteria. The provision requires that these criteria be “necessary”, but it is questionable whether this also means that the criteria should not go further than required (i.e. the other aspect of proportionality). This principle is used to varying degrees in national legislation, but is normally considered a useful means for ensuring integrity in the application of qualification criteria as well as for award criteria.
- Due to the formulation of the Article 8, it is unclear whether the obligation to publicise bid invitations represents a right for bidders, meaning that the tender must be cancelled or re-tendered if the time limit is violated.
- Article 27 permits bids that have been received too late to be opened in order to find the address of the bidder in cases where the return address is not indicated on the bid envelope. The purpose is to allow the bid to be returned to the bidder. The question is whether such a possibility creates the risk that bids that should have been rejected are nevertheless being taken into consideration.
- Articles 28 and 29 concerning rejection of bids are quite vague and seem to allow too much discretion. It is even possible to accept non-compliant bids in cases in which errors are repairable and in the interest of the JPD. Article 52 also apparently allows a non-compliant bid to be chosen as the winning bid.
- Article 30 prevents bidders in certain cases to object to decisions/actions during the tender procedure. The bidders’ right to complain is normally considered important for ensuring integrity and reducing the risk of unlawful activity, including corruption. Any limitation on this right is therefore a serious shortcoming.
- Article 40 (c) allows for the substituting of deliveries initially envisaged in the winning bid for alternatives, provided that they are equivalent or better. For the same reasons as described above for Article 36 of the Supplies Tender Regulation, this provision will easily result in a lack of transparency and opportunities for abuse, even if the application of the Article is conditional on various requirements, such as the change should be based on the catalogue of the manufacturer, on the technical report of the technical committee formed for this purpose, and on the approval of the tenders committee.



- Similar to Articles 58 and 62 of the Supplies Tender Regulation, Articles 45 and 65 allow for re-invitation of bids or changing to a different, presumably less formal procedure if the number of bidders is considered insufficient, or if the received bids are otherwise considered inadequate. Due to the excessive degree of discretion allowed, especially to decide a change of procedure, there is a risk of abuse.
- In the same manner as the Supplies Tender Regulation, Articles 54 to 58 concerning awarding of contracts allow excessive discretion in choice of criteria and permit new criteria to be included in the course of the process. It also appears that bidders can be excluded at this stage of the process due to alleged previous insufficient contract performance or due to ambiguity of their bids.
- Articles 64 and 90 provide different ways to overrule tender specifications in cases in which non-compliant bids are considered “superior”. This allows bids that are fundamentally different from what was initially planned to be accepted, cutting short any competition between comparable bids. It is similarly possible to accept non-compliant deliveries following award. In both cases, this obviously leaves room for abuse.
- Article 67 allows a very short time limit for submission of objections, which leaves bidders in a very weak position and limits their opportunity to criticise undue behaviour that could in some cases be a result of corruption.

The JPD have issued other documents, including a by-law concerning organisational aspects which essentially reiterates points from the above Regulation 1/2004 concerning bid submission, rejection, etc. The documents include standard general tender instructions as well as a number of standard forms to be used during the tender process.

#### **4.1.5. Areas of regulation that should be developed**

The foregoing review of existing rules has highlighted various risks for irregularities. In addition, there are various elements of the procurement cycle that are not currently covered by the legislative framework but which are important in any public procurement system.

- Regulation 3/93 on computer supplies essentially requires that certain steps be taken to identify and justify procurement needs. Needs assessment, together with market analysis, is considered a key element in public procurement preparation, which again is considered a precondition for drawing up suitable tender specifications. A similar approach should be taken in other areas to avoid basing tenders on frail specifications from the outset, with the risk of irregularities resulting from the use of variation orders or excessive use of direct purchases when normal tenders fail. Better preparation would also increase the possibilities for designing specifications that focus on essential needs and allow more enterprises to participate.
- The rules limit the use of brand names in tender specifications but do not otherwise set any requirements. Since there seems to be a problem regarding tender specifications, introducing requirements for objectivity and verifiability could be considered, and possibly the use of performance-oriented specifications and international standards. As Jordan has been involved for many years in the process of alignment with various international product requirement, certification and standardisation schemes, it is in an ideal position to take action on this point.
- An important element in public procurement regulation is to have a set of requirements on publication of notices concerning not just the call for tender or expressions of interests, but the outcome of the tender, be it cancellation or award of the contract. In fact, publication of tender results is considered a condition for allowing effective possibilities for complaint. For this reason, some international regulations go further and require procuring entities to provide award justifications on request. It appears that award notices are published occasionally, but it is obviously important to have uniform behaviour on this point.

- The rules do not specifically regulate opportunities for and limits to dialogue between the procuring entity and bidders. Most public procurement regulation assumes that such dialogue should be limited in procedures that do not involve negotiations. The intention is to promote equal treatment and, by implication, prevent undue favouritism. Typically, provisions on dialogue allow for parties to request clarification in case of ambiguities in tender material or bids. Such a possibility is useful for remedying lack of clarity in tender material and for avoiding rejection of bids.

#### **Key findings for Pillar A**

In summary, the legal and regulatory framework on public procurement is fragmented and not unified. The regulatory framework does not reflect international legislative models. Without a coherent public procurement law there are risks of weak enforceability and coverage, lack of legal certainty for the bidders, insufficient protection for procurement staff, and opportunities for unjustified exemptions and discretion.

The rules are vague on several important points, such as the choice of procedures and bid evaluation; this increases the risk of irregularities. The risks are further aggravated by, for example, the lack of sufficient requirements regarding the planning/preparation and publication of procurements. Within the existing legislation, there are possibilities for improvement in all stages of the public procurement cycle, from the planning phase to contract execution.

Overall, the legislation should be clearly drafted, principle-based and value-for-money oriented.

## **4.2 Pillar B - The Institutional Framework and Capacity**

### **4.2.1. Functions and objectives of key institutions and their resources**

There are three central procurement bodies in charge of procuring different items at the central governmental level: one for the procurement of works and associated services, one for supplies and one for medicine and medical supplies. Special committees established by the members of different state institutions also act as contracting authorities, but a list of all contracting authorities does not exist. The three main procurement institutions are:

- The **GTD** at the Ministry of Public Works and Housing. The scope of work of the GTD includes the procurement of works and consulting services for works. All contracting authorities have to use the services of the GTD for purchasing works of a value higher than JOD 500 000. The GTD uses a special by-law called the Government Works By-law. The GDT was established in 1982 and currently has 104 employees, 35 of which hold degrees in engineering, and has four departments: (i) the Tender Department, (ii) the Price Change Department, (iii) the Engineering Contracts Department and (iv) the Audit Department. It also has four permanent committees for public buildings, roads, water supplies and electro-mechanic work.
- The **GSD** at the Ministry of Finance. The responsibilities of the GSD are prescribed by the Supplies Act No. 32, and it is responsible for procurement for 50 institutions. It has two departments, one for e-procurement and one for supplies and services, with total staff of around 100. The GSD's annual procurement activities have been valued at JOD 100 million. Its employees also participate in the tendering procedures of other contracting authorities as members of committees, and the value of those procedures was also around JOD 100 million.
- The **JPD** working directly under the leadership of the Minister of Health. The JPD was established in 2002 to provide medications and medical supplies to the public sector (the Ministry of Health, Royal Medical Services, Jordan University Hospital, King Abdullah University Hospital, Prince Hamzah Hospital and the King Hussein Cancer Centre). In 2014, it had 16 procurement groups valued at JOD 107 million in total. The JPD currently has 60 employees.

In addition to these main actors in procurement, large parts of the public procurement market are dominated by other entities. These are the special committees established ad hoc by the Government for specific projects, including tenders involving international financing. In addition, there are many contracts that – due to their low value or subject matter – fall beyond existing legislation, or for which individual contracting authorities are otherwise allowed to use their own procedures. It has not been possible during this review to get a clear picture of the total number of procuring entities in Jordan, or of the total annual value of public procurements.

However, many of these procurements are in fact conducted according to rules identical to the general legislation. This likely applies to procurement procedures conducted by the special committees, but in the case of very low-value contracts it would be improbable and not very practical.

The **AB** has representatives on many tender committees, technical committees and receiving committees and receives various requests for consulting services and opinions concerning tenders; it monitors the most important projects through its special department charged with public procurement monitoring. The AB is entitled to issue non-binding recommendations to contracting entities regarding procedures, etc., that ought to be rectified, and it reports to the Parliament and issues annual reports concerning its activities. Many times, the AB has brought up cases that the JIACC then has the power to pursue, so the two authorities co-operate in this and other ways.

There are several authorities responsible for the public procurement system, but no central authority for overall co-ordination and policy development. Moreover, other than co-ordination between the AB and the JIACC, there seems to be little co-operation among key institutions. This shortcoming makes it difficult to identify irregularities and weaknesses in the system, and especially in the legislation.

#### **4.2.2. Distribution of tasks among key institutions**

Section 4.1 shows that legislation is fragmented in the three areas of works, supplies and medical supplies. The GTD, GSD and JPD therefore clearly manage their own sets of rules with no established distribution of tasks. Furthermore, appointing special committees for larger projects typically creates an overlap of the three institutions.

Contrary to common practice in many countries, there is no entity with a clearly mandated policy-making function to initiate, implement and monitor public procurement development strategies<sup>25</sup>. This lack of central co-ordination cannot be compensated for by co-ordination among stakeholders. This review shows that such co-ordination is generally lacking in the Jordanian system and there is no single authority responsible for the public procurement system as a whole. This is also the reason there is no overall strategy for the development of the Jordanian public procurement system. There appears to be draft legislation pending at the Government level which addresses unification of legislation, but the draft was not shared with the review team for the purpose of this review. During the interviews, the plan to introduce e-procurement was mentioned several times; this is seen by some stakeholders as a means to reduce the subjective/human element of the tender process, and in this manner effectively combat irregularities including corruption.

