

Announcement of Public Procurement in Algerian Law

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Abstract:

The announcement of public procurement is a preliminary procedure and a practical application of the principle of transparency in public procurement procedures. The Algerian legislator has ensured its inclusion in Public Procurement Law No. 23-12. The importance of announcing public procurement has been reinforced by organizing the announcement through accredited electronic press, which broadens awareness of public procurement and provides the opportunity for the largest possible number of economic operators to submit their bids to contract with the public purchaser.

Keywords: public procurement, announcement, call for tenders, consultation, print and electronic press.

Introduction:

The Algerian legislator has given great attention to organizing procedures for concluding public procurement contracts due to their significant importance. It has precisely defined these procedures and outlined contracting steps to ensure that they serve as a genuine guarantee for the efficiency of public demand, safeguarding public treasury funds, and achieving the objectives set through administrative contracting. This is achieved through a set of key principles on which public procurement is based and which administrative authorities must observe.

These principles include freedom of access to public requests, equality in the treatment of candidates, and transparency of procedures.

Under Public Procurement Law No. 23-12, the Algerian legislator has specifically addressed the principle of procedural transparency due to its critical importance in achieving the objectives of public procurement, allocating several provisions in the law to explain and clarify the manifestations of procedural transparency, thus reinforcing many important legal principles such as freedom of commerce and work, and supporting other principles underlying public procurement, including equality and freedom of access to public requests.

The principle of procedural transparency is implemented through a key administrative contracting procedure: the announcement of public procurement. The contracting authority prepares the procurement specifications and accompanying documents, defines its needs, and specifies the technical and functional requirements for the goods and services to be contracted. Based on these preparations, the procedure is launched through legal and available means.

This study aims to examine the extent to which the legislator has successfully regulated the provisions on the announcement of public procurement in a way that achieves its purpose and ensures compliance with the principle of procedural transparency. This requires studying the concept of announcing public procurement (first), explaining the method of announcement (second), and finally addressing the cases in which announcement is required (third).

First: Concept of Announcing Public Procurement

The announcement of public procurement is one of the most important procedures in concluding a public procurement contract, which is defined as “written contracts concluded for consideration by the public purchaser, called the ‘contracting authority,’ with one or more economic operators, called the ‘contracted operator,’ to meet the needs of the contracting authority in works, supplies, services, and studies according to the conditions specified in this law and applicable regulations.”

Accordingly, we present the definition of the term *announcement* linguistically and technically, and then specify the cases in which it must be made, as follows:

1. Definition of Announcing Public Procurement:

To understand the meaning of announcing public procurement, the definition of announcement is given linguistically and technically as follows:

1.1 Linguistic Definition of Announcement:

In Arabic dictionaries, announcement (*al-i‘lan*) is showing or publicizing. It is any act or activity through which something is displayed or published for the purpose of advertisement or promotion by any legal means.

Announcement: displaying something by publishing it in newspapers or similar media, as done by traders or official and private institutions in newspapers, radio, and television.

1.2 Technical Definition of Announcement:

The Algerian legislator, in all successive regulations concerning public procurement, especially Public Procurement Law and Public Service Delegations No. 15-247, and in the current Law No. 23-12 on public procurement—the first law regulating the conclusion and execution of public procurement—ensures the mandatory announcement of public procurement, regardless of the method of contracting.

Announcement of public procurement is not usually defined in public law doctrine, where scholars limit themselves to specifying its legal and practical importance, noting its contents, studying cases where the announcement is required, and discussing its legal effects.

As an administrative document, the announcement is defined as the document or procedure issued by the general administration to inform the public or the concerned party about administrative works or legal actions.

Accordingly, the announcement of public procurement can be defined as a document issued by the contracting authority to disclose its intent to contract and specify its needs for goods and services, allowing interested parties to submit bids in accordance with the technical and financial conditions and specifications included in the announcement.

The announcement is the first administrative procedure taken by the public purchaser, revealing the predetermined objective conditions that any prospective contractor must observe when preparing their bid.

