



# PUBLIC PROCUREMENT SYSTEM IN TÜRKİYE

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KYRGYZSTAN

# Historical Background and Reform in Public Procurement

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- The first legal framework of Public Procurement System in the Republic of Türkiye was the “Law on Purchasing and Selling Activities Carried Out on Behalf of Government” (Law No. 661), enacted in 1925.
- In 1934 “Law on Auctions, Reverse Auctions and Tendering” (Law No. 2940) entered into force, which remained in effect for quite some time until 1983.

# Historical Background and Reform in Public Procurement (continued)

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- In 1983 the “State Tender Law” (Law No. 2886) came into force and regulated the public procurements prior the comprehensive reforms in this area.
- State Tender Law No:2886 regulated both the procurement of goods, services, construction works; and selling of goods and services produced by the public agencies, as well as selling and hiring of government owned properties and lands.

# Historical Background and Reform in Public Procurement (cont.)

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- For the purpose of ensuring the harmonization with international standards and EU Acquis, “*Public Procurement Law*”, (PPL, Law no:4734) and “*Public Procurement Contracts Law*” (PPCL, Law no:4735) were adopted by the Parliament on 4 January 2002 and both Laws came into effect as of 1 January 2003.
- The PPL No: 4734 governs the rules and principles of the new public procurement system, while PPCL No: 4735 establishes the principles and procedures related to making and implementing public procurement contracts.

# Historical Background and Reform in Public Procurement (cont.)

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- From beginning the enforcement of PPL and PPCL in 2002, a continuous progress was realized through several legal amendments.
- Recently, Law No. 5812 (The Law Amending The Public Procurement Law And The Law On Public Procurement Contracts) was approved by the Parliament on 20.11.2008, which amended the above mentioned legislation relatively to a large extent .

# Historical Background and Reform in Public Procurement (cont.)

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- At present, the scope of the PPL is as wide as to cover procurements, which amounts 10 % of GDP, by all kinds of public entities and public economic enterprises as well as their specified partnerships governed by public law, or under public control or using public funds,
- The target is further alignment with the philosophy, principles and rules of the main EC Public Procurement Directives (Directives 2004/17/EC, 2004/18/EC and 2007/66/EC).

# Historical Background and Reform in Public Procurement (cont.)

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PPL aims;

- to cover a wide range of public agencies spending public money,
- to regulate the public procurement sector through the uniform rules and principles,
- to comply with international standards and rules,
- to ensure fundamental principles on transparency, competition, equal treatment, accountability, public supervision.

# Historical Background and Reform in Public Procurement (cont.)

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Scope of the procurement	Number of Public Procurement		Value of the procurement (1000 TL)	
	2008	in percentage (%)	2008	in percentage (%)
Through Procurement procedures	116.612	77,85	68.179.739	81,25
Direct Procurement	--	--	4.989.299	5,95
Exceptions	33.175	22,15	10.746.259	12,81
<b>TOTAL</b>	<b>149.787*</b>	<b>100,00</b>	<b>83.915.297</b>	<b>100,00</b>
*This figure represents the number of those whose information is transmitted to PPA via PPA's website and corresponds approximately 80 % of total, which is 188.704 according to available data.				

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# Public Procurement Authority (PPA)

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- One of the novelties of the PPL was establishment of an independent regulatory and monitoring body namely Public Procurement Authority (PPA).
- PPA is a public legal entity having administrative and financial autonomy while maintaining a linkage to the Ministry of Finance.
- The authority is independent in fulfillment of its duties; no organ, office, entity or person may issue orders or instructions for the influencing the decisions of the Authority.

# Public Procurement Authority (PPA) (cont.)

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- PPA consists of:
  - ✓ the Public Procurement Board acting as management organ with ten members,
  - ✓ chairmanship
  - ✓ and ten service units.
- The chairman of the PPA is also the chairman of the Board.
- The Board members are nominated by different ministries, high courts and private sector's unions, and appointed by Council of Ministers.
- At present, the Authority has been operating with 231 personnel .

# Public Procurement Authority (PPA) (cont.)

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Duties and powers of PPA are:

- to prepare, develop and guide the implementation;
- to review the complaints about the tender process and proceedings conducted by the contracting entities covered by the law,
- to prepare secondary legislation in relation to the implementation of the PPL and PPCL,
- to provide training on procurement legislation both in public and private sector, to ensure national and international coordination in this field,

# Public Procurement Authority (PPA) (cont.)

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- to collect, analyze and publish the data concerning the procurements carried out in the framework of this law,
- to keep the records of prohibited tenderers,
- to regulate the principles and procedures with regard the tender notices and to publish the Public Procurement Bulletin in electronic environment,
- to establish and operate the Electronic Public Procurement Platform

# Complaint Review System

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Another novelty of PPL is the introduction of complaint review mechanism for disappointed economic operators.

- Successive stages of the complaint review system :
  - Complaint application to the contracting entity
  - Appeal applications to the Public Procurement Authority
  - Appael to administrative courts.

# Complaint Review System (cont.)

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Who can file?

