



# **BILATERAL MEETING**

## **Chapter 05- PUBLIC PROCUREMENT**

**Country Session: The Republic of TURKEY**  
**28 November 2005**



## **SCREENING CHAPTER 05 PUBLIC PROCUREMENT**

# **AGENDA ITEM XII: REVIEW PROCEDURE**

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## General Framework

Basic principles concerning settlement of disputes in public procurement exist in Public Procurement Law No 4734 (PPL).

In accordance with Art. 81 of Directive No 2004/18/EC, an independent administrative body with expertise in public procurement has been established in Turkey.



## Legal Framework

The related provisions in PPL regarding review for complaint procedures are as follows:

- ✓ Article 53
- ✓ Article 54
- ✓ Article 55
- ✓ Article 56
- ✓ Article 57



## Secondary Legislation

- ✓ Regulation on Administrative Applications Against Procurements (Official Gazette 24.05.2004/ 25471)
- ✓ Communiqué on Administrative Applications Against Procurements (Official Gazette 04.09.2005/ 25926)
- ✓ Regulatory Decisions of the Board



# Review Procedure

- ✓ review by the contracting entity
- ✓ review by PPA
- ✓ judicial review



**First two stages constitute a pre-condition in order to file a complaint to jurisdiction of courts, related to administrative review. It is compulsory to exhaust them before judicial review.**

**All alleged breaches with regard to the tender proceeding of public procurement under the scope of the Law regardless of the estimated cost are subject to review for procedure by PPA.**



# Administrative Acts Subject to Review

All administrative acts by the contracting entity, especially, finalized tender decision shall be subject to review.





## Notification of the Finalized Tender Decisions

Another important aspect of the system is the establishment of a mechanism for notification of finalized tender decisions as in the EU, as well as the existence of an authority to which the complaints are submitted.



**Tender decisions shall be acknowledged to all tenderers who have submitted an offer, including the tenderer awarded, in return of signature or by means of registered mail sent to the notification addresses of all tenderers within maximum three days following the day of decision approval by the contracting officer.**

**In cases where the tender decisions are cancelled by the contracting officer, the tenderers shall be likewise notified.**



# Competence of Complaint

**Contracting entities and tender commissions are obliged to carry out the tender proceedings in accordance with the principles and procedures stated in PPL and this obligation is also a duty owed to the contractor, supplier or service provider.**



**Any contractor, supplier or service provider who claims that s/he has suffered a loss of rights or suffered or is likely to suffer loss or damage resulting from an alleged breach of such duty, can demand review.**



# Regulation on Administrative Applications Against Procurements

Establishes the rules and principles within the scope of the PPL for review of the complaints, conclusion of review procedures and implementation of resolutions. In line with the administrative applications;

- ✓ candidate: Natural or legal persons or their joint ventures applying for pre-qualification
- ✓ tenderer: The supplier, service provider or works contractor bidding for contracts of goods, services or works



# Regulation on Administrative Applications Against Procurements

The scope of Article 3 has been expanded to cover;

✓ “the persons who have the competence of being tenderer”...



# Review Procedure

- ✓ **complaint to contracting entities**
- ✓ **objecting complaint to PPA**
- ✓ **judicial review on decision made by PPB**

## **Complaint to Contracting Entity**

- ✓ **tenderers have the right to complain directly to the contracting entity against the finalized tender decision**
- ✓ **request an explanation**
- ✓ **written complaint to contracting entity**





**With regard to the tender proceedings, a contractor, supplier or service provider as candidates, tenderers or those that can be tenderers shall first of all submit a written complaint to the contracting entity.**

**The scope of a complaint to the contracting entity may cover notice, all infringements related to tender procedures including procurement documents.**

**Who claims that s/he has suffered a loss of rights or damage or s/he is likely to suffer loss or damage;**

- ✓ candidates and tenderers may complain, in relation to all proceedings and actions in the procurement process
- ✓ those that can be tenderers may complain, only in relation to the matters provided in the procurement announcement and the procurement and prequalification documents, and the conflicts between such matters and the administrative practices



# Time Limits of the Review for Complaints to the Contracting Entity

- ✓ no procurement contract has been signed
- ✓ complaint is submitted within 15 days after the notification of finalised tender decision



## **The formal requirements of the review for complaint to the contracting entity**

- ✓ complaints shall be accepted provided that the formal requirements of the review for complaint to the contracting entity are met**
- ✓ application of complaints to the contracting entity is not subject to any charge or fee**



# Decisions Made by Contracting Entity upon a Complaint

- ✓ decision to finalize the complaint
- ✓ decision to continue the tender proceedings

## ❖ Decision to Finalize the Complaint

**The Contracting Entity may take any of the following decisions as a result of review within thirty days:**

- ✓ **determining the corrective action**
- ✓ **cancelling the procurement proceedings**
- ✓ **disapproving the application for complaint**

**The decision shall be notified to all tenderers within 7 days following the date of the decision.**



## ❖ Decision to Continue the Tender Proceedings

Following the submission of a complaint, the contracting entity shall be prohibited from signing a contract unless the contracting officer certifies that urgency and public interest considerations require the tender proceedings to continue. Otherwise the tender decision and the contract shall be rendered null and void.



