

Environmental Aspects in Public Procurement Contracts

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Abstract: This study aims to elucidate the authority of contracting entities in establishing mechanisms designed to safeguard the environment from the adverse impacts associated with the execution of public procurement contracts. It delves into the fundamental environmental principles embedded within these contracts, both pre- and post-award. Furthermore, the study delineates the environmental standards that must be incorporated during the pre-contractual and concurrent phases of contract formation.

Keywords: Environmental public procurement ; environmental principles ; environmental qualifications ; environmental proposal.

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Introduction:

Environmental public procurement contracts are designed to embed and activate environmental considerations within the contractual data and clauses specified in the terms of reference throughout the preparation, conclusion, and execution phases of the contract.

The nexus between public procurement and environmental protection is articulated through the provisions enshrined in environmental legislation¹ pertinent to public procurement, as well as those stipulated in public procurement law² aimed at safeguarding the environment. Collectively, these provisions constitute a comprehensive legal framework that governs public procurement contracts, with the primary objective of environmental protection and ecosystem enhancement. This framework encompasses all varieties of contracts, including those with an inherent environmental orientation, which aim to protect the environment alongside the principal purpose of the contract.

This study interrogates the following research question: To what extent has the legislator succeeded in striking a balance between the sought-after economic efficiency from the execution of public procurement contracts and the environmental efficiency aimed at mitigating the adverse environmental impacts arising from such execution?

CORE ENVIRONMENTAL PRINCIPLES IN PUBLIC PROCUREMENT CONTRACTS:

The incorporation of environmental considerations into public procurement contracts is reinforced by embedding fundamental environmental principles during both the pre-contractual and post-contractual phases. This approach aims to preclude or mitigate potential or realized environmental harms resulting from the execution of the contract.

Environmental Principles Prior to Contract Conclusion:

These pre-contractual principles are preventive in nature, aimed at preserving the environmental status quo post-execution. Critical principles that must be entrenched in the contract prior to its conclusion include the precautionary principle and the environmental impact assessment (EIA).

1. Precautionary Principle

Article 03 of Law No. 03-10³ articulates the precautionary principle, stipulating that the lack of full scientific and technical certainty should not justify postponing measures to prevent serious or irreversible environmental degradation, provided these measures are economically feasible. This principle mandates the implementation of preventive actions when substantial grounds exist to believe that an activity or product poses ethically unacceptable risks to health and the environment, even in the absence of conclusive evidence establishing a causal link⁴.

¹ Law No. 03-01 of July 19, 2003, on Environmental Protection within the Framework of Sustainable Development (Official Gazette No. 43)

² Law No. 23-12 of August 5, 2023, establishing the general rules governing public procurement (Official Gazette No. 51).

³ Law 03-01. Op.Cit

⁴ Naima Amara, *The Precautionary Principle and the Responsibility of Professionals*, PhD dissertation, Faculty of Law and Political Science, University of Abou Bekr Belkaid-Tlemcen, 2014, p. 108

Environmental Aspects in Public Procurement Contracts

The precautionary principle is characterized by three main elements: the degree of scientific uncertainty, the potential for significant harm, and the irreversibility of the damage⁵. These elements distinguish it from the principle of prevention, a general principle in environmental protection law⁶ which requires the use of the best available techniques at a reasonable economic cost to prevent significant environmental harm.

The legislator has linked the precautionary principle to the rectification of environmental damage at its source, specifying three application criteria: the known potential for harm, the reasonable cost of preventive measures, and the utilization of the best available technology.

Thus, the absence of scientific certainty serves as the pivotal criterion distinguishing the precautionary principle from the prevention principle. In scenarios where sufficient scientific data exists regarding a phenomenon or activity, the principle that is applied is that of prevention⁷. This distinction is underscored by the Algerian legislator, who has associated the precautionary principle with the presence of potentially severe harms for which science has not yet furnished precise information and for which advanced mitigation techniques are unavailable.

