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Saudi Procurement System and Regulations: Overview of Local and International Administrative Contracts

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Abstract: This research investigated the Saudi procurement system and regulations in the context of local and international administrative contracts. Mainly, Saudi Government Tenders and Procurement Law was investigated in more detail to understand basic rules and regulations of the bidding, selection process, and penalties in case of delay in the administrative contract process. Moreover, a matter of direct purchase was also investigated to understand the circumstances and conditions of a direct purchase. In addition, the international administrative contract was discussed to comprehend the nature and regulations of such contracts. A matter of arbitration was also investigated to know the arbitrator's role and powers in case of a dispute in contracting and performing international administrative contracts outside the country. The arguments against arbitration were also deliberated to recognize the limitations of arbitration in the presence of local and foreign legislations. Overall, Saudi Government Tenders and Procurement Law is well-versed and organized in displaying all-important jurisdictions and matters regarding administrative contracts and the procurement system.

Keywords: procurement system; administrative contracts; international administrative contract; Saudi Government Tenders and Procurement Law



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1. Introduction

The contracts between the government as a public authority and ordinary persons, whether natural or legal, do not differ significantly from ordinary persons' contracts (Al-Jarbou 2011). Both types of contracts are predicated on the acceptance of minds intending to create mutual rights and obligations. However, one distinction is essential. The state makes such a contract as a public authority enjoying public interest privileges. On the other hand, ordinary persons do not enjoy such privileges. Moreover, there are many distinctions between public and business contracting practices because of the government's bargaining authority, exclusive requirements, and sovereign nature.

Since the government enters into contracts on behalf of the public, there is a critical difference between government contracts and other contracts. A specific fundamental difference is directly affecting the parties to government contracts. The government has dual powers once it enters into contracts, i.e., sovereign power and a party to a contract. This authority is delegated to the government from the laws and regulations. Moreover, the government's contracting principles, functions, and duties are listed. The government's representative, to act on behalf of the government, has limited powers as per regulations. The law imposes some obligations and liabilities on the government's representative. In addition, laws and regulations prescribe the methods and procedures of government contracts.

The subject of government contracts has assumed enormous significance in the current period. In the modern era, the state's economic activities are increasing, which leads to an increase in the expanded role of the state to achieve a wide variety of interests. In the present day, many individuals and private organizations have the benefit of government contracts. The government contracts may be called administrative contracts or public contracts in countries that have adopted the dual judicial system (Hebous and Zimmermann

2021). Under the dual judicial system, special legal principles are applied by the administrative courts to government contracts. The dual judicial system has been established for historical reasons in some countries. However, law scholars have preferred that the dual judicial system maintain a separation between general and administrative law. Moreover, government contracts are subject to the administrative courts.

It would be better to create new principles that are certainly the most capable of applying and developing the legal field administrative contracts. In addition, it is believed that ordinary courts lacked the necessary expertise in this regard. The lack of experience is typically found in the government agencies' work methods and their problems, which leads to a lack of ability to protect parties' interests. The administrative courts have developed the administrative principles and have granted the government agencies broad authorities and powers of the contract. The government authority has been founded to enable its agencies to protect and serve the public interest. This power exceeds the granted authorities to individuals because of promoting their self-interests. Therefore, the public interest leads to special legal rules governed by government contracts to control the relationship with individuals.

Saudi Vision 2030 is aimed at improving the business environment by reforming the legislation regarding procurement. Moreover, digital services are provided to boost the speed of bureaucracy and to raise transparency in government contracting. In addition, some government services are also aimed at privatizing to improve the concept of diversification in the Kingdom in some sectors, i.e., healthcare, municipal services, housing, education, finance, energy, and so forth. Moreover, the mining sector is under consideration to improve private sector investments in exploration, licensing extraction, investing in mining infrastructure, and creating centers of excellence. International partnerships are also welcomed to boost the productivity of national firms. In addition, project management offices are established in government agencies to adopt the central delivery unit. The government of Saudi Arabia is favoring small and medium enterprises (SMEs) for procurement and public projects' bidding, especially in the domain of "Boosting our small business and productive families" of Vision 2030 (Saudi Vision 2030).

Contrarily, if the state entered neither into legal relationships nor into commercial contracts without being described as a public authority, not seeking to achieve the public interest, then the contracts would be subject to a general agreement nature, and agencies' commercial activities are subject to the general courts. There are unique criteria applied in legal relation to distinguishing between government contracts and private contracts in the legal system. In any case, this research would provide a discussion of government contracts. Hence, it seems pertinent to investigate the Saudi procurement system, including a summary and comparative study regarding government contracts in the Saudi legal systems.

