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Legal Mechanisms within the Framework of Administrative Contracts to Prevent Conflict of Interest (Comparative Study)

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Abstract

Conflict of interest is associated with financial and administrative corruption and is considered an important issue with multiple dimensions and legal rules governing it. It is important in this research to determine the target group for the study, and we will address the legal regulation to reduce conflicts of interest within the framework of administrative contract laws, focusing on the legal rules for public officials responsible for applying government tendering and auction laws in the study countries.

And this research will answer an important question which is: How adequate are the restrictions imposed on employees working in government contracts, and how consistent are they with the rules for concluding administrative contracts and achieving their principles to reduce and eliminate conflicts of interest? This will be clarified through a legal analysis of the topic. The study concluded several results and recommendations.

Keywords: (Conflict of Interest - Public Official - Administrative Contract - Government Contracting - Tenders and Auctions - Competitions and Procurements)

Introduction

The topic of conflicts of interest is significant, encompassing various aspects and legal rules that govern it. The fundamental starting point for this topic is linked to the idea of the integrity of public officials, which is related to the effectiveness of public institutions and citizens' trust in state institutions. An important issue regarding limiting conflicts of interest in the public service is identifying the target group for the study, as the categories of public employees vary and, accordingly, the procedures followed for each category differ based on the policy and laws of each country in this regard. We find public employees subject to civil service laws and regulations, senior officials, ministers, judges, military personnel, parliament, political positions, and those working in sectors more prone to corruption than others.

In light of the foregoing, we will examine the legal regulation of limiting conflicts of interest within the framework of government contracting laws, focusing on the rules applicable to the category of public employees responsible for implementing government procurement and bidding laws in the countries under study.

Study Questions:

The study raises several questions, of which the most important are:

1. What is meant by conflicts of interest and what is its nature?
2. What is the constitutional and legal basis for preventing conflicts of interest?
3. What are the rules for preventing conflicts of interest for employees involved in government contracting?
4. What are the guarantees and pre-contractual procedures in administrative contracts to limit conflicts of interest?

Study Objectives:

This study aims to:

1. Elucidate the legal mechanisms and controls established by the legislator to limit conflicts of interest within the framework of government contracting laws and regulations.
2. Clarify the constitutional provisions and international agreements related to the study's topic.
3. Outline the preventive measures for limiting conflicts of interest in the scope of administrative contracts.
4. Demonstrate the effectiveness of legal controls in the field of government contracting to reduce administrative corruption by those responsible for implementing tendering and bidding laws.

Study Problem:

The issue of conflicts of interest generally raises numerous legal complexities, and specifically, the topic of conflicts of interest within the framework of administrative contracts is of significant importance as it leads to various legal issues that require a clear approach to address situations related to the idea of public interest and the preservation of public funds. The study's problem emerges through answering an important question: How adequate are the restrictions imposed on employees involved in government contracting, and how consistent are they with the rules of concluding administrative contracts and achieving its principles to limit and eliminate conflicts of interest? This will be clarified by providing a legal treatment for this subject. The issue of conflicts of interest for public officials is linked to the phenomenon of financial and

administrative corruption in the government sector, a phenomenon present in all countries, with many adopting various policies and laws to combat it.

Study Importance:

The significance of this topic stems from the concept of public interest, which underpins all administrative activities and administrative contracts. Deviating from achieving the public interest by favoring personal interests leads to distrust in public officials and the public authority and results in further wastage of public funds. The most evident and clear manifestation of conflicts of interest occurs in the clash between public and private interests. Looking at administrative contracts and government procurement, which largely rely on partnerships between the public and private sectors, we find them to be a broad field for conflicts of interest and abuse of power. This necessitates the imposition of restrictions and legal treatment in all aspects to achieve the public interest and eliminate financial and administrative corruption in this area.

Study Methodology:

The study employed analytical and comparative methodologies by analyzing legislative texts related to the subject matter in both the Arab Republic of Egypt and the Kingdom of Saudi Arabia, in light of the following laws:

Egyptian Law:

- The Law Regulating Contracts Concluded by Public Entities, issued by Law No. 182 of 2018.
- The Executive Regulations of the Law Regulating Contracts Concluded by Public Entities, issued by Decision No. 692 of 2019.
- The Decree-Law No. 106 of 2013 concerning the prohibition of conflicts of interest for officials in the state and interests related to their positions.
- The Civil Service Law No. 81 of 2016.
- The Code of Conduct and Ethics for Public Service (2019-2022).

Saudi System:

- The new Government Tenders and Procurement Law of 1440 H.
- The Executive Regulations of the Government Tenders and Procurement Law, issued by Ministerial Resolution No. 1242 dated 21/3/1441 H and amended by Ministerial Resolution No. 3479 dated 11/8/1441 H.
- The Regulation on Conflict of Interests in Applying the Government Tenders and Procurement Law and its Executive Regulations 1441 H (Council of Ministers' Resolution No. (537) dated 1441/8/21 H).
- The Regulation on Conduct and Ethics for Those Implementing the Government Tenders and Procurement System and its Executive Regulations 1441 H (Council of Ministers' Resolution No. (537) dated 1441/8/21 H).
- The Civil Service System issued by Royal Decree No. M/49 dated 10/7/1397 H - Council of Ministers' Resolution No. 951 dated 27/6/1397 H.
- The Code of Professional Conduct and Ethics for Public Service issued by the Council of Ministers' Resolution No. (555) dated 25/12/1437 H.

