



PROTECTING PUBLIC FUNDS ACCORDING TO THE GOVERNMENT TENDERS AND PROCUREMENT LAW OF 1440 AH IN THE KINGDOM OF SAUDI ARABIA

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Abstract:

Researching this topic enables us to clarify the characteristics of the legal protection of public funds through the government tenders and procurement system, its advantages, and its effectiveness in confronting the challenges and violations to which these properties are exposed. Furthermore, addressing this topic is considered a contribution to the ongoing jurisprudential debate surrounding rules and regulations, especially since these public funds require the necessity of protecting them in a manner that ensures their continued performance of their functions in the required manner, achieving the public benefit and, consequently, the public interest. This is a question that is being urgently raised today, given the numerous violations to which these public funds may be exposed when individuals work to harm them and dispose of them without justification. The topic of public funds is also of paramount importance in terms of its connection to the growing activity of the state and the increase in its savings. This type of funds has become a tool for public authority intervention to achieve the public interest in various sectors comprising various areas of economic, social, and cultural life.

Keywords: Protection of public funds - Administrative contracts - Concluding public tenders - Government procurement - Combating corruption.

INTRODUCTION:

Good management of public affairs requires the state to rationalize all its public funds and establish an institutional and legal system capable of ensuring effective protection of these funds¹. "The state is considered the custodian of public funds, and therefore its authority is limited to taking all necessary measures to protect them."² Establishing a legal system with a preventive nature to protect the state's public funds alone is not sufficient to achieve effective and optimal protection of these funds. Therefore, recourse to the judiciary is necessary to provide effective and necessary protection. The interest in these public funds stems from awareness of the effective role these properties play as national wealth and the material basis for managing administrative interests and continuing their economic activities. The preservation and protection of public funds in the Kingdom of Saudi Arabia represents a manifestation of civilization, as these properties are part of the national collective wealth as a whole. In this regard, the state has a significant role in managing its funds effectively and wisely, making them a source of economic stimulation³.

¹ CHATTI (Wlid), Entretien du public domain, Memory pour l'obtention du master en direct public et commerce international, Faculté de droit de Sfax, 2004-2005, p.1.

Here's how they feel:

² Ayyadh Bin Ashour, "Administrative Judiciary and the Jurisprudence of Administrative Litigation," University Publishing Center, 2006, p. 145.

³ Al-Habib Al-Jaradi, "Determining the State's Private Property between Reality and Law," a thesis submitted for a postgraduate degree in real estate law, Faculty of Legal, Political and Social Sciences, Tunis, October 1995, p. 1.



Researching this topic enables us to clarify the characteristics of the legal protection of public funds through the government tender and procurement system, its advantages, and its effectiveness⁴ in addressing the challenges and violations to which these assets are exposed. Addressing this topic also contributes to the ongoing jurisprudential debate surrounding rules and regulations, especially since these public funds require protection in a manner that ensures their continued performance of their functions in the required manner, achieving the public benefit and, consequently, the public good. This is a question that is urgently being raised today, given the numerous violations to which these public funds may be exposed when individuals seek to harm them and dispose of them unlawfully.

First: The Importance of the Research:

The importance of the study lies in the fact that when an administrative body concludes administrative contracts to secure its needs for goods, services, and major projects, it needs, in addition to the human element, public funds, which are considered a basic necessity for the administrative body to complete its work to the fullest extent. These funds used in government projects are huge sums allocated by the state from the general budget, which may make them vulnerable to misuse and waste. It is well known that they were allocated to achieve the public benefit, so it was necessary to surround these funds allocated to government projects with great importance, by organizing the stages of government competitions and procurement; Therefore, a succession of regulations governing these government projects and procurements in the Kingdom has followed. The first regulation governing these competitions was issued in 1386 AH, which was called the "Tenders and Auctions Regulation." It remained in effect until 1397 AH, when the "Securing Government Procurement and Implementing its Projects and Works Regulation" was issued. This regulation remained the dominant and governing factor for all administrative contracts until 9/2/1427 AH, with the issuance of the "Government Tenders and Procurement Regulation," which laid the foundations for regulating government tendering and procurement procedures.

