TOBNA journal for Academic scientific studies ISSN 2661-7633 / EISSN 2716-8883
Year: 2025 Vol : 08 No : 02 Page : 1965 - 1987

"INTEGRATING ENVIRONMENTAL CONSIDERATIONS INTO PUBLIC PROCUREMENT: A COMPARATIVE STUDY IN LIGHT OF ALGERIAN LAW AND SOME INTERNATIONAL EXPERIENCES"

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Send Article Date: 2025-08-09 **Date of acceptance of the article 2025-10-10**

Abstract:

This study explores the integration of environmental considerations into public procurement, focusing on the Algerian legal framework and selected international experiences. It examines the key provisions of Algerian Law No. 23-12 and related regulations that embed sustainable development objectives within procurement processes. Through a comparative analysis, the study contrasts these provisions with corresponding mechanisms in countries such as France, Morocco, and Egypt. The research highlights both the legal innovations and the gaps that hinder effective implementation in Algeria. It also assesses how international best practices can inform the refinement of national policies. Findings reveal that, while Algeria has made significant strides, further legislative and institutional measures are needed. The article concludes with recommendations to enhance compliance, monitoring, and alignment with global standards.

key words: Public procurement, environmental considerations, sustainable development, Algerian law, comparative analysis, international best practices.

Introduction:

Public procurement is one of the primary instruments through which the state implements its economic and social policies. Today, it also serves as an effective tool for advancing broader principles such as good governance, transparency, and sustainable development.

Historically, public procurement law primarily aimed to regulate competition within a contractual framework where one party is a public authority disbursing public funds[1]. Its main purpose was to ensure fair competition and select the most advantageous offer, or at best, to serve general economic policy. Over time, however, given the significant financial implications of public procurement contracts[2], the law has evolved to address broader concerns beyond competition. It is now increasingly seen as a mechanism for achieving strategic objectives, including environmental and social goals.

In this context, the concept of "environmental public procurement" or "green public procurement" has emerged as a legal and procedural mechanism requiring

public authorities to incorporate environmental considerations at every stage of contract planning, conclusion, and execution. National legal systems are now required to account for this dimension by establishing clear legal principles and mechanisms that ensure compliance with environmental standards.

However, the mere recognition of environmental principles in legal texts is not sufficient to ensure effective environmental protection. Concrete implementation mechanisms, institutional capacity, and detailed regulatory provisions are necessary. These must outline the environmental obligations and define the standards to be upheld by both contracting authorities and economic operators.

In light of this context, several legal and practical questions arise regarding the effectiveness of the public procurement system in Algeria in integrating environmental considerations, such as:

• Does the current public procurement law represent a genuine qualitative shift toward integrating environmental considerations? What are the most significant legal mechanisms introduced by this law to protect the environment, and how do they compare with similar mechanisms in other legal systems?

• To what extent are contracting authorities and economic operators able to implement these mechanisms, given the practical constraints of public administration? And what role do environmental criteria play in the evaluation of bids?

To address these questions, this study adopts a multi-method approach: the **descriptive method** to analyze Algerian public procurement legislation, the **analytical and critical method** to evaluate its practical limitations, and the **comparative method** to draw insights from international experiences in green procurement.

This study also aims to highlight the importance of public procurement as a tool for achieving a balance between economic performance and environmental sustainability, while shedding light on the legal liability of both public authorities and economic operators in the event of a breach of environmental obligations.

Accordingly, the issue of environmental considerations in public procurement in Algeria will be addressed through the following two-part structure:

The first Topic: The context of the development of environmental considerations in public procurement

The second Topic: Legal mechanisms for integrating environmental considerations into public procurement

THE FIRST TOPIC: THE CONTEXT OF THE DEVELOPMENT OF ENVIRONMENTAL CONSIDERATIONS IN PUBLIC PROCUREMENT

Law No. 23-12 of August 5, 2023, which governs the general rules of public procurement[3], introduces a series of modern principles reflecting Algeria's

commitment to incorporating environmental considerations into public policy. This is evident in the law's multiple references to environmental protection and sustainable development, particularly during the planning, preparation, execution, and monitoring stages of public contracts.

This legal framework allows for the conclusion of "green contracts" that integrate environmental standards at every stage, from the identification of needs and preparation of specifications to the evaluation of bids and the implementation and monitoring of contracts. These standards may include the use of non-polluting materials, environmentally friendly technologies, and efforts to reduce emissions and waste[4].

The global adoption of the concept of sustainable development -capable of reconciling seemingly contradictory objectives- was a major factor that led to its incorporation into national legal systems, including public procurement laws. The integration of environmental considerations into national procurement laws is thus a natural outcome of the broader adoption of sustainable development principles. This process took place in several stages, beginning with international conferences and gradually influencing domestic legislation, including in Algeria.

FIRST REQUIREMENT: THE INTERNATIONAL CONTEXT FOR INTEGRATING ENVIRONMENTAL CONSIDERATIONS INTO PUBLIC PROCUREMENT

The world has witnessed a significant shift in environmental awareness through landmark international conferences such as the Stockholm Conference in 1972, the Earth Summit in Rio de Janeiro in 1992, and the Johannesburg Summit in 2002. These events marked crucial milestones that emphasized the importance of integrating environmental considerations into public policies, including public procurement. Through these conferences, the principles of sustainable development were adopted, urging governments to use their purchasing power as a tool to promote environmental protection and achieve balanced development.

