

# PUBLIC PROCUREMENT LAW

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## PUBLIC PROCUREMENT LAW

### CHAPTER I

#### General Provisions

#### SECTION I

#### Application Principles

#### Purpose

Article 1- The purpose of this law 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

Article 2- 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 mentioned below shall be executed in accordance with the provisions of this Law :

- a) (Amendment: 5680/Article 1) Public departments included in the general budget, departments with special budget, special provincial administrations and municipalities and their related revolving funds organizations, associations (except those working as professional organizations and their supreme institutions), legal entities,
- b) (Amendment: 4964/Article 1) State economic enterprises, consisting of public corporations and state economic establishments,
- c) (Amendment: 4964/Article 1) Social security establishments, funds, entities of legal personalities that are established in accordance with special laws and that are assigned with public duties (except for professional organizations and foundation institutions of higher education) and establishments with independent budgets,
- d) (Amendment: 4761) Any institutions, organizations, associations, enterprises and corporations which more than half of their capitals, directly or indirectly, together or separately are owned by those stated in items (a), (b) and (c)
- e) The construction tenders of banks within Law No: 4603.

(Amendment: 4964/Article 1) However, Saving 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 mentioned in paragraph (e) and enterprises, establishments and corporations who carry out activities in the energy, water, transportation and telecommunication sectors are out of the scope of this Law.

#### Exceptions

#### Article 3- (Amendment: 4964/Article 2)

- a) Procurements of agriculture and livestock products, by entities included within the scope of this Law, directly from the producer or its partners in order to process, utilize, improve or sell pursuant to the establishment purpose or regulations of such entities and service procurements to be made from Development Cooperatives of Forest Villages pursuant to Law No: 6831, Forest Law, and from villagers.
- b) Procurements with regard to defence, security and intelligence pursuant to related legislation which requires to be treated confidentially as approved by the contracting officer for each tender; involving tools, arms, military materials and equipments, systems and war materials such as aircraft, helicopter, ships, submarines, tanks, panzer, rockets, missiles and tenders for their research, development, training, manufacturing, modernization, software and ammunition and their related goods and services aiming at military expedition stocks, maintenance, operation and maintaining, and procurement of services, tools, equipment and systems within the scope of state security and of intelligence.
- c) (Amendment: 5148/Article 2) 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 is stated that different tender procedures and

principles will be applied; all kinds of consultancy and bank guaranteeing services with regard to borrowings from international capital markets; procurement of goods and services to be made by Republic of Turkish Central Bank relating to production and printing of banknotes and valuable documents; any kind of procurement for consultancy services in privatization implementations pursuant to Law no: 4046, dated 24.11.1994; procurements of goods and services related to commercial activities by enterprises, undertakings and companies operate in the field of air transport,

d) Procurements of goods or services and works of organizations of contracting entities in foreign countries; goods or service procurements which necessarily to be made in place forms of transport during their presence in foreign countries.

e) For the institutions that are in the scope of this law; the goods and services produced by punishment execution institutions, the institutions of jails workhouses affiliated to Ministry of Justice, by rest homes and orphanages attached to the Social Service and Child Care Institution, by schools and centres involving production attached to Ministry of Education by institutes and breeding stations attached to the Ministry of Agriculture and Village Affairs and by Prime Ministry's Press Agency on their own to be purchased from the related institutions, the goods and equipments from the General Directorate of State Supply Office which are in the principal status of State Supply Office procurements from Republic of Turkey General Directorate of State Railways for freight, passenger and port services, procurements from General Directorate of Liquidation Works Revolving Fund Administrations

f) Necessary purchases of goods and services for research and development projects executed and supported by national research and development institutions

g) Goods and service procurements of the institutions listed in sub-paragraphs (b) and (d) of first paragraph of second article, to be made in order to cover the needs relating to direct producing of goods and services or principal activities, within their commercial and industrial activities, the estimated costs and contract prices of which do not exceed two trillion three hundred billion Turkish Liras (two trillion nine hundred twenty eight billion fourteen million Turkish Liras)\* excepting those financed by treasury guarantee or by means of transferring directly from the transfer order of budget,

h) Service procurements by contracting entities that are under the scope of this Law with a view to providing diagnosis and cure for the persons entitled pursuant to their special legislation and purchasing of drugs and medical supplies with prescription during outpatient treatment by persons whose treatments are carried out by the entities

i) (Annexed: 5226/Article 21) Survey, restoration and restitution projects of cultural heritage falling under the scope of Law No: 2863, dated 21.07.1983, which is on the Protection of Cultural and Natural Heritage, environmental planning and road

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\* has been published in Official Gazette which is numbered 25215 and dated 31.08.2003 by Communique of Public Procurement Authority, numbered 2003/8 and has covered the period of 15.08.2003-31.01.2004

rehabilitation projects and their applications; and also goods and service procurements related to assessment, protection, transportation and excavation works of those projects

j) (Annexed: 5312/Article 25) Within the scope of Law on Interference in emergency of sea pollution by reason of petroleum and detriments and on compensation of damages, procurement of services, tools, appliances and materials which urgently needed in order to execute those plans and to decontaminate the sea environment.

k) (Annexed: 5583/ Article 9) goods and service procurements by General Directorate of Youth and Sports and by autonomous sports federations relating to national and international sports events,

shall not be governed by this Law except prohibition and criminal provisions.

## Definitions

Article 4 - During the application of this Law, the terms used shall have the following meanings:

**Goods:** All procured means of necessity and movables and immovables, together with the rights thereof.

**Services:** (Amendment: 4964/Article 3) relating to maintenance and repair, transportation, communication, insurance, research and development, accounting, market surveys and polls, consultancy, architecture and engineering, surveying and project, map and cadastre, development application, development plan in any scale, promoting, broadcasting and publication, cleaning, catering, meeting, organisation, exhibition, guarding and security, professional training, photography, film, intellectual and fine arts, computer systems and software services, lease of movable and immovable properties and the rights thereof, and others similar services,

**Works:** All construction works such as buildings, roads, railways, highways, airports, docks, harbours, shipyards, bridges, tunnels, subways, viaducts, sports facilities, infrastructure, pipelines, communication and energy transmission lines, dams, power plants, refineries, irrigation facilities, soil improvement, flood prevention and pickling; and their related works of installation, manufacture, preparation of site materials, transportation, completion, large scale repair, restoration, landscaping, drilling, demolition, reinforcing and assembly works and similar construction works,

**Supplier:** Natural or legal persons, or joint ventures consisting of those persons submitting tenders for procurement of goods.

**Service Provider:** Natural or legal persons, or joint ventures consisting of those persons submitting tenders for service procurements.

**Consultant:** Service providers, who use their knowledge and experience for benefit of the contracting entity, who have no organic link with the contractors whom they provide consultancy services for, who do not gain anything other than the due

consultancy fee from the contracting entity, and who provide the consultancy services.

Works Contractor: Natural or legal persons or joint ventures consisting of those persons submitting tenders for works procurements.

Candidate: Natural or legal persons or joint ventures consisting of those persons applying for pre-qualification.

Joint Venture: (Amendment: 4964/Article 3) Partnerships or consortia established by mutual agreement of more than one natural or legal person in order to participate in a tender.

Tenderer: The supplier, service provider or works contractor submitting tenders for contracts of goods, services or works.

Domestic Tenderer: (Amendment: 4964/Article 3) Real persons who are the citizens of Republic of Turkey and legal entities established in accordance with the Laws of Republic of Turkey

Contractor: The tenderer, who is awarded and signs the contract,

Contracting Entity: Procuring entities and institutions which are within the scope of this Law.

Contracting Officer: (Amendment: 4964/Article 3) The personnel or boards of the contracting entity who have authority and responsibility to spend and to carry out procurement proceedings and officers to whom the concerned power has been transferred properly.

Request Documents (for Participation): The documents submitted by a candidate for pre-qualification in the application of Restricted Procedure, for the evaluation of his/her qualifications.

Tender Document: With regard to the procurement of goods, services or works that are the subject matter of the tender; the documents including administrative specifications specifying the instructions to tenderers, and the project descriptions together with technical specifications, draft contract and other required documents and information.

Preliminary Design: In accordance with the absolute necessity program of a certain structure, the design consisting of one or more solutions without necessary land and soil surveys where the information is obtained from the existing maps and the plans, cross-sections, views and profiles are determined on the basis of the available data including environmental impact assessment and feasibility reports,

Final Design: In accordance with the approved preliminary design of a certain construction, the design with possible land and soil surveys have been undertaken, where the construction elements have been measured and dimensioned and construction system and equipment and technical specifications have been indicated,

Application Project: In accordance with approved final design of a certain construction, the design on which all kinds of details of the construction are indicated.

Survey Project: (Abolished: 5226/Article 22)

Restoration Project: (Abolished: 5226/Article 22)

Restitution Project: (Abolished: 5226/Article 22)

Procurement: The procedure which involves the award of a contract relating to purchase of goods, services or works, to one selected tenderer in accordance with the procedures and conditions laid down in this Law, and which is completed with signing of the contract following the approval of the contracting officer.

Tender: The price offer together with the document and/or information submitted by a tenderer to contracting entity for the procurement carried out pursuant to the provisions of this Law.

Open Procedure: The tender procedure where all tenderers are allowed to submit their tenders,

Restricted Procedure: The tender procedure where following a prequalification process, only the tenderers who are invited by the contracting entity can submit their tenders,

Negotiated Procedure: A procedure which can be employed under the conditions set forth in this Law, in which the procurement process is conducted in two stages, and the contracting entity negotiates the technical details, performing procedures and in certain cases the contract price of the procurement with the tenderers.

Direct Procurement: A procedure to be carried out in the cases specified in this Law which involves the direct procurement of the necessities, through negotiating technical terms and price of the procurement with the tenderers invited by the contracting entity,.

Contract: Written agreement between the contracting entity and the contractor for the procurement of goods, services or works.

Authority: Public Procurement Authority (PPA)

Board: Public Procurement Board (PPB)

Basic Principles

Article 5- In tenders to be conducted in accordance with this Law, 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 the 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.

(Amendment: 4964/Article 4) 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.

#### Tender Commission

Article 6 - 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.

(Amendment: 4964/Article 5) The contracting entity, in the absence of personnel in adequate number or qualification, may invite experts to the commission, from other contracting entities which are in the scope of this Law.

In order to allow for the required examinations, each member of the commission shall be provided with a copy of the records of procurement proceedings, within three days following the invitation or announcement.

The tender commission shall convene with no absentees. The commission decisions shall be taken by a majority voting. Abstention is not allowed in decisions. The chairman and members of the commission are responsible for their votes and decisions. Dissenting members have to write down their justifications in the records of commission minutes and sign it.

The decisions taken by the tender commission and the minutes kept shall be signed by the chairperson and members of the commission, indicating their names, surnames and titles.

#### Procurement Proceedings Dossier

Article 7 - A record of procurement proceedings shall be kept for all procurements. This record of procurement proceedings shall include the certificate of approval and its

attached priced bill of quantities relating to the estimated cost obtained from the contracting officer, the tender documents, the advertisement texts, the tenders or the applications and other documents submitted by candidates or tenderers, and all documents relating to the procurement process such as minutes and decisions of the tender commission.

## SECTION II

### Rules on Participation

#### Threshold Values

Article 8- (AMMENDMENT :4761/Article 12) Taking into consideration the estimated cost, the threshold values that shall be applicable for the implementation of Articles 13 and 63 of this Law are as follows:

- a) Three hundred billion Turkish Liras for procurement of goods and services by the contracting entities operating under the general or the annexed budget (350 billion 31 million Turkish Liras)\*
- b) Five hundred billion Turkish Liras for procurement of goods and services by other contracting entities within the scope of the PPL (583 billion 385 million Turkish Liras)\*
- c) Eleven trillion Turkish Liras for the works contracts by any of contracting entities covered by this Law (12 trillion 834 billion 470 million Turkish Liras)\*

(Abolished, last paragraph: 4761/Article 12).

#### Estimated Cost

Article 9- (Amendment:4964/ Article 6) 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. 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.

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\* has been published in Official Gazette which is numbered 25000 and dated 21.01.2003 by Communique of Public Procurement Authority, numbered 2003/1, and has covered the period of 01.02.2003-31.01.2004

## Rules on Qualification

Article 10- The tenderers participating in the procurement proceedings may be required to submit the following information and documents, for evaluation of their economic, financial, professional and technical qualifications:

a) For evaluation of the economic and financial standing;

1) Bank statements relating to the financial standing of the tenderer,

2) (Amendment:4964/Article 7) The balance sheet of the tenderer which is obligatory to be published in accordance with the related legislation, or required sections of the balance-sheet, if those are not available, equivalent documents.

