

THE NECESSITY OF SUSTAINABLE URBAN ENVIRONMENTAL BALANCE AND ITS RELATIONSHIP WITH ENSURING GOVERNANCE IN THE FIELD OF PUBLIC PROCUREMENT

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Received: 17/04/2023; Accepted: 25/09/2023; Published: 10/10/2023

Abstract

The field of public procurement has revealed a new pattern known as "green public procurement" or commonly referred to as "green purchasing." This pattern has established a promising mechanism for contracting parties and will contribute to stimulating major projects for environmental transformation within the framework of sustainable development. Therefore, it is necessary to consider what serves the expenditure aspect and the rational financing process in order to achieve economic balance and preserve the integrity of national banking institutions. Consequently, proposing effective solutions to achieve economic and financial security, which is based on a profit-oriented approach that protects the environment, becomes essential, considering the aesthetic appeal of the urban pattern and the specificity of the field of planning and development. This will ultimately lead to sustainable development and a higher quality of life.

Keywords: public procurement, environment, sustainable development.

INTRODUCTION

It is necessary to examine the components of the distinguished economic development model that operates according to the principles of good governance and promotes social solidarity. Considering the downward trend witnessed in the oil market, there is a compelling need to seriously consider rearranging sources of financing outside the fossil fuel sector. This should be done by adopting appropriate choices that ensure the effectiveness of solutions in the financing system of development projects to achieve sustainable development, taking into account the conditions for preserving the environment and regional planning options. This requires thorough planning, in-depth studies, and effective monitoring that should align with the stages of local and national public procurement contract awarding and implementation.

As public procurement is one of the most important channels capable of facilitating the successful progress of projects and translating investments, it has a close relationship with the public treasury and serves as a fertile ground for public spending. However, it also becomes an avenue and refuge for various crimes that harm and squander public funds. This necessitates intensifying research and studies capable of solving the problems that reduce crime opportunities and fill the gaps within the public procurement regulations. This should be done in line with global challenges and changes, while overcoming obstacles. The cornerstone of this effort lies in the rule of law and effective governance.

In a related context, and in order to control the continuous increase in environmental spending, which has become an inefficient phenomenon in light of global financial changes, it is essential to promote responsible sustainable development that prioritizes environmental preservation and conservation. All of this and more signifies an objective expression of a belief system based on moderation in the economy and wisdom in moderate progress. The aim is to achieve urban environmental balance under a comprehensive policy that follows a national strategy and plan, taking into account major processes, including a general survey of the territorial area and environmental safety requirements. All of these aspects were expressed in this esteemed virtual international forum, which, in our humble opinion, deserves to be strengthened with the proper

foundations in order to appreciate this effort and make use of the available opportunities to enhance serious research in the legal system. This research should aim to understand the criteria of environmental standards and encourage the fulfillment of tasks in the field of planning and development.

In our endeavor to address this complex interrelated problem, as it represents a strategic and inevitable economic necessity that ultimately aims to achieve the profitability of the environmental and urban approach, I also believe that researching in the field of public procurement is one of the intricate topics due to the dispersion of its texts between the private and public realms. It involves a conflict between the theoretical legal nature and its realistic economic counterpart, without neglecting the balance between public and private interests under the umbrella of administrative law and its specificity. This compelled us to delve into this particular aspect as a model for promoting economic development values through a careful examination of the provisions outlined in Presidential Decree No. 15-247, which acknowledges ecological and administrative responsibility in case of breaching the environmental and urban dimensions of the contracting parties or economic operators in the same domain.

Based on the aforementioned, it becomes useful to pose the following question: What are the means and guarantees necessary for rationalizing and governing public procurement when determining the needs of contracting entities, by adopting the environmental standard and urban development rules to achieve balance and sustainable development? This main problem can branch out into several questions, such as: What are the key interconnections between the technical, artistic, and legal dimensions in this field? To address this, we have utilized an analytical approach, incorporating comparative methodology in certain instances, within the following framework: We delve into the environmental and urban approach in the realm of public procurement in the first axis, and then we explore the governance of public procurement and mechanisms to limit ecological responsibility within the second axis.

The First Axis: Environmental and Urban Approach in the Field of Public Procurement:

It is no longer hidden from anyone the diverse growth in the economic development aspect, and the escalating effects it has on the environment and natural balance, as well as its impact on the increasing environmental spending, which affects financial resources. Given this dual emphasis on environmental protection and optimizing public expenditure, we (firstly) will explore the influence of the environmental and urban standard in the field of public procurement. Then, (secondly) we will discuss the regulations of the environmental and urban standard in the realm of public procurement.

Firstly: The Impacts of the Environmental and Urban Standard in the Field of Public Procurement

We will trace the significant stages that have shaped the environmental dimension in Algeria and then delve into the pillars of public procurement that aim to protect the environment within the framework of sustainable development.