#### **4.2.3. Relations to civil society, professional environments and the public in general**

The interviews with professional associations and civil society indicate an absence of any structured advisory or information facilities. It was specifically pointed out that any dialogue among the parties is characterised by a sense of mutual mistrust. Public procurement is not subject to extensive debate in the media, and this may be the reason non-governmental organisations (NGOs) do not seem to get involved in the issue. Meaningful interaction with the public and its concrete involvement in public procurement decisions requires that information be available. Both contribute in turn to tackling corruption and lie at the heart of integrity in public procurement: the oversight of the public can deter wrongdoing.

<sup>25</sup> SIGMA (2013), "[Organising Central Public Procurement Functions](#)", Public Procurement Brief No. 26, OECD Publishing, Paris.

#### 4.2.4. Available statistical information about the Jordanian procurement system

Statistical information is necessary for the proper governance and monitoring of the public procurement system by the state administration, and the lack of available statistical information about public procurement in Jordan is evident in many areas. The government should have detailed records of the number of contracting authorities, the number of tender notices, the value of the different procurement procedures and average bidder participation within different sectors.

Without correct statistical information, it is hard to track the results of any activity and impossible to prepare valid strategies for developing and improving the public procurement system. One of the roles of the policy-maker institution in the public procurement system is to collect the necessary statistical information.

#### Key findings for Pillar B

In summary, the institutional framework is characterised by unclear policy-making and co-ordination functions.

An institution for policy development and legislative strategies in public procurement does not exist. Without this institution, a number of important functions are missing from the procurement system. In consequence, there is a lack of valid statistical information and analyses.

There is no strategy paper on the development of the public procurement system, proper co-operation among the main stakeholders has not been established, and the regular training of the members of the committees does not exist.

A strategic approach and capacity building for the entire public procurement system is also needed.

### 4.3 Pillar C - Operational Capacity and Market Functionality

#### 4.3.1. Contract types normally procured at the state level – centralised procurement

The lack of statistics makes it difficult to estimate the distribution of procurements between the state and regional levels<sup>26</sup>. However, the lack of rules on how to calculate the value of the contacts, combined with various statements during the interviews, makes it relevant to focus on the risk of many contracts being artificially split up to avoid reaching any procurement thresholds. This again means that such procurements are subject to less control although are at greater risk for irregularities.

Regarding the use of centralised procurement, it could be argued that in fact the core intention of the Jordanian procurement system is to have most major contracts subject to centralised procurement with the main procedures undertaken by the GTD, GSD and JPD.<sup>27</sup> This is confirmed by the fact that the rules in some cases limit the possibilities of public entities to initiate separate procurements.

#### 4.3.2. Frequently used selection/award criteria

The review in Section 4.1 reveals a lack of legislative clarity in the use of award criteria. Interviews with various groups uniformly confirmed that lowest price is the criterion mostly used.

<sup>26</sup> The only estimated total was put forward during the interviews as part of fact finding for the Report. The estimate is 145 entities, with 60 outside the central Government administration, but it has not been possible to validate these figures. More statistical information was provided regarding medicines by the JPD.

<sup>27</sup> According to the Jordan: PEFA assessment report (draft) the value of procurement in 2015 by GSD was 81m JD, by GTD was 192m JD and by JPD was 113 mJD, in total 386m JD.

This was pointed out as being a problem in cases for which competition should have been used to decide on quality aspects as well to get best value for money. This issue is even more pertinent given the general dissatisfaction with the standard of tender specifications. Low standards mean that quality aspects are not being safeguarded even as minimum requirements. The problems of tender specifications are further discussed in Section 4.3.3.

Regarding qualification criteria, the point has been made during interviews that requirements for the financial and technical capacities of the bidder are often not proportionate with the size and character of the contract in question. It was also mentioned during the interviews that the criteria are putting too much emphasis on resources (such as number of staff and office size) and financial capacity rather than on technical capacity, i.e. skills and experience (including references from previous contracts).

#### **4.3.3. Choice and quality of specifications**

The interviews showed that the tender specifications are generally perceived as being of low quality. In this respect, the failures are ascribed to the consultants charged with assisting the procuring/beneficiary entity in drawing up the specifications. Others see the problem as a failure of the entities to describe the procurement needs sufficiently, so that the specifications may be technically acceptable but useless for the purpose of the procurement at issue. The point has been made that the problem is less important for procurement of medicines and drugs, since specifications are based on international standards. However, this does not affect the overall impression of procurement in general.

#### **4.3.4. Capacities of/support to the tender committees, technical committees and receiving committees**

During the interviews, it was mentioned several times that the various committees involved in the procurement processes lack the necessary technical capacities, for example for the purpose of evaluating tender specifications proposed by consultants. Concretely, this is demonstrated by an apparent inability to provide clarifications to bidders during the tender process. What has also been mentioned as a problem is that the committees sometimes lack the ability to evaluate the bids. Lack of sufficient expertise increases the risk of undue influence on the decisions of the committees, and it is clear that schemes or facilities for systematic training and updating of committee members are absent.

#### **Key findings for Pillar C**

In summary, it is impossible without valid statistical information to provide appropriate analyses of the public procurement market.

The public procurement system in Jordan has the following main characteristics: lowest-price criteria is mostly used; there are three state institutions in charge of different aspects of central procurement; and the main tasks of the contracting authorities are prepared by the members of different committees (tender, technical, receiving and special committees). Knowledge of committee members and public procurement officials in general should be increased, as well as the quality of tender documentation/technical specifications.

Various institutions that are currently involved in monitoring have highlighted various issues. In terms of compliance there is an excessive division of contracts and use of variation orders<sup>28</sup>. Regarding efficiency, there is a lack of planning and the use of disproportionate requirements concerning, for example, bidder qualifications. Contract management is problematic due to the lack of resources for ensuring performance monitoring and technical dialogue.

<sup>28</sup> A variation order is issued during the implementation phase of the contract to amend it.

## **4.4 Pillar D – Control, Monitoring Structure and Integrity Mechanisms**

### **4.4.1. Enforcement and supervisory powers of key institutions**

Without one authority in charge of overall public procurement matters, there is no dedicated centralised supervision of public procurement activities. As part of its general audit functions, the AB has the right to monitor all stages of the procurement process and involve all relevant stakeholders. Thus, during the tendering phase, for example, focus would be on the GTD and GSD, whereas implementation of works projects would be controlled at the level of the Ministry of Public Works and payment procedures at the level of the Ministry of Finance.

Unlike the JIACC, the AB has no power to stop procurement procedures or order procuring entities to undertake certain actions, take certain decisions, or set aside certain decisions or desist from certain actions. JIACC investigations have in some cases led to procedures being stopped. Co-operation between the AB and JIACC should be strengthened.

The extent to which corruption cases have been prosecuted is not entirely clear, not least because prosecution in such cases is based primarily on other types of crime, such as fraud and bribery. As part of preliminary investigations in cases of corruption and other crimes, the General Prosecutor can take steps to track e-mails and tap phone lines. Criminal liability in public procurement cases is not limited to the executive level; ministers, for example, would have their immunity removed by parliament decision.

The Integrity Committee of the Parliament (ICP) was established at the end of 2015 and has opportunities for monitoring public procurement activities and, in this context, to ask questions of all procuring entities. The ICP has limited resources and relies heavily on the AB, which reports to the Parliament.

The JIACC makes assessments of procurement activities in various sectors, and has on these bases made various recommendations for change, for example on procurements in the health sector. However, the JIACC does not have the competence to ensure that such recommendations are followed.

### **4.4.2. Compliance/efficiency monitoring**

The various institutions involved in monitoring have highlighted numerous findings, not just regarding compliance but also on factors that make the public procurement system less efficient.

Main problems in compliance are:

- the artificial splitting up of contracts to remain below the thresholds and avoid tender procedures, including even the use of tender committees;
- the use of direct purchasing procedures beyond the allowed and duly justified cases (notably for situations that are not truly urgent);
- the use of variation orders in works contracts far beyond what the legislation allows;
- lowest-price bids not winning, even in cases in which price appears to be the sole award criterion.

In efficiency of public procurement, the following issues were mentioned:

- The procurements are often insufficiently prepared.
- The qualification requirements for bidders are often not proportionate with what the contract requires; for example, requiring contractors to have classifications that are higher than what the works contract in question requires.
- Tender specifications often set excessive requirements that are not proportionate with the task at hand.
- Publication of important projects is insufficient.

The absence of specific procedures for monitoring makes it impossible to consistently oversee developments in the public procurement system. This is probably due to a certain extent to the lack of any allocation of overall responsibility for policies and development of the public procurement system.

#### 4.4.3. Complaints mechanisms and their degree of integrity

It is possible to object to the procuring entity, albeit within very short time limits. It is claimed, however, that such objections are often ignored since there are no specific obligations for the contracting authorities to follow up on complaints. Private sector representatives think that strengthening the complaint system would improve the entire public procurement system, and they would also welcome better explanations for award decisions, with all reasons provided and clearly described in the decision.

In cases of rejection, the reasons should be similarly explained. Currently, award decisions are not properly justified and economic operators often do not know why they have not been awarded a contract even if they submitted the bid with the lowest price and included all required evidence of suitability.<sup>29</sup> An actual complaints system does not exist as yet, but the need has been highlighted in Section 4.1 concerning the legislative review.

#### 4.4.4. Contract management practices

Contract management has been mentioned as a problem mainly in relation to missing resources within the beneficiary, specifically the receiving committee. This results in, for example, shortcomings in the technical supervision of works projects and a general lack of sufficient ability to maintain the required technical dialogue with the contractor. However, replies to the survey addressed to the business sector indicated that contract performance is relatively actively monitored.

