

DEVELOPMENT PROJECTS: BETTER REGULATIONS FOR BETTER OUTCOMES

A look into Public Procurement

Presented by:



Senith Abeyanayake




Better Regulations for Better Outcomes:

A Look into the Procurement Regulatory Framework governing large infrastructure projects in Sri Lanka



Structure

- 1 What is public procurement and why is it important?
- 2 An overview of the current regulatory framework
- 3 Key gaps and weaknesses
- 4 Conclusion

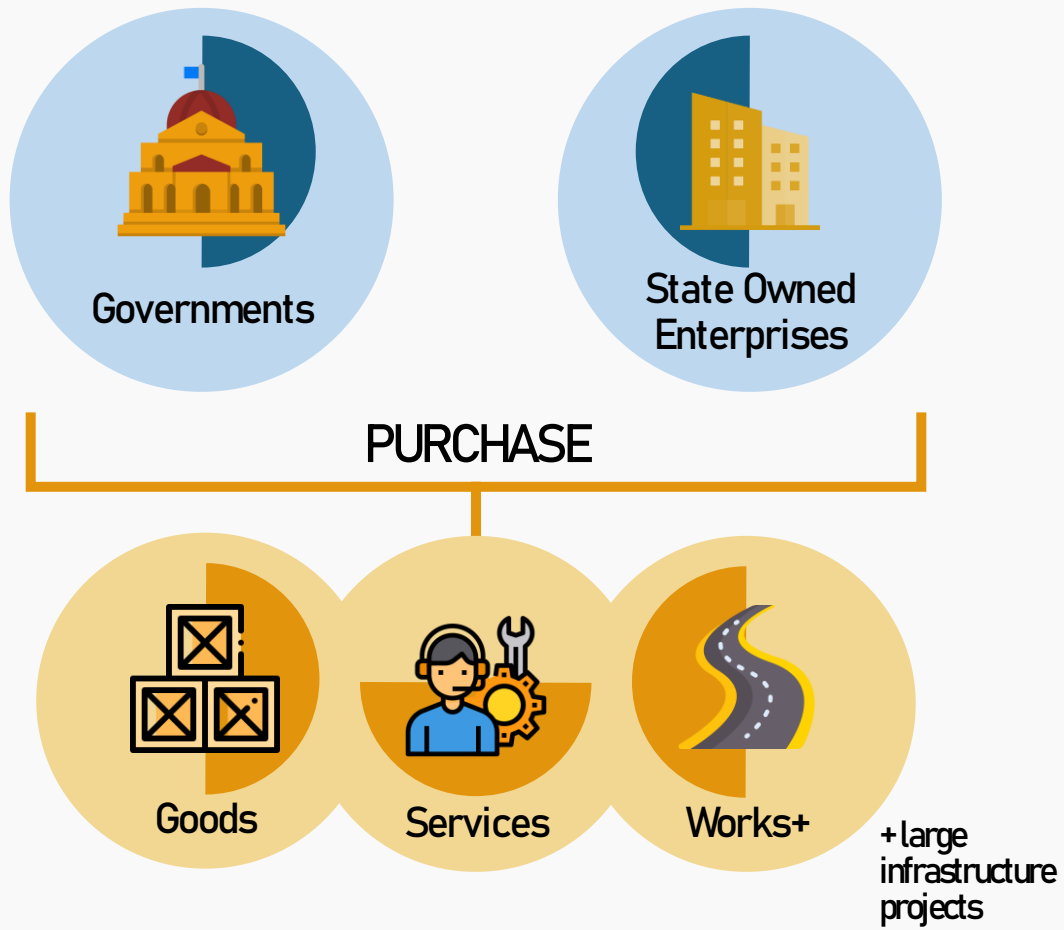


What is Public Procurement & why is it important?



What is public procurement and how does it work?

Public Procurement



Public Procurement Process

Sequence of activities from planning to payment



Public Investments in infrastructure is vital for development

- Roads/Highways
- Power plants
- Airports/Seaports
- Water supply



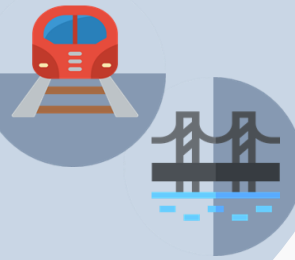
4 FAQs raised in relation to large infrastructure projects in Sri Lanka

1. Are they necessary?
2. Are the costs reasonable?
3. Are they built sustainably?
4. What are the terms & conditions of loans taken to fund projects?
Are they favourable to us?



Poor governance can result in costly, poor-quality infrastructure that fails to meet the intended objectives

Large infrastructure projects



Poor Governance Frameworks

● ● ●

“on average, countries waste about 1/3rd of their infrastructure spending due to inefficiencies”

🔄

“over half of these losses could be made up through better infrastructure governance”

Source: IMF

Budgetary problems

Corruption

Mismatch of public costs & benefits

Evaluation

Value for money

- Efficiency of the process
- Effectiveness of achieving outcomes
- Environment: Mitigating the negative impact
- Equity: Mitigating adverse cost to society
- Economy: Cost effective use of resources

