

The Principle of Transparency in the Procedures Governing the Award of Public Procurements in Algerian Legislation

مبدأ الشفافية في إجراءات إبرام الصفقات العمومية في التشريع الجزائري.

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Abstract:

This paper explores the legal and practical foundations of the principle of transparency in Algerian legislation governing public procurement. It highlights how this principle strengthens good governance, ensures fairness and competition, and protects public funds. The study analyzes international and national legal texts in the field of preparation and follow-up for the conclusion of public procurements, focusing on the implementation mechanisms provided by Algerian laws and decrees. The findings show that transparency serves as a cornerstone of efficiency and integrity in public procurements.

Keywords: transparency, public procurement, good governance, Algeria.

الملخص:

يتناول هذا البحث الأسس القانونية والعملية لمبدأ الشفافية في التشريع الجزائري المنظم للصفقات العمومية، مبرزا دوره في تعزيز الحوكمة الرشيدة وضمان النزاهة والمنافسة وحماية المال العام. كما يحلل بالدراسة الأطر القانونية الدولية والوطنية في مجال التحضير والمتابعة لإبرام الصفقات العمومية، مع التركيز على آليات التنفيذ المنصوص عليها في القوانين والتنظيمات الجزائرية. وتبين النتائج أن الشفافية تشكل حجر الزاوية في تحقيق الكفاءة والنزاهة في الصفقات العمومية.

الكلمات المفتاحية: الشفافية، الصفقات العمومية، الحوكمة الرشيدة، الجزائر.

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Introduction:

Some economists argue that public procurements constitute a gateway to the misappropriation of public funds, given the vast sums they consume and their direct connection to the State Treasury. As administrative contracts to which public authorities resort in the exercise of their administrative activity and as a means of implementing their projects in pursuit of the public interest, public procurements have been framed by the legislator within procedures founded on general rules and principles. Chief among these is the principle of transparency, due to its close link with the establishment of the foundations of good governance in the field of public procurements, as well as its role in ensuring fairness among economic operators and fostering genuine and fair competition that secures the best, most effective, and highest-quality offers — thereby safeguarding the public interest and protecting public funds.

The principle of transparency is a relatively novel concept in modern administration based on good governance. Initially associated with the fight against political corruption, it later extended to the economic and administrative sectors, where it is tied to the sincerity and credibility of the administration's dealings with citizens. Given that public procurements represent one of the most sensitive areas of State activity, the Algerian legislator has been keen to entrench this principle in the laws and regulations governing public procurements, with the aim of inspiring confidence in the actions of the contracting authority and in the manner in which it spends public funds.

The effective implementation of this principle has become an urgent necessity, especially in light of the fact that public demand exceeds 20% of the gross domestic product¹. This makes public procurements a decisive factor in the country's economic activity. Consequently, pressing questions arise: To what extent has Algerian legislation succeeded in enshrining the principle of transparency in the field of public procurements? Are there further possibilities for achieving higher levels of transparency that would ensure greater integrity and efficiency in the expenditure of public funds?

In order to identify the manifestations of this principle in the procedures for concluding public contracts, we shall first clarify the concept and significance of transparency (Section One), before turning to an examination of how it is applied in the procedures for concluding public procurements (Section Two).

1. The Concept and Importance of the Principle of Transparency

In order to grasp and clarify the concept of transparency, we shall begin by addressing the definition of the principle of transparency and its legal foundation, before turning to its significance.

1.1- The definition of the principle of transparency and its legal foundation

First: The Definition of the Principle of Transparency

The term transparency is a relatively recent expression in the administrative field; hence, it is important to clarify its linguistic meaning before turning to its technical definition.

1 — Linguistic meaning of transparency:

The word transparency (Arabic: al-shafāfiyya) is a derived noun from shaffāf, meaning the quality of an object to reveal what lies behind it. By extension, it is used metaphorically to

¹ OECD Public Governance Reviews: Public Procurement Review of the State of Algeria – Towards an Efficient, Open and Inclusive System. OECD Publishing, Paris, 2019, p. 3.

describe a person who reveals what is in his inner self; thus, one says: “a man of transparency.” To “speak with transparency” means to speak with complete clarity. One also says: “transparent fabric,” meaning delicate, such that what is behind it can be seen, or “transparent water,” meaning clear.¹

2 — Terminological meaning of transparency:

Some scholars define transparency as the opposite of secrecy, stating that it “means freeing the administration from obscurity and closedness, so that its meaning encompasses the clarity and comprehensibility of legislative and regulatory rules, and the ease of access to actual practices — just as one looks through a windowpane of perfectly clean glass.”²

In the specific field of public procurements, transparency has been defined as: “the contracting authorities’ communication of information to all those wishing to contract — in particular those who meet the pre-established financial and technical requirements — informing them of how to obtain the tender documents, the nature of the required specifications, and the time and place of holding any form of tender.”³

It is also defined as: “the system that enables bidders, suppliers, and other stakeholders to ascertain that the process of selecting the contractor with the government entity has been carried out through clear and objective means. The principle of transparency in procedures aims at achieving equality and equal opportunity among contractors.”⁴

One may say that the principle of transparency rests upon the creation of a space for disseminating and circulating clear and comprehensible information, accessible to all stakeholders.⁵ In addition, it requires clarifying and simplifying the procedures related to the procurement, so as to facilitate the process of concluding the procurement and to ensure the smooth functioning of administrative work. This must be accompanied by subjecting administrative practices to ongoing oversight and accountability.⁶ Such measures ensure the realization of economic efficiency, given the role of transparency in reinforcing the principle of freedom of competition and in providing contracting authorities with alternatives that allow them to choose the most suitable contractor, free from any suspicion.