Otherwise, in addition to the excessive use of variation orders, a main problem is the frequent changes to the contracts in both quantitative and qualitative aspects. Such changes can be significant and effectively undermine the entire competitive process to the advantage of the private party. The problem is further complicated by the apparently not uncommon view that the procuring entity should be entitled to adjust tenders and contracts to suit its needs. Another issue in connection with contract management is that apparently the winner of the tender often leaves contract implementation to a less-qualified "subcontractor". In both cases the problem is a lack of proper contract management, and the risk of corruption is critically high.

International Federation of Consulting Engineers/*Fédération Internationale Des Ingénieurs-Conseils* (FIDIC) standard contracts are frequently used, and would normally provide a certain guarantee of integrity and efficiency; however, the various sanctions included in these contracts to ensure correct contract performance are apparently not used often. The consequence is that shortcomings in contract performance are not addressed, to the disadvantage of the public party. Another aspect of FIDIC contracts is their use for information technology (IT) supplies when the requirements for works projects seem excessive.

#### 4.4.5. Financial control mechanisms in connection with payment

Control in connection with payment is important in the post-tender phase to ensure that payments are only approved and effectuated if contract performance is satisfactory (see Section 2.3). Information from the contracting entities, as well as from enterprises, does not indicate any problems regarding payments. Nonetheless, concerns were voiced about the lack of payments in instalments and the fact that payments were only made following full delivery.

#### Key findings for Pillar D

In summary, the monitoring of compliance and efficiency suffers from the lack of a dedicated institution in charge of public procurement and a complaints system. Various institutions that are presently involved in monitoring have highlighted various issues.

An effective complaints review procedure is missing from the system. The external audit tends to focus on compliance rather than on the performance of procurement operations, and a high number of procedural deficiencies have been identified.

<sup>29</sup> Recently, on 27 September 2016 a Committee was established by the Minister of Public Works and Housing for handling complaints. However, there are no articles in the relevant by-law to deal with the remedies. The Committee handles complaints submitted to GTD by bidders. It is applicable for tenders handled by GTD. Members of the committee are employees of Ministry of Public Works and Housing, GTD and the AB.

## 5. THE STAKEHOLDER PERSPECTIVE – OBSERVATIONS AND CONCLUSIONS

### 5.1 Perception of weaknesses within Pillars A to D

The opinions and experiences of stakeholders were clarified through various interviews conducted by the review team in early 2016. In addition, two surveys addressed to procuring entities and bidders were developed and circulated with the assistance of the JIACC. The surveys are included in Annex II.

The surveys were designed to collect factual information on types and volumes of procurements, as well as opinions on institutional and legislative issues and, not least, the relative importance of integrity issues during the planning and implementation of procurements, and in management of awarded contracts. The surveys also allowed comments on issues not covered by the surveys.

The interviews and the replies to the surveys showed that most stakeholders are generally satisfied with the legislation and consider that the main problems and risks are in the area of low-value contracts for which the rules do not apply. Nevertheless, most stakeholders also pointed out that the legislation could be updated in line with international good practices and that unification of the fragmented legislation should take place. Furthermore, they confirmed that manuals and guidelines on how to apply the legislation are not available.

To some degree, this overall positive view is also shared by many enterprises active in public procurement. However, many enterprises also think that the legislation does not cover all necessary aspects. According to them, there should be more regulation – for example on the MEAT criteria – and less emphasis on lowest-price criteria.

At the same time, it was also stated that public procurement is often perceived as a corrupt activity and that the public procurement system would improve with the introduction of higher ethical standards and clear policies relating to conflicts of interest.

A number of critical observations and suggestions for improvements were made (in addition to those referred to in Section 4). One such point relates to the planning phase. This phase is important from the perspective of integrity since lack of planning creates room for discretionary decisions, and thus risks of corruption. In response to the surveys, some procuring entities mentioned the lack of adequate procedures and guidance for needs assessments, and budgeting for the planning and preparation of procurements. Some respondents also stated that planning in general was occasionally lacking and that it did not always take into consideration experiences from previous procurements.

Nonetheless, the same entities did not think that there was normally much deviation between what was procured and what had been planned, in cases in which planning actually took place. They also mostly rejected the suggestion that procurements were planned to suit the needs of specific enterprises.

Many enterprises had apparently experienced lack of sufficient planning resources and insufficient market research in procuring entities. It was also a relatively widely shared opinion that procurements are often planned primarily with regard to business interests and that the planned time frames are often revised.

Regarding the tender and post-tender phase, few problems were highlighted by the procuring entities, even though several mentioned that they frequently received questions concerning tender documents; information from the enterprises confirms this.



Moreover, among enterprises, many are of the opinion that:

- Procuring entities do not take a standard approach to publishing tender notices and they are often too vague.
- Procedures for changing tender documents during the tender are not respected.
- Answers to requests for clarification are often not satisfactory, not least due to insufficient technical competence in evaluation committees.
- Time limits for bid submission are often too short.
- Qualification and award criteria are often applied differently on bidders.
- There is no access to records on the tender procedures and thus little possibility for objections/complaints.
- Contracts are often being extended, for example by means of a variation order rather than by making a new tender.

All these problems are in different ways either making public procurement less transparent or directly increasing corruption risks.

Regarding the **institutional framework**, it is clear that there is a need not only for the unification of legislation, but also institutional structures, to create a central authority with overall responsibility for the development of the public procurement system. Many stakeholders have also raised the issue of the lack of a separate complaints body in addition to the existing options for objecting to the procuring entity. In this respect, the point was made that complaint should be possible not just against award decisions but also concerning decisions and actions in earlier stages, especially on tender specifications.

Concerning **operational capacity and market functionality**, enterprises have also pointed out other weaknesses in prevailing practices, including too many cases of tender cancellation and re-tender, which discourages bidders because of the extra expenditure. Many enterprises also stressed that lowest price is being used too often and discourages enterprises with quality products. Questions have been raised as to the capacities of evaluation committees, and whereas most enterprises feel they have sufficient knowledge to participate in tenders, some point out the lack of manuals and training concerning public procurement.

## 5.2 Characteristics of the perception in various stakeholder groups

Business sector representatives pointed out a number of problems during the interviews and in survey responses, many of which create risks for corruption. However, there have been relatively few general statements to the effect that corruption is frequently occurring, and there have more specifically been very few concrete examples provided of types of corruption. This may be partly due to a perceived risk of litigation that appears to prevent at least civil organisations from raising issues of corruption in public procurement. Although it is not acceptable to make unjustified accusations in public debate, an exaggerated fear of litigation can have an overly restraining effect – as can an exaggerated concept of libel.

## **6. INTEGRITY RISK MAPPING – A VULNERABILITY ANALYSIS OF THE PUBLIC PROCUREMENT SYSTEM**

The purpose of risk mapping is to identify and analyse the most frequent integrity risks. This would ideally allow the riskiest phases of the procurement process to be identified, and appropriate measures to be designed to reduce the risks. Identification of the main risks would also enable a more focused approach to monitoring and investigation of the related activities. The other aspects of risk mapping are the concrete analysis of exactly where the impact of corruption would be most significant and where corruption is most likely to happen. Due to the lack of statistics and the limited scope of the Report (focusing only on the central Government level), this review is constrained in these respects (see Section 6.2).

### **6.1 Summary of main risk factors within legislation and institutional set-up (Pillars A, B and D)**

A number of risks factors have been identified as being of key importance. This part of the Report provides only a summary of the main risk factors, thus some of the risks which exist in the system are not mentioned as they are not considered main risks.

#### **A) No central policy-making institution and complaints system**

Without a central authority in charge of the public procurement system, the risk of corruption increases due to the mere fact that public procurement as a policy area will inevitably fall between two government jurisdictions. A central authority with overall responsibility is required to ensure consistency in legislative development as well as continuous and efficient monitoring of application of the legislation. Such central authorities exist in most countries; their powers and tasks vary, but legislative and monitoring tasks are typical. A central authority could also usefully manage a central e-platform for publication of tender and award notices. For the purpose of preventing corruption, such an authority would have obvious advantages in terms of monitoring and inter-government co-ordination.

The existing system for submitting complaints against decisions of contracting entities is limited in scope and does not effectively protect the interests of competitors who suspect corruption or other irregularities in the tenders they participate in. The normal approach is to establish a system for making complaints to an independent complaint body. Independence from the central authority is important to safeguard the interests of private enterprises. Establishing an entity specifically in charge of complaints (rather than leaving the matter to the normal courts) has the advantage of lower costs and, normally, quicker handling of complaints. In addition, it is possible through a formal complaint system to rectify a number of technical irregularities in the tender documentation during the tender stage, which currently is not an option.

#### **B) Fragmented public procurement legislation**

A unified system of rules would facilitate application and monitoring, and thus minimise the risk of irregularities and eliminate purely coincidental differences within the existing rules (see Section 4.1 for further details). Such a unified system should also cover low-value procurements to avoid leaving large areas of procurement beyond central policy control. Unification of legislation has been discussed for some time, and interviews with various stakeholders revealed that there is a draft at the Cabinet level which was not available for the present review.

In the context unifying legislation, it was also mentioned that introducing e-procurement, including e-auctions, would provide some required solutions. However, the use of electronic communication and e-auctions would only be appropriate in relatively few cases. This review highlights a number of shortcomings in publication of bids and valuation of contracts, excessive use of direct purchasing, lack of time limits and qualification/award criteria, and a lack of explanation in award decisions. In all these cases the vagueness or even absence of rules significantly compromises integrity and hence raises corruption risks.

### **C) Capacity problems in relation to tender evaluation and contract supervision**

The capacity weaknesses identified for the various committees involved in tendering and contract management, and for developing tender specifications and performing tender evaluations, allow certain bidders a wide scope of undue advantages. These weaknesses negatively affect not only the competitive procedure but the post-tender contract management phase. Measures to reduce this risk should include various capacity-building activities, such as the issuing of manuals and guidelines for committees as well as specific regulatory requirements for tender specifications as part of future legislative unification of public procurement.

