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Line Ministries and Government Bodies' Compliance with the Constraints Imposed by the Exceptions Clause in Public Procurement

2018



**Line Ministries and Government Bodies'
Compliance with the Constraints Imposed by
the Exceptions Clause in Public Procurement
under the Law by Decree No. 8 of 2014 on Public
Procurement**

2018

Introduction

Since it was approved in 2014, the Law by Decree No. 8 of 2014 on Public Procurement has been challenged by many obstacles, which have limited the possibility to fully enforce it. On 15 December 2015, the Law by Decree No. 21 of 2015 was suspended for a year. The law by decree was not put into effect after designated period had expired. Enforcement of the law by decree continued to be suspended for another six months in 2016. Earlier, however, repeated promises were made by various Palestinian government bodies to put the law by decree in force towards the end of 2015 – the timeframe needed finalise preparations to ensure effective and efficient enforcement of the said law by decree. Finally, on 28 June 2016, the Council of Ministers (CoM) made a decision to put to the law by decree into effect.

The Law by Decree on Public Procurement sets forth the legal framework for all public procurement processes. Article 8 of the Law by Decree provides for establishing the **Higher Council for Public Procurement Policies**, which supervises public procurement, government bids and tenders, and all public procurements made by government bodies. The Council also develops national policies on public procurement, improves performance, and evaluates how effective the public procurement policy is. However, the Council is defunct and plays a weak oversight role. In this context, decisions on exceptions to public procurement and tendering processes have continued to be made, allowing room to override public procurement best practices and standards.

Purpose of the Paper

1. To examine how compliant line ministries and government bodies are with the provisions of the Law by Decree No. 8 of 2014 on Public Procurement in public procurement processes. The paper monitors and identifies the nature of excluded procurements made by some line ministries and government bodies. It also sheds light on the role of the Higher Council for Public Procurement Policies as the most important control body of government procurement and tendering processes.
2. To submit recommendations with a view to promoting transparency principles and accountability systems within public finance management and public expenditure rationalisation with regard to public procurement by ensuring compliance with the provisions of the law and regulating the use of the exceptions clause under the Law by Decree on Public Procurement.

The paper covers the following topics:

- I. Exceptions in the public procurement system
 1. The legislative framework regulating exception to public procurement
 2. The current context of the Higher Council for Public Procurement Policies
 3. How often line ministries and government bodies use exceptions to public procurement
 4. How compliant line ministries and government bodies are with the constraints imposed by law in regard of the exceptions clause
- II. Conclusions, findings, and recommendations

I. Exceptions in the public procurement system

1. The legislative framework regulating exceptions to public procurement

The Law by Decree No. 8 of 2014 on Public Procurement provides the legal framework for all public procurement processes. It provides a set of controls, which ensure that objectives of the Law by Decree are achieved, namely, to purchase supplies, works, and services at the best prices, contributing to rationalising expenditures and maintaining quality assurance. The Law by Decree also provides for promoting the principle of fair competition and encouraging participation in public procurement procedures by qualified suppliers, contractors and consultants; allowing equitable opportunities without discrimination and providing fair and equal treatment for all bidders and consultants; and ensuring that transparency and integrity materialise in the procedures and implementation of public procurement processes.

However, the Law by Decree provides some exceptions for purchasing parties at line ministries, government bodies, Public Supplies Department, and Central Tenders Department to carry out public procurement without compliance with all legally prescribed conditions and procedures. Article 3 provides that enforcement of the provisions of the Law by Decree is excluded in the cases of:

- The procurement of supplies, services, and works of a high security nature, provided that these are specified by a decision from the Council of Ministers.
- The printing and issuing of currencies and relevant transfers.
- Mutual procurement between purchasing parties.

Additionally, Article 4 provides for taking account of international agreements concluded with international organisations in the context of enforcing the provisions of the Law by Decree.

