

The Governance Strategy in Reducing Corruption through the Award of Public Procurement Contracts

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Abstract:

The Algerian legislator has sought to institutionalize the principles of governance in the field of public procurement by establishing a set of legal provisions aimed at protecting public procurement contracts from various forms of corruption. It has ensured the application of the principles of freedom of competition, equality among bidders, and transparency of procedures throughout the different stages of the procurement process.

The development of information and communication technologies has affected the procedures for awarding public procurement contracts, leading to the introduction of a new approach to their award procedures in order to align with these technological advancements. Accordingly, the Algerian legislator has sought to establish a dedicated electronic system (the electronic portal) to implement these procedures through the enactment of legal provisions regulating its operation.

Keywords: Public procurement contracts, governance, transparency, electronic portal.

Introduction

Advancing the process of reform and change, while establishing the principles of integrity, transparency, and credibility, is essential to preventing all forms of corrupt practices and conduct. This is achieved by adopting a strategy aimed at fulfilling these objectives through future-oriented mechanisms and by carrying out various functions in a manner that fosters greater cooperation among different sectors and institutions in their diverse activities. Such an approach is intended to keep pace with the growing demand for public services, including education, healthcare, and security, while ensuring efficiency, competitiveness, and fairness.

Given the importance of public procurement in the national economy, particularly as Algeria is preparing to implement its long-term development programs, the award of public procurement contracts requires compliance with predetermined objectives, most of which revolve around the

sound management of public funds, defined as "funds owned by the State or by one of the public legal entities and allocated to the public interest, whether directly or indirectly."¹

As public funds constitute a stable and continuous resource that ensures the continuity of public services for citizens, their protection and preservation are among the foremost priorities of both the public administration and society. Nevertheless, despite their significance for the State as a legal entity requiring financial resources from multiple sources, and for citizens as a means of securing a decent standard of living, public funds have long been, and continue to be, subject to recurring, increasing, and increasingly sophisticated forms of abuse accompanying economic, social, and political developments. Consequently, the search for the most effective means of protecting public funds remains a challenge for all stakeholders.

Accordingly, the main issue addressed in this paper concerns the effectiveness of the governance strategy in reducing corruption in the award of public procurement contracts. This issue will be analyzed through two main sections. The first examines the governance strategy in the award of public procurement contracts, while the second discusses the mechanisms for implementing governance in the award of public procurement contracts.

Section One: The Governance Strategy in the Award of Public Procurement Contracts

The need for governance emerged in many developed and emerging economies following ²the collapse of national economies and the financial crises that occurred during the 1990s.

Governance has been defined in several ways that clarify its features. Dr. Nabih Jaber defines it as "a management approach that provides an institution with the procedures and policies that determine how its operations are managed efficiently."³ The Algerian legislator defines governance in Article 2, paragraph 8, of the Framework Law on the City as "good governance, whereby the administration is attentive to citizens' concerns and acts in the public interest within a framework of transparency."⁴

Public procurement governance means ensuring fairness in competition by establishing the applicable rules in advance, thereby enhancing transparency in procurement transactions and ensuring equality among participants. This contributes to greater efficiency in terms of both time and cost⁵. In light of the foregoing, governance can be defined as an integrated process for managing state affairs in which the government, the private sector, and civil society all participate, while taking into account the distinct roles assigned to each. Furthermore, all these

¹ Mohamed Ali Ahmed Qutb, *The Secondary and Security Encyclopedia on the Protection of Public Funds*, Itrak Printing and Publishing, Cairo, Egypt, 2006, p. 3.

² Bassam Abdullah Al-Bassam, "Good Governance in the Kingdom of Saudi Arabia: A Case Study," *Academy Journal of Social and Human Studies*, Department of Economic and Legal Sciences, Riyadh, No. 11, January 2014, p. 3.

³ Ben Aamara Saberina, "Governance of Public Procurement within the Framework of the National Strategy for the Prevention and Combating of Corruption," *Ijtihad Journal for Legal and Economic Studies*, No. 9, Tamanrasset University Centre, Algeria, September 2015, p. 166.

⁴ Law No. 06-06 of 20 February 2006 (21 Muharram 1427 AH) containing the Framework Law on the City, *Official Gazette of the People's Democratic Republic of Algeria*, No. 15, issued on 12 March 2006.

⁵ Kadoudou Djamila, "Manifestations of Governance in Public Procurement and Its Effectiveness in Preventing and Combating Corruption," *Mediterranean Journal of Law and Economics*, No. 2, Abu Bakr Belkaid University, Tlemcen, Algeria, 2018, p. 177.

actors contribute to formulating public policies, managing public affairs, and exercising oversight and accountability within a governance framework aimed at achieving the highest standards of quality and excellence in performance.

