

Electronic Contracting as a Mechanism for Enhancing Transparency in the Award of Public Procurement Contracts under the Provisions of Law No. 23–12.

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Submission date: 14/06/2026

Acceptance date: 18/09/2026

Publication date: 01/10/2026

Abstract:

The impact of technological development that the world has witnessed has extended to all fields, including public administration, which has come to rely on various modern electronic means to carry out its different functions, particularly contractual operations. As a result, what is known as modern electronic administration has emerged, whereby most public administrations in different countries have established their own websites and integrated electronic media into their contractual dealings, using Internet technology in the conclusion of administrative contracts and other competitive procedures. All of this aims to ensure a degree of transparency between contracting parties and to combat financial corruption, which has become a threat to the field of public procurement and one of the reasons that prompted the Algerian legislator to reconsider and develop a new formula capable of protecting public funds from the risk of misappropriation and waste.

Keywords: *Electronic contracting – Public procurement – Principle of transparency in contract award.*

Introduction:

Public procurement occupies an important place in the functions of the State, given its role in the provision of public services, as it represents the main artery supporting development. It is also considered the most effective system for the allocation of public funds, particularly in light of the national economy's reliance on increased public expenditure to stimulate the country's development momentum. According to the regulations governing public procurement, the awarding process follows a set of procedures that bring the contract into force, relying on the traditional administrative contracting method, mainly tendering in its various forms. This method is essentially based on human competencies,

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represented by civil servants and economic operators who carry out their duties in accordance with the law.

However, despite the existence of legal provisions governing the procedures for contract award between economic operators and contracting authorities, there remains room for the practice of corruption, even in the presence of administrative control over the awarding process. Given that public procurement is closely linked to public funds, all suspicions related to its preparation, award, and granting are primarily focused on the body responsible for organizing the various stages of the contract.

As a result of the scientific and technological development witnessed by different countries, aimed at facilitating contractual procedures between states—commonly referred to as electronic government (e-government)—Algeria has adopted the electronic contracting approach in the conclusion of its contracts as a means of modernizing administrative work and protecting public funds from various forms of corruption. It has become clear that this modern approach facilitates access to information and communication between the relevant contracting bodies at lower cost and in the shortest possible time, thereby promoting electronic administration and modernizing public services.

The following research question has therefore been raised: ***To what extent has the Algerian legislator succeeded in establishing legal provisions governing electronic contracting in the field of public procurement?***

To answer this question, the descriptive method was adopted to study the reality of electronic contracting in Algeria in general, followed by the analytical method through which the integration of electronic procedures within public procurement laws and their successive amendments was examined. Accordingly, this study is divided into two sections:

Section One: The electronic administrative contract

Section Two: The implementation of electronic contracting in Algerian public procurement law

Section One: The electronic administrative contract

Electronic contracting is among the methods recently adopted due to modern technological development, which has enabled administrations to carry out their activities through various electronic media, in order to facilitate their functioning and enhance transparency, particularly in the public procurement sector.

First: Definition of the Electronic Administrative Contract

Scholars have differed in defining the concept of electronic commerce contracts (*contrats du commerce électronique*), whether in terms of their definition or their characteristics that distinguish them from contracts in general.

Some define it as: (a contract concluded via the Internet), while others define it as (a contract concluded either via the Internet or through other electronic means of communication such as fax, telex, and telegraph).

It is also defined as “the execution or conclusion of all commercial transactions in goods and services between a business entity and another business or between a trader and a consumer, using information and communication technologies.”

It has further been defined as “an agreement concluded and performed, wholly or partially, through an international communication network using electronic data interchange, with the aim of creating contractual obligations, whereby offer and acceptance may be expressed through this medium¹.

What can be observed is that the electronic contract, in terms of the means through which it is concluded—whether the Internet, fax, telex, or fax mail—and in terms of its international dimension through the global communications network, is generally considered an international contract due to this characteristic.

However, this does not prevent the contract from being concluded between parties located within the same geographical area. Moreover, with regard to the parties to the legal relationship, it should be noted that the electronic contract is not limited to traders or consumers only; it may also be concluded between public bodies² themselves or between public administrations and consumers.

Second: Characteristics of the Electronic Contract

Similarly to traditional administrative contracts, the electronic contract—whose basis is electronic transactions—is a modern form of contract distinguished by several features, which can be summarized as follows:

1. The contract is concluded through electronic means. This feature is considered the most important distinguishing element of the electronic contract compared to traditional contracts. They do not differ in terms of subject matter or parties, but rather in the method of conclusion and means of proof. The subject matter of the contract may cover all goods and services that are legally tradable. As for the parties, they are the same as in any other contract, namely sellers, service providers, tenants, or

consumers. The contract may also be concluded between individuals and public legal entities such as institutions and public bodies.

