

QUESTIONNAIRE PROJECTS PHASES AND LOCAL PARTNERS. MEDTOWN PROJECT. 3rd LOT.

DEMONSTRATIVE ACTION. Name: Coproduction of the use of public spaces for women empowerment **MUNICIPALITY, REGION AND COUNTRY ACTION:**Tunis, Tunisia

BRIEF DESCRIPTION OF CONTEXT:

To be completed by the local partner

Since Tunisia's revolution in 2011, the Tunisian government has been engaged in an economic transition that aims to build a more inclusive economy through sustainable growth. A key objective of the current development plan, Tunisia 2020, is to stabilise public debt below 70% of GDP by lowering the fiscal deficit, while boosting foreign investment. Legislative reform to encourage private sector financing in development projects and, particularly, upgrading infrastructure across the country through PPPs, has therefore been seen as essential by the government.

Public-private partnerships (PPPs) are an integral part of Tunisia's national development plan, Tunisia 2020, and since 2016, the country has made considerable advances in strengthening its institutional and legal capacity to manage PPPs. In 2015 the country passed PPP legislation in line with international standards, followed by the establishment of an agency to supervise PPPs in 2016.

The centrality of PPPs in Tunisia's development plans is reflected in a recent expansion of the PPP institutional and legal framework. With the passing of the PPP-specific Law n. 2015-49 of November 2015 and the concession contract Decree No. 2014-1039, Tunisia has established a clear legal framework for PPPs. Law n. 2015-49 guarantees free competition and transparency in the tendering process; selects a mode of procurement that maximises benefits for government and end-users; and develops innovative evaluation criteria, such as performance-based measures that reflect the employability rate and benefit for the local economy. In addition to the already existing Competition Council that advises the Minister of Commerce and Handicrafts in procurement, Tunisia has established the General Authority for Public Private Partnerships (IGPPP) in 2016 that gives technical assistance to all stages of the PPP process and gives final approval to PPP projects. To encourage transparency and mitigate corruption, Tunisia also finalised an e-procurement system (TUNEPS) in 2018 that monitors all public procurement. Finally, in September 2018, Tunisia held a large, international public forum on PPPs, during which the Tunisian government publically embraced PPPs within their development strategy, and signed memoranda of understanding around PPPs with public sector financial institutions and international development banks.

ARRAY TO BE FILLED IN:

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1 ¹	Existing applicable legislation governing PP and PPPs	<p>Point out this legislation</p> <ul style="list-style-type: none"> - Decree No. 2014-1039 of 13 March 2014, on the regulation of public contracts. - Law No. 2015-49 of 27 November 2015, relating to public-private partnership contracts as amended by Law No. 2019-47 of 29 May 2019 on improving the investment climate 	Delivery Regulation	No regulation?
2	Purpose of the regulation	<p>Target and final intention regulation</p> <p>Establishing the rules governing the award, execution and control of public contracts</p>		

¹ Especially related to the Social Solidarity Economy (SSE).

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3 ²	Consideration-Theoretical Definition PP (According to regulation)	Transfer Definition Article 2 Public procurement: A written contract for pecuniary interest, by which the holder of the procurement, whether public or private, undertakes to a public purchaser either to carry out works, to supply goods or services, or to carry out studies		Indicate if there is no regulatory definition
4	Scope of application of PP legislation	Territorial (Supranational, State, Regional, Local)	Public/Private/Both	Referred to, enshrined in the Constitution or basic state law?
5	Stakeholders Involved in PPP	Administrations, Companies, NGOs, Associations, Collectives, etc... Public purchasers: The State, local communities, public institutions of an administrative nature and similar bodies or public companies, or any legal person under public or private law concluding contracts on behalf of public persons or from public	Identify the actors involved in the functioning and development PP	

² Necessary for making comparative terms of equivalent concepts

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		<p>funds to meet needs in the general interest.</p> <p>The main state structures PP</p> <ul style="list-style-type: none"> - National Public Procurement Council - The High Authority for Public Procurement - Amiable Settlement Committee - Special Commission for the Exceptional Revision of Public Procurement Prices - Procurement Control Commissions 		
6	<p>Administration - competent legislative body PP</p>	<p>Determine which bodies are responsible for creating applicable regulations</p> <p>The National Council for Public Procurement</p> <p>Art. 144 decree 1039 - The National Council for Public Procurement has the following missions :</p> <ul style="list-style-type: none"> - To study and propose any measure aimed at improving the governance of public procurement, particularly with regard to procedures, modes and techniques of awarding, execution, control and evaluation. 	<p>To which administrative-territorial areas do these bodies belong and with what competence?</p>	

