

The Algerian Legislative Framework's E-platform for Government Procurement

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Date of submission: 14/11/2024 - Date of acceptance: 17/12/2024 - Date of publication: 28/12/2024

Abstract: The principle of open competition is among the fundamental principles underpinning the formation of public contracts. It allows individuals and legal entities alike to submit proposals in line with the criteria set forth by the contracting body. To reinforce this principle, particularly in the context of digital advancements, the Algerian legislature introduced an electronic portal dedicated to public contracts. This portal serves as a robust tool for fostering competition among bidders and, at the same time, plays a crucial role in combating corruption. Public contracts, being major financial channels, are particularly susceptible to corrupt practices

Keywords: Digital portal, public contracts.

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Introduction:

The global landscape is witnessing substantial strides in information systems, paralleled by transformative advancements in communication technology. Together, these developments have ignited what is often termed the "ICT Revolution" or the broader "Digital Transformation," bringing forth concepts such as e-governance. In line with this, governments are increasingly integrating digital solutions across various sectors, including public administration, which collaborates with economic operators to meet citizens' essential needs. This progress in digital infrastructure has driven legislators to establish an online mechanism for managing public procurement contracts, utilizing a centralized digital portal.

In light of these advancements, a critical question emerges: What is the foundational legal framework governing the online public procurement portal, and in what ways does it support the principle of fair competition?

To examine this question thoroughly, the response is divided as follows:

- **Section One:** The legislative foundation of the public procurement digital portal
- **Section Two:** The portal's role in enabling and overseeing the public procurement process

Section One: The legislative foundation of the public procurement digital portal

Historically, public procurement contracts have been established through administrative processes, with open bidding as the standard method and direct negotiation used sparingly as an alternative. However, in response to the demands of globalization and technological innovation, alternative methods have emerged, allowing tenders to be posted and bids to be received through a specialized online portal. This portal, exclusively designed for public procurement, enables enhanced access to tender information (Topic One) and facilitates the submission of offers through a streamlined electronic process (Topic Two).

First Topic: Overview of the Digital Portal and Public Procurement

The Algerian secondary lawmaker introduced this digital platform under Presidential Decree 10-236, encompassing the Public Procurement Code¹, assigning it various responsibilities within public procurement processes. Before discussing this portal's regulatory framework, it is essential to first outline the portal itself in Section One, followed by a discussion on public procurement in Section Two.

Section One: Understanding the Digital Portal for Public Procurement

The Algerian legislature developed the digital portal to facilitate communication between contracting bodies and economic participants. This platform is jointly overseen by

¹ Presidential Decree No. 10-236 on Public Procurement Law, repealed by Presidential Decree No. 15-247 on Public Procurement Law and Public Utility Delegations, issued on 2 Dhu al-Hijjah 1436 (corresponding to September 16, 2015), which regulates public procurement and public utility delegations, published in Official Gazette No. 50 on September 20, 2015, p. 03.

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the Ministries of Finance and Information and Communication Technology, in line with Article 204 of Presidential Decree 15-247, which includes the Public Procurement Code and regulations concerning public service contracts.

Section Two: Defining Public Procurement in Algerian Regulations

Public procurement is defined in Article 2 of Presidential Decree 15-247, which is part of the Public Procurement Code, as “Documented agreements as outlined by current legislation, formed with economic entities for compensation, under the provisions set forth in this decree, to fulfill the contracting authority’s requirements in construction, supplies, services, and studies.” Consistently, all public procurement laws define this category of administrative agreement, highlighting the requirement for documented contracts. Nevertheless, the Public Procurement Code includes exceptions to this rule².

Second Topic: Purpose and Content of the Digital Portal for Public Procurement

The digital public procurement platform is intended to connect contracting authorities’ requests with economic participants electronically (Section One) and contains various information managed by the Ministry of Finance (Section Two).

Section One: Goals of the Digital Platform for Public Procurement

Article 4 of the relevant decree specifies key objectives of the digital platform, including:

- **Registration of Contracting Entities Through the Platform:** Designed to enable all entities intending to engage in public procurement contracts to register, outlining essential terms and provisions of these agreements.
- **Registration of Economic Participants via the Platform:** A fundamental purpose of this platform, allowing identification of qualified economic participants and excluding those ineligible for participation.

