

## PUBLIC PROCUREMENT PROCEDURES IN TURKEY

Sakire Kural and Umit Alsac\*

**ABSTRACT.** Turkey transformed the public procurement procedures in year 2002 by two laws; Public Procurement Law and Public Procurement Contracts Law. This situation brought about challenges for the stakeholders from both the public sector and private sector. This paper presents an analysis of the new public procurement procedures to understand the path from the determination of the need to the signing of the contract as well as several special provisions for consultancy services, complaint reviews and statistics of the last two years.

### INTRODUCTION

In Turkey, public procurement is an important aspect of the economy. One study<sup>1</sup> shows that the ratio of total public expenditures on goods, services and works to GDP varied between 20-25% in 1999-2003. In 2003 the total value was estimated as approximately \$54 billion (22% of GDP). The allocation of this value according to the types of contracting authorities is as follows: 56% State Economic Enterprises (SEE), 21% central government and universities, 9% local administrations, 7% social security institutions and 7% others. Among the procurement expenditures of state economic enterprises, basic utilities (such as petroleum and natural gas imported by related SEEs, electricity procured from concessionaires) comprise the majority. However the exact decomposition of all of the expenditures on public procurement is not

-----  
\* *Sakire Kural, LLB, is the Chief Legal Adviser of the Public Procurement Authority, Turkey. Her research interests include EU Procurement Practices, international dispute resolution mechanisms in public procurement and international arbitration. Umit Alsac, BS, is an Assistant Public Procurement Expert at the Public Procurement Authority, Turkey. His research interests include e-procurement, procurement norms of the international organizations, public procurement in the health sector and the regulatory impact analysis.*

available due to the dispersion of the public entities among different budget types, and there is a risk of double counting since an output of a public entity may be an input for another public entity. Therefore, the figures mentioned above may be a bit overstated although they are good approximations.

Public procurement is conducted generally in a decentralized way. There is a central procurement agency (SSA-State Supply Agency) that procures various goods such as stationary, computers, office equipment and vehicles and sells these items to public entities. However, purchasing from SSA is not compulsory.

In 2002 there was an important reform in the public procurement system. Turkish Public Procurement Law (PPL) No. 4734 and Public Procurement Contracts Law (PPCL) No. 4735 were ratified on 04/01/2002 and enforced as of 01/01/2003. Before these two laws, procurement procedures of central government agencies and local governments were carried out in accordance with State Tender Law. State Tender Law regulated both sales and procurement of the entities in its scope. The other public authorities and entities conducted their procurement procedures according to their own regulations. So, there were many procurement regulations among public entities. State Tender Law, ratified in 1983, was not compatible with the needs of a changing public and business environment.

PPL and PPCL are in accordance with several international regulations on public procurement such as UNCITRAL Model Law, EU Directives on Public Procurement and WTO Government Procurement Agreement. Procurements by most public entities are included in the scope. Administratively and financially autonomous Public Procurement Authority has been established to coordinate, regulate and review the public procurement procedures. A complaint review mechanism has been established for complainant tenderers. Time periods have been lengthened in order to assure that responding tenders are prepared. The contracts awarded in accordance with PPL are regulated in a separate law (PPCL).

This paper describes the basic features of PPL in terms of scope, exceptions and basic principles; the procurement procedure that will be conducted from the determination of the need to the signing of the contract with the successful tenderer in accordance with PPL; the

specific provisions for consultancy services procurement; the complaint review procedures; and procurement statistics of the last two years (2004 and 2005). Therefore, it is a procedural analysis which describes the path to be followed for both contracting authorities and economic operators.

## **PROCUREMENT PROCEDURES**

### **Scope**

Public Procurement Law No. 4734 establishes the principles and procedures to be applied in procurements by all public entities and institutions governed by public law or under public control or public funding. Any procurement of goods, services and works, the cost of which is covered by any kind of resources that are at the disposal of:

- Departments included in the general budget, annexed budget, special provincial administrations, municipalities and their related revolving funds, organizations, associations, legal entities;
- State economic enterprises;
- Social security organizations, funds, entities of legal personalities that are established in accordance with special laws and assigned with public duties (except professional organizations and higher education institutions funded by foundations) and establishments with independent budgets;
- Any institutions, organizations, associations, enterprises and corporations which more than half of their capital, directly or indirectly, together or separately are owned by these entities and institutions; and
- Banks within Law No. 4603 (only procurement of works),

are executed in accordance with the provisions of Public Procurement Law (PPL).

### **Exceptions**

Excepting prohibition and criminal provisions, Article 3 of PPL exempts from the scope of PPL various procurements such as the following:

- Procurements with regard to defense, security and intelligence pursuant to related legislation which requires confidential treatment;

- The procurement of goods, services or works that are to be realized with foreign financing pursuant to international agreements and the financing agreement of which states that different tendering procedures and principles will be applied;
- The procurement of agencies of contracting entities in foreign countries;
- The procurement of goods and equipments from the General Directorate of State Supply Agency (the central purchasing agency) that are listed in the principal status of the State Supply Agency;
- The procurement of services by contracting entities in order to provide diagnosis and cure for persons entitled pursuant to their special legislation and the purchasing of drugs and medical supplies with prescription during outpatient treatment by persons who are treated by the entities; and
- The procurement of goods and services in order to cover needs directly related to the production facilities or principal activities within their commercial and industrial affairs by state economic enterprises; enterprises, institutions and corporations who carry out activities in the energy, water, transportation and telecommunication utility sectors (until their special law enters into force) and any institutions, organizations, associations, enterprises and corporations where more than half of their capital, directly or indirectly, together or separately is owned by public entities or institutions. The estimated costs and contract prices of the procurements to be conducted under this exception clause should not exceed 3,968,935.00 YTL<sup>2</sup> (2006).

Procurement of goods and services which are not exempted and works of enterprises, institutions and corporations which carry out activities in the energy, water, transportation and telecommunication sectors are subject to provisions of PPL until their special law enters into force.

### **Basic Principles**

In Article 5, basic principles are stated. In tenders to be conducted in accordance with PPL, contracting entities are liable for ensuring transparency, competition, equal treatment, reliability, confidentiality and public supervision. The procurement of needs should be carried out under appropriate conditions and in a timely manner for the efficient use of

resources. Unless there is a natural and justifiable connection, the procurement of goods, services and works cannot be consolidated in the same tender. Goods, services or works to be procured can not be divided into lots with the intention of avoiding threshold values.

