

# PUBLIC PROCUREMENT CONTROL MECHANISMS IN ALGERIA IN THE LIGHT OF LAW 23-12 ESTABLISHING THE GENERAL RULES FOR PUBLIC PROCUREMENT.

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**Abstract:** *In recent years, Algeria has combined the models of a welfare state, based on public spending to provide services to its citizens, and a regulated state, open to other actors that contribute to meeting the needs of the population. The state has issued legal texts to protect public funds from waste and misappropriation, and to regulate contractual relations with economic operators involved in development efforts, seeking economic efficiency in spending and respect for the rights of these operators. In this context, laws regulating public procurement play a role, one of the main pillars of which is Law 23-12, which establishes the general rules for public procurement. Its objectives include legitimising and regulating the control of public procurement, both before and after the conclusion of contracts, from within and outside the contracting authority, in order to safeguard public funds and achieve economic efficiency and integrity.*

**Keywords:** *Public procurement, control, transparency, efficiency.*

## INTRODUCTION:

The style of governance and the ideology of the state in Algeria underwent a significant change in the early 1990s. After years of managing public affairs based on a socialist approach that relied on state intervention as a key actor, Algeria moved to a liberal approach in which the state limited itself to the role of regulating and controlling economic and social matters. The state now concentrates on enacting and implementing laws that govern public life, particularly those that regulate the emerging contractual relationships between the state and the various economic actors that participate in the overall performance of the state.

Public expenditure, especially in meeting general demand and its various stages, has become an important aspect of state intervention through its regulation and control, with the aim of safeguarding public funds and improving public life. Several laws on public procurement have been enacted until the entry into force of the new law n° 23-12 in 2023. The exercise of control over public procurement is one of the key issues discussed in detail, with the aim of ensuring transparency in procedures and the necessary efficiency to meet public demand. This is particularly important in light of the international focus on creating a transparent economic environment worldwide through various agreements and treaties to which Algeria is a party. Public procurement is the mechanism through which the state intervenes to meet the needs of the population at various levels, and the destination of these funds determines the image of the state both domestically and internationally. Moreover, the provision of these needs falls within the framework of the search for citizen satisfaction with the performance of the political authority.

The law introduced different forms of control, including internal control exercised by the contracting authority on itself, external control exercised at different stages of public procurement, both before and after its implementation, as well as a new type of control exercised through the digitalisation of different stages of procurement.

### 1- Research problem:

The theme addresses the following research problem: What are the forms of control over public procurement introduced by Law No. 23-12, which establishes the general rules related to public procurement? And to what extent are they effective in practice?



## 2- Research methodology:

In order to provide a high quality study, the research was conducted using the following methodologies:

- Legal methodology: The primary focus of the study is the legal provisions of Law No. 23-12 related to the control of public procurement. The study analyses and examines these legal articles, as they form the central axis of our research.

- A new institutional approach: The study goes beyond a mere examination of the structures and their functions. It also examines the relationships that govern these structures and the centres of power within each structure. This includes an examination of the authority that supervises the regulator and the way it is constituted.

By applying these methodologies, the study aims to provide a comprehensive analysis of the forms of control introduced by Law No. 23-12 and their effectiveness in practice. The legal methodology focuses on the study of legal provisions, while the new institutional approach examines the relationships and centres of power within the structures.

## 3- Significance of the research:

The importance of this research lies in the study and analysis of the texts dealing with the control of public procurement in Law No. 23-12, which is a revised version of previous laws presented in the form of a new law. This is particularly important in view of the extensive campaign waged by the political authority against corruption, which for years has been draining the public purse through astonishing amounts of wasted or misappropriated public funds. Therefore, this study attempts to examine the legal text on procurement control in order to understand the control mechanisms it introduces and to assess their effectiveness in practice. It also analyses the contractual relationships established by the State with economic operators and examines the extent to which they are protected from potential negative practices by public officials.

### Chapter 1: The concept of control and public procurement

#### First premise: The concept of control

##### A. Definition of control:

The definition of control varies due to its diversity and complexity. According to the English dictionary Dard Farapstam, control is defined as authority, sovereignty and supervision<sup>1</sup>. It refers to the process of checking the various stages of the contract, which is carried out by the supervisory and specialised body. This process embodies the authority and sovereignty of the supervisory body over the party authorised to conclude the contract. This definition tends towards a linguistic interpretation.

