

Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges

ضعف الرقابة غير القضائية على العقود العامة في الجزائر: دراسة في الإشكاليات والتحديات

Khalfallah faouzi*, Faculty of law and political science, University of Khenchela
fkhalfallah6@gmail.com

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Abstract:

This research analyzes the challenges of non-judicial oversight of public contracts in Algeria. Internal administrative oversight lacks independence and efficiency, while external oversight suffers from organizational complexity and the ease with which contractual addenda can be circumvented. Furthermore, financial oversight is slow to intervene and its various bodies operate without effective coordination, weakening the protection of public funds. The research recommends simplifying procedures, developing expertise, and establishing a unified database within the framework of Law 23-12.

Key words: Non-judicial oversight, public contracts, administrative oversight, financial oversight, independence.

Introduction:

Public contracts, or public procurement, are the cornerstone of public finance management in Algeria. They constitute the primary mechanism for implementing development projects and acquiring supplies, services, and studies through the contracting authority. These contracts hold immense importance within the Algerian legal system, given their crucial role in achieving the public interest while balancing contractual flexibility with adherence to strict legal controls aimed at protecting public funds from waste and corruption.

The importance of examining the weakness of non-judicial oversight of public contracts in Algeria is heightened by the economic and administrative challenges facing the country. This oversight serves as the first line of defense against violations before they escalate into legal disputes. While Presidential Decree No. 15-247 of September 21, 2015, amended by Law No. 23-12 of June 5, 2023, regulates public procurement based on the principles of integrity, transparency, free competition, and equal opportunity, non-judicial oversight—encompassing internal and external administrative, financial, and accounting oversight—suffers from structural problems that hinder its full effectiveness. This article aims to provide an in-depth analysis of the weaknesses in non-judicial oversight of public contracts by uncovering the organizational and functional problems that hinder it and exploring the practical challenges arising from overlapping jurisdictions and procedural delays. The ultimate goal is to propose ways to strengthen this oversight to ensure better protection of public funds.

While judicial oversight, exercised by the Council of State and administrative courts, is relatively effective in resolving disputes arising from public contracts, how can the weakness of non-judicial oversight in preventing such disputes be explained, despite the diversity of its

* Corresponding Author

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

mechanisms and the comprehensiveness of its legal texts? What are the structural problems and functional challenges that impede its ability to address the risks of waste and corruption in the management of public contracts?

This article adopts a comparative legal analytical approach, examining Algerian legislation governing non-judicial oversight, drawing on administrative practices and oversight decisions, and comparing them with similar experiences to draw lessons learned. The aim is to offer a critical perspective that contributes to the development of the legal framework. The first section addresses the challenges of administrative oversight of public contracts. Its first subsection examines the weakness of internal oversight stemming from overlapping responsibilities and a lack of independence. The second subsection then explores the challenges of external oversight, namely organizational complexity and procedural delays. The second section focuses on the limitations of financial and accounting oversight, with its first subsection addressing the delays in prior oversight and the subsequent overlap in jurisdictions among various agencies.

1-Tilte I: Problems of administrative oversight of public contracts

Administrative oversight of public contracts is one of the most important mechanisms of administrative control, as it aims to ensure compliance with legal procedures and regulatory frameworks in the conclusion and execution of contracts. This oversight is divided into internal oversight exercised by the contracting authority itself, and external oversight exercised by independent bodies. However, both types face fundamental challenges that weaken their effectiveness.

1.1- Weak internal administrative control

The contracting authority exercises its internal control through two main committees: the bid opening committee and the bid evaluation committee. The task of these committees is to ensure compliance with contracting procedures and to verify that bids meet the required technical and financial conditions. However, this control faces structural challenges that limit its effectiveness.

1.1.1 Section One: Overlapping Tasks and Lack of Independence

The independence of oversight bodies is a fundamental condition for their effectiveness, as oversight cannot be effective if it is subject to external pressures and influences. The Algerian legislator stipulated in Article 156 of Presidential Decree 15/247 that members of the bid opening committee may not also serve on the bid evaluation committee, "meaning that membership in both committees is incompatible."¹ However, this formal separation is insufficient to guarantee the independence of oversight. Ultimately, committee members remain employees of the contracting administration, subject to the authority of their superiors and bound by organizational and hierarchical relationships within the administrative structure. This organizational link limits their ability to make independent and impartial decisions, especially when the contracting authority has already settled on a specific bidder or when there is political or administrative pressure in favor of a particular bidder.²

Practice shows that members of bid opening and evaluation committees are often chosen from among the contracting authority's employees without clear, objective criteria, which undermines their impartiality and competence. Furthermore, the lack of specific legal protection for these members makes them vulnerable to pressure and influence, especially given the absence of a culture of integrity and transparency in some departments.³ In addition, internal administrative control lacks independent verification mechanisms. While administrative control is defined as "a process by which an organization's management can determine the extent to which implementation procedures, steps, and methods conform to established plans,"⁴ this definition presupposes a management capable of objectively controlling itself—an unrealistic assumption given the nature of hierarchical administrative relationships and the pressures exerted by higher authorities on employees.

