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Governance Of Public Procurement And Protection Of Public Funds : A Study In Light Of The Developments In No. 23-12 Establishing The General Rules For Public Procurement Acts

حوكمة الصفقات العمومية وحماية المال العام: دراسة على ضوء مستجدات القانون رقم 23-12 المحدد للقواعد العامة للصفقات العمومية

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Abstract:

Law No. 23-12 on public procurement constitutes the most recent milestone in Algeria's legislative reform, adopted as a reformist mechanism to consolidate governance principles and ensure the protection of public funds. This study employs a descriptive-analytical approach to the relevant legal and regulatory framework, enriched by references to selected international experiences for comparative depth. The findings demonstrate that the law has established a coherent legal system grounded in transparency, equality, and reinforced pre- and post-contractual oversight, while institutionalizing digitalization through the Public Procurement Electronic Platform as a strategic tool to combat corruption and rationalize public expenditure. The study concludes that these legislative innovations reflect a comprehensive reformist vision aimed at embedding integrity, enhancing administrative efficiency, and advancing the financial governance of the state.

Key words: Public Procurement; Governance; Transparency; Integrity.

Introduction:

The governance of public procurement has become increasingly critical in addressing contemporary challenges related to transparency and the protection of public funds. In this regard, Law No. 23-12, which establishes the general rules for public procurement in Algeria, embodies a comprehensive reform aimed at strengthening regulatory oversight, promoting administrative efficiency, and embedding principles of accountability within all stages of the procurement process. This legislation goes beyond merely defining procedural frameworks; it seeks to institutionalize a culture of integrity and ethical conduct among public officials involved in procurement activities, as mandated by Article 65, which calls for the adoption of a Code of Ethics and Professional Conduct. Moreover, the law emphasizes the vital role of digitalization and the implementation of electronic procurement platforms as innovative tools to curb corruption, increase transparency, and enhance the overall effectiveness of public spending. This study aims to critically assess the effectiveness of these legislative advancements in fostering a more transparent,

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efficient, and ethically responsible public procurement system, while also identifying the potential for further development and technological integration in safeguarding public resources.

In terms of methodology, this research relies on the descriptive-analytical approach to examine the relevant legal and regulatory texts, while drawing on selected international **experiences** for comparative insight. This approach makes it possible to highlight the main innovations introduced by Law No. 23-12 and to assess their impact on governance principles, transparency, and the protection of public funds.

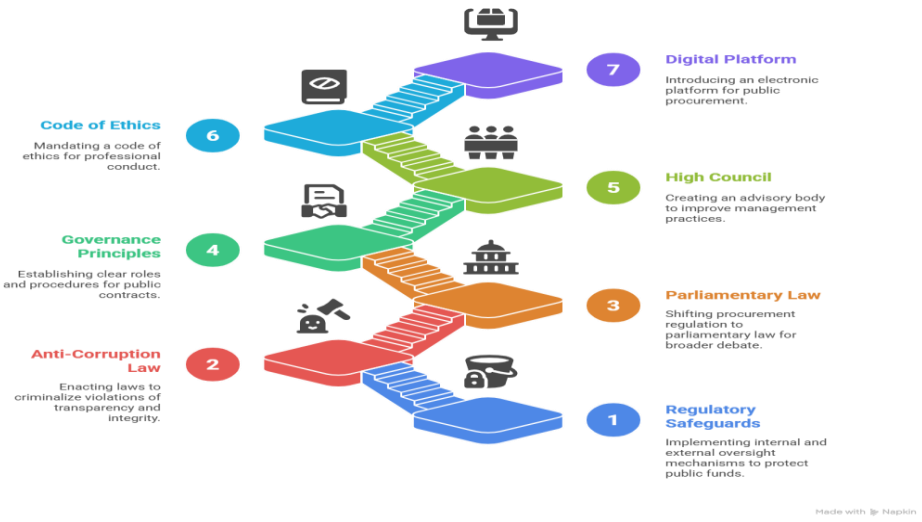
1.Legislative and Regulatory Framework of Public Procurement in Algeria

To address corruption—which has intensified due to global technological developments—the Algerian legislator has surrounded public procurement with a set of regulatory safeguards across all contracting stages. Internal oversight is exercised by the contracting authorities themselves through specialized committees, while external oversight is entrusted to independent bodies such as the budgetary controller, the General Inspectorate of Finance, and the Court of Auditors, with the aim of strengthening the protection of public funds.

