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# Public Tenders

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## Introduction

This report aims to study the public-tendering mechanisms at the institutions of the Palestinian National Authority on the basis of the principles of transparency. This study will specifically examine the process of tender preparations, appraisal and organization with the goal of enforcing and enhancing the role of internal monitoring and oversight. The study will also explore the extent to which the provisions of the law, executive regulations and instructions in force are adhered to, particularly in regards to the use of tenders and bids for the suppliers of public procurement/purchases.

The report also examines the clarity of the conditions and standards that should be prerequisites for competition in governmental tenders, the level of adherence to the principles of transparency and integrity, and commitment to them by the committees formed for studying the tenders. Moreover, this report will look at the information provided to tenderers on the award-making systems, procedures and results, in accordance with transparent, fair and effective procurement terms. Finally, the report will examine the extent to which public tender committees are committed to:

1. Cost-effectiveness/economically advantageous procurement: Institutions are acquiring the best goods and services for the price they pay, or getting the lowest price for acceptable goods and services. This does not necessarily entail that the goods must fulfill both requirements of the lowest price and the highest quality at the same time. One should aim for a combination of both in the winning tender.
2. Transparency and impartiality in award decisions: Public money must not be used to grant favors and services to others using the public fund. This also entails that the specifications and standards should be indiscriminate, resulting in the selection of contractors and suppliers on the basis of their qualifications and the quality of their proposals. All bidders should be treated equally in terms of respect for deadlines and confidentiality.
3. Transparent tendering process: This can be ensured through making all procurement

conditions and decision-making rules available to all potential contractors and suppliers as part of the invitation to bid. The opening of price offers should be made in public and all decisions documented in writing.

4. Efficient procurement: Procurement rules should reflect the value of the material intended for purchase. With the increase in the purchase value, there is a need to extend the time and elaborate the rules and regulations to ensure compliance with the established principles. However, the awarding of larger contracts may require more diligence by tender committees and a process of examination and inspection<sup>1</sup>.

## Contents of this Report

This report provides a description of the legal framework governing the organization of public tenders in PNA institutions in public supplies and public works. It also contains a description of the various committees in the various tendering phases and their formations, mandates, and tasks in addition to the most prominent of the tendering phases and their problems which could be summarized as follows:

### I – Legal Framework Regulating Public Tenders at PNA Institutions

In the late 1990s the PNA issued two laws for the regulation of public tenders. The first law, Public Supplies Law No. 9, issued in 1998,<sup>2</sup> and its regulations No. 1 for the year 1999, deals with the procurement, maintenance and insurance of public supplies, such as movable assets (e.g. furniture, equipment and vehicles) and services necessary for departments. Public Works Law No. (6), issued in 1999<sup>3</sup>, addresses public works and all related matters such as the construction of buildings, roads, facilities, engineering projects and their maintenance, equipping, following up and supervision of their implementation. In addition, the Palestinian Council of Ministers issued two decisions with regard to the administrative system of the Public Tenders Department (PTD) at the Ministry of Public Works and Housing<sup>4</sup> (MOPWH), the Committee of Contractors' Classification<sup>5</sup>, and the Unified Contracting System.

### ***The Public Supplies Law No. 9, 1998***

Law No. 9, issued in 1998, in addition to its regulations No. 1, issued in 1999, are the reference for those working in the procurement of public supplies. Both regulate the process of purchase, management and monitoring of supplies in PNA institutions. For this purpose, the Public Supplies Department was created at the Ministry of Finance, in accordance with Article 2 of the Public Supplies Law. In accordance with Articles 3-7 of the same law, the Public Supplies Department is responsible for the organization or purchase and management of departmental needs; budgets for this are covered in the PNA General Budget Law or any other department in which the Council of Ministers decides to enforce the provision of the law. In addition to the processing of purchase requests and their referral to the Public Supplies Department for finalization, which should use principles of competition in all procurement processes while taking into consideration a) the acquisition of best goods at the best prices and terms, and b) non-fragmentation of supplies into many deals in all purchase operations of similar supplies.

The law stipulates that, in accordance with the provisions of Article 9 of the Public Supplies Law, the related minister is authorized to procure for purchases of supplies with less than \$1,000 U.S. in each purchase. But when the value ranges between \$1,000 – 5,000 U.S., procurement should be made through a purchase committee comprised of three employees appointed by the minister. The committee should make its decision by majority vote and should be dissolved and reformed at least every six months.

