Guarantees for the Consolidation of Transparency in Public Procurement under Law No. 23-12

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Abstract:
Public procurement constitutes the cornerstone of economic development, serving as a principal conduit through which substantial financial resources are allocated for the realization of projects intended to satisfy collective needs. However, this pivotal function has also rendered it a fertile ground for the misappropriation of public funds, whether by economic operators or by contracting authorities themselves. Such systemic vulnerabilities have precipitated rampant corruption, fiscal dissipation, and a significant obstruction to the dynamics of national development. In response, the Algerian legislator has enacted a series of regulatory frameworks, the most recent being Law No. 23-12, which enshrines the principle of transparency through the institutionalization of a digital public procurement portal and the reinforcement of judicial oversight.
Keywords: *Digitalization of public procurement; electronic procurement portal; judicial oversight of public contracts.*

Introduction:

Public procurement constitutes one of the essential legal and procedural instruments employed by the State in the management of public resources and the implementation of development projects. It exerts a direct influence on the national economy and the quality of public services, representing one of the primary channels through which public funds are expended. This centrality, however, also renders it susceptible to manipulation and deviation, particularly in the absence of robust mechanisms for oversight and transparency. Cognizant of the magnitude of financial flows involved and the risks of corruption that may arise at any stage—from the

announcement of the tender to its execution and final settlement—the Algerian legislator has accorded increasing importance to the regulation of this sector.

In this context, Law No. 23-12, governing public procurement and public service delegation contracts, was promulgated with the aim of establishing a modern legal framework that consolidates transparency, ensures equitable access to public contracts, and promotes the rationalization of public expenditure. This legislative instrument incorporates a set of legal and procedural safeguards designed to reinforce transparency, including the digitalization of procurement processes, the institutionalization of procedural publicity, and the strengthening of both internal and external oversight mechanisms. It also introduces specific rules governing contract award procedures and the selection of economic operators, grounded in the principles of competition, equality, and judicial scrutiny.

The enhancement of transparency in public procurement is not merely a normative aspiration, but rather an imperative for restoring citizens' and economic operators' confidence in public administration, ensuring a sound business environment, and combating all forms of corruption. Accordingly, this study seeks to examine the principal guarantees enshrined in Law No. 23-12 aimed at upholding the principle of transparency, and to critically assess their effectiveness in curbing corruption. The research is guided by the following central question:

What guarantees has Law No. 23-12 on public procurement provided to consolidate the principle of transparency, and to what extent are they sufficient in mitigating manifestations of corruption?

To address this problem, the study is structured around two main axes:

- The first examines the role of the electronic procurement portal as a guarantee for transparency.
- The second explores the role of judicial oversight in upholding transparency in public procurement procedures.

Section One: The Electronic Procurement Portal as a Guarantee for the Consolidation of the Principle of Transparency

The electronic portal for public procurement constitutes a specialized and strategic digital platform designed to serve all public contracting authorities

and stakeholders in the field. This portal enables the dissemination and exchange of documents and information related to public procurement processes, and also facilitates the electronic conclusion of public contracts **(Bou Abdallah & Merkan, 2014, p. 111)**.

In this regard, Article 203 of the Public Procurement Law stipulates the establishment of an electronic portal managed jointly by the ministry in charge of finance and the ministry responsible for information and communication technologies, with each ministry assuming clearly delineated responsibilities. Furthermore, a joint ministerial decree defines the specific prerogatives of each ministerial department in this context.

The content and management modalities of the portal are determined by a decision issued by the Minister of Finance. Articles 3, 4, and 5 of the decree dated 17 November 2013 **(Ministerial Decree, 2014)** specify the structure and functions of the public procurement electronic portal, with transparency being operationalized through two primary components:

- The administration and functional operation of the portal (Subsection One), and
- The secure electronic exchange of procurement-related documents (Subsection Two).

