

PART VIII

PUBLIC POLICY, PUBLIC VALUE AND SOCIAL OUTCOMES

PUBLIC INVESTMENT STRATEGY AND PUBLIC PROCUREMENT EFFICIENCY

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ABSTRACT. Public expenditure, and in particular public investment, operates mainly through public procurement as one of its most efficient instruments in order to fulfill the needs and expectations expressed by different categories of citizens.

Throughout Moroccan history, public investment strategy and public procurement efficiency have been deeply connected.

Public investment strategy has outlined main trends of each period of Moroccan history and has impacted therefore the reforming process of public procurement regulation and practices.

This paper highlights this important relationship through an historical, and a projected analysis of both the evolution of public investment strategy and the reforming process of public procurement in Morocco.

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INTRODUCTION

Public expenditure, and in particular public investment, represents a wide-ranging issue that impacts on such diverse fields as politics, economy, finance as well as wider society.

Through public procurement, public opinion and civil society can evaluate the efficiency of expending public money and measure the degree of transparency of public expenditure achieved by government, local communities and public institutions.

Public procurement regulation incorporates competing interests expressed by:

- The citizen, who requires the government to satisfy his needs in terms of education, health care, employment, transportation when managing his contributions in terms of taxes;
- The economic operator, for whom developing his business and increasing his turnover are his major goals;
- The public purchaser, with the will to provide a public service at the best cost-quality ratio within a minimum deadline;
- The international financial organizations, as they guarantee the implementation of international standards allowing international companies to freely access different markets.

Therefore, public procurement legal framework must resolve this situation of competing and sometimes conflicting interests; It must manage a complex set of powers, moderate confrontations among corporate particularities and arbitrate between numerous aspirations and expectations.

Hence, this paper will address the issue of how the regulation of public procurement:

- has, historically, maintained a certain balance between the interests of different stakeholders in the public procurement process;
- has been an efficient tool serving the public investment strategy.

This paper will also discuss main innovations introduced by the new procurement regulation of the Kingdom of Morocco.

THE EVOLUTION OF PUBLIC INVESTMENT AND PUBLIC PROCUREMENT REGULATION

Public investment and public procurement regulation were strongly fashioned by the political, economic and social context of each period of Moroccan history.

Period before the Protectorate

Since 1792, Morocco had a financial organization fairly developed and centered around the institution of "Oumanas" (public accountants).

Figure 1
Oumanas in office (1906)



The "Oumanas" were active in the field of public revenue and expenditure, under the authority of "Amine El Oumanas", who was performing the role of Minister of Finance.

2116

Figure 2

**Hadj Thami Lahbabi (Amine of Oumanas:
Minister of Finance)**



Public purchases of "Makhzen"¹ were achieved, as individual purchases, until 1907² according to the rules of trade houses.

From 1907 to 1917 and due to the absence of a regulation specific to the protectorate, public purchases were carried out either according to usual practices of trade at the time, or according to the French regulation on public procurement.

The first public procurement contract in Morocco was concluded in January 22, 1907 between the representative of His "Shereefian"³ Majesty in Tangier (Hadj Mohammed Ben Larbi Ettore) and the dealer Jean Frédéric Blanchard, for an amount of 109,905 Pounds and aimed at the construction of the enriched pier in the port of Casablanca as shown through the following pictures and documents.

Figure 3

Pier of the port of Casablanca (Enriched Mole)

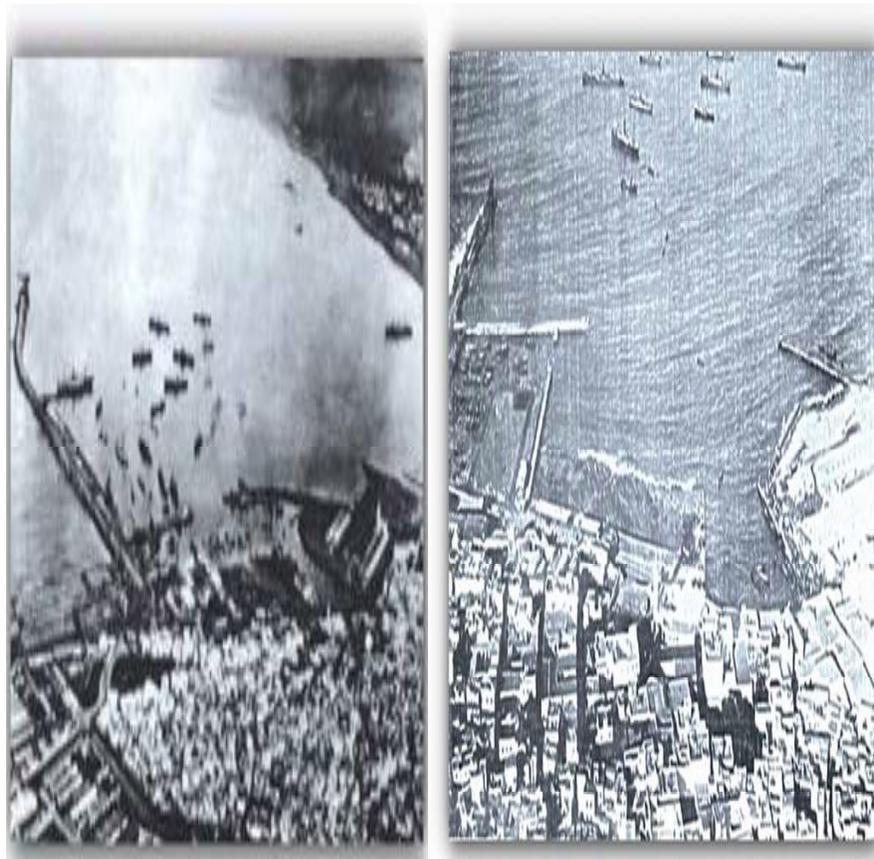


Figure 4 First and last pages of the first public procurement contract in Morocco for the construction of the enriched mole in the port of Casablanca