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		<p>- Study the reforms and improvements of the legislative and regulatory framework of public procurement in coordination with the High Authority for Public Procurement based on the analyses of the National Observatory of Public Procurement and the Committee for Monitoring and Investigation of Public Procurement, and formulate proposals in this regard to the Presidency of the Republic, the Government and the Parliament in order to strengthen transparency and efficiency and the establishment of a sustainable procurement system</p>		
7	<p>Administration - competent executive body PP</p>	<p>Determine which bodies are responsible for applying and enforcing the existing PP regulations</p> <p>the High Authority for Public Procurement</p>	<p>To which administrative-territorial areas do these bodies belong and with what competence?</p> <p>Under the supervision of the Presidency of the Government (Decree No. 2013-5096 of 22 November 2013, establishing the High Authority for Public Procurement and setting the special status for members of the body of public procurement controllers and auditors under the Presidency of the Government)</p>	

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			<p>Competences</p> <p>the control of public contracts and the drafting of control reports including the study of files and all the observations, problems and irregularities raised in the processing of these files with regard to the legality of procedures, transparency in the awarding of contracts and respect for the fundamental principles of public procurement relating essentially to the use of competition, equality of candidates and equality of opportunity</p>	
8	<p>Measures promoting or encouraging PP and PPPs</p>	<p>Are there any specific measures, grants or incentives to promote PP and PPP actions?</p> <p>yes, promote local products.</p>	<p>Indicate which ones and where they are regulated (indicating articles)</p> <p>Decree No. 2014-1039 of 13 March 2014, on the regulation of public contracts.</p> <p>Art. 10 - The services that are the subject of contracts must respond exclusively to the nature and scope of the needs to be met. The technical specifications must be determined before any call for competition or negotiation so as to guarantee the quality of the services subject to the contract and to promote local products and sustainable development.</p>	<p>Including tax benefits, social security, subsidies, etc.</p> <p>Art. 30. - Contracts are concluded in written form on a tangible or intangible medium and are the subject of a single file of which the specifications and the tender are the constituent elements.</p>

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			<p>Art. 24 - When foreign companies specialising in the industry and development of computer content and software are called upon, the specifications shall provide for incentives with a view to involving specialised Tunisian companies, selected according to the criteria announced in the said specifications.</p>	<p>The contract must include at least the following information</p> <ol style="list-style-type: none"> 1- Identification of the contracting parties, 2- The subject of the contract, 3- The incentive clause for national subcontracting, 4- The list in order of priority of the constituent parts of the contract, 5 - The contract price with an indication of whether it is firm or revisable, 6 - The contract performance period and penalties for delay, 7- The delivery and acceptance conditions of the services covered by the contract,

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				<p>8 - The payment conditions and the payment deadlines,</p> <p>9- Cases and conditions of termination,</p> <p>10- Dispute settlement procedures,</p> <p>11- The designation of the assigning public accountant or the agent authorised to do so.</p> <p>12- The date of conclusion of the contract</p> <p>Art. 64 - The public purchaser shall establish a methodology for evaluating tenders with reference to the conditions laid down in the specifications and to a set of non-discriminatory criteria related to the subject of the contract, which take into account the following aspects</p> <p>1. The incentive for Tunisian companies to</p>

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				<p>work or for products of Tunisian origin.</p> <p>2. The importance of the lots, works, products, services and studies to be carried out by local companies or design offices.</p> <p>3. The quality or technical value of the tenders and possibly other specific additional advantages.</p> <p>4. The cost of operating the works, equipment or patents.</p> <p>5. The professional and financial guarantees presented by each of the candidates.</p> <p>6. The performance in terms of environmental protection,</p> <p>7. The professional integration of people with special needs or facing integration difficulties,</p>

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				<p>8. After-sales service and technical assistance,</p> <p>9. Delivery or performance time, if applicable</p> <p>Other criteria may be taken into account if they are related to the subject of the contract.</p> <p>In any case, discriminatory criteria are not allowed.</p>
9	Other PP and PPP related legislation	<p>Indicate regulations</p> <p>Law n° 2015-36 of 15 September 2015, relating to the reorganisation of competition and prices</p> <p>Law No. 2003-43 of 9 June 2003 amending and supplementing Law No. 73-81 of 31 December 1973 on the public accounting code</p>	Relationship-Influence with ESS	
10	Possibility of creating new PP and PPP legislation	How to carry it out, phases and persons to be involved	What Territorial-Administrative Scope?	

