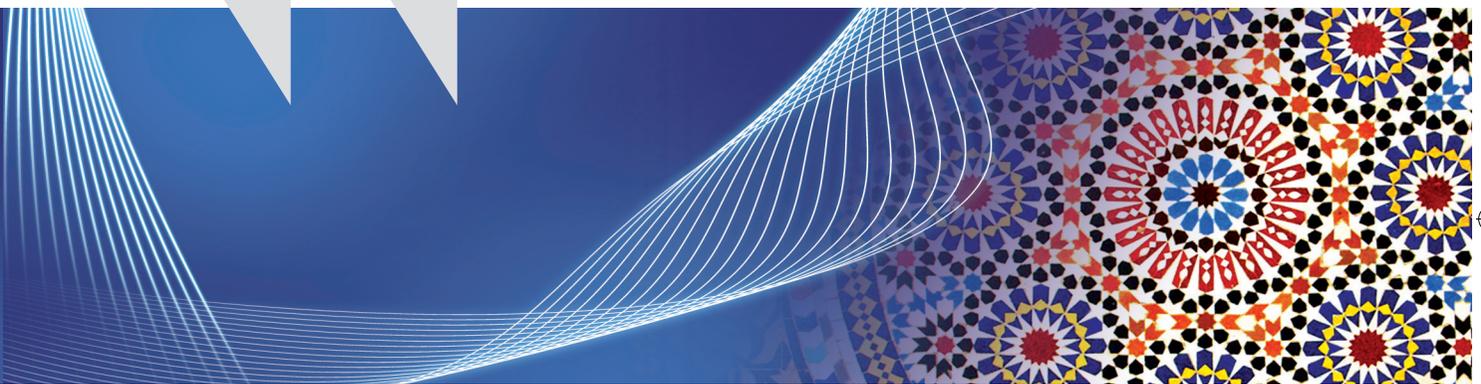




# Enhancing Integrity in Public Procurement

**OECD JOINT LEARNING STUDY  
ON MOROCCO**



# **Enhancing Integrity in Public Procurement**

Joint Learning Study in Morocco

## FOREWORD

The Organisation for Economic Co-operation and Development (OECD) is a unique forum where the governments of 30 market democracies work together to address the economic, social, environmental and governance challenges posed by globalisation.

Morocco has been working in close co-operation with the OECD for several years as part of the Good Governance for Development in Arab Countries Initiative.<sup>1</sup> The aim of this Initiative is to modernise public governance in the Middle East and North Africa (MENA) through a programme divided into seven key areas: integrity and prevention of corruption in the public sector; human resource management; e-government and administrative simplification; regulatory quality; relations between national, regional and local authorities; management of public finance; public service delivery and public-private partnerships.

This Joint Learning Study addresses integrity in public procurement and was specifically requested by His Excellency Mr. Monkid Mestassi, Secretary General of the Moroccan Ministry of Economics and General Affairs (Ministère Chargé des Affaires Économiques et Générales), following the adoption of the new regulations on public procurement by the Moroccan government in May 2007.

The Joint Learning Study is a new and innovative activity aimed at developing and sharing knowledge on key policy issues for countries in the Middle East and North Africa. The OECD peer review method is adapted to this regional initiative, with experts from both OECD member countries and MENA countries participating. This Joint Learning Study on Morocco is a pilot study for the region.

The following Joint Learning Study was written by Ms. Elodie Beth and Ms. Anikó Hrubi of the OECD's Public Governance and Territorial Development Directorate.

Additional input was provided by other members of the OECD Secretariat, in particular Mr. János Bertók, Mr. Christian Vergez and Mr. Marco Daglio, as well as Mr. Piotr-Nils Gorecki and Mr. Peder Blomberg of the SIGMA programme (Support for Improvement in Governance and Management), a joint initiative of the OECD and the European Union, principally financed by the EU.

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<sup>1</sup> For further information on the Initiative, see [www.oecd.org/mena/governance](http://www.oecd.org/mena/governance).

## *ACKNOWLEDGEMENTS*

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Special thanks are also extended to Mr. Ahmed Bouriss, Director of State Expenditure and Expenditure Control at the General Treasury of the Kingdom of Morocco, for his dedicated co-operation and co-ordination over the course of this Study.

The Secretariat would also like to thank the representatives of the Moroccan administration who made contributions to the report and who were willing to share their experiences during the fact-finding mission of this Study. These representatives were drawn from the following institutions: the Public Procurement Commission, the Commune of Rabat, the Court of Accounts, the Directorate for Public Enterprises and Privatisation, the General Finance Inspectorate, the Ministry of Agriculture, the Ministry of Economic and General Affairs, the Ministry of Infrastructure Planning, the Ministry of Justice, the National Electricity Board, the General Secretariat of the Government, the General Treasury of Rabat Commune and the General Treasury of the Kingdom of Morocco.

The report also draws on the invaluable contributions made by representatives of the private sector and civil society (Moroccan Association of Public Procurement Professionals, Moroccan Business Confederation, Transparency Maroc) as well as international donor organisations (the World Bank and the Delegation of the European Commission).

Lastly, the Secretariat wishes to thank His Excellency Mr. Monkid Mestassi for his commitment and availability during the overall Joint Learning Study project.

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## INTRODUCTION

### **Public procurement – substantial economic interests at stake**

Public procurement covers all public contracts awarded by public authorities (central government, public establishments, state-owned enterprises and local government) to acquire goods, services and public works. The economic interests at stake are considerable; public procurement represented about 16% of Morocco's GDP in 2005 (almost MAD 100 billion<sup>2</sup>). In terms of transactions, 11 614 government contracts were awarded in 2007 and 10 143 in 2005, 88.8%<sup>3</sup> and 88.9% respectively, through open tendering.

Public procurement plays an important strategic role in sustaining growth through investment projects initiated and financed by the government and carried out by market officials. Both Moroccan and foreign firms are potential tenderers for public procurement contracts. Recent statistics indicate that public procurement accounts for 70% of the business of construction firms in Morocco and 80% of the business of engineering firms.

### **Current reforms**

Given the financial interests at stake, public procurement is one of the areas of government activity exposed to the risk of corruption, both in OECD member countries and in Morocco. A perception study carried out by *Transparency Maroc* in 2002 revealed that 60% of firms taking part in the survey considered that public procurement in Morocco was not systematically transparent and that illegal payments were frequent.

The government has gradually come to realise the scale of the problem and the issues involved. Although public procurement has not been a policy priority in the past (no reforms were made between 1976 and 1998), the measures taken in 1998 and 2007 underline the State's growing determination to reform this area of its action.

The current reform of public procurement in Morocco is based on a set of government modernisation measures, including:

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<sup>2</sup> MAD 100 billion are equivalent to 8.802 thousands Euros (EUR) (exchange rate as of 23 January 2008).

<sup>3</sup> The figure of 88.8% by open tendering in 2007 does not include purchase orders. The remaining contracts were awarded by restricted open tendering (6%) or negotiated (5.2%).  
*Source: Statistiques de la Trésorerie Générale du Royaume du Maroc.*

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- 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 (referred to in the report as the “2007 Decree”);
  - Dahir <sup>4</sup>1-02-25 of 3 April 2002 promulgating Act 61-99 on the responsibility of public authorising officials, controllers and accountants;
  - Decree 2-01-2332 of 4 June 2002 approving the general administrative terms and conditions applicable to service contracts for studies and general contracting awarded on behalf of the State;
  - Dahir 1-03-195 of 11 November 2003 promulgating Act 69-00 on state financial control of state-owned enterprises and other bodies;
  - Decree 2-99-1087 of 4 May 2000 approving the general terms and conditions of contract applicable to work performed on behalf of the State;
  - Decree 2-98-884 of 22 March 1999 regarding the system for approving design and main contractor services.

### ***Objectives of the Study***

The aim of the Joint Learning Study is to examine Morocco's progress in modernising public procurement, placing particular emphasis on fighting corruption and enhancing integrity. The sought objective is to reduce the risk of corruption while ensuring that the procedures in place enable governing bodies to make the best choices in terms of public procurement, and to enhance integrity in public procurement in order to optimise the use of public resources for the production of goods and services.

The Study covers the entire public procurement process, from the assessment of needs to the award and management of the contract. It seeks to identify the strengths and weaknesses of the system itself and its performance, and to frame policy recommendations for improvement.

Fighting corruption and enhancing integrity in public procurement not only involves formulating and implementing a solid legal framework for procurement but also, enforcing sanctions in cases of non-compliance. This Study thus seeks to identify and examine the legislative, institutional and practical aspects of public procurement

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<sup>4</sup> A Dahir is a decree issued by the King of Morocco.

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management and control in Morocco within the broader framework of “improving the probity of public life”.<sup>5</sup>

### ***Analytical framework***

The OECD Checklist for Enhancing Integrity in Public Procurement provided the analytical framework for the Study (see Annex A). It guides governments in the preparation and implementation of a policy framework enabling them to enhance integrity in public procurement. This is the first time the Checklist has been applied in the Middle East and North Africa.

The Checklist defines integrity as the use of funds, resources, assets and authority for the official purposes for which they are intended to be used, keeping the public interest in mind. The offering and acceptance of bribes, conflicts of interest, nepotism, abuse and manipulation of information, discriminatory treatment as well as the waste and abuse of organisational resources are actions and situations liable to compromise integrity in public procurement.

### ***Methodology***

The Joint Learning Study, which is a pilot project for the region, was prepared in several stages:

- First stage: Preliminary research work was conducted by the OECD Secretariat and a questionnaire framework was prepared for interviews. Due to time constraints, the preliminary research did not include the collection of in-depth data from the organisations concerned prior to the fact-finding mission.
- Second stage: experts went on a fact-finding field mission in October 2007 to conduct an initial assessment of the system and the progress made. One key methodological feature of the mission was the involvement of government experts from OECD countries (Canada and France) and the MENA region (Dubai, United Arab Emirates) in order to provide a variety of viewpoints for the analysis. Interviews were conducted with officials from various Moroccan government agencies concerned, as well as with representatives from the private sector, the civil society and international organisations.
- Third stage: Preparation of the draft Study in close co-operation with the government experts who took part in the fact-finding field mission.

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<sup>5</sup> Improving the probity of public life in Morocco is a government priority. An Action Plan against Corruption was framed in August 2005.

- Fourth stage: Validation and approval of the draft Study with representatives from the government, private sector and civil society that had been met during the field mission.<sup>6</sup>
- Fifth stage: Further to this pilot project in Morocco, a regional conference was organised in Morocco in April 2008 on integrity issues in public procurement to discuss the results of the Study with stakeholders and to promote policy dialogue between experts from the region. The methodology of the Joint Learning Study was positively received by participants, with certain countries in the Middle East and North Africa region explicitly expressing an interest in carrying out a similar activity within their national system.

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<sup>6</sup> A detailed description of the methodology is given in the document “Terms of Reference for the Pilot Project on Integrity in Public Procurement in Morocco – Joint Learning Study”.

## EXECUTIVE SUMMARY

### **Risk areas**

Public procurement in Morocco is an activity that is vulnerable to corruption and fraud, as in other countries. Although the phase ranging from the call for tenders to the award of contracts is adequately and properly regulated by the 2007 Decree, it was pointed out during the interviews that these risks seemed to be more significant during the pre- and post-tendering phases, which were less well regulated.

### **Strengths and weaknesses of the system**

The following points sum up the identified strengths and weaknesses of the public procurement system in Morocco.

#### **1) 2007 regulations: A detailed framework for public procurement**

The 2007 Decree which sets the conditions and terms for public procurement, came into effect on 1 October 2007 in Morocco to fill the identified gaps of the 1998 Decree. It provides a **detailed framework** for public procurement and is conform to the principles of good governance, which guide efforts on an international level.

The 2007 Decree applies to central government and local authorities. Public enterprises and establishments can adopt their own specific regulations provided they comply with regulations regarding competition and transparency. Authorities that do not have their own regulations in place must apply the 2007 Decree. It will be important in the future to harmonise existing regulations for all **public enterprises and establishments** with the provisions of the 2007 Decree.

In addition, although the 2007 Decree partly covers the **needs assessment** (Article 4) **and contract management** (Articles 91 and 92) phases, more emphasis could be placed on these pre- and post-tendering phases in order to ensure the integrity of the entire procurement process. In particular, it would be advisable that regulations and additional guidelines, such as the General Terms and Conditions of Contract, provide further details on the preventative mechanisms that apply to these grey zones.

Lastly, attention should be paid to ensuring that the 2007 Decree is effectively **implemented** at central, regional and local levels. In particular, adequate human and financial resources must be provided at the regional and local levels to allow the implementation of the 2007 Decree.

## ***2) Greater transparency in the procurement cycle***

The 1998 Decree already reflected the principle of increased **transparency** in public procurement. The 2007 Decree introduces new features such as an increased scope for informing firms of tender notices, the introduction of transparency for negotiated contracts, an automatic notification for unsuccessful tenderers and a more systematic record of documents relating to awarded contracts in order to facilitate any subsequent research.

While the aim is to make the best purchase possible (works, supply of goods or services), one of the challenges of implementation lies in striking the **right balance** between increased transparency and procedural efficiency. Care must be taken to ensure that the implementation of provisions regarding transparency does not lead to delays in the award of contracts and additional costs for the administration.

## ***3) Electronic procedures: Creation of a national public procurement portal***

The creation of the new electronic portal has particularly **ambitious** objectives, including the publication on the portal of planned procurement programmes, tender notices, results of tendering, excerpts from the minutes of tender evaluation sessions and progress reports on the implementation of contracts.

Further consideration should be given to ways which would facilitate the transition from a paper-based system to a system that combines **paper and electronic media**, especially in terms of improving the management capacities of procurement departments and enterprises with regard to the electronic portal.

