



# **BILATERAL MEETING**

## **Chapter 05- PUBLIC PROCUREMENT**

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



## **SCREENING CHAPTER 05 PUBLIC PROCUREMENT**

### **AGENDA ITEM II: PUBLIC PROCUREMENT LEGISLATION**

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The main legislation regulating the public procurements in Turkey is Public Procurement Law No 4734 entered into force on 01.01.2003 and Public Procurement Contracts Law No 4735 regulating the contracts of tenders within the scope of Public Procurement Law (PPL).

In order to guide the implementation and establish the standards in public procurement, the secondary legislation in public procurement such as implementation regulations, administrative specifications, general specifications, typical draft contracts, communiqués is prepared and enforced by Public Procurement Authority (PPA) within the authorization given by the Law.



## Purpose of PPL

The purpose of PPL is to establish the principles and procedures to be applied in procurements held by all public entities and institutions governed by public law or under public control or using public funds.



## Scope of the Law

Any procurement of goods, services and works, the cost of which is covered by any kind of resources that are at the disposal of the contracting entities within the scope of this law, shall be executed in accordance with the provisions of this Law.



## **Contracting Entities within the Scope of PPL**

- ✓ centralized public entities, special provincial administrations and municipalities and their related revolving funds organizations, unions, legal entities**
- ✓ state economic enterprises**
- ✓ social security establishments, funds, entities of legal personalities that are established in accordance with special laws and that are assigned with public duties and establishments with independent budgets**



- ✓ any institution, organization, association, enterprise and corporation which directly or indirectly, together or separately has more than half of the capital owned by the authorities mentioned above
- ✓ construction tenders of banks within Law No 4603
- ✓ however, Deposit Insurance Fund and banks whose shares are partially or fully owned by this Fund and banks covered by Law No 4603 (excluding the construction tenders) are out of the scope of PPL



## Definitions in PPL

In the article 4 of the PPL, the terms related to the implementation of the Law are defined.



## Exceptions

The below mentioned procurements of contracting entities within the scope of the Law are conducted outside the scope of the Law except the prohibition and criminal provisions:

- ✓ procurements of agricultural and livestock products, by entities included within the scope of the Law, directly from the producer or its partners in order to process, utilize, improve or sell
- ✓ procurements with regard to defence, security and intelligence pursuant to related legislation which requires to be treated confidentially



- ✓ procurements of goods, services or works, which are to be realized with foreign financing pursuant to international agreements, and in the financing agreement of which it is stated that different tender procedures and principles will be applied; all kinds of consultancy and loan rating services with regard to borrowings from international capital markets,
- ✓ procurements of goods or services and work of organizations of contracting entities in foreign countries; goods or service procurements which necessarily to be made in place for means of transport during their presence in foreign countries



- ✓ for the institutions that are in the scope of this Law; procurement of goods and services produced by workplaces for detention houses and penalty and execution institutions, by public rest homes and orphanages, by schools and centres involving production, institutes and breeding stations and the procurement of goods and equipments from the General Directorate of State Supply Office
- ✓ necessary purchases of goods and services for research and development projects executed and supported by national research and development institutions



✓ goods and service procurements of the SEEs composed of state economic establishments and public corporations and any institution, organization, association, enterprise and corporation which more than half of their capital, directly or indirectly, together or separately are owned by the entities under the scope of the Law, the estimated costs and contract prices of which do not exceed 3,796,571 YTL (2,373,000 €) [\[1\]](#)

[\[1\]](#) The amount indicated in PPL is updated and exchanged to New Turkish Liras (YTL) and Euro (€)



## Principles and Procedures for Exemptions

The principles and procedures to be implemented in the procurement of goods services and works by contracting entities within the context of exemptions are prepared and enforced by the related entities with the approval of PPA.