LEGATION DE LA REPUBLIQUE FRANÇAISE
à TANGER (MAROC)

Traduction

Le soussigné à Dieu seul!
Conformément à l'ordre supérieur
que Dieu l'éleve, le présent
contrat a été passé pour la construction
de mâts forains dans le port de
Casablanca entre le Délégué honoraire
de Sa Majesté Chrétienne que Dieu
l'assiste à Tanger, M. de Hardy,
Mohammed ben el arbi ottari, et le
négoçant J. Théodore Blanchard, le
français, Représentant de la Compagnie
marocaine à Tanger, suivant la procuration
de la Compagnie susdite et conformément
à la délégation du négoçant de Cherguel
Administrateur Délégué de la Compagnie
marocaine à Cheris.

Le mâts sera construit suivant le
plan stable à ce sujet et présenté à S. M.
Chrétienne - que Dieu l'assiste - et aux
conditions ci-dessous indiquées qui sont:

Article 1^{er}

avec le négoçant Blanchard Représentant de
la Compagnie Marocaine à Tanger, ce jour
du 18 Mars, année 1336, correspondant
à Paris 1917, se trouve en langue française,
à approuver de nosseigneurs!
notamment ben el arbi ottari. Le tout a
été fourni.

Pour traduction certifiée conforme
Tanger le 2 février 1917.



En son Légation de la République
M. René Laroche, Consul Honoraire
Premier Inspecteur de la Légation de Tanger
Maroc - Tanger, le 2 février 1917.

Le ministre de France au Maroc -
Ayant



Under the protectorate, the first rules concerning public procurement were integrated in the public accounting regulation established by the Dahir⁴ of June 9, 1917 (General Secretariat of the Government of Morocco, 1917)⁵.

This Dahir introduced for the first time, the principles of competition and advertising in the award of public procurement contracts of works, supplies and transportation on behalf of the government. It also clarified the forms of awarding public procurement contracts and the terms of their payment.

After independence, the entire legal framework governing the financial organization of Morocco was reviewed to gradually adapt to the changing domestic reality, in particular through the implementation of regulations related to:

- Public Accounting (Dahir of August 6, 1958);
- Bank of Morocco (Dahir of June 30, 1959);
- Fund for Deposits and Management (Caisse de Dépôts et de Gestion) (Dahir of February 10, 1959);
- Financial Control of the State (Dahir of April 14, 1960);
- National Commission of Audit, the current Court of Accounts (Cour des Comptes) Dahir of April 14, 1960);
- The Constitution (December 14, 1962);
- Organic Law on Finance (November 9, 1963).

Accordingly, the Dahir of June 19, 1917 issuing regulation on public accounting was repealed and replaced by the Dahir of August 6, 1958 on public accounting of the Kingdom (General Secretariat of the Government of Morocco, 1958), initiating therefore, the first reform of the rules governing public procurement of independent Morocco.

This enduring reform had as main objective the upgrading of the rules and procedures of public procurement to cope with the new institutional, administrative and financial organization.

It improved the regulation as it adopted different forms of awarding public procurement contracts and clarified further the terms and conditions of use of these various procedures including:

- open tendering (notion of best price);

2120

- auction (concept of lowest price);
- direct agreement;
- purchase orders;
- and works expressed in Board or made directly by the public administration itself.

It also stated henceforward that the competition should rely:

- primarily on price;
- but also on the technical value of works and services offered;
- and on the professional and financial guarantees offered by each competitor.

In addition, this reform was the first regulation that required public administrations to proceed with a new consultation whenever there had been an apparent agreement between all or some of the contractors or suppliers consulted taking, therefore, a further step towards greater transparency in public procurement.

The use of direct agreement form has been restricted to limited cases, while providing that even contracts according to this procedure must be subjected, when possible, to prior advertising and to competition.

The Reform of 1965

After a decade of independence, public procurement administration rules had been subject to a double mutation as they would be:

- grouped in a specific document, thus entirely separated from those governing public accounting;
- issued, as the general regulation on public accounting, with a regulation rather than a legislation.

The separations of public procurement regulation tackled a particular political, economic and social context:

- The establishment in 1962 of the first constitution in Morocco within a period marked largely by social unrest which led to the declaration of a state of emergency;
- The adoption by the government of economic stabilization plans: 1965-1967 three-year plan and 1968-1972 five-year plan;

important projects related to water, roads, ports and airports infrastructures were launched and financially supported to meet the requirements expressed by social, educational and health care needs.

Figure 5
Bin El Ouidane: first dam built in Morocco



To cope with this boost in public investment, public procurement reform established by the Decree of May 19, 1965, introduced more rigorous rules of directing, controlling and monitoring public procurement (General Secretariat of the Government of Morocco, 1958).

For example, public procurement contracts should to be awarded mostly through public auction after competitive bidding, but with the possibility for public purchasers to use the open tendering, direct agreement or the purchase orders.

If it remained suitable for simple works and regular supplies, public auction was less convenient when it came to complex public purchases more and more numerous at that time.