## ***4) Introduction of anti-corruption measures in the 2007 Decree***

The 2007 Decree introduces anti-corruption measures for the first time, both for the **tenderer** (sworn oath, undertaking not to use dishonest practices or corruption) and for the **contracting authority** (abstention from any relationship or action that could compromise its independence).

It is considered important that these measures be applied within a legal framework that regulates **conflicts of interest** for the parties involved in public procurement in order to strengthen the integrity of the entire system.

Besides this legislative framework, attention should also be paid to the effective implementation of **sanctions** against corrupt officials, regardless of their rank or seniority, in order to bolster confidence in this new system.

### **5) First step towards the introduction of an appeals mechanism for complaints related to public procurement**

Any tenderer who challenges the outcome of a tendering procedure and is dissatisfied with the decision taken is entitled to take the matter up with the contracting authority. If the tenderer is not satisfied with the contracting authority's response, (s)he may, as a second step, take up the matter with the minister concerned and, as a third step, with the presiding Government Secretary General over the **Public Procurement Review Board** to consider the request. The Public Procurement Review Board issues an opinion in an advisory capacity.

To ensure that complaints are treated fairly, plaintiffs should on the one hand be provided **easier access** to the Review Board by eliminating a number of existing filters and on the other hand, the Board itself should be granted further **powers** and **resources** in terms of both budget and staff.

### **6) New reform of public spending controls: A shift from control of compliance to performance-based control**

The aim of the reform is to relax the control *a priori* based on procedural compliance, in favour of *ex post* control, that would emphasise **control of the outcome and tangibility of the service supplied** and therefore improve efficiency. Despite the numerous and cumbersome control efforts of such prestigious institutions as the General Treasury (*Trésorerie Générale*), the General Finance Inspectorate (*l'Inspection Générale des Finances*) and the Court of Accounts (*la Cour des comptes*), these controls have proved unable to produce sufficient material evidence for judges to investigate cases of corruption in public procurement.

Tightening up *ex post* controls requires a change of mindset and therefore calls for a structural reorganisation and the **professionalisation** and support of the staff concerned. Training has a key role to play in this enhancement of professional skills in order to keep stakeholders abreast of reforms, familiarise them with the new procedures to follow and also help them to prevent any risks of corruption.

## **Conclusions of the report and recommendations**

To assist the Moroccan government in its efforts to reform public procurement, five priority lines have been identified through an analysis of the system:

- Strengthen **professional skills** in public procurements in order to give authorising officials sufficient management capacity as part of the process of relaxing *ex ante* controls.
- Increase the **powers** of the Public Procurement Review Board.

- Continue with the assignment of **responsibilities and auditing process**.
- Ensure the harmonised **interpretation and implementation** of the 2007 Decree.
- Introduce specific measures to **prevent corruption** in public procurement.

For further details, see Section VI of this Study on Policy Recommendations.

## I. OVERVIEW OF THE NEW PUBLIC PROCUREMENT REGULATIONS

### 1. The 2007 Decree on public procurement

#### ***Reasons for the reform***

The Decree setting conditions and terms for the tendering phase and certain rules relating to their management and control, which came into effect on 1 October 2007, seeks to address:

- The shortcomings and loopholes of the 1998 Decree (*e.g.* absence of procedures for the settlement of disputes, limited public notification, lack of clarity in relation to selection criteria, etc.).
- The need to update and modernise public spending management tools.
- Developments in international standards and the government's international commitments (*e.g.* European Union, World Bank and World Trade Organisation).
- Firms' and citizens' demands for and expectation of better quality service.

#### ***The principles***

The principles of the 2007 Decree are consistent with those that guide reforms at the international level such as the WTO Agreement on Public Procurement and EU Public Procurement Directives, i.e. increased transparency and competition as well as the equal treatment of tenderers. The simplification of procedures and improved probity in public life are also stated objectives of the 2007 Decree.

#### ***Main advances***

The main advances of the 2007 Decree are:

- Increased transparency with regard to potential suppliers and within the administration (*e.g.* wider publication of tender notices, automatic notification of unsuccessful tenderers of the reasons for non-selection and a more

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systematic requirement to keep documents relating to awarded contracts for a minimum period of five years).

- Introduction of specific anti-corruption measures for both tenderers and the contracting authority.
- Better regulation of certain at-risk practices, such as the use of sub-contractors and negotiated contracts.
- Better co-operation with the private sector by simplifying administrative procedures and introducing forms of recourse.

### ***Scope of Application of the 2007 Decree***

The 2007 Decree provides a detailed framework for regulating the public procurement procedure in Morocco at central government level and regional and local level. It applies to local authorities by virtue of Article 48 of Decree 2-78-576 of 30 September 1976 regulating the accounts of local authorities and their consolidation. In the case of public establishments operating under the oversight of the Ministry of Economy and Finance, each establishment is required to draw up its own regulations on public procurement in compliance with the basic rules of transparency, competition and equal treatment. Because they did not have regulations of their own, some public enterprises have decided to apply the 2007 Decree. Some enterprises which already had their own regulations, such as the National Electricity Board and the National Water Board, are thinking about harmonising their regulations, in light of recent developments.

It was said during the interviews that local authorities may find it hard to implement the provisions of the 2007 Decree. To overcome such difficulties, fresh thought is being given to introducing supplementary regulations for local procurement, an idea which would also be in line with the broader framework of modernising and bringing local governments up to standards in terms of organisation, financing and staffing. Although public procurement is decentralised from a technical and managerial standpoint, financial decisions on the commitment of funds are taken centrally. The situation of Rabat, the capital city, is more complex and unique, since the presence of a mayor and a prefect (*Wali*) with different responsibilities means that the procurement process is split in two.

The 2007 Decree contains more exceptions than the 1998 Decree. For example, the 2007 Decree does not apply to:

- Agreements and contracts concluded by central government under the rules of common law.

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- Delegated management contracts for public services and infrastructure.
  - Asset disposals and services provided between government agencies under the prevailing regulations.

Concessions and delegated management contracts are regulated by the February 2006 Act on the delegated management of public services.

*REMARK. Steps to harmonise the provisions of the 2007 Decree with the regulations applicable to public establishments and state-owned enterprises is necessary to make the regulation of public procurement more coherent. The role of the Government General Secretariat could be enhanced in this context to ensure intergovernmental co-ordination to facilitate the harmonisation or even standardisation of regulatory provisions whenever possible. In some OECD member countries, a single regulatory text applies to the State, local authorities and public establishments. Moreover, it will be essential to put in place the means to implement the 2007 Decree; to do this, adequate human and financial resources will have to be provided at both central and local level.*

## **2. The reform stakeholders and supporting measures**

### ***The stakeholders***

Several public sector officials are involved in the planning, tendering, implementation and control of public procurement contracts. Only authorising officials – ministers at national level, and regional council presidents and governors at local level – have the power to authorise budget commitments. Authorising officials entrust the procurement procedure to contracting authorities. The contracting authorities are in charge of drawing up, managing and monitoring procurement contracts, from the preparation of specifications and award of the contract to the monitoring and control of contract implementation. Control staff is responsible for ensuring the compliance of the process in terms of budgetary and regulatory procedures. The payment office's staff is responsible for settling the corresponding expenditure and discharging the public entity's debts. Budgetary commitment, planning and expenditure payment functions are therefore kept separate.

### ***Supporting texts***

In order to complete the specific provisions of the 2007 Decree and other regulations concerning public procurement, a number of supporting texts are being created, notably through:

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- The adaption of the general conditions of contracts applicable to public works and design contracts (2000 and 2004).
  - The standardisation of other terms and conditions, such as the common conditions of contract and the special conditions of contract.

It was also pointed out in interviews that several projects were planned in this respect, such as a standard format for special specifications, the amendment of general terms and conditions of contract in order to ensure compliance with the provisions of the 2007 Decree, a guide to public procurement drawn up by the General Treasury and a common classification for documentary evidence of commitments and payments.

*REMARK. These measures supporting the implementation of the 2007 Decree in the form of explanatory notes, manuals and standardised documents for contracts related to the provision of work, supplies and services should be continued. Indeed, these texts will play an essential part in clarifying the provisions of the regulations, ensuring consistent interpretation at central government level and defining the implementing conditions for the 2007 Decree.*

### ***Raising awareness***

In order to advertise the content of the new public procurement reform, the General Treasury of the Kingdom of Morocco organises training days for departments affected by the reform. The trained experts will then assist with awareness-raising days organised at local level by territorial authorities in several regions of the country. Led by experts and practitioners, these workshops explain the new regulations and are designed to provide more efficient training for central and local government officials responsible for public procurement. These training sessions are essential in order to facilitate a harmonised interpretation and implementation of the 2007 Decree.

Additionally, the interviews revealed that the provisions of the 2007 Decree have been broadly welcomed by the government. Interviewees showed a high degree of familiarity with the 2007 Decree and acceptance of the reform. For example, several of them expressed their willingness to use the electronic portal, even if it required changing their working practices. Awareness-raising measures in the private sector have just been launched (see Part 9 on co-operation with the private sector).

*REMARK. This effort to inform and raise awareness within central and local administrations must be consolidated, particularly with regard to operational posts and the private sector since knowledge of the 2007 Decree represents the essential basis for its implementation.*

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## II. GIVING TENDERERS EQUAL ACCESS TO INFORMATION

### 3. Providing information throughout the procurement cycle

The 1998 Decree already reflected the principle of increased transparency throughout the public procurement cycle. Various changes and clarifications have been introduced in the 2007 Decree to increase competition, in particular by seeking to ensure equal access to information.

#### ***Greater transparency in the tendering phase***

The contracting authority is responsible for keeping tenderers informed throughout the entire tendering process, including the publication of tender notices, tender evaluation, award of the contract, notification of the tenderers not selected.

#### ***Publication of tender notices***

The tender notice must be published in at least two national newspapers, one of which should be in Arabic, and on the new public procurement portal. In comparison with the 1998 Decree, the publication period for open invitations to tender has been increased to a minimum of 40 days<sup>7</sup> to be defined by the contracting authority, for projects involving large sums of money and to 21 days for all other projects.

#### ***Award of the contract***

Contracts are awarded by a collective decision, based on the economically most advantageous offer with regard to the pre-defined criteria (Article 44). However, the Decree does not provide a ranking or order of priority for these criteria (Article 18).

The contracting authority informs the selected tenderer and unsuccessful candidates, and also makes public the decision taken:

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<sup>7</sup> The 40-day period applies to contracts of work worth more than MAD 65 million before tax and to contracts for the supply of goods or services amounting to more than MAD 1.8 million. Although this reform extends the publication schedule, the latter still remains slightly shorter than the period specified in international standards for public procurement. For example, the WTO Agreement on Government Procurement specifies a minimum period of 40 days for open calls for tender, as does the North American Free Trade, while EU Directives specify a period of 52 days.

- One key feature of the 2007 Decree is the requirement to inform non-selected tenderers in writing of the reasons why they were eliminated.
- The contracting authority must display the results of the tender evaluation on its premises as well as publish this information on the public procurement portal. Where applicable, the results must also be posted on the website that originally published the tender notice within 24 hours after the committee's decision has been finalised and for a period of at least 15 days.

### ***Explanatory report***

Once the contract has been awarded, the contracting authority has to prepare an explanatory report for the planned project, setting out its decisions throughout the procurement cycle, including the justification of needs, its price estimate, its reasons for the choice of method, justification of the choice of selection criteria and justification of the choice of successful tenderer (Article 90). However, the 2007 Decree does not specify what use should be made of this explanatory report nor to which authority it should be submitted.

*REMARK. It would be helpful to specify what purpose this explanatory report serves, in particular whether it has to be forwarded to control bodies or archived and whether it can be used in the event of a dispute.*

The contracting authority must also prepare a completion report for any contract of a total value superior to MAD 1 million, which will then be published on the public procurement portal (Article 91).

### ***Filing documents***

The 2007 Decree makes it mandatory for the contracting authority to systematically keep a record of the elements justifying the tenderers' non-selection for at least five years (Articles 45 and 57). Due to this provision, tender documents shall no longer be returned to unsuccessful candidates, a common practice in the past which made it difficult to verify the decision regarding contract award.

However, the Decree does not precisely state which documents must be kept. Moreover, as a result of the dispersal of these documents among different agencies, problems remain for auditors, thus complicating their work and causing them a great loss of time. Nonetheless, the General Treasury, in collaboration with certain authorising departments, has recently launched an initiative to draw up a guide for the archiving documents under different domains, particularly those relating to public procurement.

*REMARK. It is crucial to ensure that these documents are conserved throughout the procurement cycle in order to avoid certain at-risk practices (e.g. unwarranted use of*

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*negotiated contracts, contract cancellation notices). To this end, a list of elements justifying the elimination of tenderers should be provided. Since this documentation provides the basis for any verification, it must be accessible to all government bodies in charge of control. Efforts to improve the archiving and physical storage of such documents must be continued within the different administrations to facilitate access in the event of a control.*

Thus, the 2007 Decree takes a significant step towards increased transparency in public procurement in Morocco. The tendering phase is well-regulated and ensures a proper degree of transparency.

### ***Some remaining grey areas***

Certain aspects of the 2007 Decree are insufficiently precise to ensure transparency throughout the entire procurement cycle. In the interviews, a lack of precision in the 2007 Decree was mentioned in connection with:

- The method for assessing needs of the public administration in terms of public procurement, especially with regard to the framework for procurement planning.
- Indicated deadlines in the contract management phase, particularly between contract execution and payment.
- Ways of managing possible amendments to the contract (e.g. adding an amendment to introduce additional work).

*REMARK. Interpretation of the 2007 Decree at central government level should be facilitated by clarifying some of its provisions. Accompanying texts, notably the General Terms and Conditions of Contract, should be developed and drawn up to help officials with certain at-risk situations, especially during the needs assessment and execution of the contract.*

### ***Striking a balance between transparency and efficiency***

The challenge facing all government agencies is that of ensuring sufficient transparency, which helps to combat corruption, without undermining the efficiency of public procurement.

