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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from the Moroccan Central Anti-Corruption Agency

-- Session V --

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Moroccan Central Anti-Corruption Agency --

1. Public procurement is an essential component of the Moroccan economy, firstly because of the scale of the State's expenditure commitments every year, which amount to around 15% of GDP, and secondly because of the strategic importance of such expenditure for the country's development. Over the past decade, Morocco has launched a large number of structural and development projects in which public procurement has a determining role to play in ensuring the rational and efficient distribution of public expenditure.

2. In view of the large sums of money involved, the diversity of actors and the large number and complexity of rules and regulations, public procurement is an area that is exposed to the risk of fraud, favouritism, misappropriation of funds and other kinds of unlawful practices. The latter fall under two main headings:

- Corruption (or capture), which consists in a coalition between the buyer (the State or one of its subdivisions) and one or more suppliers (bidders) in order to favour the latter over other competitors;
- Collusion, which generally describes the behaviour of enterprises which reach an agreement, collude or act in concert to take market decisions, in most cases with regard to their prices, in order to restrict, impeded or distort the free play of competition.

3. These illegal practices have adverse consequences such as:

- Wastage of public funds due to their irrational and inefficient allocation;
- Supply of poor quality products or work, which can cause serious accidents and in some cases deaths;
- Wastage of resources due to orders having to be placed a second time or work being carried out twice because it had not been performed properly the first time;
- Delays in or even the cancellation of a number of large infrastructure and development projects.

4. These various dysfunctions prevent public procurement from being managed rationally on the basis of the rules of Act, free and fair competition, transparency and integrity.

5. This paper will begin by presenting the legal, regulatory and institutional framework governing public procurement in Morocco. The last two sections will then explore the main thrusts of the reform of public procurement and present the main types of action pursued by the ICPC in this regard.

I. Legal and Regulatory Framework Governing Public Procurement in Morocco

6. Public procurement in Morocco is governed by a body of texts which organise and regulate the actions of the institutions participating in this process and which guarantee compliance with the rules of fair competition, good management and integrity.

7. These legislative texts include:

- Decree 2-06-388 of 5 February 2007 setting conditions and terms for the award of government contracts and certain rules relating to their management and control;
- Decree 02-07-1235 of 5 November 2008 regarding the auditing of State expenditures;
- Act 54-05 regarding the delegated management of public services;
- Dahir (Act) 1-02-25 of 3 April 2002 promulgating Act 61-99 on the responsibility of public auditors and accountants;
- General administrative terms and conditions approved under Decree 2-01-2332 of 4 June 2002.

8. The Decree of 5 February 2007 nonetheless remains the main reference text for public procurement. The aims that this Decree is designed to meet lie mainly in the following areas:

- Strengthening of the rules encouraging the free play of competition through the promotion of wider competition between bidders;
- Introduction of tools that will ensure transparency in the preparation, award and performance of contracts;
- Adoption of the principle of equal treatment of bidders in all stages of the contract award process;
- Requirement that the contracting authority provide all competing bidders with adequate and fair information in the various stages of contract award procedures;
- Strengthening of the rules on administrative ethics and morality by introducing measures designed to reduce the scope for fraudulent or corrupt practices;
- Eliminating the use of paper in procedures and making it mandatory for contracting authorities to publish certain information and documents on the electronic portal for government contracts;
- Introduction of procedures for lodging appeals and for the amicable settlement of disputes relating to the award of contracts.

II. Main Institutional Actors in the Management and Monitoring of Public Procurement in Morocco¹

Expenditure Commitment Auditor (CED)

9. The CED is represented on the Bid Adjudication Committee in a monitoring capacity and is charged primarily with the task of ensuring the budgetary compliance of expenditure made on behalf the State.

