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The Code of Ethics and Professional Conduct in the Field of Public Procurement

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ABSTRACT:

In order to establish a transparency policy in the field of public procurement, a new mechanism was introduced into the public procurement regulations by Presidential Decree No. 15-247 regulating public procurement and public service concessions, followed by Law No. 23-12, which sets out the general rules relating to public procurement.

This new mechanism is a code of ethics and professional conduct, accessible to all agents involved in the exercise of their duties, including the monitoring, conclusion, and implementation of public procurement and public service concessions. This code, which the legislator has emphasized as mandatory for all agents involved in public procurement, aims to ensure the implementation of investments and public projects in full transparency and to effectively enshrine the concept of integrity rules, and the effective consecration of the concept of the rules of probity, these agents bearing full responsibility in this regard.

key words: The code of ethics and professional conduct- Rules of probity- Public procurement

Introduction:

Public procurement is the true engine of national development. This is why countries pay close attention to it, ensuring the oversight of its conduct, awarding, and monitoring of all stages. Algeria has adopted this same approach to protect public funds and the rights of its citizens.

Algeria has followed this same approach to safeguard public funds and protect the rights of its citizens. Algerian legislation provides mechanisms to combat suspicions of corruption among state officials, enshrined in the regulations governing

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public procurement and public service delegations by Presidential Decree No. 15-247.

Algerian law provides mechanisms to combat suspicions of corruption among state officials, enshrined in Presidential Decree No. 15-247 on public procurement and public service delegations. These mechanisms include the preventive mechanism represented by the Code of Ethics and Conduct for Public Officials involved in public procurement, provided for in Section 8 on the fight against corruption in Chapter 3 on the conclusion of public contracts.

This study aims to identify the code of ethics and professional literature of the agents responsible for their supervision, making it available to them and encouraging them to respect it throughout the exercise of their functions of conclusion, execution and supervision of public contracts and public service delegations. This supervision, considered as a preventive self-monitoring of agents during the execution and conclusion of public contracts, is always proactive and preventive.

Using this approach, we address the following question:

What is the role of the Code of Ethics and Professional Conduct in ensuring transparency in public procurement in Algeria?

Based on this question, we have divided our research into two sections. **The first section** addresses the conceptual aspect of the Code of Ethics and Professional Conduct in public procurement, while **the second section** addresses the role of the Code of Ethics and Professional Conduct in implementing transparency in public procurement in Algeria.

Section 1: Conceptual Aspect of the Code of Ethics and Professional Conduct for Public Procurement

Ethics is a hot topic that has recently received considerable attention, particularly in the field of public procurement. A code of ethics has been established for public officials responsible for public procurement to protect public funds and establish the principle of procedural transparency.

Subsection 01: Definition of the Code of Ethics and Professional Conduct for Public Procurement

In the following paragraph, we will discuss the definition of professional ethics in general **(firstly**), and then its specification in the field of public procurement **(secondly).**

Firstly: Definition of professional ethics in general

It is defined as "the term which designates the regulatory texts and standards imposed by a profession or employment, which include the duties, obligations and responsibilities to which the persons concerned are subject for its exercise."[1]

This definition clearly demonstrates that professional ethics has a broad scope in the professional and functional environment, as it represents an employee's

[1] Tebboune Abdelkrim, Anti-corruption measures related to the codes of conduct and ethics of civil servants in Algerian law, Law and Society Review, Issue 2, Volume 7, Algeria, 2019, p. 26.

commitment to their duties, as defined by law. Therefore, it imposes binding rules, mainly related to employment or profession, regardless of the nature of the services provided or the list of beneficiaries. It is also defined as "the set of values and behaviors that employees must respect in the performance of their duties and in their relationships with each other, on the one hand, and with the public, on the other."[1]

It is therefore a relationship and a commitment with the entire environment to which the civil servant belongs.

Secondly: Definition of professional ethics in the field of public procurement

Professional ethics in the field of public procurement is not recognized by Algerian law, which is based on the main principles, values and rules of procedure for the conclusion and execution of public contracts, and even on the aims and objectives sought in the best possible use of money, because ethics constitutes the main source.

