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## **Startups and Public Procurement in Algeria: Challenges and Opportunities under Law 23-12 on General Rules of Public Contracts**

### **Abstract**

This paper examines the participation of start-ups in Algeria's public procurement system, with particular emphasis on Law No. 23-12, which establishes the general framework governing public contracts. The study seeks to identify and critically analyze the principal challenges faced by start-ups in accessing procurement opportunities, including financial limitations, procedural complexities, and restricted technical capacity. At the same time, it underscores the potential of incorporating innovation-oriented criteria into the stage of defining contracting authorities' needs. Within the broader context of globalization and heightened competition, the paper argues for a reconfiguration of the public sector's role—not merely as a passive consumer of innovation, but as an active catalyst for its promotion. Such a transformation is deemed essential to enhancing transparency, ensuring equitable competition, and fostering the development of a knowledge- and technology-driven national economy.

**Keywords:** Start-ups; Public procurement; Law No. 23-12; Innovation; Intellectual property; Information confidentiality.

### **ملخص**

تهدف هذه الورقة البحثية إلى دراسة واقع مشاركة المؤسسات الناشئة في مجال الطلبات العمومية بالجزائر، من خلال تحليل أحكام القانون رقم 23-12 المتعلق بالقواعد العامة للصفقات العمومية. وتتمثل الغاية في إبراز التحديات التي تواجه هذه المؤسسات عند ولوجها سوق الصفقات العمومية، خاصة ما يتعلق بالقيود المالية والإجرائية وضعف الخبرة التقنية، مقابل استشراف الآفاق التي يتيحها إدماج معيار الابتكار ضمن مرحلة تحديد حاجات المصلحة المتعاقدة. وفي سياق بيئة تنافسية معولمة، تسعى هذه الدراسة إلى إعادة تعريف دور القطاع العام ليس فقط كمستفيد من الابتكار، وإنما أيضًا كمروج له، بما يعزز الشفافية والمنافسة العادلة ويدعم بناء اقتصاد وطني قائم على المعرفة والتكنولوجيا.

## Introduction

Enhancing the participation of start-ups in public procurement is not merely a new public policy, but rather a strategic choice aimed at integrating innovation within the public procurement system. However, the implementation of this approach faces practical and legal challenges, particularly in the absence or insufficiency of certain regulatory provisions, which makes it necessary to examine the essence of this policy and clarify its contours. Hence, this research paper raises a central question: **To what extent does Law No. 23-12 contribute to facilitating the access of start-ups to public procurement, and what are the legal mechanisms capable of ensuring the integration of innovation within the stage of defining the contracting authority's needs?**

This study seeks to achieve several objectives, most notably: analyzing the legal framework governing public procurement under Law No. 23-12; identifying the practical and legal challenges faced by start-ups; anticipating future prospects for integrating innovation in the stage of defining needs; and proposing practical recommendations for decision-makers to enhance the participation of these enterprises while ensuring a balance between innovation and legal certainty, with a particular focus on protecting intellectual property rights and preserving confidentiality of information during the evaluation of innovative bids.

To achieve these objectives, the research adopts a descriptive-analytical method through the study of relevant legal texts, a comparative method by referring to certain provisions of **Presidential Decree No. 15-247** relating to public procurement, and an applied method by examining practical practices associated with the participation of start-ups in public procurement. The scope of the study is limited to the stage of defining the contracting authority's needs, while also addressing the criteria for selecting innovative bids, the disputes related thereto, and intellectual property rights (Boudali, M. (2021)).

As for the definition of start-ups, from an economic perspective, they are enterprises seeking to market innovative products or services targeting broad markets, characterized by high risk and uncertainty, but with the potential for rapid growth and significant profits if successful. From a legal perspective, the Algerian legislator defined them under **Executive Decree No. 20-254 (Presidential Decree No. 15-247)** establishing the National Committee for granting the label "Start-up," "Innovative Project," and "Business Incubator," where **Article 11** stipulates that a start-up is any enterprise subject to Algerian law, new, active, independent, and compliant with the established legal criteria.

