

Principles for Concluding Public Utility Delegation Agreements as a Governance Benchmark

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Abstract:

Public utility delegation embodies a relatively contemporary methodology in the administration and stewardship of public utilities. This process involves a public law entity (the delegating authority) relinquishing the management of a public utility to another entity under public or private law (the delegatee), pursuant to a fixed-term agreement aimed at advancing development and enhancing the public good.

As such agreements are classified under administrative contracts, which in turn contribute to the state's revenue streams, the ensuing funds are deemed public monies. Therefore, safeguarding these funds from all forms of corruption and mismanagement is imperative. This necessitates the enactment of a robust legal regime that epitomizes transparency and integrity in the formulation of these contracts.

The contracting phase is notably vulnerable to corruption due to the heightened competition among bidders. In response, the Algerian legislature has constrained the administrative authority's discretion in selecting its contractual partners and compelled adherence to established procedures for public utility delegation agreements founded on specific principles. These principles, delineated under Article 209 of Presidential Decree No. 15-247, which governs public procurement and public utility delegation, along with Article 3 of Executive Decree No. 18-199 concerning public utility delegation, include unrestricted access to public tenders, equitable treatment of all candidates, and transparent procedural processes. These fundamental tenets are not merely procedural stipulations but are rather a concrete manifestation and reinforcement of overarching governance and prudent administrative practices.

Keywords: Governance; Delegation Agreement; Public Utility; Principles of Conclusion; Administrative Contracts.

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Introduction:

In response to the inadequacies of traditional public utility management methods (namely direct management and public institution models) in meeting the demands of contemporary governance principles, the Algerian government has increasingly favored private sector involvement. This strategic shift is designed to lessen the financial burden on the public treasury and elevate the quality of public services. Among the various strategies adopted, public utility delegation contracts have proven particularly effective. These contracts involve a legal arrangement where a public legal entity entrusts the management and operation of a public utility to either a private or another public entity. This arrangement is overseen by the public authority and includes financial compensation typically linked to the performance outcomes of the utility.

The intricate relationship between public utility delegation contracts and public finances, coupled with their significant impact on essential services, necessitates a robust legal framework to oversee these contracts. This framework delineates precise procedures for all stages of the delegation process—from the initial negotiations to the final contract award. The primary objectives of this framework are to uphold the principles of competition, equality, and procedural transparency, thus shielding these crucial contracts from corruption and other forms of administrative malpractice such as nepotism, influence peddling, bureaucratic inefficiency, and the fraudulent misuse of funds.

The administrative authority, while retaining the discretion to select its partners, must adhere to stringent competition laws that impose various restrictions and procedural mandates to safeguard public interests and finances. Article 209 of Presidential Decree No. 15-247⁽¹⁾, which is the pioneering decree regulating public utility delegation contracts in Algeria, insists on compliance with the guidelines set forth in Article N° 05⁽²⁾. Additionally, Executive Decree No. 18-199⁽³⁾, specifically its

¹ Presidential Decree No.15-247 dated 02ndDhou Al-Hijja 1436h, corresponding to 16th September 2015, regulating public procurements and public utility delegations, Official Gazette, Algeria, No.50, issued on 23rdDhou Al-Hijja 1436h, corresponding to 20th September 2015.

² Article.05 of the Presidential Decree No.15-247 stipulates that: “For insurance propose of the efficiency of public contracts and the proper use of public funds, public contracts must take into account the principles of free access to public applications,

Article 03⁽¹⁾, reiterates and reinforces these foundational principles, thus consolidating the governance framework for public utility delegation contracts within the country.

Indeed, these regulatory texts, aimed at combating fraud, favoritism, and administrative corruption that may undermine the conclusion of public utility delegation agreements, constitute the core legal foundation of governance in this field. It is crucial to regulate the conclusion of delegation contracts by establishing clear rules and principles to govern such agreements.