Second: Research Objectives:

This research aims to outline the most important principles governing the protection of public funds in the new Government Tenders and Procurement Law. It also aims to clarify the differences between the previous Government Tenders and Procurement Law and the new one in some procedures aimed at protecting public funds. It also aims to demonstrate the extent to which some provisions of the new Government Tenders and Procurement Law are compatible with the aspirations and objectives of the Kingdom's Vision 2030. It also reviews the most important new procedures in the new Government Tenders and Procurement Law and concludes the extent to which they contribute to protecting public funds. It also aims to demonstrate the effectiveness of regulating government tenders and procurement procedures in protecting public funds during all stages of government tenders and procurement, from the preparation and processing phase through the examination and finalization phase. The awarding process begins with the final stage of concluding and implementing the contract. Finally, it highlights some of the manifestations of financial corruption related to government procurement and projects, and the mechanism for combating it in the Government Tenders and Procurement System.

Third: Research Questions:

1. What are the most important principles underlying the protection of public funds in the Government Tenders and Procurement System?

⁴ DUFAU (Jean), *Domaine public, protection juridique*, Editions du juris-classeur 1998, Fascicule 406-10, p.2.

2. To what extent is the new Government Tenders and Procurement System consistent with the aspirations of the Kingdom's Vision 2030, which aims to raise the efficiency of government spending, the quality of government projects, and the protection of public funds?

Fourth - Research Methodology:

To clarify the topic more precisely, I relied on the descriptive approach when examining the concept of public funds in Islamic law and law, and the criteria for distinguishing public funds. I also used the analytical and deductive approach when examining the principles protecting public funds in the tenders system and the mechanisms for protecting public funds. This was achieved by deducing the most important procedures aimed at protecting public funds in the government tenders and procurement system, identifying the extent to which these procedures differ from the previous tenders system, and identifying how these procedures contribute to achieving the Kingdom's Vision 2030.

Fifth: Research Problem

The problem of the study is embodied in examining the effectiveness of the new government tenders and procurement system in protecting public funds through various procedures at all stages, from the preparation stage through the examination stage, all the way to the contract conclusion and implementation stage, and by introducing new mechanisms to achieve this goal. The problem is summarized in the following question: To what extent has the government tenders and procurement system contributed to protecting public funds?


Section One

Mechanisms for Protecting Public Funds in Government Tenders and Procurement.

These mechanisms encompass all stages of government tenders and procurement, from the preparation and equipment stage to the inspection and award stage, and ending with the contract conclusion and implementation stage. Based on the above, it is necessary to clarify the mechanisms for protecting public funds during the preparation and equipment stage (the first section), then the protection mechanisms during the award and contract conclusion stage, which I will discuss in the second section, and finally the mechanisms for protecting public funds during the contract conclusion and implementation stage (the third section).

Requirement One: Mechanisms for Protecting Public Funds during the Preparation and Equipment Stage:

The preparation and equipment stage is the most difficult stage of government tenders and procurement, as the remaining stages are built upon it. This stage includes many of the procedures stipulated in the new Government Tenders and Procurement Law, such as advance planning, setting terms and specifications, preparing tender documents, and obtaining financial approval. In this section, I will focus on the new procedures introduced in the tender system, which clarify the mechanisms for protecting public funds, the subject of this study. This involves advance planning for business and procurement, defining terms and specifications, and introducing new methods for selecting contractors. With regard to advance planning for government business and procurement, within the framework of transparency and a desire to curb financial waste, the new Government Tenders and Procurement Law was issued, introducing this feature, a feature previously unspecified in any previous government tender and procurement law. Advance planning has many objectives, perhaps the most prominent and important of which is to curb financial waste and preserve public funds. Advance planning for government business and procurement means that the government entity is committed to publishing its annual plan at the beginning of each fiscal year, consistent with its budget. This plan must include key information about its business and procurement during



that year⁵. Pre-planning includes several procedures, the first of which is a feasibility study for projects and procurement before obtaining contracting permission. The second is providing financial allocations for all projects and works expected to be implemented during the fiscal year, thus ensuring that these allocations are met and avoiding projects and works that exceed the available financial allocations.

Administrative bodies have always been obligated to act within their available financial allocations, avoiding unplanned borrowing or undertaking large projects with weak financial allocations. Government entities may only engage in buying, selling, or other activities within the limits of their available financial allocations from the state's general budget. However, the difference in ensuring the availability of financial allocations under the new government tenders and procurement system appears to be more organized, especially since it is linked to the administrative body publishing its annual plan on its website⁶. This means that the administrative body must take into account its available financial allocations before deciding to enter into a contract. Third, the administrative body must set estimated prices for government work and procurement, so that these prices can serve as a benchmark to guide the prevailing prices. This will ensure that the administrative body is aware of the prevailing prices, which will avoid many obstacles and financial waste. From the above, we can conclude the effectiveness of advance planning and its role, as it includes specific procedures that aim, in general, to verify the actual need and study the feasibility of projects and businesses, with the aim of excluding what does not serve the public interest, ensuring the suitability of financial allocations for the businesses expected to be implemented during the fiscal year, and finally, establishing an estimated guide for prices. All of the above contributes to preserving public funds and stopping their waste.