The scope of goods and services to cover the needs of state economic enterprises and any institution, organization, association, enterprise and corporation which more than half of their capital, directly or indirectly, together or separately are owned by the contracting entities within the scope of PPL are determined by the Authority upon the request of related entities.



**The procurements of goods and services determined by the Authority for each entity, not exceeding the monetary threshold mentioned above are conducted out of the scope of PPL.**

**The enterprises, institutions and corporations which carry out activities in energy, water, transport and telecommunication sectors procure in accordance with the above mentioned provision and procure goods and services outside the scope of this provision in accordance with other provisions of PPL.**



## **Basic Principles in Public Procurement Tenders**

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

**Unless there is a natural and justifiable connection between them purchase of goods, services and works cannot be consolidated in the same procurement.**

**Goods, services or works to be procured cannot be divided into lots with the intention of avoiding threshold values.**



**For the procurements to be held in accordance with this Law, the principal procurement methods are open and restricted procedures. The other methods may be used under the special conditions set out in the Law.**

**The procurement proceedings shall not be initiated unless there is a sufficient budget allocation.**

**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 procurements to be made urgently due to natural disasters, EIA report shall not be required.**





## The Estimated Cost

Prior to the procurement proceedings of goods, services or works, the contracting entity shall conduct all necessary price investigations and shall determine an estimated cost excluding the value added tax and shall be indicated on a calculation chart with its justifications.

The estimated cost shall not be stated in tender or pre-qualification advertisements, and shall not be explained to tenderers or to the others who do not have any formal relationship with the tender proceeding. The method of calculation of the estimated cost for the procurement of goods services and works is determined in detail in the secondary legislation.



## Threshold Values

- ✓ for procurement of goods and services by the contracting entities operating under the general or the annexed budget (the administrations under the scope of central administration) 453,863 YTL - 283,664 €
- ✓ for procurement of goods and services by other contracting entities within the scope of the Law 756,438 YTL - 472,773 €
- ✓ for the works contracts by any of contracting entities covered by this Law 16,641,656 YTL - 10,401,035 €

The thresholds and monetary limits indicated in the Law are updated and exchanged by the Authority and published in the Official Gazette



## Arrangements Regarding Domestic Tenderers

**Domestic tenderer refers to the natural persons that are the citizens of the Republic of Turkey, and the legal persons established under the laws of the Republic of Turkey.**



**Provisions may be included in tender documents with regard to;**

- ✓ only domestic tenderers can participate in tenders whereby the 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 %, and in procurement of goods, a price advantage up to 15 %, may apply to domestic tenderers who offer products which are accepted as domestic products**



## Rules on Qualification

In the Article 10 of the Law, the documents for evaluation of the economic and financial standing and professional and technical qualifications to be requested from the tenderers and candidates who will participate in tender are determined.

## Ineligibility

**The following persons or entities cannot participate in any procurement:**

- ✓ those who have been prohibited temporarily or permanently from participating in public procurements in accordance with this Law and the provisions of other laws**
- ✓ those whom the relevant authorities have been decided that they have been involved in fraudulent bankruptcy**



- ✓ the contracting officers of the contracting entity carrying out the procurement proceedings, and the persons assigned in boards having the same authority
- ✓ those who are assigned to prepare, execute, complete and approve all procurement proceedings relating to the subject matter of the procurement held by the contracting entity
- ✓ spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those mentioned above
- ✓ partners and companies of those mentioned above



## Joint Ventures

Joint ventures may be established by more than one natural or legal person either in the form of a business partnership or as a consortium.

Members of a business partnership carry out the whole business jointly having equal rights and responsibilities while members of consortium carry out the business separating their rights and responsibilities according to their expertise field for the purpose of performing relevant parts of the business.

Business partnerships may participate in any kind of tender. However, in cases where different expertise are needed, the contracting entities shall indicate in tender documents whether the consortia are allowed or not to submit tenders. At the tender stage, the joint venture shall be asked to submit an agreement indicating the mutual agreement of the parties to form a business partnership or a consortium .