Subsection One: Enshrining the Principle of Transparency through the Content and Administration of the Electronic Portal

The electronic public procurement portal constitutes a specialized digital interface designed for stakeholders and professionals engaged in the field of public procurement. Particular emphasis has been placed on its content, which embodies the core principles of transparency and clarity. The portal ensures the publication of the following:

- The legal and regulatory framework governing public procurement;
- Legal advisory services relating to procurement procedures and their application;
- A consolidated list of economic operators barred from participating in public tenders;

- A list of economic operators excluded from procurement processes for breach of contractual obligations or violation of applicable legislation;
- Forecasted programming of projects planned by contracting authorities, along with detailed registers of contracts awarded during the previous fiscal year, including the names of beneficiary entities or consortiums;
- Periodic reports issued by contracting entities concerning the progress and execution of public contracts;
- A register of companies stripped of their qualification and classification certificates due to failure to meet legal or professional standards;
- Publication of reference indices for the pricing of goods and services, serving as benchmarks for bid evaluation and cost assessment;
- All documents and information pertinent to the scope and operation of the portal **(Bouzbara, 2023, p. 3575)**.

The portal thus provides all necessary data to render electronic contracting a transparent and intelligible process, thereby reinforcing the principle of publicity. Numerous scholars have emphasized that transparency and publicity are intrinsically linked and function as two facets of the same principle, both aimed at disclosure, clarity, and the elimination of opacity, ultimately fostering trust between government institutions and the private sector **(Ahsan & Al-Azzawi, 2017, p. 64)**.

In support of the digital transformation of public procurement, the portal offers the following functionalities:

- Registration of contracting authorities;
- Registration of economic operators;
- Multi-criteria search capabilities;
- Real-time notifications on procurement updates;
- Online submission of commitments and undertakings;
- Management of information exchange between contracting authorities and investors;
- Timestamping and codification of documents;

- E-training on digital procurement commitments;
- Secure electronic document signing;
- An interactive event log;
- User-oriented digital manuals and guides.

Additionally, the portal serves as a repository for a comprehensive database encompassing **(the aforementioned Ministerial Decree, 2013)**:

- Legally authorized bodies and entities empowered to enter into and execute public contracts;
- Economic operators and their corresponding administrative records;
- Economic statistics cards related to public procurement demand;
- The exchange of documents and information between contracting parties and economic actors.

To ensure the effective and secure administration of the data constituting the portal's ecosystem, the legislator has mandated the governance of information systems, network infrastructure, and databases, alongside the regulation of access rights. Furthermore, special emphasis has been placed on the maintenance and cybersecurity of the portal, to safeguard against digital threats that may hinder its functionality or accessibility.

Subsection Two: Consolidating Transparency through the Electronic Exchange of Documents

Article 205 of the Public Procurement Law stipulates that the data and documents processed via the electronic portal shall serve to constitute a comprehensive database **(the aforementioned Ministerial Decree, 2013)**, in strict compliance with the prevailing legislative and regulatory provisions. Furthermore, the ministerial decree elaborates that the design and architecture of the electronic portal must adhere to a clearly defined set of foundational principles:

1. Security of Exchanged Electronic Documents

- All methods and formats employed in the digitization of written documents must ensure their integrity and protection from any form of tampering or damage.

- Documents must be electronically signed using secure digital signature protocols, in accordance with applicable legal and regulatory standards.
- The identity of economic operators must be authenticated and verifiably established.

2. Confidentiality of Electronically Exchanged Documents

- Documents transmitted electronically must be protected through dedicated encryption systems, subject to full compliance with the relevant legal and regulatory frameworks.

3. Traceability and Auditability of Transactions

- An electronic event log must be generated to monitor the exchange and flow of information.
- Each electronically transmitted bid, or one submitted via digital storage media, must be accompanied by an acknowledgment of receipt indicating the exact date and time of its submission.

4. Interoperability of Information Systems

- The portal must adopt standardized formats and protocols to facilitate seamless communication and data exchange between heterogeneous information systems.

5. Secure Digital Archiving of Documents

- All documents must be stored and archived electronically using protocols that ensure their accessibility, integrity, and legal evidentiary value over time.

Through the digitization of documentation and the codification of principles ensuring confidentiality, the Algerian legislator has reaffirmed a tangible commitment to transparency. In addition, the legislator has delineated the typology of documents exchanged between contracting authorities and economic operators.