The related minister may purchase services and rights for scientific, cultural and artistic services, in addition to radio and television shows, the rights to which can be sold, leased and rented through a committee of no less than three staff members formed by the related minister and which makes its decision by majority vote. The deputy minister has up to a \$500 U.S. spending limit in accordance with Article 14 of the law, which stipulates that if the value of the expenditure is more than \$500 U.S., and up to \$5,000 U.S., a purchase committee is formed of three members appointed by the related minister that will take its decisions by the majority. The committee shall be reformed at

least every six months, and the Central Tenders Committee is responsible for the management of supply tenders whose values are higher than \$15,000 U.S.

### ***Public Works Law No. 6, 1999***

Public Works Law No. 6, issued in 1999, regulates public works such as building construction, roads, facilities and engineering projects, and their maintenance, implementation, supervision and all related technical services including engineering studies, artistic designs, surveys, supervision and engineering or artistic consultancies pertinent to works. In addition, the law governs the contractors' classification systems and the administrative system for the Central Tenders Department at the Ministry of Public Works and Housing MOPWH, and the unified contractual contract (FEDEC 1999<sup>6</sup>) that regulates the relationship between the contractor and the PNA institutions.

The Central Tenders Department at the MOPWH is mandated for monitoring and follow-up of the classification of contractors and consultants and follows up with their qualifications, in coordination with trade unions and responsible specialized associations, and the accredited classification committee in accordance with the instructions for contractors' classification<sup>7</sup>. The department, in accordance with Article 3, is tasked with the auditing and analysis of governmental works and technical services in addition to the collection, retention, and analysis of information related to tendering. Moreover, the department is responsible for the general provisions of the contract and tendering procedures and for developing these conditions and procedures in accordance with the laws, regulations and instructions in force.

Article 5 of the law states that public announcement of tenders in local newspapers should be taken into consideration for decision by the Council of Ministers, provided that no tender or assignment will be announced unless the financial resources for implementation are available or a commitment from the funding agency has been made. The principle of competition is applied so that qualified parties shall be given equal opportunities to execute the works or provide the technical services. When awarded, tenders should adhere to the conditions of the tender and to the appropriate costs, taking

into consideration the level of desired quality, the likelihood of execution within the specified timeframe, and the capacity of the contractor or consultant to carry out the required tasks in accordance with specifications and standards.

## II – Tender Committees: Formation and Mandates

The laws governing public tendering require the creation of central committees and subcommittees to monitor and follow up the optimum execution of tenders. A Central Tenders Committee shall be established in accordance to the Public Supplies Law, and the Council of Ministers has the right to establish a special tendering committee. Finally, the Public Works Law stipulates the formation of three tendering committees at the national, regional and departmental levels (namely, the Central Tenders Committee, a departmental tenders committee, and a governorate tenders committee).

### ***Central Tenders Committee (Public Supplies)***

According to the provisions of the Public Supplies Law No. 9, 1998, particularly Articles 14-16, a Central Tenders Committee shall be formed from a number of ministries and headed by the Director General of Public Supplies. It shall be comprised of representatives of the ministries of Finance, Economy and Trade, Industry, and Public Works in addition to two members of the senior level of the benefiting party. The membership term is limited to two years although the related minister has the authority to reduce its terms or extend it for one additional year. The Chairperson of the Administrative and Financial Monitoring Bureau appoints a representative to the central committee in the capacity of observer. The Council of Ministers establishes the committee upon nomination from the related ministers. The council can form a special tendering committee upon nomination from the Minister of Finance and the related minister, comprised of the Deputy Minister, the General Director, and three senior-level management PNA employees, in order to procure the supplies for a certain project. The committee holds sessions with full quorum and takes majority decisions. The purchase requests issued by this committee shall be approved by the related minister and the Minister of Finance. In the

event of a disagreement, the matter is referred to the Council of Ministers for a final decision.

It should be noted here that after the integration of the Ministry of Industry with the Ministry of National Economy, its post in the Central Tenders Committee has become vacant, although there were several unsuccessful attempts to bring a replacement from the Palestinian Standards Institution (PSI). However, no amendment of the law has taken place since the integration. Furthermore, the representative of the Administrative and Financial Monitoring Bureau had not attended most of the committee's meetings until recently.