Furthermore, Law No. 06-01 on the Prevention and Fight Against Corruption (20 February 2006), as amended and supplemented by Ordinance No. 10-02, was enacted to criminalize violations of transparency, integrity, and competition principles. These efforts culminated in the promulgation of Law No. 23-12 (5 August 2023), which shifted public procurement regulation from ordinance-based legislation to parliamentary law, thereby opening the door to broader debate and legal innovation.

This law enshrines governance principles by regulating the conditions and procedures for awarding public contracts, defining the roles of the public buyer and the economic operator, and establishing the High Council for Public Procurement as an advisory body responsible for proposing and evaluating policy initiatives aimed at improving management practices. It also introduces the requirement to adopt a Code of Ethics and Professional Conduct (Article 65) and provides for the creation of an electronic public procurement platform as part of the state's broader push toward digitalization.

Gragh N° 1. legislative and regulatory framework for public procurement in Algeria



Source: prepared by the researcher

2. Manifestations of Governance in the Pre-Contracting Phases of Public Procurement

The need to implement governance principles has emerged across the economies of many countries, especially in the aftermath of successive global economic crises, the spread of the COVID-19 pandemic, and other emergencies that have introduced new approaches to managing available resources. These developments have led to the imposition of new control methods and the adoption of economic plans covering all active sectors of the state. Decision-makers have increasingly sought to adapt this governance model within the realm of public procurement, which constitutes a vital lifeline that nourishes all sectors of the state.

This has been pursued through the establishment of principles such as competition and free access to public procurement opportunities, with the aim of obtaining the best services and most advantageous offers from bidders—thereby contributing positively to the public sector and ensuring the continuity of the development process.

Governance, as a modern concept, has attracted considerable attention from researchers and experts in various fields. It has also been embraced by numerous countries, such as the United States and several European nations, in efforts to revive their economies. The International Monetary Fund **(IMF)** defines governance as *"a term that encompasses the various elements through which a country is governed, including its economic policies and regulatory frameworks."*[1] Similarly, the Organisation for Economic Co-operation and Development **(OECD)** defines it as *"all institutional, regulatory, and organizational mechanisms and measures that influence decision-making by leaders."*[2]

From these definitions, governance can be understood as a set of laws, rules, decisions, and judgments aimed at achieving quality and excellence in administrative performance through effective and realistic strategies, accountability tools, avenues for active participation, and the fair allocation of available opportunities in accordance with the law.

On the other hand, governance stands in contrast to growing phenomena such as corruption, which includes bribery, money laundering, and the unethical or fraudulent appropriation of resources and profit-generating opportunities by individuals or groups. The Algerian legislator, in Artic**le** in Article 2 of Law No. 06-01 on the Prevention and Fight Against Corruption, defines corruption-related offenses as including bribery of public officials, the granting of undue advantages in public procurement, embezzlement of public property by public officials, abuse of influence, and misuse of public office[3].Through this, the legislator outlines various individual or collective behaviors that harm public funds and create loopholes for its misuse.

The concept of public procurement is defined in Article 2 of Law No. 23-12 as *"written contracts concluded for consideration between the public buyer—i.e., the contracting authority—and the economic operator, for the purpose of fulfilling the needs of the contracting authority in areas such as works, supplies, studies, and services."* [4]To ensure their effectiveness, the legislator has subjected these contracts to a set of principles that fall within the framework of good governance of public financial management.

