

# Newsletter

KPMG Algérie



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## List of activities, goods and services excluded from investment development benefits

A decree dated 22 October 2008 has been published with the purpose of listing activities, goods and services excluded from the benefits established by Ordinance No. 01-03 of 20 August 2001 on investment development.

Milling, under this decree, has been excluded from benefits as per Ordinance No. 01-03. The activity, by reference to the classification of economic activities subject to registration in the trade register (NAE), is included in Chapter 1, "Industrial Production", under code No. 107 101. No comments were included in the "observations" part of the list.

## Public Procurement Regulations

Public procurement in Algeria is governed by Presidential Decree No. 02 250 of 24 July 2002 on public procurement regulations, as supplemented and amended by Presidential Decree No. 03-301 of 11 September 2003.

Presidential Decree No. 08-338 dated 26 October 2008 was published in the Official Gazette No. 62 of 9 November 2008, designed to amend and supplement Decree No. 02-250 of 24 July 2002.

The decree applies only to markets and expenditure items financed partially or totally by the state budget. The following are concerned: public administrations, autonomous national institutions, the wilayas, municipalities, public administrative-type establishments, research and development centers,

specific public facilities for science and technology, scientific, cultural and professional public establishments, public with

scientific and technical support, research institutes (EPIC) and public economic enterprises.

The main changes made to the ordinance are summarized in the following:

"Article 2a: To ensure the effectiveness of public commissions and proper use of public funds, public procurement subject to the provisions of this Decree must comply with the principles of freedom of access to the public commission, of equal treatment of candidates and procedural transparency."

The provisions of Article 5 are amended and supplemented as follows: "Art. 5 - Any contract or purchase order with a value equal to or less than eight million dinars (8,000,000 DA) for the provision of work or supplies, and four million dinars (4,000,000 DA) for studies or services does not, necessarily entail the awarding of a contract within the meaning of this decree."

The provisions of Article 38 of Presidential Decree No. 02-250 are hereby amended and supplemented as follows: "Art. 38. - The contractor may conclude mutual agreements after consultation in the following cases:

- when competitive bidding is unsuccessful, if no bids are received or if the bids received, after their assessment, do not comply with the specifications of the tender or attain technical prequalifications for;
- feasibility studies for specific supplies and services which do not require tenders;
- works directly dependent on state-funded national institutions."

The provisions of Article 45 of Presidential Decree No. 02-250 are hereby amended and supplemented as follows:

"Art. 45. Submissions must include:  
1 - A technical proposal containing:  
- A declaration of compliance;

- A bid deposit for works contracts and supplies, within the jurisdiction of national markets, for over 1% of the bid, with the specifications of the tender under the jurisdiction of these commissions in accordance with Article 118.

The deposit of the unsuccessful bidder, who does not appeal, is returned a day after the date of publication of the provisional award of the contract.

The deposit of the unsuccessful bidder, who appeals, is returned upon notification by the relevant market commission, of the decision rejecting the appeal .

The bid deposit of the contractor shall be released at the date of implementation of the performance bond;

- The technical bid itself established in accordance with the specifications of the tender;

- All documents relevant to the qualification of the bidder in the field concerned (qualification and classification certificate for the project contract and the approval for the feasibility study), as well as professional references;

- All other documents required by the contractor, such as the articles of association of the bidding company, the trade register, balance sheets and bank references;

- tax certification and social security certificates for domestic and foreign bidders who worked in Algeria.

In cases where works were carried out, these certificates can be provided after the bid submission with the approval of the contracting department, and in any event, before signing the contract;

- A criminal record when the bidder is an individual, the manager or general manager in a corporation.

This provision does not apply to non-resident foreign companies in Algeria.

2 - A bid which contains:

- The bid;
- The schedule of unit prices;
- Details of the estimate and quantity

The models of the letter of submission and the declaration of compliance are set by order of the Minister of Finance."

The provisions of Article 50 are supplemented by new conditions for the award in addition to existing clauses: the insertion of labor-related clauses which must ensure compliance with labor laws, clauses relating to the protection of the environment, clauses relating to the use of local labor.

The provisions of Article 93 of Presidential Decree No. 02-250 are hereby amended as follows:

"Art. 93. - The agreement, within the meaning of Article 90 (...) is not subject to review by external bodies a priori, if the object does not change the names of contractors, technical and financial guarantees, contract period and where the amount or the aggregate of the various amendments, whether it increases or decreases, does not exceed:

- 20% of the original contract, for contracts under the jurisdiction of the market commission of the service contractor;
- 10% of the original contract, for contracts under the jurisdiction of national markets."

In addition to the rights to remedies provided for by law, the bidder who

disputes the choice made by the contractor as part of a tender notice, may appeal within ten (10) days after the first publication of the provisional award of the contract, in the Official Gazette on Procurement or the press, with the market commission of the related markets, within the thresholds set out in Articles 121 and 130 of Decree Presidential 02-250.

The provisions of Article 149 of Presidential Decree No. 02-250 are hereby amended as follows: "Art. 149. In case of refusal of approval by the market commission:

- The Minister concerned, after a report from the service contractor, may overrule the decision and shall keep the Minister of Finance accordingly informed;

- the wali, within the limits of his powers and following a report from contractor, may overrule the decision and shall keep the Ministers of Interior, Local Government and Finance accordingly informed;

- President of the People's Assembly within the limits of his powers and following a report from contractor may overrule the decision and shall keep the relevant wali accordingly informed.

In all cases, a copy of the decision to overrule is transmitted to the relevant national market commission, to the commission and the Auditor General."

The provisions of Article 150 of Presidential Decree No. 02-250 are hereby amended as follows:

"Art. 150. In case of refusal of approval by the national market commissions, the Minister concerned, following a report of the service contractor, may overrule by a reasoned decision.

A copy of the decision to overrule is communicated to the Finance Minister and the Auditor General. "

## **The procedures for filing and registering trademarks, layout designs of integrated circuits and filing for patents and patent grants**

Three decrees were published in the Official Journal of 16 November 2008, relating to industrial property:

- The decree on procedures for filing and registering trademarks (supplementing and amending Decree No. 05-277 du 02 August 2005).

- The decree on procedures for filing and registering layout designs of integrated circuits (supplementing and amending Decree No. 05-276 of 2 August 2005).

- The decree on procedures for filing for patents and patent issues for inventions (supplementing and amending Decree No. 05-275 of 2 August 2005).

These texts deal with the free right of applicants residing abroad to representation by a representative from the institutions concerned in order to perform the procedures on the spot, in accordance with conditions laid down by decree of the Minister responsible for industrial property.



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