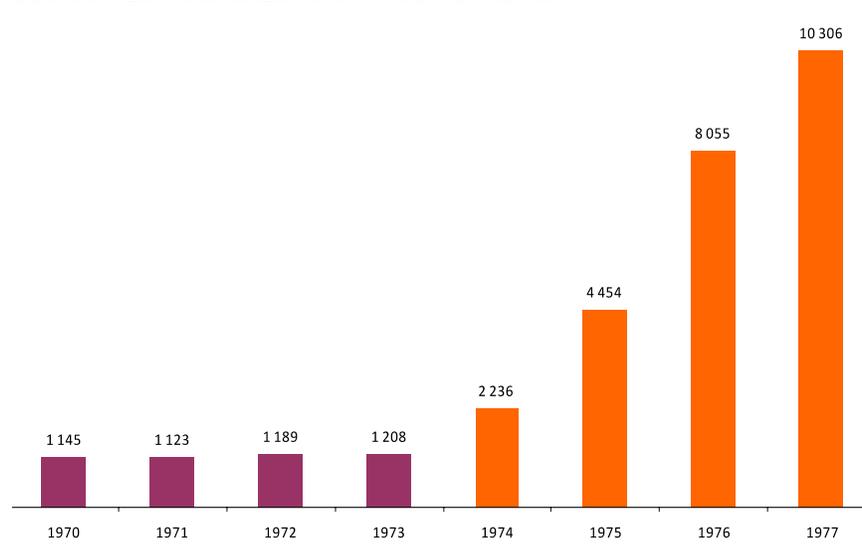
Moreover, this new regulation allowed public purchasers to select the most appropriate means to award procurement contracts considering technical and economic criteria.

2122

The Reform of 1976

During the 1970s, the increase in the price of raw materials, especially phosphates, generated substantial additional revenue for the government, bringing the authorities to increase the public investment as shown below.

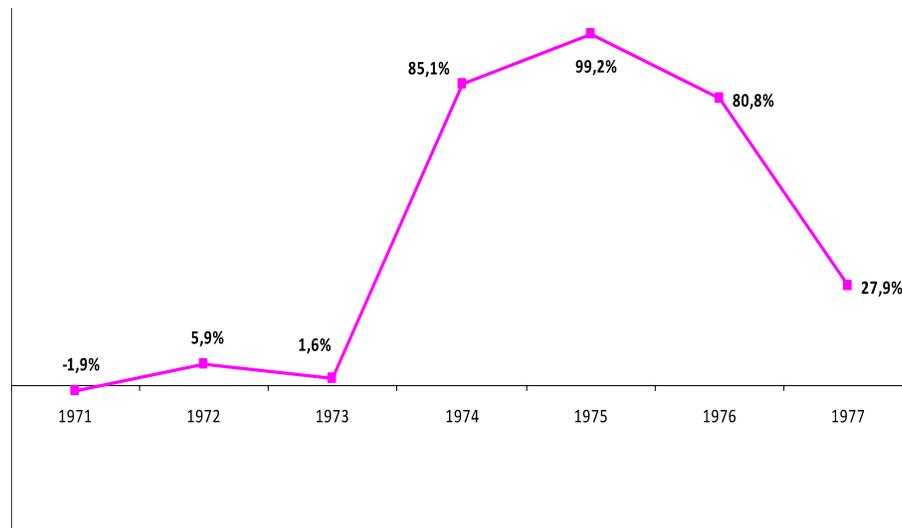
Figure 6
Evolution of investment expenditure
between 1970 and 1977 in million dirhams



The investment budget recorded during the years 1974-1977 substantial increases growing from 1,208 million dirhams⁶ in 1973 to 2,236 million dirhams in 1974, to 4,454 million dirhams in 1975, to 8,055 million dirhams in 1976, and to 10,306 million dirhams in 1977.

During the period 1974-1976, the investment budget recorded high growth rates: 85% in 1974, 99% in 1975 and 81% in 1976. In 1977 however, it registered a less high increase: 28% (General Treasury of the Kingdom of Morocco, 2011).

Figure 7
Growth rate of investment expenditure between 1970 and 1977



This investment expenditure was aimed at major public projects including dams, roads, schools and universities.

Public procurement reform of 1976 (General Secretariat of the Government of Morocco, 1976) reflected the government's will to control the expansion of public expenditure.

Due to the growing complexity of works and services compared to the needs of the 1960s, the reform of 1976 enabled the contracting authority to use study contracts whenever it could not undertake prior studies necessary for the realization of works and other public purchases.

It has also introduced the possibility of using definition contracts to clarify the goals and performances to reach, to determine the basic techniques to use and to identify the means to implement prior to the completion of related studies.

Regarding public procurement contracts prices, this reform introduced the concepts of global prices (contract with detailed prices schedule) and fixed prices (contract with no detailed prices schedule), along with the possibility of reviewing contracts prices.

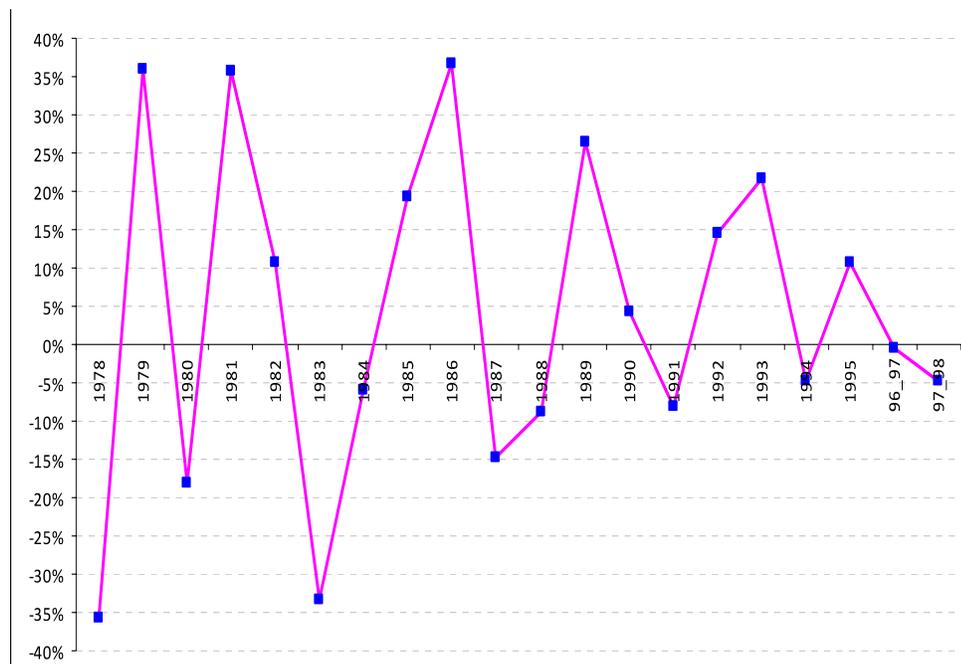
Regarding investment expenditure during the period between 1978 and 1997/98, it should be stated that the growth rate of investment expenditure has evolved in sawtoothed shape according to the