These include establishing transparency in the procedures, equal treatment of all candidates submitting bids in public procurement processes, and free access to public tenders. These principles are set out in Section II, Chapter II of Law No. 23-12, specifically in Articles 46, 47, and 48, under the title *"Transparency of Procedures."* Furthermore, the law introduces ethical standards through the creation of a Code of Ethics and Professional Conduct[5], as stipulated in Article 65, thereby formalizing the principles of governance and sound management, in terms of:

2.1.Governance Principles Report in the Pre-Contractual Stages of Public Procurement

Governance finds its foundations in the provisions established by the legislator through laws

and regulations aimed at rationalizing public expenditure. Each stage of the public procurement process is governed by a set of conditions, and is subject to specific oversight bodies and mechanisms, which differ from those operating during the post-contractual phases.

- Setting Guidelines for the Preliminary Preparation of Contract Conditions

This stage is part of the preparatory phases that precede the public procurement announcement and the opening of competition. The legislator has imposed a set of formal and substantive constraints on it, requiring the public purchaser to submit to various forms of control—whether internal or external. Furthermore, the public purchaser is obliged to provide justification in cases of extreme urgency or imminent danger when acting unilaterally and without submitting the draft contract to the legally authorized oversight bodies responsible for approving the project and authorizing the expenditure of the allocated funds.

- Prior Definition of Needs:

Article 16 of Law No. 23-12 on Public Procurement stipulates the obligation to define the needs of the contracting authority and to estimate their cost. This must be submitted for review by the relevant committee within the financial threshold assigned to each committee, whether at the local or sectoral level. The article also prohibits the fragmentation of needs in order to avoid evading oversight mechanisms. Additionally, the legislator introduces the term efficiency in this article, indicating all procedures that ensure the best service at the lowest possible cost. The article concludes by warning against and prohibiting any action intended to direct the public procurement toward a specific economic operator or product, thereby excluding other offers.

- Preliminary Drafting of the Specifications:

The specifications document constitutes the legal framework of the contract. It is a detailed document that contains all the necessary data for the procurement process. It lays the foundation for the contract, including financial and technical qualification requirements, payment methods and deadlines, price update mechanisms, and criteria for using contract amendments. All these elements are addressed in Article 17 of Law No. 23-12, which outlines the three core documents, the Administrative Clauses Book, which has been amended to reflect new legal provisions related to public works contracts, aligning with the latest reforms introduced by Organic Law No. 18-15[6]on Finance Laws, as well as the Technical Instructions Book and the Special Instructions Book.

2.2.Prior Determination of the Contract Form and Methods of Award

The conclusion of public contracts is subject to two fundamental forms: the call for tenders, which represents the general rule, and negotiation, which constitutes the exception. The call for tenders procedure is detailed in Article 39 of Law No. 23-12 and is divided by the legislator into national and international calls for tenders. Furthermore, it takes different forms depending on the subject matter of the public procurement contract, namely:

- ✓ Open call for tenders
- ✓ Open call for tenders with minimum capacity requirements
- ✓ Restricted call for tenders
- ✓ Competitive bidding (competition)

As for the exception, it is carried out through the negotiated procedure.

The legislator replaced the former term "mutual agreement" used in Presidential Decree No. 15-247 [7]with the term negotiation, in order to introduce more flexibility and grant the contracting authority greater freedom of choice, even in the absence of formal competitive procedures. This negotiation procedure is subdivided into two types:

- ✓ Direct négociation
- ✓ Negotiation following consultation, as stipulated in Article 41 of Law No. 23-12[8].

Public contracts also vary depending on the type of service to be performed. These include

public works contracts, public supply contracts and contracts for studies and services. These categories are governed by a set of fundamental principles, including the principle of equality among candidates, the principle of free access to public procurement, which is achieved through public notice and advertisement—this is a key principle that determines the validity of the procurement process. In this regard, the administrative judge plays a crucial role in the event of a dispute. The principle of transparency, ensuring clarity in the procedures and steps of the procurement process from the initial announcement to the final execution.