In the context of public procurement, the legislator has not prominently featured the precautionary principle in the current public procurement law⁸. However, Decree 06-198⁹ mandates a risk assessment aimed at identifying direct or indirect risks to people, property, and the environment from institutional activities, whether the cause is internal or external. This assessment, funded by the project owner and conducted by accredited consultancies, aims to establish technical measures to reduce the likelihood of accidents and their impacts, as well as measures for accident prevention and management¹⁰.

The risk assessment is financed by the project owner and conducted by specialized study offices, expert firms, or consultancy firms accredited by the Minister of Environment. This process involves obtaining input from relevant ministerial authorities as needed¹¹.

Additionally, the Urban Planning Law requires a risk assessment prior to the construction of facilities that could impact the environment. This measure is designed to protect environmental areas¹²—including human, fauna, flora, and natural resources—from potential risks before initiating environmental public procurement contracts related to construction works.

Moreover, the precautionary principle is incorporated into Law No. 09-03 on Consumer Protection and Fraud Repression¹³. This allows the contracting entity to establish conditions

⁵ Khaled Abdelaziz, *The Precautionary Principle in the Environmental Field*, Master's thesis, Faculty of Law, University of Algiers 1, 2015, p. 45.

⁶ Article 03 of Law 03-10

⁷ Khaled Abdelaziz. Op.cit,P. 49.

⁸ Law 23-12.Op.cit

⁹ Executive Decree No. 06-198, of May 31, 2005, defining the regulations governing classified institutions for environmental protection (Official Gazette No. 34).

¹⁰ Article 12 of the Executive Decree No.06-198

¹¹ Article 13 of the Executive Decree No.06-198. For more details refer to article 14 of the same decree.

¹² Article 04 of Law No. 04-05 of August 14, 2004, amending and supplementing Law No. 90-29 of December 13, 1990, concerning Urban Planning and Development. (Official Gazette No. 51) and subsequently in (Official Gazette No. 52).

¹³ Law No. 09-03 of February 25th, 2009 amended and complemented. (Official Gazette No. 15)

for accepting supplies in public procurement contracts to mitigate health and environmental risks, such as requiring samples for analysis, expert evaluation, or environmental labeling¹⁴.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA):

An Environmental Impact Assessment (EIA) refers to the process of evaluating the potential effects of a project on the population, protected flora and fauna, and cultural heritage sites. Environmental protection regulations mandate that all construction and equipment projects, by their nature, scope, or size, may exert direct or indirect impacts on the environment must undergo EIA. The assessment encompasses several key components:

- Analysis of alternatives and justification for the proposed project.
- The expected efforts by the project owner to mitigate, reduce, or compensate for the project's adverse environmental impacts, along with a financial evaluation of these mitigation measures¹⁵.

Article 15 of Law No. 03-10 defines an EIA as “a study related to any project—whether developmental, constructional, or technical—that may exert direct or indirect, immediate or future impacts on the environment. This assessment critically examines potential effects on biological species, ecosystems, natural spaces, ecological equilibria, and the overall quality of human living environments.”

This definition indicates that EIAs specifically pertain to public works contracts. These contracts typically involve the construction, renovation, maintenance, upgrading, rehabilitation, restoration, demolition, or reinforcement of structures or parts thereof, including the requisite operational equipment¹⁶.

During project execution, contractors can demonstrate that the services provided, as well as those by their subcontractors if applicable, meet the environmental and sustainable development requirements specified in the special terms of reference¹⁷.

Executive Decree No. 07-145 distinguishes between a comprehensive Environmental Impact Study (EIS) and a more concise Environmental Impact Summary (EIS) by specifying which projects require each type of assessment¹⁸. The distinction is based on the nature, scale, and potential environmental impact of the proposed works.

An EIA is a pre-administrative measure and not a purely administrative action because it forms part of the decision-making process regarding the granting or refusal of permits¹⁹.

¹⁴ Amara Naima. *Op.cit.* P. 193

¹⁵ Kharchi Noui, *Project Management within the Framework of Public Procurement*, Al-Khaldounia Publishing House, 2011.P, 76.