Terms and specifications refer to the technical terms and specifications established for government works and purchases, which will be tendered by any contracting method. There are controls for the terms and specifications that the government entity must adhere to, most importantly, ensuring that the terms and specifications are clear, detailed, and precise, and that approved standard specifications or international specifications are adhered to in cases where there are no approved technical specifications. The government entity must not exaggerate the technical specifications and must not exceed the needs and requirements of the project and its allocated financial allocations. The government entity may seek the assistance of consulting firms in developing the terms and specifications. This assistance is restricted if the entity does not have the necessary equipment to develop the technical specifications. The entity may not exploit this provision to expand its use of consulting firms, even if it has the capacity to develop these conditions. In view of the above texts, we find that they contain certain principles, the first of which is the emphasis on the need to develop detailed specifications for each item. This is consistent with the scientific principles of purchasing, which require the development of precise and detailed specifications for the item to be purchased⁷. It also includes a principle related to observing approved specifications to prevent these procurements from being conducted haphazardly, which could lead to a decline in the quality of procurements and projects. This would harm the state's public treasury and lead to the waste of public funds on purchases and projects that are not of the required quality. These are

⁵ Article Twelve of the new Government Tenders and Procurement Law issued by Royal Decree No. (M/128) dated 11/13/1440 AH.

⁶ The Executive Regulations of the old Government Tenders and Procurement System, issued by Royal Decree No. (M/58) dated 9/4/1437 AH, which was issued by Decision No. (362) of the Minister of Finance dated 2/20/1428 AH.

⁷ Article Twenty-Two of the new Government Tenders and Procurement System, issued by Royal Decree No. (M/128) dated 11/13/1440 AH.



the most important provisions of the terms and specifications contained in the Government Tenders and Procurement System. By implementing them, we ensure the quality of government projects and procurement, thereby achieving the system's objectives, most notably the protection of public funds. The final mechanism for protecting public funds during the preparation and arrangement phase for government tenders and procurement is the development of new methods for government procurement.⁸ Practical experience has revealed the need for administrative contracts to have unique contractual forms that differ from those used in private law. Given the connection between administrative contracts and public funds and the special protection they require, tenders have become the optimal means for concluding administrative contracts. The previous Government Tenders and Procurement System specified only three methods for concluding administrative contracts: competition, auction, and direct contracting. Within the framework of the Kingdom's Vision 2030, and driven by a desire to enhance the quality of government projects, achieve spending efficiency, and protect public funds, the new Government Tenders and Procurement Law was issued. It stipulates five new methods for government tenders and procurement, while retaining the procurement methods of the previous law. This brings the total number of government procurement methods to eight. Due to limited space, my discussion will be limited to the new procurement methods in the new tenders law, excluding the traditional methods of government procurement. I emphasize that all methods, in their entirety, protect public funds, and that the administrative body must consider the public interest when selecting a contractor—regardless of the selection method—by ensuring that the contractor possesses the financial and human resources required. These new methods include competitions, two-stage competitions, framework agreements, localization of industry and knowledge transfer, and electronic reverse auctions. The competition method is used to contract for the preparation of designs, plans, models, or other artistic and intellectual works. The expected benefits of implementing this method in government procurement are to encourage innovation in submitted bids, which will be reflected in the quality of procurement⁹. One of the advantages of this method is that the intellectual property of the winning bid contents belongs to the government entity, which means that the government entity can benefit from all aspects of the intellectual property of the bid contents through use, exploitation, and disposal. In addition, the two-stage competition method aims to conduct the competition procedures in two stages: the first stage involves the competition to establish the terms and specifications for the required work, and the second stage involves the competition to win the execution of the required work. The two-stage competition method is used when it is practically impossible to precisely determine the technical specifications and final terms due to the complex nature of some of the work¹⁰. Framework agreements are agreements between one or more government entities and one or more suppliers. These agreements clarify the terms and conditions of contracts to be awarded over a specific period. These agreements are used for procurements that are frequently requested by government entities¹¹. The benefits of implementing this contracting method include saving time and costs incurred in purchasing from other sources. This method also contributes to strengthening relationships between suppliers and beneficiaries in the long term. In addition, it localizes industry and transfers knowledge. This

⁸ Al-Khawli, Omar: A Brief Introduction to Administrative Contracts, (no publisher, Jeddah, Kingdom of Saudi Arabia, sixth edition, 1437 AH - 2016 AD), p. 56.