# Specifications

Preparation of administrative and technical specifications that constitute the subject matter of the procurement by the contracting entities is essential.

The technical criteria specified in technical specifications shall aim efficiency and functionality, shall not consist of elements impeding competition and shall ensure equal opportunities for all tenderers.

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 case where no national and/or international standards exist or where it is not possible to establish technical characteristics; brand or model can be specified provided that “or equivalent” phrase is stated.



## **Contents of Pre-qualification and Tender Documents And Administrative Specifications**

**The tender documents shall include the administrative specifications that also incorporate the instructions to tenderers, the technical specifications that also cover the design of the work, the draft contract and other required documents and information. Prequalification documents shall include qualifications of candidates, prequalification criteria and other necessary information and documents.**

**In accordance with Article 27 of PPL the participation conditions and qualification criteria and issues regard to the contract award shall be included in administrative specifications.**



## **Clarifications or Amendments to the Tender Documents**

**If errors or deficiencies are detected by the contracting entity or notified by the tenderers with a written notice, the tender documents can be amended.**

**However the addendum relating to such amendments, and constituting a binding part of the tender documents shall be provided to all tenderers who have purchased the tender documents, in a way to ensure that they are informed 10 days prior to the deadline for submission of tenders.**

**Moreover, the tenderers may request clarifications relating to aspects in the tender documents, which they may need when preparing their offers, in writing until 20 days in advance of the deadline for submission of tenders.**



## **Accessibility of Tender and Pre-qualification Documents**

**The tender and pre-qualification documents can be seen at the place of contracting entity, free of charge.**

**However, this document must be purchased by tenderers willing to participate in the pre-qualification or tender proceedings.**

**The price of the document shall be determined by the contracting entities in such a way that this amount shall not exceed its printing cost and not impede competition.**



# Exclusion from the Procurement

The regulation in the Law regarding exclusion is parallel to the Article 45 of 2004/18/EC Directive.



## Prohibited Acts or Conducts

To commit in acts and conducts that prevent competition and participation is prohibited in the article 17 of the Law No. 4734, provisions including the prohibition and punitive sanctions are included in the law for those who commit in such acts or conducts.



## **Other Rules to be Abided by Contracting Entities in Works Contracts**

**In construction works, it is obligatory to bid through receiving turnkey lump-sum price proposal.**

**However, for construction works, which have insufficient time to establish an application project due to the natural disasters, it is allowed to initiate the bidding with preliminary or final project.**



**And for the construction works, which the application project is not established before the bidding due to the requirement of land and ground researches in some certain stages, except for the building works, it is allowed to enter bidding with the definite project.**

**For the parts of these works, which the application project is implemented, it is mandatory to bid through receiving turn-key lump-sum proposal, and for the parts, which the application project is not implemented, it is allowed to bid through receiving unit price proposal for each piece of work.**

**Obtaining building site, completing property nationalization are not necessary in dams and pipelines, oil and natural gas pipeline projects.**





# Procurement Announcement Rules and Time Limits

Principally, all procurements should be announced by notices. In this framework, in order to enhance the transparency, competition and public supervision, a mechanism is set up, as it will be explained in detail below, by which the notice text is converted to a standard form by the Authority.

Contracting entities submit these standard forms to the Authority by electronic means. The Authority publishes these notices sent by contracting entities both in the printed and electronic media.