Article 28 also specifies the cases of direct purchase as follows:

1. Subject to the controls set forth by the Regulation, the purchasing party, Public Supplies Department, or Central Tenders Department is entitled to follow the direct purchase method in any of the following cases:
 - a. If the required supplies, works, or services are only provided by one bidder, on condition that the specifications determined by the purchasing party are not set so as to apply to such bidder.
 - b. If the procurements required are replacements, parts, complementary services, or extension of works that are only provided by the original supplier or contractor.
 - c. If, after it purchases some goods, equipment, technology, or services from a supplier, the purchasing party finds out that some supplies or services must be purchased from such suppliers for reasons that relate to standardisation or conformity with the existent goods or services, subject to the limited scope of the proposed procurement process in comparison to the original procurement process, reasonable price, and inappropriate alternatives.
 - d. In cases of utmost necessity and natural disasters.
 - e. If the estimated cost of the supplies, works or services are so small as determined by the Regulation.
 - f. In the case of purchasing scientific or cultural materials, such as films, scripts, and the like.
1. In the case of direct purchase, the purchasing party, Public Supplies Department, or Central Tenders Department sends a written letter, including a description of its needs, as well as any special conditions pertaining to quality, quantity, cost, and place and conditions of delivery. It negotiates with the bidder with in order to obtain the best price.

2. Procurement takes place in accordance with a written contract or through a written purchase order.
3. The Higher Council for Public Procurement Policies is entitled to scrutinise the justification of direct purchase, taking into account the purchasing party's interest, ensuring its responsibility for maintaining economy and efficiency, and furnishing equal opportunities for all qualified bidders.

The Regulation on Public Procurement was issued by the CoM Decision No. 5 of 2014. The CoM Decision No. 3 of 2016 on the Regulation Amending some Provisions of the Regulation on Public Procurement, provides more detailed and specific procedures that must be followed in cases where direct purchase is permitted under Article 28 of the Law by Decree. Article 6 of the Amending Regulation amends Article 105 of the Original Regulation as follows:

1. The purchasing party, Public Supplies Department, or Central Tender Department may only use the direct purchase method in the cases provided by Article 28 of the Law by Decree on Public Procurement No. 8 of 2014.
2. Direct purchase without competition cannot be justified by the claim that only one bidder, who enjoys the ability or exclusive right to manufacture or produce supplies or deliver works or services, exists, if there are functionally equivalent supplies, works, or services that meet the purchasing party's needs.
3. In the case of direct purchase for utmost necessity or natural disasters under Article 28(1)(d) of the Law by Decree, the purchasing party restricts the procurement to the quantity and period of time needed to tackle the emergency conditions only.
4. In the case of direct purchase by reason of standardisation, the purchase value must not exceed 50 percent of the original purchase value.
5. In all the cases provided by Article 28 of the Law by Decree, direct purchase is carried out by a decision from:
 - a. The competent officer at the purchasing party if the estimated price of the procurement is not more than \$50,000 in regard of supplies or services, or \$150,000 in regard of works.
 - b. The Council of Ministers if the estimated price of the procurement exceeds the ceilings prescribed by Clause (a) of Paragraph 5 of this Article.
6. When it resorts to direct purchase, the purchasing party must prepare an accurate estimated price of the procurement in conformity with Article 61 of the Original Regulation in order to make sure that the paid price is reasonable and fair.
7. When it enters into negotiations, the purchasing party, Public Supplies Department, or Central Tenders Department must prepare a negotiation plan, in which it identifies the issues it wishes to negotiate and sets its objectives and the extent of the results acceptable thereby.

Article 106 of the Regulation on Public Procurement No. 5 of 2014 provides a set of procedures, which must be maintained when the direct purchase method is adopted by the purchasing party, Public Supplies Department, or Central Tenders Department. These are as follows:

1. The purchasing party, Public Supplies Department, or Central Tenders Department invites the sole bidder, by means of a written letter, to submit their tender. The invitation includes a description of its needs, any special conditions of the specifications, quantity and cost, date and conditions of delivery, and all other conditions of the contract.
2. The bidder is not requested to present a bid guarantee in the case of direct purchase.
3. The bidder submits their tender based on the conditions stated on the invitation. They submit the tender in the place and at the time designated on the invitation.