With regard to contracting authorities, the documents include:

- Procurement specifications (cahiers des charges);
- Subscription declarations;
- Statements of commitment;
- Declarations of probity and, where applicable, investment undertakings, depending on the nature of the project or contract.

The process also encompasses:

- The resubmission of bids;
- Requests for clarifications or additional information;
- Provisional award decisions;
- The handling of non-viable procedures, including cancellations or annulments of provisional awards;
- Responses to inquiries regarding the content of procurement specifications;
- Communications on bid evaluation results and any appeals filed in this regard.

As for the economic operators, the required documents include:

- The subscription declaration;
- The commitment letter;
- The declaration of probity;
- The investment undertaking, when required.

Also encompassed are:

- Requests for further information or clarification concerning the procurement specifications;
- Withdrawal of procurement documents and complementary files, as needed;
- Submission of prequalification dossiers, where applicable;
- Technical and financial offers, including any revised submissions;
- Requests for access to evaluation results and appeals against procurement decisions.

From this, it becomes evident that the legislator has established a non-exhaustive list of documents to be exchanged electronically between the contracting authority and the economic operator (the aforementioned Ministerial Decree, 2013). The objective is to expedite administrative procedures, optimize time management, and reinforce both transparency and objectivity in contractual relations. Notably, the legislator's use of expressions such as "particularly" and "where applicable" indicates a flexible and adaptive approach, acknowledging that the range of documents

may vary depending on the contextual exigencies of each procurement operation **(Bouzbara, 2023, p. 3578)**.

Subsection Three: Enshrining Transparency through the Publicity of Procedures via the Electronic Portal

Publicity constitutes a foundational pillar in consolidating the principle of transparency within the framework of public procurement. The Algerian legislator has underscored the centrality of procedural publicity through the institutionalization of the electronic procurement portal. Participation in public tenders is contingent upon adherence to a set of procedural requirements by individuals or legal entities that meet the eligibility criteria specified in the procurement specifications (cahier des charges) **(Presidential Decree No. 15-247 , 2015)**. This framework is designed to ensure equitable access and enable prospective bidders to submit their proposals before the contracting authority.

This commitment to procedural publicity is manifested through several operational mechanisms:

- Contracting authorities are mandated to make the bidding documents available electronically to all prospective bidders, in accordance with a timeline defined by the Minister of Finance. Correspondingly, bidders must submit their responses electronically within the prescribed deadlines.
- Procurement notices must be disseminated via electronic means, and contracting authorities are required to clearly specify the web address for downloading the tender documents in the corresponding public announcements.
- In response to electronic calls for tender, candidates are also permitted to submit a parallel version of their bids—either in physical or electronic format—provided this is done within the legally defined timeframe. These alternative versions must be sealed and clearly marked as *"substitute copies"*, and sent to the contracting authority within the specified deadline. Such submissions shall not be opened in cases where the primary electronic bid is infected with malware, submitted beyond the

deadline, or rendered inaccessible for technical reasons **(the aforementioned Ministerial Decree, 2013)**.

- In addition, all procurement notices—whether related to open tenders, prequalification calls, or consultation letters—must be simultaneously published via the electronic portal, the print press, and the Official Bulletin of Public Procurement. Consultation letters must also be individually transmitted to the relevant economic operators.
- Furthermore, in procurement procedures for routine supply contracts and standard service provision, the contracting authority may opt for the most economically advantageous offer by employing the following methods:
    - **Reverse electronic auction**, enabling bidders to revise and resubmit their prices or other quantitatively measurable components of their bids.
    - **Electronic supplier rooms**, within the framework of a dynamic purchasing system or a framework agreement.

From the foregoing, it is evident that the legislator has taken considerable measures to embed the principles of transparency within the digital framework of public procurement **(Presidential Decree No. 15-247 , 2015)**. Nonetheless, the integration of electronic mechanisms does not preclude the continued relevance of traditional contractual instruments, which may still retain their importance in specific legal and procedural contexts.

Section Two: Judicial Oversight as a Guarantee for the Consolidation of the Principle of Transparency

Administrative justice constitutes a fundamental pillar in the fight against corruption in the field of public procurement, as it plays a critical role in reviewing legal challenges and verifying the validity of procedures undertaken by public entities. In this section, we shed light on the contribution of emergency administrative proceedings (*Subsection One*) and annulment litigation (*Subsection Two*) in strengthening the principle of transparency.

