Control over Public Contracts in Algerian Legislation: A Comprehensive Analytical Study of Oversight Mechanisms under Law No. 23-12 and Presidential Decree No. 15-247

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ABSTRACT

Administrative oversight over public contracts represents a fundamental cornerstone in safeguarding public funds against pervasive forms of financial and administrative corruption. Given that public procurement constitutes substantial state expenditure directly linked to the National Treasury, public administrations are legally subjected to exceptional pre-contractual and post-contractual procedures. This study investigates the governance and regulatory architecture established by the Algerian legislature, primarily through Law No. 23-12 of August 5, 2023, setting forth the general rules governing public contracts, and its precursor, Presidential Decree No. 15-247 of September 16, 2015. Utilizing a descriptive-analytical and comparative legal methodology, this paper examines the dual classification of oversight: ex-ante control (comprising internal bid examination bodies and external jurisdictional committees) and ex-post control (hierarchical inspection, the Court of Accounts, and the General Finance Inspectorate). The findings demonstrate that while Law No. 23-12 made strategic advances—notably enshrining digitalization, establishing the National Council for Public Contracts, and simplifying award procedures—systemic challenges persist. These include regulatory vacuums due to delayed implementing decrees, ambiguities regarding the legal autonomy of oversight bodies, and the chilling effect generated by strict anti-corruption legislation that induces excessive risk aversion among public procurement officials. The paper concludes with actionable legal and institutional recommendations to enhance control effectiveness without generating debilitating bureaucratic paralysis.

Keywords: *Public Contracts, Administrative Oversight, Law No. 23-12, Presidential Decree No. 15-247, Bid Opening and Evaluation Committee, National Council for Public Contracts, Ex-Ante Control, Ex-Post Control, Algerian Public Procurement.*

El control de los contratos públicos en la legislación argelina: un estudio analítico integral de los mecanismos de supervisión en el marco de la Ley n.º 23-12 y del Decreto Presidencial n.º 15-247

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Resumen

El control administrativo de los contratos públicos constituye un pilar fundamental para proteger los fondos públicos frente a las diversas formas de corrupción financiera y administrativa. Dado que la contratación pública representa un volumen considerable del gasto estatal directamente vinculado al Tesoro Público, las administraciones públicas están legalmente sujetas a procedimientos especiales de control previos y posteriores a la contratación. Este estudio examina la

estructura de gobernanza y el marco normativo establecidos por el legislador argelino, principalmente mediante la Ley n.º 23-12, de 5 de agosto de 2023, por la que se establecen las normas generales aplicables a los contratos públicos, y su antecedente, el Decreto Presidencial n.º 15-247, de 16 de septiembre de 2015. Mediante una metodología jurídica descriptivo-analítica y comparativa, el artículo analiza las dos modalidades de supervisión: el control previo, que comprende los órganos internos de examen de ofertas y las comisiones externas competentes, y el control posterior, que incluye la inspección jerárquica, el Tribunal de Cuentas y la Inspección General de Finanzas. Los resultados muestran que, si bien la Ley n.º 23-12 introdujo avances estratégicos —en particular, la consagración de la digitalización, la creación del Consejo Nacional de Contratos Públicos y la simplificación de los procedimientos de adjudicación—, persisten dificultades sistémicas. Entre ellas figuran los vacíos normativos derivados del retraso en la aprobación de los decretos de desarrollo, las ambigüedades relativas a la autonomía jurídica de los órganos de control y el efecto inhibidor de una legislación anticorrupción estricta, que genera una aversión excesiva al riesgo entre los funcionarios responsables de la contratación pública. El artículo concluye con recomendaciones jurídicas e institucionales concretas para mejorar la eficacia del control sin provocar una paralización burocrática que obstaculice la gestión pública.

Palabras clave: contratos públicos; control administrativo; Ley n.º 23-12; Decreto Presidencial n.º 15-247; Comisión de Apertura y Evaluación de Ofertas; Consejo Nacional de Contratos Públicos; control previo; control posterior; contratación pública argelina.