Accordingly, the research problem revolves around the following question: **To what extent do the principles guiding the selection process of the delegate contribute to the promotion and reinforcement of governance?**

In pursuit of answers to this question, our study adopts an analytical approach to examine various legal texts pertinent to the subject, complemented by a descriptive method aimed at delineating and deepening understanding of governance concepts within this context. Consequently, the study is structured into two primary sections:

- 1- Governance in Public Utility Delegation
- 2- Governance Aspects within the Principles Governing Public Utility Delegation Contracts

1. Governance in Public Utility Delegation:

Discussing governance in its legal and economic dimensions, along with its general principles, particularly within the framework of public utility delegation, necessitates a clear conceptualization of governance

equal treatment of candidates and transparency of procedures, while respecting this decree”.

³Executive Decree No.18-199 dated 20thDhou Al-Qadah 1439h, corresponding to 02nd August 2018, pertaining to the delegation of public utility, Official Gazette, Algeria, No.48, issued on 23rdDhou Al-Qadah 1439h, corresponding to 05th June 2018.

¹ Article No.03 of the Executive Decree 18-199 States that: “Without prejudice to the provisions of Article No.05 of the Presidential Decree No.15-247 dated 02ndDhou Al-Hijja 1436h, corresponding to 16th September 2015 mentioned above, the public utility must be delegated within the scope of respecting the principles of equality, continuity and adaptation, while ensuring the standards of quality and efficiency in the public service”.

itself. Governance, as a relatively modern term, has emerged amidst significant global transformations and has garnered substantial attention from scholars, often sparking considerable debate. Consequently, it is essential to first define the concept of governance and then examine its underlying principles and objectives

1.1- Definitions of Governance:

Governance has become a pivotal concept in contemporary discourse, gaining widespread attention due to its critical role in shaping institutional practices and societal outcomes. However, its relatively recent emergence as a formal concept, combined with diverse scholarly interpretations, has led to significant debate and a lack of consensus regarding its precise definition. To address this complexity, this section examines governance from linguistic, terminological, and legal perspectives

Linguistically, the term *governance* has its roots in the Old French *gouverner*, which is derived from the Latin *gubernare*, meaning "to steer" or "to guide." Notably, this etymological background underscores the concept's association with direction, oversight, and control. Today, *governance* is widely understood as the process of managing and regulating systems, organizations, or entities¹. This linguistic origin serves as a foundation for its broader interpretations, bridging historical usage with its contemporary application.

Building on its linguistic foundation, governance is defined terminologically as the processes and structures by which decisions are formulated, implemented, and evaluated. According to the World Bank, governance refers to "the manner in which authority is exercised in the management of a country's economic and social resources for development"². This definition emphasizes the practical dimensions of governance, particularly in terms of how power is wielded to achieve developmental objectives.

In addition, the United Nations Development Programme (UNDP) extends this understanding by describing governance as "the exercise of

¹Oxford English Dictionary (2023). *Governance*. Available at www.oed.com.

² World Bank (2023). *Governance and Institutional Capacity*. Available at www.worldbank.org.

political, economic, and administrative authority to manage a nation's affairs at all levels"¹. Importantly, this perspective highlights the collaborative nature of governance, as it involves not only governmental entities but also private-sector actors and civil-society organizations. Consequently, governance is viewed as a multidimensional process that fosters accountability, inclusivity, and efficiency across institutional and societal levels.

Further compounding this multidimensionality, the International Finance Corporation (IFC) narrows its focus to corporate governance, defining it as "the system by which companies and organizations are directed and controlled"². This definition highlights the structural and procedural mechanisms within organizations that ensure transparency, ethical conduct, and regulatory compliance, thereby reinforcing trust and operational integrity.

Moreover, the Organisation for Economic Co-operation and Development (OECD) situates governance within a broader socio-political framework, defining it as "a set of relationships between the government and citizens, whether as individuals or as part of political, social, and economic institutions, with a focus on the effectiveness of institutions and the values they embody, such as accountability, oversight, and integrity"³. By emphasizing relational dynamics and institutional values, this definition reflects governance's role in promoting equitable and participatory societal frameworks.