The approach used in certain OECD countries to balance the principle of transparency with efficiency is the principle of proportionality. Proportionality means that the publication of information should be proportional to the importance and value of public procurement contract. However, this approach would only be valid if the discretionary power of the official on certain procurements is counter-balanced with

efficient control mechanisms in order to minimise the risk of abuses (see below an example of good practice from France).

**Box 1. Applying the principle of proportionality in publicising procurement opportunities in France**

The legal principle of proportionality requires administrative actions be proportionate - in a reliable and predictable way - with the objectives pursued by the law.

In procurement, this principle presupposes that the publication of information differs according to the **value and importance of contracts**. The Public Procurement Law, which came into effect on 1 January 2006, stipulates the principle of **proportionality** for publicising bidding opportunities in France, namely:

- Public procurement procedures above the threshold defined by the European Directives must be published in the Official Journal of the European Union (OJEU), as well as in the procurement publications that are part of the official gazette of the French Republic (*Bulletin officiel des annonces des marchés publics*, BOAMP).
- Public bids above EUR 90 000 but which do not exceed the European thresholds are to be published in the BOAMP, and can also be published in specialised journals.
- Below EUR 90 000, the publication of bids will depend on the importance of the contract. Finding the most adequate solution for publishing is the responsibility of the procurement officer who has discretionary power to select the most adequate solution amongst available options, including the official gazette, regional or national bulletins, specialised journals or press. To balance this increased discretionary power of procurement officers, control has also been strengthened to detect mismanagement or abuse, and transfer such cases to court.
- Contracts below EUR 4 000 are exempt from mandatory publication.

*Source: Integrity in Public Procurement: Good practice from A to Z, OECD, 2007.*

According to the people interviewed, tendering procedures designed to increase transparency can sometimes be unnecessarily complex, costly and time-consuming. The resulting slowdown in operations discourages tenderers. One excessively detailed aspect of the procedure is that of the opening of tenders (Articles 35-39). Tenders are opened in public, and there are at least two phases in the procedure: first, the opening of the administrative and technical offer, then the opening of the financial offer. Tenderers whose technical and/or administrative tender is not selected do not take part in the second phase.

Where the subject of the contract is of a particular nature, the contracting authority may ask for the technical offer to be presented separately in a third envelope to be opened before the financial offer. Between the three sessions, the tender evaluation committee withdraws behind closed doors in order to evaluate the administrative and technical offers as well as the submitted samples. The financial offers are then announced during a public session. The requirement of such a degree of transparency during the tender opening sessions may well lead to multiple, long and interrupted sessions. An additional risk is that tenderers attending these sessions might have time to informally get together to exchange information and perhaps collude on future contracts, especially as they are aware of the prices charged by their competitors.

*REMARK. It would be helpful if the government could make a review of the system of the bid opening within a period of one year, for instance, in order to assess how it operates in practice and to check that the required degree of transparency does not lead to inefficiencies and does not promote collusion between tenderers.*

The 2007 Decree also regulates in a detailed manner the treatment of abnormally high tenders. A tender is considered excessive when it is more than 25 per cent higher than the arithmetic average of the contracting authority's estimate and the average of the other tenderers' financial offers. The 25% threshold for excessive tenders was specified in the 2007 Decree in order to combat certain abuses. Henceforth, when a tender is deemed excessive, it is rejected by the bid opening committee (Article 40). The 25% threshold seems rather rigid, since it may result in the automatic rejection of tenders which the committee could have selected, thereby limiting its discretionary power.

***Electronic public procurement: Implementation of the public procurement portal (Article 76)***

The main aim behind the use of new technologies in public procurement is to streamline procedures, save money and minimise human intervention. Under the 2007 Decree, since 1 October 2007 it has been compulsory to publish tender notices on the electronic portal. The General Treasury is responsible for designing and operating the portal.

The creation of the new electronic portal has particularly ambitious objectives, including publication of planned procurement programmes, tender notices, the results of tendering, excerpts from the minutes of tender evaluation sessions and reports on contract execution. Once these objectives have been met, the portal will serve as a comprehensive database containing information spanning the entire procurement cycle from the definition of needs and award of the contract to its execution. Accessible to all, it will give access to a unique source of information about past, future and ongoing procurements.

Several of the electronic portal's functions, such as searching and consulting calls for tender, accessing planned procurement programmes and downloading regulations, are already operational. The site ([www.marchespublics.gov.ma](http://www.marchespublics.gov.ma)) is well structured and available in French and Arabic. Existing features like a site search facility, a FAQ section, a press review and useful links make this electronic portal easy to use.

*REMARK. To ensure implementation of the electronic portal and maximise its utilisation, it is necessary to:*

- *Show a strong commitment to electronic public procurement.*
- *Provide all stakeholders with an action plan setting out the necessary resources to ensure sufficient means (computers, internet connection) and staff for the portal to function properly.*
- *Appoint implementation officials within ministries and train them in the new system.*
- *Take steps to provide training for and communication with the private sector to encourage firms, especially small- and medium-sized enterprises, to use the electronic portal.*

*One major challenge will be to plan the transition from a paper-based system to a system that combines paper and electronic media, especially by ensuring that the legal framework covers aspects such as the protection of personal data and use of electronic signatures. Co-operation with managers from other countries could be envisaged to help the government avoid certain pitfalls during implementation<sup>8</sup> (a good example of integrating on line processes in Dubai is set below).*

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<sup>8</sup> By as early as 2002 the Government had already played an active part in the "High-Level Seminar on E-procurement" held in Naples in 2006 as part of the Good Governance for Development in Arab Countries Initiative. Further co-operation might be envisaged in the future, particularly through bilateral arrangements with countries in the region such as the United Arab Emirates.

**Box 2. Integrating processes on line for budget, purchasing and payment in Dubai**

In the year 2000, the ruler of Dubai launched the e-drive in the Emirates of Dubai. One project was to introduce the tools and technologies to implement the best practices of e-procurement in the Dubai government. Some of the key objectives were to:

- Introduce e-marketplace technology as well as Enterprise Resource Planning (ERP) software in all the Dubai Government Departments.
- Train the employees of the Dubai Government Departments to play a more strategic role in the improvement of the efficiency of that department.
- Bring transparency to the overall procurement process.
- Enable Dubai Government suppliers to deal with the Government of Dubai electronically.
- Improve the efficiency of all Government departments.
- Make Dubai Government Departments a model for other Emirates.

*Tejari* is the company in charge of implementing all the required objectives in Dubai Government Departments. *Tejari* is a government-initiated, profit-driven online marketplace that enables all phases of the negotiation to take place on line. In addition, government departments use an Enterprise Resource Planning system that can be used for making purchases requests since it is linked to the accounting and invoicing system. These systems are used together in an integrated manner. All government departments use a shared internal information system collecting all information together. *Tejari* consists of several purchase processes and functions:

- *e-Bidding*: *Tejari* collects and evaluates bids;
- *e-Cataloguing*: uploading and searching;
- *e-Ordering* for orders and invoices;
- *e-Auctioning*, including e-Marketplace, negotiation, reversed auctions;
- *Tejari Link*: This market-making facility supports small- and medium-size businesses, where a company can log on to a national directory and view contracts, promotions and messages, as well as set up virtual showrooms.

### **Integrating processes on line for budget, purchasing and payment in Dubai (cont.)**

- *Tejari Expert*: This consulting service helps streamline the procurement process for large organisations.

In 2006, *Tejari* had more than 4 000 suppliers, and the vast majorities were from the private sector. As the Government is the largest buyer in the region, 60% of the procurement spending comes from the government sector. Since the launch of e-procurement in 2000, the value of business through this system represents over two billion USD, and over 100 000 items in the catalogue are available.

With the introduction of *Tejari*, Dubai has benefited in particular from the reduced duplication of procurement functions and offices, and a more unified and user-friendly procurement system that brings together budget, purchasing and payment processes on line. Obstacles that still need to be overcome include the lack of adequate skills in the government and the need to ensure a wider participation by suppliers. Efforts have been initiated in that direction with awareness-raising activities, as well as training for both public sector employees and suppliers.

*Source*: Information given by *Tejari* and *Integrity in Public Procurement: Good Practice from A to Z*, OECD, 2007.

## **4. Guarantees of integrity for suppliers under different procurement methods**

Moroccan procurement regulations require open tendering as a general rule. This contributes to keeping procurement open to competition and, more generally, to transparency. Yet, because open tendering procedures, according to the value and nature of the contract, can be constraining, the authorities are faced with a significant challenge in reconciling the demands of openness with those of administrative efficiency.

The government has a range of procurement methods at its disposal beyond open tendering, including restricted tendering, pre-selection of tenderers, negotiated contracts, and framework agreement and purchase orders. The award of consultancy contracts is a special case where a specific procurement procedure is applied (Article 80).

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### ***Restricted or selective tendering***

Restricted or selective tendering is strictly bound by the 2007 Decree and must be justified by the contracting authority. Restricted tendering constituted around 6% of contracts signed in 2007.<sup>9</sup>

**Restricted tendering** is limited to services which cost MAD 1 million or less and which can only be performed by a limited number of entrepreneurs, suppliers or service providers due to their nature or complexity or to the scale of the tools and equipment required (Article 17). A restricted tendering notice must be sent to at least three candidates in a position to respond satisfactorily. The contracting authority is responsible for identifying these candidates, at its discretion. To enhance transparency and the number of potential candidates, the Ministry of Equipment and Transport has now generalised to use the tenderer pre-qualification and rating system, which was previously applied only to tenderers for construction and public works contracts. The Ministry of Equipment and Transport publishes on its website a list of qualified enterprises as well as firms whose qualification certificate has been withdrawn.

In the case of restricted tendering, notice is sent by registered mail to candidates selected by the contracting authority. While the notice period is shorter than for open tendering (15 days), the tendering requirements are the same (Article 40). The restrictive tendering procedure is also similar to that for open tendering: tenders are opened at a public session, they are examined by a tender evaluation committee, and the contracting authority must communicate the information mentioned above.

*REMARK. To broaden the field of competition and guarantee integrity in the selection of candidates, the process of pre-qualifying and ranking tenderers should be reinforced. The contracting authority and the controller should have more information on potential tenderers, with a database that lists potential tenderers by economic or industrial sectors.*

**Selective tendering** (Articles 48-62) differs little from the procedures described, with the exception of the following points. First, it is used when the nature or complexity of the task to be performed requires pre-selection (pre-qualification) of candidates. The selective tendering procedure is subject to the same requirements as open tendering in terms of publication, tendering documents, and conditions of participation. The tender evaluation committee takes the form of an eligibility committee, which handles the pre-selection of candidates. During the tender opening session, the committee reads out the list of eligible tenderers, after reviewing their pre-qualification files.

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<sup>9</sup> Statistics published by the Moroccan Treasury.

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*REMARK. In terms of procedure, it would be helpful to use the same classification of procurement methods and their terminology used by international organisations in order to simplify the tasks of administrations and firms. Commonly used methods include open tendering, restricted tendering, negotiated contracts, framework agreements and purchase orders.*

### **Negotiated contracts**

Under the **negotiated contract** procedure (Articles 71-74), the client may select the candidates with which it will enter into negotiations on the terms of the contract. This procedure has the advantage of being swift and flexible, but it runs the risk of favouritism or corruption if it is not properly regulated and supervised.

The proportion of negotiated contracts in total procurement contracts has declined considerably, from 23% of transactions in 2000 to 5.2% in 2007.<sup>10</sup> Recourse to negotiated contracts without prior notification and without competition has been defined and limited to particular cases, such as services or goods that require expertise reserved solely to patent holders; that are secret for reasons of national defence or public safety; or that must be performed on an emergency basis.

Negotiated contracting may also be used if existing contracts require supplementary goods or services. In this case, the additional goods or services may not exceed 10% of the original value of the contract. This is a decision taken by the contracting authority and should comply with the 10% requirement. Such supplementary services must remain strictly incidental to the original contract.

*REMARK. The setting of a strict 10% limit on amendments is an effective means of limiting possible abuse of the negotiated contract procedure by the contracting authority. However, should this limit prove to be too rigid in practice, particularly if there are exceptional circumstances, then consideration might be given to introducing a certain degree of flexibility. One option might be to ask the tender evaluation committee to decide whether the 10% limit may or may not be exceeded. Such a decision would obviously have to be justified in writing.*

The principal innovation with respect to negotiated contracts stemming from the 2007 Decree is to distinguish two types of negotiated contract:

- Contracts negotiated after publication of an official notice and competition; and

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<sup>10</sup> Statistics published by the Moroccan Treasury.

- Contracts negotiated without publication of an official notice and without competition.

The key point is to introduce **elements of transparency** into any procedure where there is limited or no competition. Negotiated contracts with advertising require the publication of a call for tender through different channels (at least one national-circulation newspaper, the public procurement portal, etc.). Potential candidates are given at least 10 days to submit their applications. As noted above in the case of restricted tendering procedures, invitations to negotiate contracts must be issued to at least three candidates, if possible. Lastly, the contracting authority must, in certain cases, create a certificate relating to the negotiated contracts and justify their application (Article 71).

*REMARK. Consideration might be given to taking a further step towards enhanced transparency for negotiated contracts by publishing the results of negotiations.*

Promoting transparency is essential for establishing public confidence in negotiated contracts, which are still seen as a major risk area for favouritism and corruption. However, provided they are negotiated under conditions of transparency and are properly justified, such contracts can be an efficient way of procuring goods, services and public works within a short time frame.

### **Framework agreements**

The 1998 Decree opened the way for procurement by means of framework agreements, when the quantity to be procured and the regularity of purchasing are predictable and ongoing but cannot be determined in advance. However, there were few rules governing their use.

The 2007 Decree sets specific conditions for framework agreements (Article 5). Threshold amounts have been introduced, and the maximum threshold may not be more than twice the minimum. Framework agreements are negotiated for one fiscal year, and may be tacitly extended for no more than three years (versus five years in the 1998 Decree). Moreover, a framework agreement may be used only for the types of procurement listed in the annex to the 2007 Decree.