² While the legislator emphasized the element of written documentation in various public procurement laws, an exception to this rule is provided in Article 12 of Presidential Decree No. 15-247, which states: “In cases of urgent necessity due to an imminent threat to the property or investment of the contracting authority, or public security, where compliance with the deadlines and procedures of public procurement is not feasible, provided that the contracting authority could not foresee the circumstances causing the urgency and that the situation is not due to deliberate delays on its part, the head of the public authority, minister, governor, or relevant municipal council president may authorize, by a justified decision, the commencement of service implementation before the conclusion of the public procurement contract. These services should be limited only to what is necessary to address the aforementioned circumstances. If urgent necessity does not permit the preparation of the contract before commencing the service, the agreement between the parties shall be documented through an exchange of letters. At the end of these procedures, the contracting authority must regularize the legal situation of these procedures, in deviation from the provisions of Article 3 above, within six (6) months from the date of signing the aforementioned decision, if the operation exceeds the amounts specified in the first paragraph of Article 13 below, and submit it to the competent external public procurement control authority.”

- **Advanced Search Using Multiple Criteria:** Establishes the essential benchmarks for awarding public procurement contracts, such as financial, technical, or other criteria stipulated in the Public Procurement Code and public service delegations.
- **Real-time Updates and Notifications:** Since public procurement is directly linked to government efforts to fulfill public needs and serve societal interests, the platform provides real-time updates, ensuring relevant changes are adopted and implemented.
- **Document Access and Submission:** The platform enables users to obtain, download, and submit all necessary documents related to public procurement processes.
- **Legal Commitments Through the Platform:** Offers a legally recognized assurance, defined by the Algerian legislative authority, within the contractual specifications of public procurement agreements, providing convenient access for contracting entities.
- **Enhanced Information Sharing Between Contracting Entities and Economic Participants:** Functions as a contemporary solution aimed at reducing procedural delays, simplifying processes, and improving access to essential public procurement information³.
- **Document Security Through Encryption:** Uses secure coding methods to protect transmitted or shared data, making information unreadable to unauthorized individuals and requiring specific decryption protocols for access.
- **Timestamping for Document Tracking:** Ensures each document submitted within the public procurement system is date- and time-stamped, supporting accurate record-keeping and tracking.
- **Training on Digital Commitments:** Provides necessary training on digital commitment procedures for economic participants, with electronic commitment serving as a streamlined method for contractors interacting with the administration.
- **Electronic Document Authentication:** A significant new feature introduced by the platform, enabling secure, digitally verified document signing and submission.

Further Capabilities of the Digital Interface:

The platform incorporates various advanced tools aimed at improving user engagement and ensuring seamless operations, including:

- **Activity Register:** Tracks each action taken within the system, promoting transparency and security,
- **User Guidance Modules:** Offers instructional support to assist individuals in navigating the platform's functions,
- **Essential Operational Tools:** Comprises extra resources necessary to maintain smooth functionality and user accessibility.

³ Hazem Salah El-Din Abdullah, *Contracting by the Administration via the Internet*, no edition, New University House, Egypt, 2013, p. 163.

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• Section Two: Resources Available on the Online Platform

The decree from November 17, 2013, defines the elements and content of the public procurement digital system, including protocols for data administration and secure exchange of information. Resources available include:

- Legal Framework and Directives on Government Tenders: Includes full texts of applicable laws, policies, and procedural guidelines,
- List of Banned Participants: Contains names of individuals and entities excluded from government contracting activities,
- Record of Disqualified Bidders: Details parties' ineligible for procurement engagement due to non-compliance or rule violations,
- Planned Projects of Contracting Entities: Features upcoming initiatives, a record of awarded contracts from the prior fiscal period, and identifies awarded firms or groups,
- Contract Execution Reports from Agencies: Presents detailed records of outcomes related to contract implementation, as reported by agencies,
- Index of Entities with Revoked Qualifications: Lists companies whose certifications for classification and competence have been canceled,
- Pricing Standards References: Supplies pricing benchmarks to ensure fairness and uniformity in procurement dealings,
- Relevant Files and Data: Includes any supporting information pertinent to the platform's objectives, enhancing accessibility and transparency in government contracting.
- This version thoroughly describes the objectives and features of the portal, offering a clear view of each component within Algeria's public procurement framework.

Section Three: Oversight and Administration of the Digital Public Procurement Platform

The decree governing the administration of this platform underscores the importance of establishing a comprehensive database. This database is designed to collect essential information through the platform, including details about contracting bodies, registered economic participants, their official records, public procurement agreements, economic data on public sector demands, as well as systems for document and data sharing between contracting entities and economic operators, and platform-related publications.

In addition to setting up the database, the administration of the platform encompasses the following core responsibilities:⁴

- Systems, Networks, and Database Management: Overseeing all operational and technical aspects, ensuring the infrastructure operates smoothly and efficiently,

⁴ Article 6 of the decree regarding the electronic portal.

