
Public Procurement Reform

A Paradigm Shift



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Outline



PREFACE

PP in Arab World

MISCONCEPTIONS & TENSIONS

RESOLUTION

Public Procurement



“one of the least understood and most vulnerable areas of public administration... even amongst the reformists in this area there are common misunderstandings and a lack of consensus about this activity with, for example, many perceiving it as a regulatory problem and others as a mainstream management function.”

Schapper, P. R., Malta, J. N., & Gilbert, D. L. (2006). AN ANALYTICAL FRAMEWORK FOR THE MANAGEMENT AND REFORM OF PUBLIC PROCUREMENT. *Journal of Public Procurement*. Boca Raton. , 6 (1/2), 26 pages.

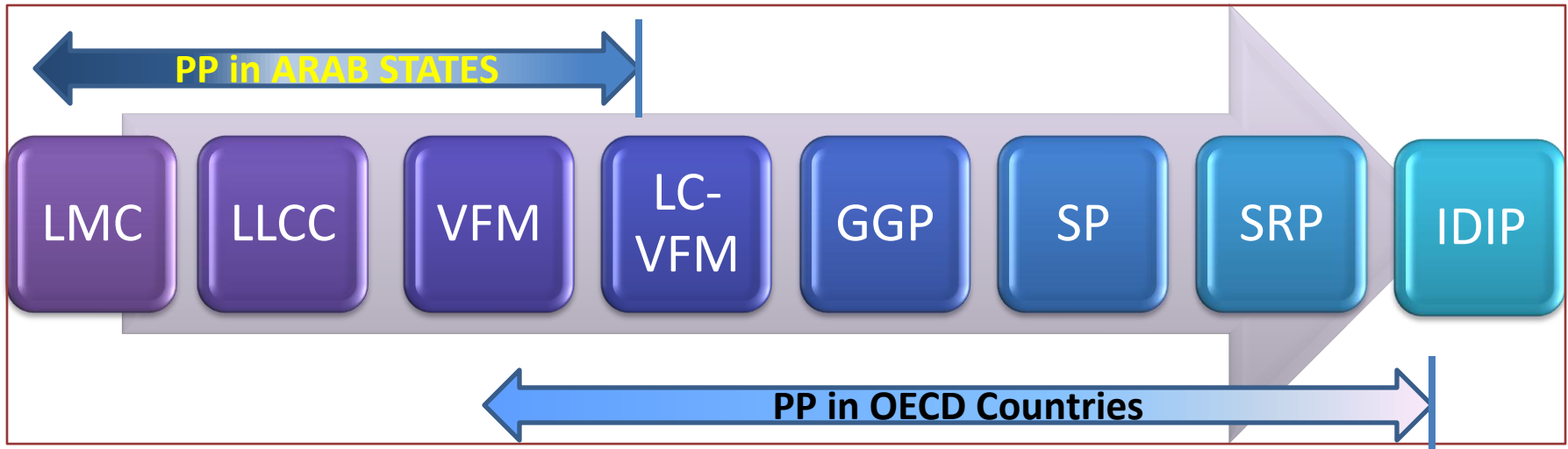
Public Procurement



“an extraordinarily adaptable tool, which has often been used to meet a regulatory need when other methods of regulation are not considered acceptable, available or effective.”

MCCRUIDDEN, C. (2006, April). Corporate Social Responsibility and Public Procurement.
University of Oxford Faculty of Law Legal Studies Research Paper Series .

Transformation



Lowest Market Cost → Lowest Life-Cycle Cost → Value-For-Money → Life-Cycle Value-For-Money → Green Government Procurement → Sustainable Procurement → Socially Responsible Procurement → Innovation-Driving Intelligent Procurement

Impediments to procurement transformation



GOV

- Incomprehension of the role;
- Dilution of responsibilities;
- Short-sightedness;
- Corruption and rent-seeking;
- Weak regulatory will and/or institutions - absence of strategic regulatory planning;
- Weak law enforcement institutions;
- Lack of socioeconomic autonomy;
- Disentangled social institutions;

I.O.

- Paternalistic attitude;
- Straitjacket;
- One-size fits all;
- Absence of phased strategy;
- Short-sightedness;
- Tying aid;
- Non-holistic approach;
- Absence of convergence;
- Limited understanding of local contexts;
- Questionable sincerity;



PP IN ARAB WORLD

International Agreements



- WTO GPA: No Arab Country is a signatory
 - Observers: Bahrain, Jordan, Oman, and Saudi Arabia.
- United Nations Convention Against Corruption
 - Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, UAE, and Yemen.
- Paris Declaration
 - Egypt, Iraq, Jordan, Kuwait, Morocco, Palestine, Saudi Arabia, Sudan, Syria, Tunisia, and Yemen.