2124

budgetary funding possibilities as shown in the following figure.

Figure 8

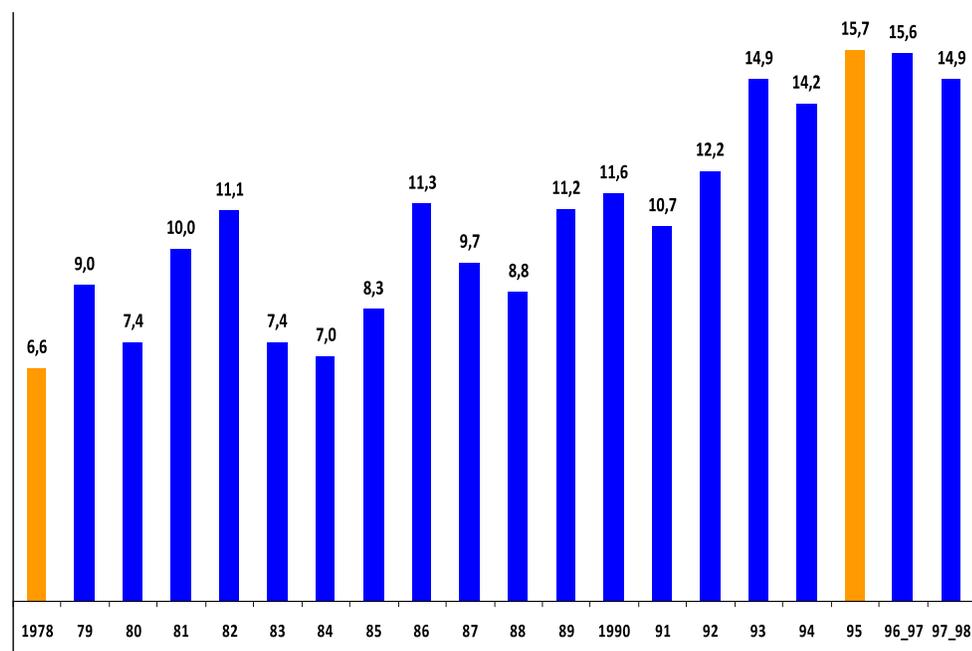
Growth rate of investment expenditure between 1978 and 1997/98



Moreover, It appears through the figure below that investment expenditure ranged from a minimum of 6.6 billion dirhams made in 1978 and a maximum of 15.7 billion dirhams reached in 1995 (General Treasury of the Kingdom of Morocco, 2011).

Figure 9

Evolution of investment expenditure between 1978 and 1997-1998, in billion dirhams



The Reforms of 1998 and 2007

These two reforms were established respectively by the Decree of December 30, 1998 (General Secretariat of the Government of Morocco, 1998) and by the Decree of February 5, 2007 (General Secretariat of the Government of Morocco, 2007), with a strong involvement of the Moroccan private sector.

They were inspired by international norms and standards including those of:

- the World Trade Organization (WTO);
- the United Nations Commission on International Trade Law (UNCITRAL);
- the Organization for Economic Co-operation and Development (OECD).

They also considered the international commitments made by Morocco as part of the association agreement of 1996 with the European Union and the Free Trade Agreement of 2005 with the United States of America.

2126

Furthermore, the reform of 1998 was significantly impacted by a context marked by the strengthening of the rule of law (Etat de droit), in particular following the political shift with the establishment of the government of Abdurrahman El Youssoufi⁷.

This reform also consolidated the review of the legal framework governing public finance with the adoption of organic law of finance during the same year (1998).

The major topics of these two reforms were:

- the upholding of the principles of competition, transparency and efficiency in public procurement;
- the development of ethics and integrity in the public procurement management (Boutaqbout, 2010);
- the enhancement of guarantees provided to competitors;
- the strengthening of the settlement of disputes;
- the start-up of an enduring process of public procurement dematerialization.