From a legal standpoint, governance is defined as "the framework of rules, relationships, systems, and processes within and by which authority is exercised and controlled in corporations"⁴. This legal interpretation shifts the focus towards regulatory compliance and ethical conduct, emphasizing the mechanisms designed to ensure accountability, transparency, and fairness. Furthermore, legal scholars argue that governance plays a critical role in upholding the rule of law, safeguarding justice, and preventing corruption, thereby creating an equitable framework for institutional operations⁵.

¹United Nations Development Programme (1997). *Governance for Sustainable Human Development*. UNDP Policy Document.

²International Finance Corporation (IFC) (2023). *What is Corporate Governance?* Retrieved from www.ifc.org.

³Organisation for Economic Co-operation and Development (OECD) (2023). *OECD Governance Framework*. Retrieved from www.oecd.org.

⁴Black's Law Dictionary (11th ed., 2019). *Definition of Governance*.

⁵Bovens, M., Goodin, R. E., &Schillemans, T. (2008). *The Oxford Handbook of Public Accountability*. Oxford University Press.

Taken together, these perspectives illustrate governance as a comprehensive concept that encompasses both structural and operational dimensions. Whether viewed through linguistic, terminological, or legal lenses, governance consistently emerges as a framework aimed at enhancing oversight, ensuring fairness, and promoting ethical practices.

To fully understand governance, it is essential to consider the principles that underpin its implementation. Specifically, governance is guided by four foundational principles:

- **Transparency:** By fostering openness in decision-making, transparency builds trust and accountability between institutions and their stakeholders.
- **Accountability:** Through robust mechanisms for oversight, accountability ensures that individuals and entities are held responsible for their actions and decisions.
- **Integrity:** Upholding ethical standards, integrity serves as a safeguard against corruption and promotes fairness in institutional practices.
- **Inclusivity:** By engaging diverse stakeholders, inclusivity ensures equitable participation and representation, aligning governance practices with broader societal values.

Ultimately, these principles function as the bedrock of effective governance. They not only facilitate institutional efficiency but also align organizational practices with ethical and developmental objectives.

1.2-Governance of Public Utilities Delegation Contracts:

In response to Algeria's recent economic transformations and the limitations of traditional public utility management methods in achieving developmental goals, the State has increasingly sought to formalize partnerships with private entities. This approach is operationalized through public utility delegation contracts, which represent a strategic dimension of public-private economic collaboration in the administration of public services ⁽¹⁾.

¹ Ahmed El Boraie, "Partnership contracts between the public and private sectors in the management of local public utilities", doctoral thesis, University of LaminDebaghine, Setif, Algeria, 2023, p.202

As outlined in Article 02 of the Executive Decree, public utility delegation provides the regulatory foundation for the contractual relationship between the delegating authority and the delegate. This framework permits the temporary transfer of specific non-sovereign functions from public authorities to private or semi-public entities, thereby advancing public interests without infringing on the core tenets of public service. Article 05⁽¹⁾ of Presidential Decree No. 15-247 reinforces that public utility delegation must be governed by principles of equality, continuity, and adaptability, ensuring that quality and efficiency benchmarks are consistently met⁽²⁾.

Notably, the aforementioned Presidential Decree was later superseded by Law No. 23-12⁽³⁾, which introduced comprehensive public contract regulations while excluding provisions on public utility delegation agreements.

Accordingly, governance in public utility delegation agreements can be conceptualized as a structured set of principles and frameworks guiding the responsibilities of each party to the contract. Recognizing the importance of public utility delegation contracts as a vehicle for public-private sector engagement, the United Nations General Assembly memorandum emphasizes the need for high-quality, sustainable, and resilient infrastructure accessible to all at equitable costs. A robust legal framework for such partnerships is critical in advancing national strategies for infrastructure and public service development. This governance structure should align with internationally recognized principles of good governance and sustainable development, forming a foundation for crafting, implementing, and strengthening policies that mitigate corruption, foster civic engagement, and uphold the rule of law, transparency,

¹ Presidential Decree No.15-247 dated 02nd Dhou Al-Hijja 1436h, corresponding to 16th September 2015, regulating public contracts and public utility delegations, Official Gazette, Algeria, No.50, issued on 23rd Dhou Al-Hijja 1436h, corresponding to 20th September 2015

² Article 03 of the aforementioned Executive Decree No.18-199

³ Law No.23-12 dated 18th Muharram 1445h, corresponding to 05th August 2023, defining the general rules of public contracts, Official Gazette, Algeria, No.51, issued on 19th Muharram 1445h, corresponding to 06th August 2023

accountability, integrity, and sound management of public resources⁽¹⁾.