Websites of WTO, UNCAC, Paris Declaration/OECD

WB on Arab States



- Egypt
 - Poor & Inefficient complaint mechanism during bidding
 - No complaint mechanism during contract implementation
- Iraq
 - Non-transparent and uncompetitive procurement procedures
 - Competition, value for money and controls in procurement: D+
- Jordan
 - Competition, value for money and controls in procurement: B
- Lebanon
 - Procurement is not primary on reform agenda

Public Financial Management Reform in the Middle East and North Africa:
An Overview of Regional Experience - Middle East and North Africa Vice-Presidency –

The World Bank – June 2010

WB on Arab States



- Morocco
 - New law in 2005
 - Competition, value for money and controls in procurement: B
- Syria
 - Competition, value for money and controls in procurement: D
- Yemen
 - New Tender law in 2007
 - Int'l org. see PP in Yemen as prone to corruption and collusion in spite of reforms
 - Competition, value for money and controls in procurement: D+

UN on Arab States



- Jordan, Morocco, Sudan, Tunisia, Lebanon & Yemen.
- Competitive awards: 66-90%, but rarely is the contract awarded to the lowest evaluated bid
- Gaps between written policies and daily practices
- PP policies comply in general with International std's but they rarely lead to intended results

Public Sector Transparency and Accountability in Selected Arab Countries: Policies and Practices – The Department of Economic and Social Affairs - UN 2004

UN on Arab States



	% of Respondents Indicating “Always” and “Frequently” Practised					
Practice	Jordan	Lebanon	Morocco	Sudan	Tunisia	Yemen
Staff with adequate experience and skills	78	25	36	55	58	45
Standardized documents	94	45	51	65	64	60
Contracts awarded by public competitive bidding	94	60	76	70	58	66
Sufficient time allowed to prepare bids	89	50	72	70	52	63
Contracts awarded to the responsive and qualified bidder with the lowest cost and without negotiation	89	25	48	19	37	39

Public Sector Transparency and Accountability in Selected Arab Countries: Policies and Practices – The Department of Economic and Social Affairs - UN 2004

OECD on Member States



- Although PP is frequently used to pursue other public policy objectives, cost benefit analysis of this multi-purpose approach is rarely carried out ;
- PP is not organized as a cycle of measures to ensure efficiency and integrity;
- PP is still organized as an administrative rather than a strategic function;
- Performance based monitoring of procurement systems is the exception to the rule;
- Innovative forms of public service delivery require attention.

Progress Made in Implementing the OECD Recommendation on Enhancing Integrity in
Public Procurement - OECD 2012

Efforts towards PP modernization in Lebanon



- Since 1997...
- 15,000 hours of Senior Civil Servants' time (committees)
- 4 final draft law versions
- 100's of reviews and comments
- WB, EU, ILO, SIGMA, UN, OECD, etc...
- Last Final Draft PP Law
 - in COM: 5 years
 - In Parliament: 18 months and counting

Lebanese PP Reform Challenges



- Absence of political interest, will & consensus
- No socioeconomic vision
- Responsibility medley
- Absence of ownership
- Limited understanding... too complex to predict outcome
- Weak public sector (policy making, regulatory, institutional, executive, judiciary)
- Absence of sufficient HR



MISCONCEPTIONS & TENSIONS

Global Misconceptions



Mistaking goals for constraints

Lock-in onto some constraints (&/or goals)

Reducing a wide array of biases to “conflict of interest”

Considering PPS a non-complex system (i.e. predictable, understandable, non-chaotic, dualistic)