10. The checks carried out as part of this oversight, as laid down in the applicable Decrees, are designed to:

- Ensure that proposed expenditure commitments, notably contracts, are based on available funds;
- Ensure that such proposals comply, in terms of their purpose, with the budgetary heading to which it is proposed to assign them;
- Ensure that these proposals have been accurately costed;
- Ensure that the proposed expenditure commitments comply with legislative texts and regulations;
- Ensure that the proposed commitments relate to the entire expenditure for which the Administration will be liable during the budgetary year;
- Examine the possible implications of the commitment with regard to the use of funds for year in progress or previous years.

11. After carrying out these checks, the auditor decides whether to approve the contract by adding a number of conditions with which the contracts officer must comply; to approve the contract by setting out a number of conditions which the contracts officer must take into account, but which do not constitute grounds for suspending payment of the contract; or lastly, to refuse approval on the grounds that the contract proposed for commitment is not compliant. This situation may prompt the contracts officer to request arbitration in the event of disagreement over the CED's decision.

12. The contracts officer, or the sub-contracts officer, must notify the suppliers or enterprises awarded the contract of the references given in the auditor's approval of the expenditure commitments before they start to perform the services covered by the contract. This notification, which ensures that the procedure complies with regulations and that funding is available, is sent after the contract has been signed and before its execution.

13. In the case of local authorities, the public accounting officer, whose is appointed under an Order issued by the Minister of Finance, audits expenditure commitments.

14. In the case of public establishments, the audit is carried out by government auditors assigned to public establishments and enterprises, depending upon their legal nature. Their role is to ensure compliance with the legislation on the award of contracts, notably the settlement of contracts relating specifically to individual bodies. These bodies are obliged to use competitive bidding procedures, unless exceptions can

¹ Excerpts from a research thesis for the award of a Master's in Public Administration by the ENA, France (2007-2008), submitted by Mr. Mohamed Abdelmouhcine HANINE, pages 47-49.

be justified, in order to ensure the transparency, equality of access to contracts and the efficiency of expenditure.

15. Lastly, it should be noted that the auditing of government expenditure commitments has been placed under the responsibility of the General Treasury of the Kingdom and the competencies of the General Auditor of government expenditure commitments have been transferred to the General Treasurer of the Kingdom under Decree 02-06-52 of 13 February 2006. This major change was made as part of the reform of public expenditure initiated by Ministry of Finance.

General Treasury of the Kingdom (TGR)

16. The General Treasury of the Kingdom of Morocco is one of the most important administrations in the Ministry of Economy and Finance, through which all the financial and accounting flows of the State and local authorities are routed.

17. It is also at the heart of an institutional network comprising public administrations, public establishments, local authorities and other major financial institutions, all of which are concerned with managing public funds.

18. The main remit of the TGR is to:

- **Collect Public Debts**

19. The TGR uses its vast network of public accountants to collect tax and non-tax revenues, primarily by:

- Managing administrative and legal claims regarding tax collection and providing assistance to tax collectors in their work;
- Taking charge of revenue orders under the general budget of the State and Treasury ancillary and special budgets;
- Centralising payments and collection of revenues from fines and financial penalties;
- Managing the accounts for loans and advances granted by the Treasury and working capital provided by financing bodies for public projects;
- Compilation of statistics on the situation regarding the collection of public debts.

- **Auditing and Payment of Public Expenditure**

20. The TGR is responsible for auditing and payment of public expenditure. The TGR's network is therefore charged with the task of verifying the compliance of commitments for practically all State expenditures. It manages the payment of the said expenditures through its network of accountants. The TGR's departments settle the State's debts in response to the proposed commitments and payments orders forwarded by accredited contracting authorities.

21. The TGR also audits and pays the salaries of around 650 000 civil servants through the National Pay Centre (CNT).

- **Management of Local Finances**

22. The TGR manages the budgets of 1659 local authorities, 86 associations of local authorities and 41 districts through its network of communal treasurers and tax collectors.

23. The TGR collects their receivables, settles their expenditures and pays the wages of their staff.

24. The TGR also makes use of its expertise by providing local authorities with necessary advice and assistance. This advice may be of a legal and financial nature and relates, among other things, to accounting procedures, financial analyses and the preparation of management charts.