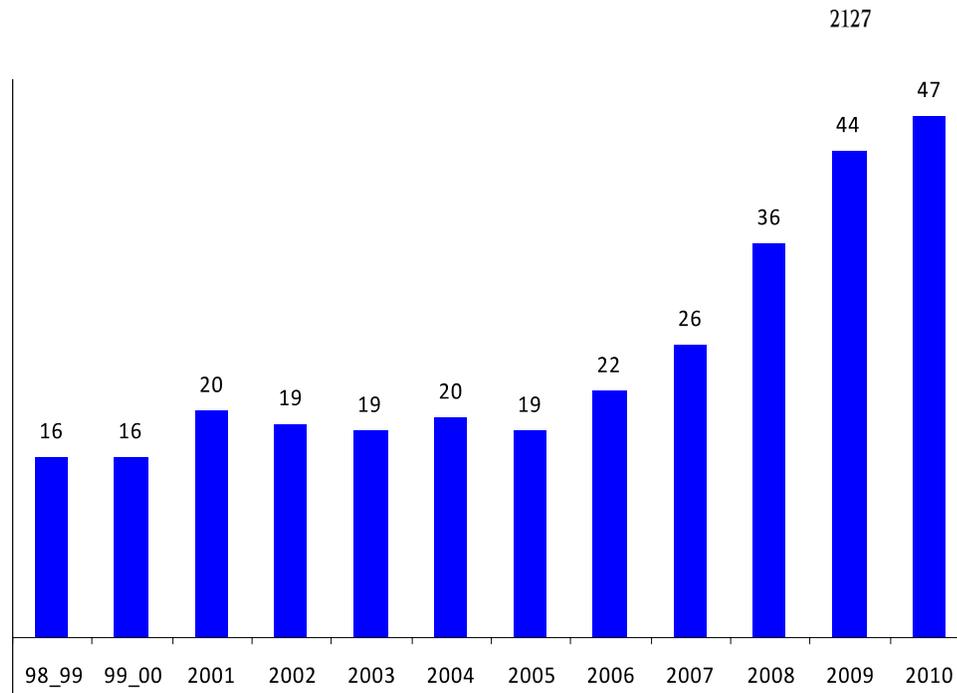
The reform of 2007 expressed the will to adapt public procurement to the mutations in government role such as the gradual disengagement from a number of sectors, the acceleration of the process of privatization and the outsourcing of certain public purchases.

Finally, this reform fitted a complete set of important reforms that have renewed the business environment, notably corporation law, the banking reform, tax reform and the Code of Commerce.

During the period between 1998/99 and 2010 the government investment budget has been maintained at a significant average of 20 billion dirhams per year recording though, an important increase in last years following a substantial increase in tax revenues (General Treasury of the Kingdom of Morocco, 2011).

Figure 10
Investment expenditure between 1998/99
and 2010, in billion dirhams

PUBLIC INVESTMENT STRATEGY AND PUBLIC PROCUREMENT EFFICIENCY



This same period has been marked by the realization of major projects such as the Tangier Med port, the highways of Tangier, El Jadida, Marrakech, Agadir, and many airports.

This constitutes a perfect illustration of the efficiency of public procurement and the success of the public investment strategy.

Figure 11

Pictures of some major infrastructure projects realized



Nevertheless, we must recognize that some economic operators have considered some aspects of these two reforms as unfair.

This was particularly the case regarding the draft Decree on classification of studies laboratories subject to a notice of the Competition Council and which the press echoed on February 17th, 2011.

Figure 12

Image of a journal article which contested the draft decree

Marchés publics BTP

Un projet d'arrêté très contesté

LE projet d'arrêté relatif à la qualification et à la classification des laboratoires BTP fait débat. Ayant fait d'abord l'objet d'un veto du Secrétariat général du gouvernement, le voilà au centre d'un avis du Conseil de la concurrence. Son rédacteur, le ministre de l'Équipement et du Transport, sera ainsi amené à revoir sa copie. Le département chapeauté par Karim Ghellab est également épinglé pour conflit d'intérêts: régulateur, client et opérateur via le Laboratoire public d'essais et d'études (LPEE). Les pratiques anticoncurrentielles de ce laboratoire, «leader» sur le marché, font jaser. □

Voir Focus pages 3 à 6

English translation of the article:

(Construction Procurement: a draft Decree highly contested.

The draft Decree relating to the classification of the construction laboratories is contested. Being first subject to a veto of the General Secretariat of the Government, it is at the center of a notice of the Competition Council. Its editor, Equipment and Transport Minister, will be thus reduced to review the copy. The Department led by Karim Ghellab is also trapped for conflict of interests: regulator, client and operator via the Public Laboratory of Tests and Studies (LPEE). Anti-competitive practices of this Laboratory "leader" in the market are subject to much discussion. See Focus pages 3-6).

The government investment strategy has experienced five main periods (Sagou, 2006):

- The period of budget expansion (1973-1977) notably characterized by:
 - substantial increase in investment expenditure in the five- year

2130

plan 1973-77;

- rising of operating expenditure (wages and food subsidies);
- use of debt to undertake the plan 1973-1977.
- the period of expenditure stabilization (1978-1982) marked by:
 - sharp cut in investment expenditure facing the rigidity of operating expenditure;
 - the establishment in 1978 of an economic austerity policy and the streamlining of public finance to cope with the increase of wages, grants and debt burdens.

For recall, during this period, the Treasury's outstanding debt jumped from 22% of GDP in 1974 to 53% of GDP in 1981 while in the same year the budget deficit reached 14% of GDP (General Treasury of the Kingdom of Morocco, 2011).

- The period of Structural Adjustment (SAP) (1983-1992) characterized by:
 - The evolution in sawtoothed shape of investment expenditure;
 - the implementation of structural reforms (tax reform, budget reform, financial market reform ...);
 - the rationalization of expenditure to fit a framework of structural adjustment plan (SAP) negotiated with the International Monetary Fund which required important sacrifices from the community to streamline the situation of public finance and finally reach a 2.4% of GDP budget deficit in 1993 (General Treasury of the Kingdom of Morocco, 2011).

- the period of preserving the gains of the SAP (1993-1998), through the implementation of new budget policies independent from the SAP directives, and the continuing of privatization.

Public investment would be therefore maintained at the same average level of 15 billion dirhams, or the equivalent of 5% of GDP (General Treasury of the Kingdom of Morocco, 2011).

The assessment of the government investment effort during this period must however, consider the following elements:

- part of the investment expenditure has been supported by some public companies and institutions;
- the concession system became operational (Water and electricity, urban transport ...);
- the transfers to local communities (30% of TVA (tax on added value)) and to public institutions (grants to equipment) increased.

During the years from 1978 to 1998, the government investment budget has been treated as a simple residual variable resulting from the difference between regular resources and operating expenditure.