Firstly: **The 1972 Stockholm Conference and the birth of the concept of sustainability**

In response to rising global environmental threats, the United Nations General Assembly adopted resolutions 2398 (XXIII) and 2581 (XXIV), calling for an international conference on the human environment. The conference took place in Stockholm from June 5 to 10, 1972, under the theme "Only One Earth." Participating countries held different perspectives. Developed nations highlighted environmental issues from industrial waste and pollution, while developing countries stressed the need for rapid economic growth to fight poverty[5]

The Stockholm Conference introduced a new social value that gained recognition in international environmental law. Its declaration laid the foundation

for the concept of **sustainability**, focusing on first-generation environmental issues and underscoring the link between environmental protection and development.[6]

Secondly: Rio Conference (Earth Summit)

Before the Rio Conference, the Brundtland Report (1987), officially known as "Our Common Future," laid the groundwork for the concept of sustainable development. This was followed by UN General Assembly Resolution 44/228, which approved Brazil's proposal to host a conference in Rio de Janeiro. The Earth Summit was held from June 3 to 14, 1992, and was attended by over 100 heads of state and more than 2,400 NGOs[7].

The conference produced several key documents: the Rio Declaration (a non-binding political document with 26 guiding principles), Agenda 21 (a comprehensive action plan for sustainable development), the Forest Principles, the United Nations Framework Convention on Climate Change, and the Convention on Biological Diversity. The Rio Declaration introduced principles not present in the Stockholm Declaration, including the precautionary principle (Principle 15), the polluter-pays principle (Principle 16), and environmental impact assessments (Principle 17)[8].

Thirdly: Johannesburg Conference

The World Summit on Sustainable Development was held in Johannesburg from 26 August to 4 September 2002, as per UN General Assembly Resolutions 55/199 and 56/226. Its objective was to evaluate the progress made since Rio and to emphasize the social dimension of sustainable development, particularly poverty reduction.

Importantly, this conference promoted the use of public procurement as a tool for sustainable development. Article 19 of the Johannesburg Plan of Implementation states: "Authorities at all levels should be encouraged to integrate sustainable development considerations into decision-making processes, including those related to development planning, infrastructure investment, business development, and public procurement. This includes the development of procurement policies that promote environmentally sound goods and services."

These international milestones contributed significantly to the formulation of sustainable development principles, particularly in their environmental dimensions. They have since been incorporated into the domestic legal systems of many countries, including Algeria, notably through their public procurement laws[9].

SECOND REQUIREMENT: INTEGRATING ENVIRONMENTAL CONSIDERATIONS INTO PUBLIC PROCUREMENT IN DOMESTIC LAWS

From the above, it can be said that the acceptance and integration of environmental considerations into the legal system in general, including those

related to public procurement, has been done gradually in stages, beginning with international agreements and conferences. This then began to be reflected in the domestic legal system, as is the case with European directives that influenced French law, which ultimately led to the integration of these considerations into the field of public procurement.

As for Algeria and the Arab countries in general, they were not isolated from these transformations, as they adopted in their development approaches a policy of sustainable development with its three dimensions: economic, social, and environmental. This was reflected in their legal system, including the regulation of public procurement. Therefore, we will demonstrate the integration of environmental considerations in this field in some Arab laws and the Algerian procurement law.

Firstly: **Environmental considerations in some Arab public procurement laws**

Several Arab countries have progressively incorporated environmental concerns into their procurement laws. These legislative reforms aim not only to align with international obligations but also to respond to internal environmental challenges such as urban pollution, water scarcity, and energy inefficiency.

In Egypt, the Public Procurement Law emphasizes sustainable procurement as a guiding principle[10]. Article 02 outlines the objectives of implementing this law, including "encouraging entities subject to this law to adopt innovative solutions, initiatives, and advanced technologies when contracting to meet their needs, as well as adopting sustainable contracting policies..." Sustainable contracting means "providing the needs of the administrative body in a way that achieves the best value for public money throughout the life cycle of the contract, while taking into account the state's economic, social, and environmental policies[11]."

We also find that this law obliges contracting parties subject to its provisions to take into account the state's economic, social, and environmental policies announced by the Council of Ministers in their contracts, taking into account quality and cost considerations, and achieving the requirements of sustainable contracting, qualification and evaluation conditions, and performance indicators.

As for integrating environmental considerations across the contracting stages, Article 12 of the Executive Regulations of the Law on Contracts Concluded by Public Authorities, mentioned above,[12] stipulates that administrative Entities must take into account the state's environmental policies announced by the Council of Ministers, starting with: the stage of identifying needs, preparing technical specifications, conducting market studies, establishing the estimated value, tender documents, qualification and evaluation criteria, and monitoring contract

implementation, to achieve sustainable economic, social, and environmental development.

In Tunisia, the Public Procurement Law has adopted sustainable development considerations during the stages of concluding this type of contract[13]. This is embodied by making sustainable development a principle of public procurement, alongside traditional principles[14] .The same applies to the stage of determining needs and determining the technical specifications of the needs subject to the contract, as this must be done in a way that guarantees the quality of the requests subject to the deal, promotes the national product, and takes into account the environmental considerations[15].

Article 16 of this Law establishes a general obligation to take into account a set of considerations, most notably the objectives of sustainable development, thereby embedding environmental and social values into the legislative framework governing public procurement. Complementing this provision, Article 19 imposes a more operational requirement, stipulating that the terms of contract performance shall, as far as practicable, integrate social and environmental dimensions consistent with sustainable development goals.