Governance of the Principles Governing Public Procurement Procedures

The first step taken by the legislator to ensure the governance of the public procurement process was to impose a set of principles that constitute the fundamental and permanent foundations of the procurement process, establishing them as the primary guarantees of transparency and legality. These principles were affirmed in Presidential Decree No. 15-247 regulating public procurement and public service delegations, as well as in Law No. 23-12 of 5 August 2023, establishing the general rules governing public procurement. Article 5⁶ of the latter sets out these principles in a coherent and complementary manner, so that they reinforce one another in achieving the objectives for which they were established, together with the other governance mechanisms.

Governance of the Principle of Competition

According to Professor André de Laubadère, the principle of competition is founded on the concept of economic liberalism, which is based on freedom of competition and the principle of equality among individuals in benefiting from public services, in addition to the neutrality of the public administration toward competitors⁷. Freedom of competition is closely linked to the principle of free access to public procurement opportunities, whereby no person may be denied the right to participate except for reasons related to the public interest. This means that all persons who satisfy the required conditions and wish to participate must be given the opportunity to submit their tenders to the contracting authority, which is required to maintain a neutral position toward all competitors⁸. This principle is also enshrined in Article 2 of the Competition Law.⁹

In principle, freedom of competition constitutes the general rule governing the award of public procurement contracts. However, this does not mean that it is absolute; rather, it is subject to the conditions and criteria established for the award of public procurement contracts, as well as to the contracting authority's power, by way of exception to the principle of competition, to select its contracting party outside the competitive process, within the limits authorized by Presidential Decree No. 15-247¹⁰.

⁶ See Article 5 of Law No. 23-12 of 5 August 2023 establishing the general rules governing public procurement, Official Gazette of the People's Democratic Republic of Algeria, No. 51, issued on 6 August 2023.

⁷ Reem Ali Ihsan Mohammed Al-Azzawi, *Methods and Forms of Concluding Administrative Contracts: A Comparative Study*, Dar Al-Fikr wa Al-Qanun for Publishing and Distribution, Egypt, 2018, p. 88.

⁸ Souad Tayebi Amrouche, "The General Principles Governing Public Service Delegations under Presidential Decree No. 15-247," *Arab Journal of Research and Studies in the Humanities and Social Sciences*, Djilali Bounaama University, Khemis Miliana, Algeria, 2019, p. 396.

⁹ Ordinance No. 03-03 of 19 July 2003 relating to Competition, as amended and supplemented by Law No. 10-05 of 15 August 2010, Official Gazette of the People's Democratic Republic of Algeria, No. 46, issued on 18 August 2010.

¹⁰ Mohamed Amine Bou El Djadri and Bousaadia Raouf, "The Enshrinement of the Principle of Competition and Its Complementary Principles under Presidential Decree No. 15-247," *Journal of Legal and Political Thought*, Mohamed Lamine Debaghine University, Sétif, Algeria, No. 5, 2019, p. 46.

Among these exceptions are those recognized by legislation and administrative case law, which allow the administration to exclude certain economic operators for various reasons related to their lack of legal capacity or eligibility. Such exclusion may also apply to operators prohibited from carrying out certain activities pursuant to judicial decisions, such as those relating to bankruptcy or involvement in tax fraud cases, resulting in their temporary exclusion. This prohibition also applies to operators placed under judicial supervision until they obtain prior authorization from the administration. Accordingly, the tender specifications may sometimes require the submission of a criminal record certificate as evidence of good conduct, a measure referred to as preventive exclusion¹¹. Article 75 of Presidential Decree No. 15-247 sets out the cases of temporary or permanent exclusion from participation in public procurement contracts.

Governance of the Principle of Equality among Bidders

The principle of equality constitutes the cornerstone of every democratic system, as all public rights and freedoms are subject to it. All legal instruments, including constitutions, universal declarations of rights, and international conventions, unanimously affirm that individuals are equal without discrimination based on sex, origin, language, religion, or belief¹². This principle is enshrined in Article 7 of the Universal Declaration of Human Rights.

The practical application of governance through this fundamental principle is more clearly reflected in the provisions of Presidential Decree No. 15-247. The Algerian legislator requires all public economic enterprises and any entity not subject to the rules of public accounting, regardless of its legal status, that uses public funds in any form, to establish procurement procedures based on the principles of free access to public procurement, equal treatment of candidates, and transparency of procedures, and to have such procedures approved by their competent governing bodies.¹³

This is further reflected in paragraph 4 of Article 27 and paragraph 5 of Article 16 of Law No. 23-12 of 5 August 2023, establishing the general rules governing public procurement, which provides: "The contracting authority's needs shall be defined accurately in terms of their nature and scope, on the basis of detailed technical specifications prepared according to standards and/or performance requirements to be achieved, or functional requirements. These technical specifications shall not be tailored to a specific product or a particular economic operator."¹⁴

It is further provided that "the evaluation of applications shall be based on non-discriminatory criteria that are related to the subject matter of the contract and proportionate to its scope."¹⁵

The administration must also ensure that candidates have equal access to the documents and information relating to the public procurement contract. This is stipulated in Article 63 of Presidential Decree No. 15-247 regulating public procurement and public service delegations,

¹¹ El-Lil Ahmed, Lectures Delivered to Second-Year Master's Students, Faculty of Law and Political Science, Department of Law, Specialization: Administrative Law, Ahmed Draia University, Adrar, Algeria, 2019.

