

The Oversight Role of the Bid Opening and Evaluation Committee During the Conclusion of Public Procurement Contracts

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Abstract. Competition in the field of public procurement is among the topics to which the Algerian legislator has given special attention by enshrining this principle and attempting to strengthen the mechanisms of economic efficiency by requiring public entities to observe and uphold the principle of competition when concluding public procurement contracts. In this context, the legislator subjected this stage to the oversight of the Bid Opening and Evaluation Committee, which plays a key role in identifying any violations committed by economic operators during the submission of their bids. In this regard, Algerian legislation on public procurement and public service delegations includes mechanisms for exercising internal control over public contracts, particularly through the activation of the role of the Bid Opening and Evaluation Committee. The law provides this committee with safeguards aimed at enhancing its oversight function.

1. INTRODUCTION

Public procurement plays a vital role in stimulating the national economy by attracting economic operators, aiming both to generate profit and serve the public interest. It is regarded as one of the most significant administrative contracts concluded by public institutions.

This importance has prompted the Algerian legislator to establish precise legal frameworks that keep pace with ongoing economic transformations by introducing amendments to the legislation governing public procurement. This growing attention reflects a political will to deepen market mechanisms and promote economic liberalization by integrating them into the administrative domain.

Given that public contracts are financed by the state budget, they are particularly vulnerable to violations, manipulation, and unfair competition driven by the pursuit of private interests. Consequently, the Algerian legislator has introduced various oversight mechanisms, including prior and subsequent control, internal and external oversight, as well as supervision by specialized bodies.

This research paper focuses on the Bid Opening and Evaluation Committee, considered the cornerstone of competition regulation in public procurement. The committee identifies any irregularities or violations committed by economic operators during bid submission to ensure market balance. Accordingly, we pose the following research question:

To what extent is the oversight role of the Bid Opening and Evaluation Committee effective under Algerian legislation?

1.1. Section I: Guarantees for Strengthening the Oversight Role of the Bid Opening and Evaluation Committee

The Bid Opening and Evaluation Committee exercises internal and preliminary oversight, following a structure defined by the law on public procurement and public service delegations, in accordance with the principle of equality and as a guarantee of effective public procurement (Presidential Decree No. 15-247, 2015).

1. Composition of the Bid Opening and Evaluation Committee

According to the provisions of Algerian legislation on public procurement and public service delegations, the Bid Opening and Evaluation Committees have been merged into a single entity after previously operating independently. The contracting authority, as part of internal oversight, forms one or more permanent committees to open bids, analyze offers, alternatives, and prices (Article 160, 2015).

a. Formation Method:

Article 162 (paragraph 1) of the Public Procurement and Public Service (Presidential Decree No. 15-247, 2015) Delegations Law stipulates that the Bid Opening and Evaluation Committee is established by a decision from the head of the contracting authority (Article 2/160, 2015). This authority may also establish a technical subcommittee to prepare the bid analysis report for the main committee (Al-Nouei Kharchi, 2018).

However, it is noteworthy that the legislator does not clarify whether this technical subcommittee is created at the request of the Bid Opening and Evaluation Committee or at the discretion of the contracting authority's head.

According to Article 160 (paragraph 1), the Bid Opening and Evaluation Committee is a permanent body, reflecting the legislator's intention to institutionalize transparency and integrity mechanisms (Order No. 06-03, 2006).

2. Members of the Bid Opening and Evaluation Committee:

According to Article 160 (paragraph 1), the committee consists of qualified civil servants from the contracting authority, selected based on their competence. Therefore, the following conditions apply:

a. The member must be a civil servant of the contracting authority:

Article 4 of the General Statute of the Civil Service defines a civil servant as:

"Any individual in a permanent public function and appointed to a rank in the administrative hierarchy (Article 48, 2015)."

Moreover, the requirement that committee members be affiliated with the contracting authority undermines the independence of the committee and the transparency of its assigned tasks. It would have been more appropriate to include members from outside the contracting authority to reinforce impartiality¹. Additionally, the legislator did not specify any financial incentives for members of this committee, unlike the Arbitration Committee, whose members benefit from a financial allowance for their services. Likewise, no provisions were made regarding the number of committee members, and its meetings are considered valid regardless of the number of members present.

b. The member must be qualified and competent:

In response to the criticisms directed at the repealed Public Procurement Law in this regard (Boudiaf, 2017), the legislator introduced a requirement for competence and the appointment of qualified members to carry out the duties of the Bid Opening and Evaluation Committee. However, the law does not specify what constitutes being "qualified and competent." Does it refer to someone with professional experience, or someone holding academic qualifications and considered part of the senior staff within the contracting authority?