- **Management of Treasury Deposits**

25. The TGR is responsible for managing Treasury deposits. This activity gives it a role in financing the State treasury in that it manages the accounts of public enterprises and establishments which are under the obligation to deposit their funds in the Treasury. This activity also extends to the management of deposits by legal persons or private bodies.

- **Production of Financial and Accounting Information**

26. The TGR centralises the accounting operations of the State and local authorities and, in consequence, provides a reference for the production and exploitation of accounting data relating to the State and local authorities.

27. The accounting information generated can thus be used to:

- Precisely describe budgetary and financial operations;
- Rapidly provide the reliable information needed for decision-making;
- Draft documents relating to statements of accounts.

General Inspectorate of Finances (IGF)

28. The IGF is entrusted with the task of carrying out random checks on the departments in the Ministry of Finance and other Ministries, local authorities and public establishments.

29. The inspectors of finance verify the compliance of transactions recorded by contracting authorities, including public procurement.

30. The IGF can also audit the procedures for the award and execution of contracts financed by external bodies.

31. Lastly, the auditing of the said inspection is subject to the provisions of Dahir 1-59-269 of 14 April 1960 on the General Inspectorate of Finances.

General Inspectorates Established in Individual Ministries

32. The organisation chart for each Ministry contains a General Inspectorate reporting to the Minister concerned which is placed under the Minister's responsibility and whose role is to carry out inspections in the central and external departments of the said Ministry. Public procurement is one of the areas covered by such inspection work.

Procurement Committee

33. This Committee is placed under the authority of the General Secretary of Government. It includes members of almost all Ministerial Departments in addition to the General Treasurer, the Expenditure Commitments Auditor and the Head of the Legislation Department in the Government's General Secretariat. All members of the Committee are entitled to vote. The Committee can also call upon other persons to act in an advisory role.

34. The Committee has two main types of function. The first is to issue opinions on draft legislation or regulations on public procurement, on issues of all kinds relating to the preparation, award, execution and payment of contracts, disputes arising from contracts and draft contracts or supplementary clauses on which it is consulted by the contracts officer. The second is to propose provisions to supplement legislation and improve contracting departments and to launch studies to improve the conditions for awarding orders and government contracts.

35. The Committee simply acts in a consultative or advisory capacity and has no real competence to monitor contracts. However, the opinions it issues are important in view of the fact that local authorities, Ministerial departments and public establishments make use of them to resolve certain practical or legal issues raised in the course of awarding, executing of paying contracts.

36. Matters are referred directly to the Committee by the Prime Minister and the Secretary-General of the Government, contracting authorities and the general inspector of expenditure commitments. The Committee's deliberations are not published systematically. The recent creation of an internet site for the General Secretariat of the Government² now allows some opinions to be consulted on-line. The main function of the Committee is to issue opinions on disputes or in cases of where complicated situations arise through ignorance or incorrect application of the legislation.

37. In addition, the permanent Secretariat of the Committee maintains a general inventory of contracts for work, supplies, services and studies awarded on behalf of the State. The Committee draws up an activities report annually.

Court of Auditors and Regional Courts of Auditors

38. These courts exercise oversight of a jurisdictional nature in accordance with Act 62-99 constituting the code of financial jurisdictions of 13/06/2002.

39. The Court of Auditors is entrusted with a wide range of tasks. It verifies the compliance of the revenue and expenditure transactions of bodies subject to its oversight under the Act, assesses their management and punishes any shortcomings. It has a jurisdictional function with regard to budgetary and financial discipline (Articles 54, 55 and 56). This latter competence concerns all government officials from the officers awarding contracts to inspectors, public accountants or civil servants working under their supervision and all civil servants such as managers or officials working in public bodies and managers or officials working in any other bodies subject to inspection by the Court.

