

Status of Implementation of Lebanon's Public Procurement Law 244/2021 and Assessment of skills' gaps and training needs

June 2024

Executive Summary

In partnership with Insights Analytica

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Contextual background

Lebanon has been reforming its public procurement system since 2019. Public procurement reform is a key commitment of the Government of Lebanon (GoL) for structural fiscal reforms made at the Conférence économique pour le développement, par les réformes et avec les entreprises (CEDRE) in 2018, in Ministerial Statements (2019-2021) and in the Staff-Level Agreement with the IMF (2022). Following the Methodology for Assessing Procuring Systems (MAPS) assessment supported by the World Bank¹, Lebanon ratified the PPL 244/2021 in July 2021. The Law entered into force in July 2022. Concurrently, the National Strategy for Public Procurement Reform (NSPPR) and its 2022-2024 action plan were approved by the Council of Ministers in May 2022.

This executive summary presents the results of a qualitative survey conducted in 2023 by the Institut des Finances Basil Fuleihan (IOF), in collaboration with Insights Analytica, to assess the implementation of Lebanon's Public Procurement Law (PPL 244/2021), 15 months after its entry into force. It aims at determining the status of the implementation of the PPL 244/2021, and at assessing skills gaps and specific training needs of procuring entities at central and local level of government towards an informed professionalization process. It also proposes recommendations to assist Lebanon in improving implementation practices as well as training and capacity building, in line with PPL 244/2021 and the reform strategic vision.

The survey's findings offer insights into the effectiveness of the legal and institutional execution of PPL 244/2021, highlighting internal and external challenges, as well as training needs across procuring entities and proposing recommendations towards an effective implementation of PPL 244/2021 provisions.

Methodology

A **survey questionnaire** was designed, revised and tested by a national team of 10 experts-practitioners.

The voluntary survey between was implemented in October and November 2023. It targeted 399 procuring entities; **with 68 being responsive**, including public administrations, public institutions, and municipalities. The survey questions centered around 1) procurement planning and applied practices, 2) publication and transparency of information, 3) the relationship with the private sector, 4) PPL 244/2021 implementation challenges, and 5) human capacities and training needs.

The survey data was collected, cleaned and transformed to allow proper analysis. The report was drafted based on the data analysis.

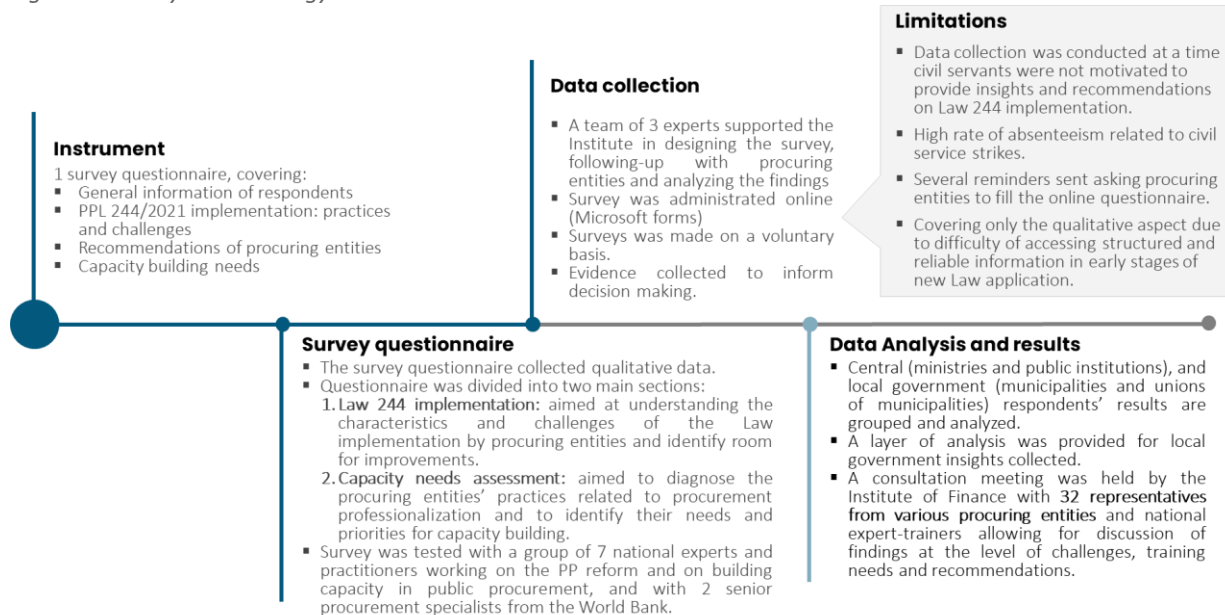
Some **limitations** were noted: 1) data collection was conducted at a time when civil servants were not motivated to provide insights and recommendations on the implementation of PPL 244/2021; 2) there was a high rate of absenteeism due to civil service strikes; and 3) difficulty in accessing structured and reliable information in early stages of new Law application which affected the overall response rate. Other