Among the most important principles addressed by the law regulating public procurement and public service delegations, pursuant to Presidential Decree N° 15-247[2], are public needs and demands, as well as rules relating to the procedures for concluding and executing contracts, etc.

Article 5 stipulates that: "To ensure public procurement and the proper use of funds, public procurement must take into account the principles of free access to public procurement, equal treatment of candidates and transparency of procedures, while respecting the provisions of this decree."

Similarly, we note that the Anti-Corruption Law No. 06-01, as amended and supplemented, stipulates in its Article 9 that the procedures in force in the field of public procurement must be based on the rules of transparency, fair competition and standards of objectivity.

Transparency, fair competition, and objective standards and principles are essential criteria for combating corruption in public procurement. This applies to all contracting parties responsible for this task, whether they are internal or external purchasing committees.

The code of ethics for public procurement and public service delegations is a set of rules and principles that public officials involved in public procurement and public service delegations must respect in the performance of their duties and in their relations with contracting parties.

Subsection 02: The Concept of the Code of Ethics and Professional Conduct for Public Procurement Officials

[1] Boutaba Mourad, Reading of the text of article 88 of presidential decree 15-247 regulating public procurement and public service delegations, University of Algiers 1, Number 32, Part 03, 2016, p. 13.

[2] Presidential Decree No. 15-247 of 16/09/2015 regulating public procurement and public service delegations, Official Journal No. 50 of 20/09/2015, p

We will discuss the concept of the Code of Ethics and Professional Conduct for Public Procurement Officials established by Presidential Decree No. 15-247 (**firstly**), then the characteristics of this code (**secondly**).

Firstly: **The concept of a Code of Ethics and Professional Conduct for Civil Servants Involved in Public Procurement, as stipulated in Decree 15-247**.

The first paragraph of Article 88 of Decree 15-247 provides for a Code of Ethics and Professional Conduct for public officials involved in the conclusion and execution of public contracts and public service concessions, which must be registered by the Public Procurement Regulatory Authority.

Public officials are informed of this code and undertake to comply with it through a declaration. They must also sign a declaration of absence of conflict of interest. A template for these two declarations is attached to the code.

This authority establishes a Public Procurement Regulatory Authority for public service concessions, with independent management, a public demand observatory, and a national dispute resolution body.[1]

Say ley na Algeria et ag mangiiter na kabaliksan ed sayan kodigo, balet ta limitaan to itan ed obligasyon na saray ahente na kontrata ya unoren itan. Kaiba ed saya so amin ya responsable ed pansumpal tan pangipaakseb na saray kontrata ed publiko, balanglan membro na kontrata, elehidon opisyal, odino empleyado, salanti, saray representante na saray komite ed loob tan paway, membro na komisyon na panag-audit, tan arum nira.

Say Code of Ethics for Contract Agents et mankaliktan milaban ed amin a klase na panagkurakot. Sakey iya ed saray mekanismo ya malinew ya ginetman mangilaktip ed amin ya empleyado, ahente na kontrata, tan saray elehidon opisyal ya nalalanor ed pansumpal tan pangipaakseb na saray kontrata na publiko tan saray delegasyon na serbisyo publiko.

Sayan kodigo et agni nipalapag tan nayarin iter na kabaliksan ed onggendan: "Say kodigo na etika et sakey a kodigo ya mangilaktip ed saray totontonen tan prinsipyo ya nepeg ya respetoen na saray opisyal na publiko ya nalalanor ed saray kontrata ed publiko tan saray delegasyon na serbisyo publiko diad panggawa na saray kimey da tan diad relasyon da ed saray kliyente. Saya so inletneg na regulatory authority parad saray delegasyon na panagsaliw na publiko tan serbisyo publiko.[2]

Secondly: Characteristics of the Code of Ethics and Professional Conduct for Public Officials Involved in Public Procurement

The Code of Ethics for Public Officials Involved in Public Procurement has several characteristics, as follows:

1- Codification: A set of legal or jurisprudential provisions relating to public policy. The term "code" is similar to "codification" and "charter," as both terms are used in the field of ethics.

[1] Presidential Decree No. 15-247, op. cit.
[2] Botaba Mourad, op.cit, p13.