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

Field studies show that "weaknesses in contract management have far-reaching consequences," as departments rely on the contractor to interpret the contract correctly without basic checks on payments and performance.⁵ This lack of independence leads to "risks of fraud and error without basic checks on payments,"⁶ which puts public funds at risk and opens the door to manipulation and abuse.

1.1.2 Inadequate Competence and Qualification

Professional competence is a prerequisite for effective oversight, as public procurement requires in-depth technical, financial, and institutional knowledge. Article 157 of Presidential Decree 15/247 stipulates that members of the bid evaluation committee must be "competent," without specifying clear and objective criteria for measuring this competence.⁷

This ambiguity in defining criteria leaves room for the contracting administration's subjective assessment in selecting committee members, often leading to the appointment of unqualified or insufficiently experienced personnel in the field of public procurement. Studies show that many Algerian administrations lack the technically, financially, and institutionally qualified staff to effectively exercise this oversight.⁸

Furthermore, training in public procurement and its oversight remains limited in Algeria, as there are no organized and ongoing training programs for the staff of the relevant administrations. Furthermore, the increasing complexity of legal texts governing public procurement—especially after continuous amendments—makes it difficult for staff to keep pace with developments and properly apply the rules.⁹

Practice shows that this lack of competence is particularly evident during the evaluation of technical and financial bids, where committee members often fail to distinguish between acceptable and non-compliant bids, or to accurately determine the estimated value of contracts. This weakness leads to the acceptance of unsuitable bids or the rejection of excellent ones, harming the public interest and jeopardizing the effectiveness of public spending.

1.2- Limitations of external administrative oversight

External administrative oversight is exercised through various public procurement committees (municipal, provincial, ministerial, and national), which aim to ensure respect for the principles of integrity, transparency, and free competition in awarding contracts. However, this oversight faces regulatory and procedural limitations that restrict its effectiveness.

1.2.1 Organizational Complexity and Multiple Committees

The external oversight system in Algeria is characterized by significant organizational complexity, with multiple procurement committees operating according to both financial and organizational criteria. The municipal committee handles works contracts valued at less than 200 million dinars, while the provincial committee handles contracts up to one billion dinars, and the national procurement committee intervenes for contracts exceeding this amount.¹⁰

This multiplicity of committees complicates procedures and lengthens deadlines, as the contracting authority must navigate various administrative levels to submit files and await approvals. Article 136 of Presidential Decree 12/23 stipulates that the committee must decide on the approval request within 20 days of the submission of the complete file.¹¹ However, this deadline is often not met due to administrative bottlenecks, bureaucracy, and insufficient human resources within these committees.

Furthermore, the multiplicity of committees leads to inconsistencies in the application of standards, as one committee may approve a particular application while another committee rejects a similar application in a different state or municipality. This inconsistency undermines the principle of equality before the law and limits the predictability of economic actors.¹²

In summary, the proliferation of procurement committees in Algeria's external oversight framework—structured across municipal, provincial, and national levels—generates undue procedural delays, administrative inefficiencies, and inconsistent decision-making that erode the

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

predictability essential for economic actors. Despite regulatory timelines like the 20-day approval period under Article 136 of Presidential Decree 12/23, persistent bottlenecks and resource shortages undermine these safeguards, ultimately compromising core principles of equality and legal certainty in public procurement. Reforming this fragmented structure toward a more streamlined, unified oversight mechanism could enhance transparency, expedite processes, and bolster trust in the system.

1.2.2 Limited Oversight of Contractual Addenda

An addenda is a "contractual document attached to the original contract" that is concluded to increase or decrease the service or amend contractual terms.¹³ The Algerian legislator has authorized the administration to conclude addenda to public contracts without being subject to the same complex procedures applied to the original contract, within certain limits.

However, in practice, this facilitation becomes a loophole for circumventing oversight. The legislator stipulates that an addenda is exempt from the oversight of external bodies if its subject matter does not alter the names of the parties, guarantees, or deadlines.¹⁴ However, this definition remains vague, leaving the door open for administrations to conclude substantial addenda that change the nature of the original contract without being subject to external oversight.

Studies show that the "issue of addenda and its control in public contracts" is one of the most important challenges, as "the Algerian legislator recognized the administration's authority to amend its contracts through addenda."¹⁵ For example, an administration may conclude a works contract of a certain value, and then conclude successive addenda that greatly increase the total value without being subject to the control of higher committees, which weakens the effectiveness of external control and allows the administration to bypass the established controls.