Second: The Legal Foundation of the Principle of Transparency

The principle of transparency derives its existence and authority from numerous legal foundations, both international and national.

¹ Ibrahim, Anas et al., *al-Mu'jam al-Wasit: Mu'jam al-Lugha* [The Intermediate Lexicon: Dictionary of the Arabic Language], 2nd ed., vol. 2, Dar Ihya al-Turath al-Arabi, Beirut, Lebanon, 2015, p. 484.

² Husayn, Abd al-Rahim al-Sayyid. “al-Shafafiyya fi Qawaidwa-Ijraat al-Ta'aqud al-Hukumi fi Dawlat Qatar (DirasaMuqarana ma Qanun al-UNCITRAL al-Namudhajilil-Mushtarayat al-Hukumiya)” [Transparency in the Rules and Procedures of Government Contracting in the State of Qatar: A Comparative Study with the UNCITRAL Model Law on Public Procurement], *Majallat al-Sharia wa-l-Qanun* [Journal of Sharia and Law], no. 39, Rajab 1430 / July 2009, p. 55.

³ Khodari, Hamza. *AliyatHimayat al-Mal al-Amm fi Itar al-Safaqat al-Umumiya* [Mechanisms for the Protection of Public Funds within the Framework of Public Contracts], PhD dissertation in Law, University of Algiers 1 – BenyoucefBenkhedda, Algeria, 2014–2015, p. 120.

⁴ Bouziane, Bushra, and Jibayili, Sabrina. “Fa'iliyatMabda al-Shafafiyya fi al-Safaqat al-Umumiya al-Iliktruniya fi Daw al-Qanun 23–12” [The Effectiveness of the Principle of Transparency in Electronic Public Contracts in Light of Law 23–12], *al-Ustad al-Bahith Journal for Legal and Political Studies*, University of Mohamed Boudiaf, M'sila, vol. 9, no. 2, Algeria, December 2024, p. 251.

⁵ al-Bahji, Ahmad Issam. *al-Shafafiyyawa-Atharuha fi Mukafahat al-Fasad al-Idari* [Transparency and Its Impact on Combating Administrative Corruption], Alexandria: Dar al-Fikr al-Jamii, 2014, p. 16.

⁶ al-Rashidi, Ali Said. *al-Idara bi-l-Shafafiyya* [Management through Transparency], 1st ed., Amman: Dar Kunuz al-Marifalil-Nashrwa-l-Tawzi, 2007, p. 15.

1 — International Legal Foundations of the Principle of Transparency

1.1 — The International Covenant on Civil and Political Rights

Article 19, paragraph 2 of the International Covenant on Civil and Political Rights stipulates that:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹

When applied to the subject of our study, this provision means that, in the context of public procurements, all economic operators have the right to access and review public procurement announcements and to participate therein.

1.2. The United Nations Convention against Corruption (2003):

The Convention stipulates in many of its articles the necessity of adhering to the principle of transparency. Article 7 affirms that each State Party shall endeavor to employ non-elected public officials on the basis of efficiency, transparency, and objective criteria such as merit, fairness, and aptitude. It also requires the adoption of appropriate procedures for the selection and training of individuals to occupy public positions considered vulnerable to corruption, while ensuring adequate remuneration and establishing educational and training programs for officials to secure their compliance with the requirements of proper, honorable, and sound performance of public functions.²

Furthermore, with respect to public procurement and the management of public funds, the Convention stipulates:

“The necessity of establishing appropriate procurement systems based on transparency, competition, and objective criteria in decision-making ... taking into account, inter alia:

(a) The dissemination of information relating to procurement procedures and contracts, including information on invitations to tender;

(b) The prior adoption and publication of conditions for participation, including selection and award criteria and tendering rules ...

In addition to the use of objective and pre-established criteria for decision-making in public procurement, mechanisms shall be put in place to verify the correct application of the rules and procedures. All of this must be accompanied by the establishment of an effective system of internal review, including an effective system of appeal, in order to guarantee the right to complaint and redress in cases of breaches of rules and procedures.”³

1.3. The United Nations Development Programme (UNDP):

The UNDP launched an initiative between developed and developing countries aimed at fostering development at both the local and international levels. Paragraph 13 states:

“Success in achieving these objectives depends, among other things, on the availability of good governance in each country, on the existence of sound governance at the international

¹ International Covenant on Civil and Political Rights (ICCPR), December 1966. Adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976.

² UN General Assembly Resolution 58/04, adopted on 31 October 2003, containing the United Nations Convention against Corruption, ratified by Presidential Decree No. 04-128 of 19 April 2004. Includes the reservation on the ratification of the United Nations Convention against Corruption, adopted by the UN General Assembly in New York on 31 October 2003, Official journal of the Peoples Democratic Republic of Algeria, no. 26, 25 April 2004.

³Article 9, United Nations Convention against Corruption.

level, and on transparency in financial, monetary, and trade systems ... all of which are grounded in the rule of law.”¹

2. National Legal Basis

2.1- Constitutional Basis

An examination of the successive Algerian constitutions prior to the constitutional amendment of 2016 ² shows that the constitutional legislator did not explicitly enshrine the principle of transparency in any of them. It was only with the 2016 constitutional amendment, following the adoption of political pluralism and democratic openness, that the outlines of this principle began to take shape. Article 51 states:

“Access to information, documents, and statistics, and their transmission, are guaranteed to the citizen. The exercise of this right may not infringe upon the private life of others, their rights, the legitimate interests of institutions, or the requirements of national security.”

