

Digital Transformation of Public Procurement In Algeria: The Role and Impact of The Electronic Portal

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Abstract:

This study delves into the public procurement system a crucial pillar within the legal and economic structure. However its conventional procedural framework, rooted in paper-based processes and physical interactions, has consistently revealed a chronic inability to align with the efficiency demands of the contemporary economic landscape. Moreover it has fostered an environment conducive to practices that undermine the principles of transparency and fair competition. Consequently digital transformation emerges as a strategic imperative for re-engineering the public procurement system. The operationalization of an electronic portal is set to establish the foundation for a decisive procedure.

Key Words: Electronic Public Procurement, Electronic Portal, Transparency, Equality.

Introduction

A compelling need has emerged to transcend the traditional and bureaucratic methods governing the public procurement system. This urgency stems from the fundamental importance of public contracts, which serve as the lifeblood of government expenditure and a primary instrument for executing developmental policies. Concurrently public procurement is an area inherently vulnerable to corruption risks. Consequently it has become one of the most prominent domains demanding the adoption of an innovative approach, specifically one that leverages the capabilities of modern technology. The legislator has thus afforded it significant attention through successive amendments, as recent legislative efforts

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have steered towards a shift from conventional contracting procedures to electronic methodologies.

In response to these evolving requirements the repealed Presidential Decree No 15-247 mandated the establishment of the electronic public procurement portal aiming to create a centralized database for public contracts, This trajectory towards digitalization was further reinforced amidst the extraordinary circumstances imposed by the COVID-19 pandemic which necessitated exceptional measures to modify public procurement procedures to mitigate the pandemic's repercussions, Continuing this modernization drive, Law No 23-12 was subsequently issued defining the general rules pertaining to public procurement, Notably Article 60 of this law unequivocally affirmed the pivotal role of the electronic portal in the conclusion of public contracts.

Through this study, we aim to ascertain the portal's impact on streamlining procedures by examining its functions, features and components, We also seek to highlight its role as a vital tool for ensuring transparency and equal opportunities in public procurement, Furthermore the study will analyze how the portal facilitates economic actors' access to public demand with transparency, equality and effectiveness, Finally we will identify the practical and legal impediments facing the portal and propose pathways for its development and performance enhancement.

Study Problem: To address the subject comprehensively, we pose the following research question: How can the electronic portal influence the public procurement system in Algeria?

Methodology and Study Structure: Our study will primarily employ the descriptive methodology evident through a precise description of the electronic public procurement system, as well as an elucidation of the content of Algeria's electronic public procurement portal, The analytical methodology will be utilized to demonstrate the extent of the electronic portal's impact on the electronic conclusion of public contracts.

Topic One / General Framework Of Electronic Public Procurement

Electronic public procurement has emerged as a pivotal instrument for concluding administrative contracts, representing a qualitative leap from traditional

paper-based procedures to a digital environment characterized by speed and efficiency.

First Requirement/Concept Of Electronic Public Procurement

The dematerialization of administrative contracting procedures constitutes the cornerstone of digital transformation for public procurement, This involves replacing paper-based supports with electronic means Within this context, the concept of electronic public procurement has emerged.

Firstly / Definition Of Electronic Public Procurement

Electronic public procurement represents the digital embodiment of contracts concluded by public administration, marking a transition from traditional paper-based procedures to a fully integrated electronic space.

1/ Definition Of Administrative Contract

An administrative contract is defined in accordance with established legal doctrine and jurisprudence as an agreement concluded by a public legal entity with the aim of managing or organizing a public service, This contract unequivocally demonstrates the administration's intent to follow public law methods, which is evident through the inclusion of exceptional and uncommon clauses in private law These clauses involve granting the administration privileges and powers not enjoyed by individuals in their dealings, thereby ensuring the proper regular and continuous functioning of public services.¹

2/ Definition Of Electronic Administrative Contract

An electronic contract is defined as the convergence of two wills to produce a legal effect, expressed and exchanged entirely or partially through an electronic medium or communication network .

This encompasses all stages of contract formation, beginning with preliminary negotiations progressing through the exchange of offer and acceptance, and concluding with an electronically authenticated signature, It is irrelevant whether the contracting parties are not physically present together in the

¹ Majid Ragheb El-Helw, Administrative Contracts and Arbitration, no edition, New University Press, Alexandria, Egypt, 2004, p 15.

same spatial dimension, as the wills conceptually meet through audio or visual technological means.¹

An electronic contract is also defined as an agreement concluded by the convergence of offer and acceptance through an electronic medium, where the wills of the contracting parties are expressed and authenticated through a remote communication network, without their simultaneous physical presence in a traditional contract assembly.²

Through these definitions, we find that the electronic administrative contract is essentially identical in its core to the concept of a traditional administrative contract. The fundamental difference lies in the means used for its conclusion, which occurs through electronic platforms to keep pace with technological advancements in communication.²

3/ Definition Of Electronic Public Procurement:

Based on Algerian legislation public procurements can be defined as written contracts concluded for a financial consideration. Such a contract involves two primary parties: the first is a public purchaser referred to as the "contracting authority," while the second party is one or more economic operators termed the "contracting party," who may be a natural or legal person.