⁹ Saudi Vision 2030, (accessed on 20/7/1441 AH - March 15, 2020 AD) Access link: <https://vision2030.gov.sa/ar>

¹⁰ See Article Thirty-Six of the new Government Tenders and Procurement Law issued by Royal Decree No. (M/128) dated 11/13/1440 AH.

¹¹ See paragraph four of Article 59 of the Executive Regulations of the new Government Tenders and Procurement System issued by Cabinet Resolution No. 649 dated 11/13/1440 AH.

method is a new approach to the government procurement system, involving the establishment of partnerships aimed at localizing industry and transferring knowledge. It represents a transitional step in the new competition system that contributes to the development of local content, thus enhancing economic development. This approach also stems from the need to utilize modern technologies in government procurement processes to take advantage of the many advantages offered by technology. It is an electronic method for submitting contractually discounted offers within a limited period to select the lowest-priced offer. The benefits of introducing this method for government procurement include reducing procurement costs, increasing market efficiency, and enhancing competitiveness among suppliers. In addition to the public funds protection mechanisms included in the Government Tenders and Procurement Law during the preparation and procurement phase, there are several public funds protection mechanisms during the examination, award, and contract conclusion and implementation phases. This phase is essential, as it results in the award of the best bid from a technical and financial perspective. This phase is also one of the most critical, and includes the opening of bids, the procedures for forming and conducting the bid opening committee, the formation of the bid examination committee, the preparation of the award minutes, and the recommendation for award. The bid opening committee phase can be referred to as the preliminary study phase. This committee is formed by a decision from the head of the government entity or his/her delegate. The committee must have no fewer than three members, in addition to its chairman, and it is reconstituted every three years. Among the committee's work controls stipulated in the Executive Regulations of the Government Tenders and Procurement Law is that bids must be opened on the specified day and time, and bids must be opened on the day of the bid submission deadline. The Tender Opening Committee must ensure the confidentiality and integrity of bids and their compliance with the provisions of the Law and its Implementing Regulations. It must record in its minutes the number of bids submitted and assign each bid a serial number¹². The Tender Opening Committee may not exclude any bid or request bidders to correct errors or address any observations contained in their bids. Referring to the provisions of the new Government Tenders and Procurement Law, there is no significant difference between the provisions of the Tender Opening Committee and those contained in the previous law, except for the name. Under the previous Government Tenders and Procurement Law, the Tender Opening Committee was called the "Envelope Opening Committee." This difference in name stems from the difference in the method of submitting bids. Bids were submitted in paper form in sealed envelopes, while under the new Government Tenders and Procurement Law, bids are submitted electronically. In any case, the Tender Opening Committee's role is summarized in the initial review of bids and the submission of suitable and compliant bids to the Tender Review Committee. Therefore, careful consideration must be given to the formation of this committee to ensure it fulfills its assigned mandate, which is a fundamental step in achieving the objectives of the new Government Tenders and Procurement Law. One of the committees stipulated in the Government Tenders and Procurement Law is the Tender Examination Committee. After the initial study conducted by the Bid Opening Committee, the work of the Bid Examination Committee begins. This committee undertakes a detailed, thorough, and comprehensive study of all submitted bids. This stage is considered one of the most crucial stages of the tender process in selecting the contractor¹³. The Bid Examination Committee performs important tasks, including recommending the award, excluding and correcting bids, negotiating with bidders, estimating prices, and recommending the cancellation of the tender and termination of the contract. The Saudi regulator has surrounded the formation of the committee with guarantees based on transparency. The work of this committee is important and effective and is primarily related to the protection of public funds. Below, I will address the most important provisions of the Bid Examination Committee stipulated in the Tenders and Procurement Law. The first is the formation of the Bid Examination

¹² Article 71 of the Executive Regulations of the New Government Tenders and Procurement System.

¹³ Al-Mutawa, Salem Saleh: Administrative Contracts, previous reference, p. 241.