¹⁶ Article 25/3 of Law No. 12-23. *Op.Cit*

¹⁷ Article 1.2.47 of Executive Decree No. 21-219 of May 20, 2021, approving the General Administrative Clauses applicable to Public Works Contracts (Official Gazette No. 50).

¹⁸ Executive Decree No. 07-145 of May 19, 2007, defining the scope, content, and approval procedures for Environmental Impact Studies and Summaries, Official Gazette No. 34, p. 95, amended and supplemented by Executive Decree No. 19-241 of September 8, 2018, Official Gazette No. 54.

¹⁹ Yahia Ouanas, *Legal Mechanisms for Environmental Protection in Algeria*, PhD dissertation, Faculty of Law, University of Abou Bekr Belkaid-Tlemcen, July 2007. P, 178.

Environmental Aspects in Public Procurement Contracts

An EIA identifies the negative environmental impacts of executing public works contracts and specifies the necessary measures to prevent these impacts during the contract's execution phase. It assesses the project's potential or actual environmental damage, forming the essential document on which the authorization to carry out the project is based²⁰.

Post-Contract Environmental Principles:

These principles are interventionist, remedial, and deterrent in nature, applied after the public procurement contract has been concluded. They are essential to be enacted and implemented following environmental damage resulting from the contract execution. The key principles include the substitution principle and the polluter pays principle.

1. Substitution Principle:

This principle entails the replacement of environmentally detrimental activities with alternatives that pose lesser environmental risks, even if the latter is more costly, provided they are consistent with the environmental values being protected.²¹

Embedded within the Environmental Impact Assessment (EIA) framework, the substitution principle necessitates a thorough evaluation of the potential environmental and human health impacts of proposed activities, along with viable alternative solutions²². This principle is particularly pertinent to anticipated environmental damages and is invoked during the execution of public works contracts that require an EIA or Environmental Impact Summary (EIS). Moreover, it applies to supply contracts involving the replacement of materials or equipment with environmentally sustainable alternatives.

The substitution principle is both preventive and remedial. It is enacted prior to the conclusion of the public procurement contract and activated during its execution to address potential environmental damages. As such, the selection of contractors should be based on multiple criteria, including proposed alternative activities that are less harmful to the environment. These criteria are essential for determining the project's acceptance or rejection.

This principle allows for the provision of alternatives, especially for technically complex services, to prevent circumstances that might hinder the contract's execution within the agreed timelines. When environmental or supply-related damages occur, substitution ensures that the alternative activity or product offers superior environmental protection compared to the original contract stipulations. These alternatives must be predefined in the terms of reference.

In public works contracts executed in environmentally sensitive areas, particularly those outlined in legislative and regulatory provisions, the contractor—whether working individually or as part of a consortium—along with their subcontractors, must adhere to specific environmental requirements.²³

²⁰ Licensing is a mechanism of administrative regulation aimed at restricting individual freedoms in accordance with legally specified conditions to maintain public order. For further details, see Kamal Muefi, *Administrative Regulation Mechanisms for Environmental Protection*, Master's thesis in Administrative Law and Institutions, University of Hadj Lakhdar-Batna, 2010-2011, p. 67.

²¹ Article 03 of Law 03-10. Op.Cit

²² Article 16 of Law 03-10

²³ Article 3.47 of Op.Cit Decree 21-219

2. Polluter Pays Principle:

This globally recognized principle, first introduced by the Organization for Economic Cooperation and Development (OECD) in 1972, dictates that polluters are financially responsible for measures needed to maintain the environment in an acceptable state.²⁴

The Algerian legislator defines it as: “the principle by which any individual whose activities cause or may cause environmental damage must cover the costs associated with preventing, minimizing, and restoring the environment to its original condition.”²⁵

The principle is designed to ensure that those responsible for environmental harm—polluters—are held financially accountable for any damage their activities cause. This accountability covers the costs associated with preventive measures, repair of the environmental harm, and restoration of the environment to its original state, often through financial compensation.