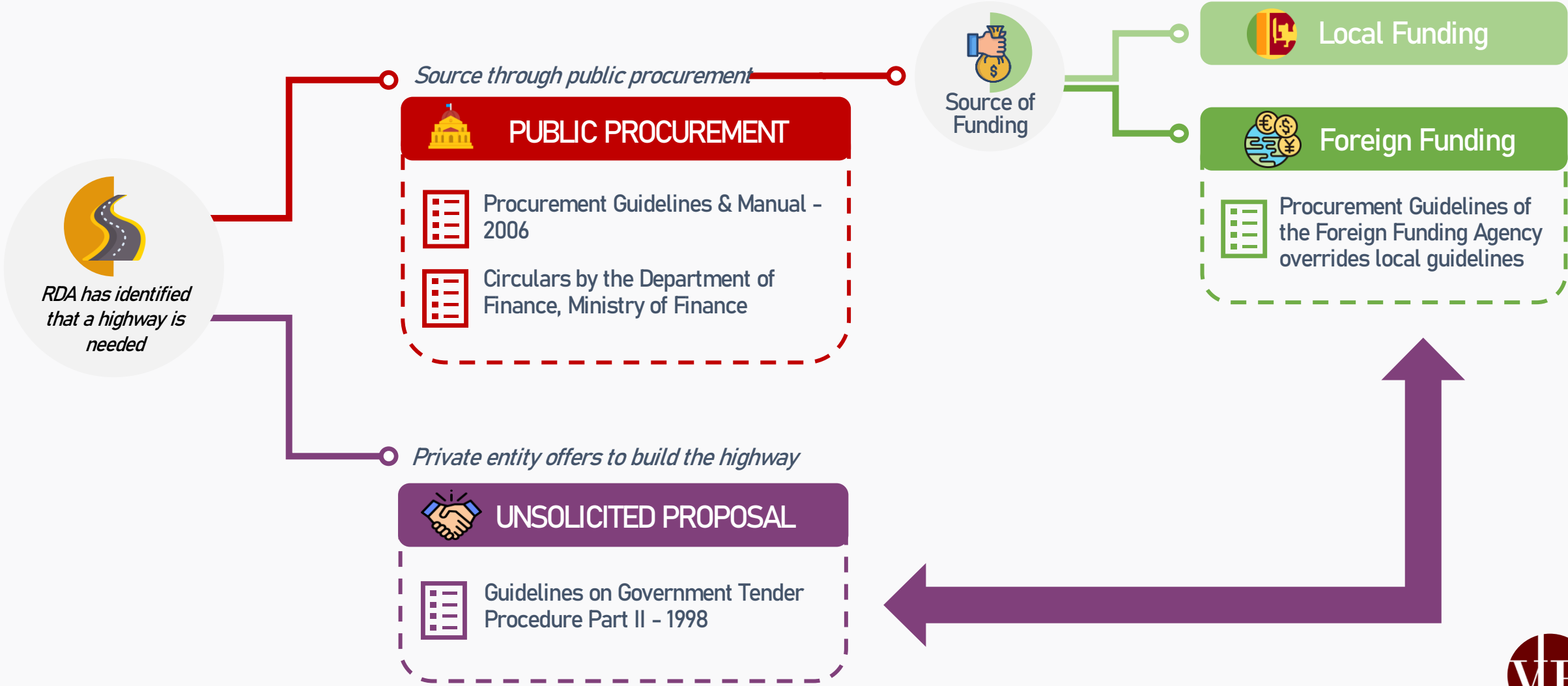


Procurement Regulatory Framework

An overview



Regulations governing large infrastructure projects in Sri Lanka



Procurement Regulatory Framework

Key gaps & weaknesses



Key gaps in the public procurement process for large infrastructure projects

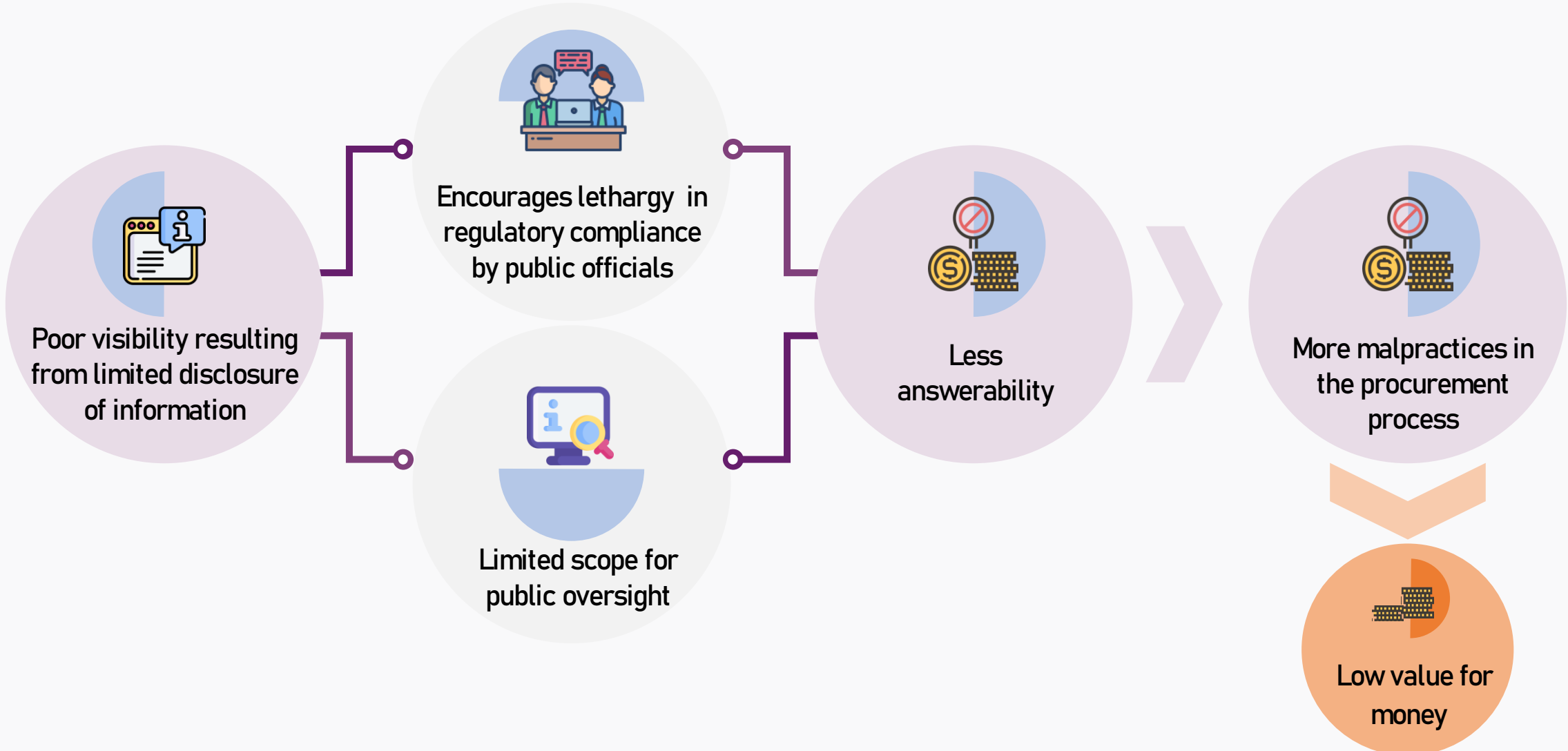


Key gaps and weaknesses

Poor visibility through limited public information

