

REQUEST FOR PROPOSALS IN THE DIGITAL PUBLIC DEAL: A STUDY UNDER THE PROVISIONS OF LAW 23/12

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Summary

The digital public deal constitutes a deal similar to the traditional public deal, except that it is carried out through electronic media, which requires that it be subject to the requirements of the digital environment and adapted within its privacy in terms of the conditions and procedures for concluding and implementing it. The request for offers is the general rule in concluding the digital public deal because it gives it the character of transparency and freedom of competition. There is equality between the candidates, but it requires a strong infrastructure and high Internet flow, supported by a protection system and advanced electronic devices and programs.

Keywords: Tenders, Digital Public Procurement, Study, Law 23-12.

INTRODUCTION

The request for offers constitutes one of the most important methods of concluding public contracts, as it is the general rule for concluding traditional public contracts, and this is what is included in Law 23/12 regulating the general rules related to public contracts by stipulating that the conclusion of public contracts shall be in accordance with the procedure of requesting offers as a general principle or in accordance with the direct negotiation procedure. Or negotiation after consultation as an exception. The request for offers, in the sense of this law, is a procedure that aims to obtain offers from several competing contractors, provided that the public deal is allocated without negotiations to the contractor who submits the best offer in terms of economic benefits, based on objective selection criteria, which are prepared in the book of conditions before Launching the procedure, which means that the request for offers is the best procedure that enshrines the principles of concluding public contracts in terms of enabling economic operators to freely access the public demand, as well as equality between the various candidates, as well as transparency of the procedures.

The principles of concluding public deals have been strengthened through the legislator's adoption of the system of digitizing public deals through his creation of the electronic portal for public deals for the first time under the repealed Presidential Decree 10/236, which aims to enable the contracting authority and economic operators to exchange information electronically, which is what is included in the decree. Canceled No. 15/247 related to public deals, and was retained by Law 23/12, which includes the general rules related to public deals, which made us look for how to conclude a public deals by requesting offers digitally, especially after the legislator stipulated the necessity of exchanging information electronically after it was permissible, and whether It is subject to the same procedures for requesting offers when concluding a public deals in the traditional manner. To answer this problem, the study was divided into two axes, so that in the first axis we addressed: the concept of the digital public deal, while we devoted the second axis: to requesting offers as a general basis for concluding the digital public deal. This necessitated our employing the descriptive approach through our description of the scientific facts as they are and the method. Analytical by analyzing the legal materials that regulate public deals.

Firstly: Concept Public deal digital

The national legislator was interested in digitizing public deals by dematerializing the procedures related to them. Given the importance of this topic, we will discuss it in some detail until it becomes clear to us the meaning of the digital deal, its importance, its characteristics, and the principles that govern it.

1. Definition of public deal Digital:

The digital public contract is nothing but one of the electronic administrative contracts, but it is a contract of a special nature. In order for the meaning to become clear to us, we must define the electronic administrative contract and then know the digital public character.

1.1. Definition of the electronic administrative contract:

Article 6 of the Law of Algerian electronic commerce defines contract read: “The electronic contract within the meaning of Law 04-02 dated 5 Jumada al-Awwal 1425, corresponding to June 2004, which defines the rules applied to commercial practices.” It is that contract that is concluded remotely, without the actual presence of the parties and the simultaneous presence of its parties by resorting exclusively to electronic communication technology¹. And it differs from the Contract Electronic administrative being concluded from person General moral², This is for the purpose of managing or organizing a public facility, via The Internet shows the administration’s intention to adopt the provisions of public law, by including exceptional conditions in the contract that are uncommon in private law deals³.

Subsequently the definition of the electronic administrative contract is identical to the definition of the regular administrative contract, except with regard to the method of contracting, as the regular administrative contract is concluded using paper writing, while the electronic administrative contract is concluded using electronic means remotely, and this does not mean the absence of the physical presence of the parties, but rather the parties exist but not combined in one council.

1.2. Legislative definition of the public contract:

the law n° 12/23 Related to the general rules of public procurement define The traditional public deal is A written contract concluded for consideration by the contracting authority (the public buyer) with one or more economic operators (the contracting agent) in order to meet the needs of the contracting authority in the field of works, supplies, services and studies, in accordance with the conditions stipulated in the Public Procurement Law, Legislation and Regulation. applicable⁴ It is the same definition that we can apply to digital public deal, as they are subject to the same terms and conditions, except for those related to dematerializing them and conducting contracts via the electronic method, which gives them special importance because they eliminate many of the bureaucratic obstacles and challenges facing contractors in concluding or contracting. Implementing public deals in paper or traditional form.

1.3. Jurisprudential definition Public deal:

considered as Public deals are a type of legal actions issued by the administration within the framework of performing the administrative function, achieving public service, and managing public facilities. It is an administrative contract of a special nature and specific form. Differs in many

1-Law No 18-05 of Shaaban 24, 1439, corresponding to May 10, 2018, relating to electronic commerce, j-o No. 28, issued on Shaaban 30, 1439, corresponding to May 16, 2018.

2- Lauboutier Flora and Romas Angelicia: “The dematerialization of the reform of the command publique.” *contrats publics*, n° 167, Juillet-aout 2016, p 22.

3-Hazem Salah El-Din Abdullah, contracting the management entity via the Internet, a comparative study, New University House, Egypt 2013, p 178.