This reflects the Tunisian legislator's intent to translate general principles into binding contractual obligations. Moreover, Article 31**,** which regulates technical specifications, expands this approach by allowing the inclusion of environmental characteristics -where feasible-through reference to all or part of an officially recognized and publicly accessible environmental label. The same article further reinforces environmental protection by permitting the public purchaser to adopt, among the bid evaluation criteria, a performance criterion specifically linked to environmental protection.

For its part, the Moroccan Public Procurement Law[16], also made environmental protection and sustainable development a principle of public procurement to which the conclusion of public contracts must be subject[17]. Thus, Morocco, too, has adopted a comprehensive approach to sustainable public procurement. Its legal framework emphasizes energy efficiency, the use of renewable resources, and environmental performance criteria in bid evaluation. The public purchaser is not only permitted but encouraged to consider these elements when designing procurement strategies. This is consistent with Morocco's broader national strategy for sustainable development and climate resilience, as outlined in its National Sustainable Development Strategy (NSDS)[18].

Secondly: Environmental considerations in the Algerian public procurement law

Algeria's experience provides a compelling case study of how a developing country with a legacy of centralized economic planning can transition toward

environmentally responsible procurement practices, which we will detail as follows:

1-The absence of environmental considerations in early procurement laws

Between 1967 and 2002, Algerian public procurement laws were largely silent on environmental issues. This absence reflected both the priorities of the post-independence state, which focused on infrastructure development and state-led industrialization, and the limited international emphasis on environmental integration at that time. Notably, the 1967 procurement framework [19], modeled after French administrative traditions, focused almost exclusively on procedural compliance, cost-efficiency, and supplier qualification. A similar approach was adopted under the 1982 Decree[20], and subsequently reaffirmed in the 1991 Executive Decree[21], regulating public procurement.

However, the early 2000s witnessed a global normative shift. The adoption of France's 2001 Public Procurement Code[22], which allowed for the inclusion of environmental criteria, marked a significant development. Algeria began to align with these new standards. Importantly, Law No. 03-10 on the Protection of the Environment within the Framework of Sustainable Development[23] was promulgated in 2003. Article 03 of this law articulates the principle of integration, requiring that environmental and sustainability considerations be incorporated into sectoral plans, including public procurement policies[24].

Then, Presidential Decree No. 08-338 of 2008[25] amended the procurement framework of 2002[26], to allow supplementary clauses relating to environmental protection. Although these clauses were initially discretionary, they signified a conceptual shift in the role of procurement law from a purely administrative mechanism to a vector for environmental policy.

2- Progressive legal reforms (2010–2023)

The 2010 and 2015 procurement regulations consolidated the environmental dimension. In particular, Article 62 of the regulation No. 10-236[27] (later Article 95 of the regulation No. 15-247) explicitly authorized the inclusion of environmental protection clauses in contract terms. Moreover, the 2015 Regulation elevated sustainable development to a general principle of procurement law, binding all stakeholders involved in the process.

This paved the way for the groundbreaking Law No. 23-12 of 2023, which codifies environmental protection as a mandatory requirement in procurement activities. Article 07 of the law obliges contracting authorities to respect environmental principles during the preparation, execution, and monitoring of contracts. The law introduces enforceable obligations, requiring the inclusion of environmental clauses in tender documents and contract specifications.

Furthermore, Article 60 allows for the specification of renewable energy use, eco-friendly materials, and pollution-reducing technologies. This innovation not only embeds environmental performance into procurement but also encourages domestic industries to adopt green technologies[28].

Nonetheless, implementation challenges remain. The mere existence of legal provisions does not guarantee environmental protection unless accompanied by: strong institutional oversight, technical training for procurement officers, clear guidelines and standardized environmental criteria, and active monitoring and accountability mechanisms.

Algeria's transition to sustainable procurement requires a multi-stakeholder approach, combining legal mandates with practical tools, capacity-building, and political will.

THE SECOND TOPIC: MECHANISMS FOR INTEGRATING ENVIRONMENTAL CONSIDERATIONS ACROSS THE STAGES OF CONCLUDING PUBLIC PROCUREMENTS

The process of concluding a public procurement contract passes through several sequential stages, beginning with the preparatory stage, during which the law obliges the public purchaser to precisely determine its needs and to establish the corresponding technical specifications through the terms of reference and procurement documents in general.

This is followed by calculating the estimated value of those needs and securing the necessary financial appropriations to fund the transaction. Subsequently, the stage of launching the tender, placing it into competition, and selecting the contracting operator begins. This phase starts with the public announcement of the procurement procedure, followed by the preparation and submission of bids, and finally, their evaluation by the public purchaser based on the pre-established selection criteria.

The key issue in this context is how to integrate environmental considerations throughout these stages. Accordingly, this section will address the integration of such considerations during the preparatory stage of the procurement (First Requirement), and then during the stage of organising the competition and selecting the contracting operator (Second Requirement).

FIRST REQUIREMENT: INTEGRATING ENVIRONMENTAL CONSIDERATIONS DURING THE PUBLIC PROCUREMENT PREPARATORY PHASE

The preparatory phase is of fundamental importance as it constitutes the foundation upon which all subsequent procedures rest. During this phase, the needs to be satisfied are identified, the technical specifications are drawn up accordingly, and the estimated value of such needs is calculated.

