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Dynamics and challenges of public procurement reform in Morocco: current status and prospects for improvement

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Abstract- Public procurement in Morocco has been the subject of several legal texts that have continuously evolved over time. Dating back to 1907, it has been regularly adapted through reforms in 1965, 1976, 1998, 2007, 2013, and 2023. This represents a legal framework that is constantly being built and progressively adapted. Under the pressure of economic efficiency, recent reforms aim to optimize the use of public funds, reduce costs, and improve the quality of services for citizens, with the objectives of strengthening competition, simplifying procedures, and reducing delays. This research demonstrates that, although the 2023 reforms have brought significant advancements, they constitute only one step in a continuous improvement process. Additional efforts are needed to consolidate these achievements and address new challenges.

However, on the ground, public procurement professionals often face a dilemma: how to comply with a strict and complex regulatory framework while ensuring the economic performance and agility of their organizations? The excessive rigidity of these rules can hinder their ability to innovate and adapt to new challenges. The complexity of the regulatory framework pushes buyers to prioritize a legal approach over a strategic vision, thus limiting their room for maneuver and

hindering the optimization of procurement. They also encounter difficulties in mastering contractual clauses, which can lead to legal uncertainties and disputes. Furthermore, the current regulations offer little flexibility to integrate recent concepts such as negotiation, innovation, and creativity into procurement procedures. The evaluation of bids is often constrained by a rigid framework, which limits the ability of public buyers to value qualitative criteria such as innovation or corporate social responsibility. Our exploratory contribution proposes practical ways to improve the performance of the procurement function, particularly in terms of cost reduction, risk management, and the capture of innovation.

Keywords: economic performance, organizational agility, rigidity, capacity to innovate, legal approach, strategic vision, procurement optimization, innovation, social responsibility, modernization, rationalization, strengthening transparency.

1 Introduction

Generally, the notion of "public procurement" or "public purchasing" has been the subject of numerous definitions,

evolving over time to reflect the transformations of economies and public policies, as well as the diversity of legal systems and national contexts. Precisely defining public procurement is a crucial issue, as it has direct implications for the scope of regulations, the procedures to be followed, and the stakeholders involved. The disparities between national legislations demonstrate the complexity of this notion and highlight the need for progressive harmonization at the international level.

The concept of public procurement lies at the intersection of the public and private spheres. While, as Lee [1] points out, procurement involves the search for and acquisition of necessary goods and services from the public and private sectors at the most competitive price, while ensuring acceptable quality standards. Furthermore, public procurement aims to provide goods or services in the public interest, in compliance with legal directives, judgments, political or administrative decisions, and within a pre-established plan, as highlighted by Gordon [2], Bright [3], and Panayiotou et al. [4]. Interest in public procurement has increased considerably in recent years, particularly among private companies and policymakers, as noted by Larbi, Baiden, and Agyekum [5] and Offei, Kissi, and Badu [6]. This increased attention is due to the economic and social issues associated with the awarding of these contracts.

While some authors, like Tas, B. K. O. [7], assert that the act of acquisition is a complex process that goes beyond simply placing an order. It encompasses the entire life cycle of a good or service, from the identification of needs to its disposal, including the selection of suppliers, the negotiation of contracts, and the monitoring of execution. Others, such as Atiga & Azanlerigu [8], believe that the objective of public procurement is to optimize the use of public funds by selecting the most efficient offers in terms of both cost and quality, while meeting the specific needs of communities.

However, it should be noted that the notion of public procurement is not always clearly defined in national legislations, thus leaving some room for interpretation, which can lead to difficulties in application. In French-speaking countries, public procurement is often defined as service contracts where the emphasis is on quality and transparency. Procedures are strict and governed by national and international regulations to ensure fairness and competitiveness. In contrast, in Anglo-Saxon countries, public procurement is often perceived as sales contracts where the emphasis is on efficiency and profitability. Procedures may be more flexible and results-oriented. These differences reflect distinct philosophies on how to manage public resources and ensure good governance. While early definitions emphasized

the strictly contractual aspect, current definitions incorporate broader dimensions, such as innovation, sustainable development, and social responsibility. The definition of public procurement has evolved over time. Public procurement differs from private procurement due to its specific nature. It is governed by strict rules, often stemming from European directives, which aim to guarantee transparency, equal opportunities, and the effectiveness of public action. This specificity is linked to the importance of the issues involved, such as meeting collective needs, promoting the local economy, and combating corruption.

Public procurement refers to all contracts concluded by public entities (the State, regional and local authorities, public institutions, etc.) to acquire goods, services, or works. These contracts are entered into to meet the needs of communities and the population in general.

Public procurement plays an essential role in the economy and society for several reasons. It represents a significant part of a country's economic activity, supporting employment and stimulating the growth of businesses, particularly small and medium-sized enterprises (SMEs). As a tool of public policy, public procurement is a privileged instrument for implementing economic, social, and environmental policies. It enables the support of priority sectors, the promotion of innovation, and the fostering of sustainable development. Moreover, public procurement is governed by fundamental principles such as transparency, equal treatment, and competition. These principles aim to ensure that public funds are used effectively and efficiently, in the general interest.

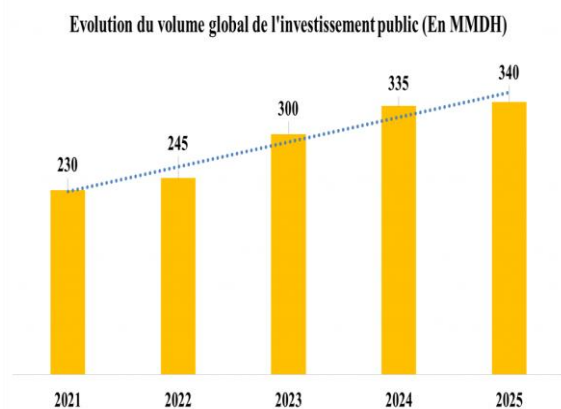
In a context of polycrises, public procurement remains a crucial lever for Morocco's economic development, in line with the three previous budget projects. The presentation notes of the 2025 Finance Bill, published on the website of the Ministry of Economy and Finance, highlights the improvement in the volume of public investment between 2020 and 2025. This increased from 198 billion dirhams (19.8 billion euros) in 2020 to 230 billion dirhams (23 billion euros) in 2021, then to 245 billion dirhams (24.5 billion euros) in 2022. In 2023, it reached 300 billion (30 billion euros), representing just over 20.8% of GDP. In 2024, public investment reached a record of 335 billion dirhams (35.5 billion euros), representing 25% of GDP [9]. And finally, in 2025, this amount increased to 340 billion dirhams (34.4 billion euros), or 25.5% of GDP [10].

In 2023, approximately 40,000 public procurement contracts were signed, including public works contracts, common law contracts, and public-private partnerships (PPPs) [11]. Moroccan and foreign companies continue to be the main

bidders for these contracts [12]. This figure increased to approximately 42,000 contracts in 2024[13]. According to recent statistics, construction and public works (BTP) companies generated 70% of their turnover from public procurement in Morocco. This figure increased to 75% for BTP companies [14]. In addition, the engineering sector saw its turnover from public procurement increase from 80% to 85% [15].

Budgetary efforts will continue to stimulate public investment between 2020 and 2023. In 2024, the envelope allocated under the Finance Bill will reach 335 billion dirhams (35.5 billion euros), an increase of 11.6% compared to 2023, when it was set at 300 billion dirhams (30 billion euros). In 2025, this envelope will increase to 340 billion dirhams (34.4 billion euros), an increase of 1.5% compared to 2024. These figures are not limited to simple amounts but reflect the State's strategic choices and priorities.

In the Moroccan context, where efficiency and transparency are major challenges, optimized management of public procurement is essential. Moreover, non-rationalized public spending leads to a considerable loss of earnings. The following Graph 1 schematically shows the evolution of the overall volume of public investment as follows:



Source: presentation note of the 2025 Finance Bill.

This momentum aims to stimulate the economy through structural projects while responding to cyclical challenges; funds have been mobilized to support the economic recovery. This dynamic has manifested itself through the rejuvenation of the Mohammed VI Investment Fund and the continuation of investments in various sectors. Public investment will concern the main areas of state intervention, notably health and social protection, education, training, housing, infrastructure development, energy, and agriculture and water. Furthermore, there is pressure in favor of social initiatives and preparations for the upcoming 2030 World Cup.

Beyond the figures mentioned, public procurement is a major issue for modern economies. It is both an engine of economic activity, a tool for implementing public policies, and a guarantor of the proper use of public funds. Its regulation is complex and constantly evolving, reflecting the importance of this instrument for the functioning of society. Numerous authors have emphasized the relevance of public procurement. For example, Israël, M. [16] highlighted the role of public procurement in the implementation of public policies and the satisfaction of collective needs. It is important to emphasize that the significant weight of regulations and procedures in place represents a real obstacle to the development of public procurement performance. As early as 1930, in his thesis on the Purchasing State, Israël, M. expressed the lack of performance in public procurement as follows: "The methods employed by public services are distinguished by the presence of a set of regulations with which agents must comply in all circumstances and without exception. In contrast, the methods adopted by industry and commerce are characterized by the absence of rigid rules. Over time, officials have developed a distorted mindset that prioritizes compliance with formalities; the concern for respecting form has ultimately become an obsession that has relegated the proper execution itself to the background." Treating procurement as an economic function while ensuring legal certainty now represents a major challenge for public buyers. The latter must comply with the imposed regulatory framework; the buyer sometimes finds it difficult to understand and secure the contractual clauses of a contract or agreement. Similarly, it must be said that the buyer has minimal room for maneuver regarding the inclusion of new topical dimensions such as negotiation, innovation, and creativity. The cultural change this implies is significant.