Fundamentally, the polluter pays principle mandates that those who derive economic benefits from polluting activities are also responsible for covering the expenses related to pollution prevention and remediation through applicable fees or taxes.²⁶ In Algerian legislation, the determination of a polluter is based on the severity and likelihood of environmental harm resulting from their activities. Operators must secure prior approval, specifically an operational license for classified establishments, before initiating construction.²⁷ This approval process includes a comprehensive risk assessment to identify direct and indirect risks posed by the establishment's activities to individuals, property, and the environment²⁸. The aim is to ensure that economic activities do not compromise environmental integrity.

Consequently, the polluters, particularly those involved in public works and supply contracts (equipment and materials), are obligated to comply with preventive measures and corrective actions to address pollution at its source²⁹. This framework ensures that polluters are held financially accountable for environmental damage, reinforcing the principle as a deterrent against environmentally negligent practices.

ENVIRONMENTAL STANDARDS IN PUBLIC PROCUREMENT CONTRACTS:

Incorporating environmental considerations into public procurement contracts involves integrating environmental concerns into the contract. The contracting authority is required to consider environmental factors in both the pre-contractual and contractual phases.

Pre-Contractual Environmental Standards

The contracting authority must integrate environmental considerations when defining the contract's subject by specifying the needs to be addressed and detailing the terms and conditions in the terms of reference.

²⁴ Kamel Rezig, *The Role of the State in Environmental Protection*, Al-Baheth Journal, Issue 5, 2007.P, 101.

²⁵ Article 03 of Op.cit Law 03-10

²⁶ Kamel Rezig, P, 101

²⁷ Article 18 of Op.cit Executive Decree 06-198

²⁸ Article 4 of the same decree

²⁹ Article 12 of the same decree

Environmental Aspects in Public Procurement Contracts

1. Defining Environmentally Friendly General Needs

Article 16 of Law No. 23-12 states: "The needs of the contracting authorities must be determined in advance, before initiating any procedure for concluding a public contract. These needs must be prepared in terms of their nature and extent with precision, based on detailed technical specifications and/or performance standards and functional requirements."

The identification and definition of needs constitute a pivotal preliminary phase prior to the commencement of public procurement procedures and the issuance of tenders. These needs encompass operational expenditures, such as the procurement of office supplies, information technology hardware, and fleet vehicles for the contracting authority, as well as capital expenditures related to public service provisions, including public transportation systems, waste management services, and tax collection mechanisms³⁰.

While Article 16 of Law No. 23-12 does not explicitly require the inclusion of environmental considerations in the definition of needs, the emphasis on preparing needs based on technical specifications or functional requirements implies the necessity of integrating environmentally friendly needs.

Therefore, environmental considerations can be incorporated into need definitions through adopting technical specifications, detailing the technical characteristics, quality standards, components, origin, nature of goods, and methods of execution, all of which align with environmental requirements³¹.

Alternatively, needs can be defined according to standards established by consensual reference documents from relevant stakeholders. These standards cover the specifics and efficiencies of the product or service, ensuring quality through measures such as anti-pollution standards for vehicle engines³².

In public works contracts, contractors must implement measures to manage elements that could harm the environment. This includes handling waste generated during contract execution, controlling emissions of dust, smoke, and fumes from polluting products, managing liquid waste, mitigating noise disturbances, and preventing general pollution affecting surface and groundwater.³³

Standardization in defining environmentally friendly needs involves provisions set forth by the standardization law³⁴, which defines standardization as the activity of establishing provisions for common and repeated use to address real or potential problems, aiming to achieve optimal order within a specific context. Standardization seeks to rationalize the use of

³⁰ Pierre De Baecke, *Comprendre simplement les marchés publics*, Le Moniteur, Paris, 2013, p 29.

³¹ KharchiNoui, Op.cit. P, 248.