Technical specifications play a crucial role, as they define the subject matter of the contract and the criteria for selecting the best offers. They also shape the structure of the bids and the conditions for participation. Establishing the estimated value of the needs -after proper identification- determines the appropriate procurement method, the manner of publicising the contract, and the applicable oversight mechanisms.

Thus, this phase truly forms the cornerstone of the entire procurement process. The focus here is not on the procedural requirements specific to this phase, but rather on the manner in which environmental considerations can be embedded within it.

Firstly: **Sustainable identification of needs prior to contract conclusion**

Under Article 07 of Algerian Law No. 23-12, contracting authorities are obliged, before commencing any procedure to conclude a public procurement contract, to determine their needs in a manner that takes into account sustainable development objectives, including environmental concerns[29].

Similarly, the French Public Procurement Code explicitly requires that the nature and extent of the needs to be met must be precisely defined prior to initiating procurement procedures, taking into account the economic, social, and environmental dimensions of sustainable development[30].

In Egypt, the law regulating contracts concluded by public authorities obliges such entities to observe the state's economic, social, and environmental policies, as announced by the Council of Ministers, starting from the stage of needs determination[31].

Therefore, the public purchaser must integrate environmental standards at this early stage, whether through technical specifications, the use of environmental labels, or the preparation of a responsible purchasing plan. This entails the following:

1- Taking environmental standards into account when defining technical specifications

Procurement laws have repeatedly emphasised the need to incorporate environmental considerations into the technical specifications of the required goods, works, or services

In Egypt, the preparation of technical specifications is entrusted to a specialised committee, appointed by the competent authority, composed of three to seven members with the necessary technical expertise. This committee may seek assistance from other public entities or consulting offices and is tasked with developing technical specifications that meet sustainable development, quality, and performance standards relevant to the contract's subject matter[32].

In Tunisia, Article 10 of the Public Procurement Law stipulates that "the technical specifications for these needs shall be defined before the call for competition or negotiation, in a manner ensuring the quality of the requests subject to the contract, the promotion of national production, and sustainable development."

By contrast, Article 16 of Algeria's 2023 Public Procurement Law, dealing with needs determination, contains no reference to the necessity of considering social or environmental factors, mirroring the silence of Article 27 of Presidential Decree No. 15-247, which governs public procurements and public service delegations.

International practice shows that technical specifications may be established by reference to national or international standards, to equivalent reference documents, to functional or performance-based requirements, or by a combination of these approaches[33].

French law permits the use of national standards inspired by European standards, European technical specifications, common technical specifications, international standards, or other technical references issued by recognised European standardization bodies[34].

Furthermore, an annex to the French Public Procurement Code details the nature and content of technical specifications according to contract type:

- For works contracts, they include the required characteristics of materials, products, or supplies in a manner that meets the contracting authority's needs, encompassing levels of environmental and climate performance.

- For supply and service contracts, they include quality and performance levels as well as environmental and climate criteria[35].

On the other hand, the Algerian 2015 Procurement Regulations (Article 27) allow technical specifications to be defined through performance or functional requirements in a precise manner that enables candidates to clearly understand the subject of the contract, facilitates competition, and permits the inclusion of environmental characteristics. This mirrors the approach taken in French and Tunisian legislation[36].

2- Resorting to Environmental Labels

In addition to setting technical specifications that incorporate environmental requirements, public purchasers may rely on environmental labels -issued by independent bodies- to guide the selection of the most environmentally friendly offer[37].

Article 31 of the Tunisian Public Procurement Law provides that contract requirements may be defined based on functional performance criteria that include,

to the greatest extent possible, environmental characteristics identified by reference to all or part of a recognised eco-label.

In the context of public procurement, an eco-label is any document or certificate attesting that the works, products, services, operations, or processes covered by the contract possess certain environmental characteristics, making their impact on the environment lower than that of other comparable products[38].

Eco-labels are awarded by independent bodies on the basis of conformity with predefined criteria, established through a transparent procedure, taking into account product life cycles and environmental impacts, and after consultation with relevant stakeholders (manufacturers, distributors, consumer protection bodies, and environmental organisations).[39].

To be valid for procurement purposes, an eco-label must:

- Be established through an open, transparent, and non-discriminatory process accessible to all parties meeting the criteria,
- Be based on objective, verifiable criteria,
- Be issued by a third party independent from the economic operator seeking it,

Moreover, the characteristics certified by the eco-label must be relevant to the subject matter of the contract and capable of identifying the works, supplies, or services concerned. To safeguard the principle of equality, public purchasers must accept any label meeting their requirements, and where an economic operator is unable to obtain the requested label or its equivalent within the tender preparation period, allow proof of compliance by any other appropriate means[40].

Secondly: Integrating environmental considerations when determining the content and terms of the public procurement

Integrating environmental considerations during the preparation phase of a public procurement does not depend solely on the process of identifying needs. It extends further, as laws governing public procurements grant the public purchaser the authority to incorporate such considerations when defining the content and terms of the contracts they conclude. This integration can occur either when establishing and determining the implementation terms of the transaction or when setting its terms and conditions through the technical specifications.

