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## RULES OF INTEGRITY IN PUBLIC TRANSACTIONS IN ACCORDANCE WITH LAW 23-12

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**Abstract.** This research paper aims to highlight the various rules outlined in Law 23/12, which specify the general rules relating to public procurement and the guarantee of transparency and integrity in public transactions. These rules either pertain to the transparency of procedures for concluding public contracts, or to the integrity of public transactions, both internally and externally, for the contracting authority. A descriptive and analytical approach was used to elucidate and analyse the various rules contained in Law 23/12, as well as their effectiveness in ensuring transparency and integrity in public procurement. The state, represented by public bodies, administrations and local communities; public institutions subject to public law; public economic institutions tasked by the state or local communities with overseeing projects; and public institutions governed by commercial rules regarding funded or unfunded operations (whether wholly or partially financed by the state or local community budgets), are all required to publicise their offers using one of the aforementioned methods, whether for bids or consultative procedures. This ensures transparency in public procurement procedures and allows any interested party to be informed about the opportunity to contract with the contracting authority.

**Keywords:** Contract, Operator, Administration, Integrity

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## ПРАВИЛА ЧЕСТНОСТИ В ГОСУДАРСТВЕННЫХ СДЕЛКАХ В СООТВЕТСТВИИ С ЗАКОНОМ № 23-12

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**Абстракт.** Данная научная работа направлена на освещение основных положений Закона 23/12, устанавливающего общие правила публичных закупок, а также принципы обеспечения прозрачности и честности при осуществлении государственных сделок. Указанные нормы касаются прозрачности процедур заключения государственных контрактов и обеспечения честности государственных операций как внутри, так и вне уполномоченных органов. В исследовании применён описательно-аналитический метод, позволяющий проанализировать положения Закона 23/12 и оценить их эффективность в обеспечении прозрачности и честности государственных закупок. Государственные органы, администрации, местные органы власти, государственные юридические лица, государственные экономические учреждения, уполномоченные государством или муниципалитетом на реализацию проектов, а также государственные предприятия, действующие по правилам коммерческого права (полностью или частично финансируемые бюджетами государства или местных органов), обязаны публиковать свои предложения указанными способами. Это гарантирует прозрачность процедур государственных закупок и позволяет любому заинтересованному лицу быть информированным о возможности заключения контракта с закупающим органом.

**Ключевые слова:** Контракт, Оператор, Администрация, Честность

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## DÖVLƏT ƏMƏLİYYATLARINDA DÜRÜSTLÜK QAYDALARI (23-12 SAYLI QANUN ƏSASINDA)

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**Abstrakt.** Bu tədqiqat işi 23/12-ci saylı Qanunda nəzərdə tutulan müxtəlif qaydaları işıqlandırmağı hədəfləyir. Həmin qanun dövlət satınalmaları ilə bağlı ümumi qaydaları, dövlət əməliyyatlarında şəffaflıq və dürüstlüğün təmininə dair prinsipləri müəyyən edir. Qaydalar ya dövlət müqavilələrinin bağlanması prosedurlarının şəffaflığını, ya da sifarişçi təşkilat üçün daxili və xarici səviyyədə dövlət əməliyyatlarında dürüstlüyü əhatə edir. Tədqiqatda təsviri və analitik yanaşmadan istifadə edilmiş, Qanun 23/12-də yer alan qaydaların mahiyyəti və dövlət satınalmalarında şəffaflıq və dürüstlüyün təminində səmərəliliyi təhlil olunmuşdur. Dövlət orqanları, idarələr, yerli özünüidarə qurumları, dövlət hüquqi şəxsləri, dövlət və ya yerli icra hakimiyyəti tərəfindən layihələrin həyata keçirilməsi ilə vəzifələndirilmiş dövlət iqtisadi qurumları, habelə kommersiya hüququna əsaslanan dövlət müəssisələri (dövlət və ya bələdiyyə büdcəsindən tam və ya qismən maliyyələşdirilən əməliyyatlar üzrə) elanlarını göstərilən metodlardan biri ilə dərc etməlidirlər. Bu isə dövlət satınalma prosedurlarında şəffaflığı təmin edir və maraqlı tərəflərin sifarişçi təşkilatla müqavilə bağlamaq imkanları barədə məlumatlandırılmasına şərait yaradır.