The complexity of public procurement law is characterized by growth due to several factors. Firstly, the multiplicity of texts and regulations makes the interpretation and application of rules particularly delicate. Public procurement regulation is a heterogeneous set of legislative, regulatory, and jurisprudential texts, both at the national and European levels. Secondly, each sector of activity, whether it involves public works, supplies, or services, presents technical and regulatory specificities that require adaptations of the general framework of public procurement. Finally, technological developments, such as artificial intelligence and blockchain, pose new challenges in terms of awarding contracts, requiring constant adaptation of regulations. The constant evolution of public procurement law is influenced by several factors. Firstly, European harmonization imposes common standards on member states in the field of public procurement, leading to regular reforms of national legislation, as Richer, L. [17] points out. Secondly, technological innovations, such as the development of digital technologies, transform procurement

methods and necessitate the adaptation of existing rules. Dr. Rajesh Kumar Shakya [18]. Finally, new societal challenges, such as sustainable development, as Helen Walker [19] or Porter, M. E., & Kramer, M. R. [20]. Porter, M. E., & van der Linde, C. [21]. McCrudden, C. [22]. Thai, K. V. [23], social inclusion Maillard, J. [24], and the fight against corruption also influence the evolution of public procurement regulations. Snider, K. F., & Rendon, R. G. [25].

The challenges related to the proper application of public procurement law are numerous and crucial. The proper application of this law is essential to guarantee the transparency of procurement procedures, prevent corruption, and strengthen citizens' trust in institutions. It also ensures equal treatment, allowing all candidates to have the same opportunities to win a public contract, without discrimination. The efficiency of procedures is also paramount to avoid delays and cost overruns, thus ensuring the proper use of public funds. In addition, public procurement must enable the acquisition of quality goods and services that meet the needs of communities. Finally, it must encourage innovation and the development of new solutions.

Public procurement, as an essential instrument for the implementation of public policies, is governed by complex and evolving regulations. The work of pioneers such as Israël, M. (1930) laid the theoretical foundations of this field. Numerous economists, jurists, and political science researchers have subsequently contributed to deepening this issue. Contemporary authors continue to explore and develop these concepts to adapt to new economic and social realities, such as Laffont, J.-J., & Tirole, J. [26], who provided a better understanding of the mechanisms of contract awarding, particularly the problems of information asymmetry and the risks of collusion. Their theoretical models served as a basis for the design of more efficient auction mechanisms. Sapir, A. et al. [27] emphasized the importance of European harmonization of procurement rules to promote competition and economic efficiency. Giulio Tremonti, as a former minister, has practical experience in the implementation of public policies in the field of public procurement. His work has focused on the challenges of public procurement reform and the importance of transparency. Lascoumes, P., & Le Galès, P. [28] highlighted the challenges of the relationship between administration and businesses, emphasizing the importance of effective governance. Philippe Schmitter analyzed the interactions between public and private actors in the public decision-making process, particularly in the field of public procurement. Mazzucato, M. [29] emphasized the essential role of public investment in innovation and economic development, advocating for a more strategic approach to public procurement.

In addition to these authors, numerous international organizations have also contributed to the evolution of rules and practices in public procurement. The Organization for Economic Co-operation and Development (OECD) has published numerous studies on good practices in public procurement OECD, [30] [31] [32] [33] [34] [35] [36] [37] [38]. These studies emphasize the importance of transparency, competition, and efficiency in procurement procedures. At the same time, the European Commission has played a driving role in the harmonization of rules at the European level, notably through Directive 2014/24/EU European Commission, [39] [40] [41] ([42] [43] [44]. Finally, the World Bank has put in place technical assistance programs to help developing countries improve their procurement systems World Bank, [45] [46] [47] [48] [49] [50] [51] [52].

Faced with the scarcity of resources and increasing budgetary constraints, the optimization of public spending has become a major challenge. Public procurement, representing a significant portion of public budgets, must be managed efficiently, effectively, and transparently. Public procurement regulations are the foundation upon which the sound management of public finances rests, as Mutangili, S. K. [53] emphasizes. To ensure the optimal use of public funds, it is essential to have a clear and stable regulatory framework, while promoting dynamic management adapted to current challenges. Nevertheless, we can observe that regulations are gradually becoming more flexible Guiri, A, [54].

The effective management of public procurement has become an absolute priority. Castelli et al. [55] propose an interdisciplinary approach, combining the perspectives of economists, legal experts, and technical experts to enrich the debate and improve the understanding of issues related to public purchasing. However, public procurement regulations, while necessary, can sometimes hinder the ability of public buyers to optimize their purchases and generate added value for organizations. This weight of regulation can sometimes impede their capacity to innovate and adapt to new challenges.

This study explores the tension between the obligation to comply with a rigorous regulatory framework, which weighs heavily on the public buyer, who becomes fixated on the legal dimension of public procurement, to the detriment of economic performance. This situation goes against the fundamental role of the procurement function as a creator of added value for the organization. The objective is to identify levers for improvement towards more agile and effective management of public procurement, while ensuring the efficiency, transparency, and fairness of procedures. The question then arises: how can public buyers navigate between the demands of a complex, rigid regulatory framework and the

need to adopt more flexible, agile, and innovative approaches to meet the evolving needs of citizens and ensure effective management of their purchases? This research question raises several sub-questions:

- What progress has been made in simplifying public procurement procedures in the face of regulatory constraints and the evolving needs of administrations?
- What challenges persist in terms of the complexity of the regulatory framework and adaptation to new public management practices?
- What levers for action can be identified to help public buyers better fulfill their mission?
- How can public buyers adapt to changes in their environment while respecting the rules and procedures in place?

To address this issue effectively, we will highlight the following points. The article will be structured in several distinct parts. Firstly, the first part will show how public procurement practitioners in Morocco suffer from the absence of a single, comprehensive, and complete code. There is a set of diverse, scattered, fragmented texts of unequal value, insufficiently consolidated, with frequent amendments (section 1). The second part will focus on the evolution of regulations, often highlighting the results of limited evolution that leads to inconsistency and confusion (section 2). These characteristics are sources of complexity and undermine the clarity, transparency, and efficiency of the system, the quality of public procurement, and the effectiveness of public funds management. The third part will address the different theoretical approaches that have marked public procurement law and the consequences of the complexity of the legal framework for public procurement, such as the contractual approach and the institutional approach (section 3). Finally, our last part will be devoted to the development of recommendations and main conclusions.

2. Methodological framework of the research

2-1 Interest and objective of the subject

Faced with increasing budgetary pressure, public organizations are forced to optimize their expenditures. The reform of public procurement is a necessity to improve the efficiency of public resource allocation and ensure a better match between needs and means. The related processes, mechanisms, procedures, and tools must be reviewed, renovated, and improved to bring them up to date and adapt them to the changes that have marked the social, political,

technological context and the business environment in Morocco.

Our analysis aims to question the tension between the requirements of a rigorous regulatory framework and the need for efficient management of public procurement. While regulation is essential to ensure transparency and fairness, it can sometimes hinder agility and innovation. We are particularly interested in the impact of this paradox on the performance of public buyers in a context where results-oriented management is increasingly favored. The study of public procurement reform in Morocco is of crucial importance in several respects. On the one hand, it allows us to understand the governance issues related to the management of public expenditure and to measure the impact of reforms on the effectiveness of public action.

On the other hand, it offers an interesting comparative perspective on the challenges faced by developing countries in their quest to modernize public management. By analyzing the progress and obstacles encountered by Morocco, this research aims to identify levers for action to improve the performance of public procurement and to contribute to the reflection on best practices in this area. The objective of this research is to evaluate the impact of public procurement reforms in Morocco on the State's performance in terms of efficiency, transparency, and quality of public services. By examining the progress made and the persistent challenges, we seek to understand how these reforms have contributed to improving the transparency, efficiency, and competitiveness of public procurement. This analysis will help identify good practices to consolidate and areas for improvement to explore in order to strengthen public governance and optimize the use of resources.

In conclusion, the field of public procurement is constantly evolving. Our study aims to explore the complex interactions between the legal framework and managerial practices to better understand the challenges and opportunities faced by public buyers. Based on a qualitative approach, we formulate recommendations to strengthen the efficiency and transparency of public procurement, while promoting cost reduction, risk management, and the capture of innovation. The research conducted in this area is justified by:

- An insufficiently explored and still restructuring field of study.
- The lack of previous studies focusing on the interaction between the legal framework and the economic strategy of public procurement in Morocco.

-The desire to broaden research on this topic and develop expertise in the field.