2. These contracts are characterized by their specific nature due to their connection with a contract relating to the provision of a product or service³, initiated by the supplier without the simultaneous physical presence of the parties, using remote communication technologies in order to transfer goods and submit purchase requests from the consumer.

3. The electronic contract is characterized by an international dimension, given that the predominant means of its conclusion is the Internet, which connects most countries of the world. This characteristic has an impact on many legal issues, such as determining the applicable law and the competent court in disputes arising from electronic contracting.

4. Execution is carried out via the Internet, as there is now the possibility of intangible delivery of products or their electronic delivery, such as computer software.

5. The electronic contract is characterized by certainty, distinctiveness, and transparency in performance, and it is proved through electronic documents and electronic signatures. Electronic payment methods may also be used for settlement, such as electronic money.

6. The electronic contract is a remote communication contract in which data is exchanged through audiovisual and interactive⁴ means and thus it does not require a special legal regime, as general contract theory applies to it.

It can be observed that this contracting method ensures the realization of the general principles governing public procurement, such as the principle of free competition, equality, transparency in contracting procedures, and non-discrimination between the contracting authority and the contracting operator. This is achieved through the public entity's commitment to ensuring the information security of bidders' submissions.

Third: Tools Used in Electronic Contracting

As a general principle, and in any contract—even when concluded through electronic means—the use of contracting instruments is based on two parties through an offer and acceptance expressed as manifestations of will, which enable the conclusion of the contract. These means vary according to the contractual provisions agreed upon, and include:

- Contracting via email
- Contracting through a website
- Contracting via online chat or Internet⁵ messaging
- Contracting through an electronic intermediary

Section Two: The Implementation of Electronic Contracting in Algerian Public Procurement Law and Related Legislation

Before examining in detail, the legal provisions that clearly regulate the mechanism of electronic contracting in public procurement, it is necessary to address the most representative procedure of electronic contracting, namely the publication of the contract through various media channels adopted in each country in accordance with applicable law.

First: The publication of the contract through traditional media (newspapers – Public Procurement Bulletin)

This is the stage in which the Algerian legislator has most clearly embodied the principle of transparency in the awarding of public contracts. This is achieved by imposing on the administration the obligation to inform potential bidders and the public, through all legally prescribed means of communication (such as newspapers and broadcasting), so as to enable the largest possible number of eligible participants⁶ to take part in the contract.

1- Public Procurement Code and Delegations of Public Service

Upon examining this law, particularly Article 61, it is evident that it establishes the use of press advertising as mandatory in cases involving tendering procedures. The administration is therefore required to comply with this obligation, as competitive bidding cannot be carried out except through advertising by all legally prescribed means. As a general rule, contracting cannot take place without prior publication, in accordance with the principle “no contract without publication.”

Accordingly, the Algerian legislator has regulated the rules governing publication in detail under Article 65, stipulating the following:

- The tender notice must be drafted in both Arabic and foreign languages and must be mandatorily published in the Official Bulletin of Public Contracting Operators, as well as in at least two national daily newspapers with nationwide circulation.*

- For provinces (wilayas), municipalities, and public institutions under their supervision, the tender notice may also be subject to local publication⁷.*

The principle of transparency is further reflected in the public procurement award process during the submission of bids, where tenders are submitted from the date of publication of the notice in national, regional, or local newspapers, or in the Official Bulletin of Public Contracting Operators as defined by Decree ⁸No. 84-116 or via the public procurement portal. The submission period extends until the final hour of the deadline, depending on several factors such as the complexity of the contract and the estimated time required for preparing bids⁹). In this

regard, the administration is obliged to publish the bid submission schedule in the Official Bulletin of Public Contracting Operators and in the press notice, and to include it in the tender specifications, indicating the date of submission as well as the time of opening of both technical and financial bids, in order to ensure¹⁰ the principle of transparency.

This was reaffirmed by the Algerian legislator in Articles 36 to 39 of Law No. 23–12, which define the tendering procedure and its various forms.

2- Anti-Corruption Law (Prevention and Combating of Corruption Law):

The importance of tender advertisement has also been emphasized in Law No. 06-01 on the Prevention and Combating of Corruption, as amended and supplemented, which provides that:

- The integrity of public procurement must be strengthened during the contract award process, as publication constitutes a means of preventing crimes related to public funds.