This same provision was reiterated in Article 55 of the 2020 constitutional amendment ³. Moreover, transparency was explicitly mentioned in Article 9, paragraph 5:

“The people shall choose institutions whose aim shall be, inter alia: ... 5 – to ensure transparency in the management of public institutions.”

As confirmation of its intention to adopt and implement the principle of transparency, and to protect public funds while combating all forms of administrative and financial corruption, the Algerian legislator established the High Authority for Transparency, Prevention, and Combating of Corruption under Articles 204 and 205 of the most recent constitutional amendment.

2.2- Legislative Basis

In addition to the constitutional enshrinement of the principle of transparency, the Algerian legislator has implemented it through various laws, among them:

- **Law No. 06–01** on the Prevention and Combating of Corruption ⁴: Article 1 states that: “One of the objectives of this law is to promote integrity, responsibility, and transparency in the management of both the public and private sectors.”

Furthermore, Article 9 of the same law, under the title Public Procurement, provides:

“Procedures in the field of public procurements must be based on rules of transparency, fair competition, and objective criteria. These rules must in particular ensure:

- (a) Public disclosure of information relating to public procurement procedures...
- (b) The prior establishment of participation and selection conditions.
- (c) Objective and precise criteria for decision-making related to the conclusion of public contracts.”

The legislator further emphasized in Article 10 of the same law the:

¹ Akhal, Mohamed. “Shafafiyyat al-Maliya al-Umumiya min Manzur al-Muassasat al-Dawliyyawa-Mustajaddatiha fi al-Tashri al-Jaza’iri” [Transparency of Public Finance from the Perspective of International Institutions and Its Developments in Algerian Legislation], *Majallat al-Huquqwa-l-Ulum al-Insaniya* [Journal of Law and Human Sciences], University of AshourZiyanDjelfa, vol. 13, no. 3, Algeria, 12 November 2021, p. 213

² Law No. 16–01 of 26 Jumada al-Ula 1437 / 6 March 2016, containing the Constitutional Amendment, Official journal of the Peoples Democratic Republic of Algeria, no. 14, 7 March 2016.

³ Presidential Decree No. 20–442 of 30 December 2020, concerning the promulgation of the Constitutional Amendment approved by the referendum of 1 November 2020, Official journal of the Peoples Democratic Republic of Algeria, no. 82, 30 December 2020.

⁴ Law No. 06–01 of 20 February 2006, on the Prevention and Combating of Corruption, Official journal of the Peoples Democratic Republic of Algeria, no. 14, 8 March 2006.

“necessity of adopting the measures required to strengthen transparency, accountability, and rationality in the management of public funds ...”

- **Law No. 11-10 on the Municipality**¹: This law affirms the obligation of the Municipal People’s Assembly (majlissha‘bibaladi) to adhere to the principle of transparency in several of its provisions, including Article 11, which stipulates that: “The Municipal People’s Assembly shall take all measures to inform citizens about their affairs and to consult them regarding options and priorities for urban planning and economic, social, and cultural development, in accordance with the conditions set forth in this law.”

The law also confirms the possibility for individuals to access extracts from the deliberations of the Municipal People’s Assembly, and even to obtain a complete or partial copy thereof at their own expense, provided that the provisions of Article 56 of the same law are respected.²

- **Law No. 12-07 on the Wilaya (Province)**³: Article 18 provides for the use of electronic means to inform the citizens of the wilaya about the agenda of the sessions of the Provincial People’s Assembly (majlissha‘biwilayi). This reflects the legislator’s desire to elevate local administration and to concretely implement transparency in its dealings and operations.⁴
- **Law No. 23-12**, establishing the general rules for public procurement, and Decree No. 15-247 concerning the regulation of public contracts and public service concessions:

The legislator, and prior to him the regulator, considered transparency to be one of the fundamental principles upon which contracts and public procurement concluded by public administrations must be based. This ensures the broadening of competition and the achievement of equal opportunities among bidders. This is expressly stipulated in Article 5 of Law No. 23-12 and Decree No. 15-247:

“To ensure the efficiency of public procurement and the proper use of public funds, public procurements must observe the principles of: free access to public procurement, equal treatment of candidates, and transparency of procedures.”

- **Decree No. 88-131 regulating the relationship between the citizen and the administration**⁵: This is one of the clearest texts reflecting the legislator’s explicit adoption of the principle of transparency, especially in Articles 08 to 11, where the regulator emphasized the necessity for the administration to inform citizens of the regulations and measures it takes, and to publish the related instructions, memoranda, and opinions that concern its relationship with citizens, whether in the Official Gazette or in the official bulletin of public administrations.⁶

¹ Law No. 11-10, dated 22 June 2011, relating to the municipality, Official journal of the Peoples Democratic Republic of Algeria, No. 37, issued on 3 July 2011.

² Article 14, Law No. 11-10, dated 22 June 2011, relating to the municipality.

³ Law No. 12-07, dated 21 February 2012, relating to the wilaya (province), Official journal of the Peoples Democratic Republic of Algeria, No. 12, issued on 29 February 2012.

⁴ Sadqi, Nawal. “The Role of Transparency and Accountability in Combating Local Corruption.” *Al-Ra’id Journal of Political Studies*, Ibn Khaldoun University of Tiaret, vol. 1, no. 2, Algeria, June 2020, p. 105.

⁵ Decree No. 88-131 of 4 July 1988, regulating relations between the administration and citizens, published in the Official journal of the Peoples Democratic Republic of Algeria, no. 27, 1988.

⁶ Belbaqi, Waheba, and Fahla, Madiha. “Mabda al-Shafafiya fi Tasir al-Shu’un al-Idariya” [The Principle of Transparency in the Management of Administrative Affairs], *Journal of Rights and Freedoms*, University of Biskra, vol. 10, no. 1, Algeria, 2022, pp. 311–312.