**Açar sözlər:** Müqavilə, Operator, Administrasiya, Dürüstlük

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## **1.Introduction**

Ensuring the integrity of public transactions [Law No. 23/12 dated August 5, 2022, published in the Official Gazette, No. 51, dated August 6, 2022] is one of the objectives emphasised by the Algerian legislator in Law 22/12, particularly in Articles 46 to 48 and 65 to 71. This commitment is also reflected in Presidential Decree 15/247, [Presidential Decree No. 15/247 dated September 16, 2015, concerning the organization of public contracts and public service delegations, published in the Official Gazette, No. 50, dated September 20, 2015, particularly Articles 88 to 94] which highlights the importance of public procurement contracts, particularly from an economic standpoint, given the significant financial resources they consume. Therefore, the Algerian legislator has prioritised establishing rules to ensure the transparency and integrity of these contracts, both procedurally and substantively, internally and externally. What rules has the Algerian legislator proposed to guarantee transparency and integrity in public transactions?

To study this issue, this paper is divided into three sections:

1. Section 1: Rules of transparency in public procurement procedures.
2. Second section: Rules of integrity in internal public transactions.
3. Third section: Rules of Integrity in External Public Transactions.

## **2.Section One: Rules of Transparency in Public Procurement Procedures**

Through Articles 46 to 48 of Law 23/12, the Algerian legislator has sought to ensure the integrity of public procurement procedures. This is achieved by obliging the contracting authority to publicise its offers (First Requirement), requiring all necessary documents to be included in the bid file (Second Requirement) and opening envelopes and evaluating offers by a designated committee (Third Requirement).

### **2.1.First Requirement: Obligation of publicity**

To ensure transparency in public procurement procedures, the Algerian legislator has mandated that all contracting authorities listed in Articles 9, 12–14 of Law 23/12 publish their tenders or invitations to tender either in the Official Bulletin of Public Enterprises or in approved print or electronic media. On the other hand, publicity is also mandatory via the electronic public procurement portal, in accordance with the conditions set out in a decision by the Minister of Finance.

Notably, Law 23/12 adopted electronic media as a new means of publication, provided it is legally recognised, in contrast to Presidential Decree 15/247. The decision dated 17/11/2013 reiterates the emphasis on the electronic portal for public procurement and specifies its content and the methods for its management and electronic information exchange [Official Gazette No. 21, dated April 9, 2013].

## **2.2.Second requirement: Inclusion of all necessary documents in the bid file**

In Article 47 of Law 23/12, the Algerian legislator stipulated that the bid file made available to contractors must contain all the information and documents necessary for them to submit acceptable offers. This means that the bid request must include all information relating to the technical and financial aspects, and this information must be accessible to all interested parties who meet the contracting authority’s conditions, in a transparent and equal manner.

## **2.3.Third Requirement: Committee for Opening Envelopes and Evaluating Offers**

According to Article 48 of Law 23/12, the opening of envelopes and evaluation of offers must be carried out by a committee established for this purpose. This committee is known as the ‘Committee for Opening Envelopes and Evaluating Offers’, as specified in Article 96 of the same law. This article states: ‘As part of internal control, the contracting authority shall establish one or more permanent committees called the “Committee for Opening Envelopes and Evaluating Offers”. This committee shall consist of qualified employees from the contracting authority, chosen for their competence.’

These two articles make it clear that the Committee for Opening Envelopes and Evaluating Offers, established by the contracting authority, comprises employees with the necessary expertise to serve on this committee, responsible for opening envelopes and evaluating offers received from all contractors who have submitted bids.

It is noteworthy that the articles do not specify the number of committee members, leaving this to the discretion of each contracting authority based on its needs, organisation and basic laws. This aligns with the approach taken by the Algerian legislator under Article 160 of Presidential Decree 15/247, which provides more detail on the committee’s tasks in Articles 161-162 of the same decree. According to these articles, the Committee for Opening Envelopes and Evaluating Offers performs administrative and technical work, recording its activities in two special registers which are numbered by the financial officer and initialed by them. The committee then presents its work to the contracting authority for awarding the contract, declaring the procedure unfeasible or cancelling it, or for cancelling the temporary award of the contract. In this regard, the committee issues a justified opinion. The contracting authority may also establish a technical committee responsible for preparing an analysis report on the offers for the Committee for Opening Envelopes and Evaluating Offers.

Additionally, the aforementioned presidential decree confirms that meetings of the Committee for Opening Envelopes and Evaluating Offers during the envelope opening session are valid, regardless of the number of members

present. The contracting authority must ensure, at its discretion, that the number of members present allows for transparency in the procedure.