40. A wide variety of infringements may be prosecuted. In accordance with Article 54 of Act 62-99 the contract awarding officer may be prosecuted if he infringes contracting regulations. According to Article 55 of Act 62-99, the inspector may be liable for sanctions if he fails to carry out the checks he is obliged to perform, notably with regard to the compliance of the planned contract with regulations regarding the award of public contracts. This may consist, for example, in failure to produce the

² Internet site of the General Secretariat of the Government: www.sgg.gov.ma.

administrative certificate or report presenting the contract which justifies the choice of procedure for awarding the contract, failure of the contract for work or supplies or services to comply with the rules on competitive bidding applicable to the body concerned.

41. The Court's audits may also be performed after the management audit missions have been completed (Article 75). The aim is to assess the quality of the services supplied and suggest possible ways of improving methods and increasing effectiveness and efficiency. The audit addresses the compliance and sincerity of the operations carried out as well as the reality of the services or goods supplied and the work carried out.

42. The nine Regional Courts of Auditors have the same competences with regard to local authorities and the bodies of the latter. They are located in the following towns in the Kingdom of Morocco: Laâyoune, Agadir, Marrakech, Settat, Casablanca, Rabat, Fès, Tanger, Oujda.

Competition Council³

43. The Competition Council was set up under Act 06-99 on the freedom of prices and competition, promulgated under Dahir 1-00-255 of 5 June 2000. It is charged with advisory functions for the purposes of providing advice and recommendations and, in addition to the Chairman, comprises twelve (12) members:

- A representative of the Minister of Justice;
- A representative of the Minister of the Interior;
- A representative of the Minister of Finance;
- A representative of the Secretary General of Government;
- A representative of the Minister of Planning;
- Three (3) members chosen for the competence in legal matters, economics, competition or consumption, appointed by the Prime Minister;
- Three (3) members who exercise or have exercised their activities in the manufacturing, distribution or services sector, appointed at the proposal of the Chairmen of the Federation of Chambers of Commerce, Industry and Services, the Federation of Chambers of Crafts, the Federation of Chambers of Agriculture and the Federation of Chambers of Maritime Fisheries.

44. Scope and means of action:

- Ensure that the free play of competition is respected within the framework of the market economy, in order to guarantee the competitiveness of the national economic fabric and a good cost-quality ratio for the welfare of the consumer;
- Act, at its initiative, to:
 - Inform and raise the awareness of the public and economic and social actors (symposia, seminars, conferences);

³ Taken from the internet site of the Competition Council: <http://www.conseil-concurrence.ma>.

- Study the degree to which competition can be created between different sectors and branches of activity;
- Draw up the annual report and submit it to the Prime Minister.
- Intervene, when formally called upon, in the event of:
 - Anti-competitive cartels which might prevent, restrict or distort the free play of competition (price fixing, geographical sharing of markets, etc.);
 - Abuse of a dominant position or situation of economic dependency (tied sales, refusal to sell, etc.);
 - Concentration liable to damage competition.
- Who consults the Council?
 - The Government on any competition-related issue;
 - Standing Parliamentary Committees on any draft legislation covering areas relating to competition;
 - Competent jurisdictions regarding matters concerning anti-competitive practices that are referred to them;
 - Regional Councils, urban communities, chambers of agriculture, crafts or maritime fisheries, union and professional organisations and consumer organisations recognised to be of public utility. The replies by the Council are restricted solely to opinions on matters of principle.

Central Anti-Corruption Agency (ICPC):

45. The Central Anti-Corruption Agency, reporting to the Prime Minister, was established under Decree 02-05-1228 of 13 March 2007. Its members were appointed on 2 December 2008 and the first meeting of its Plenary Assembly was held on 6 January 2009.

46. In addition to its Chairman and Wali Al Madhalim (mediator), the Central Agency has 43 members representing government, professional organisations (including unions), civil society and universities, which constitute its Plenary Assembly.

47. The three main missions of the ICPC are to:

- Co-ordinate anti-corruption policies;
- Oversee policies and monitor their implementation;
- Compile and disseminate information relating to corruption.