*REMARK. While framework agreements have the advantage of facilitating the purchase of standardised goods, their management requires real expertise on the part of procurement officials. They must have training in negotiation; and they must be sensitive to issues of integrity in order to avoid certain risks. To this end, consideration might be given to establishing a pool of expertise in the management of framework agreements, which would also facilitate controls on such contracts.*

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The 2007 Decree introduces a new category of framework agreement, in the form of renewable contracts (Article 6). Renewable contracts are used when the quantity of procurement and the regularity of purchasing can be determined in advance and are predictable, repetitive and ongoing.

### **Purchase orders**

Purchase orders (Article 75) are widely used because they offer the procurement authority the advantage of flexibility. Since they do not involve tendering procedures, they can speed up the acquisition of various products.

The Court of Accounts, in its 2005 and 2006 reports, identified a number of risks linked to the abuse of purchase orders. In particular, it noted the problem of contract-splitting through the use of purchase orders.<sup>11</sup>

The ceiling for use of purchase orders has been set at MAD 200 000 per fiscal year for each authorising official, since the 1998 Decree, and this ceiling was maintained in the 2007 Decree. This ceiling is somewhat higher than standard practice in OECD countries, where purchase orders are generally restricted to contracts of low value. Annex 3 of the 2007 Decree provides a list of items that may be procured through purchase orders. While it limits the scope of such procurement, the list is in fact fairly extensive.

A new element in the 2007 Decree requires that, to the extent possible, purchase orders are to be issued only after inviting written tenders from at least three competitors. However, this device does not diminish the risk inherent in the authorising official's discretionary power to place purchase orders.

*REMARK. In order to control the use of purchase orders more effectively, the ceiling should be reduced to reserve its use for purchases of low value. All procedures must be monitored, including applicable to purchase orders, even if the control procedures can be adjusted according to the sums of money involved. In this way the discretionary power of the authorising officials could be counterbalanced by audits of a representative sample of purchase orders in different government departments.*

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<sup>11</sup> Source: Court of Accounts Annual Report 2005, pages 24 and 97.

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### III. ENSURING SOUND MANAGEMENT OF PROCUREMENT

#### 5. Ensuring that public funds are used for their intended purpose

The proper organisation of procurement is an essential element of the strategic management of public funds in order to promote value for money and prevent fraud and corruption.

##### ***Planning***

The planning of procurement and related expenditures is essential for giving effect to a long-term strategic vision of government needs. The 1998 Decree requires the publication of expenditure programme forecasts in at least one newspaper of national circulation for central government departments and agencies. However, it was indicated during the interviews that this provision is not systematically applied in practice. This fact can be attributed to a general lack of planning, which can lead to spurts of budgetary expenditures in the month of June, at the end of the fiscal year and in late payments. The 2007 Decree seeks to strengthen the system by requiring these programmes to be published on the public procurement portal and, optionally, on the website of the Ministry of Finance, which should facilitate the work of potential suppliers.

*REMARK. There will have to be a move, over the medium term, to multi-year budgeting, in order to strengthen the planning and forecasting of expenditures by placing them in a multi-year context. This would improve financial transparency, especially for the planning of departmental purchasing programmes. The Moroccan government has initiated this reform and should pursue it.*

##### ***Responsibility of authorising officials***

The decision to commit expenditures is taken by an authorising official, usually a Minister. The Dahir of 2002, amended in 2005, holds the authorising official personally liable for requisition orders that involve public expenditure. This is a major step forward as part of the creation of a culture of responsibility within the administration. However, if the authorising official is a Minister he cannot be held legally liable before the budgetary and financial discipline tribunal even if he has issued a requisition order (Article 52 of Act 62-99, the Financial Jurisdictions Code, 13 June 2002).

### **Box 3. Favouring a results-oriented environment: Budgeting and financial management reforms in Canada**

Canada's long-established Financial Administration Act requires that funds be used for the purposes intended as approved by Parliament. It is also the basis for ensuring an **appropriate segregation** whereby budget procurement, project and payment verification activities are conducted by individuals from separate functions and **distinct reporting relationships**.

Current reform efforts are underway to **extend accountability** from using expenditures for the "purposes intended" to "**outcomes achieved**" with those expenditures. In particular the Management Reporting and Results Structure Policy establishes more structured and detailed appropriations documents and performance reporting both in departments and to Parliament. In addition, since November 2006, an Assets and Acquired Services Policy Framework also requires that procurement activities be clearly aligned with expected results of key programme activities and demonstrate how they contribute to expected outcomes.

The 2006 Federal Accountability Act also seeks to reinforce citizens' confidence in procurement through:

- An overarching **statement of procurement principles** that commits the government to promoting fairness, openness, and transparency in the bidding process.
- The inclusion of **integrity provisions in contracts**.
- The creation of a **dedicated Procurement Auditor** to review procurement practices across government, handle complaints from potential suppliers, review complaints from contract management, manage an alternative dispute resolution process for contracts and submit an annual report to Parliament.

In addition to establishing the planning and budgeting reporting requirements, the new frameworks and supporting policies recognise the importance of:

- An **enabling environment** for realising outcomes that promotes good governance and effective processes (*e.g.* management reporting, management capacity).
- Having an **integrated model** linking appropriation, budgeting, investment, procurement and contract management processes, validated by a robust audit process. This is a significant departure from long-established practice of silo functions with limited financial management and performance information and a transactional approach to audit.
- **Building capacity** through training at all levels of management, as well as greater reliance on professionally accredited or certified communities of practice and external recruitment.

*Source: Integrity in Public Procurement: Good Practice from A to Z, OECD, 2007.*

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For public procurement at the local level, it is planned to devolve funding to subordinate authorising officials appointed by and under the responsibility of authorising officials. However, it would appear that the transfer has primarily been at the technical level and has not been accompanied by a proportionate transfer in funding. As a result, regions which now have responsibility for certain public works (*e.g.* road construction) have not seen a proportionate increase in their budgets. Furthermore, it was stated that there were frequent delays in the transmission of funding which was not transferred to subordinate authorising officials until late in the financial year.

Each local authority chairman manages his own funding, which may or may not be sufficient to meet needs. After inspections were made in rural communities by the General Finance Inspectorate (*Inspection Générale des Finances*, IGF), it was found that the absence of *ex ante* controls in these communities could cause problems. The municipality of Rabat is a special case, given its role as the administrative capital of Morocco. The mayor who, although not an authorising official – this function is exercised by the prefect (*Wali*) – is still held accountable for the handling of procurement transactions. It was suggested during interviews that this may create additional problems in terms of sharing responsibilities.

### ***Expenditure control***

Expenditure control is intended to ensure that public funds are being spent for justifiable government needs. In OECD countries, this control may also be exercised firstly by internal auditors and secondly by independent institutions. Examples of the latter include the General Inspector in Belgium, the Auditor General in Canada or the Government Accountability Office in the United States. This control serves to ensure that the purpose of the transaction reflects the nature and scope of the need, and that the cost of the procurement has been estimated with reference to market prices. In Morocco, such control primarily falls under the discretionary power of the Minister, even though according to the legislation the Court of Accounts and the General Finance Inspectorate also have a role to play (see also Part 10 Control mechanisms, in relation to the role of the General Finance Inspectorate).

### ***Towards an overhaul of the expenditure control system***

The Ministry of Finance (*Ministère des Finances*) launched an overall reform of the government expenditure control system in 2006, following the recommendations in a study commissioned from an international consulting firm.<sup>12</sup> Implementation of this ambitious reform is in the hands of three divisions of the Ministry of Finance: the General Treasury of the Kingdom (*Trésorerie Générale du Royaume*), the Budget Directorate (*Direction du Budget*) and the IGF.

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<sup>12</sup> The study was conducted by Eurogroup.

The reform is intended, first, to shift the approach of the supervisory institutions from an *ex ante* focus on controlling regularity to a focus on controlling performance and on *ex post* control of compliance. Henceforth, *ex ante* control of compliance will be gradually handed over to the authorising officials, and control by the General Treasury will focus on expenditures. For example, personnel expenditures in amounts of less than MAD 5 000 will be overseen only by the authorising official. In this progressive transfer of responsibilities, the authorising officials will need to be strengthened in their management capacity, with coaching from institutions such as the General Treasury, the IGF and the Court of Accounts. The General Inspector and other control bodies will be responsible for the prior certification of the management capacity of each authorising official. This certification is essential, recognising that the management capacity of the authorising officials is today very uneven. Some ministries, for example the Ministry of Equipment, have longer experience in managing public procurement than do other ministries such as Fisheries. Work in this area was recently initiated by the Ministry of Finance, in partnership with other Ministries, and formally introduced at the "Performance Forum", which aims in particular to train managing departments in all aspects of expenditure, including public procurement and internal controls.

*REMARK. The reform underway to lighten the burden of ex ante control is desirable because it will help to streamline procurement procedures by avoiding excessive formalities involved in verifying the regularity of the procedure. To facilitate this transition, it would be advisable to create a body of properly trained procurement specialists, who would be dedicated full-time to the planning of purchases and to the award and implementation of contracts, in order to assist authorising officials. This professionalization would be all the more useful in a rapidly evolving environment, such as frequent updating of regulations, growing responsibility of the authorising officials with regard to control, e-procurement and striving for efficiency. Strengthening internal capacities in this way would avoid certain upstream problems of regularity. More generally, there is a need to improve the exchange of information and the transfer of skills in order to bring authorising officials up to standard with the required levels of competency.*

The system for evaluating the performance of authorising officials, as envisioned by the reform, will become operational in a second phase. However, it will be some time before the authorising officials can take over responsibility for *ex ante* control and be held accountable for expenditure performance.

*REMARK. All available tools should be mobilised to bring about a shift of organisational culture to one focused on results, measured by performance indicators. In developing these indicators, the IGF could usefully draw upon experience in other countries. For example, the Government of Chile has introduced various performance indicators for improving certain essential aspects of public management, especially in procurement. Those indicators include:*

- *The portion of the budget earmarked for purchases effected through public tendering.*
- *The percentage of purchases effected through the emergency purchase procedure.*
- *The discrepancy between the annual plan and purchases actually made during the year.*

### ***Creating a single control point for expenditure commitment and payment***

The second aspect of this reform has to do with restructuring and organisational changes in the area of control. The entities responsible for *ex ante* control have been merged in order to streamline the organisation of work, make procedures more consistent, and economise in the management of personnel and procedures. This approach explains why the first task accomplished under the reform was the physical merger of the General Treasury with the General Audit of Government Expenditure Commitments (*Contrôle Général des Engagements de Dépenses de l'État*). This merger has created a single expenditure control point, "a sole contact for the procurement authorisation units", for controlling expenditure commitments and payments. This should enhance the efficiency of the process by making it faster and by ensuring that there is only one interpretation of the regulations, *i.e.* that of the controller. However, it is important to ensure that the controller has the required level of expertise.

The success of the reform will depend heavily on mobilising and winning the support of the procurement authorising officials in the different ministries. At this time, treasury units have been created in the Ministry of Agriculture and in the Ministry of Foreign Affairs, and there are plans to set up similar units in eight other line ministries by late 2008.

### ***The role of the State-owned Enterprises and Privatisation Directorate***

The State-owned Enterprises and Privatisation Directorate (DEPP) in the Ministry of the Economy and Finances exercises governmental financial control over state-owned enterprises and oversees the public portfolio. The DEPP is also responsible for privatising state-owned enterprises and for setting accounting standards. It has a staff of around 400 persons. Its controllers must be rotated every four years, and in practice the average assignment is three years.

The DEPP exercises financial control in accordance with a series of modules, with *ex ante* control for certain public establishments such as hospitals or universities, and reporting obligations for mixed private-public corporations. Control varies according to the available skills and resources in each organisation, and according to the regulations

governing different public establishments. For establishments that lack the necessary resources, a government controller and an accountant are appointed to oversee payments.

There are around 700 state-owned enterprises, and they enjoy legal and financial independence. The principal governance body is the board of directors. An annual report on state-owned enterprises is submitted to Parliament along with the budget Act. The largest state-owned enterprises have instituted external audit by independent auditors, consistent with private-sector practice.

### ***Control over the public purse by the Court of Accounts***

The use of public funds for procurement is overseen by an independent institution, the Court of Accounts, which is the supreme budgetary audit body. When the latest Constitution was approved in September 1996, the Court of Accounts was elevated to the status of a constitutional institution. As the supreme audit institution for budget management, the Court of Accounts is expected to participate in rationalising public expenditure management and to assist Parliament and the Government in the areas within its competence (Title 10 of the Constitution). It has particular responsibility for ensuring that income and expenditure operations are conducted in accordance with regulations. The financial jurisdictions may take action to discipline the accounts of government departments, by scrutinising the responsibilities of authorising officials, auditors and public accountants and to prosecute violations of public accounting rules (for further information on the role of the Court of Accounts, see Part 10 on Control mechanisms).

## **6. Reinforcing professionalism**

The government launched the Good Governance Pact in 1995, committing the administration to rationalise public management, clean up the administration, and make it more responsive to citizens. An essential precondition for good governance in procurement is to have properly qualified and competent procurement staff.

### ***Lack of recognition of procurement specialists as a profession***

Specific professions relating to procurement do not exist in Morocco. There is no specific position concerned solely with public purchasing, nor is any specialised training or certification offered. In particular, responsibility for spending public funds through public procurement lies with the authorising officials, sub-authorising officials at the sub-national level and the directors of state-owned enterprises and establishments. However, it should be noted that some administrations in local authorities and state-owned establishments have a dedicated procurement unit.