¹ The MAPS assessment in Lebanon was conducted in 2019-2020 to assess the performance of the public procurement system prior to the reform. It was coordinated by the Institut des Finances Basil Fuleihan with the technical support of the World bank through the Global Procurement Partnership-Multi-Donor Trust Fund (GPP-MDTF).

limitations were due to the design of the survey; since responses to the survey were made on a voluntary basis and the sample of respondents was not representative of all procuring entities.

An overview of the survey’s methodology is provided in Figure 1:

Figure 1: Survey methodology



To validate the survey findings, a **consultation meeting** was held by the IOF in June 2024 with 32 representatives from various procuring entities and national expert-trainers during which the findings were presented, followed by discussions providing additional analysis based on practitioners’ feedback and experience sharing from the application of PPL 244/2021. These discussions helped inform the recommendations presented in the survey report.

Main Findings on Procurement Planning and Applied Practices

- More than **95%** of procuring entities are implementing PPL 244/2021, but **only two-thirds are implementing it fully**. The lowest rate of full implementation was in municipalities (30% fully implemented, 65% partially implemented.)
- Procurement planning is still challenging across procuring entities in the country**, with only one third of entities that were not preparing procurement plans prior to Law 244 having started to do so with the new law.
- Obstacles to procurement planning are faced in two-thirds of the cases surveyed. The **main obstacle faced in preparing the annual procurement plan is weak human capabilities** (49% overall, and 57.1% reported by municipalities surveyed.)

Figure 2: Planning practices at central government prior to and after PPL 244/2021 enactment

