



**REPUBLIC OF TURKEY
PUBLIC PROCUREMENT AUTHORITY**

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 any procurement made by public authorities and institutions governed by public law or under public control or using public funds.

Scope

Article 2- The provisions of this Law shall apply to procurement of goods, services or works the costs of which are paid from any resources at the disposal of the contracting authorities stated below:

a) (Amended: 1/6/2007-5680/Article 1) Public administrations included in the general budget, administrations with special budget, special provincial administrations and municipalities and their related revolving funds organizations, associations (except those operating as professional organizations and their supreme institutions), legal persons,

b) (Amended: 30/7/2003-4964/Article 1) State economic enterprises, consisting of public corporations and state economic establishments,

c) (Amended: 30/7/2003-4964/Article 1) Social security institutions, funds, institutions having legal personality that are established in accordance with special laws (**Amended: 9/7/2018-Decree Law-703/Article 171**) or Presidential Decrees and that are assigned with public duties (except for professional organizations and foundation institutions of higher education) and institutions with independent budgets,

d) (Amended: 12/6/2002-4761/Article 10) 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) (Amended: 13/2/2011-6111/Article 176) procurement of works by the banks within Law No: 4603 and by the corporations which more than half of their capitals, directly or indirectly, together or separately are owned by those banks.

(Amended second paragraph: 13/2/2011-6111/Article 176/paragraph 2) However, Saving Deposit Insurance Fund and banks whose shares are partially or fully owned by this Fund, banks covered by the Law Numbered 4603 and corporations which more than half of their capitals, directly or indirectly, together or separately are owned by those banks (excluding the procurement of works mentioned in paragraph (e)), real estate investment trusts, which are subject to Capital Market Law numbered 2499, of the banks covered by the Law numbered

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4603 and entities, institutions 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- (Amended: 30/7/2003-4964/Article 2)

a) procurement of agriculture or livestock products, by authorities included within the scope of this Law, directly from the producers or their partners, in order to process, utilize, improve or sell pursuant to the establishment purpose or regulations of such authorities and procurement of services from development cooperatives of forest villages and from villagers pursuant to Law Numbered 6831, Forest Law,

b) (Amended: 20/11/2008-5812/Article 1) goods, services and works procurement, which are decided by (Amended: 9/7/2018-Decree Law-703/Article 171) the President or relevant ministry that these are related to the defence, security or intelligence or that these require to be treated confidentially or which require special security measures during the performance of the contract pursuant to related legislation or which concern the cases in which the basic interests of the state's security needs to be protected,

c) procurement of goods, services or works, which are to be realised realized with foreign financing pursuant to international agreements, and in the financing agreement of which it is stated that different procurement procedures and principles will be applied; all kinds of consultancy and credit rating services with regard to borrowings from international capital markets; (Amended clause: 2/1/2017 – Decree Law – 684/Article 2; reaccepted: 1/2/2018 – 7074/Article 2) procurement of goods and services by the Central Bank of the Republic of Turkey relating to technology, security, production and printing of banknotes and valuable documents, outsourcing and procurement of consultancy services by Central Bank of the Republic of Turkey; (Inserted sentence: 27/4/2004-5148/Article 2) any kind of procurement of consultancy services for privatization implementations pursuant to Law No. 4046, dated 24.11.1994; procurement of goods and services related to commercial activities, conducted by enterprises, undertakings and companies which operate in the field of air transport,

d) procurement of goods, services or works by the branches of contracting authorities in foreign countries; procurement of goods and services which must be procured locally for transportation vehicles which are abroad.

e) by the institutions covered by this Law; procurement of goods and services from penal institutions and the jail workshop institutions affiliated to the Ministry of Justice, from rest homes and orphanages affiliated to the Social Services and Child Care Institution, from manufacturing schools and centres affiliated to the Ministry of Education, from institutes and breeding stations affiliated to the Ministry of Agriculture and Village Affairs and from the Printing House of the Prime Ministry on the condition that these goods and services are produced by themselves, procurement of goods and services which are included in the principal status of State Supply Office from the General Directorate of State Supply Office, procurement of freight, passenger and port services from the Republic of Turkey General Directorate of State Railways, procurement of fuel and vehicle from the General Directorate of Liquidation Works Revolving Fund Administrations (Inserted phrase: 20/11/2008-5812/Article 1) as well as the procurement of goods, services, and consultancy services from the Scientific and Technological Research Council of Turkey within the scope of research and development activities, procurement of meat and meat products from the General Directorate of Meat and Fish Products Agency, (Inserted phrase: 17/01/2019-7161/Article 29) procurement of tea and tea products

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from the Directorate of Tea Enterprises, procurement from International Health Services Corporation for goods and services which are in its field of activity and procurement of monoblock wheels and wheel sets used in vehicles that tow or are towed on rail from the General Directorate of the Machinery and Chemical Industry Agency,¹

f) (Amended: 20/11/2008-5812/Article 1) procurement of goods and services necessary for research and development projects executed and supported by national research and development institutions and procurement of all kinds of research and development services excluding those where the authorities covered by this law meet the whole financing and exploit the outputs only in carrying out their own activities,

g) procurement of goods or services by the authorities listed in sub-paragraphs (b) and (d) of first paragraph of article 2 within the scope of their commercial and industrial activities, which are made in order to cover the needs relating directly to production of goods and services or to their principal activities, and the estimated costs and contract prices of which do not exceed 2,300 billion Turkish Liras (14,877,509 Turkish Liras)* excepting those financed by treasury guarantee or by means of transferring directly from the transfer order of budget,

h) procurement of services by contracting authorities that are under the scope of this Law with a view to provide diagnosis and cure for the persons entitled pursuant to their special legislation and procurement of drugs and medical supplies prescribed during outpatient treatment by persons whose treatments are undertaken by their authorities, **(Inserted phrase: 20/11/2008-5812/Article 1)** procurement of goods and services intended for diagnosis and treatment by contracting authorities providing health services covered by this Law from each other,

i) (Inserted: 14/7/2004-5226/Article 21) survey, restoration, restitution and conservation projects of movable and immovable cultural heritage falling under the scope of the Protection of Cultural and Natural Heritage Law Numbered 2863, dated 21.07.1983, road rehabilitation and environmental planning projects and their implementations; and also procurement of goods and services related to assessment, protection, transportation and excavation works of those projects,²

j) (Inserted: 3/3/2005-5312/Article 25) procurement of services, tools, appliances and materials which are urgently needed in order to draft emergency response plans and after an incident takes place, to treat pollution and to execute those plans within the scope of Law on Interference in Emergency of Sea Pollution by Reason of Petroleum and Other Detrimentials and on Compensation of Damages,

k) (Inserted: 20/2/2008-5737/Article 79) procurement of goods and services with regard to repair and restoration and landscaping of cultural assets of foundations,

¹ With Article 1 of Law No. 5812 dated 20/11/2008; the clause “materials” contained in this paragraph has been changed to “services” and added in the text.

* published in Official Gazette No.31023 dated 29.01.2020 by Communique of Public Procurement Authority, No. 2020/1 and covers the period of 01.02.2020 – 31.01.2021

² Phrases “movable and immovable” and “and conservation” are inserted to this paragraph by Article 14 of Law no 6093 dated 28.12.2010

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l) (Inserted: 27/12/2007-5726/Article 24) procurement of goods and services necessary for implementing protection measures to be taken in line with the legislative provisions on witness protection,

m) (Inserted: 9/7/2008-5784/Article 28) spot purchases of liquidated natural gas (LNG) by Petroleum Pipeline Corporation (BOTAŞ) through importing,

n) (Inserted: 20/11/2008-5812/Article 1; Amended: 17/7/2013-6496/Article 38) procurement of services from Turkish Airlines Incorporated Company for the purpose of aerial transportation of privates and corporals and military materiels, **(Inserted phrase: 07/04/2015-29319 - 6637/Article 7)** procurement of goods and services by the Directorate General of Turkish Radio-Television Corporation from The Anatolian News Agency with regard to any kind of programme, news, production and broadcasting* and procurement of goods and services through agreements and contracts allowing guarantees in advance in order to ensure provision of urgent needs that may come up in cases such as defence, security and humanitarian aid issues which may arise from either international obligations or for national purposes, in a fast and effective manner,

o) (Inserted: 25/6/2009-5917/Article 31; Amended: 04/06/2016-6719/Article 11) procurement of energy, fuel, goods, services, consultancy services and large-scale repair works by the affiliated, associated and related institutions and organisations of the Ministry of Energy and Natural Resources with regard to their activities, from each other or from the other public institutions and organisations; procurement of electrical energy by Directorate General of Turkish Electricity Trading and Contracting Company (TETAŞ) ** for the purpose of supply,

p)³ (Inserted: 22/2/2007-5583/ Article 9; Amended: 3/6/2011-638/Article 31) procurement of goods and services by General Directorate of Youth and Sports and by autonomous sports federations relating to national and international sports activities,

r) (Inserted: 13/2/2011-6111/Article 177) procurement of goods and services within the scope of **(Amended: 9/7/2018-Decree Law-703/Article 171)** Presidential Decisions concerning the Coal Aid for the Poor Families, made by the General Directorate of Turkish Coal Enterprises from coal fields belonging to itself or its subsidiaries or its affiliates, regardless of the operator,

s) (Inserted: 31/3/2012-6288/Article 5; Amended: 24/4/2013-6461/Article 10) procurement of goods or services by the General Directorate of Turkish State Railways and Turkish State Railways Transportation Inc. from the Turkish Railway Machines Industry Inc., Turkish Locomotive and Engine Industry Inc. and Turkish Wagon Industry Inc.,

³ The subparagraph “(k)” which was inserted with the Article 9 of the Law No. 5583 dated 22/2/2007 changed as subparagraph “(p)” with Article 177 of the Law No. 6111 dated 13/2/2011;

*With Article 47 of the Decree Law No. 703 of 9/7/2018; provision of “any purchases, sales, services, consultancy, works and transportation and procurement procedures regarding these matters conducted by TRT are not subject to the provisions of Public Procurement Law No: 4734 and Public Procurement Contracts Law No. 4735. These operations and transactions are governed by regulation.” is set forth.

**With Article 9 of the Decree Law No. 703 of 9/7/2018; TETAŞ is merged within EÜAŞ and it is concluded that any reference made to TETAŞ in the legislation is made to EÜAŞ.

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t) (Inserted: 4/7/2012-4353/Article 27) procurement of goods and services intended for execution of examination activities from the company established by or affiliated to the Center for Evaluation, Selection and Placement (provided that assent of the Council of Higher Education is taken),

u) (Inserted: 6/2/2014-6518/Article 45; Amended: 18/6/2017 – 7033/Article 73) procurement of goods, services and works which includes industrial cooperation practices **(Repealed phrase 16/2/2016 – 6676/Article 16)** (...) for the purposes of innovation, localization and technology transfer,

v) (Inserted: 1/11/2017 – 7060/Article 13; Repealed: 9/7/2018 – Decree Law – 703/Article 72)

(Inserted: 2/7/2018 – Decree Law–702/Article 10) Procurement of goods, services and consultancy services regarding regulation and supervision by the Nuclear Regulatory Authority and procurement of surveying, services and consultancy services regarding land and feasibility studies within the scope of nuclear plant projects; procurement of all kinds of goods and services by the Turkish Atomic Energy Authority and procurement of consultancy services regarding radioactive waste management special account and decommissioning special account by the Board of Directors of Accounts,

y) (Inserted: 9/7/2018 – Decree Law – 703/Article 171) Procurement of goods and services by the offices and directorates established under the Presidency pursuant to Presidential Decree for the purposes of publicity of Turkey, increasing investments or financial resources in the country or ensuring digital transformation and technological development,

z) (Inserted: 17/01/2019-7161/Article 29) Procurement of goods and services by the responsible contracting authority to conduct international events and meetings which are determined by the President from among international events and meetings to be organised by Republic of Turkey,

aa) (Inserted: 7/12/2019-7194/Article 44) Provided that it is related to agricultural products within the scope of its duty and activity, procurement by Turkish Grain Board upon assignment by Board of Directors of Turkish Grain Board and approval of relevant minister of agricultural products by way of import and related service procurement in order to ensure price stabilization of products or prevent extraordinary fluctuations that may occur in product prices due to insufficient production,

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

Definitions

Article 4- For the purposes of this Law:

Goods means any kind of purchased necessities, and movable and immovable goods and rights.

Services (Amended: 30/7/2003-4964/Article 3) means such services as maintenance and repair, transportation, communication, insurance, research and development, accounting, market surveys and polls, consultancy, advertising, broadcasting and publication, cleaning, catering, meeting, organisation, exhibition, guarding and security, vocational training, photography, film, intellectual and fine arts, services regarding computer systems and software

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services, lease of movable and immovable properties and the rights thereof and other similar services.⁴

Works means all kind of 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 reclamation, flood-prevention and pickling; and installation, manufacturing, preparation of site materials, transportation, completion, large scale-repair, restoration, landscaping, drilling, demolition, reinforcing and assembly works related with the works stated above and similar construction works.

Supplier means natural or legal persons, or joint ventures formed by those persons, submitting tenders for goods procurement

Service Provider means natural or legal persons, or joint ventures formed by those persons submitting tenders for services procurement.

Consultant means service providers of consultancy, who use their knowledge and experience for the benefit of the contracting authority, have no organic link with the contractors of the contract for which they provide their services, who do not gain anything other than the due consultancy fee from the contracting authority.

Works Contractor means natural or legal persons, or joint ventures formed by those persons, submitting tenders for works procurement.

Candidate means natural or legal persons, or joint ventures formed by those persons applying for pre-qualification.

Joint Venture (Amended: 30/7/2003-4964/Article 3) means partnerships or consortium established by mutual agreement of more than one natural or legal person in order to participate in procurement.

Tenderer means the supplier, service provider or works contractor submitting tender for procurement of goods, services or works.

Potential tenderer (Inserted: 20/11/2008-5812/Article 2) means natural or legal persons, or joint ventures formed by those persons, operating in the field of the subject matter of contract, and have purchased the procurement or pre-qualification documents.

Domestic Tenderer (Amended: 30/7/2003-4964/Article 3) means natural persons who are the citizens of Republic of Turkey and legal persons established in accordance with the Laws of Republic of Turkey.

Contractor means the tenderer who is awarded and with whom the contract is signed.

⁴ With Article 2 of Law No. 5812 dated 20/11/2008; phrases “architecture and engineering, survey and project, map and cadastre, zoning, zoning plan of all scales” in this definition are repealed.

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Contracting authority means procuring authorities and institutions covered by this Law.

Contracting Officer (Amended: 30/7/2013-4964/Article 3) means authorised and liable persons or boards as well as those persons to whom the required authority has been transferred properly in the contracting authority to spend and to carry out procurement proceedings.

Participation Request means the documents submitted by a candidate to be considered in determining its qualification at the pre-qualification process of restricted procedure.

Procurement Document means administrative specifications including the instructions to tenderers, technical specifications including the project, draft contract and other required documents and information related to goods, services or works to be procured.

Preliminary Project means a project for a certain structure, designed in accordance with final need assessment programme without carrying out required land and ground surveys, consisting of one or more solutions through plans, sections, elevations and profiles based on information obtained from base maps and available data including environmental impact assessment and feasibility reports.

Final Project means a project in which possible land and ground surveys are carried out, structural elements are designed and dimensioned, as well as technical specifications construction system and equipment are specified in accordance with the approved preliminary project of a certain structure,.

Application Project means a project designed in accordance with approved final project of a certain structure, specifying all kinds of details of the structure.

(...)⁵

Procurement means proceedings which involve the award of a goods, services or works contract to the tenderer selected in accordance with the procedures and conditions laid down in this Law, and which are completed by signing of the contract following the approval of the contracting officer.

Tender means the price offer and the document and/or information constituting a basis for evaluation, submitted by a tenderer to a contracting authority for the procurement carried out pursuant to the provisions of this Law.

Open Procedure means a procedure where any tenderer may submit a tender.

Restricted Procedure means a procedure where only those tenderers invited following a prequalification evaluation by the contracting authority may submit a tender.

⁵ With Article 22 of Law No. 5226 dated 14/7/2004; the definitions of “Surveying Project project”, “Restoration Project” and “Restitution Project” are removed from this article.

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Negotiated Procedure means a procedure, which can be used in cases specified in this Law and which is conducted in two stages, where the contracting authority negotiates with the tenderers about the technical details, implementation methods and, in certain cases, the price.

Direct Procurement means a procedure which can be used in cases specified in this Law, where the needs are directly procured by negotiating with the tenderers invited by the contracting authority about technical terms and price .

Contract means a written agreement between the contracting authority and the contractor for the procurement of goods, services or works.