# Objecting Complaints to Public Procurement Authority

In order to carry out the duties assigned with PPL, PPA evaluates and concludes any complaints claiming that the transactions carried out by the contracting entity until the signing of the contract are in violation of this Law and the related legislative provisions.

Applications made to the PPA can be submitted in two ways:

- ✓ objecting complaint
- ✓ reviews through claims





**Provided that the contracting entity has been notified by the contractor, supplier or service provider of all alleged breaches that are requested to be remedied, a complaint may be submitted to the Authority prior to the signing of the contract.**



## **Time Limit and Formal Requirements**

**In cases where no decision can be made within thirty days or the decision taken, is found unacceptable by the tenderer; the contractor, supplier or service provider can request PPA to review the case at the end of decision period or fifteen days after the decision date.**

**If the contracting entity notifies the contractor, supplier and service provider that the tender proceedings may continue and the contract may be signed, then the contractor, supplier and service provider may request a review to be undertaken by PPA, within at least three days, following the date of the aforementioned notification.**

**Objecting complaints made after signing of the contract shall not be taken into account by the Board.**



## Application Fee for Objecting Complaint

The applicant shall deposit 245 YTL (approximately 150 €) as application fee for review by PPA.



# Time Limits and the Category of the Decisions by the Public Procurement Board (PPB)

**Decisions of PPB fall into two categories:**

✓ temporary decision as interim measure

tender proceeding would continue whether or not (within 5 or 15 days)

✓ final decision (within 45 days following the date of application)



## **Effects of the Temporary Decisions Made by the PPB**

**Contracting entity is liable to conduct the proceedings and actions required by the decision of the Board to such extent to cause any change to the legal condition immediately.**

**Final decision of the board shall be waited, and the requirements of such decision shall be fulfilled except for signing the contract.**



## **Final Decision Made by the PPB on Objecting Complaint**

**Provided that it specifies the reasons and grounds relating to the complaints submitted to the Authority, the Board;**

- ✓ determines the corrective operation**
- ✓ termination of the procurement proceedings**
- ✓ decides that complaint is irrelevant**



## Effects of the Final Decision Made by the PPB

**Contracting entity is liable to conduct the proceedings and actions required by decisions of the Board to such extent to cause any change to the legal condition immediately.**



## **Review through claims of violation by the PPB**

**PPA may, if deems necessary, review and bring to conclusion any claims of violation of PPL and the related legislative provisions.**





## Decisions Taken upon Claims of Violation by PPB

As a result of review through claims, either of the following decisions shall be taken;

- ✓ the claims being disapproved
- ✓ if the claims are approved as a result of investigation, notification of the procurement tenders where acts contrary to the legislation are detected to the pertinent contracting entity and/or the public prosecutor office



## **Notification and Publication of the PPB's Decision**

**All decisions of the PPB shall be notified to the parties within five days following such decisions' dates.**

**PPA shall also have these decisions, published in the Official Gazette.**



## **Notification to Public Prosecution and Listening to the Parties by PPA**

**The Board, if deemed necessary, may resolve on informing the contract entities to be designated and/or proclaiming the acts of crimes to the public prosecution offices for further actions in administrative and/or penal aspects in relation to the acts that are found to be contrary.**

**The Board may listen to the parties. But inclusion of parties in investigation procedure consists of only listening to the parties when deemed necessary, and to request documents and information from contracting entity.**

## Compensation of Loss

- ✓ no provision exists in PPL regarding the loss compensation
- ✓ requests on compensation of losses in public procurements shall be made to the court
- ✓ requests for compensation of losses may be relevant to losses arising from the cost of tender preparing, or relevant to depriving of profits due to the decision taken as well.



## **Judicial Review of Decisions Made by PPB**

**The final decisions made by the PPB with regard to the complaints shall be under the jurisdiction of the courts.**

**In this stage, the legal procedure is subject to general rules of administrative law.**



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