4. After it is opened, the Procurement Committee at the purchasing party, Public Supplies Department, or Central Tenders Department refers the tender to an evaluation committee, to be established by the competent officer or minister.
5. The evaluation committee provides a technical and financial examination and analysis of the tender, ensuring that:
 - a. The bidder enjoys the qualifications required to implement the procurement contract.
 - b. The quality and technical aspects of the bid satisfy the purchasing party's conditions.
 - c. The price to be paid to the bidder is reasonable and fair.
6. Following written approval of the competent officer or minister, the evaluation committee is entitled to negotiate the bidder based on the negotiation plan developed by the purchasing party, Public Supplies Department, or Central Tenders Department.
7. The evaluation committee submits a report, including its recommendations, to the relevant Procurement Committee or Tenders Committee to make the award decision, which is subject to the approval of the competent officer or minister.
8. The bidder is requested to submit a performance bond guarantee, if required.
9. The contract is signed by the competent officer.
10. The purchasing party, Public Supplies Department, or Central Tenders Department must document the direct purchase process. The procurement file must include a report, making clear the reasons for resorting to the direct purchase method as well as a written documentation of the negotiations with the bidder.

Similarly, if the direct purchase method is used with any consultant, Article 129(9) of the Regulation on Public Procurement No. 5 of 2014 provides: "The purchasing party must document the direct purchase process. The procurement file must include a report, making clear the reasons for resorting to the direct purchase method as well as a written documentation of the negotiations with the consultant."

Also, Annex A of the Amending Regulation sets the financial ceilings for procurement methods. It restricts the possibility of using the direct purchase method [to cases] when the estimated price of the procurement is not more than \$3,000 for supplies and services, \$5,000 for works, and \$100,000 for consultancy services without advertising an expression of interest.

Finally, Article 4(1) of the Regulation on Public Purchase provides that all public procurement activities in Palestine are subject to the evaluation of the Higher Council for Public Procurement Policies to ensure that all purchasing parties abide by the law and regulation. The Council must evaluate the performance of these parties.

II. The use of exceptions to public procurement by line ministries and government bodies

In relation to permitting line ministries and government bodies to make direct purchases, a review of the CoM decisions published in the Palestinian Official Gazette from 28 June 2016, when the Law by Decree on Public Procurement entered into force, towards late February 2018, as well as the decisions made by the Central Tenders Department at the Ministry of Public Works and Housing (MoPWH) and Public Supplies Directorate at the Ministry of Finance (MoF), **shows that a large number of decisions and direct purchases were made. These were as follows:**

1. CoM Decision No. 34 of 2016, dated 9 August 2016, on the purchase of the vaccine for Hajj Pilgrims and snake antivenom. Recommended by the Minister of Health, the decision approved the direct purchase of meningococcal tetravalent vaccine for Hajj pilgrims in the amount of \$150,000. It also approved the direct purchase of the venom antiserum of the Palestine viper at a total of \$20,000.