1.2.1- Constituents and Objectives of Governance:

A- Constituents of Governance:

Effective governance systems require foundational pillars to ensure that an organization's goals are met with efficiency and integrity.⁽²⁾ Key elements include:

- **Legal Framework:** A comprehensive legal structure that delineates the rights, responsibilities, and competencies of all principal stakeholders within the organization. It also outlines sanctions for rights violations, neglect of duties, overreach of authority, and establishes penalties for corruption offenses.
- **Supervisory Bodies:** A regulatory framework incorporating oversight institutions responsible for enforcing governance standards and anti-corruption measures.
- **Independent Audit Committee:** An autonomous audit committee composed of highly qualified and experienced professionals dedicated to promoting transparency within the organization and supporting anti-corruption efforts.

B- Objectives of Governance: The primary objectives of governance include the following⁽³⁾:

- Ensure a fair and transparent selection process that fosters economic development through public-private partnerships.
- Attain optimal value for public expenditure.
- Enhance core public services, especially for marginalized communities, and provide adequate training for participants in new partnerships.

¹ Raghad Khazal Abdul, Ali Yunus Ismail, "Governance in public-private partnership contracts" – A comparative legal study –, ANBAR Journal of Legal and Political Sciences, No.02, Vol.13, 2023, p.259

² Adel Bin Ahmed Al-Shalfan, op.cit. p.126

³ Hamza Douifi, "Governance of Public-Private Partnership in infrastructure projects", Journal of Contemporary Economic Research, Vol.5 No.01, 2022, p.383

- Offer equitable incentives for all parties, ensuring fair compensation for risks and contributing to business success.
- Resolve disputes judiciously to sustain service continuity and safeguard projects from financial losses that could lead to project failure.
- Bolster security against emerging threats and enhance the safety of services delivered through public-private partnership models.
- Combat corruption in all its forms and manifestations.

2- Governance Aspects within the Principles Governing Public Utility Delegation Contracts:

Given that public utility delegation contracts are classified as administrative contracts, the administrative authority's discretion in selecting contractors is subject to regulatory constraints to secure optimal offers. This limitation is highlighted in Article 03, of Executive Decree No. 18-199, which refers to Article 05 of Presidential Decree No. 15-247. Consequently, the principles governing public utility delegation agreements align with those of public contracts, ensuring **competition, equality, and procedural transparency**—key components in promoting governance within public utility delegation.

2.1- Free access to public utility delegation contracts:

2.1.1- Defining the principle of free access to public utility delegation contracts:

The principle of free access to public applications aligns closely with the concept of competitive freedom. In this context, free competition constitutes one of the fundamental principles that govern administrative contracts, influencing both the regulatory framework and practical application of contracting procedures. ⁽¹⁾Legislative reforms, especially those at the international level, have increasingly emphasized limiting administrative discretion in selecting delegates. This principle has gained international prominence, notably following its formal

¹ Nawaf Kanaan, "The legal system for concluding administrative contracts", *Journal of Studies*, University of Jordan, December, Vol. 25, No.02, 1998, p.453

establishment in France under the SAPIN Law of 1993.⁽¹⁾ Article 38 of this law mandates that public utility delegations adhere to transparent, open tendering processes within a framework of restricted competition. Furthermore, competitive freedom is regarded as a significant driver of progress in both commercial and public sectors, where fair and open competition is crucial. This principle inherently supports the equality of applicants, as any breach of competitive integrity undermines the objective of equal treatment⁽²⁾.