### **D) No specific requirements for the planning of procurements**

A number of fundamental weaknesses in the tender specifications and the tender documents as a whole can be traced back to the planning phase, which is essentially in the hands of the beneficiary institution. A lack of established routines for needs assessment and market analysis as part of the planning phase invites undue influence. Furthermore, insufficient clarification of needs and markets may, for example, lead to specifications that are unnecessarily narrow or otherwise inadequate, requiring future adjustments (not least to variation orders) and further possibilities for the contracted enterprise to take undue advantage. It is therefore important to establish requirements and procedures for procurement planning, co-ordinated with existing budget rules and other aspects of financial management. There is an abundance of international good practices regarding procurement planning on which planning requirements can be based.

### **E) Lack of monitoring and processing of statistical information**

The lack of statistics concerning public procurement activities is a risk factor in itself. Without such statistics, it is impossible to quantify the effects of corruption and identify particularly vulnerable sectors. Moreover, any monitoring of procurement activities only makes sense if there is existing statistical data to compare with. Building up a statistics database therefore presupposes regular reporting from procuring entities and the continuous capturing and processing of the results of monitoring.

A central policy-making institution is normally in charge of the collection, recording, processing and analysing of data on public procurement and delivery of statistical reports to the executive and legislative parts of the Government. As there is no central policy-making institution in charge of public procurement, there is a lack of statistical information.

## **6.2 Estimated impact and likelihood of the operational and market risks defined in Pillar C**

Due to the lack of statistics, it is not possible to estimate the impact of the identified risks. However, what seems clear is that most risks exist also in the regulated high-value areas. In fact, a distinction between areas covered or not covered by existing laws has little relevance for integrity risks. It should also be mentioned that the general preference for local products and locally established enterprises will, as intended, discourage foreign participation. This is a matter of chosen market policy, but the implicit risk of reduced competition is increased corruption. Regarding likelihood, no specific patterns of corruption have been identified. One problem in this respect is that allegedly, in the very few prosecuted cases, any charges of corruption have simply been “absorbed” under more serious charges such as fraud, etc. There is little doubt, however, that many of the identified risks are quite substantial and leave wide scope for corruption.

### 6.3 Risk indicators according to Pillars A to D

A number of recognised public procurement risk factors were identified for Jordan's public procurement system in the course of this review. Connected with the typical risk factors, a set of indicators has been developed. The "red flag" is often used to indicate the presence of an indicator, but does not automatically mean corruption. In one EU enquiry<sup>30</sup>, red flags are used to suggest a possible increased probability of corruption and to provide information on the chance of corruption being present. More red flags indicate a higher chance of corruption, but say nothing about the actual presence of corruption in an individual case.

Below is a sample list of indicators that could be useful in the Jordanian context as themes for monitoring activities. Obviously, the application of indicators presupposes continuous monitoring and reporting of basic information concerning procurement procedures, for example numbers of participating bidders, etc. It should also be noted that the indicators often involve certain patterns of behaviour; these indicators are aimed at identifying systematic corruption rather than individual, "free-standing" cases:

- abnormal number of contracts awarded by special and special-case methods (negotiated and direct contracting);
- unusual number of complaints filed by tenderers regarding tenders launched by a specific contracting authority;
- repetitive observations of mistakes in the procurement processes within a specific contracting authority;
- elements in the tender documents which consistently point at a preferred supplier;
- excessive number of tenders launched by a contracting entity within the same range of activity;
- few tenders received;
- large number of contracts signed with the same company;
- links between the company obtaining the contract and the purchaser or members of the tender committee (conflict of interest);
- substantial changes in project scope/price following award;
- many cases of poor contract performance with the same procuring entity, with cost overruns and time delays.

It is important that the monitoring and controlling bodies have effective systems in place for collecting data, and that they have the resources and capacity to make correct and relevant analyses of the information. Indicator data are only valuable as guidance tools when it is possible to make comparisons and determine deviations from the normal state of affairs.

In combination with developing an integrity risk indicator system in public procurement, it would seem logical over time to develop a performance measurement system using performance indicators. The purpose of such a system would be to determine quality and efficiency, thereby providing information on the status of the procurement system and the need for/guidance of reform of public procurement in the long term.

<sup>30</sup> PwC and Ecorys (2013), *Identifying and Reducing Corruption in Public Procurement in the EU*, study prepared for the European Commission, PwC EU Services, Brussels.

## **7. RECOMMENDATIONS FOR ENHANCING INTEGRITY IN THE PUBLIC PROCUREMENT SYSTEM OF JORDAN**

The main integrity risk areas within the Jordanian procurement system are mapped and discussed in this Report. A number of observable integrity risks stem from the lack of a coherent legal framework, insufficient operational capacity and professionalism, and deficiencies in the procurement process. Among these risk factors, there are some which have been singled out as main risks according to the vulnerability analysis in Chapter 6 and can be summarised as follows:

- There is no central policy-making institution and complaints system.
- The legislation is fragmented and not coherent.
- There are capacity problems in relation to tender evaluation and contract supervision (contract management).
- There are no specific requirements for procurement planning and the preparation of procurements.
- There is no monitoring system.
- There is no processing of statistical information on the public procurement system.

Enhancing integrity in public procurement requires a systematic and coherent approach. Any national strategy and action plan for mitigating integrity risks in public procurement needs to be discussed in the overall context of the public procurement system. Furthermore, corruption and fraud in public procurement cannot be isolated from the other parts of society. There is a need for joint mobilisation of all key stakeholders to reform the political, administrative and business culture and practices of a country. Legislative steps as well as development of institutions and building capacity in general are required to deal with the risks, which are in many respects interlinked. It is proposed that these risks be mediated by a set of actions essential for public procurement system development in Jordan (ideally through a comprehensive procurement development strategy).

To promote transparency and integrity in public procurement, this Report recommends the following set of actions for consideration by the Jordanian authorities:

1. Establishing a central institution for policy-making functions in the area of public procurement (or entrusting an already existing institution with this function).
2. Rationalising the current legislative and regulatory framework: developing and adopting a coherent, sound and modern public procurement law.
3. Introducing clear policy and rules on the preparation of procurements, especially with the aim of minimising the issue of variation orders (modification of the contracts during their implementation phase).
4. Strengthening the rules on conflict of interest and codes of conduct both in the public and private sectors.
5. Supporting and investing in the professionalisation of the procurement function by developing a national training strategy in public procurement.
6. Providing capacity building for the private and public sectors about public procurement.
7. Introducing effective remedies (complaint mechanisms) for challenging procurement decisions to build bidder confidence in the integrity and fairness of the procurement system.

These recommendations are presented in more detail below.

## **1. The establishment or designation of a central body in charge of public procurement policy issues.**

Public procurement is recognised as a strategic activity (rather than a simple administrative function) that plays a central role in preventing mismanagement, waste and potential corruption. To make a public procurement system work at all levels, a set of functions needs to be performed at the central level. These functions may include:

- the development, improvement and co-ordination of the entire public procurement system;
- collection, recording, processing and analysing data on public procurement and delivery of statistical reports;
- preparation and co-ordination of the development of draft proposals for public procurement laws and regulations, and participation in the development of related regulations;
- preparation and implementation of activities relating to training and capacity building (seminars, workshops, development of manuals) for persons participating in the public procurement system;
- oversight of the implementation of public procurement legislation;
- harmonisation and participation in the development of various standard documents for the procedures of public procurement;
- co-operation with the state bodies of Jordan with the goal of achieving uniform interpretation and correct application of the public procurement regulations;
- issuing opinions, instructions and provisions of legal assistance in connection with the application of national procurement legislation;
- development of e-procurement tools;
- international co-operation.

To perform these functions, an efficient institutional set-up is needed with clear division of tasks and responsibilities among the different institutions. It is recommended that a policy-making institution – which would lead and manage the public procurement system – be established (or one of the current institutions should be entrusted with this policy-making function). With the establishment of such a state body, the public procurement system would gain an institution responsible for the development of the system, and further improvements would be possible with less constraints and more efficiency.

Currently, the policy-making function is missing from the Jordanian system. Although this function is exercised to a certain extent by the three institutions in charge of central procurement, the role of the state body in charge of public procurement policy differs from the role of the central procurement bodies and also has a different set of activities. The three institutions in charge of central procurement cannot exercise this function because of their everyday workload and because this is not their function. Consequently, these three institutions can hardly maintain a proactive role in the development of the public procurement system.

## **2. Rationalisation of the legal and regulatory system: the three by-laws should be unified under one law in connection with various legislative reforms.**

Public procurement legislation should be clearly drafted, principle-based and value-for-money oriented. All legislation should be in line with national strategic goals and good international standards. The legal framework should avoid requirements which duplicate or conflict with other legislation or regulations. Unified legislation would ensure common rules in cases for which there is no reason to regulate the procurement of supplies, services and works differently. Common rules would facilitate application and monitoring, and thus minimise the risk of irregularities. Without unified public procurement legislation, it is difficult to create a transparent and efficient public procurement system.

Public procurement systems are recognised as the main pillars of the strategic management of public funds to promote overall value for money, as well as to help prevent corruption. Thus, unified legislation, based on good international practices and principles, is needed to ensure a proper level of competition. The unified legislation should include more clear-cut rules concerning, for example, the choice of procedures and bid evaluation. Introducing more detailed rules on publication of procurements, in combination with the establishment of an official “bulletin” (preferably an electronic portal), as well as limitations on modifying the conditions of the tender notices and the contracts is also of critical importance. Regarding variation orders, it is specifically recommended that they be allowed only within a specific financial limit, which should be prescribed by legislation and cannot be transgressed even by the government. Representatives of the private sector would therefore be bound by the provisions of the contract, and would have to increase the quality of their bids as well as contract execution.

