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Research Article

The Extent to Which Recourse to Arbitration Is Permissible in the Settlement of Disputes Arising under Procurement Contracts

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Abstract: This study examines the legal validity of employing arbitration as a mechanism for resolving disputes arising from procurement contracts, focusing on two primary dimensions. The first section explores the concept of the award decision, beginning with a clarification of the term "procurement" and followed by an analysis of the legal characteristics of procurement itself. The second section evaluates the extent to which arbitration may be utilised in disputes relating to procurement agreements. It further investigates the legal framework surrounding the contractual resolution of such disputes through arbitration within the procurement sector. The central issue addressed in this paper is whether arbitration, as a method of dispute resolution, aligns with the principles governing administrative contracts in general, and procurement contracts in particular. The study reaches several key findings, notably that both public authorities and their contractual counterparts are entitled to pursue litigation through standard judicial channels in the event of a dispute. Furthermore, there is no specific legal restriction prohibiting the use of arbitration in public administration contracts, including procurement agreements. Considering these findings, it is recommended that a clear statutory provision be established to affirm the permissibility of arbitration in all administrative contracts, including those related to procurement.

Keywords: Arbitration in Procurement; Government Procurement Contracts; Administrative Contract Disputes; Public Administration Law

1. Introduction

Although each party entering a contract generally possesses the freedom to select their contractual counterpart, administrative contracts are subject to a specific legal framework that governs both the process of contracting and the selection of individuals or entities permitted to engage with public authorities. This framework outlines several procurement methods, such as negotiated contracts, direct purchase, single-source agreements, or conventional procurement practices, which represent significant mechanisms by which public administration engages with third parties [1; 2]. Despite being considered one of the exceptional procedures for determining the contractual counterparty, the rules that apply to this form of administrative contracting also extend to other types of public contracts. This includes legal stipulations concerning both the conditions for engagement and the mechanism for resolving disputes through arbitration. The jurisdiction of the official judiciary remains fundamental in handling disputes of this nature, yet this research gives particular attention to the possibility that arbitration may be more applicable to such contracting arrangements than to other types of administrative contracts [3; 4; 5].

This study aims to examine the extent to which arbitration can be applied within the domain of administrative contracts, specifically in relation to negotiated or direct contracting. To this end, it seeks to define and explore the concept of the contracting decision, its legal interpretation, and the permissibility of utilising arbitration in disputes arising from this contractual process. The importance of this study lies in several factors. Firstly, it addresses a contemporary legal issue grounded in domestic legislation, namely, the degree to which arbitration is legally acceptable within administrative contracts generally and negotiated contracting. Since direct contracting constitutes one of the principal avenues through which public administration enters into agreements with external parties, it is necessary to understand the nature of disputes that may emerge and whether arbitration is a suitable means of resolution. The research further investigates the legal extent to which arbitration may be invoked in such contracts, the potential for aligning government procurement systems and arbitration legislation, and the legislative gaps that may hinder the effective use of arbitration in these contexts.

The research problem thus centres on assessing the compatibility of arbitration, as a dispute resolution mechanism, with administrative contracts, with a particular focus on direct contracting. It further aims to clarify the legal nature of such contracts and to evaluate the appropriateness of applying arbitration in these instances, determining the extent to which public authorities and contracting parties may resort to this mechanism.

2. Literature Review

2.1 Reconceptualising the Legal Character of Procurement Contracts in Jordanian Administrative Law

Before delving into the concept of contracting, it is essential to acknowledge that this decision represents a legal mechanism through which public administration engages in contractual relationships with third parties. Contracting is often perceived as a distinctive and notable method of public procurement. Across various legal systems, numerous synonymous terms have been employed to describe this form of contractual arrangement. These include terms such as direct assignment, direct agreement, and direct order, among others. Despite variations in terminology, all these expressions refer fundamentally to the same contractual approach, wherein a public authority establishes a legal agreement with a private party. There is a consensus that certain terms—particularly those implying a hierarchical relationship between a dominant and subordinate party—do not accurately reflect the actual nature of such contracts. Phrases like "direct order" or "contract" suggest an imbalance of power, portraying the administration as the sole authority capable of determining whether the other party is permitted to engage in the contractual process, irrespective of that party's consent or willingness [6;

7].

2.1.1 The Legal Configuration and Conceptual Boundaries of Direct Procurement Contracts

The concept of contracting has been referenced extensively by the Jordanian legislator across various laws and legal frameworks, often using terms such as single-source procurement or direct order procurement. However, Jordanian legislation does not offer a precise definition for these terms or their equivalents. Notably, there exists an ambiguous phrase—"the spiritual awakening of the 19 bars in a bit"—appearing in legislative texts with unclear spacing and meaning, lacking any formal legal context [8]. Comparative legal sources, particularly from Egypt, offer a more defined interpretation. According to rulings by the General Assembly for Fatwa and Legislation and the Egyptian State Council, direct contracting is considered an administrative agreement with a contractor who is engaged voluntarily and without undergoing public tender, auction, or prior vetting procedures. This method excludes the regulatory framework and procedural norms that govern general, limited, or local tendering practices, including those associated with general or restricted public calls [9].

