Oversight by Public Procurement Committees in Ensuring Procedural Transparency under Law 23-12

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Abstract

This study aims to examine the oversight role of public procurement committees in promoting procedural transparency and ensuring the principle of free competition under Algerian Law No. 23-12 on public procurement. This focus stems from the importance of public procurement as a key state tool for meeting its needs and achieving developmental programs, given its direct connection to public funds and its impact on economic and administrative performance, while considering the risks associated with corruption and procedural complexity.

The research employs a descriptive-analytical approach by reviewing legal texts governing public procurement, examining doctrinal perspectives, and analyzing the practical operations of internal and external oversight committees. The study highlights that public procurement committees constitute a central regulatory mechanism. The Committee for Opening Envelopes and Evaluating Bids ensures the integrity of the selection process and compliance with legal standards, while external oversight, through public procurement committees and the National Public Procurement Council, monitors procedures and reviews contract awards at both national and sectoral levels.

The findings indicate that the integrated oversight system contributes to enhancing transparency, preventing conflicts of interest, and upholding fair competition among economic operators, thereby protecting public funds and improving the efficiency of procurement management.

Keywords: Public Procurement, Transparency, Oversight Committees, Free Competition

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1. Introduction

Public procurement constitutes one of the most important tools used by the state to meet its needs and implement its development programs, given its direct connection to public funds and its impact on the effectiveness of economic and administrative performance. In light of the increasing challenges associated with procedural complexity and the rising risks of corruption and lack of transparency, ensuring integrity and adherence to fair competition rules throughout the various stages of awarding and executing public contracts has become an urgent necessity to maintain trust in public administration and achieve the public interest. From this standpoint, Law No. 23-12 introduced a new legal framework aimed at enhancing transparency, consolidating the principle of free competition, and strengthening oversight mechanisms related to public procurement.

Public procurement committees—whether at the internal or external level—represent a fundamental pillar in this regard, as they are entrusted with tasks related to monitoring procedures, examining files, evaluating bids, and ensuring compliance with the law. In addition, they play a critical role in regulating the process of awarding contracts and preventing any deviation that could undermine the integrity of the procurement process. The importance of these committees lies in their role as institutional oversight mechanisms designed to limit actions that may compromise transparency and free competition.

Accordingly, the objective of this research paper is to examine the role played by public procurement committees in promoting procedural transparency under the provisions of Law 23-12, by analyzing the legal framework governing them, studying the practical aspects of their functions, and assessing their effectiveness in protecting public funds and ensuring equality among economic operators.

The central problem addressed in this study is the following question: To what extent have public procurement committees, under

Law 23-12, succeeded in ensuring procedural transparency and reinforcing the principle of free competition in public procurement?

To answer this question, the study adopts a descriptive–analytical method, through the analysis of the legal texts governing public procurement, in addition to relevant doctrinal approaches and related studies, as well as an assessment of the effectiveness of the stipulated oversight mechanisms.

This study is structured as follows:

First: Internal administrative oversight in reinforcing the principle of free competition in public procurement.

Second: External administrative oversight of the principle of free competition in public procurement.

2. Internal Administrative Oversight in Upholding the Principle of Freedom of Competition in Public Procurement

In the field of public procurement, internal oversight is exercised through a permanent committee responsible for opening bids and evaluating offers.

2.1 Establishing a Permanent Committee for Opening Bids and Evaluating Offers

Article 96 of Law 23-12 stipulates that: "As part of internal control, the contracting authority shall establish one or more permanent committees, called the 'Bid Opening and Offer Evaluation Committee'. This committee shall be composed of qualified employees belonging to the contracting authority, selected for their competence." (Article 96 of Law No. 23-12).

It is noted that the legislator retained the same formulation as that contained in Presidential Decree No. 15-247 (Article 160 of Presidential Decree 15-247), by maintaining the unification of the Bid Opening Committee and the Offer Evaluation Committee into a single body. In contrast, some opinions have proposed recommendations calling for the separation of their membership again, based on the difficulty of combining the tasks of opening and evaluating bids simultaneously.