-Enriching the regulatory framework for promoting performance with improvement proposals, following the research.

-Suggesting recommendations to strengthen the performance approach.

2.2 Methodology adopted

Our research is situated at the intersection of several disciplines. In administrative law, we analyze the legal framework governing public procurement and its evolution. Management sciences allow us to study the decision-making processes and behaviors of the actors involved. Economics helps us understand the economic impacts of reforms, while political science sheds light on the underlying political issues. This multidisciplinary approach allows us to offer a comprehensive view of the issues related to public procurement reform in Morocco.

From a methodological point of view, our study relies on a mixed methodology combining an in-depth review of the literature (scientific and "grey ") and the collection of primary data from field actors. This approach allows us to benefit both from the theoretical richness of existing work and the depth of qualitative data from interviews, in order to better understand how the evolution of the legal framework influences the managerial practices of public buyers and, conversely, how the needs of field actors impact the design of rules. In other words, we seek to understand the complex interactions between regulatory constraints and the room for maneuver of public buyers to improve their practices.

This methodology will allow us to better understand the perceptions of the actors, identify good practices, and formulate concrete recommendations. The academic examination and exploration of this largely unexplored area could prove to be of great interest. Our research can be an important stepping stone in the quest for knowledge in this field. By exploring the interactions between the legal framework and managerial practices, our research aims to stimulate innovation in the field of public procurement. The results of this research constitute a significant contribution to the field of research on public procurement. By identifying the strengths and weaknesses of the current regulatory framework, we offer researchers new avenues for exploration and practitioners tools to optimize their practices. This study will thus enrich the debate on the modernization of public management and strengthen citizens' trust in institutions. In

addition, they will contribute to strengthening citizens' trust in public institutions and promoting more transparent and efficient management of public finances. As a methodological limitation, we did not evaluate the scientific quality of the studies found. The objective is to respond to the key objective.

3. Analysis of the results obtained

The public procurement system is governed by various legislative and regulatory texts that lack clear organization and hierarchy. This legislative framework suffers from a lack of coherence and clarity, which complicates procedures, reduces the efficiency of the system, and increases the risks of dysfunctions, as Benollet, P., & Sahin, A. [56] point out. The fragmentation and inconsistency of the legal framework hinder the performance of public procurement, generating administrative burdens and limiting competition. The absence of a clear and unified legal framework fosters opacity and creates risks of corruption, thus compromising the integrity, efficiency, and transparency of the system.

3.1 Dispersion and legal instability

3.1.1 Instability at the level of general texts

Our study, based on an in-depth literature review and interviews with field actors, has highlighted the constant evolution of public procurement regulations in Morocco for over a century. The managers and executive staff interviewed emphasized the multiplicity of reforms undertaken during this period.

Public procurement regulations in Morocco have undergone significant evolution since the beginning of the 20th century, reflecting the country's economic, political, and social changes. The first traces of public procurement regulations in Morocco date back to the French protectorate period. The construction of the Casablanca port's pier in 1907 marked a turning point in the modernization of infrastructure and necessitated the establishment of specific rules for awarding contracts.



Construction of Casablanca port in 1907

In 1917, a first version of the regulations was introduced, laying the foundations for a legal framework for public procurement. This framework, strongly influenced by French law, primarily aimed to ensure the sound management of public funds and guarantee the transparency of procedures.

After Morocco's independence, public procurement regulations were progressively adapted to the country's new economic and political realities. Successive reforms aimed to strengthen state control over public spending and promote national economic development. The 1998 reform marked a decisive turning point in the history of public procurement regulations in Morocco. This reform introduced new rules aimed at strengthening the transparency, competition, and efficiency of procedures.

The actors interviewed highlighted the numerous reforms adopted since 1998 to adapt the regulations to changes in the economic and legal context. Among these reforms, those of 2007, 2013, and 2023 were particularly significant, representing key steps in the modernization of the system.

Public procurement regulations in Morocco are complex and constantly evolving. Although Decree No. 2-22-431 of March 2023 constitutes the reference text, it is not sufficient on its own. Public buyers must also master a set of complementary texts. Regular legal monitoring is essential to master all the provisions applicable to public procurement, such as dahirs, decrees, and orders, which are often accompanied by implementing texts (circulars, notes, etc.) that supplement and address specific aspects of public procurement to ensure the compliance of their procedures:

The Dahirs:

- Dahir No. 1-03-194, promulgated on 14 Rejeb 1424 (September 11, 2003), concerning Law No. 65-99 relating to the Labor Code in Morocco.

- Dahir No. 1-14-192 of 24-12-2014 promulgating Law No. 86-12 relating to public-private partnership contracts in Morocco.

- Dahir No. 1-15-05 of 29 Rabii II 1436 (February 19, 2015) was promulgated for Law No. 112-13 relating to the pledging of public contracts (Official Gazette No. 6344 of 19/03/2015).

- Dahir No. 1-56-211 of 8 Joumada I 1376 (December 11, 1956) concerns the financial guarantees required from bidders and awardees of public contracts in Morocco (Official Gazette No. 2308 of 18/01/1957).

The Decrees:

- Decree No. 2-01-2332 of 22 Rabii I 1423 (June 4, 2002) approving the General Administrative Clauses applicable to service contracts relating to study and project management services entered into on behalf of the State (CCAG-EMO). (Official Gazette No. 5010 of 06/06/2002).

- Decree No. 2-01-437 of September 19, 2001, establishing, for the awarding of contracts on behalf of the State, a system for the qualification and classification of building and public works laboratories.

- Decree No. 2-03-703 of 18 Ramadan 1424 (November 13, 2003) relating to payment deadlines and late payment interest in matters of State contracts. (Official Gazette No. 5166 of 04/12/2003).

- Decree No. 2-07-1235 of 5 Kaada 1429 (November 4, 2008) relating to the control of State expenditure.

- Decree No. 2-14-272 of 14 Rejeb 1435 (May 14, 2014) relating to advances in public contracts (Official Gazette No. 6262 of 05/06/2014).

- Decree No. 2-14-394 of 6 Chaabane 1437 (May 13, 2016) approving the General Administrative Clauses applicable to Works contracts (CCAG-T). (Official Gazette No. 6470 of 02/06/2016).

- Decree No. 2-14-867 of September 21, 2015, relating to the national public procurement commission.

- Decree No. 2-16-344 of 17 Chaoual 1437 (July 22, 2016) setting payment deadlines and late payment interest relating to public orders. (Official Gazette No. 6488 of 04/08/2016).

- Decree No. 2-22-431 of 15 Chaabane 1444 (March 8, 2023) relating to public procurement (Official Gazette No. 7184 of 15 Ramadan 1444 (April 6, 2023)).

- Decree No. 2-94-223 of June 16, 1994, establishing, on behalf of the Ministry of Public Works, Vocational Training and Executive Training, a system for the qualification and classification of building and public works companies.
- Decree No. 2-98-984 of March 22, 1999, establishing, for the awarding of certain service contracts on behalf of the State, an approval system for natural or legal persons performing study and project management services.
- Decree No. 2-99-1087 of 29 Moharrem 1421 (May 4, 2000) approving the General Administrative Clauses applicable to works contracts executed on behalf of the State (CCAG-T). (Official Gazette No. 4800 of 01/06/2000).
- Decree relating to public procurement Official Gazette No. 6140-25 of 23 Joumada I 1434 (April 4, 2013).
- Corrigendum to Decree No. 2-12-349 of March 20, 2013, relating to public procurement of August 21, 2014.

The Orders:

- Order of the MEF No. 1689-23 of 14 Hija 1444 (July 3, 2023) taken for the application of Article 153 of Decree No. 2-22-431 of 15 Chaabane 1444 (March 8, 2023) relating to public procurement.
- Order of the MEF No. 1692-23 of 4 Hija 1444 (June 23, 2023) relating to the dematerialization of procedures, documents, and supporting documents relating to public procurement.
- Order of 04-09-2014 relating to the dematerialization of the public procurement procedure. (Official Gazette No. 6298 of 09-10-2014).
- Order of 10-12-2013 setting the list of services that may be the subject of negotiated contracts. (Official Gazette No. 6214 of 19-12-2013).
- Order of 11 Chaabane 1435 (June 9, 2014) setting the rules and conditions for the revision of prices in public contracts (Official Gazette No. 6266 of 19/06/2014).
- Order of 13-06-2013 setting the remuneration relating to the submission of plans and technical documents provided for by Articles 19 and 99 of Decree No. 2-12-349 of 20-03-2013 relating to public procurement. (Official Gazette No. 6166 of 04-07-2013).
- Order of 13-06-2013 relating to the publication of documents on the public procurement portal. (Official Gazette No. 6174 of 01-08-2013).
- Order of 13-11-2013 taken in application of Article 160 of Decree No. 2-12-349 of 20-03-2013 relating to public procurement (Models of documents). (Official Gazette No. 6214 of 19-12-2013).
- Order of 14 Joumada II 1442 (January 28, 2021) supplementing and amending the list of simple indices for the revision of prices in public contracts (Official Gazette No. 7025 of 27/09/2021).
- Order of 15 Safar 1437 (November 27, 2015) setting the rules and conditions for the revision of prices in public contracts (Official Gazette No. 6422 of 17/12/2015).
- Order of 20-03-2014 amending the threshold for contracts for which the publicity period is increased to at least 40 days. (Official Gazette No. 6248 of 17-04-2014).
- Order of 28-12-2013 setting the list of public establishments that must apply the regulations in force relating to public procurement. (Official Gazette No. 6212 of 12-12-2013).
- Order of the Head of Government No. 3-302-15 of 15 Safar 1437 setting the rules and conditions for the revision of prices in public contracts. (Official Gazette No. 6422 of December 17, 2015).
- Order No. 3011-13 of 30-10-2013 applying Article 156 of the decree relating to public procurement (measures in favor of SMEs).
- Order No. 3575-13 of 10-12-2013 setting the procedures for the composition of tender commissions for open tenders, restricted tenders or tenders with pre-selection, as well as that of the competition jury for regions, prefectures, provinces, and municipalities.
- Order No. 3576-13 of 10-12-2013 setting the number and qualifications of the members of the monitoring committee for the contracts of regions, prefectures, provinces, and municipalities.
- Order No. 3610-13 of 10-12-2013 setting the authorities authorized to approve the contracts of regions, prefectures, provinces, and municipalities.
- Order No. 3611-13 of 10-12-2013 setting the list of services that may be the subject of negotiated contracts.

