

Country Profile



I. Public Procurement Legislation Review Summary

a. Legislative framework

Public procurement in Morocco is regulated by Decree N° 2-06-388 dated 5th February 2007 related to public procurement legislation (PPL), and secondary legislation: Prime Minister Decisions ^{For example Prime Minister Decision N° 3-70-07 dated on September 18, 2007 detailing furnishing contracts not submitted to PPL}, and Ministers Decisions ^{For example Decision of Ministry of Finance N° 1291-07 dated on 4th July 2007 establishing costs of obtaining copies of plans and technical documents for tender participation}. Although Moroccan PPL is based on the principles of fair competition, it does allow for domestic preferences ^{A price preference of up to 15 per cent for Moroccan tenders}.

Moroccan PPL aims to regulate all three phases of the public procurement process: pre-tendering, tendering, and post-tendering. However the review highlighted that the PPL does not regulate the post-tendering phase as robustly as the tendering phase of the public procurement process. In addition, the PPL does not require the contract terms and conditions to be fair and balanced or reflect best business practice. However, the PPL is stable and local business stakeholders are provided with sufficient time to learn the skills necessary to prepare tenders and compete for public contracts.

On average Moroccan PPL scored 69 per cent (medium compliance) compared with other EBRD countries of operations on the quality of its public procurement legal framework. **Chart 1** presents the scores for the quality of the public procurement legal framework for each Core Principles indicator. In the review the PPL scored high compliance in the competition (85 per cent), proportionality (80 per cent), and stability (87 per cent) indicators, medium compliance in the accountability (62 per cent), transparency (60 per cent), efficiency (67 per cent), uniformity (62 per cent), enforceability (60 per cent) and flexibility (70 per cent) indicators, and low compliance in the economy (52 per cent) indicator, and very low compliance in the integrity (47 per cent) indicator. The review revealed that the low scores were because Moroccan PPL does not provide mandatory standard tender documentation and public contracts standard terms and conditions and insufficient measures to limit the scope of undue influence while conducting public procurement procedures.

Chart 1: Morocco - Quality of public procurement legal framework



Note: The chart presents the scores for the quality of the public procurement legal framework for each 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

b. Regulatory institutions

In Morocco there is no single independent regulatory institution with regulatory powers to develop and implement procurement policy. In addition, there is also no independent dedicated remedies body to handle complaints related to public procurement and monitor the compliance of contracting entities. In Morocco system several institutions are involved in setting up rules and monitoring public procurement compliance. These include:

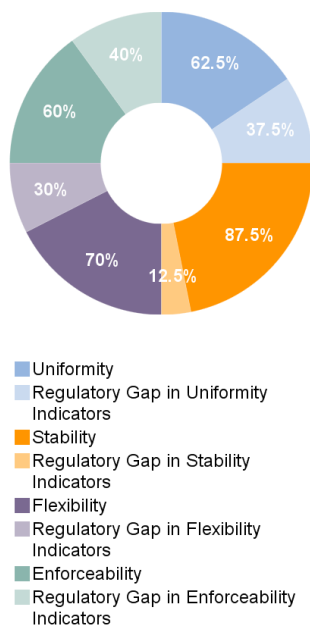
- **Public Tenders Commission ("commission des marchés")**
The Public Tenders Commission (PTC) is regulated by Decree n° 2-78-840 dated 30 December 1975. The Chairman of the PTC is appointed by the Prime Minister (PM), with the remaining ten members representatives from relevant Ministries. The core function of the PTC is to monitor enforcement and suggest amendments to the PPL. In addition, the PTC is responsible for giving opinions on awards, execution and settlement of public contracts, and giving opinion on complaints related to public tenders and disputes regarding public contracts.
- **National Audit Body ("Cour des Comptes")**
The National Audit Body (NAB) is the central independent authority responsible for reviewing the accounts of each public entity and reports to the King. In addition, the NAB monitors PPL compliance as part of its general audit review ^{Art 2, Law No. 62-99 of 2002}.

- **Ministry of the Interior**

The Ministry of the Interior (MoI) is responsible for reviewing and monitoring the public procurement process in municipalities. The MoI is headed by the PM and reports to the Government.

Chart 2 presents the results for the quality of the public procurement regulatory and institutional framework. The PPL scored high compliance (87.5 per cent) for the stability indicator, and medium compliance for the uniformity (62.5 per cent), flexibility (70 per cent), and enforceability (60 per cent) indicators. Consequently, the survey revealed several regulatory gaps in the uniformity (37.5 per cent), flexibility (30 per cent), and enforceability (40 per cent) indicators. These regulatory gaps suggest the PPL is not comprehensive, the law is not easy to enforce, and the legal framework is not market-friendly.

Chart 2: Morocco - 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

c. Scope of regulation

Moroccan PPL covers national and local government procurement and endeavours to regulate all three phases of the public procurement process. However, the PPL does not establish specific procurement rules for public law institutions or municipalities. Moreover, in addition to specific contracts listed in Prime Ministers Decisions, *concession contracts* are expressly excluded from the PPL and subject to ad hoc regulations.

Pre-tendering: Although Moroccan PPL is based on fair competition and equal opportunity in bidding for public contracts, the PPL does allow for domestic preferences. In addition, the review discovered that the PPL does not contain any provisions requiring the terms and conditions of a contract to be fair, balanced or reflect best business practice. Apart from the national defense administration, public procurement planning is mandatory for contracting entities. Each public procurement plan should be prepared during the first quarter of the financial year and should cover all public procurements for that year. Tender documentation should be made available to the public with a minimum of 21 days to the submission deadline. However, this can be extended to 40 days for works contracts exceeding a value of 65,000,000 Moroccan Dirhams, and services contracts exceeding a value of 1,800,000 Moroccan Dirhams.

The PPL does not require mandatory aggregation of lots as it is facultative. In addition, the PPL does not provide for contract valuation methods that take into account the whole life costs of the goods and services purchased. However the contract valuation should take into account the market value and contract duration of the procurement. Although cascaded thresholds have been established, the formality of the procedure is adjusted to the contract type and value. If a tender security is required contracting entities are obliged to publish details of the tender security in the contract notice. Unsupportively, the PPL does not provide for a maximum tender security amount, and unhelpfully does not require setting the tender security proportionately to the contract value.