Authority means the Public Procurement Authority (PPA).

Board means the Public Procurement Board (PPB).

Prior Notice (Inserted: 20/11/2008-5812/Article 2) means a notice published as early as possible after the beginning of fiscal year regarding the contracts that are planned to be awarded within the year.

Electronic Public Procurement Platform (Inserted: 20/11/2008-5812/Article 2) means the electronic environment, managed by the Authority, in which the contracting authorities and other stakeholders can conduct the proceedings related with the procurement process via internet.

Dynamic Purchasing System (Inserted: 20/11/2008-5812/Article 2) means a completely electronic process for making purchases of goods which are available as manufactured on the market, where all tenderers who submit an indicative tender in accordance with the procurement document and satisfy the qualification criteria within the validity period of the system are admitted to the system.

Electronic Reverse Auction (Inserted: 20/11/2008-5812/Article 2) means repetitive proceedings involving re-evaluation and re-ranking of new prices or new values concerning certain elements of the tenders submitted in electronic environment after evaluation of tenders, revised downwards, through an electronic device using automatic evaluation methods.

Framework Agreement (Inserted: 20/11/2008-5812/Article 2) means an agreement between one or more contracting authorities and one or more tenderers, which establishes the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Letter of guarantee: (Inserted: 28/11/2017 – 7061/Article 65) means letters of guarantee given by the banks and surety bonds issued within the context of indemnity insurance by insurance companies established in Turkey.

Basic Principles

Article 5- In procurement to be conducted in accordance with this Law, the contracting authorities are liable for ensuring transparency, competition, equal treatment, reliability,

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confidentiality, public supervision, and fulfilment of needs appropriately, promptly, and efficient use of resources.

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

Procurement of goods, services or works 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 laid down in the Law. **(Amended: 9/7/2018-Decree Law-703/Article 171)** Due to the specific nature of the Presidential services and the necessity to comply with the security requirements, any procurement of goods, services and works by Presidency may be performed pursuant to the subparagraph (c) of the first paragraph of the Article 21 of this Law.

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

(Amended sixth paragraph: 30/7/2003-4964/Article 4) Where the related legislation requires an Environmental Impact Assessment (EIA) Report for a works project, a EIA Approval Certificate must be obtained before the initiation of procurement procedure. However, in works procurements to be conducted urgently due to natural disasters, EIA report shall not be asked.

Procurement Commission

Article 6- The contracting officer shall assign a procurement commission, consisting of at least five members and in odd numbers, with the participation of at least four personnel of the related contracting authority provided that one of them is the chairperson and at least two of them are experts on the subject matter of the procurement, and a personnel is responsible for accounting or finance, together with its substitute members.⁶

(Amended second paragraph: 30/7/2003-4964/Article 5) In case of absence of personnel in adequate number or qualification in the contracting authority, members may be invited to the commission from other contracting authorities covered by this Law.

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

The procurement commission shall convene with no absentees. The commission decisions shall be taken by majority voting. Abstention is not allowed in decisions. The chairperson 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 minute and sign it.

⁶ With Article 13 of the Law No. 5436 dated 22/12/2005, the phrase, “finance officer of general and annexed budgeted administrations, for the others” has been changed as “and” added to the text.

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

Procurement Process Dossier

Article 7- A record of procurement process shall be kept for any procurement. This record of procurement process shall include all documents relating to the procurement process such as the certificate of approval obtained from the contracting officer and its attached calculation sheet relating to the estimated cost, the procurement documents, the notices, tenders or applications and other documents submitted by candidates or tenderers, and minutes and decisions of the procurement commission.

SECTION II Rules on Participation

Threshold Values

Article 8- 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) (Amended: 12/6/2002-4761/Article 12) 300 billion Turkish Liras (**1,778,525 Turkish Liras**)* for procurement of goods and services by the contracting authorities operating under general or annexed budget

b) (Amended: 12/6/2002-4761/Article 12) 500 billion Turkish Liras (**2,964,217 Turkish Liras**)* for procurement of goods and services by other contracting authorities within the scope of this Law

c) (Amended: 12/6/2002-4761/Article 12) 11 trillion Turkish Liras (**65,213,187 Turkish Liras**)* for procurement of works by the contacting authorities covered by this Law

(Repealed last paragraph: 12/6/2002-4761/Article 12)

Estimated Cost

Article 9- (Amended: 30/7/2003-4964/Article 6) Prior to the procurement of goods, services or works, by conducting all necessary price research contracting authority shall determine an estimated cost excluding the value added tax and it shall be indicated on a priced bill of quantities with its justifications. Estimated cost shall not be stated in procurement or pre-qualification notices, and shall not be disclosed to tenderers or to others who do not have any formal relationship with procurement proceeding.

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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 capability;

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

2) (**Amended: 30/7/2003-4964/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) Tenderer's overall turnover showing its business volume (**Amended: 17/01/2019-7161/Article 30**) or documents showing tenderer's turnover concerning subject matter of the procurement.

b) For the evaluation of professional and technical qualifications;

1) documents proving that the tenderer is operating as a registered member of the related chamber in accordance with the relevant legislation, and is legally authorised to submit tenders,

2) (**Amended: 20/11/2008-5812/Article 3**) with regard to subject matter of the procurement or similar works undertaken by the tenderer under a contract having a value in the public or private sector;

a) documents proving the experience in works contracts whose preliminary acceptance proceedings have been completed and in services contracts linked to construction works whose acceptance proceedings have been completed within the last fifteen years,

b) documents proving the experience in works contracts whose preliminary acceptance proceedings have been completed and in services contracts linked to construction works whose acceptance proceedings have been completed, of which is supervised or managed at least in the ratio of %80 of the contract value within the last fifteen years,

c) documents proving the experience for the ongoing works contracts and services contracts linked to works contracts which have been completed flawlessly, supervised or managed at least in the ratio of %80 of the total contract value within the last fifteen years, provided that the initial contract value has been completed,

d) documents proving the experience in goods and services contracts acceptance proceedings of which has been completed within the last five years,

e) for transferred contracts, the documents proving the experience in works contracts whose preliminary acceptance proceedings and in services contracts linked to construction works whose acceptance proceedings are completed within the last fifteen years and in goods and services contracts whose acceptance proceedings are completed within the last five years, provided that at least %80 of the contract value is completed,

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f) (Inserted: 6/2/2014-6518/ Art. 46) documents which are issued by the Ministry of Science, Industry and Technology in accordance with the principles determined by the Authority and which can be used for a period of five years starting from the marketing date of products having domestic good certificate and services developed out of a project, after supplying to the market such goods and services that are developed as a result of project carried out under support scheme in technology center enterprises, research and development centers, technology development zones, research, development and innovation projects supported by international funds or public institutions or foundations established by law, pre-competition partnership projects and and to beneficiaries of techno-initiative capital supports or otherwise goods which are developed with owners' resources and certified by Scientific and Technological Research Council of Turkey as a product of research and development project and required procedures for its assessment are set by the Ministry of Science, Industry and Technology.⁷

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 and it employs or will employ adequate number of staff in order to fulfil the subject matter of the procurement,

5) in procurement of services and works, documents demonstrating educational and professional qualifications of the technical staff that will perform the contract and the managerial team of tenderer,

6) documents relating to facilities, machinery, devices and other equipment required to perform the contract,

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 quality control institutions accredited in accordance with the international rules, certifying conformity of subject matter of procurement with the standards specified in the procurement document,

9) Samples, catalogues and/or photographs of the goods to be supplied, the authenticity of which shall be confirmed where the contracting authority so requests.

Which of the information or documents specified above will be required for qualification evaluation process shall be specified in procurement documents and in notices or invitations relating to procurement or pre-qualification according to the characteristics of the subject matter of the procurement.

(Inserted paragraph: 12/6/2002-4761/Article 13) Among the documents which are specified under the second item of subparagraph (b) of the first paragraph, the ones obtained

⁷ With Article 17 of the Law No. 6676 dated 16/2/2016; phrases "technology development zone" and "otherwise goods which are developed with owners' resources and certified by Scientific and Technological Research Council of Turkey as a product of research and development project and required procedures for its assessment are set by the Ministry of Science, Industry and Technology" are added to the text.

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due to the supervision or management duties in works procurement or services procurement related to works, the real person must be either an architect or an engineer. The documents which will be obtained through management, supervision and completion of work cannot be used by tenderers apart from the individuals and institutions who are the owners of the documents and cannot be transferred, rented and sold. **(Inserted phrase: 20/11/2008-5812/Article 3; Amended sentence: 17/01/2019-7161/30; effective date: 18/3/2020)** In participation of legal persons which are established or partnered by owners of aforementioned documents to procurement procedure, document owners must possess more than half of the shares of the legal person for at least one year and during that time they must have power of representation and management about performance of contracts concerning procurement subject to this Law, it is obligatory to request this share requirement in every procurement and to maintain the share during the guarantee period. **(Amended last sentence: 20/11/2008-5812/Article 3; Amended last sentence: 6/2/2014-6518/ Art. 46)** Documents which will be obtained due to supervision or management activities shall be taken into consideration at a rate of one fifth. However, documents obtained from services procurement related to works, shall not be used for works procurement. **(Inserted sentence: 17/01/2019-7161/Art. 30)** The Authority is empowered to impose limitations on total value and recipients of work experience certificates to be issued due to work performed under a contract. Except for documents issued for works performed to contracting authorities covered by the Law, only work completion certificates among documents issued for works performed abroad can be used by document holder and within group of companies or similar partnership relation to which they belong. The Authority is empowered to determine procedures and principles concerning use of this documents within group of companies or similar partnership relation. When tender is submitted by a joint venture, document holder who uses work experience certificate obtained for works performed abroad must submit tender security and performance security in proportion to its share in the joint venture.

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 declared composition with creditors, who has suspended business activities or who is in any analogous situation according to its national laws and regulations;

b) is the subject of declaration of bankruptcy, an compulsory winding up order, or is under administration of court due to his debts to creditors or is in any analogous situation according to its 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 it 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 it is established or those of Turkey,

e) has been convicted due to its professional activities by a court decision within five years preceding the date of the tender,

f) is established by the contracting authority to be involved in activities which are contrary to work ethics or professional ethics during a work it carried out for the contracting authority within the five years preceding the date of the tender

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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 participated in procurement procedure in spite of prohibition according to Article 11,

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

(Inserted paragraph: 28/3/2007-5615/Article 23) The Authority is entitled to determine the content and amount of social security premium debt by taking approval of the Social Security Institution with regard to subparagraph (c) of the fourth paragraph; and the taxes which fall under the scope of tax debts in terms of type and amount by taking approval of Revenue Administration with regard to subparagraph (d) of the fourth paragraph.

(Inserted paragraph: 28/3/2007-5615/Article 23) Among the documents required under this article, which ones can be submitted as declaration shall be determined by the Authority. If a declaration containing false statements are submitted, or the tenderer who has been awarded the contract can not submit the documents supporting the status specified in the declaration prior to signing of contract, those shall be excluded from the procurement and their tender securities shall be registered as revenue.

Ineligibility

Article 11- Those listed below cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others:

a) (Amended: 20/11/2008-5812/Article 4) those who are temporarily or permanently prohibited from participating in public procurement by contracting authorities or court decision pursuant to provisions of this Law or other laws; and those who are under sentence for the crimes falling under the scope of Prevention of Terrorism Law No. 3713, dated 12.04.1991, or for organized crimes, or for offence of bribing public officials in their own country or in a foreign country.⁸

b) those for whom the relevant authorities decided that they were involved in fraudulent bankruptcy,

c) the contracting officers of the contracting authority carrying out the procurement process, and the persons assigned in boards having the same authority,

d) those who are assigned to prepare, execute, complete and approve any procurement transaction relating to the subject matter of the procurement conducted by the contracting authority,

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).

⁸ With Article 1 of the Law No. 6359 dated 1/11/2012; The phrase “by contracting authorities or court decision” was inserted.

g) (Inserted: 31/10/2016 – Decree Law–678/Article 30; Amended: 2/1/2017 – Decree Law-684/Article 3; Approved: 1/2/2018 – 7071/Article 29; Annulled by the decision of the Constitutional Court No.E:2018/90, K:2019/85 of 14/11/2019)

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 procurement of consultancy services for such work. These prohibitions are also applicable to the companies with which they have a partnership and management relation and to companies where more than half of the capital is owned by above-mentioned companies.

(Amended third paragraph: 30/7/2003-4964/Article 8) Whatever their purposes of establishment are, the foundations, associations, unions, funds and other organisations included within the structure of or related with the contracting authority conducting the procurement, and the companies to which such organisations are partners, cannot participate in the procurement conducted by these contracting authorities.

The tenderers who participate in a procurement procedure 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, the procurement procedure shall be cancelled and tender security shall be registered as revenue.

(Inserted:31/10/2016–Decree Law–678/Article 30; Approved:1/2/2018–7071/Article 29; Annulled by the decision of the Constitutional Court No.E:2018/90, K:2019/85 of 14/11/2019)

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 authorities is obligatory. However, in cases where contracting officer approves that preparation of technical specifications by contracting authority 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 procurement documents. The specified technical criteria shall aim efficiency and functionality, shall not consist of elements impeding competition and shall ensure equal opportunity 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.

Tender notice periods and rules and Prior notice^{9 10}

Article 13- (Amended: 30/7/2003-4964/Article 9) Giving all tenderers sufficient time to prepare their tenders;

a) Procurement with estimated cost equal to or exceeding the threshold values stated in Article 8, shall be advertised by publishing in the Public Procurement Bulletin, at least once, provided that;

1) notices of procurements in open procedure shall be published not less than forty days prior to deadline for the submission of tenders,

2) pre-qualification notices of procurements in restricted procedure shall be published not less than fourteen days prior to deadline for the application,

3) notices of procurements in negotiated procedure shall be published not less than twenty-five days prior to deadline for the submission of tenders.

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

b) Procurement with estimated cost below the threshold values stated in Article 8:

1) the notices of procurement of goods or services with an estimated cost of up to 30 billion Turkish Liras (194,033 Turkish Liras)* and notices of the procurement of works with an estimated cost of up to 60 billion Turkish Liras (388,086 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,

2) the notices of procurements of procurement of goods or services with an estimated cost between 30 billion Turkish Liras (194,033 Turkish Liras)* and 60 billion Turkish Liras (388,086 Turkish Liras)* and notices of the procurement of works with an estimated cost between 60 billion Turkish Liras (388,086 Turkish Liras)* and 500 billion Turkish Liras (3,234,222 Turkish Liras)* shall be published at least once in the Public Procurement Bulletin 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 of goods or services with an estimated cost above 60 billion Turkish Liras (388,086 Turkish Liras)* and below the threshold value, and notices of procurement of works with an estimated cost above 500 billion Turkish Liras (3,234,222 Turkish Liras)* and below the threshold value shall be published at least once in the Public

⁹ The title of this article was “time limits and rules of procurement”, it was amended by Article 5 of Law No. 5812 of 20/11/2008 as is stated in the text.

¹⁰ With the Article 5 of the Law No. 5812 dated 20/11/2008; the phrase “Official Gazette” in this article was amended as “Public Procurement Bulletin” and added to the text.

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Procurement Bulletin 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 stated in paragraph (b), except for time limit, and that invitation letters be sent to the candidates who are qualified as the result of pre-qualification proceedings, in advance of the deadline for the submission of tenders in accordance with the time limits stated in paragraph (b).

(Inserted paragraph: 20/11/2008-5812/Article 5) Where notices are drawn up and transmitted by electronic means, the time limit set in item (1) of subparagraph (a) of first paragraph may be shortened by seven days. Where direct access to notice and procurement and prequalification document is enabled through Electronic Public Procurement Platform, the time limit specified in the item (1) of subparagraph (a) of first paragraph and the forty-day time limit for invitation to pre-qualified candidates in restricted procedure may be shortened by five days.

(Inserted paragraph: 20/11/2008-5812/Article 5) Contracting authorities may publish a prior notice in the Public Procurement Bulletin for procurements with estimated costs which are equal to or exceed the threshold values stated in Article 8. When a prior notice is published, the time limit of forty days for notices and invitation to tender may be shortened up to twenty-four days, including the cases of international announcement of notices.

(Inserted paragraph: 20/11/2008-5812/Article 5) It is mandatory to include the following information in a prior notice:

- a) the name, address, telephone, fax number and e-mail address of the contracting authority,
- b) the name, characteristics and type of procurement, items and estimated quantities in goods and services procurement and the place where the task is to be performed, construction technique and estimated physical quantities and coverage according to needs programme in works procurement,
- c) whether a framework agreement is to be made, or not,
- d) the place of the procurement,
- e) the quarter of the year in which the tender notice is to be published.