- Corrigendum to Decree No. 2-12-349 of March 20, 2013, relating to public procurement of 21-08-2014.

Circulars, Notes, and Others:

- Circular No. 04/2020 relating to the creation of the MAPS self-assessment project steering committee: Date: 2020. Source: CNCP.
- Circular No. 16/2019 relating to the MAPS self-assessment project: Date: 2019. Source: CNCP.
- Circular No. 19-20 relating to the activation of national preference and the encouragement of Moroccan products in the context of public procurement: Date: 2020. Source: CNCP.
- Circular No. 7-07-cab of April 12, 2007, relating to the electronic publication of information and documents relating to State contracts: Signatory: Driss Jettou. Signature Date: 12/04/2007. Subject: electronic publication of information and documents relating to State contracts.
- Circular No. 72/CAB of November 26, 1992, implementing Dahir No. 1-56-211 of December 11, 1956, relating to the financial guarantees of bidders and awardees of public contracts.
- Circular relating to the creation of Global Indices for the revision of prices in public contracts: Order of the METLE No. 21.191 of 14 Joumada II 1442 (January 28, 2021). Official Gazette No. 7025 of 27/09/2021.
- Standard documents relating to the technical specifications of works contracts, supply contracts, and service contracts, as well as the related consultation regulations made applicable by note from the Minister of Economy and Finance No. 101/2015 of July 10, 2015.
- List of services that may be the subject of purchase orders (Article 88 of Decree No. 2-12-349 of 8 Joumada I 1434 (March 20, 2013) relating to public procurement).
- List of services that may be the subject of contracts or agreements under common law (Article 4 of Decree No. 2-12-349 of 8 Joumada I 1434 (March 20, 2013) relating to public procurement).
- List of services that may be the subject of framework agreements (Article 6 of Decree No. 2-12-349 of 8 Joumada I 1434 (March 20, 2013) relating to public procurement).

- List of services that may be the subject of renewable contracts (Article 7 of Decree No. 2-12-349 of 8 Joumada I 1434 (March 20, 2013) relating to public procurement).

- Service Note No. TGR-DRRCI-N° 18 of 13-01-2013 relating to the representation of the General Treasury of the Kingdom within the tender commission, the competition jury, the architectural consultation jury, and the architectural competition jury.

- Note No. 52/TGR relating to the procedures and conditions for the dematerialization of public procurement procedures.

The proliferation of legislative and regulatory texts governing public procurement creates a complex and evolving legal framework, making it difficult for public buyers to master all the applicable rules and guarantee the legal security of contracts. The complexity of the legal framework for public procurement generates a certain legal uncertainty, both for buyers and suppliers. Successive reforms, although necessary, have sometimes contributed to this complexity, making it difficult to adapt professional practices. While public procurement regulations aim to guarantee transparency and competition, they can sometimes hinder the integration of current dimensions such as negotiation, innovation, and creativity. Public buyers often face regulatory constraints that limit their room for maneuver to adapt contracts to the specificities of projects.

3.1.2 A Dispersion of specific texts

Public procurement regulations in Morocco are characterized by excessive fragmentation, with a multitude of specific texts that complicate the uniform application of rules. This situation leads to difficulties in interpretation and unequal treatment between different actors, particularly depending on the nature of the contract or the public buyer. The absence of a unified legal framework for public procurement in Morocco, marked by numerous exceptions and specific texts, creates inconsistencies and difficulties in application. This fragmentation weakens legal certainty and can favor discretionary practices.

Although the legal framework for public procurement in Morocco offers some flexibility, the responsibility for the sound management of contracts rests entirely with the public buyer. This responsibility is all the heavier as the legal framework is complex and fragmented, which can lead to errors in interpretation and litigation.

The absence of a clear and precise legal framework for certain types of contracts creates a grey area that complicates the

selection of the most appropriate award procedure. This legal uncertainty slows down procedures and can tarnish the image of the public buyer. The lack of clarity in the regulations leaves significant room for interpretation by public buyers, which can lead to arbitrary choices and unequal treatment between candidates. This situation undermines the transparency and credibility of the procedures.

In addition, the absence of a precise legal framework for certain types of contracts makes the award procedures more complex and longer, thus reducing the responsiveness of administrations and penalizing businesses.

Decree No. 2-22-431 of March 8, 2023, which is the reference text for public procurement, does not cover all participants and categories of contracts. Indeed, certain types of purchases fall outside its scope, creating grey areas in the regulations, particularly low-value contracts, public-private partnership contracts, and contracts awarded by certain specific public entities, namely:

- Purchases governed by specific regulations, such as the selection of designers for civil buildings, are covered by Article 15. This article stipulates that public contracts may be awarded by private treaty when the services require technical skills or specific expertise that only a particular provider can offer.
- Services requiring confidentiality due to national defense and public security needs are governed by Article 20. This article provides that public contracts related to national defense and public security may be awarded by private treaty, subject to prior authorization from the Head of Government, based on special reports from the competent authorities.
- Purchases by public establishments operating in a competitive environment are governed by Article 25. This article allows for the awarding of contracts by private treaty for articles protected by patents, in order to respect intellectual property rights and ensure access to innovative and high-quality products.
- Services to be provided in cases of extreme urgency due to unforeseen circumstances are covered by Article 30. This article stipulates that public contracts may be awarded by private treaty in cases of extreme urgency due to events such as earthquakes, floods, tsunamis, droughts, epidemics, pandemics, epizootics, devastating plant diseases, locust invasions, fires, risks related to buildings or structures threatening consumer health, or events related to animal or natural heritage. These contracts must be strictly limited to the needs necessary to respond to the emergencies.
- Emergency services involving the defense of the territory, the safety of populations, or the safety of road, air, or maritime traffic are governed by Article 90, paragraph b. This article provides that public contracts may be awarded by private treaty for these emergency services. These services must begin under the conditions specified in Article 90, paragraph b, pending the determination of all the conditions of the contract.
- Services related to the organization of ceremonies or official visits are covered by Article 35. This article stipulates that public contracts may be awarded by private treaty for urgent and unforeseeable services that do not correspond to the deadlines required for prior publicity and competitive bidding.
- Additional services are governed by Article 40. This article provides that additional services may be entrusted to a contractor, supplier, or service provider who has already been awarded the main contract, if this is deemed beneficial for the timely execution or proper functioning of the contract. These supplementary services, not initially foreseen when the contract was awarded, are considered ancillary to the main contract and must not exceed ten percent (10%) of its value. For construction projects, the execution of these services must also involve the use of equipment already installed or used on-site by the contractor. Amendments to the original contracts are used to establish these additional service agreements. These provisions fall outside the scope of Decree No. 2-22-431 of March 8, 2023, relating to public procurement, as specified in Article 3 of the decree. This allows for specific requirements of each type of contract to be met and ensures the flexibility and efficiency of public procurement in emergency or necessary situations.
- Agreements or contracts executed in accordance with common law regulations and protocols are covered by Article 4, paragraph 7. This article specifies that agreements or contracts executed according to these regulations, delegated management contracts for public services and works, transfers of goods between State services or between the State and regions, prefectures, provinces, and municipalities, as well as services performed between State services governed by the legislation in force, are excluded from the scope of the decree.
- Derogations for contracts relating to financial transactions carried out on the global financial market and the services accompanying them are governed by Article 5. This article provides that derogations may be granted for these contracts, in accordance with agreements or conventions that Morocco has concluded with international organizations or foreign states, when these agreements explicitly specify the specific conditions and procedures for awarding contracts.

These specificities require adapted regulations to meet the particular needs of each sector.

Other legislative texts affect the procurement of public enterprises alongside reference texts. Among them is Dahir No. 1-21-89 of 15 Hija 1442 (July 26, 2021) promulgating Framework Law No. 50-21 relating to the reform of public establishments and enterprises. This framework law aims to modernize and restructure public establishments and enterprises to improve their efficiency and governance.