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11	Possibility to amend existing legislation PP and PPP	<p>Way to do it</p> <p>On 28 July 2022 a ministerial council was held where a PP reform unit was set up.</p>	What Territorial-Administrative Scope?	
12	<p>Problem</p> <p>Identification/Regulatory implementation PP and PPPs</p>	<p>Indicate whether there are any specific problems or loopholes in the PP and PPP regulation</p> <p>Problems with control:</p> <p>Excessive prior control over public procurement which considerably slows down all stages of procurement.</p> <p>Post-control does not systematically include all contracts due to lack of material and human resources.</p> <p>Insufficient training to upgrade existing staff after the implementation of the 2014 decree reform.</p>	Identify such problems, loopholes and other regulatory conflicts.	
13	PP, PPP and other regulations applicable to the Demonstration Action (Concrete Project)	Providing legislation that regulates and conditions the execution and development of the project		

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14	Concession Regulations	<p>Public-private partnership figure. Possible instrument</p> <p>co-production of public policies</p> <p>Law No. 2008-23 of 1 April 2008 on the regime of concessions</p> <p>Decree No. 2008-2034 of 26 May 2008, setting out the procedures for keeping the register of real rights encumbering fixed constructions, works and equipment built under concessions</p> <p>Decree No. 2010-1753 of 19 July 2010, setting the conditions and procedures for granting concessions</p> <p>Decree No. 2013-4630 of 18 November 2013, creating a concessions monitoring unit within the Presidency of the Government</p> <p>Decree No. 2013-4631 of 18 November 2013, amending and supplementing Decree No. 2010-1753 of 19 July 2010,</p>	<p>Are there administrative concessions for the provision of services?</p> <p>no</p>	

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		<p>setting the conditions and procedures for granting concessions</p> <p>Consolidated Decree No. 2010-1753 of 19 July 2010, laying down the conditions and procedures for granting concessions, supplemented and amended by Decree No. 2013-4631 of 18 November 2013</p> <p>Decree-Law of the Head of Government No. 2020-24 of 28 May 2020, laying down special provisions relating to cases of extension of concession contracts</p> <p>Government Decree No. 2020-316 of 20 May 2020, laying down the conditions and procedures for granting concessions and their monitoring.</p> <p>Law No. 2021-9 of 1 March 2021, approving the decree-law of the Head of Government No. 2020-24 of 28 May 2020, relating to the setting of specific provisions relating to cases of extension of concession contracts</p>		

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15	Regulations Regulation of aid and subsidies	Public-private partnership figure. Possible instrument co-production of public policies	Award, competitive or direct scheme or other forms of aid distribution.	
16	Regulating other possible forms of PPPs	Indicate which ones and the regulations governing them no		
17	Examples of public procurement of co-production public policies with PPPs and SSE actors	Point out successful practices/examples of public procurement for co-production of public policies with PPPs and SSE actors in the country	Provide references and functional and territorial development framework of such actions and explain reasons for success, differences and similarities with demonstrative action	
18	Other issues to highlight	Issues considered relevant to the regulation of PCs and PPPs		

CHALLENGES & RECOMMENDATIONS:

To be completed by the local partner

The local level:

The challenges :

- A complete and complex legal arsenal: Law 89-9 states that the public procurement of public enterprises must be organised by a decree. Article 102 stipulates the obligation to organise public contracts relating to local authorities by a decree dedicated to them.
- The system of incentives for small and medium-sized enterprises offers very little encouragement to the latter, for example: Article 20 of the 2007 law states that 20% of the annual orders for each public purchaser must be reserved for small enterprises. Thus, local authorities must also allocate 20% of this amount to small businesses, but for large municipalities with significant financial resources such as Tunis, this 20% is a significant figure, which far exceeds the estimated amount of orders to be reserved.
- In the article of the 2007 law, which stipulates that 20% of public contracts must be reserved for small enterprises, it is also required that the capital of the said small enterprise must not be held by more than 25% by a medium or large enterprise: thus preventing the latter from winning public contracts reserved for small enterprises through the creation of subsidiaries. In practice, a small enterprise that meets the conditions of article 20 cannot implement civil engineering projects, which are often heavy projects and require large resources from the enterprise. The legislator is targeting small but not medium-sized enterprises, and this privilege could have been extended to the latter.
- deficiencies in the implementation mechanisms: the State does not have the means to control the accuracy of the implementation in relation to two reference systems: The specifications and the accepted offer: The supplier must justify that it complies with its own offer and not only with the specifications, e.g. goods that do not comply with the supplier's offer are often accepted, as long as they comply with the specifications.