2. Details of the Announcement of Public Procurement:

The announcement must be drafted in Arabic and at least one foreign language, ensuring that the foreign language used in the international competition announcement in print media differs from that used in electronic press. Public Procurement Law does not specify the data that must be included in the announcement. Referring to Public Procurement Regulations and Public Service Delegations No. 15-247, the mandatory data for the call for tenders include:

- Name of the contracting authority, address, and tax identification number.
- Method of requesting bids.
- Qualification or pre-selection criteria.
- Subject of the operation.

- Brief list of required documents with reference to the detailed list in the relevant specifications.
- Preparation period for bids and place of submission.
- Validity period of bids.
- Obligation of bid security.
- Submission of bids in a tightly sealed envelope marked “Not to be opened except by the committee for opening and evaluating bids” with tender references.

We will briefly clarify these mandatory data as follows:

2.1 Name of the Contracting Authority with Address and Tax ID:

One party to the public request is the public purchaser, designated by law as the “contracting authority,” whose types include: the state represented by public bodies and administrations, local authorities (wilaya and municipality), public institutions governed by public law, and public economic institutions entrusted by the state or local authorities with project supervision, as well as educational institutions subject to commercial rules for projects funded wholly or partially by state or local budgets. The announcement specifies the name, address, and tax identification number of the contracting authority.

2.2 Method of Requesting Bids:

A call for tenders is the general rule for concluding a public procurement contract if its value exceeds the legal financial threshold. It may be national and/or international and aims to obtain offers from several competing contractors, awarding the contract without negotiation to the contractor offering the best economic advantages based on pre-determined objective criteria. Forms include open tender, tender with minimum capacity requirements, restricted tender, and competition.

2.3 Qualification or Pre-selection Conditions:

The contracting authority is responsible for selecting the best bids in terms of economic advantages, determining its needs in advance regarding their nature and scope based on detailed technical specifications. These specifications must not be directed towards a specific product or contractor. Pre-selection may be used in restricted procedures. Professional qualification and classification certificates verify the technical, financial, and professional capacities of institutions, facilitating the awarding process. Economic operator cards (national, sectoral, or contracting authority level) provide accurate definitions of operators, ensuring precise technical and functional conditions and evaluating the contractor’s efficiency. These cards assist in

supervisory control and coordination among different contracting authorities and guide public request data.

2.4 Subject of the Operation:

Public Procurement Law specifies the subject of the procurement to meet a public need, including works, supplies, studies, or services. The announcement must include a summary of the technical and financial specifications. The contracting authority may conclude one or more contracts to meet a public need. If the subject includes multiple operations, the authority may conclude a total contract.

2.5 Brief List of Required Documents with Reference to Detailed Specifications:

The announcement refers to pre-prepared documents and the specifications book, containing all necessary information for candidates to prepare suitable bids.

2.6 Preparation Period for Bids and Place of Submission:

The period and place for preparing and submitting bids must be specified to allow maximum participation. Considerations include the complexity of the subject and the estimated delivery time for bids. The period starts from the first publication of the competition announcement, either in the official bulletin, press, or procurement portal. The announcement specifies the date and time for bid submission and opening. If the last day falls on a holiday, the period extends to the next working day. In limited procedures, deadlines for submission and opening of pre-selection files are specified accordingly.

2.7 Validity Period of Bids:

The validity period must consider the interest of candidates who must maintain their offers throughout the validity period. The period must be reasonable to ensure seriousness, while the contracting authority is not obliged to finalize the contract if circumstances do not permit, despite announcing its intent. The Algerian legislator has attached legal and administrative effects to the validity period, including notifying the contractor before the end of the validity period and allowing price adjustments under Article 100. Contracted fees are fundamental and cannot be altered if the period between submission and service commencement exceeds the preparation period plus three months. If the contract includes a price adjustment clause, it applies only between the last validity date and the notification to commence contractual services. Price review clauses apply quarterly unless otherwise agreed. Price adjustments are based on the month of service commencement if it occurs after bid validity; otherwise, it is based on the month when the offer expired. Price adjustment is prohibited during bid validity.