Research Plan:

- 1-Section One: The Constitutional and Legal Basis for Preventing Conflicts of Interest and Its Nature
- 2-Section Two: Rules for Preventing Conflicts of Interest for Employees Involved in Government Contracting
- 3-Section Three: Guarantees and Precautionary Measures in Administrative Contracts to Limit Conflicts of Interest

First Section

The Constitutional and Legal Basis for Preventing Conflicts of Interest and Its Nature

The issue of conflicts of interest is of significant importance as it represents a form of financial and administrative corruption and is also considered a way of misusing power by employees, which countries around the world strive to combat and prevent its spread through the establishment of numerous controls and legal provisions that criminalize it under both international law and the domestic laws of each country. The topic of combating corruption, especially conflicts of interest and the misuse of power by public officials, is crucial both internationally and locally, being a pathway to corruption.

The importance of addressing and combating conflicts of interest has become especially significant in the present day due to its prevalence and the unlimited access to knowledge transfer, thus facilitating the visibility of individual behaviors, relationships, and the rapid dissemination of news. One of the main reasons for the spread of conflicts of interest is the neglect of public service ethics by employees. It may also arise from the administrative apparatus being exploited by external alliances that control decision-making. The prohibition of conflicts of interest aims to protect the reputation of public service and maintain its dignity. There are numerous legal and constitutional texts that prohibit and criminalize conflicts of interest.

Firstly, defining conflicts of interest:

In this context, two terms are commonly used: conflict of interest and interest conflict, with the latter often preferred for its precision and clarity. (Adnan Al Mulla, 2015) There are many definitions, but broadly, a conflict of interest can be described as any situation where there's a clash between the public and private interests of a public employee.

Among the definitions of conflicts of interest is the clash between the public role and the private interests of a public employee that affects their performance, obligations, and responsibilities. (United Nations, 2018) It is a real situation where an individual faces two contradictory interests: one public and the other personal or private. (Francisco Cardona, 2015)

In Egypt, the Decree-Law No. 106 of 2013 on prohibiting conflicts of interest among state officials and interests related to their positions (Law No. 106 of 2013 on prohibiting conflicts of interest among state officials, 2013) defines conflicts of interest as the existence of a material or moral interest for the government official or a person connected to them that could lead to achieving illegitimate interests conflicting with the integrity of the position and the protection of public funds.

The Law regulating contracts made by public entities, issued by Law No. 182 of 2018 (Law 182 of 2018 on regulating contracts made by public entities, 2018) in Egypt, states that collusion is to achieve illegitimate purposes at any stage of contracting with the aim of dividing contracts or fixing prices in a non-competitive manner. And fraud is to mislead to gain any benefit of any kind to influence the bidding process or to avoid fulfilling contract obligations.

The regulation of conflicts of interest in applying the system of competitions and government procurements and its executive regulation in the Kingdom of Saudi Arabia (Regulation of Conflicts of Interest in Applying the System of Competitions and Government Procurements and Its Executive Regulation 1441/08/21- 14/04/2020, 2020) defines conflicts of interest as the impact of a private interest conflicting with the government entity's interest, affecting the person's ability to perform their duties objectively and with integrity, including actual, apparent, and potential conflicts.

The Code of Conduct and Ethics for Public Service in Saudi Arabia (Code of Conduct and Ethics for Public Service, 1437) defines conflicts of interest (Article 1/8) as a situation where a private interest of the employee or someone else, whether material or moral, direct or indirect, existing or potential, affects the objectivity or impartiality in making a decision or expressing an opinion related to their job.

From the above definitions, it can be said that a conflict of interest situation arises only in the following cases:

1. The employee is legally obligated to achieve a certain public interest.
2. The employee has a private interest of any kind, whether financial or non-financial, direct or indirect.
3. There is a conflict between the legal obligation imposed on the employee (the public interest) and the private interest.

Achieving a private benefit is one of the criteria for conflicts of interest, meaning that the employee achieves a private benefit. This could lead to a violation of their job duties, but this does not constitute a conflict of interest in itself; it must be coupled with achieving a benefit or advantage. (Noura Al Oumi, 2020) It is not required that actual harm befall the public service, but potential harm can have a negative impact on public service in the event of a conflict of interest affecting the public interest. (Mardin Ali, 2018) In all cases, conflicts of interest in the framework of administrative contracts lead to the non-guarantee of competition freedom and the non-application of other standards.

Secondly, forms and cases of conflicts of interest:

The conflict of interest varies in its forms and situations; it can be confirmed, expected, or potential, and it may occur in the field of public law, domestic public law, or private law. (Mohammed Darwish, 2008) The category of public employees responsible for implementing the systems and laws of government contracts is among the most susceptible to abuse of power and conflicts of interest. In this context, there is a relationship between the public and private sectors based on government contracts, which opens the door to corruption, bribery, and abuse of power if there are no laws and regulations to limit conflicts of interest.

Law No. 106 of 2013 mentioned above distinguishes between absolute conflict: which are cases that result in certain harm to the public interest, and relative conflict: which are cases where the occurrence of harm to the public interest is possible.