Public procurements are recognized as agreements between two parties intended to create specific legal effects. However, what sets them apart from other types of contracts is that the conditions -whether related to their conclusion or execution- are determined unilaterally by the administration. This is done when it formulates and prepares the specifications for the transaction it seeks to conclude. This interpretation is supported by Article 26 of the Algerian Public Procurements and Public Service Delegations regulation, which underlines the administrative prerogative in defining such terms.[41]

1-Integrating environmental considerations when determining the terms of concluding a public procurement

The conclusion and implementation terms of public procurement contracts are defined through specifications, which contain both general and special clauses. General clauses may be administrative -applicable to a specific type of contract, such as works, supplies, services, or studies- or technical, covering requirements of a technical nature applicable to a given contract type. Special clauses, whether administrative or technical, address the unique features of a particular procurement.

In general, the specifications document consolidates all contractual terms and conditions, making it a key instrument for embedding environmental requirements. This aligns with Article 16 of the Tunisian Public Procurement Law, which obliges the public buyer, when drafting the specifications, to consider the capacities of contractors, producers, service providers, and national engineering offices, as well as the objectives of sustainable development.

The 2015 Algerian public procurement regulation require that contracts refer to applicable laws and include a set of core and supplementary clauses. The supplementary clauses explicitly encompass environmental protection and sustainable development requirements[42]. Similarly, the French general administrative clauses applicable to works contracts set forth obligations in Article 07, requiring contractors to ensure that their services comply with environmental laws and regulations in force.

Morocco's General Administrative Conditions for Works procurements[43], under Article 30, also impose requirements related to environmental protection. Similarly, Algeria's General Administrative Clauses Booklet for Public Works procurements[44], contains comparable provisions in Article 47, thereby further reinforcing the legislative intent to integrate environmental safeguards directly into the contractual framework.

2- Integration of environmental considerations in defining public procurement implementation terms

Defining the conditions for implementing a public procurement presents an optimal opportunity to incorporate environmental considerations during the preparation stage. Like the terms of conclusion, these conditions are set forth in the specification book and play a significant role in bid evaluation. The successful bidder must comply with these environmental terms throughout the execution of the contract, and the contracting authority bears the responsibility of ensuring proper enforcement[45].

Legislative frameworks in multiple jurisdictions expressly allow the inclusion of social and environmental dimensions within implementation terms.

Article 70 of European Directive No. 2014/24/EU authorizes contracting authorities to set special conditions for performance, provided they relate to the subject matter of the procurement and are disclosed in the competition notice or consultation documents. These conditions may encompass requirements on innovation, environmental protection, social impact, or employment[46].

The French public procurement code transposes these provisions, permitting performance clauses that address economic, innovation-related, environmental, social, employment, or anti-discrimination considerations, so long as they are tied to the contract's subject. Egypt adopts a similar stance, requiring public entities to align their procurement practices with the state's economic, social, and environmental policies. This obligation extends from the needs assessment phase through technical specifications, market studies, valuation, tender documentation, evaluation criteria, and ongoing monitoring to ensure sustainable development outcomes[47].

In Tunisia, Article 19 of the public procurement law mandates that, wherever possible, performance terms should integrate social and environmental elements in pursuit of sustainable development goals. These requirements must be clearly stated in both the competition notice and the specifications, ensuring transparency while avoiding any form of discrimination among prospective bidders.

SECOND REQUIREMENT: INTEGRATING ENVIRONMENTAL CRITERIA WHEN SELECTING THE CONTRACTING OPERATOR

The selection phase of the contracting operator begins with the formal announcement of the procurement procedure and the setting of a deadline for the preparation of bid documents and tenders. The bid file -including the specifications- is then made available to economic operators, who must prepare their submissions in strict conformity with the conditions specified by the public purchaser. These submissions may be filed either in traditional paper form or electronically[48].

Once the submission period closes, envelopes are opened, and the professional, financial, and economic capacities of the candidates are verified, ensuring that they are not in any of the statutory exclusion situations. This process excludes operators who lack the required qualifications or capacities to execute the contract, as well as those falling within prohibited participation scenarios under the applicable law. The remaining bids are then assessed against the contract award criteria.

What is crucial here is determining how environmental considerations are to be integrated into these procedural stages: whether failure to meet certain environmental requirements can constitute a legitimate exclusion ground; how

such considerations may be reflected in the content of the bid files and tenders; and whether the environmental dimension can operate as a valid and decisive selection criterion, and, if so, the legal value of such criteria.

Firstly: **Integrating environmental criteria through nomination files**

Following the publication of the call for competition, economic operators prepare their applications, which typically comprise administrative documents alongside technical and financial bids. The purpose of these documents is to establish the competence, qualifications, and capacity of each operator to perform the contract.

Under the Algerian public procurement law, bid documentation generally falls into two categories:

- Documents proving the absence of exclusion grounds, i.e., that the candidate is not in one of the statutory situations barring participation in public contracts.
- Documents proving eligibility and compliance with participation conditions, demonstrating the technical, financial, and professional capacity to execute the contract.

The key question here is whether the law permits, or even requires, the inclusion of documents evidencing the candidate's environmental capabilities.

Article 16 of Law No. 23-12 on public procurement requires, among other things, a declaration of candidacy affirming that the operator has met tax and para-fiscal obligations, as well as obligations to the paid-leave and weather-related unemployment bodies for the construction, public works, and irrigation sectors. While these undertakings embody a clear social dimension, they do not explicitly address environmental performance[49].

By contrast, French law[50], explicitly allows the public purchaser to request documents proving an operator's capacity in environmental matters. These may include statements describing environmental management measures applied during contract execution. Article 4 of the Order of March 22, 2019, further provides that the public purchaser may request quality certificates attesting to compliance with specific environmental or quality assurance standards, issued by independent bodies according to European norms and certified by accredited organizations[51].