¹² Qasdi Faiza, Professional Ethics in the Field of Administrative Contracts: A Comparative Study, Arab Center for Publishing and Distribution, 1st ed., Egypt, 2015, p. 189.

¹³ See Articles 8 and 9 of Presidential Decree No. 15-247 of 16 September 2015 regulating public procurement and public service delegations, Official Gazette of the People's Democratic Republic of Algeria, No. 50, issued on 20 September 2015.

¹⁴ See Article 16, paragraph 5, of Law No. 23-12, op. cit.

¹⁵ See Article 54, paragraph 2, of Presidential Decree No. 15-247, op. cit.

which provides: "The contracting authority shall make the tender specifications and the documents referred to in Article 64 available to economic operators. These documents may be sent to any candidate who requests them."¹⁶

There are numerous provisions in Presidential Decree No. 15-247 that enshrine the principle of equality. However, this principle is not applied absolutely in all circumstances, as the contracting authority enjoys certain prerogatives vis-à-vis competing bidders. It may impose additional conditions on applicants, such as requiring specific or specialized experience or particular certificates that are available only to certain categories of prospective contractors. The administration also has the authority to exempt some applicants from certain requirements.¹⁷

Among these exceptions is the granting of a national preference margin for the purpose of protecting domestic products. The legislator grants the national economic operator an additional evaluation coefficient under the national preference margin. The purpose of this incentive is to ensure equal opportunities between national and foreign economic operators, while also encouraging national investment and supporting its position within the national economy.¹⁸

Presidential Decree No. 15-247 also provides specific incentives for small and medium-sized enterprises (SMEs). Article 85, paragraph 3, requires that: The capacities of small and medium-sized enterprises must be taken into account when establishing qualification requirements, since imposing excessively stringent conditions in the tender specifications would inevitably lead to the disappearance of this category of enterprises from the country's economic landscape.¹⁹

Governance of the Principle of Transparency in the Award of Public Procurement Contracts

The principle of transparency constitutes a safeguard for ensuring open competition among candidates for public procurement contracts without exclusion or arbitrary action on the part of the administration. It is regarded as the foundation for establishing the principles of equality and competition among bidders.

The Mandatory Public Notice System as a Guarantee of the Principle of Governance

The principle of public announcement of competition is established as a mandatory requirement. This is reflected in the legislator's obligation to resort to public notice through the publication of tender notices in their various forms, rather than by direct agreement, in order to provide all candidates with an equal opportunity to compete and to give effect to the principle of equality among them.²⁰

¹⁶ See Article 63 of Presidential Decree No. 15-247, op. cit.

¹⁷ Beljilali Belaid, *Legal Protection of Competition Rules in Public Procurement*, New University Publishing, Algeria, 2019, pp. 24–25.

¹⁸ Article 83 of Presidential Decree No. 15-247 provides:

"A preference margin of twenty-five percent (25%) shall be granted to products of Algerian origin and/or enterprises governed by Algerian law whose majority share capital is owned by resident Algerian nationals, with respect to all categories of public procurement contracts referred to in Article 29..."

¹⁹ Ammar Boudiaf, *Explanation of the Regulation of Public Procurement* (Pursuant to Presidential Decree No. 15-247 of 16 September 2015), Part I, Jousour Publishing and Distribution, 6th ed., Algeria, 2017, pp. 103–105.

²⁰ Jalil Mouni, *The New Regulation of Public Procurement* (Pursuant to Presidential Decree No. 15-247), Moufem Publishing, Algeria, 2018, p. 42.

The legislator has made the announcement of the intention to contract through press publication compulsory, regardless of whether the procurement procedure is an open tender, a tender with minimum qualification requirements, a restricted tender, a competition, or, where applicable, a negotiated procedure following consultation. The notice must be drafted in Arabic and in at least one foreign language and must be published in the Official Bulletin of Public Procurement Contracts and in at least two nationally distributed daily newspapers.²¹

The legislator has also required the publication of the provisional award of the contract in the same newspapers in which the tender notice was published, whenever possible, indicating the contract price, the execution period, and all the elements that justified the selection of the successful bidder.