3) A statement of the tenderer's overall turnover, or documents indicating the volume of the work being carried out and completed by the tenderer relating to the subject matter of the procurement proceedings.

b) For the evaluation of professional and technical qualifications;

1) Documents proving that the tenderer is registered to the related chamber in accordance with the relevant legislation, and is legally eligible to submit tenders,

2) (Amendment:4964/Article 7) Documents demonstrating the experience of the tenderer in relation to the subject of the procurement in the public or private sector, within the last five years in case of procurement of goods and services, and within the last fifteen years in case of procurement of works in the amount equaling to at least 70% of the contract value realised, or 50 % of the contract value monitored or managed and accepted as free from fault by the contracting entity in proving its experience in similar jobs,

3) Documents relating to the production and/or manufacturing capacity, research-development activities and quality assurance practices of the tenderer,

4) Information and/or documents relating to the organisational structure of the tenderer, proving that he employs or will employ adequate number of staff in order to fulfil the subject matter of the procurement,

5) In cases of procurement of services or works, the documents demonstrating the educational and professional qualities of the executives and the technical staff of the tenderer,

6) Documents relating to facilities, machinery, devices and other equipment required for fulfilment of the work that is the subject of the procurement proceedings,

7) Documents relating to the technical staff or technical institutions responsible for quality control, whether they are directly attached to the tenderer or not,

8) Certificates granted by internationally recognized quality control institutions accredited in accordance with the rules, certifying the conformity of the work in question with the relevant specifications and standards,

9) In case requested by the contracting entity, samples, catalogues and/or photographs of the goods to be supplied for the confirmation of their accuracy,

The information or documents that will be required for qualification evaluation proceedings, in accordance with the characteristics of the subject of the procurement, shall be specified in the tender documents or in the advertisements or invitations relating to pre-qualification.

(Annexed: 4761/Article 13) (Amendment: 4964/Article 7) Among the documents which are defined under the sub item no:2 of item no: (b) in the first paragraph, the ones for construction or construction related service duties, the real person should be either an architect or an engineer among the staff who are employed to carry out auditing or management duties. The documents, which will be obtained through completion of work, management and auditing, can not be used by persons apart from the individuals and institutions who are the owners of the documents and can not be transferred, rented and sold. In order to participate in a tender, legal entities, which are established or participated in by the owners of this document, should have more than half of the shares of the legal entity, It is obligatory to request this share requirement in every tender and to maintain the share during the guarantee period. The documents which will be obtained through management activities, are taken into consideration maximum 1/5 rate.

Any tenderer shall be excluded from the procurement proceedings who;

a) is bankrupt or is being wound-up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under his own national laws and regulations;

b) is the subject of proceedings for a declaration of bankruptcy, for an order of compulsory winding up, or administration of court due to his debts to creditors or of any other similar proceedings under his own national laws and regulations,

c) has not fulfilled obligations relating to the payment of finalised social security contributions in accordance with the legal provisions of the country in which he is established or those of Turkey,

d) has not fulfilled obligations relating to the payment of finalised taxes in accordance with the legal provisions of the country in which he is established or those of Turkey,

e) has been convicted of an offence concerning his professional conduct by a judgement of a competent court within the five years preceding the date of the procurement proceedings.

f) are established, to be involved in misconducts by appropriate means of proof by the contracting entity that are against the work ethics or professional ethics during a work

he carried out for the contracting entity, within the five years preceding the date of the tender

g) has been prohibited from professional activity by the chamber where he is registered in accordance with the relevant legislation, as of the date of the tender,

h) fails to submit the information and documents specified in this article or it is established that he/she has submitted misleading information and/or false documents,

i) has been participated in procurement proceedings in spite of prohibition according to Article 11,

j) are established to be involved in prohibited conducts and actions laid down in Article 17.

(Annexed: 5615/Article 23) The Authority is entitled to determine the content and amount of social security premium debt by taking the approval of the Chairman of Social Security Establishment with regard to clause (c) of the fourth subparagraph; and taxes under the scope of tax due by taking the approval of Revenue Administration Department with regard to clause (d) of the fourth subparagraph; in terms of kind and amount.

(Annexed: 5615/Article 23) Documents which can be submitted as written undertakings among the required ones under this article are determined by the Authority. If the undertakings submitted are contained false statements, or the tenderer who has been awarded the contract can not give the documents supporting the status specified in the undertaking before contract signing, those shall be excluded from the tendering and their tender securities shall be registered as revenue.

### Ineligibility

Article 11- The following persons or entities cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others:

- a) 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 who have been convicted of crimes mentioned in Anti-Terror Law No: 3713 and organised crimes,
- b) those whom the relevant authorities have been decided that they have been involved in fraudulent bankruptcy,

- c) the contracting officers of the contracting entity carrying out the procurement proceedings, and the persons assigned in boards having the same authority,
- d) 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.
- e) The spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those specified under paragraph (c) and (d).
- f) The partners and companies of those specified under paragraph (c), (d) and (e) (except for joint stock companies where they are not a member of the board of directors or do not hold more than 10 % of the capital)

The contractors providing consultancy services for the subject matter of the procurement cannot participate in the procurement of such work. Similarly, the contractors of the subject matter of the procurement cannot participate in procurements held for the consultancy services of such work. These prohibitions are also applicable for the companies with which they have a partnership and management relation and for joint stock companies where they own more than half of the capital and for the companies where more than half of the capital is owned by above-mentioned companies.

(Amendment: 4964/Article 8) Whatever their purposes of establishment are, the foundations, associations, unions, funds and other entities included within the body of the contracting entity carrying out the procurement, or related with the contracting entity and the companies to which such entities are partners, cannot participate in the procurement held by these contracting entities.

The tenderers who participate in the tender proceedings despite these prohibitions shall be disqualified, and their tender securities shall be registered as revenue. Moreover, in case the contract is awarded to one of those tenderers due to failure in detecting such situation during evaluation stage, then the tender proceedings shall be cancelled and tender security shall be registered as revenue.

## Specifications

Article 12- Preparation of administrative and technical specifications specifying all characteristics of the goods, services and works that constitute the subject matter of the procurement by the contracting entities is essential. However, in cases where contracting officer approves that preparation of technical specifications by contracting entity is impossible due to the characteristics of the goods, services or works, it may be outsourced, in accordance with the provisions of this Law.

The technical criteria for the goods, services and works to be procured shall be specified in the technical specifications, which constitute an integral part of the tender documents. The specified technical criteria shall in 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. Technical characteristics and definitions shall be set forth in these specifications. 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.

#### Procurement Announcement Rules and Time Limits

Article 13- (Amendment: 4964/Article 9) Giving all tenderers sufficient time to prepare their tenders;

- a) Procurement with estimated costs equal to or exceeding the threshold values stated in Article 8, shall be advertised by publishing in the Official Gazette, at least once, provided that;
  1. Notices of procurements to be conducted by open procedure shall be published not less than forty days prior to deadline for the submission of tenders,
  2. Pre-qualification notices of procurements to be conducted by restricted procedure shall be published not less than fourteen days in advance of the deadline for the application to pre-qualification.
  3. Notices inviting candidates in a negotiated procedure shall be published not less than twenty-five days prior to the deadline for the submission of tenders.

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

- b) For the procurements with estimated costs below the threshold values given in Article 8,
  - 1) The notices of procurements to be conducted for the procurement of goods or services with an estimated cost of up to thirty billion Turkish Liras (thirty-eight billion one hundred and ninety-one million Turkish Liras)\* and for the procurement of works with an estimated cost of up to sixty billion Turkish Liras (seventy-six billion three hundred eighty-two million Turkish Liras) \* shall be published at least once in not less than two newspapers being issued where the procurement is to be held and the work is to be performed, minimum seven days in advance of the deadline for the submission of tenders.

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\* has been published in Official Gazette which is numbered 25215 and dated 31.08.2003 by Communiqué of Public Procurement Authority, numbered 2003/8 and has covered the period of 15.08.2003-31.01.2004

- 2) The notices of procurements to be conducted for the procurement of goods or services with an estimated cost between thirty billion Turkish Liras (thirty-eight billion one hundred and ninety-one million Turkish Liras) \* and sixty billion Turkish Liras (seventy-six billion three hundred eighty-two million Turkish Liras)\* and for the procurement of works with an estimated cost between sixty billion Turkish Liras (seventy-six billion three hundred eighty-two million Turkish Liras)\* and five hundred billion Turkish Liras (six hundred thirty-six billion five hundred twenty-four million Turkish Liras)\* shall be published at least once in the Official Gazette and in one of the newspapers being issued where the work is to be performed minimum fourteen days in advance of the deadline for the submission of tenders.
- 3) The notices of procurements conducted for the procurement of goods or services with an estimated cost above sixty billion Turkish Liras (seventy-six billion three hundred eighty-two million Turkish Liras)\* and below the threshold value, and for the procurement of works with an estimated cost above five hundred billion Turkish Liras (six hundred thirty-six billion five hundred twenty-four million Turkish Liras)\* and below the threshold value shall be published at least once in the Official Gazette and in one of the newspapers being issued where the work is to be performed minimum twenty-one days in advance of the deadline for the submission of tenders.

In procurements to be conducted by restricted procedure with estimated costs below threshold values established in Article 8, it is compulsory that pre-qualification notices be published not less than seven days in advance of the deadline for the application to pre-qualification in accordance with the procedures in paragraph (b), excepting the limit, and that invitation letters (to tender) be sent to the candidates who are qualified as the result of pre-qualification proceedings, prior to tender date according to the limits in paragraph (b).

PPA is competent to determine which of these procurement notices will be announced furthermore through "Media Announcement Institution" in one of the newspapers delivered nationwide (delivered in Turkey)

There where no newspaper is issued in the place of the procurement to be held, the notices shall be displayed on the notice boards of the related contracting entity, government and municipality buildings and announced by municipal facilities. These proceedings shall be permitted.

Apart from the above-mentioned compulsory announcement of notices, the contracting entities may also advertise the procurement notices by means of other newspapers or publications having national and international circulation, data processing networks or electronic media (internet), depending on the significance and characteristics of the procurement. However, where international announcement of notices is required, the above minimum time limits shall be increased by twelve days.

Joint ventures

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Article 14- (Amendment: 4964/ Article 10) 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 expertises 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. The pilot partner and the coordinator partner shall be specified in business partnership agreements and in consortium agreements respectively. In case the contract is awarded to the business partnership or consortium, a notary-certified business partnership or consortium contract shall be submitted prior to signing of the contract. In both business partnership agreement and contract, it has to be stated that the natural or legal persons setting the business partnership are jointly and severally liable in the fulfilment of the commitment, whereas in consortium agreement and contract it has to be clarified which part of the business has been committed by natural or legal persons setting the consortium and they would ensure the coordination among them through coordinator partner in fulfilling the commitment.

#### Sub-contractors

Article 15- Where it deemed necessary because of the characteristics of the subject matter of the procurement, the tenderers may be asked, to specify the portions of the contract which they plan to assign to sub-contractors at the tender stage, and submit the list of the sub-contractors for the approval of the contracting entity prior to the signing of the contract. However, in such a case, the liabilities of the sub-contractors with regard to the portion of the contract assigned to them shall not release the contractor from its own liabilities.

Cancellation of tender prior to the pre-determined time for submission of tenders (Amendment: 4964/Article 11)

Article 16- The procurement procedures may be cancelled at any time prior to the pre-determined time for submission of tenders, in cases where considered necessary by the contracting entity or where it is established that the documents included in the tender document contain items preventing the performance of the tender, which are impossible to correct.

In such a case, the tenderers shall be promptly notified of the cancellation, together with the reasons thereof. Those who have already submitted their tenders shall be notified of the cancellation with a separate notice. In case of cancellation of the tender procedures, all submitted tenders shall be deemed rejected, and shall be returned unopened to the tenderers. The tenderers cannot make any claims against the contracting entity because of the cancellation of the tender proceedings.

In case the cancellation of procurement, it may be reopened tenders by reviewing the reasons for cancellation.

## Prohibited acts or conducts

Article 17- The following acts or conducts are prohibited in tender proceedings:

- a) to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, malversation, bribery or other actions,
- b) to cause confusion among tenderers, to prevent participation, to offer agreement to tenderers or to encourage tenderers to accept such offers, to conduct actions which may influence competition or tender decision,
- c) to forge documents or securities, to use forged documents or securities or to attempt these.
- d) to submit more than one tender by a tenderer on his own account or on behalf of others, directly or indirectly, as the principal person or as representative of others, apart from submitting alternative tenders
- e) To participate in procurement proceedings although prohibited pursuant to Article 11.

Provisions stated in Chapter 4 of this Law shall apply to those who have been involved in prohibited acts or conducts.

## CHAPTER II

### Procurement Process

#### SECTION I

### Procurement Procedures and Application

#### Applicable procurement procedures

Article 18- In procurement of goods, services and works by contacting entities, one of the following procedures shall be applied:

- a) Open procedure,
- b) Restricted procedure,
- c) Negotiated procedure,
- d) (Abolished: 4964/Article 12)

#### Open procedure

Article 19- Open procedure is a procedure where all tenderers can submit their tenders.

## Restricted procedure

Article 20- Restricted procedure is a procedure in which tenderers who are invited following pre-qualification by the contracting entity, can submit their tenders. Procurement of goods, services or works may be conducted by restricted procedure where open procedure is not applicable due to the complexity of the nature of the subject and/or the requirement for high technology.