This legislative choice can be interpreted as the legislator's desire to avoid the conflicts that previously arose from discrepancies between the reports of the opening and evaluation committees, in addition to seeking time efficiency, procedural simplification, and greater flexibility—especially in light of the complexities and recurrent delays that characterize public procurement procedures (Boudayef, 2018, p. 101).

2.2 Membership in the Bid Opening and Offer Evaluation Committee

Article 96 of Law 23-12 stipulates that: "...this committee shall be composed of qualified employees belonging to the contracting authority, selected for their competence."

From this provision, several conditions for membership in this committee may be inferred:

a. Condition of Affiliation : Members must be employees of the contracting authority. From a legal and administrative standpoint, appointing members from outside the authority would be illogical, as the committee is directly linked to the interests and specificities of the contracting authority's procurement.

b. Condition of Competence and Qualification : In addition to being a public employee—defined as any agent appointed to a permanent public position and officially ranked within the administrative hierarchy pursuant to Article 04 of Order No. 06-03 concerning the General Statute of the Civil Service—members must be qualified and possess the necessary competence (Article 04 of Order No. 06-03).

It is natural that committee members possess the qualifications enabling them to examine and evaluate bids objectively and effectively, given the significant oversight role the committee plays in public procurement, especially since public contracts consume a substantial portion of public funds.

The legislator did not specify the exact type of training required; instead, the contracting authority is free to determine the nature and type of training appropriate to its procurement activities. It is also empowered to select the entities responsible for training its staff through skill-

enhancement and capacity-building programs, as provided for in Articles 211 and 212 of Presidential Decree 15-247.

c. Condition of Absence of Conflicts of Interest : The legislator also required that committee membership be free from situations of incompatibility or conflicts of interest. Articles 90–92 of Presidential Decree 15-247, in Section 8 of Chapter 3 of Title 1 under the heading "Combating Corruption," set out these instances of incompatibility. Law 23-12 incorporates these provisions in Chapter 4 of Title 3 under the heading "Integrity Rules," covering professional ethics and incompatibility rules applicable to both public officials and economic operators.

It is notable that the legislator replaced the term "Combating Corruption" with "Integrity Rules," in line with the nature of the new law.

Article 67 of Law 23-12 obliges any public employee or agent involved in awarding, monitoring, or executing a public contract who has direct and/or indirect private interests conflicting with the public interest to inform his or her hierarchical authority in writing and withdraw from the task (Article 67 of Law 23-12).

It is noteworthy that the legislator added the phrase "direct and/or indirect" and mandated written disclosure to prevent any avoidance or evasion of declaring such conflicts.

The criminal element of conflict-of-interest offenses is established whenever the employee engages in parallel activities that conflict with his or her duties, whether directly or indirectly—for example, when these activities are conducted under the name of a spouse or child.

It is also important to note that the French version of the text used the term *coïncident avec* ("coinciding with") instead of *conflit d'intérêts* ("conflict of interest"), a term that lacks legislative precision. "Conflict" is the more accurate term, especially since the matter involves a criminal offense—a distinction adhered to by the French legislator in the Public Procurement Code, where the term *conflit d'intérêts* is used.

It should further be noted that the criminalized act is not the mere

existence of a conflict of interest, but rather the failure of the concerned employee to disclose or report it.

In the same context, Article 88 of Presidential Decree 15-247 requires every committee member to sign a declaration committing to respect the ethical code, according to a pre-approved model.

Article 68 of Law 23-12 retained the same provisions without modification. The text indicates that incompatibility of membership between the Arbitration Committee and the Bid Opening and Offer Evaluation Committee is established whenever both are dealing with the same procurement file (Article 68 of Law 23-12).

2.3 The Role of the Bid Opening and Offer Evaluation Committees

The Bid Opening and Offer Evaluation Committee performs its duties in accordance with several provisions stipulated in Law 23-12. Its purpose is to verify the validity of tender submissions and ensure their compliance with public procurement legislation. The committee also evaluates offers based on the criteria defined in the specifications document, while adhering to procedures that govern each stage separately, even though the same committee carries out all these stages.

The committee's oversight results in outcomes that begin with the opening of the bids and end—when applicable—with the announcement of the provisional award, by recommending the selection of an economic operator whose offer is the most advantageous economically.