Nevertheless, during the period of proactive budget policy (1999-2010), public investment became a strategic issue in public finance rather than just a simple residual variable.

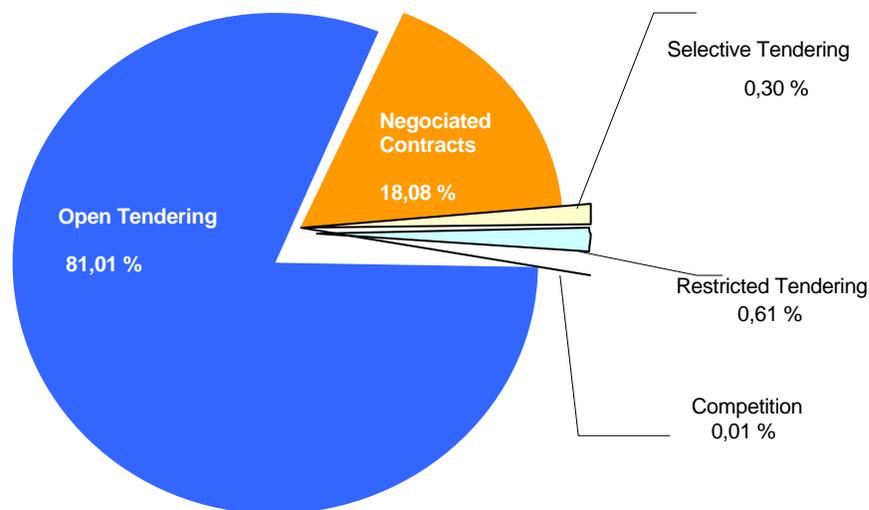
Regarding public procurement, it should be noted that the share of government procurement (procurement contracts, orders, common contracts and agreements) in government expenditure (excluding wages and debts) increased from 41% in 2001 to 57% in 2010.

Public procurement represents nearly 70% of construction companies turnover and 80% of engineering sector turnover.

2132

In 2009, public procurement contracts were awarded up to 81% using open tendering form, as shown in the figure below (General Treasury of the Kingdom of Morocco, 2011).

Figure 13
shares of awarding public procurement contracts forms



The share of negotiated contracts declined steadily from 54% in 2006 to 18% in 2009.

TOWARDS A NEW REFORM OF PUBLIC PROCUREMENT REGULATION

The draft Decree currently under adoption procedure at the General Secretariat of the Government marks a qualitative leap in public procurement regulation (General Secretariat of the Government of Morocco, 2010).

This intended reform is deeply linked to many other modernizing projects undertaken by the government in:

- consolidating good governance in public management;
- clarifying and simplifying procedures;
- awarding and executing public procurement contracts within a more improved transparency.

A Participatory and Comprehensive Reform

The projected reform is the outcome of a concerted approach extended to all the partners involved in public procurement process.

For more than two years, the draft Decree on public procurement has been subject to discussions among key actors and partners involved in public procurement, namely:

- public purchasers: government, local communities, and public administrative institutions;
- private companies or business associations;
- civil society;
- Control bodies or international institutions.

Figure 14
partners involved in the public procurement process



2134

Many workshops were organized to debate this subject with:

- different ministries;
- professional federations mainly, the National Federation of Building and Public Works and Moroccan Federation of Consulting and Engineering;
- National Order of Architects.

The dialogue process has also been greatly enriched by contributions, discussions and recommendations of the National Conference on Public Procurement organized in the General Treasury of the Kingdom in April 2009.

The World Bank has also conducted an evaluation work of our procurement system targeting the command of public procurement contracts it funds, by Moroccan regulation.

OECD, for its part, has assisted Morocco through the study of mutual learning to reinforce integrity in public procurement, which our country was the first to launch in Africa and the MENA region (OECD, 2008).

The publication⁸ of the public procurement draft Decree on the website of the General Secretariat of the Government was the first in the chronicles of issuing regulations in Morocco.

In fact, all national and international partners and the citizens can help to improve the draft with their observations and proposals.

On the other hand, and given the need for harmonization of public procurement process for all stakeholders including economic operators, the reform advocates the adoption of a single procurement regulation for government, local communities and public administrative institutions.

The architectural services are also integrated in the new public procurement regulation guaranteeing therefore, free competition in the awarding of procurement contracts to architects.

This vision marks a break with previous regulation considered to be fragmented and unconsolidated.

Despite the promotion of a single regulation, the projected reform takes cognizance of the particularities of local communities, public institutions, and architectural services.

Similarly, the government procurement portal, managed by the General Treasury of the Kingdom, has been dedicated as a national, unifying and single portal for all public procurement activities, in order to streamline procedures in public procurement without depending on public purchasers.

The number of calls for tender published on the Public Procurement Portal increased from 14,493 in 2008 to 27,565 in 2010 as shown in the following figures.

In 2010, the portal covered the entire public purchasers of the government and local communities and 60% of purchasers of public institutions (General Treasury of the Kingdom of Morocco, 2011).

Figure 15

Number of calls for tender published

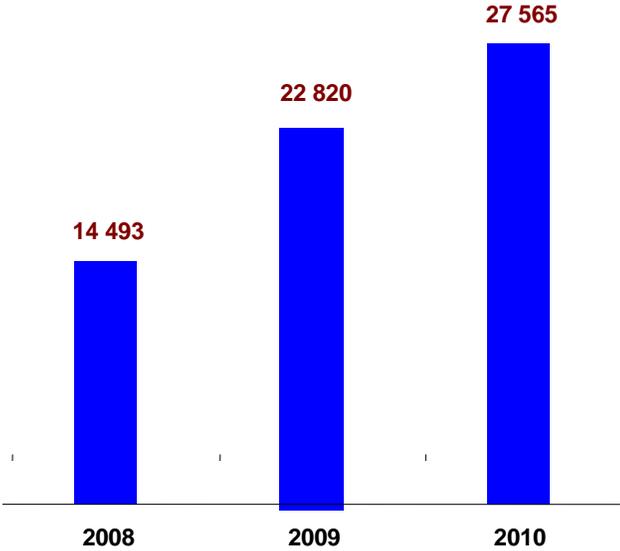


Figure 16



A Reform Strengthening the Transparency and Ethics

As a response to expectations of civil society and stakeholders in public procurement, the reform consolidates transparency and ethics of public procurement.