(Second paragraph abolished: 4964/Article 13)

(Amendment: 4964/Article 13) Pre-qualification evaluation shall be carried out in accordance with the qualification criteria, which are established pursuant to Article 10 and specified in the pre-qualification documents and in the pre-qualification notices. Those who fail to meet the minimum requirements specified in these documents shall not be accepted as qualified. (Last sentence abolished: 4964/Article 13)

(Amendment: 4964/Article 13) The candidates who fail to qualify in the pre-qualification evaluation shall also be notified with a written notice of the grounds for not being accepted as qualified. The procurement shall be concluded after the evaluation of the tenders in accordance with the evaluation criteria that are designed in accordance with Article 40 in a way to avoid any impediment to competition depending on the nature of the work and that are specified in the tender documents and in the letter of invitation. In case the number of tenderers that can be invited to submit tenders is less than five or the number of tenderers that submit tenders is less than three, the procurement shall be cancelled.

In case of the cancellation of procurement due to the number of tenderers being less than three, the procurement proceedings may be concluded by reviewing the tender documents and eliminating the deficiencies and errors, if any; and by re-inviting all pre-qualified tenderers.

## Negotiated procedure

Article 21- Negotiated procedure may be applied, where;

- a) no tender is submitted in open or restricted procedures,;
- b) it is inevitable to conduct the tender procedures immediately, due to unexpected and unforeseen events such as natural disasters, epidemics, cases entailing risk as to lives or properties or events that could not be predicted by the contracting entity,
- c) it is inevitable to conduct the tender procedures immediately, due to occurrence of specific events relating to defence and security,
- d) the procurement is of a character requiring a research and development process, and not subject to mass production,
- e) 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.

f) (Annexed :4964/Article14) Product good, material and service procurements by contracting entities with estimated costs of up to fifty billion Turkish Liras (sixty-three billion, six hundred and fifty-two million Turkish Liras)\*

(Amendment: 4964/Article 14) In the cases set forth in paragraphs (b), (c) and (f) the advertisement of the procurements is not mandatory. However, at least three tenderers shall be invited to the tenders to be conducted in accordance with those said paragraphs.

In case of advertising the procurement, the advertisement notice shall indicate that negotiations will be carried out with candidates operating in the field of the subject matter of the procurement and who are accepted as qualified by the contracting entity. In both advertised and unadvertised cases, negotiations shall be carried out only with those who qualify in accordance with the evaluation criteria that are set out by the contracting entity in conformity with Article 10 and specified in the tender documents.

(Annexed : 4964/Article 14) In procurements to be conducted in accordance with the paragraphs (a), (d) and (e), first the tenderers shall submit their initial proposals, which do not include prices, for aspects such as technical details and realization methods of the contract that is the subject of the tender. The tender commission shall consult to and negotiate with each tenderer on the best methods and solutions for the procurement of the needs of the contracting entity. 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), the procurement proceedings shall be concluded after a price negotiation based on the final offers.

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

(Annexed : 4964/Article14) In procurements of goods to be conducted under the scope of paragraph (f), signing of contract and receiving the performance security are not obligatory, provided that the goods are delivered within the time of contract signing and this is approved by the contracting entity.

#### Direct procurement

Article 22- (Amendment: 4964/Article 15) The method of direct procurement may be applied in the following cases, without advertising and without receiving any securities:

- a) when it is established that the needs can be met from only one natural or legal person,

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\* has been published in Official Gazette which is numbered 25215 and dated 31.08.2003 by Communique of Public Procurement Authority, numbered 2003/8 and has covered the period of 15.08.2003-31.01.2004

- b) in case only one single natural or legal person has exclusive rights with regard to the need in question,
- c) procurement of goods and services which are necessarily supplied from the real or legal person who is the initial supplier/ service provider, to ensure compatibility and standardization with existing goods, equipment, technology or services by means of contracts to be arranged based on the principal contract and not exceeding three-year period in total,
- d) procurements not exceeding fifteen billion Turkish Liras (nineteen billion ninety-five million Turkish Liras)\* for needs of contracting entities within the boundaries of metropolitan municipalities and procurements not exceeding five billion Turkish Liras (six billion three hundred and sixty-five million Turkish Liras)\*\* for needs of other contracting entities, and purchases with regard to accommodation, trip and virtualing within the scope of representation expenses.
- e) Purchase or lease of immovable property according to need of the contracting entity.
- f) Procurements of medicines, medical consuming materials, test and control consuming materials which are to be used in urgent cases and are impossible to be stocked for their natures,
- g) Procurements of services from advocates having Turkish or foreign nationality or from advocacy partnerships in order to represent and defend the contracting entities covered in the Law, in suits with regard to disputes which proposed to be settled by international arbitration.
- h) (Annexed: 5020/Article 28) Procurements of services from advocates having Turkish or foreign nationality pursuant to Articles 22 and 36 of Law No 4353.

In procurements pursuant to this article, the needs shall be met upon a market price investigation by a person or persons to be assigned by contracting officer, without necessity of establishing a tender commission and requiring the qualification provisions stated in article 10.

## Design Contests

Article 23- 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.

## SECTION II

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\* has been published in Official Gazette which is numbered 25215 and dated 31.08.2003 by Communiqué of Public Procurement Authority, numbered 2003/8 and has covered the period of 15.08.2003-31.01.2004

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## Advertisement of procurement and prequalification, Issuance of Tender Documents

### Contents of procurement advertisements

Article 24- The advertisement shall not include anything that is not specified in the tender documents. It is mandatory to include the following information in the advertisements:

- a) The name, address, telephone and fax number of the contracting entity,
- b) The name, characteristics, type and quantity of the procurement.
- c) the place of delivery in procurements of goods and the place where the task is to be performed in procurements of services and works, ,
- d) the commencement and completion dates for the subject matter of the procurement.
- e) the procurement procedure to be applied, rules of participation and the required documents and certificates,
- f) The criteria to be used in the qualification evaluation,
- g) Indication of whether the tender is limited only to domestic tenderers, and whether there is a price advantage for domestic tenderers,
- h) the place where the tender documents can be seen, and the price to obtain tender documents,
- i) (Amendment: 4964/Article 16) The place, date and hour of the tender
- j) The address where the tenders are to be submitted until the hour specified for opening the tenders,
- k) The type of tender and contract,
- l) (Amendment: 4964/Article 16) the statement specifying that a tender security should be given in an amount determined by the tenderer, not being less than 3 % of the tender price.
- m) The validity period of the tenders.
- n) (Annexed: 4964/ Article 16) Statement on whether the consortia are allowed to submit tender or not

### Contents of pre-qualification notices/advertisement

Article 25- Advertisements shall not include anything that is not specified in the pre-qualification documents. The following information is mandatory in pre-qualification notices:

- a) the name, characteristics, type and quantity of the procurement,
- b) the place of delivery in procurements of goods and the place where the task the name, address, telephone and fax number of the contracting entity,
- c) is to be performed in procurements of services and works, ,
- d) the commencement and completion dates for the subject matter of the procurement,
- e) the procurement procedure to be applied, rules of participation in pre-qualification and required documents,
- f) the criteria to be used in pre-qualification evaluations,
- g) indication of whether the procurement is limited only to domestic tenderers, and whether there is a price advantage for domestic tenderers,
- h) the place where the pre-qualification documents can be seen, and the price to obtain pre-qualification documents,
- i) the place, date and hour for the submission of the application to pre-qualification
- j) (Annexed :4964/Article 17). Indication of whether the consortia are allowed to submit tender or not

#### Ineligibility of procurement notices

Article 26- Procurement notices that are not in compliance with the provisions set forth in Articles 13, 24, and 25 shall not be valid. In case of such in compliance, the procurement or pre-qualification proceedings cannot be carried out unless the procurement notices are renewed in a way to ensure conformity with these articles.

In case of errors that are not in compliance with the provisions of Article 24 and 25, except for cases of not advertising the tender notices or not conforming to the related time limits specified in article 13, the tender or pre-qualification proceedings may be conducted provided that a correction notice is advertised in order to correct the erroneous matters within ten days following the advertisement of the tender or pre-qualification notices by contracting entities.

#### Contents of pre-qualification and tender documents and administrative specifications

Article 27- 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.

The administrative specifications shall include at least the following information, depending on the subject matter of the procurement:

- a) the name, characteristics, type and quantity of the work, and in case of services the work description,
- b) the name, address, telephone and fax number of the contracting entity,

- c) the procurement procedure, date and hour of the tender and place of tender submission,
- d) instructions to tenderers,
- e) rules of participation for tenderers, the required documents and qualification criteria,
- f) methods for request for clarification of the tender documents and the realization of such request,
- g) the validity period of the tenders,
- h) (Amendment 4964/Article 18) Statement on whether the consortia are allowed to submit tender, whether it is possible to submit tenders for the whole or a portion of the subject matter of the procurement, whether an alternative tender can be proposed in procurement of goods and how those alternative tenders are to be evaluated, if so.
- i) information on whether the transportation fees, insurance costs, taxes, duties and charges are to be included in the tender price,
- j) the procedures and principles set forth in this Law and which shall be applied during the receiving, opening and evaluation of the tenders,
- k) the procedures and principles set forth in this Law, which are required to be applied from beginning with the decision of procurement until signing of the contract,
- l) an indication of whether the procurement is limited to domestic tenderers only and whether there is a price advantage for domestic tenderers,
- m) type of tender and contract,
- n) the amount and terms of tender security and performance bond,
- o) (Amendment 4964/Article 18) a statement that the contracting entity is free to cancel the tendering proceedings before the hour pre-determined (deadline) for opening of tenders,
- p) a statement that the contracting entity is free to reject all the tenders and cancel the procurement proceedings,
- r) the commencement and completion dates for the subject matter of the tender, the place it will be carried out, the terms of delivery and the penalties to be paid in case of delays,



- s) the place and terms of payment; whether an advance payment is to be made or not, and if so, the amount and terms of such payment; the method of payment for price differences, if any, for subject matter of the contract
- t) (Amendment: 4964/Article 18) circumstances and conditions for time extension, mutual obligations in case of work increases possible within the scope of contract and of work decreases
- u) the parties who are responsible for paying the taxes, duties, charges and other expenses relating to the contract,
- v) terms relating to insurance of the work and the workplace, construction liability and supervision,
- y) conditions relating to supervision, inspection and acceptance,
- z) procedure of dispute settlement.

#### Providing of tender and pre-qualification documents

Article 28- (Amendment: 4964/Article 19) The tender and pre-qualification documents can be seen at the place of contracting entity, free of charge. However, it is compulsory this document 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.

#### Clarifications or amendments to the tender documents

Article 29- In principle, no amendment should be made in the tender documents after the advertisement of the procurement notices. If an amendment is deemed as necessary, the necessities and reasons thereof shall be certified with a minute, and the previous notices shall be deemed invalid, and the procurement notice shall be advertised again, likewise..

However, after the advertisement of tender notices, if material or technical errors or deficiencies that may affect the preparation of tenders or realization of the work are detected by the contracting entity or notified by the tenderers with a written notice, the tender documents can be amended. 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 ten days prior to the deadline for submission of tenders. In case an extension of the time period is needed in order to prepare the tenders due to the amendments

made with addendum, the date of tendering may be postponed for maximum twenty days, but for once only. In case of an addendum, the tenderers who have already submitted their tenders prior to such arrangement shall be allowed to withdraw their tenders and submit new tender.

Moreover, the tenderers may request clarifications relating to aspects in the tender documents, which they may need when preparing their offers, in writing until twenty days in advance of the deadline for submission of tenders. In case such request is found appropriate by the contracting entity, the required clarifications and explanations shall be provided in writing, in a way to ensure that all the tenderers who are already provided with the tender documents until that date are informed of such clarifications ten days in advance of the deadline for submission of tenders, without disclosing the tenderer making the request.

### SECTION III

#### Submission of Tenders and Applications

##### Preparation and submission of tenders

Article 30- All documents and certificates required under the rules of participation in the procurement including the tender letter and the tender security shall be placed in an envelope. The name, surname or commercial title and notification address of the tenderer, the subject of the procurement and the full notification address of the contracting entity carrying out the procurement proceedings shall be written on the envelope. The seal of the envelope shall be signed and stamped by the tenderer.

The tender letter shall be submitted in writing and signed. It is mandatory to indicate in the tender letter that the tender documents are fully read and accepted; the offered price is written clearly, both in writing and in figures as consistent with each other; there are no scrapings, erasures, or corrections and the tender must be signed by the authorized persons stating name, surname or commercial title. In procurement of goods, if a provision on submission of alternative tenders exists in the procurement document, then the alternative tender shall be prepared and submitted accordingly.

The tenders shall be submitted to the contracting entity no later than the date and hour specified in the tender documents, in return of a receipt indicating the queue number. The tenders submitted after the hour specified as deadline shall not be accepted and shall be returned unopened. The tenders may also be sent via registered mail. The tenders sent by mail must be received by the contracting entity until the hour specified as deadline in the tender documents. The date and hour of the receipt of the tenders that will not be included in the procurement proceedings due to postal delays shall be recorded in writing.