The regulation of conflicts of interest in applying the system of competitions and government procurements and its executive regulation mentioned above includes several definitions:

- Actual conflict of interest: Confirmed presence of a private interest that affects an individual's ability to perform their job duties.
- Apparent conflict of interest: The existence of a visible private interest that could affect job performance.
- Potential conflict of interest: The presence of a private interest that could lead to a conflict of interest in the future.

This regulation detailed the definition of conflicts of interest. In this framework, conflicts of interest occur at the boundaries of corruption, fraud, and unethical behaviors to achieve financial or personal interests. If the conflict of interest has no relation to financial or personal interests, it is not considered criminal. Therefore, individuals must be aware of its presence. (United Nations, 2018)

Thirdly, the United Nations Convention against Corruption: (United Nations Convention against Corruption, 2004) The Convention on Corruption includes many provisions related to conflicts of interest, including the necessity to establish standards to guide the behavior of public sector officials, establish foundations for legal practice in public procurement, and principles related to dealings with the private sector. (Francisco Cardona, 2015) The Arab Republic of Egypt signed the United Nations Convention against Corruption on December 9, 2003, and ratified it with Resolution No. 307 of 2004 on September 11, 2004. (United Nations, 2019) The Kingdom of Saudi Arabia also signed the United Nations Convention against Corruption on January 9, 2004, and ratified it on January 23, 2013, by Royal Decree No. M/5 and deposited its instrument of ratification with the Secretary-General of the United Nations on April 29, 2013. (United Nations, 2018) The United Nations Convention against Corruption includes many provisions related to combating corruption and preventing conflicts of interest in the field of public service and government procurement by placing obligations on the states parties to the treaty in this regard, including the following:

1. Establishing effective policies to combat corruption and promote values of integrity, transparency, and accountability (Article 5).

2. Establishing codes of conduct for public officials that require them to disclose to the competent authorities any external activities or employment that may lead to a conflict of interest with their official duties (Article 8).

3. Establishing appropriate procurement systems in the field of public procurement and public funds management based on transparency, competition, and objective criteria in decision-making, effective in preventing corruption, which are based on the following:

- Publishing all information related to procurement procedures and contracts, and participation in tenders, for later verification of the correct application of rules or procedures.

- (c) Using pre-determined and objective criteria for making decisions related to public procurement, facilitating later verification of the correct application of the rules or procedures.

- Establishing an effective internal audit system, and providing legal avenues for grievances in case procedures are not followed

- Regulating matters related to employees responsible for procurement and accountability in public funds management. Taking various measures for accountability, audit, and related controls.

4. Establishing a system for financial disclosure by public officials.

5. Article 12 regarding the private sector:

- Establishing standards and procedures aimed at the integrity of the private sector and the use of good business practices between commercial establishments and in contractual relationships between those establishments and the state.

- Preventing conflicts of interest by imposing reasonable restrictions on the employment of public officials in the private sector after their resignation or retirement, when those activities or employment are directly related to the functions those public officials held or supervised during their service.

- (Article 19 Abuse of Functions) Enacting legislative measures that criminalize the intentional abuse of his or her office by a public official.

Under this convention, all signatory states are committed to taking legislative and administrative measures to implement it.

Fourth, the Constitutional Basis for Preventing Conflicts of Interest:

While there are no explicit texts regarding the prevention of conflicts of interest, a set of constitutional rules in the legislative system and laws leads to the prevention of conflicts of interest. Regarding the Egyptian Constitution (Constitution of the Arab Republic of Egypt 2014, amended in 2019), there is an obligation on the state to combat corruption, with the presence of supervisory bodies that follow the implementation of the national strategy to combat corruption according to the law (Article 218). The Central Bank, the Financial Regulatory Authority, the Central Auditing Organization, and the Administrative Control Authority are among the independent and supervisory bodies (Article 215). Moreover, the Central Auditing Organization is tasked with overseeing state funds and monitoring the implementation of the state's general budget (Article 219).

According to the Constitution (Article 27), a set of objectives must be achieved through the economic system, including achieving prosperity, improving living standards, and eradicating poverty, through adherence to transparency and governance standards and balancing the interests of different parties. In this context, the state is committed to ensuring equal opportunities and the fair distribution of development returns and reducing income disparities (Article 28). The state is committed to protecting and giving special attention to medium, small, and micro enterprises.

The Constitution stipulates the formation of independent supervisory bodies, and the President of the State appoints their heads after the approval of the House of Representatives (Article 216). These bodies submit annual reports to the President of the State, the House of Representatives, the Prime Minister, and these reports are made public. The competent investigative authorities are informed of any violations or crimes (Article 217).

The Basic Law of Governance in the Kingdom of Saudi Arabia (The Basic Law of Governance, 1992/1412) stipulates the state's commitment to protecting public funds (Article Sixteen). It also specifies that there is subsequent control over all state expenditures and revenues, including all fixed and movable assets, to protect them and submit annual reports to the King. It also states that all government bodies are subject to supervision, and the system indicates the supervisory bodies (Article Seventy-Nine).

From the above, it is clear that numerous legal texts in the Constitution, laws, regulations, and international agreements in Egypt and Saudi Arabia address combating corruption and preventing conflicts of interest, with the presence of several supervisory bodies.