Committee. The first paragraph of Article 45 of the Government Tenders and Procurement Law stipulates that "one or more committees shall be formed by a decision of the head of the government agency or his delegate to examine bids, in accordance with what is specified in the regulations..." According to the provisions of the aforementioned article, the controls for forming the Bid Examination Committee are that the committee is formed by a decision of the head of the government agency. It is possible to form more than one committee to examine bids within the government agency. The head of the government agency may be authorized to form the Bid Examination Committee. It is also prohibited to combine the chairmanship of the tender examination committee with the authority to adjudicate the tender. It is also prohibited to combine the chairmanship of the tender opening committee with the chairmanship of tender examination or membership therein, in order to ensure integrity and transparency¹⁴. The number of members of the tender examination committee must not be less than three, in addition to its chairman. The members of the tender examination committee must also include a financial controller from the Ministry of Finance and a legally qualified member, in addition to a representative from the Project Management Department, the Financial Department, and the Procurement Department¹⁵. These aforementioned controls are essential for the committee's work, enabling it to complete its work to the fullest extent possible, within a framework of transparency and integrity, such as prohibiting the combination of chairing tender examinations with the authority to adjudicate the tender. This also aims to preserve and protect public funds by stipulating that members be qualified in the field of Sharia and regulations, so that the committee's work is in accordance with the law. It also stipulates that a financial controller from the Ministry of Finance must be among the committee members, to ensure that the government procurement and tendering process is conducted in a manner consistent with the public interest and the protection of public funds¹⁶. The new Government Tenders and Procurement Law stipulates that the committee, including its secretary, must be reconstituted every three years with new members, and their terms may not be extended. In this regard—i.e., determining the committee's term—I believe that the previous Government Tenders and Procurement Law was more successful than the new one, as the previous Law stipulated that the committee must be reconstituted every year. This is due to the sensitivity of the committee's work, its potential for external temptations and pressures, and its primary connection to public funds. Therefore, strict procedures must be followed when reconstituting the committee. The second is the procedures for the Bid Evaluation Committee's work. The Bid Evaluation Committee must submit its recommendations for awarding the contract to the best bid, in accordance with the stipulated criteria. The "best bid" in this regard refers to the bid that is technically and financially acceptable. The Bid Evaluation Committee may seek the assistance of any specialists in technical, engineering, technological, legal, and other aspects in preparing its recommendations. The Spending Efficiency Center (the entity responsible for unified purchasing) may also participate in the Bid Evaluation Committees. In the event of bids that include both technical and financial bids, the technical bids must be examined without the financial bids. Unacceptable technical bids are excluded, and the financial bids, along with the initial guarantees, are returned to the bidders without being opened. The Financial Bids Evaluation Committee examines the accepted technical bids and submits its recommendations for the best bids. The financial criteria stipulated in the tender documents must be adhered to when examining them. The Bid Evaluation Committee prepares its minutes, which include its recommendations for

¹⁴ See Article 74 of the Executive Regulations of the New Government Tenders and Procurement System.

¹⁵ Al-Khawli, Omar: A Brief Introduction to Administrative Contracts, previous reference, p. 69.

¹⁶ See the Government Procurement Process Guide issued by the Ministry of Finance. Guide link: <https://www.mof.gov.sa/Knowledgecenter/newGovTendandProcLow/Documents/Procurement%20user.pdf>



awarding the best bid, the reasons for its selection, and all legal grounds supporting this recommendation. The minutes also include other bids and the reasons for their exclusion. Each member of the Bid Evaluation Committee has the right to express an opinion, whether in agreement or dissenting opinion. If a dissenting opinion is found, the reasons and evidence must be stated. The minutes are signed by all members and submitted to the person authorized to decide on the award. The dissenting opinion may be supported by the person who presents it, as deemed appropriate, in accordance with the provisions of the law and regulations. An important principle in this regard is ensuring the price of the best bid is moderate. The Bid Evaluation Committee must compare the price of the best bid with recent prices previously negotiated, market prices, and estimated and indicative prices for competition. The best financial bid does not necessarily mean that it is in line with prevailing prices, as prevailing prices may be significantly lower than the price of the best bid. Therefore, the committee is responsible for ensuring that the best bid price is reasonable¹⁷.

The committee also has the right to reprice items if it finds that they were set ill-considered and do not represent the true price of the items, provided that this does not affect the total price of the bid. If the bidder refuses to reprice, he will be excluded from the competition and his bid bond will be returned. These were the most important provisions of the bid examination committee, which I previously mentioned plays an effective role in achieving the objectives of the government tenders and procurement system, particularly the protection of public funds.