2. CoM Decision No. 38 of 2016, dated 16 August 2016, on the direct contracting of print shops to print school textbooks. Recommended by the Minister of Education and Higher Education, the decision provided for concluding direct contacts to print school textbooks for the 1st through the 4th grades and for the 12th grade at an estimated cost of NIS 5,18 million. Print shops were required to submit tax invoices in due form.
3. CoM Decision No. 66 of 2016, dated 18 October 2016, on the direct contracting for operating the government VPN service. Recommended by the Minister of Finance and Planning and Minister of Telecommunications and Information Technology, the decision provided for contracting directly with the Palestine Telecommunications Company (Paltel) to operate the government VPN and internet services. 40 percent of the current monthly invoice would be deducted. The Ministry of Finance and Planning and Ministry of Telecommunications and Information Technology were assigned to develop and sign the agreement for a period of five years in due form.
4. CoM Decision No. 15 of 2017, dated 7 February 2017, on direct contracting and procurement for maintenance of the West Bank water engines and pumps. Recommended by the Chair of the Palestinian Water Authority (PWA), the decision approved direct contracting and procurement to maintain engines and pumps of the West Bank Water Department (WBWD) from the PWA 2017 budget allocation.
5. CoM Decision No. 11/144/17/2017 on direct contracting to purchase hotel services to host the Asian Women's Cup a total of \$120,000. The decision was recommended by the Chair of the Higher Council for Youth and Sports (HCYS).
6. CoM Decision No. 7/164/17/2017 on direct contracting to purchase equipment for the CoM General Secretariat. These included a videoconference system (\$6,000) and electric cutters (NIS 24,000).
7. CoM Decision No. 6/170/17/2017 on the disbursement of amounts to a number of charitable associations to purchase assistive devices. The decision was recommended by the Minister of Social Development.
8. CoM Decision No. 10/178/17/2017 on direct contracting to purchase drought-tolerant fodder seeds in support of livestock. Totalling NIS 500,000, the decision was recommended by the Minister of Agriculture.
9. CoM Decision No. 8/183/17/2017 on direct contracting of the second family visits to prisoners in Israeli prisons. With a cost of \$40,000 a month, the decision was recommended by the Minister of Detainees and based on the agreement signed with the International Committee of the Red Cross.
10. CoM Decision No. 9/188/17/2018 on direct contracting to purchase pumps for the WBWD from the PWA budget allocation. The decision was recommended by the PWA Chair.
11. CoM Decision No. 5/186/17/2018 on direct contracting for maintenance of the Geomolg Portal for Spatial Information in Palestine (an annual maintenance contract), totalling \$64,704. The decision was recommended by the Minister of Local Government.
12. Based on CoM decisions, direct purchases were made by the MoF Public Supplies General Directorate on behalf of the Ministry of Health (MoH). These included medical devices (purchase of two tubes for the Rafidia and Beit Jala hospitals (\$360,000); and purchase of CT scanners (NIS 1.576 million) and maintenance of a MRI scanner (NIS 382,800) for the Palestine Medical Complex).
13. In 2017, the MoF Public Supplies General Directorate made direct purchases on behalf of the Ministry of Agriculture (MoA) based on CoM decisions (vaccines worth NIS 439,495, and detectors and laboratory equipment worth NIS 240,720).

Added to these exceptions, the Law by Decree allows direct contracting for purchases within prescribed financial ceilings, namely \$3,000 for supplies, \$5,000 for works, and \$100,000 for consultancy services without advertising an expression of interest.

Although Article 3(1) excludes enforcement of the Law by Decree to supplies and works of a high security nature, which are only identified by a CoM decision, many goods and services of security agencies as well as some medicines purchased by the Military Medical Services are procured without clear procedures, through direct purchase, or without a CoM decision.¹

Since the Law by Decree on Public Procurement entered into force, some government bodies have sought to receive a decision from the President to exclude them from enforcement of the Law by Decree. Accordingly, these could purchase needed items through direct contracting and without specific ceilings. Others, including the Palestinian Alimony Fund and Hebron Governor Office, make direct purchases without applying legally prescribed procurement processes.²

III. How compliant line ministries and government bodies are with exceptions to public procurement

In contrast with the exceptions provided by Article 28 of the Law by Decree on Public Procurement, a review shows that some CoM decisions on direct purchases can be justified. These include the decision on purchasing the government VPN service from Paltel because this system is provided by a sole producer. This is also the case of maintaining and purchasing water pumps for the WBWD as well as maintaining MoLG's Geomolg portal. These are considered as replacement or complementary parts. On the other hand, it is difficult to justify the direct contracting of print shops to print school textbooks, hotel services, fodder seedlings and seeds, or a videoconference system and electric cutters. These items do not fall within the exceptions provided by the Law by Decree. This was further confirmed by Mr. Khaled al-Abbadi, Auditor and Observer Member of the Central Tenders Committee at the State Audit and Administrative Control Bureau (SAACB).³

Engineer Fayeq al-Deek, Chair of the Higher Council for Public Procurement Policies, indicated that many direct purchases are not only restricted to the list of exceptions provided by Article 28 of the Law by Decree. These fall within the financial ceilings set by the Regulation and are based on a decision from the minister or head of institution. Fayeq stated that most direct purchases are justified by time constraints. Sometimes, the funding allocated for these purchases is disbursed late in the fiscal year, requiring that a direct purchase be made.