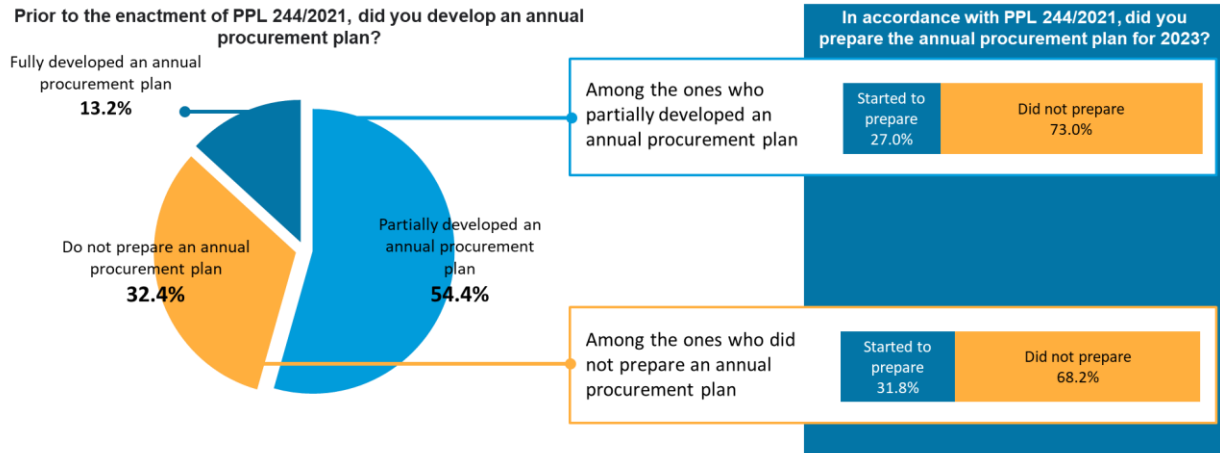
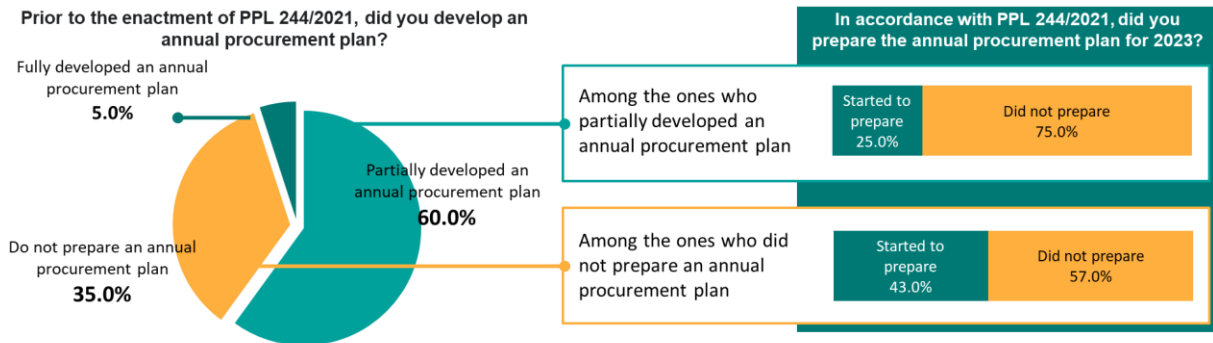
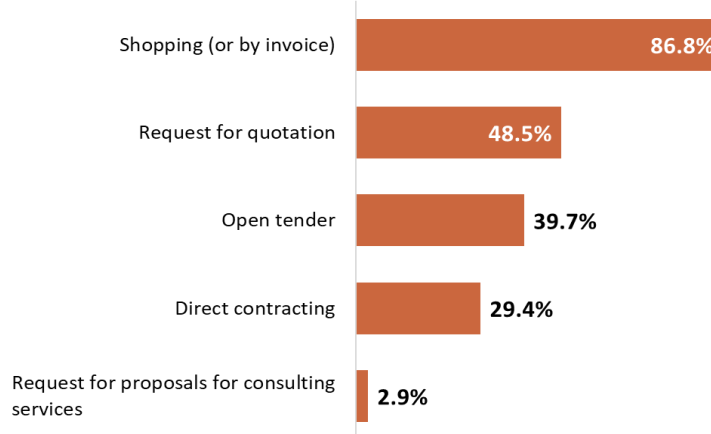


Figure 3: Planning practices at local government prior to and after PPL 244/2021 enactment



- **Shopping is the most commonly used method** across the public sector, which is different from the open competition emphasized as the default practice by PPL 244/2021 of. Based on qualitative data from training and consultation with procuring entities, this is mainly due to: 1) the devaluation of the Lebanese Pound which had a severe impact on procuring entities' budgets; 2) the suppliers not bidding for open tender due to payment delays combined with the devaluation of the national currency; and 3) the procuring entities splitting procurement under threshold to be able to procure by invoice, which is not permitted by the Law.
- **Direct contracting** is applied mainly in specific sectors: security, telecommunications, health, public works, as well as energy and water. **Newly introduced methods** (framework agreements and two-stage tendering) are practically not used yet due to the lack of awareness and need for training on their use.