On the other hand, Darker defines control as "verifying that the implementation is carried out in accordance with the established plan, the instructions given and the principles adopted"<sup>2</sup>. This means that control is a process that follows the administrative implementation process according to a pre-established system. This control can take place during the implementation phase.

Public procurement control can be defined as the process of examining the legality of the procedures for concluding and implementing contracts by various competent administrative authorities.

##### B. Types of control:

The control varies according to the entities that exercise it and the time of its implementation, as follows:

**B-1 Control according to the bodies exercising it:** Control is classified according to the entities that exercise it as follows:

- Internal control: It is exercised by the control committees appointed by the contracting authority itself within the entity responsible for concluding and executing the contract. It serves as a self-control of its actions, emphasising the ethical dimension of the control process.

- External control: It is exercised by specialised bodies outside the contracting authority. It includes administrative, financial and judicial control.

**B-2 Control according to the time of its execution:**



The control is divided, according to the time of its execution, into

- Pre-contractual control: This control begins before the contract is concluded and during the initial stages of its implementation. It focuses primarily on monitoring the legality of the procurement procedures.
- Post-contractual control: This control takes place after the conclusion of the public contract. At this stage, the focus is on ensuring the legality of the award procedures and monitoring their proper implementation. The control may also extend to the management of the guarantee phase, which generally requires technical expertise.

## **Chapter 2: The concept of public procurement**

### **Section 1: Definition of public procurement**

The French public procurement portal defines public procurement as "a contract concluded for consideration between a public or private contracting authority and a public or private economic operator. This contract must meet the buyer's needs for works, supplies or services"<sup>3</sup>.

Public procurement has also been defined as "a contract binding the State to a contractor for the execution of a project, a work or the provision of services"<sup>4</sup>. Law No. 23-12 defines public procurement as "written contracts concluded for consideration by the public purchaser, referred to as the "contracting authority", with one or more economic operators, referred to as the "contracting party", in order to meet the contracting authority's needs in the fields of works, supplies, services and studies". It is a contract concluded between two parties, one of which is a public entity such as the State, local authorities or public bodies of various kinds, and the other is a public or private economic operator, for the purpose of providing goods, services or studies<sup>5</sup>.

The definition provided by Law No. 23-12 appears to be more precise and comprehensive, as it stipulates the requirement of a written contract and the existence of a financial consideration in the contractual relationship. It also provides more detailed information on the scope of the procurement.

However, the French definition adds the inclusion of private operators who are required to carry out procurement in their financial transactions, which is not explicitly mentioned in Algeria.

Richer, a French academic, defines a procurement as "a contract by which the administration provides materials or services and carries out works in return for payment"<sup>6</sup>. His definition simplifies the concept of procurement and limits it to the actions of the administration.

### **Section 2: Elements of public procurement<sup>7</sup>.**

The following elements can be derived from the definition of public procurement: - It is necessarily a written contract, and verbal agreements are not considered procurement.

- It is carried out for financial consideration.
- It is concluded between a contracting authority, which is necessarily a public entity, and a contracting party, which may be a public or private economic operator.
- Its conclusion is subject to the provisions of the applicable law.
- Its subject matter is defined exclusively in terms of works, various types of supplies, services or studies.
- The nature of public procurement is limited to operations carried out, in whole or in part, by the State, local authorities and their public institutions, as mentioned above in the definition. The Algerian legislator has not yet classified operations financed entirely by the private sector as public contracts subject to the procedures of the Public Procurement Code.

## **Chapter 3: Methods of procurement**

The Public Procurement Law in force provides for three methods of procurement, namely:

### **1. Invitation to tender:**

#### **1.1 Definition of tendering:**

The basic principle of procurement is based on a competitive process that ensures transparency and equality among bidders. This is achieved through a call for tenders, which is defined as "a procedure aimed at obtaining tenders from several competing contractors, with the public contract being awarded, without negotiation, to the contractor who submits the best tender in terms of



economic advantage, on the basis of objective criteria established before the start of the procedure"<sup>8</sup>. The contract notice is published through the various means of communication provided for by law, with the aim of reaching as many relevant economic operators as possible. The selection process is then carried out among the participating offers, taking into account the financial proposal as well as the financial soundness and past performance of the bidder, which are predetermined conditions specified in the tender documents.

Tendering is considered to be the most effective method of selecting a contractor who will obtain market prices and be best suited to meet the stated needs.