1. Introduction

Public contracts constitute one of the primary legal and economic instruments through which modern states implement macroeconomic strategies, construct structural infrastructure, and satisfy collective public needs. By translating state policy into tangible socio-economic services, public procurement serves as a pivotal engine of national growth. However, because public contracts entail the disbursement of substantial public funds directly from the Treasury, they inherently represent fertile ground for financial mismanagement, procedural deviation, illicit enrichment, and corruption (Boudaoud, 2010; Zouzou, 2016). Consequently, subjecting public procurement to rigorous, multifaceted, and institutionalized oversight mechanisms is an indispensable imperative of public governance.

In Algeria, the legal framework governing public contracts has undergone continuous structural and normative evolution across distinct legislative milestones. From early ordinances to Executive Decree No. 10-236, subsequently repealed and overhauled by Presidential Decree No. 15-247 of September 16, 2015, the legislature has endeavored to strike an elusive equilibrium between administrative procedural flexibility and stringent anti-corruption safeguards (Boudehief, 2007; Yaala, 2005). Presidential Decree No. 15-247 established a comprehensive procedural code, dedicating Articles 156 through 202 exclusively to control mechanisms—subdividing internal ex-ante control (Articles 156–162), external prior control (Articles 162–190), and cross-cutting common provisions (Articles 191–202).

The contemporary milestone in this legislative trajectory is Law No. 23-12 of August 5, 2023, which established general rules governing public contracts, modernizing the field in alignment with modern administrative law standards. Law No. 23-12 formally introduced overarching principles, including mandatory digitalized procurement (the National Public Procurement Portal), the institutional establishment of the National Council for Public Contracts under the auspices of the Minister of Finance, and the prioritization of national economic production.

> **Core Conceptual Premise:** *"The legal dilemma of public procurement lies in balancing two conflicting objectives: ensuring absolute transparency, equal opportunity, and integrity on the one hand, against avoiding cumbersome, multi-layered bureaucratic controls that delay project completion and stifle managerial initiative on the other."*

Article 110 of Law No. 23-12 explicitly stipulates a transitional bridge: the specialized control committees established under Presidential Decree No. 15-247 remain operational within their statutory jurisdictions until the regulatory decrees implementing Law No. 23-12 are formally enacted. This legislative duality necessitates a rigorous comparative inquiry. Hence, the central problem statement addressed in this study is formulated as follows: How has the Algerian legislator organized administrative oversight as the primary mechanism of public procurement governance, and to what extent do the emerging provisions under Law No. 23-12 effectively address the operational deficits observed under Presidential Decree No. 15-247?

2. Methodology and Legal Analytical Framework

To systematically interrogate the problem statement, this study employs a descriptive-analytical and comparative legal methodology, recognized as the standard methodological paradigm in public law and administrative sciences (Yaala, 2005). The investigation is structured around two analytical axes:

• **Primary Legal Corpus:** 1. Normative Descriptive Analysis: Meticulous textual analysis of primary legislative and regulatory instruments, including Presidential Decree No. 15-247, Law No. 23-12, Law No. 11-10 (the Municipal Code), Law No. 06-01 on the Prevention and Fight Against Corruption, Order No. 95-20 governing the Court of Accounts, and relevant ministerial circulars from the Ministry of Finance.

• **Institutional Comparative Assessment:** 2. Functional Comparative Analysis: A comparative evaluation of oversight bodies before and after the 2023 legislative reform, scrutinizing structural changes in committee compositions, financial thresholds, competence ceilings, and operational autonomy.

The analytical taxonomy adopted throughout this research categorizes oversight across two intersecting vectors: temporal occurrence (Ex-Ante / Prior Control vs. Ex-Post / Subsequent Control) and institutional locus (Internal Control within the Contracting Authority vs. External Control conducted by specialized third-party jurisdictional and administrative bodies).

3. Results and Legal Analysis

3.1. Internal and External Ex-Ante (Pre-Contractual) Control Mechanisms

Prior administrative control represents the primary defensive bulwark designed to prevent statutory infractions, financial irregularities, and procedural deviations prior to the definitive legal perfection and award of the public

contract. Under Algerian legislation, this control is dual-faceted, combining internal self-regulation with external validation.