Article 17 of the law states that the Central Tenders Committee shall convene in full session and accept a majority vote for the purchase of supplies for public use, or special supplies for departments which include in their members a representative from the Public Supplies Department. This representative is appointed by the chairperson of the Central Tenders Committee created in order to assist the committee in the performance of its tasks in accordance with the provisions of the law. The committee holds meetings almost daily, whether for the opening of tenders or for the provisional or final awarding of tenders, and for addressing any objections submitted to the committee.

### ***Public Tenders Department (Public Works)***

According to Article 2 of the Public Works Tender Law No.6, 1999, a department shall be formed within the Ministry of Public Works to be called the Central Tenders Department and staffed by its own personnel. This Department will be headed by a general director appointed by the Council of Ministers. Three committees will be established as follows:

1. *The Central Tenders Committee*, in accordance with Article 7 of the Tenders Law, will have jurisdiction in four areas: i) public buildings; ii) water, irrigation, sanitation and dams; iii) roads, transportation and mining; and iv) electro-mechanics and communications. A tenders subcommittee is formed for each area chaired by the director of the Central Tenders Department, and has six members: two representatives of the Ministry of Public Works; two members of the department pertinent to the tender who are appointed

by the responsible official; and two additional experts appointed by the minister of public works. These committees convene in the presence of five members at least, two of whom must be the chairperson and a representative of the relevant department. Decision is taken by the majority vote of attending members.

These committees are authorized to issue and award tenders that fall beyond the purview of other committees, i.e., the Department Tenders Committee or the Governorate Tender Committee, or any other tender assigned to it by the minister upon the nomination of the official in charge.

2. *The Department Tenders Committee* is formed in each department and chaired by the deputy minister or the department's director-general, or anyone appointed as the acting director in his absence, in addition to two other persons appointed by the official in charge, and two representatives of the Ministry of Finance. The committee is mandated to prepare and award public works tenders whose value do not exceed \$150,000 U.S., as well as technical-services tenders with a maximum value of \$7,000 U.S.
3. *The Governorate Tenders Committee* operates in each district, where it is headed by the Public Works Director and comprised of representatives of the ministries of Finance and Local Governance as well as the relevant departments, the Tenders Department and the Ministry of Interior. The committee is specialized in tenders where the values of each do not exceed the amount of \$25,000 U.S.

### **III – Tender Phases (Public Supplies)**

The tendering process passes through a number of sometimes overlapping phases which allow for a higher level of transparency and monitoring as well as objection to the tendering mechanisms. The process of tendering is initiated as the request is received from the benefiting party through the Central Tenders Committee for the purchase of supplies. The request is then referred to a technical committee for the preparation of an estimated cost for requested purchases. Subsequently, the General Budget is requested for the allocation of

the needed finances. This is then followed by the preparation of the tender document, including clear specifications, terms and set deadlines for receipt of applications, so that the tender is then publicly announced in at least two newspapers for two days minimum.

The main problem usually encountered at this stage is the determination of specifications and the extent to which there are accredited/adopted specifications for local products. The greater part of responsibility for this falls on the Palestinian Standards Institution (PSI).

Received offers are publicly opened in the presence of firms that submitted their offers as well as in the presence of all members of the Central Tenders Committee. All offers are referred for technical review one more time and then for the discussion and study of the technical report, so that a provisional award is made to one of the tenderers. For objection purposes, the provisional award is posted on the notice board for four days, which can be reduced to two days.

The Central Tenders Committee refers any opened offer for study to the technical committee, which should meet, study offers, and assess them financially. The technical committee prepares a detailed written report for submission to the Central Tenders Committee. The technical committees responsible for the study and assessment of offers are comprised of a representative of each of the Central Tenders Department, PSI, and the relevant department benefiting from the tender, as well as any other person whose presence in the committee is beneficial to the Central Tenders Committee. In turn, the Central Tenders Committee further studies the technical report from an objective and financial perspective, but is not under obligation to adhere to the technical committee's report.

A second technical committee can be formed to study the same offer, but in case the two technical committees disagree a third technical committee is formed within the private sector, whose opinion is considered neutral by the Central Tenders Committee. When the Committee studies the technical report, a provisional, potentially retractable award can be made that will be placed on the notice board for four days; this period can be shortened to two days when the tender is urgent.

The provisional decision is also posted on the board and all firms which submitted offers, whether won or not, are contacted and informed of the provisional award so as to allow for objections and grievances; these should be made in writing and submitted to the Central Tenders Committee. If a received objection is technical in nature, it shall be referred to the technical committee which assessed the tender, and a written reply is prepared and sent out to the objecting firm regardless of whether the objection is accepted or denied<sup>8</sup>.