Transparency in public procurement is not limited to publishing the procurement notice in daily newspapers; rather, this principle extends throughout all stages of the procurement process, thereby embodying the concept of governance in the management of public procurement contracts and protecting them from any suspicion of corruption. Accordingly, bidders are informed of the date on which tenders will be opened, as well as the exact time of the opening session, and they may attend the opening in person.

Furthermore, after completing the internal evaluation of the submitted tenders, the competent committee is required to disclose all information relating to the evaluation process and to identify the provisionally successful bidder by publishing a provisional award notice. Every bidder is also entitled to submit an appeal before the Public Procurement Committee.

To further strengthen transparency and impartiality, the legislator, through Law No. 23-12 of 5 August 2023, establishing the general rules governing public procurement, created the National Public Procurement Council as an advisory body and as the authority responsible for adjudicating procurement-related appeals.

Among the legal provisions enshrining this principle is Article 9 of the Law on the Prevention and Combating of Corruption, which recognizes transparency as one of the fundamental principles governing public procurement by providing that: "The procedures applicable in the field of public procurement shall be based on the principles of transparency, fair competition, and objective criteria..."

To further reinforce this principle, Law No. 23-12 of 5 August 2023, establishing the general rules governing public procurement, introduced the mandatory publication of procurement notices through the written press, the electronic press, and the electronic public procurement portal under Article 46. This represents a development from Presidential Decree No. 15-247, whose Article 203 merely provided for the establishment of an electronic public procurement portal managed jointly by the ministry responsible for finance and the ministry responsible for information and communication technologies. All these measures strengthen the principle of transparency in public transactions and keep pace with technological developments toward better governance of public procurement.

²¹ See Article 61 of Presidential Decree No. 15-247, op. cit.

Section Two: Mechanisms for Implementing Governance in Public Procurement

First: The Digitalization of Public Procurement Procedures in Algerian Legislation

The development of information and communication technologies has affected the procedures for awarding public procurement contracts, leading to the introduction of a new approach to procurement procedures that is compatible with these technological developments. Accordingly, the Algerian legislator has sought to establish a dedicated electronic system (the electronic portal) to implement these procedures through the enactment of legal provisions regulating its operation.

1. The Electronic Public Procurement Portal

As part of its efforts to implement e-government, Algeria has sought to modernize the public procurement process at all its stages. The first legislative basis for this was provided in Presidential Decree No. 10-236 (repealed) regulating public procurement, pursuant to Articles 173 and 174 thereof, as well as in the Ministerial Decision of 17 November 2013, which specifies the content of the electronic public procurement portal and the procedures governing its management²². This approach was subsequently reaffirmed in Article 203 of Presidential Decree No. 15-247 concerning public procurement and public service delegations, and Article 105 of Law No. 23-12, establishing the general rules governing public procurement. These legal provisions authorize the publication and exchange of documents and information relating to public procurement, as well as the conduct of procurement procedures by electronic means.

The Concept of the Electronic Public Procurement Portal

The electronic public procurement portal is defined as a specialized website dedicated to public procurement. It serves as a comprehensive platform for all public contracting authorities involved in public procurement, as well as for all parties interested in this field. Its purpose is to facilitate the publication and exchange of documents and information relating to public procurement, as well as to enable the award of public procurement contracts through electronic means.²³

The electronic portal constitutes a unified gateway to a wide range of electronic services and applications operating within a specific sector. It is designed to serve a category of users with similar interests by bringing together content from different sources that incorporates communication and information on a broad regional basis founded on the principles of participation and interaction.²⁴

The Algerian legislator has sought to eliminate the paper-based nature of public procurement procedures by establishing this electronic portal and enabling contracting authorities to use modern means of communication in the procedures for awarding public procurement contracts.

²²Ministerial Decision of 17 November 2013 determining the content of the electronic public procurement portal and the procedures for the electronic exchange of information, Official Gazette of the People's Democratic Republic of Algeria, No. 21, issued on 9 April 2014.

²³ Ben Salem Bouabdellah Oudan and Mohamed El Bachir Mekrane, "The Electronic Public Procurement Portal toward Better Public Service within the Framework of E-Government," Finance and Markets Journal, Abdelhamid Ben Badis University, Mostaganem, Vol. 2, No. 2, 2015, p. 111.

²⁴ Hichem Messaoudi, "A Reading of the Laws Regulating the Functions of the Algerian Electronic Public Procurement Portal," Comparative Legal Studies, Hassiba Ben Bouali University, Chlef, Vol. 7, No. 2, 2021, p. 279.

The portal contributes to saving time and effort, facilitates access to information, and enables the secure exchange of documents by both contracting authorities and the economic operators dealing with them.