The Importance of the Principle of Transparency

Transparency holds great importance in the field of administrative contracts, because the administration's implementation and activation of this principle enables it to meet the international standards stipulated in international conventions in the area of administrative contracts¹. Furthermore, the principle plays a significant role in clarifying the state's political, administrative, and developmental vision.

Its importance is particularly evident in the field of public procurement in the following aspects:

- Transparency is considered one of the most fundamental pillars for establishing good governance in the field of public procurement, as it represents the unifying principle between the principles of free access to public procurement and equality².
- It has a direct impact on improving and enhancing government performance, since it reveals its administrative and financial actions and the public contracts it concludes, thereby confirming its credibility before public opinion³.

Transparency reduces public spending and the squandering of public funds because costs incurred under conditions of transparency are lower compared to those carried out under opacity caused by corruption, which means that management based on transparency constitutes one of the principles of self-financing for projects⁴.

Transparency also serves as a tool to reinforce the credibility of the public administration as a whole in the eyes of the private sector through the disclosure of its activities, objectives, and specificities⁵. This, in turn, contributes to attracting foreign investment and preserving national investment⁶.

It also guarantees broader competition through the public announcement of the tender by the contracting authority, providing access to the related information, and granting sufficient time for participation⁷. Furthermore, transparency is considered the foundation for popular

¹ Jabbari, Mahmoud Khalaf. *al-Uqud al-Idariya [Administrative Contracts]*, 1st ed., Jordan: Qandil Publishing and Distribution, 2011, p. 72.

² See Bouzira, Souhila. "Mabda al-Shafafiyawa-RaqmanatQita al-Safaqat al-Umumiya" [The Principle of Transparency and the Digitalization of the Public Procurement Sector], *The Academic Journal of Legal and Political Research*, University of Amar TelidjiLaghout, vol. 7, no. 1, Algeria, March 2023, p. 3571.

³ Ghaoui, Ahmed. *Dawr al-Hakama fi Tarshid al-Safaqat al-Umumiya fi al-Jazair [The Role of Governance in Rationalizing Public Procurement in Algeria]*, doctoral dissertation (third cycle) in Law, specialization in Governance and State-Building Institutions, University of Batna 1, Algeria, 2018–2019, pp. 63–64.

⁴ Hadadou, Fahima, and Faraj, Shaaban. "The Role of Transparency and Accountability in Raising the Efficiency of Tax Administration – A Field Study." *Ma'arif: An International Peer-Reviewed Scientific Journal*, University of Bouira, no. 22, Algeria, June 2017, p. 243.

⁵ Bin Alloush Bin Badi, Fares. *The Role of Transparency and Accountability in Reducing Administrative Corruption in Government Sectors*. Doctoral dissertation in Security Sciences, Naif Arab University for Security Sciences, College of Graduate Studies, Department of Administrative Sciences, Riyadh, Saudi Arabia, 2010, p. 19.

⁶ HishamAbd al-Sayyid, Muhammad Badr al-Din. "Administrative Transparency and Combating Administrative Corruption." *Journal of Legal and Political Research and Studies*, University of Blida, vol. 10, no. 1, Algeria, 2020, p. 75.

⁷ Rahmoun, Muhammad, and Shunuf, al-'Id. "The Importance of the Principle of Transparency in Rationalizing Public Procurement Expenditures According to Presidential Decree 15–247." *Sawt al-Qanun Journal*, DjilaliBounaamaKhemisMiliana University, vol. 9, no. 1, Algeria, 2022, p. 1439.

oversight of administrative actions, in addition to being the basis for both internal and external control¹.

In conclusion, the implementation of the principle of transparency in the field of public procurement is likely to achieve the objectives of both the contracting authority and the contractors, leading to effective and efficient public procurement, the provision of higher-quality services, the safeguarding of the public interest, and the protection of public funds.

Applications of the Principle of Transparency in Public Procurement Procedures:

Based on the Algerian legislator's conviction that transparency is a fundamental element in realizing good governance in the field of public procurement—ensuring effectiveness and protecting public funds—he has been careful to enshrine it in most of the procedures for concluding public contracts. Among these is the prior preparation of tender documents (Subsection One) And the announcement, exchange, and provision of information and documents through the electronic portal (Section Two), as well as the public nature of the bid-opening session and the announcement of the provisional award of the procurement (Section Three).

Section One – The Prior Preparation of the Tender Specifications:

In order to ensure the transparency of procedures, the legislator has required the contracting authority to prepare in advance the tender specifications related to the subject matter of the contract². In doing so, it may rely on its qualified internal expertise, such as engineers and technicians³. The procurement notice often refers to the tender specifications, which contain all the technical details of the goods, services, or construction works requested⁴. Pursuant to Article 101 of Law 23–12, draft tender specifications are subject to review by the competent public procurement committees prior to the call for tenders. Accordingly, we will address first the definition of the tender specifications, followed by their types.

First – Definition of the Tender Specifications:

The Algerian legislator has not provided a definition of tender specifications. However, legal scholarship defines them as: “An official document unilaterally established by the administration, through which it determines all the conditions relating to the rules of competition in its various aspects, the conditions of participation, and the modalities for selecting the contracting party”⁵.

Second – Types of Tender Specifications:

¹ Abu Shu'faMatuq, Tariq. “The Role of Administrative Transparency Practices in Enhancing Organizational Health – A Field Study of Employees in the General Administration at the University of Al-Merqab.” *Journal of Economic Studies*, Faculty of Economics, University of Sirte, vol. 6, no. 1, Libya, January 2023, p. 156.