³² Bouchareb Yassine, *Public Procurement and the Environment*, Master's thesis in Public Law, University of Mohamed Lamine Debaghine - Sétif 2, 2017/2018, p. 52. For more details on standardization, refer to:

- Articles 10, 11, and 12 of Law No. 03-10 mentioned above.
- Executive Decree No. 05-465 of December 6, 2005, concerning conformity assessment, Official Gazette No. 8, Articles 8, 13, 14-15

³³ Article 1.2.47 of Executive Decree No. 21-219, op. cit.

³⁴ Law No. 04-04 of June 23, 2004, concerning Standardization, amended by Law No. 16-04 of June 19, 2016, Official Gazette No. 37.

environmental resources³⁵, ensuring that products impacting the safety and health of people, animals, plants, and the environment are subject to mandatory compliance certification³⁶.

Incorporating environmental considerations in defining public needs aligns with the objectives of sustainable development, which include social aspects in tender selection, such as reducing unemployment and distributing services, alongside the economic aspect of selecting the most economically advantageous proposal.

2. Environmental Specifications in the Terms of Reference:

The terms of reference (ToR) in public procurement refer to a formal document prepared unilaterally by the contracting authority, stipulating all conditions related to the tender rules in various aspects, participation criteria, and methods for selecting the contractor. When preparing the ToR for each public procurement contract, the contracting authority leverages its qualified internal expertise and mobilizes all relevant personnel to develop a ToR that meets the predefined objectives³⁷.

The ToR are prepared prior to any call for tender and include three types³⁸:

- **General Administrative Clauses:** These apply to public procurement contracts for works, supplies, studies, and services, and are approved by an executive decree.
- **Common Technical Specifications:** These define the technical arrangements applicable to all public procurement contracts related to a specific type of works, supplies, studies, or services and are approved by a decision from the head of the public entity or the relevant minister.
- **Specific Instructions:** These define the specific conditions for each procurement.

Given that accurately defining public needs is based on technical specifications, which enable bidders to understand the requirements set by the contracting authorities, the environmental specifications in question are found within the common technical specifications. These define the required technical arrangements to protect the environment, either based on standards or functional requirements to achieve the intended environmental objectives.

Technical arrangements encompass the specifications regarding the materials utilized, the methods adopted, and the sector-specific safety and security measures. For instance, these arrangements pertain to materials and techniques in bridge construction within the field of public works, the quality and standards of paper in supply procurement, and the protocols for maintaining green spaces in service contracts, among others.³⁹

Public environmental needs are detailed within the special technical specifications included in the common technical specifications. These encompass the inspection of materials for usability, contract execution conditions, construction methods, soil thickness and depth,

³⁵ Article 03 of the same Law

³⁶ Article 22 of the same Law

³⁷ Ammar Boudiaf, *Explanation of Public Procurement Regulations*, Jousour Publishing and Distribution, 2011.Pp. 142-143.

³⁸ Article 1è of Law 12-23

³⁹ KharchiNoui, Op.cit. P, 191

Environmental Aspects in Public Procurement Contracts

foundational and superstructure elements, technological methods, and the employed ecological practices⁴⁰.

In public works procurements, environmental requirements and sustainable development considerations are detailed in the specific instructions⁴¹. Should there be legislative and/or regulatory advancements in environmental protection within the framework of sustainable development during the contract execution, any necessary amendments requested by the contracting authority to comply with new regulations will be formalized through an addendum agreed upon by the parties to the public works procurement⁴². If these legislative and/or regulatory changes introduce transitional provisions and/or an exceptional regime affecting the procurement's execution conditions, the contractor is obligated to adhere to these new provisions.⁴³

CONTEMPORARY ENVIRONMENTAL STANDARDS IN PUBLIC PROCUREMENT CONTRACTS

The contracting authority must consider environmental capabilities when selecting contractors, using purely environmental criteria in the evaluation of the most economically advantageous proposal.

Environmental Qualifications as a Criterion for Contractor Selection

Contractor selection is predicated on non-discriminatory criteria pertinent to the procurement's subject, which must be explicitly delineated in the specific terms of reference⁴⁴. The selection criteria are articulated in the specific instructions, formulated based on general administrative clauses and common technical specifications⁴⁵.