01: Landmarks of the Environmental Dimension in Algeria

Recognizing the importance of environmental protection and the development of Algerian society as a whole, the Algerian legislator has shown increasing concern for environmental issues and the surrounding ecosystem. Decree No. 74-156 was issued, establishing a National Committee for the Environment¹, which is tasked with providing opinions on any legislative or regulatory projects related to environmental improvement. The committee also contributes to all of Algeria's international activities in the field of environment and is responsible for preparing national laws for the protection of nature and the environment. Among the texts that were issued during that time are: Decree No. 75-43, dated 02/06/1975, which includes the Law of Pasturage.

- Decree No. 76-90, dated 23/10/1976, which includes the Health Law. In the same year, various texts were issued, including the decree related to the issuance of the Maritime Law (Law of the

¹Decree No. 74-156, dated 12/07/1974, was issued to establish the National Committee for the Environment. This decree was published in the Official Gazette, issue number 59.

Sea) and Decree No. 76-90, establishing the National Institute of Animal Health, along with other legislative texts.

In 1983, the Algerian legislator issued specific legislation for the environment, consolidating scattered provisions from various laws on this subject. This legislation aimed to unify and streamline the fragmented regulations related to the environment. Additionally, Law No. 03-10, concerning environmental protection within the framework of sustainable development², was enacted. This law serves as the general framework for legislative efforts aimed at outlining the broad lines and main axes of environmental policy in Algeria, both in terms of behavior and law³. Furthermore, the Algerian legislator implicitly addressed the issue of environmental protection in certain articles of the constitution. Article 54/2 of the Constitution, dated 28/11/1996, states that "the state is responsible for controlling and combating epidemic and infectious diseases." Similarly, Article 55/2 guarantees "the right to protection, security, and cleanliness during work." However, explicit provisions regarding environmental protection are included in other constitutional articles.

Indeed, we find references to environmental protection in the Algerian Constitution of 1976, specifically in Article 151 of the third chapter, which addresses the legislative function. The 1989 Constitution also grants legislative powers to Parliament regarding environmental matters in Article 115 of the chapter on the legislative authority. In addition, central administrative bodies were established to oversee the management of the environmental sector⁴. Responsibilities were also assigned to municipalities and provinces as the main local institutions for environmental protection.

In the late 1960s, Algeria ratified the African Convention on the Conservation of Nature and Natural Resources, signed on September 15, 1968, in Algiers. Algeria also ratified the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, signed in Brussels on December 18, 1971. Furthermore, Algeria ratified the Convention concerning the Protection of the World Cultural and Natural Heritage, concluded in Paris on November 23, 1972.⁵

Referring to the provisions of Article (64) of the constitutional amendment dated 30/12/2020, "Citizens have the right to a sound environment within the framework of sustainable development, whereby the law delineates the obligations of natural and legal persons to protect the environment."⁶

2: Foundations of Public Procurement for Environmental Protection within the Framework of Sustainable Development

The organization "ENGO" presents its vision for environmental responsibility, composed of three primary pillars: environmental commitments, resource and energy management, and effective consideration of stakeholders' requirements. Recognizing each contracting party as a vigilant institution dedicated to achieving the public interest and implementing programs and development plans for others, alongside the contracting operator who is considered a partner and assistant benefiting from public procurement, I believe that both bear environmental responsibilities if they

² Law No. 03-10, dated 19/07/2003, related to environmental protection within the framework of sustainable development, was published in Official Gazette No. 43, issued on 20/07/2003.

³ Ahmed Lekhal, "The Role of Local Communities in Environmental Protection," Dar Homa, Algeria, unpublished, 2014, p. 47 and beyond.

⁴ NourEddineHairchi, "The Place of Sustainable Development within Environmental Law," Abd Hamid Ibn Badis University, Constantine, an article published in the Journal of Law and Business, dated 04/07/2014, p. 03.

⁵ NourEddineHairchi, Ibid, p. 03.

⁶ Constitution of the People's Democratic Republic of Algeria, Journal Officiel (Official Gazette), No: 76, dated 08 December 1996, as amended by: Law No: 02-03, dated 10 April 2002, Journal Officiel, No: 25, dated 14 April 2002. Law No: 08-19, dated 15 November 2008, Journal Officiel, No: 63, dated 16 November 2008. Law No: 16-01, dated 06 March 2016, Journal Officiel, No: 14, dated 07 March 2016. Presidential Decree No: 20-442, dated 30 December 2020, relating to the issuance of the constitutional amendment approved in the referendum on 01 November 2020, Journal Officiel, No: 82, dated 30 December 2020.

accomplish the following: adopting a comprehensive institutional vision aimed at supporting environmental protection, prioritizing environmental preservation and conservation as a prioritized strategy, embracing the principles of preventive measures. As for the element of resource and energy management, its contracts should efficiently exploit natural resources, while adopting and implementing proper production systems that utilize renewable resources efficiently, incorporating the overall environmental costs and benefits.

