

# Country Profile



## I. Public Procurement Legislation Review Summary

### a. Legislative framework

Public procurement in Egypt is regulated by Tender Law No. 89 adopted in 1998 (the PPL), and its executive regulations (secondary laws) issued pursuant to the decision of the Minister of Finance, no.7 1368 adopted in 1998. Since 2008 the PPL has been subject to 2 amendments which have had no significant impact on the regulations. The most recent amendment, decree no. 33/2010 by the Prime Minister, introduced electronic means for tender notification and established a government website where contracting entities should publish contract notices in addition to traditional means (a public tender board or newspaper) of publication.

In the legislative review of national legislation the PPL on average scored medium compliance. The scores have been calculated on the basis of a questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisers. **Chart 1** presents the scores for the quality of the public procurement legal framework for each Core Principles indicator.

**Chart 1: Egypt - Quality of public procurement legal framework**



**Note:** The chart presents the scores for the quality of the public procurement legal framework for each Core Principles benchmark indicator. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisers. Total scores are presented as a percentage with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

**Source:** 2012 SEMED Public Procurement Assessment

The review highlighted that Egyptian PPL is based on the principles of fair competition and non-discrimination. However, the review revealed that the PPL does allow for domestic preferences, with a price preference of up to 15 per cent for Egyptian tenderers or tenders offering domestic goods and services permitted. Moreover, the PPL is stable and local stakeholders are provided with sufficient time to learn the skills necessary to prepare tenders and compete for public contracts.

Egyptian PPL scored above 70 per cent (medium compliance) in the accountability, integrity and transparency indicators. At present, Egyptian PPL does not provide mandatory standard tender documentation or public contracts standard terms and conditions. However, guidelines are issued by the central government which enhanced the score (72 per cent) achieved or the uniformity indicator. However, significantly lower standards were observed in incorporation of efficiency instruments, with the economy and proportionality indicators scoring low compliance. The review also identified that the PPL was formal, inflexible and bureaucratic, which resulted in a very low score achieved for the flexibility indicators. However, although benefiting from good monitoring procedures, the PPL does not provide sufficient enforcement instruments to protect private sector suppliers.

### b. Institutional framework

The review highlighted that in Egypt there is no single independent authority with regulatory powers responsible for developing procurement policies. In addition there is also no independent dedicated remedies body to handle complaints related to public procurement and monitor compliance of contracting entities. The review indicated that the Egyptian public procurement institutional framework is complex, with a number of authorities (government departments) involved in delivering public procurement functions. These include:

- **Ministry of Finance**

The Ministry of Finance (MoF) is responsible for policy making, issuing decrees and determining public procurement policy. The MoF is the ultimate authority responsible for national procurement planning and ensures that government and contracting entities achieve value for money.

- **Public Services Authority**

The Public Services Authority (PSA) is a central government agency responsible for several aspects of public procurement. These include:

planning, regulating and monitoring public contracts; reporting on technical, financial and regulatory governmental expenditures; and, issuing guidelines to contracting entities. Guidelines issued by the PSA play a significant role in harmonising public procurement practice <sup>Presidential Decree No. 2126 of 1971</sup>. The PSA reports to the MoF.

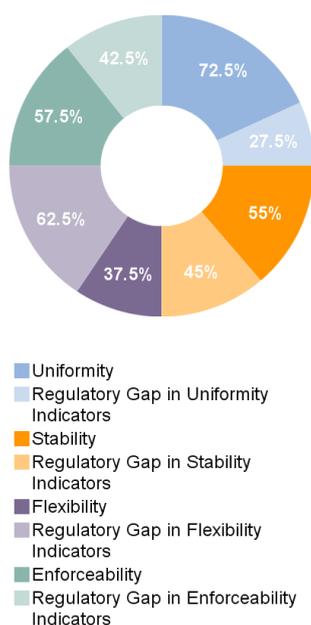
- **Public Contracting Office**

The Public Contracting Office (PCO) is a department within the MoF. Although the PCO does not possess any regulatory powers, it is responsible for handling complaints from suppliers. Procedurally, the PCO does not make a decision on a complaint, but reviews complaints and provides recommendations on how the complaint should be treated. The final decision with respect to each complaint is taken by the supervising Competent Authority (CA). The CA is an administrative authority, with contracting entities reporting to the relevant supervising CA regarding complaints.

- **Central Auditing Authority**

The Central Auditing Authority (CAA) is the independent authority responsible for reviewing the accounts of each public entity. The CAA takes its instructions directly from the President's Office. While the scope of the CAA is not primarily to monitor PPL compliance, the authority undertakes this function as part of its general audit review <sup>Art 11/3, Law No. 144 of 1988</sup>.

**Chart 2: Egypt - Quality of public procurement institutional and enforcement framework**



**Note:** The chart presents the scores for the quality of the public procurement institutional and enforcement framework. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles benchmark for an Efficient Public Procurement Framework and answered by local legal advisers. Total scores are presented as a percentage with 100 per cent (one quarter of the pie chart) representing the optimal score for each of the four institutional and enforcement measures. A regulatory gap, the difference between the assessment results and the benchmark, is marked in light blue, light orange, light purple and light green respectively.

**Source:** 2012 SEMED Public Procurement Assessment

In the legislative review the Egyptian public procurement institutional framework - 'law on the books' - scored from low to medium compliance assessed against respective international standards. **Chart 2** presents the results for the quality of the public procurement institutional and enforcement framework. The results were benchmarked against the EBRD Core Principles for institutional and enforcement measures: uniformity, stability, flexibility and enforceability. Although the review revealed that the institutional framework is rather uniform and predictable, it also highlighted that the framework is hierarchical and inflexible, and based on old governing principles and not business-friendly. The review revealed regulatory gaps in the uniformity indicator (27.5 per cent), in the the stability indicator (45 per cent), in the flexibility indicator (62.5 per cent), and in the enforceability indicator (42.5 per cent).

### c. Scope of regulation

The review revealed that Egyptian PPL is not comprehensive. The PPL regulates central and local government procurement, but does not cover procurements by state-owned or state controlled companies. In addition, the PPL does not specifically regulate concession contracts which are awarded through a specific PPL procedure. However, there are exceptions for oil and gas concessions which are procured and awarded according to project specific laws <sup>For example, Law No. 155 of 1963 as amended by Law No. 172 of 2005 with regards to the concession agreement between the Egyptian General Petroleum Corporation and IPR Transoil Corporation in the Yidma/Alamein area.</sup> Since 2010, Public Private Partnerships (PPP) projects are regulated by PPP Law No. 67 of 2010.

Although the PPL provides a decentralised public procurement function, contracting entities are monitored and managed in their procurement decision by central government agencies. Currently monitoring is undertaken operationally and not governed by procedures, with central government agencies appointing representatives on tender evaluation committees. Notwithstanding the relationship between the agencies representing central government and its contracting authorities, currently there is no central purchasing body and no method of aggregating demand in procurement planning.