(Inserted paragraph: 20/11/2008-5812/Article 5) Where a prior notice has been published, tender notice must be published at least 40 days after the publishing date of prior notice in order to take the advantage of time limit shortening specified in the fourth paragraph. Publishing of the prior notice does not impose the contracting authority an obligation to procure.

(Inserted paragraph: 20/11/2008-5812/Article 5) It is compulsory to conduct the procurement either in open or restricted procedure where a prior notice published.

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(Inserted paragraph: 20/11/2008-5812/Article 5) Prior notices shall be published in the Public Procurement Bulletin free of charge.

The Authority is competent to determine which of these tender notices will be announced furthermore through “Media Announcement Institution” in one of the newspapers delivered nationwide.

If 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 authority, government and municipality buildings and announced by municipal facilities. These proceedings shall be minuted.

Apart from the above-mentioned compulsory announcement of notices, the contracting authorities 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 made, the minimum time limits specified above shall be increased by twelve days.

Joint ventures

Article 14- (Amended: 30/7/2003-4964/Article 10) Joint ventures may be established by more than one natural or legal person either in the form of a business partnership or a consortium. Members of a business partnership become partner to carry out the whole business jointly with its rights and responsibilities while members of consortium become partner to carry out relevant parts of business according to expertise field of members, separating their rights and responsibilities. Business partnerships may participate in any kind of tender. However, in cases where different expertises are needed, the contracting authorities shall indicate in procurement documents whether consortium is allowed or not to submit tender. At tendering stage, joint ventures shall be asked to submit an agreement indicating that they formed a business partnership or a consortium among themselves. The pilot partner and the coordinator partner shall be specified in business partnership agreements and in consortium agreements respectively. In case 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 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 stated which part of the business is committed by each 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 is deemed necessary because of the characteristics of the subject matter of the procurement, the tenderers may be asked, to specify the parts of the contract which they plan to assign to sub-contractors at the tendering stage and to submit the list of sub-contractors for approval of the contracting authority prior to the signing of the contract. However, in such a case, the liabilities of the sub-contractors with regard to the parts of the contract assigned to them shall not release the contractor from its own liabilities.

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Cancellation of procurement procedure prior to the time for submission of tenders¹¹

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

In such a case, cancellation of procurement procedure shall be promptly announced to the tenderers by way of a notice, together with the reasons thereof. Those who have already submitted their tenders shall also be notified of the cancellation. In case of cancellation of the procurement procedure, all submitted tenders shall be deemed rejected, and shall be returned unopened to the tenderers. The tenderers may not make any claims against the contracting authority because of cancellation of procurement procedure.

In the case of cancellation of procurement procedure, it may be initiated again by reviewing the reasons for cancellation.

Prohibited acts or conducts

Article 17- The following acts or conducts are prohibited in procurement procedures:

a) to conduct or attempt to conduct procurement fraud by means of fraudulent acts, promises, threats, unlawful influence, undue interest, collusion, extortion, bribery or other actions,

b) to cause confusion among tenderers, to prevent participation, to offer collusion to tenderers or to encourage it, 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 where submitting alternative tenders is allowed.

e) to participate in procurement procedure although prohibited pursuant to Article 11.

Provisions stated in Chapter 4 of this Law shall apply to those are involved in these prohibited acts or conducts.

CHAPTER II Procurement Process

SECTION I Procurement Procedures and Implementation

¹¹ With Article 11 of the Law No.46864, dated 30/7/2003; the phrase “day” in the title and first paragraph of this article was changed to “time” and added to the text.

Applicable procurement procedures

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

- a) Open procedure,
- b) Restricted procedure,
- c) Negotiated procedure,
- d) (Repealed: 30/7/2003-4964/Article 12)**

Open procedure

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

Restricted procedure

Article 20- Restricted procedure is a procedure in which tenderers who are invited following pre-qualification by the contracting authority, can submit their tenders. **(Amended last sentence: 20/11/2008-5812/Article 6)** Restricted procedure may be used in procurement of goods, services or works where open procedure is not applicable due to the fact that nature of the subject matter necessitates expertise and/or high technology and in procurement of works with estimated cost exceeding the half of threshold value.

(Repealed second paragraph: 30/7/2003-4964/Article 13)

Pre-qualification evaluation shall be done 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. **(Repealed last sentence: 30/7/2003-4964/Article 13) (Inserted sentence: 20/11/2008-5812/Article 6)** Provided that it is stated in prequalification notice and document, all qualified tenderers or a certain number of the tenderers among qualified tenderers, who are ranked and listed according to criteria specified in the document, may be invited to submit their tenders

(Amended first sentence: 20/11/2008-5812/Article 6) The candidates who are not invited to submit tenders shall be informed in writing about the reasons of their rejection. The procurement shall be concluded after evaluating tenders in accordance with the evaluation criteria that are designed in accordance with Article 40 in a way that avoids any impediment to competition depending on the nature of the work and that are specified in the procurement 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.¹²

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

¹² The phrase "Article 10" in this paragraph has been amended as "Article 40" by the Law No. 4964 dated 30/7/2003 and has been added into the text.

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Negotiated procedure

Article 21- Negotiated procedure may be used in the following circumstances:

- a) no tender was submitted in open or restricted procedures,
- b) it is inevitable to conduct the procurement procedure immediately in the cases of sudden and unexpected events such as natural disasters, epidemics, risk of losing lives or properties or **(Inserted phrase: 16/5/2018 – 7144/Article 11)** peculiarity of procurement in terms of construction technique, or necessity of procuring urgently established by the contracting authority in order to ensure safety of life and property or structure, or occurrence of events which could not be foreseen by the contracting authority.
- c) it is inevitable to conduct the procurement procedure immediately, due to occurrence of special incidents 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) **(Inserted: 30/7/2003-4964/Article 14)** product, material and service procurement by contracting authorities with estimated costs of up to 50 billion Turkish Liras (**323,398 Turkish Liras**).*

(Amended second paragraph: 20/11/2008-5812/Article 7) Publication of a notice is not compulsory in cases set forth in subparagraphs (b), (c) and (f). Where a notice is not published, at least three tenderers shall be invited to submit their qualification documents and price offers together.

(Repealed third paragraph: 20/11/2008-5812/Article 7)

(Amended fourth paragraph: 20/11/2008-5812/Article 7) In procurements to be conducted in accordance with subparagraphs (a), (d) and (e), first of all, the tenderers who are accepted as qualified according to evaluation criteria in procurement documents shall submit their initial proposals, which do not include prices, on aspects such as technical details and realization methods of the contract that is subject matter of the tender. The procurement commission shall discuss with each tenderer the best methods and solutions to meet the needs of the contracting authority. After the clarification of the conditions as a result of the technical discussions, the tenderers who can meet these conditions shall be asked to submit their tenders including the tender price based on a reviewed and clarified technical specifications.

(Amended fifth paragraph 20/11/2008-5812/Article 7) In procurement procedure to be conducted under this provision, the procurement shall be concluded after receiving the tenderers' final price offers in writing which may not exceed their initial price.

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(Repealed sixth paragraph: 20/11/2008-5812/Article 7)

(Inserted paragraph: 30/7/2003-4964/article 14; Amended seventh paragraph: 20/11/2008-5812/Article 7) In procurement of goods to be conducted under paragraphs (b), (c) and (f), signing of contract and receiving performance security are not obligatory, provided that the goods are delivered within the time limit for signing contract and it is approved by the contracting authority.

Direct procurement

Article 22- (Amended: 30/7/2003-4964/Article 15) The method of direct procurement may be applied in the following cases without announcing and without receiving any securities:

- a) when it is established that the needs can be met from only one natural or legal person,
- b) in case only one 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) procurement not exceeding 15 billion Turkish Liras (**97,008 Turkish Liras**)* for needs of contracting authorities within the boundaries of metropolitan municipalities and procurements not exceeding 5 billion Turkish Liras (**32,316 Turkish Liras**) * for needs of other contracting authorities, and purchases with regard to accommodation, trip and subsistence within the scope of representation and hospitality expenses,
- e) purchase or lease of immovable property which fits the need of the contracting authority,
- f) **(Amended: 20/11/2008-5812/Article 8)** procurement of medicine, vaccination, serum, antiserum, blood and blood products stocking of which is not economical due to their nature and necessity to use within a certain period of time or which shall be used in urgent cases, and procurement of medical consumables, test and examination consumables which are peculiar to a patient and which can be specified at the time of application such as orthosis and prothesis,
- g) procurement of services from advocates having Turkish or foreign nationality or from advocacy partnerships in order to represent and defend the contracting authorities covered by the Law, in lawsuits with regard to disputes to be settled by international arbitration,
- h) **(Inserted: 12/12/2003-5020/Article 28; Amended: 20/11/2008-5812/Article 8)** procurement of services from Turkish or foreign advocates pursuant to Articles 22 and 36 of Law No. 4353 dated 08.01.1943, and procurement of services in order to register intellectual and industrial property rights at national and international institutions,

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i) (Inserted: 15/5/2008-5763/Article 35) procurements of services by Turkish Labor Authority regarding its duties stated in the subparagraphs (b) and (c) of the article 3 of Law No. 4904 dated 25.06.2003 and stated in the seventh paragraph of article 48 of the Unemployment Insurance Law No. 4904 dated 25.08.1999,

i) (Inserted: 20/11/2008-5812/Article 8; Amended: 19/11/2013-6504/Article 1) In periods of election of the president by the public, holding referendums on laws regarding constitutional amendments, general and midterm parliamentary elections, general and midterm elections of local administration and neighbourhood mukhtar and council, procurement of watermarked voting paper and watermarked voting envelope paper, voting paper printing service, voting envelope production service and procurement of all kinds of election materials for such elections and overseas election spending for the need of Supreme Election Board, procurement of voting paper printing service by the chairmanships of Provincial Election Boards.

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

Design Contests

Article 23- In order to acquire the required plans and design projects relating to architecture, landscaping, engineering, urban design projects, urban and regional planning and fine arts; the contracting authorities may organise contests, with or without prize, in which the winner is selected through an evaluation by a jury, by publishing a notice in a way that ensures competition in accordance with the principles and procedures stated in their related legislation.

SECTION II

Procurement and prequalification notice, Issuance of Procurement documents

Contents of procurement notices

Article 24- The notice shall not include anything that is not specified in procurement documents. It is mandatory to include the following information in the notices:

- a)** the name, address, telephone and fax number of the contracting authority,
- 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 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 procurement documents can be seen, and the price to obtain procurement documents,

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- i) (Amended: 30/7/2003-4964/Article 16)** the place, date and hour of opening of the tenders,
- 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) (Amended: 30/7/2003-4964/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) (Inserted: 30/7/2003-4964/Article 16)** statement on whether consortium is allowed to submit tender or not.

Contents of pre-qualification notices

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

- a)** the name, address, telephone and fax number of the contracting authority,
- 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)** 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 and deadline for the submission of the pre-qualification application,
- j) (Inserted: 30/7/2003-4964/Article 17)** indication of whether consortium is allowed to submit tender or not.

Noncompliant 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 incompliance, the procurement or pre-qualification procedure cannot be carried out unless the procurement notices are renewed in a way that ensures conformity with these articles.

(Amended second paragraph: 20/11/2008-5812/Article 9) However, in case of errors in notices that are not in compliance with Article 24 and 25, except for the cases of not publishing procurement notices or not conforming to the related time limits specified in article 13, the tender or pre-qualification procedure may be conducted provided that a correction notice is published in order to correct the erroneous matters within fifteen days for procurement with twenty-five or forty day time limits for notices pursuant to article 13, and within ten days in other cases following the publication of procurement notices.

Contents of pre-qualification and procurement documents and administrative specifications

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Article 27- Procurement documents shall include administrative specifications that also incorporate the instructions to tenderers; technical specifications that also cover the project of the work; draft contract and other required documents and information. Prequalification documents shall include required 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) name, characteristics, type and quantity of the subject matter of procurement, and in case of services the work description,
- b) the name, address, telephone and fax number of the contracting authority,
- c) procurement procedure, date and hour of opening of the tender and place of tender submission,
- d) instructions to tenderers,
- e) required qualifications for tenderers, the required documents and qualification criteria,
- f) methods for request for clarification of the procurement documents and the realization of such request,
- g) the validity period of the tenders,
- h) (**Amended: 30/7/2008-5812/Article 18**) statement on whether consortium is allowed to submit tender, whether it is possible to submit tenders for the whole or a part of the subject matter of the procurement, whether an alternative tender can be proposed in procurement of goods and if so, how those alternative tenders are to be evaluated,
- i) information on whether 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 procurement decision 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) a statement that the contracting authority is free to cancel the procurement procedure before the tender opening time,
- p) a statement that the contracting authority is free to reject all the tenders and cancel the procurement procedure,
- r) commencement and completion dates for the subject matter of the procurement, the place where it will be carried out, terms of delivery and penalties to be paid in case of delays,
- s) place and terms of payment; whether an advance payment is to be made or not, and if so, amount and terms of such payment; method of payment for price adjustment, if any, for subject matter of the contract,
- t) (**Amended: 30/7/2003-4964/Article 18**) circumstances and conditions where time extension is possible, and mutual obligations in case of additional works or omitted works possible within the scope of contract,
- u) information on which party will be responsible for paying taxes, duties, charges and other expenses relating to the contract,
- v) in works contracts, terms relating to insurance of the work and workplace, and building inspection and liability,

- y) conditions relating to supervision, inspection and acceptance,
- z) procedure of dispute settlement.

Providing procurement and pre-qualification documents

Article 28- The procurement and pre-qualification documents can be seen at the place of contracting authority, free of charge. However, it is compulsory for economic operators willing to participate in the pre-qualification or procurement procedure to purchase this document. **(Inserted sentence: 4/7/2012-6353/Article 28)** In procurements where advertising of procurement notices is not required, procurement document shall be sold only to those who are invited by the contracting authority. The price of the document shall be determined by the contracting authorities in such a way that this amount does not exceed its printing cost and not impede competition.¹³

Clarifications or changes to the procurement documents

Article 29- In principle, no changes should be made to the procurement documents after the publication of the procurement notices. If a change is deemed as necessary, the necessity and reasons thereof shall be recorded in a minute, and the previous notices shall be deemed invalid, and the procurement notice shall be published again in the same way.

However, after publication of procurement 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 authority or notified by the tenderers in writing, the procurement documents can be changed. The addendum relating to such changes, constituting a binding part of the procurement documents shall be provided to all tenderers who have obtained the procurement documents, in a way that ensures 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 changes made with addendum, deadline for submission of tenders may be postponed for maximum twenty days for once. In case of an addendum, tenderers who have already submitted their tenders prior to such arrangement shall be allowed to withdraw their tenders and submit new tender.

Moreover, tenderers may request explanations in writing relating to aspects in the procurement documents, which they may need when preparing their offers, twenty days prior to the deadline for submission of tenders. In case such request is found appropriate by the contracting authority, the required explanations shall be provided in writing, in a way that ensures that all tenderers who are already provided with the procurement documents until that date are informed of such explanations 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 required under the rules of participation in the procurement including the letter of tender 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 authority carrying out the

¹³ By the Article 19 of the Law No. 4964, dated 30/7/2003; the phrase “preparation cost” in the last sentence of this article has been changed to “printing cost”.

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procurement procedure shall be written on the envelope. The seal of the envelope shall be signed and stamped by the tenderer.

The letter of tender shall be submitted in writing and signed. It is mandatory to indicate in the letter of tender that procurement documents are fully read and accepted; the offered price must be written clearly, both in writing and in figures as consistent with each other; there must be no scrapings, erasures, or corrections and the letter of tender must be signed by the authorised 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 authority no later than the date and hour specified in procurement documents, against a receipt indicating the queue number. The tenders submitted after that hour shall not be accepted and shall be returned unopened. Tenders may also be sent via registered mail. The tenders sent by mail must be received by the contracting authority until the hour specified as deadline in the procurement documents. The date and hour of the receipt of tenders that will not be included in the procurement process 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 issuing an addendum.

Submission of applications

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

Tender validity period

Article 32- Tender validity period shall be specified in procurement documents. If deemed necessary by the contracting authority, this period may be extended as much as the tender validity period specified in the procurement document with the consent of the tenderer, provided that conditions of tender and contract are not changed.

Tender security

Article 33- (Amended: 30/7/2003-4964/Article 20) In procurement, a tender security shall be given in an amount determined by 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 procurement documents.