## **Axis One: Regulatory Measures to Facilitate Start-ups' Access to Public Procurement**

The Algerian legal framework seeks to integrate start-ups into the public procurement market through a set of mechanisms and procedures aimed at encouraging innovation and simplifying their access to public tenders. The most significant measures can be summarized as follows:

### **1. Allocation of Public Contracts to Start-ups**

An agreement was signed in July 2020 between the Ministry of Post and Telecommunications and the Ministry of Start-ups and Micro-enterprises, with the objective of encouraging youth ideas and projects, particularly in modernizing telecommunications networks. Simplification of access procedures to public procurement was also promoted through the **SAFQATIC (SAFQATIC. (2023, July 25))** Electronic platform. This aligns with **Article 86 of Presidential Decree No. 15-247**, which reserved certain services for artisans and technicians, as well as **Articles 59–60 of Law No. 23-12** concerning the promotion of national production, and **Articles 63–64** of the same law relating to employment promotion and professional integration(**Law No. 23-12**).

### **2. Awarding Contracts by Mutual Agreement to Support Innovation**

The legislator authorized contracting authorities to resort to mutual agreement in specific cases, including support for innovation or the execution of public service missions (**Dabbabha, N. (2014)**). The Ministry of Interior applied this measure by awarding contracts by mutual agreement for the construction of local markets in cooperation with the company “Batimetal,” pursuant to **Article 49 of Presidential Decree No. 15-247**, in addition to **Article 41, paragraph 02 of Law No. 23-12** concerning direct negotiation procedures.

### **3. Application of the Preference Margin**

**Article 83 of Presidential Decree No. 15-247** grants a 25% preference margin for products and services of Algerian origin or for companies whose majority capital is held by resident Algerians (**Ben Mohamed, M., & Halimi, M. (2015)**). Furthermore, **Article 87** allocates 20% of total public procurement to small and medium-sized enterprises, a measure that can also include start-ups, with amounts determined according to the nature of the contract (works, studies, services, supplies).

### **4. The Allotment Mechanism**

To avoid excluding start-ups due to the size of contracts, **Article 31 of Presidential Decree No. 15-247** provides for the possibility of dividing works into

separate lots, thereby allowing several contractors, including start-ups, to win part of the contract(Cherif, S. (2021)).

## **5. Exemption from Providing Guarantees and Reliance on Other Companies' Capacities**

**Article 133 of Presidential Decree No. 15-247** grants an exemption from performance bonds for micro-enterprises and artisans, a measure that may also apply to start-ups. Additionally, **Article 57** allows bidders to rely on the capacities of other companies, enabling start-ups to strengthen their chances through strategic partnerships.

## **6. Subcontracting and Partnership with Foreign Operators**

**Article 84 of Presidential Decree No. 15-247** permits partnerships with foreign operators, while **Articles 140–144** regulate subcontracting and outsourcing. This provides start-ups with opportunities to collaborate with foreign expertise and expand their technical capacities.

## **7. Contracts with Adapted Procedures**

Contracts with adapted procedures are among the most important mechanisms to support start-ups. Contracts valued below 12 million DZD for works or 6 million DZD for studies and services can be awarded directly to start-ups without public announcement or competition, provided the tender includes an element of innovation. These contracts represent the majority of public procurement, making them an effective tool to enhance start-ups' participation and finance their innovative projects.

## **8. Integration of the Innovation Criterion in the Needs Definition Stage**

One of the key mechanisms introduced by **Law No. 23-12** is the obligation to integrate innovation when defining the contracting authority's needs. Instead of relying solely on traditional solutions, public entities are required to open the door for start-ups to propose innovative solutions, thereby strengthening their competitiveness.

## **9. Enhancing Transparency and Digitalization of Procedures**

Public authorities have adopted digitalization as a means to simplify procedures and ensure transparency, through electronic platforms such as SAFQATIC. This digitalization not only facilitates start-ups' access to information on public tenders but also reduces bureaucratic obstacles. This reflects the firm orientation of the country's higher authorities towards digitizing all sectors, including public procurement, as stipulated in Article 107 of Law No. 23-12, concerning the electronic exchange of information.