This comparative approach illustrates that while Algerian law permits broad participation criteria, it does not yet impose explicit environmental capability requirements at the nomination stage, unlike French law, which codifies them as permissible and, in some contexts, expected.

Secondly: Integrating environmental considerations when examining offers

Once the public purchaser has reviewed the administrative candidacy files and verified the capacity of candidates, operators in prohibited situations, or those

failing to meet participation conditions, are excluded. Exclusions also apply to candidates submitting false information or failing to provide the required documents or clarifications within the specified deadlines[52].

The remaining offers are then assessed against the award criteria. At this point, two critical issues arise concerning environmental integration:

1-Eliminating environmentally non-compliant offers

Before applying substantive selection criteria, the public purchaser must exclude offers that fail to meet the stated requirements or that are irrelevant to the subject matter of the procurement.

In French public procurement law, the concept of environmental integration reaches a high level of procedural sophistication. The law requires the exclusion of non-compliant, unacceptable, and inappropriate offers. A "non-compliant" offer is one that fails to respect the terms of the consultation documents, for example, by omitting mandatory environmental performance clauses, or that breaches applicable legislation, particularly environmental laws and regulations[53].

As a principle, such offers must be rejected outright[54] French law provides the contracting authority with a discretionary power to allow operators to rectify their non-compliant offers, provided certain conditions are met. This flexibility is not available in all procedures: it is generally excluded in methods not allowing negotiation (e.g., adapted procedures), but is permitted in negotiation-based methods such as negotiated procedures, competitive dialogue[55], or, in the Algerian context, direct negotiation[56].

Readjustment is subject to strict safeguards:

- The correction must occur within the prescribed time limits,
- The offer must not be abnormally low (price),
- Adjustments must not alter the essential characteristics of the procurement.

It should also be noted that reorganizing and adjusting offers is a discretionary right of the public purchaser, not an obligation. [57]

2- Incorporating environmental considerations when selecting the most economically advantageous offer

The ultimate purpose of public procurement is to meet the needs of the contracting authority by awarding the contract to the most economically advantageous tender (MEAT). Price remains important, but modern procurement law -in Algeria, France, Tunisia, and internationally-recognizes that quality-based criteria, including environmental performance, can be decisive.

In French law, Article L.2152-7 of the public procurement code lists permissible quality-based award criteria, which include:

- Technical value and functional performance.
- Accessibility and inclusivity.

- Innovation.
- Efficiency in environmental protection.
- Biodiversity conservation and animal welfare.[58]

In Tunisian law, the specifications must define the evaluation methodology and criteria, expressly including environmental performance indicators[59].

In Algerian law, Article 78 of the Public Procurement Regulation of 2015 permits award criteria such as quality, implementation deadlines, lifecycle cost, aesthetic and functional value, social integration of marginalized groups, technical value, after-sales service, and effectiveness in promoting sustainable development. The law also allows additional criteria, provided they are expressly stated in the procurement documents[60],

From this, it follows that environmental considerations may legally be used as award criteria in Algeria, but they must:

- Be directly related to the subject matter of the contract.
- Be non-discriminatory and proportionate.
- Not unduly restrict competition.
- Be disclosed in the call for tenders or procurement documents.

This ensures compliance with the principles of transparency, equal treatment, and fair competition, principles that underpin both Algerian procurement law and international public procurement standards.

Conclusion:

The integration of environmental considerations into public procurement systems represents a crucial evolution in aligning state purchasing power with sustainable development goals. This study has shown that while Algeria has made significant legislative strides with the enactment of its 2023 public procurement law and the 2015 procurement regulation, there remain substantive challenges and opportunities when compared to the more developed frameworks in France, as well as the evolving systems in Egypt, Tunisia, and Morocco. Algeria's legal framework recognizes the importance of sustainability, particularly through provisions that allow for environmental criteria within tender documents and award procedures. However, the practical application and depth of environmental integration remain in their nascent stages.

In comparison, French law provides a more advanced and detailed approach to environmental integration in public procurement, featuring explicit criteria embedded within the public procurement code that govern environmental performance, technical innovation, and sustainability standards. Tunisia and Morocco have also adopted progressive measures, mandating the inclusion of environmental performance indicators in tender evaluations, reflecting a regional trend towards embracing green procurement. Egypt, while gradually moving in this

direction, still faces implementation gaps that hinder the full realization of environmental objectives in procurement practices.

The comparative analysis underscores that legal provisions alone are insufficient; effective environmental integration demands robust institutional capacity, clear procedural guidelines, and a cultural shift within procurement authorities to prioritize sustainability alongside traditional criteria such as price and quality. Moreover, transparency and non-discrimination principles must be carefully balanced to ensure environmental criteria do not inadvertently restrict competition.

From the Algerian perspective, this research highlights several key results. First, the 2023 public procurement law represents an important step forward by explicitly allowing environmental and social criteria in award evaluations, signaling a legislative intent to embed sustainability. Second, the 2015 regulation provides a foundation for implementing these principles but requires enhanced clarity and operational tools to support contracting authorities. Third, regional experiences demonstrate the benefits of integrating environmental management measures at early stages of procurement, including bid preparation and qualification, which Algeria could adopt more comprehensively.