Egyptian PPL regulates the three phases of the public procurement process: pre-tendering, tendering, and post-tendering. However, the PPL does not regulate the post-tendering phase as robustly as the pre-tendering and tendering phases. For example, the PPL incorporates only minimal standards with regard to monitoring, contract management, payments, and completion dates. In the case of underperformance or late completion by a contractor,

the contracting entity can impose penalties, seek damages, and/or terminate or perform the contract at the expense of the contractor. Although the PPL requires the public entity to monitor the conformity of the materials supplied by the contractor with the published technical specifications <sup>Article 82 of the Law</sup>, the review highlighted that there is no independent authority that fulfils this function.

#### d. Eligibility rules

Egyptian PPL does not establish firm eligibility rules for participation in a public procurement exercise. However, primary eligibility criteria for contractors wishing to participate in public tender (clean criminal record, lack of bankruptcy, positive professional conduct) can be deduced from provisions setting out grounds for exclusion and termination of public procurement contracts. These eligibility rules include: non compliance with technical specifications; the contractor committed, personally or through a third party, fraud or manipulative practices in obtaining the contract; or the contractor has been declared bankrupt. In addition, the contractor can be excluded if the contract performance guarantee is not paid within 10 days of being informed of the contract award.

The PSA maintains a register ('black list') of contractors who are excluded from competing for public contracts due to non-performance in public contract delivery. The PPL includes regulations governing qualification criteria, with tenderers requested to demonstrate several attributes including: professional activity, technical capacity, economic and financial standing, and professional qualifications. Secondary laws stipulate that the information requested by the contracting entity in the tender documents to be 'descriptive of the technical specifications of the required supplies and financial capability of the tenderer'. Therefore all contractors will be required to prove compliance with the qualification criteria set out in the contract notice.

#### e. Procurement methods and procedures as prescribed by law

Egyptian PPL provides for various public procurement methods. These include:

- Open tender
- Open negotiation
- Restricted tender
- Local tender
- Restricted negotiation
- Direct agreement.

*Open tender* and *open negotiations* are the default procurement methods. The selection between these methods is discretionary, with no link to the value, scope or type of contract prescribed. Moreover, no justification is necessary with regard to the method chosen. In exceptional circumstances the contracting entity may apply any of the other four methods. However, in such cases prior approval of the supervising CA will be required <sup>Art. 8 of the PPL</sup>.

Egyptian PPL authorises *direct contracting* between public sector contracting entities. Contracting entities can enter into contracts with other contracting entities through *direct agreement* without following the established procurement procedures. In addition, contracting entities may represent other contracting entities in carrying out procurement procedures <sup>Art. 31 of the PPL</sup>. However, to enter into a contract through *direct agreement*, a contracting entity must obtain the approval of the supervising CA. For example:

- The head of a contracting entity can approve entering into contracts to purchase goods / services through *direct agreement* with a value up to **EUR 50,000**, and entering into contracts of works through *direct agreement* with a value up to **EUR 100,000**.
- The relevant minister or governor can approve entering into contracts through *direct agreement* to purchase goods / services with a value up to **EUR 100,000**, and entering into contracts of works through *direct agreement* with a value up to **EUR 300,000**.
- In cases of extreme urgency, the prime minister can approve entering into contracts through *direct agreement* to purchase goods/services and contracts of works with a value that exceeds **EUR 300,000**.

When entering into a contract through *direct agreement*, a tender bond is not required. However, a contract performance guarantee must be submitted by the public sector contractor.

#### f. Public procurement process regulation

Egyptian PPL makes endeavours to regulate the three phases of the public procurement process.

**Pre-tendering:** Egyptian PPL has been founded on the principles of fair competition and equal opportunity. Public tenders are prepared by contracting entities under the guidance of the supervising CA. Before launching a procurement process the PPL requires the contracting entity to submit a procurement plan to the supervising CA. The plan will specify the timescale and deadlines for the procurement exercise and the contract completion date. In addition, the PPL requires that tender documentation should be made available to the public with a minimum of 10 days to the submission deadline. This submission period can be shortened to 5 days if the contracting entity obtains approval from the supervising CA.

**Tendering:** Egyptian PPL prescribes in detail the procurement procedures for the tendering phase. Each contracting entity is required to select an appropriate procurement method and prepare the procurement procedure. Depending on the procurement method, a public notice is required or contractors are invited to participate. However, it is unclear from the review if publication of the notification on the government's online publication website is mandatory. In addition to the mandatory general eligibility check, the public procurement procedure can specify additional eligibility requirements. However, the review revealed that no prequalification procedures for contractors are in place. Moreover, in addition each contracting entity is obliged to describe the scope and terms of the procurement. Furthermore, the tender documents are not free of charge as a capped fee - the actual cost of preparing the tender documents plus 10 per cent <sup>Art 7 of the executive regulations</sup> - is payable to obtain the tender documentation from the contracting entity.

Tenders are required to be submitted by the submission deadline and opened the same day. Egyptian PPL sets out procurement procedures in which a technical evaluation of the bid is separated from the financial evaluation. Tenderers must submit their bids in two separate sealed envelopes: one envelope for the technical proposal, and one envelope for the financial proposal. In general, tenders are valid for a period of no more than three months,

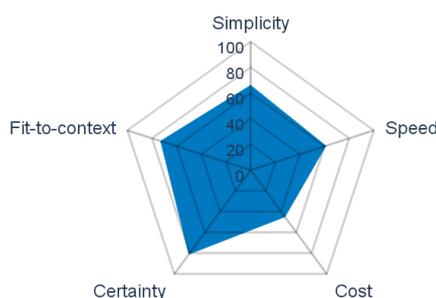
and the PPL requires the public entity to finalise the procurement process within this period. However, in the case of Egyptian PPL there are exceptions. Firstly, in cases of 'necessity' the PPL allows the public entity to set a period longer than 3 months. Unhelpfully, the PPL does not define what constitutes a 'case of necessity'. Secondly, in cases where the process will take longer than 3 months the PPL allows the contracting entity to request the tenderers to extend the validity of their offers<sup>Art. 14 of the PPL</sup>. In such cases, tenderers have the option to withdraw their offers.

Tenders are evaluated by tender evaluation committees [technical committee and financial committee] and awarded based on the tender evaluation criteria. Tenderers who fail in the technical evaluation are excluded from the financial evaluation. Decisions by the supervising CA to reject or approve the technical proposals must be published on a public board for a minimum of one week prior to the date that the financial proposals will be opened. This allows unsuccessful tenderers an opportunity to challenge the technical evaluation decision. Evaluation committees are permitted to recommend the cancellation of the tender process. However, this can only be undertaken if there are no responsive technical proposals identified in the technical evaluation, or if all submitted tenders exceed the estimated value of the contract<sup>Art. 15 of the PPL</sup>.

