



**SIGMA**

**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

# **ASSESSMENT**

## **TURKEY**

### **2010**

# **PUBLIC PROCUREMENT**

### **Main Developments since Last Assessment**

Main developments since last year in terms of legislative or institutional development, and if only viewed through the adoption of new pieces of procurement or concession legislation, few significant changes in the public procurement system can be reported since the 2009 assessment report. Only one important legislative action has been taken, namely the adoption of Law 5917, 25 June 2009, through which the Ministry of Finance has been assigned the responsibilities and powers to ensure the implementation of a coherent policy in all areas related to public procurement, and to coordinate the future negotiations on chapter 5 – public procurement. Therefore, for more detailed guidance on the current legislative and institutional situation, reference is made to the 2009 SIGMA Assessment Report and to the 2008 SIGMA Peer Review Report.

- A new draft unified public procurement law has been prepared by the Public Procurement Authority (PPA). This draft PPL, which will replace PPL 4734, was reviewed and commented on by both SIGMA and DG Internal Market at the beginning of 2010. The draft PPL, which aims to transpose the EC directives 2004/17 and 18, covers both the classical sector and utilities as well as concession contracts. The adoption of this draft unified law is only foreseen in a mid-term perspective (2011);
- Therefore, as a temporary measure (adoption in 2010), the PPA has prepared a number of amendments to the existing PPL 4734 in order to enhance alignment with the *acquis* in the areas of scope, exclusions, definitions, and thresholds.
- The authorities have expressed their intention to improve the functionality of the PPA by revising its general organisational structure and to create a special Procurement Advisory Board chaired by the president of PPA.
- A reorganisation of the complaint review system has been decided and will lead to changes both in the review organisation and in the procedure;
- As part of the draft National Strategy, the government has decided to transpose the new EC Directive on defence procurement.
- A new draft law (4th version) for public private partnerships (PPPs) was prepared by the State Planning Organisation (SPO) during the first quarter of 2010 but the existing fragmented legal structure remains in place. SIGMA has commented on the draft PPP law;
- A decision has been taken to establish a PPP policy and support unit within the SPO; it will be responsible for a number of key policy, monitoring and support functions;

### **Main Characteristics**

A number of actions aimed at developing the systems for public procurement and PPP/concessions were taken during 2009 and the first quarter of 2010. Some are in line with the conclusions and recommendations made by SIGMA and the EC (Assessment and Progress Reports). An additional aspect of reforms has been the Government's decision to elaborate a National Strategy and Action Plan on Public Procurement, a key opening benchmark for chapter 5 on public procurement. This work started in 2009 but accelerated at the beginning of 2010, with the aim of obtaining a decision by the Council during 2010.

The government seems today to be strongly committed to reforming the systems of public procurement, concessions and PPPs, in order to achieve full alignment with EC law and meet European standards. However, in parallel, the magnitude, the complexity and the variety of interests within the administration and the political sphere complicates and risks delaying the reform process.

The main problems identified in the current unified draft PPL relate to its coverage, because of the need to remove exclusions but also definitions, the inclusion of concessions other than those covered by the draft PPP law, and insufficient design of the procedures for low value procurement. The structure of the draft PPL could also be improved and made more user-friendly.

The PPA's current organisation needs to be adapted to a new external reality arising from the introduction of e-procurement and the other new instruments of the EC Directives, such as frameworks, and by the important work needed to increase professionalisation throughout the procurement community.

The review system is not aligned with the *acquis* and is a cumbersome activity for the PPA, occupying a lot of its resources. It needs to be changed in the future.

### ***Reform Capacity***

As already mentioned, the government seems committed to reforming the public procurement, concessions and PPPs systems, with the aim of achieving full alignment with EC law, meeting European standards, and not least, meeting the opening benchmarks for chapter 5. However, at the same time the magnitude, the complexity and the variation of interests within the administration and the political sphere complicates and risks delaying the reform process. Examples abound of good legal initiatives, such as the (e.g previous draft on utilities procurement; lengthy process on drafting a concession/PPP law), blocked in the legislative process. In conclusion, a strong focal coordinating point within the government for managing and controlling the legislative process is needed. It is hoped that the Ministry of Finance, with the adoption of Law 5917, 25 June 2009, can shoulder this coordination responsibility as well as play the role of guardian of the procurement legislative process.