### **1.2 Types of tender:**

The choice of the type of tender is determined by the contracting authority and may vary according to the nature of the needs to be met. There are four types of tender, which may be national or international:<sup>9</sup>

- Open tender
- Open tender with minimum capacity requirements
- Restricted tender
- Competition

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## **2. Negotiation:**

Negotiation is defined as "the process of awarding a contract to a single economic operator without a formal invitation to compete"<sup>10</sup>. This means that no competition is announced among the general economic operators who are qualified to submit their offers to meet the stated needs.

The negotiation process can be divided into two types:

### **2.1 Direct negotiation:**

Direct negotiation is carried out with an economic operator with the aim of obtaining an appropriate economic offer based on prevailing market prices. The use of direct negotiation is limited to the following cases:<sup>11</sup>

- When the needs are limited to an operator with a monopoly position, such as the electricity and gas utilities in Algeria, which are legally monopolised by the company Sonelgaz.
- When the establishment is a start-up with an innovative and original service.
- In cases of urgency to avoid a threat to an existing public facility owned by the contracting authority, or in cases of disasters and emergencies, etc.
- In cases where it is desired to promote domestic products over imported ones, with the prior approval of the Council of Ministers, if the financial value of the procurement exceeds the limit established by law.

**2.2 Negotiation after consultation:** Negotiation after consultation generally takes place after the second announcement of the impracticability of the procedure for simple works or well-known services. This method of consultation after negotiation is used in other cases, but is limited and centralised.

### **2.3 Adapted procedures:**

These are simplified procedures designed to meet needs that do not reach the thresholds set by law. They dispense with many of the required procedures, in particular the oversight of the procurement committee and advertising in newspapers. However, the required publication must still be made in order to provide economic operators with the necessary information.

## **Chapter 4: The stages of public procurement**

The public procurement process consists of several stages, the most important of which are as follows:

### **1. Precise identification of needs:**

In this stage, the contracting authority accurately identifies its needs, whether they are for supplies, studies or works. Quantities are determined by drawing up a detailed list of the items required.



## **2. Announcement and selection:**

At this stage, the competition is announced through the official procurement gazettes, newspapers and various electronic media<sup>12</sup>. Economic operators taking part in the competition receive the tender documents, which contain all the details of the procurement, including the list of items, the evaluation criteria and the contractual conditions governing the future relationship between the contracting authority and the economic operator. The evaluation and tender committees conclude their work by proposing the award of the contract in accordance with the conditions set out in the tender documents.

## **3. Examination and approval:**

Procurement documents are submitted to specialised oversight bodies for review and approval prior to the start of the implementation phase. This includes approvals by specialised procurement committees, financial oversight bodies and the review by the Municipal Council for municipal contracts.

## **4. Execution and settlement:**

Once the procurement procedures have been completed, the contracting authority issues the order to proceed with the service. The assigned economic operator then carries out the provisions of the contract, regardless of whether it concerns works, studies or the supply of goods. The contracting authority is obliged to make monthly payments to the economic operator on the basis of the progress made, as certified by the competent technical authorities in accordance with the legal requirements

## **5. Warranty:**

Upon completion of the works or services specified in the contract, a temporary acceptance of the works is carried out for a period of time specified in the contract terms<sup>13</sup>. This is followed by a warranty period to ensure the quality of the completed works. Final acceptance of the works takes place at the end of the specified period.

### **Chapter 3: Public procurement supervision**

#### **Section 1: Internal pre-award supervision**

##### **1. Tender opening and evaluation committees:**

The contracting authority exercises internal oversight by setting up Tender Opening and Evaluation Committees<sup>14</sup>. These committees perform the function of self-regulation during the initial stages of public procurement, which involve opening the bidders' envelopes and evaluating their proposals. The contracting authorities form these committees from qualified and competent staff<sup>15</sup>.

Qualification refers to their professional and educational background related to public procurement issues. They should have technical expertise in areas such as construction, public works, irrigation and other relevant fields, as well as knowledge of economics, commerce and law.

Competence, on the other hand, refers to their ability to carry out their duties effectively, demonstrate discipline and maintain good conduct. Due to the sensitive nature of their work, which involves the management of public funds and ensuring the integrity of the public procurement process, Tender Opening and Evaluation Committees are expected to uphold the principles of transparency and equality.

It is expected that the work of these committees will reflect the highest standards of integrity of the contracting authority's staff in their oversight of their own actions.