The primary objective of concluding these contracts is to meet the needs of the contracting authority in diverse areas including the execution of works, supply of goods, provision of services and undertaking of studies; The conclusion and execution of these contracts are subject to a set of conditions and provisions stipulated in applicable laws and regulations which aim to ensure transparency, integrity and the judicious use of public funds.³

Furthermore, the essential characteristic distinguishing a public procurement contract concluded through an electronic medium from its traditional counterpart lies in the nature of its conclusion mechanism, rather than its substantive elements. In essence, an electronic contract does not differ from a traditional contract,

¹ Elias Nassif Zaitoun, *Electronic Contract in Comparative Law*, 1st ed, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2009, pp 36-37.

² Ahmad Yousef Ashour Al-Hadidi, *The Impact of Modern Technology on Legal Means*, 1st ed, Dar Al-Fikr Al-Jami'i, Alexandria, 2017, p 157.

³ Article 02 of Law No23-12 of 18 Muharram 1445, corresponding to 5 August 2023, setting out the general rules relating to public procurement, *Official Gazette of Algeria*, Issue 51, published on 6 August 2023, p 5.

whether in terms of its parties, who can be natural or legal persons or in terms of its subject matter which can encompass all services and goods permitted by law, The divergence primarily resides in the immaterial means of conclusion and the resulting particularities in the accepted methods of proof.¹

Secondly / Elements Of Electronic Public Procurement

Like all contracts in branches of private law, the administrative contract is founded upon a set of essential elements without which it cannot exist Given that electronic public procurements are an application of administrative contracts, due to their close association with achieving public interest and fulfilling the needs of public services, they are subject to the same constitutive provisions and elements.

1/ Electronic Consent:

Consent represents the cornerstone in the formation of electronically concluded public procurements, as a contract is only concluded by the convergence of two identical wills to produce a legal effect, This convergence materializes as a mutual understanding between the administration and the other party expressed in a manner consistent with imperative legal rules² Defects of consent that may vitiate an administrative contract include error, fraud exploitation (undue influence), and duress Within the context of administrative contracts concluded by electronic means, the expression of will takes various forms ,such as exchange by email, through government electronic platforms and websites, or by digital conversations Regardless of the means used, the soundness of will free from defects, remains an essential condition for contract validity However proving some of these defects particularly duress, may pose practical challenges in the digital environment where the physical presence of contracting parties is absent ,While physical coercion might be difficult to conceive, it can manifest in other forms such as economic pressure exerted by a party holding a monopolistic position for a specific product or service, imposing unfair terms for its provision or for supplying spare parts, thereby leaving the other party with no option but to accept those terms³.

2/ The Element Of Subject Matter

¹ Youssef Mohamed Amin, Administrative Contract and Electronic Administrative Contract, no edition, Dar Al-Kutub Wal-Dirasat Al-Arabiya, Alexandria (Egypt), 2018, pp 244-245.

² Safaa Fattouh Gomaa, The Electronic Administrative Contract, no edition, Dar Al-Fikr wal-Qanoun, Egypt, 2018, p 49.

³ Safaa Fattouh Gomaa, op cit, pp 50-51.

The subject matter of a contract is defined as the direct legal effect that the contracting parties aim to achieve which involves the creation of specific obligations, whether to perform an act or to refrain from an act, For the subject matter of a contract to be valid and produce its effects, it must satisfy essential conditions derived from the general rules of contracts, which the administrative judiciary applies in a manner consistent with the nature of administrative contracts and their objectives related to public interest These conditions are as follows:

a/ The Subject Matter Must Be Possible: The obligation must be capable of execution, If it is absolutely impossible at the time the contract is concluded, the contract is null and void due to the absence of its subject matter.

B/ The Subject Matter Must Be Determined Or Determinable: The subject matter of the obligation must be precisely specified either by identifying it directly or by stating its distinguishing characteristics, or by setting clear criteria through which it can be determined in the future.

C/ The Subject Matter Must Be Lawful: Dealing with the subject matter of the contract must be legally permissible, meaning it must not contravene imperative legal provisions public order or morals.

The condition of lawfulness constitutes a fundamental pillar for the validity of the administrative contract's subject matter, as the object of the contract and the content of the obligations arising therefrom must be legally permissible and not contrary to public order or morals, If the subject matter of the contract is unlawful, the contract is absolutely null and void.

In this regard the administrative judiciary applies the general rules established in civil law, but it adapts them to suit the inherent nature of administrative contracts and the requirements of public interest, This particularity is evident in the existence of certain matters that are legally prohibited from being the subject of an administrative contract a prime example of which is the protection of regulatory statuses.¹

3/The Element Of Cause

The cause (or legal basis) is an essential element for the validity of an administrative contract, similar to all other contracts, The cause represents the

¹Safaa Fattouh Gomaa, op cit, pp 50-51.

direct and lawful purpose that the administration aims to achieve through the conclusion of the contract, which is invariably to satisfy a public need and realize the public interest. It is inconceivable for the administration to enter into a contract without the underlying motive being related to the management of a public service or the fulfillment of a societal interest.

The use of electronic means to conclude public procurements does not alter the nature of the fundamental rules governing the validity of an administrative contract, specifically regarding the element of cause. The ultimate goal and lawful purpose of the contract which constitutes its legal reason to be, remain the same, whether the contract is concluded through the Internet or traditional methods; This principle applies even to contracts whose subject matter involves new digital services or goods, such as software packages or databases; the fact that these transactions are conducted and executed entirely electronically does not exempt them from being subject to the same substantive conditions related to the lawfulness of the cause in an administrative contract.¹

In summary, the digital transformation in the realm of administrative contracts represents an evolution impacting the form and procedures of contracting yet it does not affect the core substantive elements upon which a contract is based and from which it derives its validity.