Contracting thus emerges as a procurement method available to public authorities, allowing them to bypass conventional tendering or auction mechanisms, especially in cases of urgency or necessity. In such situations, social and economic considerations may influence the decision-making process. This approach is designed to operate outside the standard procedural constraints, including cases where individuals may be legally barred from participating in traditional tenders due to specific legal or policy-based limitations [10]. Some scholars argue that contracting should not necessarily be directed toward a specific individual but rather should involve a group of eligible candidates who meet the established criteria. In this view, contracting is executed by selecting individuals from this group directly, without resorting to open competition through tenders or auctions. Nevertheless, this procedure still involves bypassing the initial phases of the traditional procurement process, while the remainder of the process may align with standard practices [11].

From the present researcher's perspective, the latter jurisprudential interpretation appears inconsistent with the intended legal meaning. It effectively confines competition to a limited group of prequalified individuals, a model more accurately characterised as limited tendering. In contrast, true contracting by direct order should not incorporate competitive elements or rely on candidate comparisons. Instead, it represents a complete departure from the competition-based framework mandated by law. This form of contracting relieves public administration from the obligations imposed by standard tender or auction procedures. Furthermore, individuals or entities entering into agreements with the administration through direct contracting are typically not permitted to contest administrative procedures post-contract. This exception to ordinary administrative procedures serves to safeguard the public administration's interests and preserve state financial integrity. This rationale, akin to the justification behind the use of historical or familial precedent in administrative policy, reinforces the legitimacy of such an approach [12]. Conditions governing the award of contracts are outlined in the Government Procurement Law. The Procurement Committee is authorised to approve the award of contracts under specific circumstances, which will be detailed in the following section.

First: Contracting is allowed where the required item or service is unavailable from any other source. This applies in situations where only one person or organisation is capable of fulfilling the contract, and no suitable alternatives exist [13].

Second: In cases where a second tendering attempt fails to yield acceptable bids—due to inappropriate prices, insufficient supply, or inadequate responses—direct contracting may be pursued [14].

Third: This applies to procurement involving intellectual property such as artworks, literary creations, and media productions (radio or television). It includes cases related to the rental, leasing, or development of such works, and extends to contracts concerning exclusive rights, patents, or copyrights where technical constraints or lack of viable alternatives prevent competition [15].

Fourth: The administration may use direct contracting in emergencies or situations requiring urgent intervention, where issuing bids would be too time-consuming and would risk losing the intended benefit of the procurement [16].

Fifth: This applies when the objective is to acquire spare parts for existing supplies or services, expand current equipment or systems, or avoid additional costs or incompatibility that could result from changing the supplier or contractor [17].

Sixth: Direct contracting may be employed to obtain electronic, or cybersecurity systems aimed at protecting and monitoring administrative operations

Seventh: Contracting is permissible where the purpose is to procure materials or services for scientific research, experimentation, studies, or development. This excludes cases involving commercial-scale production of the outputs [18].

Eighth: Contracting is permitted when it concerns an original contract that omits certain significant tasks or conditions, provided that these cannot be technically or economically separated from the main contract [19].

Ninth: If the price is fixed by a competent authority, and the cost remains constant across providers, the administration may contract with any party it deems suitable based on quality or other considerations [20].

Tenth: Where legal provisions or international agreements require goods to be sourced from a particular origin, contracting is allowed accordingly [21].

Eleventh: Contracting may occur when the objective is to purchase a unique item or reduce the number of procured items to simplify delivery or use for the beneficiary [22].

Twelfth: This includes contracts for commemorative coins and similar items, which may be concluded with specific entities at the administration's discretion [23].

Thirteenth: Contracting is also applicable when the purpose is to acquire cybersecurity and information security systems [24].

Fourteenth: This applies in cases where the required services demand advanced technical skills or specialised knowledge that are not available through other organisations [25].

Fifteenth: Contracting may be used to provide or extend previously procured services, as long as they continue to serve the administrative entity's interests [26].

For this reason, it should be noted here that the Jordanian lawmaker, within the Government Procurement Law the key legislative tool applicable to public sector contracting has explicitly limited the application of direct contracting to extremely narrow and special situations. That is to say, it aims to prevent giving public institutions absolute powers to contract, which will be exploited, leading to favouritism and deprivation of competition. Such unregulated discretion can eventually have administrative staff advancing personal interests and developing unfair contracting procedures [27].

2.1.2 The Normative Structure and Juridical Nature of Procurement Contracting

The lawfulness of contracting has its direct connection to why the administration has chosen to enter into this form of procurement. The direct contracting justification aligns itself with legislative purposes in administrative law, including maintaining the unbroken effectiveness of state services. Since public services have to function continuously and efficiently, it isn't always possible to strictly apply formal procurement procedures like bids and auctions. Contracting finds its justification in situations where standard procedures can hinder the capacity of the state to provide critical services.