The Tender Opening and Evaluation Committee is responsible for the following tasks in the tender opening process:

- Opening the envelopes containing the proposals of the participating economic operators at the time and place specified in the public notice published in newspapers, electronic publications and various media. The tender-opening session is considered a public session open to all participants and interested parties.
- Monitor the bidders' files and all related tender documents, arrange the bids and record any observations regarding incomplete files or anything that may affect the spirit of the competition.



- Document their observations in a special numbered and indexed report by the responsible official of the contracting authority.
- Suggest to the contracting authority that it declare the contract to be inoperative if no tenderer takes part in the competition.

During the evaluation phase, the committee shall:

- Inspect the bidders' files to ensure that all the required documents specified in the tender documents are present.
- Verify that the bidder is qualified to participate in the competition, either in terms of expertise or financial and human resources. It also ensures that the bidder has not been excluded by administrative decision<sup>16</sup> from participating in public contracts, whether the exclusion is permanent or temporary.
- Checking the financial offer of the bids and making corrections if necessary.
- Drawing up a technically qualified list of bids and arranging them, ensuring that no bidder is excluded from the contract because of situations such as insolvency or market monopoly.
- If it is established that the prices quoted are significantly low, the committee may, through the contracting authority, contact the economic operator who has submitted the tender in order to request clarification of the price quoted. The Committee may propose that the tender be rejected if it is not satisfied with the explanations given<sup>17</sup>. This is a legal means of protecting public funds and ensuring that the planned development works are carried out within the required time frame and with quality results.

The practice of self-contracted internal oversight enhances the transparency of the process. However, the challenge lies in the extent to which the client is committed to appointing competent people to these committees and in the ability of workers to exercise real oversight over those who exercise peaceful authority in the workplace, especially in societies that have not yet fully developed a democratic culture that accepts oversight by those below them in the organisational and professional hierarchy.

## **2. Oversight by the elected or appointed body:**

The governing laws of public institutions may require that the contract be subject to internal oversight before implementation. This is the case in the work of municipal councils, where contracts financed by the municipal budget from various sources are subject to the oversight of the municipal council<sup>18</sup>. The council approves the budget of the municipality and its various components, as well as its annexes, and it has the authority to supervise the implementation of this budget at various stages.

The Municipal Council also indirectly exercises control over public procurement in the municipality through its representation of two members on the Municipal Procurement Committee. Together with representatives from the Ministry of Finance, they form the backbone of the Municipal Procurement Committee<sup>19</sup>. A more detailed explanation of the role of the procurement committee in exercising oversight over public contracts follows.

The shortcomings in the exercise of oversight by the municipal council lie in the extent to which its elected members understand the subject of public procurement and their ability to exercise this oversight. This is particularly the case as the electoral law does not require any scientific or cultural qualifications for candidates running for membership of these elected local councils.

### **The second requirement: External supervision:**

#### **1. Supervision by the supervisory authority:**

This supervision is exercised by the central authority over its decentralised or non-centralised units. It monitors the integrity of procedures, thus preventing illegal practices such as the misappropriation of public funds and their unconditional diversion.

The purpose of supervision is to ensure that the contracts of the entities under its authority are in line with the priorities set and are pre-programmed<sup>20</sup>. When there is a lack of prudence in management, it becomes necessary to establish a scale of priorities in work programmes, especially





when resources are limited. Public institutions are also obliged to implement pre-defined programmes.

As far as the local council is concerned, its decentralised nature requires that its work be subject to administrative supervision. This supervision is exercised by the provincial governor, since the decisions resulting from its deliberations are subject to the approval of the provincial governor before being implemented, particularly with regard to the finances of the municipality<sup>21</sup>. These decisions include the approval of public contracts and the authorisation of the expenditure officer to conclude them, as mentioned above.

## **2. Financial supervision:**

Financial supervision has been gradually extended to the ministerial sectors until it reaches the municipal sector in 2013 and 2021. Public expenditure is now subject to prior financial control by the Ministry of Finance and its agents. The approval of the financial supervisor is a basic requirement for expenditure prior to implementation and approval. Failure to obtain the approval of the financial supervisor indicates the illegality of the previous procedures.

The Financial Supervisor is appointed by the Minister of Finance and is an employee of the Ministry of Finance<sup>22</sup>. They are subject to the hierarchical authority of the Minister.