Fayeq asserted that direct purchases need to be minimised. In spite of the restrictions and procedures provided by the Law by Decree and Regulation, there is still room for irregularities and violation of fair competition, which the law seeks to safeguard. Accordingly, direct purchases are more commonly used to procure public supplies, which can only be provided by a sole producer or source.

Engineer Said Abu Zeid, Director of the MoPWH Central Tenders Department, said that the department has not used direct purchases since 2015. Unlike some public supplies, public works projects do not require particular specifications that are procured by sole agencies.⁴

According to the relevant CoM decision, many direct purchases are approved by the CoM, MoF Public Supplies Department, MoPWH Central Tenders Department, or the purchasing party itself.

In cases of procurement by the Public Supplies Department, the purchasing party submits the name of the producer, who provides the goods, as well as other required documents, including procurement budget line item. Then, the Department makes the direct purchase.⁵

¹ Zeid, Said, *The Environment of Integrity, Transparency and Accountability in Functions of the Military Financial Department*, Ramallah: The Coalition for Accountability and Integrity (AMAN), 2018, p. 13.

² Interview with Mr. Samer Abu Qare', Acting Director General of the SAACB Control on Governance and Security Department, Ramallah, Sunday, 4 March 2018.

³ Interview with Mr. Khaled al-Abbadi, SAACB Auditor, Ramallah, Sunday, 4 March 2018.

⁴ Interview with Engineer Said Abu Zeid, Director of the MoPWH Central Tenders Department, Tuesday, 27 February 2018.

⁵ Interview with Mrs. Rania al-Shanti, Director of the Tenders Department, MoF Public Supplies General Directorate, Sunday, 4 March 2018.

According to Mrs. Rasha Amayreh, Director General of the Legal Department at the Palestinian Anti-Corruption Commission (PACC), most complaints about the Law by Decree on Public Procurement indicate that a main problem is posed by local government units (LGUs). Not necessarily associated with suspicions of corruption, many LGUs resort to direct purchases for various justifications, including the claim that direct purchase is sometimes less costly than the application of legally prescribed procedures. Other causes include ignorance of the law and weak oversight of law enforcement. In this context, an agreement was signed by the Ministry of Local Government (MoLG) and PACC to introduce LGUs to the Law by Decree on Public Procurement.

Amayreh asserted that complaint data show that government bodies demonstrate a high degree of compliance with the Law by Decree on Public Procurement. Transactions are associated with financial operations, issue orders, and a unified control system at the MoF.

Amayreh said that public institutions of the Palestine Liberation Organisations (PLO) are excluded from law enforcement despite the fact that relevant staff are subject to the Civil Service Law. PLO institutions are located in the Palestinian territory and their budget line items are earmarked by the State's general budget. This vagueness is triggered by the argument about whether the PLO institutions are subject to public oversight bodies. The relevant presidential decree provides that this is the case based on a mandate issued by the President. Hence, for all government bodies, including PLO institutions, to be subject to the law requires a clear, unambiguous legal provision to this effect.

Amayreh stressed the need to place severe restrictions on direct purchases. A clear provision should also identify the body vested with the power of granting exceptions to public procurement.

IV. Slow steps at the Higher Council for Public Procurement Policies

According to the Law by Decree, the Higher Council for Public Procurement Policies is a regulatory, policy-making council. It has an independent financial position in the general budget and reports to the CoM. Effective enforcement of the Law by Decree on Public Procurement resides in how capable the Council is to play its role. The Council is the cornerstone in the Law by Decree.

Some progress has been scored in regard of the institutional and organisational structures of the Higher Council for Public Procurement Policies. On 13 January 2018, the CoM made a decision, approving nomination of the Council members, who included representatives of the MoF, Ministry of National Economy, MoPWH, private sector, and civil society organisations. The latter involved the Palestinian Contractors' Union (PCU), Palestinian Medical pharmaceutical Suppliers Association, and An-Najah National University.⁶

Six employees of line ministries and government bodies were transferred to the Council. It is worth noting that the 2018 budget covers a number of new positions at the Council.

