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MANIPULATIVE PRACTICES IN PUBLIC PROCUREMENT: LEGAL RAMIFICATIONS FOR CONTRACT TERMINATION UNDER SAUDI LAW

Ghaleb Mubarak S. Alhamami^{1*}, Salih Mohammad M. Alhamami², and Ahmed Ahmed S. Al-Tuwaili³

¹Najran University, Najran, Kingdom of Saudi Arabia, Email: gmalhamami@nu.edu.sa,
<https://orcid.org/0009-0001-8981-4603>

²Najran University, Najran, Kingdom of Saudi Arabia, Email: smalhamame@nu.edu.sa,
<https://orcid.org/0009-0005-3751-347X>

³Najran University, Najran, Saudi Arabia, Email: ahmedaltawily@hotmail.com

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Corresponding Author: Ghaleb Mubarak S. Alhamami
(gmalhamami@nu.edu.sa)

ABSTRACT

This research critically examines the regime of mandatory termination of administrative contracts due to forgery (Tazweer) under the aegis of the Saudi Government Tenders and Procurement Law (GTPL). Adopting an analytical methodology, the study delineates the legal framework through an introduction, two substantive sections, and a conclusion. The primary objective is to analyze the statutory conditions under which the administration is compelled to dissolve a contract upon the detection of fraudulent alteration of truth. A pivotal finding of this inquiry is that the Saudi legislator has established a rigorous standard: the government entity is statutorily obligated to terminate the contract if it "becomes evident" (tabayyana) that the contractor secured the tender through forgery or engaged in such illicit practices during execution. Crucially, this administrative prerogative—and indeed, duty—is operative immediately upon the manifestation of forgery, without necessitating a prior final judicial conviction, thereby prioritizing the integrity of public funds and the continuity of public services. The study further characterizes the administration's power in this context as a bound authority (sultah muqayyadah), devoid of discretionary latitude once the material facts of forgery are apparent. The research concludes with strategic recommendations, including the necessity of intensifying specialized legal training for administrative personnel to accurately identify grounds for termination and advocating for further academic exploration of the GTPL's protective mechanisms given its recent enactment.

KEYWORDS: Administrative Contract, Mandatory Termination, Forgery (Tazweer), Saudi Procurement Law, Public Funds Protection.

1. INTRODUCTION

1.1. Contextual Background

The Kingdom of Saudi Arabia has undertaken a paradigmatic shift in its legislative architecture to align with modern economic imperatives. This is most visible in the domain of administrative contracting, which serves as the operational engine for public service delivery.

The enactment of the new Government Tenders and Procurement Law (GTPL) (Royal Decree No. M/128, 2019) represents a qualitative leap, introducing rigorous governance to public procurement. Recent scholarship further underscores this legislative evolution, highlighting how modern Saudi regulations activate the purposes of Islamic Sharia (Maqasid) by establishing preventive frameworks to safeguard public interests and resources (Alasmari & Zurib, 2025).

1.2. Problem Statement

The termination phase constitutes the most volatile juncture in the lifecycle of an administrative contract. Specifically, the "mandatory termination" clause for forgery raises complex legal questions regarding the balance between protecting public funds and ensuring due process.

Unlike voluntary termination, mandatory dissolution for fraud is a punitive measure that carries significant legal and financial ramifications for the contractor.

1.3. Research Objectives

This paper aims to elucidate the legislator's intent regarding "apparent forgery" as a ground for termination. It seeks to

1. Define the scope of "Administrative Contracts" under the new regulatory framework.
2. Analyze the legal nature of the administration's authority specifically, confirming it as a "bound authority" when fraud is detected.
3. Outline the procedural conditions required to validate such termination.

2. CONCEPTUAL FRAMEWORK: THE ADMINISTRATIVE CONTRACT & DISSOLUTION

The Juridical Definition of the Administrative Contract While Saudi statutory law does not provide a rigid definition of the "administrative contract," judicial practice by the Board of Grievances serves as the interpretive authority.