For the tenders to be conducted in accordance with PPL, the principal procurement methods are open and restricted procedures. The other methods may be used under the special conditions set out in PPL. In accordance with the related legislation, for the works requiring an Environmental Impact Assessment (EIA) Report, a positive EIA report must be obtained before the initiation of procurement proceedings. However, in works when procurements to be made urgently due to natural disasters, EIA report shall not be required.

In addition to basic procurement principles, the Law requires procurement proceedings be conducted if there is a sufficient budget allocation, in order to enhance procurement practices.

### **Determination of the Need**

The first step of procurement in accordance with PPL is the determination of the need. In the context of their internal work flows, related departments of the contracting entities inform the department which is in charge of procurement about their goods, services and works needs. With the aim of completing investment projects in the planned time period and presenting them for the use of the economy, in order for a tender to be conducted for any work that covers a period exceeding one year, it is compulsory that a program be established to ensure that there is an appropriation in the budget on a yearly basis distributed according to the time period of the work. The appropriation contemplated for the first year shall not be less than 10% of the project cost and the appropriation portions which are initially put in the program for the coming years can not be decreased in the following years. In consideration of the time period in which the planned appropriations can be used, it is essential that the tenders be conducted in due time. For works covering a period of more than one year and having the investment characteristic, excluding those that must be carried out due to natural disasters, it is essential that the tenders be concluded within the first nine months of the year. The procurement of goods and services to be realized in the following fiscal year and having continuous characteristic, however, may be carried out before the end of the previous fiscal year. In construction works, other

than projects relating to dams, large-scale irrigations, oil and natural gas pipelines, public entities are not allowed to initiate the tender process without obtaining the building site, completing ownership, expropriation and, if required, development transactions.

### **Preparation of Technical Specifications and Projects**

Principally technical specifications which demonstrate the technical details, conditions and criteria of the goods, services and the productions stated in the project of the works are prepared by the contracting entities. The specified technical criteria shall aim for efficiency and functionality, ensure equal opportunity for all tenderers and shall not consist of elements impeding competition. Technical specifications may, where possible, include arrangements to ensure conformity with national and/or international technical standards. No specific brand, model, patent, origin, source or product can be specified, and no feature or definition indicating any brand or model can be included. However, in cases where no national and/or international standards exist or where it is not possible to establish technical characteristics, a brand or model can be specified provided that an “or equivalent” phrase is stated.

At this step, the preparation of projects and the establishment of application projects shall be completed for the works. However, for construction works, when there is not sufficient time to establish an application project due to the natural disasters, the tenders may be conducted with preliminary or final projects. For construction works for which the application project cannot be established before the tender since land and soil surveys are required in certain stages, except for the building works, the tender may be conducted with the final project.

### **Determination of the Estimated Cost**

One of the most recent concepts brought about by PPL is the “estimated cost”. This term replaces the term “estimated value” which was formerly used. The contracting entities shall determine the estimated cost in accordance with market conditions via conducting a detailed price and quantity research. Before the determination, the contracting entity shall establish the type of offer and receive the price quotations accordingly. In the procurement of goods and services, the offers may be received as lump sum or unit price where the unit prices are multiplied

by the quantities for each unit. In the procurement of works the offers may be received as turnkey lump sum or unit price.

While the estimated cost is being determined by the contracting entities, several factors should be taken into account by contracting entities for the type of purchases; for example:

- For goods: type, class, quantity, delivery time, transportation and insurance should be considered;
- For services: service units (like workmanship, supplies, equipment and others) which are mentioned in the service identification should be considered; and
- For works: the factors in metric lists where the site lists, work items and work groups are listed should be considered; and price references (such as the price quotes determined by public entities, the updated values of the prices realized in the same or similar procurements concluded by the contracting entity or another entity before; prices announced by the related trade, industry or profession chambers; the price quotes received from the real or legal persons in the market; or the prices determined by specialists with the use of various sources like internet) are used. The price quotes which do not reflect real market prices are avoided.

In the procurement of services and works, if several supplies and equipment are contracted out to a contractor, these items are not included in the estimated cost. If there is not any extra payment to be considered for price differences, expected price changes during the contract period are taken into account. Different price quotes taken at different times are updated as of the determination date. In the procurement of services and works, 25% general expenses and profit provision may be added.

If the estimated cost can not be calculated within the contracting authority, it may be outsourced to consultancy services providers. The estimated cost, determined without Value Added Tax (VAT) taken into account, shall be indicated on a calculation chart with its justifications. Estimated cost is not stated in tender or pre-qualification advertisements, and not explained to tenderers or to the others who do not have any formal relationship with the tender proceedings.

### Threshold Values

After the determination of the estimated cost, a comparison shall be made in the context of threshold values included in Article 8 and minimum time limits for the advertisements and invitations included in Article 13. The threshold values included in Article 8 are summarized in Table 1.

**TABLE 1**  
**Threshold Values Established in Article 8**

Goods and services procurement of public entities that are included in the general and annexed budgets	474,468.00 (2006)	YTL
Goods and services procurement of other public entities in the scope of PPL	790,780.00 (2006)	YTL
Works procurement of public entities in the scope of PPL	17,397,187.00 (2006)	YTL

Contracting entities may establish provisions in the tender documents with regard to the participation of only domestic tenderers in tenders whose estimated costs are below the threshold values. In cases where the estimated costs are above the threshold values, in procurement of services and works, a price advantage may apply to all domestic tenderers up to 15%. In procurement of goods, a price advantage up to 15% may apply to domestic tenderers who offer domestic products. The relation of threshold values with the procurement advertisements are detailed in the section below.

### Determination of the Procurement Procedure to Be Applied

The procurement procedure to be applied is determined after the determination of the estimated cost. Open tender procedure where all tenderers may submit tenders and restricted tender procedure for which the nature of the subject is complex and requires expertise and/or high technology and only the tenderers who are invited after a pre-qualification process may submit tenders are basic procurement methods.