To realize the last element, which is the effective consideration of stakeholders' requirements, it is necessary to adhere to the principles of prioritizing disclosure and free communication with local authorities and organizations. Accepting accountability for past, present, and future environmental responsibilities by organizations and other stakeholders is essential⁷. Due to the environmental consideration within the responsibility of the contracting party, it must act as a sustainable management entity to protect the environment and achieve a balanced development based on several principles, including:

1. The principle of goal setting, where the primary objective of all state departments is to achieve environmental protection and sustainable development that meets the needs of the present generation without neglecting the needs of future generations.
2. The principle of non-conflict, as Professor Jalal Al-Din Fahmi sees administrative regulation carrying a formal appearance while concealing an informal administrative organization influenced by the psychological and behavioral attitudes of its employees. Therefore, certain rules and measures should be implemented to ensure interaction among members and the work team of sustainable management, who represent a mixture of different departments, to at least limit any conflict between this informal organization and the actual formal structure.
3. Management scholars link the principle of specialization and division of labor to the existence of supportive activities for the main activities in the administrative organization, which is the case in sustainable management. The main activity is protecting the environment while achieving development.
4. Lastly, the principle of continuity emphasizes the need to establish the foundations of sustainable management while responding to changes. It is necessary to maintain coordination, integration, and communication among departments (contracting parties), even in the event of government changes⁸.

Secondly: Environmental and Urban Standards in Public Procurement

Recent studies in the field of economic research have indicated that green public procurement serves as an important and beneficial resource for sustainable development, as well as an environmentally friendly approach. This presents a promising domain that can potentially serve as an impressive model for a market conducive to the selection of technology and products that protect the environment, while providing exceptional and acceptable services, such as the utilization of solar energy and the reduction of greenhouse gas emissions. I believe that this direction is commendable and represents a lasting commitment encompassed within the provisions of tender documents. Thus, we will examine the key implementation aspects of the environmental standard through a careful examination of the amendments introduced by Presidential Decree No. 15-247, which regulates public procurement and delegations in the public sector⁹. Subsequently, we will explore the options and tools of urban development in Algerian legislation and their relationship with the environment.

01: Integration of the Environmental Standard in Determining the Needs of the Contracting Party

⁷Sassi, Sufyan. "Environmental Responsibility in the Industrial Institution (Case of Algeria)." Article published in JilHuquq Al-Insan Magazine, Issue 02, June 2013, pp. 15 and beyond.

⁸Ben Ahmed, Abdel-Monem. "Administrative Legal Means for Environmental Protection in Algeria." PhD thesis in Public Law, University of Algeria BenyoucefBenkhedda, Faculty of Law, Ibn Khaldoun, 2008-2009, pp. 112 and beyond.

⁹Presidential Decree No. 15/247 on the Regulation of Public Procurement and Delegations in the Public Sector, dated 2 Dhu al-Hijjah 1436 corresponding to 16/09/2015, Official Gazette No. 50.

The Algerian legislator has addressed an important issue regarding the pre-determination of the needs of the contracting party that must be fulfilled before initiating any public procurement procedure. It is noteworthy that the determination of amounts is based on a sincere and rational administrative estimation, according to the specific conditions specified in Article 27. Furthermore, the legislator has stipulated that the preparation of these needs should be done accurately, based on detailed technical specifications that are established on the basis of standards and/or efficiency requirements that need to be achieved or functional requirements¹⁰. I believe that this stage is highly favorable for both direct and indirect impact on the environment, and for demanding the contractor to adhere to environmentally friendly technical specifications and products with artistic and technical considerations. The legislator has indeed made a good provision in the eighth paragraph of the same article by allowing the contracting party to include optional prices in the tender documents, but it is required to evaluate these prices and make a decision regarding their selection before awarding the contract. The legislator also obliged the contracting party to regulate the total amount of the needs, taking into the following consideration as obligatory.

- The total value of the needs related to the same construction project in terms of construction contracts.

- Homogeneity of needs regarding procurement contracts, studies, and services is determined either by the homogeneity of needs related to studies, services, or supplies for their inherent specificity, or by referring to a functional unit to define the jurisdiction boundaries of procurement committees and the required procedures. The total amount encompasses all separate allocations, regardless of the contracting party's ability to initiate a single procedure for all allocations or a separate procedure for each allocation. In the case of new needs, the contracting party can either enter into an addendum¹¹ or initiate a new procedure, while fragmentation of needs is prohibited to avoid the prescribed procedures and the jurisdiction boundaries of the procurement committees. The legislator has shown great attention to public expenditure when determining needs, especially those related to the environmental aspect, technical specifications, and technology. When trying to understand and define the legal nature of specific instruction documents, Professor Dr. "Ben Nagi Sharif" summarized in his doctoral thesis titled "The Evolution of Public Procurement Regulations in Algeria," on page 508 of the second part of this important thesis¹². The simplest idea we can infer from this passage is that the importance of tender documents as a constitutive element of public contracts in Algeria rises to the level of necessity to examine its role as a criterion for defining public contracts in Algeria and even as a criterion for defining administrative contracts in Algerian administrative law¹³. Based on the above, we see that the analytical and objective reading of tender documents generates a legal perspective and provides a margin for the contracting authority to adapt its documents according to the requirements of environmental protection and the consequences of ecological responsibility. It remains only to rationalize public expenditure within the allocated financial framework. This confirms the possibility of integrating environmental considerations into the contract entitlement through fair competition and transparent procedures.