Values accepted as tender security

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

- a) The current Turkish Lira,
- b) **(Amended: 30/7/2003-4964/Article 21; Amended: 28/11/2017/7061/Article 66)**
Letters of guarantee,
- c) Domestic Borrowing Bills issued by the Undersecretariat of Treasury and documents arranged for replacing these bills,

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The letters of guarantee to be issued by foreign banks permitted to operate in Turkey in accordance with the related legislation, and the letters of guarantee to be issued 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.¹⁴

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 shall not be received by procurement commissions. Such securities must be deposited to accounting offices or departments.

Letters of guarantee belonging to successful tenderer and to the tenderer submitting the second economically most advantageous tender shall be delivered to accounting offices or departments following the procurement procedure. The tender securities of other participants shall be returned promptly. In case a contract is signed with the successful tenderer, the guarantee belonging to the tenderer who has submitted the second economically most advantageous tender 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 contracting authority can be seized and subject of cautionary judgement.

Letters of Guarantee¹⁵

Article 35- Public Procurement Authority is authorised to determine the form and scope of letters of guarantee to be provided pursuant to Law.¹⁶

A period shall be stated in letters of guarantee submitted as tender security provided that it shall be at least 30 days more than the tender validity period set in accordance with Article 32. In case of extension of tender validity period, the period of such letters of guarantee shall be extended accordingly. Validity of performance bonds shall be determined by the contracting authority by taking into account the completion date of the subject matter of the procurement.

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

SECTION IV Evaluation of Tenders

Receiving and opening of tenders

Article 36- (Amended first sentence: 30/7/2003-4964/Article 23) Tenders shall be submitted to the contracting authority until the deadline for submission of tenders stated in the procurement documents. The number of tenders submitted at the hour of opening of the tenders shall be recorded in the minutes by procurement commission and announced to those who are

¹⁴ The phrase “or private financial institutions” in this paragraph was added to the text by the Article 21 of the Law No. 4964 dated 30/7/2003.

¹⁵ The phrase “Bank” in the title of this article is removed from the text by Article 22 of the Law No. 4964 dated 30/7/2003.

¹⁶ The phrase “by banks” in the first paragraph of this article was removed from the text by article 22 of the Law No. 4964 dated 30/7/2003.

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present, and then the tender proceedings shall be immediately commenced. The procurement commission shall examine the tender envelopes in receiving order. Envelopes that are not in compliance with paragraph 1 of Article 30 shall be recorded in the minutes and shall not be considered in the evaluation stage. The envelopes shall be opened in the presence of tenderers and those who are present, in receiving order.

It shall be checked if the documents of the tenderers are complete or incomplete, and whether the tender letters and the tender securities are in due form. Tenderers with incomplete documents or improper tender letters and tender securities shall be recorded in the minutes. The tenderers and their tender prices and the amount of estimated cost shall be announced. The minutes relating to these actions shall be signed by the procurement 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 procurement commission.¹⁷

Evaluation of tenders

Article 37- Upon the request of procurement commission, the contracting authority 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 to the conditions in the procurement documents to an eligible one.

(Amended second paragraph: 20/11/2008-5812/Article 11) In evaluating tenders, first of all, the tenders of the tenderers whose documents are established to be incomplete or whose tender letters and tender securities are established to be not compliant with the requirements as a result of first session in accordance with Article 36 shall be excluded from the evaluation process. However, in case of missing information in the documents provided that absence of those do not alter the substance of the tender; the contracting authority shall request the tenderer in writing to furnish these missing information in a given time period. The tenderers who do not furnish this missing information in a given time shall be excluded and their tender securities shall be registered as revenue. Following this first-evaluation and actions, the tenders of tenderers with complete documents and appropriate tender letters and tender securities 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, as well as with the conditions set forth in the procurement documents and whether an arithmetical error exists in unit price charts. The tenders that are found ineligible and the tenders with arithmetic errors in unit price charts shall be disqualified.

(Repealed last paragraph: 20/11/2008-5812/Article 11)

Abnormally low tenders

Article 38- The procurement commission shall evaluate the tenders **(Amended:6/2/2014-6518/Article 47)** and shall determine those that are abnormally low compared to the other tenders or the estimated cost determined by the contracting authority. Before rejecting these tenders, the commission shall request from the related tenderers, the

¹⁷ With Article 10 of the Law No. 5812 of 20/11/2008; the phrase “tender prices shall be announced” in this paragraph is changed to “tender prices and the amount of estimated cost shall be announced” and added to the text.

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details relating to components of the tender that are determined to be significant, in writing and within a specified period.

The procurement commission shall evaluate the abnormally low tenders by taking into consideration the written explanations relating to the issues such as:

- a) the economics of the manufacturing process, of the services provided and of the construction method,
- b) the technical solutions chosen and any favourable conditions available to the tenderer for the supply of the goods and services or for the execution of the works,
- c) the originality of the goods, services or works proposed.

Tenders shall be rejected where the written explanations of the tenderers are found to be insufficient or where tenderers fail to make a written explanation.

(Inserted paragraph: 20/11/2008-5812/Article 12; Amended paragraph: 6/2/2014-6518/Article 47) The Authority is entitled to make regulations concerning setting anomaly thresholds and inquiry criteria in order to identify and evaluate abnormally low tenders and to determine economically most advantageous tender in accordance with the type, characteristics and estimated cost of the subject matter of the procurement and the procurement procedure; concluding a procurement procedure without requiring the explanation provided for in this article; also in case of procurement of services and works with estimated costs up to half of the threshold values provided for in article 8, rejection of tenders which are below the anomaly threshold without requiring explanation provided for in this article. Procurement commission shall apply such regulations in implementation of this article.

Rejection of all tenders and cancellation of the procurement procedure

Article 39- Upon decision of procurement commission, contracting authority is free to reject all tenders and cancel the procurement procedure. In this case, all the tenderers shall be informed promptly about this cancellation. The contracting authority shall incur no liability for rejecting all the tenders. **(Amended last sentence: 30/07/2003-4964/Article 24)** However, upon request of the tenderers, the contracting authority shall send the reasons of cancellation of the procurement procedure to tenderers who request that information.¹⁸

Conclusion and Approval of Procurement

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

(Amended second paragraph: 20/11/2008-5812/Article 13) The economically most advantageous tender is determined either solely on the basis of price or on the basis of both price and non-price factors such as operation and maintenance costs, cost effectiveness, productivity, quality and technical value. In procurement where the economically most advantageous tender shall be determined by taking into account the non-price factors in addition

¹⁸ By Article 24 of the Law No. 4964 dated 30/7/2003; the phrase “at any stage prior to the approval of the contracting officer, provided that it is stated in the tender document” in this article is removed from this paragraph.

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to the price, the monetary values or relative weights of these factors shall be specified in procurement documents.

When it is stated that there will be a price advantage for domestic tenderers in procurement documents in accordance with Article 63 of this law, the procurement shall be concluded by applying this price advantage and by determining the economically most advantageous tender.

In procurement procedures where the lowest price offer is evaluated as the economically most advantageous tender, in case there is more than one tenderer bidding the same price and these tenders are established to be the economically most advantageous tenders, the procurement shall be concluded by determining the economically most advantageous tender considering the non-price factors as stated in the second paragraph.

The procurement commission shall reach a justified decision, and submit the decision for the approval of the contracting officer. The decisions shall include; the names or commercial titles of the tenderers, the submitted prices, the date of opening of tenders and the to whom contract is awarded and grounds thereof, and in case the contract was not awarded, the related reasons thereof.

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.¹⁹

The procurement commission's decision shall be deemed valid if the decision is approved, and null if it is cancelled.

(Amended last paragraph: 20/11/2008-5812/Article 13) Prior to approval of the award decision by the contracting officer, the contracting authority shall confirm whether the successful tenderer and the second most economically advantageous tenderer are prohibited from participating in tenders and shall attach the related document to the tender decision. If it is detected that both tenderers are prohibited, the procurement procedure shall be cancelled.

Notification of final tender decisions

Article 41- (Amended: 20/11/2008-5812/Article 14)

The result of procurement shall be notified to all tenderers who have submitted tenders, including the tenderer to whom the contract is awarded, within maximum three days following the day of approval of the award decision by the contracting officer. Within this notification, the reasons for excluding tenders from the evaluation or disapproval of tenders shall also be included.

In cases where the tender decision is cancelled by the contracting officer, the tenderers shall be notified of the reasons thereof.

The contract shall not be signed unless five days have passed in procurement held pursuant to subparagraphs (b) and (c) of Article 21 and ten days in procurement held in other cases, following the notification to all tenderers of the result of procurement.

¹⁹ With the Article 25 of the Law No. 4964 dated 30/7/2003; the phrase "twenty days" in this article has been changed to "five working days".

Invitation to signing of contract

Article 42- (Amended first paragraph: 20/11/2008-5812/Article 15) Within three days following the end of time limits specified in Article 41, and in cases requiring the ex-ante financial control, following the completion date of this control, the successful tenderer shall be notified to sign the contract by submitting a performance bond within ten days following the date of notification. In case of foreign tenderers, twelve days shall be added to this period. On the date of contract signing, it is compulsory to confirm whether the successful tenderer is prohibited from participating in tenders by means of submitting the results of the procurement to the Authority.²⁰

In accordance with the Article 43, in procurement of consultancy services where no performance bond is required before signing of contract, 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 performed in accordance with the provisions of the contract and procurement documents, a performance bond calculated as 6 % of the contract value shall be received from the successful tenderer prior to the signing of the contract.

(Inserted paragraph: 20/11/2008-5812/Article 16; Repealed paragraph: 6/2/2014-6518/Article 48)

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

(Inserted paragraph: 6/2/2014-6518/Art. 48) In case the offer of the successful tenderer is below the anomaly threshold, the Authority may make regulations regarding the performance bond to be received from this tenderer, which is not less than 6% and not more than 15% of the estimated cost.

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

In case these obligations are not fulfilled, the tender security of the successful tenderer shall be registered as revenue without need to send a formal protest or take any legal action. In such a case, the contracting authority may sign 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 aforementioned tender's price is found appropriate by the contracting officer. However, in order to sign a contract with the tenderer submitting the second

²⁰ The phrase “the seventh day following the posting day of the letter shall be deemed to be the notification date of the decision” stated in this paragraph before it was amended by the Article 15 of the Law no. 5812, is annulled by the decision of the Constitutional Court No.E:2012/132, K:2012/179 of 22/11/2012.

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economically most advantageous tender, the tenderer in question shall be notified as stipulated in Article 42, within three days following the end of the ten-day period specified in Article 42.

In case the tenderer with the second economically most advantageous tender also rejects to sign the contract, the tender security of this tenderer shall also be registered as revenue and the procurement procedure shall be cancelled.

The obligations and liabilities of the contracting authority in signing contract

Article 45- The contracting authority 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 authority fails to fulfil this obligation, the tenderer may renounce its commitments, on condition that it notifies so within maximum five days following the end of the period through a notary-public certified warning with a period of ten days. In this case, the tender security is returned and the tenderer gains the right to demand the documented expenses he has incurred in the issuing of the guarantee. Those who have caused this loss shall compensate it and shall be subject to the provisions of Article 60.

Signing of the contract

Article 46- (Amended first paragraph: 30/07/2003-4964/Article 28) All procurement procedures that are carried out shall be concluded with a contract. The contracts shall be drafted by the contracting authority 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 procurement documents.

Contracts shall not be contrary to the conditions set forth in the procurement documents.

Notification of Results²¹

Article 47- (Amended: 20/11/2008-5812/Article 17)

Except those sent according to Article 42, the results of the procurement of goods, services and works carried out by contracting authorities covered by this Law, are notified to the Authority in fifteen days at most. Among these results, those relating to procurements covered by this Law are published in the Public Procurement Bulletin by the Authority. The information to be included in the notification of results and which of the results regarding the goods, services and works procurement awarded according to this Law by the contracting authorities operating in the areas of defence, security and intelligence to be published shall be decided by the Authority after considering the opinion of the contracting authority concerned.

SECTION FIVE

Special Provisions on Procurement of Consulting Services

Consulting services

Article 48- (Amended: 28/11/2008-5812/Article 18)

Services in technical, financial, legal or similar fields such as engineering and architecture, surveying and project, map and cadastre, development plan in any scale, development application, preparation of Environmental Impact Assessment Reports, plan,

²¹ By Article 17 of the Law No. 5812 of 20/11/2008; title of this article “notification of the procurement decision” is amended as “notification of results”.

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software development, design, drafting of technical specifications, supervision and controlling shall be procured from consultancy service providers.

Subject to the provisions contained in this section, only the restricted procedure shall be used in procurement of consultancy services. **(Amended last sentence: 31/03/2012-6288/Article 6)** However, the consultancy services estimated costs of which are below the four times of upper limit established for procurement of services in subparagraph (2) of paragraph (b) of Article 13 may be carried out as procurement of services.

Pre-qualification and Selection of Tenderers

Article 49- The pre-qualification notices shall be published 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 the candidates to be invited for inclusion in the short list and for submitting tenders.

In consequence of the evaluation of the candidates who apply for pre-qualification in accordance with the pre-qualification criteria set forth in the procurement documents and notices, a short list shall be made, which includes minimum three and maximum ten candidates selected among those that qualify in the pre-qualification.

Invitation to tender

Article 50- The candidates who have been included in the short list made according the Article 49 above, shall be given a time period which is not less than the periods stated in article 13 in order to prepare their technical and financial proposals, and a letter of invitation to tender shall be sent along with the procurement 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 contract shall not be awarded.²²

When preparing their tenders, the tenderers can make a request for explanations on matters which need explanation in the procurement documents in writing until twenty days prior to the final submission date of tenders. In case an explanation is made by the contracting authority, this explanation shall be sent in writing to all the tenderers who are shortlisted so that they are informed ten days prior to the final submission date of tenders.

In case the contracting authority notices or the tenderers notify in writing that material or technical mistakes or incompleteness exist that may affect the preparation of the tenders or the realization of the assignment after the invitation letter is sent, some changes may be made in the procurement documents. An addendum containing those changes which is a binding part of the procurement documents, shall be sent to all tenderers who are shortlisted 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 changes made with the addendum,

²² By Article 31 of the Law No. 4964 dated 30/7/2003; The phrase “forty days” in this paragraph has been changed to “periods stated in Article 13”.

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the date of the tender can be postponed for a maximum of twenty days, only for once. In case an addendum is issued, tenderers who have submitted their tenders prior to the issuance of the addendum 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 the tender is related to. The seal of the envelopes shall be signed and stamped by the tenderer.

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

Evaluating the tenders and awarding the contract

Article 52- The procurement commission shall take the minutes indicating the number of tenders submitted until the tender opening time and shall announce this figure to those who are present and promptly start the tendering process. The procurement 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 tenders 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 tenders shall be recorded in the minutes without being opened, packed all together, sealed, and signed by the procurement 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 procurement commission to evaluate the tenders immediately.

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

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

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In these procurements, 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 procurement documents and in the invitation to tender, the following shall be taken as a basis; the experience in fulfilling contracts of similar characteristics and scale, the method proposed for the job, the organisational structure and the educational and professional qualifications of the managerial team and the technical staff to be assigned for the execution of the job.

In the evaluation of the tenders, 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 procurement documents. Tenders, which have missing documents, or which do not comply with the required conditions shall be disqualified. **(Amended third and fourth sentence: 20/11/2008-5812/Article 19)** However, in case of missing information in the documents provided that absence of those do not alter the substance of the tender; the contracting authority shall request from the tenderers in writing to furnish these missing information in a given time period. The tenderers who do not furnish this missing information in a given time shall be excluded from the evaluation and their tender securities shall be registered as revenue.

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

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

At the date and hour notified by the procurement commission; first of all, the results of technical evaluation and the technical scores shall be announced to those who are present. The package containing financial tenders, which have been collectively kept under protection by the procurement commission, shall be opened. The financial tender 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 leave the room. **(Amended fourth sentence: 20/11/2008-5812/Article 19)** After these transactions, the financial tenders of tenderers who achieve the minimum technical point or higher, shall be opened and the prices and related estimated cost shall be announced and recorded in the minutes. The envelopes of the financial tenders, which could not be returned unopened by hand, shall be mailed immediately after the conclusion of the procurement procedure.

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

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The technical and financial scores of these tenderers shall be multiplied by the weighted coefficients specified in the procurement documents and thus the total scores shall be determined. The tenderer scoring the highest total point shall be invited to negotiate the job description, contractual terms, personnel and financial tender. However, this meeting shall not cause any significant change in the terms and conditions set forth in the procurement 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 procurement 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, the tender security shall be registered as revenue by the contracting authority. In this case, a contract shall be signed with the tenderer scoring the second highest total point by negotiating provided that the tender price is approved to be appropriate by the contracting officer. If the second tenderer does not fulfil the obligation to sign the contract, its tender security shall be recorded as revenue by the contracting authority.