- Candidates, tenderers or potential tenderers who claim that they have suffered a loss of right or damage or likely to suffer a loss of right or damage within the process of the tender may file a complaint and appeal in line with the procedures and the principles of PPL.

# Complaint Review System (cont.)

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- The complaint and appeal applications are the mandatory administrative steps which must be exhausted successively before filing a lawsuit.
- Complaint applications shall be submitted to the contracting entity and appeal applications shall be submitted to the Public Procurement Authority through signed petitions.
- Appeal applications to PPA are subject to a certain fee determined in PPL.

# Complaint Review System (cont.)

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- Complaint application to the contracting entity;
- shall be made to the contracting entity within five days in urgent cases,
- and within ten days for other cases

from the date which the proceeding or action, which is subject matter of the complaint, have been realized or should be realized, and before contract signing.



# Complaint Review System (cont.)

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- The complaints regarding the procurement notice, prequalification or tender documents;

shall be submitted at the latest until three working days before the tender or application deadline.

# Complaint Review System (cont.)

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- The contracting entity;
- Reviews and takes a reasoned decision within ten days following the complaint application.
- concludes the complaint essentially before the procurement date or deadline for the application, in case of complaint applications regarding notices, prequalification or tender documents
- Notifies to the complainant and the other candidates, tenderers or potential tenderers within three days following the date of the decision

# Complaint Review System (cont.)

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- Appeal application to PPA;
  - within 10 days following the expiring of decision period if no decision is taken by the contracting entity,
  - within 10 days following the notification of the decision by the contracting entity if the concerned decision is not deemed appropriate

# Complaint Review System (cont.)

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- The Authority shall take the final decision
  - within 20 days in general,
  - within 10 working days for the appeals against tenders conducted in urgent cases and against actions taken by the contracting entity to cancel the tender upon a complaint or appeal.

# Complaint Review System (cont.)

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- Upon the applications, reasoned decisions to be made by the contracting entity or by the Authority are as follows;
  - a) Ordering the termination of the procurement proceedings in case of violation of law
  - b) Determining the corrective action in cases where the problem may be remedied through correction
  - c) Rejecting the application in cases where the application does not comply with related rules

# Complaint Review System (cont.)

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## Standstill Period

- The contract may not be signed,
  - Unless ten days have passed in procurements in general,
  - unless five days have passed in procurements held in urgent cases,

following the notifying all the tenderers of the tender result.

# Complaint Review System (cont.)

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- PPB is empowered to hear the parties and the relevant persons, if deemed necessary,
- Contracting entities are obliged to immediately execute the necessary transactions resulting from Board decisions,
- Board decisions are exempted from appropriateness supervision, (however it does not pose an obstacle to the judicial supervision),

# Complaint Review System (cont.)

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- The final decisions made by the PPA with regard to the complaints shall be under the jurisdiction of the Turkish courts and such cases shall have priority.
- Having been signed of the contract without complying with the specified periods and procedures in the Law or having been resigned from the appeal application shall not constitute an obstacle for reviewing appeal application



# Complaint Review System (cont.)

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## Administrative Control Other Than Complaint Review System:

- Ex ante control: for ensuring an efficient, economical and productive use of public sources, and compatibility with other legislative provisions on finance. This component is realized by expenditure units and financial service units of the entities.
- Internal audit: conducted by internal auditors to evaluate the management and control structures of the basis of objective risk analysis and to perform ex-post audits on legal compliance.
- Ex-post external audit: conducted by Court of Accounts.
- State Auditing Board affiliated to Presidency of Republic and Supreme High Auditing Board affiliated to Prime Ministry are also the bodies making external audit.

# Main Figures on Complaint applications to PPA in 2008

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<b>Procurement type</b>	<b>No. of complaints</b>	<b>No. of Procurements*</b>	<b>Share in total (%)</b>
Goods	1.096	68.715	1,6
Services	3.487	53.784	6,48
Works	1.009	28.095	3,60
<b>Total</b>	<b>5.592</b>	<b>150.594</b>	<b>3,71</b>

\* Exceptions are not included.

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# E-Procurement

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Legal Framework in Türkiye :

- Public Procurement Law (PPL. No:4734 2002 as amended by 5812 of 2008)
- E – Signature Law ( No:5070 of 2004)
- Regulation on the Procedures and Principles Pertaining to the Implementation of Electronic Signature Law (2005)

## E-Procurement (cont.)

The reform efforts are very comprehensive in Türkiye as they cover all governmental agencies and public services including public procurement sector. General coordination of e-government has been assigned to mainly State Planning Organization SPO, and e-Transformation Türkiye Executive Board have been established with the participation of several ministers, top-level bureaucrats and non-governmental organizations (NGOs), and the Advisory Council with the participation of public and private sectors and NGO's.

# E-Procurement (cont.)

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- PPA was designated as the responsible public body for e-procurement within the scope of e-Transformation Türkiye Project by the circular of the Prime Ministry on December 4, 2003.
- In this respect, PPA set up an internal working group to develop e-procurement strategy and has been actively participating international studies in this area.