In the procurements to be conducted within the scope of the Law, all tenderers shall be given sufficient time to prepare their tenders. In this sense;

❖ *For procurements with estimated costs equal to or exceeding the threshold values;*

✓ notices of procurements conducted by open procedure shall be published at not less than 40 days prior to deadline for the submission of tenders

✓ pre-qualification notices of procurements conducted by restricted procedure shall be published not less than 14 days in advance of the deadline for the application to pre-qualification

✓ notices inviting candidates in a negotiated procedure shall be published not less than 25 days prior to the deadline for the submission of tenders

*shall be advertised by publishing in the Public Procurement Bulletin, at least once.*



**In procurements conducted by restricted procedure with the estimated costs equal to or exceeding the threshold values, it is compulsory to provide to the tenderers that are qualified as a result of the pre-qualification proceedings a letter of invitation to tender, not less than 40 days in advance of the deadline for the submission of tenders.**



- ❖ *For procurements with estimated costs below the threshold values;*
  - ✓ based on estimated cost of contract, the time limits for the notices are determined as 7, 14 and 21 days
  - ✓ these notices are published in local newspapers where tender will be conducted and in Public Procurement Bulletin



# **Mandatory Items to be Included in Procurement and Pre-qualification Notices**

**In accordance with the Articles 24 and 25 of the Law, the participation conditions and qualification criteria and items related to contract award should be included in procurement and pre-qualification notices.**



## Notification of Result of Tender

According to the Law, the announcement of contract award information exceeding certain monetary values in the Public Procurement Bulletin is foreseen in order to inform all related parties and the public about the use of public resources and realization of transparency not only before the procurement but also after it.



**In PPL, three procurement procedures are defined:**

- ✓ **open procedure**
- ✓ **restricted procedure**
- ✓ **negotiated procedure**



# Open Procedure

Open procedure is the main procedure where all tenderers can submit their tenders.





## Restricted Procedure

Restricted procedure is a procedure in which tenderers who are invited following pre-qualification by the contracting entity, can submit their tenders.

Restricted procedure is used where the complexity of the nature of the subject and/or the requirement for high technology necessitates to do so.

When the number of candidates that are qualified after pre-qualification is less than 5 or the number of tenderers who submit tender is less than 3, the procurements proceedings should be cancelled.



# Negotiated Procedure

Negotiated procedure may be applied, where;

- ✓ no tender is submitted in open or restricted procedures
- ✓ it is inevitable to conduct the tender procedures immediately, 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
- ✓ it is inevitable to conduct the tender procedures immediately, due to occurrence of specific events relating to defence and security
- ✓ 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
- ✓ manufactured goods, materials and service procurements by contracting entities with estimated costs of up to 82,532 YTL- 51,582 €



In the cases set forth in paragraphs (b), (c) and (f) of Article 21, the advertisement of the procurements is not mandatory. However, at least 3 tenderers shall be invited to the tenders to be awarded in accordance with those said paragraphs.

In procurements to be conducted in accordance with the paragraphs (a), (d) and (e) of Article 21, after the clarification of the conditions as a result of the technical consultations, the tenderers that have demonstrated their capacity and capability to meet all these conditions shall be asked to submit their final offers including the tender price based on a reviewed and clarified technical specification.

In the cases stated in (a), (b) and (c) of Article 21, procurement proceedings shall be concluded after a price negotiation.

In the negotiated procedure carried out in accordance with (a), (d) and (e) of Article 21, the procurement proceedings shall be cancelled in case the number of tenderers submitting tenders is less than 3.



# Contract Award Criterion

**Contracting entities award contracts based on the lowest price or by also taking into account factors other than price.**

**In the tender document, contract award criterion is determined and in the cases where factors other than price will be used, primarily monetary values of these factors are given, if it is not possible to give monetary values relative weights are given.**



# Direct Procurement

Direct procurement is a method used when it is established that needs can be met from only one natural or legal person and for convenient acquisition of small sized daily needs with market research.

In this framework, the method of direct procurement may be applied without advertising and without receiving any securities.



## Consultancy Services

Technical, financial and legal services stated in the Law may be procured as a consultancy service.

Consulting services can be conducted only by restricted procedures. In these procurements the most economically advantageous tender shall be determined by taking into account of the factors other than price. The number of candidates who can submit tenders after the pre-qualification is limited to 10.