Negotiated procedures are only applied in specific circumstances as follows:



- No tender is submitted in open or restricted procedures;
- Due to unexpected and unforeseen events such as natural disasters, epidemics, cases entertaining risk as to lives or properties or events that could not be predicted by the contracting entity, the tender shall be conducted immediately;
- Due to the occurrence of specific events relating to defence and security the tender shall be conducted immediately;
- The procurement is of a character requiring a research and development process, and not subject to mass production;
- Due to specific and complex characteristics of the works, goods or services to be procured, it is impossible to define the technical and financial aspects clearly; and
- Manufactured goods, materials and services will be procured for which the estimated cost is less than 86,278.00 YTL (2006).

Although direct procurement is not a kind of tendering procedure, it may be used in the circumstances defined in Article 22. In this case, without an obligation to establish a tender commission and seek qualification provisions, the needs may be met after a market price investigation.

### **The Preparation of Pre-Qualification/Tender Documents**

After the contracting entity determines the estimated cost and the procurement procedure to be applied, it prepares the tender document. The tender document is composed of administrative specifications specifying instructions to tenderers, technical specifications specifying the technical details of the subject and when applicable the projects, the draft contract, several standard forms (e.g. the tender letter, the standard form showing that the tender document is purchased) and other documents (e.g. general specifications). While administrative specifications and the draft contract are prepared, mainly typical administrative specifications, typical contract and standard forms prepared by Public Procurement Authority (PPA) are used. In typical administrative specifications there are sections to be filled in by the contracting entity according to the nature of the subjects as well as standard sections. The tender date and hour, the type of tender and contract, currency unit valid in the offers, the validity period of offers,

whether subcontractors will be allowed or not, whether the tender will be open to foreign tenderers or not, whether partial offers will be allowed or not and whether economically most advantageous, tenders will be determined by lowest price or the inclusion of factors other than price, are the main issues to be included in the tender documents. In addition, whether a price advantage will be applied for domestic tenderers, whether a price difference during the execution of the contract will be given or not, commencement and completion dates of the subject of procurement, the payment place and conditions, the personal situation and qualification criteria shall be stated in the tender documents.

The personal situation criteria are composed of documents showing that the business is conducted as a registered member of the related chamber, the bill of signature or the circular of signature, the communication information, the tender letter, the tender security and the declaration form specifying that the tenderer is not a tenderer who should be excluded and other documents specified in the related regulations. Qualification criteria are composed of economic and financial criteria (documents to be obtained from banks, the balance sheet, and the income statement etc.) and professional and technical criteria (documents demonstrating the experience, certificates to be obtained from quality control institutions, documents related to the organisational structure, the technical staff, the production capacity and samples and catalogues etc.) which are specified in Article 10 of PPL and described in detail in the application regulations. Based on the estimated cost, qualification criteria which shall be used are specified in each application regulation (goods, services, works and consultancy services). While determining qualification criteria, contracting entities should demand these in accordance with the subject of procurement and shun documents which contradict each other and restrict competition.

In the restricted procedures a pre-qualification document shall also be prepared. For that, a typical pre-qualification document prepared by PPA and several standard forms (e.g. application letter) are used. In the pre-qualification document, pre-qualification personal situation criteria, economic-financial and professional-technical criteria are included as well as general information about the subject of the procurement. As is the case in the open procedures, administrative specifications and the draft contract are prepared by the use of typical administrative specifications and contract with content similar to open procedures.

A draft contract is prepared by using a typical contract prepared by PPA and in accordance with the type of offer (lump sum, turn-key lump sum or unit price). At this stage the sections that may be filled in by the contracting entity are filled; and the sections which will be filled in after the contractor is selected remain unfilled. In goods and services procurement in accordance with Article 5 of Public Procurement Contracts Law the contracts customarily prepared by tenderers may be used.

### **Approval of the Procurement -Establishment of the Tender Commission**

The estimated cost calculation chart, specifications, the draft contract and other prepared documents are annexed to the procurement approval certificate; then they are presented to the contracting officer for approval. The procurement approval certificate is prepared by PPA as a standard form. After the approval of procurement, a tender registry number (TRN) is obtained electronically from PPA. Then the procurement proceedings dossier is prepared. In this dossier, the procurement approval certificate, the estimated cost calculation chart, the tender document, procurement advertisement text(s), applications or tenders, decisions and minutes of the tender commission, complaints and all the other documents related to procurement procedure are included. The procurement procedure dossier expands with applications or tenders, procurement advertisements and clarification requests.

After the approval of procurement, the contracting officer appoints the tender commission which consists of at least five members and in odd numbers, including one chairperson, at least four personnel of the related contracting entity provided that two of them are experts on the subject matter of the tender and a personnel responsible for accounting and finance, together with its substitute members. In the absence of personnel in adequate number or qualification, experts from other contracting entities which are in the scope of PPL may be included.

### **Pre-Qualification/Procurement Advertisement or Invitation to Tender**

After the procurement procedure dossier is prepared and given to the tender commission, the procurement advertisement in open and negotiated procedures for which advertisement is required and the pre-

qualification advertisement in restricted procedures are published. While procurement and pre-qualification advertisements are being published, the tendering procedure to be used, the estimated cost and the subject of the procurement (goods, services or works) are taken into account to determine the minimum time limit prescribed in Article 13 and the print media where the advertisement is going to be published. Procurement or pre-qualification advertisements are published in not fewer than two newspapers in areas where the procurement is to be held and the work is to be performed or a newspaper being issued where the work is to be performed or Public Procurement Bulletin (published by PPA) and, if possible, in the electronic media. Time limits and other rules to be abided by are summarized in Table 2.