Ensuring the integrity of procedures, or what is known as legality, is the main task of the Financial Supervisory Authority in its supervision of public procurement. This process involves reviewing the various elements of the public procurement file and its stages to ensure compliance with the applicable laws and regulations.

### **Financial supervision is carried out in the following ways:<sup>23</sup>**

- Authority to authorise expenditure: The financial supervisor is the only expert or person authorised to sign documents, decisions and minutes of public procurement. Others are not allowed to perform this task in order to protect public funds.
- Ensuring the availability of financial resources: Expenditure cannot be incurred without the necessary financial cover, especially in public procurement. The authorised registration by the qualifying authority is an essential document in the procurement file.
- Legal allocation of expenditure: Authorisation of expenditure requires a precise deduction from the budget. The law specifies the types of operations to be charged to each budget and to each section and item of the budget.
- The amount of the commitment cannot exceed the amount entered and deducted in the budget, whether it concerns the procurement budget or the administrative budget.
- Securing the necessary approvals from authorised bodies, such as procurement committees, and the approval of the municipal council authorised by the supervisory authority for municipal procurement.

The Financial Supervisor has the power to temporarily reject a public procurement file if it is found to contain correctable deficiencies. They also have the power to permanently reject a procurement file if it is found to be in breach of the procedures required by the law and regulations.

The introduction of financial control over public procurement and public spending reflects the need for greater transparency in public spending, especially in the face of widespread corruption in the management of public affairs. This need has become even more urgent as a result of the economic and financial crises that have hit our country, which has not been able to achieve a diversified economic transition in which the revenues of the public treasury can vary. Oil revenues have remained the main source of income. The need for budgetary discipline to control public debt has also accelerated the introduction of financial supervision.

Public administration debt has accumulated significantly, especially in elected local councils, where extravagant spending is often undertaken without sufficient financial cover.

This has necessitated government intervention on several occasions to deal with these debts. However, what is observed on the ground is that this oversight has failed to exert real and effective control over public procurement due to the inadequacy of the legal instruments available to exercise oversight.



Corrupt practices have gone beyond formal procedures in public procurement and corruption has become more widespread, as evidenced by the daily judicial proceedings against those involved in procurement at all levels. It should be noted that, for various reasons, the coverage of financial control authorities remains very weak.

### **3. Supervision of public accountants:**

A public accountant is any public official appointed by the Minister of Finance to perform the following financial functions:<sup>24</sup>

- Collection of revenue and payment of expenditure.
- Custody of money, bonds, valuables and assets.
- Handling money, bonds and securities.
- Keeping budgetary accounts.
- Keeping general accounts based on the principle of fixed rights and obligations.
- Keeping accounts of non-fixed assets.
- Preparation of financial statements and management accounts.
- Keeping records and accounting documents for operations carried out at the level of the accounting centre they manage.

The public accountant is primarily responsible for the collection and settlement of financial operations relating to public finances, be it the finances of the State and its institutions or the finances of local authorities.

In addition to these tasks, the public accountant is responsible for monitoring the expenditure of public funds, including public procurement. The payment of due expenditure to the contracting party is preceded by a process of verification and examination of a number of requirements related to procurement.

The public accountant is required to verify various elements related to public procurement, such as:<sup>25</sup>

- Attachment of evidence of expenditure in accordance with applicable regulations, such as budget registration documents, tender notices, opening and evaluation records, procurement committee approvals, financial controller approvals, service performance certificates and work progress reports. This enables the public accountant to monitor the legality of expenditure and the security of procurement procedures.
- Authorisation of expenditure: Only the authorised expenditure officer or his delegate can sign expenditure documents, thus ensuring financial discipline in public institutions.
- Availability of financial resources: Expenditure cannot be made without the necessary financial cover.
- Accuracy of the amount owed:

By reviewing and auditing the status presented for payment, comparing the quantity statement of procurement with the status presented for work in progress or supplies.

- Accuracy of the budget limitation: Each budget has its own sections and items, and each section has specific types of work and supplies to be restricted. In addition, different types of work and supplies are distinguished between, for example, new projects and repairs.
- The innocence of the payment: Ensuring that the payment is free from any legal impediments or objections and that the expenditure is not subject to the statute of limitations. According to the principle of quadruple prescription, an expense that has been due for four years cannot be paid. Therefore, in order to protect rights and public funds, the public accountant cannot process the payment until the dispute has been resolved by a final judgement of the competent court.