4- Article 02 Of the provision the law Get up 23/12, historian in 18 Muharram Year 1445 corresponding to August 05 -2023 ,Determines the general rules related to public procurement, j-o number 51, dated in 06 August 2023.

of its aspects, Special contracts requiring the consent of both parties to produce legal effects¹. She is Contracts written². Under which the economic contractor is obliged to perform work for the benefit of the public administration in return.³. These contracts are concluded by ALimit Persons of public law: the state, the state, the municipality, and the public institution of an administrative nature in the Algerian legal system with one of the other legal persons, public or private, natural or legal, such as a contractor or supplier, according to certain and legally defined conditions, aiming to complete or implement public works, supplies, or performance service, And rules were applied to it Public Law⁴.

From the above it becomes clear to us that public deals are contracts are made between specific parties and for her a specific topic it is done with an amount specific according to the law regulating public procurement, types of deals can be distinguished according to the nature of the public deal, which relate to the following: - completion of works - acquisition of supplies - provision of services - completion of studies. The legislator indicated the nature of these deals as follows:

- **With regardsFor works deals:** Related to construction, maintenance, rehabilitation, restoration or demolition operations for facilities or part there of⁵.

- **With regardsFor deals related to the acquisition of supplies**It includes obtaining various goods, equipment, and supplies necessary for the management of public facilities. It relates to the acquisition, rent, or rental sale, with or without an option to purchase, of equipment or materials, and the equipping of complete, non-new production facilities⁶.

- **Deals Completion of studies** It is related to providing previous studies to complete specific projects, because these studies are what determine the quality of the project to be completed, and they mainly aim to ensure technical monitoring of the project⁷.

- **Deals Services** It is noted that the latter was not clarified by the legislator, but rather he defined it with a negative standard, which is every deal that differs from deals of works, supplies, or studies. Accordingly, service deals include the supply of necessary goods and services, such as goods, movables, and various materials and equipment, in exchange for a price determined by the contracting administration in advance⁸.

1.4. Meaning the digital public deal:

Algerian legislation has not provided a definition of a digital public deal under the law 23/12 regarding the general rules of public deal, it merely stipulated the creation of an electronic portal through which information related to the deal to be concluded can be exchanged digitally⁹. He considered it a database for concluding and implementing digital deals¹⁰ it also obligated the contracting departments to place all documents related to the call for competition at the disposal of economic contractors or candidates for public contracts in a digital manner, according to a timetable determined by a decision of the Minister of Finance¹¹.

¹- Jaber Zaid and Wahiba Diji, procedures and methods for concluding public deals in Algerian legislation, *Majma' Al-Ma'rifa Magazine*, College. Economic, social and management sciences, Tindouf University Center, first volume, first issue, 2015, p 152.

²- Ibid, p 153.

³- Faisal Nasigha, The Legal System for Public deal and Their Protection Mechanisms, *Journal of Judicial Jurisprudence*, Faculty of Law and Political Science, University of Biskra, Issue Five, September 2009, p 99.

⁴- Majed Ragheb Al-Helou, *Administrative Contracts*, New University House, Egypt, 2009, p 399.

⁵- Article 24 of law N° 23/12, op. cit.

⁶- Aisha Khaldoun, Ahmed Bouzek, Concluding public contracts during the spread of the Corona epidemic, *Journal of Human Sciences*, Oum El Bouaghi University, Volume 08, Issue 2, June 2021, p 35.

⁷- Article 24 of law N° 23/12, op. cit.

⁸- Jaber Zaid, and Wahiba Deji, previous reference, p 153.

⁹- Article 105 of law N° 23/12, op. cit.

¹⁰- Article 106 of law N° 23/12, op. cit.

¹¹- Article 107 of law N° 23/12, op. cit.

The French legislator used the term dematerialization this is in Article 56 of the Digital Public Deals Law of 2006, amended by Decree 2011-1000¹. To express the number of public deals It means the literal translation of the term dematerialisation “to dematerialize” or “to gain an unreal appearance,” and its opposite materiel" in a material sense" or that we use material means this means the dematerialization of deals related to the digital public deal as a replacement the paper documents with electronic editors². Any adopting digital means in concluding and implementing public contracts as is the Digital deals in France are in the final stage, as is the case with digital deals in Algeria³.

It is clear from the above that Public deal digital she is a contract it will be concluded between Public law persons and private law persons using electronic means, anyremote, The digital public Deal is concluded between the country and Economic transactors using electronic means in order to meet the needs of the contracting authority in the field of works, supplies, services and studies. It is the same as the normal public deal, that is, the traditional one. The only difference between them is the approved method in contracting⁴. Which It does not differ from the traditional deal in terms of its elements and effects, but rather differs mainly in the method of conclusion, because the former takes place via digital media, and there fore these media do not affect the content and essence of the contract.

The importance of a digital public transaction to reduce nepotism, favouritism, corruption and speeding up procedures is stressed, It also helps to avoid staff discrepancies in the performance of their administrative function, as it allows direct contact between bidders and contractual service via the Internet, prevents management officers from taking advantage of their influence as available at the conclusion of the traditional public transaction⁵. He also emphasizes the importance of a digital public deal to rationalize expenses by providing substantial amounts, especially if the offers are futile⁶. This is done through the process of electronic announcement of the public deal⁷ which leads to attracting the largest possible number of economic customers this provides the opportunity for freedom of competition among a large number of candidates and enables the administration to choose the best offers⁸.