To foster a more effective integration of environmental considerations within Algerian public procurement, several recommendations emerge. It is imperative to develop detailed implementing regulations and practical guidelines that clarify the criteria and procedures for assessing environmental performance. Capacity-building initiatives targeting procurement officials must be prioritized to equip them with the knowledge and skills necessary to apply environmental criteria effectively and consistently. Furthermore, a centralized monitoring mechanism should be established to evaluate the environmental impact of public contracts and ensure compliance with sustainability objectives. Lastly, Algeria could benefit from enhanced regional cooperation and knowledge exchange with countries like France, Tunisia, and Egypt to adopt best practices and innovative approaches that reconcile economic efficiency with ecological responsibility.

In conclusion, the journey toward embedding environmental considerations in public procurement is ongoing and multifaceted. Algeria stands at a pivotal moment, with promising legal foundations that require strategic implementation and continuous refinement. By drawing on regional experiences and committing to institutional strengthening, Algeria can transform its public procurement framework into a powerful lever for sustainable development, promoting environmental stewardship while supporting economic growth and social inclusion.

Footnotes:

[1] According to a report by the Organization for Economic Cooperation and Development (OECD), the public procurement sector represents between 25 and 30% of the GDP in developing countries, and about 15% of the GDP in the member countries of the OECD. See: OECD (2019), Review of the Public Procurement System in Algeria: Towards an Efficient, Open, and Inclusive System, OECD Public Governance Reviews, OECD Publishing, Paris, Available at: https://doi.org/10.1787/49802cd0-en. Accessed on: September 12, 2024.

[2] In 2024, Algeria's Gross Domestic Product (GDP) was estimated at approximately **35,750 billion Algerian dinars** (equivalent to about **263.6 billion U.S. dollars**). GDP (current US$) report - Algeria published on the World Bank website: https://data.worldbank.org/, accessed on: September 15, 2024.

[3] Law No. 23-12 of August 5, 2023, setting out the general rules relating to public procurement, published in Official Journal No. 51 of August 6, 2023.

[4] Laib Abderrahmane, Controlling the Comprehensive Performance of the Economic Institution in Algeria in Light of the Challenges of Sustainable Development, PhD in Economic Sciences, Faculty of Economics, Business and Management Sciences, University of Setif, 2011, p. 08.

[5] In this context, Indian Prime Minister Indira Gandhi famously asked: "Are not poverty and need the greatest polluters?".

[6] Shukrani Al-Hussein, «From Stockholm Conferences 172 to Rio+20: An Introduction to the Evaluation of Global Environmental Policy», Arab Economic Research Journal, Issues 63-64, 2013, p. 150.

[7] See: environment and sustainable development conferences on the United Nations website: https://www.un.org/ar/conferences/environment/rio1992. Accessed on: November 20, 2024.

[8] Kasdi Faiza, Environmental Standards in Public Procurement - A Comparative Study, PhD in Law, Faculty of Law and Political Sciences, University of Saida, 2019, p. 126.

[9] Report on the World Conference on Economic Development (Johannesburg, 26 August - 4 September 2002), p. 97. Available on the International Environmental Forum website: https://iefworld.org/, accessed on: September 20, 2024

[10] Article 8 of Law No. 182 of 2018, issued on October 3, 2018, related to Organizing contracts concluded by public authorities in Egypt, published in the Official Journal on October 3, 2018.

[11] Amna Salem Al Jabri, «Sustainable Government Procurement», Publications of the Department of Finance, Government of Dubai, United Arab Emirates, February 2024, p. 02.

[12] Executive Regulations of Law No. 182 of 2018 Regulating Contracts Concluded by Egyptian Public authorities, issued by the Minister of Finance under Resolution No. 692 of 2019, published in the Official Journal on November 3, 2019.

[13] Decree No. 2014-1039 of 13. March 2014, on the regulation of public procurement, published in the Official Journal of the Tunisian Republic No. 22 issued on March 18, 2014.

[14] Article 6 of the Tunisian Public Procurement Law states that: "Public procurement is subject to the following principles: competition, freedom of participation in public procurement, equality before public procurement, and transparency and integrity of procedures. Public procurement is also subject to the rules of good governance and takes into account the requirements of sustainable development."

[15] Article 10 of the Tunisian Public Procurement Law, mentioned above.

[16] Decree No. 2.22.431 of March 8, 2023, relating to public procurement, Official Journal No. 7176, issued on March 9, 2023.

[17] Article 6 of the Moroccan Public Procurement Law, mentioned above.

[18] Article 18 of the Moroccan Public Procurement Law, mentioned above.

[19] Order No. 67-90 of June 17, 1967, containing the Public Procurement Law, published in the Official Journal, No. 52, issued on June 27, 1967 (Cancelled).

[20] Decree No. 82-145, of April 10, 1982, regulating public operator contracts, published in the Official Journal No. 15, issued on April 13, 1982 (Cancelled).

