

THE ROLE OF THE NEEDS ASSESSMENT PROCESS IN PROTECTING THE ENVIRONMENT AND ACHIEVING SUSTAINABLE DEVELOPMENT: AN ANALYSIS OF ARTICLE 07 OF LAW 12-23 ON PUBLIC PROCUREMENT REGULATIONS

SALIM BOULMOKH¹, CHAGUETMI SIHEM²

¹University of Badji Mokhtar Annaba (Algeria).

²University of Badji Mokhtar Annaba (Algeria).

The Author's E-mail: Salim.boulmokh@univ-annaba.dz¹, chaguetmisihem@yahoo.fr²

Received: 02/2024

Published: 12/2024

Abstract:

The needs assessment process in public procurement law is the fundamental pillar on which contracting authorities rely to determine the type, nature and objectives of contracts aimed at meeting emerging and evolving needs with the aim of achieving economic, social, cultural or environmental development.

Recent climate changes at international, national and local levels have forced legislators and public procurement stakeholders to adapt laws and regulations to meet the requirements of environmental protection and sustainable development. This is due to the significant role that procurement plays in requesting services and supplies and in creating various projects that may harm the environment and affect natural, financial and environmental resources. Therefore, the first step towards achieving the objectives of environmental protection and sustainable development is a detailed, precise and rigorous legal framework for the needs assessment phase of public procurement.

Keywords: Needs assessment, Environmental protection, Sustainable development, Public procurement.

INTRODUCTION

The report “Our Common Future”, published in 1987 by the United Nations World Commission on Environment and Development, also known as the Brundtland Commission, defined sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This definition is reflected in Article 4 of Law No. 03-10 of 19 July 2003 on the protection of the environment in the context of sustainable development.

In order to achieve development, which is a primary factor in satisfying and improving the needs of any society, it is necessary to exploit all possible natural, human, animal, technical and technological resources. This should be done through well-planned and studied projects based on realistic requirements and urgent needs imposed by the daily life of individuals and the State. The aim is to achieve prosperity and social and economic stability for the State, while meeting future security challenges in all their dimensions. This can only be achieved through the creation of numerous projects, the procurement of necessities, the creation of studies and the provision of essential services, which the State seeks through public contracts with specialised operators in each field. This guarantees the best results and services, optimising technology and time, while protecting public funds.

Public procurement law is an important indicator of the state's commitment to development. The first and most important step is the needs assessment phase, which forms the basis of every public contract. This phase is not only essential, but also one of the most challenging, in order to ensure that the objectives of the contracting authority are met. It is governed by specific legal frameworks and administrative and procedural rules designed to protect public funds and to meet the economic, financial, environmental and foresight requirements set by the competent authorities. Recent developments include requirements for environmental protection and the achievement of

sustainable development. It is therefore necessary to establish a clear and specific perspective for the development approach and environmental protection. In this context, we will try to answer the following question: What is the legal framework established by the legislator in various laws and regulations to reconcile the rules for assessing the needs of the contracting authority with the necessities of environmental protection and the achievement of sustainable development?

To answer this question, we have decided to outline a plan consisting of three sections. In the first section, we will address the legal criteria for identifying and defining the needs of the contracting authority. In the second section, we will discuss the requirements for environmental protection and sustainable development in Algerian law. In the third section, we will detail the legal guarantees for the process of identifying needs in relation to environmental protection and achieving sustainable development.

Section One: Legal Criteria for Identifying and Defining Needs for the Contracting Authority

If we examine Article 07 of Law No. 12-23, which lays down the general rules on public contracts, we can see that it is written in a mandatory tone, which means that the contracting authority must comply with the content of the article when determining its needs, taking into account the public interest. This is the main objective of public procurement: to meet public needs and provide public services, while respecting the environment and the objectives of sustainable development. The legislator has established a general and abstract rule addressed to the contracting authority, obliging it to respect the environment and to achieve the objectives of sustainable development during the preparatory phase of the contract¹. This makes it necessary to include these criteria in the specifications, as can be seen in Article 27 of Presidential Decree No. 15-247, which organises public contracts and public service delegations. The peculiarity of this article is its technical and procedural nature, which raises many questions in its application by the contracting authorities, due to its general and abstract conditions and controls, especially with regard to the administrative estimation or the lack of clarity and precision in the selection of these controls or techniques, especially with regard to the definition of public needs. The correct identification and definition of these needs leads to several objectives that help contracting authorities to prepare correct procedures for the contract through a series of measures and controls².