Subsection One: The Contribution of Emergency Administrative Jurisdiction to Transparency

The Algerian legislator has instituted a specialized framework governing emergency administrative litigation in public procurement, pursuant to **Law No. 09-08** on the Code of Civil and Administrative Procedure, as amended by **Law No. 22-13**, particularly in Articles 946 and 947 bis. This framework is intended to reinforce mechanisms for the protection of public funds in the context of procurement procedures. Emergency litigation is therefore conceived as a preventive legal remedy against corruption-related offenses that may occur during the contract award or implementation phases.

To initiate an emergency administrative action, a set of conditions must be satisfied:

- **General conditions** (*Branch One*),
- **Specific conditions** (*Branch Two*),
- In addition to the **broad prerogatives granted to the summary judge** (*Branch Three*).

Branch One: General Conditions

These consist of *urgency* and *the existence of harm*.

1. Urgency: Urgency is defined as a situation that necessitates immediate judicial intervention to avert an imminent and irreparable harm, which cannot be mitigated through standard litigation procedures, even when expedited. Such cases are deemed incompatible with the ordinary pace of judicial proceedings due to their potential irreversible consequences.

2. Proven Harm: The plaintiff must demonstrate the existence of actual or imminent harm threatening a right, and such harm must be of a nature that cannot be adequately remedied at a later stage. Moreover, the urgent request must be intrinsically connected to the principal right claimed in the main action—it must not constitute a separate or unrelated claim **(Law No. 09-08 , 2008)**.

Branch Two: Specific Conditions

These include *legal standing, proof of violation,* and *timing of the action prior to contract signature*.

1. Legal Standing of the Claimant: Any party with a legitimate interest in the procurement process may bring an emergency claim, particularly if they

are likely to suffer harm due to breaches of publicity or competition rules during the contracting procedure. The law also authorizes public entities explicitly empowered to initiate such proceedings. Notably, the **Wāli** (governor), acting as the State's representative at the wilaya level, is vested with the right to notify the administrative court regarding contracts concluded or intended to be concluded by local authorities or public institutions.

2. Existence of a Breach of Publicity and Competition Obligations
Indicators of procedural irregularities by the contracting party may include:

- Violation of rules governing public tender announcements;
- Improper selection of procurement methods, such as direct negotiation in lieu of competitive bidding;
- Failure to adhere to required technical specifications or awarding undue advantages to certain candidates;
- Arbitrary exclusion from tender procedures without justification;
- Breach of principles governing contractor selection, such as the principle of equality among bidders.

3. Statutory Deadline for Filing the Action: According to paragraph 2 of Article 946 of the Code of Civil and Administrative Procedure **(Law No. 09-08 , 2008)**, an emergency action may be filed *prior to the formal conclusion of the contract*. Moreover, the **Wāli**, as the State's delegate at the regional level, may refer the matter to the court if a contract is concluded—or is about to be concluded—by a local authority or public institution **(Law No. 22-18, 2022)**.

It is also important to note that the administrative court may issue an **order suspending the signature of the contract** until the judicial proceedings are finalized.

Branch Three: Powers of the Summary Judge in Public Procurement Disputes

The legal instruments available to the summary judge are crucial to ensure that contracting entities comply with statutory obligations related to publicity and competition. These include the **Public Procurement Law No.**

23-12, the **Investment Law**, and **Law No. 01-06 on the Prevention and Combating of Corruption**, as amended.

The powers of the summary judge in procurement-related matters include the following:

1. Authority to Issue Mandatory Injunctions to the Administration: The judge has the power to compel the administration to fulfill its legal obligations concerning transparency and competition in public procurement. For example, the judge may order the publication of a procurement notice or its republication if the original process is deemed unlawful. The judge may also direct the administration to undertake any corrective action to bring the procurement procedure in line with legal standards of fair competition **(Berrak, p. 308)**.