2.8 Obligation of Bid Security:

A key element in publishing the announcement is specifying the amount of initial security to ensure the seriousness of candidates. The contracting authority must provide guarantees to ensure contracting with the best, most efficient, technically and financially qualified operator. The amount and method of security recovery are specified in the specifications or contract terms according to applicable legal provisions.

For public works and supply contracts, the bid security is a specified amount exceeding 1% of the bid when the estimated contract value exceeds 1,000,000,000 DZD and 300,000,000 DZD, respectively. The security is issued per a template determined by a ministerial decree. For institutions under Algerian law, it is issued by a bank under Algerian law or the Public Procurement Guarantee Fund; for foreign contractors, it is issued by a bank under Algerian law with a corresponding first-class foreign bank guarantee. In limited procedures, the security is submitted in a sealed envelope marked "Bid Security – Not to be opened except during financial envelope opening."

The bid security is returned to the candidate whose bid was not accepted and who did not appeal after one day from the expiry date of the appeal period. The bid security is also returned to a candidate who filed an appeal upon notification of the decision rejecting the appeal. Likewise, the bid security is returned to the successful bidder upon submission of the performance guarantee.

2-9. Emphasis on Submission of Bids in a Tightly Sealed Envelope:

The competition announcement must indicate the necessity of submitting technical and financial bids in a tightly sealed envelope marked: "Not to be opened except by the committee for opening and evaluating bids and reviewing the call for tenders."

2-10. Price of Documents:

The price of the public procurement documents must be specified in the announcement, as the contracting authority prepares a set of documents in addition to the specifications book. These documents must contain all necessary information enabling candidates to submit acceptable bids, particularly regarding:

- Detailed description of the required services or all requirements, including technical specifications, proof of conformity, standards required for products or services, as well as necessary designs, drawings, and instructions.
- Economic, technical conditions, and financial guarantees.

- Additional information or documents required from the contractors.
- Language(s) to be used in submitting bids and accompanying documents.
- Payment methods and currency of the bid.
- Period granted for bid preparation, bid validity, date and time for submission, and date and time for opening the envelopes.
- Exact address for bid submission.
- All other modalities and conditions specified by the contracting authority that the procurement must comply with.
- The specifications book must be obtained by the contractor or their appointed representative, the temporary consortium agent, or their designated representative unless otherwise agreed in the consortium agreement. The documents may be sent to a candidate upon payment of their price.
- The contracting authority must make the call for tenders documents available to contractors or candidates electronically according to a timetable determined by a decree of the Minister of Finance.

Second: How to Announce Public Procurement:

Public Procurement Law requires that public procurement be announced through multiple and widely accessible channels, allowing maximum awareness among operators in the subject of the procurement. The legislator ensured announcements be made via the Official Bulletin of Public Procurement, print and accredited electronic press, for open tenders, open tenders with minimum capacity requirements, restricted tenders, and competitions. The procedure may be national and/or international, including negotiation after consultation and the consultation method.

The Algerian legislator also emphasized mandatory publication via the Public Procurement Portal under conditions set by the Minister of Finance for the previously mentioned contracting methods. Announcements of contracts concluded under these forms must be made domestically and internationally in Arabic and at least one foreign language.

The joint decision of the Minister of Finance and the Minister of Communication No. 196, which defines the conditions and procedures for contracting authorities to publish via accredited electronic press, represents an important step in digitizing public procurement and achieving the true purpose of announcements through electronic publication.

Summary of public procurement announcement channels:

1. Official Bulletin of Public Procurement:

The procurement must be announced in the Official Bulletin of Public Procurement, a periodic bulletin published weekly in Arabic, French, and English. It includes announcements of national and international tenders, pre-selection, auctions, competitions, deadline extensions, notices, cancellations, wage statements, public works and construction materials, studies, and legal and regulatory texts.

2. Accredited Print and Electronic Press:

Public Procurement Law mandates announcements in print newspapers and, for the first time, explicitly allows publication via accredited electronic press. Previous regulations required publication in two nationally distributed daily newspapers but did not address electronic publication. The Ministerial Decision No. 196 outlines the procedures and conditions for electronic press publication.