First: Procedures for identifying needs in public procurement law

The public procurement legislator, through Article 27 of Presidential Decree No. 15-247, which organises public procurement and public service delegations, has established several procedures, as follows:

1. Determination of the amount of the contracting authority's needs on the basis of an accurate and rational administrative estimate.
2. A clear definition of the nature and scope of the needs, based on detailed technical specifications.
3. Define the needs on the basis of criteria and/or efficiencies to be achieved or functional requirements.
4. The need to provide alternatives to technical specifications in the case of technically complex services³.

Accordingly, the contracting authority carries out a preliminary study to determine the nature and scope of its needs. This study includes a detailed analysis of the current situation, future projections and various legal and logical checks. It also includes consultations with the relevant stakeholders, in particular those involved in the implementation process or the beneficiaries of the

¹- See Article 07 of Law 23-12 dated August 5, 2023, which defines the general rules related to public contracts, Official Gazette No. 51, dated August 6, 2023.

²- Lghouti Mohamed, Ben Jelloul Mustafa, Issues in Identifying Needs in Public Contracts: A Review of Article 27 of Presidential Decree 15-247 Related to the Organization of Public Contracts and Public Service Delegations, *Journal of Legal and Political Studies*, Vol. 06, No. 02, Algeria, June 2020, p. 208.

³- See Article 27 of Presidential Decree 15-247 dated September 16, 2015, concerning the organization of public contracts and public service delegations, Official Gazette No. 50 dated September 20, 2015.

project, in order to ensure the accuracy of the definition of needs, and in particular with the financial bodies in order to determine the budget allocated to the project. At this point, the contracting authority can draw up a precise and transparent set of specifications to avoid the need for amendments, to fill in gaps and to avoid misinterpretations

Second: Rules for determining needs in public procurement law

In order to oblige contracting authorities to carry out a study before requesting the registration of an operation to finance a public project, the registration of programmed operations and, to a lesser extent, the registration of allocations in all budgets, including the operating budget, is subject to a prior determination of needs. This is specifically set out in Executive Decree No. 98-227 of 19 Rabi' al-Awwal 1419 (13 July 1988), relating to government expenditure on equipment. In particular, Article 6 states: "Only centralised equipment programmes and their projects which are sufficiently completed to allow their implementation during the year may be registered under the state equipment budget". This text emphasises the organisation of public procurement as one of the references used⁴.

In this respect, according to Decree No. 98-227, the following must be identified and provided

- Feasibility study
- the planned method of implementation
- Elements justifying the economic, social and preliminary suitability of the project
- An estimate of the costs in hard currency, with a direct indication of how they will be financed.

Article 9 of Decree No. 89-227 states that "... once the project has been sufficiently developed in accordance with the provisions of Articles 6, 7 and 8, the technical file for the project submitted for registration must include...".

Justification

- A technical package including, in particular, the material content, the costs in local and foreign currency, the execution schedule and the payment terms.
- An implementation strategy and the approach chosen in the light of the development objectives.
- The necessary coordination between sectors.
- An evaluation report, which may include a comparison of alternatives.
- Results of tenders.
- Evaluation of costs in foreign currency and methods of financing⁵.

Article 27 of Presidential Decree 15-247 requires the contracting authority to determine the total amount required, taking into account the following factors

1. The total value of the needs relating to the same works, in the case of works contracts.
2. The homogeneity of needs in the case of supply, study and service contracts.
3. Criteria for the allocation of needs and new needs.
4. Public interest considerations.
5. Respect for the environment and the objectives of sustainable development.
6. Preliminary studies for the project.
7. Feasibility study of the project.
8. Study of the specific suitability of the project.
9. Studies related to the maturity of the project (feasibility, method of operation, technical and geotechnical monitoring studies, project supervision, etc.).
10. Inclusion of the project in the list of projects eligible for implementation⁶.

⁴ Noui Kherchi, *Public Contracts: An Analytical, Critical, and Supplementary Study of the Public Contracts System*, Dar Al-Huda, 2019, Algeria, pp. 85-86.

⁵ See Article 9 of Decree 89-227 dated 19 Rabi' al-Awwal 1419 corresponding to July 13, 1988, regarding state equipment expenditures, amended and supplemented by Executive Decree No. 09-148 dated May 2, 2009, Official Gazette No. 26 dated May 3, 2009.