As soon as the tender award is announced in the newspaper and the tender documents are sold, any firm has the right to object to the tender and its specifications. Sometimes, the firms are granted the right to objection from the start. At other times firms may object to the design of the tender specifications, especially when they are perceived as having been tailor-made for a specific firm. In the latter case, the issue is presented to the technical committee that was responsible for setting up those specifications, and the objection is studied from a technical point of view<sup>9</sup>.

It should be noted in this regard that the referral of objections pertinent to tender specification to the very party that prepared the technical specification casts doubt on the reliability and impartiality of this procedure, particularly when the objection hinges on allegations of targeted specifications fitting just one firm or supplier.

The absolute award decision is considered an advanced stage in the tendering process, whereby it cannot be revoked without the issuance of a later amendment decision. Such an amendment is not the preferred course of action except when a problem occurs and the Central Tenders Committee believes there is good reason to revoke an award decision. After the Committee's approval of the absolute decision, it is submitted to the responsible minister for endorsement and for the conclusion and signature of contracts with the awarded firms in order to execute the procurement order.

Article 30 of the Public Supplies Law states that each department should form one or more receiving committee of three staff members appointed by the deputy minister in order to be responsible for receiving supplies worth more than \$500 U.S. When necessary, these committees

can be assisted by experts and technicians from any other departments. The warehouse manager receives all delivered supplies immediately at the time and point of delivery, while the receipt committee examines the supplies and ensures that they adhere to the specifications set forth in the tender documents, both in terms of quality and quantity as well as the time and place for delivery.

These committees also check for adherence to the relevant signed contracts and organize receipt of delivered goods, then issue an acceptance or rejection notice in case of a deviation from the specifications and conditions. The notice to decline receipt should also establish the percentage of deviation. Two copies of this report, which should be handed to the supplier and the warehouse manager, and the supplier's copy are considered as a notice of rejection or acceptance of the delivered supplies.

One frequent problem emerging in this area is the availability of relevant technical experience of the committee members at public institutions. This problem is particularly related to the extent to which the members of the receipt committee possess the capacity to ensure that the specification of the delivered material are identical to the specifications stated in the tender document according to which the contract was awarded to the supplier.

## IV – Tender Phases (Public Works)

Projects are selected on the basis of need, expressed by the benefiting party in a written and direct request and taking into consideration the availability of funding for the project. After approval of the project by the Central Tenders Committee, it is adopted by the department and the tender advertised in two newspapers for two days. The relevant Central Tender Committee is called on to discuss the tender depending on its subject area (e.g., public construction, water/irrigation/sewage/dams, transport/roads/mining, or communication and electro-mechanics) in order to illicit bids and open proposals in the presence of five out of the seven members of the Central Tenders Committee, including the minister.

Tender offers are referred to a technical committee for evaluation and submission of the technical referral report and recommendations upon which the

Central Tenders Committee discusses the received offers and selects a firm to be awarded the contract. The committee also informs the award-winning firm in order that the necessary procedures are initiated for the signature of the purchase contract.

## **V – Monitoring Mechanisms (Public Supplies and Works)**

The Administrative and Financial Monitoring Bureau is responsible for the monitoring of revenues and expenditures of the Palestinian ministries and public institutions. It submits a comprehensive yearly report to the Palestinian President and the Legislative Council that contains all opinions and observations as well as the violations committed and the responsibilities ensuing from them<sup>10</sup>.

The Bureau also controls the work of the two public tenders committee (of works and supplies) whereas the Bureau's representative enjoys the status of an observer member in the two committees but this representative does not attend meetings pertinent to public works tenders due to their specialized technical nature<sup>11</sup>. The Ministry of Finance also has internal financial monitoring functions so that no transaction is completed until all its documents and records have been scrutinized.

## **VI – Public Tenders and the Private Sector**

Here the report will examine two cases of direct contact in relation to tenders. The first case pertains to the public-supplies tenders, of vehicles in particular, where transport constitutes the largest supplies sector in terms of value and type of supplies tenders. The second case is related to the public-works tenders involving the construction of buildings, facilities and public infrastructure<sup>12</sup>.

### **1. The Automobile Companies and Public Supplies Tenders<sup>13</sup>**

The PNA lacks comprehensive vision in the procurement process for governmental vehicles. There is nothing to determine the numbers and types of vehicles in the budget, no specific or estimated figures established for the needs of the various ministries for vehicles, and no clear public policy on the purchase of vehicles, whether in terms

of price, fuel consumption or maintenance cost.