Corrupt unless proven innocent

Optimal level of corruption is zero

PPS's are absolute dogmas

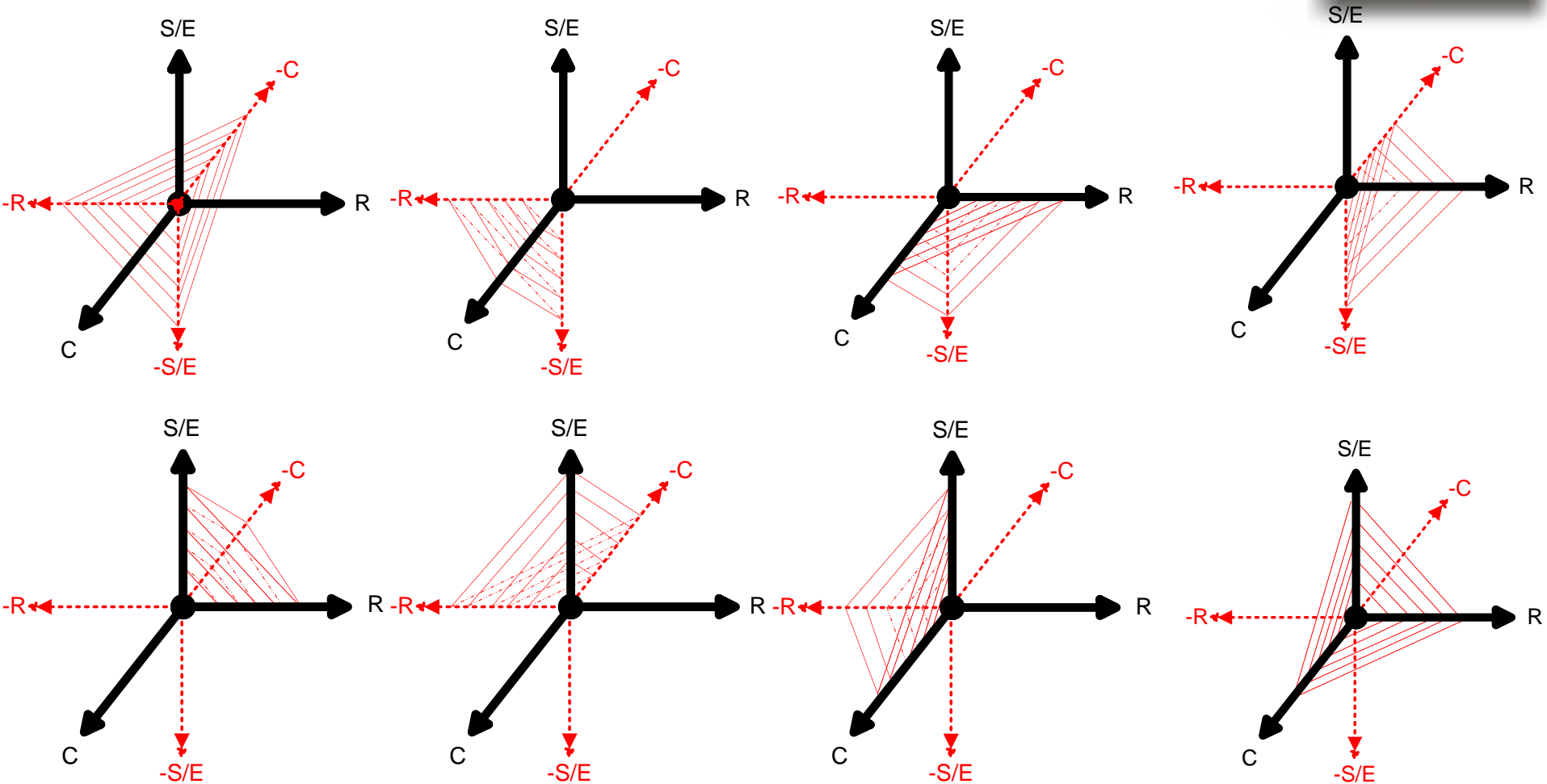
There is an optimal PPS

Accountability systems work

Ignorance is finite

PPS's are not culture-sensitive... one-size fits all

Opposite forces

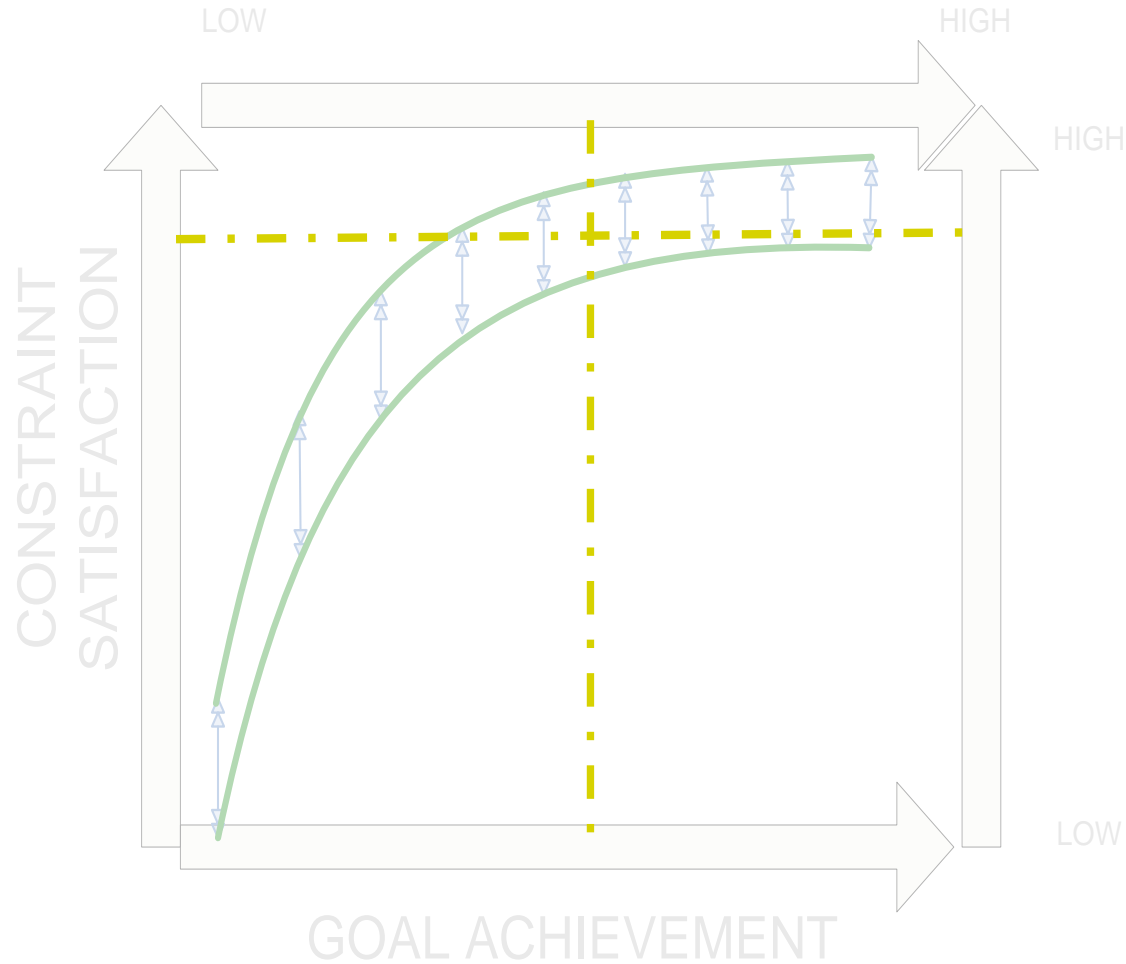


The Goal-Constraint Interplay:



- Goals and Constraints interact in a ***dualistic bi-directional*** manner
- goals dictate some constraints and constraints impact goal achievement.
- Distinguishing constraints from objectives is paramount in understanding, modernizing and practicing public procurement.

Constraints vs. Goals



GOAL DIMENTIONS	GOALS	Framework-Driven Constraints
Policy Level Goals		
PG1. Enhancing economy and development	<ul style="list-style-type: none"> - National and/or Regional and/or Global Economy Dev/Growth - Local Regional Development - Targeted procurement (set-asides, support to SME's, sheltered firms, etc...) - private sector growth 	<ul style="list-style-type: none"> - procedural constraints: publicity, proportionality, award procedures, thresholds, standard documents, etc... - allowable discretion - Conditions and criteria for set-asides, preferential treatment, reserved procurement, green procurement, etc...
PG2. Maintaining and enhancing public service delivery	<ul style="list-style-type: none"> - Services to all Citizens & Social, Industrial & Business Groups enhancement - Effective & efficient Service Delivery modernization 	
PG3. Maximizing welfare	<ul style="list-style-type: none"> - National wellbeing optimal enhancement - Delivery of best public value - Efficient use of Public Money - Equitable income distribution 	<ul style="list-style-type: none"> - contract law (terms & conditions) - Linkage guidelines/tools - green procurement practices - region-specific treatment - Social group specific treatment - smaller bid packaging - segregation - award procedures & thresholds - selection/qualification criteria
PG4. Promoting sustainability, human rights, social cohesion & justice, environmental protection, etc...	<ul style="list-style-type: none"> - sustainability and environmental protection held paramount - Human Rights promotion - Advancement of Social justice, Labor Rights & Standards, Anti-discrimination (racial, sectarian, gender, minorities...), Provention of Child Labor, Promotion of social preferences, etc... - strategic allignment 	
PG5. Promoting other policy objectives (coherence and integrity of the public service)	<ul style="list-style-type: none"> - Coherence with other policies and regulations; strategic alignment - Furthering of government policies and goals 	<ul style="list-style-type: none"> - Linkage guidelines/tools