⁶ Article 27 of Presidential Decree 15-247 concerning the organization of public contracts and public service delegations, Official Gazette No. 50 issued on September 20, 2015.

These rules aim to strike a balance between meeting public needs and conserving public resources, and can be summarised as follows

Accurate identification of needs: clearly defining the type and quantity of products or services required.

Needs assessment: ensuring that financial capacity is not exceeded and that only essential items are purchased.

Respecting the general principles of public procurement: These include transparency, equality, freedom of access to tender and competitiveness.

Technical study and supervision: The Public Procurement Law requires prior approval of the needs assessment by supervisory bodies to ensure compliance with laws and budgets.

Adaptation to market developments: Particularly with regard to economic fluctuations and alignment with stock market trends and indicators in both global and local markets in order to acquire needs in the best way and at the best price.

One of the most important established and new regulations in various public procurement laws relates to environmental protection and achieving sustainable development in the face of resource depletion, increasing consumption, technology monopolisation and the development of production methods and alternatives to conventional resources.

Section Two: Environmental protection and sustainable development requirements in Algerian law

The protection of the environment and the achievement of sustainable development goals are objectives that Algeria is seeking to achieve in the short, medium and long term, notably through a series of laws, notably Law 03-10 of 19 July 2003 on environmental protection in the context of sustainable development⁷ and Law 05-12 of 4 August 2005 on water, which regulates the management and protection of water resources against pollution and overexploitation⁸. There are also laws on waste management, disposal and recycling.

Article 68 of the 2020 Constitution emphasises the State's commitment to environmental protection and obliges all bodies to comply with it⁹, while Article 21 stresses the need to rationalise the use of natural resources and ensure sustainable development that respects the rights of future generations. This reflects the importance of balancing economic development¹⁰, achieved through public procurement and the laws that regulate it, with environmental protection and the preservation of biodiversity.

Thus, the requirements for environmental protection and the achievement of sustainable development are largely detailed in Law 03-10 on Environmental Protection in the Context of Sustainable Development, as follows:

First: Environmental protection requirements in Algerian law

Article 2 of Law 03-10 states that the objective of protecting the environment in the context of sustainable development is to:

- Establishing basic principles and rules for environmental management.
- Promoting and developing sustainable national development by improving living conditions and ensuring a healthy living environment.
- Prevent all forms of pollution and damage to the environment and ensure the preservation of its components.
- Restoring damaged environments.
- Promoting the rational and ecological use of available natural resources and the use of cleaner technologies.

⁷- Law 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development.

⁸- Law 05-12 dated August 4, 2005, concerning water, which regulates the management of water resources and their protection from pollution and overuse.

⁹- Article 68 of the 2020 Constitution issued on December 30, 2020, Official Gazette No. 82.

¹⁰- Article 21 of the same Constitution.

- Encourage awareness, public participation and the involvement of various stakeholders in environmental protection activities.

As a result, environmental protection requirements in Algerian law are constantly evolving to meet international standards and growing environmental concerns. As a result, Law 03-10 on environmental protection in the context of sustainable development includes the following basic principles

- Conservation of natural resources.
- Preventing pollution.
- Improving the quality of life.
- Environmental Impact Assessment (EIA) standards, which require development projects to undergo EIA studies prior to obtaining permits to ensure the reduction of environmental damage¹¹.
- Legislation on waste management, as outlined in Law 01-19 on Waste, which focuses on the management of hazardous and non-hazardous waste, while promoting recycling and reducing waste generation¹².
- Renewable Energy and Energy Efficiency, which promotes and improves the use of renewable energy, replacing fossil fuels with clean energy sources.

These requirements aim to integrate environmental considerations into all aspects of economic development, particularly in the preparation of specifications for public procurement. This integration is essential to ensure the efficient provision of various public services and to improve and develop infrastructure. This can sometimes conflict with the objectives of sustainable development, and it is therefore necessary to establish a legal and practical framework for achieving these objectives.