In addition, Law No. 15/95 forming the Commercial Code, promulgated by Dahir No. 1-96-83 of August 1, 1996, covers various aspects of commercial law in Morocco. It governs commercial contracts, commercial exchanges, and the resolution of disputes. This law is essential for framing commercial activities and ensuring a stable and predictable legal environment for companies operating in Morocco.

These texts complement the legal framework for public procurement by providing specific details and rules for public enterprises and commercial activities, thus contributing to greater transparency and efficiency in the management of public procurement and public enterprises.

In addition to the general texts, a multitude of specific texts complement the general legislation, such as:

- Dahir (9 Ramadan 1331) forming the Code of Obligations and Contracts (Official Gazette, September 12, 1913).
- Dahir No. 1-02-238 of 25 Rejeb 1423 (October 3, 2002) promulgating Law No. 17-99 on the Insurance Code.
- Dahir No. 1-07-129 of 19 Kaada 1428 (November 30, 2007) promulgating Law No. 53-05 relating to the exchange of legal data (Official Gazette No. 5584 of 25 Kaada 1428 (December 6, 2007), p. 1357).
- Dahir No. 1-11-140 of 16 Ramadan 1432 (August 17, 2011) promulgating Law No. 24-09 relating to the safety of products and services, and supplementing the Dahir of 9 Ramadan 1331 (August 12, 1913) forming the Code of Obligations and Contracts (Official Gazette No. 5984 of 8 Kaada 1432 (October 6, 2011), p. 2166).
- Dahir No. 1-14-116 of 2 Ramadan 1435 (June 30, 2014) promulgating Law No. 104-12 relating to the freedom of prices and competition.
- Dahir No. 1-16-05 of 23 Rabii II 1437 (February 3, 2016) promulgating Law No. 107-12 amending and supplementing

Law No. 44-00 relating to the sale of buildings in their future state of completion (Official Gazette No. 6518 of 17 Safar 1438 (November 17, 2016), p. 1717).

- Dahir No. 1-19-76 of 11 Chaabane 1440 (April 17, 2019) promulgating Law No. 21-18 relating to movable securities (Official Gazette No. 6840 of 22 Rabii II 1441 (December 19, 2019), p. 2512).
- Dahir No. 1-18-15 of 5 Joumada II 1439 (February 22, 2018) promulgating Law No. 31-13 relating to the right of access to information (Official Gazette No. 6670, 16 Chaabane 1439 (May 3, 2018)).
- Law No. 11-03 relating to the protection and enhancement of the environment.
- Law No. 12-06 relating to standardization, certification, and accreditation, promulgated by Dahir No. 1-10-15 of 26 Safar 1431 (February 11, 2010).
- Law No. 13-03 relating to the fight against air pollution.
- Law No. 28-00 relating to the management and disposal of waste.

In addition to the numerous texts directly or indirectly related to public procurement, one must not forget the texts relating to regional, provincial, and municipal councils. These consist of various organic laws, multiple implementing decrees, orders, and circulars, as well as the Town and Country Planning Code (Law No. 12-90 on urban planning).

Furthermore, it is essential to take into account the numerous international texts and agreements. This abundance of regulations and successive amendments creates legal instability for public buyers and bidders.

Public procurement regulations in Morocco suffer from excessive fragmentation. The multitude of legislative and regulatory texts, without effective coordination, creates a complex and unclear legal framework, undermining the efficiency and integrity of the system.

The absence of a centralized body responsible for supervising and coordinating all the rules governing public procurement constitutes a major shortcoming in the Moroccan system. This lack of unified governance contributes to the complexity of the legal framework and the dispersion of responsibilities.

The proliferation of legislative and regulatory texts, combined with the absence of a dedicated regulatory authority, generates

legal insecurity and favors opaque practices. This results in a loss of efficiency and a decrease in confidence in the public procurement system.

3.2 Limited Evolution and Lack of Coherence and Transparency

Public procurement, as a lever of public action and an instrument for the implementation of public policy, is subject to constant evolution to adapt to changes in the environment. While the successive reforms of Moroccan regulations demonstrate a desire for adaptation, they have not always resolved fundamental problems, particularly in terms of coherence and effectiveness. The challenge of public procurement regulation lies in reconciling the need to maintain stable and predictable rules with the need to adapt to changes in the economic and social environment. The successive reforms in Morocco, although ambitious, have not always made it possible to find this optimal balance. Despite the numerous reforms undertaken, the regulatory framework for public procurement in Morocco still has shortcomings that hinder its effectiveness. Sector stakeholders particularly emphasize the complexity of procedures, the lack of transparency, and the difficulty of adapting rules to new challenges, such as the energy transition or the circular economy.

3.2.1 Limited evolution and procedural instability

While successive reforms of public procurement in Morocco aimed to promote a more inclusive and competitive economy, particularly by favoring SMEs and local production, the results achieved are mixed. Indeed, the amendments have mainly focused on procedural aspects, leaving aside fundamental issues related to the definition of needs, the evaluation of performance, and the measurement of the impact of public procurement on economic development. Despite the introduction of mechanisms aimed at promoting competition and transparency, the reforms have not always succeeded in resolving problems related to the precise definition of needs, the evaluation of the quality of bids, and the measurement of the performance of successful companies. These shortcomings limit the effectiveness of public procurement as a tool for economic development.

Although the reforms have favored an incremental approach focused on improving procedures. However, economic theories of industrial organization show that the effectiveness of public procurement depends not only on procedural rules but also on the clear definition of objectives, the establishment of appropriate incentive mechanisms, and rigorous monitoring of contract execution.

The semi-structured interviews conducted with managers and executive staff revealed several additional justifications regarding the challenges of the public procurement system. Firstly, there is a lack of clear definition of needs, with specifications sometimes being too general. This limits competition and favors less innovative bids. In addition, the award criteria are not always aligned with public policy objectives. For example, the lowest price criterion may not favor innovation or quality.

Secondly, the monitoring of contract execution is often insufficient, which limits the possibility of identifying potential failures and adjusting contracts accordingly. Finally, there is a lack of ex-post evaluation, with the impacts of public procurement on economic and social development rarely being systematically assessed. These observations highlight the persistent challenges in the management of public procurement and the need to improve current practices to strengthen the efficiency and transparency of the system.

In conclusion, while public procurement reforms in Morocco have improved transparency and competition, they have not always achieved the stated economic and social development objectives. A thorough reflection on the objectives, tools, and evaluation methods is necessary to strengthen the effectiveness and impact of public procurement.

Decree No. 2-22-431, although it constitutes a general framework for the awarding of public contracts, does not exhaustively address the specificities of intellectual service contracts, particularly consultant contracts. The absence of detailed provisions on the evaluation of the quality of intellectual services and on the consideration of qualitative aspects in the awarding of contracts represents a significant gap. The successive amendments to Decree No. 2-22-431 have mainly focused on the procedural aspects of public procurement, to the detriment of the award criteria. In particular, intellectual service contracts, which require a fine evaluation of the skills and experience of candidates, do not benefit from a sufficiently precise regulatory framework to guarantee the selection of the best bids. Consultant contracts require a rigorous evaluation of the skills and experience of candidates. However, Decree No. 2-22-431, while aiming to improve the quality of services, does not provide sufficient tools to evaluate the quality of intellectual services and to guarantee the selection of the best profiles.

Successive public procurement reforms have mainly focused on optimizing award procedures, particularly regarding the receipt, opening, and examination of bids. This procedural approach, while necessary, has not made it possible to thoroughly address issues related to the overall effectiveness

of public procurement and the optimization of results for administrations.

The multiple amendments made to public procurement regulations reflect a reactive rather than proactive approach. By focusing on ad hoc adjustments to procedures, the reforms have lacked a comprehensive strategic vision aimed at improving the efficiency and performance of the system as a whole.

Successive reforms have led to a proliferation of regulatory texts, without a systematic evaluation of their impact being carried out. The lack of evidence on the effectiveness of the various measures adopted limits the ability to identify levers for improvement and guide future reforms.

The technical file contains a set of documents and fragments demonstrating the capacities and qualities of the competitors. The technical offer may be required when the particular nature of the services to be performed justifies it, given their complexity or the importance or means to be used for their realization. To this end, the consultation regulations specify the constituent documents of a technical offer and the eligibility criteria for bids.

The technical offer is an essential element of any public contract, as it allows for the evaluation of the skills and qualifications of candidates. Its content, defined in the consultation regulations, must demonstrate the bidder's ability to successfully complete the project. A candidate's technical file includes all documents attesting to their capacities, such as references for similar projects, certifications, and CVs of qualified personnel. The exact content of the technical file is specified in the consultation regulations.

The technical offer is evaluated according to precise criteria defined in the consultation regulations. These criteria make it possible to select the candidates whose skills and qualifications best meet the requirements of the contract, thus guaranteeing the quality of the services and the proper execution of the contract.

The opening of bids, a key moment in the public procurement procedure, takes place in a public session and is held at the place, date, and time, in accordance with the provisions of the consultation regulations. This transparent process allows all candidates to follow the different stages of bid evaluation.