### **3. Introduction of a clear policy concerning preparation of procurements, especially for minimising the use of variation orders.**

The excessive use of variation orders shows that measures need to be taken to improve planning and preparation of the procurement procedures. Variation orders represent the “grey area” of public procurement in a number of countries; they and similar procedures cause, directly or indirectly, a number of problems in procurement systems, from the planning phase to the point of contract execution.

The wide use of variation orders in Jordan creates uncertainties in the public procurement market. Currently it is possible to change the main aspects of contract execution through variation orders, even when a new tendering procedure should be published. Wide application of variation orders and low regulation in the legislation undermine competition among private sector representatives during the tendering stage. As public contracts are often extended or new quantities or even new items are added to an existing contract (rather than a new tender being put out), bidders submit bids with unjustifiably low prices, knowing that through variation orders they will have the opportunity to rectify any problems in the contract execution phase. Without a clear policy on variation orders, it is difficult to improve the quality of contract execution and contract management.

Limiting possibilities for variation orders would put increased pressure on contracting authorities to prepare better-quality tender documentation and specifications. If variation orders can be used without limitation, the quality of the tender documentation and technical specifications will remain poor, with increased risk for undue influence.

Consequently, the possibility to change contracts should be regulated in detail by the legislation, and the possibility to amend contracts should be limited to justified and exceptional situations. Legislative steps must be followed up with precise requirements for preparation of procurements. This preparatory phase should follow international good practices, frequently described as consisting of three stages:

- needs assessment, which includes consultations with the user groups and a critical questioning of the needs to avoid defining them too narrowly and unnecessarily limiting competition;
- market analysis, which confronts the agreed-to needs with what is available on the market in terms of prices and qualities;
- determination of tender specifications, tender criteria and procurement procedure.

These stages are not strictly separated, since there often may be reason to review the needs assessment in the light of what the market offers in alternative solutions. What is important is to have the two stages spelled out in specific procedures and reporting requirements. Ideally, a procurement of any reasonable size should be based on a dossier of documentation proving that the procurement has been appropriately prepared. The effect of solid procurement preparation and planning goes beyond the specific problem of variation orders: a well-prepared and planned procurement generally reduces the scope for undue influence. For this reason, planning/preparation procedures are a main element to put in place for the purpose of preventing corruption.

#### **4. Introduction of a clear policy for dealing with integrity standards and conflicts of interest.**

A code of conduct and code of ethics for all employees involved in public procurement procedures should be introduced. Conflicts of interest are a threat to the integrity of the public procurement process and pertain to potentially vulnerable positions, activities or projects. These risks can be addressed through mechanisms that foster a culture of integrity in the public service, such as integrity training, financial disclosure and management of conflicts of interest. For instance, the JIACC could draw up a “risk map” that identifies the positions of officials who are vulnerable, activities in procurement for which risks arose in the past, and particular projects at risk due to their value or complexity.

Integrity standards are a core element of professionalism, as they influence the daily behaviour of procurement officials and contribute to creating a culture of integrity. To prevent individual private interests to influence public decision making, officials should be aware of the circumstances and relationships that lead to conflict-of-interest situations. These situations may involve the reception of gifts, benefits and hospitality; the existence of other financial and economic interests; personal and family relationships; and affiliations with organisations or the promise of future employment. Communicating integrity standards is essential to raise awareness and build the capacity for officials to handle ethical dilemmas and promote integrity. This is of equal importance for managers, high-level officials, and external employees and contractors involved in procurement.

There are two sides in public procurement, the public and the private. Close co-operation between the government and the private sector, particularly in contract management, is thus needed to maintain high standards of integrity. The government should set clear integrity standards for the private sector and ensure they are followed. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. Beneficial tools include codes of conduct, integrity training programmes for employees, corporate procedures to report fraud and corruption, internal controls, and certification and audits by an independent third party.

#### **5. Professionalisation of the function of public purchaser and creation of a database of all members of technical, tendering, receiving and special committees.**

The development of a professional and experienced staff in public procurement is of essential value for the strengthening of a public procurement system. As there are a number of members within the technical, tendering, receiving and special committees, these members should be identified. Creating a database of all of the members of these committees would allow the monitoring institutions to maintain better records and to identify government employees with experience in specific fields in public procurement.

Recognising officials who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. Governments should invest in public procurement accordingly and provide adequate incentives to attract highly qualified officials. They should also update the knowledge and skills of officials on a regular basis to reflect regulatory, management and technological evolution. Public officials should be aware of integrity standards and be able to identify potential conflicts between their private interests and public duties that could influence public decision making.

Adequate public employment conditions and incentives – in terms of remuneration, bonuses, career prospects and personal development – help attract and retain highly skilled professionals. Mobility within the administration should also be encouraged to the greatest extent possible, supported by adequate training.



## **6. Capacity building in the public and private sectors.**

How well a public procurement system works in practice depends largely on the quantity and quality of training in public procurement given to relevant officials and contractors, as well as to others involved – technical experts, auditors and judges. Only trained, experienced public procurement officials behave according to the integrity standards. Recognising the procurement profession within the government through a system of certification for suitably qualified officials and increasing salaries (within the limits imposed by civil service laws) helps reduce the temptation for officials, once trained, to leave the public service or to become involved in corrupt activities.

Training of procurement staff also helps officials recognise possible mistakes in performing administrative tasks and gives them the opportunity to improve their practices accordingly. Formal and on-the-job training programmes should be available for entry-level as well as more experienced procurement officials, to ensure that procurement officials who are members of different committees meet high professional knowledge, skills and integrity standards. Capacities should also be sufficient that procurement officials are able to fulfil their various tasks. Without trained and experienced public procurement officers, it is impossible to increase the quality of a public procurement system.

## **7. Increased integrity in relations between the public sector and the business sector (potential bidders) by ensuring easy access to legal protection (remedies).**

Remedies are legal actions available to economic operators who participate in public procurement procedures, which allow them to request the enforcement of public procurement regulations when contracting authorities, either intentionally or unintentionally, fail to comply with the legal framework for public procurement. These mechanisms encourage economic operators to monitor contract award procedures and require that procurement rules be followed so that their chances of being awarded a contract are not unlawfully diminished. Thus, these mechanisms both enhance the lawfulness of procedures and encourage competition.

One of the main aims of legal protection is to allow for irregularities that occur in contract award procedures to be challenged and corrected as soon as they occur. This should increase the lawfulness and transparency of contract award procedures, build confidence among businesses and facilitate the opening of local public contract markets to foreign competition. Without possibilities for legal protection, any mistakes in the tendering documentation are usually left uncorrected. This usually creates problems at the contract execution stage, provoking the use of variation orders, delays in the execution of contracts and increases in public expenditures as well as other consequences.

It is therefore recommended that an entity in charge of handling complaints independent from the central public procurement policy maker be established; this is the approach used in many countries. There are many structural solutions, but what matters is that bidders can submit complaints concerning alleged failures during a procurement process and they are given certain procedural rights, especially the right to be heard during the complaints procedure.

\* \* \*

In summary, the seven components above (recommendations 1-7) constitute a strategy for dealing with what the review has identified as the main corruption risks in the Jordanian public procurement system. Nearly any institutional or legislative shortcoming can be exploited for corruptive purposes; this is why the foregoing seven-component approach covers such a wide range of measures.

A supplementary effect of implementing this strategy, in addition to mitigating corruption risks, would be a general improvement in the efficiency and integrity of the Jordanian public procurement system as a whole.

To ensure the efficient and effective management of the identified risks, and implementation of the recommendations, we also advise that a follow-up committee be established (or the mandate of the project group established for this review should be extended for this purpose).

The development of an action plan for implementing the above-mentioned recommendations would be an important next step. The Action Plan should identify concrete actions for implementing the recommendations, with indications of time limits, responsible institutions and types of resources required.

The follow-up committee should also monitor implementation of the Action Plan and report on progress to the Prime Minister.

### **A. List of the institutions interviewed during the fact-finding mission**

- Jordan Integrity and Anti-Corruption Commission
- General Supplies Department
- Government Tenders Department
- Joint Procurement Department
- Jordan Standards and Metrology Organisation
- Financial Committee of the Parliament
- Audit Bureau
- Information and Communication Association
- Jordanian Food & Drug Administration
- Jordanian Construction Contractors Association
- Jordanian Engineers Association
- Rasheed Jordanian Coalition for Integrity and Transparency: Partners Jordan: Jordanian Transparency Centre
- Various representatives of the private sector at the meeting organised by JIACC:
  - Eng. Said Abujaber, Chairman AE Business Council
  - Ms Jihad Abu Jamous, Infrastructure & Environment Director Arabic Jardaneh Group – Engineering and Pharmaceutical
  - Eng. Ebtisam Abu Eisheh, Manager Tendering Department – Construction Company
  - Mr. Hassan Abukuppeh, Director Bid Management – IT Company
  - Mr. Kamal Abu Sofeh, Abu Soufeh Company – Constructions
  - Mr. Ahmad Hussainat, Babel Company for Constructions
  - Eng. Nizar Gharaybeh, Sabeel Engineering and Consultancy Company
  - Eng. Nashat Abu Arjeh, Abu Arjeh Establishment for constructions
  - Eng. Fuad Tahat, Al Sabeel Engineering Company

### **B. List of institutions which replied to the questionnaires**

- Ministry of Public Works and Housing, Government Tenders Department (GTD)
- Ministry of Municipal Affairs
- Ministry of Energy and Mineral Resources
- Ministry of Environment
- Ministry of Communications and Information Technology
- Ministry of Health, Joint Procurement Department (JPD)
- Ministry of Finance, General Supplies Department (GSD)
- Jordan Engineers Association
- Jordan Constructors and Contractors Association
- Arabtech Jardaneh Engineers & Architects
- Babel Company for Constructions
- Sabeel Engineering and Consultation Company
- Dar Alomran Infrastructure & Environment Company
- Consolidated Consultants Groups