2- Binding: All officials involved must comply with this code throughout their appointment, election, or assignment to conclude and execute public procurement contracts.

3-Non-conflict of interest: All officials involved undertake to comply with it through a declaration. They must also sign a declaration of non-conflict of interest.

4- Prevention: The code constitutes a guarantee against corruption, to which the officials involved are not subject and who, as the code implies, are impartial in their work.

Section 2: The Role of a Code of Ethics and Professional Conduct in Transparency in Public Procurement in Algeria

The code of ethics and professional conduct is a preventive mechanism aimed at implementing the concept of procedural transparency in public procurement, to which public officials involved in the conclusion and execution of public contracts are bound.

This preventive nature remains a procedure that is likely to occur, leading to violations that are punishable by sanctions for violators. Therefore, we address the preventive aspects in the first subsection, then we will talk the foundations of the rules of probity are laid through the provisions of law 23-12 in the second subsection of the same theme.

Subsection 01: Preventive Aspects for Contracting Parties During the Conclusion and Execution of Public Procurement Contracts.

Adapting this code requires reference to laws and regulations in general so that it can be published and enforced. At the international level, we note that, to embody transparency, each country strives to promote integrity, honesty, and accountability among its public officials, in accordance with the fundamental principles of its legal system.[1]

The African Charter itself stipulates some of these obligations in this regard, including[2]:

- Respect for professionalism, transparency, and integrity.
- Respect for decency, impartiality, and responsible behavior.
- Prevention of conflicts of personal interest between public officials and private interests.
- Respect the confidentiality of documents and information.
- Demonstrate excellence and innovation in the performance of one's duties.

At the national level, duties and ethics are stipulated in Ordinance No. 06-03, which establishes the general organic law for the civil service, and must be respected.

[1] Botaba Mourad, op.cit, p15.
[2] Same reference, p16.

This law defines the objectives that each employee must achieve in order to establish a true notion of integrity, namely[1]:

- The duty to perform one's duties with integrity and impartiality.
- Responsibility for their implementation.
- The duty of discretion.
- The duty to assume one's responsibilities.
- The commitment to professional secrecy.
- The duty to treat users of public services with courtesy and without delay.

Duties related to professional ethics are stipulated in Law No. 06-01 on the prevention and fight against corruption. These include:

- Transparency and integrity of individuals[2].
- Integrity, honesty, accountability, and fair and appropriate performance.[3]
- Conflicts of personal interest.[4]
- Organizing and managing the decision-making process and its justification, disseminating information, and responding to complaints.[5]

To ensure the transparency and integrity of the public procurement process, the procedures in force must be based on the principles of transparency, fair competition, and objective criteria.

These rules must, in particular, establish:

- the publication of information relating to public procurement procedures;
- the prior establishment of conditions for participation and prevention;
- objective and precise criteria for decision-making regarding public procurement;
-the exercise of all remedies in the event of non-compliance with public procurement rules.[6]

For these procedures to be implemented by public officials, a set of guarantees must be made available to officials, including:[7]

- Recruit qualified and competent professionals to the public procurement departments of public institutions, administrations, and oversight bodies. These two criteria include requiring specific specialization for candidates for positions related to the conclusion, implementation, and monitoring of public procurement contracts, as well as conducting background checks to identify the best candidates.
- Train public procurement officials in ethics. This training must be ongoing and provided by experts in public administration, public procurement, and human resources management.

[1] The articles 41, 43, 47, 48, 53 of Ordinance No. 06-03 of 15/07/2006 on the general status of the public office. Official Journal No. 46 of 16/07/2006.
[2] Article 04 of Law No. 06-01 amended and supplemented, previous reference.
[3] Article 07, same reference.
[4] Article 08, same reference.
[5] Article 11, same reference.
[6] Article 09 of Law No. 06-01 amended and supplemented, previous reference.
[7] Botaba Mourad, op.cit, p21.

- Ensure adequate salaries for public procurement officials to protect them from temptation.

Subsection 02: Establish rules of probity through the provisions of Law 23-12.

The legislature included a special chapter in the provisions of Law 23-12[1], defining the general rules relating to public procurement. This chapter appears in Chapter 4, entitled "Rules of Probity," of Part Three, which deals with methods and procedures for awarding public procurement contracts.

