



BILATERAL MEETING

Chapter 05- PUBLIC PROCUREMENT

Country Session: The Republic of TURKEY
28 November 2005



SCREENING CHAPTER 05 PUBLIC PROCUREMENT

AGENDA ITEM I: GENERAL OVERVIEW

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Background

Public procurement in Turkey has traditionally been an important activity of the government.

Prior to the latest reforms the State Tender Law No 2886, which was enacted on 8 September 1983, regulated the public procurements during the last two decades.



Turkish public procurement regime underwent a major reform in 2002.

The reasons underlying the reform:

- ✓ **practical problems related to the implementation of the State Tender Law**
- ✓ **Turkey's candidacy to the European Union**
- ✓ **some agreements with the World Bank and the IMF**



Public Procurement and Contract Laws were prepared by taking into account UNCITRAL Model Law and EC Directives on Procurement. These new laws aiming at regulating public procurements were approved by the Parliament on 22 January 2002, namely;

- ✓ Public Procurement Law (PPL) No 4734**
- ✓ Public Procurement Contracts Law (PPCL) No 4735**



In the National Programme for the Adoption of the Acquis, Public Procurement Authority (PPA) was stated as the responsible authority to carry out the studies for the alignment with the EU acquis.

Strengthening the institutional capacity of Public Procurement Authority was set as a short term priority.

Further strengthening of monitoring and implementation capacity of the PPA and completion of the alignment of the PPL and PPCL with the relevant EU acquis before the full membership were stated as medium term targets.



Legal Framework

At present, the legal framework of public procurements is drawn by the PPL and the PPCL.

PPCL regulates the period following signature of contract and focuses on contract management issues.

Apart from these two legal texts regulating practical issues in tender process, there are some other related legislative documents which also have some impact on public procurement activities of the public agencies.



Secondary legislation regarding the implementation of the PPL and PPCL is issued by the Public Procurement Authority.



List of some acts having an impact on awarding public contracts;

- ✓ **Court of Accounts Law (832/1962)**
- ✓ **Council of State Law (2575/1982)**
- ✓ **Procedure of Administrative Justice Law (2577/1982)**
- ✓ **Build Operate and Transfer Law (3996/1994)**
- ✓ **Privatisation Law (4046/1994)**
- ✓ **Public Financial Management and Control Law (5018/2004)**
- ✓ **Municipality Law (5393/2005)**



Public Procurement Law aims at;

- ✓ **covering all public agencies spending public money**
- ✓ **introducing and securing transparency, competition, equal treatment and accountability, in public procurements**
- ✓ **regulating the public procurement sector through uniform rules and principles which are also in line with internationally recognised principles**



Institutional Framework

As a government function, public procurement has been traditionally organised with a decentralised approach.

While the regulating and monitoring of it is mostly conducted by the central agencies, implementation is decentralised.

In Turkish public procurement system, generally, each public organisation awards its public contracts on its own.



Ministry of Finance

- ✓ ex-ante control for the procurements of general budgeted and annexed budgeted bodies

Ministry of Public Works and Settlements

- ✓ preparations on behalf of some public agencies for the award of public works contracts
- ✓ takes part in the contract award process
- ✓ conciliation to settle the disagreements occurring in the contract implementation phase (decisions of the Ministry are non-binding)

Court of Accounts

- ✓ ex-post control of public contracts

Administrative Courts

- ✓ the last resort for the disappointed bidders to fill their complaints



Civil servants taking part in the award of public contracts are not professional purchasers. They do this as secondments to their main profession.

However, some public entities which conduct intensive procurement activities have specialised departments and full time purchasing specialists whose only task is managing the procurement process.



The PPL aims to increase the involvement of the experts in the tender processes by stating that:

“The contracting officer shall assign a 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, a financial officer in cases of general budget and annexed budget entities, and in case of other entities a personnel responsible for accounting and finance, together with its substitute members.”



Public Procurement Authority (PPA): A new agency in the institutional framework of Turkish public procurement system.