3.1.1. Internal Ex-Ante Control: The Envelope Opening and Bid Evaluation Committee

Internal oversight is defined as self-regulation exercised by the public contracting authority (Service Contractant) over its own operations. It ensures administrative continuity, legal compliance, and budgetary discipline. Under Article 96 of Law No. 23-12, internal control is principally exercised through a permanent body designated as the Envelope Opening and Bid Evaluation Committee (لجنة فتح الأظرفة وتقييم العروض).

A critical legal examination reveals several key structural observations regarding this committee:

1. Consolidation from Bifurcated to Unified Committee System: Under the repealed Executive Decree No. 10-236, internal procurement control was partitioned between two distinct bodies: a permanent Envelope Opening Committee and a separate Bid Evaluation Committee. Presidential Decree No. 15-247 abolished this bifurcated model, merging the functions into a unified single committee (Article 160). Law No. 23-12 has preserved this unified model to streamline administrative workflow and eliminate bureaucratic redundancies.

2. Professional Qualification and Institutional Belonging: Article 160 (paragraph 2) of Decree No. 15-247 and Article 96 of Law No. 23-12 mandate that committee members must be qualified civil servants possessing documented professional competence. Furthermore, the members must formally belong to the administrative structure of the contracting authority itself. This requirement corrects deficiencies in earlier regulations where opening envelopes was treated as a clerical task devoid of technical competence criteria (Boudaoud, 2010).

3. Statutory Responsibilities and Verification Protocol: The statutory tasks incumbent upon the Envelope Opening and Bid Evaluation Committee under Article 162 of Decree No. 15-247 and Article 97 of Law No. 23-12 comprise:

• Verification of bid registration logs within numbered, indexed legal registers dedicated separately to opening and technical/financial evaluation;

• Drafting a chronological inventory of received tenders detailing submitted financial offers, prospective rebates, and alternative proposals;

• Comprehensive inventory and preliminary administrative audit of the mandatory constitutive files (declaration of candidacy, technical offer, financial offer);

• Execution and formal signing of session minutes by all attending members during the opening session, or drafting a formal Declaration of Unsuccessful Tender (جدوى عدم محضر) if no conforming offers are lodged.

3.1.2. The National Council for Public Contracts: Oversight vs. Advisory Mandates

One of the salient structural innovations introduced by Law No. 23-12 is the creation of the National Council for Public Contracts (المجلس الوطني للصفقات العمومية) under the administrative supervision of the Minister of Finance (Article 104). This body supersedes the former Public Procurement Regulatory Authority and Delegations of Public Facilities (العام المرفق وتفويضات العمومية الصفقات ضبط سلطة) stipulated in Article 213 of Decree No. 15-247.

The competencies allocated to the National Council under Article 104, paragraph 2 of Law No. 23-12 fall into two distinct legal categories:

• **Oversight and Regulatory Authority:** The Council possesses the statutory power to approve standard internal operating regulations applicable to external pre-contractual oversight committees (Article 99 of Law No. 23-12). It further audits the overall performance of public procurement systems.

• **Advisory and Dispute Resolution Function:** The Council acts as a permanent consultative organ to the Minister of Finance, issuing formal opinions on general administrative clauses (CCAG), standard technical specifications (CCTG), model contract dossiers, and disputes arising from the execution of contracts entered into with foreign economic operators (Mustafawi, 2023).

> **Critical Legislative Shift:** *Unlike the former Public Procurement Regulatory Authority established under Decree No. 15-247, which held theoretical managerial independence, Law No. 23-12 placed the National Council for Public Contracts directly under the hierarchical authority of the Minister of Finance. Moreover, regarding disputes involving foreign partners, the Council's role was curtailed from dispute settlement to rendering a non-binding consultative opinion.*

3.1.3. External Ex-Ante Control: Specialized Public Procurement Committees

External prior control verifies that draft specifications (cahiers des charges), draft contracts, and supplementary agreements (avenants) strictly comply with existing legislation before commitments become legally binding. Pursuant to Article 98 of Law No. 23-12 and Articles 166–187 of Decree No. 15-247, this control is partitioned across decentralized administrative tiers:

Committee Level	Statutory Composition	Competence & Financial Thresholds	Legal Basis
Municipal Committee (Commune)	• President of APC (Chair) • Contracting authority rep. • 2 Elected municipal reps. • 2 Ministry of Finance reps.	Scrutinizes draft specifications and contracts within the municipal budgetary remit under municipal spending limits.	Law 11-10, Art. 189; Decree 15-247, Art. 174