Although the PPL allows for the use of languages other than Arabic ^{Official language of Morocco}, unfortunately the PPL does not state the rules on the use of other languages in public procurement. Therefore, contracting entities are obliged to publish ad hoc rules in the relevant contract notice. The PPL requires that the contract notice must state the tender currency to be used for the contract when bidders are non-domicile in Morocco, and that bids in a foreign currency must be converted to Moroccan Dirhams. Regarding the Legal Efficiency Concept the PPL scored 40 per cent (low compliance) concerning the speed of the procedure suggesting that the pre-tendering phase is too bureaucratic and inflexible.

Tendering: Moroccan PPL prescribes 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 suppliers are invited to

participate. The PPL will allow the submission of tenders electronically, unless the tender notice states otherwise. However, a Prime Ministers Decision is required to specify the conditions for submitting tenders electronically and at the time of undertaking this review this decision has not been published. Moreover, an online publication website has been established www.marchespublics.gov.ma, with publication of the tender notification mandatory. In addition to the eligibility check, the procedure should describe the scope and terms of the procurement and may also specify additional eligibility requirements (technical capacity / financial standing) for the tenderer to satisfy. However, the PPL does not contain a provision requiring the contract terms and conditions to be fair and balanced or reflect best practice.

Tenders should be submitted within the submission deadline stipulated in the tender documents and officially opened the same day. Tenders are evaluated by the tender evaluation committee and awarded based on the tender evaluation criteria stipulated in the tender documents. Tenderers who fail in the technical and administrative evaluation are excluded from the financial evaluation. Regarding the Legal Efficiency Concept the PPL scored 90 per cent (high compliance) concerning the speed of the procedure.

Post-tendering: Moroccan PPL requires each contracting entity to undertake appropriate contract management of its public contracts portfolio. In cases where a contract value is higher than 1,000,000 Moroccan Dirhams, the contracting entity is requested to submit notification of the contract performance with any contract extension or amendment published on the public procurement website. However, the national defense administration is exempt from this requirement. Regarding the Legal Efficiency Concept the PPL scored very high compliance (100 per cent) concerning the speed of the procedure.

d. Eligibility rules

Moroccan PPL determines general primary eligibility criteria which clearly states when contractors are excluded from participation in the public procurement procedure. These primary eligibility criteria include: bankruptcy, liquidation proceedings, failing to fulfill obligations relating to payment of taxes or social security contributions, and exclusion from previous procedures and should be published in the contract notice.

In addition to these primary eligibility criteria, Moroccan PPL provides an opportunity for contracting entities to set additional qualification criteria for tenderers. For example, tenderers may be requested to demonstrate: past performance, professional competence, technical capacity, economic and financial standing, and professional qualifications. Moreover, some contracting entities set additional qualification criteria that are ambiguous and somewhat difficult to satisfy. For example, disproportionate financial standing, professional awards and staff qualifications. These additional qualification criteria can act as a barrier to entry for some firms especially micro, small and medium sized enterprises, which in turn negatively impacts equal opportunities and the promotion of economic development.

Moreover, the PPL details a list of certificates that may be required from the tenderer to prove compliance with the established eligibility criteria. These include: prequalification and good standing certificates provided by the tax and social security administration.

e. Procurement methods

Moroccan PPL provides for both tendering and negotiation procurement methods. These methods include:

- Open tender
- Restricted tender
- Negotiated procedure
- Competition
- Direct contracting.

The PPL incorporates a clear test as to the choice between tendering and negotiated procedures. *Open tender* is the default procedure. Although contracting entities may apply other procedures, these can only be applied in situations where the law allows. For example, *direct contracting* is allowed for contracts up to 200,000 Moroccan Dirhams, with the contracting entity obtaining a minimum of three proposals from different tenderers. Regarding *negotiated procedures*, the PPL allows the selection of the tender type or method based on the specifics of the purchase and the contract scope and value.

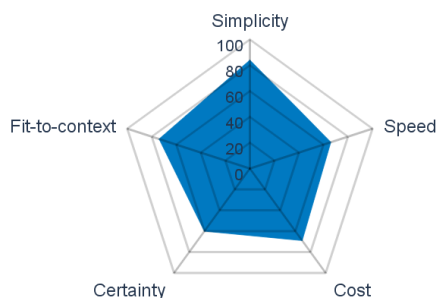
f. Procurement process regulation

In Morocco tenders are valid for a period of 60 days, with the PPL requiring the contracting entity to finalise the procurement process within this period. However, there are options to extend this period. Although the PPL does not define conditions for extensions, the PPL allows the contracting entity to set a period longer than 60 days to a maximum of 90 days. In addition, in cases where the process will take longer than 60 days or longer than 90 days, the PPL allows the contracting entity to request the tenderers, to extend the validity of their offers. In such cases, tenderers can choose to withdraw their tender. Moreover, although the PPL does not stipulate that the costs of tender participation should be kept low, the PPL states that tender documents should be free of charge except for architects drawings and technical documents.

The review highlighted that the PPL does not regulate the post-tendering phase as robustly as the pre-tendering and tendering phases of the public procurement process. 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, the contracting entity can impose contractual penalties, terminate the contract, or perform the contract at the expense of the contractor. Unfortunately, the PPL does not include any provisions requiring of the monitoring the contractor's compliance with the tenders technical specification.

Chart 3 presents the average scores for efficiency of regulation of the public procurement process for key Legal Efficiency Concept indicators. In the review the simplicity (84 per cent) indicator scored high compliance, while the remaining indicators speed (66 per cent), cost (69 per cent), certainty (60 per cent) and fit-to-context scored medium compliance. The resultant regulatory gaps are the consequence of high transaction costs of procurement, with too many unpredictable elements in the current legal system, combined with the regulatory institutions struggling to adapt to the modern economic, social and legal context.