Functions of the Electronic Public Procurement Portal

The electronic public procurement portal includes a range of functions that enable economic operators, contracting authorities, and all stakeholders interested in public procurement to access it in order to meet public needs and serve the requirements of the public interest. These functions include the following:

1- Publication

Electronic publication refers to the digital storage, processing, transmission, dissemination, and display of information through communication networks by electronic or digital means. This information may take the form of texts, images, or graphics that are processed electronically.²⁵ It is also defined as the use of electronic devices in various administrative production activities and in the distribution of information to users, in a manner consistent with publication through traditional methods.²⁶

Pursuant to Article 3 of the Ministerial Decision of 17 November 2013, referred to above, the electronic portal shall publish the following information and documents:

- Legislative and regulatory texts relating to public procurement.
- Legal consultations relating to public procurement.
- The list of economic operators prohibited or excluded from participating in public procurement contracts.
- Any document or information related to the subject matter of the portal.
- The projected programs of contracting authorities' projects, the lists of contracts concluded during the previous financial year, and the names of the enterprises awarded those contracts.
- Reports issued by contracting authorities concerning the execution of public procurement contracts.
- The list of enterprises whose classification and qualification certificates have been withdrawn.
- Price index figures.

2- Registration

The electronic portal provides both contracting authorities and economic operators with an electronic account on its dedicated network, enabling them to carry out their transactions electronically through the registration process.

This process is set out in Article 4 of the Ministerial Decision of the Minister of Finance dated 17 November 2013, which includes the following:

- Registration of contracting authorities through the electronic portal.

²⁵ Ahmed Nafea Al-Madadha, *Electronic Publishing and Information Protection*, Dar Al-Safa for Publishing and Distribution, Jordan, 2011.

²⁶ Badr Ahmed, *Library and Information Science: Studies in Theory and Subject Relationships*, Dar Al-Gharib, Cairo, 1996, p. 309.

- Registration of economic operators through the electronic portal.
- Encoding of documents.
- Electronic signature of documents.
- Any other function necessary to ensure the proper operation of the electronic portal.

3- Information Collection

The same Ministerial Decision provides for the establishment of a database for the collection of information through the electronic portal. Pursuant to Article 5, this database includes information relating to:

- Contracting authorities.
- Economic operators and their administrative files.
- Public procurement contracts.
- Economic statistical records.
- The exchange of documents and information.
- Publications available through the electronic portal.

4- Management

Pursuant to Article 6 of the same Ministerial Decision, the management of the electronic portal includes, in addition to hosting the information technology infrastructure, the management of systems, networks, and databases; management of access to the portal; maintenance of the portal; ensuring the continuity, availability, and accessibility of the services provided through the portal; and managing technical developments by incorporating new functionalities.

In addition, the electronic portal enables users to subscribe to an information dissemination service concerning one or more specific service-related topics and to choose the preferred means of receiving such information, such as e-mail, mobile phone, or other modern communication methods.²⁷

The portal also enables users to search for and access the content they wish to consult or retrieve.

2. Electronic Publication of Public Procurement Contracts

Electronic publication is one of the most important procedures that the administration is required to observe when awarding public procurement contracts, while respecting the fundamental principles governing public procurement, particularly the principles of transparency and equality in the award of public contracts, in order to ensure open competition among economic operators. These principles constitute some of the most important foundations for the lawful and proper award of public procurement contracts, as well as for their proper execution. This is reflected in Articles 105 to 107 of Law No. 23-12 of 5 August 2023, establishing the general rules governing public procurement.

As a result of technological transformation, the administration has become able to use electronic means for publishing procurement notices and for receiving applications or tenders electronically. Freedom of competition in electronic public procurement means providing all persons who satisfy the prescribed conditions with the opportunity to submit their applications

²⁷ Farouk Mohamed Ahmed Al-Abasiri, *Subscription Contracts for Information Databases via the Internet*, Dar Al-Jami'a Al-Jadida for Publishing, Egypt, 2002, p. 20.

in accordance with the requirements announced by the contracting authority. Consequently, electronic publication constitutes a genuine guarantee for attracting the largest possible number of competing economic operators.²⁸

Definition and Importance of Electronic Publication

The process of awarding a public procurement contract begins with the publication of the contract conditions.

This consists of informing all parties wishing to contract with the administration particularly those meeting the financial and technical requirements established in advance by the contracting authority of the procurement opportunity, as well as notifying them of the procedures for obtaining the tender specifications, the required technical specifications, and the time and place for conducting the relevant procurement procedure.²⁹

Electronic publication of administrative contracting may also be defined as: "The issuance of an invitation to the public by the administrative authority that intends to conclude a specific contract, in accordance with the conditions set out in the invitation to contract, with the aim of receiving tenders that comply with those conditions within a specified period through the use of electronic means."³⁰

The publication of a procurement notice is mandatory, as it constitutes both a formal and substantive procedural requirement reflecting the administration's neutrality and transparency. It opens the door to competition by allowing the largest possible number of interested parties who satisfy the prescribed conditions to express their intention and willingness to participate in the award of specific public procurement contracts through electronic means. These electronic means vary and evolve in line with developments in communication systems and information technology.³¹

Article 46 of Law No. 23-12, establishing the general rules governing public procurement, clearly provides that publication is also mandatory through the electronic public procurement portal, under the conditions to be determined by a decision of the Minister responsible for Finance, with respect to the procurement procedures referred to in Articles 39 and 42 of the same law.