**TABLE 2**  
**Time Limits and other Rules**

<b>Estimated Cost Interval (2006)</b>	<b>Subject of Procurement</b>	<b>Procurement Procedure</b>	<b>Minimum Time Period</b>	<b>Where it will be published</b>
<b>0- 51,767.00 YTL</b>	Goods-Services	Open, Negotiated, Restricted	At least 7 days before the tender/last application date	In at least two newspapers in areas where the procurement is to be held and the work is to be performed
<b>0- 103,535.00 YTL</b>	Works	Open, Negotiated, Restricted	At least 7 days before the tender/last application date	In at least two newspapers in areas where the procurement is to be held and the work is to be performed
<b>51,767.00 - 103,535.00 YTL</b>	Goods-Services	Open, Negotiated	At least 14 days before the tender date	In a newspaper in areas where the work is to be performed and Public Procurement Bulletin
		Restricted	At least 7 days before the last application date	

TABLE 2 (Continued)

<b>Estimated Cost Interval (2006)</b>	<b>Subject of Procurement</b>	<b>Procurement Procedure</b>	<b>Minimum Time Period</b>	<b>Where it will be published</b>
<b>103,535.00 – 862,810.00 YTL</b>	Works	Open, Negotiated	At least 14 days before the tender date	In a newspaper in areas where the work is to be performed and Public Procurement Bulletin
		Restricted	At least 7 days before the last application date	
<b>103,535.00 YTL- Threshold Values (PPL Art. 8)</b>	Goods-Services	Open, Negotiated	At least 21 days before the tender date	In a newspaper in areas where the work is to be performed and Public Procurement Bulletin
		Restricted	At least 7 days before the last application date	
<b>862,810.00 YTL- Threshold Values (PPL Art. 8)</b>	Works	Open, Negotiated	At least 21 days before the tender date	In a newspaper in areas where the work is to be performed and Public Procurement Bulletin
		Restricted	At least 7 days before the last application date	
<b>Equal to or higher than threshold values (PPL Art. 8)</b>	Goods-Services Works	Open	At least 40 days before tender date	Public Procurement Bulletin
<b>Equal to or higher than threshold values (PPL Art. 8)</b>	Goods-Services Works	Restricted	At least 14 days before last application date	Public Procurement Bulletin
<b>Equal to or higher than threshold values (PPL Art. 8)</b>	Goods-Services Works	Negotiated	At least 25 days before tender date	Public Procurement Bulletin

The procurement advertisement texts to be published in the Public Procurement Bulletin are derived from the use of the Procurement Advertisement Preparation Module in the Public Procurement Platform on the web site of Public Procurement Authority. After procurement and pre-qualification advertisements are prepared, they are controlled by public procurement experts of PPA and error rates in the advertisements are minimised. Correction, cancellation and award notices are also prepared by use of the same module.

In procurement and pre-qualification advertisements, issues such as the name, feature, type and quantity of the subject of procurement, the procedure to be used, personal situation criteria, documents requested, qualification criteria, the price of the tender document, the type of tender and contract, the validity period of tenders which are listed in Articles 24 and 25 are included. The issues which are not specified in tender or pre-qualification documents cannot be included in the advertisements. Advertisements and pre-qualification/tender documents shall be compatible. Within 10 days after the advertisement is published, corrections may be made by correction notices.

In the following cases when the negotiated procedure is used, a procurement advertisement may not be published but at least 3 tenderers shall be invited. Due to unexpected and unforeseen events such as natural disasters, epidemics, cases entertaining risk as to lives or properties or events that could not be predicted by the contracting entity, there is an emergency situation and the tender should be urgently concluded. Due to the occurrence of specific events relating to defence and security the tender shall be conducted immediately. Goods and services will be procured for which the estimated cost in 2006 is up to 86,278.00 YTL.

Within 3 days after the pre-qualification/procurement advertisement is published or tenderers are invited, a copy of the procurement procedure dossier which consists of documents and transactions made until that time are given to tender commission members in order to allow for the required reviews.

#### **Seeing and Purchasing of Pre-Qualification/Tender Documents, Amendments and Clarifications to Pre-Qualification/Tender Documents**

Pre-qualification and tender documents may be seen free of charge at the place mentioned in the advertisement; however, purchasing is

compulsory for tenderers who wish to participate in the tender procedure or candidates who will apply for the pre-qualification. To tenderers who prefer the CD copies of pre-qualification/tender documents, in the framework determined by PPA and provided that necessary confidentiality measures are taken, the CD copies may be sold. The tender document price is determined in a way so that it does not exceed printing cost and impede competition.

In principle, no amendments should be made in tender documents after the advertisement of the procurement notices. However in the cases where material or technical errors or deficiencies that may affect the preparation of tenders or the realization of the work are detected by the contracting entity or notified by the tenderers with a written notice, the tender documents can be amended with an addendum. The addendum relating to such amendments and constituting a binding part of tender documents shall be provided to all tenderers who have purchased the tender documents, in return of signature or by means of registered mail sent to the notification addresses of all tenderers. This way ensures that they are informed 10 days prior to the deadline for the submission of tenders.

In case an extension of the time period is needed in order to prepare the tenders due to the amendments made with the addendum, the date of tendering may be postponed for a maximum of 20 days, but only one time. In case of an addendum, the tenderers who have already submitted their tenders prior to such an arrangement are allowed to withdraw their tenders and submit a new tender. Candidates or tenderers may request clarifications relating to aspects in the tender documents in writing until 20 days in advance of the deadline for submission of tenders. Clarifications and explanations of the contracting entity shall be provided in writing in a way that all tenderers are informed 10 days in advance of the deadline for submission of tenders.

### **Preparation, Submission and Evaluation of Tenders in Open Procedures**

All documents and certificates required as personal situation criteria including the tender letter and the tender security, economic and financial criteria and professional and technical criteria that are specified in administrative and technical specifications are prepared in accordance with application regulations and administrative specifications and placed

in an envelope. The name, surname or commercial title and notification address of the tenderer, the subject of the procurement and the full notification address of the contracting entity carrying out the procurement proceedings are written on the envelope. The seal of the envelope is signed and stamped by the tenderer.

The tender letter shall be submitted in writing and signed. It is mandatory to indicate in the tender letter that the tender documents have been fully read and accepted. The offered price is written clearly, both in writing and in figures as consistent with each other. There should be no scrapings, erasures, or corrections. The tender must be signed by authorized persons stating the name, surname or commercial title. In the procurement of goods, if a provision on submission of alternative tenders exists in the tender documents, the alternative tender is prepared and submitted accordingly.

The tenderers shall give tender security of an amount determined by them, not being less than 3% of the tender price. New Turkish Lira in circulation, letters of guarantee from banks and special financing institutions (including the letters of guarantee that may be arranged by foreign banks permitted to operate in Turkey in accordance with the related legislation, and letters of guarantee that may be arranged by banks or special financing institutions operating in Turkey upon the counter-guarantees given by banks or similar creditors operating abroad), Treasury Bills issued by the Undersecretariat of Treasury and documents arranged for replacing these bills are accepted as tender security instruments. Performance bonds and advance payment securities are also taken among the instruments listed above. Tender letters in accordance with tender types and letters of guarantee that may be given as tender security are prepared as standard forms by PPA.