The submitted tenders cannot be withdrawn or changed for any reason whatsoever, except in case of an addendum arrangement.

##### Submission of applications

Article 31- All documents required for participating in pre-qualification shall be submitted to the contracting entity in accordance with the relevant principles and procedures set forth under the first and third paragraphs of Article 30.

#### Validity period of tenders

Article 32- The validity periods for tenders shall be specified in the tender documents. In case contracting entity requires, this period may be extended maximum as long as the validity period of the tender specified in the tender document with the consent of the tenderer, provided that no amendments are made in the conditions of tender and contract.

#### Tender security

Article 33- (Amendment: 4964/Article 20) In procurements, a tender security shall be given in amount determined by the tenderer, not being less than 3 % of the tender price. In consultancy services, it is not compulsory to require tender security provided that it is stated in tender documents.

#### Values Accepted as tender security

Article 34- The values accepted as tender security are as follows:

- a) The current Turkish Lira,
- b) (Amendment: 4964/Article 21) Letters of guarantee from banks and special financing institutions
- c) Domestic Borrowing Bills issued by the Undersecretariat of Treasury and documents arranged for replacing these bills,

(Amendment: 4964/Article 21) The letters of guarantee that may be arranged by foreign banks permitted to operate in Turkey in accordance with the related legislation, and the letters of guarantee that may be arranged by banks or special financing institutions operating in Turkey upon the counter-guarantees given by banks or similar creditors operating abroad shall also be accepted as tender security.

With regard to bills and documents replacing these bills mentioned in paragraph (c), the bonds issued with a nominal value including interest shall be accepted as tender security on the sales value corresponding to the capital.

Securities other than letters of guarantee cannot be received by tender commissions. Such securities must be deposited to accounting offices or departments.

The letters of guarantee belonging to successful tenderer who is awarded the contract and to the tenderer submitting the second economically most advantageous offer shall be submitted to accounting offices or departments following the procurement proceedings. The tender securities of other participants shall be promptly returned. In case a contract is signed with the successful tenderer, the guarantee belonging to the

tenderer who has submitted the second economically most advantageous offer shall be returned immediately after the signing of the contract.

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.

#### Guarantee Letters<sup>1</sup>

Article 35- (Amendment: 4964/Article 22) Public Procurement Authority is authorized to determine the form and scope of guarantee letters pursuant to Law ,.

The period shall be stated in preliminary letters of guarantee provided that it shall be at least 30 days more than the validity periods set for tenders in accordance with Article 32. In case of extension of the validity period of the tender, the period of preliminary letters of guarantee shall be extended accordingly. Validity of performance bonds shall be determined by the contracting entity by taking into account the termination date of the procured task.

Letters of guarantee violating the relevant legislation shall not be accepted.

#### SECTION IV

##### Evaluation of Tenders

##### Receiving and opening of tenders

Article 36- (Amendment: 4964/Article 23) The tenders shall be submitted to the contracting entity until the time stated for submission of tenders in the tender documents. The number of tenders submitted at the hour of the tender shall be recorded in the minutes by tender commission and announced to those who are present, and then the tender proceedings shall be immediately commenced. The tender commission shall examine the tender envelopes in the order of submission. Envelopes that are not in compliance with paragraph 1 of Article 30 shall be recorded in the minutes and shall not be included in the evaluation stage. The envelopes shall be opened in the presence of tenderers and those who are present, in the order of submission.

It shall be 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. Tenderers with incomplete documents or improper tender letters and tender securities shall be recorded in the minutes. The tenderers and their tender prices shall be announced. The minutes relating to these proceedings shall be signed by the tender commission. At this stage, no decision shall be made with regard to rejection or acceptance of any of the tenders, the documents consisting of the tender cannot be corrected or completed. The session shall be closed for immediate evaluation of the tenders by the tender commission.

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<sup>1</sup>The statement of "Bank" has been omitted from the title with 22nd article of Law no 4964

## Evaluation of tenders

Article 37- 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, in order to use in the examination, evaluation and comparison of tenders. However, this clarification shall not be required and made with the intention of making change in the tender price, or converting any ineligible tender according the conditions in the tender documents to an eligible one.

In evaluating the tenders, first of all, the tenders of the tenderers whose documents are established to be incomplete or whose tenders or tender securities are established to be not in compliance with the requirements as a result of the first session in accordance with Article 36 shall be excluded from the evaluation proceedings. However, in case of omission of documents or omission of unimportant information in the documents provided that absence of those do not alter the substance of the tender; the contracting entity shall request the tenderer in writing to furnish these missing documents or information in a given time period. The tenderers who can not furnish these missing documents in a given time shall be excluded from the evaluation. Following this pre-evaluation and proceedings, the tender of tenderers with complete and appropriate documents and appropriate tender letters and preliminary guarantees shall be held subject to a detailed evaluation. At this stage, the tenders shall be examined for their conformity with the qualification criteria determining the capacity of the tenderers to perform the contract, which is the subject of the tender proceeding, as well as with the conditions set forth in the tender documents. The tenders of tenderers that are found ineligible shall be disqualified.

At the final stage, the price charts annexed to the tender letter shall be checked if any arithmetic errors exist. In case of any arithmetic errors in the multiplications or additions in the annexed chart of the tender letter demonstrating the offered prices these arithmetic errors shall be corrected by the tender commission ex officio, on the basis of the unit prices offered by the tenderers. The corrected tender price shall be accepted as the actual offer of the tenderer and the tenderer shall be promptly notified in writing of such an event. The tenderer must notify in writing whether he accepts or not the corrected tender within five days following the notification date. In case the tenderer does not accept the corrected tender or fails to respond within this period, the tender in question shall be disqualified and the tender security shall be registered as revenue.

## Abnormally low tenders

Article 38- The tender commission shall evaluate the tenders in accordance with Article 37 and shall determine those that are abnormally low compared to the other tenders or the estimated cost determined by the contracting entity. Before rejecting these tenders, the commission shall request from the tenderers, the details relating to components of the tender that are determined to be significant, in writing and within a specified period.

The tender commission shall evaluate the abnormally low tenders taking into consideration the written explanations documented on the following aspects;

- a) economic nature of the manufacturing process, the service provided and the method of works,
- b) selected technical solutions and advantageous conditions to be utilized by the tenderer in supply of the goods and services or fulfillment of the works.
- c) the originality of the goods, services or works proposed.

As a result of this evaluation, the tenders of the tenderers whose written explanations are found insufficient or who fail to make a written explanation shall be rejected.

Rejection of all tenders and cancellation of the tender proceedings

Article 39- (Amendment: 4964/Article 24) Upon decision of the tender commission, the contracting entity is free to reject all tenders and cancel the tender proceedings. In case the tender proceedings are cancelled, this event shall be notified promptly to all the tenderers. The contracting entity shall incur no liability for rejecting all the tenders. However, in case requested by the tenderers, the contracting entity shall notify of the reasons for the cancellation of the tender proceedings the tenderers who request.

Conclusion and Approval of the Tender Proceedings

Article 40- Following the evaluation performed in accordance with Article 37 and 38, the tenderer with the economically most advantageous tender shall be awarded with the contract.

In cases where it is not possible to determine the economically most advantageous tender on the basis of the lowest price only, the economically most advantageous tender shall be determined by taking into account the factors other than price such as operation and maintenance costs, cost-effectiveness, productivity, quality and technical merit. In tender proceedings where the economically most advantageous tenders shall be determined by taking into account the other factors in addition to the price, these factors must be stated in the tender documents and where possible, must be expressed in monetary values. Relative weights shall be determined in tender documents for the factors which cannot be expressed in monetary values.

In tender proceedings where it is stated in the tender documents that there is a price advantage for domestic tenderers in accordance with Article 63 of this Law, the tender proceedings shall be concluded by also taking into account the price advantage to determine the economically most advantageous tender.

In tender proceedings where the lowest price offer is evaluated as the economically most advantageous tender, in case there are more than one offers with the same tender prices and these are established to be the economically most advantageous tender, the tender proceedings shall be concluded by determining the economically most advantageous tender taking into account the factors other than price as stated in the second paragraph.

The tender commission shall make its justified decision, specifying the grounds thereof, and submit the decision for the approval of the contracting officer. The

decisions shall include the names or commercial titles of the tenderers, the offered prices, the tender date and the award of contract and grounds thereof, and in case the tender was not realized, the related reasons thereof.

(Amendment: 4964/Article 25) Within maximum five days following the date of the decision, the contracting officer shall approve or cancel the tender decision, indicating clearly the grounds for cancellation.

The tender shall be deemed valid if the decision is approved, and null if it is cancelled.

Prior to approval of the tender decision by the contracting officer, the contracting entity must confirm whether the successful tenderer is prohibited from participation in tenders pursuant to Article 58, by asking for the confirmation as specified under Article 58, and must attach the related document to the tender decision.

#### Notification of finalised tender decisions

Article 41 - (Amendment: 4964/Article 26) The tender decisions approved by the contracting officer shall be acknowledged to all tenderers who have submitted an offer, including the tenderer awarded, in return of signature or by means of registered mail sent to the notification addresses of all tenderers within maximum three days following the day of approval. The seventh day following the mailing of the letter shall be deemed as notification date of the decision to the tenderers.

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 five days following the notification date; the contracting entity must notify the tenderer in writing of the reasons for rejection within five 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.

#### Invitation to contract signing

Article 42 - (Amendment: 4964/Article 27) Within three days following the end of time limits specified in the second paragraph of Article 41 or in cases necessitating the visa of Ministry of Finance, in three days following the notification on realisation of this visa, an announcement shall be made to the successful tenderer, in return of signature or by registered mail to his notification address, to sign the contract by issuing a performance bond within ten days following the date of notification. The seventh day following the mailing day of the letter shall be deemed as notification date of the decision to the tenderer. In case of foreign tenderers, twelve days shall be added to this time period.

In the procurements related to consultancy services where no performance bond is required before the contract according to the provision of Article 43, invitation to sign the contract shall be issued in accordance with the provisions of first paragraph without asking for any performance bond.

#### Performance bond

Article 43 - In order to ensure that the commitment is carried out in accordance with the provisions of the contract and tender documents, a performance bond calculated as 6 % of the contract value shall be taken from the successful tenderer prior to the signing of the contract.

However, in case of procurements related to consultancy services, provided that it is specified in the tender documents, the performance bond may not be taken before signing of the contract. In such a case, a deduction of 6 % from each progress payment shall be retained as guarantee.

The obligations and liabilities of the tenderer in signing of the contract

Article 44 - The successful tenderer is obliged to sign the contract after submitting the performance bond according to Article 42 and 43. The tender security shall be returned immediately after the signing of the contract.

In case these obligations are not fulfilled, the tender security of the successful tenderer shall be registered as revenue without taking any further legal action. In such a case, the contracting entity may sign a contract with the tenderer submitting the second economically most advantageous tender in accordance with the principles and procedures set forth in this Law provided that the said tender's price is found as appropriate by the contracting officer. However, in order to sign a contract with the tenderer submitting the second economically most advantageous tender, the tenderer in question shall be notified as stipulated in Article 42, within three days following the termination of the ten-day period specified in Article 42.

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

The obligations and liabilities of the contracting entity in signing of the contract

Article 45 - The contracting entity is obliged to carry out its duties regarding the conclusion of the contract within the period set forth in Article 42 and 44. In case the contracting entity fails to fulfil this obligation, the tenderer may renounce his commitments within maximum five days following the end of the period, on condition that he makes an announcement through a notary-public approved notification with a period of ten days. In this case, the tender security is returned and the tenderer gains the right to demand the recorded expenses he has incurred in the issuing of the guarantee. Those who have caused this loss shall compensate for it and shall be subject to the provisions of Article 60.

Signing of the contract

Article 46 - (Amendment: 4964/Article 28) All tenders that are carried out shall be concluded with a contract. The contracts shall be prepared by the contracting entity and signed by the contracting officer and the contractor. In case contractor is a joint venture, the contracts shall be signed by all the partners of the joint venture. It is not mandatory the contracts be registered and notarized by public notary, unless otherwise stated in tender documents.



Contracts shall not be contrary to the specifications set out in the tender documents.

Notification of the result of the tender

Article 47 - (Amendment:4964/Article 29) The tender results of tenders whose contract value exceeds one trillion Turkish Liras (one trillion two hundred and seventy-three billion fifty million Turkish Liras)\* for procurement of goods or services and two trillion Turkish Liras (two trillion five hundred and forty-six billion hundred million Turkish Liras)\* for works, shall be published in the Official Gazette within maximum fifteen days following the date which the registration of the contract by Court of Accounts is notified to the contracting entity and in cases where such a registration is not necessary, the date of contract signing by the parties.

The contracting entities may also announce the results of the tender depending on the significance and characteristics of the work which is the subject of the tender via other newspapers or broadcasting instruments published in the country or abroad, or via, data processing networks or through electronic communication (internet).