2. Principles of the Digital public deal and its characteristics:

Digital public deals are based refers to those general principles on which traditional deals are based by looking however, it differs from it only in the method of conclusion, as digital deals are concluded in the absence of the actual presence of the contract council which includes contracting authority (administration) On the one hand and The dealer economics on the other handIt is carried out via electronic means, which makes it distinct from other administrative deals and contracts.

2.1. Principles of digital public deal

Public deals are made Digital is based on a number of principles mentioned in the text of Article 05 of Presidential Decree N° 12/23 relating to the organization of public procurement

¹- Article 56 of Decree No. 2006-975 of 1 August 2006 on the Code of Public Procurement, Amended by Decree No. 2011-1000 of 25 August 2011 - Art. 19, Repealed by Order No 2015-899 of 23 July 2015 - Art. 102.

²- Fayrouz Hout, The Legal System for Electronic Contracting in the Field of Public deals, PHD thesis, specializing in contracts, Faculty of Law, University Sidi Bel Abbes, Algeria, 2019, 2020, p. 21.

³- To learn more about the concept of dematerialization of public deals, see: Ben Jarrad Abdel Rahman, Mahdawi Abdel Qader, Dematerialization of public deals (a comparative study), Al-ostaz Al-Bahith Journal for Legal Studies, Issue 11, September 2018, p 229.

⁴- Fayrouz Hout, op. cit, p 23.

⁵- Majed Ragheb Al-Helou, Administrative Contracts, New University House, Egypt, 2009, p. 121.

⁶- Achache Hamza, electronic contracting in the field of public contracts in Algerian law, PHD thesis, administrative specialty, Faculty of Law and Political Sciences, Mohamed Boudiaf University of Lamsila, 2021-2022, p 18.

⁷- Hamdi Laqbilat, Electronic Public Administration Law, Wael Publishing House, Jordan, 2014, p 160.

⁸-Ibid, p 160.

¹Which Freedom of access to public applications, equality in treatment of candidates, and transparency of procedures.

2.1.1. Free access to public demand

The principle of freedom of access to public demand means that Not restricted the nominated for the public contract except within the limits of the law which results in determining the public demand accurately on the one hand, And create an atmosphere of competition between people Candidates For the deal on the other hand² And it is done by facilitating the task of potential candidates for the deal to submit their nominations under clear conditions and procedures³, This means opening the way for natural and legal persons who meet the required conditions to submit offers before legally qualified bodies in accordance with the law on concluding public contracts based on the required conditions determined and set in advance by these bodies⁴. Based on the published announcement with the conditions and procedures contained in the book of conditions to enable candidates who meet the necessary conditions Submitting their offers⁵, The electronic announcement of the deals is carried out through various appropriate advertising means, as the announcement of the deal is the first criterion determining the extent of freedom of access to public demand⁶.

The legislator has approved the principle of freedom of access to public requests is explicitly stated under presidential decree No. 08-338 amending Decree No. 02-250, which was explicitly established through Article 02 bis there of. This was embodied through the text of article 03 of Presidential Decree No. 10-236 under the first section entitled Preliminary Provisions, and the scope of its application was expanded to include even scientific economic institutions, so that this principle became clearer through presidential decree No. 15-247, which he attached importance to. Major by adopting it in Article 5 there of this is what the legislator also maintained in light of Law 23/12, which specifies the general rules related to public contracts.

2.1.2. Equal treatment of candidates

Represents a principle Equality is the most important principle that governs the management of public facilities, and is embodied through the administration performing its services to everyone who requests them from the public who meet the necessary conditions⁷. Equally and without any discrimination based on religion, race, color or gender. Or language⁸ It finds its basis in the laws of international law and national constitutions, and is embodied in contracts Deals generality, Through the contracting authority's keenness to give equal opportunity to all candidates who meet the required conditions to submit their offers⁹. This is what is understood from the text of Article 43, paragraph 2, of Law 23/12, which includes the general rules for public contracts, as it stipulates that the submission of nominations must be based on non-discriminatory criteria that are related to the subject of the deal and appropriate to its scope. Of course, there are some exceptions to this

¹- Article 05 of the the law 12/23, op cit .” To ensure the effectiveness of public applications and the proper use of public funds, the principles of free access to public applications, equality in the treatment of candidates, and transparency of procedures must be taken into account in public procurement, while respecting the provisions of this decree”.

²- Mohammad Ababsa and others, procedures for applying the principles of advertising and competition in concluding public contracts, Journal of Legal and Economic Research, Volume 05, Issue 01, 2022, p 650.

³- Furqan Fatima Al-Zahraa, the legal framework for the protection of public deals in algeria, PhD thesis, specializing in Public Law, Faculty of Law, University of Algiers 1, 2017-2018, p 21.

⁴- Ashash Hamza, op. cit, p 39.

⁵- Muhammad Ababsa and others, op. cit, p 651.

⁶- Ibid, p 39.

⁷-Kadouj Hamama, The Process of Concluding Public deals in Algerian Law, 2nd edition, Office of University Publications, Algeria 2006, p 84.

⁸-Drifi Nadia, Public Facility Management and New Transformations, Dar Yalqis, Algeria, 2010, p 35.

⁹- Jaafar Khadija, Principles of Public deals in Decree 15/247, Journal of Studies and Research, Arab Journal of Humanities and Social Sciences, Volume 12, Issue 03, 2020.

principle, such as preference for local contractors over others, preferring local products over other products, and so on¹.