Fulfilling these elements is a prerequisite for the conclusion of the contract and for it to produce its legal effects. It also serves as the fundamental safeguard against its nullification. Amidst the recent developments that have influenced contracting methods and the emergence of electronic contracting, the Algerian legislator has moved to adapt the traditional legal framework for administrative contracts to accommodate the specificities of these newly established transactions.

Second Requirement/ Principles Of Electronic Public Procurement

The significance of electronic public procurement extends beyond mere procedural modernization; its core philosophy lies in reinvigorating and entrenching the fundamental principles that have long governed administrative contracting. The digital environment does not conjure new principles from nothing rather it imparts traditional principles such as freedom of competition equality

¹ Youssef Mohamed Amin, op cit, p 274.

among competitors, and transparency a more stringent and effective practical dimension by dematerializing procedures.

Firstly/Freedom Of Access To Public Demand (Freedom Of Competition)

Public procurement contracts constitute the strategic instrument and procedural framework established by the legislator for contracting entities, aimed at enabling them to effectively manage public funds and execute required works and services. Due to this importance, they have been intentionally subjected to an exceptional legal regime distinguishing them from the sphere of private contracts, drawing their provisions and philosophy from the rules governing free competition; Accordingly the legal framework for public procurement is founded upon the tenets of economic liberalism, which on one hand guarantees freedom of competition and on the other, entrenches the strict principle of equality among individuals in their pursuit of contracting with public utilities and benefiting from their services.¹

The principle of freedom of competition in public procurement is considered the most effective means to ensure the selection of the best available offers, This principle aims to broaden the pool of competitors thereby increasing the administration's opportunities to secure the most favorable contractual terms from both financial and technical standpoints, The transition towards electronic procedures significantly enhances this principle by removing geographical and temporal barriers, allowing the largest possible number of interested suppliers and contractors to submit their offers, This ultimately leads to the selection of the most responsive offer to the administration's needs and the one most beneficial to the public treasury.²

From our perspective, genuine competition is the backbone of public procurement efficacy. It can only arise through widespread and non-discriminatory dissemination of information, ensuring that data related to the contract reaches the widest possible number of competitors without any restrictions or favoritism.

Secondly/ Principle Of Equality In Treating Candidates

¹ Abdel Hamid Meftah Khalifa, Administrative Contracts (A Comparative Study), 1st ed, University Publications House, Alexandria, 2020, p 148.

² Rahima Saghir Sa'id Namdili, The Electronic Administrative Contract (A Comparative Analytical Study), Dar Al-Jami'a Al-Jadida, Alexandria, 2010, p 66.

The administration's role is not limited to merely ensuring freedom of competition; it is also obligated to strictly apply the principle of equality among all competitors. This principle mandates that the process of evaluating offers adheres to objective and pre-defined criteria primarily based on the technical competence and financial capability of the candidates. Consequently, the administration is bound to enforce compliance with all conditions and deadlines stipulated in the tender announcement on all applicants without discrimination, and to exclude any offer that fails to meet the required conditions or is submitted after the specified deadline, thereby guaranteeing equal opportunities and objectivity in selection.¹

The principle of equality in administrative contracts requires the administration to maintain absolute neutrality towards all applicants, ensuring no discrimination among them. This principle is manifested in the standardization of competition conditions and requirements for all applicants without exception or favoritism. It is impermissible to exempt some from submitting required documents or guarantees, or to impose additional burdens on others. Furthermore, the administration's discretionary power in selecting its contractor remains bound by this principle, ensuring the achievement of equal opportunities among all competitors.²

The capacity of electronic public procurement to eradicate manifestations of administrative and financial corruption hinges fundamentally on the deployment of high-precision software and technologies specifically designed for this purpose. The effectiveness of this means is not absolute; rather it is contingent upon its application within a robust technical framework that ensures transparency and prevents any procedural deviation.³

Thirdly/ Principle Of Transparency

Transparency constitutes a cornerstone in anti-corruption strategies, as it inherently stands in stark contrast to an environment of secrecy and concealment that typically serves as fertile ground for corrupt practices. The essence of this principle lies in guaranteeing the free flow of information and its broad accessibility to the public. This in turn facilitates effective oversight and public

¹ Boudiaf Ammar, Explanation of Public Procurement Regulation According to Presidential Decree 15-247 (Execution, Control of Contracts, Disputes, Contract Crimes, Termination of Contracts), Part Two, 5th ed, Jusour Publishing and Distribution, Algiers, p 80.

² Miftah Khalifa Abdel Hamid, op cit, p 155.

³ Hamdi Al-Qubailat, Law of Electronic Public Administration, 1st ed, Dar Wael for Publishing and Distribution, Amman, Jordan, 2014, p 201.

participation thereby undermining opportunities for exploiting public office to achieve private interests, Consequently transparency is not regarded as an end in itself, but rather as an indispensable procedural instrument for realizing the public good and preventing administrative corruption.¹

The complex technical nature of these contracts and the magnitude of conflicting interests open the door to evolving fraudulent methods designed to circumvent existing controls, This reality has prompted intensified efforts at both national and international levels, to entrench the principles of transparency, integrity, and accountability as indispensable fundamental pillars to ensure the soundness of the public procurement conclusion and execution processes and to protect public funds from waste and squandering² Electronic contracting in public procurement consecrates the fundamental principles governing it, as it contributes to fostering free competition and equal opportunities by broadening the base of participation and ensuring equal treatment for all competitors.