Second: Requirements for Achieving Sustainable Development in Algerian Law

Article 03 of Law 03-10 concerning the protection of the environment within the framework of sustainable development states:

- Conservation of Biodiversity: Avoid any activities that cause significant harm to biodiversity.
- Conservation of Natural Resources: Avoid any activities that damage natural resources, such as water, air, land, and subsoil, within the framework of rational development and accurate studies.
- Search for Alternatives: Avoid and replace any harmful actions to the environment in the context of development by seeking environmentally friendly and non-exhaustive technological alternatives. This involves selecting qualified specialists and developers of execution methods and materials that are non-damaging to the environment, with sustainable efficiency.
- Incorporating Environmental Protection and Sustainable Development Arrangements: Include these arrangements in the preparation of specifications, making them necessary and exclusionary conditions.
- Balancing Development Needs and Sustainable Development: This involves conditioning technologies to an acceptable economic cost.
- Not Neglecting Environmental and Sustainable Development: Avoid neglecting these aspects due to urgency or necessity.
- Imposing Conditions and Commitments for Compensation: Ensure compensation for any damage to the environment and sustainable development during project execution and the fulfillment of needs.
- Continuous Monitoring: Maintain strict and ongoing oversight of the conditions and circumstances of project execution and the fulfillment of needs necessary for protecting the environment and achieving sustainable development¹³.

¹¹- Article 2 of Law 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development, Official Gazette No. 43, dated July 20, 2003.

¹²- Law 01-19 concerning waste, focusing on how to handle hazardous and non-hazardous waste while promoting recycling and reducing waste production.

¹³- Article 03 of Law 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development.

Achieving these requirements requires a strong commitment on the part of various governmental bodies, particularly the legislative, executive and judicial, especially those responsible for requesting and implementing various development projects and meeting various needs.

They must therefore provide sufficient guarantees when determining their needs in order to ensure environmental protection and achieve sustainable development.

Third axis: Legal guarantees for environmental protection and the achievement of sustainable development through the needs assessment process in public procurement law

The legal safeguards for environmental protection and the achievement of sustainable development in public procurement in Algeria focus on the integration of environmental standards in all stages of the procurement process, from needs assessment to implementation. This includes the provision of control and sanction mechanisms to ensure compliance with these standards, which can only be achieved by complying with all the procedures that frame the needs assessment process.

First: Procedural safeguards

1. Honest and rational administrative assessment: This should focus on all aspects of the project, supplies, studies or services being assessed, ensuring that all solutions and means are assessed by specialists. This guarantees the accuracy of the assessment of needs, their effectiveness, necessity and adaptability to the conditions of environmental protection and sustainable development.

2. The use of detailed techniques to determine the nature of needs: This involves the careful identification of all human, technical, legal and financial possibilities for the use of various modern techniques to ensure accurate needs assessment and to achieve the goal of genuine and sustainable development, while protecting public funds and natural resources and avoiding damage to the environment and biodiversity.

3. Research and selection of alternatives for technical specifications in the case of technically complex services: This can only be achieved by accessing the national market, supporting emerging Algerian companies and consulting leading companies in the specific field to ensure real alternatives at acceptable cost that meet the requirements of environmental protection and sustainable development.

4. Decree No. 21-219 approving the General Administrative Conditions of 20 May 2021, in particular section twelve on environmental protection, in particular article 47¹⁴.

5. Law 07-06 of 13 May 2007 relating to green spaces and their protection and development, and in particular Article 2 thereof¹⁵.

6. Law 11-02 of 17 February 2011 on protected areas in the context of sustainable development¹⁶.

7. Article 95 of Presidential Decree 15-247 on the organisation of public procurement and public works delegations.

These procedures can therefore be summarised as follows:

First: Commitment to prior planning:

This specifically involves a thorough study of environmental needs and development projects, taking into account local, national and regional priorities.

Second, environmental regulatory frameworks: The process of identifying development needs must be consistent with national and international environmental legislation aimed at protecting the environment, conserving natural resources and combating climate change.

Third: Consultation with all stakeholders: This involves involving civil society, environmental experts and sustainable development specialists in the needs assessment process, which increases transparency and ensures accurate identification of needs while respecting environmental regulations and ensuring genuine sustainable development.

¹⁴- Executive Decree 21-219 approving the General Administrative Terms of Reference dated May 20, 2021, Section Twelve titled "Environmental Protection," particularly Article 47.

¹⁵- Law 07-06 dated May 13, 2007, concerning green spaces and their protection and development, especially the provisions of Article Two.

¹⁶- Law 11-02 dated February 17, 2011, concerning protected areas within the framework of sustainable development.

Fourth, strategic environmental assessment: Particularly for major and strategic projects that could have serious and lasting environmental impacts and that could consume significant resources compared to their economic and social effectiveness.