2. Literature Review

2.1. International Context

A vast literature has investigated public procurement in different dimensions. The present study focused on some critical issues regarding public procurement. Samuels (2021) argued that the government should provide information about the internal process, reducing the procurement system's uncertainty and improving external reporting. The research investigated the U.S. procurement system and found that such information improved the firms' external reporting per cost accounting standards after the government's procurement awards. In this connection, Zhang and Xu (2021) argued that asymmetrical information would create a moral hazard, which would harm the public interest and service quality. Hence, they provided the model based on the principal-agent theory, which would help to improve the service's quality based on the optimal incentive contracts.

Oakden et al. (2021) argued that public services would be complex in measuring their quality. They found that public sector administrators were using different ways of contracting in the public services. Hence, they suggested ways to improve the contracting

procedures. [Al-Shibili \(2020\)](#) argued that any government has the objective to deliver optimum quality of public services. For this purpose, managerial reform would be required to improve the public administration in the procurement system and raise public–private partnership (PPP) to improve efficiency. [Khetrapal et al. \(2019\)](#) investigated Indian health insurance with PPP. They found that government did not specify the regulatory procedures for the insurance companies, which were responsible for regulatory weakness and breaks in contracts. In comparing Egyptian law with the Middle East and European law, [Helw and Ezeldin \(2019\)](#) found that Egyptian law was a little weak in terms of arbitration and termination. Hence, there was a need for reforms to strengthen these weak points of Egyptian law, which might increase the PPP to activate the private firms' role in the public procurement to improve efficiency.

[Pi \(2021\)](#) argued that corruption was the leading cause of favoritism in the process of public procurement, and there was a trade-off between allocative efficiency and contractors' rents. Hence, these rents reduced the higher targets of allocative efficiency and vice versa, which was blamed for favoritism. [Dávid-Barrett and Fazekas \(2020\)](#) argued that corruption worked with favoritism in public contracting and government agencies played their role in the process of favoritism. On the other hand, the quality of institutions would play their role in a transparent procurement system. Their comparative analyses explored that favoritism was found more influential and higher in Hungary than in the U.K. [Athinson \(2020\)](#) argued that open competition could achieve efficiency and reduce corruption in public procurement. Competition might improve the overall efficiency and would reduce the waste of government resources. However, the degree of competition depends on the size of the project, bidding firms' size, and type of industry. [Nagy and Groves \(2021\)](#) claimed contract cheating was a white-collar crime. They argued that rational choice theory would be utilized to control such contractual crimes, and a mixed blunder of the different approaches should be used to control such crimes.

[Hafsa et al. \(2021\)](#) argued that government is the largest customer in any economy through its procurements. Hence, public procurement would help increase the aggregate demand in the economy and ensure purchasing sustainability. [Stritch et al. \(2020\)](#) argued that the sustainability issue in public procurement would slow down the procurement process's speed. The low-price purchases and increasing policy objectives would also slow down the procurement process. On the other hand, the central decisions might improve the speed of the procurement process by reducing the purchasing complexity. [Montalbán-Domingo et al. \(2020\)](#) investigated the sustainability indicators in public procurements of 28 European Union countries. They established both indicators of social and environmental aspects. They found that some European countries were focused more on the environmental factors, and others were inclined toward social factors of public procurement.

[Vluggen et al. \(2019\)](#) investigated the external force to implement sustainability in the public procurement in the Dutch municipalities. They found that the lack of legislation about the penalties on non-sustainable activities was responsible for a low level of public procurement sustainability. The citizen created political pressure to bind the public procurement with sustainability issues. Hence, municipalities focused more on legal and financial audits instead of performance audits. They found that only large projects could care for the sustainability issue in the public procurement compared to small and medium projects. Lorusse and de [Lorusse and van deWalle \(2021\)](#) argued that political factors did matter for public procurement efficiency. Because most public procurements followed the lowest bid and care regarding social and environmental factors in public procurements, in their analyses, the influence of the political factors was more substantial than the price factor in the procurement decisions.

[Wallis \(2020\)](#) investigated the public transport procurement in New Zealand and found increasing bidders in tendering raised efficiency and reduced contracts' cost. Moreover, the cost of negotiated contracts was found higher than the tendering contracts. [Gallego-García and García-García \(2020\)](#) proposed a model using a system dynamic approach to enhance service delivery, reduce cost, and improve resource utilization in market-oriented procure-

ment. The proposed model would help reduce the obsolete inventory using information technology in market-oriented procurement planning to match the demand and supply efficiently. [Henrique et al. \(2020\)](#) argued that the risk of incompleteness of contract might be responsible for a low public services' delivery. Therefore, the administrative bodies should conduct the audit and checks on the contractors to reduce the risk of non-compliance. Moreover, e-governance might also play an active role in the process of audit to reduce the risk. [Kravchenko et al. \(2021\)](#) proposed to rank the risks related to economic security in public procurement. They found that a significant risk was involved in saving the budget in a competitive process. They proposed to develop a security monitoring system to control the risk as per the strength and weakness of the public procurement system.