2- Limitations of Financial and Accounting Control

Financial and accounting control is one of the most important mechanisms for protecting public funds, as it ensures that expenditures comply with financial laws and regulations, and achieves efficiency and economy in the use of public resources. This control is divided into prior control (exercised before the transaction is concluded) and subsequent control (exercised after implementation). However, both types face limitations that restrict their effectiveness.

2.1 Problems of prior financial control

Prior financial control constitutes a fundamental pillar of the public procurement system in Algeria, as it aims to ensure economy and efficiency in the expenditure of public funds by verifying the legality and appropriateness of procedures before their implementation. However, this system faces fundamental problems that reveal structural and procedural contradictions hindering the achievement of its objectives. On the one hand, financial control intervention occurs at late stages of the contracting process, which limits its preventive capacity. On the other hand, the system suffers from a multiplicity of oversight bodies and overlapping jurisdictions without effective coordination. This section addresses these two main problems, focusing on their negative impact on the effectiveness of control and the guarantee of the principle of economy in public spending.

2.1.1 Transactions Do Not Acquire Legal Status Until After Oversight

A transaction acquires legal status "after being subjected to oversight by the financial controller and the public accountant within the framework of financial and accounting control."¹⁶ However, this oversight comes at a late stage in the transaction process, after it has passed through internal and external administrative controls.

This delay in financial oversight limits its effectiveness in preventing violations before they occur. The financial controller receives the file after the procedures have been completed and the decisions have been made, thus limiting their role to a formal verification of the documents without scrutinizing the economic and technical content of the transactions.¹⁷

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

Studies indicate that "public procurement oversight in Algeria" lacks early prevention mechanisms, focusing on verifying the conformity of procedures with legal texts without evaluating the economic feasibility of the transaction and its suitability to actual needs.¹⁸ This focus on form over substance weakens the ability of oversight to achieve the objectives of efficiency and economy in public spending.

This structural delay in financial oversight reveals a critical imbalance in Algeria's public procurement controls, prioritizing administrative over financial scrutiny and undermining preventive objectives¹⁹. In practice, it fosters a reactive rather than proactive approach, confining the financial controller to formal document checks post-decision, as per Law No. 23-12, without probing economic viability or technical merits—echoing broader critiques of "form over substance" in Algerian oversight studies²⁰. Consequently, this sequencing exposes public spending to risks of inefficiency and undetected violations, perpetuating fiscal waste and eroding accountability, while highlighting the urgent need for earlier integration of financial controls to enhance overall system effectiveness.

2.1.2 The Multiplicity of Oversight Bodies and Overlapping Jurisdictions

Algeria has numerous financial and accounting oversight bodies, including the Financial Controller, the Public Accountant, the General Inspectorate of Finance, and the Court of Accounts. However, this multiplicity leads to overlapping jurisdictions, duplication of oversight, and, in some cases, gaps in oversight.²²

Each oversight body operates within a separate legal framework, without effective coordination among them. The Financial Controller monitors expenditures before disbursement, while the Public Accountant monitors them after disbursement. The General Inspectorate of Finance conducts investigations and inspections, and the Court of Accounts oversees the management of public funds.²³

Studies show that "the General Inspectorate of Finance lacks decision-making authority,"²⁴ and that "its reports are confidential and are not submitted directly to Parliament,"²⁵ which weakens the effectiveness of oversight and limits its ability to deter violations. Furthermore, the lack of coordination mechanisms among these bodies leads to duplication of efforts in some areas and a complete absence of oversight in others.

This fragmented oversight architecture ultimately compromises the integrity of Algeria's public procurement system by diluting accountability and fostering bureaucratic inertia.²¹ Without a centralized coordination body—such as a unified financial oversight council—these parallel structures generate inefficiencies, where duplicated audits waste resources while jurisdictional gaps allow potential irregularities to evade scrutiny.²² Moreover, the confidentiality of key reports, particularly from the General Inspectorate, insulates findings from parliamentary debate, contravening principles of transparency enshrined in Law No. 23-12.²³ Strengthening inter-agency protocols and empowering bodies with binding authority could mitigate these issues, promoting a more cohesive and deterrent financial control regime.

2.2- The second issue: Weak accounting and post-audit controls.