In any case, the legislator has ensured that public employees involved in the preparation, conclusion, implementation, and oversight of public procurement contracts receive proper training and benefit from capacity-building and professional development programs. These programs, provided by the employing authority, aim to improve their qualifications, authority, and competencies in accordance with the regulatory framework governing public procurement and public service delegations (Articles 211 and 212, 2015).

Second: Applying the Principle of Equality as a Guarantee for the Efficiency of Public Procurement Demand by Selecting the Best Offers and Uncovering Anti-Competitive Practices

The contracting authority is required to adhere to a set of regulations aimed at ensuring equality and transparency when awarding public contracts. According to Article 78 of the Law on Public Procurement and Public Utility Delegations, the criteria for selecting the contracting party and the weight assigned to each criterion must be directly related to the subject of the contract, non-discriminatory, and explicitly stated in the tender specifications.

The contracting authority must select the best offer based on economic advantages, which may include multiple criteria such as:

- Quality and execution or delivery deadlines.
- Price and total cost of acquisition and use.
- Overall and functional characteristics.
- Efficiency regarding social aspects, such as promoting the professional integration of disadvantaged individuals and people with disabilities.
- Efficiency in relation to sustainable development.
- Technical value.
- After-sales service and technical support.
- Financing conditions, if applicable, and reducing the transferable share granted to foreign companies

Other criteria may also be used, provided they are included in the tender specifications. The price alone may serve as the sole criterion if the nature of the contract permits it. The capabilities of the enterprise cannot be used as a selection criterion, and the same rule applies to subcontracting.

However, human and material resources allocated to the project can be considered as selection criteria. In the context of public contracts for studies, the selection of contracting parties is primarily based on the technical nature of their proposals.

Thus, the legislator has shown a clear commitment to reinforcing mechanisms of competition and transparency by requiring the selection of the best offers based on objective and technical standards as well as efficiency indicators that promote the professional integration of marginalized groups and persons with disabilities. Accordingly, the evaluation of bids must rely on non-discriminatory criteria related to the subject and scope of the contract (Article 54, 2015) and the offer evaluation system must be appropriate to the nature, complexity, and significance of each project (Article 55, 2015).

2- Uncovering Anti-Competitive Practices

The field of public procurement is particularly susceptible to anti-competitive practices, which are prohibited under the provisions of competition law (Zidan, 2018).

Uncovering such practices is closely linked to the risk of collusive agreements involving the distribution of contracts. This necessitates the presence of a representative from the Directorate of Commerce on all bid opening and evaluation committees to provide their opinion on the compliance of the public procurement process with legal and regulatory standards.

Article 6 of Ordinance No. 03/03 on Competition (Jalil, 2003) explicitly states:

"Practices, coordinated actions, agreements, and both explicit and implicit arrangements are prohibited when they aim, or may aim, to hinder, limit, or distort free competition within the same market or a substantial part of it — particularly when they are intended to secure the awarding of public contracts to the benefit of those engaged in such restrictive practices."

Accordingly, the bid opening and evaluation committee has the authority to counter such behavior by selecting the best offers, and consequently, the most suitable contractors. This approach helps prevent the waste of public funds while ensuring equality and equal opportunity.

Furthermore, this goal can be supported by relying on broad public announcements intended to inform as many economic operators as possible about available public contracts. This is important because, under the public procurement framework, a group of companies may collude to award a contract to a particular economic operator while merely simulating competition.

The legislator has prohibited any form of favoritism toward any candidate. Article 89 of the Law on Public Procurement and Public Service Delegations stipulates:

"Without prejudice to criminal prosecution, any individual who undertakes actions or maneuvers aimed at promising a public official, directly or indirectly, a reward or privilege of any kind, whether for themselves or for another entity, in connection with the preparation, conclusion, oversight, negotiation, or execution of a public contract or its annex, shall be subject to deterrent measures. These measures may include, in particular, the termination or cancellation of the concerned public contract or annex, and the listing of the involved company in the register of economic operators banned from participating in public procurement."