The Public Procurement Authority (PPA) has in recent years become a stable and strong institution and has already largely contributed to the establishment of a modern public procurement system. In general, it has the capacity to monitor procurement legislation effectively. However, it needs to be reorganised in order to improve its functionality and be better adapted to a new reality arising from the introduction of e-procurement, framework agreements and other new procedures and instruments introduced by the EC Directives. A reconsidering of the existing system for review and remedies is also needed.

The State Planning Organisation (SPO) has the capacity and is the 'natural' body to which the coordinating and supporting functions for the regulation and monitoring of public private partnerships (PPPs) should be assigned. It is therefore important that these responsibilities are clarified by the future PPP law.

**PROCUREMENT/CONCESSIONS STATISTICS for 2009<sup>i</sup>**

<b>A. Number of contracting entities<sup>ii</sup></b>		
Central government	<b>6.390</b>	
Regional and local authorities	<b>2.431</b>	
Other (bodies governed by public law)	<b>1.120</b>	
Utilities	<b>N/A</b>	
Total number of contracting entities	<b>9.941</b>	
<b>B1. Awarded<sup>iii</sup> public contracts/Contracting entities</b>	<b>Total (estimated) value (Mio EURO)</b>	<b>Total number<sup>iv</sup></b>
Central government	14.644	60.939
Regional and local authorities	8.807	25.482
Other (bodies governed by public law)	8.431	11.721
Utilities	<b>N/A</b>	<b>N/A</b>
Total public contracts awarded	31.882	98.142
<b>B2. Awarded concessions/Contracting entities</b>	<b>N/A</b>	<b>N/A</b>
Central Government	<b>N/A</b>	<b>N/A</b>
Regional and local authorities	<b>N/A</b>	<b>N/A</b>
Other (bodies governed by public law)	<b>N/A</b>	<b>N/A</b>
Utilities	<b>N/A</b>	<b>N/A</b>
Total concessions awarded	<b>N/A</b>	<b>N/A</b>
<b>C1. Awarded public contracts above the EU thresholds<sup>v</sup></b>		
Works <sup>vi</sup>	8.709	4.81
Services <sup>vii</sup>	9.695	4.859
Goods <sup>viii</sup>	6.361	5.002
Mixed contracts	<b>N/A</b>	<b>N/A</b>
Total public contracts above the EU thresholds	24.764	10.342
<b>C2. Awarded concessions above the EU thresholds</b>	<b>N/A</b>	<b>N/A</b>
Works <sup>ix</sup>	<b>N/A</b>	<b>N/A</b>
Services <sup>x</sup>	<b>N/A</b>	<b>N/A</b>
Other	<b>N/A</b>	<b>N/A</b>
Total concessions above the EU thresholds	<b>N/A</b>	<b>N/A</b>
<b>D. Procurement methods used<sup>xi</sup> (above the national thresholds<sup>xii</sup>)</b>		
Open procedure	18.682	4.869
Restricted procedure	700	66
Negotiated procedure with prior publication of a notice	2.214	567
Negotiated procedure without prior publication of a notice <sup>xiii</sup>	<b>N/A</b>	<b>N/A</b>
Other procedures (competitive dialogue, etc)	3.439	1.097
<b>D1. Low- value procurement (estimated)</b>	11.241	124.229
<b>E. Participation rate (average number of submitted tenders)</b>		
Works	4,74	
Services	2,60	
Goods	8,27	

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

	<b>NAME OF THE PROCURING ENTITIES</b>	<b>Annual Procurement Budget</b>	<b>Total Value of Contracts Awarded in 2008</b>
1.	REPUBLIC OF TURKEY PRIME MINISTRY HOUSING DEVELOPMENT ADMINISTRATION	N/A	1.925,91
2.	MINISTRY OF NATIONAL DEFENCE	N/A	1.078,80
3.	REPUBLIC OF TURKEY GENERAL DIRECTORATE OF HIGHWAYS DIVISION OF ESTIMATION & SPECIFICATION	N/A	441,93
4.	ISTANBUL METROPOLITAN MUNICIPALITY DIRECTORATE OF TENER AFFAIRS	N/A	290,71
5.	DIRECTORATE GENERAL OF WATER AND CANALIZATION ADMINISTRATION OF ISTANBUL	N/A	270,23
6.	GENERAL DIRECTORATE OF TURKISH COAL MINES	N/A	269,04
7.	IZMIR METROPOLITAN MUNICIPALITY	N/A	210,63
8.	ISTANBUL DIRECTORATE GENERAL OF ELECTRICAL TRAM AND TROLLEY ENTERPRISES	N/A	180,97
9.	TURKISH STATE RAILWAYS	N/A	178,44
10.	ANKARA METROPOLITAN MUNICIPALITY CONSTRUCTION DEPARTMENT	N/A	142,24