- **User Access Control:** Regulating and securing access for authorized users, providing role-specific permissions to ensure the correct use of the platform,
- **Ongoing Maintenance and Cybersecurity:** Implementing regular updates and security measures to protect against digital threats, ensuring the integrity and safety of all data,
- **Ensuring Service Reliability, Continuity, and Availability:** Maintaining uninterrupted, reliable access to the platform for all users, prioritizing accessibility for public and private entities alike,
- **Technical Upgrades and Functional Enhancements:** Continually updating the platform by integrating new features and optimizing existing ones to keep up with technological advancements,
- **Publication of Mandatory Information:** Regularly releasing essential documents and information, as required by Article 3 of the decree, to maintain transparency and uphold legal standards

Additional measures include routine evaluations of the platform's efficiency, user feedback mechanisms to improve the system, and collaborative efforts between governmental bodies to ensure that the platform meets evolving legal and operational needs. These efforts collectively aim to provide a secure, accessible, and modern environment for public procurement processes.

Section Four: Safeguarding the Digital Public Procurement Platform

To protect the digital procurement platform from all possible electronic security threats, administrators are required to implement the security protocols outlined in Article 7 of the relevant decree. These protocols rest on several key principles:

1. Ensuring Document Integrity in Digital Transactions

- Formats and processes used for converting physical documents to digital form must guarantee the accuracy and completeness of information, maintaining their unaltered state.
- All documents must incorporate secure digital signatures, fully aligned with current laws and regulatory standards.
- The identities of registered economic participants must be authenticated to confirm legitimacy and prevent unauthorized access.

2. Maintaining Confidentiality in Electronic Exchanges

- The privacy of all digitally transmitted documents is preserved through advanced encryption methods, strictly adhering to established legal and regulatory frameworks.

3. Tracking and Auditing Digital Activity

- An activity log records all electronic exchanges on the platform, allowing administrators to monitor interactions and maintain a record for future reference.

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- For each electronically submitted bid or proposal, an official receipt specifying the exact date and time of receipt is issued, providing assurance to participants and maintaining process transparency.

4. System Compatibility for Data Integration

- Adopted standards and protocols ensure that various digital systems can seamlessly interact, allowing smooth data sharing and integration across different platforms involved in the procurement process.

5. Secure Digital Archiving

- Digital records must be stored safely within an electronic archive, ensuring the long-term preservation of all documents, with safeguards against unauthorized access or tampering.

Additional protective measures may involve regular system vulnerability assessments, software updates to strengthen defenses against emerging cybersecurity threats, and ongoing training for administrators to keep security practices aligned with current best practices. Together, these strategies are designed to foster a secure and reliable environment, protecting the integrity, privacy, and transparency of Algeria's digital public procurement system.

Section Two: The Function of the Digital Platform in Executing Public Procurement Agreements

The digital portal dedicated to public procurement is a specialized tool for facilitating information flow between contracting entities and economic participants, operating under Public Procurement Law and Public Utility Delegations No. 15-247, as well as the aforementioned decree. This decree specifies the methods for digital information exchange related to public procurement, organized as follows:

First Topic: Data Exchange Between Contracting Entities and Economic Participants

The digital portal enables a streamlined exchange of information between contracting entities and economic participants, initiated by a mandatory registration process. Registration entails filling out, signing, and submitting the designated form associated with the decree⁵. This form can be emailed to the portal administrator or submitted in person to ensure proper verification. Once registered, contracting entities and economic participants appoint an authorized representative with a designated email address to access the platform's features and perform necessary functions. This registration process not only secures access but also establishes clear channels of communication, allowing authorized representatives to submit, retrieve, and respond to procurement-related information quickly and securely.

In addition, the portal facilitates real-time updates, notifications of new public tenders, access to contract specifications, and the ability to submit bids directly through the platform. By centralizing these tasks, the portal significantly reduces administrative delays and enhances transparency in the procurement process. These features collectively create an

⁵ See Article 10 of the aforementioned decree containing the legal provisions of the electronic portal.

efficient, user-friendly environment that supports both compliance and accessibility within the Algerian public procurement framework.