The legislator mandates that the contracting authority utilize multiple criteria for contractor selection, ensuring the integration of environmental considerations. As stipulated in Article 53 of Law No. 23-12: "The contracting authority must base the selection of the most economically advantageous proposal on several criteria, or the best quality/price ratio if the subject of the procurement permits. The selection criteria for a contractor, along with the weight each criterion holds, must be intricately connected to the specifics of the contract and be non-discriminatory. These essential criteria must be comprehensively articulated within the tender's special terms of reference."

Selecting the most economically advantageous proposal involves criteria that achieve social efficiency, sustainable development, and aesthetic and functional aspects. The legislator permits the contracting authority to adopt additional criteria, provided these are included in the tender's special terms of reference. Accordingly, the contracting authority can mandate a minimum qualification and classification level, which must be documented in the specific instructions. Candidates must provide evidence or certifications from accredited bodies demonstrating their technical capacity to protect the environment during procurement contract execution.

⁴⁰ Faiza Kacedi, *Environmental Standards in Public Procurement: A Comparative Study*, PhD thesis, University of Tahar Moulay-Saida, 2018-2019.P, 315.

⁴¹ Article 2.47 of Executive Decree No. 21-219.

⁴² Article 4.47 of Executive Decree No. 21-219.

⁴³ Article 5.47 of the same Decree.

⁴⁴ Article 53 of Law 12-23

⁴⁵ Kharchi Noui, P. 191

The requirement for a certain environmental qualification level as a criterion for candidate selection must be aligned with the procurement's subject and non-discriminatory among candidates⁴⁶. Qualification or classification should be based on detailed scoring, where candidates receive varying scores according to their qualification levels⁴⁷.

The contracting authority is required to rely on a single criterion for selecting a candidate if the procurement subject is simple and straightforward, usually price. However, if the contract subject is complex and significant, multiple criteria must be used, with environmental qualification as an additional criterion.

The technical proposal evaluation system, regardless of the procurement procedure, must align with the project's nature, complexity, and significance⁴⁸. Consequently, in highly complex procurement processes, the contracting authority may deploy a ranking system for criteria to select the most suitable contractor. This system organizes criteria from least to most crucial, selecting contractors based on their technical prowess and ability to meet stringent environmental standards.

Moreover, the ranking system for criteria must be clearly outlined in the tender announcement to ensure transparency⁴⁹. This system not only prioritizes the technical and environmental capabilities of the bidders but also ensures the most economically advantageous proposal is chosen, in alignment with the contract's overarching goals.

The multi-criteria ranking system effectively communicates to candidates the project's specific requirements and the priorities for contractor selection⁵⁰, fostering a competitive and fair bidding environment.

The multi-criteria evaluation system, prioritizing environmental qualification, is closest to giving preference to environmental and economic considerations. The contracting authority's autonomy in drafting the terms of reference highlights the possibility of prioritizing environmental qualifications. The selected contractor must achieve the highest score, ensuring the contract aligns with environmental, economic, and social sustainable development goals.

Incorporating Environmental Criteria in Bid Selection

Article 38 of Law No. 23-12 emphasizes that the objective of the request for proposals is to award the contract to the bidder who presents the most economically advantageous proposal. This system of criteria weighting plays a pivotal role in identifying the most economically advantageous proposal by setting multiple criteria closely related to the subject matter of the procurement and specifying the importance of each. This method allows for the appropriate weighting of the environmental criterion, integrating it into the assessment of the best economic proposal.

The criteria weighting system evaluates the most economically advantageous proposal based on the significance assigned to each criterion, while the criteria ranking system determines the best proposal strictly through the ranking of criteria, without distributing

⁴⁶ Article 43/1 of Law 12-23

⁴⁷ Kharchi Noui, P. 194

⁴⁸ Article 53/3 of Law 12-23

⁴⁹ Pierre De Baeck, op.cit., p 168.

⁵⁰ Pierre De Baeck, op.cit., p 168.