The bid opening session is chaired by the president of the tender commission. He begins by opening the public session, then proceeds to open the envelope bearing the mention "administrative and technical files". He announces aloud the

documents contained in each file and reads the list of candidates as well as the documents provided. This step consists of verifying the presence of all the required documents in the candidates' files and drawing up a detailed statement of the documents provided by each competitor, thus ensuring the transparency of the process. This phase is essential to guarantee equal treatment between competitors. Once this step is completed, the public session ends. The public and the competitors are then invited to leave the room, allowing the commission to continue the examination of the files in confidence. The tender commission plays a central role during the bid opening session, ensuring compliance with the rules of procedure, guaranteeing equal treatment between candidates, and strengthening confidence in the process.

The commission then examines in depth, in camera, the documents of the administrative file, the technical file, and the supplementary file, if applicable. It excludes competitors who do not meet the required conditions or the method of presentation of the files, those who have not submitted the required documents, and those who are represented by the same person in the context of the contract.

After examining the documents of the administrative file, the technical file, and the supplementary file, samples, prototypes, prospectuses, notices, or other technical documents by the commission, and after establishing the list of selected competitors following the evaluation of these files, the commission resumes its work in camera for the evaluation of the technical offers of the admitted competitors. It may consult any expert or technician or form a sub-committee to analyze the technical offers. Their conclusions are recorded in reports that they draw up and sign.

The commission eliminates competitors whose technical offers are not in conformity with the specifications required by the consultation regulations or who do not meet the criteria provided therein. It may also ask one or more competitors in writing for clarifications on their technical offers. This approach ensures a good understanding of the proposals and facilitates the comparison between the different offers. Technical evaluation is a crucial step that determines the candidates admitted to the next phase of the procedure. The results of this evaluation, combined with the financial evaluation, allow the commission to select the most economically advantageous tender.

Indeed, Decree No. 2-22-431 of March 8, 2023, introduced significant changes in the process of receiving and evaluating technical and financial offers. From now on, the receipt of offers is carried out in a single step, while their opening is divided into two distinct steps. The most notable innovation

lies in the redefinition of the most economically advantageous tender, placing greater emphasis on the price criterion.

This evolution contrasts with the 2013 decree, which gave greater importance to qualitative criteria such as the technical value of the offer, environmental performance, functional qualities, and supplementary technical assistance. These criteria played a crucial role in determining the eligibility and ranking of offers, and the use of a scoring system with weighted or hierarchical criteria was authorized.

Decree No. 2-22-431 simplified procurement procedures by streamlining the receipt of offers. However, this simplification is accompanied by a change in the award criterion, with greater weight given to price compared to qualitative criteria. This modification raises questions about the balance between seeking the best price and taking into account other criteria such as quality, innovation, or social and environmental aspects.

On the other hand, the new decree stipulates that the overall price of the offer will be the sole criterion for public works, supply, or service contracts (excluding study contracts). This change simplifies the evaluation process, making the overall price the main decision-making factor. The 2023 reform strengthened the weight of the economic criterion in the awarding of public contracts, to the detriment of qualitative criteria. Although this evolution simplifies procedures, it risks limiting the consideration of other important factors such as innovation, environmental quality, or social aspects.

Furthermore, the 2013 reform authorized a multi-criteria evaluation, taking into account both quantitative and qualitative aspects. This allowed for a more nuanced evaluation, integrating qualitative criteria. The 2023 decree opted for a more simplified approach by favoring the single criterion of the overall price. This evolution is part of a desire to rationalize procedures but may have consequences on the quality of services.

To this end, Decree No. 2-22-431 marked a turning point by entrusting the CNCP with a central role in the regulation of public procurement. Equipped with new powers and increased, more effective control tools, such as the possibility of conducting investigations, requesting additional information, or bringing legal action in the event of irregularities. The legislator wanted to create an environment more favorable to fair competition and innovation in public procurement.

The CNCP is now better equipped to guarantee the transparency, fairness, and efficiency of procedures. The

broadening of its scope of competence, provided for by the decree, strengthens its role as a regulator of the public market and contributes to better governance. This extension of prerogatives also increases its independence, allowing it to exercise more rigorous control over procurement procedures. This evolution responds to a growing demand for good governance and strengthens the confidence of economic actors in the system. However, additional efforts are needed to digitize procedures and simplify administrative processes, in order to make the system even more efficient and accessible to all.

The prospects for the evolution of the CNCP's role and public procurement regulations in Morocco are promising. The CNCP could strengthen its control and regulatory capacities by adopting advanced technologies to digitize procedures and simplify administrative processes. This would make the system more efficient and accessible to all actors. In addition, the CNCP could develop partnerships with international organizations to exchange best practices and benefit from the expertise of other countries in public procurement. Finally, public procurement regulations could evolve to better integrate qualitative criteria, such as innovation, environmental sustainability, and social aspects, in order to ensure a more holistic and balanced approach in the awarding of contracts.

The systematic publication of the results of calls for tenders, introduced by Decree No. 2-22-431, constitutes a decisive step towards greater transparency in the management of public procurement. This measure allows all actors, businesses, and citizens, to follow the awarding of contracts and evaluate the fairness of procedures. By making the results of calls for tender's public, the 2023 decree strengthens confidence in the system and helps to combat opaque practices. This measure is a guarantee of transparency and integrity in the management of public affairs.

The publication of the results of calls for tenders offers companies, whether successful or not, visibility on the selection criteria and the reasons for the decision. This transparency allows companies to improve their future bids and better understand the expectations of public buyers. By allowing companies to consult the results of calls for tenders, the decree promotes healthier and more transparent competition. Companies can thus identify best practices and improve their performance.

The systematic publication of the results of calls for tenders is a valuable tool for strengthening citizens' trust in public action. This measure contributes to better management of public funds and greater efficiency of public services. By

making information relating to public procurement public, the decree promotes a better understanding of decision-making processes and contributes to greater accountability of actors.

However, the reform has shortcomings regarding the conditions for resorting to negotiated procedures. Indeed, the decree does not sufficiently specify these conditions, thus leaving room for interpretation that could hinder the objective of accelerating procedures. Nevertheless, the regulations relating to negotiated procedures remain vague, which could compromise the effectiveness and fairness of the procedures. Although the flexibility offered by negotiated procedures is necessary in certain cases, it must be framed by clear and precise rules to avoid any abuse and guarantee equal treatment between candidates. The 2023 decree, by not sufficiently defining the conditions for resorting to these procedures, leaves room for interpretation that can favor opaque practices. This ambiguity can lead to delays and uncertainties in the awarding of public contracts, thus compromising the efficiency and speed of purchasing processes.

To remedy these problems, it would be necessary to clarify the conditions for resorting to negotiated procedures and to provide more precise guidelines in order to guarantee a uniform and transparent application of the rules. This would strengthen the confidence of economic actors in the public procurement system and ensure greater efficiency of procedures.

3.2.2 A Lack of coherence and transparency

The coexistence of multiple legislative texts, such as Law 104-12 on the freedom of prices and competition and Law 20-13 on the competition council, alongside texts specific to public procurement, creates a complex and sometimes contradictory legal framework. This makes the uniform application of rules difficult and favors arbitrariness. The proliferation of legislative texts, without clear codification, leads to difficulties in interpretation for public buyers and businesses, creating a climate of legal uncertainty and favoring unequal treatment.

The diversity of legislative texts applicable to public procurement creates a risk of arbitrariness in the application of rules and can favor divergent interpretations, to the detriment of equal treatment of candidates. The current system of public procurement regulation, characterized by a multitude of texts, requires rationalization to ensure a more coherent and equitable application of rules. The overlapping of legislative texts makes the legal framework opaque and difficult for economic actors to understand. The absence of a single, coherent text leads to difficulties in interpretation and risks of

arbitrariness, thus creating a complex and uncertain legal framework for public procurement.

Public procurement regulations in Morocco suffer from a lack of coherence, particularly regarding the definition and treatment of economic actors. For example, the notion of small and medium-sized enterprises (SMEs), although benefiting from a preferential regime, is not defined consistently and completely in all legislative texts. This leads to difficulties in application, especially for SMEs operating in the field of agricultural works. In addition, application circulars, by introducing new provisions or modifying the interpretation of regulatory texts, complicate the legal framework and can create uncertainties for economic operators.

The circular relating to the creation of global indices for the revision of prices in public contracts, updated by the Order of the METLE No. 21.191 of 14 Joumada II 1442 (January 28, 2021), disrupts the hierarchy of norms and creates a situation of legal insecurity. By introducing clauses not provided for by the decree (Article 15 on price revision), this overlapping of texts, where an administrative act of application modifies a legislative text, weakens the regulatory framework and complicates the interpretation of rules for market actors. This update, although providing corrective provisions to a hierarchically superior text, can create inconsistencies and difficulties in application.

Indeed, the introduction of new clauses by the circular can lead to discrepancies between existing legislative and regulatory texts, thus complicating the task of public buyers and businesses. These corrective provisions, although aimed at improving the legal framework, can also generate uncertainties and divergent interpretations, making the application of rules more complex.