2.4 Procedures for Opening Bids and Evaluating Offers : The opening of bids is carried out by the internal committee appointed by the head of the contracting authority, in a public session attended by bidders or their representatives, on the final day designated for submitting offers. During this session, an opening report is prepared and signed by all attending members.

Article 71 of Decree 15-247 outlines the committee's tasks during the initial stage (the opening stage), specifically (Article 71 of Decree 15-247):

- Verifying the proper registration of offers in a numbered and

certified register.

- Preparing a list of candidates or bidders, arranged according to the date of receipt of their application or offer envelopes.
- Preparing a list of the documents constituting each offer.
- Initialing the documents contained in the opened envelopes that are not subject to completion requests.
- Drafting minutes during the session, signed by all attending committee members, with any reservations recorded if applicable.
- Inviting candidates or bidders, when necessary and in writing via the contracting authority, to complete their technical offers (except for the justified technical memorandum) within a maximum of 10 days from the date of opening the envelopes.
- Proposing the declaration of the procedure as unsuccessful when necessary, in accordance with the conditions stated in Article 40 of the presidential decree.
- Returning unopened envelopes to their owners among the economic operators, pursuant to the decree's requirements.

By reviewing the tasks of the Bid Opening and Offer Evaluation Committee, it becomes clear that the opening stage entails significant consequences. It is noted that neither Decree 15-247 nor Law 23-12 specifies the quorum required for the committee's meetings to be valid.

It is unreasonable for the session to be held with only one member present, as the assigned tasks require distribution and rigorous monitoring to avoid omissions or errors—such as examining application files, where an economic operator may be excluded due to missing documents that cannot be supplemented. Therefore, it is necessary to ensure sufficient member attendance to guarantee transparency, seriousness, and the safeguarding of fair competition.

3. External Administrative Oversight over the Principle of Freedom of Competition in Public Procurement

Public procurement is among the most important mechanisms used

by the state to meet its needs and achieve development objectives. Given the financial and economic nature of these contracts and their link to public funds, the Algerian legislator has established a set of oversight mechanisms to ensure their transparency and proper execution. Among these is external oversight carried out by specialized bodies.

3.1 External Oversight Committees for Public Procurement: External oversight involves the intervention of bodies that are relatively independent from the contracting authority. These bodies monitor the procedures related to awarding and executing public contracts in accordance with applicable laws and regulations. Law No. 23-12 on Public Procurement dedicates several provisions to organizing these committees, defining their powers, and outlining their mechanisms of intervention.

In this context, distinctions can be made between the Public Procurement Committee, sectoral committees, and committees of contracting authorities, each exercising a specific oversight role aimed at protecting public funds and ensuring that procurement processes comply with legal requirements.

a. The Public Procurement Committee : Article 97 of Law 23-12 on Public Procurement stipulates that the Public Procurement Committee exercises ex-ante (prior) control over public contracts. Its responsibilities include (Article 97 of Law 23-12):

- Verifying the validity and compliance of contracts with legislation and regulations.
- Ensuring the contracting authority's commitment aligns with the programmed activities.
- Granting approval (visa) or refusing it, with refusal requiring proper justification.

The committee acts as the decision-making authority concerning the oversight of public contracts falling within its jurisdiction. Its approval is binding upon the contracting authority, the budgetary controller, and the public accountant, unless it contradicts legislative provisions.

b. Sectoral Committees and Contracting Authority Committees : Article 101 provides for the establishment of a Public Procurement Committee within each contracting authority. This committee is responsible for reviewing draft specifications documents, contracts, amendments, and handling appeals (Article 101 of Law 23-12).

Article 102 establishes a sectoral public procurement committee within each ministerial department, exercising external oversight over the contracts awarded by the subordinate entities (Article 102 of Law 23-12).

3.2 The National Council for Public Procurement : The National Council for Public Procurement is a new oversight mechanism introduced by the Algerian legislator in the new public procurement law. The law dedicates a single article to this council, addressing its designation, its affiliation to the Minister of Finance, and the responsibilities assigned to it.