The Public Procurement Portal has also been designed.⁷ Some line ministries and government bodies have posted information on procurement contracts and tenders on the portal. Work is underway to develop standard documents for supplies, tenders, and consultancy services. Having been produced, draft documents are under discussion for approval and publication. The process is aided by the World Bank and PCU.⁸

In spite of the foregoing steps to put the Law by Decree on Public Procurement into effect, many challenges continue to impede full enforcement of the Law by Decree.

⁶ CoM Decision 2/137/17, dated 13 January 2017, *Palestinian Official Gazette*, Issue 133.

⁷ <http://www.shiraa.gov.ps/shera>

⁸ Personal interview with Engineer Fayeq al-Deek, Chair of the Higher Council of Public Procurement Policies, Ramallah, Monday, 27 February 2018.

The number of employees who form the executive body of the Higher Council for Public Procurement Policies is still limited. More qualified staff members are needed.

Commitment to posting information related to purchased supplies, tenders, and consultancy services on the portal is still mediocre. Despite binding legal provisions, many key purchasing parties still refrain from posting information on the portal. In this context, the process is slow.

Considered as a hub in the Council's functions, the legally prescribed Dispute Review Unit is still not in place. This is also the case of the complaint handling system, provided by the Law by Decree and Regulation. In this vein, the Chair of the Higher Council for Public Procurement Policies, said that the Council will work on these aspects over the upcoming period after the some donors at the World Bank expressed willingness to provide support to the Council in this area.⁹

Abu Zeid asserted that dysfunction of the Higher Council for Public Procurement Policies disrupts tendering procedures. Many relevant operations are associated with the Council. For example, the right of complaint or challenge is initiated at the purchasing party or Tenders Department. If the complainant is not satisfied with the reply, they report to the Complaints Unit at the Council. The fact that this unit has not so far been established can suspend procedures. For the time being, the department attempts to overcome this situation by devising amicable solutions or looking for remedies beyond the law in cooperation with the PCU. The fact that tenders are not advertised on the Public Procurement Portal can also be challenged by contractors, who do not have access to unadvertised tenders.

According to Abu Zeid, the Law by Decree on Public Procurement has not served the purpose for which it was enacted. Many provisions of the Law by Decree, first and foremost the Higher Council for Public Procurement Policies, have not been put into effect. The Law by Decree is meant to consolidate various items of legislation and bridge gaps in different aspects of public procurement. The shortfalls have provided the grounds for donors to impose their own procurement systems in funded projects.¹⁰

A letter sent by the CoM General Secretariat to the MoF Public Supplies General Directorate stressed the need to modify standard documents in line with the provisions of the Law by Decree on Public Procurement and relevant Regulation until such time the Higher Council for Public Procurement Policies approves standard tender documents. Tender advertisements will also be posted on the General Directorate's webpage until such time the Public Procurement Portal is put to operation. Current complaint handling and challenge mechanisms will be put in place until such time a complaint handling system and the Dispute Review Unit are established at the Higher Council for Public Procurement Policies.¹