The tenders are submitted to the contracting entity no later than the date and hour specified in the tender documents, in return of a receipt indicating the queue number. The tenders submitted after the deadline are not accepted and are returned unopened. The tenders may also be sent via registered mail. The tenders sent by mail must be received by the contracting entity before the deadline. The submitted tenders cannot be withdrawn or changed for any reason whatsoever, except in case of an addendum arrangement.

At the time of tender, the number of tenders submitted is determined by the tender commission; then the tender proceedings are started



immediately. After announcing the number of tenders to those who are present, the tender commission examines the tender envelopes in accordance with criteria stated in Article 30 and those which do not comply are excluded from the evaluation. Then envelopes are opened in the order of submission and whether the documents of the tenderers are complete or incomplete and the tender letter and the preliminary guarantee are in conformity with the relevant procedures are controlled. Tenderers with incomplete documents or improper tender letters and tender securities are recorded in the minutes. The tenderers and their tender prices are announced. At this stage, no decision of rejection or acceptance of any of the tenders is made; the documents consisting of the tender cannot be corrected or completed. The session is closed for immediate evaluation of the tenders by the tender commission.

In evaluating the tenders, first of all, the tenders of the tenderers whose documents are determined to be incomplete or whose tenders or tender securities to be not in compliance with the requirements as a result of the first session are excluded from the evaluation. Other than obligatory contents of tender letters and tender securities prescribed in PPL, in the following cases the missing documents may be furnished within a time period determined by the contracting entity. The missing documents are needed to avoid the lack of information and do not alter the substance of the tender and change the outcome of the tender. For documents which are arranged by other entities, corporations and persons, missing documents are needed to avoid the lack of information and clear the uncertainties in the original document that stem from entities, corporations or persons who arrange the original document. The tenderers who do not furnish these documents in this time period are excluded from the evaluation proceedings. The tender commission shall be aware of general criteria related to exclusion and ineligibility situations of tenderers. At this stage the tenders are examined for their conformity with the qualification criteria determining the capacity of the tenderers to perform the contract, which is the subject of the tender proceeding and for other criteria set forth as well in the tender documents. The tenders of tenderers that are found ineligible shall be disqualified.

After the evaluation of tenders in accordance with the principles written above, the tender commission determines abnormally low tenders compared to other tenders and the estimated cost. Before rejecting these tenders, the tender commission requests from the tenderers the details relating to components of the tender that are determined to be significant,

in writing and within a specified period, taking into account Article 38, application regulations and communiqué of PPA, inquires and evaluates.

When the stages written above are completed, the economically most advantageous tender is determined. When an economically most advantageous tender cannot be determined by the lowest price, it is determined by taking into account factors like the operation and maintenance cost, cost effectiveness, efficiency, quality and technical merit. Factors other than price are taken into account as monetary values stated in the tender document. If it is not possible, they are taken as relative weights. If the price advantage is applied for domestic tenderers, tenders of foreign tenderers are increased by the price advantage percentage.

#### **Pre-Qualification Evaluation, Invitation to Tender and Evaluation of Tenders in Restricted Procedures**

In a restricted procedure, a pre-qualification process is used. The candidates applying for pre-qualification submit documents and certificates specified in the pre-qualification document to the contracting authority with an application letter in an envelope before the last application time in a way similar to open procedures and with the same principles. The opening and evaluation of pre-qualification applications are conducted in a way similar to open procedures and in accordance with minimum qualification criteria and pre-qualification documents. After the pre-qualification procedure is completed, qualified candidates are selected.

The invitation letters to tender are sent to qualified candidates considering the time limits prescribed in Article 13. After the pre-qualification stage, preparation, submission and evaluation of tenders are made in the same way as for open procedures. If the number of candidates who may be invited to tender is less than five and the number of tenderers who submit tender is less than three, the procurement is cancelled.

#### **Application for Qualification, Evaluation of Applications, Technical Interview, Submission of Final Tenders That Include Price and Evaluation of Final Tenders in Negotiated Procedures**

When the negotiated procedure is used, an application letter for qualification and documents and certificates requested in the tender

documents are placed in an envelope in accordance with Article 30 and submitted to the contracting authority before the last application time. The opening and evaluation of applications are made, excepting the tender letter and tender security, in a way similar to open procedures and in accordance with qualification criteria and administrative specifications.

If the negotiated procedure is used in the context of the sub paragraphs (a), (d) and (e) of Article 21, the tender commission requests initial proposals, which do not include prices, for aspects such as technical details and realization methods of the contract that are the subject of the tender from tenderers who are qualified after the qualification procedure. Within a time period determined by the tender commission, tenderers submit their initial proposals including technical details and realization methods without prices. The tender commission shall consult and negotiate with each tenderer on the best methods and solutions for the procurement of the needs of the contracting entity. After the clarification of the conditions as a result of technical consultations, the tenderers that have demonstrated their capacity and capability to meet all these conditions are asked to submit final offers including the tender price based on a reviewed and clarified technical specification. If the number of tenderers is less than three, the solicitation is cancelled.

When the negotiated procedure is used in the context of sub paragraphs (d), (e) and (f) of Article 21, procurement proceedings are concluded based on the tenders submitted, without further price negotiation and in the procedures which are used in the context of sub paragraphs (a), (b) and (c) of Article 21, after the tenders are evaluated by the tender commission, price negotiations take place with the tenderers based on the offers. Procurement proceedings are concluded after the evaluation of final tenders. While the economically most advantageous tender is determined, abnormally low tenders, the price advantage for domestic tenderers and factors other than price are dealt with in the same way as are open procedures in accordance with specifications.

#### **Approval of Procurement Proceedings by Contracting Officer**

After the evaluation process, the tenderer with the economically most advantageous tender is awarded the contract. The tender commission makes its justified decision, specifying the grounds thereof,

and submits the decision for the approval of the contracting officer. Prior to the approval of the contracting officer, a confirmation that the successful tenderer is not prohibited from participation in tenders is received electronically from the PPA web site (see [www.kik.gov.tr](http://www.kik.gov.tr)) by the use of the Public Procurement Platform. If it is understood that this tenderer is prohibited, the procurement is cancelled. Before the approval of the contracting officer, the successful tenderer delivers also the documents showing that it is not among the tenderers to be excluded (e.g. unpaid taxes or social security premiums due) in the context of situations mentioned in Article 10. No more than five days following the date of the decision, the contracting officer approves or cancels the tender decision, indicating clearly the grounds for cancellation.