Under Article 104 of the law, a National Council for Public Procurement is created under the authority of the Minister of Finance. It assumes the duties of the National Council for Public Procurement, which include oversight, advisory, and proposal-related functions. These responsibilities may be summarized as follows (Article 104 of Law 23-12):

a. Oversight Functions:

- Approving the internal regulations applicable to ex-ante oversight bodies for public procurement.
- Ruling on the validity of procedures for awarding and granting contracts of national importance, including major projects, specifications documents, and public contracts.
- Conducting an annual economic survey of public procurement, analyzing economic and technical data, and presenting recommendations to the government.

b. Advisory Functions:

- Providing consultation and assistance regarding public procurement matters referred to it by the Minister of Finance.

- Giving opinions prior to the approval of specifications documents and templates for public procurement contracts.
- Giving opinions on disputes arising from the execution of contracts involving foreign operators.

c. Proposal Functions: The council has the authority to propose:

- Draft legislative and regulatory texts related to public procurement, including proposals to improve procurement management and establish sound principles.
- Legal measures to enhance transparency, equal treatment, and ensure optimal use of national capacities (Mostefaoui Kamal, 2024, p. 236 +).

3.3 Supervisory Authority Oversight over Public Procurement : According to Article 103, supervisory oversight consists of verifying (Article 103 of Law 23-12):

- The degree to which public procurement aligns with the objectives of efficiency and economy.
- The inclusion of the project subject to the contract within the sector's priority programs.

When the contracting authority is subject to a supervisory body, this authority must establish a model plan defining the organization and functions of oversight related to the contracts awarded by the entities under its control.

4.Conclusion

In light of the preceding analysis of the legal and regulatory framework governing public procurement under the provisions of Law 23-12, it is clear that the Algerian legislator aimed to build an integrated system that enhances transparency, supports the principle of free competition, and imposes effective oversight over the various stages of contract award and execution. It is evident that public procurement committees—both internal and external—represent a pivotal link in ensuring integrity and preventing deviations that could affect public funds. These committees have established an institutional mechanism for

prior and ongoing oversight, making them a key actor in promoting good governance.

I. Results

- Law 23-12 demonstrates a clear orientation toward enhancing transparency through the incorporation of integrity rules, prevention of conflicts of interest, and expansion of declaratory obligations for committee members.
- The Committee for Opening Envelopes and Evaluating Bids remains the cornerstone of internal oversight, despite debates regarding its unification, as this unification has contributed to simplifying procedures and reducing conflicts between committee reports that existed previously.
- Requiring competence and qualification for committee members represents a significant development to enhance the quality of evaluations and ensure an accurate understanding of technical and financial files, despite the lack of precise specifications for required training.
- Conflicts of interest are now governed by stricter provision, mandating written declarations and broadening the concept of direct and indirect interests, thus enhancing the integrity of representatives of the contracting authority.
- External oversight mechanisms have expanded qualitatively, through the establishment of sectoral committees, the reinforcement of the public procurement committee with impactful decision-making powers, and its linkage to the budgetary controller and public accountant.
- The creation of the National Public Procurement Council represents a qualitative leap, as it is an authority with oversight, advisory, and propositional functions, allowing for comprehensive evaluation of nationally significant contracts.
- The combination of these internal and external mechanisms

reflects a clear legislative intent to build a multi-level oversight system aimed at reducing violations, improving public expenditure efficiency, and ensuring fair treatment for all economic operators.

II. Recommendations

- Define precise training and qualification standards for members of the opening and evaluation committees to ensure a consistent level of competence and improve the quality of technical and financial bid analysis.
- Separate the tasks of opening envelopes and evaluating bids in major and complex contracts to reduce pressure on committees and ensure greater objectivity in assessing high-financial-impact files.
- Enhance comprehensive digitalization of public procurement procedures to reduce human intervention, limit disputes, and increase transparency, traceability, and oversight.
- Require contracting authorities to publish detailed periodic reports on contract awards and evaluation processes to enable societal and media monitoring that deters potential deviations.
- Expand the role of the National Public Procurement Council to include ex-post oversight, enabling evaluation of project implementation, not just contract award, to ensure more comprehensive protection of public funds.

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