3. Local Publicity of Public Procurement:

Law No. 23-12 does not address local publicity, unlike previous regulations (Law No. 15-247, Article 65/2), which allowed local announcements for provincial or municipal public tenders if the estimated administrative value did not exceed 100,000,000 DZD for works or supplies, or 50,000,000 DZD for studies or services. Local publicity may include:

- Publication in two local or regional daily newspapers.
- Posting the announcement at relevant provincial offices, all municipal offices, chambers of commerce and industry, craft and agriculture offices, and the concerned technical directorate.

4. Public Procurement Electronic Portal:

Publication via the Public Procurement Portal is mandatory for the tender types specified in Article 39 of the Public Procurement Law, negotiation after consultation where applicable, and consultation under Article 18. The portal's main purpose is to disseminate and exchange procurement documents and information and to conclude procurement electronically. Article 9 of the decision specifies electronic exchange procedures between contracting authorities and economic operators, including tender announcements, pre-selection invitations, consultation letters, provisional awards, annulments, or cancellations. Electronic announcements must coincide with announcements in the Official Bulletin and press.

Third: Cases Where Public Procurement Must Be Announced:

The Public Procurement Law specifies cases in which the contracting authority must announce its intent to contract in a limited set of circumstances, according to the contracting methods in Articles 18, 39, and 42. Announcements must be made through the Official Bulletin, print and electronic press, and the Public Procurement Portal. These cases include:

1. Tender Forms:

Mandatory announcement via Official Bulletin, print and electronic press, and the electronic portal for tender types under Article 39.

2. Negotiation After Consultation:

An exceptional method used only in specific cases:

- When a call for tenders is deemed unsuccessful for the second time.
- For studies, supplies, or special services not requiring a tender due to their nature, low competition, or confidentiality.
- For works related to the exercise of sovereign functions of state institutions.
- For previously awarded contracts that were canceled and cannot be re-tendered.
- For operations under government cooperation strategies, bilateral agreements involving preferential transfers, debt-to-development project conversions, or grants. Consultation may be limited to the relevant country or fund-providing country.

3. Consultation:

Requests where the estimated total amount is equal to or below the public procurement thresholds.

4. Exceptions to the Obligation to Announce:

Contracts of the Ministry of National Defense are excluded from the law, with no public envelope openings, and no publication of documents under Article 95, to protect national defense and state security. Article 107 prohibits electronic access to competition documents for these contracts. The law does not explicitly address the announcement of defense contracts but implicitly prohibits it due to this restriction.

Fourth: Legal Effects of Public Procurement Announcement:

The announcement is the first step taken by the contracting authority to conclude contracts to meet predefined needs. It is not merely an administrative procedure; it ensures transparency and freedom of competition and serves as a known contracting action. It invites contracting, protecting legal principles underlying public procurement and allowing the purchaser to obtain the maximum number of quality offers.

The announcement does not create obligations for the contracting authority beyond providing the documents for a fee, either physically or electronically. It does create obligations for those submitting bids, who must adhere to deadlines and maintain their bids throughout the validity period, under penalty of administrative sanctions, including exclusion.

A distinction exists between the announcement as an invitation to contract and as a condition for the validity of procurement procedures. As an invitation, it is the initial administrative step in forming the contract. As a condition for procedural validity, it informs stakeholders of actions taken, such as provisional awards, cancellations, or declarations of ineffectiveness, allowing recourse to external control bodies or competent courts.

Conclusion:

Announcement is a critical stage in public procurement, enabling the contracting authority to obtain the best economic offers and the highest quality goods and services. It embodies the principle of procedural transparency. While it does not create obligations for the public purchaser, it obliges every economic operator submitting a bid to maintain their offer throughout its validity period, subject to legal penalties for non-compliance.

Given the importance of public procurement announcements, the Algerian legislator is encouraged to expedite issuing regulatory texts for full implementation of the Public Procurement Law, particularly regarding electronic procurement documents, including electronic specifications books, and to revise the portal regulations governing public procurement.

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