On the other hand, allegations made by some automobile-import agencies pertaining to public tenders for the purchase of governmental vehicles claim that specifications are sometimes tailor-made to fit types of vehicles imported by a specific agency, and that although tenders are sometimes awarded to more than one agency the majority of the actual purchase was concluded with only one agency, or that some agencies are paid promptly for the supplied vehicles while payments to other agencies are withheld or unpaid for long periods<sup>14</sup>.

### **2. The Contracting Sector and Public Works Tenders<sup>15</sup>**

A letter from the Palestinian Union of Contractors pointed at many issues facing contractors regarding public-works tenders, the most prominent of which are related to the multiplicity of parties issuing tenders, such as donor agencies and other public institutions such as PEC DAR, the President's Office. Tenders are supervised by the Central Tenders Committee and issued in many currencies, which can result in losses to contractors from fluctuating currency exchange rates. Most donors and many public institutions do not adhere to the unified contractor's contract and the multiplicity of contracts, which the contractors perceive as submissive, hence, creating hardships in the collection of financial entitlements, particularly from the PNA institutions.

## **Problems and Challenges:**

### **First: Problems in Relation to the Legal Framework**

1. Introducing amendments to the two laws on public tenders (the Public Supplies Law and the Public Works Law) to address problems that sometimes occurs in the purchase or implementation processes, especially those for mixed usage (i.e. in public works and in procurement), and purchases in some projects that require tenders for their execution and for the purchase of supplies at the same time.
2. The Public Supplies Law suffers from legal deficiencies in the articles dealing with the purchase committee. In principle, any

purchase operation should be made on the basis of a tender. Yet, the law provides certain facilitations so that financial ceilings were put in place which allowed for direct purchase on values of up to \$1,000 U.S. without referral to purchase committees. Item A2 of Article 13 states that purchases of up to \$15,000 U.S. should be made through a committee of three staff members of the department appointed by the responsible minister. But the law has not clarified the committee's functions and authority and whether or not it has the right to undertake all tendering procedures, including publishing tenders in newspapers and awarding the tender to one of the competitors.

3. Some of the bylaws and execution regulations stipulated in the law have not been issued, including the financial rewards regulations for experts and technicians and members of technical committees. A group of tenders officers and technicians complained of the absence of such regulations, particularly in light of the performance of many tasks not required by their job, including the attendance of sessions held for the Central Tenders Committee and the technical committees.
4. The legal framework suffers from a complete absence of procedures regulating purchases across borders, particularly when funding comes from external resources and when some donors implement projects without recourse to the Central Tenders Committee. Furthermore, the law does not stipulate for a domestic partner in the case of external purchases, especially in the area of high technology.
5. There are no provisions in the Public Supplies Law that would permit a replacement of Central Tenders Committee members when a member does not attend the meeting at which a quorum is required.
6. The law has neither clear legal provisions which obligate staff or committee members to report any case of corruption that would occur in the process of tendering, nor does it contain any clauses to ensure the protection of whistleblowers.
7. Identifying a percentage of 2-3% of the

tender's estimated cost in the Public Works Law needs to be amended since it is possible to deduct the amount of the tender if the guarantee amount of a tenderer is known.

8. The Public Works Law does not include a clear and specific mechanism for re-tendering or when this should be done. When a tender is re-advertised it is not clear whether contractors who participated in the first one should buy the tender document and pay the fees for participation in the new tender.
9. There is no stated mechanism in the law on how, where and for how long unsuccessful tender offers should be kept.
10. Finally, the law has not specified the legal reference for the adjudication of any legal disputes that may occur between the contractors and the tender committees. In relation to public tender, the ministries are the bodies responsible for contracting, supervising, and providing legal advice all at once. In addition, the fact that objections are addressed to the same party that designed the specifications also casts doubt on the creditability of such a procedure.