3.Application of Governance Principles in the Contract Award and Execution Phases

Governance in the field of public procurement is embodied in the legal and regulatory mechanisms established by the legislator. Due to their importance, these mechanisms have been codified in a law that organizes their general rules, serving as a guarantee for the efficiency of sound project selection—especially those based on long-term feasibility studies. It also ensures compliance with all the rules and conditions governing the awarding of contracts, particularly in terms of equality and transparency in the selection of contracting parties, as well as oversight reports, both internal and external, prior and subsequent. Moreover, the launch of the Public Procurement Electronic Platform aims to improve the efficiency of public financial management. This will be detailed as follows:

3.1. Principles Governing the Award of Public Contracts:

The governance of public procurement is based on a set of principles aimed at ensuring fairness in competition according to predetermined rules. These principles foster transparency in procurement processes, saving time, effort, and money, and reducing the number of legal disputes. This explains the numerous legislative amendments made in response to evolving economic conditions and the growing needs of public demand. Article 5 of Law No. 23-12 provides that, in order to ensure the efficiency of public procurement and the proper use of public funds, public contracts must comply with the principles of free access to public procurement, equality among bidders, and transparency in procedures[9].

3.1.1. Principle of Free Access to Public Procurement:

This principle entails allowing any natural or legal person who meets the legal requirements set by the legislator to submit bids before a competent and neutral contracting authority, without excluding any party. The evaluation must be based on objective criteria, primarily the qualifications necessary to carry out the project. Article 43 of Law No. 23-12 requires the contracting authority to verify the professional and financial capacities of the candidates and to base the evaluation of applications on non-discriminatory criteria that are relevant and proportionate to the subject and scope of the contract.

Article 44[10]further clarifies the conditions and criteria for the acceptance of applications and bids using any legal means. To ensure the regular updating of information on economic operators and the contracts concluded throughout the year, the legislator mandated the creation of a national registry, sectoral registries, and registries at the level of each contracting authority. These are to be updated regularly, and **Article 45**[11]stipulates that the content and update conditions of these registries shall be defined by an order issued by the Minister of Finance.

3.1.2. Principle of Equality:

This is one of the most prominent applications of governance in public procurement. It manifests clearly in the equal treatment of economic operators during the contract award phase through the prior establishment of participation conditions and selection criteria as outlined in the tender specifications. Dr. Ammar Bouzid defined the specifications document as “an official document unilaterally drafted by the contracting administration, through which all conditions

related to competition rules and participation requirements are specified, as well as the criteria for selecting the contracting party. In preparing the specifications, the administration relies on its internal expertise and mobilizes its relevant personnel to develop a document that meets its strategic objectives."[12]Law No. 23-12 does not define the specifications document explicitly but refers to it in Article 17, stating that the contracting authority is responsible for preparing it as a prerequisite before launching the call for tenders.

It is important to note that all bids not conforming to the specifications document are excluded from the competition. Adhering to its provisions ensures equality among bidders, as all financial and technical bids are evaluated according to the same scoring scale.

3.1.3. Principle of Transparency:

This principle obliges the administration to take specific legal actions when awarding contracts to contractors, whether at the provisional or final award stage, including the obligation to announce the results and to declare procurement procedures void when no bids meet the requirements. It ensures clarity of information and procedures for all participants and reinforces the neutrality of the contracting authority. This is detailed in Article 46 of Law No. 23-12, which mandates the publication of contract-related announcements in the Official Bulletin of Public Contracts and in authorized print and online media.