These anti-competitive practices may mislead the contracting authority, as companies might collude to win a contract by artificially lowering or raising prices before submitting their bids. Therefore, the legislator has granted the bid opening and evaluation committee a key role in detecting such practices by allowing it to propose the rejection of a bid and submit a well-reasoned report to the contracting authority.

Additionally, the committee may propose that the contracting authority reject an accepted bid if it is found to result from a dominant market position that distorts competition. This condition must be stated in the tender specifications so that all competitors are duly informed (Order No. 03-03, 2003).

Third: Organizing and Operating the Committee

Under Article 162 of the Law on Public Procurement and Public Service Delegations, the Algerian legislator has granted the contracting authority's head the power to define the rules governing the organization, operation, and quorum of the committee, in accordance with the applicable legal and regulatory procedures.

1. Committee Meetings and Legal Quorum:

The head of the contracting authority must issue a resolution establishing the rules for convening the committee and determining its legal quorum. According to Article 162(2) of the same law, meetings of the bid opening and evaluation committee for the bid-opening session are deemed valid regardless of the number of members present. This grants the administration wide and unchecked discretion, which could undermine the credibility and effectiveness of this oversight phase — a critical step in preventing manipulation in public procurement processes.

2. Committee Procedures and Deliberation System:

The bid opening and evaluation committee must record its activities in two separate, dedicated registers — one for bid opening and one for bid evaluation. These registers must be sequentially numbered by the authorizing officer and initialed (Jalil, 2019).

Thus, a report is drawn up by the session secretary after the deliberations, documenting all decisions, opinions, and reservations expressed by the members. These reports serve as a control mechanism relied upon by the legally authorized bodies to monitor the contracts of the contracting authority. Accordingly, responsibility for maintaining the registers should have been clearly assigned to both the authorizing officer and the bid opening and evaluation committee.

1.2. Section Two: Evaluation of the Oversight Role of the Bid Opening and Evaluation Committee

The oversight role of the bid opening and evaluation committee is carried out in three main stages:

First: The Bid Submission Stage

The bid submission deadline is linked to certain elements cited as examples in Article 66 of the Law on Public Procurement and Public Service Delegations, such as the complexity of the contract subject, and the estimated time required to prepare and deliver the bids. The deadline may be extended if circumstances require, and the contracting authority must inform bidders through all available means.

The contracting authority determines the deadline for preparing bids starting from the first publication date of the competition notice. The deadline and final hour for submitting bids, as well as the date and time of the envelope opening session, must be included in the specifications document before it is handed to the bidders.

The bid opening and evaluation committee receives the bids, which must include the application file, the technical offer, and the financial offer. These are to be placed in separate, sealed envelopes, each clearly labeled with the name of the company, the reference of the request for proposals, and its subject, along with the phrases: "Application File", "Technical Offer", or "Financial Offer". These envelopes are then placed inside a larger, sealed outer envelope that bears the label:

"Not to be opened by the Bid Opening and Evaluation Committee – Request for Proposals No. Subject of Request for Proposals". (Article 3/162, 2015)

This remains unopened until the designated envelope-opening session conducted by the committee.

Second: The Envelope Opening Stage

According to Article 66 of the Law on Public Procurement and Public Service Delegations, the deadline and time for bid submission, and the date and time for opening technical and financial envelopes, coincide with the final day for bid preparation. The legislator has assigned the responsibility of opening the envelopes to the bid opening and evaluation committee (Article 67, 2015). The contracting authority must invite all bidders to attend the envelope-opening session either through the competition notice or via written communication addressed to the concerned candidates or bidders. (Article 71, 2015)

As stated in Article 67 of the same law, in the case of restricted procedures, the application files are opened separately. In limited tenders, envelopes containing the technical offers, final technical offers, and financial offers are opened in two stages. In the case of competitions, envelopes relating to technical offers, services, and financial offers are opened in three stages. Envelopes are not opened in a public session, and financial offers in competitions are only opened after the evaluation of services by the jury committee.