02: Qualification of Candidates and Contractors and Selection of the Contracting Party

Undoubtedly, the selection of the contracting party, whether a natural or legal person, with the contracting authority, is one of the most important and complex stages in the conclusion of a public contract as it determines the overall fate of the contract. If the contracting authority successfully

¹⁰Article 27 of the first section "Determining the Needs of the Contracting Party" of the second chapter "Determining Public Needs, Contracts, and Operators" of Presidential Decree No. 15/247 on the Regulation of Public Procurement and Delegations in the Public Sector, dated 2 Dhu al-Hijjah 1436 corresponding to 16/09/2015, Official Gazette No. 50.

¹¹Refer to Articles 135 to 139 of the Fifth Section "Annex" of the Fourth Chapter "Implementation of Public Contracts and Contractual Provisions" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247.

¹²In stating that the specifications are essential components of public contracts, the Public Procurement Code aims to make these documents elements of the legal definition of this category of contracts.

¹³Nabil Jouadi, "Tender Documents in Algerian Administrative Law (A Study Related to Administrative Contracts)," Master's thesis in Administration and Finance, University of Ben Youcef Ben Khedda, Algeria, year: 2005-2006, p. 47.

completes this stage in a proper, professional, and legitimate manner, in accordance with the applicable legislation, it ensures a high probability of accomplishing the contract and achieving the intended objectives. On the contrary, if the selection process deviates from its correct legal framework, it may lead to the failure of the contract, resulting in negative consequences for ensuring public service, as it deprives the population of completing a project they urgently need. Consequently, this harms the public interest, which remains the ultimate goal of every public contract¹⁴.

This is explicitly indicated by the legislator, where the contracting authority cannot allocate the contract to an institution that it believes is capable of executing it regardless of the prescribed procurement method¹⁵. Once again, the legislator obliges the contracting authority to ensure the technical, professional, and financial capabilities of candidates and contractors before evaluating the technical proposals¹⁶. Qualification may take the form of a mandatory qualification or accreditation if stipulated in regulatory texts¹⁷. The contracting authority has the right to inquire about their capabilities during the evaluation of nominations, using all legal means available¹⁸. All of this can only be achieved through the establishment of diverse criteria that align with the nature of each contract and its evaluation in an objective, scientific, and transparent manner that achieves these objectives. Thus, we begin to observe the emergence of new criteria¹⁹.

The environmental criterion, known as "Le Critère Environnemental," has now taken its place in the process of selecting the contracting party, within the perspective of sustainable development that takes into account the requirements of the present without compromising the rights of future generations. The contracting authority may require the submission of proposals that comply with specific environmental conditions, such as not containing hazardous materials, for example. In this regard, the use of ecological conformity certificates, known as "Les Ecolabels," prepared by public authorities in coordination with civil society organizations²⁰, is utilized. These certificates ensure compliance with environmental standards and regulations.

Infringing upon the rules related to candidate selection is considered when the contracting party intends to exclude institutions that may potentially win the contract in order to allocate it to a favored contractor. The contracting authority decides that the mentioned institutions do not meet the required conditions regarding professional eligibility, or conversely, insists on a contractor who does not meet the criteria for their candidacy or imposes disproportionately high technical competencies compared to the required work to be accomplished. Similarly, infringing upon the rules related to bid submission includes not respecting the deadlines for preparing bids in order to grant an unjustifiable privilege. Therefore, differentiation must be made between contracts subject to competition and others²¹. The contracting party has the right to make a final exclusion of the contracting party in specific cases of serious misconduct, and the final exclusion can be either automatic or based on a decision. The effects of the exclusion are apparent according to Article 05 of the mentioned ministerial decree. If an economic operator is excluded from participating in a public contract, the impact extends to other contracts. The legislator has rightly

¹⁴Abdel NabiBousouar, Selection of the Contracting Party in Public Procurement, International Symposium on Prevention and Combating Corruption in Public Procurement, University of DjillaliLiabes, SidiBel Abbes, April 24-25, 2013.

¹⁵Article 53 of the Second Section "Qualification of Candidates and Contractors" of the Third Chapter "Conclusion of Public Contracts" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247

¹⁶Article 54 of the Second Section "Qualification of Candidates and Contractors" of the Third Chapter "Conclusion of Public Contracts" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247

¹⁷Article 55 of the Second Section "Qualification of Candidates and Contractors" of the Third Chapter "Conclusion of Public Contracts" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247

¹⁸Article 56 of the Second Section "Qualification of Candidates and Contractors" of the Third Chapter "Conclusion of Public Contracts" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247.