GOAL DIMENTIONS	GOALS	Framework-Driven Constraints
Framework Level Goals		
FG1. Practicing procurement strategically	<ul style="list-style-type: none"> - adoption of strategic planning mechanisms - Promotion of professional role and responsibilities of procurement - endogenous and exogenous strategic fit of procurement operations 	<ul style="list-style-type: none"> - Award procedures & thresholds - standardization - user involvement - life-cycle cost analysis - discretion levels
FG2. Ensuring efficiency and effectiveness	<ul style="list-style-type: none"> - Fulfillment of government and society needs efficiently and effectively - Life-cycle value-based operations - Most Economic Purchases - Most Economically-Advantageous Purchases - Value-for-money 	<ul style="list-style-type: none"> - Strong Market Awareness - Strong estimation capacities - Strong Requirements Practices - collaborative procurement - performance management systems - Award procedures, thresholds & proportionality
FG3. Attracting innovations	<ul style="list-style-type: none"> - Design and implementation of demand-side innovation stimulating operations - support to innovation of SME's 	<ul style="list-style-type: none"> - Selection & Award Criteria; - Conditions and criteria for set-asides, preferential treatment, reserved procurement, etc...; - Intelligent Requirements Practices
FG4. Maximizing value	<ul style="list-style-type: none"> - Consideration of valuable outcomes across all measures (financial, social, environmental, developmental, etc...) - Sustaining wise spending of public money 	
FG5. Capitalizing on supply side value	<ul style="list-style-type: none"> - supply-side involvement, participation, and partnerships - maximizing value returns on investment - efficiency and effectiveness - increased access to public contracts 	<ul style="list-style-type: none"> - value-based management; - Accountability - transactional versus relational contracting; - reputation-based contracting; - performance and results-based management systems
		<ul style="list-style-type: none"> - transactional versus relational contracting - reputation-based contracting - Award and Selection Criteria
FG6. Developing markets	<ul style="list-style-type: none"> - creating and developing new markets for government needs - sectors development & advancement 	

GOAL DIMENSIONS	GOALS	General Constraints
Framework Level Goals		
FG2. Ensuring efficiency and effectiveness	<ul style="list-style-type: none"> - Fulfillment of government and society needs efficiently and effectively - Life-cycle value-based operations - Most Economic Purchases - Most Economically-Advantageous Purchases - Value-for-money 	<ul style="list-style-type: none"> - Fund availability, prioritization and allocation - Government systems for the strategic planning & management - Governance regimes - Law enforcement capabilities

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Framework Level Goals		
FG2. Ensuring efficiency and effectiveness	<ul style="list-style-type: none"> - Fulfillment of government and society needs efficiently and effectively - Life-cycle value-based operations - Most Economic Purchases - Most Economically-Advantageous Purchases - Value-for-money 	<ul style="list-style-type: none"> - Transparency - Competition - Confidentiality - Accountability; - Curbing corruption - Procurement & Contract law constraints

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RESOLUTION: A PARADIGM SHIFT

PP Systems



- The majority of 20th century procurement reform initiatives were ignited by the spark of corruption.
- Unfortunately, they, in their entirety, are still running by the same spark.
- These initiatives mandate that PPS be fragile to corruption (among many other types of shocks)

PPS: a complex system



- full of non-linear responses and interdependencies that are difficult to detect
 - double something... you will not get double of the outcome but instead much more or much less
 - difficult to understand how such systems work by looking at single parts
 - unpredictability

Resolution



- Custom-designed Goals & respective Constraints:
 - One cannot achieve all the goals simultaneously
 - Periodic revision of Goals/Constraints
- Custom-designed frameworks & Institutional setups:
 - Something that works well in Germany does not necessarily work in Lebanon
 - Easy on the thrust of harmonization

Resolution



- Evidence-based rather than theory-based PPS
- PPS that work: what is written = what is applied
- Achievable targets: if you don't aim for the stars, you may actually get there!
- PPS that are authentic/genuine: sincere
- PPS that are simple:
 - developing countries crave for simplicity
 - Manage the complexity of the PP market by simple regulations

Thank You!

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