To actualize this principle, it is essential to allow equal access for all qualified individuals and entities—whether under public or private law—to apply for contracts without discrimination. Additionally, practices that intentionally restrict entry or apply unequal terms are prohibited, as they detract from the benefits of fair competition and equal opportunity.⁽³⁾

2.1.2- Reinforcement of the Principle in Executive Decree No 18-199

Algeria has embedded the principles of free access and competitive fairness into its public utility delegation framework, recognizing their significance in ensuring equitable participation. This is articulated in Presidential Decree No. 15-247 and reinforced by Executive Decree No. 18-199, which institutionalize fair competition through transparent declarations that provide open access to public opportunities⁽⁴⁾.

¹ Law No.93-122 dated 29th January 1993, pertaining to the prevention of corruption and the transparency of economic life and public procedures, JORF No.25, 30th January 1993.

² Souadi Taïbi Amrouche, “General principles of concluding public utility contracts under the Presidential Decree No.15-247”, Journal of Studies and Research of the Arab Journal in Humanities and Social Sciences, University of Djilali Bounaama, Khemis Miliana, 2018, p.396

³ Zamal Salah, “The principles of the delegation of the public utility in the Algerian legislation”, reading the provisions of the provisions of Article 209 of the Presidential Decree No.15-247”. Annals of the University of Algiers 1, No.32, Part 1, 2018, p.501

⁴ Hamad Mohammed Hamad Suleimani “Privileges of the public authority in the administrative contract”, University Publishing House, Faculty of Law, Alexandria, Egypt, p.2007, p.61

To implement this principle, Executive Decree No. 18-199 obligates the delegating authority to disseminate all relevant information and ensure equal opportunity for participation by all qualified candidates through formal public declarations. This framework establishes a genuine competitive environment among potential contractors and mitigates any preferential treatment toward specific groups⁽¹⁾.

However, competition within public utility delegation agreements diverges somewhat from traditional public procurement. Here, the process is initiated by a public announcement and followed by negotiation. Moreover, the delegating authority is required to issue a Specifications Document that outlines both organizational and contractual requirements governing the delegation agreement. As per Article 13, this document includes two primary components:⁽²⁾

- **Candidacy File Book:** This section specifies the administrative requirements, including criteria for candidate eligibility, required documentation, and procedures for candidacy submission.
- **Book of Offers:** This part details the administrative, technical, and financial conditions of the proposed offer.

2.1.3- Constraints on the Principle:

Although the principle of competition is essential, its application in public utility delegation is nuanced, with restrictions imposed in alignment with public interest needs. Article 47 of Executive Decree No. 18-199, referencing Article 75 of Presidential Decree No. 15-247, outlines specific grounds for temporary or permanent exclusion of individuals or entities from participating in contracts. These include circumstances such as:⁽³⁾

- Withdrawal or refusal to complete the contract before the offer validity expires;
- Situations of bankruptcy, liquidation, cessation of activities, judicial restructuring, or settlement;

¹ Ammar Aouabdi, “Administrative law”, Part 2, Administrative activity, 04th Edition, University Publications Office, 2007, p.205

² The Executive Decree No.18-199, op.cit.

³ Article 75 of the Presidential Decree No.15-247

- Convictions that challenge professional integrity;
- Non-compliance with tax or parafiscal obligations;
- Failure to submit mandatory financial disclosures for the company;
- False declarations;
- Inclusion on lists of entities held responsible for contract cancellations under their oversight;
- Registration among economic operators barred from public contracts;
- Listing on the National Register for serious infractions of fiscal, customs, and trade laws;
- Convictions for severe breaches of labor and social security laws;
- Non-compliance with obligations outlined in Article 84 of this Decree.

The cases cited in Article 75 of Presidential Decree No. 15-247 represent administrative penalties for actions that contravene principles of fair competition and transparency. These exclusion criteria, consistent with those governing public procurement, demonstrate Algeria's regulatory commitment to integrity and anti-corruption within public utility delegation agreements.