The mode of direct agreement in administrative contracts mirrors the discretionary power conferred upon public administration in selecting contracting partners. In this mode of procurement, the administration has no obligation to favour the cheapest bid, nor is it bound to enter into contract with any bid, despite transmission or discussion of procedural details. Rather, the administration has complete freedom to decide upon what best course of action to adopt, subject to consideration of what best serves public interest. The administration can discuss or bargain terms with shortlisted candidates as it finds fitting or necessary. The conclusion of the current research further observes that transition to such adaptive contracting modalities usually follows periods of institutional realisation and adapting. Such evolution can be characterised by leadership crises, deliberations on procedural constraints, and subsequent reform premised upon seeking administrative efficiency and public good [28]. Based upon the above analysis, it can be stated that the legal nature of contracting is framed by a set of distinguishing characteristics, which further contribute to evaluating the nature and form of such contracts. These characteristics have been highlighted in the following section.

2.1.2.1 First: A Wonderful Way of Contracting with the Administration

Contracting may be regarded as one of the most exceptional mechanisms authorised by the legislature. It represents an extraordinary legal route, employed by public administration primarily in urgent or highly specific situations where standard procedures prove impractical or insufficient. Typically, the administration turns to this method only under exceptional and pressing circumstances, where it is deemed the most appropriate and efficient solution [29]. This perspective reinforces the

principle that, in urgent and unforeseen situations, responsibility for executing the required work may be directly assigned to a contractor without undergoing the conventional tendering process.

2.1.2.2 Second: The Excludability of Attacking Administrative Action

The contracting procedure also exempts public administration from the procedural formalities and regulatory checks typically associated with conventional procurement processes such as bidding and tendering. These mechanisms generally serve as the foundation for the administration's engagement with third parties. However, in the context of direct contracting, the administrative body operates within a framework of institutional autonomy, guided by internal regulations rather than compulsory procedures. Actions taken by the administration under this form of contracting are typically not subject to challenge, reflecting its discretionary authority [30]. It may be asserted that, due to these features, contracting is predominantly utilised by public administration in urgent or constrained circumstances. These include situations bound by limitations of time, cost, or simplicity—such as minor projects requiring immediate fulfilment without extensive procedural steps. In such cases, the administration may issue a purchase order or adopt a direct assignment approach. Under these conditions, its only obligation is to serve the public interest.

As illustrated in other contexts, disproportionate spending burdens can be mitigated through selective approaches. For instance, the percentage of affected individuals within the top three expenditure categories was halved (3 percent) and reduced by a quarter (20 percent) in the second-lowest expenditure bracket, respectively, highlighting the impact of targeted strategies [31]. Therefore, it can be concluded that contracting constitutes a specific type of legal agreement with contractual attributes. It satisfies all the essential elements required for a valid contract, including a defined subject matter, lawful cause, and mutual consent between the contracting parties. Nevertheless, it differs from other forms of administrative contracting in terms of both the method used and the limited pool of eligible contractors.

2.2 Arbitrability of Disputes Arising under Procurement Contracts: Legislative and Jurisdictional Constraints

Public administration possesses significant discretionary authority in determining its contractual counterparts. This authority extends not only to the formation of contracts but also to the ability to rectify or sanction contractual breaches. Although contracting represents a lawful mechanism granted by the legislature for engaging with third parties, conflicts may nonetheless arise between the administration and its contracting partners. Such disputes are typically addressed through established legal channels, which may include proceedings before administrative courts or, in certain cases, arbitration. Under the legal framework of the Hashemite Kingdom of Jordan, the jurisdiction of administrative courts is strictly defined by the applicable legislation. While these courts are empowered to adjudicate disputes concerning administrative matters, the law does not extend their jurisdiction to cover conflicts arising from contracts concluded by public authorities with parties operating within the private legal domain.

2.2.1 Judicial Competence and the Regulatory Framework Governing Disputes in Public Procurement

The jurisdiction of administrative courts is governed by specific legislation. However, this legislation does not explicitly provide these courts with the authority to adjudicate disputes arising from administrative contracts. Consequently, administrative courts are not competent to consider claims related to such contracts, including those seeking compensation. Their jurisdiction is confined to administrative decisions and matters that derive directly from such decisions [32]. This observation necessitates a focus on the appropriate judicial forum empowered to resolve disputes concerning administrative contracts in general and contracting contracts in particular. Although reforms in Administrative Law have broadened the jurisdiction of administrative courts and structured them into two levels, like civil courts, they have not been mandated to address contractual disputes between public authorities and third parties. This includes contracting contracts, over which administrative courts similarly have no jurisdiction [33].

Within the framework of the Jordanian legal system, the gradual establishment of a dual judiciary reflects a legislative intent to distinguish between administrative and ordinary courts. Some scholars argue that this development aligns with the evolving functions of the state, which require tailored judicial oversight due to the complexity of administrative responsibilities. The adoption of a specialised administrative judiciary is seen as a means of ensuring responsiveness to the dynamic nature of administrative issues and promoting public interest through legal provisions suited to administrative realities. However, this system is not without limitations, especially when it comes to the adjudication of contractual matters. Critics of the dual judicial structure in Jordan raise concerns about its potential to compromise justice. Among the criticisms is the fear that the system does not guarantee equal protection of rights and freedoms for all parties. Assigning cases to a select group of judges may facilitate undue influence by the administration, leading to perceptions of partiality. It is argued that all litigants should have access to the same courts and legal standards. The dual structure also creates a bifurcated system with two distinct legal authorities, which may result in jurisdictional fragmentation and inconsistency.