### **3.Section Two: Rules of Integrity in Internal Public Transactions**

In order to promote transparency in public procurement procedures, the Algerian legislature has enacted several rules under Law 23/12 to ensure the integrity of public transactions. These relate to the ratification of a code of professional ethics (First Requirement), the adoption of punitive measures in cases of bias or corruption (Second Requirement) and conflicts of interest involving public employees or agents (Third Requirement).

#### **3.1.First Requirement: Ratification of the Code of Professional Ethics**

Article 65 of Law 23/12 stipulates that all public agents involved in preparing, concluding, monitoring, negotiating or executing public contracts must ratify a code of professional ethics by means of an executive decree proposed by the Minister of Finance.

This code reflects an ethical obligation in a legal context and represents a commitment that each public agent must sign before performing their duties. This signature establishes a basis for accountability in the event of a violation of any of its provisions, with agents bearing full responsibility, including disciplinary and criminal liability if necessary.

The anticipated Code of Professional Ethics in the context of public procurement acts as a pre-established charter designed as a precautionary measure to support the integrity of public transactions at various stages: before, during and after the contracting process. The signatures of public agents provide the practical foundation for ensuring the integrity of these procedures. Furthermore, all punitive measures outlined in this code must be activated in the event of any violations.

#### **3.2.Second requirement: Adoption of Punitive Measures in Cases of Bias or Corruption**

In order to ensure the integrity of public transactions, as previously discussed, it is essential to support the aforementioned precautionary measure of signing the code of professional ethics with punitive measures in the event of bias or corruption by any employee or public agent involved in the public contracting process. This is in accordance with Article 66 of Law 23/12, and applies whether the bias or corruption occurs before, during or after the conclusion of the public contract or its annex, without prejudice to the legislative provisions regarding public procurement crimes.

If such bias or corruption is conclusively proven, the contracting authority is entitled, according to the aforementioned article, to take disciplinary and criminal punitive measures against all complicit employees or public agents. This includes the annulment or cancellation of the public contract or the relevant annex.

Conversely, the contractor who benefits from this bias or corruption will be provisionally listed among the economic operators prohibited from participating in public contracts by the relevant authorities of the Ministry of Finance. The Algerian legislator has also stipulated in the same text that all contracting bidders with the contracting authority must submit a declaration of integrity, which serves as evidence throughout the duration of the contract and holds them fully accountable.

### **3.3.Third requirement: Rules of integrity in cases of conflict of interest or incompatibility of membership for public employees or agents**

In order to continue ensuring the integrity of public transactions, the Algerian legislator emphasised a specific situation that may occur in practice and affect one of its employees or public agents involved in a contract, as set out in Article 67 of Law 23/12. This involves a potential conflict of interest between the private interests of a public employee or agent, whether direct or indirect, and their duties when participating in the preparation, conclusion, monitoring, negotiation or execution of a public contract. Therefore, the law requires any public employee or agent in this situation to inform their superiors in writing and withdraw from the assigned task.

Article 67 clearly demonstrates the Algerian legislator’s commitment to the integrity of public transactions at all stages, including preparation, monitoring, negotiation and others as indicated in the article, not only during the contracting phase. This is achieved by ensuring the neutrality of every public employee or agent involved in these stages who finds themselves in a situation of conflict concerning direct or indirect interests relating to a spouse, relative or acquaintance. As the article emphasises the public interest, they must withdraw from their duties after notifying their superiors. The legislator has rightly emphasised this procedure to ensure the neutrality of employees and agents of the contracting authority involved in public contracts, aligning with the constitutional principle of administrative neutrality [Article 26/2 of the constitutional amendment 2020].

Additionally, Article 68 of Law 23/12 explicitly states that serving on the arbitration committee and/or acting as rapporteur are incompatible with serving on the Committee for Opening Envelopes and Evaluating Offers when the two committees are dealing with the same case. This precaution by the Algerian legislator aims to prevent any potential influence or direction arising from a member who previously served on one of these committees regarding the same file. All these measures aim to ensure the integrity of public transactions at every stage.

### **4.Section Three: Rules of Integrity in External Public Transactions**

In order to support the framework that governs the internal integrity rules established by the legislator in Article 67 of Law 23/12, the legislator has

outlined an additional set of integrity rules in Articles 69 to 71 of the same law. These rules apply to individuals and entities outside of the contracting authority, including former employees (First Requirement) and contractors who interact with the contracting authority (Second Requirement).