The announcements shall include the following information:

- a) contracting entity who conducted the tender,
- b) date of the tender,
- c) procedure of the tender,
- d) name, characteristics, type, amount and place of the work that is the subject of the tender,
- e) number of tenderers participated in tender,
- f) name or commercial title of the awarded tenderer,
- g) contract price,
- h) the source from which the contract price to be paid and the amount of the source,
- i) the commencement and termination dates of the work.

## SECTION FIVE

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\* has been published in Official Gazette which is numbered 25000 and dated 21.01.2003 by Communique of Public Procurement Authority, numbered 2003/1 and has covered the period of 01.02.2003-31.01.2004

## Special Provisions on Procurement of Consulting Services

### Consulting services

Article 48 - (Amendment: 4964/Article 30) Consulting services in technical, financial, legal or similar fields which are comprehensive and complex in nature and which require special expertise and experience, such as preparation of Environmental Impact Assessment Reports, plan, software developing, design, preparation of technical specifications or supervision can be procured from consultancy service providers.

The consulting services tenders are carried out in accordance with the provisions of this Law. However, the special provisions set forth in this section shall apply in selection and evaluation of the candidates and tenderers. Subject to the provisions contained in this section, only the restricted procedure shall be applied to tenders regarding consultancy services.

### Pre-qualification and Determination of Tenderers

Article 49 - The pre-qualification announcements shall be made within the period and principles specified in Article 13.

The pre-qualification notices announced in accordance with the provisions of this Law shall include information relating to the pre-qualification criteria to be used in the evaluation of the general competency, financial capacity and technical skills of the candidates. These notices shall also include the number or range of number of candidates to be invited for inclusion in the short list and for submitting tenders.

The candidates who apply for pre-qualification shall be evaluated in accordance with the pre-qualification criteria set forth in the tender documents and in the pre-qualification notice, and then a short list shall be prepared, which includes minimum three and maximum ten candidates selected among those that qualify in the pre-qualification evaluations carried out.

### Invitation to tender

Article 50 - (Amendment: 4964/Article 31) The candidates who have been included in the short list prepared according to Article 49 above, shall be given a period which is not less than the periods stated in article 13 in order for those candidates to prepare their technical and financial proposals, and a letter of invitation to tender shall be sent along with the tender documents. Those who are not found to be qualified as a result of the pre-qualification evaluation and candidates who are not included in the short list shall be notified in writing. In case the number of tenderers who are eligible to be invited to the tender is less than three, the invitations shall not be sent and the tender shall not be conducted.

When preparing their tenders, the tenderers can make a request for written explanations until twenty days prior to the final submission date of tenders, on matters,

which need explanation in the tender documents. In case an explanation is made by the contracting entity, this explanation shall be sent in writing to all the tenderers in the short list, so that they are informed ten days prior to the final submission date of tenders.

In case the contracting entity notices or the tenderers notify in writing that material or technical mistakes or discrepancies exist that may affect the preparation of the tenders or the realisation of the assignment after the invitation letter is sent, some amendments can be made in the tender documents. An addendum containing those amendments which are binding part of the tender documents, shall be sent to all tenderers who are included in the short list to ensure that they are informed at least ten days prior to the final submission date of the tender. In case additional time is needed to prepare the tenders due to the amendments made with the addendum, the date of the tender can be postponed for a maximum of twenty days, for once only. In circumstances where an addendum is arranged, tenderers who have submitted their tenders prior to the arrangement shall be allowed to withdraw their tenders and submit new ones.

#### Preparation and submission of tenders

Article 51 - The letter of tender containing the price offered for the consultancy services and tender security shall constitute the financial offer of the tenderer. These shall be put in an envelope with the statement indicating that it is the financial offer. The letters of tender must comply with the conditions set forth in Article 30.

All other documents required for the technical evaluation shall constitute the technical proposal of the tenderer. This proposal shall be placed in a separate envelope marked as technical proposal.

Both envelopes shall indicate the name, surname or commercial title and notification address of the tenderer and the assignment, which is the subject of the tender. The seal of the envelopes shall be signed and stamped by the tenderer.

The envelopes containing the financial and technical proposals shall be submitted by placing both of them in another separate envelope or package and writing on it the name, surname or commercial title, open notification address of the tenderer, the assignment which the tender is related to, and the open address of the contracting entity.

#### Evaluation and conclusion of tenders

Article 52 - The tender commission shall take the minutes indicating the number of tenders submitted at the hour of the tender, shall announce this number to those who are present and promptly start the tender opening. The tender commission shall examine the tender envelopes in receiving order. Envelopes, which do not comply with the first paragraph of Article 30 shall be recorded in the minutes and shall be excluded from the evaluation process. Envelopes containing the technical proposals shall be opened in receiving order in the presence of the tenderers and those who are present, a control shall be made to ensure that all of the required documents are submitted and the situation shall be recorded in the minutes. The envelopes containing the financial

proposals shall be recorded in the minutes without being opened, packed all together, sealed, and signed by the tender commission to be held in protection. No decision can be made at this stage as regards the rejection or acceptance of any tender. The documents in the tenders cannot be changed; no corrections or completion can be made. The session shall be closed for the tender commission to evaluate the tenders immediately.

The submitted tenders cannot be withdrawn or changed for any reason whatsoever, except the case of an addendum arrangement.

The tenders submitted for consultancy services shall be evaluated in two stages, namely technical and financial evaluation. The technical proposal shall be evaluated at the first stage and the financial proposal at the second stage by scoring individually at each stage. The overall score shall be calculated taking into account the weighted coefficients determined for the technical and financial points. The weighted coefficients of technical and financial points may be established in different ratios depending on the characteristics and the authenticity of the service, provided that the weighted coefficient of the technical point is higher.

In these tenders, the technical evaluation criteria shall be set in accordance with the criteria specified under Article 10. In the designation of these criteria, which are specified in the tender documents and in the invitation to tender, the experience in fulfilling contracts of similar characteristics and scale, the method proposed for the job, the organisational structure, the educational and professional qualifications of the executives and the technical staff to be assigned for the execution of the job shall be taken as a basis.

In the evaluation of the tenders submitted for consultancy services, firstly an examination is made to ensure that all documents of the tenderers pertaining to the technical evaluation comply with the conditions required in the tender documents. Tenders, which have missing documents, or which do not comply with the required conditions shall be disqualified. However, in case of omission of documents or omission of unimportant information in the documents provided that absence of which do not alter the substance of the tender; the contracting entity shall request the tenderer in writing to furnish these missing document or information in a given time period. The tenderer who can not furnish these missing documents within given time period shall be excluded from the evaluation.

The tender commission shall make a technical evaluation according to the technical evaluation criteria and points specified in the tender documents and in the invitation letter and shall determine the technical points of the tenderers. Tenders, which have got points below the minimum technical points specified in the tender documents, shall be excluded from the evaluation.

Tenderers with missing documents or who do not comply with the required conditions or who have gotten a technical point below the minimum required technical point, shall be notified in writing that their tenders have been excluded from the evaluation and that their financial proposals shall be returned unopened by hand, to themselves or to their proxies at the date and hour of the opening of the financial proposals. At the same date, tenderers whose technical proposals exceed the minimum technical points

set out in the tender documents shall also be notified in writing of the date and hour when the financial proposals shall be opened.

At the date and hour notified by the tender commission; first of all, the results of technical evaluation and the technical points shall be announced to those who are present. The envelopes containing financial proposals, which have been collectively kept under protection by the tender commission, shall be opened. The financial proposal envelopes of the tenderers, whose tenders have been disqualified, shall be returned unopened by hand to themselves personally or to their proxies, and these tenderers shall be made leave the room. After that, the financial proposals of tenderers who achieve the minimum technical point or get higher shall be opened and the prices shall be read out and recorded in the minutes. The envelopes of the financial proposals, which could not be returned unopened by hand, shall be mailed immediately after the conclusion of the tender proceeding.

Tenderers who fail to submit the tender letter and tender security in their financial proposals or whose tenders are not in conformity with the procedures shall be disqualified from the evaluation and be recorded in the minutes. The financial points of the tenderers with eligible financial proposals and tender securities shall be determined.

The technical and financial points belonging to these tenderers shall be multiplied by the weighted coefficients specified in the tender documents and thus the total points shall be determined. The tenderer scoring the highest total point shall be invited to negotiate the job description, contractual terms, personnel and financial proposal. However, this meeting shall not cause any significant change in the terms and conditions set out in the tender documents. In case the parties clarify the contractual terms and come to an agreement after the meeting, the tenderer in question shall be awarded the contract.

The decision taken by the tender commission shall be submitted to approval of the contracting officer.

In case the tenderer awarded with the contract fails to fulfil his liability to sign the contract, despite of the agreement reached in the meeting, then the tender security shall be registered as revenue by the contracting entity. In this case, a contract shall be signed with the tenderer scoring the second highest total point by negotiating in accordance with the principles and procedures set forth in this Law, provided that the tender price is approved to be appropriate by the contracting officer. If the second tenderer does not realise the signing obligation, its tender security shall be recorded as revenue by the contracting entity.

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

## CHAPTER THREE

Public Procurement Authority Review of Complaints and Settlement of Disputes

### SECTION ONE

Public Procurement Authority

Public Procurement Authority

Article 53- a) In order to carry out the duties assigned with this Law, a Public Procurement Authority with public legal entity, which is administratively and financially autonomous, has been established. Public Procurement Authority is assigned and authorized for the accurate implementation of the principles, procedures and proceedings specified in this Law.

The Authority is related to the Ministry of Finance. The centre of the Authority is in Ankara.

The Authority shall be independent in fulfillment of its duties. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority.

The Public Procurement Authority shall comprise of the Public Procurement Board, Presidency, and the service units.

b) The duties and authorities of the Public Procurement Authority with respect to the tender procedures carried out in accordance with this Law are as follows:

1) to evaluate and conclude any complaints claiming that the proceedings carried out by the contracting entity within the period from the commencement of the tender proceedings until the signing of the contract are in violation of this Law and the related legislative provisions,

2) to prepare, develop and guide the implementation of all the legislation concerning this law and Public Procurement Contracts Law and the standard tender documents and contracts,

3) to provide training on procurement legislation, to provide national and international coordination,

4) to gather information relating to the contracts and tender proceedings carried out as specified by the Authority, to compile and publish statistics relating to quantity, price and other issues,

5) to keep the records of those who are prohibited from participating in tenders,

6) to carry out research and development activities,

7) to regulate the principles and procedures with regard to tender notices, to publish Public Procurement Bulletin in printed or electronic media.

8) In cases where it is established that domestic tenderers are prevented due to unfair reasons from participating in tender proceedings taking place in foreign countries, to take relevant measures in order to ensure that the tenderers of those countries are prevented from participating in the tenders held under the scope of this

Law, and to furnish proposals to the Council of Ministers in order to ensure that the necessary arrangements are made,

9) to prepare the annual budget, the final account and the annual activity reports of the Authority, to ensure the implementation of the Authority's budget, the collection of the revenues and the incurrence of the expenses.

The Authority may, if deemed necessary, review and bring to conclusion any claims of violation of this Law and the related legislative provisions.

The Authority may request documents, information and comments from all private and official institutions, establishments or persons, when fulfilling its duties. The requested documents, information or comments must be provided within the given time limits.

The Authority shall be authorized to issue the standard tender documents, form contracts, regulations and communications relating to the implementation of this Law and Public Procurement Contracts Law, subject to Board resolution. The Board and the Authority shall employ their authorities by establishing regulative transactions and taking specific decisions. Standard tender documents, form contracts, regulations and communications shall be put into force through publication in the Official Gazette.

c) The decision organ of the Authority shall be the Public Procurement Board, consisting of ten members including one chairperson, and one secondary chairperson. The members of the Board shall be appointed by the Council of Ministers as follows: 2 candidates proposed by the Ministry of Finance, 3 candidates proposed by the Ministry of Public Works and Settlement, and one each candidate proposed by the Presidency of Court of Accounts, Council of State and the Ministry in charge of Undersecretariat of Treasury, and one each candidate proposed among professional groups relating to public procurements by Turkish Union of Chambers and Stock Markets (TOBB) and Turkish Employers Union Confederation (TISK). The Council of Ministers shall appoint one of the members as the Chairperson. The Chairperson of the Board shall also be the President of the Authority. One of the members shall be selected by the Board as the Secondary Chairperson.

The members of the Board shall be graduates of Faculties of Law, Economics, Political Sciences, Business Administration, Economics and Administrative Sciences, Architecture and Engineering, or from the foreign higher education institutions whose equivalence to the above mentioned Faculties are recognized by the authorized bodies. The persons to be proposed for Board memberships must: have no less than twelve years of assignment fulfilled in the public institutions and entities (candidates proposed by TOBB and TISK are not obliged to be employed in the entities); have recognized qualifications and experience with regard to national and international procurement legislations as a result of an active work experience of at least four years in judging, reviewing, supervising, implementing or advising with regard to public procurement legislation; and have no past or present relationship of membership or task, including candidateship, with any political parties. The candidates proposed by TOBB and TISK must fulfill all conditions stipulated under subparagraphs 1, 4, 5, 6 and 7 of paragraph (A) of Article 48 of Civil Servants Act No: 657;

(Amendment 4761/Article 15) The duty period of the Board members is five years. A member can not be elected more than once. Board members can not be discharged before the duty period is over. However, if members become incapable due to the physical disabilities or illness or those the conditions related to their assignment, they are deposed from their duties before the due date. In case of sentenced with misconduct or defamatory offence, they are deposed from their duties by the approval of Prime Minister. Board memberships, which become vacant due to deposition or any reason before the due date, are filled with appointments that are in agreement with the above-mentioned procedures within one month. The member appointed under these circumstances, completes the duty period of the member whom he/she is assigned in lieu of.