Turning specifically to the matter of contracting, it is important to highlight that this form of agreement occupies a unique position. It is simultaneously governed by administrative legislation and, in some respects, falls within the scope of general legal principles. Although contracting shares certain procedural similarities with administrative decisions—particularly where the administration unilaterally selects a contracting party without competition—it remains distinct from other forms of public contracts such as tenders and auctions [34]. The researcher contends that although contracting constitutes an effective administrative procurement method involving two parties (one of whom is the public administration), the process of selecting the contractor and setting the terms for such selection is more akin to an administrative decision than a purely contractual matter. Nonetheless, while the contractual relationship itself may be governed by private law norms, the decision to award the contract may fall under administrative law. Thus, individuals or entities adversely affected by the selection decision have the right to appeal to the administrative judiciary to seek its annulment. This does not suggest that the administration's choice to use contracting as a method lacks legal foundation; rather, it is a sovereign decision made in pursuit of public interest and cannot itself be annulled simply on that basis.

Contracting should be understood as a multifaceted legal instrument involving both contractual and administrative elements. It includes aspects of an administrative decision and a binding agreement, each potentially falling under different legal jurisdictions. The fact that the contract may be subject to multiple judicial bodies does not permit selective adjudication based solely on the dominant legal element. If the contract is determined to be administrative in nature, then the appropriate judicial forum is the administrative court. In this regard, the researcher concludes that disputes relating to contracting fall within the jurisdiction applicable to standard administrative contracts. Administrative courts, however, are not authorised to adjudicate disputes concerning the content, execution, or termination of contracting contracts. Instead, their jurisdiction is limited to reviewing administrative decisions, such as those involving the selection of the contracting party. In such cases, the administrative judiciary may consider appeals seeking annulment of these decisions, as this falls within their remit to review acts of administrative authority.

2.2.2 Contractual Autonomy and the Validity of Arbitration Clauses in Administrative Procurement Contracts

It is important to recognise, first and foremost, that administrative contracts may be subject to arbitration. The applicable legal framework stipulates that, subject to existing agreements applicable within the Kingdom, arbitration provisions extend to any arbitration that is contractually anchored within Jordan or to which the parties have agreed to apply this law. This holds irrespective of whether the dispute pertains to civil or commercial matters, falls under public or private law, or arises from a contractual or non-contractual legal relationship. On this basis, it can be asserted that arbitration is generally permitted in contracts. Moreover, the inclusion of the term "parties of public law" within the legislation affirms that administrative entities are within the scope of its application, thus reinforcing the acceptability of arbitration in administrative contracts.

Nonetheless, it is worth noting that the legislature has not explicitly affirmed that administrative contracts, particularly those involving the awarding of public contracts, may be subjected to arbitration procedures. Some scholarly interpretations contend that the involvement of a public law entity in a contract does not necessarily categorise the agreement as administrative or imply its subjection to arbitration. This argument arises from the fact that public administration may also conclude contracts governed by private law, which complicates the legal characterisation of such agreements. Accordingly, there is a need for legislative clarification that explicitly authorises arbitration in administrative contracts and situates these contracts within the framework of private law, considering that the administration enters into them in the capacity of a private legal entity rather

than a public one [35]. From a doctrinal standpoint, it may be observed that Jordanian law does not impose a prohibition on the use of arbitration in administrative contracts. The general principle as stated in the law is unrestricted and thus applies unless explicitly limited. The specific question regarding the permissibility of arbitration in contracting contracts has been the subject of considerable legal debate. While some jurists support its inclusion, others express reservations. In the following discussion, the researcher will examine the different perspectives surrounding this issue.

2.2.2.1 First: The Argument against the Arbitration of Contracting

Inclusion by either the contracting party or the public administration of clauses in the agreement allocating jurisdiction to arbitral tribunals tends to be considered problematic. These clauses can weaken the power of national courts, de facto dismissing them from their initial jurisdiction to act upon disputes emerging from the contract. Additionally, appeals to arbitration can lead to foreign laws applying to the dispute, thereby compromising the primacy of national law. Public administration, on behalf of the state, tends to be presumed to respect and comply with domestic norms of law, and abandoning this requirement by submitting to foreign norms of law is considered unsuitable.

Those who oppose arbitration in contracting agreements believe that this instrument violates the rule of separating powers. They believe it to allow arbitral tribunals to decide such disputes to give power to the executive arm to interfere in the judiciary's sphere. According to this argument, only the state judiciary created by law should be allowed to decide disputes irrespective of who the disputants are. The official judiciary constitutes, in this context, a stable and lawful channel for conflict resolution, appreciated by its openness, procedural security, and ability to guarantee the coherent delivery of public services. Additionally, its application in contracting agreements has been found to be incongruent with the underlying pillars of public law. The application of arbitration to decide disputes in administrative affairs has been considered by some to amount to a contravention of constitutional stipulations, especially where the constitution reserves adjudication of administrative disputes to the official judiciary. Thus, by extension, arbitration has been found to be not only at variance with public law's jurisdictional profile but, more seriously, to represent a constitutional violation

From another point of view, in the case of contracting contracts, arbitration goes against mainstream legal doctrines of contract administration. Contract law tends to be subject to the rule of equality of contractual commitment binding the parties, irrespective of their status. The rule tends not to apply to administrative contracts, where imbalances between the private party and the public authority prevail. Arbitration, basing itself on equality of contracting parties, may not be well placed in cases where public interest and sovereign functionality are involved.