48. To this end, it is charged in particular with the task of:

- Proposing to government the main directions of a corruption prevention policy, particularly with regard to co-operation between the public and private sectors to combat corruption;
- Proposing measures to raise public awareness and organising information campaigns for that purpose;
- Contributing, in co-operation with the administrations and bodies concerned, to the development of international co-operation in the prevention of corruption;
- Ensuring the follow-up and assessment of measures taken to implement government policy with regard to corruption and making recommendations to administrations, public bodies, private enterprises and all other actors in corruption prevention policy;
- Providing the administrative authorities with opinions on measures that might be taken to prevent corrupt transactions;
- Collecting all types of information relating to corruption and managing the related database;
- Informing the competent judicial authority of all the facts brought to its attention in the course of its work which it feels might constitute acts of corruption punishable by Act.

49. With regard to public procurement, the ICPC acts as an advisory body by issuing opinions on different reforms and by making practical recommendations on how to improve the process. Furthermore, recognising the paramount importance of public procurement for the development of the country and the considerable risks of corruption in this sector, the ICPC has set up a working party to analyse issues relating to such procurement in order to continue proposing improvement measures.

III. Reform of Public Procurement in Morocco

50. Over the past few years Morocco has embarked on a major reform of public procurement primarily aimed at improving procurement management and promoting greater integrity and transparency. The following section presents a summary of the main features of this reform.

51. The reform of public procurement is part of the major raft of reforms aimed at modernising the Moroccan administration and adapting it to changes in progress and to Morocco's commitments to its partners.

52. It is with this aim in mind that a new Decree setting conditions and terms for the award of government contracts as well as certain rules relating to their management and control, was published in April 2007, thereby amending the Decree of 30 December 1998 on public procurement.

53. This reform, introduced less than ten years after the Decree was issued in 1998, was the outcome of the public authorities' desire to give greater responsibility to departments awarding contracts, and at the same time greater freedom and flexibility, in order to achieve efficient and effective public expenditure, coupled with the determination of those public authorities to combat all types of fraud and corruption. Transparency was therefore presented as one of the main challenges of the reform.

54. The will to achieve transparency is apparent in several of the new Decree's provisions. The demands of modernisation, good governance and economic openness are incentives to introduce regulations on contracts which take account of the objective of consolidating transparency and the interests of the Administration and the private sector within the framework of a balanced partnership, with a view to

ensuring higher quality services at lower cost. In addition, the new Decree was designed in line with the new approach to the management of public finances based on the increased empowerment of contracts officers, efforts to improve performance and the placing of relations between central administrations and their decentralised departments on a contractual basis. In short, the 2007 Decree expresses the determination of the public authorities to introduce a framework for the award of public procurement contracts that is irreversibly linked to compliance with the principles of free access to public procurement, equal treatment of bidders, transparency and the streamlining of procedures.

55. Moreover, it should be noted that work is currently proceeding on an overhaul of the 2007 Decree. This reform is primarily aimed at increasing transparency and at combating all types of fraud and corruption. The need for such a reform is all the more pressing in that contracts are the main way in which the needs of the Administration are met.

56. The main innovative thrusts of this planned reform consist in:

- Enshrinement of the unity of the regulations applicable to public procurement;
- Simplification and clarification of procedures;
- Increased use of competition and greater fairness in the treatment of bidders;
- Consolidation of transparency measures and introduction of ethical principles into the management of public procurement;
- Modernisation of public procurement procedures;
- Improved guarantees for competing bidders and introduction of appeals mechanisms.

57. However, this planned reform still contains several provisions which should really be reconsidered to ensure that the reform will effectively help to build a system for management public procurement contracts that is transparent, fair and efficient.

IV. Observations by the ICPC on the Reform of Public Procurement

58. The Central Anti-Corruption Agency was consulted by the TGR about the new planned reform of the 2008 Decree and made a number of comments regarding appeals, inspections, audits, increased transparency, the exceptions granted to the National Defence Administration and the discretionary power of the contracting authority.

I. Appeals

59. With regard to appeals, the ICPC felt that complaints should be dealt with by an independent, diligent body with real decision-making power, notwithstanding the use of legal channels for appeals. However, the planned reform maintained the same approach to the handling of appeals as that taken in the legislation currently in force, as well as a hierarchical appeals procedure in which it was possible for an appeal to be lodged directly with the contracts committee despite the fact that the latter remains an advisory body.