From all that has been presented it can be asserted that there is an interdependent and complementary relationship among these principles, genuine competition cannot be achieved without equality, and equality cannot be ensured without full procedural transparency; Through the digitalization of procedures and the elimination of paper-based transactions, transparency will undoubtedly serve as a cornerstone that undermines opportunities for corruption and the abuse of power, ultimately leading to the entrenchment of integrity and the protection of public funds.

The Second Topic / The Impact Of The Electronic Portal On Realizing The Electronic Public Procurement System In Algeria.

The transition from traditional paper-based procedures to the digital realm has constituted a profound transformation in the legal and technical nature of concluding public procurement contracts, The portal is no longer merely a technical interface; it has become a procedural framework regulated by legal rules, the ultimate goal of which is to enshrine the constitutional principles governing public procurement, primarily freedom of access to public demand equality in treating candidates and transparency of procedures, Consequently the study of the electronic portal is not confined to its technical dimension but necessitates an

¹ El-Bahgi, Essam Ahmed, Transparency and its Impact on Combating Administrative Corruption, 1st ed, Dar El Fikr El Jam'y, Cairo, 2014, p 256.

²Faiza Qasdi, Professional Ethics in the Field of Administrative Contracts: A Comparative Study, 1st ed, Arab Studies Center for Publishing and Distribution, Cairo, 2015, p 153.

analysis of the legal impact it has brought about on various aspects of public procurement contracting.

First Requirement/ Concept Of The Electronic Portal

The electronic public procurement portal has emerged as a term referring to a procedural mechanism that substantively and legally embodies the principle of "dematerializing" the procedures for concluding administrative contracts, This platform serves as the technical and legal framework that transfers the public contracting process from its traditional paper-based domain to an integrated digital space.

Firstly/Definition Of The Electronic Portal For Public Procurement Conclusion

In this section we will address the definition of the electronic portal from the perspective of Algerian legislation and from the jurisprudential viewpoint.

1/ Legislative Definition Of The Electronic Portal

Despite the importance attributed by Law No 23-12, which defines the general rules related to public procurement to this digital mechanism it like previous texts, did not provide a comprehensive and exclusive definition for it, Through an inductive study of successive legislative and regulatory texts starting from Presidential Decree 15-247 concerning the organization of public procurement and public service delegations, leading up to the current Law 23-12 we observe that the focus has been on procedural aspects and the modalities of electronic exchange of information and documents, These texts have delegated the determination of the portal's content and management modalities to subsequent regulations.

A/ Definition Of The Electronic Portal In Presidential Decree 10-236 On Public Procurement Regulation

Article 173 of Presidential Decree 10-236 enshrined this by stating: "An electronic public procurement portal shall be established under the Minister of Finance, Its content and management procedures shall be determined by a decision from the Minister of Finance," This constituted the explicit legal basis for the transition towards digitalization in public procurement as it laid down the idea of

recourse to information and communication technologies, which was lacking in previous legal frameworks governing this field.¹

Despite this a thorough inductive study of all articles of the Decree reveals that the legislator did not endeavor to formulate a comprehensive and exclusive definition of the electronic portal. Instead, its focus shifted towards entrenching its principled existence and announcing its establishment, considering this a preliminary procedural step towards the gradual dematerialization of certain public procurement conclusion procedures.²

B/Definition Of The Electronic Portal In The Decision Dated 17/11/2013³

This decision in turn, did not provide an explicit definition for the electronic portal. Its Article 2 stipulated that the portal's objective is to allow for the publication and exchange of documents and information related to public procurement. Chapter One of the decision addressed the content and management procedures of the electronic portal, while Chapter Two outlined the modalities for electronic information exchange between contracting entities and economic operators.

C/ Definition Of The Electronic Portal In Law No. 23-12

Law No 23-12, which defines the general rules related to public procurement, marked a qualitative shift in the Algerian legislator's commitment to digital transformation, placing the digitalization of procedures at the core of its concerns. This strategic direction is manifested in the pivotal position it accorded to the electronic portal, which is no longer a mere supplementary option but has become a mandatory tool under explicit provisions.⁴

This mandatory nature was clearly embodied in Article 80 of the aforementioned Law, which not only enshrined publication via the electronic portal but also made it a compulsory procedure linked with publication on the contracting

¹ Presidential Decree No 10-236 of 7 October 2010, on the Regulation of Public Procurement, Official Gazette of Algeria, Issue No58, 7 October 2010, p 33.

² Ibid.

³ Decision of 17 November 2013, Specifying the Content and Management Procedures of the Electronic Public Procurement Portal and Modalities for Electronic Information Exchange, Official Gazette of Algeria, Issue No 21, 9 April 2014.

⁴ Art 105, Law N 23-12, op cit, p17.

entity's website, thereby enhancing transparency and broadening the base of competition ,We observe that the Algerian legislator in this text also refrained from providing a precise and specific procedural definition for the concept of the "electronic portal," preferring to focus on its functions and legal implications rather than defining its essence theoretically.

In light of this legislative void at the definition level, the concept of the electronic public procurement portal can be inferred by considering its objectives and functions as established by the legislator, as follows:

The electronic portal is an official platform based on digital methods, established and regulated by the competent authority, aiming to digitize and standardize all public procurement procedures from publishing tender announcements and downloading specifications, through submitting and evaluating offers, up to the provisional and final award of the contract, all within a framework of transparency, free competition, and equal opportunities between economic operators and contracting entities.