The government offers no specific training in public purchasing, either at the time of recruitment or during the course of career development of officials who will work in procurement. The only specialised courses are offered by private institutes such as the *Institut Supérieur de Commerce et d'Administration des Entreprises*. While the National School of Administration (*École Nationale de l'Administration*, ENA) of Morocco provided specific one-year training courses for procurement specialists during the 1980s, it no longer does so. The authorising officials today take general training in public management, and employees of certain ministries, such as the Ministry of Equipment, receive specialised training in engineering upon recruitment. However, it was noted that some *ad hoc* training is conducted to familiarise public officials with the provisions of the 2007 Decree on procurement (this training is described in Part I which presents an overview of the new regulations on public procurement).

*REMARK. It would be advisable to professionalise public procurement, for example by creating a professional category of public procurement specialists who would hold a specific position and follow a defined course of study. Procurement-specific training could be organised by the government, in co-operation with ENA. In the longer run, a procurement certification system could be developed, through international partnerships. This would allow for the regular updating of the skills profile to reflect the latest regulatory and technological developments, especially as the electronic portal is implemented.*

### **Human resource management**

The selection, remuneration, promotion and evaluation of officials involved in the procurement process follow the general personnel management rules of the Moroccan government. The civil service provides guaranteed employment, but it offers little in the way of motivation for public officials. Pay and promotion are based primarily on seniority, and the system is just beginning to adopt a performance-based managerial culture.<sup>13</sup>

The institution responsible for administrative reform in Morocco is the Ministry for Modernisation of the Public Sectors, created in 2002 to implement the reform of the public administration, with a particular stress on enhancing the efficiency of human resource management in the public sector.

### **Recruitment**

The January 2006 Act amending the Civil Service Statute introduced some flexibility into recruitment procedures in order to meet the needs of the administration. The Act provides for holding competitions to fill vacant posts, as a way of guaranteeing equality of access to government positions. At the same time, it authorises recruitment on

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<sup>13</sup> Source: African Development Bank, Evaluation Report, May 2006.

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contract without the right to tenure. In addition, the Ministry of Finance organises continuous training, with the support of international organisations such as the World Bank, to compensate for the skills lost through the voluntary departure programme in 2004 and 2005.

### **Remuneration**

The pay levels for public employees, and in particular those involved in procurement, is an important element in efforts to ensure integrity in public procurement. If salaries are too low for public officials to live properly, there will be more temptation to accept bribes and engage in corruption. Under such circumstances, public officials may also feel to have a secondary job in the private sector, with the resulting risk of conflict of interest. Holding two such conflicting posts is now prohibited by the amendments to the Civil Service Statute.<sup>14</sup>

It was suggested during the interviews that the main problem has to do with significant differences in salaries between the public and private sectors. For example, procurement officials in the central administration are paid much more than their counterparts at the local government level. There are similar differences from one ministry to another. In some ministries, the Ministry of Equipment for example, there are substantial advantages such as housing allowances in the "package" offered to public officials.

*REMARK. An effort should be made to harmonise remuneration (not only pay scales but also other advantages) within the Moroccan administration. One possibility might be to create a professional category of public procurement specialists who would thereby enjoy appropriate status and recognition within the hierarchy.*

The fact that salaries in the private sector exceed those of public officials by a wide margin poses the question of how to attract and keep competent experts in government. Some public establishments, such as hospitals, find it difficult to retain accountants who can earn more competitive salaries in the private sector. However, Moroccan public officials enjoy guaranteed employment, which may help offset pay differences vis-à-vis the private sector.

One focus of the current reform is to move from a pay system based on seniority towards one based on merit and individual performance. As part of this process, special attention must be paid to officials in charge of public procurement who, by virtue of their position, are more likely to accept or to seek bribes.

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<sup>14</sup> The holding of two or more offices is authorised only in the case of secondary activities of a scientific, artistic or literary nature, or those involving consulting, advisory or teaching activities.

***Performance evaluation and the promotion system***

The performance evaluation system for public officials introduced in 2006 seeks to address the problems identified in the old system, which include exclusive reliance on seniority for promotion, the prevalence of subjective and theoretical criteria in evaluation, and the lack of indicators for evaluating an employee's performance. It was noted during the interviews that the current system contains some 140 evaluation criteria, making it very complex. These criteria are pre-established and are uniform across all levels of the civil service.

The system is aimed at introducing a system based on two aspects – a rating (at 5 levels: excellent, very good, good, average, and weak) and an appraisal. In addition, it introduces a direct correlation between the rating and appraisal system and the promotion system. Civil servants participate in their own appraisal procedure, which takes place at least once every two years and on application for establishment and grade advancement.

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## IV. STRENGTHENING RESISTANCE TO CORRUPTION

### 7. The general framework for combating corruption

The action plan to combat corruption in Morocco, which the government approved in 2005, includes an important element on strengthening transparency in public procurement. These measures fall within the broader framework of the Moroccan government's effort to enhance the ethical dimension of public life. These efforts culminated with Morocco's ratification of the United Nations Convention against Corruption in May 2007.

#### ***The Central Corruption Prevention Authority***

As part of the preparations for ratification, a number of steps have been taken to combat corruption, in particular with the creation of the Central Corruption Prevention Authority, established in March 2007 by Decree 2-05-1228 and reporting to the Prime Minister, with an exclusively preventive function. Financed from the budget of the Prime Minister's Office, this unit is tasked with co-ordinating, supervising and monitoring implementation of government anticorruption policies. It also gathers and disseminates the necessary information in this field. It is a proactive force, involved in preparation of strategies for prevention, awareness and international co-operation. It comprises not only representatives from every ministerial department but also from civil society, associations, labour unions and research teachers. The Prime Minister is expected to appoint the head of the unit in the near future.

*REMARK. This Office could give thought to specific measures for preventing corruption in areas at risk, such as public procurement. A first step might be to compile a "risk map" to identify the positions of officials exposed to corruption, public procurement activities that are particularly vulnerable and particular projects at risk due to the value and complexity of the procurement. To achieve this, the co-operation of various administrations would need to be secured to ensure that the Office has access to all the information needed for such work. The project could be pursued in collaboration with civil society organisations, such as the Confederation of Moroccan Businesses (Confédération Générale des Entreprises du Maroc, CGEM) as well as Transparency Maroc, which plan to identify and prevent procurement corruption risks, through integrity pacts concluded with different sectors.*

### ***Disclosure of assets***

New draft legislation, in the form of amendments to Act 25-92 of 7 December 1992 on the disclosure of assets by public officials, seeks to detect illicit enrichment. The use of assets disclosures to detect illicit enrichment is a common practice in various parts of the world, from Continental Europe to Mexico and Korea.

The draft legislation targets, in particular, public officials who occupy positions particularly exposed to corruption. This includes senior officials and all personnel involved in procurement, regardless of their level of responsibility.

The disclosure statement is adopted by the legislative and will then be standardised and submitted annually to the Court of Accounts. The intention is for the contents of statements to remain secret and communicated solely at the request of the filing party, or upon a court order. Nevertheless, the scope of disclosure does not *a priori* include wealth held abroad, or that registered in the name of relatives (spouses or children).

*REMARK. The main challenge will be to ensure proper implementation of the draft Act on disclosure of assets once it has been adopted. The 1992 Act had remained a dead letter because it was too ambitious in scope and there was no competent body to oversee the disclosures. The new draft Act targets certain positions at risk, which should make it easier to enforce. However, it is slightly too limited in that it does not allow investigation of either family members or assets held abroad. It will be a challenge to ensure that all public officials concerned complete their disclosure statements and that this information is duly verified by the Court of Accounts.*

### ***Reform of the justice system***

Since 2002, the Government of Morocco has been engaged in efforts to modernise the justice system. The new government that took office following the elections in late 2007 has given a new impetus to reform, and the Minister of Justice has announced that it will focus on four areas: modernisation, ethics, training and communication.

The Ministry of Justice is responsible for processing cases of corruption and financial irregularities, and its mandate also includes the preparation of provisions to combat corruption. In October 1972, a Special Court of Justice was created by the Dahir promulgating Act 1-72-157, as the body responsible for combating and prosecuting the misappropriation of public funds, corruption, influence peddling, and embezzlement by public officials. The Special Court was abolished in September 2004 as it was found to be ineffective in combating corruption and created distortions in application of the Act.

Today, the Moroccan judicial system still suffers from shortages of budgetary and human resources. In this framework, it takes a long time – on average one year – to

process cases. Staffing reinforcement and professional development of magistrates are central elements of the action plan developed for the reform to be launched in 2008.

It is also true that criminal sanctions are not always enforced. While the IGF and the Court of Accounts discover new cases of fraud and corruption every year, these are rarely prosecuted and punished. Yet, the prosecution of crimes is as important as their detection. For this reason, under the new reform there are plans to establish a public authority specifically responsible for enforcing verdicts.

No case of corruption in public procurement has been proved to date. This raises the issue of the identification of evidence and, more generally, the effective power of criminal judges to punish offences relating to corruption.

*REMARK. In order to enhance integrity in public procurement, it is essential that offences against the law be punished by effective and proportional sanctions. The reform of the justice system must be continued to ensure that the Justice Ministry is able to intervene, not only by strengthening its resources but also by giving more general thought to ways to ensure the independence of the justice system.*

## **8. Strengthening resistance to corruption in procurement**

### ***Specific rules for combating corruption in procurement***

In legislative terms, the general rules for preventing and combating corruption are spelled out in the General Statute of the Civil Service, the Act on Asset Disclosure, and the Criminal Code. Morocco has also adopted specific rules for preventing corruption and promoting integrity in procurement. An element essential to the integrity of the system is to define ethical standards in procurement.

The 2007 Decree introduces specific provisions for preventing corruption in procurement, and represents an important step forward in guaranteeing the system's integrity. While the 1998 Decree made no reference to combating corruption, the 2007 Decree makes the need for integrity in procurement explicit. Obligations in this regard apply both to the tenderers and to the official.

### ***Obligations of tenderers***

Tenderers must certify the accuracy of the information contained in their tenders, and they must solemnly declare that they will not engage in fraud or corruption in the course of procurement. The contracting authority must abstain from any action or relationship that might compromise its independence.

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*REMARK. This mutual commitment of tenderers and government must be accompanied by effective, proportionate and dissuasive penalties in the event of a criminal offence. The control authorities have a crucial role to play in ensuring that this commitment is kept. One possibility in the case of major high-risk projects might be to bring in an independent expert (who could be a member of civil society or a person recruited under contract) to certify the integrity of the procedure, perhaps by signing an Integrity Pact.<sup>15</sup>*

### ***Obligations of the contracting authority***

The contracting authority must abstain from any relationship or act that could compromise its independence. These may involve private interests, for example gifts, benefits, other economic and financial interests, personal or family relationships, affiliations with organisations, or future employment. For example, some public officials leave government only to reappear as private-sector contractors. The administration does not at present have any standards in place for the identification and management of conflict-of-interest situations in government service or for post-public employment, and even less so in public procurement. This lack of standards may encourage nepotism and favouritism, the cost of which can be high in an area such as public procurement.

*REMARK. To make this provision effective, regulations could be developed to define the circumstances and relationships that can lead to conflict-of-interest situations, and the prohibitions put in place to avoid such risks. Moreover, detailed guidance could be given to procurement officials, for example in the form of a code of conduct, on the measures they should take in order to remain impartial in their interactions with suppliers.*

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<sup>15</sup> An Integrity Pact is an agreement between a government or government department with all tenderers for a public sector contract that neither side will pay, offer, demand, or accept bribes, or collude with competitors to obtain the contract or while carrying it out. Transparency International has introduced this practice in many countries (Source: *Integrity in Public Procurement: Good Practice from A to Z*, OECD, 2007, page 180).

**Box 4. Enhancing transparency and integrity in public procurement: Examples of good practice in the National Electricity Board (*Office National de l'Électricité*) in Morocco**

With 10 000 employees and 3.5 million customers, the National Electricity Board is a public establishment of an industrial and commercial nature, created in 1963, with activities focused on the production, transportation and distribution of electricity. After the government itself, it is the largest investor in the country with planned investment of MAD 11.6 billion in 2008 (compared with MAD 36.07 billion from the government's general budget and a total of MAD 66.6 billion<sup>16</sup> by all state-owned enterprises and public establishments). It is subject to supervision by the Court of Accounts, the IGF, the Directorate of State-Owned Enterprises and Public Establishments and Parliament (through specific parliamentary committees).

Given the sums at stake, the power sector is particularly vulnerable to corruption. In order to minimise risks of corruption that could tarnish its reputation, the National Electricity Board has taken a proactive stance to strengthen the integrity of its procedures. It established an ethics committee in 2007 that includes the CGEM and staff representatives. The remit of this Committee is to propose binding ethical rules and procedures for both staff and other stakeholders, including suppliers.

Its first task was to develop a code of ethics which would encourage staff to comply with the Act on the status of personnel. The consultation process for preparing the code was based on a representative sample that included not only managers but also operational staff (around 40% of representatives were from management, versus 60% from workers on the ground). Adherence to the code was made voluntary, as a means of encouraging all staff to sign on willingly. The next task will be to evaluate conflict-of-interest risks within the firm.

The National Electricity Board is also playing a driving role in the use of new technologies to strengthen transparency and accountability in procurement. Thus, it was publicising invitations to tender on its Internet site even before the 2007 Decree made this mandatory. It also maintains a database not only for storing information on calls for tender but, more generally, to keep records of decisions taken in the procurement process, and thereby make staff accountable. Information on suppliers is centralised and classified to facilitate evaluations on the basis of objective parameters, such as price and timeliness of delivery.

The next phase should be to examine the National Electricity Board's current operating regulations to harmonise them with the provisions of the 2007 Decree and have them validated by its Board of Directors.

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<sup>16</sup> Statistics published by the Directorate of State-Owned Enterprises and Privatisation.

### ***Mechanisms for combating corruption in procurement***

The 2007 Decree provides for certain mechanisms to enforce the standards.