II. Monitoring and Auditing

60. The provisions regarding monitoring and auditing are among the major innovations introduced in the 1998 reform. The auditing of contracts worth more than MAD 5 million (and MAD 1 million for local authorities) is assumed to cover the preparation, awarding and execution of contracts. However, in the ICPC's opinion, the reference made in the second paragraph of Article 110⁴ of the draft Decree on public procurement would seem to be seeking to focus the audit on the obligation to draw up and publish the various documents stipulated in the Decree, which considerably restricts the scope of this important provision.

61. In the opinion of the ICPC, in order to make this provision both operational and effective would require terms of reference for the audit to be specified beforehand. These terms of reference would have to cover at least the following: timeliness, appropriateness of the contract specifications, compliance of the operations relating to the award of the contract, management of deadlines, compliance of the supply and payment of contracts.

III. Increased Transparency

62. With regard to increased transparency, the ICPC considered that the planned reform did indeed include advances in this area, notably through the use of the national portal. However, this effort needed to be stepped up in at least two areas: the dissemination of audit reports and the publication of the contracting authority's estimate.

63. Publishing the audit report or the results of the audit will indeed make it possible to ensure that this provision is implemented and will provide the public, and in particular unsuccessful bidders, with information about how the procedure was executed. Instead of publishing the entire report, consideration might also be given to publishing excerpts.

64. In addition, the ICPC saw no interest in preserving the confidentiality of the contracting authority's estimate; firstly because the estimate is an essential guide to bidders when drawing up their bids, and secondly because there is a danger that this information might be made available, illegally, to some bidders to the detriment of others.

⁴ Draft Decree setting out the conditions and formalities for the award of public procurement contracts as well as certain regulations regarding their management and auditing: Article 110 Internal controls and audits.

Besides the checks provided for in general legislation regarding public expenditure, contracts and their supplementary clauses are subject to internal controls and audits laid down by decisions by the Minister concerned.

These controls and audits relate to the preparation, award and execution of contracts, and in particular compliance with the obligation to draw up and publish the various documents specified in the present Decree.

Checks and audits are mandatory for contracts worth more than five million (5 000 000) dirhams and must be presented in a report submitted to the Minister in charge of public procurement or to the Director of the public establishment concerned in the case of contracts for public establishments.

In the case of local authorities and associations of local authorities, controls and audits are mandatory for contracts worth more than one million (1 000 000) dirhams and must be presented in a report submitted to the Minister of the Interior.

However, the provisions of the present Article do not apply to contracts regarding the national defence administration.

IV. Exceptions Regime Applicable to the National Defence Administration

65. While it is perfectly understandable that security-related procurement by the National Defence Administration should be granted exceptions to the public procurement code, the ICPC does not see any particular reason why the everyday procurement by this department should be covered by the many exceptions provided by in the Decree.

V. Discretionary Power of the Contracting Authority

66. The ICPC noted that the detailed provisions introduced under the reform make it clear that the contracting authority retains full control over the choice of contract award procedure and the establishment of specifications.

67. In the opinion of the ICPC, it is not so much the power given to the contracting authority which poses a problem, since the latter is held to represent the general interest, but the risk of that power being misused for personal gain. Accordingly, a framework needs to be provided for this power. If there is no framework, compliance with the procedure will be meaningless if a determining tool such as the contract specifications makes it possible to steer the choice towards the supplier benefiting from the favours of those in charge of placing the order.

68. Besides these observations, the ICPC also voiced reservations about certain provisions, and in particular:

- Introduction of the call for an expression of interest, which duplicates the pre-qualification procedure and which may be diverted from its original purpose;
- Maintenance of firm prices for supplies and services, regardless of delivery schedules. This provision may well affect the aim of producing balanced contracts;
- Maintenance of the procedure for depositing samples, which presents the major risk of revealing the list of bidders a day before the bids are opened.