The Public Procurement Authority is a financially and administratively autonomous regulatory body responsible for regulating and monitoring the public procurement system.



Main duties of PPA are:

- ✓ preparing secondary legislation and guiding the implementation
- ✓ resolving complaints
- ✓ providing training for public and private sector
- ✓ publishing the Public Procurement Bulletin



Establishment of the PPA is one of the most important innovations of the PPL.

- ✓ **complaint review mechanism introduced by the PPL**
- ✓ **role of the Public Procurement Board in handling complaints related to the infringements of the PPL in public procurement processes is unique**



PPA consists of;

- ✓ **Public Procurement Board**
- ✓ **Presidency**
- ✓ **service units**

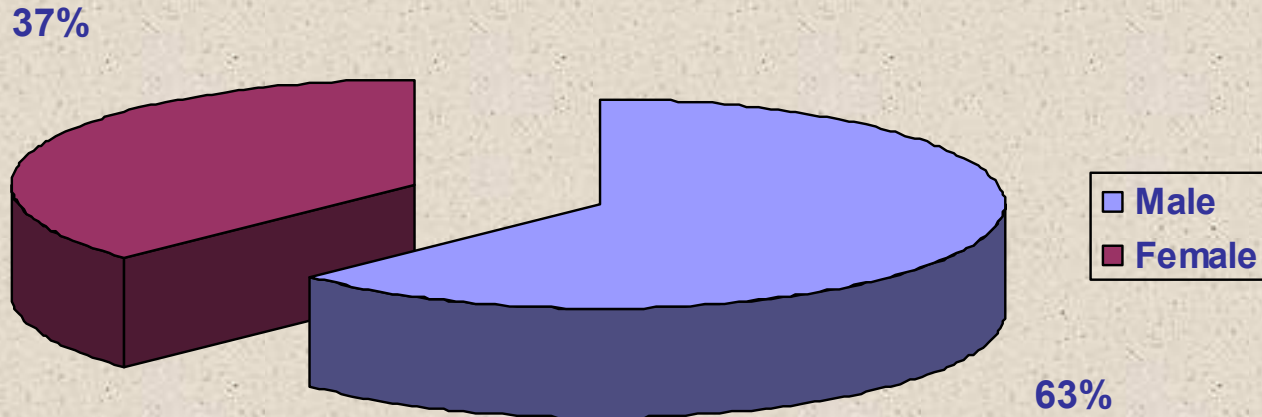
The Board consists of ten members who are nominated by different ministries, high courts and private sector's unions.

There are 10 service units currently.