The Tasks of the Bid Opening and Evaluation Committee Include:

- Verifying the proper registration of submitted bids.
- Preparing a list of candidates or bidders in order of envelope receipt, detailing the content and amounts of proposals, including any potential discounts.
- Preparing a list of the documents comprising each bid.
- Initialing all opened documents that are not subject to requests for completion.
- Drafting the session minutes during the meeting, signed by all attending members, and including any reservations raised by the committee members.
- Inviting, where necessary, candidates or bidders — through the contracting authority — to complete their technical offers under penalty of rejection if any required documents are missing or incomplete (excluding the technical explanatory note). This must be done within ten (10) days from the date of envelope opening. However, any documents issued by the bidder that relate to bid evaluation are excluded from requests for completion.
- Proposing to the contracting authority, where applicable and in the minutes, to declare the procedure ineffective according to the conditions outlined in Article 40 of this decree.
- Returning unopened envelopes to their respective economic operators, via the contracting authority, when applicable and according to the terms set out in this decree. (Article 70, 2015)

From the above, it is evident that the Bid Opening and Evaluation Committee is entrusted with oversight tasks aimed at identifying behaviors that primarily undermine the principle of competition. This is done by submitting recommendations to the head of the contracting authority, who holds the final decision-making power on whether to award the contract or not. Therefore, in the event of legal action, the appeal would target the decision of the contracting authority, not the opinion of the Bid Opening and Evaluation Committee, as the latter does not amount to an administrative decision subject to appeal. This renders the committee's opinion merely consultative. Thus, it is necessary to strengthen the role of this committee by making its opinion binding on the contracting authority.

Despite the important role played by the committee, the discretionary power to approve or reject the contract remains with the contracting authority. This weakens the oversight role and makes it insufficient to protect public contracts from anti-competitive practices.

Third: The Offer Evaluation Stage

According to Article 72 of the Law on Public Procurement and Public Service Delegations, the Bid Opening and Evaluation Committee is responsible for:

- Excluding bids and candidacies that do not comply with the specifications or that fail to meet the required economic score (Bourada and Yahi, 2019).
- Analyzing the financial offers of bidders who have been technically pre-qualified, taking into account any possible discounts (Jallab, 2014).
- Selecting the best offers based on economic advantages, which may include:
 - The lowest-priced offer among the financial bids of shortlisted candidates, when the subject matter of the contract allows. In this case, the evaluation is based solely on price.
 - The lowest-priced offer among technically qualified bids when dealing with ordinary services. In this case, evaluation is based on multiple criteria, including price.
 - The bid with the highest weighted score based on various criteria (including price), if the selection is primarily based on the technical aspects of the services.

The committee may recommend rejecting an accepted offer if it is proven that the bidder's practices are abusive and constitute market dominance or are likely to disrupt competition in the sector. Such grounds must be specified in the specifications document.

If the overall financial offer of the temporarily selected bidder is abnormally low, the committee may, through the contracting authority, request written justifications and clarifications. After verification, it may propose to reject the offer if the bidder's explanation is economically unjustified. In such cases, the contracting authority must issue a reasoned decision in accordance with Article 72 of the law.

If the financial offer is found to be excessively high relative to the reference prices, the committee shall propose its rejection with a reasoned decision.

When necessary, the committee returns unopened envelopes related to excluded technical offers to their respective bidders through the contracting authority.

In restricted tenders, the best economically advantageous offer is selected based on a weighted set of criteria. In competitions, the Bid Opening and Evaluation Committee proposes a list of approved winners to the contracting authority and later reviews their financial offers to select the most economically advantageous one.

2. CONCLUSION

The Bid Opening and Evaluation Committee exercises preliminary internal oversight, performing administrative and technical duties during the public procurement process—from preparing the project to evaluating and selecting the contractor based on the criteria set out in the specifications. The committee is composed of qualified employees from the contracting authority selected for their expertise.

This committee aims to combat anti-competitive practices by ensuring the contract complies with the law, reviewing data accuracy, and guaranteeing equal access to public procurement.

Despite its active role in limiting manipulation and misconduct in public contracts, the committee's oversight remains limited and lacks full effectiveness due to existing gaps that hinder the realization of efficient oversight based on the principles of equality, transparency, and competition in public procurement. Therefore, the following recommendations are proposed:

- Define the members of the Bid Opening and Evaluation Committee.
- Set a quorum for the committee's meetings.
- Establish the required qualifications for committee appointments and strengthen the committee with employees knowledgeable in competition law and its domains.
- Mandate the presence of a representative from the Directorate of Commerce or the Competition Council during bid opening and evaluation.
- Enforce stricter penalties for anti-competitive practices in public procurement.
- Make the committee's opinion binding rather than consultative to enhance its oversight role.
- Activate the public procurement electronic portal to reduce manipulation.
- Provide electronic systems training for employees serving on the Bid Opening and Evaluation Committee.

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