[Džupka et al. \(2020\)](#) suggested using the economic approach for tendering to improve government resource utilization efficiency. This approach might lead to a higher saving in the procurement process. In their findings, the open procurements were responsible for the lower savings than the non-open procurement. Moreover, the contract with a single supplier would deliver more savings than that of multiple suppliers. [Abdurakhmonov et al. \(2021\)](#) argued that public resources' dependency affected the performance of the firms. They found that single-resource dependence in government contracts was responsible for the low revenues, the low investments, and low market performance. [Hebous and Zimmermann \(2021\)](#) investigated the effect of public procurement on the USA's investment level. They found that increasing public purchases helped to raise the investment of vendor firms. [Wontner et al. \(2020\)](#) found that implementing community benefit in the procurement process and policy would increase public projects' economic and social outcomes. However, potential differences in the comparison of community benefit and views of buyers and sellers could be constraints in the way of procurement.

2.2. Saudi Context

[Mosley and Bubshait \(2017\)](#) investigated the Saudi procurement system in 207 engineering projects in the construction industry. In the cost analyses, the authors compared the design-build (DB) and design-bid-build (DBB) systems. The authors corroborated that the DB system was more cost-effective than the DBB system and more stable in terms of changing orders in procurement procedures of pricing and selection. [Alalshikh and Male \(2010\)](#) discussed the role of value management in DBB in the government sector in Saudi Arabia. DBB was criticized due to the disintegration and separation of the project's stakeholders. The authors suggested utilizing value management in the pre-concept stage for the optimum strategic decision and verifying the project's parties' viewpoints as per the project's objectives. Hence, value management would help in structuring the requirements of projects and their parties.

[Islam et al. \(2017\)](#) argued that Saudi Arabia is moving toward a public-private partnership in sustainable procurement as per its sustainable development goals. The authors investigated the hurdles at the firm level in the way of sustainable procurement for a smooth partnership of PPP in the procurement procedures. The authors found that procurement procedures were not sustainable for both public and private firms. The main reasons behind these unsustainable procedures were the behavior of top managers and organizational structures, which could not implement sustainable procurement procedures. [Al-Hawary and Al-Nady \(2014\)](#) investigated the effects of benchmarking and after-sale services on the success of contractors in the sales of supplies in Saudi Arabia. Hence, benchmarking procurement plans and after-sale services helped to improve sales.

3. The Legal Status of Administrative Contract

The government contract is an agreement that is an enforceable instrument under the law. The agreement provides specific legal rights, and it imposes legal obligations as well. Indeed, the law protects and enforces against the parties to the agreement. Accordingly, government contracts are governed by a hybrid of legal rules, whether in Saudi Arabia or other countries. In Saudi Arabia, administrative law governs the government contract.

However, the government contract might be governed by common law, statutes, and regulations in other countries ([Lupton 1953](#)). According to the administrative contract theory, administrative contracts must include all the following conditions:

1. One of the parties must be a public authority.
2. It must be related to public service.
3. It should be classified as an administrative contract.
4. It should be subject to the authority of the administrative judiciary in the dispute.
5. It must include a condition from the public law.
6. It must include an “onerous” clause or condition from the public law.

Hence, the government contract is based on the contracts’ general law. Thus, parties to the agreement have to create legal rights and legal obligations, and the parties should agree purely as a natural person. However, due to the state activities’ public nature and the agencies’ purpose to conduct public interests’ activities, the contract includes extraordinary conditions in the contract law. A significant portion of the applicable law and governing governmental procurement is derived from the general contract law. Nevertheless, some specific fundamental differences also directly affect the parties to a government contract. These arise from the general facility’s character as a party to a contract ([Massengale 1991](#)).

The government’s power, unique requirement, and sovereign nature give the government contract certain supremacies, which parties do not possess to private commercial contracts. The government’s actions should be for the public interest. Commonly, governments have a right to use the contractor’s inventions. For example, according to the terms of the Saudi public works contract model, all intellectual property rights or inventions developed by contractors during the contract’s performance would transfer to the government. They should become the exclusive property of the government agency. Furthermore, government contracts’ unique nature is justified because the government must contract for products in fulfilling its public function. The government has dominant bargaining power because it conducts massive annual spending in contracting. It grants the government extraordinary bargaining power that cannot be given the same in a private contract ([Nagle 1999, 2000](#)).

The government’s public function justifies the government contract’s unique nature because its function is to provide supplies and services to individuals sourced from the private sector. This rationale is vital because both the public and private sectors have mutual economic interests that affect each party’s economic motivation ([Buchanan and Tullock 1999](#)). Direct governmental contracting is awarded through the government machinery to achieve multiple benefits and ensure that the costs of projects and contracts’ preference would be reduced. It also allows for more innovations in resources because the government has enormous reserves, and the government shows generosity in spending on the projects. This manner of contracting might contribute to reducing government projects’ costs and providing services to citizens optimally.