**Post-tendering:** The procurement plan and contract schedule provide a basis for the management of public contracts. For public contracts that require more than 6 months to complete, the contracting entity should review, and if necessary, amend the contract every three months to reflect any increase or decrease in prices through the contracts inflation / deflation clause. In all cases the contracting entity has the right to unilaterally change the value of the contract at any time by up to 25 per cent without reimbursing the contractor. Egyptian PPL requires the public entity to monitor the conformity of the goods and services supplied. The contracting entity inspecting committee checks the goods supplied to confirm compliance with the contract specification. Unfortunately, the results of the review were inconclusive concerning whether the contract specification is required to reflect the original tender proposal suggesting a gap in the contract management framework.

In construction contracts, the PPL requires the architect/ engineer acting on behalf of the contracting entity to measure the materials used by contractors during delivery of the contract. If any subsequent additional order includes items which were priced in the contract, the price contained in the contract will apply if the amount or volume of the varied works is not more than 25 per cent of the relevant items. If agreed with the contractor, the public entity may, in case of necessity, issue additional orders which exceed 25 per cent of the amount or volume of the relevant item in the contract. In all cases, the supervising CA must approve any amendment or extension to the contract. The amendment must be negotiated and signed during the duration of the original contract and its results cannot lead to altering the tender results. However, contracting entities are not allowed to propose amendments which would result in the selection of another contractor in the original bidding process.

**Chart 3: Egypt - Efficiency of regulation of the public procurement process (average scores for key LEC indicators)**



**Note:** The chart presents the average scores for the key Legal Efficiency Concept benchmark indicators for efficiency of regulation of the public procurement process. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisers. Total scores are presented as a percentage with 100 per cent representing the optimal score for each Legal Efficiency Concept benchmark indicator.

**Source:** 2012 SEMED Public Procurement Assessment

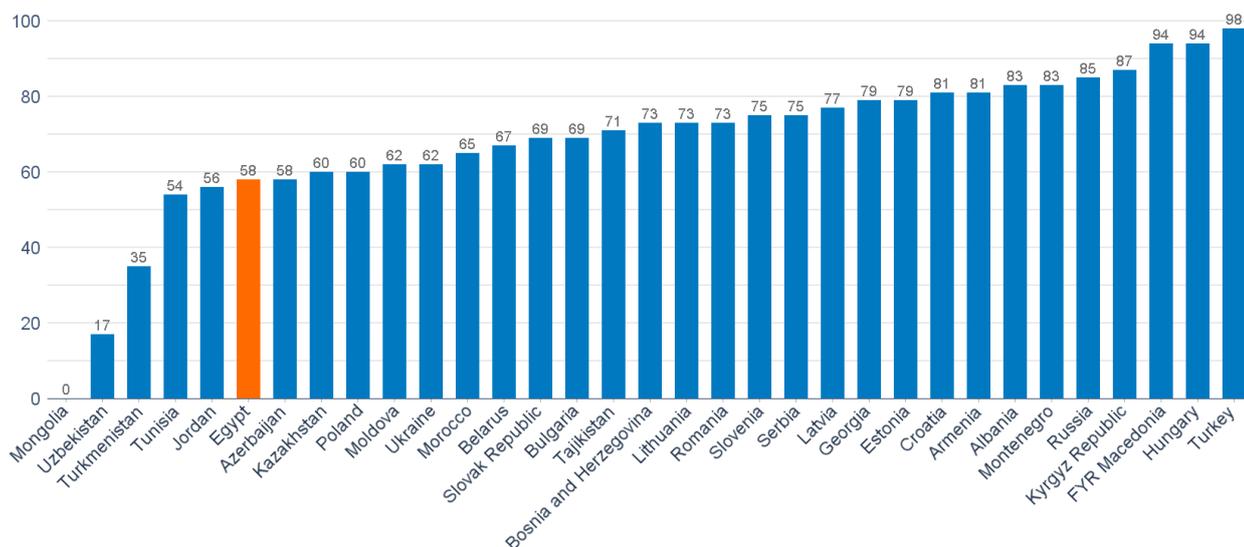
**Chart 3** presents the scores for efficiency of regulation of the public procurement process benchmarked against the key Legal Efficiency Concept Benchmark indicators. The chart shows that fit-to-context and certainty scored high compliance, while simplicity and speed scored medium compliance. Cost achieved a very low compliance which is the result of the tender documents not being free of charge.

### g. National review and remedies mechanisms for complaints related to public procurement

Egyptian PPL does not provide for a dedicated review and remedies mechanisms ensuring procedural fairness or judicial review. The review discovered that public procurement complaints are reviewed by administrative means. Complaints may be lodged in the case of a contracting entity breaching the PPL, and thus infringing the tenderer's rights. Complaints are submitted to the PCO, which reviews the complaint(s) and provides a recommendation on how the complaint(s) should be treated within 7 days. However, the PCO does not decide on the complaint. The final review decision is taken by the supervising CA. During the review procedure complainants are not heard, and complainants cannot request to examine the procurement records. Egyptian PPL does not specify any review fees to be paid by the complainants.

**Chart 4** presents the results for the quality of public procurement review and remedies legislation as compared to countries in the EBRD region. The Egyptian laws have been benchmarked against key requirements of the Core Principles for enforceability of public procurement laws, based on international standards for public procurement review of the UNCITRAL and the WTO GPA. Egyptian PPL scored low compliance (58 per cent) for the quality of its public procurement review and remedies legislation. This places Egypt in the lowest quartile compared to other countries in the EBRD region 2 percentage points above Jordan, level with Azerbaijan and a full 30 percentage points behind the top scoring country Hungary. This low score can be partly attributed to the fact that Egyptian PPL does not provide for a dedicated independent review and remedies mechanism.

Chart 4: Egypt - Quality of public procurement review and remedies legislation as compared to countries in the EBRD region



**Note:** The chart presents the scores for the quality of public procurement review and remedies legislation as compared to countries in the EBRD region. The laws have been benchmarked against key requirements of the EBRD Core Principles for enforceability of public procurement laws. The scores have been calculated on the basis of a checklist on remedies procedures and answered by local legal advisors. Total scores are presented as a percentage with 100 per cent representing the highest performance in the Legal Efficiency Concept benchmark indicators.