#### **Notification of the Contract Award**

The contract award is acknowledged to all tenderers who have submitted an offer, including the tenderer awarded within a maximum of three days following the day of the approval. The contracting entity notifies, in writing of the reasons for rejection, tenderers whose tenders have not been included in the evaluation or who is found ineligible, and who makes a written request within five days following the notification date.

Within three days following the end of time limits specified in the second paragraph of Article 41 or in cases necessitating the approval of the Ministry of Finance, in three days following the notification of the approval of the Ministry, an announcement is made to the successful tenderer to sign the contract by issuing a performance bond within ten days following the date of notification.

#### **Signing of the Contract**

Prior to signing the contract, the contractor shall give a performance bond of 6% of the contract value, in order to ensure that the commitment is carried out in accordance with the provisions of the contract. As a signer of the contract, the contractor shall abide by the obligations and liabilities listed in Article 44, and the contracting authority shall abide by the obligations and liabilities mentioned Article 45. A contract is prepared by the contracting authority. Prior to signing the contract, if the contract value exceeds the value mentioned in the 1<sup>st</sup> subparagraph of paragraph (j) Article 53 (172,560.00 YTL in 2006), the contractor shall deposit 0.0005

of contract value in a PPA bank account. Tender security of the contractor is given back after contract signing. In cases where the successful tenderer does not deliver the documents showing that it is not among the tenderers to be excluded in the context of situations mentioned in Article 10 or a performance bond or does not sign the contract, the contracting entity may sign the contract with the tenderer submitting the second economically most advantageous tender provided that this tenderer's price is determined appropriate by the contracting officer. If this tenderer does not abide by the rules of contract signing, the procurement is cancelled.

The contract is signed by the contracting officer and the contractor. Unless stated in the tender document, notarization by a public notary is not obligatory. Within thirty days after signing the contract, a contract award form is sent electronically to PPA by the Public Procurement Platform on the web site. Contract awards exceeding the values stated in Article 47 are announced and published in the Public Procurement Bulletin within fifteen days following the date of contract signing by the parties.

### **Procurement Procedures in Consultancy Services**

Consulting services in technical, financial, legal or similar fields which are comprehensive and complex in nature and which require special expertise and experience can be procured from consultancy service providers. Such services include the preparation of Environmental Impact Assessment Reports, plan, software developing, design, and preparation of technical specifications or supervision. Only the restricted procedure shall be applied to tenders regarding consultancy services, and procedures are conducted in accordance with special provisions prescribed in Articles 48-52 of PPL and application regulation for consultancy services procurement.

A pre-qualification evaluation is conducted in the procurement of consultancy services. Advertisements about the pre-qualification are published in accordance with Article 13. Pre-qualification criteria are determined to assess the general adequacy (personal situation criteria mentioned in the application regulation for consultancy services procurement such as circular of signature and registry to related chamber), the financial capacity (unused credit or letters of guarantee, balance sheet and related ratios, net sales etc.) and technical skills (general job experience, specific job experience, staff composition, equipment composition, quality certificate of management system etc). Whether the

candidates meet the minimum financial capacity criteria and technical skills is evaluated. If the number of candidates that exceed the minimum criteria is less than or equal to the number of candidates to be included in the short list, all these candidates are included in the short list. Otherwise scoring of the candidates in accordance with scoring criteria is needed. Among the candidates who are pre-qualified and score the highest, a short list of at least three and at most ten is formed. If the number of candidates to be invited to tender is less than three, the procurement is cancelled.

The candidates who have been included in the short list are given a period which is not less than the periods stated in Article 13 so they can prepare their technical and financial proposals. An invitation letter to tender is sent along with the tender document to these candidates. The letter of tender containing the price offered for the consultancy services and the tender security constitute the financial proposal of the tenderer. These are put in an envelope with a statement indicating that it is the financial offer in accordance with Article 30. All other documents required for the technical evaluation constitute the technical proposal of the tenderer. These are put in an envelope as technical proposal. The envelopes containing the financial and technical proposals shall be submitted by placing both of them in another separate envelope or package and writing on it the name, surname or commercial title, open notification address of the tenderer, the assignment which the tender is related to, and the open address of the contracting entity.

At the time of the tender, envelopes are opened in accordance with Article 52. Envelopes containing the technical proposals are opened in the order received in the presence of the tenderers. A control is made to ensure that all of the required documents are submitted. The envelopes containing the financial proposals are, without being opened, packed all together, sealed, and signed by the tender commission to be held in protection. No decision is made at this stage in regard to the rejection or acceptance of any tender and the documents in the tenders can not be changed; no corrections or completions can be made.

Tenders are evaluated in two stages: a technical and a financial evaluation. The technical proposal is evaluated at the first stage and the financial proposal at the second stage by scoring individually at each stage. The overall score is calculated by taking into account the weighted coefficients determined for the technical and financial scores. The weight of technical proposal is determined as 51-80% and the weight of the

financial proposal is determined as 20-49% taking into account the factors specified in the application regulation. Technical proposal evaluation criteria are determined as the experience in fulfilling contracts of similar characteristics and scale, the method proposed for the job, the organisational structure, the educational and professional qualifications of the executives and the technical staff to be assigned for the execution of the job, in accordance with the application regulation and typical administrative specifications.

Documents related to technical proposals are evaluated by members of the tender commission based on the criteria mentioned above. Each member determines a technical score of each tenderer and by using an average score of each member, the technical score of each tenderer is determined in accordance with the application regulation and specifications. Tenders which receive below the minimum technical score are excluded from the evaluation. Unopened financial proposals are given back to these tenderers at the opening of financial offers. On the date and hour of the opening of financial proposals, results of technical evaluation and technical scores are announced to those who are present. After that, the financial proposals of the tenderers who score above the minimum technical score which were held in protection are opened and tender prices are announced. Financial scores of the tenderers who have submitted appropriate tender letters and tender securities in their financial proposals are determined in accordance with the application regulation and specifications.