Requirement Two: Mechanisms for Protecting Public Funds During the Contract Conclusion and Implementation Phase

This final stage is the longest of the government tenders and procurement phases. It includes the submission of the final guarantee, signing the contract, contract terms and procedures, contract amendments and extensions, contract terminations, contract durations, and receipt and delivery processes. Among the most prominent mechanisms for protecting public funds are the drafting of contracts and their implementation period. The Government Tenders and Procurement Law does not leave the administrative body free to draft the contracts it concludes. Rather, it is keen to regulate this drafting with several controls that achieve the purpose of the contract terms, details, and provisions, the extent of the obligations expected to burden the administrative body, and the extent of its rights in the contract to be concluded. When concluding any contract, the administrative body is bound by the forms approved by the Ministry of Finance. These forms are essentially standard contracts that the administrative body uses when concluding administrative contracts. The purpose is to avoid drafting errors that could render the obligations of either party unclear. The Tender Law requires that contracts be drafted in Arabic. It is permissible to use another language, provided that the language used for interpreting the contract is Arabic. The Law also permits exchanged correspondence instead of drafting the contract if the contract value does not exceed three hundred thousand riyals. The administrative contract must be prepared in at least four copies: one for the contractor, one for the implementation supervisor, one for the accounting department, and one for the General Auditing Bureau. The final guarantee is also one of the most important mechanisms in this regard, as each party awarded the contract must submit a final guarantee amounting to 10 percent of the contract value within fifteen working days of being notified of the award. The government agency may extend this period for a similar period. If the bidder fails to do so, the initial guarantee will not be returned. Negotiations will continue with the next bidder. The final guarantee must be retained until the contractor fulfills its obligations and receives final delivery of the project, in accordance with the terms and conditions of the contract. This ensures that the administrative authority has a guarantee that the contractor will complete the project as agreed upon and in accordance with the terms and specifications stipulated in the

¹⁷ Article 61 of the new Government Tenders and Procurement Law.



contract. Finally, final guarantees are accepted if submitted in one of the following forms: a bank guarantee letter from a local bank, a bank guarantee letter from a bank outside the Kingdom submitted through a local bank, or any other form specified by the regulations. Final guarantees are an effective means of achieving the system's objectives. It is well known that the initial guarantee also has importance, but its importance lies solely in ensuring the contractor's seriousness in concluding the contract. Therefore, the initial guarantee is called a seriousness guarantee, while the final guarantee aims to achieve the system's objectives, including ensuring project quality and the contractor's fulfillment of its obligations with the administrative authority. This benefits the public and prevents the waste of public funds on projects where contractors fail to complete them as required.

Section Two

Combating Financial Corruption in the Government Tendering and Procurement System

The phenomenon of corruption lacks a comprehensive definition at the global level, despite all the international efforts that have been made in this field to define this phenomenon. However, the difference in the backgrounds and specializations of those who define it has led to a discrepancy in these definitions. Corruption is defined in the language as: the opposite of good. It is also defined linguistically as damage, spoilage, and the loss of something from its intended use, and its opposite is cure. Transparency International defines corruption as "the behavior of some government officials in the public sector, whether politicians or civil servants, where they deliberately enrich themselves or those close to them through the abuse of public authority granted to them." It is also defined as "violating laws and regulations, failing to adhere to them, and exploiting their absence or gaps in their content to achieve political, economic, or social interests for the benefit of an individual or a specific group." The question here is: What are the anti-corruption mechanisms in the government tender system and procurement?

Given that corruption is an obstacle to all progress and advancement, and also constitutes an obstacle to achieving the Kingdom's Vision 2030, it was necessary to address all shortcomings in the various systems, the most important of which is, of course, the government tender system and procurement. Therefore, the new government tender system and procurement system was issued, addressing all the shortcomings in the previous tender system and stipulating numerous procedures and mechanisms that form a solid foundation for combating corruption in government tenders and procurement. The most important of these mechanisms are the establishment of a unified procurement center, known as the Spending Efficiency Center, the use of technology in government tender procedures, and the effective role of the bid review committee in this area. To clarify this more precisely, it is necessary to discuss the Spending Efficiency Center and how technology is used as a mechanism to combat corruption in government procurement, as well as the role of the Tender Examination Committee in combating corruption¹⁸. Regarding the Spending Efficiency Center, the law stipulates an entity responsible for unifying the work and procurement required by the government entity. This entity is the Spending Efficiency Center. The Spending Efficiency Center has numerous powers stipulated by the law and regulations. The goal of limiting the provision of government procurement and work required by more than one government entity is to increase the efficiency of government spending, eliminate financial waste in government procurement, and standardize procedures for purchasing commonly used goods required by most or some government entities, thus controlling their prices. The center's powers stipulated by the law include identifying the work and procurement required by more than one government entity and standardizing their