[21] Executive Decree No. 91-343 of November 09, 1991, regulating public procurement, published in the Official Journal No. 57 issued on November 11, 1991 (Cancelled).
[22] Decree No. 2001-210 of March 07, 2001, relating to the public procurement code, published in the Official Journal No. 57 of March 8, 2001.
[23] Law No. 03-10 of July 19, 2003, relating to environmental protection within the framework of sustainable development, published in the Official Journal, No. 43, issued on July 20, 2003, as amended and supplemented.
[24] Kasdi Faiza, op.cit, p.153.
[25] Presidential Decree No. 08-338 of October 26, 2008, amending and supplementing the 2002 Public Procurement Regulations, published in the Official Journal, No. 62, issued on November 09, 2008 (Cancelled).
[26] Presidential Decree No. 02-250 of July 24, 2002, regulating public procurement, published in the Official Journal, No. 52, issued on July 28, 2002 (Cancelled).
[27] Presidential Decree No. 10-236 of October 07, 2010, regulating public procurement, published in the Official Journal, No. 58, issued on October 07, 2010 (Cancelled).
[28] Article 60 of the Law No. 23-12 of August 5, 2023, states that: "When the Contracting Authority issues a national and/or international call for competition, taking into account the exceptional circumstances provided for under this Law, it shall, as applicable, include in the specifications (book of conditions) provisions relating to environmental protection, preservation, and the use of new and renewable energy sources."
[29] Review Article 16 the Law No. 23-12 of August 5, 2023, regulating the general rules for public procurement, and Article 27 of the Presidential Decree No. 15-247 regulating public procurement and public service delegations, published in Official Journal No. 50 of September 20, 2015.
[30] Article L2111-1 of the Order No. 2015-899 of July 23, 2015 relating to public procurements, published in Official Journal No. 0169 of July 24, 2015, amended and supplemented, states that: “The nature and the tendency to be satisfactory with precision before the consultation in advance and to compute the objects of durable development in all economic, social, and environmental dimensions.”.
[31] Article 12 of the law regulating contracts concluded by public authorities, previously mentioned.
[32] Article 19 of the law regulating contracts concluded by public authorities, previously mentioned.
[33] See, for example, Article 14 of the Egyptian Law, Article 05, Paragraph 5 of the Moroccan Law, and Article 31, Paragraph 3 of the Tunisian Law.
[34] Article L2111-8 and 9 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[35] Notice relating to the nature and content of technical specifications in public procurements (Official Journal n°0077 of March 31, 2019) - text n° 84, Annex 5 of the public procurement code, previously mentioned.
[36] Article L2111-10 of the Order No. 2015-899 of July 23, 2015, relating to public procurements states that: “Technical specifications formulated in terms of performance or functional requirements are sufficiently precise to allow candidates to know exactly the object of the contract and the buyer to award the contract. They may include environmental or social characteristics.” See also: Article 31 of the Tunisian Public Procurement Law, mentioned above.
[37] Bouchareb Yacine, Public Procurement and the Environment, Magister's thesis in law, Faculty of Law and Political Sciences, University of Setif 2. 2017, p.127.
[38] Osama Yousef Mohamed, «Ecolabelling and its role in enhancing Product competitiveness», intervention at the Fifth International Conference of the Faculty of Applied Sciences “From Scientific Research to Practical Application”, Faculty of Applied Arts, Helwan University, Egypt, 2018, p.03, published on https://www.researchgate.net/, accessed on: October 06, .2024, p.03.
[39] Ana Nuytten, «How to integrate environmental clauses into public procurement? », Public Contracts Journal, no. 251, March 2024, p.40.

[40] Article 31, paragraph 3 of the Tunisian Public Procurement Law, mentioned above. see also: Article L2111-14, 15, 16, and 17, of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[41] This article stipulates that "the periodically updated specifications shall clarify the conditions under which public procurements are concluded and implemented.".
[42] Article 95 of the Algerian Public Procurement Regulations, previously mentioned.
[43] Executive Decree No. 02.14.394 issued on May 16, 2016, approving the general administrative specifications applicable to works procurements (Official Journal No. 6470 of 02/06/2016).
[44] Executive Decree No. 21-219 of May 20, 2021, approving the General Administrative Provisions Booklet applicable to public works procurements (Official Journal No. 50 of June 24, 2021).
[45] Charlier Raphaële, Environmental criteria in public procurement, Master II in Public Economic Law, University of Paris 1, 2007, p. 21.
[46] Directive 2014/24 EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJEU No. L94 of March 28, 2014).
[47] Article 12 of the law regulating contracts concluded by public entities, previously mentioned.
[48] Ana Nuytten, op.cit, p.41. See also the website of the Ministry of Ecological Transition and Territorial Cohesion in France: https://www.ecologie.gouv.fr/labels-environnementals/.
[49] Article 67 of the Algerian Law No. 23-12 of August 5, 2023, regulating the general rules for public procurement, previously mentioned.
[50] Order of March 22, 2019, establishing the list of information and documents that may be requested from candidates for public procurements (Official Journal of March 31, 2019, text 18), Annexe No. 9.
[51] Article 04 of the Order of March 22, 2019, mentioned above.
[52] Article L.2144-4 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[53] Article L.2152-2 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[54] Article L.2152-1 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned, states that: "The buyer rejects irregular, unacceptable or inappropriate offers."
[55] Article L.2124-4 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[56] Article 41 of the Law No. 23-12 of August 5, 2023, regulating the general rules for public procurement, previously mentioned.
[57] French Council of State, March 21, 2018, No. 415929, Bouches-du-Rhône department; available on the website: www.marche-public.fr. Viewed on October 21, 2024.
[58] Article L.2152-7 of the Order No. 2015-899 of July 23, 2015, relating to public procurements, previously mentioned.
[59] Article 64 of the Tunisian Public Procurement Law, previously mentioned.
[60] Article 78 of the Algerian Presidential Decree No. 15-247 regulating public procurement and public service delegations, previously mentioned.

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