Chart 3: Morocco - 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 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

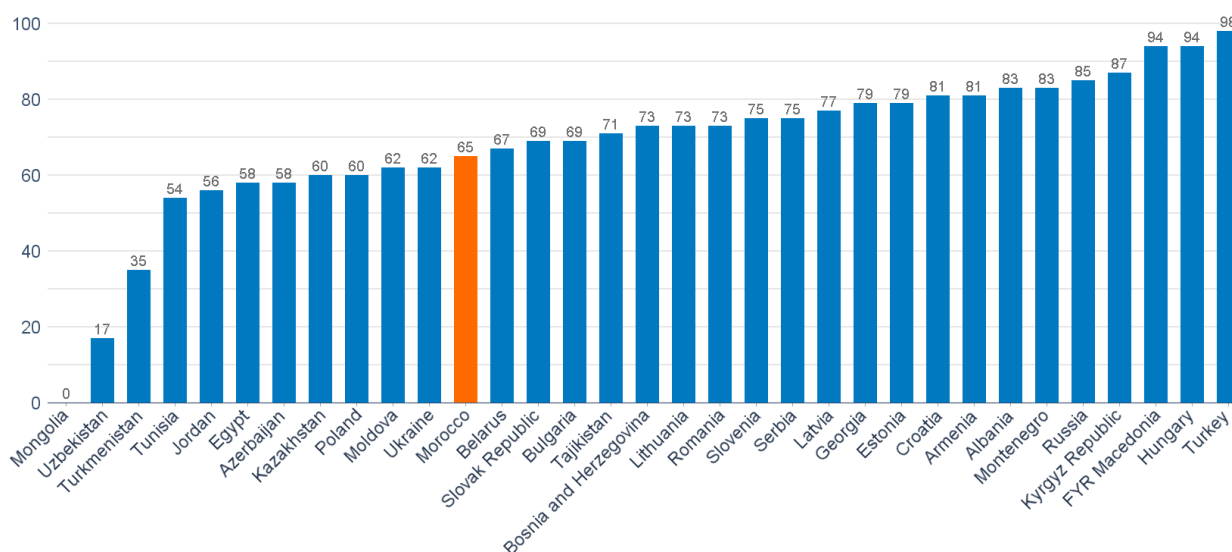
g. National review and remedies mechanisms for complaints related to public procurement

Moroccan PPL does not provide for independent review and remedies mechanisms, or a separate review and remedies mechanism for each phase of the public procurement process. Although the PBC reviews complaints regarding public procurements, the PBC is not independent and cannot make decisions on public procurement remedies. However, public procurements and public contract award procedures are regularly audited by the NAB.

Tenderers may challenge a tender evaluation procedure by submitting a request to the relevant contracting entity. The contracting entity is obliged to reply within seven days of receiving such a claim. If the tenderer is not satisfied with the decision of the contracting entity, the tenderer may file a claim with the relevant Minister. The Minister in turn may cancel or suspend the tender for a maximum period of twenty days. Unhelpfully with regard to the process, there is no legal deadline for the Minister to respond to the tenderers claim. If the tenderer is not satisfied with the decision of the Minister, the tenderer may file a claim with the PBC. However, there is no legal deadline for the PBC to respond to the claim, and the PBCs decisions are only recommendations that are not binding. Therefore, tenderers may choose between following the administrative remedies procedure and making representations to the relevant Minister and the PBC, or file a complaint to the Administrative Court. The review identified that the current complaint mechanism is free of charge to participants.

Chart 4 presents the assessment scores for the quality of public procurement review and remedies legislation compared to other countries in the EBRD region. The review scored 65 per cent (medium compliance) for the quality of its review and remedies legislation. This places Morocco at the middle of the lower half of the range of results compared to other countries in the EBRD region sitting just 3 percentage points above Moldova and Ukraine, 2 percentage points behind Belarus, and 33 percentage points below the top ranked country Turkey.

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



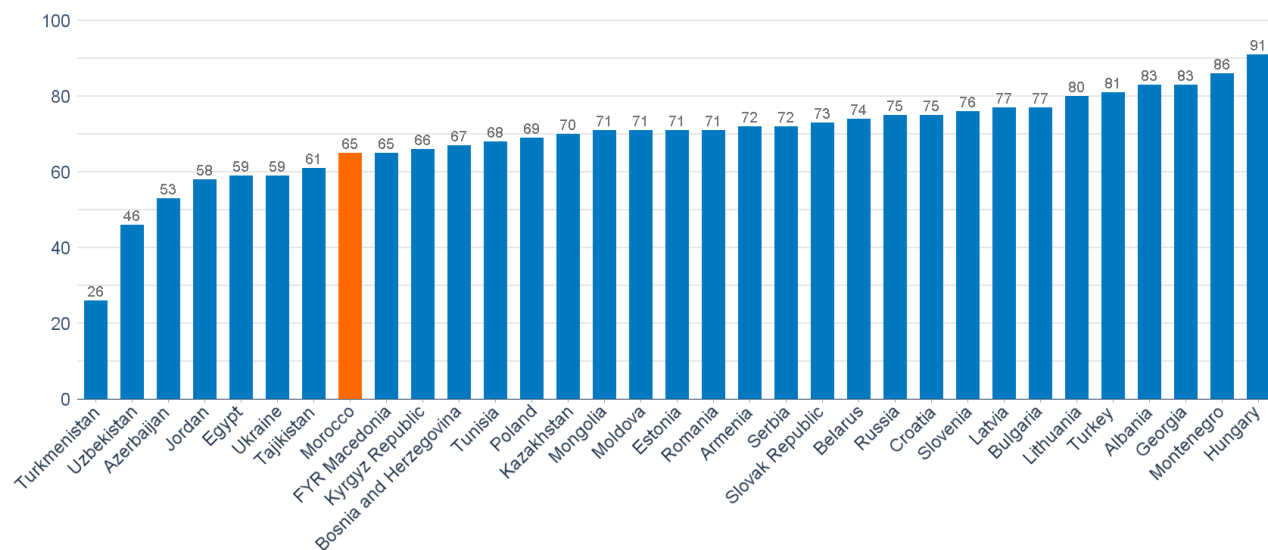
Note: The chart presents the scores for the quality of public procurement review and remedies legislation as compared to countries in the EBRD region. The laws have been benchmarked against key requirements of the Core Principles for enforceability of public procurement laws. The scores have been calculated on the basis of a checklist on remedies procedures answered by local legal advisers. 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

Assessment overview

Chart 5 presents the assessment results for the quality of the national legal framework (law on the books) as compared to countries in the EBRD region. The review scored 65 per cent (medium compliance) for the quality of the national legal framework. This score places Morocco at the lower end of the range of the range of results compared to other countries in the EBRD region sitting 4 percentage points above Tajikistan, level with FYR Macedonia, 1 percentage point below Kyrgyz Republic, and 26 percentage points below the top ranked country Hungary.