The procurement procedure 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

The Public Procurement Authority

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

The Authority is linked to the Ministry of Finance. The Authority is situated in Ankara.

The Authority is independent in fulfilment of its duties. No organ, office, entity or person can give 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 services units.

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

1) to evaluate and conclude any complaints claiming that acts of contracting authority within the period from the commencement of the procurement until the signing of the contract are in violation of this Law and the related legislative provisions,

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

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

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

5) to keep 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 from participating in procurement procedures taking place in foreign countries, to furnish proposal to **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** the President in order to ensure that the relevant measures are taken regarding the prevention of participation of tenderers of those countries in tenders as well and 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.

(Repealed paragraph: 20/11/2008-5812/Article 20)

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 procurement documents, standard contracts, regulations and communiqués relating to the implementation of this Law and Public Procurement Contracts Law, through Board decision. The Board and the Authority shall employ their authorities by adopting regulations and taking specific decisions. Standard procurement documents, standard contracts, regulations and communiqués shall be put into force through publication in the Official Gazette.

c) **(Amended: 24/10/2011-Decree Law-661/Article 57; Amended: 9/7/2018 – Decree Law – 703/Article 171)** The decision making organ of the Authority shall be the Public Procurement Board, consisting of nine members including a Chairperson and a Vice Chairperson, appointed by the President from among those graduated from at least 4-years higher education. The Chairperson of the Board is also the Director of the Authority.

(Amended: 24/10/2011-Decree Law-661/Article 57; Amended: 9/7/2018-Decree Law-703/Article 171) Members of the Board can have no past or present relationship of membership or assignment, including candidationship, with any political party.

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(Amended: 12/06/2002-4761/Article 15) (Amended first and second sentence: 24/10/2011-Decree Law-661/Article 57) (Repealed first and second sentence: 9/7/2018 – Decree Law – 703/Article 171) 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 loose the conditions related to their assignment, they are deposed from their duties before the due date. In case members are convicted of official misconduct or infamous crimes, they shall be deposed from their duties by the **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** approval of the President. Board memberships, which become vacant due to deposition or any other reason before the due date, are filled according to above-mentioned procedures within one month.²³ **(Repealed last sentence: 20/11/2008-5812/Article 20)**

The general management and representation of the Authority and the execution of the decisions taken by the Board shall be the liability of the director. In case of leave, illness, domestic or abroad assignment or relieve of duty of the director, the vice director shall act as the director.

(Inserted paragraph: 20/11/2008-5812/Article 20) The right to sue, to commence execution proceedings and not to appeal to higher courts against courts' decisions and not to apply for correction of decisions given by higher courts belong to the Board.

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) (Amended first sentence: 20/11/2008-5812/Article 20) The Chairperson and the members of the Board may issue scientific papers in return of copyright fees and lecture against remuneration on condition that these activities do not hinder their primary duties; however they may not be involved in any official or private task other than mentioned above as long as it is not based on a special law, may not hold a managing position in associations, foundations, cooperatives and similar bodies, and may not be involved in trade or freelance activities as well. The members of the Board are obliged to dispose of 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.

(Inserted paragraph: 20/11/2008-5812/Article 20) Board decisions shall not be subjected to appropriateness supervision.

(Inserted paragraph: 20/11/2008-5812/Article 20) The chairperson and the members of the Board and the Authority's staff may not be appointed as arbitrator or court experts.

²³ By the first article of Law No. 6462 dated 25/4/2013; the phrase "handicap" in this paragraph has been changed to "disability".

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The Board members and the staff of the Authority cannot disclose any confidential information or document obtained during executing their duties to anyone other than those authorized by law in this matter, 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. **(Amended third and fourth sentence: 20/11/2008-5812/Article 20)** Board members and Authority's staff shall be treated as Civil Servants for crimes they commit or crimes committed against them due to their duties. The provisions of Article 104 of Banking Law no.5411 of 19.10.2005 shall apply regarding the civil and criminal liability of Board Members and Authority staff.

f) The Board members are obliged to submit a declaration of assets, 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 call from the chairperson or, in case of his/her absence, the vice chairperson, with no absentees, and shall take decisions by majority. In case of equal votes, the party supported by the Chairperson shall be considered 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 leaves, sick-leaves, assignments or failure to make new appointments to the offices that become vacant, at least six members are necessary for convening.²⁴

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 foster-children.

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) **(Amended first sentence: 20/11/2008-5812/Article 20)** Four deputy directors may be appointed by Minister upon the proposal of the Director in order to assist the Director in his/her duties. The deputy directors shall be appointed from among those that have same qualifications required for being appointed as 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 providing at least 4-year education or from higher education institutions abroad whose equivalences to those are recognized by authorized bodies.^{25 26}

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. **(Inserted sentence: 24/10/2011-Decree Law-661/Article 57)** Those who will be appointed as Chief Legal Adviser must graduate from

²⁴ By Article 57 of the Decree Law No. 661 of 24/10/2011; the phrase "seven members" in this sub-paragraph has been changed to "six members".

²⁵ By Article 57 of the Decree Law No. 661 of 24/10/2011; the phrase "with board decision" in this sub-paragraph has been changed to "by Minister".

²⁶ By Article 29 of the Decree Law No. 6353 of 4/7/2012; the phrase "three" in this sub-paragraph has been changed to "four".

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Faculties of Law and have sufficient knowledge and experience with regard to their professions and must have no less than twelve years of work experience related to their professions fulfilled in the public institutions and authorities; those who will be appointed as Authority Adviser and Directorate Adviser must graduate from at least a four-year undergraduate program of Faculties or from foreign higher education institutions whose equivalences to those are recognized by the authorized bodies and must have no less than twelve years of assignment fulfilled in the public institutions and authorities; those who will be appointed as Head of Department must graduate from at least a four-year undergraduate program of Faculties or from foreign higher education institutions whose equivalences to those are recognized by the authorized bodies and must have served no less than ten years in the public institutions and authorities. **(Inserted sentence: 20/11/2008-5812/Article 20; Amended: 24/10/2011-Decree Law-661/Article 57)** Head of Departments and other personnel are appointed by the Director.

The fundamental and permanent duties required for the service 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.

Those who will be appointed as Public Procurement Assistant Experts must know well at least one of the foreign languages specified in the regulation, must graduate 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 contest 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 Assistant Experts, 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 take 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 take the proficiency exam and those who fail in this exam shall be assigned to another post within the Authority according to their status.²⁷ The provisions relating to appointment, proficiency exams, duties, authorities and liabilities, working principles and procedures of Public Procurement Experts shall be specified in the regulation, which will be put into force by 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 governed by the regulation issued **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** by the President.

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.

²⁷ By Article 15 of Law No. 4761 dated 12/6/2002; the phrase “discharged from the Authority” is changed to “assigned to another post within the Authority according to their status.”

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i) The monthly salaries of the Chairperson and the members of the Board shall be designated by the **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** President.

The salaries and other financial and social rights of the Authority staff **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** shall be determined by the Board, within the framework of the principles, procedures and amounts specified by the President.

The provisions of the Law of Retirement Fund of Republic of Turkey no. 5434, shall apply to those who are appointed as Board members and the Authority staff. With regard to retirement; chairman of the Board shall have the representation compensation, office compensation, additional co-efficient and other financial provisions applicable to **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** Head of Strategy and Budget of the Presidency, the Board members shall have those applicable to **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** Director General of the Ministry, the deputy directors of the Authority shall have those applicable to the Director General of Ministry, and the Heads of Departments of the Authority shall have those applicable to Deputy Director General of Ministry. The periods spent under these offices shall be deemed spent under offices requiring the payment of executive compensation and higher judge 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.

(Amended: 12/06/2002-4761/Article 15) During the duty period, the persons who are appointed as Board chairperson or as members are discharged from their 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 shall be appointed to the suitable positions by the related ministry or officials who have the authority to appoint provided that they apply for their previous institutions within thirty days. During the mentioned appointment procedure, for those who are in official and judiciary category and appointed as Board chairperson and members after starting to receive supreme judge indemnity, the period of time spent in the Authority is considered as spent in the duties requiring payment of supreme judge indemnity. In case the persons who have been charged in the Authority request to leave the job, they shall be appointed to suitable positions by the authorized officials by means of evaluating their current positions in their service in accordance with the Law provisions to which they were previously subject to. Those provisions shall also apply to the personnel who come from the universities, provided that the provisions about acquiring academic titles are legally guaranteed.

(Inserted paragraph: 20/11/2008-5812/Article 20) The salaries as well as the social rights and benefits received by the Chairperson and the members of the Board, whose duties have ended due to the expiry of their terms of duty, shall be continued to be paid by the Authority until they are appointed to positions suitable for their acquired rights. Payments by the Authority to those appointed to positions suitable for their acquired rights shall be terminated as of the date of their appointment. The salaries as well as the social rights and benefits being received at the expiry of their duties by those, who were appointed as the Chairperson or a member of the Board among persons who had not been working in any public entity and whose duties have ended due to the expiry of their terms of duty, shall be continued

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to be paid by the Authority until they are appointed to a duty or employed in a job. The payments to be made by the Authority within this scope may not exceed three months.

(Inserted: 12/06/2002-4761/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, for the posts excluding public procurement expert. Those personnel are regarded as on leave without pay from their institutions and their salaries, allocations, any kind of increments and indemnities and other financial and social benefits and aids are determined through the contract signed between the Authority and the related personnel. During their vacation period, the employee rights of their civil service 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 academic personnel can be assigned in the Authority for tasks that corresponds to their expertise in accordance with the Article 38 of Law of Higher Education no.2547 of 4.11.1981. The number of personnel who will be assigned within this context can not exceed 10 % of the total staff number.²⁸

j) The revenues of the Authority are as follows:

1) **(Amended: 30/07/2003-4964/Article 32)** Five per ten thousand of the contract price to be collected from the contractor for the contracts above 100 billion Turkish Liras (646,821 Turkish Liras)*, to be signed in the scope of this Law (At the stage of contract signing, contracting authorities and notaries are obliged to check that the contractor has deposited this amount to Authority's accounts),

2) **(Amended: 20/11/2008-5812/Article 20; Amended: 6/2/2014-6518/Art. 49)** A complaint application fee of; 3,000 Turkish Liras (**6,139 Turkish Liras**)* for contracts with estimated costs up to 500,000 Turkish Liras (**1,023,922 Turkish Liras**)*, 6,000 Turkish Liras (**12,284 Turkish Liras**)* for procurements with estimated costs between 500,000 (**1,023,922 Turkish Liras**)* and 2,000,000 Turkish Liras (**4,095,700 Turkish Liras**)*, 9,000 Turkish Liras (**18,426 Turkish Liras**)* for those with estimated costs between 2,000,000 Turkish Liras (**4,095,700 Turkish Liras**)* and 15,000,000 Turkish Liras (**30,717,756 Turkish Liras**)*, and 12,000 Turkish Liras (**24,571 Turkish Liras**)* for those with estimated costs that equals or exceeds 15,000,000 Turkish Liras (**30,717,756 Turkish Liras**)*.

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

4) **(Amended: 20/11/2008-5812/Article20)** Revenues to be obtained from all kinds of printed papers, forms, notices, documents, and publications and from operating the Electronic Public Procurement Platform,

5) Supports from the general budget, when necessary,

²⁸ By Article 20 of the Law No. 5812 dated 20/11/2008; the phrase "excluding public procurement expert" has been added.

* published in Official Gazette No.31023 dated 29.01.2020 by Communique of Public Procurement Authority, No. 2020/1 and covers the period of 01.02.2020 – 31.01.2021

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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 seized 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 in accordance with the 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 absolved with **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** the Decision of the President.

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

SECTION TWO **Applications Against Tenders and Review²⁹**

Applications against tenders³⁰

Article 54- (Amended: 20/11/2008-5812/Article 21)

Candidates, tenderers or potential tenderers who claim that they have suffered a loss of right or damage or likely to suffer a loss of right or damage due to unlawful acts or actions within the procurement process may file a complaint and appeal in line with the procedures and the principles of this Law.

The complaint and appeal applications are the mandatory administrative application paths to be exhausted before filing a lawsuit.

Complaint applications shall be submitted to the contracting authority and appeal applications shall be submitted to the Authority through signed petitions.

The petitions shall include;

a) name, surname or title and address of the applicant, and of the agents or representatives if any,

²⁹ While the title of this chapter was “Requesting for Review and Investigation of Complaints”, it was amended as written in the text by article 21 of the Law No. 5812 dated 20/11/2008.

³⁰ While the title of this chapter was “Request for Review”, it was amended as written in the text by article 21 of the Law No. 5812 dated 20/11/2008.

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b) name of the contracting authority and subject matter of the procurement or the procurement registration number,

c) the date when the situation has become known or been notified,

d) the subject of application, the reasons and the evidences thereof,

e) for appeal applications, the date of the complaint submitted to contracting authority and the date of notification of the contracting authority's decision, if any.

It is compulsory to attach to the complaint petitions the original documents evidencing the authority to make complaint as well as the original of the signature circular or the copies thereof approved by the competent authorities. These documents need not be submitted together with the complaint petitions, if they had already been submitted within the application documents or the tender envelope by the candidate or the tenderer.

(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171) The President may decide that an application security shall be received up to the four times the amount specified in item (2) of subparagraph (j) of Article 53 from the appeal applicants. Application security shall be deposited in the accounts of the Authority. That security shall be kept in separate accounts without being associated with the revenues of the Authority.

It is compulsory to attach to the appeal petitions the original documents evidencing the authority to make application as well as the original of the signature circular or the copies thereof approved by the competent authorities, and a copy of the reply of the contracting authority, if any, and the document evidencing the application fee has been deposited to the accounts of the Authority.

A person may not apply against more than one procurement and more than one person may not apply against the same procurement with a single petition.

(Inserted: 6/2/2014-6518/Art. 50) Where the applications are made to the administrative or judicial bodies other than the Authority or contracting authority and such petitions are sent to the contracting authority or the Authority, whichever is relevant, by the said bodies, the date on which the petitions are recorded by the Authority or the contracting authority is considered as the date of application.

The deficiencies in applications that are contrary to the matters mentioned above and period of which have not expired yet may be corrected by the applicant before the end of application period, without any obligation of the Authority or contracting authority to notify it.

Upon the applications, reasoned decisions to be made by the contracting authority or by the Authority are as follows;

a) Cancellation of the procurement in case of detection of violation of law which would constitute an obstacle for the continuation of the procurement process and which cannot be remedied by taking corrective action;

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b) Ordering corrective action in cases where the problem may be remedied through correction and where it is not necessary to interrupt the procurement process;

c) Rejecting the application in cases where the application does not comply with related rules on time, procedure and form, the contract has been signed properly or no infringement of law could be detected or the matter which subject of appeal is not within the Authority's field of duty.

When application is rejected, application security, if it was deposited, shall be registered as revenue except the application is rejected because of not being within the field of duty of the Authority.

The principles and procedures of applications relating to dynamic purchasing system, electronic reverse auction and framework agreements shall be determined by a regulation to be issued by the Authority.

Complaint to the Contracting Authority³¹

Article 55- (Amended: 20/11/2008-5812/Article22)

Complaints claiming illegality of acts or actions in procurement process shall be made to the contracting authority within five days for public contracts awarded according to subparagraphs (b) and (c) of the Article 21 and ten days for other cases from the date when such acts or actions are noticed or should be known, and before signing of contract. The period for complaint applications concerning the issues in the procurement notice shall start from the date on which the notice is first published, while the period for applications regarding other provisions of prequalification or procurement documents which are not reflected in the procurement notice shall start from the acquisition date of the related document.

Complaints about procurement notice, prequalification or procurement documents shall be submitted at the latest three working days before the deadline for submission of tenders or applications provided that it does not exceed the time limits stated in the first paragraph. It is compulsory for the contracting authorities to conclude such complaints before the deadline for submission of tenders the applications. In case material or technical defects or deficiencies which could affect preparation of tenders or performance of the work are detected during the review upon the complaint and the contracting authority decides to correct procurement document, the necessary correction shall be made and deadline for submission of tenders or applications can be postponed for once, according to the procedure stated in article 29. However, if the detected material or technical defects or deficiencies also exist in tender notice, it shall act according to Article 26.

The contracting authority shall conduct the necessary review and shall take a reasoned decision within ten days following the complaint. The decision shall be notified to the complainant and the other candidates, tenderers or potential tenderers within three days after the date of the decision. Potential tenderers are not notified about the decisions other than those against the tender notice, tender or pre-qualification documents.

³¹ While the title of this article was "Review by the Contracting Authority", it was amended by Article 22 of the Law no. 5812 of 20/11/2008 as written in the text.