### ***Second: Procedural and other Mechanism-Related Problems***

1. Public tenders are affected by the absence of a comprehensive development plan due to economic and political instability. The General Budget of PNA is heavily reliant on external financial assistance and grants it receives; therefore the overall economic and fiscal environment at the Palestinian Public Treasury affects purchases and tendering operations when the General Budget is not approved in its due date. The non-adoption of a General Budget greatly affects the firms and the competition between them.
2. Problems often emerge as a result of mismanagement and execution, where a contract may be awarded to more than one firm or for more than one purchase item, but the entire purchase is made from one supplier only.
3. Specifications can be tailored to fit particular firms or manufacturers, as was the case with tender no. 5/2003 issued for the procurement



of vehicles for PNA institutions (cars for ministers, general directors and PLC members and vehicles for services, security agencies and municipalities). In this case the Ministry of Transport changed a key condition just 48 hours before the opening of tenders on the pretext of a typo in the tender document. The PLC was later forced to form a committee to investigate the matter. Tenders with ceilings of less than \$15,000 U.S. executed by local tender committees in the various ministries suffer from a similar problem.

4. There is no adherence for use of the services of the Central Tenders Committee in the implementation of donor-funded projects. For example, many tenders exceeding the value of \$15,000 U.S. are executed by public institutions, particularly the Ministries of Education and Health, the Office of the President, and the Palestinian Investment Fund. This constitutes a direct violation of the law which obligates all public institutions and their departments to make purchases through the Central Tenders Committee when the tender value exceeds \$15,000 U.S.<sup>16</sup>. The same also applies to public-works tenders with a threshold of \$150,000 U.S., which should be conducted through tenders as stipulated by the law. Despite this clear legal provision, PNA institutions, especially the Office of the President, the Ministry of Education and other ministries continue their practice of direct purchases without recourse to the Public Central Department<sup>17</sup>. The Central Tenders Committee has not been involved in tenders with values in excess of \$150,000 U.S. and directly administered by the donor agencies<sup>18</sup>.
5. The technical committees are clearly limited in terms of experience, particularly in the areas of high technology.
6. The receipt committees, too, show signs of weakness that may lead to misuse of public money. Committees are lacking the qualifications and experience that would ensure that accurate and effective receipt procedures are followed and that the received goods match the ones specified in the tender document. Some ministerial committees indicate the number of goods received and pay no attention to the Tender's specifications,

particularly when the tenders need advanced technical knowledge and expertise such as for the procurement of hospital equipment.

7. Priority is not given to the procurement<sup>19</sup> of legitimate local products, where 60% of PNA purchases of pharmaceuticals are awarded to illegal or locally unregistered companies, meaning that only 40% are awarded to legal, local manufacturers. As a result, the Palestinian pharmaceutical sector has declined to the point where some companies are on the verge of closure<sup>20</sup>.
8. The Central Tenders Department lacks well-trained experts, technicians and specialists. Combined with reliance on foreign or external experts, the PNA institutions have not yet managed to make optimum use of such practice. This problem is exacerbated by the lack of appropriate compensation and rewards for such experts.
9. Sometimes delays occur in the implementation of the administrative procedures specified by the law, especially in case of the expiry of firms' or suppliers' offers before a reply is issued by the Public Supplies Department where the law release firms from commitment to prices specified in their offers.
10. Long delays occur in the disbursement of payments to suppliers or firms implementing PNA projects

### ***Third: Problems Pertinent to Monitoring over Public Supplies and Works***

1. Monitoring by the Administrative and Financial Monitoring Bureau on public tenders and supplies is practically non-existent due to absence of the Bureau's representatives from the committees' meetings, either because of a shortage in staff or because of lack of technical expertise necessary for the monitoring of some public tenders<sup>21</sup>.
2. There is no effective or accurate monitoring for verification of tender specifications at the time of delivery of purchases.
  - There is a lack of clarity in terms of the role of the Internal and External Monitoring Unit at the Ministry of Finance in the monitoring of public tenders and procurement.