Fifth, continuous monitoring and review: This involves the implementation of monitoring and review mechanisms for the needs assessment processes in order to avoid errors, misjudgments and violations of applicable laws and regulations related to environmental protection and sustainable development.

Second: Regulatory safeguards for the needs assessment process to protect the environment and achieve sustainable development

This should be included in all documents, such as the general administrative conditions, special conditions and technical specifications, as follows

- By fixing the total amount for the same work, the contracting authority can ensure smooth operations and avoid resorting to additional or complementary works that may deplete resources and harm the environment under the pretext of necessity and urgency.
- Ensuring the homogeneity of needs and allocating them on the basis of legally and technically prepared bases guarantees the accurate fulfilment of needs within the specified time limits, avoiding damage to natural resources and optimising human and material resources.
- Conducting preliminary studies and assessing the effectiveness and appropriateness of each project in a comprehensive manner, using the client's human, technical and advisory resources, ensures a balance between development and the satisfaction of needs, while protecting the environment and conserving human, material and environmental resources.
- Studies related to project maturity and prior registration with the relevant authorities are the best guarantee of environmental protection and sustainable development. This involves the involvement of all stakeholders, beneficiaries and even those adversely affected by the projects to be studied and registered, in order to avoid any environmental or technical damage, to ensure the presentation of alternatives and to provide a real development perspective of the project to be studied and registered. Incentives should be offered to companies that commit to applying environmental and sustainable development standards in public procurement, while financial or administrative penalties should be imposed on those that violate these standards.

CONCLUSION

The process of identifying needs is the most important and precise phase in public procurement, as it plays a key role in achieving the desired development and satisfying the needs of the contracting authority. It is a fundamental guarantee for the protection of the environment and the achievement of sustainable development through a series of procedures aimed at ensuring the optimal use of public resources. It achieves a balance between economic and social needs and the requirements of environmental protection through the adoption of clear and precise criteria in the identification of needs, which directs public expenditure towards projects that respect the environment and reduce negative impacts on the natural environment.

Directing needs towards the use of modern and environmentally friendly technologies, together with improved monitoring of natural resources and required services, contributes significantly to reducing pollutant emissions and conserving natural resources. In addition, the involvement of economic institutions with experience in the environmental field in public procurement provides opportunities to develop projects in line with national sustainable development goals.

Given the consequences of the implementation of many public procurement contracts, whether in the services sector or in the supply sector, in particular construction contracts, and their impact on the environment and the depletion of natural resources, as well as the failure to achieve economic and social justice despite legal controls at various stages of public procurement, it is necessary for the legislator to strengthen the legal framework, especially at the stage of identifying needs. This should aim at closing gaps that allow leniency towards the environmental and developmental aspects of public procurement, while establishing strict measures and severe penalties for violations during the needs identification phase.

REFERENCE**Constitutions**

1. Constitution of Algeria of 2020: Adopted on 30 December 2020, Official Journal No. 82.

Ordinary laws

2. Law No. 23-12: Dated 18 Muharram 1445, corresponding to 5 August 2023, establishes general rules relating to public procurement, Official Gazette No. 55 of 6 August 2023.
3. Law No. 03-10: Of 19 July 2003, concerning the protection of the environment in the context of sustainable development, Official Journal of 20 July 2003, No. 43, page 6.
4. Law No. 05-12: of 4 August 2005, on the management of water and its protection against pollution and overexploitation, amended by Law No. 08-03 of 23 January 2008.
5. Law no. 01-19: Concerning waste management, focusing on the treatment of hazardous and non-hazardous waste, while promoting recycling and reducing waste production.
6. Law no. 07-06: Of 13 May 2007, concerning green areas, their protection and development.
7. Law no. 11-02: Of 17 February 2011, on protected areas in the context of sustainable development.

Presidential and executive decrees

8. Presidential Decree no. 15-247: of 16 September 2015, concerning the organisation of public procurement and the delegation of public services, Official Journal no. 50 of 20 September 2015.
9. Executive Decree No. 98-227: Dated 19 Rabi al-Awwal 1419, corresponding to 13 July 1988, concerning expenditure on public equipment.
10. Executive Decree No. 21-219: Approving the General Administrative Clauses Book, dated 20 May 2021, Section Twelve entitled Environmental Protection.

REPORTS

11. Report “Our Common Future”: Published in 1987 by the United Nations World Commission on Environment and Development, also known as the Brundtland Commission.