Second Section

Rules for Preventing Conflicts of Interest for Employees Involved in Government Contracting

Numerous legal texts have been issued regarding the prevention and combating of conflicts of interest for employees in general, and specifically for those involved in government contracts. This section highlights the most important legal rules in this regard for this latter category.

Firstly, prohibitions on the government official throughout their tenure:

The Civil Service Law in Egypt, number 81 of 2016, prohibits employees, in particular, from engaging in activities that conflict with impartiality, detachment, and occupational commitment, including conducting business activities by a public employee, which is prohibited due to its conflict with the requirements of the public office. The executive regulation of the Civil Service Law (issued by Law No. 81 of 2016, 2017) in Article (150) lists a series of actions that employees are prohibited from doing, including:

1. Disclosing any information of a confidential nature or by virtue of instructions without written permission, a commitment that continues after leaving service.
2. Combining their job with any other work that could harm the performance of their duties, whether done personally or through intermediation.
3. Performing work for others for a fee or compensation, even outside official working hours, without permission from the competent authority.
4. Exploiting their official position.
5. Accepting any gifts, commissions, services, or loans on account of performing their job duties.

The Civil Service System in the Kingdom of Saudi Arabia (Civil Service System, 1397) imposes a set of prohibitions on public employees, including:

1. Abuse of power and exploitation of influence.
2. Accepting bribery and accepting gifts from stakeholders.
3. Disclosing job secrets, a commitment that continues after leaving the position.
4. Engaging in commerce, participating in the establishment of companies, or accepting membership in their boards of directors, except as allowed by a regulation issued by the Council of Ministers for employees to work in the private sector outside official working hours.
5. The prohibition of combining their job with practicing another profession, which was modified by Royal Decree No. (M/57) dated 24/5/1438H by adding a clause allowing this under a regulation issued by the Council of Ministers, permitting engagement in freelance professions for those whose public interest permits due to the need for their professions.

The regulation on the conduct and ethics of those involved in implementing the government procurement and competition system 1441H states that the employee is prohibited from the following (Article Four):

1. Exploiting the position to achieve any private interest for themselves or others.
2. Disclosing any confidential information related to the competitions and purchases of the government entity.
3. Concealing any information that should be disclosed to the dealer.
4. Requesting or encouraging the offering of gifts, or accepting them from the dealer.
5. Refraining from issuing a decision or carrying out a certain action that they should take, or delaying it.
6. Delaying the payment of dues and extracts to the dealer with the government entity without a regulatory justification.

Secondly, Legal Controls to Limit Conflicts of Interest:

The law in Egypt, through the Conflicts of Interest Law No. 106 of 2013 mentioned earlier (Law No. 106 of 2013 on the Prohibition of Conflicts of Interest for Officials in the State, 2013), sets a series of obligations and prohibitions upon appointment to a public office:

1. Resignation from membership or work immediately upon appointment in a public office if one is a member of the boards of directors of companies or private projects. Until the resignation is accepted, the individual is obligated not to attend or participate in the company or accept any financial return from it.
2. The prohibition of combining membership on boards of directors of companies or private commercial projects, considered an absolute conflict of interest. (Article 6)
3. Undertaking necessary measures to separate the employee's ownership from the management of shares or stakes in the aforementioned companies, including participation in profits immediately upon appointment to their position, within a period not exceeding two months from their appointment. (Considered an absolute conflict of interest) (Article 7)
4. Submission of a financial disclosure statement within a month of appointment and annually thereafter. (Article 5)
5. The government official is required to take immediate measures upon appointment to stop or liquidate their professional activity—if they were engaged in a professional activity before their appointment—whether practiced individually or in partnership with others, within two months of their appointment. (Article 10)
6. The provision of consulting services is prohibited. (Article 11)
7. The government official dealing with the private sector in leasing, purchasing, or selling regarding state-owned assets and properties must do so at a fair price, without the government official's interference in determining it and without obtaining any private advantages or benefits. If the contract involves services and goods that do not have a market price, the official must request a financial expert to determine a fair price, to be done by the Corruption Prevention Committee. (Article 12)
8. The prohibition of purchasing shares and stakes in commercial projects directly or indirectly or increasing one's share in them except in two cases (Article 9):
 - The first: the increase occurred before assuming the position, and the increase is for all partners, and the participation does not lead to an increase in their share of the capital.
 - The second: subscription to Egyptian investment funds offered for public subscription.
9. The prohibition of obtaining a credit facility or purchasing by installment or borrowing money, which is allowed after notifying the Corruption Prevention Committee, according to the prevailing market conditions without obtaining any additional advantages. It is considered an absolute conflict if the credit granting entity is affiliated with or under the supervision of the government official, in which case dealing with it is prohibited even at a fair price.
10. Receiving or accepting gifts from any public or private entity, with some exceptions. (Article 14)
11. The prohibition on engaging in professional activities or holding any position in the private sector or an entity that was subordinate or linked to their previous work or was under their presidency or supervision, and this is not allowed except

after the approval of the Corruption Prevention Committee, for a period of six months from leaving their position or job. (Article 15)