Environmental Aspects in Public Procurement Contracts

importance among them.⁵¹ The most economically advantageous proposal can encompass additional criteria stipulated by the contracting authority in the tender's special terms of reference. The legislation grants the contracting authority the discretion to incorporate other criteria, including environmental considerations, in selecting the most economically advantageous proposal.

The environmental criterion is employed to ascertain the most economically advantageous proposal under four essential conditions:

- The environmental criterion must be pertinent to the procurement's subject and explicitly specified in the terms of reference.
- It must be non-discriminatory and not grant the contracting authority absolute freedom in selection, ensuring reliance on objective criteria⁵².

Integrating environmental considerations into public procurement processes revitalizes the method of selecting the most economically advantageous proposal. Procurements are required to include mandatory clauses focused on environmental sustainability⁵³, ensuring that contractors adhere strictly to these stipulations. The choice of an environmentally focused proposal must not undermine the competitiveness of other proposals, adhering to the principle of non-discrimination.

Selection of the most economically advantageous proposal does not solely depend on financial criteria. The environmental criterion, contingent on the specifics of the contract, holds significant weight, facilitating a thorough verification of the information submitted by bidders⁵⁴.

The process's effectiveness stems from the predefined environmental needs and the selection of the most economically advantageous proposal that incorporates environmental considerations. This approach maintains a balance between environmental protection and the economic integrity of public contracts, ultimately achieving the best quality/price ratio.

Conclusion:

Achieving both economic and environmental efficiency in public procurement is a goal that necessitates the implementation of both preventive and deterrent mechanisms. These mechanisms are essential for fostering economic sustainability while accounting for long-term environmental equilibria.

However, despite the expansive notion of selecting the most economically advantageous proposal, public procurement, especially in the environmental sector, faces significant hurdles. The freedom given to contracting authorities to incorporate considerations beyond strictly economic metrics is substantial. Yet, the integration of an environmental dimension can often conflict with the principles designed to ensure the efficiency of public procurement and the proper use of public funds, notably the principle of non-discrimination. This issue

⁵¹Maxime Jacob- Pierre Rawevel et Antoine Paqpvier-Devignes; L'offre économiquement la plus avantageuse, Le Moniteur, p. 194.

⁵² Article 38 and 53 of Law 12-23

⁵³ Article 72 of Law 23-12 pending the issuance of the relevant regulation."

⁵⁴ Daniel Chalamol- Jean-Pierre Jonguelet- François Bourrachot, Le régime juridique des marchés publics, Le Moniteur, Paris, 2005, p 194.

frequently compels contracting authorities to depend solely on price as the criterion for selecting the best or lowest proposal.

This study yielded significant findings:

1. Contracting authorities are required to rigorously integrate environmental considerations when finalizing public procurement contracts. This involves accurately defining public needs to ensure environmentally responsible procurement without undermining the integrity of the tender process.

2. The implementation of the "polluter pays" principle in public works procurements is crucial, involving the deduction of compensation for environmental damages directly from the contractor's financial entitlements.

3. Environmental qualifications should be clearly defined to enhance the environmental aspect of contractor selection, ensuring this does not conflict with the protection of public funds and adherence to procurement regulations.

4. It is necessary to mandate environmentally friendly practices in the terms of reference, especially if selecting the most environmentally and economically advantageous proposal is not feasible.

5. The explicit adoption of mixed economic and environmental criteria is recommended for procurement contract awards, ensuring that the environmental proposal complements the most economically advantageous proposal.

6. The scope of public procurements should be expanded to include both environmental and economic dimensions to reduce the exclusion of environmental considerations perceived as irrelevant to the procurement's subject.

7. Compliance with environmental conditions during the execution phase must be ensured, and stringent penalties, including potential contract termination, should be applied for any violations.

8. Bidders who commit environmental crimes or violate environmental legislation should be explicitly excluded from participating in public procurement contracts.

9. Effective mechanisms should be implemented to prevent environmentally harmful behaviors as stipulated within the provisions of Law No. 23-12 on general rules for public procurement and its implementing regulations.