As an exception to open access, Article 10 of Executive Decree No. 18-199 restricts competition to national applicants. Additionally, Article 22 stipulates that public utility delegations may only be granted to legal entities subject to Algerian law, a requirement intended to address the unique regulatory considerations of delegation contracts and to promote national economic interests by fostering local investment in public utilities.⁽¹⁾

2.2- Governance Aspects in the Principle of Equality Among Candidates:

2.2.1- Definition of the Principle:

The principle of equality finds its roots in Article 37 of the Algerian Constitution, as amended in 2020, which stipulates that "All

¹ Article 10 and Article 22 of the Executive Decree No.18-199

citizens are equal before the law and entitled to equal protection...". This principle holds particular significance in public utility delegation agreements, where open access alone does not suffice; non-discrimination among candidates is also essential. Equality among candidates in public delegation has been defined as the requirement that "all participants in a tender are treated legally and equally"⁽¹⁾, ensuring that each candidate enjoys the same opportunities to contract with the administration, free from preferential or discriminatory treatment.

This principle precludes the selective application of conditions, prohibiting exemptions or amendments to conditions for specific candidates. For equality to be fully realized, all legally qualified participants must be afforded the same opportunity to submit proposals, with equal consideration given to their submissions ⁽²⁾. Additionally, the selection criteria for delegates must be non-discriminatory, thereby safeguarding fair competition within public utility delegation. ⁽³⁾

Notably, the relationship between competition and equality is inherently interdependent; adherence to competitive principles necessitates equal treatment, while equality serves as a critical instrument in fostering competition⁽⁴⁾.

2.2.2- Guarantees Upholding the Principle within Executive Decree No. 18-199:

The principle of equality in public utility delegation agreements is underscored by the requirement for the delegating authority to implement specific legal guarantees, instilling confidence that equal opportunities are available to all eligible candidates without discrimination. Achieving this objective necessitates establishing contract terms on impartial and

¹ Mohammed Khalaf Al-Jubouri, "Administrative contracts, library of the House of culture for publishing and distribution", Amman, 1998, p.52

² Nadia TIAB, "Mechanisms of combating corruption in the field of public transactions", PhD thesis, University of MouloudMaamari, TiziOuzou, Algeria, 2013, p.71

³Zamal Salah, op.cit. p.503

⁴KadoudjHamama, "The process of concluding public contracts in Algerian law", University Services Office, Algeria, p.122

objective foundations, accompanied by standardized evaluation criteria for assessing proposals.⁽¹⁾

These guarantees are explicitly supported by Article 11, Paragraph 2, of Executive Decree No. 18-199, which mandates that "the delegation of public utility shall be awarded to the candidate offering the best proposal according to the scoring system outlined in the Specifications as per Article 13" ⁽²⁾.

Article 13 of the same decree further delineates the evaluation criteria for candidates' proposals, which include professional qualifications (certifications pertinent to managing the public utility) and technical capacities (human resources, financial resources, professional experience, and financial stability, evidenced by accounting records and banking references).

These objective criteria provide a robust framework for achieving equality among candidates. However, further clarification may be required to reach the level of detail found in Article 78 of Presidential Decree No. 15-247, which outlines criteria for selecting contractors in public agreements.

2.2.3- Exceptions to the Principle of Equality in Public Utility Delegation:

While equality is a guiding principle, certain exceptions exist. For instance, special provisions apply to small and medium-sized enterprises (SMEs), as the delegating authority is encouraged to prioritize delegations to these entities under Article 23⁽³⁾. Additionally, foreign entities are excluded from participating in public utility delegation contracts, with Article 22 explicitly requiring candidates to adhere to Algerian law to qualify for candidacy.

¹ Iman Ouanes, Fatima Zahra El Fassi, "The principle of competition in public utility delegation contracts in Algeria", Journal of Research, Vol.6, No.02, p.144

² Article 11 of the Executive Decree No.18-199

³ Article 23 of the Decree No.18-199 states that: "if small and medium-sized enterprises can fulfil the object of delegation of the public utility, the delegated authority shall give it priority in granting delegation"

This exception reflects an intent to favor domestic investment in public utilities, balancing economic priorities with governance principles⁽¹⁾.

According to Articles 22 and 23, the delegating authority may also restrict certain parties from contracting, thereby supporting national SMEs when they are equipped to undertake the delegation, thus promoting national economy.