¹⁸ An article published in Al-Madina electronic newspaper entitled "28 loopholes in the government tender system", dated 11/11/2017, can be viewed at the following link: http://bader59.com/gov_text.htm



technical specifications. It also includes creating lists of work and procurement for which framework agreements have been concluded, enabling the government entity to view these lists and the provisions contained in the framework agreements through the portal. It also reviews feasibility studies and estimated costs submitted by government entities for the procurement and tendering of the work to ensure that the tender documents meet the requirements of the government entities. In addition to preparing tender document templates, prequalification documents, contract templates, contractor performance evaluation templates, and any other documents required by the nature of the business and procurement, this will standardize the templates used by government agencies in accordance with local and international best practices¹⁹. This mandate plays an important role in combating financial corruption. The system does not grant government agencies the freedom to prepare tender documents, as was the case under the previous system. This aims to block all avenues leading to corruption regarding the information contained in tender documents. The preparation of tender documents falls under the purview of the Spending Efficiency Center, which provides reassurance that no information about tender documents will be disclosed. It also prepares the necessary training programs to develop the qualifications and skills of those responsible for implementing the provisions of the system. It also participates in some bid review committees, enhancing integrity and transparency in the procurement process. From the above, it can be concluded that the Spending Efficiency Center is a mechanism for combating financial corruption in the tender system. The system stipulates that the center is responsible for reviewing tender documents, and it has the right to approve reductions in project components. It is prohibited to mention a specific trade name in tender documents without obtaining the approval of the Spending Efficiency Center. Before launching any project, the government entity is obligated to submit a feasibility study to the Spending Efficiency Center. Regarding the use of this technology to reduce financial corruption, it is well known that the implementation of electronic transactions plays a fundamental role in reducing the possibility of corruption. This is because it provides an accurate accounting and auditing system without any human intervention. Given that the Kingdom is witnessing a qualitative shift in the implementation of electronic transactions and recognizes the e-administration system, it was imperative to employ technology in all areas, including government projects. Before addressing the use of technology in the new government tenders and procurement system, it is necessary to clarify how technology contributes to reducing corruption, especially in the field of government procurement.

The answer is that relying on the use of technology limits the available avenues for corruption. This is because it effectively leverages the concept of transparency, reduces randomness, and provides an opportunity for civil society organizations to monitor indicators of corruption and assist the relevant authorities in taking action. Necessary measures. Employing technology and recognizing its importance, the new Government Tenders and Procurement Law was issued, introducing an electronic portal (Etimad Platform) for government procurement. The Etimad Platform is an electronic portal established by the Ministry of Finance and aims to unify government procurement for all government agencies electronically at all stages of tendering, from preparation and processing to contract conclusion and implementation. The portal must provide the highest levels of confidentiality, security, and transparency. Among the portal's functions are offering government work and procurement electronically, eliminating the need to publish tender advertisements in local newspapers as was the case previously. It also includes registering suppliers and contractors on the portal, creating any purchase or demand request, pre- and post-qualification processes, advertising on the portal, submitting requests for quotations, receiving and responding to bidders' inquiries through the portal, opening bids through the portal, eliminating the need for manual

¹⁹ Article Fourteen of the new Government Tenders and Procurement Law issued by Royal Decree No. (M/128) dated 11/13/1440 AH.