2.1.3. The principle of transparency of procedures

He means transparency in general, the clarity of what the administration is doing in its relations with citizens and the publicity of the procedures, goals and objectives it aspires to, whether in public or private governmental institutions². In public contracts, we find that the contracting authority is obligated to devote the character of transparency in concluding public contracts through its reliance on publicity as a mandatory procedure in all available media, including the written press and the electronic press, and this is also done through the electronic portal for public contracts³. No necessity of announcing the call for competition according to the methods specified in the organization of public procurement, to enable candidates can deliver their offers, attend envelope opening sessions, and evaluate the offers, in addition to reviewing the results of the evaluation and selection, and opening the scope of appeal against decisions related to the temporary award of the deal⁴.

2.2. characteristics of Deal Digital public

2.2.1 Conclusion via digital media

The system of communication and exchange of information in the digital manner is the most important thing that distinguishes digital deals from traditional deals. It is the system that the Algerian legislator introduced into the administrative legal system based on comparative legislation to ensure public service and improve its quality in a way that is commensurate with the application of the digital administration project, which touched many areas, including the field of public deals.⁵ Is characterized by deals concluded electronically by belonging to the category of digital commerce⁶, it is carried out over the Internet, in whole or in part, which gives the procedures a high-speed character compared to traditional deals that rely on papers and documents, which doubles the effort, time and cost⁷. It is also distinguished from the digital public deal being based on the electronic mediator in conclusion and proof. Except she is you agree with her regarding the subject of the deal and its parties⁸, it is answered. The subject of the deal concluded electronically applies to all things and services that may be dealt with in a traditional deal. As for implementation, some deals concluded electronically can be implemented completely electronically, such as deals whose subject is the provision of a service.⁹ in While there is another type of deal, which is partial digital deals, which completely it is concluded via the Internet and implemented outside it in the tangible physical world, such as sales that involve tangible goods supplied to the contracting authority, such as food supplies supplied for university services¹⁰.

2.2.2. Concluding public contracts remotely

As a result of concluding the deal electronically, the deal is completed remotely, that is, the digital public deal is concluded between people who are present in terms of time and absent in

¹-And this is what was stipulated in Article 12 of Presidential Decree N° 01-640 regarding the organization of public procurement and public utility authorizations, which stipulates that: "A margin of preference of twenty-five percent (25%) shall be granted to products of Algerian origin and/or to institutions subject to Algerian law, which The majority of its capital is owned by resident Algerians, with regard to all types of deals mentioned in Article 52 above.

²-Ammar Boudiaf, Explanation of the Organization of Public deals, Section 1, op. cit, p 106

³- Article 46 of the law 23/12, op. cit.

⁴-Kharshi Al-Nawi, Project Management within the Framework of Organizing Public deals, Dar Al-Khaldounia for Publishing and Distribution, Algeria, 2011, p 439.

⁵- Fayrouz Hout, op. cit, p 24.

⁶- Ben Jarrad Abdel Rahman, Mahdawi Abdel Qader, Dematerialization of Public deals (Comparative Study), op. cit, p 226.

⁷- Hamdi Laqbilat, op. cit, p 661.

⁸- Ashash Hamza, op. cit, p 19.

⁹- Mohammed Hussein Abdel Aleem, Proof of the Electronic Administrative Contract, New University House, Egypt, 2019, p 31.

¹⁰- Ibid., p 31.

terms of place, meaning that the contracting parties are not united by a real contract council, but rather by a virtual contract council¹, that is there is no physical presence of the parties. There is only a moral presence and it is concluded with the presence of an electronic intermediary between both parties to the public deal, and it is considered the basis of contracts concluded electronically².

2.2.3. Adjective International Digital Public Deal

Given that digital public deals are such as digital administrative contracts that are carried out via digital media, which makes them available to everyone, to everyone who has the capacity and interest in concluding them. This is what gives it a global character, as it transcends borders and places, as it takes place between people who belong to different countries, and this is due to the means of concluding it, which is the Internet³.

In this type of deal, both the contracting authority or the contracting customer may be from two different countries, but this method of contracting raises several important legal problems, including the judicial authority responsible for resolving disputes related to the deal, as well as the law that must be applied to it⁴. It is worth pointing out that condition in nature. If the contract is international or internal, it is up to the contracting parties if they are from the same country or from two different countries⁵.

Second: Request for offers as a mechanism for concluding the digital public deal

The national legislator grants the contracting authority complete freedom in the manner in which the public contract is concluded, as it alone bears the consequences of its choices⁶. However, he limited it to two forms: requesting offers as a general rule and direct negotiation and consultation as an exception⁷. Based on this, we will discuss the concept below. Electronic request for offers then we discuss the procedures for concluding the deal by requesting offers.

1. The concept of electronic request for offers (tendering)

The request for offers constitutes the general principle in concluding public contracts if their amounts exceed boundaries built into matter 41 from Law 23/12 the afore mentioned, and based on that, we will analyze and discuss it by presenting its definition and forms.

1.1. Definition of electronic request for tender (digital tender)

the Article 38 from Law 23/12, which specifies the general rules for public procurement, Defined the request for offers is as follows: Procedure Target to get Based on offers from several competing contractors, the deal is allocated without negotiations to the contractor who presents the best offer in terms of economic advantages. To Objective selection criteria prepared before the start of the procedure ”⁸, Based on this, we can define the electronic request for proposals as “obtaining Receive offers from several competing contractors submitted electronically according to the method determined by the administration, whether via a website, email or otherwise. that From the media and allocate the deal to the one who offers the best offer in terms of economic advantages, based on... “On objective selection criteria imposed by the administration in advance and included in the electronic conditions booklet before launching the procedure ”⁹.