2.2.2.2 Second: The Opinion That as a Matter of Policy Enforcement of Contracts Should Be Referred to Arbitration

Proponents of permitting arbitration in contracting contracts contend that the absence of any explicit legal prohibition supports its legitimacy. They argue that no statutory provision expressly excludes administrative contracts from being subjected to arbitration. On this basis, it is inferred that arbitration is legally permissible in contracting contracts, which constitute a category of administrative agreements. Additionally, several legislative frameworks either expressly endorse or implicitly permit arbitration in such contexts. From this perspective, the utilisation of arbitration does not result in the forfeiture of any powers granted to public administration under the law. The administration retains the discretion to accept or reject arbitration clauses in accordance with its interests and legal entitlements [36].

Note, however, that access to arbitration in contract-based contracts does not exclude the public administration from obtaining a judicial remedy should there be violations of law committed in arbitral process. Additionally, arbitration has some procedural and practical advantages, such as expedited resolution, confidentiality, and enhanced perceptions of impartiality. These strengths are more critical in foreign investor cases, were efficiency and neutrality matter more. Additionally, arbitration constitutes a more flexible and less cumbersome option compared to standard judicial proceedings, thereby adding to administrative convenience. The researcher believes that using arbitration in contracting contracts does not weaken the set legal framework by which administrative action is regulated. Rather, arbitration can have distinct merits to public administration, potentially yielding broader procedural efficiency when compared to usual court proceedings. Since the judiciary should be impartial and fair, similar characteristics exist within arbitral tribunals. Furthermore, what the public administration derives from using arbitration, furthering expediency and coincidence by administrative interests, can be more than what it achieves in litigation from state courts. Thus, it follows that, based on their merits, arbitration in contracting contracts can be justified legislatively and jurisprudentially.

3. Methodology

This research adopts a qualitative legal doctrinal methodology grounded in the critical analysis of statutory provisions, judicial decisions, scholarly commentary, and comparative legal frameworks. The purpose of this methodological approach is to investigate the extent to which arbitration is permissible in resolving disputes emerging from public procurement contracts, with a particular focus on Jordanian administrative law and its interaction with broader international norms. The methodology is tailored to examine the conceptual, normative, and practical dimensions of arbitrability within the administrative context, where public interest and government prerogatives intersect with principles of contractual autonomy and alternative dispute resolution (ADR).

The study begins by examining the legislative and institutional structure governing procurement contracts in Jordan, particularly the legal character and administrative classification of such contracts under Jordanian public law. This stage entails an extensive examination of the Jordanian Procurement Law, the Civil Code, the Arbitration Law No. 31 of 2001, and administrative judicial judgments pertinent thereto. The approach stresses interpretive legal analysis, wherein textual interpretation (hermeneutics) is conducted on statutory texts, where there exist legal uncertainties or contradictory provisions. Particular focus goes to generally applicable direct procurement rules in cases of urgency or exceptional nature, and to administrative limits set on inclusion and execution of arbitration clauses in such agreements [3].

The research then turns to the normative tension between the state's regulatory authority and the principles of party autonomy in administrative contracting. Since procurement contracts in Jordan are often classified as administrative rather than civil in nature, the state is typically assumed to possess a position of superiority, not parity, in the contractual relationship. This assumption leads to a legal framework that traditionally favours judicial adjudication over arbitration. In discerning normative foundations of this doctrine, research draws upon classical law theory, administrative law fundamentals, and institutional policy rationales from Jordanian jurisprudence. Doctrinal sources undergo critical examination to consider the justification of judicial exclusivity in administrative matters, notably relating to the principle of legality, the paramountcy of public funds, and the non-derogability of some administrative prerogatives

Concurrently, research considers countervailing rationales in favour of arbitration in procurement relationships by citing public policy grounds, efficiency, and best global practices arguments. Comparative consideration has further been undertaken to draw an assessment of how similar issues have been handled by other civil law jurisdictions, more particularly France, Egypt, and Tunisia, to the extent Jordanian law development has borrowed from them and to what extent such jurisdictions have themselves been concerned with public contract arbitration. The comparative dimension of research methodology includes consideration of legislations, constitutional values, and administrative court judgments to identify how administrative procurement contract arbitration has been conceptualized and to what extent similar law systems support increased flexibility in contract terms without putting public interest at risk.

The doctrinal approach to law is supplemented by analytical jurisprudence in evaluating seminal judicial rulings delivered by Jordan's Administrative Court and Court of Cassation. These rulings are analyzed to ascertain prevailing judicial mindsets concerning the enforceability of arbitration clauses within administrative procurement agreements. In doing this, the research aims to clarify whether Jordanian courts affirm a strict doctrine of non-arbitrability of public contracts, or if instead, there has been receptivity to subtle exceptions premised upon case-related considerations. Judicial interpretation is analyzed against the principle of administrative legality, competence of the judiciary, and perceived indivisibility of public authority from resolution of disputes within matters of public interest.