2/ Jurisprudential Definition Of The Electronic Portal

Many interested specialists have striven to formulate a definition for this platform, It has been defined as "that specialized website for exchanging information in the field of public procurement, aiming to allow for the publication and exchange of documents and information related to public procurement concluded electronically , It also established a database enabling the collection, through the information portal of data related to the following: contracting entities, economic operators and their administrative files, public procurement contracts, economic statistical sheets for public demand, exchange of documents and information between contracting entities and economic operators and portal publications."¹

The electronic portal has also been defined as a central digital gateway, providing access to a homogenous range of electronic services and applications belonging to a specific thematic field. Its essential characteristic lies in forming a unified entry point that simplifies and facilitates the process of obtaining specialized information and services, and imbues a significant degree of dynamism and interactivity into the relationship between the relevant entity and its external

¹ Smail Boughazi, "The Electronic Public Procurement Portal in Algeria: Real-world Variables and Future Prospects," African Journal of Legal and Political Studies, Adrar, Algeria, Vol 5, No1, June 2021, p 170.

environment In another definition it was described as "a specialized public procurement website and a space connecting the contracting entity and the economic operator."¹

Secondly/Content Of The Electronic Public Procurement Portal

The Ministerial Decision of September 17, 2013, specified the content of the portal through its Article 03, It includes the following information and documents:²

- Legislative and regulatory texts pertaining to public procurement.
- Legal consultations related to public procurement.
- List of economic operators prohibited from participating in public procurement.
- List of economic operators excluded from participating in public procurement.
- Provisional programs for contracting entities' projects.
- Lists of contracts concluded during the previous fiscal year, and names of beneficiary enterprises.
- Reports from contracting entities concerning the execution of public procurement.
- List of enterprises from which classification and qualification certificates have been withdrawn.
- Price index numbers Administrative files of economic operators.
- Files and documents of contracting entities specific to each contract.
- news and updates section dedicated to public procurement.
- Economic statistical sheets for public demand.

Thirdly /Functions Of The Electronic Public Procurement Portal

According to Article 106 of Law 23-12 the electronic portal serves as a pivotal tool with multifaceted functions, combining technical and procedural aspects all aimed at enhancing the efficiency and transparency of transactions, The aforementioned Law stipulates that data and documents exchanged through this

¹ Saliha Benouda, "The Importance of Contracting via the Electronic Portal and Public Procurement," Mediterranean Journal of Law and Economics, University of Abou Bakr Belkaid Tlemcen, Algeria, No 2 2016, p 56.

²Art 3, Decision of 17 November 2013, op cit, p 27.

portal are utilized in building an integrated database, with full adherence to applicable legislative and regulatory frameworks.

1. Publication

Electronic publication is defined as the process of storing information in a digital format, then processing adapting broadcasting, making available and displaying it through electronic or digital means through communication networks; This information encompasses various forms such as textual data, images and graphics subject to automated processing.

In accordance with this concept, electronic publication in public procurement undergoes sequential stages, it begins with the digital storage of contract-related information followed by an automated processing phase where content is formatted as texts or images, Subsequently the broadcasting and display phase occurs, during which information is made accessible to users and interested parties; Thus adopting the publication mechanism on the electronic portal effectively meets the needs of operators and interested parties, ensuring them access to required information with a high degree of reliability and security in addition to achieving rapid information access and reducing time and costs.¹

Consequently, the electronic public procurement portal serves as a comprehensive platform for publishing all necessary information related to public demand; Its responsibilities include publishing the legal and regulatory framework including laws and regulations in addition to making relevant legal consultations available.

2. Registration

Utilizing the services of the electronic public procurement portal necessitates completing formal registration procedures through the creation of dedicated electronic accounts for both contracting entities and economic operators, The process begins with the relevant entity assigning a natural person who is then provided with credentials granting access to the portal. The registration is completed by filling out and signing an information form prepared for this purpose, which must conform to the model appended to the Ministerial Decision issued by the Minister of Finance ,This decision establishes the regulatory

¹ Harfouche Madani and Krib Nabil, "Electronic Platforms in Algeria: Reality and Challenges - The Electronic Public Procurement Portal as a Model," Annals of Algiers University 1, No3, 2023, p 124. 1348

framework for the portal's content specifies its management mechanisms, and regulates procedures for exchanging information and data by electronic means, Following the completion of data and signature of the form, it is submitted to the authority managing the portal, either through direct delivery or approved electronic communication channels.¹

3. Database And Infrastructure Formation

In the context of public procurement a database is defined as an organized digital repository of non-duplicated information shared among various applications It is structured into tables composed of specialized records and fields, such as contract data related to the method of conclusion, the nature of the contract, or its financing mechanisms, This database serves multiple specific objectives as stipulated by the legislative and regulatory framework, and its primary functions can be summarized in the following points:²

a/Establishing a Central Information Registry: The database is formed by compiling all documents and information exchanged through the electronic portal, Among its notable practical applications is the archiving of candidates and contractors files for use in future procedures thereby enhancing procedural efficiency.

b/ Electronic Interaction: The portal aims to entrench the principle of electronic information exchange, This function obliges both contracting entities and candidates to exclusively submit and respond to tender documents electronically, strictly within specified timelines.

c/Providing Advanced User Services: Pursuant to Article 04 of the Ministerial Decision, the electronic portal is designed to offer advanced technical services including: a multi-criteria search mechanism an alert system for updates document upload and encoding functionalities, in addition to a training environment for practicing tendering and electronic signature procedures.

D/Supporting Analysis And Statistics: One of the strategic objectives of this portal is to enable the competent authorities within the Ministry of Finance to

¹ Arts 3-5, Decision of 17 November 2013, op cit, pp 27-28.