Technical and financial scores of these tenderers are multiplied with weights specified in the tender document and total scores are determined. The tenderer that scores the highest is invited to negotiate the job description, contractual terms, personnel and financial proposal. However, this negotiation shall not cause any significant change in the terms and conditions set out in the tender documents. If the parties clarify the contractual terms and agree after the negotiation, the tenderer in question is awarded the contract. The tender proceedings shall be cancelled in cases where there are less than three candidates or tenderers after the pre-qualification or technical or financial evaluation.

#### **Demand for Review, Review of Complaints by Contracting Entity and Public Procurement Authority (PPA)**

Contracting entities and tender commissions are obliged to carry out the tender proceedings in accordance with the principles and procedures

stated in PPL. This obligation is a duty owed also to the contractor, supplier or service provider. Any contractor, supplier or service provider who claims that he has suffered a loss of rights or damage or he is likely to suffer a loss or damage resulting from an alleged breach of such duty can request review in accordance with Articles 55 and 56 and the regulation regard to administrative applications for review of procurement procedures, with a written complaint.

Candidates who have applied for pre-qualification, tenderers who have submitted tender and potential tenderers who have purchased the tender or pre-qualification document firstly apply to the contracting entity with regard to tender proceedings for a complaint review. The complaints are heard by the contracting entity, if the contract has not been signed yet and the applicant has submitted the complaint within fifteen days following the date upon which the applicant became aware of the circumstances giving rise to the complaint or the date upon which the applicant should have become aware of those circumstances. Applications are submitted in accordance with form requirements specified in the regulation.

The contracting entity, within thirty days after submission of the complaint, issues a reasoned decision. If the complaint is upheld in whole or in part, the decision shall also indicate the corrective measures to be taken. The decision shall be notified to all tenderers within seven days following the date of the decision. If there has not been an appeal to PPA within fifteen days following the last notification date, the contracting entity applies the measures and transactions required by its decision. In cases where no decision is taken within the specified period or the decision taken is found unacceptable, the candidate or the tenderer may appeal to the Authority within fifteen days following the end of the decision period or decision date. Appeal to PPA does not impede the transactions required by its decision, other than the signing of the contract.

Following the submission of a complaint, the contracting entity cannot sign the contract unless the contracting officer certifies that urgency and public interest considerations require the procurement proceedings to continue. This certification, which is the justifiable approval of the continuation of the tender proceedings, is notified within a period that ensures that the complainant candidate or tenderer receives such notice no less than seven days in advance of the signing of the contract. In case the contract is signed without proper notification of such circumstances by the



contracting entity, the tender decision is null and the contract rendered is void. In case the contracting entity notifies that the tender proceedings will continue and the contract will be signed, then the complainant candidate or tenderer may submit a protest to the Authority within three days following the date of the aforementioned notification. The appeal against the certification of the contracting entity in regard to the urgency and public interest is separate from the appeal against the decision of the contracting entity in regard to the complaint.

Within the procurement procedure and before the contract is signed, complainants, other candidates, tenderers and potential tenderers may act against the decision taken in regard to the complaint; if no decision is made within a specified period the complainant may appeal to PPA for review procedures. Appeals made after signing of the contract are not resolved by the Public Procurement Board. It is compulsory that appeals made in accordance with the procedures be reviewed and concluded by the Board until the signing of the contract. Appeals are made with petitions that have the appropriate form determined by the regulation with all related documents and certificates annexed and the application fee determined in Article 53 (256 YTL-2006) deposited in the bank account of PPA.

In cases where the subject of the complaint is obviously contrary to PPL and the related legislation or in case a damage or loss which would be irreparable in the absence of a suspension is likely to be inflicted upon the works contractor, supplier, service provider, public, the contracting entity or other tenderers, procurement proceedings are suspended by an interim decision of the Board. When the Board does not decide on the suspension of procurement proceedings, the contracting entity may finalize the procurement proceedings (except signing of the contract with the contractor) without waiting for a final decision of the Board. The appeals against the decision of the contracting officer to continue with the tender proceedings due to urgency requirements and public interest are reviewed with priority after suspension of the tender proceedings, when necessary. Appeal to PPA for review procedures is an obligatory procedure prior to a legal action. After an appeal, PPA makes a decision relating to continuity of the procurement proceedings within 5 days in cases where the contracting entity has decided on continuation of tender proceeding and within 15 days in other cases. PPA makes the final decision within 45 days following the request date.

In appeals for review procedures the Board makes three types of decisions specifying the following reasons and grounds:

- Determining the corrective operation(s) (e.g. re-evaluation of tenders) in cases where the cancellation of the procurement is not necessary and remedies by the contracting entity would be sufficient,
- Ordering the cancellation of the procurement in cases of non-compliances with PPL and the related legislation that constitute an obstacle for the continuation of the tender proceedings and can not be removed by taking corrective measures, and
- Deciding that the appeal for review procedures is irrelevant.

Apart from the regular complaint and appeal procedures, there is another type of review. In regard to procurements that are conducted in the scope of PPL, the president of PPA is authorized to initiate the review by the Authority of claims of non-compliance with PPL and related legislation that are serious, concrete and debated in the press and other media. Moreover applicants who are not qualified to apply for review procedures may apply to PPA with claims that there are non-compliances with PPL and related legislation. If the conditions specified in the regulation are fulfilled, just those claims may be reviewed. After the review of the claims, the decisions are made whether the claims are relevant. If the claims are relevant, procurement proceedings that do not comply with related legislation are acknowledged to the related public entity and/or public prosecutor.

All decisions of the Board are notified to the parties within five days following decisions and published in the Official Gazette. The final decisions made by the Public Procurement Authority may be brought to the jurisdiction of the Turkish courts and such cases have priority.

#### **PROCUREMENT STATISTICS REGARD TO PROCUREMENT PROCEDURES OF YEARS 2004 AND 2005**

By use of contract award and direct procurement forms that are submitted to PPA electronically, information about procurements and contracts is gathered, and statistics on the basis of numbers, values and other subjects are compiled and published periodically. Statistics on procurement procedures for years 2004 and 2005 (first 9 months) are shown in Table 3 and Table 4 respectively.