Figure 4: Top used procurement methods since the beginning of Law implementation

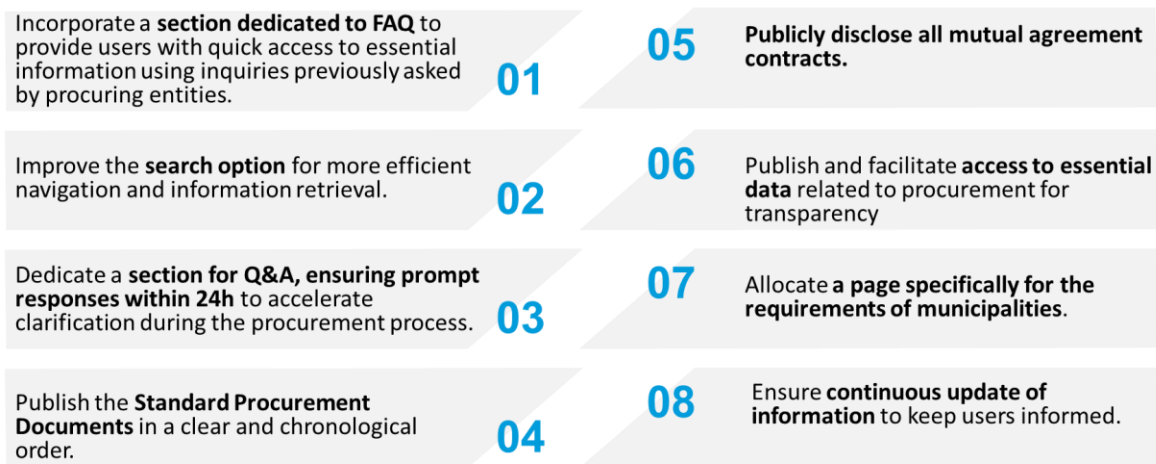


- Many public administrations/institutions (**89.7%**) that participated in the survey considered the adoption of standard procurement documents by the Public Procurement Authority a high priority to ensure proper implementation of the law. **Non-standardized procedures are entry points for practices of corruption and inefficiencies, which worsen the business community's lack of trust in the PPL 244/2021 and reform.**
- Less than half (**39.7%**) of respondents incorporate sustainability standards into their procurement processes. Significantly, **17.6%** are unfamiliar with the concept of sustainable procurement.

Main Findings on Publication, Access to information and Transparency

- The central electronic platform at the Public Procurement Authority (PPA) is the tool allowing access to public procurement information free of any charges through a central database. Publishing on this platform is mandatory to all contracting authorities and to other stakeholders concerned by PPL 244/2021 implementation (such as PPA and Complaints Authority, etc).
- Although the publication of procurement proceedings information is required by Law 244, **35.3% of procuring entities do not publish procurement information at all**, while **29.4%** of entities publish all procurement related information.
- Among entities that publish some or all procurement information, **84.1%** of them publish the information on the Public Procurement Authority (PPA) website.
- The absence of a central electronic platform with essential functionalities such as templates, information availability, helpdesk, open data access, data analytics, and reporting hinders the effective operationalization of the regulatory authority (PPA) as per its mandate in Article 76 of PPL 244/2021. Survey respondents have highlighted the need to have the central platform with key functions and services as detailed in Figure 5.

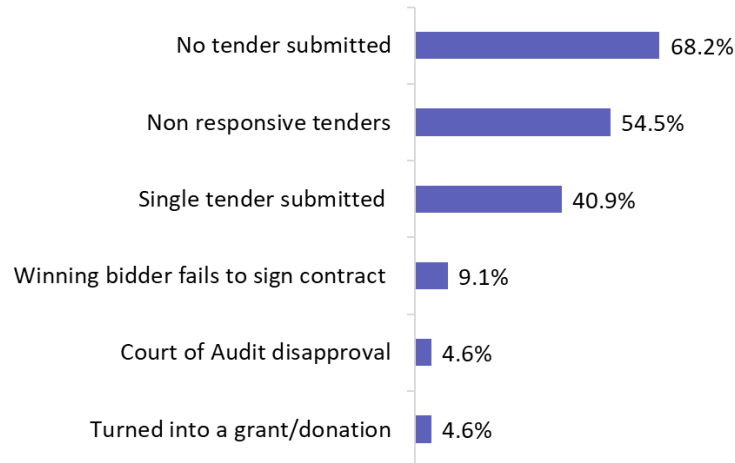
Figure 5: A functional electronic platform as a key tool of transparency



