

Governing Public Procurement in Algeria: Challenges and Reforms

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Summary:Public procurement plays a vital role in national development, particularly in developing countries like Algeria. Over the years, Algeria has made various attempts to regulate and govern its public procurement system in order to promote transparency, efficiency, and accountability. This article explores the evolution of Algeria's public procurement framework, with a focus on the legal and institutional reforms, especially the Presidential Decree No. 15-247. It also examines the challenges that continue to affect the implementation and governance of public procurement processes in the country.

Keywords: Public procurement, Governing Public, Algeria.

I-Introduction:

Public procurement is one of the most important mechanisms employed by public authorities to implement development and service programs. It reflects a set of principles and values rooted in the constitutional framework and the standards of good governance. In this context, the Algerian legislator, through Presidential Decree No. 15-247, enshrined several general principles governing the awarding of public contracts. These include: freedom of access to public procurement, equal treatment of candidates, and transparency of procedures, while also providing for some exceptions to these principles.

This presentation aims to shed light on these principles by analyzing the relevant legal provisions and presenting practical case studies that reveal the gap between the legal text and actual practice. It seeks to answer the following question:

To what extent are the principles governing public procurement, as stipulated in Presidential Decree No. 15-247, respected in practical implementation?

This paper examines these principles and the exceptions outlined in Presidential Decree 15-247, dated September 16, 2015, which regulates public procurement and public service delegations. The paper is structured as follows:

2-Historical Background of Public Procurement in Algeria

Algeria's public procurement system has undergone various reforms since independence in 1962. Initially inspired by French administrative law, the procurement framework has evolved in response to both domestic needs and international pressures (Benmaamar, 2018). Notably, the early 2000s saw the introduction of stricter procurement rules aimed at combating corruption and inefficiency.

2. Principles of Public Procurement

I. Theoretical Overview of Public Procurement

Public procurement represents a strategic channel for the expenditure of public funds. It serves as the legal mechanism through which the state, its institutions, regional communities, and public entities fulfill public needs (e.g., works, supplies, studies, and services) by contracting with technically, professionally, and financially qualified operators (natural or legal persons).

Definitions of public procurement vary across legislative, judicial, and doctrinal contexts. This section elaborates on these definitions:

I-1 Legislative Definition

Article 2 of Presidential Decree 15-247 defines public procurement as *"written contracts under applicable legislation, concluded with economic operators for the fulfillment of contracting authorities' needs in works, supplies, services, or studies, as stipulated in this decree."*

The legislature incorporates several criteria for defining public procurement:

Organic Criterion: Entities subject to public procurement rules (Article 6 of Decree 15-247) include:

- The state (in the narrow sense);
 - Regional communities (provinces and municipalities);
 - Public administrative institutions;
 - Public enterprises governed by commercial law when executing projects funded wholly or partially by the state or regional communities.
- Subjective Criterion: The scope of public procurement (Article 29) includes works, supplies, studies, and services.
- Financial Criterion: Procedures vary based on estimated contract values:
- Formal procedures** for works/supplies exceeding 12 million DZD and studies/services exceeding 6 million DZD;
 - Adapted procedures** for amounts equal to or below these thresholds;
 - Simplified procedures** for works/supplies under 1 million DZD and studies/services under 500,000 DZD.
- Formal Criterion**: Contracts must be written on plain paper, with priority given to written agreements over execution, except in urgent cases.

I-2 Judicial Definition

In a ruling dated December 17, 2002, the Council of State defined public procurement as *"a contract linking the state to private entities for the execution of projects or provision of services."* This definition, however, limits contracting authorities to the "state" and excludes supplies and studies. Subsequent decrees (e.g., 02-250, 03-301, and 08-338) expanded this to include studies.

I-3 Doctrinal Definition

Public procurement is an administrative contract, defined as *"an agreement concluded by a public entity to manage a public service, incorporating clauses atypical to private law."*

II. Principles of Public Procurement

Article 5 of Decree 15-247 mandates adherence to three core principles:

II-1 Principle of Free Competition

Free competition ensures all qualified candidates can participate in tenders without restriction. Article 40 emphasizes competitive bidding as the default procedure, while Article 15-247 limits non-competitive methods (e.g., direct negotiation) to 11 exceptional cases.

Exceptions to Free Competition:

- Exclusion of candidates lacking technical/financial qualifications;
- Restrictions on former public officials (Article 92);
- Exclusion of entities in bankruptcy, tax non-compliance, or convicted of fraud (Article 75).

II-2 Principle of Equal Treatment

Equal treatment prohibits favoritism. Contracting authorities must predefine evaluation criteria and avoid post-tender negotiations. Article 85 grants a 25% preference to Algerian-made products or majority-Algerian-owned firms. Article 87 reserves certain contracts for micro-enterprises.

II-3 Principle of Transparency

Transparency requires clear procedures, including:

- Publicizing tenders in national newspapers and the *Official Bulletin of Public Procurement (BOMOP);
- Electronic submission of bids (Article 204);
- Mandatory disclosure of conflicts of interest;
- Prohibition of bidder collusion.

Challenges in Governing Public Procurement**

Despite significant legal reforms, several challenges persist in Algeria's procurement system:

- Corruption and lack of enforcement**: Allegations of favoritism and kickbacks are common in large-scale projects;
- Bureaucracy and procedural delays**: Excessive administrative requirements slow down procurement;
- Lack of trained personnel**: Many procurement officials lack adequate training and understanding of the rules;
- Insufficient digitalization**: While electronic procurement is encouraged, implementation remains partial and inconsistent (OECD, 2019).

Recommendations for Effective Governance

To improve public procurement governance, Algeria should consider:

- Strengthening institutional capacity** through training and recruitment;
- Enhancing digital tools** for e-procurement and data transparency;
- Promoting citizen and civil society oversight** to reduce corruption;
- Aligning with international best practices**, such as those recommended by UNCITRAL and the WTO's GPA.

III. Conclusion

Algeria's attempt to govern public procurement reflects a broader struggle to modernize public administration and combat corruption. While legal reforms like Decree No. 15-247 represent a step in the right direction, much remains to be done in terms of implementation, oversight, and capacity-building. A more transparent, accountable, and efficient procurement system is essential for Algeria's economic and institutional development.

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