¹⁹Articles 76 to 81 of the Fifth Section "Selection of the Contracting Party" of the Third Chapter "Conclusion of Public Contracts" of Public Procurement Regulation and Delegations in the Public Sector Law No. 15-247

²⁰Bousouar, Abdelnabi. The previous reference, p.14

²¹AhcenBoussagui, Al-Wajiz fi al-Qanun al-Jaza'i al-Khas, Part 2, Dar Huma, Algeria, 12th edition, 2012, p.141

done so to exert more pressure on contractors, urging them to engage in lawful activities and comply with the laws of the republic²².

The Algerian legislator has established, through Law No. 90-29 related to planning and urban development, two types of urban development tools and their relationship with the environment. These tools are the (PDAU) "Master Plan for Development and Urban Planning," and the (POS) "Land Use Plan." Article 10 of the aforementioned law recognizes these urban development tools. Furthermore, Article 11 outlines the objectives of these tools, which are based on regulating the structure of urban and developable lands within the municipal territory while ensuring responsible land use. This includes safeguarding lands from any encroachment and promoting their enhancement, taking into account green spaces, agreements, and agricultural lands.²³

Therefore, the PDAU aims to achieve a set of defined objectives, some of which relate to the urban aspect, while others pertain to the environmental aspect. This means that it seeks to regulate urban development by identifying areas suitable for construction according to the urban fabric. Simultaneously, it aims to protect the environment and shield it from the risks of development and construction by designating and preserving areas that require protection, such as agricultural lands, forests, and areas of cultural and historical significance. In doing so, it works to avoid all forms of pollution and harm, combating them, as urban development necessitates striking a necessary balance between the requirements of economic growth and the need to protect the environment and preserve the living conditions of the population. From this perspective, the environmental aspect of the PDAU, which is the master plan for development and urban planning, becomes evident. It can be said that the "Plan d'Occupation des Sols" (POS) under Law No. 90-29 and Executive Decree No. 91-178, which amends and complements it, is considered a detailed tool for land use and construction rights under the provisions of the PDAU and the guidance of higher-level plans. It acts as a link between them and the planning documents, where the plan addresses the finer details of the urban structure for each sector by covering the entire territory of each municipality for a period of five years²⁴.

It is worth mentioning that Article 15 of Law No. 03-10 explicitly outlines the objectives of conducting an environmental impact assessment before initiating any work or activity. The article emphasizes the principle of precaution and control against diverse and significant environmental damages. It states that "development projects, structures, fixed installations, factories, other artistic works, construction programs, and planning activities that directly or indirectly impact the environment, particularly species, resources, environments, natural spaces, ecological balances, and the framework and quality of life, shall be subject to prior environmental impact assessment or a summary of the impact." The article also specifies the methods of implementing this provision through regulations²⁵.

Second Axis: Governance of Public Procurement and Mechanisms for Limiting Ecological Responsibility

Complying with local and international obligations in terms of respecting and promoting environmental principles remains a conditional path that cannot be compromised but rather pursued, supported by rational public expenditure that enables combating corruption through prudent measures and mature governance. However, the practical reality of contractual services and the increasing number of issues and disputes with economic operators in the field of public procurement do not instill confidence. Therefore, in this axis, we (firstly) will address public

²²AmmarBoudeyaf, Explaining the Organization of Public Procurement, Dar Jusur for Publishing and Distribution, Algeria, 3rd edition, 2011, pp. 155-161

²³Law No. 90-29 dated 01/12/1990 related to planning and urban development, Journal Officiel de la RépubliqueAlgérienne (Official Gazette of the Algerian Republic), Issue 52, Year 1990, amended by Law No. 04-05 dated 14/08/2004, Journal Officiel de la RépubliqueAlgérienne, Issue 51, dated 18/08/2004.

²⁴Tunisi, Sabrina. "The Environmental Dimension of Urban Law in Algeria," Journal of Legal and Political Studies, Volume 04, Issue 02, Year 2019, pp. 288 and beyond.

²⁵Law No. 03-10, dated 19/07/2003, concerning environmental protection within the framework of sustainable development, Journal Number 43, issued on 20/07/2003.

procurement within the framework of sustainable development and then(secondly) focus on governance measures for professionals operating in the field of public procurement.

Firstly: Public Procurement within the Framework of Sustainable Development

The administrative contract, like the civil contract, generates contractual obligations on both parties. Consequently, any breach of obligations by the administration constitutes a contractual error on its part. The administration enjoys exceptional powers in the execution of administrative contracts, but these powers do not exempt it from the obligation to respect its commitments. Its authority is not absolute but rather limited to pursuing the public interest and is subject to administrative judicial oversight. Thus, it is a relationship of cooperation and mutual support with the contracting party.