2. Power to Impose Coercive Fines (Astreinte): Codified in Article 471 of the Civil Procedure Code, the coercive fine serves as a financial deterrent to compel the administration to comply with judicial orders. This mechanism exerts financial pressure on defaulting authorities and has been explicitly authorized under the amended Law No. 08-09, thereby empowering the administrative judiciary to enforce compliance through pecuniary sanctions.

3. Power to Suspend the Contract Award Process: The administrative judge may issue an order suspending or postponing the conclusion of a public contract. While this measure serves an essential protective function, it may also have adverse effects on the execution of the procurement process. Such powers, therefore, are not absolute—they are exercised with restraint and only when justified by serious and compelling grounds. The power to defer contract signature for a fixed period not exceeding twenty (20) days is specifically provided for in Article 946 of the aforementioned code.

Subsection Two: The Role of Annulment Litigation in Upholding the Principle of Transparency

Annulment litigation plays a pivotal role in reinforcing the principle of transparency, particularly in the realm of public administration. The judicial oversight exercised through this mechanism contributes to the exposure of non-transparent practices and the invalidation of administrative decisions that contravene the principles of legality and transparency, thereby

reinforcing the foundations of sound and effective governance. The annulment action is brought with the objective of contesting administrative decisions and seeking their nullification. In this context, the administrative judge is vested with limited and not discretionary authority—that is, the judge acts strictly within the bounds of legality and does not enjoy unfettered discretionary power **(Bouzidaf, 2009, p. 48)**.

The administrative judge adjudicating an annulment claim is empowered solely to invalidate the contested decision, provided it is found to be legally flawed. The judge does not have jurisdiction to amend or replace the decision with another. This principle is evident in legal doctrine, which defines annulment actions as legal proceedings initiated before administrative courts for the purpose of nullifying an administrative act believed to be unlawful, following a specific set of procedural rules.

Unlike full jurisdiction litigation, which governs contractual disputes, annulment actions are strictly confined to administrative decisions. They are inadmissible against decisions directly relating to administrative contracts—unless the action targets pre-contractual administrative acts, such as preparatory or obstructive measures affecting the tendering process. This is based on the doctrine of the detachable administrative act, whereby certain legal acts that form part of the contractual process retain the character of standalone administrative decisions **(Al-Tamawi, 1976, p. 266)**, making them susceptible to independent annulment claims **(Aouabdi, 2003, p. 446)**.

It is worth noting that decisions issued during the execution phase of the contract do not grant the contractor the right to initiate an annulment action. Nevertheless, the contractor may pursue an alternative legal remedy in the form of a compensatory claim if such decisions cause actual harm. Therefore, annulment actions remain viable only where the contracting authority issues a decision in its regulatory capacity, and not merely as a contracting party. Such decisions are referred to as detachable administrative acts (*Branch One*) and may be challenged via annulment litigation (*Branch Two*).

Branch One: Identifying Detachable Administrative Acts

Detachable administrative acts are those which, although embedded within a broader contractual framework, retain an autonomous legal character falling under the jurisdiction of administrative courts. Despite their integration into a contractual process, these acts are separable and may be contested independently of the contract itself.

The definition of such acts remains legally ambiguous, as there is no express statutory formulation. However, Article 09 (last paragraph) of Law No. 06-01 on the Prevention and Combating of Corruption, as amended, affirms the right to exercise all available remedies in the event of non-compliance with public procurement rules. From this, one may infer the legislator's intention to allow broad legal standing to challenge violations of procurement principles **(Tiab, 2013, p. 218)**.

In general, various steps taken during the procurement process may qualify as detachable administrative acts. These can be categorized as follows:

1. **Preparatory Acts Prior to Contract Formation**: These include actions taken before the formal conclusion of the contract, such as the allocation of budgetary appropriations, project registration, and the issuance of payment authorizations, among other administrative measures in the pre-contractual phase.

2. Detachable Acts Issued During the Contract Award Phase
These may include, for instance:

- The decision determining the method of contract award (e.g., public tender, negotiated procedure), whether decided by the contracting authority or imposed by supervisory entities. Such decisions are separable and challengeable by way of annulment.
- The request for proposals, which may be defective due to the absence of mandatory information.
- The exclusion of a candidate from the tender process, which—if based on erroneous or abusive grounds—may be annulled.
- The provisional award decision, which affects both the selected bidder and competing candidates, and qualifies as one of the most consequential detachable administrative acts.