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

G.	SUBJECT OF THE CONTRACT	NAME OF THE AUTHORITY	CONTRACTOR	PROCUREMENT TYPE	PROCUREMENT PROCEDURE	VALUE OF THE CONTRACT (mio Euro)
1.	LABORATORY SERVICE PROCUREMENT OTHER THAN HOSPITAL FOR THE TEST RESULTS (46.350 TESTS)	MINISTRY OF HEALTH BURSA STATE HOSPITAL	HİPOKRAT LAB.SCREENİNG CENTER	SERVICE	OPEN PROCEDURE	370
2.	PROCUREMENT OF MEDICINE AND SERUM (349)	BURSA ŞEVKET YILMAZ HOSPITAL	ANKARA BEŞER <a href="#">PHARMACEUTICAL WAREHOUSE</a>	GOODS	OPEN PROCEDURE	200
3.	TEST, MEASURING AND METERING DEVICES	TEİAŞ GOODS MANAGEMENT AND TRADE DEPARTMENT	MEVAG TEKNİK TİC.VESAN.A.Ş.	GOODS	3G	198
4.	MAKRO ELİZA KIT DEVICE PROCUREMENT 62.000 TEST	MURADIYE STATE HOSPITAL	ASER HEALTH INSTRUMENTS AND EQUIPMENT	GOODS	OPEN PROCEDURE	183
5.	NATURAL GAS COMBINED CONVERSION PLANTDIRECTORATE 5 NO FUEL OİL (350.000 bin ton)	EÜAŞ GOODS MANAGEMENT AND TRADE DEPARTMENT	PETROL OFİSİ A.Ş.GENERAL DIRECTORATE	GOODS	OPEN PROCEDURE	166
6.	KIRSAL MOTORİN (188.000.000 litre)	TCDD STATE RAILWAYS	TP PETROL DAĞITIM	GOODS	OPEN PROCEDURE	155
7.	CONSTRUCTION OF İSTANBUL METRO	İSTANBUL METROPOLITAN MUNICIPALITY	GÜLERMAK AĞRI SANAYİ İNŞAAT VE TAAHHÜT	WORKS	OPEN PROCEDURE	148
8.	DRINKING WATER PIPES AND ACCESSORIES	YEŞİLOVA MUNICIPALITY	PLASTSU PLASTİK SANAYİ VE TİCARET LTD. ŞTİ	GOODS	OPEN PROCEDURE	145
9.	Kadıköy-Kartal PUBLIC RAILWAY TRANSPORTATION SYSTEM PROCUREMENT OF METRO VEHICLES	İSTANBUL METROPOLITAN MUNICIPALITY	Construcciones Y Auxıllar De Ferrocarriles S.a	GOODS	OPEN PROCEDURE	143
10.	ANKARA İLİ MÜCAVİR ALANLARI İÇERİSİNDEKİ MUHTELİF CADDE VE BULVARLARA B.S.K ,MODİFİYE EDİLMİŞ BİTÜM	ANKARA METROPOLITAN MUNICIPALITY	SÖĞÜT İNŞAAT TAAHHÜT PETROL MADENCİLİK GIDA NAK.İÇ VE DIŞ TİC.LTD. ŞTİ.	WORKS	OPEN PROCEDURE	142

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- <sup>i</sup> Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009
- <sup>ii</sup> As for 31 December 2009
- <sup>iii</sup> Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)
- <sup>iv</sup> Please indicate whether the data include the low value contracts
- <sup>v</sup> Please indicate whether the data include contracts awarded by the utilities sector
- <sup>vi</sup> above 5.150.000€
- <sup>vii</sup> above 137.000€ for public institutions, 412.000€ for utilities
- <sup>viii</sup> above 137.000€ for public institutions, 412.000€ for utilities
- <sup>ix</sup> above 5.150.000€
- <sup>x</sup> above 137.000€
- <sup>xi</sup> Both for public contracts and concessions
- <sup>xii</sup> Including contracts above EU thresholds
- <sup>xiii</sup> Including single-source procurement