## Recommendations:

### *I – Recommendations on Legal Issues*

1. The two public tenders laws, on public supplies and works and their regulations, appear to have been issued in haste without sufficient study and scrutiny. The laws present deficiencies such as penal provisions for tender manipulation and abuse of public office, articles regulating public works and supplies tenders co-financed by foreign entities and international donors, and articles providing protection to whistleblowers.
2. Paragraph 2A of Article 13 of the Public Supplies Law should be amended, and all articles that deal with purchase committees should be replaced as the law does not clarify their mandates and powers and the formation of local tender committees at all ministries and departments which shall be responsible for the execution of tenders of values ranging between \$5,000 and \$15,000 U.S.
3. Monetary rewards and stipends for technicians, experts, and members of technical committees should be stipulated in the regulations of the public tenders and supplies laws.
4. Articles 10-11 of the Public Supplies Law pertaining to external procurement and contracting with foreign firms, while specifically taking into consideration the identification of clear mechanisms for the execution of contracts with foreign firms, does not include the Central Tenders Committee as a party to all externally-funded projects.
5. Legal apparati that would allow for a Palestinian partner on large projects that Palestinian firms are not at present able to work on independently must be introduced so that the latter can acquire international experience.
6. Article 15 of the Public Supply Law should be amended to allow for the replacement of an absent committee member by a new member, nominated by the absentee member upon the approval of the responsible minister.
7. Article 35 of the Public Works Tenders Law should be amended to establish a specific guarantee amount by the Central Tenders Committee in lieu of a percentage of the tender amount.
8. Article 16 of the Public Works Law Amendment, on the re-issuance of tenders in case of insufficient number of received bids, should be amended. The law must explicitly set forth the mechanisms and the procedures for re-tendering.
9. Regulations must be prepared detailing the mechanism, process and duration for which unsuccessful tenders should be kept on file.
10. Legal provisions for the protection of staff and committee members should be introduced for the event they inform the responsible authorities of violations that may be committed in the process of tendering or implementing those tenders.
11. It is necessary to work for the establishment of an arbitration committee to address appeals and objections to public tenders.
12. It is necessary to formulate legal systems that would allow for the electronic execution of some phases of public tenders through a website that is created for this purpose.

### *II – Recommendations Related to Work Procedures and Mechanisms*

1. Public tenders constitute a major portion of the PNA's General Budget and, thereby, they should be based on the ministries' annual plans and objectives within a comprehensive framework for national development. All public tenders should also be based on already available fiscal allocations in the General Budget. It is also necessary to create an independent account for public tenders so that disbursement is immediately made as soon as implementation is completed. Furthermore, public tenders should also be planned so the goal of public tenders is attained, namely

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the “purchase of governmental supplies (or services) with the least prices and in the best quality.” No disbursement should be made unless they already have been allocated for in the General Budget, and no allocated amounts should be used for purposes other than those they were allocated for.

2. It is necessary to aim for balance in the procurement process in case awards are given out to more than one firm.
3. It is equally necessary for the Palestinian Standards Institute to take an active role in setting forth specifications for local products.
4. Conflict of interest must be avoided in any committee formed for the study of public tenders through financial disclosure by their members and the clarification of the relationships between their members or between them and other parties to the tender. Tenders should be carried out in a competitive environment devoid of purposeful direction towards certain entities or products.
5. All governmental institutions should be obliged to apply the laws on public works and supplies tenders so that all tenders are executed by central tenders committees and with the participation of tender committees in all grants and external assistance.
6. It is necessary to equip the technical committees with the required experience that would permit the development of specifications suitable for tenders, particularly tenders that require knowledge in high technology such as hospital equipments.
7. It is necessary to train staff responsible for the execution and supervision of public tenders in all stages of their execution.
8. It is necessary to build the capacity of receipt committees at the ministries so that they can fulfill their functions in an effective, transparent, and accurate manner.
9. It is necessary to adhere to the provision of the law which gives priority to Palestinian products and firms.
10. Codes of conduct should also be developed for

staff involved in public tenders especially those in public tender and purchase committees as well as receipt committee members in governmental institutions.

11. A special tenders account should be created at the Ministry of Finance from which all transactions to a firm or supplier are made directly following the verification of all documents.
12. A timeline should be established for the disbursement of financial obligations so that, in case a payment is delayed for more than 45 days after the due date, the supplier becomes entitled to receive an interest on the amount at the same rate in the country in which the bank is located.
13. Safety considerations should be taken into account when tender specifications are defined and equipment is purchased so as to ensure they are free of hazardous materials.

### ***III – Monitoring Recommendations***

1. The Financial and Administrative Monitoring Bureau should be concerned with the mechanisms of tender issuance and follow-up.
2. The Financial and Administrative Monitoring Bureau should issue its annual report with information on the process of monitoring over public tenders.
3. A clear mechanism should be put in place to address the complaints and appeals of suppliers, by another committee than the one responsible for defining the tender specifications.
4. A clear deterrence-and-accountability mechanism should be established as a point for reference for the staff in the event of whistle-blowing or in case of corruption or other problems during the execution of public tenders.
5. The External Monitoring Unit at the Ministry of Finance must be activated over the public tenders and supplies.