## **10. Support Programs and Legal Assistance**

In addition to legal provisions, national committees and support bodies have been established to provide legal and technical advice to start-ups, helping them understand complex procurement procedures and avoid formal errors that could lead to exclusion.

## **11. Encouraging Partnerships between Start-ups and the Public Sector**

Encouraging partnerships between start-ups and public entities is an important mechanism to foster innovation. Start-ups can provide innovative technical solutions, while the public sector offers funding and demand, creating a complementary relationship that supports the national economy.

## **12. Inclusion of Clauses Protecting Intellectual Property**

To ensure effective participation of start-ups, it has become necessary to include clear clauses protecting intellectual property rights in tender documents, preventing their innovations from being unlawfully exploited or copied by larger competitors.

## **13. Innovative Financing Mechanisms**

The legislator can further enhance start-ups' participation by establishing dedicated support funds or innovative financing mechanisms linked to public procurement, such as concessional loans or financial guarantees that reduce risk. This aligns with the objectives of **Law No. 23-12** in supporting innovation.

# **Axis Two: Outcomes of Start-ups' Participation in Public Procurement**

The participation of start-ups in public procurement generates multiple outcomes that go beyond their mere integration into the market. It contributes to embedding innovation as a fundamental element in public policies. This participation also opens the way for redefining needs in functional terms, adopting new criteria for evaluating bids, and strengthening partnerships between the public sector and the start-up ecosystem. These outcomes are reflected at both the economic and social levels, thereby achieving the objectives of **Law No. 23-12** in supporting innovation and enhancing the competitiveness of the national economy.

## **1. Innovation as a Core Entry Point in Public Procurement**

Integrating start-ups into public procurement strengthens innovation as a strategic value in the national economy. Innovation is not limited to the technical dimension but also includes social innovation that addresses societal challenges, environmental innovation that contributes to environmental protection, and

organizational innovation that improves administrative processes. Moreover, innovation in public procurement enhances Algeria's international competitiveness, as it enables start-ups to develop solutions exportable to foreign markets, thereby contributing to economic diversification and reducing dependence on imports.

## **2. Functional Definition of Needs Instead of Formal Specifications**

One of the most significant outcomes of start-ups' participation is the shift from defining needs through rigid technical specifications to adopting a functional approach focused on results and required performance. This orientation opens the door to innovative solutions and reduces financial waste by adopting more efficient and cost-effective technologies in the long term (**Omrani, M. (2019)**).

- **Practical example:** Instead of specifying the purchase of computers with fixed technical features, the need can be defined as "providing an integrated digital solution for distance learning."
- This approach allows the introduction of advanced technologies such as Artificial Intelligence, Blockchain, and the Internet of Things into public projects.
- The challenge lies in the lack of expertise within contracting authorities, which necessitates training administrative staff to formulate needs functionally.

## **3. Consideration of Alternatives and Commitment to Confidentiality**

Allowing start-ups to propose technical alternatives enhances their innovative capacity and enables contracting authorities to obtain more efficient and flexible solutions.

- Alternatives may be proposed either by the start-up or by the contracting authority, provided they remain consistent with the subject of the contract.
- Commitment to confidentiality strengthens trust between start-ups and public administration, encouraging participation without fear of idea theft.
- Mechanisms such as arbitration or mediation can be introduced in case of disputes regarding confidentiality or exploitation of innovation, ensuring the protection of parties' rights.

## **4. Criteria for Selecting Innovative Bids**

A key outcome of start-ups' participation is the integration of multiple criteria in bid evaluation, instead of relying solely on price.

- These criteria include technical value, quality, performance, and functional or aesthetic aspects.
- Innovation can be introduced as a primary or secondary criterion with a weighting (5–10%), thereby incentivizing start-ups to submit innovative bids.

- The “social and economic impact” of bids can also be considered, assessing the extent to which projects contribute to job creation or improvement of public services.
- The involvement of experts and specialists in evaluating innovative proposals is essential to ensure objective selection.