#### **4.1.First Requirement: Integrity rules concerning former employees**

The neutrality and integrity of the contracting authority necessitate compliance with the obligation set out in Article 69 of Law 23/12. This prohibits the authority from awarding any public contract to former employees who ceased their duties more than five years ago, except in exceptional cases outlined by applicable legislation or regulations.

This obligation imposed on the contracting authority is justified, particularly given the widespread phenomenon of corruption in all its forms, especially within the administrative sphere. It ensures the principles of equality, competition and transparency among all contracting parties and prevents any undue influence, exploitation of power or unwarranted privileges granted to contractors due to their previous official status within the authority.

However, the legislator has provided an exception within the same article, stating that, in accordance with applicable legislation and regulations, a contract may be awarded to former employees who ceased their duties before the five-year period expired, provided that certain conditions are met. This is similar to the provisions of Law 22/22, [Decree dated December 18, 2022, amending Ordinance 06/03 dated July 15, 2006, concerning the general status of public service, published in the Official Gazette, No. 85, dated December 19, 2022, which states in Article 206 bis: "The employee has the right to unpaid leave to establish a business"]. which states in Article 206 bis 4 that 'an employee wishing to establish a company can benefit from the advantages and grants provided under public policies for the initiation and expansion of activities, in accordance with the applicable legislation and regulations'.

Therefore, an employee who has taken leave to establish a company is entitled to state support for their venture, including preferential treatment for a certain percentage of announced contracts.

#### **4.2.Second requirement: Integrity Rules Concerning Contractors**

It is not sufficient for integrity rules to apply only to former employees of the contracting authority in public transactions; these rules must also apply to contractors dealing with the authority to ensure their adequacy in both form and substance. According to Article 70 of Law 23/12, the legislator emphasises the importance of integrity in public transactions by requiring every contractor to inform the contracting authority of any conflict of interest relating to the public contract. This enables the authority to take appropriate measures to address the conflict, which could impact the proper execution of the public contract and consequently harm public interest. It is possible that a contractor

may have been awarded or selected for a contract, but then not commenced or ceased execution due to a conflict of interest.

Furthermore, to enhance integrity, transparency and equality among all contractors, Article 71 of the same law establishes the necessity of prohibiting any public contract holder who has accessed information that could give them an advantage when submitting a bid for another public contract, unless they can prove that this information does not violate the principle of competition. Therefore, every contracting authority must ensure and demonstrate that the information included in the specifications for any public contract they announce does not infringe the principle of equality among interested contractors.

The aforementioned Article 71 significantly supports the integrity rules of public transactions by extending its legal provisions to any contract holder who may exploit information obtained in the context of their contract to win another public contract. Therefore, the article presumes that any public contract holder is prohibited from participating in another public contract with the same contracting authority, unless they can prove that the information acquired under their contract does not violate the principle of competition with other contractors.

Additionally, according to the same article, the contracting authority is obligated to ensure that the information included in the specifications for any public contract does not infringe the principle of equality among contractors.

## **5.Conclusion**

Through a review of various provisions of Law 23/12 regulating public procurement- specifically Articles 46 to 48 and 65 to 71- compared to the provisions of Presidential Decree 15/247, it is evident that the Algerian legislator is more committed to establishing transparent public procurement processes and ensuring the integrity of public transactions. This is to ensure the principles of equality, competition and transparency, as outlined in Article 5 of the same law. The following results can be noted:

5.1.The Algerian legislator has adopted a clear structure, explicitly adopting Section Two: Transparency of Procedures and Chapter Four: Rules of Integrity, which is a positive step despite the similarity of many provisions between the two texts.

5.2.Rules have been established to ensure transparency in public procurement. For example, the contracting authority is obliged to publicise public contracts through various media, including the electronic portal for public procurement, and publish all necessary information related to each public contract.

5.3.Rules have been established to ensure the integrity of public transactions both within and outside the contracting authority. This includes the ratification

of a code of professional ethics for public agents involved in the preparation, conclusion, monitoring, negotiation or execution of public contracts.

The following recommendations can therefore be made:

1.The executive decree related to the code of professional ethics should be issued in the near future, given its significant importance.

2.The Minister of Finance should issue a decision in the near future to regulate the electronic portal for public procurement under Law 23/12, as stipulated in Article 46/2.

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