Government contracting is not without criticism in the literature. Some jurists’ critics believe that government contracting often decreases service quality, weakness of control, and contractors’ accountability. The government may not monitor the contracts’ performance results and not have enough power of accountability over the contractors ([Marvel and Marvel 2007](#)). Considering all of these criticisms, however, government contracting is an essential option for governments to perform duties to the citizens. The governments could successfully improve their contracting policies to face the fears of critics of their performances, achieve exemplary implementation of their contracts, and achieve cost savings. In some instances, government contracts seem to be the best method for the government to fulfill its obligations to the public and speed up the development. The government attempts to employ qualified contractors capable of delivering on time at fair and reasonable prices and maintaining a good-faith relationship with its contractors ([Massengale 1991](#)).

After discussing the legal status and limitations of administrative contracts, we may conclude that administrative contracts are like the other standard contracts, carrying the distinction of contract as a public authority enjoying public interest privileges. Consid-

ering the limitations of administrative contracts, the Saudi system is not an exception. [Groucutt et al. \(2017\)](#) investigated the administrative contracts and procurement in the archaeological sites and corroborated that the procurement system was well in Saudi Arabia. The following section discusses the procurement system for administrative contracts.

4. Procurement System and Procedures for a Contract

The procurement system consists of public purchases for government entities' needs from goods and services. All purchases are made through a competition system in which all suppliers are free to enter a competition by offering price ([Alofi 2017](#)). The vendors submit the offer of a price, and the price should be near the market prices and reasonable, which is a system of clarification ([Alofi et al. 2015](#)). The competition system regarding the prices was updated in 2006–2007 ([Ministry of Finance 2007](#)). For public projects, a public entity recognizes the need for a project as per the established development plan. Then, it sends the proposal to the Ministry of Finance to check the feasibility and fund requirements of the project. After the Ministry of Finance approval, the public institution calls the bids from vendors through some reasonable and clear advertisement, containing all necessary information regarding the project. This information includes the deadline for submission of bids and provisions and qualification of the project. Moreover, the vendor may also contact the public institution in case of a need for more technical information. Then, vendors may apply to bids and all necessary documents that show the vendor's qualification and experience in the project domain. [Alsugair and AbuThnain \(2011\)](#) explored the contractors' classification in the contracting procedures in Saudi Arabia. The authors reported that technical, financial, and managerial capabilities were evaluated in the first stage of awarding. In the second stage, contractors' classification was done to decide the best bid. After a survey of contractors, the classification system could not identify the suitable qualification of the contractors.

In the later stage, submitted proposals of bids are compared among all submitted competitors, and it is checked that these submitted bids qualify for all requirements of the announced project. Then, competent auditors and other technical staff give their evaluations for each submitted bid and proposal. In the last step, the best bid is chosen in the open competition. The competition winner is chosen based on the lowest price and the best abilities to complete the project. The chosen winner has to sign the contract with competent public authority to start the project and agree on the project's terms and conditions, i.e., payment requirements, insurance requirements, and completion steps. After signing, the project may be started by the winning competitor. Later, the vendor needs to submit periodic reports to show their performance, which may be investigated for financial and technical audits.

Moreover, auditors' remarks are provided to the vendors for corrections and improvement in case of need. The vendor has a legal binding to follow all technical and financial auditors' observations through the contract's tenure until the completion. At the completion of the contracted project, the vendor is legally bound to deliver all necessary documents and plans of the work to the competent authority that investigated all the documents in detail before approving the contracted project. Moreover, the vendor also provided documents of the guarantee of the work or physical entity of the product under the contract. However, the guarantee duration varies from project to project ([Alshahran and Alsaleem 2016](#)). For example, the decennial liability insurance is included in the Ministry of Finance's form of public works contracts. It means the contractor guarantees the repair of complete or partial destruction of what has been constructed if such destruction is caused by execution defects for ten years, starting from the initial works takeover date. [Ashmawi et al. \(2018\)](#) explored the element of risk-sharing in the perception of owner and contractor in Saudi public contracts. The authors collected respondents' perceptions through a survey and concluded that risk-sharing did not exist in Saudi Arabian contract culture. Hence, a need for decennial liability insurance is realized in Saudi Arabia.

After discussions of administrative contracts and procurement systems, the following section sheds light on the Saudi Government Tenders and Procurement Law, which carries comprehensive legislation to handle the legal matters for administrative contracts and procurement procedures.