In order to strengthen the process of supervision exercised by the public accountant over the financial management of the public institutions under his jurisdiction, the principle of incompatibility between his role and that of the disbursing officer has been established<sup>26</sup>. The





disbursing officer cannot be the public accountant within the same institution and at the same time. Similarly, the public accountant cannot be a disbursing officer within the same institution. This frees the public accountant from any pressure, especially as some of his relatives are also prohibited from holding the position of disbursing officer while performing the duties of a public accountant. These include spouses, children, parents and siblings<sup>27</sup>. This potential family relationship would prevent the public accountant from carrying out his supervisory duties objectively and with the necessary discipline. Such a relationship would undoubtedly put pressure on the professional accountant and the emotional aspect would overshadow the supposed professional relationship.

**The third requirement: External supervision:**

**1. The Court of Accounts:**

Decree 95-20 defined the role of the Court of Audit as an independent public body responsible for the external control of public funds<sup>28</sup>. Public funds are defined as the budgets of State entities, local and regional authorities and all public institutions.

The Council consists of a national chamber and regional chambers covering a group of states. The regional chambers are responsible for supervising the management of the states, municipalities and public institutions under their jurisdiction<sup>29</sup>.

A distinctive feature of the Council's oversight of public procurement is that it goes beyond the mere examination of documents related to procurement procedures, which is typically done in regular periodic audits. The Council monitors compliance with laws and regulations and assesses the quality of execution by going to the site, examining and verifying the extent to which execution conforms to approved legal and technical standards. It also compares the quantity records of contracts with the physical evidence of execution in the field.

The Council issues a supervision report containing all observations from the supervision process. This report is normally addressed to the highest authority of the audited entity for response and clarification. It is also addressed to the immediate superior of the audited entity for notification.

The Council has been granted judicial powers enabling it to impose sanctions on offenders<sup>30</sup>. After examining the reports of the supervising magistrates, the competent bodies of the Council assess the infringements that justify sanctions against the offending officials. These sanctions often include financial compensation for the damage caused to public institutions.

In addition, the Council may inform the Public Prosecutor's Office of the violations detected in the field of public procurement if it deems it necessary to take legal action in view of the extent of the violations detected and the damage caused to public funds.

On the basis of the Council's activities, it appears that the limited spread of its structures has hampered its ability to carry out its tasks effectively, particularly in view of the scarcity of its human resources and the limited resources allocated to it. In addition, its work has often been limited to the publication of annual reports, without corrective and dissuasive follow-up to maintain ethical standards in public administration.

The effectiveness of such oversight bodies is often dependent on the orientations of the executive authority and its commitment to fighting corruption and safeguarding public funds. This is reflected in the powers granted to these bodies and the material and human resources allocated to facilitate their tasks and improve their performance.

**2. General Inspectorate of Finance:**

The General Inspectorate of Finance was established under the authority of the Minister of Finance to supervise all matters relating to public expenditure<sup>31</sup>. It primarily supervises the operations of public bodies, including State bodies, regional communities and various public institutions, whether they are economic, commercial or administrative in nature. Its supervision also extends to the finances of entities that benefit from public support, such as associations, cultural organisations and national and local sports organisations. The General Inspectorate of Finances ensures the integrity of public procurement procedures and all public spending, while ensuring compliance with



the applicable legal and technical standards. Its supervision is carried out under the authority of the Minister of Finance.

The work of the General Inspectorate of Finance is centred on a central administration, which carries out supervision at the central level, such as ministries and central public institutions. Regional directorates are responsible for supervision at the regional and local levels, with each region having its own supervision mission within its jurisdiction. This hierarchical structure aims at activating the audit mission with regard to public spending practices.

What distinguishes the General Inspectorate of Finances from other supervisory bodies is its ability to provide advisory services and expertise on financial management to public entities upon request<sup>32</sup>. It conducts field studies on management methods and decision making based on the latest modern scientific approaches. In addition, it is an audit body that values the continuous training of its human resources in order to adapt to the evolving trends in management and performance.

**The fourth requirement:**

**Digitisation of public procurement:**

Digitisation is seen as a modern approach to ensuring transparency in public procurement processes and equal treatment of economic operators interested in accessing public tenders. Digital advertising makes public tendering accessible to all interested parties, and the information is also readily available to regulators and oversight bodies for close monitoring of the public procurement process.