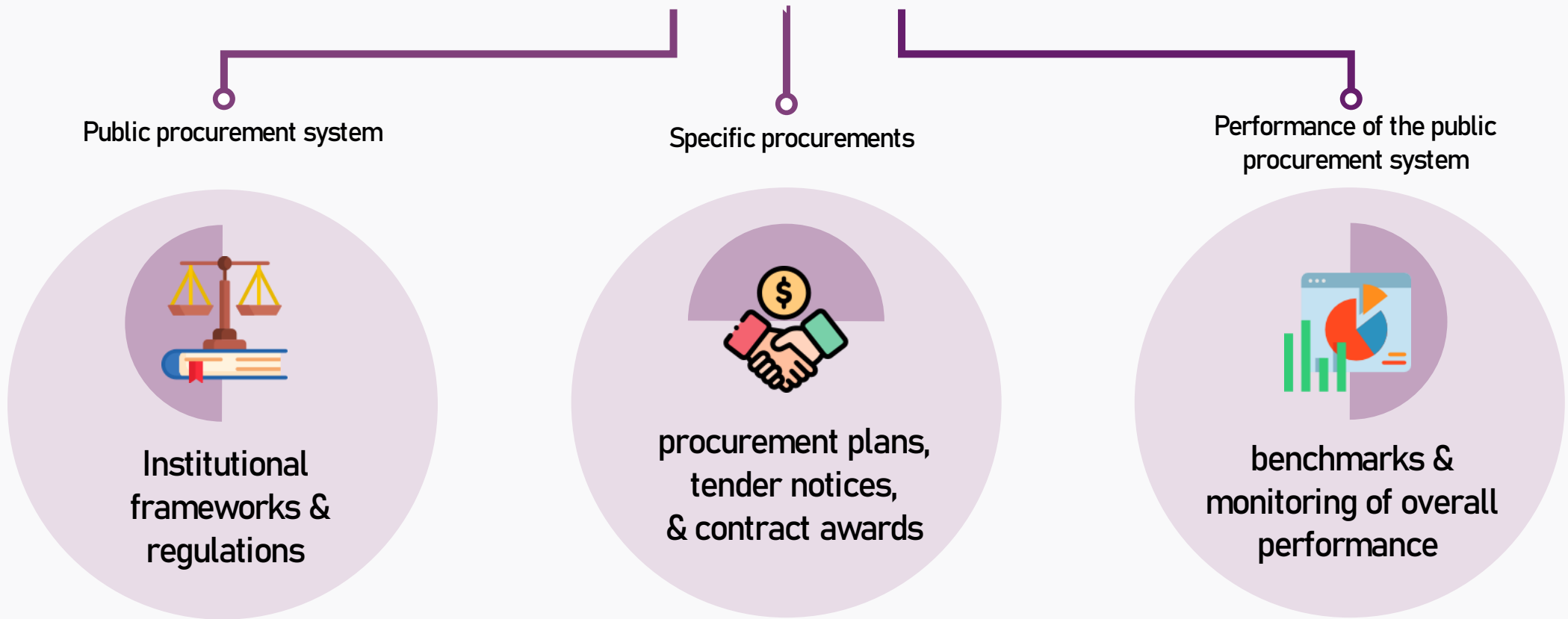


A less visible public procurement process erodes value for money



i The 3-limitation problem: Increasingly decreasing access to information

The international best practices recommend disclosure of following 3 types of information on procurement

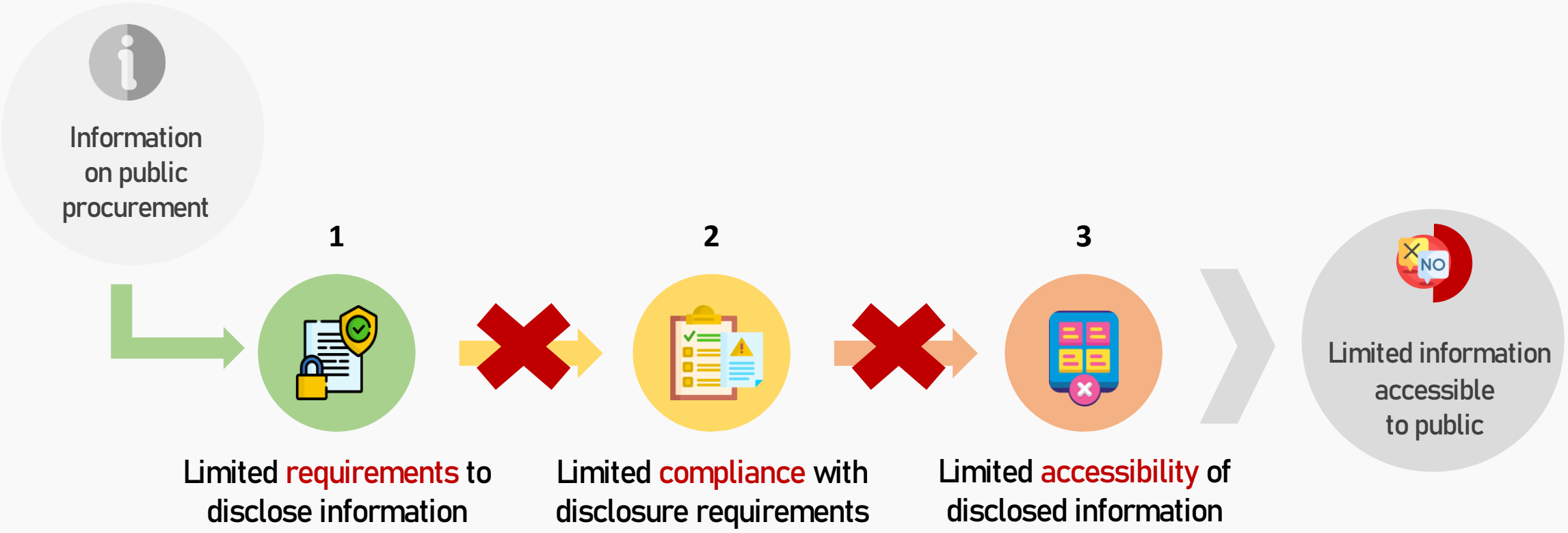


Based on the OECD Recommendations of The Council On Public Procurement (2015)