And the question What arises in this area is: Does submitting offers electronically allow the legalization of public contracts?

¹- « Interactivity: possibility of exchange between the user of a computer system and the machine, via a terminal with a display screen». bresse pierre, beaure d'augeres guillaume et thuillier stéphanie: digital payment on the internet «state of the art, impact on trades and legal aspects, thomson publishing, paris 1997, p 76.

²- Ashash Hamza, op. cit, p 20.

³- Khaled Mamdouh Ibrahim, Concluding the Electronic Contract (Comparative Study), Dar Al-Fikr University, Alexandria, Egypt, 2006, p 55.

⁴- Ashash Hamza, op. cit, p 20.

⁵- Farooq Muhammad Ahmed Al-Abasiri, Subscription contract in information bases via the Internet, an applied study of international e-commerce contracts, New University House, Egypt, 2002, p 60.

⁶- Article 36 of law N° 23/12, op. cit.

⁷- Article 37 of law N° 23/12, op. cit.

⁸- Subject 38 of law N° 23/12, op. cit.

⁹- Ashash Hamza, op. cit. p 90.

By returning to the article 105 And 106 From Law 23/12, which specifies the general rules related to public procurement We find the Algerian legislator's announcement of the establishment of the aforementioned digital portal, which allows contracting departments and their contracting clients to submit all documents related to the lawsuit for competition and exchange information in a digital manner¹. In addition to what was stipulated in Article 323 bis 1 of the Civil Code, which stipulates: "Proof in writing in electronic form is considered the same as proof in writing on paper, provided that it is possible to verify the identity of the person who issued it and that it is prepared and stored in conditions that guarantee its safety"², Therefore, digital public contracts have the same legal value as traditional public contracts. This is what the Algerian legislator informed us of.

Regarding Article 10 of the decision dated 2013, which stipulated that the entry of contracting interests and economic operators into the jobs allocated to them depends on their registration in the portal, and Article 204 of Decree No. 15-247, we find that the legislator gave freedom to the contracting client in the method of submitting his offer, either by classical method or Electronic³ While we find that it obligates the contracting authority to place at the disposal of contractors or candidates for public contracts all the documents necessary to call for competition (announcement, book of conditions...), it also obligates economic contractors and candidates to respond to this in a digital manner.⁴.

1.2. Shapes Request for offers

Article 39 of Law 23/12 relating to public procurement stipulates that The request for offers can be national, meaning it is limited to national contractors whose residency activity is proven in Algeria, or international and here The request for offers is open to contractors residing in Algeria and foreign contractors, and the request for offers takes one of the following forms: open request for offers, open request for offers with minimum capabilities requirements, limited request for offers, competition⁵. It is noted that Law 23/12 did not include the regulatory provisions related to stating the forms of request for offers and referred us to the previous Decree No. 15/2047 related to public procurement, which we can discern through the text of Article 112 of the provisions of Law 23/12, which stipulated the cancellation of the violating provisions. The new law, while keeping the provisions that fall within the regulatory field in effect until the publication of the new regulatory texts⁶. Based on this, we will discuss the forms of requesting offers in accordance with the provisions of Decree 15/245.

1.2.1 Open Request for Proposals (Open Bidding): Article 43 of Decree No. 15-247, stipulates that "a procedure that allows any qualified candidate to submit a pledge, and it is considered the most competitive form of request for offers. It is a procedure that allows entry into a competition with an unlimited number of competitors who meet the fulfilled general conditions, and this circle expands as If the deal is national and international, which establishes transparency and equality between the candidates, especially if it is published through the digital portal for digital public contracts, which allows everyone, without exception, to access the announcement of the deal⁷.

1.2.2. Request for offers with minimum capabilities requirements: According to Article 44 of Presidential Decree No. 15-247 mentioned above, which is "a procedure that allows candidates who meet the minimum qualifying conditions determined by the contracting authority in advance

¹-These two articles carry the same content as the previous two articles in light of Decree 15/247 relating to public procurement and the public utility, which was cancelled. However, the difference lies in the obligation to exchange information electronically under the new law. See Articles 105/106 of Law 23/12 relating to public procurement. , op. cit.

²- Order N° 75-58 of Ramadan 20,1395, corresponding to September 26,1975, amended and supplemented by Law N° 07-05 of May 13, 2007, containing the Civil Code, J-O N°. 31, issued on May 27, 2007.

³- "all Special process for procedures on a paper holder. "It can be adapted to electronic procedures."

⁴- Article 107 of law N° 23/12, op. cit.

⁵- Subject 39 of law N° 23/12, op. cit.

⁶-Article 112 of law N° 23/12, op. cit.

⁷- Belgul Abbas, Electronic Public deals in Presidential Decree 15-247, Journal of Legal Studies, Issue 2, December 2019, p. 43.

before launching the procedure, by submitting a pledge.”¹, From the economic dealer, excluding or fulfilling these conditions, there is no pre-selection of candidates², And it was determined Second paragraph from The same article: The minimum qualifying conditions in these procedures are the financial, professional and technical capabilities necessary to implement the deal, which are proportional to the nature, complexity and importance of the project³. Therefore, the contracting authority must include among the technical conditions the ability to provide digital means while announcing the deal electronically in order to be informed of the contractor’s capabilities electronically⁴.