**TABLE 3**  
**2004 Statistics on Procurement Procedures**

Procurement Procedure (2004)	Number	Percentage based on number	Amount (million YTL)	Amount (million \$)	Percentage based on amount
<i>Open Procedure</i>	77,204	<b>81.2%</b>	12,089	9,046	<b>87.1%</b>
<i>Restricted Procedure</i>	96	<b>0.1%</b>	150	112	<b>1.1%</b>
<i>Negotiated Procedure</i>	17,805	<b>18.7%</b>	1,638	1,226	<b>11.8%</b>
<b>Total (Based on Types of Procedure)</b>	<b>95,105</b>	<b>100.0%</b>	<b>13,877</b>	<b>10,385</b>	<b>100.0%</b>
<i>Direct Procurement</i>	738,355		2,198	1,645	

Note: 1\$=1.3363 YTL (Central Bank FX Buying Rate on December 31, 2004).

**TABLE 4**  
**2005 (first 9 months) Statistics on Procurement Procedures**

Procurement Procedure (2005)	Number	Percentage based on number	Amount (million YTL)	Amount (million \$)	Percentage based on amount
<i>Open Procedure</i>	57,553	<b>86.6%</b>	16,171	12,048	<b>87.7%</b>
<i>Restricted Procedure</i>	93	<b>0.1%</b>	309	230	<b>1.7%</b>
<i>Negotiated Procedure</i>	8,781	<b>13.3%</b>	1,949	1,452	<b>10.6%</b>
<b>Total (Based on Types of Procedure)</b>	<b>66,427</b>	<b>100.0%</b>	<b>18,429</b>	<b>13,730</b>	<b>100.0%</b>
<i>Direct Procurement</i>	-		2,423	1,805	

Note: 1\$=1.3422 YTL (30.09.2005 Central Bank FX Buying Rate).

As it may be understood in Table 3, 95,105 contract awards with a total amount of 13,877 million YTL were concluded in 2004. In 77,204 of the procurements (81.2%), the open procedure was used. The total amount

of this has been approximately 12,089 million YTL with a share of 87.1%. The restricted procedure has been used so rarely; in only 96 of the procurements was it used. With just 0.1% share of total number of procurements, the total amount has been 150 million YTL with a share of 1.1%, which reflects that this procedure was used for relatively expensive procurements. In 17,805 (18.7%) of the procurements, the negotiated procedure was used with a total amount of 1,638 million YTL and a share of 16.6%. This reflects that the negotiation procedure was used for relatively cheap procurements (due to monetary limits prescribed in paragraph (f) of Article 21 of PPL especially). The total amount of direct procurement was approximately 2,198 million YTL in 2004.

In the first nine months of 2005, based on contract award and direct procurement forms submitted to PPA, 66,427 procurements were concluded with a total amount of nearly 18,429 million YTL. In 57,553 (86.6%) of the procurements the open procedure was used with a total amount exceeding 16 million YTL (87.1%). The restricted procedure was again rarely used. In just 93 (0.1%) procurements the restricted procedure was used with a total amount of nearly 309 million YTL with a share of 1.7%. In 8,781 (13.3%) procurements the negotiated procedure was used with a total amount of 1,949 million YTL (10.6%). In 2005, use of the negotiated procedure was decreased based on percentages of both number and amount compared to 2004. This situation reflects the increase of principle procurement methods. In this period the total amount of direct procurement was 2,423 million YTL.

### CONCLUSION

In this paper, public procurement procedures currently applied in Turkey are described in detail. There are two challenges that will affect the public procurement procedures in Turkey in the near future. The first one is Turkey's accession negotiations with EU for membership and the second one is the e-procurement.

Turkey has started accession negotiations with EU in October 2005 as a candidate country for membership. Public procurement is one of the thirty-five chapters to be negotiated. In this period Turkey will align its public procurement legislation with EU public procurement rules. The new legislative package (Directives 2004/17/EC and 2004/18/EC) enforced in 2004 overhauled the public procurement procedures in EU.

The most remarkable changes in the new legislative package are the provisions that allow and regulate the use of e-procurement.

Developments in the information and communication technologies present new opportunities for citizens, businesses and public entities. In this regard, e-procurement is embraced in many countries in order to enhance efficiency, transparency and effectiveness in the procurement procedures. The procedures currently used in Turkey are paper-based and does not allow the use of e-procurement.

Both global developments in the information and communication technologies and the alignment process of Turkey's public procurement legislation with that of EU compel Turkey to embrace e-procurement. For this reason, Turkey should establish a functional and comprehensive e-procurement system and remove the paper based procedures that lead to many complaints, delays and inefficiencies in the procurement procedures. PPA strives to establish a functional e-procurement system in Turkey in the near future.

#### NOTES

1. That study was carried out by Umit Alsac during the training program for assistant public procurement experts at PPA; the figures are based on the bulletins of public accounts acquired from related public sources
2. 1 YTL (New Turkish Lira) = 1,000,000 TL (Turkish Lira). 1.3383 YTL (New Turkish Lira) = 1 \$ (03.01.2005 Central Bank FX Buying Rate). YTL began circulating as of January 01, 2005 after 6 zero digits have been deleted from TL.

#### REFERENCES

- Public Procurement Authority (2004, September). *Public Procurement Law (No: 4734)*. Ankara, Turkey: Research, Development and Documentation Department of PPA.
- Public Procurement Authority (2004, September). *Public Procurement Contracts Law (No: 4735) with Justifications*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

Public Procurement Authority (2004, September). *Application Regulation for Tenders of Goods Procurement*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

Public Procurement Authority (2004, September). *Application Regulation for Tenders of Services Procurement*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

Public Procurement Authority (2004, September). *Application Regulation for Tenders of Works Procurement*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

Public Procurement Authority (2004, September). *Application Regulation for Tenders of Consultancy Services Procurement*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

Public Procurement Authority (2004, June). *Regulation Regard to Administrative Applications for Review of Procurement Procedures*. Ankara, Turkey: Research, Development and Documentation Department of PPA.

*E-ihale Egitim (Support and Training Project for Application of Procurement Procedures): A Guidance for Contracting Authorities (Vol. 1) and Tenderers (Vol. 2)*. [On-line]. Available at [www.ihale.gov.tr/diseegitim.asp](http://www.ihale.gov.tr/diseegitim.asp).

*Procurement Statistics (Ihale Istatistikleri): 2003 & 2004*. [On-line]. Available at [www.kik.gov.tr/ihaleistatistik.htm](http://www.kik.gov.tr/ihaleistatistik.htm).