Chart 5: Morocco - 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 advisers. 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 and risks regarding Moroccan PPL. These include:

Strengths

The review highlighted some strengths of the Moroccan public procurement legislative framework. For example, Moroccan PPL is stable and aims to achieve economy and cost optimization through relatively low participation costs. In addition the PPL makes endeavours to promote fair competition and certainty through the publication of clear eligibility rules, and achieves transparency through the online publication of notices promoting speed within the public procurement process. Moreover, the PPL aims to promote accountability across all stages of the public procurement process through mandatory procurement planning, and a clear chain of responsibility between management, budget and procurement officials.

Weaknesses

The review identified several weaknesses regarding the legislative framework. For example, enforceability is not achieved as there is no independent remedies mechanism or no independent regulatory institution to assess the compliance of contracting entities which compromises certainty. In addition, as the PPL allows for domestic preferences this negatively impacts the promotion of fair competition, as does the lack of the provision requiring the contract terms and conditions to be fair, balanced and reflect best business practice. The PPL cannot be considered to be unitary and comprehensive as it does not include procurement rules for all public sector entities. These weaknesses impact the level of system uniformity achieved. Because electronic communication between contracting entities and tenderers is not permitted and the PPL does not require procurement monitoring, transparency of procurement decision making is impacted. Moreover, as the PPL does not regulate the post-tendering phase robustly, accountability of the whole process is compromised. Furthermore, economy of the process is affected as the contract evaluation methods do not require aggregation of demand or appraisal of the whole-life costs of large projects.

Opportunities

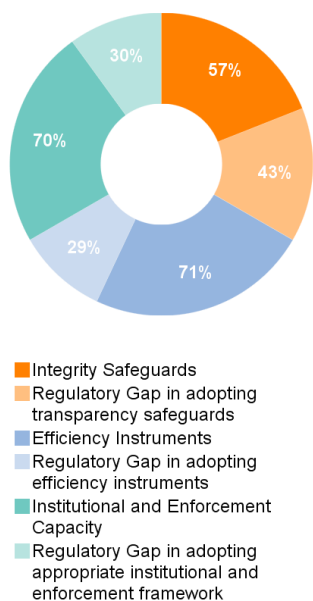
The review revealed several opportunities for reform and modernisation of the national procurement system. Current efforts to ensure better competition and transparency of the public procurement process should be continued. To enhance the current levels of enforceability, independent review and remedies institutions should be established to monitor contracting entities. For example, following debate regarding the review of the PPL draft public procurement legislation has been published. If effectively implemented the reform will be an opportunity to achieve significant improvements in the national procurement system. Better certainty and uniformity could be achieved by the development and implementation of standardised online bid submission tools and better use of standard contract templates. In addition, the on-line submission of tenders and electronic communication between process stakeholders will enhance levels of integrity, transparency and economy of the public procurement process.

Risks

Throughout the review several regulatory risks were identified. For example, the structure of the system is too centralised and is not flexible enough to accommodate the nature and dimensions of the market. In addition, as the PPL allows for domestic preferences this counteracts the aim to achieve fairer competition. Moreover, the PPL does not provide a code of ethics for public procurement officers, or require procurement officers to have adequate contract management capabilities. This impacts the accountability and integrity of the public procurement process.

Chart 6 presents the results for the public procurement policies on the books in three fundamental evaluation categories. The PPL scored medium compliance for efficiency instruments (71 per cent) and institutional and enforcement capacity (70 per cent), and low compliance for the integrity safeguards (57 per cent). Consequently, as a result of these medium to low compliance scores the review highlighted regulatory gaps across all three evaluation categories: efficiency instruments (29 per cent), institutional and enforcement capacity (30 per cent), and integrity safeguards (43 per cent). The integrity safeguards regulatory gap suggests that the PPL needs to improve accountability across all three stages of the procurement process balancing public and business dimensions of the process, promoting integrity between the procurement function and transparency in delivering government policy and value for money. Moreover, with regard to the gap in efficiency the PPL should promote fairer competition and prevent discrimination in public procurement, and enable public procurement to be accomplished in a reasonable timeframe. Furthermore, concerning the gap in the institutional and enforcement capacity, this suggests that the PPL is not easy to enforce, the legal framework is not uniform, stakeholders do not fully understand their roles, rights and obligations, and the law is not flexible enough to accommodate the changing market.

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



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

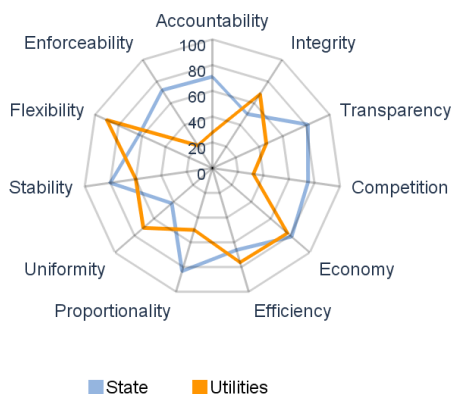
II. Practice Review Summary

a. Legal framework in practice

Local public procurement practitioners reported that Moroccan PPL is clear. However, some aspects of the PPL are considered incomplete, subject to interpretation and in some cases require explanation. Although most contracting entities provide training to their public procurement officers regarding their roles, rights, and obligations in the public procurement process, the majority have not established internal procurement rules to close any regulatory gaps. For municipalities, training is provided by the MoI. The survey highlighted that pay levels for procurement officers are below levels set for other private sector technical specialists. Furthermore, there are no procurement manuals, instructions or codes of ethics available to procurement staff to consult. On average Morocco just met the conditions for medium compliance (61 per cent) for the general quality of its local public procurement practice.

Chart 7 presents the scores for the quality of local public procurement practice. The survey revealed that local procurement practice scored very low to high compliance with the Core Principles benchmark. In the survey the economy (79 per cent), and flexibility (76 per cent) indicators scored high compliance, medium compliance in the transparency (63 per cent), efficiency (71 per cent), proportionality (66 per cent), and stability (70 per cent) indicators, low compliance in the integrity (59 per cent), competition (53 per cent) and uniformity indicators, and very low compliance in the accountability (49 per cent) and enforceability (46 per cent) indicators. The high levels of compliance are because of the mandatory legal provisions for the preparation of a procurement plan before commencement of the procurement process, and that contracting entities have in place procedures for planning the procurement of recurrent contracts. The regulatory gap in the competition indicator is because domestic preferences are allowed. The very low level of compliance achieved in the enforceability indicator is because some aspects of PPL are incomplete and subject to interpretation, and in the accountability indicator because in practice the PPL does not balance public and business dimensions.