Firstly: Restore legislative power to their prerogative over public procurement.

For many years, public procurement in Algeria was governed by regulatory texts, initially by executive decrees, then by presidential decrees. This clouded understanding of public procurement and placed it in the hands of the executive branch for several years.

Restoring this legislative authority aims to protect public procurement and constitutes, in itself, a true guarantee of transparency in the field of public procurement.

The code of ethics and professional conduct for public officials involved in the preparation, conclusion, monitoring, negotiation, or execution of public contracts is approved by executive decree upon the proposal of the Minister of Finance.[2]

Secondly: Measures relating to the rules of probity in public procurement.

The discovery of indications of bias, before, during, or after the conclusion of a public contract or ancillary contract, constitutes sufficient grounds for the contracting authority to take any dissuasive measures, including the termination or cancellation of the public contract or ancillary contract.[3]

The economic operator concerned must be included as a precautionary measure on the list of economic operators prohibited from participating in public procurement, maintained by the competent authorities of the Ministry of Finance. The contracting operator is also required to submit a declaration of integrity.[4]

When membership in the arbitration committee, membership, or the role of rapporteur within a public procurement committee are incompatible with membership in the tender opening and evaluation committee, when the same matter is concerned.[5] concerned.[5]

Furthermore, the contracting authority may not award a public contract, for a period of five years, in any form whatsoever, to its former employees who have

[1] Official Journal No. 56 of 08/06/2023, p 05.
[2] Article 65 of Law 23-12, same reference, p13.
[3] Article 66/1 of the same law, same page.
[4] Article 66/2 of the same law, p13.
[5] Article 68 of Law 23-12, same reference ,same page.,

ceased to exercise their functions, except in the cases provided for by the applicable legislation and regulations.[1]

Third : Use the conflicts in the environment with the public agents involved in the public markets.

When the interaction privileges, direct or indirect, of a public agent participating in the preparation, in conclusion, at the end, in the negotiation or execution of a public operation, are in conflict with the public interaction and are susceptible to compliance with normal operations. functions, it is necessary to inform him that his computer is automatically compiled and its functions are distributed.[2]

Of course, an economic operator contracting a public market cannot be troubled by a situation that conflicts with the interests of people in the market. If this situation is survient, it should inform the adjudicator.[3]

Conclusion

It follows from the above that the code of ethics and professional conduct is one of the most important mechanisms for embodying the transparency policy regarding public procurement, particularly for public officials involved in the procurement process.

This code was established by Presidential decree No. 15-247, regulating public procurement and public service missions, and subsequently by Law No. 23-12, establishing the general rules for public procurement. We have reached the following conclusions:

- It is binding on officials and is based on the values, principles, and rules governing the procedures for concluding, executing, and monitoring public procurement and public service missions.
- It constitutes a new mechanism for combating corruption and related offenses.
- It guarantees self-control by contracting officials involved in the monitoring and execution of public procurement.
- It provides preventive oversight to protect public funds from corruption. - It requires all stakeholders in the public procurement process to comply with it and to review it regularly.
- This guide is an information tool for public procurement stakeholders regarding their responsibilities and the penalties incurred in the event of violation. - It helps raise awareness among all stakeholders in public procurement procedures of the severe penalties incurred in the event of violation.
- Based on these findings, we can make several suggestions, which we consider both preventive and corrective, namely:

[1] Article 69 of Law 23-12, same reference, same page.
[2] Article 67 of Law 23-12, same reference, same page.
[3] Article 70 of Law 23-12, same reference, same page.

- The need to supervise and monitor public officials involved in public procurement in order to establish a code of ethics and professional conduct.

- The need to select public officials based on their qualifications and skills, with mandatory training and monitoring throughout their careers to improve their performance.

- The need to streamline the use of public funds by public officials. - The need to impose strict controls on public officials to protect public funds, both before and during public procurement procedures.

- The need to ensure that public officials' declarations are binding so that they can assume their responsibilities and withstand the sanctions imposed.

- Improving public officials' salaries and providing them with adequate housing to protect them from criminal acts related to public procurement**.**

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