#### ***Exclusion of tenderer***

Articles 24 and 85 establish the following grounds for excluding a tenderer:

- Inaccuracy of the sworn oath. The line minister, acting upon the advice of the Public Procurement Review Board or the competent authority is empowered to exclude a tenderer, temporarily or permanently, or to cancel the contract.
- Discovery of fraudulent acts or breach of commitments given by the tenderer. The decision to exclude a tenderer, temporarily or permanently, is taken by the line minister, after consultation with the Public Procurement Review Board.

In both cases, the tenderer has a fixed time limit to respond to accusations against him/her. The grounds for exclusion are thus clearly defined in the 2007 Decree, but the processes of verifying the sworn oath and detecting fraudulent acts are not specified.

A promising development is the publication of the grounds for exclusion on the electronic procurement portal, ensuring that ministries have up-to-date information concerning the exclusions. To date the portal has not been used for this purpose. Nonetheless, it is important to recall that this exclusion provision is not a new development and that certain competitors have been the subject of temporary exclusion decisions banning them from tendering for contracts offered by the departments concerned. These decisions were taken on the basis of either proven inaccuracies in the sworn oath (false information, forged documents, etc.) or fraudulent acts or failure to meet commitments demonstrated during execution of the contract.

*REMARK. The experience of OECD Member countries in this respect, which admittedly is relatively recent, shows that this promising provision for excluding tenderers may be difficult to implement in practice. It would be important in particular to specify the procedure to follow in order to verify the sworn oath and to investigate any fraudulent acts in the event of doubt.*

#### ***Measures relating to the tendering and contract award procedure***

The 2007 Decree also provides for other promising mechanisms for enhancing resistance to corruption in the context of the tendering and contract award procedure.

Article 18 requires pre-publication consultation on the call for tenders, between the contracting authority and the tender evaluation committee (the representative of the

General Treasury). This consultation is supposed to prevent any discriminatory element in the call for tenders, or any bias in favour of a specific tenderer. This is an important factor in preparing the call for tenders, for the contracting authority is not alone in the process. The role of the auditor therefore extends to verifying that a given item of expenditure complies with the regulations in force. This “four-eyes” principle – which ensures the joint responsibility of at least two people or entities in the decision making process – provides an additional guarantee of independence in the procedure followed.

*REMARK. This initiative has strengthened the oversight role of the General Treasury in the process of reinforcing the management capacity of the authorising officials. However, the authorities need to watch for pitfalls until the ex post control system becomes entirely effective. When the controller becomes an adviser as part of the process of preparing the call for tender, this may introduce some confusion into the chain of responsibility, and the controller could face a conflict of roles if problems are identified in the rest of the procedure or in implementation of the contract. In principle, these two roles must be fulfilled by two different persons or indeed entities.*

As for the tender evaluation committee, guarantees have been instituted to ensure independence in its decisions. First, the selection of the winning tenderer is a collective decision, taken by members of the tender evaluation committee. The makeup of the committee is such as to avoid any undue influence. The two representatives of the contracting authority on the committee are selected by lot on the day of the public session, from among four members designated in advance by the authorising official, and this could help to bolster resistance to corruption. However, there is a risk that the four members appointed in advance for the draw could all belong to the same department or agency as the contracting authority, and this would cast doubt on their decision-making independence. Moreover, this element of randomness demands flexibility on the part of government personnel. In some departments it may be difficult to appoint four people as potential members of the tender evaluation committee.

*REMARK. One option for enhancing the independence of tender evaluation committee members would be to verify systematically that they are not in a conflict of interest situation vis-à-vis the contract to be awarded. This holds true as well for other parties involved in the procedure, in particular the outside consultants who, through their technical expertise, contribute to the selection of the winning tenderer.*

## **9. Co-operation with the private sector**

It is important to maintain open dialogue with the private sector, recognising that firms are the principal partner of the authorities in supplying the goods and services needed by government.

### ***Involving the private sector in the reform***

Bringing private sector representatives into the examination or preparation of procurement regulations and policies can help ensure that the standards proposed reflect the expectations of both parties, and that they are well understood. The private sector has been closely involved in preparing the new procurement regulations in Morocco, mainly through the participation of the General Confederation of Moroccan Businesses (CGEM) and the Construction and Public Works Federation. The CGEM's proposals for the new regulations were broadly accepted and reflected in the 2007 Decree on procurement. In particular, the private sector proposed the introduction of a solemn undertaking by tenderers not to resort to fraudulent practices, one of the elements for enhancing the ethical dimension of public life reflected in the 2007 Decree.

*REMARK. Close involvement of the private sector in the preparation phase of the 2007 Decree should facilitate its implementation: firms will be more familiar with the new provisions, and more disposed to comply with them. To publicise the 2007 Decree throughout the private sector, awareness seminars and outreach activities could be organised. This is particularly important for encouraging firms, including small- and medium-sized enterprises, to use the new electronic procurement portal.*

Further evidence of the good relationship between government and the private sector was provided by the signature in 2004 of the programme contract between the Moroccan government and the Public Works Federation, with a view to preparing a set of regulations governing the Moroccan private sector. This co-operation was initiated by the Ministry of Housing and by the Ministry of Equipment, which is in charge of issuing certifications to firms so that they can become credible partners for the public sector.

### ***Promoting dialogue with the private sector***

Such dialogue is essential at all phases of the procurement process, from evaluating needs to managing contracts. In Morocco, every tenderer has the right to demand clarifications concerning a call for tenders, before submitting its bid. The contracting authority, upon receipt of such a question, is required to disclose the response to the other tenderers in order to ensure equitable access to information. While Moroccan firms are entitled to demand information and details from contracting authority during the tendering procedure, they rarely do so.

A further sign of hesitancy is that very few firms appeal procurement decisions. They seem reluctant to take this step out of fear, sometimes founded, or "informal" sanctions by the administration.

The 1998 Decree required that unsuccessful tenderers must be advised of the reasons for their rejection, if they so request. However, that Decree set no time limit within which the contracting authority must respond. Recognising that tenderers were

making little use of this provision, the 2007 Decree requires that unsuccessful tenderers be notified automatically that their tenders have been rejected, and why. However, in the course of the interviews, it was stated that the responses received from government explaining the grounds for rejection were not sufficiently detailed.

*REMARK. If this provision of the 2007 Decree is to be truly effective, unsuccessful tenderers will have to be given detailed information on the grounds for their rejection. It is important that they be informed why their tender was judged inferior to the one ultimately chosen, obviously without disclosing sensitive commercial information from other tenderers.*

### ***The procedure for selecting Moroccan and foreign suppliers***

To facilitate the task of suppliers and to avoid their disqualification for failure to comply with bureaucratic formalities, an effort has been undertaken to simplify the selection procedure. In fact, completing the tendering forms and furnishing all the documents required is a heavy and time-consuming administrative burden. In the past, suppliers were sometimes eliminated for mistakes in their documentation. The 2007 Decree introduces an element of flexibility applicable to all candidates and of particular importance for foreign suppliers, by allowing certain missing documents to be added to the file up to the day on which the bids are opened.

Under the 2007 Decree, foreign suppliers are subject to the same conditions as their Moroccan counterparts in responding to a call for tender (Article 23). Foreign suppliers are allowed to submit documentation issued by the competent authorities of their home country, to substantiate their tenders.

Calls for tender notices are published in national newspapers, in Arabic and foreign languages (usually French), which can attract interest from neighbouring countries. With the 2007 Decree, calls for tender will be published on the electronic procurement web portal, giving much broader publicity and encouraging increased participation by the foreign private sector.

More generally, the selection process is based on the principle of the most economically advantageous offer. A special case with regard to foreign tenderers has to do with consulting and works contracts, where the 2007 Decree explicitly provides a margin of preference for domestic enterprises. The price proposed by the foreign firm may be increased by no more than 15 per cent before being compared with the tenders received from domestic enterprises (Article 81).

*REMARK. This provision does not necessarily contravene international rules, since the national preference is limited to works and consulting contracts, and is clearly spelled out in the 2007 Decree. Such an approach is consistent with the sense of the conclusions of the WTO Working Group on Transparency in Government Procurement. Transparency*

*regarding the existence of preferences allows potential tenderers to determine whether or not it is in their interest to reply to a call for tender despite the existence of a discriminatory national policy.*

### ***The role of professional associations as intermediaries with the government***

Given the reluctance of firms to contest certain decisions by the Administration themselves, the CGEM has undertaken to represent firms that want to challenge decisions while remaining anonymous. It is not in a position to represent them before the court, but it can initiate and keep up political pressure by sending letters to the authorities (the Prime Minister, for example) or to the press.

In this way, associations representing the private sector can play an important role in improving dialogue between government and the private sector and in striking a better balance in the relationship between the two sides. This is particularly important because, as indicated in the interviews, government can exert pressure on the supplier, for example by delaying payment. Even with the entry into force of Decree 2-03-703 of 13 November 2003 which requires the systematic payment of interest in the event of late payment, in practice there has been no reduction in payment times – as expressed during the interviews.

### ***An effort at self-regulation in the private sector***

The private sector has been taking steps to regulate itself and to demonstrate its integrity. The CGEM, for example, has had an ethics committee since 1999, working with firms to combat corruption and thereby enhance their competitiveness. One result has been a draft "Moroccan Code of Good Practices in Business Governance," applicable to private and public firms alike. This code contains four chapters dealing with the responsibilities of the governance body, the rights of shareholders, transparency and information disclosure, and the role of stakeholders and their equitable treatment. Preparatory work on the Moroccan Code began a year ago and has involved many public and private stakeholders (including professional associations and international partners), using the 2004 OECD Principles of Corporate Governance as a guide.

## V. STRENGTHENING ACCOUNTABILITY AND CONTROL

### 10. Control mechanisms

Public procurement in Morocco is subject to many controls, the bases for which are spelled out firstly in the 2007 Decree on procurement, and also in the Dahir on the assignment of responsibilities to authorising officials, and regulatory texts reforming the control of public expenditure.

Procurement transactions are verified by:

- Controllers who inspect expenditure commitments by the General Treasury, Ministerial Treasuries and provincial treasuries;
- Inspectors of finances; and
- Magistrates of the Court of Accounts.

#### ***Internal controls or audits are mandatory for large contracts***

The line minister is responsible for defining internal controls and audit requirements, which may cover the pre-tendering, tendering and post-tendering phases. The 1998 Decree (Article 86) required internal controls and audits for works contracts exceeding MAD 5 million. During the interviews, it was learned that this provision has not been systematically applied in the past. The 2007 Decree extended this obligation to all contracts exceeding MAD 5 million, regardless of their nature (Article 92).

*REMARK. It would seem necessary to ensure that all contracts exceeding MAD 5 million are actually audited. Contracts worth less than this amount should also be audited in order to ensure that there is no corruption below this ceiling. One possibility would be to set audit priorities in light of the risks inherent in the contract (for example according to the amount, type of procedure, etc.), without a minimum threshold.*

#### ***Co-ordination of controls***

Co-ordinating controls to avoid overlaps or gaps and to optimise the information produced represents a challenge. It is for this reason that procedures are in place to allow the exchange of information among control bodies. The Court of Accounts may

request additional information if necessary from the IGF, which may in turn refer cases to the Court for prosecution.

When it comes to exchanging information, the annual report of the Court of Accounts is published in the Official Bulletin and is therefore publicly available. Furthermore, under Article 109 of the Code of Financial Jurisdictions, Ministers are required to forward to the Court the reports drawn up by their inspection and control units detailing their monitoring of the management of the units managed by their departments or bodies under their supervision.

However, it was stated during the interviews that controls were not necessarily coordinated in practice and that, in the cases where irregularities and anti-corruption were detected, disciplinary and/or criminal sanctions were not systematically applied.

### ***The role of the General Treasury/Ministerial Treasury controllers***

The General Treasury is the focal point for the design and implementation of the 2007 reform. Since the Expenditure Commitment Control Office was instituted in January 2006, under a Decree issued by the Prime Minister, the General Treasury has been responsible for verifying the commitment and payment of expenditures relating to the contracts awarded. Along with the merger of the Expenditure Commitment Control Office and the General Treasury at the national level, ministerial treasuries are being established, comprising both the regularity and validity of the payments.

### ***The role of the IGF***

The General Finance Inspectorate (IGF) is the control institution created by an Act of 14 April 1960, reporting directly to the Ministry of Finance. It has broad powers to inspect financial services, authorising officials, local governments, and public establishments and state-owned enterprises in order to verify the conformity of their rules, procedures and accounts. More recently, it has taken on the task of auditing and evaluating public policies. The IGF is the auditor used by foreign donors who wish to ensure that the funds they transfer to Morocco are used properly.

The IGF has a core of about 100 inspectors, 75 of them who are in service. They are usually recruited by competition (75% from outside, 25% internally), and are given two years of training in audit and public finance. Their profile varies, with specialties in economics, law and, increasingly, engineering.

The IGF follows an annual audit plan that is vetted by the Minister of Finance but is not set in stone. During its inspections, the IGF prepares a draft report containing a general opinion on the accuracy and honesty of the accounting records and public outlays, which is submitted to the authorising official for comment 15 days before it is

finalised. Generally speaking, 90% of the IGF's observations will be retained in the final report.

The IGF intervenes at different phases of the procurement cycle:

- In the pre-contract award phase, it checks the terms of reference of the projects approved.
- It checks the work of the controller and the regularity of the procurement cycle.
- During management of the contract, the IGF may intervene, at the request of the Minister, to verify the ongoing progress of the project. It thus exercises control over both the formal and the material aspects of procurement transactions.

*REMARK. The IGF's role could be broadened in the pre-tendering phase, to include not only ex post review of the terms of reference for projects but also to ensure that the purpose of the contract corresponds to the nature and extent of needs. This would serve to verify the appropriateness of the expenditure, and thereby counterbalance the discretionary power of the Minister.*

The IGF publishes various annual reports on its control activities. However, its recommendations are not always followed up by the ministries concerned. If the Ministry of Finance suspects a potential criminal offence, it may refer the case to the Ministry of Justice.