- **Doctrinal Perspective** It is defined as an agreement where a public legal entity creates,

manages, or regulates a public utility.

A defining characteristic is the presence of "exorbitant clauses" (clauses dérogoires au droit commun), granting the administration sovereign prerogatives unmatched in private civil law.

- **Jurisdictional Scope** The Board of Grievances exercises plenary jurisdiction over all disputes involving government entities, ensuring judicial oversight regardless of whether the contract is purely administrative or mixed in nature.

2.1. Legal Taxonomy of Termination

- **Concept** Termination (Rescission) in administrative law generally operates prospectively (*ex nunc*). It dissolves future obligations while preserving performed acts. This distinction is vital for continuous contracts (e.g., maintenance or operation), where restoring the status quo ante is factually impossible, unlike instantaneous civil contracts.
- **Unified Definition** The study proposes defining termination as "The cessation of contractual obligations prior to natural expiry, executed via penalty, mutual agreement, public interest requirements, or force majeure".

3. THE LEGAL NATURE OF MANDATORY TERMINATION FOR FORGERY

The Principle of "Bound Authority" The GTPL (Art. 76/1/a) fundamentally alters the administration's discretion. The statute explicitly mandates: "The government entity must terminate the contract... if it becomes apparent that the contractor obtained the contract via forgery or practiced it during execution".

- **Implication** This transforms the termination from a discretionary prerogative into a statutory imperative.

Once the condition (forgery/fraud) is met, the administration has no option but to terminate. The administrative decision here is merely declaratory (*acte recognitif*), revealing a pre-existing legal reality.

- **The Threshold of Evidence** "Appearance" vs. "Conviction" A critical finding of this study is the interpretation of the phrase "if it becomes apparent" (*tabayana*).
- **Administrative Autonomy** The text suggests the administration may terminate the contract upon its own discovery of fraud, without waiting for a final criminal court judgment. This is a "Direct Execution Privilege" aimed at protecting the public utility from corrupt actors immediately

- **Risk Allocation** If the contractor is later acquitted by the judiciary, they retain the right to seek compensation. However, the administration is not required to suspend termination pending a lengthy judicial process, as doing so would harm the public interest.

The Nature of the Offense Forgery, in this context, is defined broadly under the Penal Law for Forgery (Royal Decree M/11) as any alteration of truth intended to cause harm or gain an undue advantage. It represents a fundamental breach of the "moral capacity" required of government contractors.

4. PROCEDURAL CONDITIONS FOR VALIDITY

For the mandatory termination to be legally valid, **two primary conditions must be satisfied**

Condition 1: Issuance by Competent Authority Per the Implementing Regulations (Art. 131), termination is not automatic in a procedural sense; it requires a formal decision.

- **The Authority** The decision must be issued by the Head of the Government Entity (or their authorized delegate).
- **The Process** It must be based on a recommendation from the Bid Examination Committee or the Procurement Committee.

Condition 2: Materiality of the Fraud The administration cannot terminate based on suspicion

alone. The facts must be established either that the contract was obtained through forgery (vitiating consent) or that forgery was practiced during execution. The administration is prohibited from relying on non-existent facts or legally incorrect premises.

5. CONCLUSION AND STRATEGIC RECOMMENDATIONS

5.1. *Synthesis of Findings*

The study establishes that mandatory termination under the GTPL is a non-discretionary administrative act. The Saudi legislator has prioritized the purity of government transactions, empowering entities to dissolve contracts upon the administrative establishment of forgery, without necessitating a prior judicial ruling. Recommendations To enhance the application of the GTPL, **the following measures are proposed**

1. **Specialized Training** Conduct periodic workshops for legal departments in government entities to distinguish between "suspected" and "apparent" forgery to avoid wrongful termination liability.
2. **Academic Expansion** Further research is needed to analyze the economic impact of immediate termination on stalled public projects due to the novelty of the 2019 Law.

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