01: Sound Performance of the Contracting Authority

Contracts are subject, as a general principle of law, to be executed in a manner consistent with the requirements of good faith in performance. Therefore, the administration must fulfill its contractual obligations in a proper manner, "to execute the contract correctly." The obligation is not limited to the literal implementation of what is stated in the contract alone but also encompasses its implications. This principle is fundamental in the law, as previously mentioned, and applies to administrative contracts, just like civil contracts²⁶. The extent to which the principle of "good faith in performance" is upheld is an objective matter subject to the scrutiny of the judge, who determines the administration's diligence in fulfilling its contractual obligations²⁷. On the part of the administration, it is incumbent to take action towards implementing the contract immediately upon its conclusion by the competent authority. It should enable the contractor to commence the implementation by providing them with all the necessary means for execution. It goes without saying that the administration is not only bound to fulfill the principal obligations arising from the contract but also committed to all the obligations encompassed by the contract. This is an accepted principle in the field of public law, as it is in the realm of private law relationships²⁸. The legislator has emphasized this obligation due to its significance, considering that the scope of the project, estimation of dimensions and areas, knowledge of technical specifications, and other details are encompassed in the studies provided by the administration. Similarly, like Algerian legislation, French legislation also obliges the contracting administration to provide the contractor with a certified copy of the contract, along with plans, drawings, and measurements, as soon as the approval of the contract is communicated. The legislator has made the date of notification the starting point for the implementation, which may be determined by an administrative order to initiate the execution²⁹. This is confirmed by Article 36, paragraph three, which states that "each contracting authority is responsible for the proper execution of the part of the contract that concerns it." Furthermore, within the third section "Contracting Procedures" of the third chapter "Public Procurement Contracts," Article 59 clearly establishes an obligation on the contracting authority to seek the most favorable conditions to ensure the achievement of its prescribed objectives within the framework of its mission and to choose the method of contracting in order to enable it to modify the contract (the procurement) in a manner that makes it suitable for the public interest³⁰.

Without neglecting the respect for the principles of public procurement to ensure their effectiveness and the preservation of public funds³¹, there is no doubt that the precise adherence

²⁶Article 107 of the Algerian Civil Law.

²⁷Ben Chaabane, Ali. "The Effects of Public Works Contracts on the Parties in Algerian Legislation." Doctoral thesis in Public Law, Mentouri University - Constantine, 2011/2012, p. 131.

²⁸El Sharaf, Taher Tawfiq. "Difficulties Facing the Implementation of Administrative Contracts - Comparative Study." University Press, Egypt, no edition, 2011, pp. 53-55

²⁹Ben Chaabane, Ali. Same reference as above, p. 130.

³⁰Articles 36 and 59 of the Public Procurement Regulations and Delegations of Public Authority No. 15/147.

³¹Article 05 of the first section "Definitions and Scope of Application" of Chapter 1 "Provisions Applicable to Public Procurement" of the Law on Public Procurement and Delegations of Public Authority No. 15-247

to these principles carries ethical and guiding values. It requires those responsible for public procurement to conduct themselves with integrity, allowing for the establishment of trust in transactions, which is considered a necessary condition for any economic and commercial activity. This is emphasized in the French Public Procurement Law³².

02: Environmental Guarantee in Public Procurement

The study of efficiency and suitability aims to answer the following questions: Is the project feasible? What are the technical and financial conditions for it? The study allows for assessing the importance and profitability of the intended project, thus identifying its strengths and weaknesses while determining development objectives and meeting social needs. Additionally, the study aims to evaluate the project's impact on the environment, excluding works specified in Executive Decree No. 78/90 dated 27/02/1990, which states the following:

- Identification and study of the project implementation site.
- Analysis and study of the project's environmental impact.
- Taking possible precautions to mitigate or reduce the damages that may result from the project and allocating the necessary funds to address them.
- Understanding the reasons for initiating the project.

This study is subject to a general investigation that concludes with a decision from the Ministry of Environment, either approving or rejecting the project.

It should be noted that the failure to conduct a geotechnical study of the land is considered a criminal act.³³ The legislator explicitly included the requirement to emphasize provisions related to environmental protection and sustainable development within Article 95 of Presidential Decree No. 15-247. This signifies the enactment of this clause as a public policy and legal intent to preserve the public's living environment³⁴.

Secondly: Measures for governing the activities of individuals involved in public procurement

We will focus on preventive measures that help reduce violations of real estate legislation and environmental damage, among other things, without limitation.

01: Selection of Public Employees and Declaration of Assets

The Algerian legislator, recognizing that public servants are the backbone and vital force of the state, has emphasized the importance of selecting them according to precise criteria that ensure their integrity and protect against any inclination to compromise the integrity of public service. Among these criteria is the consideration of principles such as "efficiency, transparency, and objective standards such as merit, fairness, and competence."³⁵ In Islam, public service is considered a benefit for Muslims, and it is well known that causing harm to Muslims is strictly prohibited, as exemplified by the Prophet's statement: "There should be neither harming nor reciprocating harm." Therefore, the selection of public servants must be based on specific conditions and considerations, taking into account the comparative evaluation between candidates, as the Prophet, along with his family, said: "Whoever appoints someone to a position of authority over Muslims and finds someone better qualified, then he has betrayed Allah and His Messenger." All of this requires preservation and knowledge, as Allah says through the words of Prophet Yusuf (Joseph), "Appoint me over the storehouses of the land. Indeed, I will be a knowing guardian"³⁶ (Quran 12:55). "Knowing" implies having authority, knowledge, insight, and understanding of what is entrusted to one's care. It is also necessary to adopt specific measures for selecting and training