**Candidates who are in short list and qualified after the pre-qualification process submit their proposals in two envelopes as technical and financial proposals and together. The technical and financial scores are multiplied with their respective weights and the tenderer who scores the top is awarded the contract.**

**The tender proceedings shall be cancelled in case there are less than 3 candidates or tenderers after the pre-qualification or technical or financial evaluation.**



# Design Contests

Design contests are organized in order to acquire the required plans and projects relating to architecture, landscaping, engineering, urban design projects, urban and regional planning and fine arts; the contracting entities may conduct contests, with or without prize, in which the winner is selected through an evaluation by a jury, by advertising such contests in a way to ensure a competitive environment in accordance with the principles and procedures stated in the related legislation.





# Preparation and Submission of Tenders and Applications

Tenders can be submitted to the contracting entity by hand or can be posted until the hour specified in the tender document. The tenders submitted after deadline shall not be accepted.

Tenders are binding for tenderers as soon as they are presented to the contracting entities. For this reason except the cases where the tender documents are amended by the addendums for the removal of material or technical errors or deficiencies, tenders can not be withdrawn or changed.



## Opening of Tenders and Controlling of Documents

Tender commission carries out the procedures in presence of tenderers and those who are present with open session for the realization of transparency and public supervision. Then the commission checks the tender envelopes in the order of submission, the ones that fail to meet formal requirements are determined and stated in the minutes and the tenders of those who do not have proper envelopes are not included in the evaluation stage.

It is checked if the documents of the tenderers are complete or incomplete, and whether the tender letter and the preliminary guarantee are in conformity with the relevant procedures. The tenderers and their price offers are announced. The session is closed immediately for the evaluation of the tenders by the tender commission.



## Evaluation of Tenders

During the evaluation of the tenders in the closed-session, upon the request of tender commission, the contracting entity may ask the tenderers to clarify their tenders in writing on the unclear aspects of the tender, for the examination, evaluation and comparison of tenders, assumed that this clarification shall not make any changes in the tenders.



In case of omission of documents or omission of unimportant information in the documents except the tender letter and the preliminary guarantee provided that the absence of those do not alter the substance of the tender; the tenderers furnish these missing documents or information in a time period determined by the tender commission. The tenderers who can not furnish these missing documents in the given time period are excluded from the evaluation.



**After this stage the tenders are evaluated in detail and examined for their conformity with the qualification criteria determining the capacity of the tenderers to perform the contract, as well as the conditions set forth in the tender documents.**

**The tenders that are ineligible with the qualification criteria or the conditions set forth in the tender documents shall be disqualified.**



## **Determination and Evaluation of Abnormally Low Tenders**

**Tender commission, after the detailed evaluation of the tenders, determines the tenders that are abnormally low. For this assessment, tenders are compared to other tenders or estimated cost.**

**After comparison, if a tender is found abnormally low, compared with other tenders or estimated cost, commission requests from tenderers in writing, the details relating to components of the tender that are determined to be significant within a specified period.**



**Written explanations of tenderers relating to the abnormally low tenders, should be based on at least one of these aspects and be documented;**

**✓ economic nature of the manufacturing process, the service provided and the method of works**

**✓ selected technical solutions and advantageous conditions to be utilized by the tenderer in supply of the goods and services or fulfillment of the works**

**✓ originality of the goods, services or works proposed**

**✓ tenders of the tenderers whose written explanations are found insufficient or who fail to make a written explanation shall be rejected**



## Notification of the Contract Award Decision

Finalized tender decision approved by the contracting officer is acknowledged to all tenderers who have submitted an offer.

In case the tenderers participating in the tender and whose tender has not been included in evaluation or not found eligible, make a written request within 5 days following the notification date; the contracting entity must notify the tenderer in writing of the reasons for rejection within 5 days following the date of the request. In cases where the tender decisions are cancelled by the contracting officer, the tenderers shall be likewise notified.



# Types of Tender Security

Public Procurement Law foresees two types of tender security.

