



BILATERAL MEETING

Chapter 05- PUBLIC PROCUREMENT

Country Session: The Republic of TURKEY
28 November 2005



SCREENING CHAPTER 05 PUBLIC PROCUREMENT

AGENDA ITEM IV: THE UTILITY SECTORS

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General Framework

There is no a specific law in Turkey coordinating the rules and principles relating to works, goods and services procurements awarded by public entities operating in energy, water, transport, telecommunication and postal sectors.

LEGAL FRAMEWORK

Public Procurement Law No 4734 (PPL)

The related articles of PPL are:

- ✓ Article 2
- ✓ Article 3/g
- ✓ Article 5
- ✓ Interim Article 4



- ✓ according to Article 2, utility sectors are out of the scope of PPL
- ✓ it has been regulated by interim Article 4 that the utility sectors are subject to Article 3/g of PPL until the necessary legislative arrangement is made
- ✓ utility sectors are subject to other provisions of PPL for the procurements of works, goods and services which are not in the scope of Article 3/g

Article 3/g of PPL

Entities covered:

- ✓ state Economic Enterprises (SEEs)
- ✓ any institution, organisation, association, enterprise or corporation, more than half of whose capital is owned by SEEs, directly or indirectly, together or separately
- ✓ enterprises, undertakings and corporations operating in energy, water, transport and telecommunication sectors



Why utilities are included in Art. 3/g ?

- ✓ absence of a specific law coordinating the procurements by entities operating in utility sectors
- ✓ the need for more flexible rules for these entities, since their commercial activities are governed by the principles of private law

Activities Covered:

✓ goods or service procurements to be made by the entities in order to meet their needs relating to direct production of goods and services or principal activities, within their commercial and industrial operations

Excepting those financed:

- ✓ by treasury guarantee
- ✓ directly from the transfer items of the budget



Monetary Limits

Estimated cost and contract price

≤

3,796,571 YTL

(approximately 2,373,000 €)

Legal Structure of Utility Sectors

- ✓ most of the public entities and institutions operating in utility sectors are organised as SEEs
- ✓ SEEs are economic operators established by a Council of Ministers' decree and they have legal personality
- ✓ the State owns more than half of their capital
- ✓ their liabilities are limited with their capital



- ✓ **SEEs are incorporated bodies and operate under commercial rules, i.e. subject to private law provisions, taking into account public interest**
- ✓ **they have to operate under commercial rules and procedures in their relations with third parties**
- ✓ **however, SEEs are subject to administrative law with respect to their internal structures and relations**



Procedure to be Followed by Utility Sectors for Procurements under the Scope of Article 3/g

- ✓ the legal procedure regarding exceptions requested by the entities subject to Art. 3/g is regulated through a communiqué published by PPA**
- ✓ the entities send their lists, which are prepared in accordance with the said communiqué, to PPA for assessment**



The goods and services which are under the scope of Art. 3/g are determined by PPA (Interim Article 4).

✓ procurement regulations concerning the goods and services under the scope of Art. 3/g are prepared by the related entities and published in Official Gazette



While preparing these regulations, related entities take into consideration the basic principles stipulated in the Art. 5 of PPL; such as transparency, competition, equal treatment, reliability, confidentiality, public supervision, value for money, meeting the needs of procurement in timely manner and the efficient use of resources.



Consequently, the procedure seems simplified in this field, but procurements should be awarded in line with basic principles and the same announcement procedures.



As mentioned above;

- ✓ **procurements below 3,796,571 YTL (2,373,000 €) are not covered by PPL**
- ✓ **procurements above this limit (3,796,571 YTL / 2,373,000 €) are under the scope of PPL**
- ✓ **taking into account the average magnitude of monetary value of procurements, i.e. those undertaken by SEEs operating in energy sector, it is observed that the procurements which fall out of the scope of PPL are quite limited**



Preliminary Studies for Draft Utility Sectors Law

In line with the National Programme for the Adoption of the Acquis, the PPA has launched preliminary studies for drafting a law for utility sectors taking into account the relevant EU legislation.



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