3.1.4. Launch and Activation of the Public Procurement Electronic Platform:

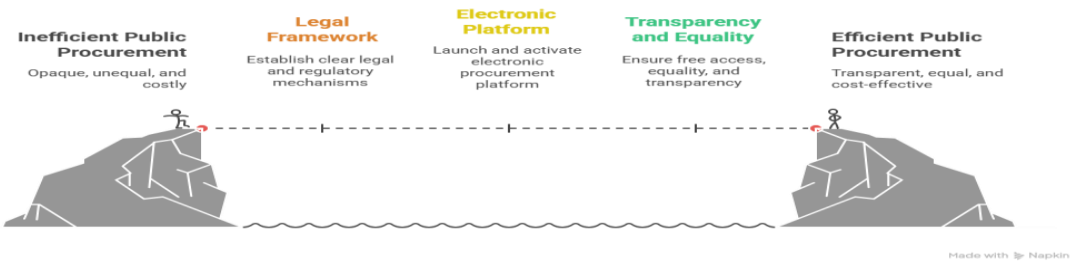
In alignment with the broader digitalization strategy adopted across various sectors, the legislator has mandated the activation of the Public Procurement Electronic Platform. This is supported by the dissemination of statistical bulletins[13]directed at state entities such as the Tax Authority, Commercial Registry, banks, Customs, and other institutions that contribute to building a database essential for determining the legal status of economic operators, their completed projects, exemption rates under special economic regimes, and their financial solvency based on creditworthiness assessments.

This system acts as a national statistical registry for public procurement, allowing for the exchange of documents and information among all stakeholders. The legislator emphasized the necessity of activating the platform's role, particularly in terms of accessing bids, reviewing participation requirements, and selection criteria.

It is worth noting that the platform was first established under Article 3 of the decree dated November 17, 2013[14], and was officially launched on December 21, 2021.

The legislator also issued transitional provisions through various ministerial circulars to clarify matters related to contracts concluded prior to the enactment of the current law, most notably the circular concerning the handling of specifications during the transitional period following the entry into force of Law No. 23-12 [15]on Public Procurement.

Gragh N° 2:Achieving Public Procurement Efficiency



Source: prepared by the researcher

3.2. In Terms of Procedures Governing the Execution and Oversight of Public Procurement Contracts

The legislator has surrounded the execution phase of public procurement contracts with specific procedures and conditions, which vary depending on the form of contracting. A system of oversight has been established involving various bodies across the entire timeline of the contract, from its inception to its execution, final delivery, and the return of performance guarantees. This is illustrated in the following aspects:

3.2.1. With Respect to Execution:

The principles of governance are manifested in this phase through the process of awarding public contracts, which requires strict legal procedures. The conditions for the qualification of candidates are narrowly defined in Articles 43, 44, and 45 of Law 23-12, particularly regarding the need to verify and investigate the capacities of bidding entities[16], whether in the case of provisional awarding or the completion of procedures for final awarding.

On another front, the French legislator has given significant attention to competition rules, granting the authority to exclude or ban bidders from participating in public contracts if proven to have violated these rules through fraudulent practices or collusion aimed at restricting free access to public procurement opportunities[17]. Once the contractual relationship is established between the parties (the contracting authority and the contractor), it gives rise to rights and obligations binding both sides, and the administration acquires the right to oversee execution.

The administration exercises its oversight authority over the implementation of the contract, while the contractor is entitled to financial compensation for the services rendered. At this point, the importance of the tender specifications document (particularly the administrative terms and conditions) becomes apparent in defining the rights and obligations of both parties. It serves as a guarantee enabling both parties to claim rights or invoke provisions before a court in the event of a dispute. The Algerian legislator has also addressed the issue of delay penalties and interest, granting contractors the right to claim compensation if the public buyer is responsible for delaying the commencement of work or causing interruptions. This measure curtails administrative arbitrariness in awarding compensation and raises the possibility of judicial challenges, as expressed by the legislator through the concept of unjust enrichment of the public treasury[18].

3.2.2. With Respect to Oversight of Public Procurement:

Governance is also evident in the oversight conducted by various entities throughout the procurement process—from the announcement of the contract to its completion and settlement. To safeguard public funds, ensure efficient spending, and promote effective financial management, the Algerian legislator has instituted several oversight mechanisms, including internal and external controls, as well as ex ante, ex post, and supervisory audits. These mechanisms aim to combat corruption and prevent the misappropriation of public resources.

One of the most crucial forms of financial pre-audit is the control exercised by budgetary controllers, whose

approval is fundamental to the legality of a contract through the issuance of a visa. In addition, public procurement commissions, at various levels, play an essential oversight role. External oversight is further reinforced through bodies such as the Court of Auditors and the General Inspectorate of Finance.