## ❖ *Preliminary Tender Security*

✓ tenderers shall give tender securities in amount determined by themselves, not being less than 3 % of the tender price in the phase of tender submission. In consultancy services, it is not compulsory to require tender security provided that it is stated in tender documents.



### ❖ *Performance Bond*

✓ **successful tenderer shall present a performance bond not less than 6% of the contract value within 10 days following the notification before the signing of the contract**



## Values Accepted as Tender Security

❖ *The current Turkish Lira,*

❖ *Letters of guarantee:*

✓ letters of guarantee shall be arranged directly by domestic and foreign banks or special financing institutions operating in Turkey or upon the counter-guarantees of banks or similar creditors operating abroad. Public Procurement Authority is authorized to determine the scope and format of the guarantee letters and they are published in the Official Gazette.

❖ *Domestic Borrowing Bills issued by the Undersecretariat of Treasury and documents arranged for replacing these bills.*



**Securities may be exchanged with other values accepted as tender security. Under no circumstances, the tender securities received by the contracting entity can be attached and held subject to precautionary measures.**



## Obligations and Liabilities of Tenderer in Signing of Contract

Successful tenderer is obliged to sign contract after submitting performance bond. Otherwise tender security of the successful tenderer shall be registered as revenue without taking any further legal action. In such a case, contracting entity may sign a contract with tenderer submitting second economically most advantageous tender in accordance with the principles and procedures set forth in PPL provided that the said tender's price is found as appropriate by contracting officer.

In case tenderer with the second economically most advantageous tender also rejects signing contract, tender security of this tenderer shall be registered too as revenue and tender proceedings shall be cancelled.



## Signing of Contract

All procurements that are carried out shall be concluded with a contract. The compulsory issues to be included in the contracts are listed in the Public Procurement Contracts Law (PPCL). Moreover PPCL foresees that the parties of the contract have equal rights and obligations in the application of the provisions of the contract, any provisions contrary to this principle shall not be included in the tender document and the contract and this principle should be kept in the mind in the implementation and interpretation of the law.

Contracts are prepared by contracting entity and signed by contracting officer and contractor. PPCL prohibits the inclusion of provisions in contracts contrary to the specifications set out in the tender documents.



## Prohibition from Participating in Tenders

✓ those who are determined to have been engaged in deeds or behaviours as specified in PPL; shall be prohibited from participating in tender processes carried out by all public entities and institutions, for a period of up to two years, not being less than one year

✓ those who have been awarded the contract and fail to sign, for a period of up to year not being less than six months depending on the nature of the said deeds and behaviours

In case the legal person prohibited pursuant to above mentioned paragraphs happen to be a sole proprietorship, the prohibition shall apply to all partners in that company; while in case of capital stock company the prohibition shall apply to all shareholders, natural or legal persons, who own more than half of the capital in the subject company.



## **Public Procurement Contracts Law No 4735 (PPCL)**

**By PPCL, in order to achieve effectiveness and efficiency in procurements, provisions related to contracts are included and standardization of implementation is realized.**

**PPCL applies to contracts awarded as result of procurement procedures carried out by organizations and institutions subject to PPL accordance with the provisions of PPL.**





## Form Contracts

Form contracts prepared by Public Procurement Authority are published in the Official Gazette in order to assure uniformity. Any contract that is awarded by the administrations is drawn up in accordance with the provisions of the Form Contract.



# Types of Contracts

- ✓ in procurement of works; turn key lump-sum and unit price contracts
- ✓ in procurement of goods or services; lump-sum and unit price contracts



## Contract Amendments

Amendments may be made in provisions of contract after signing a contract on matters as stated below, provided that contract price is not exceeded and that contracting entity and contractor mutually agree on such amendment:

- ✓ location of performance of works/services or location of delivery
- ✓ duration of works/business and conditions of payment in accordance with such duration, provided that works/business is completed/performed or delivered before its time



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