Accounting and post-audit controls are two fundamental pillars for ensuring the effectiveness of public procurement and achieving the principles of economy and efficiency in public spending. However, the Algerian oversight system suffers from weaknesses in these two areas, hindering effective verification of the conformity of procurement transactions with their intended objectives and opening the door to waste and abuses. Accounting controls, which aim to audit accounts and financial obligations, remain limited in their mechanisms and independence, while post-audit controls lack the necessary coordination and follow-up to evaluate results and draw lessons. Hence, the weakness of supervisory oversight emerges as the primary issue, alongside the absence of coordination and follow-up mechanisms as the second, perpetuating a state of ineffective, merely formal oversight.

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

2.2.1 Section 1: Limitations of Supervisory Oversight

The supervisory authority exercises its oversight to verify that "transactions conform to the objectives of efficiency and economy."²⁴ However, this oversight is not robust, as it lacks mechanisms for continuous monitoring and evaluation, and is often limited to formal aspects rather than substantive ones.

The supervisory authority—represented by the ministry, state, or municipality—is often the same entity that is contracting or the body that oversees the contracting entity, which limits its independence and impartiality in exercising oversight.²⁵ Furthermore, supervisory oversight lacks sufficient human and technical resources to effectively monitor all public transactions within its jurisdiction. Given the proliferation of public institutions and the abundance of contracts, oversight becomes a mere formality, limited to approving submitted reports without scrutinizing their content.²⁶

These limitations have direct negative repercussions on the quality of public contracts, allowing for the conclusion of uneconomical or ineffective contracts without genuine scrutiny. This leads to the squandering of public resources and a loss of confidence in the administration. In the absence of independent oversight, it becomes easy to circumvent tender conditions or favor unqualified contractors in exchange for illicit payments, as demonstrated by several reports from the Supreme Audit Court on instances of extravagance in public projects.²⁷

To overcome these problems, it is necessary to strengthen the independence of the supervisory authority by establishing specialized external oversight bodies, supported by modern technological tools such as artificial intelligence for data analysis and automated contract tracking. Furthermore, it is essential to intensify the professional training of inspectors and ensure the allocation of sufficient budgets to transform oversight from a formality to an effective, substantive process, drawing inspiration from successful experiences in countries such as France.²⁸

2.2.2 Lack of Coordination and Follow-up Mechanisms

The Algerian oversight system lacks effective coordination mechanisms among the various oversight bodies, which limits the effectiveness of comprehensive oversight.²⁹ Administrative oversight is conducted in isolation from financial oversight, and accounting oversight lacks sufficient information about the nature of transactions and the circumstances of their conclusion.

Furthermore, the absence of unified databases for public contracts hinders comparative and analytical oversight. There is no central database that compiles information on all public transactions in Algeria, allowing repeat contractors with different administrations to exploit loopholes in the oversight system.³⁰

Post-award oversight also lacks follow-up and evaluation mechanisms. After a transaction is concluded and implemented, there are no effective mechanisms to assess the achieved results and compare them with the set objectives, which weakens the ability to learn from mistakes and improve future performance.³¹

These analytical shortcomings exacerbate the risks of administrative and financial corruption, as they enable repeat contractors to exploit discrepancies between oversight bodies to circumvent legal rules, thereby perpetuating a lack of transparency and undermining the principle of accountability. In the absence of coordination, oversight remains sectoral and disconnected, hindering the development of a comprehensive view of public transaction performance and preventing the detection of irregular spending patterns. Consequently, systemic reform is required, including the establishment of a centralized electronic platform for public contracts and the activation of information-sharing protocols among oversight bodies, to ensure effective post-award oversight that enhances efficiency and economy in public spending.

" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

Conclusion:

This study reveals the structural and practical problems that hinder the effectiveness of non-judicial oversight of public contracts in Algeria, where weak independence and coordination among oversight bodies emerge as key factors exposing public funds to risks. Despite legislative progress achieved by Laws 15-247 and 23-12, administrative and financial oversight often remains formalistic, necessitating radical reforms to enhance efficiency and transparency.

Main Findings

- ✓ Internal administrative oversight lacks genuine independence due to structural subordination and insufficient expertise, weakening its ability to prevent violations.
- ✓ External oversight suffers from organizational complexity and multiple committees, with loopholes in monitoring contract addenda exploited to bypass procedures.
- ✓ Prior financial oversight is temporally delayed, while post-audit controls lack coordination and unified databases, impeding analytical evaluation and learning from errors.

Recommendations

- Simplify the oversight structure by establishing a unified central regulatory body for public contracts.
- Develop ongoing training programs to enhance professional expertise in public procurement and oversight.
- Mandate a centralized electronic database for contracts, with information-sharing protocols among oversight bodies.
- Strengthen oversight independence through legal protections for inspectors and activation of AI tools for tracking and analysis.
- Require mandatory post-contract performance evaluations with public reporting to enhance accountability and transparency

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" Weaknesses of non-judicial oversight of public contracts in Algeria: A study of the problems and challenges"

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