1.2.3. To request Limited offers (limited tender): Article 45 stipulates a procedure for selective consultation, as the candidates who are selected are the first from Only those who are invited to submit their pledges before the contracting authority are related to complex studies or operations, or of special importance, which can only be implemented by candidates who have high qualifications⁵, And it can The request for limited offers must be in one stage, or two stages according to the conditions as follows:

- **To request Limited offers in one stage:** when The contracting authority launches the procedure on the basis of detailed technical specifications prepared with reference to standards, efficiency to be achieved, or functional requirements ⁶.

- **To request Limited offers in two stages:** apply The contracting authority conducts a limited request for offers in two stages when it is not able to determine the technical means to meet its needs, even with a study deal. In the first stage, the candidates who were initially selected are invited by a consultation letter to submit an initial technical offer, and This is amazing the condition It can be emailed directly by sending a consultation letter⁷, as the contracting authority can correspond with contractors electronically to clarify or detail their conditions, provided that they respond in the same way. This procedure applies to offers that the bid opening and bid evaluation committee deems conforming to the book of conditions⁸, as the contracting authority may organize meetings to clarify the candidates’ offers in the presence of members of the bid opening and bid evaluation committee, with the assistance of experts in this field, provided that minutes signed by them are drawn up on this⁹. And it is possible for this the make that this is done by conducting an electronic conversation over the Internet, and the minutes sent by the contracting authority and the members of the committee are signed by sending a copy that includes the location of each member’s signature, provided that it is returned in the same way via mail. the signature It is submitted electronically and re-sent. The contracting authority collects the signatures and folds them in One sheet of paper, provided that each signed sheet is kept separately.¹⁰

1.2.4. Competition: Based on Article 47 of Decree 15-247, this is a procedure make Art guys in competition yet Taking The opinion of a specialized arbitration committee, to present a plan or project designed in response to a program prepared by the project owner, with the aim of completing a process that includes special technical or technical aspects, before awarding the deal to one of the winners of the competition ¹¹. The deal is awarded during the competition after negotiations to the winner who presented the best offer from an economic standpoint, And it was

¹- Article 44 From Presidential Decree 15-247, op. cit.

²- Ashash Hamza, op. cit. p 92.

³- The second paragraph of the article 43 of Presidential Decree 15-247, op. cit.

⁴- Ashash Hamza, op. cit. p 93.

⁵- And it's similar The limited request for offers, along with the open request for offers and consultation, enables the submission of offers from unknown clients based on the announced terms and conditions.

⁶- And loyal In this case, the contracting authority is aware in advance of the technical complexities of the deal, the goals that must be achieved by concluding it, and the techniques that require this, meaning that it has complete information about the subject of the deal despite its complexity.

⁷- This is called selective counseling.

⁸- The 3rd paragraph of the article 46 of Presidential Decree 15-247, op. cit.

⁹- The 3rd paragraph of the article 46, *ibid*.

¹⁰- Ashash Hamza, op. cit. p 94.

¹¹- The 2nd paragraph of the article 47 of Presidential Decree 15-247, op. cit.

confined Article 47 The scope of resorting to competition in the field of territorial development, reconstruction, architecture, civil engineering, and information processing¹, and prevent The legislator prohibits resorting to holding a competition in deals to supervise the completion of works if their amounts do not exceed the limit stipulated in the first paragraph of the article, which relates to intervention in an existing building, or an infrastructure facility, or which does not contain design tasks², And be The competition is either open with a requirement of minimum or limited abilities, with the exception of the agreement to supervise completion, which is obligatory according to the limited competition procedure³, And it mustThe competition conditions booklet should include the methods of initial selection and organization of the competition, in addition to specifying the estimated financial cover for the works⁴.

And bald consideration toThe competition is concerned with information plans, programs, and models, so it is possible to dispense with the physical aspect, and rely on the software systems for preparing these models and information systems directly, and submit their bids through digital methods according to the methods determined by the contracting authority, either by e-mail or depositing them on a special site for the contracting authority. Created for this connection or through the digital portal⁵.

2. Electronic bid request procedures.

Public administrations register and control projects related to public needs⁶ After studying it and ensuring that there are sufficient and allocated financial funds to cover its contract in facing the various burdens it faces⁷, By arriving at the preparation of the book of conditions, we have carried out the most important preparatory process for the digital public deal, so that the most important pre-contractual stage comes, which is announcing the public deal electronically without compromising the confidentiality of deals, and this is because of its positive impact that is reflected in transparency and acceptance by those wishing to compete and contract. With the administration that owns the electronic advertisement, this advertisement thus expands the scope of competition and eliminates the monopoly imposed by specific categories of suppliers and economic dealers, which we will try to shed light on through the following two elements:

2.1. Preparing the electronic presentation for the public deal

In the field of digital public deals and in order to confirm the freedom of competition in contracting with the administration, directing advertising through the Internet and modern electronic media is the most important way to provide a positive means for a large number of economic operators to express their desire to contract⁸. Thus, the advertisement in this way crossed the territorial borders of the state once it was displayed on the Internet⁹, And consecrate More publicity.