*REMARK. It could be useful to set a reasonable deadline for the ministries to follow up and implement the IGF's recommendations. Consideration could also be given to conducting random ex post audits in the ministries to verify that the recommendations have been followed. The results of this evaluation would be published as a way of encouraging organisations to implement the recommendations. The IGF should automatically advise the Ministry of Justice when serious procurement irregularities are suspected.*

### ***The Court of Accounts***

The Court of Accounts was made a constitutional institution in 1996 and has been a jurisdiction since 1979. It is the supreme body for verifying the implementation of financial legislation. As an institution, it helps Parliament review the report on the implementation of the Act on Finances and the General Statement of Compliance, and it similarly assists the Government through the evaluation of public projects and inspection of the management of one of the bodies over which it has oversight. Its independence is

guaranteed by a number of provisions including the judges who are appointed by the King. Its operating budget is provided by the Finance Act and voted by Parliament.

The Court of Accounts and the nine regional courts of accounts have approximately 250 judges with varying profiles (lawyers, economists, engineers, etc.), which has made possible the effective implementation of the accountability requirement. It should be noted that the judges working for the Court of Accounts and regional courts are financial judges who do not serve on the bench of courts administered by the Ministry of Justice.

When it comes to procurement, the Court of Accounts exercises control over authorising officials, controllers and accountants with respect to their compliance with regulations (procurement cycle and contract management) and other management aspects (in particular the quality/price relationship of purchases, observance of procedural time limits, etc.). The Court of Accounts also has the mandate to verify the material aspects of contract management.

The Court of Accounts plays an invaluable role in advising managers and in helping them to improve their management in the wake of its audits. Furthermore, the managers of the bodies audited by the Court and investigated in the course of management audits, are required by law to present their comments as part of the procedure. Upon completion of the management auditing missions carried out by its judges, the Court of Accounts draws up recommendations on how the management of public finances might be improved. The Court presents these recommendations in the form of an activities report, together with a general report and observations on the institutions it has audited during the year.

If it detects irregularities, the Court of Accounts is obliged to impose fines of at least MAD 1 000 on offenders. For more serious or repeated violations, the fine may be raised to four times the annual net pay of the person concerned. During our interviews, however, it was indicated that application of these financial penalties is not always in proportion to the offences committed. In the case of criminal offences, the Court of Accounts systematically refers the case to the Ministry of Justice.

*REMARK. Given the reluctance to impose penalties, a system of rewards could be envisaged for organisations. In this way, organisations that demonstrate sound management of public funds could be rewarded by receiving higher appropriations the following year, a reform that would require changes to the legislation.*

More concretely, the controls performed by the Court of Accounts cover the following aspects:

- The existence of budgetary authorisation and availability, the choice of procurement procedure.

- Advertising rules (contents of the call for tenders, lead time, at least two newspapers, etc.).
- Selection of the winning tenderer.
- The reasons for the elimination of certain competitors.
- The composition of the tender evaluation committee.
- Conformity of the specifications with existing regulations.

To examine certain aspects of contract management, the Court verifies compliance with regulations (security standards, prior administrative authorisations, public accounting rules, etc.), as well as respect for contractual causes such as warranties, materiality, performance deadlines (late penalties and moratorium interest), amendments of the contract, and revision of prices. With respect to payment, the Court checks the validity of the claim paid by the accountant. In addition, the Court looks at contract management aspects, such as the quality of the products acquired and the quality/price relationship.

As part of the examination of the management of bodies subject to inspection by financial jurisdictions, the Court of Accounts may identify non-compliance in contract award and management mechanisms. Any malpractice discovered is usually judged by the financial judges. Moreover, should a malpractice prove to be related to fraud or embezzlement, the Court of Accounts refers the cases concerned to the Minister of Justice.

Establishing proof of technical malpractice and possible corruption, particularly during the contract management phase, is a major challenge. The Court has the right to exercise physical supervision over procurement contracts, but field visits to determine whether contract work has actually been performed are costly and are often impractical, given the Court's limited resources. Moreover, the members of the Court are judges, and they do not always have all the special expertise needed to assemble evidence of malpractice in the field. Aware of this problem, the Court of Accounts tries to improve the effectiveness of its inspections by occasionally calling on the services of technical experts.

*REMARK. In order to help the control body assemble evidence of fraud or corruption, it would be useful to have specialised methods and techniques available. Control agents, in particular those responsible for physical inspection, should be given regular specialised training in the forms that corruption can take in the procurement area, and in the means of compiling elements of proof. Experts could be employed more systematically to examine a given technical, financial or legal aspect of procurement and to compile the*

evidence needed for prosecution. Finally, the Court of Accounts could be given the possibility of auditing the accounts of a firm suspected of misusing public funds, in coordination with the tax authorities<sup>17</sup>.

### **Problems identified**

The IGF and the Court of Accounts are in agreement that the tendering phase is adequately regulated by the 2007 Decree, and that the risk of corruption is therefore confined essentially to the pre- and post-tendering phases. In addition, evidence suggests that the risks of irregularity and corruption are higher in the case of local governments and certain state-owned enterprises.

The following problems were identified during the course of inspections:

- Pre-tendering phase: biased specifications, excessive red tape, limited resort to competition with only a small number of suppliers consulted, improper use of purchase orders, inconsistent criteria for assessing the capacities of firms.
- Tendering phase: unequal access to information, failure to keep proper files (of tenders submitted, in particular), biased evaluation.
- Post-tendering phase: improper resort to stop and rework orders, supplementary work added to the initial contract, substitution of substandard products or services that do not meet contractual specifications, failure to arrange audits of contracts exceeding MAD 5 million.

*REMARK. Some risks could be prevented by drawing up more accompanying texts, such as the General Terms and Conditions of Contract that public officials should follow during the pre- and post-tendering phases. These would be a useful supplement to the 2007 Decree which concerns essentially the tendering to award of contract phase and provides fewer indications for the rest of the procurement cycle.*

## **11. Towards creating a channel for complaints and appeals**

A key element in fostering a climate of trust among tenderers for public procurement is to have a mechanism in place for handling complaints and challenges relating to procurement decisions. The availability of such recourse offers dissatisfied tenderers an opportunity to verify the honesty and correctness of government decisions.

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<sup>17</sup> An approach that has proved its worth, notably in France.

**Appeal to the contracting authority**

During the interviews, it was indicated that there was a widespread climate of mistrust among firms vis-à-vis the government. Firms were reluctant to contact officials for information on the reasons for their disqualification, or to challenge official decisions. The 1998 Decree provided no possibility of recourse to challenge the award of the contract. The 2007 Decree, in contrast, takes a first step towards establishing a system of recourse for tenderers.

A competitor who feels that the procurement procedure has been abused may complain to the contracting authority within seven days after the award is announced. If a competitor challenges the grounds for its disqualification, it has 10 days to file an appeal after receipt of a letter notifying the grounds for disqualification (Article 47). The contracting authority must respond within seven days of receiving the complaint. This new provision therefore begins by specify the time limits within which the contracting authority must respond to the initial appeal.

**Appeal to the Minister**

An unsuccessful tenderer who is dissatisfied with the contracting authority's decision may appeal to the Minister concerned. The Minister may overturn the contracting authority's decision, suspend the procedure for 20 days at most, or possibly cancel it.

*REMARK. This possibility for a dissatisfied tenderer to appeal to the Minister as a second resort after seeking to settle the issue with the contracting authority runs the risk of prolonging the time needed to settle the dispute, as there is no provision governing the time limit within which the Minister must respond to the tenderer.*

**Indirect appeal to the Public Procurement Review Board**

If the tenderer is still not satisfied with the Minister's response to its complaint, it has the possibility to submit a substantiated complaint to the General Secretary of Government, who may decide to refer it to the Public Procurement Review Board for advice. The committee's opinion is sent to the Prime Minister and to the line minister. The deadline for responding to this appeal is not specified. On the basis of this opinion, the Minister may decide to suspend or to cancel the tendering procedure.

The Public Procurement Review Board's mandate is thus very narrow: appeals to it are submitted indirectly through the General Secretary of Government, and its opinion merely has advisory force. This means that the government is both judge and party, for it is the line minister who has the final say in the dispute.

Decisions taken during the tendering procedure may be challenged. However, tenderers are not entitled to challenge the contracting authority's choice of procedure. This is an issue that is increasingly raised by unsuccessful tenderers in OECD countries. Nor is it possible to challenge cases where the tender evaluation committee decides to reject all tenders, or where the procedure is cancelled.

It should be noted, however, that the Review Board's opinions are published, which helps to strengthen external controls and increase the confidence held by potential suppliers in the administration's decisions. These opinions are published on the website of the General Secretariat of the Government ([www.sgg.gov.ma](http://www.sgg.gov.ma)), on the public procurement website ([www.marchespublics.gov.ma](http://www.marchespublics.gov.ma)) and in the public procurement review.

*REMARK. While the aim is to put in place a proper appeals mechanism, consideration might be given to guaranteeing the independence of the Review Board by enhancing its statutes. Its opinions could be made binding so that they cannot be contested by the administrative and judicial tribunals. Furthermore, the exceptions mentioned in the 2007 Decree under which the procedure cannot be disputed could be removed to allow the procedure to fully fulfil its role as an appeals mechanism.*

### **Appeals judge intervention**

The appeals judge may also intervene and may decide to suspend the procedure if he feels that such a suspension would be in the interest of plaintiffs (Articles 7 and 24 of Act No. 41-90 establishing the administrative tribunals).

*REMARK. Speedy procedures are required to ensure that tenderers have a genuine right of appeal and there are a number of ways in which this can be achieved:*

- *The 2007 Decree should be amended to remove a number of filters on access to the Review Board, notably by allowing it to be consulted directly, without appealing to the Minister.*
- *Consideration might be given to speeding up the appeals procedure by making more systematic use of the right to refer cases to the Administrative Judge, which would allow appeals to be judged within a reasonable period of time.*

### **The limited powers of the Public Procurement Review Board**

The Public Procurement Review Board was created in 1936 and has been overhauled several times. Its primary mandate is to review all legal provisions governing public procurement and the drafting of enabling legislation. It also issues opinions for use in the friendly settlement of disputes, and this constitutes a significant workload.

Lastly, its responsibility includes the monitoring of public procurement contracts and the compilation of statistics.

The Public Procurement Review Board is a body made up of the representatives of government departments involved in public procurement as either managers, inspectors or funding agencies. However, its permanent secretariat does not have the human and budgetary resources needed to operate effectively. Its secretariat has merely three members, namely a chairman, a legal adviser and a secretary, despite the fact that it has to deal with between 30 and 50 complaints a year. These added problems prevent the Review Board from functioning properly.

*REMARK. To ensure that the Review Board deals fairly with complaints and properly meets its responsibilities, it should be given more budgetary and human resources. To prevent any political interference, its members and chair should be appointed in line with clear professional and ethical criteria (e.g. lack of any conflict of interest, a reputation for integrity and neutrality with regard to the government). Lastly, consideration might be given to publishing the results of appeals in order to strengthen external controls and improve business confidence in the administration.*

## **12. Involving stakeholders**

All stakeholders, notably external bodies such as the mediator but also the media, civil society and, more generally, citizens, must be encouraged to play a role in the external control and verification of the administration and, in particular, public procurement. In this respect, public authorities can facilitate such participation by encouraging the release of information and by fostering debate.

### ***The relationship between the Moroccan government and its citizens***

As part of the modernisation of the public administration, the success of corruption prevention strategies is also contingent upon the creation of a favourable climate within the administration, notably through the use of transparent administrative procedures.

A number of initiatives have been undertaken to respond to certain criticisms regarding the administration's lack of transparency and inaccessibility. In December 2001, the institution of ombudsman (*Diwan Al Madalim*) was created, at initiative of the King, to protect citizens from administrative abuses, to handle their complaints, and to establish a modern and democratic State. The ombudsman thus exercises a new form of external control over government, alongside existing structures. In February 2003, Parliament approved an Act requiring government to provide citizens with a justification of any negative decisions. These efforts are a major step forward towards ensuring a more open and transparent relationship between the administration and citizens.

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### ***Enhancing right of access to information for the public***

Access to information is a key element in any integrity-based framework put in place to combat corruption because it enhances both the transparency and external control of the public administration, and in particular public procurement. While Morocco does not at present have legislation on access to information, "Ensuring that the public has effective access to information"<sup>18</sup> is one of the provisions of the United Nations Convention against Corruption which was recently ratified by Morocco. This effort at the international level aimed at ensuring better access to information for citizens is pursued at the level of civil society and the media in Morocco.

*REMARK. Transparency in the relations between government and citizens would be enhanced significantly by an Act enshrining the right of access to information and establishing the conditions for its exercise. Adoption of such an Act could bolster the Moroccan government's efforts at modernising the administration. A law on access to information would also facilitate journalists' gathering of information and investigative reporting.*

During the interviews, it was stated that very few concrete examples of corruption in public procurement had been reported in the Moroccan media in recent years. The "Worldwide Press Freedom Index", published annually since 2002 by Reporters without Borders, indicates that the freedom of the Moroccan press in 2007 was above the average of other countries in the Middle East and the Arab world, but compares unfavourably with countries such as the United Arab Emirates and Lebanon.

*REMARK. It would be desirable to guarantee freedom of expression and to allow the media and civil society to play their full role in combating corruption by enshrining the right of access to information, which would facilitate the collection of sensitive information on procurement contracts as well as investigations of potential cases of corruption.*

### ***The role of NGOs such as Transparency Maroc***

*Transparency Maroc*, the national chapter of Transparency International, is the most active non-governmental organisation (NGO) in Morocco when it comes to fighting corruption. Created in 1996, it strives to make the public aware of the need to combat corruption, analyse corrupt practices and the legal means of eliminating them, and examine existing regulations in order to encourage the emergence of "islands of transparency".