Procurement Information in Sri Lanka: the 3-limitation problem

An increasingly decreasing access to public procurement information



Limited information disclosure requirements

Sri Lanka fares poorly in comparison to international best practices



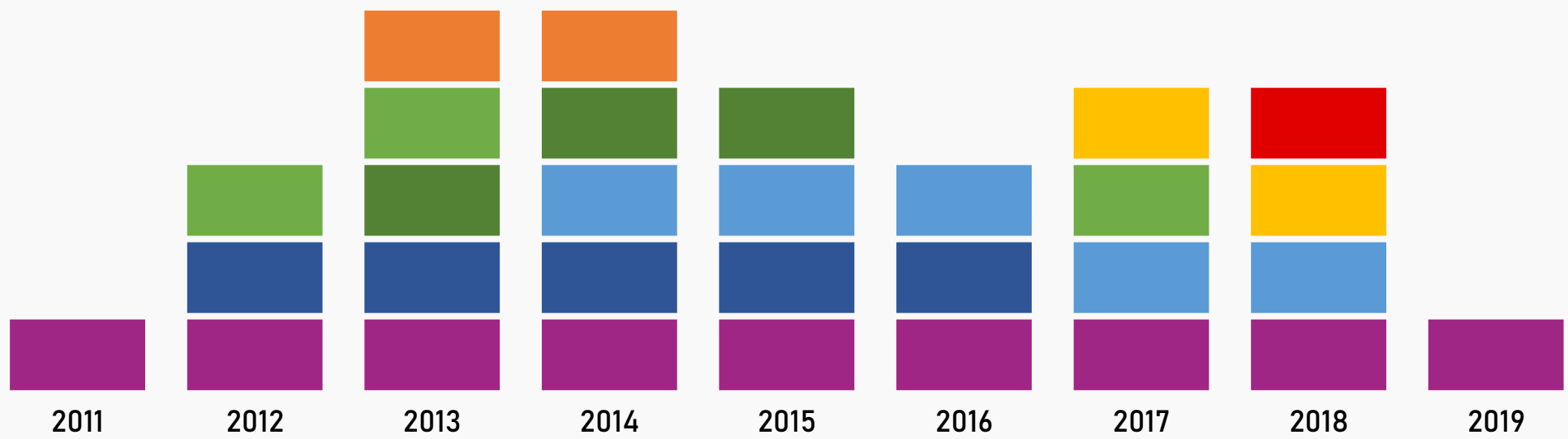
“A WB study benchmarking public procurement in 2017 highlights that there is **less publicly available (online) information about the procurement system and specific procurements in Sri Lanka** compared to its South Asian counterparts – Afghanistan, Bangladesh, Bhutan, India, Nepal and Pakistan.”

1

Limited information disclosure requirements

Limited mandatory requirements lead to ad-hoc and inconsistent disclosure of information

Publication of information on the **annual performance of the public procurement system** in the Ministry of Finance Annual Reports from 2011-2019



- Regulatory amendment & policy changes
- Total government procurement expenditure
- Ministries with major procurements
- Procurement by source of funding
- Details of procurement committees
- Data on efficiency and delays
- Social distribution on public procurement
- No. of appeals received by the Procurement Appeals Board



Limited compliance with disclosure requirements

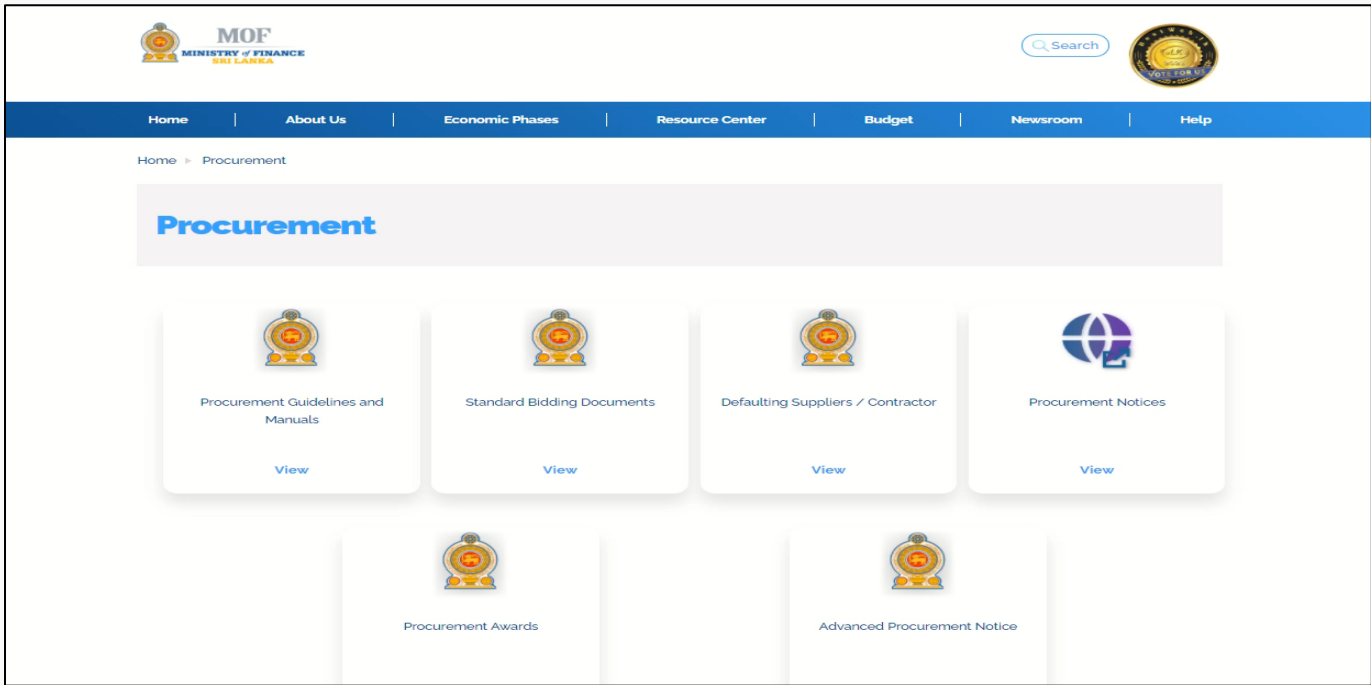
Sri Lanka fares poorly in complying with the required disclosure of information on specific procurements



“A study by Verité Research in 2017 on proactive disclosure under the RTI Act by 53 cabinet portfolios and the offices of the President and the Prime Minister found the compliance on proactive public procurement disclosure to be low.”