The Public Service Code of Conduct and Ethics (2019-2022) in Egypt (Public Service Code of Conduct and Ethics 2019-2022, 2019) includes a set of legal controls regarding limiting conflicts of interest and prohibits employees from a range of actions:

1. Engaging in any activity that leads to an actual, apparent, or potential conflict between their personal interests and all matters related to their job functions.
2. Directly or indirectly using their position to gain financial or in-kind benefits or anything of value for their own interest or that of their family.
3. Exploiting information obtained during the performance of their duties after leaving their administration to obtain personal benefits for themselves or others in any form or to harm others.
4. Refraining from establishing close relationships with individuals or institutions whose interests primarily depend on their decisions or those of their administration.
5. Performing work for others - with or without compensation - during their leave period without authorization from their employer.
6. Collecting donations or prizes or in-kind contributions for charitable institutions only after obtaining the necessary approvals.
7. Engaging in any activity that is incompatible with their objective and impartial performance of their duties or leads to discrimination against natural or legal persons in their dealings with the government.
8. Withholding job-related information from the new occupant of the position, affecting their job entitlements after transfer, exit, or end of service.
9. Using inventions and works created as a result of official experiments and acknowledging state ownership of them or if the invention or work falls within the scope of their job functions, and it is not allowed to use them for personal interest.
10. Working under the direct supervision of a first-degree relative in the same unit to prevent conflicts of interest within the organizational unit. In such cases, the employee

Thirdly, Obligations Imposed on Government Officials in Case of Conflicts of Interest:

Employees are obligated to eliminate any conflicts of interest by disclosing them. Disclosure means that the employee must declare any "conflict of interest" that exists or is likely to exist in any transaction or procedure that they are involved in, are assigned to, or participate in. Following this disclosure, the employee is obligated to refrain from using their influence. (Saleha Bin Ouda, 2022)

Under Law No. 106 of 2013 concerning the prohibition of conflicts between the interests of state officials and their job-related interests, there are several obligations that a government official must fulfill in case of any conflict of interest, regardless of its type. The employee is obligated to remove the conflict with the integrity required by their position by renouncing the conflicting interest or leaving the public office or job. In the case of relative conflict, they are required to disclose this and take necessary actions to prevent harm to the public interest. (Article 3)

There is a general obligation on the government official to avoid conflicts of interest that are not mentioned in the law. The official must notify the Corruption Prevention Committee about any potential conflicts of interest that may raise doubts or questions and are not listed in this law. This implies that conflicts of interest are not exhaustively listed and cannot be limited by one law alone.

The Public Service Code of Conduct and Ethics (2019-2022) in Egypt mandates that the employee must immediately inform their direct supervisor in writing in the event of a conflict of interest with any person in their dealings with the work entity, or if a conflict arises between personal interest and public interest, or if the employee is exposed to pressures that conflict with their official duties or raise doubts about the objectivity required in their dealings, clarifying the nature of the relationship and how the conflict arises.

The Saudi Public Service Code of Conduct and Ethics (Code of Conduct and Ethics for Public Service, 1437) in Article Nineteen mandates that employees must disclose in writing to the administration any conflict of interest situation, including cases such as:

- Having a personal interest between the employee and the contracting party or one that has started contracting steps with their work entity
- Having a familial relationship up to the fourth degree between the employee and the person nominated for a position within their work entity

The Regulation of Conflicts of Interest in the application of the Government Tenders and Procurement Law and its implementing regulations (Regulation of Conflicts of Interest in the Application of the Government Tenders and Procurement System and its Implementing Regulation 1441/08/21- 14/04/2020, 2020) includes several legal rules in this regard, aiming to prevent the influence of private interests of employees and contractors on the fairness and integrity of government contracting processes and addressing conflict of interest situations.

This regulation applies to any employee directly or indirectly related to government tenders and procurement, as well as to contractors and their employees.

Employees are required, under Article Five, to avoid any conflict between their private interest, whatever its nature, and any of the government entity's interests. They must disclose in writing to their direct supervisor as soon as they become aware of any conflict between their private interest and the government entity's interests and refrain from participating in voting or

carrying out any work or procedure related to the tenders and procurement of the government entity that may involve a private interest.

The regulation emphasizes the obligation of disclosure in writing in case of conflict of interest with the public interest, to be submitted to the direct supervisor, imposing this obligation on all employees. Article Six specifies certain individuals required to make such disclosures in the event of any conflict between their private interests and the government entity's interests, including:

1. The head of the government entity or their delegate.
2. Members of the board of directors of the government entity.
3. Employees involved in preparing or drafting tender documents, regardless of their participation nature.
4. Members of the envelope opening committee, the bid examination committee, technical and financial committees derived from it.
5. Experts performing any task for the government entity related to preparing tender documents or examining or evaluating offers, and so forth.

Under the regulation, the government entity is obligated to take all necessary measures to prevent any conflicts of interest in any stage of the government tenders and procurement it conducts. If it becomes apparent to the government entity that the conflict of interest cannot be addressed through preventive measures and procedures, it shall decide to exclude any employee from participating in the tender and procurement processes.

In the context of the employee's obligation to disclose - Article Nine - employees are prohibited from accepting any job offer from the contractor without prior disclosure to the government entity if it represents an actual conflict of interest. Also, participation in any capacity as an agent or representative of the contractor or in any other capacity in everything related to the tender from the beginning to the end is prohibited.