2.1.1. to setPublic needs related to the deal

Article 16 of Law 23/12 containing the general rules for public procurement on specifying Needs, by saying, “identify the needs of the contracting authority that must be met in advance before embarking on any action.”and To Abram“public deal”¹⁰.

¹- The 2nd paragraph of the article 47 op. cit.

²- The 2nd paragraph of the article 47 op. cit.

³-article 48 of Article 46 of Presidential Decree 15-247, op. cit.

⁴- Paragraph 3 of Article 48, op. cit.

⁵- Ashash Hamza, op. cit, p 97.

⁶-Abdel-Ghani Boualkour and others, Controlling and Determining Needs on the Occasion of Concluding Public deals, Journal of Legal and Political Research, Issue 3, Muhammad Al-Sadiq Ban Yahya Jijel University, p 169.

⁷- Whout Fayrouz, op. cit.p 63.

⁸-Mohamed Bakr Hussein, the Mediator in Administrative Law, Dar Al-Fikr Al-Jami'i, Alexandria, 2006, p. 292.

⁹- Amal Lotfi Hassan Jaballah, The impact of electronic means on the actions of electronic administration (a comparative study), Dar Al-Fikr Al-Jami'i, Egypt, 2013, p 120.

¹⁰- Article 27 of the provisions of Presidential Decree 15- 247, op. cit.

As for the determining needs through digital means, there is something that prevents this, given that the original process of identifying needs is done through computer applications, and the needs identification document is authenticated and signed using the electronic signature method ¹.

2.1.2. Preparing the terms and conditions book

He means the book of conditions is a document that includes a set of items related to the subject of the deal and the documents that make up it, in addition to the conditions required of the candidates, as well as the principles that are relied upon in selecting the contractor, and all the conditions according to which the deal to be concluded is concluded and implemented². It is an official document guaranteed by the contracting authority unilaterally, given that the booklet of conditions has an electronic origin. The national legislator has stipulated the necessity of relying on it in calling for competition through the electronic method, which is what is understood from the text of Article 106 of Law 23/12 related to public procurement.

2.1.3. Advertising And electronic advertising

In the field of digital public contracts and in confirmation of the principle of freedom of competition in contracting with the administration, directing advertising through the Internet and modern digital media is the most important way to provide a positive means for a large number of economic operators to express their desire to contract³. Thus, the advertisement in this way crossed the territorial borders of the state once it was displayed on the Internet⁴, And it provided more publicity, and the State of France was one of the first to approve and urge government institutions to advertise using the Internet through a decree⁵, 99-68 dated 02-03- 1999, and this was through a special website established for this purpose. Article 65 of Decree No. 15-247 specified that the announcement of the tender must be published in Arabic and one foreign language in at least two newspapers. It also specified the method for the second to be done. The announcement will be published through the digital portal for public contracts stipulated in Article 15 of the decision dated November 17, 2013. The Algerian legislator also stressed the necessity of announcing all information, the name of the contracting agreement, the title, the type of tender, either limited or open..., and information. Other. The administration believes it is necessary to include and announce it in both digital and traditional ways⁶, And it is necessary. Announcement of the tender in order to inform all concerned persons about the opening of the tender, and inform them of the conditions contained in the book of conditions⁷.

2.2. Submission the offers in the deal electronically

Grounded Digital public contracts have the same stages and steps as traditional public contracts, except that the difference between them results from the use of digital technology in these procedures instead of traditional means. Accordingly, the process of submitting offers passes through the following basic stages:

2.2.1. Receiving offers electronically

After the contracting authority announces its intention to contract by publishing the public contract announcement, all bidders who meet the specified conditions can begin the process of contracting. Submitting offers according to the conditions required in the book of conditions and

1-The Egyptian legislator defined the electronic signature as “what is placed on electronic documents and takes the form of letters, numbers, symbols, signs, or other things, and has a unique character and allows the person of the signatory to be identified and distinguishes him from others.” See in this regard, Yassin Qutal, Hakima Hamdi, Electronic contracting in the field of public deals, Al-Bahith Journal for Academic Studies, Batna 1, Volume 09, Issue 01, 2022, p 348.

2- Khaled Khalifa, Methods and Procedures for Concluding Public deals in Algeria, Dar Al-Khaldouniyah, Algeria, 2017, p 30.

3-Mohamed Bakr Hussein, The Mediator in Administrative Law, Dar Al-Fikr Al-Jami'i, Alexandria, 2006, p 292.

4- Amal Lotfi Hassan Jaballah, op. cit. p 120.

5- Muhammad Amin Youssef, The Administrative Contract and the Electronic Administrative Contract, Dar Al-Kutub and the House of Arab Studies, Alexandria, Egypt, 2017, p 282.

6- Article 62 of Presidential Decree N°. 15-247.

7- Article 26 of Presidential Decree N°. 15-247

within the appropriate legal deadlines¹, And it will be yesPreparing offers based on the date of the first publication of the competition announcement, either at the level of the official bulletin for public dealer deals, or in the press. This is somewhat logical, even though the date of publication in the official bulletin is technically earlier than the date of publication in written newspapers². In this context, the French legislator added a new guarantee to the principle of confidentiality and transparency in concluding the digital public contract by granting twenty-four hours to receive offers electronically. In the event of exceeding this period, the contract is considered rejected. As for the Algerian legislator, it stipulated, in accordance with Article 16 of the ministerial decision dated November 17, 2013, that For the content of the electronic portal, the date that is taken into account in calculating the period for preparing offers is the date applied within the framework of the procedures followed for the physical paper holder.