In fact, conflicts of interest in public procurement are formally banned in this reform.

In this regard, it provides that members of tender commission as well as any person, officials or technicians named to participate in this commission, are required not to intervene, directly or indirectly, in the proceedings, as long as they have an interest, personally or through an intermediary person, with one of the bidders.

This reform, also specifies the content of the report on the negotiated procedure transparency established by the contracting authority, through the following elements:

- the publishing references in newspapers and in public procurement portal;
- the list of candidates who manifested their interests in bidding and those with whom negotiations have been conducted;
- the financial offers given by competitors with whom negotiation have been conducted;
- the reasons governing the choice of the bidder selected.

The reform also establishes a negotiation commission for all negotiated contracts preserving by the way, the collegiality of negotiation process and award of the contract.

It also meets the requirements of citizens and civil society by strengthening public procurement audit and control mechanisms.

2138

Hence, and in addition to the controls and audits assigned by law to the Court of Accounts on public procurement, the reform introduced the obligation to audit all negotiated contracts with an amount greater than 1 million dirhams and sets the threshold of 3 million dirhams and 5 million dirhams to audit respectively public procurement contracts awarded by local communities using open tendering or competition, and public procurement contracts awarded by government.

A Reform Improving the Business Climate and Fostering Competition

The reform of public procurement regulation introduced substantial innovations for companies.

It supports the small and medium business by enabling the contracting authority to decide the allotment of procurement contracts (procurement allocated by lots), whenever this allotment is expected to allow small and medium business to access public procurement.

The reform also provides that the contracting authority may mention in bidding documents the obligation for foreign contractors, if they decide to use subcontracting, to choose a domestic small or medium business as subcontractors.

This reform simplifies and clarifies evaluation procedures by abridging administrative files. Now, the “tax certificate”, the “certificate of the CNSS (Social Security National Fund)” and the listing in “the Register of Commerce” will be required only from the bidder to whom it is intended to award the contract.

It allows competitors to request a deadline extension to submit bids, whenever this deadline is considered too short for some complex public purchases.

Furthermore, the reform defines the criteria of assessment,

evaluation, scoring and ranking of bids, depending on the public purchases concerned (works, supplies, or services).

It also incorporates into the total cost, maintenance costs for supplies inducing cost of use and maintenance, which is now expressed in monetary terms.

It introduces systematic price review for all works contracts, regardless of their amounts and their execution deadlines, allowing contractors to deal with price fluctuations notably in raw material and wages.

The reform also provides that, in case of unsuccessful tender due to lack of offers, the negotiated procedure may be initiated only after a second open tendering term itself is declared unsuccessful.

It provides that any cancellation of a call for competition shall be subject to a decision made by the competent authority stating the reasons for its cancellation; this decision must be published in the procurement portal and communicated to members of tender commission.

This reform also requires the contracting authority to justify use of restricted tendering form by an administrative certificate.

A Reform Improving Appeals and Settlement of Disputes

The settlement of disputes has always been one of the major weaknesses marking the Moroccan legal system of public procurement.

Together with the ongoing reform of Procurement Commission⁹, which is the administrative entity in charge in this matter, the reform of public procurement provides the following clauses:

- a 15 days stand still to approve public procurement contracts, during which, the competent authority cannot approve contracts. The purpose being to allow competitors to introduce their

2140

administrative appeals, in accordance with international standards regarding this issue;

- the possibility for competitors to appeal directly before the Procurement Commission, without waiting for responses from the contracting authority and the minister involved;
- a maximum period of 30 days to respond competitors claims by the Minister concerned (government procurement), by the Minister of Interior (procurement of local communities) or by the Minister in charge of the public institution (procurement of public institutions);

Furthermore, the reform limits significantly the power given to the contracting authority in the award of procurement contracts enabling the competitor to:

- challenge the non-compliance with one of the terms of the procurement procedure;
- reveal discriminatory or disproportionate clauses contained in bidding documents regarding the object of the contract;
- challenge the grounds for exclusion of his bid.

A Reform Promoting more Efficiency for the Public Purchaser

One of the major objectives assigned to the reform of public procurement regulation in Morocco is to strengthen the efficiency of public purchasing in terms of cost, quality and deadlines.

This reform provides the public purchaser with renovated tools allowing him to:

- optimize his public procurement strategy with an emphasis on the necessity to define clearly his needs;
- identify the technical specifications of the procurement

contract;

- select the type of procurement contract to conclude and set the most advantageous awarding procedure.

It also enables the public purchaser to incorporate in his evaluation approach, the concept of global quality, which covers all parameters related to quality, considering the economic, social and environmental impacts of public procurement.

As such, the call for notice of invitation mechanism has been introduced for specific and complex public purchases requiring prior identification of potential competitors (software solutions, purchases with high technology...).

The procedure of the design-implementation procurement (turnkey contracts) has been established for some public purchases with special manufacturing processes that are closely integrated or for some specific works.

The reform also introduced the mechanism of cooperative purchasing, aiming at greater spending and savings optimization.

This reform clarifies the required practices to better comprehend the most advantageous bid according to the nature of purchases concerned (works, services, supplies), and to evaluate financial proposals abnormally low or excessive and prices called aberrant.