Main Findings on Relationship with the Private Sector

- A wide array of challenges is facing the proper private sector participation in public procurement even after the entry into effect of the new PPL 244/2021.
- **Main obstacles to the participation of private sector in public procurement are the following:** 1) Not being registered at the Ministry of Finance; 2) Not being capable of maintaining proper records (e.g., invoice serialization); and 3) The need for awareness regarding the regulations and laws applicable to municipalities.
- **Obstacles related to the country's economic and financial situation directly affecting the private sector participation to public procurement are the following:** 1) Requirements imposed by the PPL 244/2021; 2) Suppliers are unwilling to participate in bids unless it is through shopping; 3) Non-responsiveness to calls for competition and failure to submit offers in LBP due to the instability of the exchange rate and delays in payment; 4) Reluctance to provide long-term price offers, particularly in fuel purchases; 5) Difficulty in meeting contract requirements; 6) Lack of confidence in public management and hesitation among some suppliers to engage with the public sector; 7) Challenges in securing administrative documents and bank guarantees; and 8) Delays in payment and extended procedures associated with it.
- Cancellation of procurement is a common practice. The main reason behind cancellation of procurement is the **absence of offers (68% of the cases)**. The fact of having **50% of cases of cancellation due to non-responsive tenders** highlights the need for strategies and approaches to enhance bidder engagement and improve the quality of submitted tenders, ensuring a more competitive and successful procurement environment. **Failing to sign the contract** by the winning bidder is an issue that deserves further investigation.

Figure 6: Top reasons behind cancellation of procurement



- The majority of procuring entities indicated that **they have not waived submission of bid security in procurement offers** for values estimated to be less than 500 million LBP (before adjusting the financial ceiling) or 2.5 billion LBP (after adjusting the ceiling). This shows a prevalent adherence to bid security requirements, even for lower-value procurement offers, a practice that may tend to discourage small and medium enterprises from participating due to the financial burden. This is due to lack of awareness of the existence of this clause in the PPL 244/2021 (Art. 34-2) and the need to further be trained on its application.
- **Communication with bidders regarding procurement proceedings remains unstructured;** only **29.4%** of procuring entities have an employee responsible for direct contact with bidders and communicating with them.
- The majority of procuring entities (**95.6%**) have answered that they did not face any complaints about procurement procedures. **The complaints mechanism is not yet applied as per PPL 244/2021 especially with the non-establishment of the Complaints Authority and the non-initiation of related training and awareness of bidders' right to complain.**