² Omar Mouadden and Omar Baba, "The Electronic Portal as a Mechanism for Upholding the Principle of Transparency in Public Procurement Procedures," Journal of Law and Local Development, Ahmed Draia University, Adrar, Algeria, Vol 6, No1, 2024, pp 59-60.

conduct statistical and analytical operations concerning concluded public procurement contracts ,This imposes a legal obligation on all contracting entities to comply with the requirements of this statistical process and provide the necessary data.

Here it can be asserted that infrastructure is the indispensable physical and technical pillar for establishing the electronic public procurement, system, This concept encompasses all necessary physical assets, including advanced computing systems high-speed digital communication networks, and associated accessory equipment and modern communication media, Therefore, providing an integrated and reliable infrastructure is a primary and essential condition for ensuring the effectiveness of this system and its achievement of intended objectives.¹

It is clear from this discussion that the electronic public procurement portal embodies a technical function, represented by its capacity to securely and systematically process and store vast quantities of data and documents. Concurrently its procedural function is evident in its ability to support successive operations, such as offer evaluation and contract management by providing a reliable database that contributes to informed decision-making.

First Requirement/ Indicators Of The Electronic Portal's Impact On The Public Procurement Conclusion System

In this context, the analysis will focus on elucidating the indicators through which the extent of impact and effectiveness of realizing electronic transactions can be measured and evaluated as a modern mechanism for enhancing these principles in the conclusion of public procurement contracts.

Firstly/Indicator Of Eliminating Paper Mediums And Alleviating Burdens On Operators And The Administration

1. Indicator Of Eliminating Paper Mediums

The electronically concluded public procurement contract is characterized by its detachment from a paper medium , This immaterial nature of electronic

¹ El Harrak Asia, Electronic Administration in Morocco: Public Procurement as a Model, 1st ed, Dar Al-Salam for Printing, Publishing and Distribution, Rabat, 2015, p.109.

contracting necessitates reliance on a sophisticated and reliable technological infrastructure to ensure the validity and legal probative force of the procedures.¹

This immaterial nature implies liberation from the constraint of the paper document, which constitutes the fundamental pillar in the traditional procurement system reliant on physical documentation, This transition from the physical methodology to the digital realm inherently transcends familiar spatial structures and limitations.

2. Indicator Of Alleviating Burdens On Operators And The Administration

This indicator is manifested in the extent to which time and effort previously expended on physical travel are reduced, alongside the financial savings resulting from the abolition of monetary charges formerly imposed for obtaining paper copies of the tender file, Consequently information and procedures related to procurement have become accessible to operators around the clock without being restricted by specific administrative timings, which further enhances the principles of transparency, equality and equal opportunities among competitors; All of this inevitably leads to a reduction in the administrative and financial burdens placed upon economic operators, as digital platforms enable them to remotely access consultation documents and download specifications without the need for physical travel to the premises of contracting entities².

This implies that, while the digital transformation in public procurement may initially require substantial investments including upgrading technological infrastructure acquiring digital devices, continuous software development and ongoing human resource qualification these foundational costs are offset in the medium and long term by considerable financial savings for the administration; The replacement of paper documents with digital instruments decisively reduces costs related to printing and storage.

Secondly/Indicator Of Unifying Information Sources And Undermining The Contracting Entity's Discretionary Power

1. Indicator Of Unifying Information Sources:

¹ Youssef Mohamed Amin, op cit, p 245.

² El Harrak Asia, op cit, p109 108.

The electronic portal plays a pivotal role in centralizing information related to public procurement, acting as a unified and coordinated communication channel between governmental bodies and economic operators. By relying on modern technologies and centralized databases, the portal ensures that information is clear and well-documented, enabling users to conduct their transactions within a secure environment characterized by neutrality and reliability.¹

2. Indicator Of Undermining The Contracting Entity's Discretionary Power:

Discretionary power is defined as the margin of choice granted by law to the administration when exercising its competencies. This power arises from legal rules formulated by the legislator with flexibility such that they do not impose a single, pre-determined course of action on the administration.²

By virtue of this authority the administrative entity possesses the discretion to assess the appropriateness of taking or refraining from a particular action. It also holds the power to choose the most suitable timing for intervention, define the content of its decision, determine the method of its execution, and evaluate the underlying reasons for it, all within the bounds of legality and in pursuit of the public interest.

Thirdly/Indicator Of Activating Accountability And Auditing

Accountability is not merely a subsequent punitive mechanism; rather, it transcends this to become a preventive and proactive process that fosters a sense of responsibility and stimulates self-regulatory mechanisms. This process is embodied through periodic performance evaluations aimed at early detection of deficiencies, culminating in the preparation of comprehensive evaluative reports. In this sense, accountability comprises two dimensions: oversight and auditing. In the context of digitizing public procurement, the concept of accountability transforms to assume electronic dimensions relying on integrated digital control systems. Here, the electronic portal emerges as a central platform and an informational space where all reports related to public procurement are deposited, facilitating their publication and accessibility to various oversight and relevant entities. This digital

¹ Aqoujil Nabila, "The Role of the Electronic Public Procurement Portal in Confronting Corruption Crimes," *Journal of Legal and Political Thought*, Amar Telidji University, Laghouat, Algeria, Vol 6, No 1, 2022, p 1096.

² Samy Gamal El-Din, *Administrative Judiciary*, 1st ed., Mansha'at Al-Maaref, Alexandria, 2003, p 215.