² Mal Allah, Ja'far, and Abdelmalek al-Hammadi. *Guarantees of the Administrative Contract: Procedures Preceding the Conclusion of the Administrative Contract – Public Tender (A Foundational Analytical Comparative Study between Bahraini Law, Egyptian Law, and the UNCITRAL Law)*. Alexandria: Dar al-Jami'a al-Jadida, 2nd ed., 2010, p. 81.

³ Belhaj, Slim. *The Concise Guide to Public Procurement Law in Accordance with Presidential Decree 15-247*. Algeria: Laboratory of Legal and Political Studies, University of Oum El Bouaghi, 2023, p. 57.

⁴ Mal Allah, Ja'far, and Abdelmalek al-Hammadi. *Op. cit.*, p. 81.

⁵ Masqam, Mariam. “Tender Specifications as a Mechanism for Achieving Transparency of Procedures in Public Procurement.” *Hoggar Journal of Economic Studies*, an international peer-reviewed scientific journal in the field of economics, University Center of Tindouf, no. 03, Algeria, December 2018, p. 118.

Tender specifications play an important role in enshrining transparency, as they contribute to shaping the position of the bidder seeking to contract with the administration. The specifications constitute the framework that determines the rules governing the contractual relationship, setting out the conditions and criteria under which the contract is concluded, as well as the method of evaluation for both the technical and financial offers¹. This role is particularly significant when the conditions and requirements are objective and non-discriminatory.

According to Article 17 of Law 23-12 and Article 26 of Presidential Decree 15-247, tender specifications are divided into three types:

1. General Administrative Clauses (GACs): These are considered model contracts that set out the overall provisions applicable to all types of public procurements, as approved by an executive decree².

2. Common Technical Clauses (CTCs): These refer to the set of documents that establish the technical arrangements and conditions applicable to all public procurements of a particular type or category—such as works, supplies, studies, or services—approved by a decision of the competent minister³.

3. Special Clauses (SCs): These specify in detail the conditions particular to each procurement⁴, apart from the general rules contained in the General Administrative Clauses and the Common Technical Clauses that govern all procurements. Tender specifications form an integral part of the procurement⁵. According to Professor Ahmed Mahyou, they can be regarded as an administrative document constituting part of the administrative procurement, comprising both regulatory and contractual provisions. The regulatory provisions are binding on the administration and the contracting party, even if the latter did not participate in their formulation, while the contractual provisions become binding on both parties—the contracting authority and the contractor—upon approval of the procurement, in line with the general principle that “the contract is the law of the parties.”⁶

Although the general rule is that tender specifications must be prepared in advance before the announcement of a public procurement, there are certain exceptions to this rule:

- **Emergency programs:** In the case of urgent works, such as repair operations financed by the wilaya (province), the wali (governor) issues a requisition designating a trusted company to carry out the urgent works, and subsequently issues an order. The commencement of services takes place once the procurement has been settled following the approval of prices, duly endorsed by the Public Procurement Committee and the budgetary controller, thereby entering into force⁷.

¹ Sebti, Khadija. “Governance of Public Procurement in Algeria – A Field Study in the Executive Directorates of the Wilaya of Constantine.” *Journal of Economic Studies*, University of Constantine 2, vol. 2, no. 4, Algeria, June 2017, p. 739.

² Article 17, Law No. 23-12, laying down the general rules governing public procurement.

³ Article 26, Presidential Decree No. 15-247, op. cit.

⁴ Article 17, Law No. 23-12, laying down the general rules governing public procurement.

⁵ Kherishi, al-Noui. *Al-Safaqat al-Umumiyya: DirasaTahliliyyawa-Naqdiyyawa-Takmiliyya li-Manzumat al-Safaqat al-Umumiyya* [Public Procurement: An Analytical, Critical and Complementary Study of the Public Procurement System], Algeria: Dar al-Huda li-l-Tibaawa-l-Nashrwa-l-Tawzi, 2019, p. 17.

⁶ Mahyou, Ahmed. *Muhadarat fi al-Muassasat al-Idariyya* [Lectures on Administrative Institutions], translated by Mohamed Arab Sasile, Algiers: Diwan al-Matbuat al-Jamiiyya, 4th ed., 2006, p. 371.

⁷ Ben Daas, Siham. Op. cit., p. 07.

• **Compelling urgency:** Article 21 of Law No. 23-12 stipulates that, in urgent situations, the contracting authority may limit itself at the execution stage to an exchange of correspondence concerning the project site, which serves to establish the existence of a procurement between the authority and the economic operator. This implies that, in such circumstances, the preparation of tender documents may be dispensed with.

The significance of tender documents lies primarily in their prior preparation, which plays a decisive role in entrenching the principle of transparency throughout the remaining stages of the procurement procedure. However, the limited number of legal provisions governing such documents, as well as their failure to keep pace with economic and technological developments, has had an impact in this area. For example, the General Administrative Clauses were first enacted pursuant to the decision issued by the Office of the Secretary of State for Public Works on 21 November 1964¹ and remained in force until updated by Executive Decree No. 21-219, referred to earlier. In addition, the Special Administrative Clauses, of which three were issued by the Algerian legislator and implemented by the Ministry of Commerce in 1979, continue to be applied to this day².

Section II: The Call for Tenders and the Exchange of Information via the Electronic Portal

Among the most important applications and manifestations of the principle of transparency in public procurement are the announcement of the tender, as well as communication and the exchange of information through the recently activated electronic portal.

I. Announcement of the Tender:

The legislator has attached particular importance to the public announcement of procurement opportunities, given its role in enhancing transparency in administrative action³, as it constitutes a safeguard for ensuring fair competition and for demonstrating integrity and transparency.