In implementation of this approach, Article 107 of Law No. 23-12 provides that: "Contracting authorities shall make the procurement solicitation documents available to bidders or candidates for public procurement contracts by electronic means, according to a timetable to be determined by a decision of the Minister responsible for Finance."

The legislator went even further by requiring the contracting authority to publish procurement notices through the electronic press, which was not expressly mentioned in Presidential Decree

²⁸ Kheireddine Faiza, "Electronic Publication as a Means of Attracting the Largest Possible Number of Competitors in Public Procurement in Algeria," *Journal of Legal and Economic Research*, Aflou University Centre, Laghouat, Vol. 106, No. 2, 2023, p. 849.

²⁹ Abdel Salam Nour Eddine, "The Role of Publication in Strengthening the Principle of Transparency in Public Procurement as a Mechanism for the Prevention of Corruption," *Journal of Legal and Economic Research*, Aflou University Centre, Laghouat, Vol. 4, No. 2, 2021, p. 323.

³⁰ Kheireddine Faiza, *op. cit.*, p. 859.

³¹ Abdel Salam Nour Eddine, *op. cit.*, p. 327.

No. 15-247. Joint Ministerial Decision No. 194 of 9 July 2025³² provides that: "Candidates or bidders for public procurement contracts shall respond to the invitation to competition by electronic means, in accordance with the timetable referred to above."

Here, the mandatory nature of the principle of public notice is clearly evident. The legislator requires contracting authorities to publish invitations to tender in their various forms, including through the electronic public procurement portal, in order to ensure that all candidates have the opportunity to compete and to give effect to the principle of equality among them.

Publication constitutes an effective means of achieving the intended objective of informing the public about various contractual opportunities. Its primary purpose is to attract the largest possible number of economic operators or interested parties to the procurement opportunity by enabling them to consult the electronic public procurement portal through electronic means or an online platform.³³

A comparison between electronic publication and traditional publication of public procurement notices demonstrates the significant advantages of the former, including:

1. Rapid dissemination of procurement notices and time savings. Electronic publication procedures are carried out through registration on the electronic public procurement portal, which was established specifically for this purpose. Economic operators communicate with contracting authorities through their portal accounts and receive all updates relating to public procurement, including relevant information and data, with the possibility of storing such information for future use in procurement procedures or as documentary evidence.³⁴
2. Protection of public funds and reduction of contracting authorities' expenditure. Electronic publication relies on communication networks rather than paper documents and physical files, thereby reducing operational costs and storage requirements. It also enhances the ability to meet public needs with fewer resources, contributing to the sustainability and preservation of public funds.
3. Faster interaction between contracting authorities and economic operators. Under the traditional publication system, interaction between contracting authorities and economic operators generally takes place over a relatively long period. By contrast, under the electronic publication system, communication occurs within much shorter timeframes, enabling contracting authorities to disseminate procurement notices and communicate easily with the largest possible number of economic operators in a shorter period of time.
4. Continuity of publication. Electronic publication remains continuously accessible, day and night, without interruption. Consequently, geographical distance between contracting authorities and candidates does not hinder access to procurement notices.
5. Greater reliability and data protection. Electronic publication offers a higher level of reliability and better protection of data than traditional publication, which is more susceptible to damage, loss, or alteration.

³² Joint Ministerial Decision No. 194 of 9 July 2025 determining the conditions and procedures governing publication by contracting authorities through accredited electronic press outlets in the award of public procurement contracts.

³³ Kheireddine Faiza, *op. cit.*, p. 851.

³⁴ Abdel Salam Nour Eddine, *op. cit.*, p. 324.

6. Freedom of access to procurement notices. Electronic publication gives effect to the principle of competition by ensuring that procurement notices remain continuously available and automatically accessible to all interested parties through information published on the Internet.

7. Promotion of the principle of equality. Electronic publication guarantees equal treatment of economic operators, without discrimination, in their dealings with contracting authorities in terms of rights and obligations. Procurement notices are made available to everyone through electronic media, allowing the largest possible number of national and foreign economic operators to access them.

8. Strengthening the principle of transparency. By making information available to the public, the administration promotes openness and transparency, enabling all interested parties to access information relating to the procurement contract, including its subject matter, date, value, and other relevant details.