## Footnotes:

1. Transparency International. Arab Transparency System in the Fight against Corruption (reference book). Beirut. Lebanese Center for Studies.
2. Law No. 9, 1998. from The Palestinian Legal and Judicial System (Al-Muqtafi).
3. Law No. 6, 1998. from The Palestinian Legal and Judicial System (Al-Muqtafi).
4. Decision of the Council of Ministers No. 201, 2004. From the Palestinian Legal and Judicial System (Al-Muqtafi).
5. Decision of the Council of Ministers No. 11, 2005. From the Palestinian Legal and Judicial System (Al-Muqtafi).
6. Ministry of Public Works and Housing. Unified Contractor Contract – General Provisions (FEDEC 1990), Palestinian Special Provisions, Jerusalem, 2006.
7. A contractor classification committee was founded upon the decision by the Cabinet of Ministers No. 11, 2005. The most important tasks of this committee is the classification and rehabilitation of contractors for participation in PNA tenders and to provide propositions for the amendment of contractors' classification in force and their annexes in addition to the periodic re-evaluation and reclassification of contractors.
8. Specifications are defined by engineers, experts or knowledgeable individuals who recourse to the internet, products and local firms. (Nasser Al-Khatib, the secretary of the Central Tenders Committee at the Ministry of Finance. A workshop held by AMAN coalition on tenders dated March 11, 2008.
9. An interview with Mr. Nasser Al-Khatib, the secretary of the Central Tenders Committee at the Ministry of Finance, January 2, 2008.
10. Only one report was issued by the Financial and Administrative Monitoring Bureau. The second report is expected to be published soon which addresses the issue of governmental tenders.
11. Two interviews with Mr. Nasser Al-Khatib, the secretary of the Central Tenders Committee at the Ministry of Finance, Ramallah, January 2, /2008 and with Bassam Jaber, the director of the Central Tenders Department at the Ministry of Public Works and Housing, Ramallah, January 9, 2008.
12. See Annex 1 for more information on the problems of this sector.
13. An interview with Mr. Maha Abu Shousha, The Director General of Abu Shousha Commercial Company, Ramallah, February 9, 2008.
14. In a workshop held by AMAN Coalition on the issue of public tenders on March 11, 2008, Mr. Nasser Al-Khatib, the secretary of the Central Tenders Committee at the Ministry of Finance said that all firms, in accordance to the Palestinian law, have the right to appeal and object to all phases on the tenders. The central tenders committee should respond to these objections in they were right. He also said that Palestinian products are referable even if they are often higher in price and affirmed that there is no preferential treatment in terms of payment since actual disbursement to supplier hinges on the liquidity of PNA at the time.
15. A letter addressed to AMAN Coalition by Engineer Adel Oudeh Ameen, the General Secretary of the Palestinian Union of Contractors, on the issue of governmental tenders on February 13, 2008.
16. Two interviews with Mr. Nasser Al-Khatib, the secretary of the Central Tenders Committee at the Ministry of Finance, Ramallah, January 2, 2008.
17. The representative of the Ministry of Education and Higher Education pointed out, in a workshop held by AMAN Coalition on March 11, 2008 that the ministry adheres in full to the provisions of the law. But he also said that there were cases where the tender was estimated to be less than US\$150,000, but after the tenders were opened it was discovered that the tender value was more than US\$150,000, so the tender is not reissued.
18. Interview with Bassam Jaber, the director of the Central Tenders Department at the Ministry of Public Works and Housing, Ramallah, January 9, 2008.
19. Interview with Mr. Mohammad Masrouji, the Sales Director General at Hyundai Automobiles Company, Ramallah, December 19, 2008.
20. Mohammad Masrouji in a workshop held by AMAN Coalition on the general budget of 2005, held on September 21, 2005 at AMAN's headquarters.
21. Mr. Jaffal Jaffal, the representative of The Financial and Administrative Bureau to a workshop held by AMAN Coalition on March 11, 2008, pointed out that the Bureau started to attend most of the meetings held by the Central Tenders Committee in relation to public supplies but the problem remains in those on the public works due to the fact the Bureau has no cadres of technicians and engineers to attend these meetings.

This report was written in a "gender-blind" style to simplify reading.

### Management of Public Funds: Citizen Rights for Accountability

The enforcement of the principles of transparency and the right to access information by the public and civil society institutions in relation to the management of public funds, on part of the executive authorities, and the monitoring in the Palestinian National Authority through the publication of its reports on its website and the opening of discussion on such issues in cooperation with both parties (official agencies and public institutions).

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