## E-Procurement (cont.)

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- PPA has a website to inform all stakeholders about the developments and activities in public procurement field. This website is also used as a platform to transmit data and documents. (<http://www.kik.gov.tr>)
- internet has been comprehensively used in order to enhance transparency and competition in public procurement field in particular for the publication of tender notices, all relevant regulations, decisions of the Public Procurement Board as well as the provision of training etc.

# E-Procurement (cont.)

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## Scope of e-procurement:

- Electronic Procurement Model created by PPA aims to transform all the tender stages into electronic system, from need assessment by contracting entities to contract management process.
- Electronic Procurement Model includes all the stages which are independent from each other. If a problem emerges during the transformation of the tender stages into the e-system, it provides the possibility to go on with paper-based system.

# E-Procurement (cont.)

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- To that aim, PPA, by complying with the relevant legislation, would set up a platform in order to allow the contracting entities and tenderers to carry out their procurement related activities under the scope of e-procurement through internet.

Following objectives are basically aimed by Electronic Procurement Project in parallel with the similar practices throughout the World:

- to support principles and procedures which must be used in public procurement process with information and communication technology by saving principles in the public procurement process,

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# E-Procurement (cont.)

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- to provide purchasing proceedings for buyers and suppliers with lower workload and cost,
- to provide uniform practices and standardization in the public procurement process,
- to abolish substantially reasons of errors and unlawfulness arisen from misunderstanding or misinterpreting of the public procurement regulations by buyers and suppliers.

# E-Procurement (cont.)

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## Electronic Public Procurement Platform (EPPP)

- The principles and procedures concerning the establishment and operation of the Electronic Public Procurement Platform as well as the use of electronic means during the tendering process shall be determined by the Authority.
- Enabling to reach tender documents in electronic environment as well as tendering via internet in some circumstances

# E-Procurement (cont.)

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- EPPP may be used in:
  - ▣ preparation and submission of tender documents,
  - ▣ preparation, submission, and evaluation of the proposals,
  - ▣ finalization and approval of the tender,
  - ▣ notification of the final tender decision, and execution of the contract,
  - ▣ all sorts of notifications.

# Transparency in Public Procurement

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## Transparency and Procurement Notices -I-

- Publication of prior notice
- Publication of all procurement notices in The Public Procurement Bulletin
- Publication of all contract award notices in The Public Procurement Bulletin
- Publication of The Board's decisions on complaints in the PPA website

# Transparency in Public Procurement (cont.)

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## Transparency and Procurement Notices -II-

- Shorter time limits in notices
  - In case of a prior notice,
  - When notices are drawn up and transmitted by electronic means,
  - Where direct access to notice and tender and prequalification documents is enabled through Electronic Public Procurement Platform,

# Transparency in Public Procurement (cont.)

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## Other Transparency Measures

- ❑ Public Procurement Bulletin can be reached through internet free of charge,
- ❑ Standard documents and sample contracts are prepared and made public by the PPA,
- ❑ Objective contract award criteria are set and declared,
- ❑ Public opening of tenders,
- ❑ Announcement obligation for small contracts as well,
- ❑ Mechanism for the clarification of tender documents,
- ❑ Independent complaint review mechanism,

# Classification of Tender Notices in terms of Procurement Procedure (2008)

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PUBLISHED IN	Open Procedure		Restricted Procedure		Negotiated Procedure		Exceptions		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
PUBLIC PROCUREMENT BULLETIN	52.853	45,30	112	23,98	72	2,06	--	--	53.037	39,60
LOCAL NEWSPAPER / ANNOUNCEMENT BOARD	63111	54,09	114	24,41	1548	44,30	2245	16,88	67.018	50,04
OTHERS	707	0,61	241	51,61	1874	53,64	11.056	83,12	13.878	10,36
TOTAL	116.671	100	467	100	3.494	100	13.301	100	133.933	100

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# Classification of Tender Notices in terms of Procurement Type (2008)

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PUBLISHED IN	Goods		Services		Works		Total	
	No.	%	No.	%	No.	%	No.	%
PUBLIC PROCUREMENT BULLETIN	24.515	39,31	16.383	36,40	12.139	45,71	53.037	39,60
LOCAL NEWSPAPER / ANNOUNCEMENT BOARD	28.944	46,41	23.861	53,00	14.213	53,52	67.018	50,04
OTHERS	8.904	14,28	4.770	10,60	204	0,77	13.878	10,36
TOTAL	62.363	100	45.014	100	26.556	100	133.933	100

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# Next Steps-I

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Türkiye plans to introduce below framework laws in order to align its public procurement system with international standards.

- ✓ Procurement Law on Entities Operating in Energy, Water, Transport Sectors and Postal Services
- ✓ Law on Concessions Awarded For Carrying Out Some Investments and Services
- ✓ Law on Realization of Some Investments and Services Within the Framework of Public Private Partnership Models

## Next Steps-II

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Other priorities in the public procurement field are as follows;

- to conclude negotiations with EU under Public Procurement chapter,
- to create an SME-friendly procurement environment,
- to raise awareness on issues such as green procurement, innovative procurement and social aspects of procurement .