Chart 7: Morocco - 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.

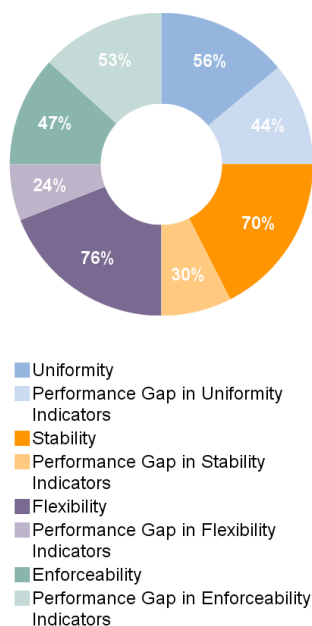
Source: 2012 SEMED Public Procurement Assessment

b. Institutional framework in practice

Compliance with Moroccan PPL is monitored by the NAB and the PBC. Although the PBC makes endeavours to harmonize rules and monitor public procurement compliance, it is not an independent regulatory institution. Regarding the institutional framework the MoI monitors the municipalities public sector procurement compliance.

Chart 8 presents the scores for the public procurement institutional and enforcement framework in practice. The data presented illustrates how the institutional framework has been evaluated by local contracting entities and practitioners. A medium score for stability (70 per cent) suggests that in practice public procurement is progressing towards compliance with the PPL. However, a low score was achieved for uniformity (56 per cent), and a very low score for enforceability of procurement rules (47 per cent). The resultant performance gaps indicate that the institutional framework lacks a robust mechanism capable of assessing the compliance of contracting entities and employing corrective measures when necessary, and in addition to being considered as being too bureaucratic the legal framework in practice lacks flexibility and as such cannot accommodate the changing market.

Chart 8: Morocco - 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

The PPL covers national and local government procurement. However, the PPL does not establish specific procurement rules for public law institutions or municipalities. In addition, concessions are expressly excluded from the PPL, as well as specific contracts listed in Prime Ministers Decisions. Moreover, the use of *direct contracting* is limited to the conditions set by law ^{Direct contracting is allowed only for contracts amounting up to 200,000 Moroccan dirhams}. The survey confirmed that contracting entities follow in practice the published PPL procedures covering all three phases of the public procurement process.

Pre-tendering: The survey highlighted that each contracting entity prepares an annual procurement plan, with inventory control used for planning the procurement of recurrent contracts. Contracting entities use standard tender documents provided by the PPL. However, the survey revealed that no appraisals are undertaken to ensure that the procurement is economically justified. This has resulted in the decision to progress with a procurement being dependent on political and social factors rather than commercial acumen. The survey highlighted that efficiency of the process in practice during the pre-tendering phase scored (69 per cent) medium compliance.

Tendering: The survey revealed that although there are standard contract terms and conditions, these contracts do not cover all types of procurement. In practice French is the preferred language used for the tender documents. Moreover, all contract notices are published online and accessible to the public free of charge. However, electronic communication and online submission of proposals and tenders is not permitted. The survey highlighted that efficiency of the process in practice during the tendering phase scored (62 per cent) medium compliance.

Post-tendering: In addition to procurement audits conducted on contracting entities, post-tendering procedures monitor the delivery and verify the quantity, quality and timeliness of the goods and services procured. However, contracting entities do not use any manual or computerised procurement or contract monitoring system. The survey highlighted that the efficiency of the process in practice during the post-tendering phase scored (84 per cent) high compliance.

d. Eligibility rules

Eligibility rules provided by law are in practice respected and followed. Submitting false declarations results in exclusion from the procurement process. In practice, the bidder who fails to comply to the published eligibility rules is excluded from the public procurement process and will not be awarded a public contract. However, if a decision on exclusion is unfair there is no legal protection for private sector stakeholders.

In addition, contracting entities do not establish additional prequalification criteria except for high value contracts for which the financial situation of tenderers is paramount. Moreover, prequalification is not mandatory and contracting entities do not prepare lists of prequalified contractors. Furthermore, there are no rules implemented to avoid conflicts of interest during procurement procedures.

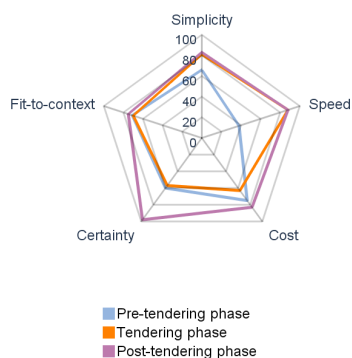
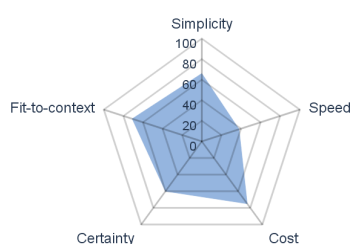
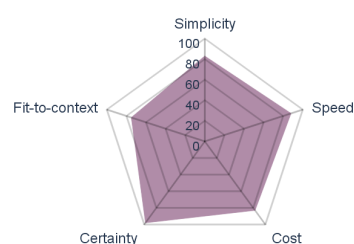
e. Procurement procedures as applied by contracting entities

Although *open tender* is the default procedure Moroccan contracting entities can use all of the procurement procedures provided by law. This includes *open tender*, *restricted tender*, *negotiated procedure*, *competition* and *direct contracting*. However, the contracting entity may only use procedures other than *open tender* in situations where the law allows. In practice *negotiated procedure* is used when the procurement can only be granted to a specific provider or for specific or urgent contracts.

f. Efficiency of the procurement process regulatory framework in practice

Contracting entities stated that it takes on average 45 days to complete the process to procure a goods and services contract to the value of EUR 250,000, and a works contract to the value of EUR 500,000. Contracting entities believe that tenderers are allowed sufficient time to prepare and submit tenders, with the evaluation of tenders completed within the original tender validity period. In general, management of contracts is well developed with public contracts generally completed within the budget and on schedule. However, manual or computerized procurement and contract monitoring systems are not in place. The survey highlighted that public procurement planning procedures are implemented, with public procurement plans prepared for each budget year. Contracting entities are obliged to complete the plan before commencing the procurement process, and as a result the coordination of technical, financial and procurement planning is achieved. However, although an assessment of risks regarding the procurement is not mandatory, evaluations and audits of public contracts are undertaken. In practice, contracting entities have not introduced internal monitoring procedures or established auditing arrangements, although there are procedures to monitor the delivery of goods and services and contract payments. Consequently, changes in public procurement policies and procedures are not monitored. However as they are mandatory, contracting entities have adopted standard procurement forms and templates. In practice, public contracts administration is deemed fair and equitable.