Among the most notable developments introduced by the new law on public procurement is the creation of the National Council for Public Procurement, under Article 104[19]. This council is tasked with oversight functions and with issuing guidance on behaviors to be adopted in order to improve the management of public procurement. It relinquishes the regulatory authority over public procurement contracts and public service delegations previously granted under Presidential

Decree No. 15-247[20].which had not been implemented due to the absence of a regulatory framework defining its operational conditions and modalities.

Accordingly, the establishment of the National Council for Public Procurement represents a significant step toward rationalized management and the development of ethical standards in the field. It aligns with the principles of good governance and supports the professional development of human resources responsible for overseeing this domain.

4. Conclusion:

An in-depth examination of the Public Procurement Law reveals a strong alignment between its provisions and the core principles of good governance. During the pre-qualification phase, which precedes the formal acceptance of bids, the contracting authorities engage in highly specific and rigorous procedures aimed at verifying the professional and financial capacities of the bidders before considering their technical offers. The law mandates the use of non-discriminatory criteria that are closely linked to the subject matter of the contract and proportionate to its scope.

Moreover, during the submission of applications—and where necessary—contracting authorities conduct background checks on the professional history of bidders and initiate financial investigations through banking institutions to verify the financial solvency of contractors.

A significant development in recent years is the shift toward digitalization of procedures, particularly through the establishment of the Public Procurement Electronic Platform. This platform serves not only as a repository for the registration, storage, and archiving of all transactions, data, and documents, but also creates an integrated digital database that enhances efficiency by saving time, effort, and resources.

In line with this digital transition, Article 95[21]of Law No. 23-12 mandates the compulsory publication and advertisement of procurement notices through the official public procurement portal, in addition to the websites of the respective contracting authorities.

5. Recommendations

The legislator has shown a strong commitment to combating corruption, enacting a comprehensive arsenal of laws and regulations. However, the implementation of these measures faces numerous challenges, further exacerbated by the rapid and boundless development of information circulation and the absence of robust infrastructure capable of supporting cybersecurity requirements. This has created significant challenges that necessitate the adoption of stringent measures, including:

- The need for legislative stability: Frequent amendments to the legal framework generate a degree of legal uncertainty and inconsistency in the application of the law, thereby complicating efforts to conduct comparative statistical analyses over time. Additionally, delays by the legislator in issuing implementing regulations that clarify the conditions and procedures for applying the law further hinder effective enforcement.
- Human capital development: Most experts agree that the success of development policies fundamentally depends on training and information dissemination among all stakeholders, including public employees and economic operators. However, the field of public procurement is currently hampered by a severe shortage of qualified human resources capable of performing functions related to regulation, evaluation, and oversight. Some analysts attribute this deficiency to flaws in the democratic system, where individuals lacking even the most basic knowledge of governance or decision-making are elected to key positions in procurement management. In response, the legislator must establish strict eligibility criteria or minimum qualifications for candidacy to roles related to public procurement administration. These functions should be entrusted to individuals with

demonstrated knowledge of public accounting rules, supported by the implementation of ongoing and structured training programs.

- Clarifying emergency procurement cas**es**: There is an urgent need to precisely define and limit emergency situations, and to eliminate ambiguous language that leaves room for interpretation. This legal loophole has sparked significant controversy and has often served as a gateway for bypassing regular procedures and awarding contracts without the necessary oversight.

Enhancing coordination among oversight bodies: It is imperative to harmonize the efforts and overcome the conflicts of interest between the various actors responsible for controlling public procurement—namely, the budgetary controller, the authorizing officer, the public accountant, and the executing agency. This tension negatively affects performance, as each party seeks to protect itself legally—either for authorizing expenditures or issuing discharges. While the legal framework governing public spending rightly subjects procedures to accountability, it must also provide mechanisms to determine which party is responsible for project delays, missed deadlines, or failure to execute—particularly when such failures result in the imposition of late penalties on the administration. For this reason, all relevant entities must commit to institutionalizing governance principles and to the rationalization of public expenditure in a manner that promotes effective and timely project implementation[22].

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