The regulation applies to all contractors dealing with the government entity. Under Article Ten, all contractors dealing with the government entity are required to disclose all conflict of interest

Fourthly, Employee Violation of the Law Regarding Conflicts of Interest:

Law No. 106 of 2013, as mentioned earlier, established the "Corruption Prevention Committee," tasked with applying the law's provisions, including determining what constitutes an absolute or relative conflict, and prescribed penalties for violating the law's provisions on preventing conflicts of interest, without prejudice to any harsher penalty stipulated by the Penal Code or any other law. In all cases, a verdict is issued to return the profit gained in violation of the law's provisions on preventing conflicts of interest and for dismissal from the job, which is a compulsory and additional penalty. The law provides a period for those subject to its provisions to regularize their situations within six months from the date of its enforcement.

According to Article (5) of the law regulating contracts made by public entities in Egypt, the Public Contracting Complaints Office under the Ministry of Finance directly handles complaints related to the violation of the aforementioned law and its implementing regulations, and decides on them. These decisions are binding on both parties of the complaint, and the administrative entity is obligated to implement this decision within a period not exceeding seven days from the date of receipt, without prejudice to the complainant's right to file a lawsuit.

In case of an employee's violation of the Government Tenders and Procurement System's provisions, disciplinary action is taken, along with other penal provisions. State agencies are obligated to report cases of fraud, deceit, and manipulation to the Ministry of Finance immediately upon discovery, along with the measures taken in this regard.

The Regulation on Conduct and Ethics for those involved in implementing the Government Tenders and Procurement System 1441H, under Article Six, provides legal protection by the government entity for the employee and the contractor in case of reporting any employee or another contractor committing acts that violate the system's provisions and other relevant regulations. Adequate protection is provided to ensure they are not subjected to job-related reprisals or infringed upon their benefits and rights. The employee is disciplined if they violate any of the regulation's provisions.

From the above, it is evident that the prohibition of conflicts of interest is linked to administrative reform and anti-corruption, encompassing all systems related to administrative organization and reform based on several pillars, including accountability and transparency. (Sabah Al-Saadi, 2018) Based on the foregoing, it is clear that both the Egyptian law and the Saudi system include numerous legal provisions regarding prohibitions and legal controls to limit conflicts of interest, imposing a set of obligations in case of conflict, including disclosure and conflict resolution, with several penalties imposed for non-compliance by the employee and proven exploitation of their official influence.

Third Section

Guarantees and Precautionary Measures in Administrative Contracts to Limit Conflicts of Interest

The legislator has surrounded administrative contracts with numerous principles and procedures aimed at ensuring the integrity of administrative contract formations, reducing corruption, and thereby minimizing conflicts and interests. Government contracting laws include many binding procedures that are considered guarantees to limit conflicts of interest. These include aspects related to the principles upon which these contracts are based, aspects related to employees and committee formations, and aspects related to the entities interacting with the administrative body. We will refer to the most important points in this regard.

Firstly, the principles and preliminary procedures for contracting:

The Egyptian law on the regulation of contracts made by public entities stipulates:

- The administrative entity must prepare an annual needs plan, which is approved and published on the public procurement portal for transparency purposes, with some cases exempted from publication due to national security considerations (Article 9).
- The administrative entity must ensure the availability of the allocated financial appropriations before starting the tendering procedures and is prohibited from contracting with the intent of exhausting financial appropriations (Article 11).
- The estimated value of the contract subject must be prepared by a specialized committee whose work is confidential - except for the case mentioned in Article 71 of this law - and members of that committee are not allowed to participate in other committees for the same operation.
- Bidders are prohibited from submitting more than one bid unless they are partners with others with a share that does not allow them to influence the decision related to the bid.

The Saudi Public Procurement and Competition law states:

- All entities and interests, bodies, and governmental institutions that have contracts with a duration of more than a year and a value of five million riyals or more must present them to the Ministry of Finance for review before signing them (Article 32).
- All employees in governmental entities must keep the information provided in the bids confidential and not disclose it to other competitors or anyone else, except as provided in this system (Article 74). All governmental entities must announce the results of public competitions and government procurements that they contract to implement and exceed one hundred thousand riyals. The executive regulation specifies the method of announcement (Article 73).

The Executive Regulation of the Public Procurement and Competition system provides a set of rules and procedures:

- The procedures of public procurement and competition are based on transparency, and all bidders are notified of any changes to the competition, with the governmental entity obligated to publish its business plan and purchases during the first quarter of each fiscal year.
- It is prohibited for employees of the governmental entity, consultants, and participants in preparing the competition documents to disclose any information about the competition before it is announced.
- The governmental entity is not allowed to amend the terms, specifications, and quantity schedules after the submission of bids according to the provisions of the system and this regulation, and the competition is canceled in case of violation.
- The Efficiency of Spending Center prepares strategies that specify the controls for contracting, purchasing, quantities, and periodic monitoring of procurement data and contracts made by governmental entities.
- The electronic portal provides the necessary reports for the authorities and regulatory entities responsible for monitoring and reviewing purchasing operations and contract implementation. It also provides statistics and data on public competitions and government purchases and ensures the confidentiality of the data received from users and the bids submitted by competitors (Article 9).
- The portal publishes a list of contractors, suppliers, and contractors banned from dealing with the government (Article 10).
- The governmental entity must apply the standards, conditions, and procedures specified in the qualification documents and not aim to limit dealings to specific competitors (Article 17).
- The governmental entity, the Efficiency of Spending Center, and all participants in setting the estimated prices must maintain their confidentiality (Article 27).
- The criteria for evaluating bids must be clear, objective, and serve the public interest, and not aim to award the work to specific competitors (Article 29), allowing the opportunity for the largest number of competitors; thus, the government entity's dealings are not limited to a specific number of them (Article 41).