Section One: Data Exchange Protocols for Contracting Entities

The process of data exchange for contracting entities follows the guidelines set forth in Article 9 of the specified decree, including the following components:

- **Key Documents:** This involves providing terms of reference, subscription declarations, and commitment letters for investment, as needed, to establish clear terms for prospective contracts.
- **Supplementary Information:** Additional supporting documents and relevant information are shared as necessary to ensure comprehensive communication.
- **Public Announcements:** This includes official notices of tenders, invitations for preliminary selection, consultation requests, and retrieval of submitted offers, all managed digitally through the platform.
- **Clarification Requests:** Authorities may request additional details or clarifications from bidders to support evaluation or complete offers when required.
- **Provisional Contract Awards:** Temporary decisions on awarding public procurement contracts are shared to inform participants of interim selections.
- **Notifications of Procedure Status:** Contracting entities may declare a procedure unsuccessful, cancel a procedure, or revoke provisional contract awards, with full notifications communicated to involved parties.
- **Responses to Inquiries:** Answers are provided to questions concerning the provisions outlined in the terms of reference to ensure all participants have a clear understanding.
- **Evaluation Feedback:** Results from the evaluation process, including responses to appeals, are shared to uphold transparency and compliance.

This structured approach to information exchange enhances coordination, enabling efficient and timely sharing of critical information to ensure a fair and streamlined process.

Section Two: Data Exchange Procedures for Economic Participants

The digital exchange of information for economic participants follows the instructions detailed in Article 9/3 of the decree, covering several essential actions:

- **Registration and Commitment Documentation:** Includes declarations of subscription and signed commitment letters, required for participation.
- **Integrity Assurance:** Participants submit integrity statements to confirm compliance with ethical standards.
- **Investment Commitment:** When applicable, economic participants provide declarations related to investment commitments.
- **Clarification Requests:** Participants can request additional information or explanations regarding the terms of reference to aid in offer preparation.

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- **Applications for Preliminary Selection:** For procedures with an initial selection phase, applications are submitted through the portal.
- **Submission of Offers:** Technical and financial proposals are submitted in line with platform requirements.
- **Updated Offers:** If applicable, revised proposals can be provided as part of the negotiation or re-evaluation process.
- **Request for Evaluation Outcomes:** Participants can submit appeals or request results regarding the evaluation of offers to ensure fairness and transparency.

These procedures create a secure and standardized exchange system, fostering clarity, accountability, and efficient communication within Algeria's public procurement framework. Regular updates and real-time notifications further support the transparency and smooth execution of public procurement processes on the digital platform.

Second Topic: Methods for Finalizing Public Procurement Agreements Using Digital Systems

The objective of government administration is to act in the public interest, whether utilizing traditional procurement processes or digital methods administered through the online platform. These approaches follow general contracting rules and comply with legal frameworks governing contract formation, including core procurement principles and unique procedural requirements. Contracts may be concluded through standard methods or exceptional circumstances as outlined in Algerian public procurement laws. Furthermore, Algerian lawmakers are implementing new technologies in this domain, such as digital processes anchored by secure electronic signatures. Each aspect of this system will be explored in detail in the sections below.

Section One: Limitations on Freedom in Digital Contracting

1. **Principles of Competition and Fair Access:** Digital contracts must align with the principles of free market competition, ensuring equal opportunities for all qualified bidders, thereby preventing unfair practices or exclusions.
2. **Confidentiality Protections:** Data exchanged through the platform, from submitted offers to sensitive company information, must be kept secure. Encryption protocols and access controls are enforced to safeguard the privacy of all participants.
3. **Transparency in Process:** The digital system is required to disclose essential details, such as bidding procedures, evaluation criteria, and award notifications, to maintain transparency and uphold public trust in the contracting process.

In addition, the system incorporates mechanisms for real-time updates, ensuring that all participants are informed of relevant developments promptly. These measures not only streamline the contracting process but also strengthen accountability within Algeria's public procurement framework, reflecting the legislative commitment to fostering an equitable, secure, and accessible environment for public contracts managed through digital means.

4. Freedom to Compete in Public Procurement Contracts

The fundamental guideline in public procurement is that all economic participants are treated equally and have unrestricted access to compete for contracts. This freedom is intrinsically tied to transparency, allowing greater visibility and openness. The adoption of digital methods has further enhanced this open competition by making contract information accessible online to a broader spectrum of companies, from small businesses to large corporations. Posting contract announcements on the portal expands the range of companies able to participate and facilitates more extensive interactions between economic operators and contracting bodies. As stated by Algerian legislation in Article 11 of the decree concerning the digital platform, contracting entities must provide a downloadable link within the public announcement for procurement documents available online. This requirement ensures immediate access for all interested applicants, promoting fairness by allowing all eligible companies equal opportunity to review contract specifications. Additionally, the digital platform offers features such as automatic notifications for newly posted tenders, progress tracking for submitted applications, and established deadlines, which collectively simplify the participation process. This electronic approach encourages a competitive environment that includes a wide variety of economic actors, strengthening transparency, efficiency, and inclusivity in Algeria's public procurement process.