Main Findings on PPL 244/2021 Implementation Challenges

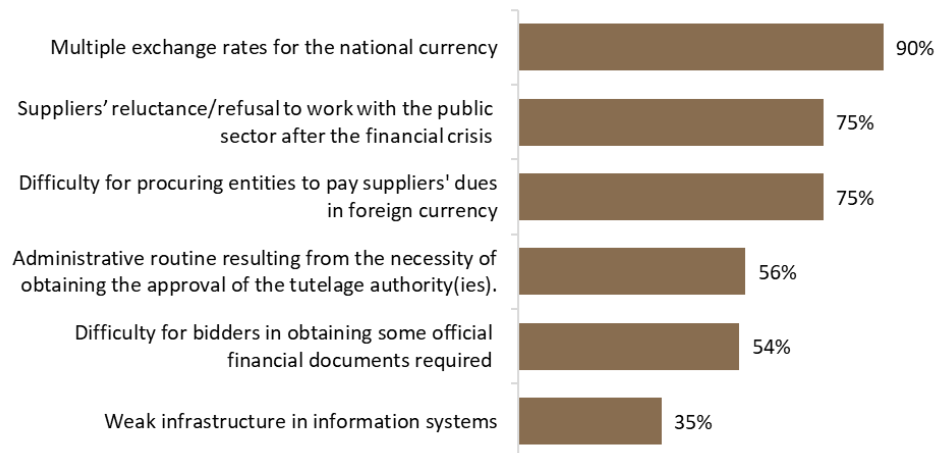
- **Internal and external challenges are hindering the proper and efficient implementation of PPL 244/2021 and thus negatively affecting the progress of public procurement reform.** If not addressed adequately, these challenges can have far-reaching consequences, including delays and inefficiencies in procurement processes, an increased financial burden due to currency-related issues that will impact budget allocations and fiscal responsibilities, compromised quality of decision-making, and strained supplier relationships.
- The most significant **internal challenge expressed by procuring entities is the shortage of financial resources and weaknesses in the competencies of procurement personnel.**

- The most significant **external challenge is suppliers' reluctance or outright refusal to work with the public sector post-financial crisis**, in addition to facing multiple exchange rates for the national currency.

Figure 7: Internal challenges at procuring entities level



Figure 8: External challenges linked to the country's economic and financial situation



- At the local level, municipalities face a significant shortage of 1) **Financial resources linked to the deteriorating financial situation in the country** (insufficient tax collection, delays in transfers from the Independent Municipal Fund, limited resource generation from projects, etc); and 2) **Human resources -whether in number or capacity- to perform procurement tasks to abide by PPL 244/2021 provisions.**
- There is also a permanent challenge related to the identification of municipal employees as members of tender and acceptance committees. **With a freeze on employment across the public sector, building the capacity of available procurement personnel would help ensure needed human resources for committees' membership.**

Box 1: A need for sound operationalization of the regulatory authority

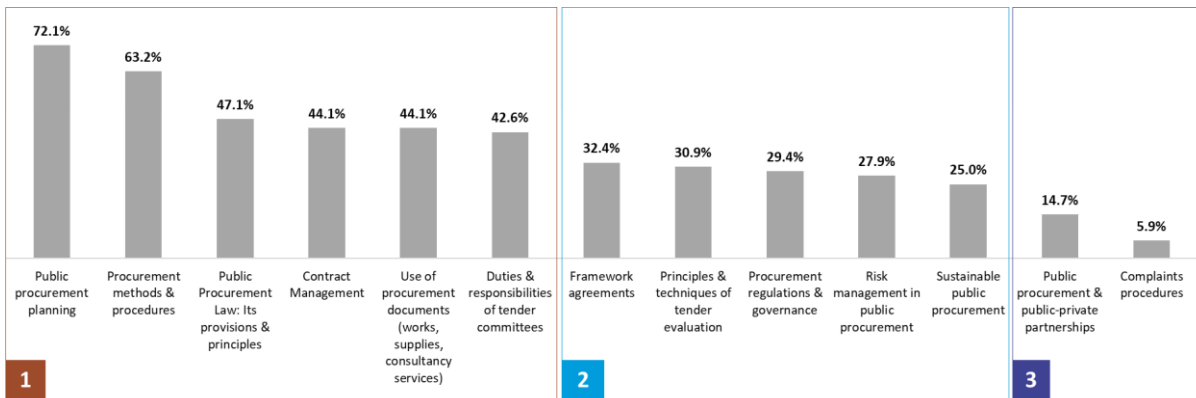
Several challenges are hindering the sound operationalizing of the regulatory authority (Public Procurement Authority-PPA) and negatively affecting the performance of the procurement system:

- Increasing difficulty in adopting complementary decrees, in particular those concerning the creation and/or operationalization of the PPA, and similarly the Complaints Authority, both created by PPL 244/2021.
- Absence of the central electronic platform and its functionalities which hinders the proper functioning of the procurement system, namely the use of templates, the availability of information, the establishment of a helpdesk, the access to open data, the availability of data analytics and reporting.
- Absence of explanatory guidelines that explain the provisions and articles of PPL 244/2021 to avoid misinterpretation and ineffective application of the Law.
- Absence of standard procurement documents and basic templates such as committees' reports.
- Misunderstanding of the advisory role of the regulatory authority (stipulated in Art. 76-19) by senior decision makers at procuring entities level (ministers, directors general, etc) who are systematically requesting prior review of tender documents by the regulatory authority. This practice has serious negative implications on the procurement system, like delaying procurement procedures, creating conflicts in the PPA (monitoring v/s prior approval), and inefficient use of limited resources at PPA to exercise the regulatory role.
- The provision by the PPA of opinions on technical evaluation procedures, indicating whether they are correct or incorrect, despite this not being within its remit (such as in the telecommunications sector).

Main Findings on Human Capacities and Training Needs

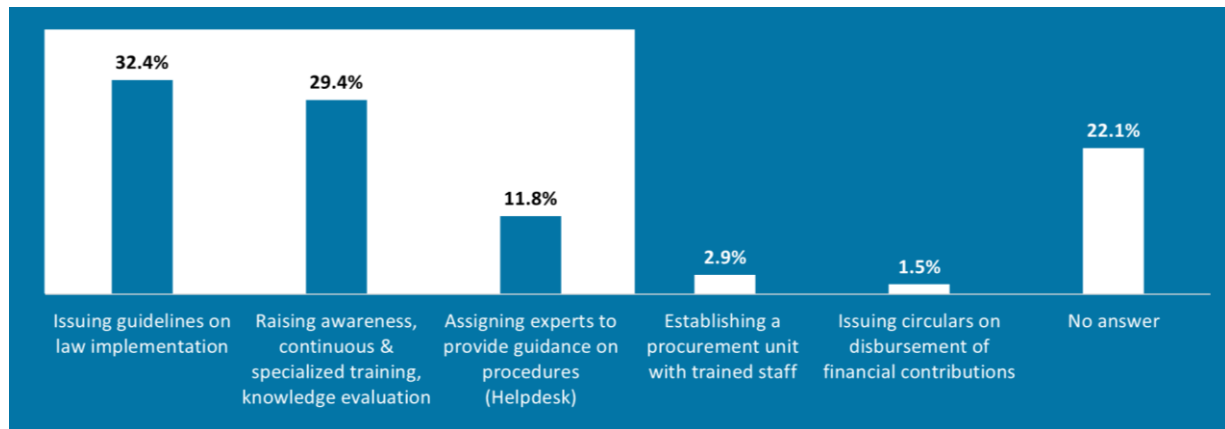
- Two thirds of procuring entities (especially municipalities) continue to operate **without the establishment of a dedicated unit responsible for procurement operations** as stipulated in Article 73 of PPL 244/2021.
- There is a relatively even split between procuring entities that have designated a "Procurement Officer" and those that do not.
- **Only 34% of surveyed entities have fully trained their procurement employees through the Institute of Finance.**
- **Training needs expressed by procuring entities surveyed cover a wide range of priority areas**, revealing the necessity for a comprehensive approach to enhancing capabilities for a sound implementation of PPL 244/2021. **Three clusters of training topics are identified** in Figure 9 according to priorities of respondents.

Figure 9: Training needs in public procurement



- **Procuring entities prefer in-person and blended learning formats** over entirely online learning. This approach reflects a balanced recognition of the advantages offered by face-to-face interaction, as well as the flexibility and accessibility provided by online components knowing the effects of the financial crisis on employee’s mobility, and the adaptability to workload/work styles offered by the blended solutions.
- Providing practical tools and assistance remains key for a proper implementation of PPL 244/2021.