2 Limited compliance with mandatory disclosure requirements

Example:
Noncompliance in disclosing contract awards on the MoF website



The Procurement Guideline 2006 makes it mandatory to publish contract awards above contract value of LKR 250 Mn on the MoF Website

However, MoF website last updated in 2015 As of 25th June 2021



Limited accessibility of disclosed information

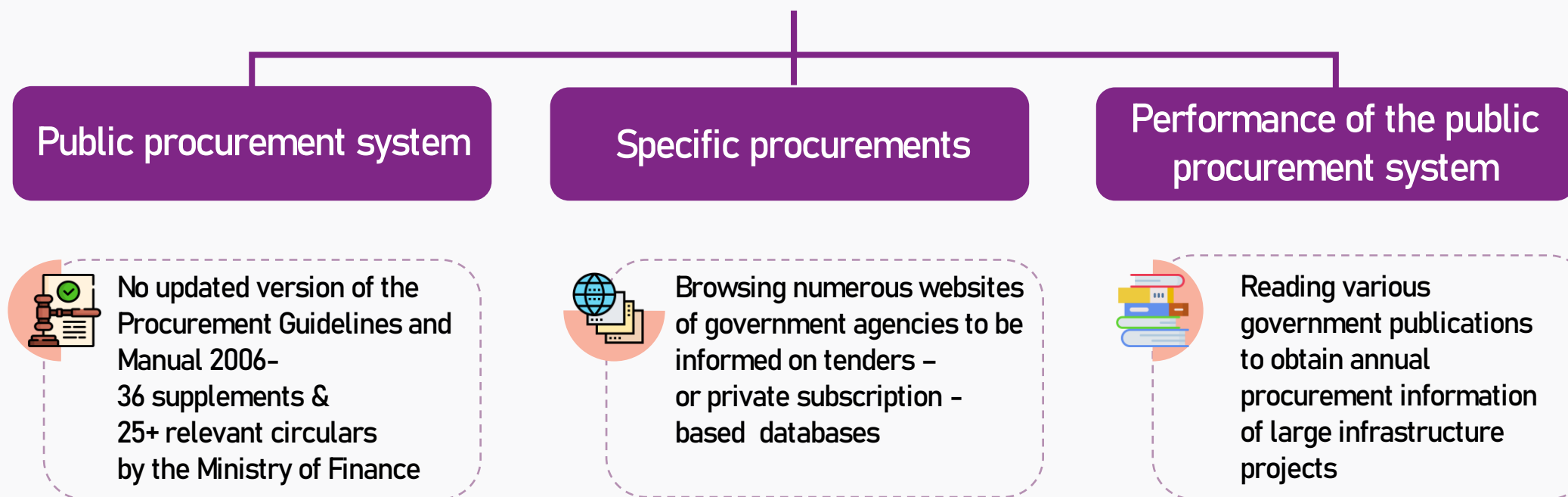
Sri Lanka fares poorly in making disclosed information easily accessible



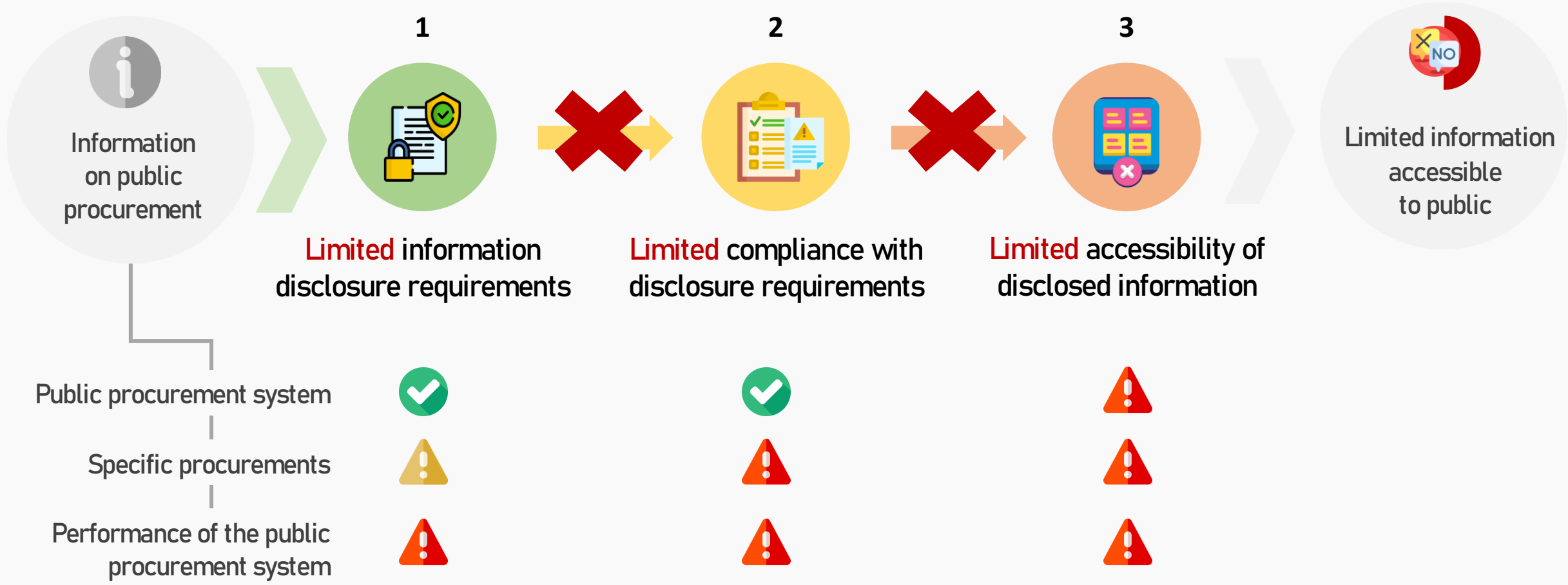
“...to be up to date on procurement-related decisions, one must browse through cabinet decisions and government gazettes individually as this information is not collated and published in a centralized location.”