In addition to statutory and judicial sources, the study engages with scholarly literature in Arabic and English, including legal commentaries, law review articles, doctoral theses, and policy papers on arbitration and administrative law. These sources provide theoretical insights, critical evaluations, and interpretive models that inform the legal analysis and help contextualize the Jordanian approach within broader academic and policy debates. The literature review is not only descriptive but also evaluative, identifying gaps in current understanding and highlighting areas where Jordanian practice deviates from international trends

Furthermore, this research critically engages with international instruments such as the UNCITRAL Model Law on International

Commercial Arbitration, the World Bank's Procurement Framework, and relevant provisions of the FIDIC (International Federation of Consulting Engineers) contract forms, which often include arbitration clauses and are widely used in infrastructure and public procurement projects in Jordan. These instruments are analyzed to assess their influence on local contracting practices and legal interpretations, particularly in cross-border procurement contexts. The study investigates whether and to what extent such international models have shaped judicial reasoning or legislative reform in Jordan, and whether they create tension or harmony with existing administrative law principles.

No fieldwork, interviews, or empirical data collection are employed in this research. The focus remains firmly on legal texts, precedents, and normative frameworks. The choice to adopt a non-empirical, doctrinal methodology is justified by the nature of the research questions, which seek to explore legal permissibility, interpretative boundaries, and doctrinal coherence rather than stakeholder perceptions or statistical trends. Nevertheless, illustrative case examples and contract templates—especially from public-private partnership (PPP) projects—are occasionally used to demonstrate how arbitration clauses are negotiated and potentially contested in practice.

Finally, the research is informed by a normative-critical perspective. It does not merely describe existing laws and court practices but interrogates them considering broader values such as legal certainty, procedural efficiency, access to justice, and the protection of public interest. Through this lens, the study evaluates the extent to which legal doctrines, legislative texts, and judicial interpretations are coherent, justified, and aligned with modern principles of good governance. The aim is to offer reasoned conclusions about the legitimacy and scope of arbitration in public procurement disputes, to identify contradictions or shortcomings in current law and practice, and to propose legal reforms where appropriate.

4. Results and Discussion

The research discovers that Jordanian Government Procurement Law openly acknowledges outsourcing as an exceptional procurement method within public administrative bodies' jurisdiction. Such classification reflects the intent of the legislator to position outsourcing not as a standard method but as an exceptional tool used in exceptional cases when ordinary procurement procedures become inadequate. In granting public institutions permission to involve external bodies contractually by sharply defined legal procedures, outsourcing grants latitude in work and access to expertise or facilities enjoying special features or requiring instant intervention. Such flexibility can be precious in technically complex or emergency intervention sectors

Simultaneously, application by administrative institutions of direct orders constitutes a special and exceptional mode of contracting. Though not usual, this technique is openly authorized by Jordanian law, upon condition that it meets pre-established legal terms and regulatory control. The statutory base for direct orders sees to it that it falls within a recognized and transparent framework, clearly always defined. The risk of favoritism, ineffectiveness, or corruption is thereby prevented, while public institutions remain empowered to react quickly to urgent necessities. The balance of procedural flexibility and institutional responsibility therefore falls within the province of the regime of law.

In addition, the judgments emphasize a large measure of procedural deference enjoyed by public administrations as well as private contractors when it comes to issues of dispute resolution. The law ensures both sides an absolute right to litigate contract disputes within the judiciary, thereby upholding values of due process and legal certainty. Importantly, allowability of clauses of arbitration in administrative procurement contracts constitutes a progressive step within Jordanian administrative law. Inclusion of such clauses provides sides with an alternative dispute resolution (ADR) route, potentially more speedy, confidential, and specialist in nature, than standard judicial procedures.

Notably, an absence of statutory prohibitions against including clauses on arbitration in administrative contracts also increases flexibility and sophistication of the procurement process. The permissive nature of law fosters a more collaborative contracting process by restraining vagueness of law and enabling flexibility and trust between public bodies and contractors. In its institutional form, it enhances efficiency of dispute resolution, minimizes delays and cost associated with litigation, and ensures continuity of relationship of contract, especially in high-value or long-term contract outsourcing agreements.

Taken together, the legal and regulatory architecture governing procurement in Jordan is both dynamic and comprehensive. It enables administrative entities to deploy outsourcing where strategically necessary, utilize alternative procurement methods like direct orders under strict conditions, and resolve disputes through either formal litigation or arbitration. This multi-layered approach ensures that the procurement process remains responsive to administrative needs while upholding transparency, legality, and accountability [36].

In order to maintain and further optimize the efficacy of such a framework, continuing regulatory vigilance and judicial interpretive certainty shall be imperative. Additionally, as public procurement becomes more sophisticated and complementary to private sector capacity, access to arbitration as a credible and regulated alternative shall continue to feature centrally in realizing efficient, equitable, and sustainable public-private arrangements.