The contracting authority⁴ In what follows, we shall define the call for tenders, clarify its components, and explain the means of announcement.

1 - Definition of the call for tenders: In the field of public procurement, the announcement constitutes a fundamental formal procedure⁵, serving as an invitation to those wishing to contract⁶, particularly those who already meet the financial and technical conditions previously set by the authority, informing them of how to obtain the tender

¹ Decision issued by the Office of the Secretary of State for Public Works, dated 21 November 1964, approving the General Administrative Clauses applicable to works contracts of the Ministry of Reconstruction, Public Works and Transport, Official journal of the Peoples Democratic Republic of Algeria, No. 06, 19 January 1964.

² Qaisar, Mostafa. Op. cit., p. 131.

³ Al-Tammawi, Suleiman Mohamed. General Principles of Administrative Contracts: A Comparative Study. Egypt: Dar al-Fikr al-Arabi, 2011, p. 220 ff.

⁴ Qubailat, Hamdi. Al-Qanun al-Idari [Administrative Law], Jordan: Dar Wael li-l-Nashr, vol. 2, 2010, p. 120.

⁵ Tariaa, Nouwara. "HududMabdaHurriyat al-Munafasa fi Ibram al-Safaqat al-Umumiyya fi Zill al-Marsum al-Ri'asi 15-247" [The Limits of the Principle of Freedom of Competition in the Conclusion of Public Procurement Contracts under Presidential Decree No. 15-247]. Majallat al-Dirasat al-Qanuniyyawa-l-Iqtisadiyya, University Center of Aflou, vol. 4, no. 2, Algeria, 2021, p. 316.

⁶ Miloudi, Fatiha. Al-Aliyat al-Qanuniyya li-TakrisMabda al-Shafafiyya fi AmaliyyatIbram al-Safaqat al-Umumiyya [The Legal Mechanisms for the Consolidation of the Principle of Transparency in the Process of Concluding Public Procurement Contracts], Doctoral thesis, specialization: Public Procurement Law, University of BelhadjBouchaib, Ain Temouchent, Algeria, 2023–2024, p. 92.

documents, the required specifications, and the place and date of conducting any form of call for tenders¹.

2 — Contents of the announcement: The procedure of announcing the contract is closely linked to transparency, and plays a role in enabling economic operators to freely access public procurement opportunities. For this reason, the Algerian legislator and regulator took care to define all its elements in legal texts, so that contracting authorities do not exercise arbitrariness in this regard². Thus, it imposed on the contracting authority that the call for tenders and negotiations following consultation must contain specific and mandatory information pursuant to Article 62 of Presidential Decree No. 15-247³.

The same applies to the content of the announcement concerning the consultation procedure. According to Article 62 of Decree No. 15-247, the legislator stipulated the necessity that the consultation file of institutions includes all the information required to enable bidders to submit acceptable offers⁴.

3 — Means of announcing the contract: By examining Article 46 of Law No. 23-12 and Article 65 of Presidential Decree No. 15-247, we find that the legislator has obliged the contracting authority to announce the procurement in Arabic and at least one foreign language through the Official Bulletin of the Public Contractor, as well as in the written press and accredited electronic media. The article further provides, in its second paragraph, for the mandatory publication through the Public Procurement Electronic Portal. This applies to the forms of public procurement defined in Article 39 and, where applicable, Article 42. Publication is also permitted in the case of local calls for tenders and institutions affiliated thereto, subject to two conditions⁵:

- That the public demand relates to the wilayas, municipalities, and public institutions under their supervision (organic criterion).
- That the administrative estimate amounts to one hundred million Algerian dinars (100,000,000 DZD) or less for works and supply contracts, and fifty million Algerian dinars (50,000,000 DZD) or less for service and study contracts (financial criterion). In such cases, the call for tenders must be:
 - Published in two local or regional daily newspapers,
 - Posted at the relevant premises (the wilaya, all municipalities within the wilaya, chambers of commerce, industry, crafts and agriculture, and the relevant technical directorate of the wilaya).

From the foregoing, we conclude that the legislator, under Law No. 23-12, made the announcement—whether traditional or electronic—mandatory, in contrast to Presidential Decree No. 15-247 which merely authorized electronic publication. The legislator's intent to entrench the principle of transparency in public procurement procedures is evident in both the formal requirements and the content of the announcement, as well as in the detailed

¹ Khoudri, Hamza. Op. cit., p. 120.

² Nour al-Din, Abd al-Salam. "Dawr al-Ilan fi Taziz Mabda Shafafiyyat al-Safaqat al-Umumiyyaka-Aliyya li-l-Wiqayamin al-Fasad" [The Role of Publicity in Enhancing the Principle of Transparency in Public Procurement as a Mechanism for the Prevention of Corruption]. Majallat al-Buhuth al-Qanuniyyawa-l-Iqtisadiyya, University Center of Aflou, vol. 4, no. 2, Algeria, 2021, p. 326.

³ Article 62 of Presidential Decree No. 15-247, op. cit.

⁴ Article 64 of Presidential Decree No. 15-247, op. cit.

⁵ Article 65, paragraph 03, Presidential Decree No. 15-247, op. cit.

information it must contain, given that any failure to comply results in the invalidity of the announcement¹.

Nevertheless, although the general rule in public procurement is the obligation of publication through the aforementioned means, exceptions exist. Among them are:

Direct negotiation contracts, which exclude publicity and the announcement of competition in specific cases exhaustively listed in Article 41 of Law No. 23-12. These may be considered a justified derogation from the principle of transparency and Other principles governing public procurement.