The general management and representation of the Authority and the execution of the decisions taken by the Board shall be the liability of the president. In case of leave of work due to permission, illness, domestic or abroad appointment or relieve of duty of the president, the second chairperson shall act as the proxy of the president.

d) The Board members shall take an oath in witness of the First Bureau of Assembly of the High Court of Appeal that they will fulfil their duties in an honest and impartial manner that they will not violate and let others violate the provisions of this Law and the related legislation throughout their memberships. Any application for such oath shall be deemed among priority issues by the High Court of Appeal. The Board members cannot start working unless they take their oaths.

e) The members of the Board, unless based on a specific Law, can not be involved in any official or private jobs, trade or freelance activities, can not participate in conferences or instruct courses in return of payment, and can not be a shareholder or manager in any kind of partnerships based on commercial purposes. The members of the Board are obliged to dispose off any stocks or securities they have acquired prior to starting their offices, belonging to legal entities carrying out activities in the market or their subsidiaries, via transferring or selling off to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their assignment periods, except for those securities issued by the Undersecretariat of Treasury for domestic borrowing purposes. The members who do not act in compliance with this provision shall be deemed resigned from their memberships.

When executing their duties, the Board members and the staff of the Authority cannot disclose any confidential information or document concerning the related officials or third parties to any entity except for those authorized by law for such disclosures, and cannot use them for the benefit of their own or third parties. This liability of confidentiality shall also continue after they leave their offices. Board members and Authority staff shall be treated as Civil Servants for crimes they commit or crimes committed against them due to their offices, and in case of such crimes, the provisions of Act No: 4483 concerning Judgment of Civil Servants or Other Public Officers shall apply. The permission for legal investigations shall be issued by the relevant Minister for Chairman and Board members and by the President of the Authority for the staff of the Authority.



f) The Board members are obliged to submit a declaration of property, within one month following the date of commencement and expiry of office, and every year during their office period.

g) The Board shall meet upon the call of the chairperson or, in case of his/her absence, the second chairperson, with no absentees, and shall take decisions by rule of majority. In case of equal votes, the party supported by the Chairperson shall be accepted as constituting the majority. There can be no abstentions while taking decisions. The board members shall be responsible for their votes and decisions. In cases of permit-leaves, sick-leaves, assignments or failure to make new appointments to the offices that become vacant, seven members at least are necessary for convening.

The Board members cannot participate in meetings and voting sessions related to decisions concerning their relatives by blood up to third degree or by marriage up to second degree and fosters.

The members who fail to participate in five meetings within a calendar year for reasons other than stated in this Law shall be deemed to have resigned from membership.

h) Three deputies may be appointed by resolution of the Board, in order to assist the President in his/her duties. The deputies of the president shall be appointed among those who comply with the same terms of appointment as the Board members or those who have been working at the Authority as professional staff for at least ten years consecutively with no interruptions, after graduating from a Faculty of Law, Economics, Political Sciences, Business Administration, Economics and Administrative Sciences, Architecture and Engineering or from higher education institutions abroad whose equivalences to those are recognized by authorized bodies.

The service units of the Authority; shall consist of main service units, consultancy units and auxiliary service units, organized in adequate number of departments as required in line with the duties and authorities of the Authority.

The fundamental and permanent duties required for the services of the Authority shall be executed by the professional staff consisting of the Public Procurement Experts and Assistant Experts, together with the other staff. All of these personnel shall be employed under a service contract.

(Amendment 4761/Article 15) Those who will be appointed as Public Procurement Expert Assistants must know well at least one of the foreign languages specified in the regulation, must be graduated from a four-year undergraduate program of Faculties of Law, Economics, Political Sciences, Business Administration, Economics and Administrative Sciences, Architecture and Engineering or from foreign higher education institutions whose equivalences to those are recognized by the authorized bodies, must be successful in the special contending examination specified in the regulation, and must be under thirty years old on the first day of January of the year of such examination. Among those who have been appointed as Public Procurement Expert Assistants, the ones who have fulfilled at least three years of actual work period, received positive records every year, and proven that they can perform the

duty of Public Procurement Expert within the framework of the principles and criteria set forth in the regulation such as performance during work and during the participated training activities shall be entitled to enter the proficiency examinations for Public Procurement Experts. Those who are successful in the proficiency exam shall be appointed as Public Procurement Experts, whereas those who fail to acquire the right to enter the proficiency exams and those who fail in this exam shall be assigned to another post within the Authority according to their status. The provisions relating to appointment, proficiency exams, duties, authorities and liabilities, working principles and procedures of Public Procurement Experts shall be specified with the regulation, which will be put into force with the decision of the Board.

The service units of the Authority, their duties and responsibilities, the procedures and principles relating to appointment and working of the personnel, and the titles, number and qualifications of the personnel that will be recruited under a service contract shall be regulated with the regulations issued by the Council of Ministers upon the proposal of the Authority and in line with the comments of the Ministry of Finance.

The staff of the Authority shall be subject to the Civil Servants Act No: 657, provided that the provisions envisaged in this Law are reserved.

i) The monthly salaries of the Chairperson and the members of the Board shall be designated by the Council of Ministers upon the proposal of the Ministry of Finance.

The salaries and other financial and social rights of the Authority staff shall be determined by the Board, within the framework of the principles, procedures and amounts specified by the Council of Ministers upon the proposal of the Board and in line with the opinions of the Ministry of Finance.

The provisions of the Law of Retirement Fund of Republic of Turkey, No 5434, shall apply for those who are appointed as Board members and for the Authority staff. With regard to retirement; President of the Board shall be applied to the representation compensation, office compensation, additional coefficient and other financial provisions of those designated for Undersecretary of the Ministry, the Board members shall be applied to those of Ministry Deputy Undersecretaries, the Deputies of the President of the Authority shall be applied to those of the Director Generals of Ministry, and the Heads of Departments of the Authority shall be applied to those of Deputy Director Generals of Ministry. The periods spent under these offices shall be deemed spent under offices requiring the payment of executive compensation and higher authority compensation.

In case those who are appointed as Board Chairperson or member are included within a scheme of any other social security institution established by law prior to their appointments, they shall remain within these schemes, if they desire, and shall not be subject to the provisions specified above.

(Amendment 4761/Article 15) During the duty period, the persons who are appointed as a Board chairman or as members are discharged from the past duties. However, for the persons who are appointed for the membership while they are charged with the public duties, in the event that their duties are ended for any reason apart from losing the conditions to enter civil-service positions, or they request to leave the job or in

case of completing their duty periods, they are appointed for the suitable positions by the related ministry or officials who have the authority to appoint providing that they apply for their previous institutions within thirty days. During the said appointment procedure, if the period of time that the Board Chairman and members spent in the Authority are in the official or ruler category, the duties required payment of supreme arbitral indemnity are considered as passed (past) for the persons who are appointed after the Board Chairman and members start to earn supreme arbitral indemnity. In case the persons who have been charged in the Authority request to leave the job, they are appointed to suitable positions to gain benefit from their duties by the authorized officials in accordance with the Law provisions to which they were previously subjected. Those provisions are also applied to the personnel who come from the universities, provided that the provisions about acquiring academic titles are legally guaranteed.

(Annexed:4761/Article 15)The personnel who work on the issues related to Authority's field of duty in general and annexed budget administrations and state economic enterprises can be assigned in the Authority by the consent of their institutions, while the judges and attorneys can be assigned in the Authority by their own consent. Those personnel are regarded as on leave without pay and their salaries, allocations, any kind of increments and indemnities and other financial and social benefits and aids are determined through the agreement signed between the Authority and the related personnel. During their vacation period, the employee rights of their civil services continue and these periods are taken into account at the time of their promotion and retirement, also they are promoted on due date without requiring any other procedure. The university personnel can be assigned for the suitable positions in the Authority regarding their professions in accordance with the article no 38 of Law of Higher Education, no 2547, date: 4.11.1981. The number of personnel who will be assigned in this frame can not exceed 10 % of the total staff number.

j) The revenues of the Authority are as follows:

1) (Amendment:4964/Article 32) , Five of the per ten thousand of the contract price to be collected from the contractor for the contracts whose prices exceeding one hundred billion Turkish Liras (one hundred and twenty-seven billion, three hundred and four million Turkish Liras)\*, to be signed in the scope of this Law. (At the stage of contract signing, contracting entities and notaries are obliged to check that the contractor has deposited this amount to Authority's accounts)

2) One hundred and fifty million Turkish Liras (one hundred and ninety million Turkish Liras)\*\* collected from the tenderers who make complaints,

3) Revenues from activities such as training programs, courses, seminars and meetings,

4) Revenues from all kinds of printed papers, forms, documents and publications,

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\* has been published in Official Gazette which is numbered 25215 and dated 31.08.2003 by Communiqué of Public Procurement Authority, numbered 2003/8 and has covered the period of 15.08.2003-31.01.2004

\*\* has been published in Official Gazette which is numbered 25000 and dated 21.01.2003 by Communiqué of Public Procurement Authority, numbered 2003/1 and has covered the period of 01.02.2003-31.01.2004

5) Supports from the general budget, when necessary,

6) Other revenues

The revenues of the Authority shall be collected at an account in the Central Bank of Republic of Turkey or in any of the national banks.

The properties and assets of the Authority shall be deemed belonging to the State, and therefore cannot be attached or pledged. The uncollected revenues of the Authority shall be collected by property funds in accordance with the provisions of Law No: 6183 on Collection Procedures of Public Receivables, and shall be transferred to the accounts of the Authority within one month.

k) The expenses of the Authority shall be made with an annual budget which is put into force upon the decision of the Board. The budget year of the Authority shall be the calendar year. The budget shall be prepared within thirty days prior to the beginning of the budget year. The annual financial report and the budget final account relating to the budget implementation results of the Authority shall be acquitted with a Resolution of Council of Ministers.

Transactions and works relating to the annual accounts, revenues and expenses of the Authority shall be audited by the Court of Accounts.

## SECTION TWO

Demands for Review and Review of the Complaints

Complaint for Review

Article 54 - Contracting entities and tender commissions shall have the obligation to carry out the tender proceedings in accordance with the principles and procedures stated in this Law and this obligation is a duty owed also to the contractor, supplier or service provider. Any contractor, supplier or service provider who claims that he has suffered a loss of rights or damage or he is likely to suffer loss or damage resulting from an alleged breach of such duty can request review in accordance with the phases specified below, with a written complaint.

Review by Contracting Entities

Article 55 - With regard to the tender proceedings, a contractor, supplier or service provider shall first of all submit a written complaint to the contracting entity.

The complaint shall be heard by the contracting entity only where:

a) no procurement contract has been signed;

b) the complaint is submitted within fifteen days following the date upon which the contractor, supplier or service provider submitted the complaint

became aware of the circumstances giving rise to the complaint or the date upon which the contractor, supplier or service provider should have become aware of those circumstances.

(The third and fourth articles have been abolished: 4964/Article 33)

(Amendment: 4964/Article 33) The contracting entity shall, within thirty days after the submission of the complaint, issue a reasoned decision. If the complaint is upheld in whole or in part, the decision shall also indicate the corrective measures to be taken. The decision shall be notified to all tenderers within seven days following the date of the decision.

(Amendment: 4964/Article 33) In cases where no decision can be taken within the specified period or the decision taken is found unacceptable, the candidate or the tenderer may appeal to the Authority within fifteen days following the end of decision period or decision date.

(Amendment: 4964/Article 33) Following the submission of a complaint, the contracting entity can not sign the contract unless the contracting officer certifies that urgency and public interest considerations require the tender proceedings to continue. This certification, which is the justifiable approval of the continuation of the tender proceedings, shall be notified within a period that will ensure that the complainant candidate or tenderer receives such notice not less than seven days in advance of the signing of the contract. In case the contract is signed without proper notification of such circumstances by the contracting entity, the tender decision and the contract shall be rendered null and void.

(Amendment: 4964/Article 33) In case the contracting entity notifies that the tender proceedings may continue and the contract may be signed, then the complainant candidate or tenderer may request the Authority for protested complaint within three days following the date of the aforementioned notification.

Review by the Public Procurement Board

Article 56 - (Amendment: 4964/Article 34) Provided that the contracting entity is notified by the contractor, supplier or service provider of all alleged breaches with regard to the tender proceeding that are requested to be remedied, together with an indication that the right to refer to legal action is reserved, then it may be appealed to the Authority prior to the signing of the contract, within the time limits and under the conditions stated above.