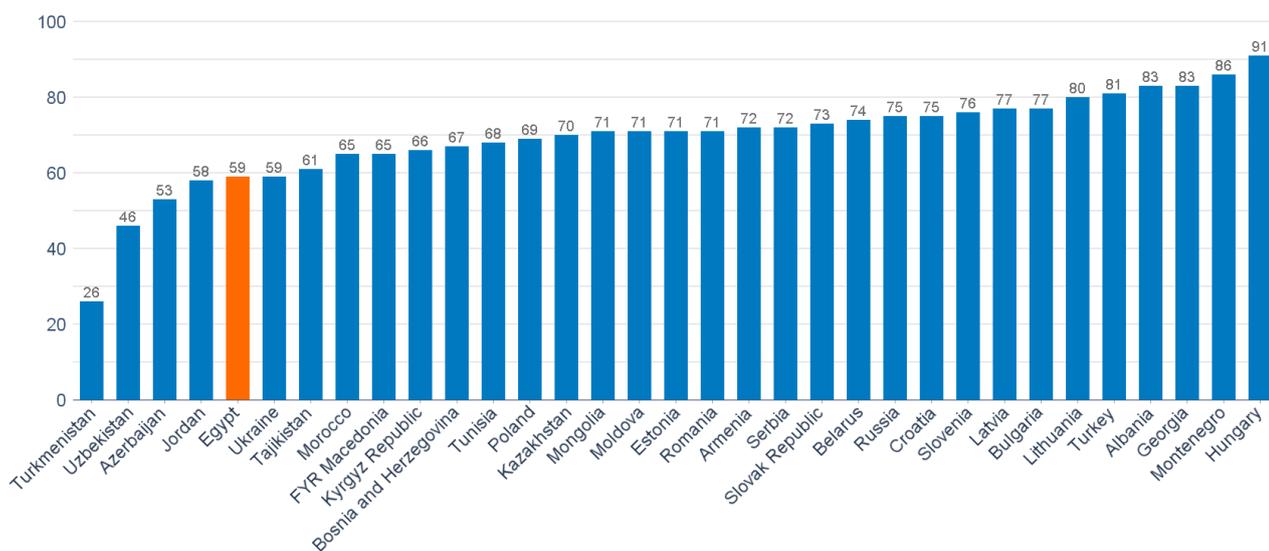
**Source:** 2012 SEMED Public Procurement Assessment

Given that the review process in Egypt is fully administrative and not judicial, tenderers unsatisfied with the administrative review decision can refer their complaint to the Administrative Court (AC). The AC decides on the appeal following the standard administrative procedure, with no standstill period applying. Based on the general rules of administrative law tenderers may appeal a review decision to the AC, challenge a contract award decision, request the court to suspend a contract award decision, or prove that loss has been sustained from a breach by the selected tenderer (i.e. fraud or corruption) or by the public entity (i.e. infringement of the PPL rules). In addition, the tenderer can also claim compensation. In Egypt there are no capped fees for procurement procedures, and although the costs of judicial procedures and legal fees vary from case to case they are considered to be reasonable. However, courts in Egypt are slow, with the judicial process lengthy. This results in the final decision on a complaint normally being obtained well after the contract has been awarded. If a complaint has been submitted after the public contract has been awarded to a specific supplier, the dispute between this supplier and the contracting entity is also decided by the AC not the Commercial Court.

## Assessment overview

Chart 5 presents the results for the core quality of the national legal framework as compared to countries in the EBRD region. The chart illustrates that Egyptian PPL achieved low compliance (59 per cent) for the quality of its public procurement legal framework. This places Egypt in the lowest quartile compared to other countries in the EBRD region 1 percentage point above Jordan, level with Ukraine, and a full 32 percentage points below the top placed country Hungary.

Chart 5: Egypt - Quality of national legal framework as compared to countries in the EBRD region



**Note:** The chart presents the scores for the quality of the national legal framework (law on the books) as compared to countries in the EBRD region. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisors. Total scores are presented as a percentage with 100 per cent representing the highest performance in the Legal Efficiency Concept benchmark indicators.

**Source:** 2012 SEMED Public Procurement Assessment

In addition, the review highlighted several strengths, weaknesses, opportunities and regulatory risks regarding Egyptian PPL. These include:

### Strengths

The review highlighted several strengths regarding the legislative framework. For example, the review revealed that Egyptian PPL promotes fair competition and achieves simplicity by striking a reasonable balance between a user-friendly approach and the sophistication required by legal advisors and businesses. In addition the PPL promotes proportionality ensuring the formality of procedures reflects the scope and size of the contract. Moreover, efficiency of the process is promoted through adaption of institutions to fit the local environment.

### Weaknesses

The review unearthed several weaknesses regarding the legislative framework. For example, there are issues with regard to transparency, integrity and certainty of the public procurement process. In addition, the lack of a dedicated review and remedies mechanism places doubt on whether certainty can be achieved in enforcement of public procurement law. Moreover, the current procurement procedures do not reflect the scope and size of the contract and as a result of the current levels of bureaucracy reduce proportionality, simplicity and speed, and increase participation costs.

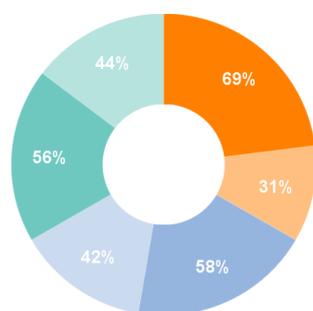
### Opportunities

The review highlighted several opportunities for reform. For example, the PPL should encourage the use of e-Procurement to increase levels of transparency and speed and reduce the costs of undertaking the procurement process. In addition the PPL should develop a dedicated review and remedies mechanism accompanied by independent national regulatory agencies to achieve enforceability and certainty.

### Risks

Throughout the review several regulatory risks were identified. For example, there is currently a lack of transparency and integrity regarding the public procurement processes combined with an ineffective monitoring and review mechanism. In addition, the lack of a code of ethics for public procurement officers highlights risks regarding integrity, transparency and certainty.

**Chart 6: Egypt - Public procurement policies on the books (transparency safeguards, efficiency instruments, and institutional and enforcement measures)**



- Integrity Safeguards
- Regulatory Gap in adopting transparency safeguards
- Efficiency Instruments
- Regulatory Gap in adopting efficiency instruments
- Institutional and Enforcement Capacity
- Regulatory Gap in adopting appropriate institutional and enforcement framework

**Note:** The chart presents the results of the assessment of public procurement policies on the books in three fundamental evaluation categories (transparency safeguards, efficiency instruments, and institutional and enforcement measures). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisers. Total scores are presented as a percentage with 100 per cent (one third of the pie chart) representing the optimal score for each evaluation category. A regulatory gap, the difference between the assessment results and the benchmark, is marked in light orange, light blue and light green respectively.

**Source:** 2012 SEMED Public Procurement Assessment

**Chart 6** presents the results of the assessment of public procurement policies on the books. The assessment scores highlight significant regulatory gaps in all three fundamental evaluation categories. For example, integrity safeguards (31 per cent), efficiency instruments (42 per cent), and institutional and enforcement capacity (44 per cent). These results reveal that both the PPL and institutional and enforcement capacity needs to be strengthened and modernised to comply with modern public procurement practice.

## II. Local Public Procurement Practice Review Summary

### a. Legal framework in practice

Local public procurement practitioners interviewed as part of the survey of local procurement practice consider the national public procurement legal framework to be unclear, not comprehensive, and not conducive to a competitive procurement environment. However, only limited attempts have been made by contracting entities to supplement the existing PPL with internal procurement policies and regulations. The survey revealed that the existing PPL is inflexible and creates difficulties in its application in practice. Due to the disciplinary sanctions against public officials, the PPL is strictly, literally followed and the lowest priced tender accepted. Although there are official guidelines on good practice and the correct application of procurement rules, in practice up-to-date guidelines are not available to contracting entities and contractors. Local respondents participating in the assessment suggested that in addition Tender Law regulation and the guidelines should be published on the MoF website. However, the assessment was inconclusive as to the reason why recent regulations and guidelines were not available. The survey highlighted that the latest review decisions and guidelines on the MoF website were dated 2008. Practitioners also reported that there is no policy in relation to providing regular professional training for procurement officers and technical specialists.