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If no decision was taken in the specified period, the complainant may appeal to the Authority within ten days following the expiry of decision making period; and if the decision taken is not deemed appropriate, the candidates, tenderers or potential tenderers including the complainant may appeal to the Authority within ten days following notification of the decision of the contracting authority.

If a complaint is submitted to contracting authority, the contract cannot be signed unless ten days elapse from the final notification date of the decision taken upon complaint or from the expiration of decision making period where no decision is taken and without enquiring that no appeal is made or where there is an appeal to the Authority, unless the Authority makes a final decision.

The appeal application to the Public Procurement Authority³² Article 56- (Amended: 20/11/2008-5812/Article 23)

The candidates, the tenderers or potential tenderers who submitted a complaint to the contracting authority or who consider the decision of the contracting authority inappropriate may file an appeal to the Authority before the signing of the contract under the conditions and within the period stipulated in the fourth paragraph of Article 55. Among the acts and decisions related to cancellation of procurement, only those taken upon complaints and appeals can be subject matter of an appeal and this appeal application is submitted directly to the Authority within five days.

The Authority shall review the appeal in terms of claims of applicant, matters stated in decision made by contracting authority upon complaint and whether the principle of equal treatment is infringed with respect to acts complained about. Review of appeals to be submitted against decision of the contracting authority to cancel the procurement upon a complaint or appeal shall be limited to reasons of cancellation by contracting authority.

Signing contract without complying with the periods and procedures specified in the Law or withdrawing appeal application shall not constitute an obstacle for reviewing appeal application and taking one of the decisions stated in Article 54.

The Board, when deemed necessary, may decide to hear the parties and the relevant persons. In this case, the parties and the relevant persons shall be heard on a date to be decided by the Board.

The Authority is obliged to make the final decision on the appeal within twenty days following the date on which the required documents, information and the procurement process dossier of the procurement under review are received by the Authority. This period shall apply as ten working days for appeals against contracts awarded pursuant to subparagraphs (b) and (c) of the Article 21 and against decisions to cancel the procurement upon a complaint or appeal.

The Authority, when deemed necessary, may ask opinions of expert public or private law legal persons and real persons on the technical issues which requires certain expertise. Private law legal persons and real persons shall be paid an amount to be determined by the Authority which does not exceed the value to be calculated by multiplying the benchmark figure

³² While the title of this article was "Review by the Authority", it was amended by Article 23 of the Law no. 5812 of 20/11/2008 as written in the text.

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of (8000) by the salary coefficient applied to civil servant salaries. If the opinions of public officers are requested, a payment shall be made to such personnel under same principles by taking the benchmark figure of (5000) as basis without being constrained by other legislation. The payments to be made under this paragraph are not subject to any tax and deduction other than stamp duty.

All decisions taken by the Board shall be notified to the parties within five working days following the date of decision and is published on the website of the Authority within five days following that notification. No fee may be collected for access to the decisions.

Contracting authorities shall immediately take action required by Board decisions which change the legal situation.

Judicial Review

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

CHAPTER IV Prohibition and Criminal Liability

Prohibition from participating in tenders

Article 58- (Amended first paragraph: 30/07/2003-4964/Article 35) Those who are established to be involved in acts and conducts set forth in Article 17, shall be prohibited from participating in any tender carried out by all public institutions and authorities including those authorities excluded by the 2nd and 3rd 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 contract 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 awarding the contract or by the Ministry which the contracting authority is subordinate to or associated with, by contracting officers of contracting authorities which are not considered as subordinate to or associated with any Ministry, (**Amended: 28/11/2018-7153/Article 28**) by the Ministry of Interior in special provincial administrations and their affiliated unions, associations and undertakings, and by the Ministry of Environment and Urbanisation in municipalities and their affiliated unions, associations and undertakings.

In case legal persons who are subject to prohibition are unlimited companies, all of the partners, and in case of corporations, partners that are real or legal persons who own more than half of the capital shall also be prohibited in accordance with the provisions of paragraph 1. Depending on prohibited person being real or legal person, in cases where those prohibited are partners of an unlimited company, that unlimited company shall also be subject to the prohibition decision; and in cases where those prohibited are partners of a corporation, that corporation 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 procurement procedure shall not be allowed by the contracting authority to participate in the

current procurement as well as in the subsequent procurement to be carried out by the same contracting authority until the effective date of the entry into force of prohibition decision.

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 registry of those who are prohibited from participating in public procurement shall be kept.³³

The contracting authorities carrying out the procurement procedures are obliged to notify 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 in that task, who have been involved in acts or conducts specified in Article 17 constituting a crime under the Criminal Code, shall be reported to public prosecutors in order to be prosecuted in accordance with provisions of the Criminal Code. In addition to the punishment rendered by the court, they shall be prohibited from participating in the procurement procedures of all public institutions and authorities that are within the scope of this Law by decision of court together with those stated in paragraph 2 of Article 58, starting from the end of the prohibition decision made by the contracting authority pursuant to Article 58 and for a period of at least one year and up to 3 years.

Those against whom a criminal case is initiated following the criminal prosecution pursuant to paragraph 1 due to procurement procedures carried out within the scope of this Law, and those mentioned in paragraph 2 of Article 58, cannot participate in procurement procedures carried out by public institutions and authorities within the scope of this Law, until the end of judicial proceedings. Those against whom a criminal case is initiated shall be reported to the Public Procurement Authority by Public Prosecutor's Office in order to be recorded on the registry.

Those who are convicted for repeated times because of prohibited acts and conducts set forth under this Law, and the corporations in which these persons own more than half of the capital, or the unlimited companies of which these persons are partner, shall be prohibited permanently from participating in public procurement 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 Prosecutor's Office to the Public Procurement Authority in order to be recorded in the registry and to the relevant professional chambers in order to be recorded in their professional registry.

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

³³ The phrase "at most thirty days" in this paragraph has been amended as "at most forty-five days" by the article 35 of the Law No. 4964 dated 30/7/2003.

Penal Liability of Officers

Article 60- In case it is established that the contracting officer, the chairperson and the members of the procurement commissions and other related persons assigned at any stage of the procurement process from the beginning until the signing of contract, 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 culpable 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. These persons shall also be prosecuted 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. **(Amended last sentence: 30/07/2003-4964/Article 36)** Public officials who are convicted because of 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 imposed any punishment by judicial bodies due to acts within the scope of this Law shall not be appointed and assigned by any public institution and authority covered by this Law, to any duty or authorized position related with the implementation of this Law or other related regulations.

(Amended third paragraph: 30/07/2003-4964/Article 36) The sanctions mentioned above shall also apply to those who permit launching a procurement and who award a contract in violation of the principles set forth under Article 5 and the instructions stipulated under the Article 62.

Confidentiality of Information

Article 61- (Amended: 30/07/2003-4964/Article 37) Those who are assigned with the implementation of this Law and those who provide consultancy services cannot disclose any of the confidential information or document relating to all acts in the procurement process; acts and transactions of the tenderers, technical and financial aspects of the tenders as well as the estimated costs of procurement or use this information for the benefit of their own or of third persons. For those that act contrary, the sanctions stipulated under Article 58 and 60 shall apply, depending on its relevance.

CHAPTER V Miscellaneous Provisions

Other Rules for Contracting Authorities

Article 62- It is mandatory for contracting authorities covered by this Law to comply with the following rules, before launching a procurement of goods, services or works.

a) With the aim of completing investment projects in the planned time period and presenting them to the economy, in order to launch procurement of works that covers a period exceeding one year, it is compulsory to draw up a programme to ensure that there is an appropriation in the budget on a yearly basis distributed according to the time period of the work. **(Inserted phrase: 24/11/2016 – 6761/Article 6)** Except for the investments or projects of strategic importance specified in the annual central government budget law, the appropriation provided for the first year shall not be less than 10 % of the project cost, and the appropriation portions which are initially put in the programme for the coming years cannot be decreased in the following years.

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b) Considering time periods in which the planned appropriations can be used, in principle procurement shall be carried out timely by contracting authorities and contracts for investment which cover a period of time exceeding one year (except those that must be carried out due to natural disasters) shall be awarded within the first nine months of the year. **(Inserted phrase: 30/07/2003-4964/Article 38)** However, procurement 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) **(Amended:18/04/2007-5625/Article 5)** In construction works, it is not allowed to initiate the procurement procedure without obtaining building site, without completing ownership, expropriation and if required development procedure and without preparing application projects. Where the technical and financial characteristics can not be precisely determined due to the originality and complexity of the works, the procurement may be carried out through preliminary or final project. In construction works where application projects exist, it is obligatory the procurement be carried out through receiving turnkey lump-sum price tender. However, for works when there is no sufficient time to prepare an application project due to natural disasters, the procurements may be conducted with preliminary or final projects; and for all types of repair works and works which the application project cannot be prepared before the procurement 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 procurement may be conducted with final project. In those works, the procurement may be carried out on turn-key lump-sum basis for the parts of works where the application project can be prepared, and on unit price basis for each item of work for the parts where the application project cannot be prepared. The condition regarding availability of building site and completion of ownership and expropriation procedure 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) **(Amended: 30/07/2003-4964/Article 38)** The estimated cost calculated to be used in programming of the budget by the contracting authorities and to be used in comparing the tenders submitted by tenderers participating in the procurement shall not be disclosed to tenderers.

e) **(Amended: 20/11/2008-5812/Article 24; Amended: 10/9/2014-6552/Article 10; Amended: 20/11/2017 – Decree Law – 696/Article 83; reaccepted: 1/2/2018 – 7079/Article 78)** 1) Public administrations (except Undersecretariat of the National Intelligence Organization) included in the tables (I), (II), (III) and (IV) attached to the Law No. 5018 and their related revolving fund organizations, central and provincial organizations of the administrations specified in the list (I) attached to the Decree Law No. 375, special provincial administrations, municipalities and their affiliated organizations and unions of local administrations of which they are members, corporations whose more than half of capital, together or separately are owned by special provincial administrations, municipalities and their affiliated organizations cannot procure services based on personnel employment or make purchases in a way that gives rise to the same result from the budgets of central government, social security authority, funds, surety funds, investment monitoring and coordination presidency, youth services and provincial directorate of sports, local administrations, company or revolving fund organizations; for the other administrations covered by the concerned list, they cannot do it from their budgets and other legislation provisions allowing that cannot be applied.

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2) Procurement of services based on personnel employment means services in which number of the personnel to be employed for the subject matter of the procurement is stated in the procurement documents; all working hours of this personnel is spent for the contracting authority; at least 70% of its estimated value is workmanship expenses including minimum workmanship cost and food and travel expenses in kind, if any; and which are continuous by nature. Procurement of services for maintenance and repair of parks and gardens, refuse collection, cleaning of avenues, streets, squares and etc, which are spent from the budgets of local administrations and affiliates thereof, are continuous by nature and continue all yearlong and in which weekly working hours are spent completely for the contracting authority are deemed as procurement of services based on personnel employment. Where different types of services are included in a service contract, assessment about being a service based on personnel employment or not shall be made separately for each type of service. Procurement for consultancy services, services regarding hospital information management system and call centers are not deemed as services procurement based on personnel employment.

3) The Authority is entitled to lay down procedures and principles regarding whether the services are based on personnel employment or not or it gives rise to the same result by nature, by taking into account, together or separately, the criteria specified in the subparagraph (2).

f) No notice shall be published without preparing the procurement documents. In determining the notice periods, the day of publication of the notice shall be taken into account; the date of opening of the tenders or the deadline for application shall not be taken into account. It is mandatory to send the texts of the notices to 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 designated 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 without a new notice being necessary, and the tenders which have been submitted until this time shall be accepted. The time of the tender shall be designated considering working hours. Even if there is a change in the working hours after the notice, the tender shall be conducted at the hour announced before.

h) **(Amended: 20/11/2008-5812/Article 24)** In case engineers or architects without work experience apply for procurement of works compatible with their undergraduate education, the years after their graduation shall be taken into consideration as similar work experience within the scope of article 10 by calculating each year as 122,387 New Turkish Liras **(358,977 Turkish Liras)***, provided that the total period does not exceed fifteen years. This period shall not apply for architects and engineers who have work experience. The experience

* published in Official Gazette No.31023 dated 29.01.2020 by Communique of Public Procurement Authority, No. 2020/1 and covers the period of 01.02.2020 – 31.01.2021

obtained according to this subparagraph may also be used by legal entities, where the concerned engineer or architect has owned more than 51 % of the relevant legal entity³⁴ for five years.

i) **(Inserted: 30/07/2003-4964/Article 38)** The annual total amount of the expenses made within the monetary limits specified in 21st and 22nd articles of this Law, cannot exceed 10% of the appropriations to be allocated in contracting authorities' budgets for this purpose, unless otherwise is approved by the Public Procurement Board.

Arrangements regarding domestic tenderers

Article 63- (Amended: 13/02/2011-6111/Article 178; Amended: 6/2/2014-6518/Art. 51)

The following regulations shall be considered regarding the participation of only domestic tenderers in public procurement procedures and providing price advantage in favour of domestic tenderers and tenderers offering domestic products:

a) It can be set out that only domestic tenderers may participate in procurement procedure where the estimated cost is below the threshold.

b) A price advantage of up to 15% may be provided in favour of domestic tenderers in procurement of services and works.

c) **(Amended: 18/6/2017 – 7033/Article 74)** A price advantage of up to 15% may be provided in favour of tenderers offering domestic products in procurement of goods. However, it is mandatory to provide a price advantage of 15% in favour of tenderers offering domestic products in procurement of goods which are selected by the Ministry of Science, Industry and Technology from among medium and high technology industry products by taking the opinions of relevant institutions and organizations and which are included in the list declared by the Authority. It is also mandatory to provide a price advantage of 15% in favour of tenderers offering domestic software products.

d) **(Inserted: 18/6/2017 – 7033/Article 74)** All or a portion of the machinery, materials, equipment and software to be used in construction works may be required to be domestic goods. However, machinery, material and equipment to be used in the work, which are selected from among medium-low, medium high and high technology products by Ministry of Science, Industry and Technology regarding machinery and equipment and by the Ministry of Environment and Urbanization regarding materials, by taking opinions of relevant institutions and organizations, and which are included in the list declared the Authority must be domestic goods.

e)* Procedures and principles for identifying domestic products are established by the Ministry of Science, Industry and Technology by taking opinions of relevant institutions and organisations. Whether goods offered by tenderers are domestic or not is documented with domestic product certificate issued in accordance with these procedures and principles.

f)* In order to consider the joint ventures as domestic tenderers, all of their partners should be domestic tenderers.

³⁴ The phrase “or both partners are engineers each holding 50% - 50% share of the legal entity,” previously found in the text of this article is annulled by the E:2012/104; K: 2013/87 of 10.07.2013 Decision of the Constitutional Court to be effective from 10/06/2014 which was published in the OJ numbered 28847 and dated 10/12/2013.

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.

Announcement and Notification Principles³⁵

Article 65- (Amended: 20/11/2008-5812/Article 25)

It is compulsory to obey the following rules for the announcements and notifications to the candidates, tenderers and potential tenderers.

a) Notifications shall be made with one or more of the following ways by the contracting authorities or the Authority:

- 1- By hand with signature
- 2- By registered mail
- 3- In electronic environment
- 4- By fax

... in case of foreign tenderers the nineteenth day ...³⁶ When notification arrives to recipient before that date, actual notification date shall be taken as basis.

b) Notifications made by contracting authorities or by the Authority in electronic environment or by fax as well as the price offers submitted in electronic environment by tenderers involved in a framework agreement must be confirmed on the same day. For notifications in electronic environment or by fax, the actual notification date shall be deemed as the legal notification date.

However, acts done by contracting authorities or the Authority or candidates, tenderers and potential tenderers by using electronic signature or acts regarding the procurement process done via Electronic Public Procurement Platform, including those relating to complaint applications, does not require confirmation.

c) The tools to be used in electronic communication and their technical features shall be compatible with the commonly used communication and information technology products and easily available and shall ensure the principle of equal treatment.

d) It is essential to preserve integrity of data and the confidentiality of tenders and participation requests, in all kinds of exchange and storage of information.

In case there is no relevant provision in this Law for notifications to be served, the provisions of the Code of Notification shall apply.

³⁵ While the title of this article was "Notification", it was amended by the article 25 of Law no 5812 dated 20/11/2008 as written in the text.

* By Article 74/7033-18/06/2017 new subparagraph (d) is inserted, and therefore, the subsequent subparagraphs are changed to (e) and (f).