(Amendment: 4964/Article 34) The Board takes one of the decisions counted below, provided that it specifies the reasons and grounds relating to the appeals to the Authority:

a) Determines the corrective operation in cases where no suspension of the tender proceeding is necessary and remedies by the contracting entity would be sufficient.

b) Orders the termination of the procurement proceedings in case of non-compliance with this Law and the related legislation, which would constitute an obstacle for the continuation of the tender proceeding and which cannot be removed by taking corrective measures.

c) (Amendment: 4964/Article 34) Decides that the appeal is irrelevant.

(Amendment: 4964/Article 34) The Board orders the suspension of the procurement proceedings until the final decision, in case the subject of the appeal is obviously contrary to this Law and the related legislation or in case damage or loss which would be irreparable in the absence of a suspension is likely to be inflicted upon the works contractor, supplier, service provider, public, the contracting entity or other tenderers.

(Amendment: 4964/Article 34) The appeals upon the decision of the contracting officer to continue with the tender proceedings due to urgency requirements and public interest shall be reviewed with priority after suspension of the tender proceedings, when necessary.

(Amendment: 4964/Article 34) Appeals made after signing of the contract shall not be assessed by the Board. It is compulsory that appeals made in accordance with the procedures be reviewed and concluded by the Board until the signing of the contract.

(Annexed: 4761/Article 16) (Amendment: 4964/Article 34) Appeal is a procedure which should be obligatorily used prior to sue. Following an appeal is made,, the Authority shall take a decision relating to continuity of the tender proceedings within five days in cases where the contracting entity has taken the decision of continuation of tender proceeding and within fifteen days in other cases. The Authority shall take the final decision within forty-five days following the request date.

All decisions of the Public Procurement Board shall be notified to the parties within five days following such decisions' dates.. The Authority shall also have these decisions published in the Official Gazette.

#### Judicial Review

Article 57 - The final decisions made by the Public Procurement Authority with regard to the complaints shall be under the jurisdiction of the Turkish courts and such cases shall have priority.

### CHAPTER IV

#### Prohibition and Criminal Liability

##### Prohibition from participation in tenders

Article 58- (Amendment: 4964/Article 35) Those who are established to be involved in acts and conducts set forth in Article 17, shall be prohibited from participation in any tender carried out by all public institutions and entities including the ones excepted with the 2<sup>nd</sup> and 3<sup>rd</sup> articles of this Law, for at least one year and up to two years depending on the nature of the said acts and conducts; and those who do not sign a

contract in accordance with the procedures, except for force majeure, although the tender has been awarded to them, shall be prohibited likewise from participation in any tender for at least six months and up to one year. Prohibition decisions shall be taken by the Ministry implementing the contract or by the Ministry which the contracting entity is subordinate to or associated with, by contracting officers of Contracting Entities which are not considered as subordinate to or associated with any Ministry, and by the Ministry of Internal Affairs in special provincial administrations and in municipalities and in their affiliated associations, institutions and undertakings.

In case legal persons who are subject to prohibition are sole proprietorships, the prohibition decisions shall apply to all of the partners, and in case of companies with shared capital, the prohibition decisions shall apply for partners that are real or legal persons who own more than half of the capital in accordance with the provisions of paragraph 1. Depending on their being real or legal persons, in cases where those who are subject to a prohibition decision are partners to a sole proprietorship, the sole proprietorship shall also be subject to the prohibition decision; and in cases where those who are subject to a prohibition decision are partners to a company with shared capital, the company with shared capital shall also be subject to the prohibition decision provided that they own more than half of the capital.

Those who are established to be involved in these acts and conducts during or after the tender proceedings shall not be allowed by the contracting entity to participate in the current tender as well the subsequent tenders to be carried out by the same contracting entity until the effective date of the prohibition decision.

(Amendment :4964/Article 35) The prohibition decisions shall be made within at most forty-five days following the date which the conducts or acts requiring prohibition has been established. The prohibition decision shall be sent for publication in the Official Gazette within at most fifteen days, and shall become effective on the date of its publication. The decisions shall be followed up by the Public Procurement Authority and those who are prohibited from participation in public procurements shall be recorded.

The contracting entities carrying out the tender proceedings shall be responsible for notifying the relevant or related ministry of any event requiring prohibition from participation.

#### Penal Liability of Tenderers

Article 59- Even if it has been established after the completion and acceptance of the contract, the real or legal persons and their partners or proxies who have been involved in acts or conducts constituting a crime under the Criminal Code among the ones specified in Article 17, shall be notified to public prosecutions in order to be held subject to criminal prosecution in accordance with provisions of the Criminal Code. In addition to the punishment rendered by the court, these persons shall be prohibited from participation in the tender proceedings of all public institutions and entities that are included within the scope of this Law by decision of court, starting from the ending date of the prohibition decision made by the contracting entity pursuant to Article 58 and for a period of at least one year and up to 3 years, together with the those stated in paragraph 2 of Article 58.

Those for whom a decision to file a public lawsuit is made following the criminal prosecution held in accordance with paragraph 1 due to tenders conducted within the scope of this Law, and those mentioned in paragraph 2 of Article 58, can not participate in the tenders held by public institutions and entities included within the scope of this Law, until the end of judgment proceedings. Those who are decided to be subject to a public lawsuit shall be informed to the Public Procurement Authority by the Public Prosecutor's Office for recording.

Those who are convicted for repeated times for prohibited acts and conducts set forth under this Law, and the companies with shared capital in which these persons own more than half of the capital, or the sole proprietorships to which these persons are partner, shall be prohibited permanently from participation in public procurements by court decision.

In accordance with the provisions of this Article; those, who are prohibited and convicted by court decision shall be notified by the Public Prosecutors to the Public Procurement Authority in order to be entered the records and to the relevant professional chambers in order to be entered in their professional records.

The court decisions pertaining to those who are prohibited permanently from participation in public procurements shall be announced by publication in the Official Gazette within fifteen days following the notification by the Public Procurement Authority.

#### Penal Liability of Officers

Article 60- (Amendment: 4964/Article 36) In case it is established that the contracting officer, the chairperson and the members of the tender commissions and other related persons assigned at any stage of the procurement proceedings starting from the tender proceedings until the completion of the commitment, have committed acts or conducts specified in Article 17; have failed to fulfil their duties in accordance with the legal requirements or failed to act impartially; or have been involved in defaults or negligent acts which inflict loss upon one of the parties, these persons shall be given a disciplinary punishment in accordance with the related legislation. Criminal prosecution shall also apply for these persons depending on the nature of their acts or conducts, and in addition to the punishment rendered by the court, these persons shall compensate for all the loss and damage inflicted upon the parties in accordance with the general provisions. The persons who have been convicted for the acts and conducts contrary to this Law shall not be assigned to duties within the scope of this Law.

The personnel who have been incurred to any punishment by judicial bodies due to acts and conducts included within the scope of this Law shall not be appointed and assigned by any Public institutions and entities covered in this Law, to any duties or authorized positions related with the implementation of this Law or other related regulations.

(Amendment: 4964/Article 36) The sanctions mentioned above shall also apply to those who permit and carry out tender proceedings in violation of the instructions stipulated under Article 62 and the principles set forth under Article 5.



## Confidentiality of Information

Article 61- (Amendment: 4964/Article 37) Those who are assigned with the implementation of this Law and those who provide consultancy services cannot disclose or use for the benefit of their own or of third persons, any of the confidential information or documents relating to all proceedings about the tender process; works and proceedings about tenderers, technical and financial structures of the tenders, as well as the estimated costs of the procurements. Depending on their relevance, the sanctions stipulated under Article 58 and 60 shall apply in case of violation.

## CHAPTER V

### Various Provisions

#### Other Rules for Contracting Entities

Article 62- It is mandatory for contracting entities to comply with the principles set below within the scope of this Law, before conducting a tender proceeding for goods, services or works.

a) With the aim of completing investment projects in the planned time period and presenting them to the service of the economy, in order for a tender to be conducted for any work that covers a period exceeding one year, it is compulsory that a program be established to ensure that there is an appropriation in the budget on a yearly basis distributed according to the time period of the work. The appropriation contemplated for the first year shall not be less than 10 % of the project cost, and the appropriation portions which are initially put in the program for the coming years cannot be decreased in the years to follow.

b) (Annexed: 4964/Article 38) In consideration of the time period in which the planned appropriations can be used, it is essential that the tenders be conducted in due time and for the works/procurements covering a period of more than one year and having the investment characteristic (excluding those that must be carried out due to natural disasters), it is essential that the tenders be concluded within first nine months of the year. However, the procurements of goods and services to be realized in the following fiscal year and having continuous characteristic, may be carried out before the end of previous fiscal year.

c) (Amendment 4761/Article 17) (Annexed: 4964/Article 38) (Amendment: 5625/Article 5) In construction works, it is not allowed to initiate the tender process without obtaining building site, without completing ownership, expropriation and if required development transactions and without establishing application projects. Where the technical and financial characteristics can not be precisely determined due to the originality and complexity of the works, the tender may be carried out through

preliminary or final project. In construction works where application projects exist, it is obligatory the tender be carried out through receiving turnkey lump-sum price proposal. However, for works, which have no sufficient time to establish an application project due to natural disasters, the tenders may be conducted with preliminary or final projects; and for all types of repair works and works which the application project can not be established before the tender since land and soil surveys are required in some certain stages during construction, or a development or route change is probable, except for the building works, the tender may be conducted with final project. In those works, the tender may be carried out on turnkey lump-sum basis for the parts of works where the application project can be implemented, and on unit price basis for each item of work for the parts where the application project can not be implemented. (Fifth sentence abolished: 5226/Article 23). The conditions regarding to availability of building site and completion of ownership and expropriation transactions shall not be required in projects relating to dams and large-scale irrigations, drinking water conduit lines, energy transmission lines, substations, transformer stations, switchyards, captures, water tanks, highways, harbours and airports, railways, oil and natural gas pipelines.

d) (Amendment: 4964/Article 38) The estimated cost, which determined to be used in programming of the budget by the contracting entities, and to be used in comparing the proposals submitted by tenderers participating in the tender shall not be disclosed to tenderers.

e) (Amendment: 4964/Article 38) In cases where the staff employed by contracting entities in accordance with the laws, decrees and regulations have not sufficient qualifications and are not sufficient in number, a tender can be opened for the services specified in this Law on condition that the contracting officer approves.

f) No advertisement shall be published without preparing the tender documents. In determining the notice periods, the day of publication of the notice shall be taken into account, and the date of tender or the deadline for applications shall not be taken into account. It is mandatory to send the texts of the notices where they will be published in advance, taking into consideration the time that will elapse until the publication of the notice, in order to ensure compliance with the time limits set forth in Article 13.

g) In case the date determined for the tender falls on a holiday, the tender shall be realized on the first working day following the holiday at the same place and time with no further requirement of a notice, and the tenders which have been submitted until this time shall be accepted. The time of the tender shall be determined with regard to the working hours. Even if there is a change in the working hours after the notice, the tender shall be held at the hour announced before.

h) For the engineers or architects not participating in management and control tasks in construction works, their each year after graduation shall be taken into account as worth sixty billion Turkish Liras (seventy-six billion, three hundred and eighty-three million Turkish Liras)\* so that they can participate in construction tenders, and the

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\* has been published in Official Gazette which is numbered 25000 and dated 21.01.2003 by Communique of Public Procurement Authority, numbered 2003/1 and has covered the period of 01.02.2003-31.01.2004

professional and technical qualification condition within the scope of Article 10 of this Law shall not be required for the year which the related individual has begun to work.

i) (Annexed :4964/Article 38) The annual total of the expenses to be used up within the monetary limits specified in 21<sup>st</sup> and 22<sup>nd</sup> articles of this Law , can not exceed 10 % of the appropriations to be allocated in contracting entities' budgets for this purpose, unless otherwise is approved by Public Procurement Authority.

#### Arrangements regarding domestic tenderers

Article 63 - In tenders held under this Law , the contracting entities may establish some provisions to the tender documents with regard to; only domestic tenderers can participate in tenders of which estimated costs are below the threshold values, and in cases where the estimated costs are above the threshold values, in procurement of services and works, a price advantage would apply to all domestic tenderers, up to 15% , and in procurement of goods, a price advantage up to 15 % , would apply to domestic tenderers who offer products which are accepted as domestic products by the Authority by taking the opinions of Ministry of Industry and Trade and of other relevant organisations and institutions. However, domestic tenderers who participate in the tender proceedings by forming joint ventures with foreign tenderers can not enjoy this right..

#### Calculation of time limits

Article 64 - In case there is no provision regarding the calculation of the time limits written in this Law , the provisions of the Code of Obligations shall apply.

#### Notification

Article 65 - For notifications to be served in case there is no relevant provision in this Law , the provisions of the Code of Notification shall apply.

#### Amendments

Article 66 - Amendments to provisions of this Law shall only be arranged through annexing provisions or making changes.