5. Saudi Government Tenders and Procurement Law

The Ministry of Finance cares for the Saudi Government Tenders and Procurement Law (GTPL) in the Kingdom. According to the public procurement system, the Unified Procurement Agency (UPA) is a government entity responsible for unified strategic procurement in the country. A government contract may be defined as an agreement among government institutions or government institutions and private vendors. GTPL is facilitated by an electronic auction system that allows offering bids and selecting the lowest bid. It also checks the vendor's ability to perform any government contract by comparing its qualification with the contract's nature (GTPL 2019, Article 1). Bahaddad et al. (2018) suggested adopting e-procurement in Saudi Arabia due to its low cost of various services. Moreover, the authors realized an excellent network of internet usage in the Kingdom as per Kingdom's 38th rank in the world and with an access of 40% of the total population. Moreover, a significant proportion of trading was online, and most online purchases were from foreign websites. The SMEs comprised 90% of the total Saudi companies, which faced problems in procurement due to financial constraints. Hence, e-procurement would be a fast and easy way for public procurement. The authors suggested a concept of e-Malls to capture a wide range of consumers at a low cost.

The language of documents related to the contract should be Arabic (GTPL 2019, Article 55). A bidder needs to submit the bid to guarantee at least 1–2% of the total proposal value to show the financial qualification (GTPL 2019, Article 41). Assaf et al. (2013) investigated the causes and hurdles in the way of industrial projects in Saudi Arabia. The authors identified some managerial, financial, growth, and environmental causes from the survey that were responsible for the failure of industrial projects. Moreover, insufficient experience, lousy management, wrong projection of cost, and incompetent leadership were significant reasons for contracts' failure. Moreover, the proposal should be open through some government agency as per regulations (GTPL 2019, Article 43). The committee should forward the proposal to the review committee within 3 days of the opening date (GTPL 2019, Article 44).

The review committee might submit their commendations and minutes of the meeting for the best proposal to the tender awarding agency as per regulations. UPA may also be involved in this procedure carrying the same authorities as other committees, but tender awarding authority cannot be joined as a part of the review committee. Moreover, the matching of the financial aspect of the technical proposal aspects is done by a review committee (GTPL 2019, Article 45–46). If the review committee finds that the proposal's price is higher than the market price, it may recommend a reduction to be consistent with the market price. In case of failure of bidder to reduce price, a committee may contact the second-best bidder. Moreover, if the committee fails to reduce the cost per project pertinence, the committee may request the government agency to reduce unnecessary items in the project after the UPA's approval (GTPL 2019, Article 47).

A tender can be canceled if it contains errors with no chance to improve. It contains violation of regulation if any vigorous fraudulent or corruption-related activities are suspected between the bidder and related authorities and if it disrupts tender or public interest (GTPL 2019, Article 51). The head of the government agency handles most of the decisions to carry out the procurement. They may also delegate this power if the project's value is less than SAR 10 million. They can cancel the tender in case of need or delegate their powers. Nevertheless, the delegation should follow a chain-of-command system. They may have direct purchase if the project value is less than SAR 3 million (GTPL 2019, Article 54).

GTPL ensures that only competent persons should be treated equally while acquiring government contracts (GTPL 2019, Article 4). It ensures that all vendors should be well-

versed about procurement and be treated equally to acquire identical information to ensure transparency (GTPL 2019, Article 5 & 6). GTPL intends to protect the government funds by smoothing the procurement process. It ensures the reasonable prices of any public project's work. In addition, it promotes fairness in the procurement procedure to maintain fair competition among bidders by promoting transparency in all the procedures of procurement (GTPL 2019, Article 2). The procurement should be restricted to the public agency's formal requirement and should be with fair prices that do not surpass the market prices (GTPL 2019, Article 2). In Saudi Arabia, Al-Aama (2012) investigated the role of e-procurement to improve the efficiencies of public procurement and the transparency in the procurement procedures. The author suggested using online procurement terms instead of e-procurement.

GTPL prefers local small and medium businesses and locally listed businesses with a stock exchange for procurement (GTPL 2019, Article 9). The number of bidders should not be less than five in case of limited tender (GTPL 2019, Article 30). With the Ministry of Finance coordination, the public agencies may plan the procurements and excuse a plan accordingly at the start of the fiscal year. Nevertheless, this plan would not ensure any commitment and obligation (GTPL 2019, Article 12). The Ministry has developed a portal to execute the policies as per regulations. The platform provides services for the government agencies and the private sector that include many essential services such as contract management, budget, and payments and managing bids, procurement, and financial rights. Moreover, through the platform, the Ministry may approve all documents related to tender, the ability to perform tasks, assessment forms to monitor vendor performance, and other documents about a particular procurement requirement (GTPL 2019, Article 13). It has a high level of transparency and the correct information of tenders and carries the necessary contract-related and project-related data of government agencies as per specified regulations (GTPL 2019, Article 17). Al-Yahya and Panuwatwanich (2018) argued that e-tendering increased the number of paperless transactions in the world. The authors developed a model to promote e-tendering in Saudi construction projects. After a comprehensive survey, the authors found that e-tendering helped the contractor be involved in the project design stage, which helped reduce the pre-construction time and projects' risks and improved the transparency in the e-tendering process.