Military purchases: The legislator stipulated that public procurement contracts relating to the Ministry of Defense are not necessarily subject to the provisions of Law No. 23-12, which sets out the general rules relating to public procurement, in the following areas: the opening of bids in a public session, the publication and notification of the information and documents provided for in Article 95 of this law, which require the preservation of national defense interests and state security. All procurements concerning the purchase of weapons, ammunition, military equipment, and purchases related to national security are exempted from publication in order to safeguard military secrets and national security. In such cases, invitations are directed only to contractors already known to the Ministry of Defense.

Second – Communication and exchange of information through the electronic portal:

Within the context of digital transformation and the use of information and communication technology systems, the Algerian government has expressed its intention to digitize the public procurement sector through the establishment of an electronic portal for public procurement pursuant to Article 105 of Law No. 23-12, corresponding to Article 203 of Presidential Decree 15-247, with the aim of enhancing transparency and transitioning to the electronic conclusion of public procurements.

We shall now examine the electronic portal and its content, followed by the documents exchanged electronically pursuant to the decision issued by the Minister of Finance on November 17, 2013, which defines the content of the electronic portal and the method of its management and the exchange of information within it.

1 – Definition of the electronic portal:

The concept of the electronic portal is based on gathering information from various sources and creating a single access point for such information. It is essentially a specialized website.

In public procurement, it constitutes a broad space for all stakeholders and interested parties in the field of public procurements², and is managed by the Minister of Finance³.

2 – Content of the electronic portal:

According to Article 03 of the decision issued by the Minister of Finance dated November 17, 2013, the portal includes the following:

- Legislative and regulatory texts relating to public procurement.
- Legal consultations relating to public procurement.
- A list of economic operators prohibited from participating in public procurement.

¹ Al-Tammawi, Suleiman Mohamed. Op. cit., p. 235.

² Ben El Akhdar, Mohamed; Harrouche, Lamine. Public Procurement and Electronic Transactions in Algerian Legislation, Journal of Human Sciences, Mentouri University Constantine, Vol. 20, No. 02, Algeria, December 31, 2020, p. 62.

³ Article 105, Law No. 23-12, defining the general rules relating to public procurement.

- A list of economic operators excluded from participating in public procurement.
- Estimated programs of the contracting authorities' projects and the lists of procurements concluded during the previous financial year, as well as the names of companies or groups of companies benefiting from them.
- Reports of the contracting authorities relating to the execution of public procurement.
- A list of companies whose certificate of competence and classification has been withdrawn.
- Price indices.
- Any document or information related to the subject of the portal.

In the same context, Article 05 of the aforementioned decision provides for the establishment of a database that allows the collection of all information relating to contracting authorities, as well as the profiles of economic operators, in addition to all information relating to public procurement, economic statistics cards for public demand, mechanisms for exchanging documents and information between contracting authorities and economic operators, and various publications concerning the portal¹.

3 – Methods of managing the electronic portal:

The electronic portal for public procurement is managed using information and communication technology systems, as specified in the aforementioned decision². In addition to hosting the Information Technology infrastructure, it also includes:

- Management of systems, networks, and the database– management of portal access – maintenance of the portal, particularly by ensuring an adequate level of security against electronic threats – continuity, sustainability, and accessibility of the services provided by the portal – management of technical developments, inclusion of new functions, and publication of the information and documents provided for in Article 03 of this decision³.

4 – Functions of the Electronic Portal:

The electronic portal includes a set of functions, such as:

4(a) Electronic publication: The electronic portal is responsible for publishing all the documents referred to earlier in the content of the electronic portal, with the aim of making the information accessible to all stakeholders⁴.

4(b) Registration: Through the creation of electronic accounts by contracting authorities, as well as economic operators, for the purpose of carrying out electronic transactions. This is done by completing and signing an information form according to the model annexed to the Minister of Finance's decision of November 17, 2013, and sending it either directly to the portal administrator or by email⁵.

¹ Ministerial Decision issued on November 17, 2013, defining the content of the electronic portal for public procurement, as well as the methods of its management and the exchange of information electronically.

² Ben El Akhdar, Mohamed; Harrouche, Lamine. Op. cit., p. 63.

³ Ministerial Decree of 17 November 2013, determining the content of the electronic portal for public procurement and the modalities of its management and the exchange of information electronically.

⁴ Yacine, Koutal; Hamidi, Hakima. "Al-taaqod al-iliktroni fi majal al-safaqat al-umumiya" [Electronic Contracting in the Field of Public Procurement], Al-Bahith Journal for Academic Studies, University of Batna, Vol. 09, No. 01, Algeria, 2022, p. 351.

⁵ See: Article 04, Decree of 17 November 2013, determining the content of the electronic portal for public procurement and the modalities of its management and the exchange of information electronically.

It is clear that the activation of the electronic portal, even though delayed, constitutes a serious step by the current political will toward reforming and improving public service within its orientation toward generalizing e-administration and combating corruption, by enshrining the principles of good governance, especially transparency, through the design of an information system based on confidentiality and document integrity. However, the guarantees provided in this regard do not prevent the electronic portal from being exposed to hacking, not to mention that its administrator is a natural person, which means the possibility of fraud and practices that undermine the transparency of procurement procedures and the fairness of competition.

Section III: The public nature of the bid-opening session and the provisional award of the procurement.

First – The Public Nature of the Bid-Opening Session:

Based on Law No. 23-12 as well as Presidential Decree No. 15-247, the process of opening bids is organized in public sessions¹ conducted by the Bid Opening and Evaluation Committee to ensure that the procurement complies with the applicable legislation and regulations, within the framework of internal control entrusted to it². This reflects the legislator's concern with upholding the principles of participation, legality, and transparency in public procurement procedures.