³²Boudali, Mohamed. "Financial and Administrative Parliamentary Control over Public Procurement." International Conference on Prevention and Combating Corruption in Public Procurement, University of DjillaliLiabes - SidiBel Abbes, April 24-25, 2013, p. 01

³³Jawi, Houriya. "The Duty of Precaution in Public Procurement." University of Sidi Bel Abbes, Article published on the website www.elkanoon.blogspot.com, June 2015. Accessed on January 2, 2018

³⁴Article 95 of the first section "Mandatory Information" of the fourth chapter "Implementation of Public Procurement and Contractual Provisions" of the Law on Public Procurement and Delegations of Public Authority No. 15-247

³⁵Article 03, first paragraph of Law 06/01, Public Financial Management and General Accounting Law.

³⁶Surah Yusuf, verse 55.

candidates, as well as qualifying them for positions that are more prone to corruption and bribery crimes in general³⁷.

Providing appropriate and fair wages, along with compensations and bonuses³⁸, is essential to prevent employees from seeking personal gain or accepting bribes to improve their living standards. Implementing suitable training and educational programs is crucial to empower public servants to perform their duties effectively and ethically. Additionally, awareness programs about the risks of corruption should be established³⁹. Islam not only established these regulations and conditions as criteria for selecting public servants but also emphasized the necessity of appointing the most righteous and qualified individuals. Experience has shown that combating corruption solely through systems can be futile if there is a lack of individuals who enforce and apply these systems with strength and strictness. Furthermore, experiences have proven that instilling educational values and purifying souls have been among the most successful means of preventing corruption and ensuring integrity⁴⁰.

According to the Law on Prevention and Combating Corruption, and in order to strengthen transparency in professional, occupational, political, and public affairs, and to dispel any doubts surrounding the integrity of public officials and administrations, it is required that a declaration of assets of public officials be submitted during the month following their appointment to their position or the start of their tenure⁴¹. The declaration form is specified in Decree 06/414⁴², which is the applicable regulation. However, by examining Article 6 of Law No. 06/01 on Prevention and Combating Corruption, it can be inferred that the legislator neglected the obligation to publish declarations of high-ranking officials and leaders at the end of their term or electoral mandate. This contradicts the principles of good governance, as transparency is one of its fundamental principles. To establish a genuine commitment to the policy of "From Where Do You Have This," it is necessary to ensure that the designated body responsible for receiving asset declarations is effectively and practically implemented, both in reality and functionally. Additionally, addressing legal loopholes that prevent the enforcement of sanctions against influential positions is crucial, along with the imperative need for their effective implementation.

By examining Article 6 of Law No. 06/01 on Prevention and Combating Corruption, it can be concluded that the legislator neglected the requirement to publish declarations of high-ranking and distinguished positions in the country at the end of their term or electoral mandate. This contradicts the principles of good governance, as transparency is one of its fundamental principles. Establishing a genuine commitment to the policy of "From Where Do You Have This" requires the embodiment of the designated body responsible for receiving asset declarations in practical and/or functional terms. It is also necessary to address legal loopholes that prevent the enforcement of sanctions against influential positions and ensure their effective implementation.⁴³

02: Activation of the Code of Conduct and Ethics:

The Algerian legislator has consistently sought to support integrity, honesty, and a sense of responsibility by stipulating in Article 07 of the Law on Prevention and Combating Corruption the

³⁷Ayman Farouk Saleh Zareb. "Exploitation of Position in the Misappropriation of Public Funds in Islamic Jurisprudence." Master's Thesis in Comparative Jurisprudence, Faculty of Sharia and Law, Islamic University, Gaza, Palestine, 2007, p. 12

³⁸Article 3, paragraph 3 of Law 06/01, Law on [specific topic/subject]

³⁹Article 3, Paragraph 4 of Law 06/01, Anti-Corruption and Prevention Law.

⁴⁰Muawiya Ahmed Sayed Ahmed, "The Policy of Islam in Preventing and Combating Corruption," an article published by the Naif Arab University for Security Sciences in 2003, p. 228.