Recommendations:

- Apply more regularly the system of allotment of public contracts: i.e. divide the offers for public contracts by lots, which would have the advantage of allowing several companies to benefit at the same time from the same offer and of reducing the weight for small and medium-sized companies which generally do not have much technical and financial capacity. For example, for a construction project, trucks represent one lot, tractors another lot and light vehicles a third lot.
- The obligation to reserve contracts for medium-sized companies, not just small ones.
- Establish an obligation to use "labour-based works". The HIMO approach tends to promote all work that calls for a large workforce.
- Establish an inclusive economy approach. A group of neighbouring local authorities should, for example, create a new entity under the umbrella of the intercommunality, which includes private companies, farmers and retailers etc. to produce a profit-making activity. At present,

local authorities are not allowed to carry out profit-making activities, but this is possible through the intercommunality they can create, as the intercommunality is governed by another legal framework (law 89-9) and not by the local authority code.

- Compression of deadlines: Local authorities that pay late should be penalised by digitisation through the existing information system. Once the payment order is issued, the system will start calculating the number of days of delay and the default interest according to the MMR and will automatically print the amount to be paid with the addition of this interest. In this way, suppliers will not have to request payment of default interest in addition to having requested payment of the initial amount and it encourages communities to pay within the statutory time limits.
- As regards local authority procurement, local authorities find it difficult to draw up tender documents due to lack of time, expertise, funding etc. and tend to copy and paste from other tender documents. Standardised standard tender documents should be created which all authorities can use.

At national level :

Challenges:

- Obstacles to the adoption of e-procurement: awareness of the legal requirement to use e-procurement remains low, especially at the regional level. In addition, HAICOP's capacity to provide training and awareness raising is limited. Many buyers lack the information or skills to use the e-procurement platform. Attitudes towards a full transition to e-procurement vary between different stakeholders, an aspect that still requires attention.
- Need for high-level commitment to support the full transition to e-procurement.
- Technical solutions requiring further development of TUNEPS: Apart from barriers related to political commitment and awareness raising, some barriers to the use of TUNEPS are related to the technical aspects of the platform. Public purchasers, especially those who have been using the platform for several years, have recommendations to make TUNEPS more efficient and easy to navigate. Improving navigation and intuitiveness would also provide better access for buyers and public entities that are new to e-procurement. Currently, public purchasers face some challenges in using e-procurement, as it is not yet fully digitised. Indeed, the mandatory registration of public contracts with the tax authorities is still done offline. In addition, buyers face challenges when uploading large files related to certain types of procurement.

Recommendations:

- Ensure the adoption of e-procurement by tackling widespread resistance to change through dedicated campaigns involving all stakeholders, including those in the control function
- Send clear signals to buyers and suppliers about the commitment to move to e-procurement through sanctions for non-compliance.
- Coordinate with other authorities to reduce structural barriers to the use of e-procurement, such as Internet penetration and support for businesses in marginalised areas (e.g. access to ANCE)
- Continuously improve certain functionalities and user-friendliness to enhance the current e-procurement platform by soliciting feedback from users via a dedicated mechanism, particularly with regard to the search for business opportunities.
- Develop policy-relevant data as well as data for public purchasers, including indicators on vulnerable groups (categories of companies winning contracts, above and below thresholds)
- Raise awareness among public purchasers of their role as key actors in pursuing the strategic objectives of supporting vulnerable groups.
- Ensure continuity of capacity building activities such as training of trainers programmes and other activities. Interactive technologies such as e-learning could be considered.
- Coordinate a community of practice of TUNEPS users who can learn from each other and share their experiences with a wider audience of contracting authorities.

MEASURES TO BE IMPLEMENTED:

To be completed by the local partner

OTHER INTERESTING SUGGESTIONS/NOTES:

To be completed by the local partner

IDENTIFIED CONFLICTING ISSUES (if any):

To be completed by the local partner