The government agencies provide feasibility reports, projected cost, tender forms, pre-qualification certificates, and others to the UPA. If it fails to respond within the prescribed period, then the contract is deemed to be approved. Moreover, the projected cost cannot exceed the cost mentioned in the regulations. Otherwise, the agency may have a right to hold the tender (GTPL 2019, Article 15). In exceptional circumstances, a government agency might make needed purchases through the method of a direct purchase. This action is valid in case of military equipment or to protect some national security interest and in case of a single vendor's availability in a field if the competitor is not available, cost is less than SAR 100,000, and emergency (GTPL 2019, Article 32). Moreover, the initial guarantee of 1–2% of the project cost is not required in direct-purchase and some other contracts carrying some exceptional circumstances (GTPL 2019, Article 42). However, the letter of guarantee of 5% of the total value should be submitted within 15 days of final approval of the contract. Work of contract may be started within 60 days from approval in construction contracts (GTPL 2019, Article 59).

If the final guarantee is not provided within the prescribed time, then the initial guarantee would not be returned, and the contract may be negotiated with the second-best bidder. In small-sized bidders, a fine may be imposed if the proposal is withdrawn from bidding or the bidder could not complete the final guarantee. Moreover, the bidder may also be banned for the next year as a penalty. The final guarantee is not required for any government or non-profit organization vendor (GTPL 2019, Article 61). The price of the contract could not be changed during the contract period. However, price changes may be considered in the exceptional circumstance mentioned in the regulation (GTPL 2019, Article 68). Moreover, a contractor could not sign a subcontracting agreement

without approval from the government agency and without following prescribed regulation conditions for this matter (GTPL 2019, Article 71).

If a contractor could not execute his contract timely in the supply contracts, then a penalty may be imposed, which could not exceed 6% of the total value. However, the fine is increased to 20% for the other contracts (GTPL 2019, Article 72). The government agency may terminate a contract if the contractor fails to start the work timely. If a contractor is found in malpractices of bribe or fraud or fails to follow the contract's regulation, the government may think of the public interest to terminate the contract. In case of insolvency, death, or subcontracting with permission, the contract may also be terminated. In case of termination, the remaining work may be given to other contractors following the same contracting regulation, and the government may claim damages to the first contractor (GTPL 2019, Articles 76–78). GTPL also provides space for complaints, by forming a committee of five members, to the contractor in case of a problem or a misunderstanding. A bidder may complain against the award decision, performance assessment, and price adjustment. All parties of a contract have to follow the committee's decision in case of any filed complaint. The complaint may be investigated for the decision, and a decision should be announced with 15 days of filing (GTPL 2019, Articles 86–87).

Alhudaithy (2011) exposed that the Saudi government did a lot of legislative reforms in the 1990s. The objectives of these reforms were to improve procurement regulations and enhance competition in the procurement process. Moreover, Saudi Arabia passed the new procurement law in 2019 to regulate public purchases, including procurement processes, and prevent personal interests in protecting public funds. Additionally, it aims to procure government purchases and fulfilling government projects at fair and competitive prices. This law's important goals are enhancing integrity, transparency, and competitiveness, ensuring fair treatment of contractors, and ensuring equal opportunity and transparency. The new GTPL was issued in 2019 by Royal Decree (GTPL No. M/128). According to that GTPL, the procurement types are competitive, public, and specific, and procurement is a natural phenomenon. The old Saudi GTPL was focused on a stringent legal obligation about public tendering and procurement, and the rights and duties of contractors appointed for the government projects were limited. The new GTPL supports several principles such as fairness and equality, separating personal interests from government interests, and promoting transparency. Moreover, the new GTPL provides an introduction of Reverse E-Bidding by logging onto E-Portal. The new GTPL also helps in resolving dispute resolution, and it provides arbitration as an option.

This section discusses the all-important legislation regarding the local administrative contracts in the Kingdom. However, international administrative contracts carry some unique features, which are discussed in the next section.

6. International Administrative Contract

International administrative contract (IAC) is an outcome of globalization. It may be defined as a contract between one country's government and a foreigner from another country (Hofmann et al. 2011). As per Saudi law, foreign procurement should follow the local regulations, but some exemption may be provided as per regulation in exceptional circumstances (GTPL 2019, Article 11). The foreign persons may only be employed for local work inside the Kingdom if local capacity is unavailable to perform such tasks (GTPL 2019, Article 3). The Ministry of Finance has developed a portal to execute the policies related to the regulations, displayed tender-related information, and listed the prohibited persons as per rules of law and regulations (GTPL 2019, Article 13).

The IAC may be called an international contract if it involves the legal system of two or more countries and at least one foreign party. This contract can be due to foreign investment or services. The international contract may be called IAC if it involved any government agency in the contract (Salama 1984). Moreover, IAC can also be formed for international trade purposes. As per French law, IAC can also be formed if foreign distributors are involved in selling local products in the international market (Bakr 2000).