**A. SURVEY FOR THE STATE EMPLOYEES WORKING IN PUBLIC PROCUREMENT REGARDING THE PUBLIC PROCUREMENT SYSTEM IN JORDAN**

**1. Basic statistical information about the institution/public company**

1.1. To which part of the state administration does your institution belong?	Central government	
	Regional government	
	Public company	
1.2. How many public procurement procedures does your institution manage per year?	1-10	
	11-30	
	31-50	
	51-100	
	100 and more	
1.3. What is the total value of public procurement procedures in your institution per year, taking into consideration the different values of the thresholds?	Below 1.000 JOD	
	Between 1.000 - 5.000 JOD	
	Between 5.0000 – 10.000 JOD	
	Between 10.000 – 250.000 JOD	
	Above 250.000 JOD	
	TOTAL:	
1.4. How many different public procurement procedures of works, supplies and services does your institution have per year?	<i>Type of procurement</i>	<i>Number of procedures</i>
	Works	
	Services	
	Supplies	
		TOTAL:
1.5. How many years of experience on average do the public procurement experts being employed in your institution have?	1-3	
	3-8	
	8-13	
	13-20	
	Above 21	
	Don't know	
1.6. According to your experience, what kind of professional qualifications should employees have that relate to the tendering of public procurement procedures? And in what percentage?	Economic	%
	Legal	%
	Technical (engineers)	%
	Social	%
	Don't know	
		<b>Total</b>

**2. Questions related to the national legislation and internal regulations of the contracting authorities in Jordan**

<i>Please answer using a scale of grades from 1 to 4. Where 1 = not at all, 4= always, Mark the grade with the letter X.</i>	1	2	3	4
2.1 According to your experience, is the legislation in Jordan sufficiently clear and understandable?				
2.2 Does the legislation in Jordan sufficiently cover all aspects of public procurement that are necessary for the contracting authorities?				
2.3 According to your experience, is the legislation in Jordan sufficient and understandable for the private sector?				
2.4 According to your experience, do the internal regulations of the contracting authorities sufficiently cover all aspects of public procurement that are necessary for the contracting authorities?				
2.5 According to your experience, is the internal regulation on public procurement within your organisation in line with the existing national legislation and principles of public procurement?				
2.6 Are all steps of the public procurement procedure covered in your internal regulations, such as: planning, preparation of technical specifications, tendering procedures, evaluations and awards, post-tendering procedures?				
2.7 Do the internal regulations dealing with public procurement have detailed provisions on conflicts of interests in public procurement?				
2.8 According to your experience, do the internal regulations for different contracting authorities differ in their basic content?				
2.9 Based on your experience, what are the <b>major weaknesses</b> of the present national law and the internal regulations of the contracting authorities that regulate public procurement procedures? _____ _____ _____				
2.10 Please indicate any <b>suggestions you may have</b> to enhance the national public procurement legislation? _____ _____ _____				

**3 Questions related to the internal organisation of the contracting authorities**

<i>Please answer using a scale of grades from 1 to 4. Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.</i>	1	2	3	4
3.1 How well is the staff of your institution prepared – in terms of knowledge, experience – for tendering works, services and supplies, according to the public procurement regulations in Jordan? (1– not at all, 4 – always)				
3.2 Do you have a functioning department solely in charge of public procurement? (1– not at all, 4 – always)				
3.3 In the last 5 years, has your organisation made any changes in distribution of tasks that deals with public procurement issues? (1– not at all, 4 – always)				
3.4 If you have questions regarding public procurement procedures or regulations, is there a dedicated unit/person in your organisation to whom you can turn for advice? (1 = not at all, 4 = always)				
3.5 Is your institution’s business environment – office, IT and Internet, number of employees working in public procurement – capable of operating according to the public procurement regulations of Jordan? (1– not at all, 4 – always)				

3.6 Do your internal public procurement regulations prescribe a clear policy dealing with the conflicts of interests of employees in public procurement – for example code of ethics? <i>(1– not at all, 4 – always)</i>				
3.7 Has your institution adopted a Code of Ethics that deals with everyday business activities? <i>(1– not at all, 4 – always)</i>				
3.8 How well do you think your institution is prepared, in general, for operating according to the public procurement regulations in Jordan? <i>(1– not at all, 4 – always)</i>				
3.9 Please indicate any <b>suggestions you may have</b> for making your institution better prepared for operating according to the public procurement regulations?  _____ _____ _____ _____				

#### 4 Accessibility and availability of public procurement related information

4.1 According to your experience, where can stakeholders and private sector firms <b>find information</b> about the procurement system, legislation, regulations? (Websites, magazines, newspapers, official gazettes, informal ways...)  _____ _____ _____ _____		
4.2 Is there any institution to which you can turn in case you <b>need information or need any assistance</b> about public procurement rules in Jordan, in general?	YES	NO
4.3 If YES, please specify the method of communication:  _____ _____ _____ _____		
4.4 According to your internal regulations on public procurement, are there prescribed methods for communicating with representatives of the private sector? If yes, please describe them:  _____ _____ _____ _____		
4.5 Do your internal regulations or practices require that bidders be informed about their right to complain as well as on time limits for complaints?  _____ _____ _____ _____		
4.6 How many complaints from the private sector have you received in the last 3 years (in any form)?  _____ _____ _____ _____		

4.7 Do you have any suggestions for improving the flow of information in the area of public procurement?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**5. General perception of the public procurement system**

*Please answer using a scale of grades from 1 to 4.  
Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.*

	1	2	3	4
4.1 Public procurement procedures in Jordan are transparent and promote fair and equal treatment. <i>(1: disagree completely, 4: agree completely)</i>				
4.2 Financial resources allocated for public procurement are used in accordance with intended purposes. <i>(1: disagree completely, 4: agree completely)</i>				
4.3 The behaviour and professionalism of procurement officials or employees who deal with public procurement are in line with the public interest purposes of their organisation and they do not pursue private interest purposes. <i>(1: disagree completely, 4: agree completely)</i>				
4.4 The persons taking decisions are – in general – fully accountable. <i>(1: disagree completely, 4: agree completely)</i>				
4.5 Public procurement is perceived as a corrupt activity by the private sector and the general public as well. <i>(1: disagree completely, 4: agree completely)</i>				
4.6 If you apply at the tender and you suspect to any kind of corruption you will file a complaint with indication of contact details to the ACC? <i>(1: disagree completely, 4: agree completely)</i>				

**6. Internal financial rules, internal controls, audit**

	YES	NO
6.1 Are there any written internal control mechanisms within your institution that specify the workflows, tasks and responsibilities of those who are involved in the public procurement procedures?		
6.2 <b>If YES</b> , do they describe the entire public procurement lifecycle (needs identification, budget planning, procurement planning, drafting technical specifications, preparing tender dossiers, conducting procurement procedures, tender evaluations, contract awards, contract implementation) - audits, and decision making points within these steps.		
6.3 Has your institution been audited in the previous years by the Audit Bureau, and did your institution respect and implement its recommendations?		
6.4 Is the Audit Bureau frequently participating in tender committee meetings?		
6.5. Within your institution, is there a <b>separation of duties and authorizations</b> , in particular:		
6.5.1. Are strategic planning, budget and performance, accounting and reporting, and internal control functions clearly separated?		
6.5.2. Are the stages of the procurement process (procurement plans, the approval of key procurement milestones, the recommendations of awards and the payment) clearly separated?		
6.5.3. Are the administrative and technical duties in the public procurement procedure clearly separated between different employees?		
6.5.4. Are the financial duties (such as invoicing, payments and approval of payments) clearly separated?		
6.5.5. Does your institution have a database of signed contracts and payments?		

## 7. Questions related to the public procurement lifecycle

<b>THE PLANNING / PREPARATORY PHASE</b>				
<i>Please answer using a scale of grades from 1 to 4. Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.</i>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
7.1. There is a lack of adequate procedures for the preparation of needs assessments, planning and budgeting of public procurement. <i>(1: disagree completely, 4: agree completely)</i>				
7.2. The requirements for procurement items are adequately defined. <i>(1: not at all, 4: always)</i>				
7.3. The requirements for procurement items objectively defined. <i>(1: not at all, 4: always)</i>				
7.4. The type of procurement procedure in question is not chosen for unexplained reasons. <i>(1: disagree completely, 4: agree completely)</i>				
7.5. Does your institution make procurement plans? <i>(1: not at all, 4: always)</i>				
7.6. According to your experience, are procurement plans for the following year usually prepared by December of the current year? <i>(1: not at all, 4: always)</i>				
7.7. According to your experience, are the values of specific procurement items estimated based on market research? <i>(1: not at all, 4: always)</i>				
7.8. According to your experience, are planned procurements frequently changed without proper justification? <i>(1: not at all, 4: always)</i>				
7.9. According to your experience, do the procurement of works, services and supplies often deviate from what was initially planned? <i>(1: not at all, 4: always)</i>				
7.10. Is the established timeframe for the planned procurement procedure sufficient and consistently applied? <i>(1: not at all, 4: always)</i>				
7.11. Does it sometimes happen that procurement is planned mainly in the interest of business and with little or no value to the end users? <i>(1: not at all, 4: always)</i>				
7.12. Are lessons learned from contract performance monitoring in previous years being used in current procurement planning? <i>(1: not at all, 4: always)</i>				
7.13. The procurement is sometimes economically unjustified or environmentally damaging. <i>(1: disagree completely, 4: agree completely)</i>				
7.14. Is the need for supplies, works or services sometimes overestimated to favour a particular provider? <i>(1: not at all, 4: always)</i>				
7.15. Old political favours or kickbacks are sometimes paid by including a contract in the procurement plan which is not unjustified (for a contract with a "certain" pre-arranged company). <i>(1: disagree completely, 4: agree completely)</i>				
7.16. According to your experience, does your institution have the necessary knowledge for planning major infrastructure projects? <i>(1: not at all, 4: always)</i>				
7.17. Decision makers decide on procurement plans on the basis of personal interests without or outside of the prescribed procedures. <i>(1: disagree completely, 4: agree completely)</i>				