⁴¹Article 3, second paragraph of Law 06/01, Public Financial Management and General Accounting Law

⁴²Decree 06/415 issued on 22/11/2006, which specifies the model for declaring assets, Official Gazette No. 74 issued on 22/11/2011

⁴³Fatima Othmani, "From Where Do You Have This?" Between the Fragility of Legal Texts and the Lack of Implementation Will, National Symposium on Corporate Governance as a Mechanism to Combat Financial and Administrative Corruption, University of Mohamed Khider, Biskra, 6-7 May 2012, p. 07.

necessity of providing a set of behavioral rules in the form of codes that delineate and define the employee's upright and honest conduct. For instance, one such rule is the obligation to disclose any conflict of interest with the public interest⁴⁴. In Islamic ethics, morality refers to a collection of legitimate values that a responsible Muslim person embodies, having a clear impact on both public and private behavior. These values promote goodness, prevent evil, advocate for justice, oppose falsehood, and support righteousness while opposing injustice and tyranny in society within the framework of rules and standards governing such behavior. The precise identification of key values on which the public sector relies is a meticulous process. In Europe, it has been observed that the value of impartiality is the most frequently mentioned and circulated value as it encompasses equality of consideration before the law and administrative regulations⁴⁵. The perpetrator's personality is the main source and cause of criminal activity. The components of the criminal personality have been classified into four primary traits: selfishness, aggression, indifference, and tension. We emphasize the importance, in any case, of improving the living environment for the actors involved, in addition to criminal treatment and the science of criminology⁴⁶.

Conclusion

Public procurement plays a crucial role in the economies of nations, as it serves as the legal mechanism through which the executive authority (the government), represented by the contracting entity, executes its various projects and realizes its programs with the highest possible quality, at the lowest cost, and within the shortest possible time frame. The effectiveness of the public procurement system relies on its ability to achieve the fundamental dimensions that establish conducive and efficient factors for the successful implementation of public contracts.

Thus, ecological and administrative responsibility related to environmental preservation within the framework of sustainable development fall within the realm of objectivity in public procurement management and rationality in monitoring public expenditures. By analyzing the concept of integrating environmental criteria as qualifying conditions in procurement, we have found that although it is a promising initiative, it has become a source of legal and economic controversies in most cases. This inevitably leads to legal consequences when there is excessive deviation or non-compliance with national legislative obligations or international agreements, particularly concerning public finances. In other words, the role of integrity and ethics in the management and governance of public procurement becomes evident. Simply amplifying the legal framework and infusing it with a series of repetitive amendments is not sufficient if it is not balanced by an ethical system which is embraced as a creed that precedes it. This is what we deduce from the precedence of the saying of the All-Knowing over the saying of the All-Wise in a decisive and precise revelation: "Appoint me in charge of the storehouses of the land. Indeed, I am a knowing guardian" (Quran, Surah Yusuf, verse 55). In this precedence, there is realization and authentication.

It is evident that all of this and more was theorized by the jurist Bentham in his statement: "While the realms of ethics and law meet at the center, they do not have the same circular boundary." Additionally, Professor KhalatouFarid concluded in one of his opinions that "When you have a scale that does not proportionally measure weight, you can weigh several times, but what you weigh will always be incorrect, even if you are honest. We cannot fight corruption if our inner selves accept it." In turn, I may not be exaggerating when I say that, for the success of environmental protection and regional development, it is necessary to anticipate or at least align them with the preparation of the political, legal, and cultural environment by optimizing the triangle of governance (state administration, private sector, civil society) while launching a qualitative national initiative to ensure human development. This can be achieved by reviving ethical values and education. Ibn

⁴⁴Samira Ibn Khalifa, "Corruption Crimes in Algerian Law," a thesis for obtaining a Master's degree in Private Law, University Center of Béchar, 2006/2007, p. 174

⁴⁵Iman Sophie, Maryam Gourari, "Work Ethics as a Tool to Reduce Administrative Corruption in Developing Countries," National Symposium on Corporate Governance as a Mechanism to Combat Financial and Administrative Corruption, University of Biskra, 6-7 May 2012, p. 03

⁴⁶Anas Talbi, "Moralizing Public Procurement (Criminological Approach)," International Symposium on Mechanisms of Protection and Fight Against Corruption in Public Procurement - University DjilaliLiabesSidiBelAbbés, 24-25 April 2013.

Khaldun expressed all of this and more in his Introduction, where he discussed the beneficial aspect of wealth, meaning that wealth is subordinate to prestige and authority, rather than the other way around. This is to prevent the boundaries between public interest and private interest from being blurred, and to prevent the squandering of public funds and the violation of principles of environmental protection and quality of life.

Since there is a clear relationship between the two main variables in this equation, which examines the development of the national plan strategy, namely the environmental factor and the choice of urban development, the manifestations of integration and overlap between them are evident. Each variable has both positive and negative impacts on the other, whether in presence or absence. Thus, the idea of balance logically, technically, and legally imposes itself in each stage.


- The inclusion of the environmental dimension in the field of public procurement is not only necessary but also imperative for legislators to improve the criteria for environmental accreditation and give it the utmost technical and technical value in accepting bids and alternative proposals when submitting tenders to adopt the best option in terms of economic benefits.
- Acknowledging ecological and administrative responsibility and demanding compensation for damages resulting from systemic or personal errors by economic operators.
- Encouraging all purchases related to environmental preservation.
- Building and enhancing the knowledge of professionals in the field of public procurement by providing them with ecological technology and refined practices in the field of urbanism and construction.
- Organizing seminars and conferences to explain urban development tools in Algerian legislation, especially for direct managers and economic operators

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