Figure 10: Type of guidance needed by procuring entities to support them in PPL 244/2021 implementation



Way Forward and Recommendations

The Public Procurement Law 244/2021 has entered into force amidst the severe economic and financial crisis hitting Lebanon, which put at risk its full and sound implementation by administrations and institutions. The following recommendations, for the short to long term, were expressed by surveyed entities to enhance proper application of the principles and provisions of the PPL 244/2021 on two main levels:

Level 1: Regulatory framework and procurement operations

1. Reinforcing the regulatory role and the independence of the Public Procurement Authority (PPA) from transactional prior reviews and decisions, through clear legislation and complementary regulations.
2. Establishing the Complaints Authority that is still absent from the system.
3. Making sure that any update/amendment of the PPL 244/2021 is based on assessing the impact of its implementation on concerned stakeholders.
4. Issuing standard procurement documents by the Public Procurement Authority (PPA) to serve as a benchmark, and help minimize ambiguities and disputes, thereby streamlining the procurement process.
5. Streamlining procedures, particularly those outlined in decisions and memorandums of the PPA.
6. Ensuring regularity in the procurement planning process, which depends primarily on a timely budget exercise (integration with the budget).
7. Providing additional instructions and guidelines and clarifying new concepts in PPL 244/2021.
8. Providing guidance to explain complex procurement procedures (FAs, two-stage tendering, etc).
9. Issuing guidelines for the disbursement of funds in a crisis mode.
10. Issuing the needed regulation for the automation in public procurement operations.
11. Ensuring complementarity of PPL 244/2021 with other laws that are impacting the PP system (CoA laws, the processes of validation by tutelage authorities for procuring entities such as municipalities, autonomous public institutions, etc.)
12. Reconsidering the currency of effective payment by the Ministry of Finance in order to proceed with procurement operations and ensure public services.
13. Disrupting the cartels, monopoles, elite capture regime in procurement market.

Specific to municipalities:

1. Revising prior review financial thresholds set in related oversight laws to align with the new market prices and exchange rate.
2. Modernizing public finance related laws that are inter-linked with the PPL 244/2021 such as the Law governing the Court of Accounts and the Budget Law.

Level 2: Capacity development and professionalization

1. Building institutional capacities in public procurement, through the provisions of continuous and specialized training in public procurement to meet the needs of civil servants involved in the various stages of the procurement cycle.
2. Raising awareness (through briefings, seminars and policy discussions) among senior management (director generals and heads of institutions, elected members of municipal councils) about the importance of the PPL, the relationship with the PPA, and the necessity of applying it as a change management tool for an efficient procurement system, so that they are aware of their roles and responsibilities, avoid back-and-forth correspondences concerning procurement due to misconceptions, and better enforce procurement processes that align with best practices and regulatory requirements.

3. Incentivizing the personnel to fully perform its public procurement related tasks.
4. Establishing a dedicated department / unit with procurement expertise, dedicated to performing operations in accordance with the PPL 244/2021, even if the creation of this unit necessitates the amendment of internal regulations proper to some procuring entities.
5. Defining the job description of procurement personnel and organizing their work into dedicated units/departments.
6. Searching for solutions considering the limited number of personnel at procuring entity level and the burden of multi-tasking, to avoid difficulties in forming procurement units as well as tender and acceptance committees.
7. Raising awareness on the PPL 244/2021 to the private sector and economic operators and improving public opinion towards PPL 244/2021.
8. Building on the Memorandum of Understanding (MOU) signed between the IOF and the PPA that institutionalizes the collaboration between both institutions on many fronts, in line with PPL 244/2021 (Art. 72 & 76).

Specific to municipalities:

1. Providing more training and awareness raising among those responsible for public procurement across local government.
2. Providing customized training programs directed at municipalities and unions aligned with PPL 244/2021 provisions and requirements.
3. Conducting hands-on sessions on topics of practical relevance for municipalities, namely procurement methods among others.
4. Exchanging experiences in applying the PPL 244/2021 among municipalities to learn from challenges and from successful practices.
5. Modifying the requirements and criteria for the appointment of employees at municipal level to secure high level of qualification enabling them to perform procurement operations as required in PPL 244/2021.