7.18. In the planning phase contracts are artificially divided to bring the procurement value below threshold value. <i>(1: disagree completely, 4: agree completely)</i>				
7.19. According to your experience, are procedures for making changes in a procurement plan the same as for the adoption of the procurement plan? <i>(1: not at all, 4: always)</i>				
7.20. Do you have any suggestions for improving the flow of information in the area of public procurement? _____ _____ _____				
7.21. Do you have any suggestions regarding improvements in the planning and preparatory phase in the area of public procurement? _____ _____ _____				
<b>TENDERING PHASE</b>				
<i>Please answer using a scale of grades from 1 to 4. Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.</i>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
7.23. Are the technical specifications prepared by private consulting companies of high quality? <i>(1: not at all, 4: always)</i>				
7.24. Are any kind of manuals and trainings related to public procurement available for you and your colleagues? <i>(1: not at all, 4: always)</i>				
7.25. Are brand names of the specific products often used in the technical specifications? <i>(1: not at all, 4: always)</i>				
7.26. Are criteria concerning the qualifications of the bidder always established in the tender documents? <i>(1: not at all, 4: always)</i>				
7.27. Are criteria for the award of the contract always established in the tender documents? <i>(1: not at all, 4: always)</i>				
7.28. Are criteria for qualification and award always of relevance for the procurement in question? <i>(1: not at all, 4: always)</i>				
7.29. Are criteria for the award of the contract sometimes changed during the tender procedure? <i>(1: not at all, 4: always)</i>				
7.30. The criteria for evaluating bidder qualification and for award of bids are often applied differently on bidders. <i>(1: not at all, 4: always)</i>				
7.31. Are the technical specifications sometimes biased? <i>(1: not at all, 4: always)</i>				
7.32. According to your experience, does your institution use a standard methodology for publishing tender notices? <i>(1: not at all, 4: always)</i>				
7.33. According to your experience, does your institution use a different methodology for publishing tender notices compared to other contracting authorities? <i>(1: not at all, 4: always)</i>				

7.34. The information included in tender notices is often not sufficient for allowing enterprises to determine whether the tender is of interest to them. <i>(1: disagree completely, 4: agree completely)</i>				
7.35. Time limits for bid submission are often very short and do not take account of the complexity of the tender. <i>(1: disagree completely, 4: agree completely)</i>				
7.36. There is often uncontrolled and undue access to submitted bids before the bids opening procedure. <i>(1: disagree completely, 4: agree completely)</i>				
7.37. Bids or bidders are often rejected for undue or unclear reasons. <i>(1: disagree completely, 4: agree completely)</i>				
7.38. The classification system for works contractors is often used to benefit certain contractors. <i>(1: disagree completely, 4: agree completely)</i>				
7.39. Variation orders are being used almost routinely as a "follow-up" on works tenders. <i>(1: disagree completely, 4: agree completely)</i>				
7.40. Are the official communication channels between your company and bidders during the tendering stage clearly prescribed? <i>(1: not at all, 4: always)</i>				
7.41. Do bidders incur high costs for bid preparation? <i>(1: not at all, 4: always)</i>				
7.42. A level of favouritism or discrimination of tenderers is present due to biased preparation of tender specifications by consulting companies. <i>(1: disagree completely, 4: agree completely)</i>				
7.43. During tendering procedures do you frequently receive questions related to the tender materials? <i>(1: not at all, 4: always)</i>				
7.44. According to your experience, do you think that you and your colleagues have sufficient knowledge for tendering infrastructure works projects? <i>(1: not at all, 4: always)</i>				
7.45. Are the procedures for changing technical specifications/tender documents during the tendering stage specified and usually respected? <i>(1: not at all, 4: always)</i>				
7.46. There is inconsistent access to information for bidders during the tender procedure. <i>(1: disagree completely, 4: agree completely)</i>				
7.47. A lack of competition or in some cases collusive bidding results in inadequate prices. <i>(1: disagree completely, 4: agree completely)</i>				
7.48. There are conflict of interest situations that lead to bias and corruption in the evaluation and in the approval process. <i>(1: not at all, 4: always)</i>				
7.49. There is lack of access to records on the procurement procedures for the awards that makes it difficult to complain about award decisions. <i>(1: disagree completely, 4: agree completely)</i>				
7.50. There is a lack of sufficient technical competency in evaluation committees. <i>(1: disagree completely, 4: agree completely)</i>				
7.51. The decisions and recommendations of the technical committee and tender committee do not include any justification. <i>(1: disagree completely, 4: agree completely)</i>				

<b>IN THE POST-TENDERING PHASE</b>				
7.52. Contracts are being changed in the period between award and signature for the benefit of the private party. <i>(1: disagree completely, 4: agree completely)</i>				
7.53. Contracts are being changed after signature and during the contracting period for the benefit of the private party. <i>(1: disagree completely, 4: agree completely)</i>				
7.54. Contract duration is being extended in cases where retendering could have taken place, for example by using variation order. <i>(1: disagree completely, 4: agree completely)</i>				
7.55. The contracts do not include precise performance specifications to allow for control of the quality of what is to be delivered. <i>(1: disagree completely, 4: agree completely)</i>				
7.56. The contracts do not include any right for the public party to monitor performance <i>(1: disagree completely, 4: agree completely)</i>				
7.57. The contracts do not include sanctions to be applied in cases of performance failure <i>(1: disagree completely, 4: agree completely)</i>				
7.58. The public party is not effectively applying the control of performance prescribed in the contract <i>(1: disagree completely, 4: agree completely)</i>				
7.59. Payment to the private party is often authorised even in cases of performance failure or before verification of correct delivery has taken place. <i>(1: disagree completely, 4: agree completely)</i>				

**8. Questions on the national statistical information related to public procurement for the Anti-Corruption Commission and the Government Tenders Department.**

8.1. How many years of experience on average do public procurement experts who are employed in your institution have?	1-3	
	3-8	
	8-13	
	13-20	
	Don't know	

8.2. What kind of professional qualifications should employees who are involved in the tendering of public procurement procedures have? And in what percentage?	Economic	%
	Legal	%
	Technical (engineers)	%
	Social	%
	Don't know	
	<b>Total</b>	<b>100 %</b>

8.3. What are the total number of public procurement procedures published in Jordan?	Works	
	Supplies	
	Services	
	PPP	
	Concession	

8.4. What is the value of public procurement procedures published in Jordan?	Works	
	Supplies	
	Services	
	PPP	
	Concession	

8.5. What is the value of public procurement procedures taking into consideration the different thresholds?	Below 1.000,00 JOD	
	Between 1.000,00 - 5.000,00 JOD	
	Between 5.0000 – 10.000,00 JOD	
	Between 10.000,00 – 250.000,00 JOD	
	Above 250.000,00 JOD	
	<b>TOTAL:</b>	

8.6. What is the total number of different types of public procurement procedures that are published in Jordan?	Open tendering procedure	
	Restricted tendering procedure	
	Direct dealing (single source procurement)	

8.7. How many different public procurement entities exist in Jordan?	Number of contracting authorities within the state administration:	
	Number of contracting authorities in the utility sector:	
	Number of contracting authorities in regional/local authorities:	
	Number of independent public entities:	
	<b>TOTAL:</b>	

Please indicate if you have any other comments not covered by the question above:

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## **B. SURVEY FOR THE PRIVATE COMPANIES INVOLVED IN PUBLIC PROCUREMENT REGARDING THE PUBLIC PROCUREMENT SYSTEM IN JORDAN**

### **1. Basic statistical information about the procurement activities**

1.1. How many bids for public procurement procedures does your organisation submit per year?	1-10	
	11-30	
	31-50	
	51-100	
	100 and more	

	<i>Value of threshold</i>	<i>Number of bids</i>
1.2 What is the number of bids that you submit according to the different values of the thresholds?	Below 1.000,00 JOD	
	Between 1.000,00 - 5.000,00 JOD	
	Between 5.0000 – 10.000,00 JOD	
	Between 10.000,00 – 250.000,00 JOD	
	Above 250.000,00 JOD	
	<b>TOTAL:</b>	

	<i>Type of procurement</i>	<i>Number of bids</i>
1.3 How many bids in procurement procedures of works, supplies and services does your company submit per year?	Works	
	Services	
	Supplies	
	<b>TOTAL:</b>	

1.4 How many years of experience on average do the employees who prepare the bids in your organisation have?	1-3	
	3-8	
	8-13	
	13-20	
	Above 20	
	Don't know	

1.5 According to your experience, what kind of professional qualifications should employees who are involved in the tendering of public procurement procedures have? And in what percentage?	Economic	%
	Legal	%
	Technical (engineers)	%
	Social	%
	Don't know	
	<b>TOTAL:</b>	<b>100 %</b>

## 2 Questions related to the national legislation and internal regulations of the contracting authorities in Jordan

<i>Please answer using a scale of grades from 1 to 4. Where 1 = not at all, 4= always, Mark the grade with the letter X.</i>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
2.1 According to your experience, is the legislation in Jordan sufficiently clear and understandable for the contracting authorities?				
2.2 Does the legislation in Jordan sufficiently cover all aspects of public procurement that are necessary for the contracting authorities?				
2.3 According to your experience, do the internal regulations of the contracting authorities sufficiently cover all aspects of public procurement procedures that are necessary for the private sector?				
2.4 According to your experience, do the internal regulations in different contracting authorities that deal with public procurement have detailed provisions that deal with conflicts of interests?				
2.5 According to your experience, do the internal regulations for different contracting authorities differ in their basic content?				
2.6 According to your experience, is public procurement perceived as a corrupted activity by the private sector and general public as well?				