As per the Saudi legal system, a government contract may be formed if any government body contracts with the foreign body ([Al-Jarbou 2011](#)). Moreover, a government contract may be considered an administrative contract if the contract involved some public welfare ([Board of Grievances Decision 1995](#)).

There is a chance of dispute in the IAC due to different laws in different countries. Therefore, Saudi law involves some international arbitration commercial bodies in the contract, following some international arbitration laws. In international trade, international arbitration may be involved in a dispute related to the foreign business center located outside Saudi Arabia in the case of multiple business centers. In the case of a single business center, the domestic business center would be considered. In multiple business centers, a business center would be considered responsible for completing the contract mentioned in the contract's conditions and agreements. Secondly, both parties of the contract should consult any international arbitration body that should be a commercial body. All parties would decide the location to process the arbitration as per the arbitration agreement. Moreover, a permanent foreign body of arbitration may be consulted if both parties of IAC are agreed on in international trade. If the dispute is related to many locations, then international arbitration is the best solution for disputes, where the subject of the dispute is international.

[Mosley and Bubshait \(2019\)](#) compared the DB and DBB in the context of international contracts in the construction sector in Saudi Arabia. The authors argued that DB combined the construction functions and project design in one contract. On the other hand, DBB split it into more than one contract. In their empirical analyses, the authors found DB was superior over the DBB while testing the effects of procurement methods. [Winter and Reis \(2019\)](#) argued that most foreign investment agreements are bilateral or multilateral and related to commercial activities. Most developing countries got hindrances in their economic and social development due to such agreements. Hence, the authors recommended considering such problems in the process of public bidding and international administrative contracts.

The international administrative contract may involve the legal systems of more than one country. Hence, it needs arbitration. The arbitration is allowed in the case of an international administrative contract due to its unique features. The following section discusses the role of arbitration in international administrative contracts.

7. Arbitration in IAC

The purpose of an arbitration agreement is to shift the jurisdiction authority to the international arbitrator ([Barracough and Waincymer 2005](#)). Hence, both parties of IAC should agree to follow an international arbitrator's decision without the involvement of any court through an agreement separate from IAC. Generally, public law prohibits the arbitration agreement in the administrative contract. Nevertheless, the public law does not place this condition in the case of IAC. IAC may promote foreign trade and foreign investment, which are vital components of economic growth. Hence, the national laws and some international treaties provide the space for the arbitration agreements in the case of IAC. An arbitration agreement disqualifies the national laws on a contract and shifts the power of decision in the arbitrator's hand in case of a dispute. Moreover, the termination of IAC cannot dismiss the arbitration agreement as it has a separate legal entity ([Muneer 1991](#)).

Saudi law allows arbitration with permission from the Council of Ministers. Saudi Arabia is following administrative law for administrative contracts originated from France's legal system. In France, arbitration is not allowed in case of dispute in the IAC as per civil law. In this case, the public prosecutor may be deprived of playing their role in the dispute. On the other hand, a judge may ignore the civil law in the administrative contract, as it is a pure matter of administrative law. In Egypt, arbitration is also prohibited in the administrative contract as a state's council may act as a judiciary to settle the dispute. This action is not as per a regular judiciary.

In Saudi Arabia, public authorities are not allowed for arbitration in the administrative contract's dispute settlement except exceptional cases, which the government decides based on the maximum welfare doctrine. A reason to discourage arbitration in the administrative contract is that the administrative judiciary has specific jurisdiction to decide the dispute as per particular administrative law. The arbitrator may ignore these jurisdictions while solving the dispute. Thus, it violates the common ideologies of law. A second argument is that foreign law may be implemented on the local problem, violating the national jurisdiction and disturbing the national sovereignty. However, the [GTPL 2019](#) includes new provisions, allowing any government agency to resort to arbitration. The arbitration agreement requires that the value of the government contract exceeds one hundred million Saudi Arabian Riyals. In addition, the Kingdom of Saudi Arabia laws has to apply to the subject matter of the dispute. Finally, it is not permissible to do the arbitration with international arbitration bodies located outside the Kingdom unless the other party is a foreign person. The arbitration and its conditions are stipulated in the contract documents. [El-Adaway et al. \(2018\)](#) investigated the cultural and contractual risks of U.S. contractors in Saudi Arabia due to differences in the legal and social framework of both countries in the case of international construction contracts. The authors found that a meager contract administration was among the significant reasons for enhancing the contractual risks. Moreover, the authors found that ex-ante disputes' detections were missing in the construction contracts, which were responsible for ex-post disputes.