envelopes, examining technical and financial bids, notifying bidders of the award, canceling the award, extending and canceling bids, and notifying bidders accordingly²⁰. It also includes completing tender and contracting procedures. It can be concluded from the above that all government tender procedures are now conducted electronically, enhancing integrity and transparency at all stages of government tenders and providing a protective shield against all forms of corruption, which previously occurred under the manual system. To ensure greater transparency in government procurement and tendering, the electronic portal must meet several requirements. It must ensure the confidentiality of data submitted by users and bids submitted by competitors, ensuring that they are not accessible to anyone except in accordance with the regulations. In addition, the portal must include instructions for its use and procedures for bidding and purchasing. The portal also enables the government entity to amend any tender documents when the regulatory requirements are met. Furthermore, the portal must include general statistics on government tenders and procurement, particularly the volume of spending by the government entity²¹. These are the most important provisions of the electronic portal (Etimad), which demonstrates the inclusion of all government tender and procurement procedures on the electronic platform. This means greater transparency and clarity, making it difficult to engage in any form of corruption in government tenders and procurement, as there is no communication between those in charge of the tender and the bidders throughout the tendering and awarding period. Regarding the role of the financial controller in the tender examination committee, which constitutes a mechanism to combat financial corruption under the government competition and procurement system, the tender examination committee was previously mentioned in the context of discussing the mechanisms for protecting public funds during the examination and award phase, as well as the effective role of the tender examination committee in protecting public funds²². The formation of the committee was also explained in accordance with what was stipulated in the executive regulations of the government competition and procurement system: "Taking into account the provisions of Article (Forty-Five) of the system, the number of members of the tender examination committee - in addition to its chairman - shall not be less than three, including the financial controller, a member with legal qualifications, and a member who has technical knowledge of the nature of the work and purchases subject to the competition. The decision to form the committee stipulates the appointment of a vice chairman from among its members to replace him in the event of his absence, and a reserve member for each member of the committee..." What concerns us in forming a bid review committee as a mechanism to combat financial corruption here is the text of the executive regulations of the Government Tenders and Procurement Law that stipulates that the bid review committee must include a financial controller from the Ministry of Finance. Undoubtedly, the presence of a financial controller on the bid review committee is a mechanism to combat financial corruption, preventing price manipulation. The committee's meetings are not valid unless the financial controller is present. The primary role of the financial controller is to monitor spending and ensure that it is consistent with the government entity's budget. It is important to note that the financial controller and his effective role also existed under the old Government Tenders and Procurement Law.

CONCLUSION

²⁰ An article published in Al-Eqtisadiyah newspaper entitled "Using Technology Supports Transparency and Reduces Opportunities for Corruption" by Muhammad Abdullah Al-Sharif, published on January 18, 2010. Available at https://www.aleqt.com/2010/01/18/article_335002.html

²¹ The first paragraph of Article Seventeen of the new Government Tenders and Procurement Law issued by Royal Decree No. (M/128) dated 11/13/1440 AH.

²² Article 74 of the Executive Regulations of the New Government Tenders and Procurement System.



This study addresses the topic of digitizing public contracts and protecting public funds in the Saudi system, which is of paramount importance, especially given the developments taking place in various fields in the Kingdom. This study addressed the most important mechanisms and principles for protecting public funds in the government tenders and procurement system and their compatibility with the Kingdom's Vision 2030.

First - Results:

This study reached several conclusions, the most important of which are:

1. The Government Tenders and Procurement System's provisions are based on important principles such as transparency, openness, equality, and equal opportunity, across all stages of government tenders and procurement.
2. The Kingdom's move toward making technology a foundation for all transactions, including, of course, government transactions in projects and tenders.
3. The provisions and procedures of the new Government Tenders and Procurement System are based on its objectives, the most important of which is the protection of public funds.
4. The procedures introduced in the new Government Tenders and Procurement System are consistent with the Kingdom's Vision 2030.
5. The Government Tenders and Procurement System is consistent with the Kingdom's new economic vision, which relies on increasing spending efficiency, eliminating financial waste, and achieving the best value for public money. This is clearly demonstrated in the system's new mechanisms, such as advance planning and the Spending Efficiency Center.
6. The system's mechanisms and procedures are clearer compared to the previous tenders system.
7. The government tenders and procurement system's focus on encouraging innovation, which positively impacts the quality of procurement, is reflected in its adoption of the "competition" method as a new method for government contracting, not provided for in the previous government tenders and procurement system.

Second - Recommendations:

Through the research, I reached a number of recommendations, perhaps the most important of which are the following:

1. The need to review current legislation to achieve greater effectiveness in protecting public funds, not only through the tenders system but also in most other legislation.
2. Intensifying fieldwork by doubling judicial oversight over the disposal of public funds and the conclusion of public contracts.
3. In addition to providing legal and judicial protection of all kinds for public funds, it is assumed and expected that constitutional protection will be provided for this public fund.
- 4- It is necessary to strengthen administrative protection and develop the legal texts related to these public funds by overcoming the loopholes and shortcomings in these legal texts, which have made protection of these public funds relative. Given the role these properties play in achieving the public interest, effective and distinctive protection is essential..
- 6- It is necessary to make a fundamental and effective change to protect public funds on three levels by closing outstanding legal loopholes, providing the necessary incentives for this effort, and preparing national public opinion to accept it.

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