The creation of an electronic public procurement portal in Algeria<sup>33</sup> is the first step towards the digitalisation of public procurement. This step represents a serious commitment to transparency in the handling of public tender files, increased effectiveness in the supervision of public procurement procedures and the reduction of corruption in the administrative and economic sectors in Algeria, thus saving valuable resources that would otherwise be wasted.

However, the law did not specify the specifications of the portal or how it should be used, leaving these details to be decided at a later stage. This could lead to delays in the digitisation of public procurement.

**CONCLUSION:**

The protection of public funds and the fight against corruption require the use of all available control mechanisms, as provided for in Law 23-12, which lays down the general rules for public procurement. The law emphasises all the control mechanisms included in previous laws, in addition to electronic monitoring, which seems to be the beginning of the general control of public procurement in Algeria. This will help rationalise public spending and put an end to the waste of public resources, which has consumed considerable energy that could have been used to meet many societal demands and needs that have become more extensive and complex.

The multiple types of oversight that govern the public procurement process, including internal and external oversight, as well as pre-contractual and post-contractual oversight, ensure that those responsible for procurement cannot escape constant scrutiny. It also helps to distribute the function of oversight among several bodies, thereby preventing any one oversight body from colluding with the contracting party.

There is no denying the positive role of the oversight mechanisms prescribed by the Public Procurement Act. However, their effectiveness does not depend solely on their inclusion in the law. The existence of a political will at the highest level of authority to safeguard public funds is the first and essential prerequisite for creating the appropriate climate and the necessary guarantees for these bodies to effectively fulfil their oversight role. An atmosphere of freedom of expression is the best climate for exercising oversight over public funds, especially with the existence of independent media that collectively monitor public life, in addition to an independent judiciary that prosecutes any violation of the law in accordance with the principles of justice and equality.



It is also believed that focusing on value-based approaches in the training of civil servants is an effective guarantee for safeguarding public funds. When conscience becomes a self-deterrent for public servants to violate the law, and when structures operate in an atmosphere of ease and smoothness, free from any pressure or compromise.

#### RECOMMENDATIONS:

1. It is necessary to combine legal texts with the political will of the executive branch of the state to ensure the implementation of the law at all levels and to increase the penalties for any misuse of public funds.
2. Incorporate an ethical values-based approach into training processes across all sectors to develop morally upright individuals who are committed to their religious beliefs and love their country. Employees should be aware that maintaining integrity is a religious duty to God before others, making conscience-based self-policing the first practice of self-policing for employees and others.
3. To promote the process of digitalisation in all sectors, especially in public procurement, in order to reduce the spread of corruption. This will make information available in all directions, whether to stakeholders or to supervisory bodies at different levels.
4. Free the media from restrictions and involve them in the oversight process that falls within their remit. This will make it easier for oversight bodies to obtain information.
5. Involve citizens in the oversight process and raise awareness of the importance of their role in safeguarding public funds by promoting a culture of whistleblowing, while ensuring protection for whistleblowers.
6. Learn from the experience of countries around the world in improving transparency in their public life and adapt what is appropriate to our cultural and social specificities.
7. Improve the living standards of civil servants to protect them from pressure, whether they are involved in public procurement or responsible for oversight. This can be achieved through regular salary reviews and by recognising the specific nature of public procurement work.

#### Footnotes :

- <sup>1</sup>- George Lesaisier, *The Control of the State over National Enterprises* (Paris: GDG, 1959), p.25.
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- <sup>3</sup>- French republic, *What is a public market?*, Entrepreneur.Service-Public.Fr...the official administrative information website for businesses, accessed on 9 December 2023 at 18:30.
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- <sup>5</sup>- Article 02 of Law 23-12 of 5 August 2023 laying down the general rules governing public contracts, published in the Official Journal of the Algerian Republic, No. 51 of 6 August 2023.
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- <sup>9</sup>- Article 39 of Law 23-12 laying down the general rules on public contracts.
- <sup>10</sup>- Article 40 of Law 23-12 laying down the general rules on public contracts.
- <sup>11</sup>- Article 41 of Law 23-12 laying down the general rules on public contracts.
- <sup>12</sup>- Article 46 of Law 23-12 establishing the general rules on public contracts.
- <sup>13</sup>- Article 86 of Law 23-12 establishing the general rules on public contracts.
- <sup>14</sup>- Article 97 of Law 23-12 establishing the general rules for public contracts.
- <sup>15</sup>- In the same place.
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