- Transparency ensures financial efficiency for the administration, as it increases the number of bidders participating in the tendering process, thereby enabling the administration to obtain the most advantageous prices. Thus, publication serves as a mechanism for ensuring transparency and compliance with the law¹¹.

3- Ordinance No. 03-03 on Competition, as amended and supplemented:

In addition to the Anti-Corruption Law, the Competition Law also stipulates that public procurement contracts must be concluded based on the principles of fairness and transparency with regard to prices, production and distribution activities, as well as the transparency of commercial practices. It also provides that public contracts must be published and announced, and that these provisions must not hinder the performance of public service missions¹².

Specified Information Required in Tender Notices:

The Public Procurement Law requires that tender notices contain mandatory information as set out in Article 62 of Presidential Decree No. 15-247, including:

- The name, address, and tax identification number of the contracting authority.
- The method of tendering.
- Eligibility or pre-selection criteria.
- The subject of the operation.
- A brief list of required documents, with reference to the detailed list provided in the relevant tender documents.

- *The deadline for submission of bids, the place of submission, and their validity period.*
- *The requirement of a bid bond, where applicable.*

These provisions were further reaffirmed in Article 46¹³, which stipulates that publication is mandatory through the Official Bulletin of Public Contracting Operators, print and electronic press, and may also be carried out via the public procurement electronic portal under legally defined conditions.

Furthermore, bids must be submitted in a sealed envelope marked: “To be opened only by the Tender Opening and Bid Evaluation Committee”, along with references to the tender where applicable, as provided in Articles 48 and 96 of Law No. 23–12.

The Algerian legislator has thus made these data requirements mandatory in tender notices, thereby ensuring that all concerned parties are given the opportunity to participate. This is achieved by informing them of the contracting authority, the subject of the service, the type of tender, participation conditions, deadlines, required documents, and guarantees. In doing so, the legislator has reinforced the principles of publicity and equality among competitors¹⁴. The more the contracting authority complies with the legal rules governing publication, the more transparent the public procurement procedure becomes¹⁵, ensuring that all potential bidders are fully informed of the details of the contract. The notice thus guarantees equal opportunities for all competitors within a framework of full transparency. Provided that the administration respects the legally prescribed method of publication, it is not precluded from using additional means of advertisement that it considers more effective in communicating its intention to contract to the public¹⁶.

Advertisement of the Contract through Electronic Exchange of Information (Electronic Means)

The use of the Internet in the conclusion of administrative contracts, particularly in the tendering procedure¹⁷ or other competitive methods, contributes to increasing the number of competitors wishing to contract¹⁸ with the administration. It also simplifies, facilitates, and accelerates tendering procedures, bringing them closer to the concept of public auction under private law. Electronic media technologies thus allow for the expansion of competition and the enhancement of the effectiveness of contracting methods to obtain the best offers and achieve the public interest.

In comparative legislation, for instance, France and the European Union, publication is carried out through the Official Bulletin of

Administrative Contracts, the Official Journal of the European Union, as well as via the Internet and on the websites of the concerned administrative authorities wishing to contract.

At the national level, domestic law (public procurement regulation) has also referred to electronic contracting for the first time in Presidential Decree of 2010 relating to public procurement¹⁹, particularly in Article 174 thereof, followed by a 2013 decision specifying the content of the public procurement electronic portal²⁰.

Even though the Algerian legislator had already adopted electronic contracting in the civil law system since 2005, this development aimed to keep pace with the evolution of French legislation²¹ in the modernization of public procurement technologies, thereby reinforcing transparency and protecting public funds.

1. The authority responsible for electronic communication under Presidential Decree 15–247:

One of the advantages of the 2015 public procurement regulation is that it addresses methods of communication and information exchange electronically, thereby following the approach already adopted in the 2010 regulation.

An examination of the legal provisions shows that Chapter Six provides for the establishment of an electronic public procurement portal managed jointly by the Ministry of Finance and the Ministry of Information and Communication Technologies, through a joint ministerial decision. The content and operating procedures of the portal are determined by an order issued by the Minister of Finance.

It may be noted that electronic contracting in public procurement is thus institutionally framed through two main authorities: the Ministry of Finance, given the financial nature of public contracts and their link to the State Treasury, and the Ministry of Information and Communication Technologies, as the competent authority for electronic media and its implementation.

2. Procedures for electronic information exchange under Presidential Decree 15–247:

Information exchange is carried out through mechanisms established by the contracting authorities and made available to competitors, pursuant to a decision issued by the Minister of Finance. These procedures enhance competitive bidding among contractors for the award of public contracts.