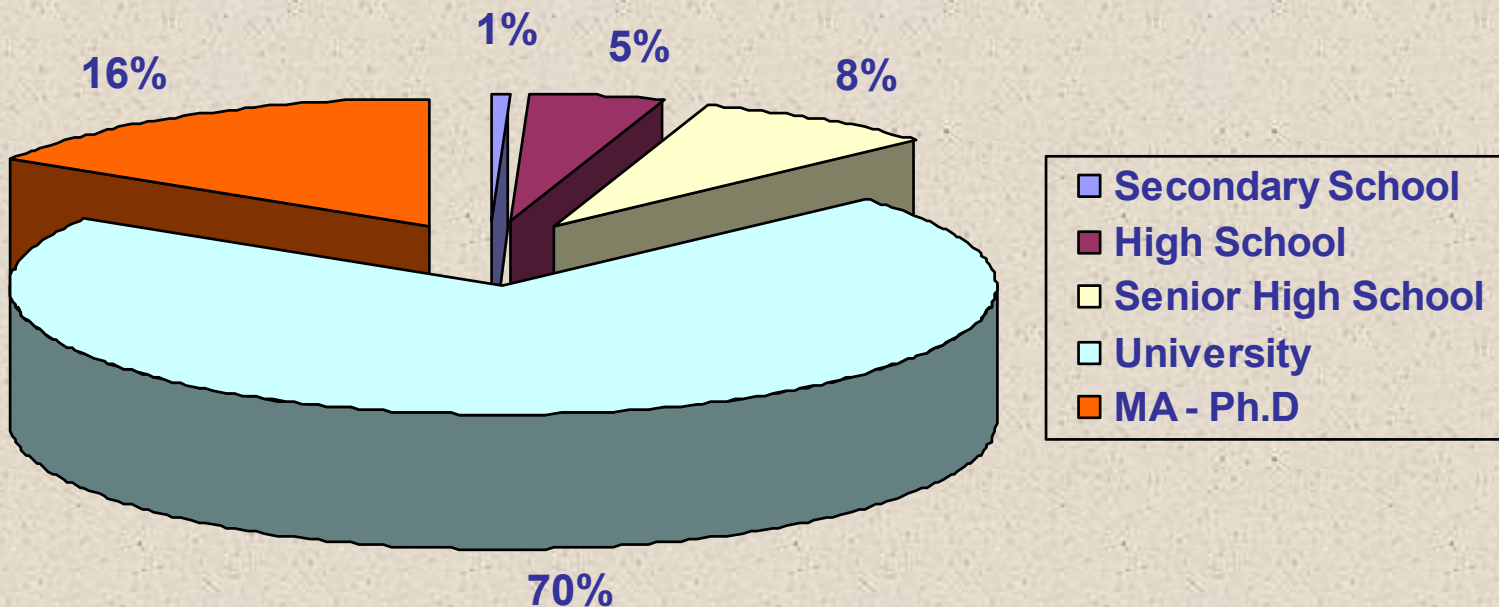
At present PPA has 199 employees. The distribution by gender is 125 male 74 female which means females make up over 37 % of PPA's work power. Among these 199 there are 140 University graduates. 32 of the staff has also M.A. and Ph.D in different fields.

PPA STAFF by GENDER





EDUCATIONAL BACKGROUND OF THE PPA'S STAFF





PPA intensively uses information and communication technologies:

- ✓ its web site was activated in 2002
- ✓ since 2003: over 12 million hits
- ✓ average number of daily visits: 27, 000



- ✓ PPA provides guidance and training to both public and private sector to secure proper implementation of the PPL
- ✓ training packages are prepared by the PPA for bidders and public administrations separately and are presented by the PPA's public procurement specialists to the participants during training events
- ✓ 10,237 persons from 296 administrations were trained by PPA experts



Procurement Practices Training and Support Project was initiated in 2003

A Training Assistance CD was prepared for tenderers and contracting authorities;

- ✓ to better inform them about the procurement legislation regarding implementation
- ✓ to standardize the training process and practices
- ✓ to support procurement process by IT.

Content of the CD is easily accessible from the web page of *PPA* www.kik.gov.tr and e-learning has started.



Permanent and low cost standard training and common application is provided by Electronic Learning Project for the operators. This project builds a basis for electronic public purchasing system.

It is planned to train the tenderers and contracting authorities about e-procurement. Putting into action interactive training programs by the help of IT about e-procurement is planned and a protocol signed between PPA and TOBB-ETU (TOBB Economy and Technology University) to this end.



Announcement of contract opportunities is vital to secure the transparency, competition and equal treatment of economic operators in awarding public contracts.

Thus, PPA is mandated to publish procurement notices of the contracts covered by the PPL.

The PPA performs this duty by publishing Public Procurement Bulletin which is also available in electronic format.

As of 15 November 2005, 41,985 procurement notices published in the PPB. The number was 43,359 in the year 2004.



If the contract in question is not covered by the PPL or its value is below the thresholds for publication of notices stated in the PPL, then the announcements of these contract opportunities are made through either Official Gazette or national and/or local newspapers.



Preparation of the secondary legislation and development of the standard forms to be used in public procurement processes are other important functions of the PPA.

There are documents prepared by the PPA to that end, and these documents can be reached on:

<http://www.kik.gov.tr>



To strengthen the institutional capacity of the agencies involved in the public procurements EU has allocated funding for a Project, namely “Strengthening the Public Procurement System in Turkey”.

The Project is implemented through a Twinning Project and an IT Infrastructure Support Project for the PPA.



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