Charts 9A - 9D presents the results for efficiency of the public procurement process for all three phases of the procedure benchmarked against the Legal Efficiency Concept benchmark indicators. The compliance scores presented in the charts highlight that there is little consistency in the scores achieved regarding efficiency of the public procurement process through all three phases. Regarding efficiency of the pre-tendering phase a high compliance score was achieved for the cost indicator, while a medium compliance score was achieved for the certainty, fit to context and simplicity indicators. Speed achieved a very low compliance score. Regarding the tendering phase a high compliance score was achieved for the simplicity and speed indicators, while a medium compliance score was achieved for the cost, certainty and fit to context indicators. Regarding the post-tendering phase a very high compliance score was achieved for certainty indicator, while a high compliance score was achieved for the remainder of the indicators. On average across all three phases the simplicity indicator scored well demonstrating that the process is considered straightforward and achieves a reasonable balance between the user friendly approach and the sophistication required by the local legal and business culture. However, the speed and cost indicator produced a wide variety of results across all three phases of the process highlighting that although there are costs associated with the inherent delays, the treatment of these indicators over the duration of the process is at best inconsistent. Moreover, while the certainty, and fit-to-context indicators scored well across the process the scores reflect that there are some concerns concerning the predictability of the legal system, especially in the first two phases of the process, with the legal institutions not fully adapted to the current economic, social and legal context.

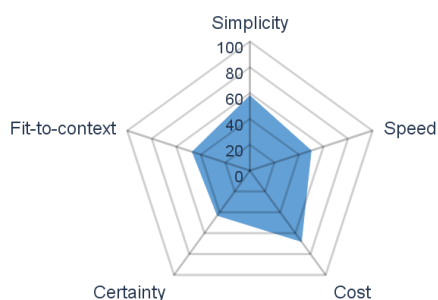
Chart 9A: Morocco - Efficiency of public procurement process in practice**Chart 9B: Morocco - Public procurement process in practice (efficiency of the pre-tendering phase)****Chart 9C: Morocco - Public procurement process in practice (efficiency of the tendering phase)****Chart 9D: Morocco - Public procurement process in practice (efficiency of the 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

g. Efficiency of the review and remedies system in practice

The survey confirmed that in practice complaints are heard by the PBC, contracting entities, relevant Ministers, or Administrative Courts. Although the PBC is not independent, the survey revealed that the complaints procedure is considered by contracting entities to be generally straightforward and effective. However, the scores achieved for efficiency of the public procurement review and remedies in practice would cast some doubt on the views of the contracting entities. Concerning cost, although the mechanism is free of charge it only secures a medium score in the survey. However, although the speed of the proceedings are deemed by contracting entities to be reasonable, the score achieved in the survey for this Legal Efficiency Concept indicator would challenge this view. In addition, procurement records are not made public and only disclosed to Judicial Courts. Regretfully, the survey unearthed that the public procurement bodies undertaking the complaints procedure are perceived to be corrupt.

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

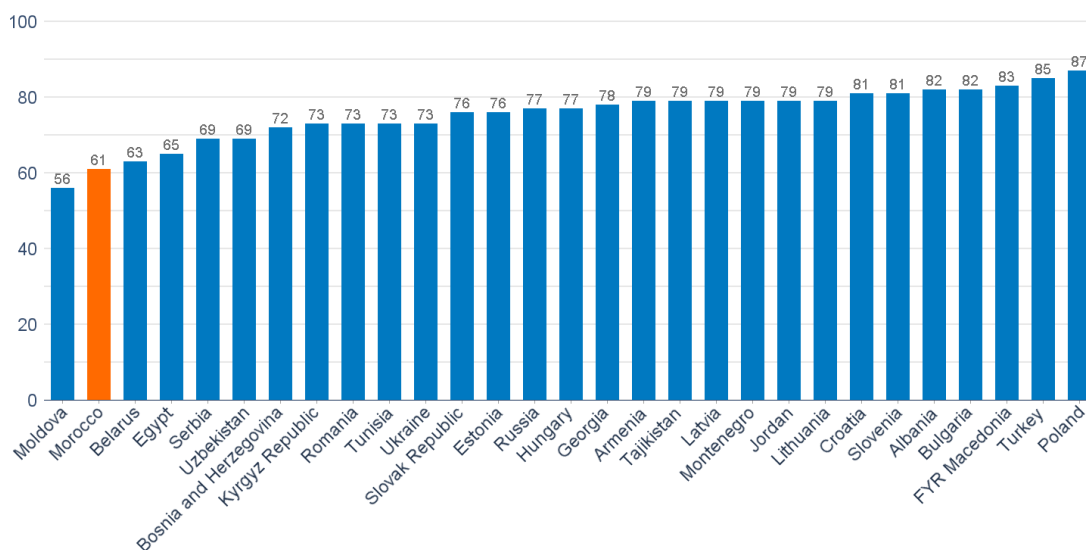
Note: The chart presents the average scores for the five Legal Efficiency Concept benchmark indicators for efficiency of the public procurement review and remedies procedures in practice. The scores have been calculated on the basis of a checklist on remedies procedures and case studies answered by local 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 local procurement practice as compared to other countries in the EBRD region. Morocco scored 61 per cent (medium compliance) for the quality of its local procurement practice. This score places Morocco in second last place 5 percentage points above Moldova the lowest placed country, 2 points below Belarus, and a full 26 percentage points below Poland the highest placed country.