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environment significantly enhances the effectiveness of various control mechanisms over the expenditure of public funds, owing to the free flow of information and guaranteed immediate and accurate access to it without restrictions.¹

Furthermore these portals activate societal oversight by making updated data on public procurement activities immediately and freely available to the public, This is a recently adopted legislative direction as the legislator has made electronic publication of information a legal obligation for contracting entities to ensure the highest degrees of integrity in public fund expenditure².

Fourth/Indicator Of Corruption Reduction And Enhanced Competition

1. Indicator Of Corruption Reduction:

Automated systems precisely and objectively apply programmed criteria, establishing absolute neutrality and complete equality among contractors, This circumvents discrimination and personal discretion that may arise from individuals, thereby fortifying the contract conclusion process against illicit practices Such systems eliminate the possibility of arbitrarily excluding superior offers without legal justification, manipulating advertising procedures or capriciously canceling tenders after their award. Consequently, they serve as an effective preventive tool to deter manifestations of corruption provided they are implemented according to robust technical controls and ensure continuous and uninterrupted access to their services, This enhances procedural transparency and guarantees impartiality towards all transacting parties.³

2. Indicator Of Enhanced Competition:

Electronic portals reinforce the principles of freedom of access and competition in public procurement by enabling participation for all qualified competitors and prohibiting any discriminatory conditions, This results in

¹ Iman Dembri, "The Role of Electronic Information in the Governance of Public Procurement Conclusion," *Dirassat Journal*, Amar Telidji University, Laghouat, Algeria, No 1, 2018, p 251.

² Mouadden Omar and Baba Omar, op cit , pp 63-64.

³ Aqoujil Nabila, op cit,p1096.

expanding the scope of competition to an international level, allowing the contracting entity to select the best offer technically and financially.¹

From all that has been presented it can be stated that adopting these indicators to measure the impact of pursuing the digital path in public procurement facilitates the assessment for all parties, especially those managing the electronic portal of the effectiveness of this transformation and enables efforts to overcome obstacles that may affect the procedures for concluding public procurement contracts at their various stages.

Third Requirement/ The Imperative Of Activating The Electronic Public Procurement Portal

The mere recognition of an electronic portal for concluding public procurement contracts within legislative texts is insufficient and will remain without practical impact as long as it is confined to legal provisions; it necessitates tangible, on-the-ground implementation.

Firstly/Justifications For Activating The Electronic Portal

The electronic public procurement portal endeavors to embody the principles of electronic public procurement to the fullest extent possible, as detailed below:

1/The Electronic Portal As A Practical Embodiment Of The Principle Of Publicity

The principle of publicity represents the cornerstone of the electronic public procurement system extending its impact to encompass all stages of contract conclusion, This transparency is manifested through a range of digital mechanisms commencing with electronic advertising, proceeding to the availability and exchange of contract documents, and culminating in the publication of the award decision on the electronic portal This imbues the procedures with attributes of fluidity and speed, Moreover this principle of publicity extends to include critical procedures, such as the sessions for opening envelopes pertaining to qualification files and technical and financial proposals which can be broadcast live by electronic means, There is also a future concept envisioning the replacement of traditional evaluation committees with specialized software ensuring the utmost objectivity.

¹ Rahima Saghir and Sa'id Namdili,opcit,p66.

Practices rooted in withholding information or making it selectively and illicitly available have consistently undermined competitive capacity, particularly for small and medium-sized enterprises SMEs, thereby reducing their prospects of securing public projects. While traditional press advertisements were once a mandatory mechanism they have proven deficient in meeting contemporary demands. Consequently electronic advertisement has emerged as an imperative necessity to surmount these impediments, effectively preventing any potential manipulation by certain contracting authorities; The broad dissemination of information not only curtails corrupt practices but also fosters an environment of fair and equitable competition, offering robust protection for the interests of SMEs, which often have limited access to decision-making spheres.¹

This legislative direction aims to dismantle practices that restrict supply services and projects to a limited circle of contractors and companies a scenario that fosters corruption and collusion. Such practices serve the interests of a select few while excluding other economic actors, thereby imposing additional burdens on the national economy. This occurs due to missed opportunities from bidders who could have presented superior offers at reduced costs.²

2/The Electronic Portal As A Practical Embodiment Of The Principle Of Equality

The principle of treating candidates equally is considered a fundamental pillar in concluding public procurement contracts obliging the contracting authority to maintain absolute neutrality and prohibiting any discrimination among candidates; Preference may only be given based on strictly objective criteria aimed at evaluating their capacities and eligibility to execute the contract. These criteria include verifying the candidate's financial solvency substantiated through accounting documents and banking references, in addition to technical competence derived from human and material resources and previous professional references. Professional eligibility manifested in qualification certificates, classifications and specialized accreditations is also encompassed. The contracting authority bears the

¹ Article 61 of Presidential Decree No 15/247 of Dhu al-Hijjah 2, 1436 corresponding to September 16, 2015, on the Regulation of Public Procurement and Public Service Delegations, Official Gazette of Algeria, Issue 50, published September 20, 2015, p17.

-Thiab Nadia , "Towards the Digitalization of Public Service in the Field of Public Procurement." International Scientific Conference on the Legal System of the Electronic Public Service: Reality - Challenges - Prospects Faculty of Law and Political Sciences, Mohamed Boudiaf University, M'Sila, Algeria, 2018, p 4.