Electronic Publication as a Mechanism for Attracting the Largest Possible Number of Competitors

Electronic procurement notices are designed by specialists possessing expertise in artificial intelligence and advanced skills in the use of international software applications for preparing electronic advertisements in a manner consistent with the objectives of the contracting authority. The latter may employ various electronic means of publication, including websites, e-mail, and text messaging services, thereby promoting the principles governing public procurement, namely transparency of procedures, equal access to public procurement opportunities, and the protection of public funds.

The use of the electronic public procurement portal, through electronic registration, further contributes to reducing irregularities and arbitrary practices in the award of public procurement contracts by eliminating many opportunities for unlawful conduct.³⁵

Article 15 of the Ministerial Decision of 2013, which determines the content of the electronic public procurement portal, specifies that public procurement notices shall be published as follows:

- The procurement notice shall be published on the electronic portal simultaneously with its transmission for publication in newspapers and in the Official Bulletin of Public Procurement Contracts.
- Publication on the electronic portal reaches economic operators before publication in newspapers and the Official Bulletin of Public Procurement Contracts, since publication in the latter requires a longer processing period. Consequently, publication does not reach interested parties simultaneously because of the time difference between submission and publication.

Accordingly, publication of procurement notices through the electronic portal enables economic operators to become aware of procurement opportunities before they appear in newspapers and the Official Bulletin of Public Procurement Contracts, whose publication process requires a longer period. This demonstrates the advantage of speed offered by electronic

³⁵ Kheireddine Faiza, op. cit., pp. 849–879.

procurement through the rapid dissemination of procurement notices, allowing any interested economic operator to access them within a very short time.

The experience of electronic publication of public procurement contracts in Algeria has achieved considerable success and has significantly enhanced communication between the administration and both domestic and international economic operators by facilitating the disclosure of the administration's intention to conclude public procurement contracts.³⁶

Second: Awarding Public Procurement Contracts through the Electronic Portal

Following registration on the electronic portal, which enables access to the electronic public procurement portal, contracting authorities and economic operators are able to exchange information electronically. Article 10 of the Ministerial Decision of 17 November 2013 provides that access by contracting authorities and economic operators to the functions allocated to them is conditional upon their registration on the electronic portal.

The next stage is the electronic publication of the public procurement contract, which serves as the means of public notice, as discussed above. Through this process, the contracting authority announces its intention to conclude a public procurement contract while complying with all the conditions set out in Articles 62 and 65 of Presidential Decree No. 15-247, after which the following stages are undertaken.

1. Electronic Exchange of Information

Article 107 of Law No. 23-12 provides that contracting authorities shall make the documents referred to in Articles 63 and 64 of Presidential Decree No. 15-247 available to candidates. These documents may be downloaded and sent to the candidate requesting them in accordance with Article 63 of Presidential Decree No. 15-247.

Furthermore, Article 204 of the same Decree provides that contracting authorities shall make the procurement solicitation documents available to bidders or candidates by electronic means according to a timetable established by a decision of the Minister responsible for Finance.

The second paragraph of the same article, as well as the second paragraph of Article 107 of Law No. 23-12, provides that: "Bidders or candidates for public procurement contracts shall respond to the invitation to competition by electronic means in accordance with the aforementioned timetable. Any procedure carried out in paper form may be adapted for implementation by electronic means."

Article 12 of the Ministerial Decision of 17 November 2013 further provides that when bidders or candidates respond electronically to invitations to competition, they may, within the legally prescribed time limits, also submit a copy of their tender in paper or electronic form. Such copy shall be placed in a sealed envelope bearing the words 'Substitute Copy.'

After downloading the tender specifications electronically from the public procurement portal, competing bidders may submit their applications and tenders electronically to the contracting authority. This enables economic operators to avoid travelling to the contracting authority to obtain, receive, or submit procurement documents, thereby saving time, effort, and costs.

³⁶ Kheireddine Faiza, op. cit., p. 864.

Moreover, electronic exchange reduces the risk of corruption and bribery by minimizing human intervention in the public procurement process.³⁷

2. Opening of Tenders and Evaluation of Offers

The envelopes containing the tenders shall be sent to the specific address designated for the submission of bids, as indicated in the electronic invitation to tender. Subsequently, the Tender Opening and Evaluation Committee assumes responsibility for opening the envelopes and evaluating the tenders. Within the framework of internal control over public procurement, this committee is entrusted, pursuant to Article 96 of Law No. 23-12 and Articles 71 and 160 of Presidential Decree No. 15-247, with opening the tender envelopes and analyzing the offers, alternative proposals, and indicative prices, where applicable.

This committee is established by a decision of the contracting authority and is composed of qualified officials affiliated with that authority who are selected on the basis of their competence. This is in accordance with Article 96 of Law No. 23-12 and Article 160 of Presidential Decree No. 15-247, both of which authorize contracting authorities to establish a technical committee responsible for preparing a report on the evaluation of tenders.