Limited accessibility of disclosed information

Sri Lanka fares poorly in making disclosed information easily accessible



i The 3-limitation problem: Increasingly decreasing access to information



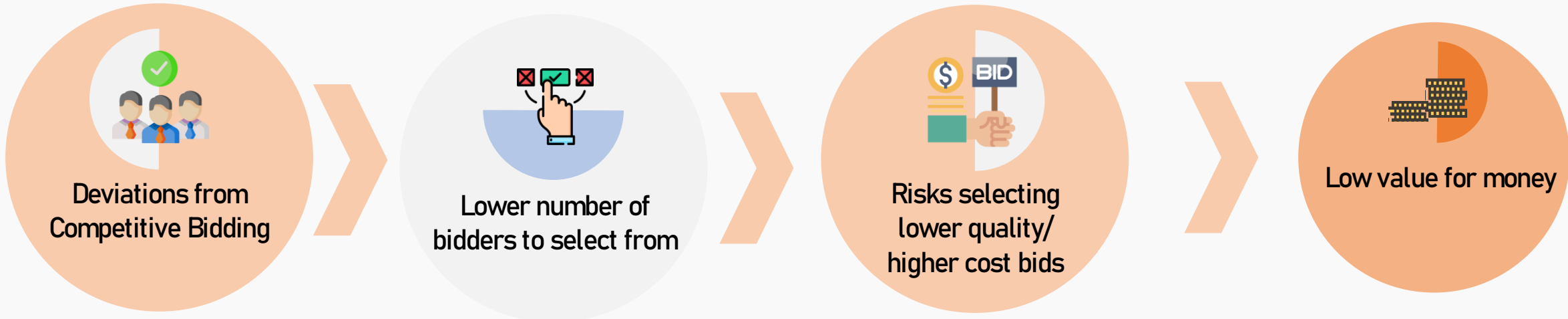
Key gaps and weaknesses

Frequent deviations from competitive bidding





Deviations from competitive bidding risk lowering the value for public money spent





Deviations from competitive bidding risk lowering the value for public money spent

Fair, equal and maximum opportunity for interested parties to participate in Procurement: Good procurement is unbiased, consistent, **competitive** and therefore reliable. It offers all interested contractors, suppliers and **consultants a level playing field** on which to compete and thereby, directly expands the purchaser's options and opportunities

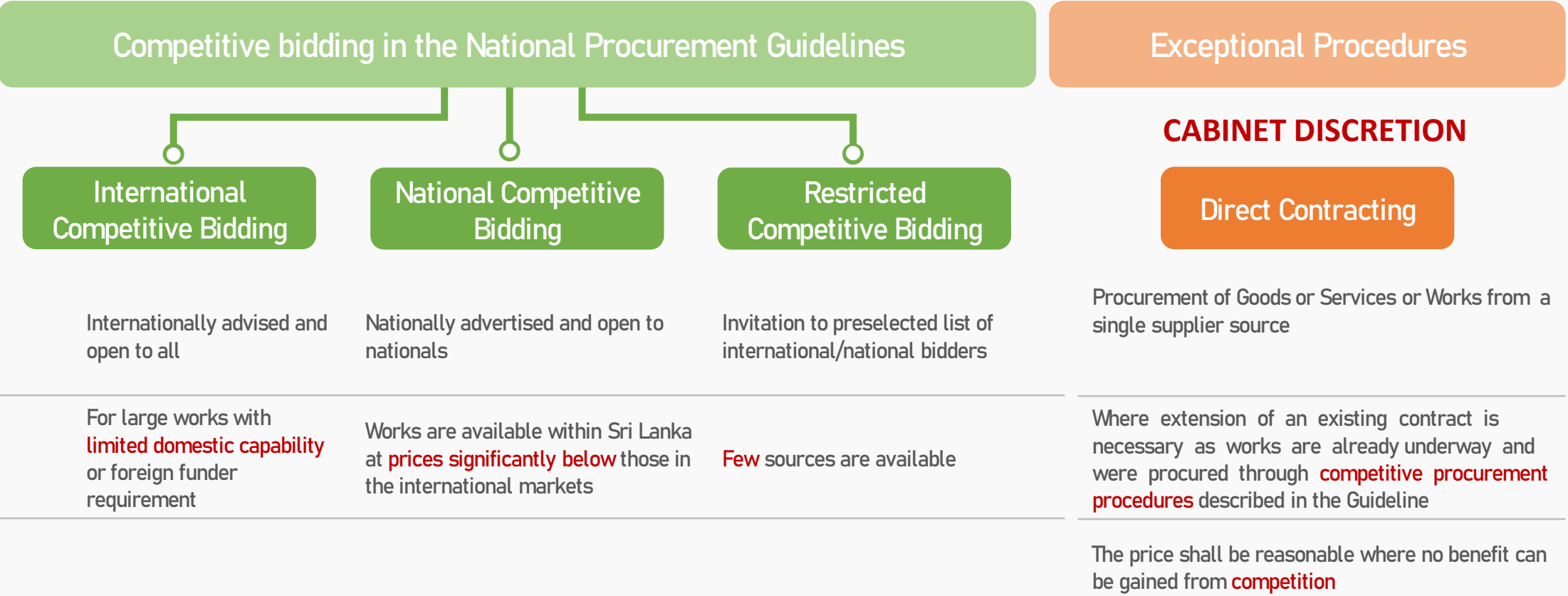
– Objectives, National Procurement Guidelines





Deviations from competitive bidding risk lowering the value for public money spent

Deviations allowed – but with conditions to ensure value for money





Deviations from competitive bidding risk lowering the value for public money spent

Unsolicited Proposals:

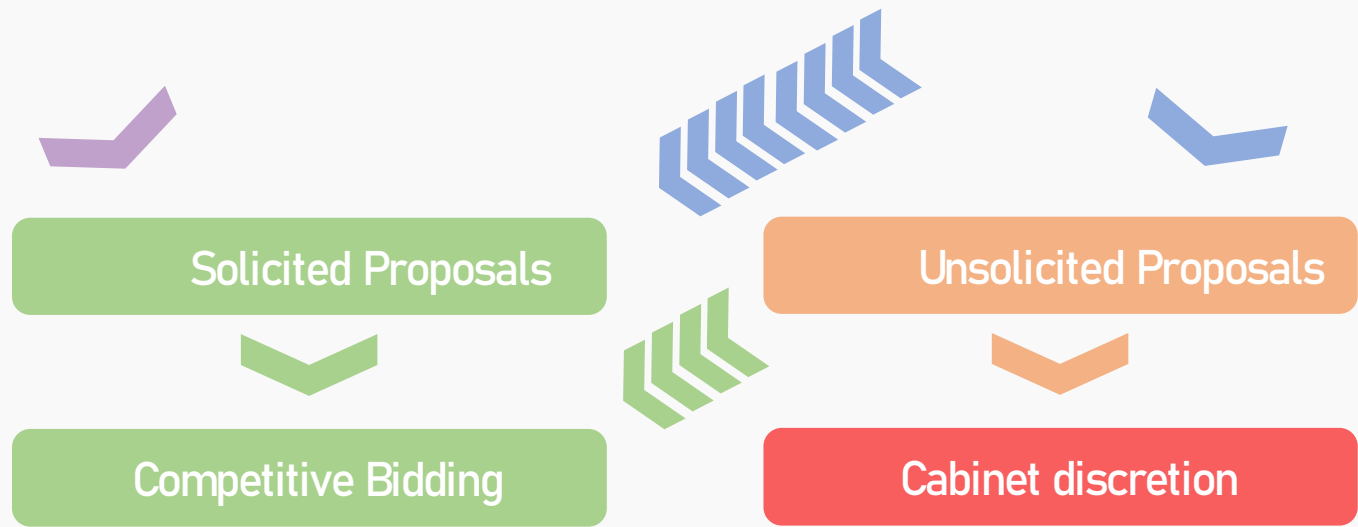
Weak regulations and Cabinet Discretion risk undermining Value for money