2.7	According to your experience, would the introduction of higher ethical standards and clear policies for conflicts of interests help improve the public procurement system in Jordan?				
2.8	Do you have any suggestions for enhancing the national public procurement legislation? _____ _____ _____				

### 3 Questions related to your internal organisation

<i>Please answer using a scale of grades from 1 to 4. Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.</i>		1	2	3	4
3.1	How well is your company's staff prepared – knowledge, experience – for bid preparation, according to the public procurement regulations in Jordan? <i>(1– not at all, 4 – always)</i>				
3.2	Do you have a specific department solely in charge for bid preparation? <i>(1– not at all, 4 – always)</i>				
3.3	In the last 5 years, has your organisation made any changes in its internal structure to deal with public procurement issues? <i>(1– not at all, 4 – always)</i>				
3.4	If you have questions regarding public procurement procedures or regulations, is there someone from the state institutions to whom you can officially turn for help? <i>(1 = not at all, 4 = always)</i>				
3.5	If you have questions regarding public procurement procedures or regulations, is there someone from the private sector or private associations (Chamber of Commerce or equivalent) to whom you can officially turn for help? <i>(1– not at all, 4 – always)</i>				
3.6	Do you have, prescribed by your internal regulations, a clear policy for dealing with the conflicts of interests of your employees in public procurement? <i>(1– not at all, 4 – always)</i>				
3.7	Was the level of training on public procurement received in the last 3 years sufficient? <i>(1– not at all, 4 – always)</i>				
3.8	How do you think that your organisation is prepared, in general, for operating according to public procurement regulations in Jordan? <i>(1– not at all, 4 – always)</i>				
3.9	Please indicate any <b>suggestions you may have</b> for improving or making the private sector more prepared for operating according to the public procurement regulations? _____ _____ _____				

### 4 Accessibility and availability of public procurement related information

4.1	According to your experience, where can stakeholders and private sector firms <b>find information</b> about the procurement system, legislation, regulations? (Websites, magazines, newspapers, official gazettes, informal ways...) _____ _____ _____
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4.2 Is there any institution to which you can turn in case you <b>need information or need any assistance</b> about public procurement rules in Jordan, in general?	YES	NO
4.3 According to your experience, how do you communicate with the contracting authorities when clarifications are needed for the technical specifications or tender documents? _____ _____ _____		
4.4 In cases in which representatives of the private sector are not satisfied that the procurement procedure was done according to the internal regulations of the contracting authorities, and you claim that you have been discriminated against, is there a possibility to ask for legal protection? _____ _____ _____ _____		
4.5 How many complaints (objections) that deal with irregularities in public procurement in the last 3 years (in any form) have you submitted to the public side? _____ _____ _____ _____		
4.6 Please make any <b>suggestions you may have</b> suggestions for improving the flow of information in the area of public procurement? _____ _____ _____ _____		

**5. Questions related to the public procurement lifecycle**

<b>THE PLANNING / PREPARATORY PHASE</b>				
<i>Please answer using a scale of grades from 1 to 4. Where 1= not at all, 4 = always, or 1=disagree completely, 4=agree completely. Mark the grade with the letter X.</i>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
5.1 Is there a lack of adequate procedures for the preparation of needs assessments, planning and budgeting of public procurement? <i>(1: not at all, 4: always)</i>				
5.2 Are the requirements for procurement items adequately defined in the tender documentations? <i>(1: not at all, 4: always)</i>				
5.3 Are the requirements for procurement items objectively defined in the tender documentations? <i>(1: not at all, 4: always)</i>				
5.4 The procurement procedure appropriate for the contract in question is not chosen for unexplained reasons. <i>(1: disagree completely, 4: agree completely)</i>				
5.5 According to your experience, do the employees involved in the preparation of procurement plans of the contracting authorities have sufficient knowledge and experience necessary for the planning? <i>(1: not at all, 4: always)</i>				

5.6	According to your experience, are the values of specific procurement items within the procurement plans estimated on the basis of market research? <i>(1: not at all, 4: always)</i>				
5.7	According to your experience, are procurement plans usually changed without proper justification? <i>(1: not at all, 4: always)</i>				
5.8	According to your experience, do the procurement of works, services and supplies often deviate from what was initially planned in the procurement plan? <i>(1: not at all, 4: always)</i>				
5.9	Is the timeframe for the planned procurement procedure sufficient and consistently applied? <i>(1: not at all, 4: always)</i>				
5.10	Does it sometimes happen that a procurement is planned mainly in the interest of business and with little or no value to the end users? <i>(1: not at all, 4: always)</i>				
5.11	According to your experience, is the procurement sometimes economically unjustified or environmentally damaging? <i>(1: not at all, 4: always)</i>				
5.12	Is the need for supplies, works or services sometimes overestimated to favour a particular provider? <i>(1: not at all, 4: always)</i>				
5.13	Old political favours or kickbacks are sometimes paid by including a “tagged” contract in a procurement plan (for a contract with a “certain” pre-arranged company)? <i>(1: not at all, 4: always)</i>				
5.14	According to your experience, does your company have the necessary knowledge for executing infrastructure projects? <i>(1: not at all, 4: always)</i>				
5.15	According to your experience, are decision makers deciding on procurement plans on the basis of personal interests without or outside of the prescribed procedures? <i>(1: not at all, 4: always)</i>				
5.16	According to your experience, does it happen that the value of contracts is artificially divided to achieve a below threshold value in the planning phase of the contracting authorities? <i>(1: not at all, 4: always)</i>				
5.17	According to your experience what are the biggest mistakes in the planning phase of public procurement in Jordan? _____ _____ _____				
5.18	Do you have any suggestions for improving the planning and preparatory phase in the area of public procurement? _____ _____				
<b>THE TENDERING PHASE</b>					
5.19	According to your experience, does your company have sufficient knowledge to prepare bids and to execute public contracts? <i>(1: not at all, 4: always)</i>				
5.20	Are the technical specifications that are prepared by private consulting companies of high quality? <i>(1: not at all, 4: always)</i>				



5.21 Are any kinds of manuals and training related to public procurement available to you and your colleagues? <i>(1: not at all, 4: always)</i>				
5.22 Are the brand names of the specific products used often in the technical specifications? <i>(1: not at all, 4: always)</i>				
5.23 Are criteria for the award of the contract and for selection of qualified bidders always established in the tender documents? <i>(1: not at all, 4: always)</i>				
5.24 Are criteria for qualification and award always of relevance for the procurement in question? <i>(1: not at all, 4: always)</i>				
5.25 Are criteria for the award of the contract sometimes changed during the tender procedure? <i>(1: not at all, 4: always)</i>				
5.26 Are criteria for evaluating bidder qualification and for award of bids often applied differently on bidders <i>(1: not at all, 4: always)</i>				
5.27 Are the technical specifications sometimes biased? <i>(1: not at all, 4: always)</i>				
5.28 Are the communication channels between your company and representatives of the public sector during the tendering stage clearly prescribed? <i>(1: not at all, 4: always)</i>				
5.29 Do the representatives of the private sector have high expenditure requirements for bids preparation? <i>(1: not at all, 4: always)</i>				
5.30 Favouritism or discrimination of bids often happens as a result of biased preparation of the tender specifications by the consulting companies? <i>(1: disagree completely, 4: agree completely)</i>				
5.31 According to your experience, does the contracting authorities use a standard methodology for publishing tender notices? <i>(1: not at all, 4: always)</i>				
5.32 According to your experience, does different contracting authorities use a different methodology for publishing tender notices? <i>(1: not at all, 4: always)</i>				
5.33 According to your experience, does your company usually have more than 3 demands for clarifications for the tender specifications by the private sector per tender procedure? <i>(1: not at all, 4: always)</i>				
5.34 According to your experience, is it clear from the tender documentation to whom you may ask the questions related to the specific tender documentation and in what timeframe you will receive the answer? <i>(1: not at all, 4: always)</i>				
5.35 Are you satisfied with the quality of the answers provided to your questions by the contracting authorities during the tendering procedure? <i>(1: not at all, 4: always)</i>				
5.36 If you have bought tender documentation, have you also received, during the tendering stage, clarifications for the documentation made by the contracting authorities, according to the questions raised from other private companies? <i>(1: not at all, 4: always)</i>				
5.37 Are the procedures for changing the technical specifications/tender documentation during the tendering stage specified and usually respected? <i>(1: not at all, 4: always)</i>				

5.38 Are the information included in tender notices often not sufficient for allowing enterprises to determine whether the tender is of interest to them? <i>(1: not at all, 4: always)</i>				
5.39 Are the time limits for bid submission often very short and do not take account of the complexity of the tender? <i>(1: not at all, 4: always)</i>				
5.40 Is lack of competition or in some cases collusive bidding resulting in inadequate prices? <i>(1: not at all, 4: always)</i>				
5.41 Do conflict of interest situations that lead to bias and corruption arise frequently in the tendering phase? <i>(1: not at all, 4: always)</i>				
5.42 There is a lack of access to records on the tendering procedures that makes it difficult to complain about award decisions. <i>(1: disagree completely, 4: agree completely)</i>				
5.43 Do you and your colleagues have sufficient knowledge for preparation of the bids for infrastructure works projects? <i>(1: not at all, 4: always)</i>				
5.44 Is there a lack of sufficient technical competency in the evaluation committees? <i>(1: not at all, 4: always)</i>				
<b>THE POST-TENDERING PHASE</b>				
5.45 Are the public procurement contracts changed in the period between award and signature? <i>(1: not at all, 4: always)</i>				
5.46 Are the public procurement contracts changed after signature and during the contracting period for the benefit of the private party? <i>(1: not at all, 4: always)</i>				
5.47 Is the contract duration being extended in cases where retendering could have taken place, for example by using variation order? <i>(1: not at all, 4: always)</i>				
5.48 Is the public party actively monitoring the performance of the contract, for example by requiring reporting or asking questions concerning deliveries? <i>(1: not at all, 4: always)</i>				

Please indicate if you have any other comments not covered by the questions above:

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