In this context, the contracting authority may select the best economically advantageous offers, particularly in contracts for the

acquisition of supplies and the provision of standard services, through a ministerial decision allowing the use of:

- *An electronic reverse auction procedure, enabling bidders to revise their prices or other elements of their offers;*

An electronic catalogue in the case of a permanent procurement system under a framework contract or purchase orders, A database of offers and applications, established in compliance with applicable legislative and regulatory provisions. 203–206).

The Algerian legislator's adoption of electronic communication and information exchange in public procurement procedures aims to modernize administrative communication tools, keep pace with ICT developments, and safeguard public funds. Publication via the Internet²² for tendering procedures provides greater transparency, as it is no longer limited to a single country but extends globally through the Internet. The advantages of publishing tender notices on electronic platforms include facilitating access to information and enabling any interested party to consult administrative websites, thereby ensuring transparency and eliminating secrecy and ambiguity in public procurement procedures²³.

3. The electronic platform under Law No. 23–12 and Ministerial Decision of 2026:

Referring to Law No. 23–12, particularly Part Six entitled the National Public Procurement Council and Digitalization, the Algerian legislator dedicates Chapter Two to digitalization in public procurement.

Digitalization is defined as the process of converting any type of document into digital form, whereby images, audio, video, or files are encoded into numerical data, allowing documents²⁴ of any kind to become readable, transferable, and usable in digital form.

In this regard, Article 105 provides for the establishment of a public procurement electronic portal²⁵ managed by the competent services of the ministry under the supervision of the Minister in charge. Information exchange is conducted electronically by uploading tender documents by contracting authorities, making them available to bidders according to a timetable set by the Minister of Finance. This timetable enables bidders to respond electronically to tender invitations.

This process is integrated with paper-based procedures in a complementary manner, as the legislator aims to ensure integrity and transparency through a digital platform that structures administrative contracting within public procurement, contributing significantly to the fight against corruption and bureaucracy.

Functions of the electronic platform under the Decision of 4 February 2026:

a) Information dissemination:

The portal is responsible for publishing all documents and information, including legislative and regulatory texts related to procurement, annual procurement plans of contracting authorities, legal opinions, all public contracts concluded during the previous budget year, lists of excluded or banned economic operators, price reference indices, published notices, and all related documents and information.

b) Management and registration:

The platform ensures the registration of contracting authorities and economic operators, provides search and notification tools, enables information exchange, document upload and download, as well as electronic submission and signature of bids.

To ensure proper functioning of the digital procurement process, several conditions must be observed:

- Ensuring the integrity and confidentiality of electronically exchanged documents;*
- Monitoring system events and ensuring interoperability of information systems;*
- Secure electronic archiving digital documents.*

Registration conditions on the platform:

Registration is carried out by completing a form that provides a username and password, enabling both contracting authorities and economic operators to access their designated functions. In the case of consortium bids, tender documents are published by the coordinating contracting authority. To reinforce transparency, the technical specifications of the platform must not be discriminatory so as not to create barriers for economic operators.

Conclusion:

The reliance on modern technology through electronic information exchange in tendering procedures represents a modern approach adopted by Algeria, in line with other countries seeking to modernize their contracting systems, particularly public procurement as an administrative contract. This approach aims to save time, detect irregularities, enhance administrative transparency, and achieve the objectives of digital transformation across public services. Among the main findings:

- Electronic contracting is a modern method aligned with technological developments, ensuring speed and lower cost;*

- *The Algerian legislator has adopted modern technologies similarly to French legislation;*
- *The activation of electronic administration reduces financial corruption, bribery, and nepotism while promoting transparency and the rule of law;*
- *Despite legal recognition from the 2010 decree up to 2023, provisions on electronic contracting remain relatively ambiguous, even after the issuance of the 2026 electronic portal decision.*

Based on these findings, the study recommends:

- *They need to introduce detailed legal provisions governing electronic contracting procedures, specifying the competent authorities and the stages from tender advertisement to final award;*
- *The necessity of implementing this system in practice rather than limiting it to legal texts, to strengthen the functioning of the electronic portal and combat digital corruption in public procurement;*
- *The importance of drawing on comparative international experiences in this field to keep pace with technological developments and integrate them into Algerian legislation.*

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2 Majid Ragheb Al-Hilu, *ibid.*, p. 45

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17Tendering is a term introduced by the Algerian legislator in the 2015 Public Procurement Decree instead of the term "public bidding." It is "a procedure aimed at obtaining offers from several competing bidders, with the contract awarded without negotiation to the bidder presenting the most economically advantageous offer, based on objective selection criteria established prior to launching the procedure."

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