In addition, the lack of coordination between the various legislative and regulatory texts can favor arbitrariness and opaque practices, undermining the transparency and integrity of the public procurement system. It is therefore essential to rationalize and clarify the legal framework to ensure a coherent and equitable application of rules, while minimizing the risks of arbitrariness and corruption.

The practice of introducing, through circulars, provisions contrary to legislative texts, as was the case for the circular on global indices, weakens the legal framework for public procurement. This situation generates legal insecurity, favors divergent interpretations, and undermines the transparency and effectiveness of the system.

In Morocco, the absence of a comprehensive and reliable information system for public procurement constitutes a major obstacle to the efficiency and transparency of the system. No amendment to the decrees governing public procurement has remedied this deficiency, which hinders the establishment of a high-performing public procurement system that meets economic and social objectives.

The public procurement regulatory body (CNCP) does not have a comprehensive and reliable information base, as public buyers are not obliged to publish their calls for tenders via the CNCP website. This situation creates a lack of transparency and complicates the task of verifying and cross-referencing information. The non-existence of a centralized body holding a structured and complete information base concerning public procurement complicates the task of public buyers and businesses. This situation creates difficulties in monitoring and evaluating contracts, identifying best practices, and detecting potential irregularities. Consequently, economic actors lack visibility on market opportunities and supplier performance, which limits competition and innovation.

In addition, the absence of an integrated IT system for the management of public procurement prevents the collection and analysis of essential data for decision-making and the development of effective public policies. Public buyers and businesses must navigate through a multitude of platforms and information sources, which leads to inefficiencies and risks of errors. This fragmentation of information limits the CNCP's ability to effectively monitor and regulate public procurement. Decision-makers do not have the necessary information to assess the impact of public procurement on economic and social development, nor to adjust strategies based on the results obtained.

Without a centralized system, it is also difficult to guarantee equal treatment of candidates and prevent fraudulent practices. Businesses may encounter obstacles in accessing the information necessary to bid, which reduces competition and can favor already established players.

To remedy this situation, it is crucial to implement an integrated IT system that centralizes all information relating to public procurement. Such a system would strengthen transparency, improve the management of contracts, and facilitate the monitoring and control of procedures. It would also contribute to the fight against corruption by allowing better traceability of transactions and ensuring equitable access to information for all economic actors.

In summary, it is crucial to emphasize that the quality of public procurement regulations has a direct impact on the

efficiency of public spending and on the confidence of economic actors. The creation of an integrated IT system for the management of public procurement is essential to improve the efficiency, transparency, and integrity of the public procurement system in Morocco. A thorough reform is necessary to guarantee a more transparent, equitable, and efficient system.

4. Analysis of theories and consequences of the complexity of the legal framework for public procurement

The theory of complexity, developed by Simon, H. A. [57] and Morin, E. [58], highlights the proliferation of norms resulting from the accumulation of legislative and regulatory texts over time, without regular evaluation of their relevance. This creates a complex and difficult-to-master normative system. In addition, the absence of a central authority responsible for coordinating all legislative and regulatory texts favors inconsistencies and contradictions. The complexity of the legal system also makes the interpretation of texts difficult, both for public buyers and for businesses.

The transaction cost theory, introduced by Coase, R. [59] and developed by Williamson, O. E. [60], emphasizes that the complexity of the legal framework leads to high information costs for the actors involved, which can limit competition and favor already established companies. Procurement procedures are lengthened and made more complex, thus increasing transaction costs for buyers and suppliers.

The agency theory, formulated by Jensen, M. C., & Meckling, W. H. [61], highlights the information asymmetry, where public buyers generally have less information than suppliers, making them vulnerable to manipulation and anti-competitive practices. There is also a risk of regulatory capture, where economic actors may try to influence the development of rules to favor their interests, to the detriment of the general interest.

The incentive theory, developed by Laffont, J.-J., & Tirole, J., indicates that a complex and unclear legal framework can reduce the incentives of public buyers to seek the best offers and optimize the use of public funds. The complexity of the system can also create opportunities for corruption, allowing certain actors to profit from grey areas or ambiguities.

The concrete consequences of this lack of coherence include the slowing down of procurement procedures, thus delaying the completion of public projects. The complexity of the system leads to additional costs for public buyers and businesses. Companies, discouraged by the complexity of procedures, may be less likely to participate in calls for tenders. The opacity and complexity of the system favor

illegal practices, and a public procurement system perceived as opaque and inefficient can erode citizens' trust in institutions.

In conclusion, the complexity and lack of coherence of the legal framework for public procurement have negative consequences on the efficiency, transparency, and integrity of this system. To remedy this, it is necessary to unify the legal framework and clarify the institutional structures. By simplifying procedures, clarifying rules, and strengthening controls, Morocco could improve the efficiency and transparency of public procurement.

5. Recommendations and main conclusions:

This section highlights the crucial importance of the legal framework as a structuring foundation, essential for a profound overhaul of public procurement in Morocco. This transformation, initiated by the new 2011 Constitution, is based on Articles 35 and 36, which enshrine the freedom to undertake business and the management of conflicts of interest. It aims for increased harmonization and more optimal management of public affairs. The public procurement award procedure, by complying with the principles of freedom of access and transparency, is part of this reform dynamic. However, although progress towards more rigorous management of public procurement is perceptible, it remains insufficient given the scale of the challenges to be met.

The performance-oriented approach, introduced in particular by the organic law relating to the finance law of 2016, represents a central pillar of the modernization of the Moroccan public administration. This strategy has already made it possible to record notable advances in the performance of public procurement, by emphasizing objectives of transparency and control of state expenditure. However, to capitalize on these achievements, an active pursuit of reforms is essential. It is undeniable that significant progress has been observed with the adoption of the decree of March 8, 2023, which constitutes a significant step in the consolidation of the rule of law and economic democracy. By enshrining fundamental principles such as freedom of access, equal treatment, and respect for rights, this decree marks an important turning point. However, although promising, this advance remains incomplete and requires additional efforts to ensure the effectiveness of the reforms undertaken. This text aims to correct the shortcomings of the former 2013 decree, while strengthening transparency and efficiency in the management of public procurement.

Nevertheless, the analyses show that the implementation of the new law, far from favoring the practical application of the

fundamental principles of public procurement, rather maintains the bad practices that have been observed in the system for decades and which nevertheless justify this reform. Challenges persist in simplifying procedures, eliminating normative ambiguities, and adapting to modern public management requirements, such as transparency, innovation, and sustainable development.

Thus, to fully meet the expectations of citizens and economic operators, it is imperative to continue consolidating the legal framework. Reforms must aim to make this framework more coherent, more accessible, and better adapted to current challenges, by strengthening confidence in public institutions and promoting efficient and ethical management of public procurement. This need for continuous reforms is the key to transforming current challenges into opportunities for excellence in public governance.

The legal system of public procurement suffers from a dispersion and a poorly defined hierarchy that weakens the effectiveness of the current legal framework. Currently, these systems are governed by a multitude of diverse texts, scattered across several regulations and legislations. These texts are fragmented, of unequal value, insufficiently consolidated, and frequently amended. It is evident that this system has presented these shortcomings for a long time.

These shortcomings lead to great complexity of the regulatory framework, slowness of public procurement procedures, inadequacy of the legal framework governing the execution of public procurement, and a lack of transparency in the development of new provisions. This leads to an ineffective and inappropriate application of regulations and, consequently, to cumbersomeness, opacity, and inadequacy in terms of efficiency and integrity.

The buyer has very limited room for maneuver to integrate current dimensions such as negotiation, innovation, and creativity, which are nevertheless essential to achieve performance objectives in the sphere of public procurement. Existing texts strictly define the missions of public buyers as well as their relations with service providers and suppliers, preventing them from fully exploiting contemporary opportunities for improvement.

Faced with these challenges, it is recommended to continue the reform of the legal framework for public procurement to ensure greater legal certainty for contracts and public buyers. This reform is suggested to ensure an adequate balance between the legal security of contracts and economic logic.

Indeed, this security is ensured by the harmonization, simplification, and unification of the texts governing public procurement through the establishment of a law relating to the public order code and the insertion of flexibility in purchasing methods and negotiation with suppliers to allow the public buyer to create and innovate in their management with the aim of achieving professional performance and guaranteeing added value to their profession in the sphere of public procurement. The emergence of a performance obligation becomes a cornerstone of the process, guiding public buyers in the development of their purchasing strategy. This detailed component of the reforms would aim to establish more efficient practices, strengthen the added value of public procurement, and ensure professional management focused on performance. These changes are essential to meet current challenges and reposition public procurement as a strategic lever in the service of governance and economic development.

Towards a public procurement code: from regulation to legislation, a call for coherence and participation

It has therefore become imperative to produce a complete and strong text to provide Morocco with a text having legal force through the legislative process, a complete and highly readable text (Public Procurement Code), after freeing this subject from the grip of regulatory laws, to move it from the regulatory space to the legislative space.