- Decisions annulling the procurement procedure for reasons of public interest, irrespective of the stage reached.
- The declaration of ineffectiveness, when the competition procedure is deemed futile or inoperative for any valid reason.

Branch Two: The Contribution of Annulment Litigation to Combating Corruption

By identifying and isolating detachable administrative acts issued by contracting authorities during procurement management, annulment litigation provides economic operators with a powerful legal remedy. Actions brought against such acts fall within the general framework of administrative litigation and are subject to the same procedural conditions as other annulment proceedings.

These conditions include:

- The legal capacity, standing, and interest of the claimant;
- The nature of the contested act, which must qualify as an administrative decision;
- The filing of the claim within statutory deadlines, before the competent judicial authority in terms of subject matter and territorial jurisdiction.

In addition, substantive grounds for annulment must be established, which may include:

- Lack of jurisdiction;
- Procedural or formal irregularities;
- Substantive unlawfulness;
- Abuse of power or purpose deviation;
- Insufficient or unfounded reasoning (defect of cause) **(Bouali, p. 812)**.

Upon receipt of an annulment claim against a detachable administrative act, the administrative judge first verifies compliance with procedural admissibility requirements. Subsequently, the judge assesses the legality of the act in question. If illegality or non-conformity with public procurement principles is established, the judge may render the act null and void, or invalidate its legal effects.

In doing so, annulment litigation emerges as an essential instrument in the administrative judiciary's arsenal to confront and reduce corruption in public procurement **(Ghaoui, 2020, p. 245)**.

Conclusion

In the context of this study concerning the guarantees for enhancing transparency in public procurement under Law No. 23-12, it becomes clear that the Algerian legislator has accorded significant importance to this principle, viewing it as the cornerstone for safeguarding public funds and ensuring efficient management of public contracting. The enactment of this legislation was a direct response to the systemic challenges and vulnerabilities that plagued the procurement system, primarily due to the prevalence of administrative and financial corruption. It also aims to close the loopholes that had previously been exploited to favor private interests over the public good.

Law No. 23-12 represents a concrete step forward in codifying numerous guarantees, whether through the digitalization of procedures via the national electronic procurement portal, or through the formalization of public calls for competition and the expansion of judicial and administrative oversight mechanisms.

Based on the findings of this analysis, the following conclusions may be drawn:

- Law No. 23-12 marks a qualitative leap in the regulation of public procurement, by embedding transparency as a foundational pillar in both contract award and execution.
- The digital transformation of procurement procedures via the electronic portal constitutes a real guarantee for equal opportunity, and a deterrent against favoritism and procedural manipulation.
- The law enshrines a range of oversight mechanisms, both judicial (summary proceedings and annulment litigation) and administrative (internal and external controls), aimed at safeguarding legality and transparency at all stages.
- While the legislation retains certain traditional safeguards, it updates and modernizes them to align with the requirements of integrity and good governance.

- Notwithstanding this legislative progress, some of the guarantees remain insufficiently implemented in practice, thus limiting their tangible impact.

Recommendations

In light of the foregoing, the study puts forward the following recommendations:

1. Strengthen the training and professional development of officials in charge of preparing and monitoring procurement procedures, through continuous education programs focusing on transparency and fair competition principles.
2. Activate ex-post oversight mechanisms on contract execution—not just the award phase—to ensure that what is contracted is effectively delivered.
3. Enhance the operational efficiency of the electronic procurement portal, and develop advanced digital tracking systems for supply and demand, as well as for bid evaluation, in order to improve credibility and accountability.
4. Mandate contracting authorities to provide reasoned decisions, particularly with regard to exclusion or declarations of unsuccessful tenders, to ensure effective post-facto review and judicial challenge.
5. Encourage civil society and investigative journalism to monitor transparency in public procurement, through institutionalized reporting and community-based oversight mechanisms.
6. Tighten sanctions against violators of transparency principles, whether they are public officials or economic operators, including the use of blacklists to prevent repeat offenses.

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