Finally, the performance issues related to respect of the environment, the development of renewable energies and the degree of knowledge transferred are considered in this reform as important criteria for evaluating bids and awarding public procurement contracts.

On the social level, the reform encourages the promotion of local employment, in procurement contracts awarded by local communities.

The integration of information and communication technologies in the

2142

public procurement process is strengthened, in relation to all partners, through the program of dematerialization of public procurement headed by the General Treasury of the Kingdom.

In fact, the implementation of suppliers database, as part of electronic bidding, in order to dematerialize the competitors administrative files, will allow companies to focus more on preparation of their technical and financial bids.

CONCLUSION

The projected public procurement reform participates constructively in improving public investment strategy.

It ensures the balance between the requirements of the citizen, the economic operator, the public purchaser and the international financial organizations.

The citizen can better evaluate the use of public money¹⁰: Transparency in government procurement provides him with a public service of high quality.

Simplification of procedures benefits the economic operator, empowers the process of public procurement dematerialization, and boosts free access to public procurement contracts through equal treatment of competitors and objective choosing of contractors.

The public purchaser benefits from better programming of his purchases in terms of efficiency and execution.

Nevertheless, it is crucial to professionalize public purchasing activity by ensuring the training of officials in charge of public procurement.

International financial organizations are reassured about the convergence of national public procurement regulation with the latest international norms and standards in the field.

Codification of public procurement regulation deserves to be considered, in order to consolidate all the dimensions of public procurement (procurement contracts, common contracts and agreements, concessions...) (Castaing, Bernard., Noguellou, Rozen., & Prebissy-schnall, Catherine., 2003).

If this ambition expresses a legal reasoning, the reality of public investment on the ground obeys a social and economic reasoning and represents an other legitimate ambition as well, since it truly fulfills the high expectations of the citizens.

NOTES

¹ The name « Makhzen » refers to the central administration in Morocco.

² Year of signature of the Act of Algeciras and abandonment of the institution of the "Oumanas".

³ A honorific distinction given to the royal family as a mark of respect.

⁴ Document issuing laws in Morocco.

⁵ All references are in French language. The titles, however, were translated into English to allow easy reference matching.

⁶ The « dirham » refers to the Moroccan currency.

⁷ Prime minister from 1998 to 2003.

⁸ According to the Decree No. 2.08.229 of May 21, 2009 establishing a publication period of draft laws and regulations before their final adoption.

⁹ The procurement commission includes notably the representatives of ministries of finance and economy, transportation and equipment, habitat, agriculture and of the General Treasury of the kingdom.

¹⁰ Article 15 of the Declaration of human and citizen rights of 1789 in France: "The community has the right to request account to any public officer of its administration."

REFERENCES

- General Secretariat of the Government of Morocco (1917). Dahir of June 9, 1917 issuing regulation on Public Accounting of the Shereefian Empire. [ON-Line]. Available at www.sgg.gov.ma/BO/bulletin/fr/1917/BO_244_fr.pdf. [Retrieved January 1, 2012].
- General Secretariat of the Government of Morocco (1958). Dahir n° 1-58-041 issuing regulation on public accounting of the Kingdom of Morocco. [On-Line]. Available at www.sgg.gov.ma/BO/bulletin/Fr/1958/BO_2393_fr.pdf. [Retrieved January 1, 2012].
- General Secretariat of the Government of Morocco (1965). Decree n° 2-65-116 of May 19, 1965 establishing conditions and forms of awarding public procurement contracts of works, supplies, or transports on behalf of the government. [On-Line]. Available at www.sgg.gov.ma/BO/bulletin/Fr/1965/BO_2744_fr.pdf. [Retrieved January 3, 2012].
- General Treasury of the Kingdom of Morocco. (2011). Statistics issued by the Information System of the General Treasury of the Kingdom of Morocco.
- General Secretariat of the Government of Morocco (1976). Decree n° 2.78.479 of October 4, 1976 on public procurement of works, supplies or services on behalf of the Government. [On-Line]. Available at www.sgg.gov.ma/Bo/bulletin/Fr/1976/BO_3339_Fr.pdf. [retrieved January 5, 2012].

-
- General Secretariat of the Government of Morocco (1999). Decree n° 2-98-482 of December 30, 1998 establishing conditions and forms of awarding government procurement contracts and some provisions related to their control and administration. [On-line]. Available at www.sgg.gov.ma/BO/bulletin/Fr/1999/BO_4654_fr.pdf. [Retrieved January 3, 2012].

 - General Secretariat of the Government of Morocco (2007). Decree n° 2-06-388 of February 5, 2007 establishing conditions and forms of awarding government procurement contracts and some rules related to their administration and control. [On-line]. Available at www.sgg.gov.ma/BO/bulletin/Fr/2007/BO_5518_Fr.pdf. [Retrieved January 5, 2012].

 - Bouatqbout, Abdelmjid. (2010). Public Procurement Management in Morocco. Remald. PP. 102-103.

 - Sagou, Mhamed. (2006). «Macroeconomic policies: fiscal and monetary policies in Morocco for fifty years and prospects for the next twenty years." Contribution to the report on «50 years of human development in Morocco and perspectives to 2025”.

 - General Secretariat of the Government of Morocco (2010). Draft decree on public procurement. [On-Line]. Available at www.sgg.gov.ma/projets_com/37/Decret_marches_publics.pdf. [Retrieved January 10, 2012].

 - OECD. (2008). Enhancing Integrity in Public Procurement Morocco. Joint Learning Studies.

 - Castaing, Bernard., Noguellou, Rozen., & Prebissyschnall, Catherine. (2003). Public Procurement: Notion, administration guidelines, implementation. Financial affairs collection. Lexis Nexis.