8. Discussion

To examine the legal and executory efficiencies of the administrative contract, there is a need to explore the Strength, Weakness, Opportunities, and Threats (SWOT) analysis of the procurement system. Table 1 shows the SWOT analysis of local and international administrative contracts. A well-developed IT infrastructure in the Kingdom is the most significant strength of the procurement system because the working of e-auction and e-procurement systems depends on the IT infrastructure and e-systems promote transparency in all stages of procurement. Hence, there is fair competition in the bidding process because of the equal dissemination of the project's information on the website. Hence, equal participation of contractors is expected in the bidding process. Contractors are also aware of all information needed for the project and are aware of all bidding processes. Moreover, the UPA is responsible for many activities of the procurement process. Hence, the UPA helps reduce project costs and evaluate the pre-qualification of contractors in the bidding process.

In the investigated opportunities, the Arabic language in the procurement process is an excellent opportunity for national contractors as any foreign language is a significant barrier in contracting in Saudi Arabia. Moreover, the e-bidding process provides an opportunity for fair competition among bidders. A complaint system also enhances transparency and fair competition in the bidding as any contractor may request reevaluation if they disagree with the contract decision. In addition, a qualified contractor gets the opportunity of revision if they could not offer a competitive price. Hence, pricing could not affect the decision of the contract if other qualifications of a contractor are strong. The locally listed companies and SMEs business are favored in the bidding process. Hence, Saudi procurement promotes opportunities for local businesses to get government contracts.

After discussing the strengths and opportunities of the Saudi procurement system, it is not free from limitations, weaknesses, and threats. In exceptional circumstances, limited tender direct purchase is allowed, which discourages the doctrine of competition. However, Saudi procurement favors the local business for contracting. Nevertheless, the shortage of skills in the national labor and entrepreneurs is a hurdle in supporting national business. In the case of international administrative contracts, procurement legislation fails to be implemented in case of disputes. Hence, arbitration is allowed in international contracts, which may be a question of national sovereignty.

There are some potential micro and macroeconomic threats to the procurement system. For example, inflation is a macroeconomic threat to the contract's budget as inflation may raise the contract cost due to an unforeseen rise in the cost of contracts. Moreover, foreign investors threaten local businesses due to larger business operations and more contracting experience than local contractors. For instance, most construction contracts are in the hands of foreign companies, and local companies could not compete with foreign companies. Last but not least, a fear of cancelation of contracts and penalties in case of delays are also potential threats to contractors.

Table 1. SWOT analysis.

Strengths		Weaknesses	
(1)	A well-developed IT infrastructure to support transparency in the procurement process.	(1)	Lack of competition in case of direct purchase.
(2)	E-auction and e-procurement systems improve transparency and reduce the cost.	(2)	Lesser legal control in case of international administrative contract due to foreign legislation system.
(3)	UPA involvement in improving feasibility, reducing project cost, and ensuring contractors' pre-qualification.	(3)	Arbitration in an international administrative contract weakens the local legal enforcement and reduces national sovereignty.
(4)	UPA ensures unified procurement procedures.	(4)	Shortage of local skilled professionals.
(5)	Fair competition in the bidding process ensures competent contractors in tendering and ensures fairness and equality.	(5)	Low investment capacity of local contractors to win large contracts.
(6)	Lesser chance of corruption due to regulations of termination of the contract at any stage due to identification of any illegal or corruption-related activities.		
Opportunities		Threats	
(1)	Arabic language facilitates the local bidders for the bidding and procurement process.	(1)	Inflation is increasing the gap between the projected and actual budget of any project.
(2)	A revision is requested if the price offered is not competitive as per market prices.	(2)	Heavy penalties in case of non-execution of the project are a threat for small contractors.
(3)	An equal spread of project-related information through the portal to ensure fair competition.	(3)	Foreign competition in terms of foreign contractors is a threat for local contractors.
(4)	SMEs are encouraged in procurement, which supports local small and medium-sized businesses.	(4)	A fear of cancelation of a project in case of malpractice.
(5)	Locally listed firms are preferred, thus supporting local business environment.		
(6)	Complaint system to ensure transparency in awarding contracts.		

9. Conclusions

Administrative law supports the government procurement system and government contracts. Saudi Arabia has a very well versed Government Tenders and Procurement Law that describes all essential rules and regulations regarding the government procurement system and protects government agency and the contractor's legal rights. This research investigated all essential domains of Saudi Government Tenders and Procurement Law to understand the procurement system in Saudi Arabia and identify the legal rights, liabilities, and duties of the government agency and the contractor in case of different circumstances. Moreover, the international administrative contract was also investigated to understand the rules and regulations in case of government agencies' international

matters while conducting contracts. It was found that arbitration is necessary in the case of an international administrative contract due to the existence of different legal systems in foreign matters. Nevertheless, the legal system restricts it due to national sovereignty. Moreover, there are many pros and cons of arbitration in international matters. After discussing all pros and cons of arbitration, this study concluded that arbitration should be compulsory in the international administrative contract.

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