² ibid

responsibility of diligently investigating these capacities to ensure the soundness of its selection; To enshrine this principle selection criteria must be exclusively linked to the subject matter of the contract and devoid of any discriminatory nature; The practical dimension of this principle is clearly evident in the context of electronic public procurement Beyond the aforementioned manifestations the digital environment reinforces equality by ensuring equal opportunities for all candidates to access information and documents related to the contract through the electronic portal, without any form of discrimination and by allowing them to equally benefit from the consultations provided by the platform.¹

This principle acquires a more effective procedural dimension with the adoption of electronic tender publication, where digital means ensure the simultaneous and instantaneous dissemination of information to all potential competitors, This eliminates the temporal disparities that characterized traditional paper-based publication, thereby establishing a unified and fair starting point for all parties wishing to participate.²

Achieving simultaneity in information availability not only reinforces the principle of equality but is also central to realizing equal opportunities and transparency paving the way for objective and genuine competition based on efficiency and merit.

Secondly/ The Extent Of Activation Of The Electronic Public Procurement Portal In Algeria

Algeria faces a clear gap between legislation and actual implementation regarding the electronic public procurement portal mechanism Although Algerian laws have stipulated the establishment of this digital platform to keep pace with technological advancements, achieve transparency, and facilitate procedures, it has not yet come into force.

1/Reasons For The Non-Activation Of The Electronic Public Procurement Portal

¹ Bouzid Khaled, "Communication and Information Exchange by Electronic Means as a New Procedure to Enhance Principles of Transparency and Equality in Public Procurement," Journal of Human Rights and Public Freedoms, University of Mostaganem, Algeria, No 06, June 2018, p282.

² Mouaddan omar& Baba Omar, op cit, p 62

This setback is attributed to a set of fundamental obstacles, notably:¹

A /Legislative Ambiguity: The legal texts pertaining to the portal lack clarity and precision creating difficulty in understanding its operational mechanisms and practical application.

B/Security Challenges And Concerns: The digital transformation in public procurement necessitates robust guarantees to protect economic operators data and documents from breaches, This level of information security has not yet been achieved by Algeria which still needs to develop its capabilities in the field of information security before adopting this sensitive mechanism.

C/Weak Infrastructure: Algeria's technological infrastructure, particularly limited internet speed constitutes a major impediment Instead of being a tool to expedite procedures, the portal could become a source of disruption and complexity contradicting its primary goal of achieving efficiency and integrity.

In conclusion this combination of legislative technical and security obstacles renders the implementation of the electronic public procurement portal system in Algeria currently elusive, thus remaining merely ink on paper despite its legislative endorsement.

Conclusion

The legislative trend in Algeria reflects a diligent endeavor to align the administrative contracts system with advancements in information and communication technology, as embodied by the establishment of an electronic portal dedicated to public procurement, This electronic public procurement portal is not merely a website; rather it represents a new administrative philosophy expressing the state's commitment to integrity and efficiency, It serves as a vital tool to ensure the optimal expenditure of public funds, ultimately contributing to economic development and strengthening citizens' trust in their institutions.

A straightforward review of the legislative framework reveals that the move towards digitalization was not entirely novel in Law 23/13, as Presidential Decree 15-247 had previously alluded to the importance of these means. However, those

¹ Toumi, Hadjira and Messeghem, Meriem, "The Electronic Portal as a Mechanism to Enhance Transparency and Simplify Public Procurement Procedures," Masdaqia Journal of the Military Higher School of Information and Communication, Algeria, Vol 4, No 1, 2022, p 101.

prior calls did not find their way to practical implementation, which perpetuated obstacles hindering contractors' timely access to information and reinforced the absence of transparency during the conclusion stages.

Results: This study has concluded with a set of results, most notably:

- 1) The effective role that the electronic portal can play in transitioning public procurement from traditional transactions to a digital level that supports competition in an environment saturated with transparency and equality.
- 2) The existence of deficiencies in the legislative framework governing electronically concluded public procurement, which may indicate legislative hesitation in fully and effectively adopting electronic transactions in this field, especially as it has referred many procedural aspects to regulatory texts that have not yet been issued.
- 3) The ambiguity of procedures related to the electronic conclusion of public procurement, particularly those pertaining to the opening of envelopes and electronically submitted offers.
- 4) The difficulty of activating the electronic public procurement portal before establishing a robust infrastructure, both technically and human resources-wise.

Recommendations: Based on the foregoing, we can propose the following recommendations :

- 1) Intensifying awareness campaigns directed at economic operators to highlight its importance and the obligation to register, in addition to holding specialized workshops and training courses for operators to enable them to master the mechanisms of contracting through it and to address digital illiteracy among all those responsible for this portal.
- 2) The urgent necessity of reviewing the ministerial decision related to the electronic public procurement portal, with the aim of amending it to ensure its consistency and full compatibility with the provisions of the current Public Procurement Law No 23-12.
- 3) Expediting the issuance of all necessary regulatory and executive texts to activate the electronic public procurement system, given its imperative necessity.
- 4) Developing a strong infrastructure supported by information security and precautionary measures due to the sensitivity of the field.

- 5) The possibility of a gradual and well-studied phased implementation to address shortcomings, followed by generalization and benefiting from the experiences of leading countries in this subject.

In conclusion we can assert that the transition from bureaucratic administration to digital management of public procurement is no longer a technological luxury but an imperative necessity imposed by the requirements of the modern state aiming to achieve economic efficiency, enhance transparency and rebuild trust in the administration's relationship with its contractors, ultimately serving the public interest and supporting sustainable development. From this perspective technological development imposes itself as a fundamental lever for reforming the public procurement system with the advent of e-governance concepts, the shift towards digitalization has become an indispensable option.

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