³⁶ The phrase "The seventh day following mailing of the letter in the notifications by the registered mail ,... shall be deemed as the notification date of the decision to the tenderers" in the sentence "The seventh day following mailing of the letter in the notifications by registered mail and in case of foreign tenderers the nineteenth day shall be deemed as the notification date of the decision to the tenderers" which was previously inserted by the Article 25 of the Law No 5812 is annulled by the decision of the Constitutional Court No.E:2012/20,K:2012/132 and dated 27/9/2012 and published in the Official Gazette No.28719 dated 26/07/2013.

Amendments

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

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 based on Index of Wholesale Prices of the previous year and shall be published in the Official Gazette until the 1st of February which will be effective as of the same date. However, amounts below 1 million Turkish Liras shall not be taken into consideration in updating. The threshold values and monetary limits indicated in this Law may further be updated upon the proposal of the Authority by the **(Amended phrase: 9/7/2018 – Decree Law – 703/Article 171)** decision of the President in case of emergency.

CHAPTER VI Final Provisions

Provisions which are not applicable

Article 68- a) The provisions of State Procurement Law no. 2886, dated 08.09.1983 shall not be applicable to procurements covered by this Law.

b) The provisions of other laws, which provide exclusion from State Procurement Law no. 2886, dated 08.09.1983 and which are not in conformity with the Law no. 4734 shall not be implemented.

c) **(Inserted: 30/07/2003-4964/Article 39)** In projects within the scope of Law no. 2985 on Collective Housing, the procurement may be launched without requiring the conditions stated in fifth and sixth paragraphs of the Article 5, paragraphs (a) and (b) of Article 62 and expropriation, ownership, obtaining of building site, development procedure and application project requirements in paragraph (c) of Article 62. However, in cases where Environmental Assessment Report is obligatory, it is compulsory this report be obtained before signing of contract.³⁷

Electronic public procurement platform³⁸

Additional Article 1- (Inserted: 30/07/2003-4964/Article 41; Amended: 20/11/2008-5812/Article 26)

In procurements to be conducted within the scope of this Law; without prejudice to the article 13, stages related to procurement process, such as the tender notice, preparation and submission of the procurement document, submission of the documents concerning participation and qualification, preparation, submission, and evaluation of the tenders, finalization and approval of the award decision, notification of the final award decision, and signing of the contract as well as all sorts of notifications may be realized partly or wholly through the Electronic Public Procurement Platform established by the Authority.

³⁷ By Article 179 of the Law No. 6111 dated 13/2/2011, the phrase “in collective housing projects” in this paragraph was changed to “in projects”.

³⁸ The title of this article is the provision of article 26 of the Law No. 5812 dated 20/11/2008.

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The principles and procedures concerning establishment and operation of the Electronic Public Procurement Platform as well as the use of electronic means during the procurement process shall be determined by the Authority.

All the notices to be published pursuant to article 13 of this Law shall also be published in the Electronic Public Procurement Platform.

Systems may be established over the Electronic Public Procurement Platform concerning the determination of the qualifications of candidates or tenderers in procurements that are within the scope of this Law. The Authority is authorized with regard to establishing, getting established, and supervising these systems, cancelling powers of the authorized institutions or taking decisions that have precautionary nature.

Framework agreements³⁹

Additional Article 2- (Inserted: 01/06/2007-5680/Article 2; Amended: 20/11/2008-5812/Article 27)

Contracting authorities may conclude framework agreements for procurement of required goods, services and works provided that they use open or restricted procedures. Framework agreements shall not be used in a way that prevents, restricts or distorts competition.

Goods, services and works to be procured under framework agreements shall be announced in accordance with Article 13 of this Law. Estimated quantity planned to be procured under framework agreement shall be stated in the notice.

Except for the provisions with regard to receiving of securities, the framework agreement shall be signed for a period not exceeding forty-eight months in accordance with the provisions in this Law prescribing the conclusion of contracts, and the results shall be announced in Public Procurement Bulletin.

Framework agreements may also be concluded with only one tenderer provided that all terms are set out in advance. In framework agreements to be concluded with more than one tenderer, the number of tenderers who will become party to the framework agreement, which is not less than three, shall be stated in procurement documents, on condition that adequate number of tenders meeting the requirements is submitted. The tenderers whose tenders are accepted as valid after the evaluation shall be included in the list by ranking from the economically most advantageous tender, except the cases which the framework agreement is concluded with only one tenderer. In case the number of tenderers who are party to the framework agreement falls under three, the parties shall be notified of the termination of the framework agreement in question.

In procurements under framework agreements in which all terms are set out in advance, tenderers may be requested to re-tender on condition not to exceed their initial tenders. In cases where all terms are not set out in advance, tenderers shall be requested to re-tender provided that no substantial changes are made on terms of the framework agreement.

The tenderers shall be given sufficient time for submitting their tenders considering the complexity and originality of the subject matter of the contract.

³⁹ The previous title of this article "Procurement of goods and services under the framework contracts" was amended by Article 27 of the Law no. 5812 of 20/11/2008 as written in the text.

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Tenderers shall document every twelve months that their qualification is still valid. Framework agreements of those who lose their qualifications and those who do not submit a valid tender twice even though they have been invited to do so, shall be terminated.

The framework agreement with the tenderer who have failed to sign the individual contract within the time specified in procurement documents in spite of an invitation from the contracting authority, shall be terminated and the provisions of Article 58 shall be applied to that tenderer.

Articles 6, 38, 40, 41, 42, 43, 44, 45, 46, 54, 55 and 56 of this Law shall not apply to individual contract phase. The Authority is authorized to establish the procedures and principles as well as the nature and scope of the purchases under framework agreements, including the matters specified in these articles, to impose restrictions, and to determine the form and scope of contract when such contracts are deemed necessary.

Entering into a framework agreement does not impose contracting authority an obligation to purchase. Contracting authority may procure its needs that are within the scope of framework agreement also by using other procedures in this law.

Additional Article 3- (Inserted: 15/05/2008-5763/Article 36)

(Amended phrase: 2/7/2018-Decree Law 703/Article 171) The president is empowered to establish principles on price adjustment and to take decisions that allow to amend or terminate contracts in order to apply to works or works-oriented services contracts which have been concluded up to the enforcement date of this article and the contracts to be concluded at foreign currency over fixed prices after this date, according to the related legislative provisions other than those of State Procurement Law no. 2886, and are under the same scope with that of subparagraph (c) of article 3 of Public Procurement Law no. 4734.

Dynamic Purchasing System

Additional Article 4- (Inserted: 20/11/2008-5812/Article 28)

Dynamic purchasing system may be used for purchasing in electronic environment of the manufactured goods available on the market. Open procedure is used while establishing the system. The dynamic purchasing system shall not be operated in a way that impedes, restricts or distorts competition.

It shall be announced through a notice in the Public Procurement Bulletin that the system is to be established. The information regarding the nature, type and quantity of the planned procurement, as well as purchasing system, electronic equipment to be used in operating this system, necessary arrangements to connect the system in technical terms, the rules regulating the operation of system and other information shall be specified in procurement document.

All tenderers fulfilling the qualification criteria and submitting the preliminary tenders in line with the conditions specified in the procurement document shall be allowed to participate in the system. Preliminary tenders may continuously be improved as long as they comply with the rules set forth in procurement document.

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The evaluation of preliminary tenders shall be completed within fifteen days following their submission. If no invitation to submit tenders has been issued yet, the evaluation period may be extended once up to fifteen days.

Decision to establish a dynamic purchasing system, or to abandon the establishment of such a system, and that the preliminary tenders are admitted to the system or are rejected, shall be notified to the tenderers within three days at the latest following that decision.

All tenderers admitted to the system shall be invited to submit their tenders for each procurement. The procurement shall be announced by way of a simplified notice at least fifteen days before this invitation. All of the tenderers admitted to the system shall be invited to submit tender by allowing sufficient time to prepare their tenders.

The procurement shall be finalized by evaluating the tenders in accordance with the principles in the procurement document and concluded by signing of the contract.

The period of dynamic purchasing system cannot be longer than forty-eight months.

The Electronic Public Procurement Platform shall be used for the procurement under dynamic purchasing system. No fee shall be collected for admission to and operating of the system.

The Authority is empowered to determine the cases that require signing of contract, and the form and scope of the contracts for procurement under dynamic purchasing system.

Electronic Auction

Additional Article 5- (Inserted: 20/11/2008-5812/Article 28)

Electronic auction may be held after the completion of the evaluation phase of the open procedure, restricted procedure and negotiated procedure conducted according to paragraphs (a), (d) and (e) of Article 21, provided that it is stated both in tender notice and procurement documents. Electronic auction may also be used in procurement under dynamic purchasing system and framework agreement. Electronic auction shall not be used, however, in procurement of consultancy services conducted pursuant to article 48.

Electronic auction may only be used in cases where all the technical characteristics of the subject matter of procurement are precisely determined.

Before starting the electronic auction, the initial evaluation of the tenders shall be made in accordance with the requirements stated in the procurement document.

The tenderers who are accepted as qualified shall be simultaneously invited to re-tender in the electronic environment. The starting date and time of the auction and all information necessary for tenderer to connect the electronic device being used shall be included in the invitation. A timetable indicating each stage of the electronic auction shall also be given together with the invitation. Electronic auction may take place in a number of successive phases. The auction shall not start sooner than two working days after the date on which the invitation is sent out.

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In cases where economically most advantageous tender is determined by considering also the non-price factors, the result of the initial evaluation and the mathematical formula determining the rankings on basis of new tenders submitted shall also be notified in the invitation. This formula shall also incorporate the relative weights, if any, of all the criteria to be used in determining economically most advantageous tender as indicated in tender notice or procurement documents.

Throughout each phase of the electronic auction, the tenderers are instantly provided with necessary information to enable them to learn their rankings at the very moment. Where this has been indicated in the procurement document, information concerning the tenders of other tenderers and the number of tenderers at any stage of the auction may be announced. However, the identities of the tenderers shall not be disclosed during the electronic auction.

Electronic auction shall be closed in the event that one or more of the following conditions occur:

- a) Expiration of the date and hour scheduled in the invitation for the closing of auction,
- b) Receiving no tenders which meet the minimum difference range within the time period specified in the invitation for submitting new tenders,
- c) Completion of the number of phases indicated in the invitation.

Financial leasing

Additional Article 6- (Inserted: 20/11/2008-5812/Article 28)

The principles and procedures to be applied in procurement of goods through financial leasing by the contracting authorities covered by this Law shall be established by the Authority.

Procurement for common needs of two or more contracting authorities

Additional Article 7- (Inserted: 6/2/2014-6518/Article 53) A single procurement procedure may be carried out by implementing the procedures stated in this Law for the purpose of meeting common needs of two or more contracting authorities regarding goods, services and maintenance and repair works.

In case of procurement within the scope of first paragraph, contracting authorities shall assign a contracting authority from among themselves by means of a protocol to be drawn up in order to conduct procurement procedures on behalf of all the contracting authorities concerned, other than receiving performance security and signing of the contract.

Contracts shall be signed separately by all contracting authorities who are party to the protocol and the successful tenderer/tenderers.

Those who are excluded from and ineligible to participate pursuant to Articles 10 and 11 of this Law and those who are prohibited from participating in procurement procedures pursuant to third paragraph of Article 58 of this Law, carried out by the other contracting authorities who are party to the protocol cannot participate in a procurement procedure carried out by the assigned contracting authority.

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Those who take part in procurement procedures within the scope of this article are responsible for the compliance of the transactions with the legislation provided that it is limited to the parts they carried out.

Procedures and principles regarding the implementation of this article shall be established by the Authority.

Obtaining approval and responsibility of officials

Additional Article 8- (Inserted: 10/9/2014 – 6552/Article 11)⁴⁰ (Inserted: 28/11/2017 – 7061/Article 67; Amended: 20/11/2017 – Decree Law: 696/Article 84; Approved: 1/2/2018 – 7079/Article 79) Before launching procurement of services (except for consultancy services contracts) based on the employment of personnel within the scope of subparagraph (e) of first paragraph of the Article 62, it is mandatory to get approval for the State Economic Enterprises and affiliated partnerships which are subject to the Decree Law no. 233 within the scope of General Investment and Financing Programme Decision published in accordance with the Decree Law no 233 on State Economic Enterprises of 8/6/1984, from the Undersecretariat of Treasury; and for business organizations under privatisation programme within the scope of Law no 4046 on Privatization Applications of 24/11/1994 and whose more than 50% of their capital belongs to public, from the Directorate of Privatisation Administration. The approval includes determination of the ceiling of wages and similar payments to be specified in procurement documents by taking into account one or more or all of the factors such as number of personnel to be employed within this context, contracting authorities, type of services, location of the task to be performed, which effect the price level.

The procurement procedure shall not be initiated without obtaining that approval. **(Repealed second sentence: 20/11/2017 – Decree Law – 696/Article 84; Approved: 1/2/2018 – 7079/Article 79)**

A procurement procedure cannot be held for these services without taking the necessary assents. The condition of assent is not stipulated in activities whose contract period is not exceeding six months in procurement of services stated in the (1) point of sub-paragraph (e) of the first paragraph of Article 62.

The personnel employed within the scope of services contracts which are based on personnel employment and awarded in accordance with the sub-paragraph (e) of first paragraph of the Article 62 cannot be employed for and assigned to tasks other than subject matter of the procurement and contract. Within this scope, in case any damage comes up to the detriment of the contracting authority by the reasons of launching a procurement based on personnel employment when it should not be done, launching a procurement procedure without obtaining the necessary approval when it is mandatory to do so, employing the personnel assigned within the scope of the procurement for activities other than subject matter of procurement and performing activities and actions contrary to the seventh paragraph of Article 2 of the Law no. 4857, these damages shall be recovered by means of recouring to those who caused the damages. Furthermore, without prejudice to the criminal and disciplinary provisions to be applied to these persons, an administrative fine shall be imposed on them at an amount which is five times of monthly net payment they receive including all kinds of salary, allowance, raise

⁴⁰ With the first paragraph of the Provisional Article 1 of the Law No: 6645 dated 4/4/2015, it was provided that the provisions of the third paragraph of this article shall not be enforced until 31/12/2015, Then with the Article 9 of the Law No 6656 dated 30/12/2015 the phrase “31/12/2015” was amended as “30/6/2016”

and compensation. Also, an administrative fine shall be imposed on persons who did not apply to appeal or to other legal remedies provided in the second paragraph of Article 3 of Law no. 4857 at an amount which is two times of monthly net payment they receive including all kinds of salary, allowance, raise and compensation.

Procedures and principles regarding the implementation of this Article shall be regulated by a regulation put into force by (**Amended phrase: 2/7/2018-Decree Law 703/Article 171**) the President.

Use of public procurement for the purpose of regional development and technological advancement

Additional Article 9- (Inserted: 21/10/2016 – Decree Law: 678/Article 31; reaccepted: 1/2/2018 – 7071/Article 30) Where goods are procured for the purposes of ensuring regional development, improving strategic sectors and domestic production based on technology transfer, promoting project based investment and research, development and innovation, provisions of this article shall apply.

Needs may be met through one or more procurement by publishing notices or sending invitations, by dividing into lots with respect to duration, quantity or parts, from one or more tenderers. Technical specifications, cost and performance criteria and conditions of the contract may be negotiated in accordance with the characteristics of needs; and where necessary, cooperation may be established between contracting authorities and tenderers.

Where requirements of domestic production and local content are envisaged in procurement, how to fulfil such requirements shall be indicated in the documents.

Procurement of goods within the scope of this article may be conducted as being open only to participation of tenderers offering domestically produced goods or goods produced in the cities where regional development programmes are implemented. With regard to procurement of goods which are open to the tenderes offering domestically produced goods, price advantage up to 15% may be applied in favour of the tenderers offering goods produced in the provinces where regional development programmes are implemented.

In procurement of goods, it can be stated in the document that contractors procure or obtain certain parts of the need from other legal or real persons operating or producing in the cities where implementing regional development programmes are implemented.

Purchase guarantee may be given, provided that one or more requirements such as domestic production, local content, investment, employment, exportation and technology transfer are fulfilled and also cost and performance criteria are met, for the procurement of goods carried out for the purposes of improving domestic production based on transfer of medium-high and high technology which is not produced or produced to a limited extent in domestic market and the strategic sectors, promoting research, development and innovation and ensuring regional development and for project based investments. Purchase guarantee may also be given for the procurement of goods and services carried out by the Ministry of Education concerning information and communication technologies for education and training.

Within the scope of Regional Development Programmes, the State Procurement Office may provide for the needs of the contracting authorities without being limited to the goods

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stated in its main status and monetary limits stated in the paragraph (g) of Article 3 of this Law are applied as double.