69. Various inspection missions and reports drawn up by regional Courts of Auditors revealed major dysfunctions in the management of the contracts awarded local authorities. These dysfunctions may be attributable to the lack of a legal framework properly adapted to the realities and nature of the missions entrusted to these authorities. A draft Decree dealing specifically with this issue is currently being finalised. This draft is aimed at:

- Making the regulations more accessible to elected local representatives;
- Streamlining the procedures with a view to activating local development projects;
- Introducing effective internal management control mechanisms;
- Putting in place bodies to audit and monitor local public procurement contracts;
- Consolidating the requirements for transparency and spending efficiency;
- Transforming local public procurement into a genuine vector for local development;
- Contributing to promote local good governance.

70. The ICPC has been asked by the General Directorate for Local Authorities to give an opinion on this draft. The Central Anti-Corruption Agency made the following comments:

71. In general, the draft Decree retains the structure, principles and procedures for the award of public procurement contracts set out in the Decree of 5 February 2007. The additions and improvements mentioned in the outline of the reasons for preparing the said draft, of which there are admittedly a large number, do not make any fundamental changes to the original text. In particular, the ICPC noted that no effort had been made to simplify the text in order to make it more accessible to local authorities with limited managerial resources or to small local enterprises which were unaccustomed to bidding for local procurement contracts.

72. However, a number of innovations in the draft do merit special mention:

- Creation of a monitoring committee which plays an advisory role in the management of public procurement;
- Creation of a national database for local public procurement;
- Mandatory display of the value of contracts and orders placed by each local authority.

The comments made by the ICPC relate to the following four points:

I. Substantial Discretionary Powers of the Contracting Authority

73. The contracting authority retains full control over the choice of contract award procedure, the drafting of specifications and the setting of selection criteria.

74. It is not so much the fact that the contracting authority has been given this power which poses a problem, given that the latter is assumed to represent the general interest, but the risk of it being misused for personal gain. It therefore needed to be given a proper framework. Without such a framework, compliance with the procedure will be meaningless if a determining tool such as the specifications allows the choice to be steered towards the supplier favoured by those in charge of placing the order.

II. Appeals

75. Article 127 establishes a monitoring committee with a dual remit: the first is to improve the management of public procurement by local authorities, and the second relates to the follow-up of applications from actors involved in the award and execution of an order.

76. The text appears to allow competing bidders and/or contractors to submit grievances directly to the committee. The latter has the power to order the procedure to be suspended should it be deemed necessary.

77. The committee is composed of eleven members and no indication is given of its composition, apart from its chair.

78. Although these advances are indisputably positive, it nonetheless remains that an appeals body must be independent of the administrative structures of the contracting authority.

79. The committee's composition, were it to be widened to include personalities from outside the Administration, could, to a certain extent, remedy this lack of independence. In this respect, securing the participation of the ICPC would be a welcome move.

III. Audits and Inspections

80. The audit requirement applies to contracts worth more than one million dirhams rather than the 5 million dirhams specified in the Decree. Terms of reference, and not just a simple formulation, must first be specified for the audit before this provision is implemented. The nature and powers of the body in charge of this audit must also be specified.

81. The second condition to ensure the effectiveness of the audit is to publish the audit report or at least ensure its wide dissemination.

IV. Excessive Formality

82. The draft Decree that is supposed to streamline procedures for awarding contracts has maintained a level of formality that jeopardises the transparency and integrity of the procedure in that a minor shortcoming could be used as a pretext for rejecting a competitor's bid.

83. This risk is clearly illustrated by the list of documents that competing bidders are required to submit. The list of documents to be produced such as the tax statements and CNSS statement given in the draft Decree could perhaps be simplified.

84. In conclusion, while admittedly Morocco has made considerable progress in the management of public procurement over the past decade, shortcomings still remain and a constant effort will have to be made to ensure better governance in this area. Aware of the importance attached to public procurement as a lever for the development of the country, the ICPC has made promoting the integrity and transparency of public procurement one of its priority strategic directions.