	• Technical department rep.		
Provincial Committee (Wilaya)	• Wali or representative (Chair) • 3 APW elected members • Directors of Public Works, Water, Housing, Planning • Provincial Treasurer & Financial Controller	• Works contracts ≥ 1,000,000,000 DZD • Supplies contracts ≥ 300,000,000 DZD • Services contracts ≥ 200,000,000 DZD • Studies contracts ≥ 100,000,000 DZD • Municipal tenders ≥ 200M / 50M / 20M DZD	Decree 15-247, Art. 173; Law 23-12, Art. 110
Regional Committee (Regional Services)	Regional directors of decentralized central state departments and specialized financial inspection delegates.	Oversees specifications and contracts concluded by regional external services of central ministerial administrations.	Decree 15-247, Art. 171; Decree 15-247, Art. 184
Sectoral Committee (Ministries)	Appointed by ministerial decree based on expertise, comprising departmental heads, budget officials, and technical delegates.	• Central works contracts > 12,000,000 DZD • Studies/services contracts > 6,000,000 DZD • Major sectoral projects exceeding Wilaya ceiling	Decree 15-247, Art. 179; Decree 15-247, Art. 187

3.2. Ex-Post (Post-Execution) Control Mechanisms

Post-contractual oversight intervenes subsequent to the approval and execution of public procurement transactions. While ex-ante control acts preventively, ex-post control is widely regarded as the most rigorous and effective mechanism for verifying actual value-for-money, detecting illicit procurement practices, and correcting systemic accounting anomalies (Boudaoud, 2010; Zouzou, 2016).

1. Hierarchical / Supervisory Audit (Contrôle de Tutelle): Pursuant to Article 164 of Decree No. 15-247, the supervisory authority (Tutelle) conducts internal post-completion evaluations to ascertain whether procurement contracts satisfied performance, efficiency, and economy benchmarks. The contracting officer is statutorily compelled to compile an exhaustive execution report. This dossier is transmitted to the competent minister, the Wali, the municipal president, and the central regulatory body.

2. Specialized External Financial Auditing: External subsequent control is exercised by autonomous administrative and financial audit bodies:

• The Court of Accounts (مجلس المحاسبة): Governed by Order No. 95-20, the Court of Accounts is the supreme financial auditing institution in Algeria. It conducts retrospective judicial and financial evaluations of state accounts, evaluating contract regularity and penalizing fiscal mismanagement.

• The General Finance Inspectorate (المفتشية العامة للمالية - IGF): Established under Executive Decree No. 08-272, the IGF exercises comprehensive financial inspections over the financial operations and management of public institutions, detecting budgetary deviations and fraudulent invoicing.

4. Discussion

A rigorous appraisal of the Algerian public procurement oversight ecosystem highlights significant structural progress, notably with the enactment of Law No. 23-12. However, deep-seated institutional and normative bottlenecks continue to impede the system's operational efficiency:

1. The Problem of Regulatory Lag (الفراغ التنظيمي الإجرائي): Although Law No. 23-12 came into force in August 2023, the critical executive decrees required to specify the composition, operational rules, and quorum requirements of the National Council for Public Contracts remain unpromulgated. Consequently, pursuant to Article 110 of Law No. 23-12, the procurement apparatus remains reliant on the transitional framework of Presidential Decree No. 15-247. This institutional latency creates administrative uncertainty among public buyers.

2. The Chilling Effect of Anti-Corruption Enforcement: The enactment of Law No. 06-01 on the Prevention and Fight Against Corruption drastically increased criminal liability for public officials involved in procurement breaches. While vital for deterring fraud, the rigorous and sometimes ambiguous enforcement of anti-corruption provisions has inadvertently fostered widespread risk aversion among procurement managers and committee members (Hadri, 2021). Fear of judicial accountability has frequently resulted in administrative paralysis, reluctance to exercise discretionary authority, and substantial delays in infrastructure project delivery.