 PUBLIC PROCUREMENT

 PUBLIC PRIVATE PARTNERSHIPS

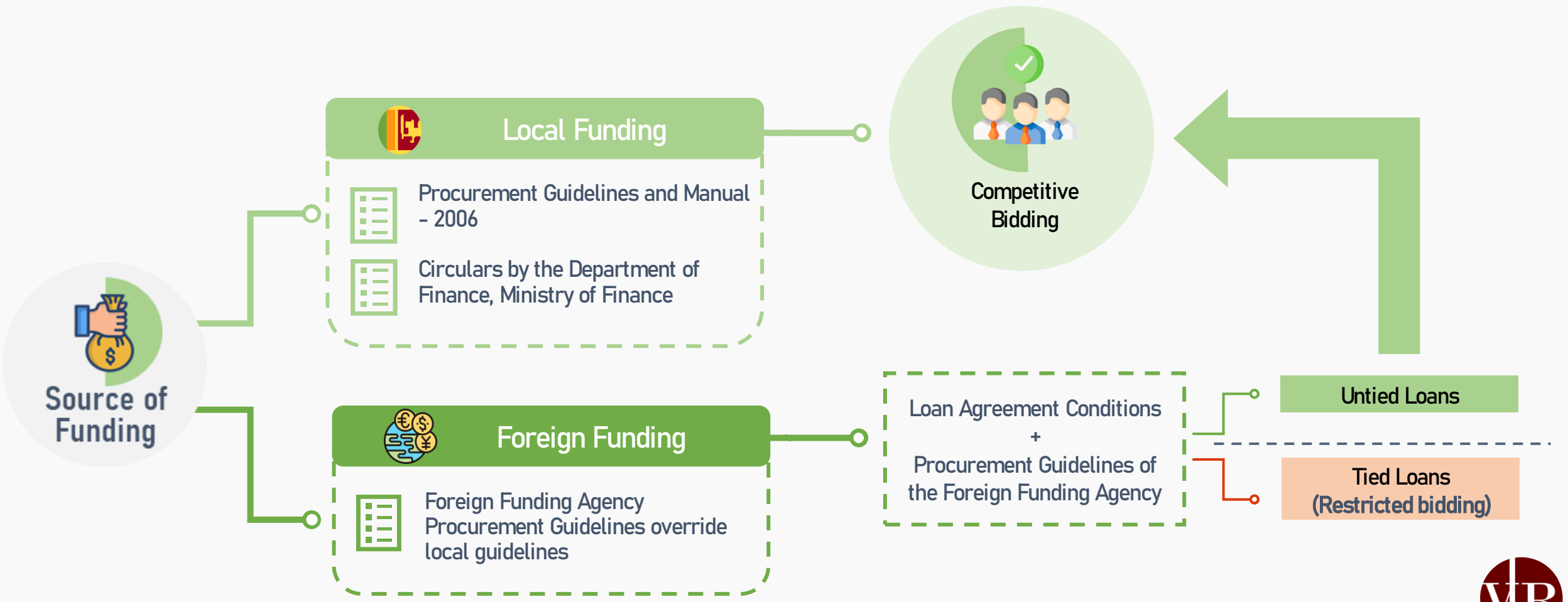
 National Procurement Guidelines

 Guidelines on Government Tender Procedure Part II - 1998



Deviations from competitive bidding risk lower value for public money spent

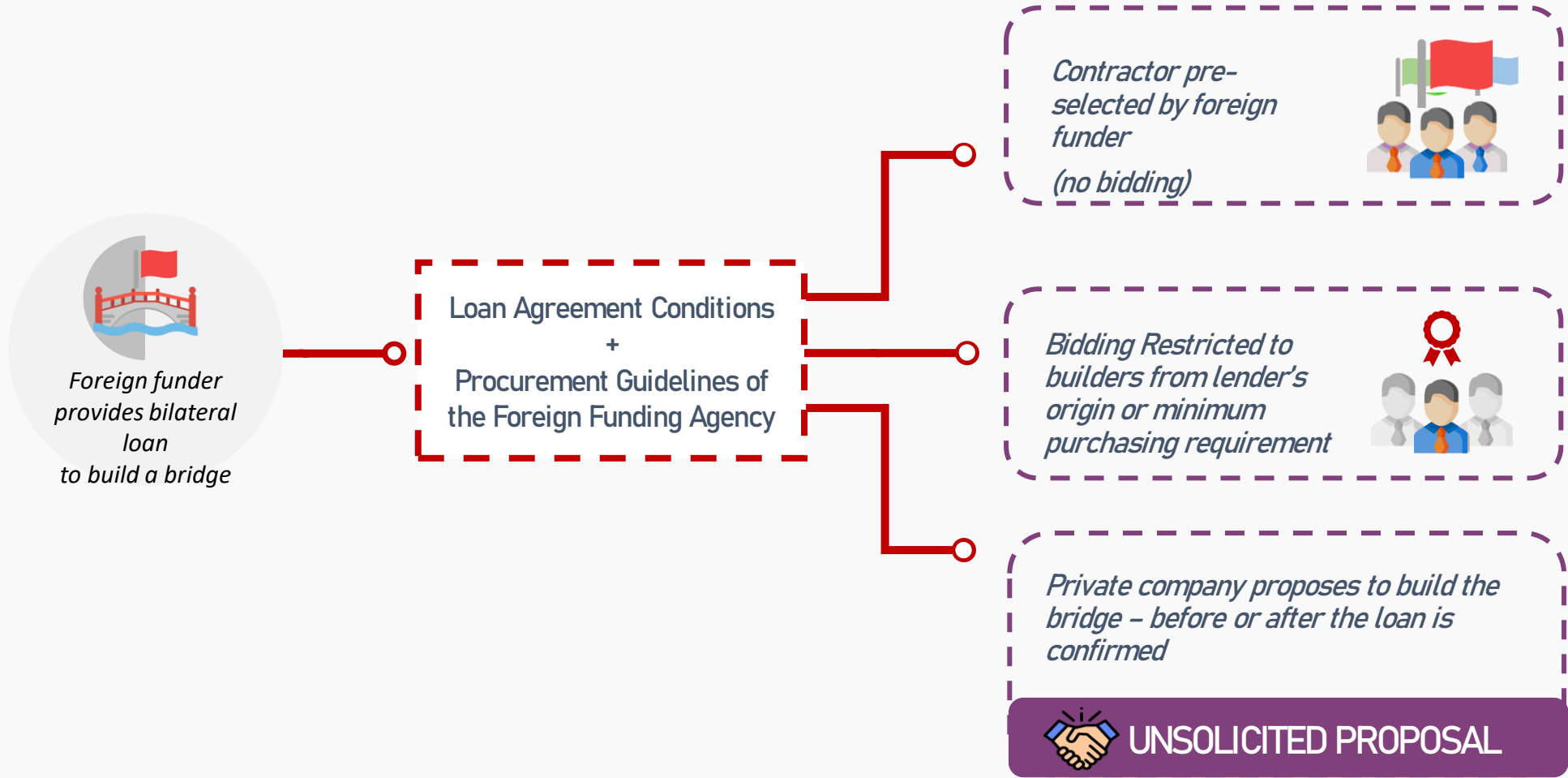
Loan Agreements signed with FFAs/Guidelines of FFAs play an important role in determining the procurement method