Chart 11: Morocco - 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 application of the PPL in practice. These include:

Strengths

The survey highlighted several strengths. For example, the survey revealed that Moroccan PPL is clear and comprehensive achieving economy and cost optimization through low participation costs in both the procurement process and the review mechanism. Efficiency levels are enhanced through the training of procurement officers, the preparation of annual procurement plans, and the use of inventory control for the planning of recurrent contracts. These strengths also contribute towards achieving speed and cost reduction within the process. Stability of the process is encouraged as tenderers are allowed sufficient time to prepare and submit tenders, allowing these stakeholders to learn their roles, rights and obligations regarding the public procurement process. In addition, the use of standard tender procurement forms and contract documentation for all types of contracts encourages efficiency and economy of the process achieving speed, cost and certainty. Moreover, the levels of transparency achieved are enhanced as all contract notices are published online, which also positively contributes to simplicity, speed and cost reduction of the procurement process. Furthermore, accountability of the process in practice is promoted as contracting entities follow the published PPL procedures, with particular emphasis on the eligibility rules being respected and followed.

Weaknesses

The survey unearthed numerous weaknesses. For example, in practice there are issues with competition as prequalification for the public procurement process is not mandatory. Regarding integrity, procurement officers are not treated the same as private sector officers and have no procurement manuals, rules or guidelines which impacts accountability and transparency. In addition, some aspects of the PPL are considered to be incomplete and subject to interpretation with no internal monitoring or auditing procedures or requirement to assess procurement risk. This impacts accountability and certainty. Uniformity is not fully achieved as there are no procurement rules for public law institutions or municipalities, and concessions are expressly excluded from the the PPL. Moreover, no appraisals are undertaken to ensure that the procurement is economically and commercially justified, and as such efficiency of the process is compromised. Furthermore, the transparency of the process in practice is negatively impacted as electronic communication and online submission of tenders is not allowed, monitoring systems do not exist, and procurement records are not made public. This in turn impacts the speed, cost and certainty of the public procurement process in practice.

Opportunities

The survey highlighted several opportunities for reform. For example, uniformity could be enhanced by establishing specific procurement rules for concessions, public law institutions and municipalities. To increase transparency online submission of tenders and electronic procurement and monitoring should be permitted. This will positively impact the speed and cost of the process. In addition, to aid integrity independent institutions should be established to implement an independent review and remedies mechanism which in turn will promote certainty and simplicity. Moreover, a system should be developed to harmonize the monitoring of compliance within municipalities promoting integrity and accountability.

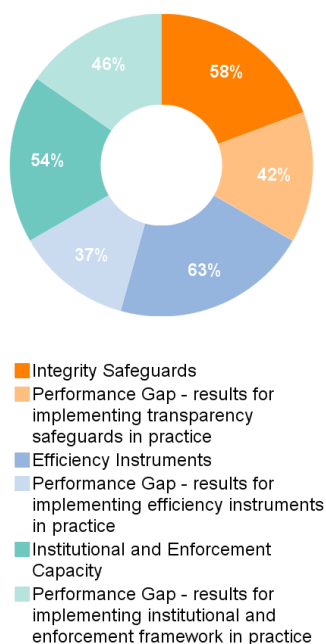
Risks

Throughout the survey several regulatory risks were identified. For example, regarding enforceability the existing institutions operating the complaints

mechanism are perceived to be corrupt impacting certainty. Moreover, as the PPL currently does not prescribe specific deadlines for completion of the procurement process there is a risk to the achievement of accountability and efficiency, which in turn impacts speed and certainty. It is unclear if electronic communication is allowed which places a risk on the integrity and transparency of the process impacting simplicity and certainty.

Chart 12 presents the data for public procurement policies in practice regarding integrity safeguards, efficiency instruments and institutional and enforcement capacity. Two of the indicators scored low compliance namely institutional and enforcement capacity (54 per cent) and integrity safeguards (58 per cent), while the efficiency instruments indicator scored medium compliance (63 per cent). These low to medium scores indicate large performance gaps across all three indicators. The institutional and enforcement capacity performance gap (46 per cent) is the result of a weak institutional framework which lacks accountability. More specifically, the lack of independent regulatory agencies and an independent review and remedies mechanism. In addition, the integrity safeguards performance gap (42 per cent) highlights a lack of public procurement anti-corruption precautions and procedures, as well as mandatory transparency mechanisms and accountability requirements. Moreover, the performance gap (37 per cent) in the efficiency instruments suggests that the procurement practices and procedures which ensure that the purchase meets the requirements are uneconomic and inefficient. In sum, regarding Moroccan public procurement policies in practice, even if the law does not set high standards these standards have not been met in practice.

Chart 12: Morocco - 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

III. Conclusions and recommendations

Overview

Public procurement in Morocco is governed by primary and secondary legislation. Although stable and based on the principles of fair competition and non-discrimination, the PPL does allow for domestic preferences which negatively impacts the levels of competition and non-discrimination achieved. In addition, the PPL cannot be considered unitary and comprehensive as it does not establish specific procurement rules for public law institutions and municipalities. Moreover, although regulating all three phases of the public procurement process, regulation of the post-tendering phase is considered weak impacting accountability. Furthermore, the PPL does not contain provisions requiring the contract terms and conditions to be fair and balanced and reflect best practice. Compared with other EBRD countries Moroccan PPL scored medium compliance regarding quality of laws

Local public procurement practitioners reported that Moroccan PPL is clear and to a certain extent comprehensive. Consequently, aspects of the PPL are considered by contracting entities to be incomplete and subject to interpretation. In general, contracting entities have not established internal procurement rules to close regulatory gaps. However, although the PPL provides mandatory standard tender documentation and public contracts templates, there are no public procurement manuals or instructions available. In addition, there is no single independent regulatory institution with powers to develop policy and monitor the compliance of contracting entities. Moreover, the levels of enforceability and transparency achieved is impinged as although all contract notices are published online and accessible to the public free of charge, the PPL does not provide for independent remedies mechanisms and procurement records are not made public. On average Morocco scored medium compliance for the quality of its local public procurement practice.