Secondly, the formation of committees related to government competitions and procurements:

The law regulating contracts made by public entities in Egypt applies to contracts made by public entities. Among the goals of this law are to regulate the procedures for planning and executing public contracts, enhance principles of governance and integrity, avoid conflicts of interest, and eliminate collusion, fraud, corruption, and monopolization:

- The law states in Article 3 the formation of a Contracts Management Department within the administrative entity and a committee for economic indicators and changes - Article 4, which specializes in studying projects and deals. The procedures for all contracting methods mentioned in Article 7 are entrusted to committees consisting of legal, financial, and technical specialists, according to the nature and importance of the contract, including the duration of their formation. The law also stipulates the formation of specialized committees in Article 31 according to the nature of the operation.
- Regarding the formation of committees, Article 28 stipulates that it is not permissible to combine the chairmanship of the committees mentioned in this law and their endorsement. This rule is an important guarantee to prevent the concentration of decision-making power and thereby reduce conflicts of interest.
- Decisions in tenders of all types are made by two committees, not one; one is responsible for opening envelopes, and the other for making decisions on the tender. There is an exception for tenders not exceeding three hundred thousand Egyptian pounds, where envelope opening and decision-making are done by one committee. The separation of the work of the two committees is important in terms of not concentrating power in one entity.
- Article 34 stipulates that the evaluation committee is responsible for examining the bids submitted and verifying the availability of technical competence, financial solvency, and good reputation among the bidders.

- Regarding the work of committees and their formation and participation, Article 29 stipulates the necessity for a representative from the Ministry of Finance to participate in the membership of the envelope opening committees, tender evaluation committees, and practice committees if the estimated value exceeds one million Egyptian pounds, and a member from the competent legal department of the State Council if the estimated value exceeds two million Egyptian pounds. The meeting of the committee is not valid except in their presence in the specified committees, and a representative from the Ministry of Housing in cases required by law. Requiring a certain formation and quorum is also among the important controls in this regard.

- Regarding direct contracting, a direct contracting committee is formed, which does not unilaterally endorse its work and is referred for endorsement to the competent authority. (Article 30)

Regarding the Kingdom of Saudi Arabia, the Government Tenders and Procurement Law 1427 AH aims to prevent the influence of personal interests on government contracts by regulating the procedures of competitions and procurements carried out by government entities, through achieving transparency in all stages of government competitions and procurement procedures.

The system entrusts the competition and tender procedures, from start to finish, to specialized committees, and many controls have been put in place to ensure the performance of tasks and eliminate and limit conflicts of interest:

- A committee or more is formed to examine the offers (Article 16 of the system), which is responsible for presenting its recommendations on awarding the best offers according to its executive regulation. The committee is reconstituted every year, and according to Article 17, it is not permissible to combine the chairmanship of the offer examination committee and the authority to decide on the competition, nor to combine the chairmanship of the envelope opening committee and the offer examination committee or membership in both (Article 71 of the executive regulation of the Government Tenders and Procurement system), which is an important guarantee to prevent conflicts of interest and misuse of official influence.

- The head of the government entity - or his delegate - issues a decision to form one or more committees to carry out the pre-qualification and post-qualification procedures, by the head of the government entity according to the executive regulation of the Government Tenders and Procurement system amended by Ministerial Decree No. 3479 dated 11/8/1441 AH (Article 20) according to a set of controls, including not combining membership or chairmanship of this committee with any other committees in the system and this regulation.

- Regarding direct purchase (Article 47 of the executive regulation of the Government Tenders and Procurement system), one or more committees are formed to examine direct purchase offers, and it is not permissible to combine chairmanship or membership of this committee with chairmanship or membership of any other committee formed according to the system and this regulation. Works and purchases not exceeding 30,000 Riyals are exempted from being presented to the direct purchase offer examination committee.

Thirdly, the prohibition of contract subject division:

- The law regulating contracts made by public entities stipulates the prohibition of dividing the subject of the contract - Article 10 - with the intention of circumventing terms, rules, and procedures. A bidder may subcontract some parts of the work to others provided that their details and expertise are included in the bid, with the contractor remaining responsible for contract execution (Article 25).

- Dividing purchases or works to qualify for direct purchasing is not allowed. Likewise, dividing these works to qualify for authorized officials' approval is prohibited (Article 46 of the Government Tenders and Procurement Law). The executive regulation of the Government Tenders and Procurement system in Article 30 requires that competition division must not aim at shifting to other purchasing methods. The competition documents must include the division method, and the nature of the work must be suitable for division. If dividing items is deemed in the public interest, approval from the Efficiency of Expenditure Center must be obtained before announcing the competition, aiming to serve the public interest.