**Chart 7** presents the scores for the quality of local public procurement practice for state and utilities procurement. On average, Egyptian contracting entities scored a compliance rate of 72 per cent for the Core Principles Benchmark indicators. In the survey, local procurement practice scored high compliance (83 per cent) for the accountability indicator. A medium compliance was achieved for the transparency, efficiency, proportionality, uniformity, and flexibility indicators. A low compliance score was achieved for the competition, integrity and efficiency indicators.

**Chart 7: Egypt - Quality of local procurement practice**



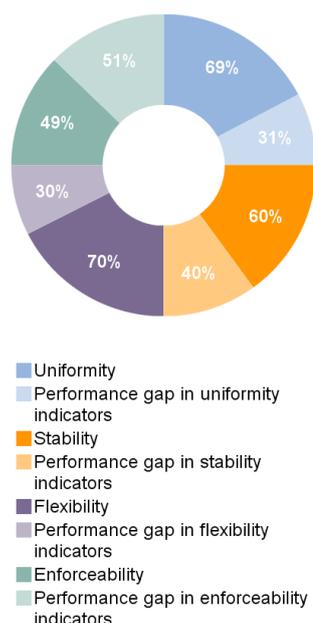
**Note:** The chart presents the scores for the quality of local procurement practice for each Core Principles indicator. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

**Source:** 2012 SEMED Public Procurement Assessment

### b. Institutional framework in practice

**Chart 8** presents the scores for the public procurement institutional and enforcement framework in practice for the uniformity, stability, flexibility and enforceability indicators. A low compliance highlighted that regardless of the supervision of central government, compliance with PPL rules is in practice poor. The assessment scores revealed performance gaps in the uniformity indicators (31 per cent), the stability indicators (40 per cent), the flexibility indicators (30 per cent), and the enforceability indicators (51 per cent). These performance gaps are because contracting entities lack procurement capacity and apply rules or guidelines which are no longer in force. In addition, there is no clarity as to which public procurement authorities are responsible for ensuring uniform standards, developing good practices, and training procurement staff for public sector procurement.

**Chart 8: Egypt - Public procurement institutional and enforcement framework in practice**



**Note:** The chart presents the scores for the public procurement institutional and enforcement framework in practice. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage with 100 per cent (one quarter of the pie chart) representing the optimal score for each of the four institutional and enforcement measures. A performance gap, the difference between the results of the survey of local practice and the benchmark, is marked in light blue, light orange, light purple and light green respectively.

**Source:** 2012 SEMED Public Procurement Assessment

### c. Scope of regulation in practice

The survey of local practice confirmed that Egyptian PPL covers only government procurement. Interviewees revealed that contracting entities in the utilities sector apply their own individual procurement procedures. Although these procedures are modelled on the PPL, they are adapted to fit the specificity of the commercial needs of the sector. With no mandatory application by law, it is often the case that the PPL is followed by state-owned companies voluntarily. In addition, the survey highlighted that the internal procurement procedures of state-owned companies are substantially the same as the PPL's policies and procedures. Moreover, Egyptian PPL is not explicit in relation to concession contracts, creating problems in practice for contracting entities.

### d. Application of eligibility rules

In practice Egyptian contracting entities apply mandatory general eligibility rules, and establish qualification criteria which includes: expertise, experience, and performance history. The contracting entities requirements are generally included in the tender documents. In addition, the survey revealed that there are no rules regarding conflict of interest in competing for public contracts. This is because all affiliates of the contracting entity, as long as they remain in public ownership, are not required to tender as they can obtain contracts through *direct contracting*. Moreover, in addition to general public procurement eligibility rules and individually specified qualification requirements, each public entity keeps registers of pre-qualified and blacklisted suppliers and contractors. Regrettably, these registers are not easily accessible or available electronically.

### e. Procurement methods and procedures as applied by contracting entities

Based on the survey of local practice contracting entities favour *open tender*, *open negotiations* and *direct contracting* procurement methods. The selection of *direct contracting* requires authorisation from the supervising CA, with the survey confirming that in practice this obligation is followed. The survey revealed that there are standard tender documents for several contract types. However, in practice their use is not mandatory. In addition, there are no guidelines on how to provide a good description of the contracting entities needs in the tender documents. Consequently, tender documents frequently include unclear technical specifications and financial requirements.

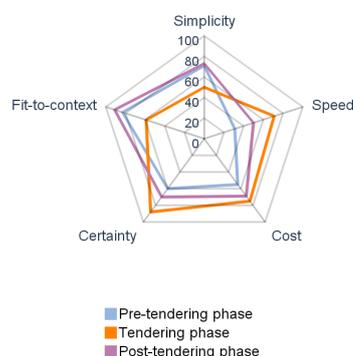
Due to the structured approach to the evaluation of technical proposals, and with no requirement to respond to the tenderer, procurement officers strictly follow the law and exclude tenders because of minor irregularities. In practice tenderers are frequently excluded if their offers do not exactly comply with the technical specification published in the tender documents. Because this practice is common, contracting entities suggest the need to adopt legislation that will allow bidders to rectify minor irregularities in their technical offers. Since the technical evaluation is separated from the financial evaluation, the current practice may lead to numerous missed opportunities to contract with a wider range of potential contractors specifically micro, small and medium sized enterprises.

### f. Efficiency of the procurement process regulatory framework in practice

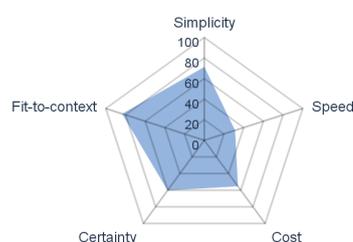
**Charts 9A - 9D** presents the assessment results for efficiency of the public procurement process in practice in the pre-tendering, tendering and post-tendering phases of the public procurement process. The efficiency of local practice for each procurement phase has been assessed against the

five key indicators [simplicity, speed, cost, certainty, fit-to context] of the Legal Efficiency Concept. The survey highlighted that in practice the existing methods of communication and submission requires upgrading. The survey revealed that Egyptian PPL does not allow for the employment of e-commerce to support the public procurement process. Moreover, contracting entities' reported a need to adopt new legislation that promotes electronic communication enabling the submission of tenders online.