Conclusions

Unsatisfactory transparency safeguards: Although the indicators for accountability and transparency managed to just secure medium compliance, the integrity indicator scored very low compliance. This indicates that the provision for public procurement anti-corruption precautions and procedures, as well as mandatory transparency mechanisms and accountability requirements is unsatisfactory. Until the required safeguards are fully aligned transparency of the process will be compromised and no improvement regarding integrity can be achieved in the short-run. This will, in addition to abject delivery of government policy and the poor achievement of value for money, result in ineffectual anti-corruption safeguards throughout all phases of the public procurement process. Although, the transparency safeguards in practice scored marginally better than the transparency safeguards 'on the books', overall the integrity safeguards were assessed as second-rate with the assessment revealing numerous regulatory gaps which require immediate treatment.

Insufficient efficiency instruments: In the review the aggregate score for the competition instruments was assessed as only satisfactory. The assessment of the legislative framework highlighted that incorporation of inadequate efficiency instruments within the procurement regulations cast doubt as to whether value for money for a procurement can realistically be achieved. No doubt this is the same for procurements across all sectors and segments. In addition, it can be deduced that the low score for efficiency indicates that the procurement practices and procedures do not ensure that the final outcome of the procurement meets the desired requirements. This suggests that a sound business case and contract profile is not established before the tendering process is launched. Moreover, the survey of local practice highlights major issues with regard to competition and proportionality. The use of direct contracting has resulted in low levels of competition in practice. This is evidenced by the performance gap in the economy indicator which highlights that economy of the process is more advanced in practice than 'on the books'. The performance gap for the proportionality indicator suggests that the formality and extent of the procurement procedure does not accurately reflect the scope and size of the contract, with contracting entities failing to align the value and scope of the contract with the choice of contract type and tendering procedure. In terms of economy of the process contracting entities were found to apply in practice higher standards than required by law, with the survey of local practice recording higher marks than in the legislative review. This indicates that contracting entities are ever mindful of cost with the lowest priced tender most frequently selected. There is only limited evidence of making endeavours to achieve value for money from procurements, and in terms of achieving efficiency of the procurement process there is no evidence of any credible desire to innovate and secure advancement.

Regulatory and performance gaps: The assessment for the quality of the Moroccan local procurement legal framework (law in practice) as compared to countries in the SEMED region highlighted that with the exception of flexibility and economy where a high performance was achieved, local procurement practice scored low compliance to medium compliance with the benchmark. The assessment of the quality of the Moroccan local procurement practice highlighted a medium compliance rate regarding essential transparency safeguards and efficiency instruments and overall public procurement institutional and enforcement capacity. This suggests that public procurement is not considered to be objective, there are concerns with regard to the resolution of issues and the promotion of fairer competition, and some anxiety regarding the comprehensiveness and flexibility of the legal framework and the enforcement of public procurement law. The results of the assessment suggest that the PPL does not provide a firm foundation for supporting modern public procurement practice. In addition, the assessment discovered numerous inconsistencies between the legal framework and local public procurement practice. These inconsistencies include the implementation of inadequate integrity safeguards, weak efficiency instruments and poor institutional and enforcement measures. The regulatory gaps identified regarding the adoption of adequate integrity safeguards are explained by the fact that there is no dedicated national independent regulatory agencies. The medium compliance achieved for the quality of the public procurement legal framework (law on the books) as compared to other countries in the EBRD region, with the economy and integrity indicators scoring low compliance, suggests that the PPL does not implement sufficient efficiency instruments to enable public procurement to be accomplished in a reasonable timeframe. The survey of the law in practice discovered that there are issues with regard to competition as pre-qualification is not mandatory. In addition, the assessment highlighted a disconnect regarding the promotion of integrity between the procurement function and the required transparency in delivering government policy and achieving value for money. As no independent remedies mechanism is provided a large regulatory and performance gap has been identified regarding enforceability. Local procurement practice scored very low compliance indicating that legal protection for suppliers and contractors is poor, with the implementation of the existing standards - albeit of a low quality - not consistent or uniform. Therefore both 'on the books' and in practice a low compliance was achieved. Enforceability is also compromised as the institutions operating the complaints mechanism are perceived to be corrupt. This corruption has also impacted on the levels of economy and efficiency achieved. These inconsistencies have resulted in the identification of unacceptable levels of risk regarding the procurement, contracting and execution of publically administered projects. Consequently, these inconsistencies suggest several opportunities for improvement between the legislative framework and local procurement practice. 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 adequate endeavours to promote fair competition. In addition, there is a need to develop specific procurement rules for public law institutions and municipalities and contracts for concessions, and a need to use ICT and specifically the internet to better manage public procurement activities.

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

Chart 13: Morocco - 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

Analysis of the assessment data has informed the development of several policy recommendations. These include:

- **Update procurement legislation to current standards in public procurement.** 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 regarding the implementation of public procurement procedures. This in turn will promote greater accountability and integrity regarding the planning and execution of government contracts and will increase the perception of fair trade with contracting entities by local businesses and enterprises resulting in higher levels of participation. This higher level of participation will result in greater levels of supplier diversity and as a result promote economic development.
- **Develop dedicated public procurement policies 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.
- **Develop and implement specific procurement rules for public law institutions and municipalities.** The development and implementation of sector specific procurement rules for public law institutions and municipalities will close the identified regulatory gap and result in public procurement legislation having a wider scope regarding public procurement regulation.
- **Create a dedicated national regulatory agency and an independent review and remedies mechanism.** A single independent regulatory institution with regulatory powers to develop policy and monitor the compliance of contracting entities will build on the current levels of accountability and integrity achieved. A dedicated remedies body implementing an independent review and remedies mechanism will promote integrity and transparency of the public procurement process and contribute to fair competition. This in turn will increase the perception of fair trade with contracting entities resulting in higher levels of satisfaction by local businesses and enterprises regarding participation in public procurement procedures.
- **Develop a robust system to monitor the compliance of procurement entities.** There is an urgent need to implement stronger anti-corruption instruments across the pre-tendering, tendering and post-tendering phases of the public procurement process. Anti-corruption instruments need to be identified as a key aspect of government procurement policy. The greater levels of transparency achieved as a result of implementing these anti-corruption instruments will increase the perception of fair trade with contracting entities and in turn encourage higher levels of participation in public tenders from local businesses and enterprises. Higher levels of participation from the supplier community - especially SMEs - will promote economic development.
- **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.
- **Deliver policy through procurement.** New and enhanced legal instruments promoting sustainability should be developed and implemented. The government should make endeavours to utilise public tenders and the public procurement process to achieve environmental and social policy objectives declared by the government.