As forWith regard to submitting offers electronically, the decision regulating the public procurement portal issued by the Minister of Finance made this possible³, When it was stipulated that contractors could respond digitally,While Law 23/12 stipulates that this procedure is mandatory,It also allowed them to add a copy of the offer sent digitally as well, within the legal deadlines specified for requesting bids. This digital copy should not be opened unless the original offer carried a virus or did not arrive within the legal deadlines despite being sent or the contracting authority was unable to open it⁴. While the French legislator ruled that the display that was exposed to the virus be considered as if it had not happened⁵.

2.2.2. Opening envelopes and evaluating offers electronically

I supportedThe task of opening envelopes and examining bids was assigned to a unified committee called the Committee for Opening Envelopes and Evaluating Bids, and this is what was included in Articles 159 to 162 of Presidential Decree No. 15-247, under the section entitled Internal Control and the Committee for Opening Envelopes and Evaluating Bids, which was composed of two independent committees in Previous decrees, the first included an opening committee and the second a bid evaluation committee⁶. Article 70 of the same decree stipulates that the process of opening the envelopes related to the nomination file, and the financial and technical offer, takes place in a public session and on the last day and last hour of the deadline for submitting offers, by inviting the contracting authority and contractors to attend, whether in the published announcement that includes the invitation to competition, Or by message to the concerned contractors⁷, The contracting authority can, whenever possible and given the nature and complexity of the deal, carry out the process of opening the envelopes in an electronic public session via teleconference technology, provided that it informs the contractors of this in the competition announcement⁸.

2.2.3. Establishing the public deal electronically

The committee refers the bids to the contracted operator submitting the best bids financially, technically, and artistic, that meet the required conditions, taking into account the required quality, the possibility of implementation within the specified period, and the extent of the contracting customer's ability to complete his deal according to the terms and conditions. acharacteristicsspecified inThe book of conditions, based on what is known as the temporary grant of the deal, as stated in Article 73 of Presidential Decree 247-15 mentioned above⁹. AndThis announcement shall be included in the newspapers in which the tender was

¹- Fayrouz Hout, op. cit, p 95.

²-Ashash Hamza, op. cit.p 104.

³- article 12 of the decision of 17 November 2013, op. cit.

⁴- Ashash Hamza, op. cit. p. 104.

⁵- Fayrouz Hout, op. cit.p 106.

⁶- Look Article 159 to 162 of Presidential Decree N°. 15-247, op. cit.

⁷-Article 70, ibid.

⁸- It must During the electronic envelope opening session, the contracting authority must also ensure that the session is recorded, as a precaution in the event that a dispute arises regarding this matter.

⁹- Article 73 of Presidential Decree N° 15-247, op. cit.

published, specifying all data related to the project, price, and so on. The achievement has come, and all the elements that allowed the selection of the contracting agent. Here, it is assumed that the candidate will be announced as a winner digitally via the electronic portal so that economic contractors can request the results of evaluating the offers and submit appeals electronically¹. The digital public deal enters into force as soon as the result is officially approved by the Minister in national deals and the governor in local deals through electronic certification.

CONCLUSION

Algeria has sought to adopt the e-government system and disseminate it in various public administrations, given its role in bringing the administration closer to the citizen, simplifying procedures, reducing costs, and facilitating dealings between the administration and individuals and between the administrative bodies themselves. Digitization also plays a prominent role in facilitating economic deals with investors and economic operators, and public contracts are an important means of public spending. Therefore, the legislator sought to digitize them for the purpose of giving the character of transparency to their procedures. After studying the request for offers as a general rule in concluding the digital public deal and our answer to the problem that was raised in the introduction to the study, we arrived at a set of results that we followed with some suggestions. .

First: the results

- The digital public contract differs from the traditional public contract in the use of electronic media and the Internet in contracting.
- The digital public contract enshrines the principles of the traditional public contract, including freedom of access to public demand, equality between candidates, and transparency of procedures.
- The digital public deal has a number of characteristics that distinguish it from the traditional public deal, the most important of which is the use of electronic media and the Internet in contracting and the global nature of the digital deal.
- Requesting tenders digitally allows for the consolidation of the principles of public procurement, as it allows freedom of access to the public request. It also adds transparency to the procedures for concluding a public procurement and also leads to equality between the various candidates.
- The legislator stipulated that it is mandatory to call for competition electronically and to respond electronically by candidates through Articles 105/106 of Law 23/12, but it did not specify the procedures by which it is carried out.
- The unification of procedures and deadlines between public, digital, and traditional deals leads to compromising the nature of transparency and confidentiality of deals expected from the establishment of the electronic portal for public deals.

Second: Suggestions

- We recommend that the national legislator should take a bolder plan to adopt an integrated legal system to regulate the digital public deal at its various stages.
- The state must pay great attention to strengthening the infrastructure and ensuring a high flow of the Internet to ensure the conclusion and implementation of the deal digitally.
- It is necessary to surround the digital public deal, for which the request for offers constitutes the general basis for concluding it, with procedures, conditions, and deadlines that are compatible with its nature to achieve the goals sought from it.
- It is necessary to train and form committees specialized in opening envelopes in the information field to enable them to study offers digitally.

¹- Fayrouz Hout, op. cit. p 108.



- The necessity of working to provide a highly effective and strong protection system against all forms of piracy and hacking that may affect the process of exchanging information electronically.