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<sup>18</sup> Article 13 on Participation of Society, United Nations Convention against Corruption.

*Transparency Maroc's* most recent move was to create the National Corruption Observatory. Its purpose is to collect process and publicise information on corruption, governance and transparency, in order to submit substantiated proposals to the authorities for combating corruption. It also monitors this phenomenon in order to measure it, track changes and predict future developments.

The Observatory has a legal unit that provides support for citizens who have been the victims of acts of corruption. The unit helps people who have filed complaints of corruption, giving them advice and legal assistance.

*Transparency Maroc* is also represented in the Central Corruption Prevention Authority, a sign of the government's willingness to involve civil society associations in formulating its anticorruption strategy and actions.

*REMARK. The government's demonstrated willingness to associate representatives of civil society in formulating its anti-corruption policies, particularly in the context of the Central Corruption Prevention Authority, should be pursued. Consideration might also be given to involving civil society in future reforms of public procurement or in other areas where there is a risk of corruption.*

## VI. POLICY RECOMMENDATIONS

The analysis of procurement in Morocco identified a number of possible adjustments for enhancing the integrity of the system. Five priority areas are suggested in order to help the government in its effort to reform procurement:

**1. Professionalise public procurement so that authorising officials have sufficient management capacity in a context where *ex ante* control is being lightened.**

The reform now underway to simplify *ex ante* controls contributes to speeding up procurement procedures and avoiding excessive red tape in verifying their compliance with regulations. The plan is to transfer *ex ante* control gradually to the most capable authorising officials. While this should be feasible in the case of ministries that have a long tradition of procurement such as the Ministry of Equipment, the transfer may be more difficult for other line ministries that do not have the same skills profile. The issue is still more complicated for local governments, where there is even less available capacity.

In this context, the professionalism could be enforced by developing a common body of knowledge and skills. One possibility would be to create a professional category of public procurement specialists, whose function would be devoted entirely to planning, contracting and executing purchases, and who would assist the authorising officials in a context where the authorising officials themselves are responsible for internal controls. This function should have its own status and recognition within the hierarchy of civil service posts. In addition, specific procurement training could be organised so that procurement specialists can keep their skills up to date in line with the latest regulatory and technological developments, especially those relating to the electronic procurement portal. Over the longer term, a system for certifying purchases could be developed, with the support of international partners.

These measures would allow procurement to be recognised as a profession in its own right and ensure that contracting authorities at both the central and local level have the contract management capacity needed which cannot but facilitate the move towards *ex post* control.

**2. Strengthen the independence of the Public Procurement Review Board.**

The possibility of invoking the Public Procurement Review Board for the friendly settlement of disputes represents a step towards instituting an effective right of appeal for tenderers (Article 95 of the 2007 Decree). In fact, there is a widespread climate of

mistrust among firms vis-à-vis the government, and firms are reluctant to file complaints. Yet, the Public Procurement Review Board's mandate is very narrow, for appeals to it are submitted indirectly through the General Secretary of Government, and its opinion has merely advisory force. This means that the government is both judge and party, for it is the line minister who has the final say in the dispute. Although its creation dates back to 1936, the committee's human and financial resources are grossly inadequate for the proper handling of complaints. Finally, the right of challenge only relates to the award of the contract. This right therefore does not apply to the choice of procurement procedure or to the criteria for the selection of candidates, to a decision by the Review Board to reject all tenders, or to a decision by the competent authority to cancel the call for tenders.

A speedy mechanism for dealing with complaints is needed to ensure that tenderers are treated fairly, and there are a number of ways in which this can be achieved:

- The 2007 Decree should be amended to remove a number of filters on access to the Review Board, notably by allowing it to be consulted directly.
- Consideration might be given to speeding up the appeals procedure by making more systematic use of the right to refer cases to the Administrative Judge, which would allow appeals to be judged within a reasonable period of time.

If the aim is to put in place a proper appeals mechanism, consideration might be given to guaranteeing the independence of the Review Board by:

- Enhancing its statutes. Its opinions could be made binding so that they cannot be contested by the administrative and judicial tribunals. Furthermore, the exceptions mentioned in the 2007 Decree under which the procedure cannot be disputed could be removed to allow the procedure to fully fulfil its role as an appeals mechanism.
- Increasing its budgetary and human resources which are too limited and do not allow for it to successfully meet its intended purpose.

Furthermore, other considerations must be taken into account to ensure the independence of the appeals mechanism. To avoid any undue influences, notably at a political level, certain guarantees for integrity could be introduced, for example the appointment of its members could be based on precise professional and ethical criteria (*e.g.* no conflicts of interest, a reputation of integrity and neutrality).

### **3. Pursue the initiative to reinforce accountability and control.**

There has been significant progress in recent years in terms of provisions making the authorising officials accountable before the budget discipline court (Act 61-99 promulgated by Dahir 1-02-25 of 3 April 2002) and overseeing them (mandatory audit for contracts exceeding MAD 5 million since 1998). Another move in the right direction is the ambitious reform to ease *ex ante* control, which can lead to excessive formalities. In addition, the control is under reform to become more performance based. Yet, despite these efforts, it was indicated during our interviews that ministers and senior officials are not systematically held responsible for their decisions and are rarely taken to task for violating the rules.

This can be attributed to the fact that when the authorising official is a minister, he cannot be held legally liable even if he has issued a requisition order (Article 52 of Act 62-99, on the Code of Financial Jurisdictions, 13 June 2002). More generally, there is no real control over the appropriateness of expenditure, and this leaves the authorising official broad powers of discretion when it comes to defining needs. With respect to *ex post* control, it was indicated in the interviews that the audit requirement for major contracts is not systematically enforced.

The move to accountability and *ex post* control of the authorising officials should be pursued. Several steps could be considered. The Code of Financial Jurisdictions could be amended to make authorising officials more accountable. The role of the IGF in the pre-tendering phase could also be expanded so that it can ensure the proposed procurement is consistent with the nature and scope of needs, which would help to verify the appropriateness of the expenditure. Finally, steps should be taken to ensure not only that large contracts are audited, but that audits are conducted more systematically for contracts worth less than MAD 5 million. One possibility would be to set audit priorities for the IGF in light of the risks inherent in the contract (for example, the amount, the type of procedure used, etc.), without any minimum threshold for such audits.

### **4. Ensure harmonised interpretation and implementation of the 2007 Decree.**

The 2007 Decree constitutes a detailed and modern framework for regulating public procurement at the level of both central and local government. Its principles are consistent with those applied internationally, such as the WTO Agreement on Public Procurement, especially when it comes to transparency, promoting competition and preventing corruption. The private sector's involvement in preparing the 2007 Decree has enhanced its relevance, for it broadly reflects the expectations of stakeholders. It establishes clear rules governing procurement. It covers the entire procurement cycle, from the definition of needs to management of the contract, although it is focused primarily on the tendering phase. However, the Decree solely applies to state-owned enterprises and public establishments which do not have their own specific regulations.

The main challenge is to ensure that the decree is taken into consideration and actually implemented:

- Measures to publicise the decree have been initiated and should be stepped up. Training is underway within government departments and agencies, at both the central and local levels. This effort should be extended to firms, to familiarise them in particular with the new electronic portal and encourage them to use it.
- Similarly, more explanatory notes, manuals and standardised documents focusing on works, goods and services should be developed to ensure a common interpretation and implementation of the 2007 Decree. These explanatory notes would be particularly important for pre- and post-tendering phases.
- To ensure implementation of the Decree, consideration might be given to organising, within a year's time, a review of the application of its provisions by the administrations concerned and to make public the results of this review.

Moreover, it is essential to harmonise the provisions of the 2007 Decree with the regulations applicable to public establishments and state-owned enterprises, in order to make procurement regulation more consistent. The role of the General Secretary of Government could be useful here, in fostering intergovernmental co-ordination to facilitate harmonisation of texts. Moreover, adequate capacity must be provided at the local level to permit implementation of the Decree.

##### ***5. Introduce specific measures to fight corruption in procurement.***

The 2007 Decree introduces for the first time provisions targeted specifically at combating corruption in public procurement, by tenderers and officials alike. However, there are no detailed, government-wide ethical standards defining private interests and situations that might compromise officials' impartiality. More generally, government officials do not have a thorough understanding of the phenomenon of corruption and its causes, particularly when it comes to procurement.

It would be useful for the Central Corruption Prevention Authority to take into consideration the specific measures for preventing corruption in public procurement. A first step would be to compile a "risk map" for the different departments and agencies to identify the positions of officials which are vulnerable, those procurement activities where risks arise, and the particular projects at risk due to the value and complexity of the procurement. To achieve this, the various administrations will have to co-operate with the Office and provide the required information. On this basis, the strategy and the means for combating corruption in procurement could be properly adapted. For

example, training sessions could be organised to inform procurement officials and the controllers about the risks of corruption and measures for preventing and detecting it.

If ethical standards are to be thoroughly instilled in procurement activities, it is essential to develop regulations on conflicts of interest that will clearly define private interests or situations that could compromise an official's independence. In addition, officials involved in procurement could be made aware of ethical issues, with the adoption of a professional code that would help them manage potential conflict-of-interest situations (for example the receipt of gifts and other advantages) in their relations with suppliers.

## ANNEX A

### OECD CHECKLIST FOR ENHANCING INTEGRITY IN PUBLIC PROCUREMENT

The OECD launched a long-term programme to promote integrity in public procurement by organising the “Global Forum on Governance – fighting corruption and promoting integrity in public procurement” in Paris in 2004. The results of Forum discussions revealed the need for a multidisciplinary approach to promote good governance and safeguard integrity during all phases of the public procurement cycle from the assessment of needs to tendering, contract execution and payment.

With the support of a network of experts in public procurement and the fight against corruption, the OECD has gradually established a Checklist designed to enhance integrity in public procurement. This list is based not only on the good practices of public authorities in OECD Member countries, but also on those of Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa. OECD experts who took part in the Symposium on Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement held in November 2006 reviewed good practices that had been identified in an international survey of OECD Member and Observer country governments. The Global Forum on Governance which followed the Symposium provided an opportunity to dialogue with Non-Member countries on a wide range of good practices.

The Checklist provides guidelines for policy makers at the level of national administrations by inculcating a culture based on integrity at all phases in the public procurement process:

- The first part of the Checklist provides general lines of approach for development of a policy framework that will enhance integrity in public procurement.
- The second part mainly deals with the means that need to be deployed within this framework, from the assessment of needs to contract management and payment.

The Checklist is based on applying the principles of good governance, namely: transparency, good management, prevention of misconduct, accountability and control to enhance integrity in public procurement. It is designed to be used in conjunction with

good practices already recognised (see *Integrity in Public Procurement: Good practice from A to Z*, OECD, 2007, at [www.oecd.org/gov/ethics/procurement](http://www.oecd.org/gov/ethics/procurement)).

The Checklist proposes a policy framework with ten essential recommendations aimed at enhancing integrity and citizens' trust in the management of public funds. This framework for action emphasises the importance of methods aimed at enhancing transparency in public procurement, professionalism, prevention of misconduct and accountability:

#### I. Factors relating to transparency

1. *Member countries should provide an adequate degree of transparency in the entire public procurement cycle in order to promote fair and equitable treatment for potential suppliers.*
2. *Member countries should maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.*

#### II. Factors relating to management

3. *Member countries should ensure that public funds are used in public procurement according to the purposes intended.*
4. *Member countries should ensure that procurement officials meet high professional standards of knowledge, skills and integrity.*

#### III. Factors relating to the prevention of misconduct, compliance and monitoring

5. *Member countries should put mechanisms in place to prevent risks to integrity in public procurement.*
6. *Member countries should encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.*
7. *Member countries should provide specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement.*

#### IV. Factors relating to responsibility and control

8. *Member countries should establish a clear chain of responsibility together with effective control mechanisms.*
9. *Member countries should handle complaints from potential suppliers in a fair and timely manner.*

10. *Member countries should empower civil society organisations, media and the wider public to scrutinise public procurement.*

The second part proposes practical guidelines for enhancing integrity at each phase of the public procurement process, from the assessment of needs to contract management and payment. Public procurement is divided into three main phases:

- The phase upstream of the call for tender, which includes the assessment of needs, planning and budgeting, drafting of specifications and choice of procedure.
- Tendering and contract award.
- The downstream phase, notably contract performance, purchases order and payment.

## ANNEX B

### GLOSSARY

Authorising authority	The competent authority – usually the Minister concerned – which approves the contract.*
Award of a public procurement contract	This Study defines the award of a public procurement contract as consisting of a series of operations ranging from the assessment of needs to award of the contract and final payment.
Call for tender	The call for tender is a public procurement procedure following which the Tender Review Board awards a contract to the successful tenderer.
Candidate	Any natural or legal person who takes part in a call for tender or competition during the phase preceding the submission of tenders or proposals or to a negotiated procedure prior to award of a contract.*
Competitor	Candidate or tenderer.*
Contract	Any contract for remuneration entered into by a contracting authority and a natural or legal person known as the entrepreneur, supplier or service provider, whose purpose is the performance of work, delivery of goods or supply of services.*
Contracting authority	The Administration which, in the name of the State, enters into a contract with the entrepreneur, supplier or service provider.*
Four-eyes principle	An obligation whereby a procedure must be successfully implemented by the joint responsibility of at least two individuals.
Integrity	A use of funds, resources, assets or powers according to their intended purposes and public interest.
Integrity pact	Agreement between the public administration and all tenderers taking part in a public procurement contract, under the terms of which each party undertakes not to pay, offer, solicit or request bribes or collude with competitors in order to obtain the contract or during contract execution.
Successful tenderer	Tenderer whose proposal is chosen prior to notification of contract approval.*
Transparency	In the context of public procurement, transparency is taken to mean the possibility for all stakeholders to know and understand the means and procedures through which contracts are specified, awarded and managed.

*\* These definitions have been taken from the 2007 Decree.*



[www.oecd.org](http://www.oecd.org)