**Chart 9A: Egypt - Efficiency of public procurement process in practice**



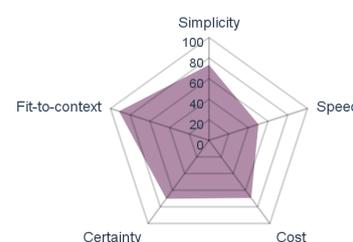
**Chart 9B: Egypt - Public procurement process in practice (pre-tendering phase)**



**Chart 9C: Egypt - Public procurement process in practice (tendering phase)**



**Chart 9D: Egypt - Public procurement process in practice (post-tendering phase)**



**Note:** The charts present the average scores for the five Legal Efficiency Concept benchmark indicators for efficiency of the public procurement process in practice in the pre-tendering, tendering, and post-tendering stage of the public procurement process. **Chart 9B** presents the assessment scores for efficiency of local procurement practice in the pre-tendering stage of the public procurement process. **Chart 9C** presents the assessment scores for efficiency of the local procurement practice in the tendering stage of the public procurement process. **Chart 9D** presents the assessment scores for efficiency of the local procurement practice in the post-tendering stage of the public procurement process. The scores have been calculated on the basis of a practice questionnaire based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage with 100 per cent representing the optimal score for each Legal Efficiency Concept benchmark indicator.

**Source:** 2012 SEMED Public Procurement Assessment

**Pre-tendering phase:** Each contracting entity prepares an annual procurement plan. However, in practice, the content of the plan may be amended during the budget year. Egyptian PPL prohibits dividing the required supplies or services into several contracts to avoid the application of the tender procedures or CA authorisation. However, in practice this frequently takes place. In Egypt tender documents are typically only available in Arabic. However, in the case of international tenders for major projects an English translation is provided. Egyptian PPL does not prohibit the use of international standard contract forms such as FIDIC, which can be used by contracting entities for all types of public contracts. However, there are no mandatory standard tender documents. Every contracting entity prepares descriptive tender documents, which lists the technical specifications of the required supplies / services when applying for approval from the relevant CA.

Egyptian PPL requires the contracting entity to seek budget authorisation before applying for approval to launch the public procurement process. The contracting entity is required to provide a sample of contract terms and conditions as part of the tender documents. Although the PCA circulates standard contracts templates, their use is not mandatory. Therefore, they are not consistently used in practice, even if they are suitable for standard small and medium size tenders. Based on the contracting entities' report, pre-tendering procedures are sufficiently regulated and perceived as well aligned with the contracting entities' needs. Procurement planning procedures are regular and familiar to contracting entities. However these procedures are perceived to be slow and costly, which impacts the scores for efficiency during the pre-tendering stage.

**Tendering:** Contracting entities strictly follow deadlines set out in the PPL. Tenders are announced at least 10 days prior to the submission deadlines. However, this period can be shortened to 5 days in cases of urgency or emergency. While the law requires the contracting entity to publish tender notices within a certain deadline in two widely read newspapers, there is no deadline for posting tender notices on the central governmental procurement website [Prime Minister decree 33/2010](#). Contracting entities usually finalise the procurement process within the original tender validity period. The survey highlighted that certain procurement procedures are not regulated by the PPL but are still used in practice. For instance, although the pre-qualification procedures are not regulated by the PPL, such procedures are used in practice and viewed as an enhancement to the tendering process. Moreover, the survey discovered that in practice, pre-qualification procedures only take place for major projects. Similarly, in principle, the evaluation committee must award the contract to the qualified tenderer with the lowest bid. However, in some cases a 'points system' is used which allows the evaluation committee to evaluate and score all aspects of the proposal.

Decisions by the CA to reject or approve technical bids must be reasoned and announced on a public board for a minimum of one week before notifying the bidders with the date of opening the financial bids. However, the PPL does not require their publication. In practice, if the financial evaluation committee recommends the cancellation of a tender because all of the submitted proposals exceed the estimated value of the contract, the contracting entity generally applies and usually obtains the approval of the CA to initiate a new tender process. In sum, the survey of local practice highlighted that the tendering procedures were reported as well prescribed but too complicated for both contracting entities and contractors. In particular, marks for

simplicity of the procedure and its alignment with contracting entities' business needs were recorded as medium to low, with the tendering process described as complex. In addition, positive reports were recorded on the speed and predictability of the decision making process. Moreover, participating in a public tender exercise was also not cost prohibitive. However, due to a very formal approach to the evaluation of tenders, specialist skills are required to submit offers which will pass the technical evaluation.

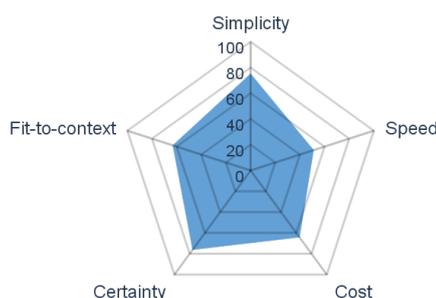
**Post-tendering process:** In practice contracting entities adhere to contract monitoring requirements stipulated by the PPL. However, contracting entities do not consider the management of contracts as an essential administration function, but as a part of an enforced bureaucracy regime. Therefore, not all procurement and contract management staff are trained to competently undertake a robust monitoring and contract management regime. The survey highlighted that the post-tendering procedures were reported in the survey of local practice to be simple, well established, and easy to follow. However, the survey highlighted that public contracts are not always completed on schedule and generally not completed within the original contract price. This suggests that the actual contract management taking place is not robust or effective. This may also imply that the post-tendering phase regulation enables reporting, but remains in fact under-regulated from a value-for-money perspective.

### g. Efficiency of the national review and remedies system in practice

Egyptian public procurement review and remedies procedures are complex and ineffective. The survey highlighted that the review and remedies procedures are biased against private suppliers, and not always non-discriminatory. However, based on the reports of local practitioners, the government bodies involved in the review of public procurement procedures were perceived not to be corrupt. In addition, the survey highlighted a number of major practice shortcomings regarding the national review and remedies system. For example, procurement recording is frequently post factum and procurement reports, if fully disclosed to the review bodies, are not always reliable. Moreover, due to the lengthy judicial process at the AC there are no actual remedies applied. Furthermore, obtaining a final review decision may take years and will very seldom occur when the procurement is in progress.

**Chart 10** presents the survey results for the efficiency of the public procurement review and remedies procedures in practice. The survey assessed the five Legal Efficiency Concept indicators with the simplicity and certainty indicators achieving high compliance, the fit-to-context indicator medium compliance, and the cost and speed indicators low compliance. In general, the current review and remedies procedures were assessed as lacking in comparison to accepted international standards. In addition, private sector suppliers competing for public contracts are not provided with sufficient and effective protection, and do not benefit from procedural fairness instruments in the public procurement review procedures.