#### Updating threshold values and monetary limits

Article 67 - The threshold values and monetary limits specified in this Law shall be updated yearly by the Public Procurement Authority in view of the Index of Wholesale Prices of the previous year and shall be published in the Official Gazette until the 1<sup>st</sup> of February which will be effective as of the same date. However, the updating shall not take into consideration the amounts below 1 million Turkish Liras. The threshold values and monetary limits indicated in this Law may further be updated upon the proposal of the Authority with the decision of the Council of Ministers in case of emergency.

## CHAPTER VI

### Final Provisions

#### Provisions not applicable

Article 68 - a) The provisions of State Procurement Law No: 2886, dated 08.09.1983 shall not be applicable in procurements covered in this Law.

b) The provisions of other laws, which are not in conformity with this Law and which are exempted from State Procurement Law No: 2886, dated 08.09.1983 shall not be implemented.

c) (Annexed: 4964/Article 39) In collective housing projects within the scope of Law no: 2985 on Collective Housing, the tenders may be conducted without requiring the conditions stipulated in fifth and sixth paragraphs of the 5<sup>th</sup> article, in (a), (b) subparagraphs of 62<sup>nd</sup> article and the conditions related to expropriation, ownership, obtaining of building site, development transactions and application project stated in subparagraph (c) of the same (62<sup>nd</sup>) article. However, in cases where Environmental Assessment Report is obligatory, it is compulsory this report be obtained before contract signing.

ADDITIONAL ARTICLE 1.- (Annexed: 4964/Article 41) With the provisions with regard to publication obligation in Official Gazette set forth in 13<sup>th</sup> and 47<sup>th</sup> articles of this Law, it shall be understood the publication obligation in the Public Procurement Bulletin specified in the 53<sup>rd</sup> article of this Law.

#### Goods and Service Procurement Under Framework Agreement

ADDITIONAL ARTICLE 2.- (Annexed: 5680/Article 2) Departments in health services may conclude framework agreements relating to goods and services which they permanently need, and initiate tender process on the basis of those framework agreements, as long as they comply with the basic tender procedures stipulated in this Law. There shall be no allocation requirement in framework agreements. Goods and services to be procured under the framework agreement shall be announced in Public Procurement Bulletin in accordance with sub-clause (1) of clause (a) of first subparagraph of Article 13. Estimated amounts to be provided under the framework agreement shall also be indicated in the notice. Goods and service procurements under the framework agreement with estimated costs lower than threshold values shall also be published at least once in one of the newspapers being issued where the work is to be performed.

The tenders submitted by suppliers or service providers for a framework agreement shall be evaluated according to provisions of Article 40 and the tenders shall be ranked beginning from the economically most advantageous tender; and all tenderers meeting the requirements, the number of whom is not more than twentyfive, shall be included in the list. The number of tenderers in the list shall not be less than three. The framework agreement shall be signed with tenderers included in the list in compliance with the provisions stipulated in this Law except the ones

concerning tender security, for a period not longer than twentyfour months, and the results shall be announced in Public Procurement Bulletin . .

Following the approval by contracting officer for procurement of goods or services in question under the concluded framework agreement, the tenderers in the list shall be invited to submit their tenders in return of signature, or by mail, or by means of telex, fax or electronic mail with a notification soon. A specification indicating the amount, delivery and performance requirements of goods or services to be purchased shall also be accompanied to the invitation letter.

The tenderers shall be given at least three working days for preparing tenders in order to give their proposals not exceeding the tender values basis to the framework agreement. The confidentiality of the content of written tenders shall be kept until the time of tendering and the tenders shall be evaluated following the provisions in tender documents, the economically most advantageous tender shall be determined and the tenderer concerned shall be awarded the contract. The framework contract shall be signed in compliance with the rules relating to conclusion of contracts in this Law .

The tenderers shall document the continuation of their qualification each twelve months. The framework contracts with tenderers whose qualifications are expired, or don't submit tender twice in spite of invitation shall be cancelled.

In case the number of tenderers party to a framework agreement becomes less than three, then it shall be notified to the parties that the existing framework agreement has ended.

Conclusion of a framework agreement does not in pose a procurement obligation on contracting entity. As far as its needs relating to the goods and services under the framework agreement are concerned, the contracting entity may obtain them by means of other procedures set forth in this Law as well. The Authority is empowered to establish the principles and procedures to be applied in procurements under the framework agreements.

#### Standard tender documents and regulations

INTERIM ARTICLE 1 - The standard tender documents and regulations to be issued for the implementation of this Law shall be prepared by the Public Procurement Authority in view of the opinions of the relevant institutions and entities until the enforcement date of the Law and published in the Official Gazette .

Until the enforcement of these documents, the contracting entities shall continue to apply the existing principles and regulatory provisions.

#### Ongoing tenders

INTERIM ARTICLE 2 - The procurements for which a written tender announcement or a notice has been made prior to the enforcement date of this Law shall be concluded in accordance with the relevant laws and procedures.

#### Updating

INTERIM ARTICLE 3 - The threshold values and monetary limits set forth in this Law shall be updated as specified in article 67 for the period lasting between the date of publication of the Law in the Official Gazette and the date of enforcement.

#### Principles and procedures relating to the exceptions

INTERIM ARTICLE 4 - Principles and procedures relating to;

a) paragraph (b) of 3<sup>rd</sup> article shall be prepared by relevant institutions,

b) paragraph (d) of 3<sup>rd</sup> article shall be prepared by the Ministries of Foreign Affairs, National Defence, Finance, and Public Works and Settlement upon the approval of Public Procurement Authority,

c) procurements of goods and services to be made pursuant to sub-paragraph (f) of 3<sup>rd</sup> article shall be prepared by relevant institutions upon the approval of Public Procurement Authority,

until the date of enforcement of the Law by taking into account the opinions of relevant institutions and organisations and shall be put in force by decision of Council of Ministers.

(Amendment: 4761/Article 18) The principles and procedures to be implemented in procurements according to sub-paragraph (e) of 3<sup>rd</sup> article of this Law, may be determined by Authority, whereas the principles and procedures of purchases from State Procurement Office may be determined by the Ministry of Finance if deemed necessary.

(Amendment: 4761/Article 18) (Amendment: 4964/Article 40) The goods and services within the scope of sub-paragraph (g) of 3<sup>rd</sup> article of this Law shall be determined by Authority upon the request of relevant institutions. (Annexed: 5436/Article 13) The monetary limit set forth in sub-paragraph (g) of 3<sup>rd</sup> article of this Law shall not apply to any kind of goods, services and works procurements relating to activities for searching, drilling, generating and transporting of oil and natural gas by Turkish Petroleum Corporation within Turkish territorial waters as well as international waters.

(Annexed: 4964/Article 40) The principles and procedures related to sub-paragraph (h) of 3<sup>rd</sup> article of this Law shall be determined with the regulation prepared by Ministry of Finance, taking into account the opinions of Authority and Ministry of Health.

(Annexed: 4964/Article 40) The enterprises, institutions and corporations which carry out activities in energy, water, transportation and telecommunication sectors shall be

subject to sub-paragraph (g) of 3<sup>rd</sup> article of this Law until their special laws enter into force and shall be subject to other provisions of this Law for procurements of goods, services and works which are not within the scope of said sub-paragraph.

(Annexed : 5226/Article 24) The principles and procedures regarding to paragraph (i), Article 3 of this Law shall be set forth with a regulation to be issued by the Ministry of Finance, Public Procurement Authority and the Ministry.

(Annexed : 5312/Article 26) The principles and procedures regarding to paragraph (j), Article 3 of this Law shall be set forth with a regulation to be issued by the Ministry of Environment and Forestry by taking comments of Ministry of Finance, Public Procurement Authority and Undersecretariat of Ministry.

#### Establishment of Public Procurement Authority

INTERIM ARTICLE 5- The Public Procurement Board specified in Article 53 of this Law shall be appointed within thirty days following the publication date of this Law in the Official Gazette. For the initial appointments to the Public Procurement Board; one each member determined by the Council of Ministers selected among the candidates proposed by the Ministry of Finance and selected among the candidates proposed by the Ministry of Public Works and Settlement shall be on duty for a period of seven years.

The Board, within sixty days following appointments, shall establish its organization and make the Authority become effective by this date for the realization of its duties defined in this Law.

Until the date at which this Law shall be effective, the principles and procedures of the procurements to be held by the Authority shall be regulated by a regulation to be issued by decision of Council of Ministers upon the request of The Board.

The regulations mentioned in Article 53 of this Law and in the third paragraph above shall be issued by the date on which the Authority begins to operate.

All expenditures of the Authority shall be financed by the general budget sources, until the time when they are met by Authority's own revenues.

INTERIM ARTICLE 6.- (Amendment: 4761/Article 19) Within 1 year from the date of execution of this article;

a) Among the staff charged in public institutions and entities, those who are graduated from the higher education institutions defined in the scope of paragraph (h) of the article no:53 and have obtained the profession through private competition exam, and after a certain period of on-the-job training, have been appointed to office through private qualification exam, and those who are judges, attorneys and the ones regarded as from this profession,

b) The university teaching personnel who have completed at least postgraduate education provided that their branch is in relation with the Authority's field of duty,

c) The ones having bachelor's degree in engineering and architecture and have worked in the public institutions and entities as related to their field of study for at least 5 years, and the ones having the post graduate education in one of these fields following their bachelor's degree and who have worked in the public institutions and entities as related to their field of study for at least 3 years,

may be appointed as public procurement experts by the Board through obtaining the approval of their institutions, provided that they have not exceeded 40 years old by a day, and for the ones defined in the sub-paragraphs (a) and (c), provided that they have worked in the field of judgment, inspection, auditing, implementing or consultancy related to public procurement legislation. .

The personnel who work in the administrations with general and annexed budget, state economic enterprises and their affiliated partnerships, in institutions having juristic personality established by private laws and charged with public duties and institutions with independent budget, may be appointed to the positions of the Authority apart from the public procurement expert and expert assistant positions until 31.12.2003, upon their request and approval of their institutions.

INTERIM ARTICLE 7.- (Annexed:5255/Article 15) Regarding to World Inter-university sports games to be performed in Izmir in 2005, all kinds of procurements for goods, services and works by the Executive Board and by other public authorities and entities upon request of said Board shall not be governed by this Law, except prohibition and criminal provisions.

#### Enforcement

Article 69 - (Amendment:4761/Article 21) Article 53, and interim Articles 1, 5 and 6 of this Law shall be effective on the publication date, whereas the other articles shall enter into force on 1.1.2003.

#### Execution

Article 70 - The Council of Ministers shall execute the provisions of this Law.

Provision of law no: 4761 which is not applicable to Law no: 4734 on Public Procurement

ARTICLE 20. The salaries, financial and social rights and benefits for the Chairman and members of the boards, supreme boards, institutions and organizations which were established or to be established until 31.12.2006, through the private laws possessing the form of public legal entities and administrative and financial independencies, shall be determined by the Council of Ministers taking into account the functions of these boards, supreme boards, institutions and organizations, wage equity and the practice of provisional article 1 of the Decree of Law no:631. When necessary, the Council of Ministers has the authority to increase the ceiling job-bt price of representation and duty indemnities up to the amount as three times as the



ones which are being paid to civil servants, and to make arrangements in the increased amount in respect to staff position and titles, in order to ensure wage equity.

Until the above mentioned arrangement is made, The Chairman of the Public Procurement Authority, is paid as total of net amount monthly and other payments as the Chairman of the Energy Market Regulation Authority is paid, and the members of the Public Procurement Board are paid monthly on the net amount of the 97 % of the total amount paid to the Chairman of the Board.

Provisions of Law no: 4964 which are not applicable to the Law no: 4734, on Public Procurement

INTERIM ARTICLE 1. - Tender documents, form contracts and regulations which need to be rearranged because of the amendments on the Laws no: 4734 and 4735 made by this Law shall be prepared by Authority within 60 days as of publication date of this law and shall be put into force. Arrangements made by this law on monetary limits in Law no: 4734 and newly added monetary limits shall be updated by the Authority as of 1.1.2003, within the framework of the principles of article 67 of Law no: 4734, accepting those limits were valid on 22.01.2002., Contracting Entities shall continue to implementing the provisions of existing principles, procedures and regulations until the above mentioned arrangements become effective.

Principles and procedures need to be prepared and become effective due to the amendments made on 3<sup>rd</sup> and provisional 4<sup>th</sup> articles of Law no: 4734 shall be prepared within 30 days as of publication date of this law and put into force. Contracting Entities shall continue to implementing the principles and procedures which were prepared and became effective prior to amendments made by this law, based on formerly executed 3<sup>rd</sup> and provisional 4<sup>th</sup> articles of Law no: 4734, until those arrangements are published,. Works procurements, which the institutions benefiting from the exception provision in paragraph (g) of the 3<sup>rd</sup> article of Law no: 4734 are contractors under contracts, shall be subject to the exception provisions proposed in the same paragraph for a period of ten years.

ARTICLE 50.- Article 41 of this law shall become effective on January 1<sup>st</sup>, 2004, while the others shall come into force on publication date.

ARTICLE 51.- Council of Ministers shall execute the provisions of this Law.