## **5. Intellectual Property Disputes**

Contracts with an innovative character raise several legal issues, notably:

- In the case of acquiring ready-made products or services, the contracting authority does not require intellectual property rights.
- When negotiating customized solutions, the contracting authority may retain ownership rights for maintenance or development purposes.
- If the contract involves the realization of a new innovation, the contracting authority may request licensing for its commercialization, while the start-up retains ownership rights.
- It is necessary to establish a specific legal framework for innovative public procurement, including clear clauses for intellectual property protection, and to create a national committee specialized in resolving disputes related to innovation.

## **6. Strengthening Partnerships Between the Public Sector and Start-ups**

A positive outcome of start-ups’ participation is the reinforcement of the complementary relationship between the public sector as a beneficiary and the start-up ecosystem as an innovator.

- This partnership can evolve into a national innovation incubator, where new solutions are tested in public projects before being generalized to the market.
- Start-ups’ participation fosters a culture of collaboration between the public and private sectors, reducing the gap between them.
- It also contributes to building a knowledge-based and technology-driven economy, in line with the objectives of **Law No. 23-12**.

## **7. Economic and Social Impact of Start-ups’ Participation**

- Creation of new job opportunities for youth, particularly in technological sectors.
- Improvement of public services (health, education, transport) through innovative solutions.
- Support for the national economy by reducing reliance on imports, through the development of local innovative solutions.
- Enhancement of Algeria’s competitiveness in international markets through the export of start-up innovations.

## 8. Future Challenges and Prospects

- The need to train competencies within public administrations to understand and evaluate innovation.
- The necessity of amending certain legal provisions to adapt to the specificities of start-ups.
- Strengthening public funding directed toward start-ups through dedicated support funds for innovative procurement.
- Full integration of digitalization across all stages of public procurement, facilitating start-ups' participation and reducing bureaucracy.

## Conclusion

This study has demonstrated that the integration of start-ups into public procurement under **Law No. 23-12** is not merely a legislative amendment, but rather a strategic choice aimed at transforming public demand into a tool for supporting national innovation and enhancing the competitiveness of the Algerian economy. The **first axis** showed that the legislator introduced a set of regulatory measures to facilitate start-ups' access to the public market, such as contract allocation, application of preference margins, adoption of adapted procedures, and simplification of guarantees—practical mechanisms that open the way for these enterprises to participate effectively.

The **second axis** highlighted the outcomes of such participation, whereby the integration of start-ups consolidates innovation within public policies, promotes a functional approach to defining needs, develops new criteria for evaluating bids, strengthens partnerships between the public sector and the start-up ecosystem, and ensures the protection of intellectual property rights. Moreover, this participation has tangible economic and social impacts, including the creation of new job opportunities, improvement of public services, reduction of reliance on imports, and support for the national economy through locally developed innovative solutions.

To ensure the success of this approach, several practical recommendations can be proposed:

1. Strengthening the culture of innovation within public administrations by training competencies capable of functionally defining needs and evaluating innovative bids.
2. Establishing a specific legal framework for innovative procurement that includes clear provisions for intellectual property protection and confidentiality of information.
3. Encouraging partnerships between start-ups and the public sector through the creation of national innovation incubators, where new solutions can be tested before being generalized.



4. Expanding the scope of adapted procedures to include projects of strategic value, thereby enabling start-ups to benefit from public funding and develop their capacities.
5. Fully integrating digitalization across all stages of public procurement, facilitating start-ups' participation and reducing bureaucracy.
6. Defining the concept of innovation with precision to avoid ambiguity in practical application, whether it concerns a new product, an improved service, or a patented solution.
7. Launching dedicated support and financing funds specifically for start-ups participating in public procurement, to reduce financial risks and ensure the sustainability of their projects.

The involvement of start-ups in public procurement represents a bet on the future, whereby public demand evolves from a mere mechanism for meeting administrative needs into a strategic instrument for fostering innovation, supporting sustainable development, and strengthening Algeria's position in the global economy. Thus, **Law No. 23-12** constitutes a first step toward building a more suitable legal and regulatory framework, capable of transforming innovation into a key driver of economic and social growth.

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