2.3- Governance Aspects in the Principle of Procedural Transparency:

2.3.1- Definition of Procedural Transparency:

Transparency in procedures involves the clarity and accessibility of legislative and regulatory rules, ensuring practices are openly understood and verifiable⁽²⁾. In the domain of administrative contracts, transparency allows candidates and stakeholders to confirm that the selection process is conducted with clear, objective criteria⁽³⁾.

Transparency is essential in public utility delegation contracts, as competition can only be genuine if procedural openness is ensured. Transparency fosters trust, clarity, and honesty, dispelling any atmosphere of secrecy or mistrust historically present in government-private sector interactions. In this way, transparency reflects openness in its purest form⁽⁴⁾.

2.3.2- Implementation of Transparency within Executive Decree No. 18-199

¹ Issam Sabrina, "Delegation of the public utility of industrial and commercial character in Algeria", Thesis for obtaining a doctorate in Law, specialization of Business Law, Faculty of Law and Political Sciences, University of Mouloud Maamari, Tizi Ouzou, 2020, p.146

² Hassan Abdul Rahim Al-Sayed, "Transparency in the rules and procedures of government contracting in the State of Qatar", a comparative study with the unitral model law on government procurement, Sharia and Law Magazine, No. 39, July 2009, p.55

³ Hassan Abdul Rahim al-Sayed, op.cit., p.57

⁴ Ibrahim Al Shehawi, "The contract of public utility delegation", B.O.T, – A comparative study –, House of Writers, Egypt, 2003, p.102

The provisions of Executive Decree No. 18-199 mandate transparency across several articles (Articles 25, 26, 27, and 28), which include specific standards and procedures to reinforce this principle:

- **Wide Publication of Tenders:** Article 25 mandates broad dissemination of competition applications, including publication in two daily newspapers (one in the national language and one in a foreign language).
- **Precise Information in Applications:** Requirements for detailing all relevant information in competition applications.
- **Predefined Conditions in Specifications:** Delegating authorities must prepare selection criteria, participation requirements, and terms of the delegation contract within the Specifications document. Candidates are also required to submit a declaration of integrity.
- **Standardized Bid Submission Procedures:** Specification of time and place for bid submission and opening, with all candidates invited to witness the envelope-opening process.
- **Provisional Award Announcement:** Article 41 mandates the public announcement of the provisional award decision in the same manner as the tender notice, allowing unsuccessful candidates the opportunity to challenge the award decision through the public utility delegation committee.

This decree emphasizes the need for procedural transparency at each stage of the public utility delegation process, as any breach of transparency can foster corruption and misuse of public funds.

Conclusion:

The principles governing public utility delegation agreements mirror those applied to public contracts, as outlined in Article 05 of Presidential Decree No. 15-247. Through these principles, the State reinforces its commitment to governance by embedding competitive fairness, equality, and procedural transparency to protect candidates from potential administrative bias. Together, these principles provide a cohesive framework to counteract corruption, favoritism, and other governance challenges in public utility delegation agreements.

Through this study, we have reached the following results:

- Effective governance of public utility delegation agreements is essential to realize their benefits. Transparency and anti-corruption measures are key to enhancing service quality for citizens and ensuring candidates are selected through objective and fair criteria.
- Algerian legislation has introduced governance measures within the framework of public utility delegation agreements, emphasizing the importance of fostering competition, guaranteeing equal access for candidates, and maintaining procedural clarity from the tender announcement to the final award decision, thereby ensuring transparency throughout the process.

Based on the above results, we can put the following suggestions:

- Strengthening governance standards in public utility delegation agreements is necessary to achieve strategic objectives. A clear legal framework, enacted by the legislative authority, would help define roles and responsibilities among parties, bolstering investor confidence.
- Promoting information and communication technology adoption in public utility delegation, including electronic transactions, to support transparency and enhance access to competitive applications.
- Updating delegation agreement principles to align with recent public utility reforms under Law No. 23-12, which supersedes Presidential Decree No. 15-247 and excludes specific references to public utility delegation.