**Chart 10: Egypt - Efficiency of public procurement review and remedies in practice**



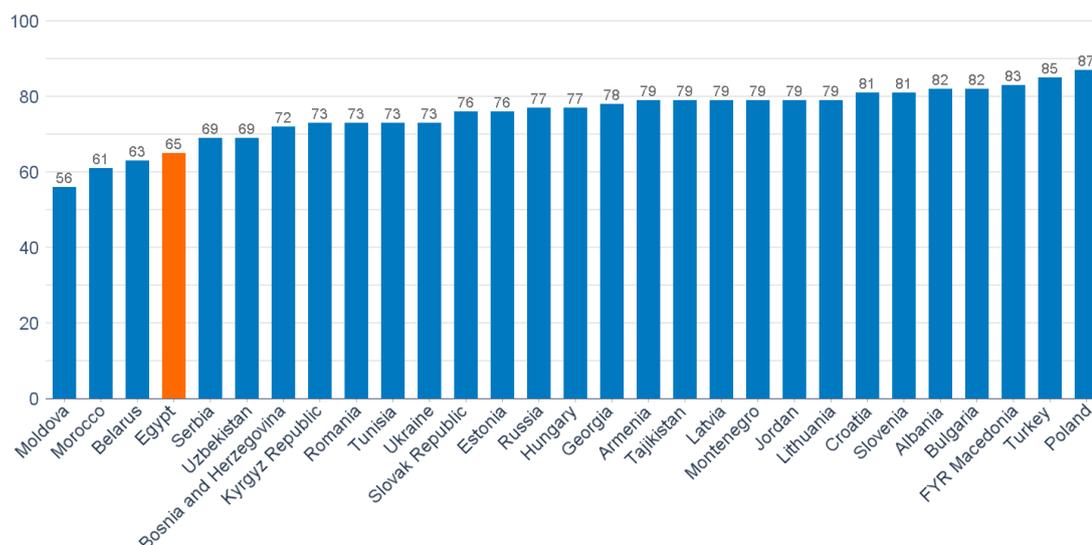
**Note:** The chart presents the average scores for the five Legal Efficiency Concept benchmark indicators for efficiency of the public procurement review and remedies procedures in practice. The scores have been calculated on the basis of a checklist on remedies procedures and case studies answered by local legal advisors. Total scores are presented as a percentage with 100 per cent representing the highest performance in the Legal Efficiency Concept indicators, equivalent to full compliance with the Legal Efficiency Concept benchmark.

**Source:** 2012 SEMED Public Procurement Assessment

### Assessment overview

**Chart 11** presents the assessment results for the quality of the Egyptian local procurement practice as compared to countries in the EBRD region. Egypt scored 65 per cent (medium compliance) for the quality of its local procurement practice. This places Egypt in the lowest quartile 2 percentage points above Belarus, 4 percentage points below Serbia, and a full 22 percentage points behind Poland the top placed country.

Chart 11: Egypt - Quality of local procurement practice as compared to countries in the EBRD region



**Note:** The chart presents the scores for the quality of local procurement practice as compared to countries in the EBRD region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles benchmark for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage with 100 per cent representing the optimal score.

**Source:** 2012 SEMED Public Procurement Assessment

In addition, the survey highlighted several strengths, weaknesses, opportunities and risks regarding the legal framework in practice. These include:

### Strengths

The survey highlighted several strengths. For example, strict accountability is promoted in practice across the procurement process. In addition, procurement practitioners enforce the PPL with precision achieving transparency and certainty.

### Weaknesses

The review unearthed several weaknesses. For example, inefficiencies in the procurement process has resulted in the achievement of poor value-for-money and has negatively impacted the cost and economy of participation and administration of the procurement process. In addition, implementation problems exist highlighted by a lack of transparency in the procurement process. There are flexibility concerns regarding the PPL which requires the development of appropriate secondary and tertiary legislation to accommodate the changing market. Moreover, the survey highlighted enforceability concerns regarding an ineffective review and remedies system, which provides little or no certainty regarding decisions following complaints by private sector suppliers. Issues concerning transparency were highlighted regarding the minimal use of electronic methods of procurement and the non-availability of procurement documentation and records. Furthermore, integrity of the procurement process could be at risk as pay levels and training for procurement officers are not addressed in the PPL impacting speed, cost and certainty.

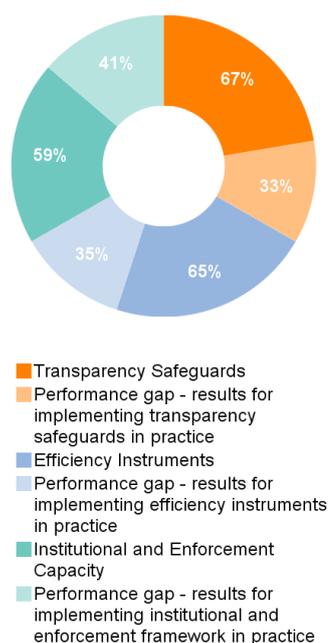
### Opportunities

The survey highlighted several opportunities for regulatory reform. For example, there is an opportunity to advance improvement towards a greater awareness of economy of the process positively impacting the speed and cost of the procurement process. Moreover, a more flexible PPL capable of accommodating the market through the development of secondary and tertiary legislation, and the promotion of institutions that are adapted to the economic, social and legal context of the market.

### Risks

The survey highlighted several regulatory risks regarding the implementation of the PPL in practice. For example, there are issues regarding efficiency with the requirement to achieve value-for-money across all stages of the procurement process. In addition, it is important that contracting entities promote accountability through effective management of all three phases of the procurement process ensuring certainty.

**Chart 12: Egypt - Public procurement policies in practice (transparency safeguards, efficiency instruments, and institutional and enforcement measures)**



**Note:** The chart presents the scores of the survey of public procurement policies in practice in three fundamental evaluation categories (transparency safeguards, efficiency instruments, and institutional and enforcement measures). The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage with 100 per cent (one third of the pie chart) representing the optimal score for each evaluation category. A performance gap, the difference between the results of the survey of local practice and the benchmark, is marked in light orange, light blue and light green respectively.

**Source:** 2012 SEMED Public Procurement Assessment

**Chart 12** presents the results of the assessment for public procurement policies in practice. The survey revealed implementation gaps in the transparency safeguards (33 per cent), efficiency instruments (35 per cent), and the institutional and enforcement measures (41 per cent). These scores and the resultant implementation gaps suggest that even if the PPL does not set high standards, these standards are not achieved in practice.

### III. Conclusions and recommendations

#### Overview

The current Egyptian public procurement legislative framework is outdated and requires upgrading. In addition, the framework does not comply with international standards of public procurement best practice. Moreover, the PPL does not incorporate regulatory features recommended by current procurement standards, and does not ensure efficiency of public spending or facilitate economic development.

In the assessment Egypt scored on average low to medium compliance with the Core Principles Benchmark. This is below the average for the EBRD region. Regrettably, laws adopted in 2010 did not modernise the system, and for the most part these laws are neither implemented nor enforced. In addition, the Egyptian public procurement institutional framework lacks modern administration qualities. Put differently, it is complex, bureaucratic and unfriendly to private sector contractors. Furthermore, there is no independent regulatory authority or remedies body, and no effective public procurement review mechanism.