3. Challenges of Digitalization and Technological Integration: Law No. 23-12 decisively championed the complete digitalization of public contracts through the National Electronic Procurement Portal (المرتكز الرقمي). Digitalization substantially mitigates human discretion, enhances transparency, and prevents bid tampering. Nonetheless, the full operationalization of this portal requires significant investments in cybersecurity infrastructure, electronic authentication protocols, and comprehensive IT training for municipal and regional contracting staff.

5. Conclusion and Policy Recommendations

In conclusion, the oversight apparatus governing public contracts in Algerian legislation represents an essential legal guarantee for safeguarding public funds, ensuring transparent competition, and optimizing state expenditure. Law No. 23-12 marked a progressive transition by modernizing normative principles, promoting domestic

enterprise, and establishing digital procurement standards. Nonetheless, ensuring that oversight serves as a catalyst for sound governance rather than a bureaucratic impediment requires targeted institutional reforms.

Policy Recommendations: Based on the analytical findings of this study, the following policy and legal recommendations are submitted:

1. Accelerating Implementing Decrees: Promptly enact the executive decrees detailing the internal composition, organizational structure, and operational mechanisms of the National Council for Public Contracts to resolve existing transitional ambiguities.

2. Guaranteeing Institutional Autonomy: Re-evaluate the institutional placement of the National Council for Public Contracts to ensure financial, administrative, and operational independence from the executive tutelage of the Ministry of Finance.

3. Operationalizing E-Procurement: Fully deploy the national electronic procurement portal, eliminating paper-based transactions and enforcing end-to-end digital auditing reinforced by robust cryptographic cybersecurity standards.

4. Legal Protection and Managerial Discretion: Enact legislative safeguards distinguishing deliberate corrupt practices from non-fraudulent procedural errors, thereby revitalizing administrative initiative and shielding diligent procurement managers from undue criminal harassment.

5. Capacity Building & Professionalization: Implement mandatory, standardized certification programs in public procurement law and accounting audits for civil servants appointed to bid evaluation and external control committees.

6. References

References are formatted in strict compliance with the American Psychological Association (APA) 7th Edition guidelines:

Algerian Republic. (1995). Order No. 95-20 of July 17, 1995, relating to the Court of Accounts. Official Gazette of the Republic of Algeria, No. 39.

Algerian Republic. (2006). Law No. 06-01 of February 20, 2006, on the prevention and fight against corruption. Official Gazette of the Republic of Algeria, No. 14.

Algerian Republic. (2008). Executive Decree No. 08-272 of September 6, 2008, determining the powers and organization of the General Finance Inspectorate. Official Gazette of the Republic of Algeria, No. 51.

Algerian Republic. (2010). Presidential Decree No. 10-236 of October 7, 2010, on the regulation of public contracts (repealed). Official Gazette of the Republic of Algeria, No. 58.

Algerian Republic. (2011). Law No. 11-10 of June 22, 2011, relating to the Municipality. Official Gazette of the Republic of Algeria, No. 37.

Algerian Republic. (2015). Presidential Decree No. 15-247 of September 16, 2015, on the regulation of public contracts and public service delegations. Official Gazette of the Republic of Algeria, No. 50.

Algerian Republic. (2023). Law No. 23-12 of August 5, 2023, setting the general rules relating to public contracts. Official Gazette of the Republic of Algeria, No. 51.

Boudaoud, I. (2010). Financial control over public expenditures in Algerian legislation. Modern Book House (Dar Al-Kitab Al-Hadith), Cairo.

Boudehief, A. (2007). Public contracts in Algeria: A comprehensive legal study (1st ed.). Dar Al-Jusoor, Algiers.

Hadri, H. (2021). Control mechanisms over public procurement in light of recent legislative reforms [Conference presentation]. Study Day on Public Contracts, Faculty of Law, Mohamed Khider University of Biskra, Algeria.

Mustafawi, K. (2023). Novelties of Public Procurement Law No. 23-12: The National Council for Public Contracts and digitalization as case studies. Journal of Legal and Administrative Studies, 19(2), 325–338.

Yaala, M. E.-S. (2005). Administrative contracts in comparative and Algerian public law. Dar Al-Ouloom for Publishing and Distribution, Annaba.

Zouzou, Z. (2016). Crimes of public contracts and mechanisms for combating them in Algerian legislation. University Publications Office, Algiers.