To this end, the contracting authority is required to:

- Ensure that the tender documents specify the date and time of the bid opening before their delivery to bidders or candidates, in accordance with Articles 64 and 66 of the Decree, in order to allow the attendance of the largest possible number of participants. In this way, the legislator has provided an important guarantee of fairness and transparency in the bid-opening process³.
- Invite all candidates or bidders to attend the bid-opening session by explicitly mentioning this invitation in the procurement notice, or by sending a direct communication to the concerned bidders or candidates⁴. The application file, together with the financial and technical offers, is opened in a public session in the presence of the candidates who were informed beforehand. In the case of restricted procedures, application files are opened separately, while under the restricted tendering procedure, the envelopes containing the technical offers, service offers, and financial offers are opened in three stages, with the service envelopes not being opened in a public session⁵.

The public nature of the bid-opening sessions makes the candidates active participants in monitoring the administrative work of the Bid Opening and Evaluation Committee, especially since these sessions cannot convene or be valid unless attended by the bidders and at least two members of the permanent Bid Opening and Evaluation Committee, thus serving as a safeguard for the principle of transparency.

¹ Ghaoui, Ahmed. Op. cit., p. 78.

² Khalaf Allah, Shams al-Din; Saadi, Haidara. "Transparency as a Mechanism for Preventing Corruption in the Organization of Public Procurement." *Al-Wahdat Journal for Research and Studies*, University of LarbiTebessi, Vol. 14, No. 03, Algeria, 2021, p. 466.

³ Abbas, Ghania. "The Bid Opening and Evaluation Committee and the Extent to Which It Enshrines the Principle of Competition in Public Procurement." *Journal of Legal and Political Research*, University of Mohamed Seddik Ben YahiaJijel, Vol. 09, No. 01, Algeria, June 2024, p. 475.

⁴ Article 70, Presidential Decree No. 15-247.

⁵ See Article 70, Presidential Decree No. 15-247.

Second – The Provisional Award of the Public Procurement:

The award stage, or the provisional granting of the procurement, constitutes a fundamental phase within the procedures of public procurement in order to rationalize public expenditure in this domain. The legislator required the publication of the provisional award notice in the same media outlets where the call for tenders was announced, whenever possible, with specification of the price, completion deadlines, and the various factors and criteria that justified the selection of the bid provisionally awarded the procurement¹. This ensures transparency and clarity in procurement procedures².

The notice of provisional award invites the bidders to consult the detailed results of the evaluation of their technical and financial offers by contacting the relevant services within a maximum period of three (03) days from the date of publication of the provisional award notice³. In strengthening appeal mechanisms—which constitute a genuine pillar of the rule of law, enshrining the values of transparency and reinforcing competition mechanisms⁴—the Presidential Decree and the Law stipulate the right of economic operators to submit appeals to the competent procurement committee within ten days from the date of the provisional award notice.

Accordingly, a procurement cannot be awarded to a bidder until the appeals have been examined, if any, since the provisional award is only a temporary selection and becomes final only after thirty days from the date of its publication⁵, followed by the approval of the competent authority vested with such power under Law No. 23-12 mentioned above⁶.

It is thus evident that the Algerian legislator has been diligently striving to achieve good governance in the field of public procurement by ensuring transparency in all aspects of the provisional award stage, including procedural formalities and appeal deadlines, as this stage represents a decisive step prior to contract approval and implementation.

Conclusion

The principle of transparency constitutes a fundamental pillar in achieving good governance, particularly in the field of public procurement, which is directly linked to public funds. Our study has revealed the Algerian legislator's increasing awareness of the importance of this principle, as evidenced by its incorporation into primary legislation, laws, and regulations, alongside the establishment of electronic mechanisms that ensure public access to information and uphold equal opportunities.

Despite the significant progress achieved, challenges remain that hinder the full implementation of this principle. Among the most prominent are weak effective oversight, shortcomings in the application of legal texts, and the presence of exceptions that may open the door to manipulation and corruption. Therefore, ensuring genuine transparency requires a strong and committed political will, closely linked to the promotion of citizenship principles

¹ Article 65 of Presidential Decree No. 15-247.

² Jalil, Mounia. "The Role of the Tender Opening and Bid Evaluation Committee in Protecting Competition in Public Procurement," *Annals of the University of Algiers* 1, No. 31, Vol. 01, Algiers, n.d., p. 402.

³ See Article 82 of Presidential Decree No. 15-247.

⁴ Jalil, Mounia. "The Role of the Tender Opening and Bid Evaluation Committee in Protecting Competition in Public Procurement," *op. cit.*, p. 402.

⁵ Article 82 of Presidential Decree No. 15-247.

⁶ See Article 10, Law No. 23-12, laying down the general rules governing public procurement.

based on fostering a culture of reporting, accountability, and participatory management of public affairs.

Recommendations:

1. Strengthen the effective implementation of legal texts by activating pre- and post-award oversight of procurement procedures.
2. Expand the use of the electronic public procurement portal, making it the sole platform for publishing tender documents, announcements, and bid results, to reduce the potential for manipulation through traditional methods.
3. Train and qualify actors in public procurement, particularly in local authorities and sectors with high state budget funding, to ensure the proper application of the principle of transparency and prevent misinterpretation of laws.
4. Review and limit legal exceptions, especially those related to the non-publication of certain contracts, to ensure that exceptions are not exploited as a pretext for violating the principle of transparency.
5. Promote a culture of accountability and appeals by simplifying appeal mechanisms and encouraging economic operators to report violations through streamlined and user-friendly methods.
6. Work towards digitizing post-contractual phases, such as contract execution and performance monitoring, rather than simply digitizing publication, to ensure high levels of transparency.

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