Deviations from competitive bidding risk lowering the value for public money spent

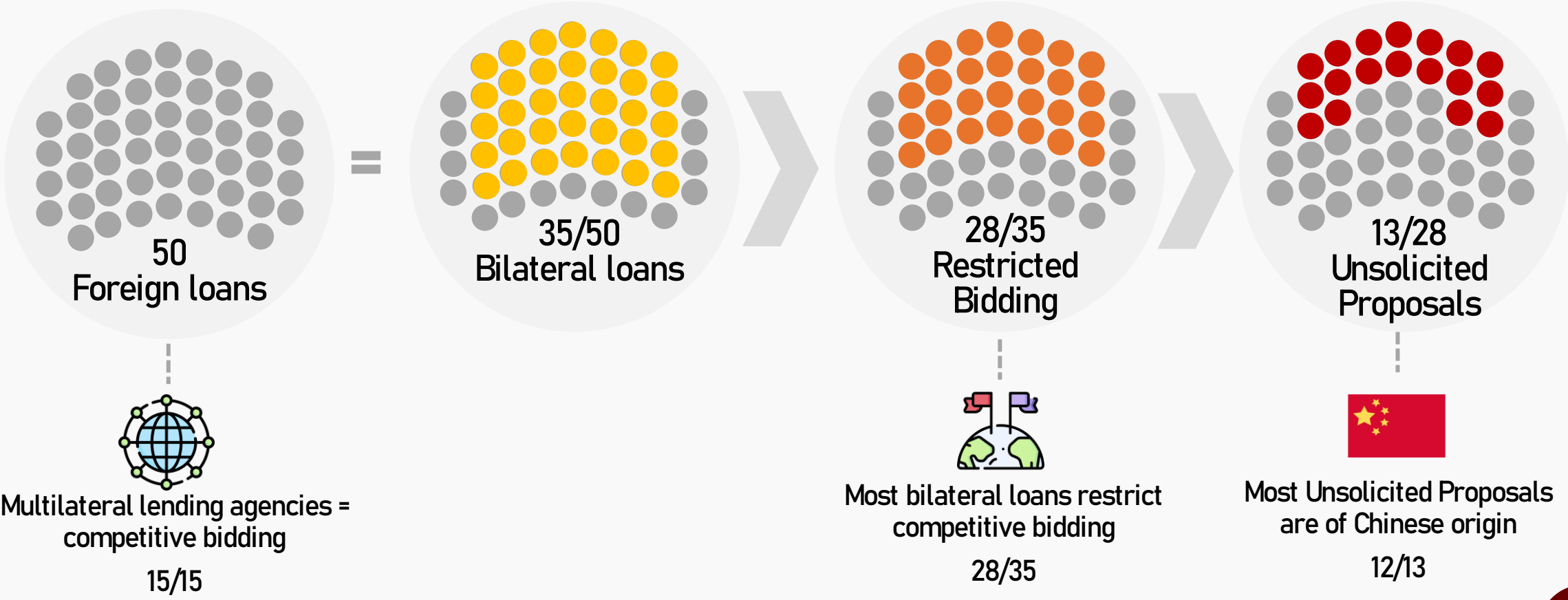
Deviations from competitive bidding Provides an advantage to identified types of bidders in exclusion of others





Deviations from competitive bidding risk lowering the value for public money spent

Sri Lanka has frequently deviated from competitive bidding in projects funded via bilateral foreign loans
Analysis of 50 highest loan values taken during 2005-2018



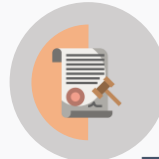
Source: Verité Research, Financing Infrastructure: The (non) Concessionality of Concessional Loans, (2020)



Deviations from competitive bidding risk lowering the value for public money spent



Deviations from competitive bidding may result in **higher costs** and a **lack of choice** in competing bids



The weak regulatory framework governing unsolicited proposals leaves room for higher level of **discretion** in decision making, **reduced visibility** and increased room for **malpractices**



Restricted bidding may **discourage potential qualified bidders** from participating in the process

Procurement Regulatory Framework

Conclusion



Key implications of the gaps identified



A less visible public procurement process allows malpractices



Weak regulatory framework grants wide discretion to the cabinet of ministers, allowing for ad-hocism



Risk of compromising quality, cost and sustainability through deviations from competitive bidding



Unsolicited proposals are frequent but not adequately regulated

Summing up

When procuring large infrastructure in Sri Lanka,

Less visible
decision making + Weak
regulation = Erodes value for
public money

OPPORTUNITIES TO PROTECT PUBLIC INTEREST IN PUBLIC INFRASTRUCTURE

Review of Regulatory Frameworks in Sri Lanka

The complete report can be accessed
through:

www.veriteresearch.org/publication