The said reform needs to break the dominance of the regulatory authority in the production of this law to the detriment of the legislative authority is part of the hegemonic strategy, because laws are not immune to conflicts of interest. In order to make it a language capable of paving the way for the transition of public order legislation from the regulatory domain to the legislative domain. Our concern is to formulate objective recommendations regarding the codification of this area "Public Procurement Code", so as to be able to compile the disparate legal rules relating to public procurement in a single legal code comprising comprehensive and unified legislation.

Quite simply, before publishing this decree, the government should have given all those interested in this field the opportunity to participate in the discussion on this subject, which has a very important impact on the economic and social development of our country, and formulate objective recommendations regarding the codification of this area, so as to be able to compile the disparate legal rules relating to public procurement in a single legal code comprising comprehensive and unified legislation such as the Labor Code, the Civil Code, the Family Code or.....and update and harmonize them with

all the laws they encounter, with the aim of accelerating the economic cycle.

One of these main advantages is its ability to group in a single code several texts containing rules specific to public procurement such as subcontracting, payment deadlines, or electronic invoicing. Similarly, certain terms such as the definition of SMEs in the Moroccan economic context, abnormally low offers, or project management assistance (AMO) have been defined to limit errors, further open public procurement to SMEs, and promote social and environmental aspects, etc. We also note the absence of application of the provisions relating to the advance payment system, which constitutes a means of support, especially for small and medium-sized enterprises.

Seek more coherence and concordance between the different hierarchical structures. At the top is the constitution, dahir, decrees, laws, circulars, and notes on the one hand, and between general texts and specific texts on the other hand, the legal system must be organized so that lower norms are consistent with what is promulgated by higher norms, a lower-level text must never contradict a higher-level text.

The dynamics of public procurement reforms in Morocco: between reforms and delays in the publication of implementing texts, a crucial didactic guide

The legal framework for public procurement in Morocco is constantly evolving. Adjustments and reforms are frequent, requiring constant monitoring by the actors concerned. The decree of September 1, 2023, is part of this dynamic. It is only one step in a continuous reform process. Economic operators are eagerly awaiting the publication of the implementing decrees, which will specify the procedures for implementing the new legal framework. However, the publication of the CCAGs (general administrative clauses) for Works, Emo, and Services, especially after this decree, reveals several major problems:

- CCAG Works: Decree No. 2-99-1087 of May 4, 2000, approved the CCAG Works, applicable to works contracts executed on behalf of the State. This decree was replaced by Decree No. 2-14-394 of April 6, 2016, which introduced a new version of the CCAG Works¹.
- CCAG EMO: The CCAG Emo, applicable to service contracts relating to study and project management services, was approved by Decree No. 2332-01-2 of June 4, 2002.
- CCAG Services: Specific information on the publication or update dates of the CCAG Services is not available in the

current results. However, it is often linked to revisions of the CCAG Works and Emo.

These dates show that some CCAGs have not been updated for several years, which can create a gap with regulatory developments, particularly those introduced by the new public procurement decrees. This underscores the importance of a rapid revision to avoid inconsistencies and delays in the application of the rules.

To this end, it should be recalled that other implementing texts should accompany it, in particular the order setting the models of documents and supporting documents for public contracts, the order on the reservation of 30% of contracts for SMEs, the order on the revision of prices of public contracts, and the order relating to the dematerialization of public procurement procedures. It is essential to highlight the implementing texts mentioned, while emphasizing the delays in their publication and implementation. Here is a detailed analysis:

- Order setting the models of documents and supporting documents for public contracts

Order No. 1874-13 of November 13, 2013, published in Official Gazette No. 6214, came into force on January 1, 2014. Since that date, no significant update has been made to align this order with the new requirements of the 2023 public procurement decree. This creates a gap between current models and modern needs.

- Order on the reservation of 30% of contracts for SMEs

The 2023 public procurement decree enshrines the rule of reserving 30% of contracts for SMEs, but the specific implementing order has not yet been published. The absence of this order hinders the effective implementation of this measure, thus limiting opportunities for SMEs and startups, particularly in innovative sectors such as the digital transition.

- Order on the revision of prices of public contracts

Order No. 3-302-15 of November 27, 2015, sets the rules for price revision. However, no recent update has been made to integrate current economic fluctuations and the new provisions of the 2023 decree. This delay exposes actors to financial uncertainties, particularly in a context of volatility in the costs of materials and labor.

- Order relating to the dematerialization of public procurement procedures

Order No. 1692-23 of June 23, 2023, was published to frame dematerialization. However, its application remains limited due to the absence of clear guidelines for certain technical aspects. Although this order is recent, adjustments are necessary to ensure a smooth and accessible digital transition for all actors, especially SMEs.

These delays in the publication or updating of implementing texts hinder the efficiency and modernization of public procurement. Rapid and coordinated action is needed to:

- Publish the missing orders.
- Update existing texts to align them with the decree of March 8, 2023.
- Support actors with appropriate training and tools.

The launch of a detailed didactic guide, covering all stages of the public procurement process (definition of needs, awarding, execution, and control), represents a central concern for public procurement actors and is particularly awaited by private operators, especially those in the construction sector.

Why a didactic guide is crucial:

- Standardization of practices: A guide would standardize approaches across different sectors, strengthening the coherence and performance of public procurement.
- Strengthening transparency: By clearly explaining each step, it reduces the risks of mismanagement or irregularities.
- Support for private operators: Companies, especially those in the construction sector, could more easily align with the expectations of public authorities.

In short, such a guide would constitute a practical, educational, and strategic tool, contributing both to better public management and to a more competitive economic environment.

Modernization of public procurement in Morocco: transparency, citizen participation, and digitalization

Still on the regulatory level, it should also be noted that many principles and procedures remain ineffective due to the absence of implementing modalities, such as social, environmental, and ecological dimensions, sustainable development goals, energy efficiency, and the preservation of water resources. The absence of mechanisms ensuring compliance with certain obligations is also mentioned, such as

the publication of information or the use of presentation and completion reports.

- At the very least, efficiency should also guide the legislator in developing measures to place public procurement under the supervision of a high independent expert authority that has indeed been established, responsible for ensuring this performance requirement. While it currently animates discussions, it should not be used to directly sanction norms that produce poor public procurement, which can occur at any stage of the procedure to ensure its smooth operation in a performing climate and give it the possibility to question the contracting authority and at the same time exclude a bidder in case of failure. For example, it should be possible to sanction a competitive bidding procedure that is legal but too restrictive, or the legislator's refusal to extend the possibilities of negotiation for the public buyer.

In parallel, the creation in 2023 of the "Economic Observatory of Public Procurement," under the management of the TGR, marks an important step in improving the transparency of award procedures. This body is equipped with the necessary means and powers to develop indicators to monitor the evolution of transparency throughout the process. Its main mission is to collect and analyze economic data related to public procurement, while establishing a constructive dialogue with public buyers to optimize their practices and improve their consumption.

- It would be wise to strengthen the legal framework for public procurement by integrating provisions allowing for the rapid identification and sanctioning of practices harmful to transparency. In parallel, rigorous application of sanctions is necessary to optimize public management and promote respect for the principles of public procurement. These sanctions must be applied at all hierarchical levels and give rise to case law to create a healthy and rule-abiding system.

- Regularly improve the performance of the public procurement process by regularly evaluating the texts that govern public procurement, the legal framework that governs companies, and their intersection.

- Implement better regulations on the functioning of bid opening committees, as they play an essential role in the awarding of public contracts. In addition, it is essential to increase the credibility of the aforementioned committees to ensure the transparency of public procurement, in order to guarantee the independence and integrity of the members of the bid opening committee, in particular through the declaration of the absence of conflicts of interest.

- Establishing mechanisms for citizen participation in the main stages of the public procurement cycle promotes its transparency and direct public oversight. Thirteen member countries have established mandatory or optional participation mechanisms, mainly at the stage of bid opening and public hearings on contract terms. In particular, Korea and Japan involve citizens at one or more stages of the public procurement cycle. The consultation mechanisms established by the United States, Poland, and the Czech Republic rely a little more on volunteerism OECD, (2011). Civil society plays an indispensable role in promoting the values of transparency, integrity, and ethics in the public procurement process. To this end, it must exercise control over this area: monitoring public procurement activities in its capacity as an observer;

- Handling complaints: It is essential to strengthen the independence and effectiveness of the appeal mechanism, as it is essential to evolve practices towards healthy competition. It is intended to give bidders who are not satisfied the opportunity to verify the sincerity and rigor of the decisions taken by the administration. Its role is therefore essential in the evolution of the behavior of actors. It should also be emphasized that the appeal system is barely effective, as the procedures are more or less cumbersome and the resources allocated to the National Public Procurement Commission responsible for the arbitration mission are insufficient.

- Design and implement practical guides for innovative public procurement. This guide aims to help public buyers integrate innovation into their procurement, while demonstrating the importance of this practice. This guide therefore outlines the essential elements for success, the key success factors, the scope of innovative procurement, upstream preparation tools, as well as the entire contractual framework.

- It is essential that the legislator should revise the legal framework and enrich it with measures that will allow it to fully digitize the public procurement process, both upstream and downstream, and to use artificial intelligence end-to-end in an integrated manner throughout the public contract cycle.

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