The provisions regarding the prohibition of contract subject division are important safeguards to prevent the misuse of power and manipulation to shift to direct purchasing methods.

Fourthly, the prohibition on employees' participation in tenders, practices, and bids:

- The law regulating contracts conducted by public entities in Egypt, in Article 26, prohibits employees of entities subject to this law from directly or indirectly submitting bids or proposals to these entities. They are also prohibited from purchasing items from them or being assigned work by them. Exceptions are made for purchasing books authored by them or commissioning them for artistic works related to official business, provided they do not participate in the purchasing or commissioning procedures, and such transactions are conducted within legal limits and procedures.

- The executive regulation of the law regulating contracts conducted by public entities, issued under Law No. 182 for the year 2018 (the executive regulation of the law regulating contracts conducted by public entities issued by Law No. 182 for the year 2018, 2019), Article 2, mandates the General Authority for Government Services to review contracting procedures of administrative entities to ensure their integrity. This must be done independently, transparently, and impartially, with all employees required to avoid conflicts of interest in all its forms. They are prohibited from participating in any tenders, practices, and bids, directly or through mediation, except if the items purchased are for their personal use and are available for sale through other entities.

- The competent authority must ensure the integrity, honesty, and good reputation of those occupying contracting management positions, ensuring they receive necessary training and certifications (Article 3).

- In public contracting, Article 4 requires employees of administrative entities to adhere to standards and principles of transparency and prevent conflicts of interest in their contracting procedures, observing the code of conduct for their positions.

- The executive regulation for the Government Tenders and Procurement system, Article 14, prohibits government entities and their contractors from dealing according to the system and this regulation with, including state employees, except in the following cases: a- Non-commercial activities if they are licensed to engage in them. b- Purchasing their publications or any intellectual property rights directly from them or through publishing houses or others. c- Commissioning them for artistic works. d- Participating in public auctions, if the items intended for purchase are for their personal use.

Fifthly, delegation:

The law stipulates delegation for certain competencies while prohibiting delegation in other cases. The law regulating contracts conducted by public entities, in Article 81, allows the competent authority to delegate within its leadership functions, except in cases where delegation is prohibited by this law. Article 82 emphasizes the preservation and confidentiality of documents, prohibiting the disclosure or access to these documents and data by unauthorized parties or individuals, except for auditing and review entities.

The authority to make direct purchase decisions rests with the minister or the head of the independent department, who may delegate this authority only up to a limit of five hundred thousand Riyals, along with several other controls (Article 45 of the Government Tenders and Procurement Law). The executive regulation for the Government Tenders and Procurement system specifies that the authority to decide on tenders for the execution of works, purchases, and additional work assignments belongs to the head of the government entity, with delegation allowed in specific cases as defined by this article.

Sixth: Cancellation of the Competition:

One of the main reasons for canceling a competition is the practice of corruption and fraud. Article 37 of the law regulating contracts made by public entities in Egypt states that the cancellation of a tender or practice is at the discretion of the competent authority if there is evidence of collusion among bidders, fraudulent practices, corruption, or monopolization, or if deficiencies or errors are discovered in the specifications document. The cancellation can be initiated by the authority itself or based on a recommendation from the evaluation committee or practice committee, and the decision must always be justified. Article 25 of the Government Tenders and Procurement Law in Saudi Arabia allows for the cancellation of a competition if its procedures violate the law's regulations, for the public interest, or if significant errors that affect the terms or specifications are found. The authority to cancel lies with the competent minister or head of the independent department.

Conclusion

This study aimed to outline the legal controls to prevent conflicts of interest within the framework of government contracting laws and to demonstrate their adequacy in limiting and preventing conflicts of interest. The study concluded with several findings and recommendations, of which the most important are listed below:

Firstly, Findings:

1. The Egyptian law and the Saudi system include many prohibitions and legal controls to limit conflicts of interest regarding employees involved in government contracts.
2. Both mentioned laws impose a set of obligations on the employee in case of a conflict of interest, including the obligation to disclose and resolve the conflict. If the employee fails to disclose and it is proven that they exploited their influence, several penalties are imposed.
3. The administrative entity is committed to taking all measures to prevent conflicts of interest at any stage of contracting. If these measures do not remedy the matter, it will issue a decision to exclude the employee from participating in the government contracting procedures.
4. The laws and regulations of government contracts, including their contracting procedures, are consistent with the rules concerning conflicts of interest regarding the category of employees involved in contracting processes.

Secondly, Recommendations:

1. Preventing conflicts of interest through public awareness, in addition to activating penalties to address its effects.
2. Enhancing transparency rules by making information freely available and accessible without request in matters of public contracting, provided that restrictions are kept to a minimum and by the public interest.
3. Promoting transparency in cases of conflicts of interest where employee involvement is proven.
4. Adopting real standards in selecting the most competent individuals for public service positions.
5. Reforming the wage system and increasing the salaries of employees involved in government contracting in a manner commensurate with the burdens of their positions.

These recommendations aim to strengthen the integrity and efficiency of government contracting processes, ensuring that they are conducted transparently and fairly, free from any undue influence or conflict of interest.

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