5. Upholding Confidentiality and Openness in Digital Administrative Contracts

Confidentiality and openness are closely linked and universally upheld across legal frameworks, especially within the context of public administration. The digital approach enhances both by enabling announcements and essential information to be distributed online, ensuring equal and immediate access to all parties⁶. Through internet-based publication, details are shared with transparency, fostering an environment where data security and access rights are balanced. This system ensures that sensitive contract data remains protected while also maintaining open access to general procurement information. By reaching a wider audience simultaneously, the electronic platform also prevents any information advantage, thereby reinforcing equal opportunity and fair competition.

Additional benefits include robust data encryption to secure confidential elements of each contract, logging mechanisms to track document access, and compliance protocols that align with national and international data privacy standards. These digital enhancements support a secure yet transparent procurement process, safeguarding both the confidentiality of sensitive documents and the integrity of public access, contributing to a trustworthy and efficient contracting environment.

Section Two: Protocols for Tender Submissions and Digital Negotiations

Following the announcement of a public procurement contract on digital platforms, economic entities respond by submitting a version of their proposal, either as a physical document or in digital form, as specified by Article 12 of the decree. This version, labeled "Alternative Copy," is placed in a sealed envelope and delivered to the contracting authority

⁶ Kaidar Abdelkader Saleh, *Ibid.*, p. 162.

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within the required timeframe. This backup copy is accessed only if the electronically submitted version encounters specific issues, such as:

- Detection of a virus within the digital file,
- Failure to arrive within the stipulated legal timeframe,
- Inability to open the electronic document.

If the alternative copy is not needed, it is securely disposed of to maintain confidentiality and avoid unnecessary storage.

Per Article 13, for documents marked as confidential or those that are particularly large, the contracting authority may inform the economic participant through a physical or electronic notification. Furthermore, the announcement or invitation to bid must clearly specify the address from which relevant documents can be obtained.

In cases where a submitted file is infected with a virus, the contracting authority attempts to resolve the issue, such as by cleaning the file, and proceeds to evaluate the proposal as intended⁷. However, if the problem remains unsolvable, the offer is marked as invalid or incomplete due to the virus, with the issue logged, and the bidder is promptly informed.

These protocols help maintain data security and ensure a smooth evaluation process. The digital platform not only enables efficient communication between public authorities and participants but also establishes clear procedures for managing technical issues. This systematic approach enhances the reliability of Algeria's public procurement process, safeguarding both the integrity and accessibility of the electronic system.

Section Three: Digital Documentation in Public Procurement⁸

Contracts within public procurement follow the same rigorous standards as traditional agreements, though digital documentation introduces unique features, especially in relation to electronic signatures. An electronic signature is defined as a unique combination of numbers, letters, symbols, or distinct marks that securely identify the signer, authorized and verified by competent agencies. Various forms of electronic signatures are utilized in this field, including encrypted digital signatures, biometric-based signatures, confidential signatures, and secure storage of digital documents within the public procurement platform.

These digital signatures not only authenticate the identity of the individual but also enhance data integrity and prevent unauthorized modifications. The system provides a secure means for officials and contractors to endorse documents electronically, ensuring both convenience and compliance with legal standards. By incorporating advanced signature methods, the platform supports an efficient, secure, and legally sound digital environment for public procurement activities.

⁷ See Article 14 of the aforementioned decree.

⁸ Sardouk Haiba, *Public Tender as a Method of Administrative Contracting*, Al-Wafaa House, Egypt, 2009, p. 115.

Conclusion:

To conclude, Algeria's public procurement digital platform represents an essential element of its e-government strategy. This online system holds vast potential for further development, as it supports public sector goals to promote the public good while embracing technological advancements that benefit economic entities both within Algeria and internationally. By serving as a legally recognized mechanism, the portal assists authorities in finalizing procurement contracts, making processes more accessible and straightforward, and enhancing transparency in government operations.

The portal's capacity to streamline administrative tasks and broaden participation reinforces trust in public sector dealings, encouraging fairness and inclusivity. As this digital platform evolves, it paves the way for a more efficient and responsive public procurement system, which is instrumental in building a modern, digitally empowered Algerian economy. This integration of technology with administrative transparency and efficiency not only bolsters public confidence but also establishes a model for sustainable e-governance in Algeria.