⁹ Interview with Engineer Fayeq al-Deek, *op. cit.*

¹⁰ Interview with Said Abu Zeid, *op. cit.*

V. Conclusions and Recommendations

1. Conclusions

- Although exceptions to enforcement of the Law by Decree on Public Procurement are clearly demarcated, some relevant government bodies seek to unlawfully excluded themselves from the scope of the Law by Decree. Institutions (e.g. the Palestinian Alimony Fund and Hebron Governor Office) apply their own procurement regulations. Others, like the Palestinian Broadcasting Corporation, attempt to obtain a decision from the President to exclude themselves from enforcement of the Law by Decree and approve direct purchase for their requirements. In an attempt to evade regulatory procedures and restrictions set by the Law by Decree on public procurement, some bodies continue to enforce the provisions of laws, namely Public Supplies Law and Public Tenders Law, which have been repealed by the Law by Decree on Public Procurement.
- Based on CoM decisions, direct purchases worth millions of shekels continue to be widely made by many line ministries and government bodies, including the MoH, MoA, and Ministry of Education and Higher Education (MoEHE). The Law by Decree on Public Procurement and relevant Regulation are meant to make direct purchases as narrowly as possible and under strict conditions.
- A review of CoM decisions on direct purchases and the requirements and goods to be purchased shows that many procurements do not fall within the conditions and parameters provided by Article 28 of the Law by Decree and Article 106 of the relevant Regulation. In many cases, these pertain to goods provided by more than one source. Contrary to the Law by Decree, direct purchases do not include complementary items nor are they procured to address a state of emergency or natural disaster. This is the case of purchasing hotel services by the HCYS, fodder seedlings and seeds by the MoA, and printing of school textbooks by the MoEHE. Direct purchase contradicts the objectives the Law by Decree seeks to achieve, particularly rationalisation of expenditures, promotion of fair competition, and provision of equitable opportunities and fair treatment to all bidders. As emphasised by most interviewed specialists, it also clearly violates the principles and values of transparency and integrity in the public procurement process.
- Although it was enforced on 28 June 2016, many key aspects of the Law by Decree have not yet been put into effect. For the most part, these involve the institutional and functional structure of the Higher Council for Public Procurement Policies. In addition to lacking a fully staffed executive body, the Council still needs budget appropriations to carry out assigned tasks. Standard contract templates and tender document should be adopted. The Public Procurement Portal and Dispute Review Unit (Complaints Unit) should also be operational. As the central agency, inaction undermines the Council's supervisory and oversight role in the public procurement process.
- Contrary to the effective Law by Decree on Public Procurement, the CoM General Secretariat requested that the Public Supplies General Directorate develop standard tender documents and contracts, provide complaint handling and challenge mechanisms, and continue to post tenders on its webpage. Instead, all capacities needed should have been provided to the Higher Council for Public Procurement Policies to implement these tasks inasmuch as they fall within the scope of the Council's legally prescribed functions.

2. Recommendations

- Remove all obstacles or reservations that impede putting the Law by Decree on Public Procurement in force. Given that the Law by Decree has been in force since 2016, the institutional and functional structure of the Higher Council for Public Procurement Policies should be complemented.
- The CoM should address all relevant line ministries and government bodies to abide by the provisions of the Law by Decree and put an end to the exclusion of any institution from the scope of the Law by Decree under whatever justifications.
- Until such time the Higher Council for Public Procurement Policies is fully operational, the SAACB should double its effort to control line ministries and government bodies and examine compliance with the provisions of the Law by Decree on Public Procurement.
- The CoM should apply strict conditions to granting exceptions for direct purchase. These will be limited as narrowly as possible and be in line with the conditions and parameters set by the Law by Decree on Public Procurement.
- All CoM decisions on direct purchases should be referred to the purchasing parties, MoF Public Supplies General Directorate, and MoPWH Central Tenders Department in their capacity as the competent bodies to process needed procurements.

References

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- CoM Decision No. 5 of 2014 on the Regulation on Public Procurement.
- CoM Decision 2/137/17, dated 13 January 2017, Palestinian Official Gazette, Issue 133.
- CoM General Secretariat's Letter to the MoF Public Supplies General Directorate on the mechanisms for enforcing the Law by Decree on Public Procurement, Ramallah, 11 August 2016.
- Zeid, Said, *The Environment of Integrity, Transparency and Accountability in Functions of the Military Financial Department*, Ramallah: The Coalition for Accountability and Integrity (AMAN), 2018, p. 13.
- Personal interview with Engineer Fayeq al-Deek, Chair of the Higher Council for Public Procurement Policies, Ramallah, Monday, 27 February 2018.
- Interview with Said Abu Zeid, Director of the MoPWH Central Tenders Department, Tuesday, 27 February 2018.
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- Interview with Mr. Samer Abu Qare', Acting Director General of the SAACB Control on Governance and Security Department, Ramallah, Sunday, 4 March 2018.
- Interview with Mr. Khaled al-Abbadi, SAACB Auditor, Ramallah, Sunday, 4 March 2018.
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(Footnotes)

1 CoM General Secretariat's Letter to the MoF Public Supplies General Directorate on the mechanisms for enforcing the Law by Decree on Public Procurement, Ramallah, 11 August 2016.