Although the PPL is uniform and comprehensive, it incorporates standards no longer facilitating economy and efficiency of public contracts. It is positive that *open tenders* are the default procurement method, but extensive use of *direct contracting* negates efforts to achieve effective competition. In addition, there are no modern procurement procedures suitable for different contract types. Moreover, the PPL does not provide for electronic communication, and current procedures do not ensure transparency of procurement decisions.

In sum, the public procurement process is overregulated, procurement policies and procedures are underdeveloped, objectives are unclear, with the law on the books and law in practice lacking compliance with current international standards and best practice in public procurement.

#### Conclusions

**Unsatisfactory transparency safeguards:** The current policy of monitoring procurement decisions has resulted in the achievement of medium levels of accountability. However, the Egyptian case clearly demonstrates that any monitoring regime must be fully aligned with the required measures to ensure transparency. For example, the promotion of measures to prevent collusion. If the monitoring regime is not fully aligned with the anti-corruption measures, no improvement regarding integrity of the procurement process will be achieved. The results will include poor delivery of government policy and the non-achievement of value for money. Overall, integrity safeguards were assessed as mediocre with the assessment identifying a substantial regulatory gap in this area. Moreover, the transparency safeguards currently in place are slightly better 'on the books' rather than in practice. That said, the survey identified major implementation problems regarding local procurement practice.

**Insufficient efficiency instruments:** Egyptian PPL make endeavours to achieve fair competition in public tenders. However, in the assessment competition instruments were assessed as just satisfactory. The survey of local procurement practice discovered that the actual application of the competition principle is inadequate, and the level of competition in public tenders is very low. This is evidenced by the limited number of bids per tender and the large number of cancelled tenders. This low level of competition is clearly linked to underdeveloped transparency measures. The assessment also discovered that contracting entities apply only minimal standards with regard to transparency, with no evidence regarding the development of internal procurement policies and procedures to increase transparency of procurement decision-making. Limited information about procurement opportunities and the use of direct contracting has directly contributed to the low levels of competition in practice. In terms of economy of the process contracting entities were found to apply in practice higher standards than that required by law, with the survey of local practice recording higher marks than in the legislative review.

Furthermore, contracting entities are conscious of cost with the lowest priced tender most frequently selected. There is limited evidence of aiming to achieve value for money, and in terms of ensuring efficiency of public tenders there has been little advancement. What is evident is that the current high level of central administrative control does not result in higher levels of compliance. In addition, the high level of central control does not significantly increase the score for accountability of contracting entities. For example, although the PPL focuses on monitoring contracting entities, it does not provide sufficient protection to private sector suppliers and contractors. This is evident as requests for reconsiderations are infrequently used, which implies a low degree of trust from local businesses and effectiveness of the review process in practice. In addition, no independent remedies mechanism is provided, and as a result a high regulatory and performance gap has been identified regarding the enforceability indicators. Overall, legal protection for suppliers and contractors is very low, and the implementation of existing standards is not uniform. This has resulted in contracting entities scoring only low compliance combined with low performance of these indicators in practice.

**Regulatory and performance gaps:** The assessment results suggest that the Egyptian PPL does not provide an adequate basis for modern public procurement practice. The assessment discovered numerous inconsistencies between the legal framework and local public procurement practice. These inconsistencies include the implementation of inadequate transparency safeguards and the lack of robust enforcement instruments. These inconsistencies have resulted in the identification and advancement of unacceptable levels of risk regarding the procurement, contracting and execution of publically administered projects. Moreover, the assessment identified several areas which require immediate improvement. For example, the legislative framework is outdated and does not comply with regulatory standards recommended by international best practice. In particular, the PPL is not compliant with the WTO GPA standards as it allows for domestic preferences and does not make endeavours to promote fair competition. Moreover, in the survey of local procurement practice contracting entities evaluated in the assessment scored only low to medium compliance for their procurement practice. The survey discovered that local procurement practice is over bureaucratic and highly inefficient. This implies significant procurement capacity problems. Despite several levels of administrative control there is little accountability and tenuous enforcement of compliance with the PPL. Moreover, despite the stability of the primary legislation - which was adopted in 1998 - implementation problems were reported regarding the lack of secondary legislation. The assessment highlighted that the required secondary legislation has not been developed to successfully implement the legal framework in practice. Furthermore, the assessment identified that there is limited availability of procurement guidelines for tender preparation, conducting procurement procedures and undertaking contract monitoring and auditing. Since contract performance monitoring is not mandatory by law, contracting entities seldom voluntarily establish and implement any contract administration regime.

Chart 13 presents the regulatory and performance gaps identified in the assessment of public procurement laws and practice.

**Chart 13: Egypt - Regulatory and performance gaps identified in the assessment of public procurement laws and practice**



**Note:** The chart presents the scores for the regulatory gaps identified in the review of public procurement legislation, and the performance gaps identified in the survey of local procurement practice for each Core Principles benchmark indicator. The regulatory gap is marked in light blue, while the performance gap is marked in dark blue. The implementation gap (the percentage difference between the higher scoring regulatory gap and the lower scoring performance gap) highlights issues regarding the implementation of public procurement legislation in practice. The wider the percentage performance gap the greater the issues regarding the implementation of public procurement legislation.

**Source:** 2012 SEMED Public Procurement Assessment

## Main policy recommendations

- **The Egyptian public procurement legal framework requires updating.** The development and implementation of modern public procurement policies compliant with the 2012 WTO GPA standards will impact positively the levels of transparency, economy and efficiency achieved by public procurement procedures. Greater accountability and integrity regarding the planning and execution of government contracts will increase the perception of fair trade by local businesses and enterprises. This in turn will result in higher levels of participation in public tenders, since low participation in tenders is a serious problem in Egypt and may increase supplier diversity.

- **Greater transparency safeguards need to be adopted.** Anticorruption instruments should be stronger and recognised as an integral part of government public procurement policy. Greater levels of transparency regarding procurement opportunities combined with better access to information on public tenders for local businesses and enterprises as well as public procurement decisions of contracting entities in public sector will result in a larger and more diverse supplier community. This in turn will contribute to a more enhanced economy in the country.
- **The Egyptian legal framework should incorporate modern procurement methods based on electronic communication.** There is an urgent need to introduce eProcurement tools which will contribute to the modernisation and simplification of public procurement procedures. eProcurement solutions if applied correctly reduce procurement transaction costs for both contracting entities and local businesses, while at the same time increase transparency and accountability of public procurement procedures.
- **Dedicated public procurement policies should be used to facilitate economic development.** The introduction of simplified procedures for small value contracts will encourage the participation of local SMEs in public tenders. This will contribute to economic development at a sub-regional, regional and national level.
- **New legal instruments promoting sustainability should be developed and implemented.** The government should utilise public tenders to implement environmental and social policy relevant for public projects.
- **The public procurement policy review should focus on ensuring operational ability.** New procurement policies, supported by modern ICT tools, should be developed to ensure a level of operational ability necessary for modern governments. Good implementation of procurement regulations is essential to achieving policy objectives as recommended by WTO GPA standards.