With regard to procurement to be carried out within the scope of this article, restrictions and implementation procedures and principles including contracting authorities, products, purchase guarantee applicable products and guarantee period, ratio of domestic content of the product, ratio of price advantage to be applied and its duration, commitment period, quantity, monetary limits, procurement procedure and its rules, price adjustment, additional works and omitted works and contractual issues shall be determined by (**Amended phrase: 9/7/2018 – Decree Law- 703/Article 171**) decision of the President.

For procurement to be carried out within the scope of this article, provisions of this Law, other than those regarding penalty, prohibition from participating in procurement procedures, notification of the final decision, provisions of Law no. 4735 and period, subject matter and other restrictions related to commitment laid down in relevant legislation shall not apply.

Restrictions and requirements regarding public purchase guarantee governed by other Laws shall not apply to the procurement carried out by giving public purchase guarantee within the scope of this article. Likewise, provisions regarding public purchase guarantee stated in his article do not prevent implementation of the provisions concerning public purchase guarantee in other Laws.

Procurement of Goods, Services and Works within the scope of FATİH Project

Additional Article 10 – (Inserted 9/12/2016 – 6764/Article 52) For the goals of increasing domestic production and added value, ensuring technological attainment, producing products that are not produced domestically before, carrying on research and development activities for new technology and products and becoming a knowledge-based society, goods, services and works to be awarded by the Ministry of Education within the context of Movement for Enhancing Opportunities and Improving Technology in Education (FATİH) for the purposes of providing information technology hardware, software, network infrastructure and internet access in classrooms of the preschools, primary and secondary schools subordinate to the Ministry of Education, providing e-content in online and offline environments for lessons and establishing e-content infrastructure, supplying e-books, tablet computers and similar needs to teachers working at schools subordinate to the Ministry of Education and students in formal education are not subject to the provisions of this Law, except the provisions regarding prohibition and penalty. Principles and procedures regarding procurement under this article shall be regulated by a regulation drafted by the Ministry of Education upon taking opinions of the Public Procurement Authority and the Ministry of Finance, in a way that is open to competition.

Additional Article 11 – (Inserted Article: 9/7/2018 – Decree Law – 703/Article 171)

The Procedures and principles regarding the subparagraphs (b), (d), (e), (f), (h), (i), (j), (k), (l), (n), (u), (y) (**Amended: 17/01/2019-7161/Article 31**) and (z) of the Article 3 of this Law shall determined by the President.

Standard procurement documents and regulations

Interim Article 1- The standard procurement documents and regulations to be adopted for the implementation of this Law shall be prepared by the Public Procurement Authority upon taking opinions of the relevant institutions and authorities until the date this Law enters into force and shall be published in the Official Gazette.

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Until the entry into force of these documents, the contracting authorities shall continue to apply the existing principles and regulatory provisions.

Ongoing tenders

Interim Article 2- The procurement for which a written tender announcement or a notice is made prior to the entry into force 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 between the date of publication of the Law in the Official Gazette and the date of entry into force.

Principles and procedures relating to the exclusions

Interim Article 4- (Repealed first and second paragraph: 9/7/2018 – Decree Law – 703/Article 171)⁴¹

(Inserted: 12/06/2002-4761/Article 18; Amended: 30/07/2003-4964/Article 40) The goods and services within the scope of subparagraph (g) of 3rd article of this Law shall be determined by Authority upon the request of relevant institutions.

(Inserted paragraph: 30/07/2003-4964/Article 40) (Repealed fourth paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 30/07/2003-4964/Article 40) The enterprises, undertakings and corporations which carry out activities in energy, water, transportation and telecommunication sectors shall be subject to subparagraph (g) of 3rd 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 subparagraph **(Inserted sentence: 22/12/2005-5436/Article 13)** The monetary limit set forth in sub-paragraph (g) of 3rd article of this Law **(Inserted sentence: 9/5/2013 – 6475/Article 31; Repealed sentence: 24/12/2017 – Decree Law- 696/Article 85; Approved: 1/2/2018 – 7079/Article 80)** shall not apply to procurement of goods, services and works of any kind relating to activities for exploring, drilling, producing and transporting of oil and natural gas by Turkish Petroleum Corporation in Turkish territorial waters and international waters;⁴²**(Inserted phrase: 7.12.2019-7194/Article 45)** procurement of vehicle, renting vehicle, procurement of fuel, medicine, medical material and medical device by State Supply Office on behalf of contracting authorities.

(Inserted paragraph: 14/07/2004-5226/Article 24(Repealed sixth paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 03/03/2005-5312/Article 26) (Repealed seventh paragraph: 9//2018 – Decree Law 703/Article 171)

⁴¹ The phrase “the principles and procedures to be applied for the purchases to be made are determined by the Authority” is inserted by the Law No. 4761 dated 12/6/2002.

⁴² By Article 11 of the Law No. 6475 dated 9/5/2013 the phrase “goods and services procurements of The General Directorate of Post and Telegraph Organization (PTT) within the scope of mentioned subparagraph” is inserted after the phrase “monetary limit set forth in subparagraph (g) of Article 3 of this Law”, by Article 85 Decree Law 696 dated 24/12/2017 the same phrase is repealed.

(Inserted paragraph: 27/12/2007-5726/Article 24) (Repealed eighth paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 20/02/2008-5737/Article 79) (Repealed ninth paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 20/11/2008-5812/Article 29) (Repealed tenth paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 6/2/2014-6518/Article 52) (Repealed eleventh paragraph: 9//2018 – Decree Law 703/Article 171)

(Inserted paragraph: 7.12.2019-7194/Article 45) Principles and procedures to be applied in procurement by State Supply Office under paragraph five shall be adopted by the State Supply Office upon opinion of the Authority. In procurement within that scope, main principles specified in first paragraph of Article 5 of this Law shall be observed, procurement shall be conducted in a way that ensures highest participation.

Establishment of the 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 organisation 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 until the date on which the Authority begins to operate.

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

Interim Article 6- (Inserted: 12/06/2002-4761/Article 19) Within 1 year from the date of entry into of this article;

a) Among the staff charged in public institutions and authorities, those who are graduated from the higher education institutions defined in the scope of paragraph (h) of the article 53 and have obtained the profession through private competition exam, and after a certain period of on-the-job training, and are appointed to office through private qualification exam, and those who are judges, attorneys and the ones regarded as from this profession,

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b) The university teaching personnel who 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 authorities 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 authorities 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 legal 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- (Inserted: 10/11/2004-5255/Article 15)

Regarding World Inter-University Sports Games to be performed in İzmir in 2005, all kinds of procurements for goods, services and works by the Executive Board and by other public authorities and institutions upon request of said Board shall be excluded from this Law, except prohibition and criminal provisions.

Ongoing procurements

Interim Article 8- (Inserted: 20/11/2008-5812/Article 30)

Provisions of law that were in force at the time of publication of this Law shall continue to apply for the tenders which were announced or notified in writing until the date of entry into force of this Law.

The complaint applications and the applications that involve claims of contradiction to the provisions of this Law and relevant legislation that were submitted until the entry into force of those listed in subparagraph (b) of article 35 of this Law shall be finalized pursuant to the provisions of the legislation effective on the date of submission of that application.

Current appointments

Interim Article 9- (Inserted: 20/11/2008-5812/Article30)

The appointments of those actually working from among the personnel appointed as public procurement experts in the Authority pursuant to subparagraph (i) of article 53 before 31.05.2008 may continue depending on the needs of the Authority.

Terms of duty of the chairperson and the members of the Board

Interim Article 10- (Inserted: 20/11/2008-5812/Article30)

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From among the existing chairperson and members of the Board, the terms of duty of those appointed to complete the term of another member before the effective date of this Law shall apply as five years starting from the date of their appointment.

Continuation of Board Membership

Interim Article 11- (Inserted: 24/10/2011-Decree Law-661/Article 58) Existing board members shall remain in the office until they complete their term of duty.

Appointment to Directorate Adviser

Interim Article 12- (Inserted: 24/10/2011-Decree Law-661/Article 58)

Duties of those who are working as Deputy Director, Chief Legal Adviser and Head of Department in the Authority shall end at the effective date of this Decree Law. They are considered to be appointed to the title of Directorate Adviser, which is created by attached list number (3), without any further procedure. In case of any vacancy of the titles of Directorate Adviser which are created by this paragraph, the titles are deemed to be revoked without any further procedure.⁴³

For those who are considered to be appointed to the title of Directorate Adviser pursuant to the first paragraph, as of the date of their appointment if the total net amount of payments (this value is considered as a constant value) received at the most recent month in accordance with the related legislation for their previous titles exceeds the total net amount of payments received in accordance with the related legislation for their new titles which they are deemed to be appointed, the amount of the difference shall be paid as difference compensation without being subject to any tax or deduction until the difference is offset. For those who have any voluntary change at the titles which they are considered to be appointed and for those who are voluntarily appointed to other authorities, the payment of difference compensation ends.

Those who are appointed as Directorate Adviser pursuant to first paragraph shall execute the duties determined by the director at the departments determined by the director.

Interim Article 13- (Inserted: 30/03/2012-6287/Article 24) Procurement of goods, services and works to be performed until the end of 2015 by Ministries of National Education and of Transportation, Maritime Affairs and Communication within the scope of Increasing Educational Opportunities and Improving Technology Action Project (FATİH), which is pursuing the goals of; increasing domestic production and added value, ensuring technology

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List no. 3

PUBLIC PROCUREMENT AUTHORITY	
TITLE	NUMBER
Directorate Adviser	14
TOTAL	14

acquisition, production of goods not produced before domestically, performing research and development activities of new technologies and goods, becoming information society, providing IT hardware, software, network infrastructure and internet access to preschools, primary and secondary schools subordinate to the Ministry of National Education, providing e-content in online and offline environments for lessons and meeting certain needs of teachers and students such as e-book, tablet computer and etc. shall not be subject to the provisions of this Law, except for prohibition provisions. The principles and procedures regarding the procurements performed in accordance with this article, shall be competitively determined by the regulation jointly prepared by the Ministries of National Education and of Transportation, Maritime Affairs and Communication by means of considering the opinions of Ministry of Finance and Public Procurement Authority.

Ongoing tenders

Interim Article 14- (Inserted: 6/2/2014-6518/Article 54) With regard to the procurement for which a tender announcement or a written notice is made prior to the entry into force of this Law, provisions which are effective at the date of notice or announcement shall continue to apply .

Interim Article 15- (Inserted: 6/2/2014-6518/Article 55)

Among the staff in public institutions and organizations who carry out review, supervision, implementation or consultation duties regarding public procurement legislation, those who graduated from the higher education institutions defined in the paragraph (h) of the article 53 and entered the profession through private competition exam, and are appointed as qualified through a qualification exam following an on-the-job training, and those who are graduated from faculty of engineering or architecture and have worked in the public institutions and organizations as related to their field of study for at least four years may be assigned as public procurement experts by the Directorate in accordance with the other principles stated in the last subparagraph of paragraph (i) of the article 53, provided that they obtain the consent of their institutions and the number of personnel to be assigned shall not exceed 5 % of the total professional staff number. Notwithstanding any time limitations, such assignment may be terminated at any time by the Directorate. Those who are assigned as such may be appointed as public procurement experts for once only, in case they pass the exam to be organized by the Authority without requirement of any other consent or transaction, provided that they meet the education requirements for taking the professional staff exam and are under forty years old on the date of such examination. Assignment to the Authority does not constitute any vested right or preferential right regarding the appointment to the cadres of the Authority.

Interim Article 16 – (Inserted: 10/9/2014-6552/ Art. 12) (1) Procurement of goods, services and works to be conducted in 2014 and 2015 within the scope of G-20 Presidency which Turkey will undertake for the year of 2015, is not subject to this Law and Public Finance Management and Control Law no. 5018 except for their criminal and prohibition provisions. Procedures and principles and other issues regarding the purchases and works within the scope of this paragraph are jointly prepared by the Ministry of Foreign Affairs and the Undersecretariat of Treasury by taking the opinion of the Ministry of Finance and are put into force by the decision of Council of Ministers.

(2) Regardless of whether their workplaces are in the same area or not; provided that it is done between the units of a local administration or its affiliate, or between a local administration and its affiliate, or between different affiliates of the same local administration,

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workers employed in local administrations or in their affiliates may be subject to changes in the same or similar works or workplaces with their cadres or temporary work positions in one hundred and twenty days following the date on which this article is published with the consent of the superior chief of the relevant local administration. In accordance with this paragraph, issues related to the salaries, other financial and social rights and severance pays of workers subject to the mentioned changes, shall be subject to the relevant provisions of the Interim Article 1 of the Law no. 6360 and dated 12/11/2012.

Interim Article 17 – (Inserted: 31/10/2016 – Decree Law – 678/Article 32) (Repealed article: 20/11/2017 – Decree Law 696/Article 85; Approved: 1/2/2018 – 7079/Article 80)

Interim Article 18 – (Inserted: 2/1/2017 – Decree Law: 684/Article 3; Approved:1/2/2018 – 7074/Article 3) Provisions of subparagraph (g) of the first paragraph of Article 11 shall not apply to the corporations for whom power of custodianship is handed over to the Savings Deposit Insurance Fund or the Savings Deposit Insurance Fund is appointed as a custodian as per article 19 of the Law with regard to the Acceptance of Revision of the Decree Law No. 6758 dated 10/11/2016 on the Regulations Within State of Emergency.

Interim Article 19 – (Inserted: 28/11/2017 – 7061/Article 68) Procurement of goods and services for the textbooks and workbooks to be distributed free of charge to students who are enrolled in the public and private schools of the Ministry of National Education and guidebooks to be distributed free of charge to concerned teachers until the date of 31/12/2019 may be carried out pursuant to first and fifth paragraphs of the Article 20 and without applying other provisions of this Law except penalty and prohibition provisions.

Procedures and principles regarding the implementation of this Article are established by the Ministry of Education by taking the opinions of the Ministry of Finance and the Authority.

Implementation of the procedures and principles

Interim Article 20 – (Inserted: 9/7/2018 – Decree Law – 703/Article 171)
Implementation of the principles and procedures put into force in accordance with the first paragraph of Article 4 before the date of publication of this article shall continue to apply until the procedures and principles stated in Additional Article 11 is put into force.

Entry into force

Article 69- Article 53, and interim Articles 1 and 5 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.

**PROVISIONS WHICH COULD NOT BE INSERTED INTO
LAW NO 4734 DATED 4/1/2002**

1) Provision of Law No. 4761 dated 12/06/2002:

Article 20- The salaries, financial and social rights and benefits for the Directors 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 personalities 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 numbered 631. When necessary, the Council of Ministers has the authority to increase the ceiling job-lot 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 Chairperson 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 Chairperson of the Board.

2) Provision of Law No. 4964 dated 30/07/2003:

Interim Article 1- Procurement 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 authorities shall continue to implement the provisions of existing principles, procedures and regulations until the above mentioned arrangements become effective.

Principles and procedures that need to be prepared and become effective due to the amendments made on 3rd and provisional 4th articles of Law No. 4734 shall be prepared within 30 days as of publication date of this law and put into force. Contracting authorities shall continue to implement the principles and procedures which were prepared and became effective prior to amendments made by this law, based on formerly executed 3rd and provisional 4th articles of Law No. 4734, until those arrangements are published.

Works procurements, which the institutions benefiting from the exclusion provision in paragraph (g) of the 3rd article of Law No. 4734 are the awarded contractors, shall be subject to the exclusion provision specified in the same paragraph for a period of ten years.

2) Provision of Law numbered 5398 and dated 3/7/2005:

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Interim Article 2- The part to be calculated according to the ratios established by the institutions and authorities upon the proposal of the Ministry of Finance and the approval of the Prime Minister, of the accumulated income derived from all kinds of revenues generated by Istanbul Stock Exchange, the Radio and Television Supreme Council, the Competition Authority, the Capital Markets Board, Banking Regulation and Supervision Authority, the Telecommunications Authority, Energy Market Regulatory Authority, the Public Procurement Authority and the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulatory Authority shall be deposited to the account at the Republic of Turkey Central Bank to be recorded as revenue at the scale (B) of the budget within the time period established by the Ministry of Finance. Also, cash surplus of the above listed institutions and authorities accumulated in their cashbooks until the date of 31.12.2005 shall be closed upon in accordance with the principles specified in this article and transferred to related accounts.

The above listed institutions and authorities shall notify the Ministry of Finance by 15.07.2005 about their income as well as their cash and cash balance accumulated until the date of 30.06.2005, and financial information showing the income and expenses and cash and cash balance of the each month. In case the amounts specified in this article are not paid within the deadline period, unpaid amounts shall be pursued and collected by means of applying default interest in accordance with the provisions of Law Regarding the Collection Procedures of Public Receivables No. 6183.