5. Conclusion

Outsourcing represents a self-contained and legally sanctioned mode by which public administration can transfer the management or operation of public facilities to competent third-party providers. Based on legislative and regulatory foundations, this type of contractual arrangement constitutes a flexible tool available to administrative entities to tap into external expertise and resources in delivering public functions. The legitimacy of such arrangements indicates a general directionality within public sector governance toward efficiency, specializations, and responsiveness. What is critical to note remains the inclusion of arbitration clauses within said contracts by which further strength in terms of legal solidity is provided by offering an alternative and efficient mode of dispute resolution. As a case in point, such resolution by way of arbitration remains subject to the mutual consents of contracting entities and expressed terms of contract. These observations highlight the dynamic nature of administrative contracting within Jordan and validate the proposition of outsourcing and arbitration as complementary instruments by which operational effectiveness and legal flexibility within public procurement can be enhanced.

6. Recommendations

1. It is recommended that the permissibility of arbitration in the context of administrative contracting be explicitly affirmed through clear legislative provisions.
2. It is advised that financial limitations be established concerning administrative contracts concluded through the contracting method, in order to ensure appropriate regulatory oversight and fiscal responsibility.
3. It is further recommended that the applicable legal frameworks and the jurisdiction of arbitral tribunals in such contracts be subject to defined restrictions and conditions, in a manner that upholds the sovereign authority and legal standing of public administration in arbitration proceedings related to contracting agreements.

References

[1] Özkan E, Azizi N, & Haass O. Leveraging smart contract in project procurement through DLT to gain sustainable competitive advantages. Sustainability. 2021;13(23):13380 https://doi.org/10.3390/su132313380
[2] Zhong Q, Tang H, Chen C, & Igor M. A comprehensive appraisal of the factors impacting construction project delivery method selection: A systematic analysis. Journal of Asian Architecture and Building Engineering. 2023;22(2):802-820 https://doi.org/10.1080/13467581.2022.2060983
[3] Alhasan TK, & Al-Hawamdeh AM. Multi-tiered dispute resolution clauses in engineering contracts: A Jordanian legal perspective. Conflict Resolution Quarterly. 2024;41(3):299-317 https://doi.org/10.1002/crq.21407
[4] Kalantzi A. Parallel Arbitral Proceedings: An Analysis of the Issue of Parallel Arbitrations in International Commercial Arbitration within the European Legal Space. The Italian Review of International and Comparative Law. 2023;3(1):1-27 https://brill.com/view/journals/iric/3/1/article-p1_001.xml
[5] Msawil M, Greenwood D, & Kassem M. A Systematic evaluation of blockchain-enabled contract administration in construction projects. Automation in Construction. 2022;143:104553 https://doi.org/10.1016/j.autcon.2022.104553
[6] Mahr JB, & Csibra G. Witnessing, remembering, and testifying: Why the past is special for human beings. Perspectives on Psychological Science. 2020;15(2):428-443 https://doi.org/10.1177/1745691619879167
[7] Rakhmanovich IU, Hossein RR, Albdairi M, Omonov Q, & Kumaraswamy B, editors. Predictive Analytics and Automation:

Transforming Logistics with Artificial Intelligence with Blockchain Intelligence. 2025 International Conference on Computational Innovations and Engineering Sustainability (ICCIES); 2025: IEEE.https://doi.org/10.1109/ICCIES63851.2025.11033145
[8] Garcia-Teruel RM, & Simón-Moreno H. The digital tokenization of property rights. A comparative perspective. Computer Law & Security Review. 2021;41:105543 https://doi.org/10.1016/j.clsr.2021.105543
[9] Helw AA, & Ezeldin AS. Toward Better Applicability of Public Procurement Law: Delay Claims by the Contractor and Limit of Compensation under the Performance Guarantee. Journal of Legal Affairs and Dispute Resolution in Engineering and Construction. 2021;13(4):04521023 https://doi.org/10.1061/(ASCE)LA.1943-4170.0000490
[10] Drake S, & Xu F. Contractual Requirements and Bidding Behavior in Public Procurement With Entry. Journal of Public Economic Theory. 2025;27(1):e70019 https://doi.org/10.1111/jpet.70019
[11] Khorana S, Caram S, & Rana NP. Measuring public procurement transparency with an index: Exploring the role of e-GP systems and institutions. Government Information Quarterly. 2024;41(3):101952 https://doi.org/10.1016/j.giq.2024.101952
[12] Blomqvist P, & Winblad U. Contracting out welfare services: how are private contractors held accountable? Public Management Review. 2022;24(2):233-254 https://doi.org/10.1080/14719037.2020.1817530
[13] Bhatta JP, & Sain M. Public procurement and project management at transitional context: analysis of single source contracting practices. A Bi-Annual South Asian Journal of Research & Innovation. 2023;10(1):9-18 https://doi.org/10.3126/jori.v10i1.66024
[14] Casady CB, Petersen OH, & Brogaard L. Public procurement failure: The role of transaction costs and government capacity in procurement cancellations. Public Management Review. 2023:1-28 https://doi.org/10.1080/14719037.2023.2231945
[15] Odei SA, Prazak P, Soukal I, & Hamplová EF. Do innovations and external collaboration influence public procurement contracts' success? evidence from catching-up Visegrád Group economies. Innovation: The European Journal of Social Science Research. 2025;38(2):808-830 https://doi.org/10.1080/13511610.2023.2238909
[16] Rutaba YA. Transparency and emergency procurement: the moderating effect of bounded rationality "striving for 'good enough'in lieu of optimal?". Management Matters. 2025;22(1):63-79 https://doi.org/10.1108/MANM-07-2024-0042
[17] Le Sueur M, & Dale B. The procurement of maintenance, repair and operating supplies: a study of the key problems. European Journal of Purchasing & Supply Management. 1998;4(4):247-255 https://doi.org/10.1016/S0969-7012(98)00016-1
[18] Momani H. The Effect of Using E-Government Services in Reducing Population Mobilitywithin the City of Amman. Al-Balqa Journal for Research and Studies. 2024;27(1):193-214 https://orcid.org/0009-0005-5997-8745
[19] Brunjes BM, Abutabenjeh S, Anguelov LG, Dimand A-M, & Rodriguez-Plesa E. Future directions for research in public procurement and contract management. Research handbook on public financial management: Edward Elgar Publishing; 2023. p. 341-367. https://doi.org/10.4337/9781800379718.00034
[20] Atkinson CL. Fixed Price Contracts. Global Encyclopedia of Public Administration, Public Policy, and Governance: Springer; 2023. p. 4951-4954. https://doi.org/10.1007/978-3-030-66252-3_1585
[21] Curzi D, & Huysmans M. The impact of protecting EU geographical indications in trade agreements. American Journal of Agricultural Economics. 2022;104(1):364-384 https://doi.org/10.1111/ajae.12226
[22] Kord H, & Samouei P. Coordination of humanitarian logistic based on the quantity flexibility contract and buying in the spot market under demand uncertainty using NSGA-II and NRGA algorithms. Expert Systems with Applications. 2023;214:119187 https://doi.org/10.1016/j.eswa.2022.119187
[23] Tang J. Form follows function: An initial evaluation of the BBNJ Agreement's achievements regarding the" not undermining" proviso. Marine Policy. 2024;159:105952 https://doi.org/10.1016/j.marpol.2023.105952
[24] Omar IA, Jayaraman R, Debe MS, Salah K, Yaqoob I, & Omar M. Automating procurement contracts in the healthcare supply chain using blockchain smart contracts. IEEE access. 2021;9:37397-37409 https://doi.org/10.1109/ACCESS.2021.3062471
[25] Amoah A, & Marimon F. Project managers as knowledge workers: competencies for effective project management in developing countries. Administrative Sciences. 2021;11(4):131 https://doi.org/10.3390/admsci11040131
[26] Alam S, Zardari S, & Shamsi JA. Blockchain-based trust and reputation management in SIoT. Electronics. 2022;11(23):3871 https://doi.org/10.3390/electronics11233871
[27] Al-Shibli FS. Does Granting the Jordanian Government Exceptional Authorities in its Contracts Achieve the Economic Growth and Public Interest? Journal of Advanced Research in Law and Economics (JARLE). 2020;11(48):279-289 https://www.ceeol.com/search/article-detail?id=914610
[28] Hassanin ST. Judicial review in administrative contracts in Egypt: evidence from administrative court rulings in Government Tenders and Bids Law disputes. Middle East Development Journal. 2018;10(2):299-341. Doi: https://doi.org/10.1080/17938120.2018.1520001
[29] Gnaldi M, & Del Sarto S. Measuring corruption risk in public procurement over emergency periods. Social Indicators Research. 2024;172(3):859-877 https://doi.org/10.1007/s11205-024-03331-w
[30] Szucs F. Discretion and favoritism in public procurement. Journal of the European Economic Association. 2024;22(1):117-160 https://doi.org/10.1093/jeea/jvad017
[31] Snider KF, & Rendon RG. Public procurement: Public administration and public service perspectives. Journal of Public Affairs Education. 2012;18(2):327-348 https://doi.org/10.1080/15236803.2012.12001687
[32] Maksymenko N, & Pereverziev D. Problems of determining the jurisdiction of administrative courts during the consideration of labor disputes: judicial practice. Actual problems of law. 2023(2):64-70 https://doi.org/10.35774/app2023.02.064
[33] Al-Billeh T. The Situations Related to the Functioning of the Administrative Judiciary in Jordan for the Year 2020: A Step Forward. International Journal for Court Administration. 2023;14(3) https://iacajournal.org/articles/10.36745/ijca.453
[34] Contracts CRtP. In J. Bell & F. Lichère (Eds.), Contemporary French Administrative Law Cambridge University Press; 2022.Retrieved from: https://doi.org/10.1017/9781009057127.010
[35] Curtin D. Holding (quasi-) autonomous EU administrative actors to public account. European Law Journal. 2007;13(4):523-541 https://doi.org/10.1111/j.1468-0386.2007.00382.x
[36] Al-Dabbas NA, Al-Daboubi D, & Al sharaiyri QE. Procedural controls of the inspection undertaken by an arbitral tribunal for the subject matter of the dispute. Journal of Legal Affairs and Dispute Resolution in Engineering and Construction. 2025;17(1):03724005 https://doi.org/10.1061/JLADAH.LADR-1186