In the context of electronic procurement, the documents transmitted through the electronic portal are used to create a database. Accordingly, the application files of bidders are electronically stored at this stage and throughout the subsequent stages, pursuant to Article 205 of Presidential Decree No. 15-247. To ensure the protection of data, Article 7 of the Ministerial Decision of 17 November 2013 provides that this shall be achieved through an encoding system. The envelopes relating to the application file and the technical and financial offers are opened by the Tender Opening and Evaluation Committee during a public session, following an invitation to attend the session issued either through the procurement notice or by separate notification.

However, Article 12 of the Ministerial Decision of 17 November 2013 provides that the substitute copy, placed in a sealed envelope bearing the words "Substitute Copy," shall not be opened unless the tender submitted electronically:

- Contains a virus;
- Is not received within the prescribed legal time limit; or
- Cannot be opened.

Where the documents comprising the administrative file contain a virus, the candidate shall be requested to resubmit them. Alternatively, the committee may open the substitute copy or repair the files where both the electronic submission and the substitute copy contain a virus.³⁸

3. Awarding the Contract or Provisional Contract Award

Upon completion of its administrative and technical tasks, the Tender Opening and Evaluation Committee records the evaluation process in a special register, which is numbered and authenticated by the authorizing officer. The evaluation report is then submitted to the

³⁷ Belghoul Abbas, op. cit., p. 48.

³⁸ Kadouj Hamama, The Public Procurement Award Process between Law No. 23-12 and Presidential Decree No. 15-247, Beit Al-Afkar, Dar El Beida, Algeria, 2023, p. 71.

contracting authority, which proceeds either to provisionally award the contract or to declare the procurement procedure unsuccessful.

For the contract to become final and acquire legal validity, it must be formally approved. Such approval is effected by the signature of the competent administrative authorities, which may be affixed either by traditional means or electronically following the enactment of Law No. 15-04.³⁹

The provisional contract award is published in the electronic newspapers that published the invitation to tender, whenever possible, indicating the contract price, the execution period, and the other factors that justified the selection of the successful bidder.⁴⁰ The publication may also appear in the Official Bulletin of Public Procurement Contracts, in the press, or on the electronic public procurement portal, as provided in Article 82, paragraph 3, of Presidential Decree No. 15-247 and Article 8, paragraph 7, of the Ministerial Decision of 17 November 2013, in the case of electronic procurement procedures.⁴¹

Conclusion

Law No. 23-12 aims to promote good governance and institutionalize governance through transparency in the management of public funds. The procedures established by this law are based on three fundamental principles: free access to public procurement opportunities, equal treatment of candidates, and transparency of procedures. Accordingly, the Algerian legislator has undertaken the digitalization of the public procurement sector in terms of both its mechanisms and procedures, transforming it into a comprehensive platform for contracting authorities, economic operators, and all interested parties, particularly civil society organizations. The law also enables the publication and exchange of documents and information relating to public procurement, as well as the award of public procurement contracts through electronic means, with the aim of accelerating procurement procedures, improving the accuracy of operations, saving time, effort, and financial resources, enhancing transparency in this sensitive sector, eliminating favoritism, nepotism, and bribery, and strengthening fair competition among economic operators by facilitating access to public procurement opportunities.

It may be concluded that there is both political and legislative willingness to advance this process; however, there is still no clearly defined strategy in this field due to the weakness of the digital infrastructure within public administrations and institutions, particularly in light of the shortage of qualified personnel. There also remains a genuine delay in achieving a complete transition to electronic contracting in the field of public procurement through the use of technical tools such as electronic signatures, encryption systems, and electronic archiving, as is already the case in the field of private electronic contracts (for example, electronic commerce) in many developed countries, including the European Union, and even in some developing countries, particularly the Arab Gulf States, which have made significant progress in this area.

³⁹ Law No. 15-04 of 1 February 2015 establishing the general rules relating to electronic signature and electronic certification, Official Gazette of the People's Democratic Republic of Algeria, No. 6, issued on 10 February 2015.

⁴⁰ See Article 2, paragraph 3, Joint Ministerial Decision No. 194 of 9 July 2025, op. cit.

⁴¹ Kadouj Hamama, op. cit., p. 78.

This situation is attributable to hesitation and the insufficient provision of both legal and electronic protection for such transactions.

Accordingly, the Algerian legislator, and particularly the competent departments of the Ministry of Finance, should expedite the issuance of the implementing decisions and regulatory texts relating to the digitalization of public procurement provided for under Law No. 23-12 on public procurement, in order to ensure its effective implementation in practice. This includes updating the Ministerial Decision of 17 November 2013, which determines the content of the electronic public procurement portal, its management procedures, and the methods for exchanging information electronically. It is also essential to strengthen cooperation between the public administration, universities, and scientific research institutions in order to advance the digitalization of public procurement.

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