



Public Procurement 2025

17th Edition



Contributing Editor:

Euan Burrows

Ashurst LLP

glg Global Legal Group

Expert Analysis Chapter

1

Incentivising Supplier Performance: Regulation of the Management of Public Contracts
Euan Burrows, Edward McNeill & Catherine Maddox, Ashurst LLP

Q&A Chapters

5

Bulgaria
Dr. Irena Georgieva, PPG Lawyers

13

Cyprus
Alexandros Gavrielides & Chara Pieri,
Scordis, Papapetrou & Co LLC

21

England & Wales
Euan Burrows, Edward McNeill & Julian Jarrett,
Ashurst LLP

32

Finland
Juhani Matinlassi, Applex Attorneys Ltd

39

Germany
Paolina Ilieva & Charlotte Schäffer, KP Partners

50

Greece
Marios Markatos & Eftychia Pournara,
Michailopoulos & Associates Law Firm

62

India
Suhaan Mukerji, Shreya Ramakrishnan, Jibrán Khan &
Sunidhi Sawhney, PLR Chambers

72

Indonesia
Farid Fauzi Nasution, Berla Wahyu Pratama &
Herminingrum, Assegaf Hamzah & Partners

82

Italy
Filippo Pacciani & Ada Esposito, Legance

92

Poland
Jacek Liput & Agata Grzeńkiewicz,
GP Partners Gawroński, Biernatowski Sp.K.

100

Romania
Iulia Vass, VASS Lawyers

115

Slovenia
Njives Prelog Neffat, Neffat and Partners Law Firm

125

Switzerland
Mario Strebel & Fabian Koch, CORE Attorneys Ltd

133

Turkey/Türkiye
İlyas Kılıç & Işıl Kılıç, Kılıç Law & Consulting Office

142

USA
James J. McCullough & Michael J. Anstett,
Fried, Frank, Harris, Shriver & Jacobson LLP

Turkey/Türkiye



İlyas Kılıç



Işıl Kılıç

Kılıç Law & Consulting Office

1 Relevant Legislation

1.1 What is the relevant legislation, and, in outline, what does each piece of legislation cover?

Distinct laws govern tenders that generate revenue for the state and those that incur expenses to the state in the Turkish procurement system. Tenders generating revenue for the state are regulated under the State Procurement Law No. 2886. Such tenders may include the sale and leasing of movable and immovable property belonging to the state. The tenders that are the main focus of this chapter are the tenders that incur expenses for the state. Such tenders are regulated in Public Procurement Law No. 4734, which entered into force in 2002.

The purpose of Law No. 4734 is to determine the principles and procedures to be applied in the tenders to be made by public institutions and organisations subject to public law, or under public control, or using public resources (Article 1 of Law No. 4734). The scope of the same Law is the procurement of goods and services and construction works to be carried out by the relevant public institutions and organisations in accordance with the existing regulations (Article 2 of Law No. 4734).

Tenders made under Law No. 4734 are implemented in accordance with the Public Procurement Contracts Law No. 4735, which entered into force in 2003. Public procurement is carried out in two stages: while the tender notice and the execution and finalisation of the tender are made within the scope of Law No. 4734; the implementation of the contract, acceptance procedures and progress payments to be made to the contractor are made within the scope of Law No. 4735.

Secondary legislation for the implementation of both laws is regulated by Law No. 4734 and the Public Procurement Authority established in 2002. The Tender Implementation Regulation issued by this Authority within the scope of the implementation of Law No. 4734 serves as a guide for contracting authorities and companies wishing to participate in tenders. Likewise, the Inspection and Acceptance Regulations, which guide the implementation of Law No. 4735, have also been issued by the Authority.

The Public Procurement Authority has a supervisory role as well as a regulatory role in the Turkish procurement system. The Authority also has the responsibility to review and finalise applications for tenders under Law No. 4734. The process for submitting applications to the Public Procurement Authority and contracting authorities is governed by the Regulation on Applications for Tenders and the Communiqué. This legislation serves as a guide for companies that have been subjected to unlawful actions in the tender process.

1.2 What are the basic underlying principles of the regime (e.g. value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?

Turkish public procurement legislation is prepared in accordance with European Union and international legislation. Different notice periods have been set according to thresholds and procurement procedures, considering the notice periods in the European Union procurement legislation, in order to ensure clarity and competition in tenders and to allow tenderers sufficient preparation time to submit responsible and realistic bids. In addition, the Electronic Public Procurement Platform (EKAP) makes it possible to publish tender notices and tenders, enabling more tenderers to participate in tenders.

Through the EKAP, the public is informed about the use of public resources. Debriefings are made through the notification of the results of the tenders as well as prior to the tender. Tenders are conducted in a transparent manner thanks to electronic tools, and tender participation documents can be submitted through the EKAP.

The Turkish procurement system effectively imposes criminal sanctions on tenderers and contracting authorities in order to ensure the efficient use of public resources.

1.3 Are there special rules in relation to procurement in specific sectors or areas?

Law No. 4734 exempts the tenders of many contracting authorities with respect to the execution of their actual duties (Article 3 of Law No. 4734). Tenders for defence, energy, or foreign procurement, which require high security, are excluded from the scope of Law No. 4734 and are governed by their own special regulations.

However, the scope of the procurement not governed by the law (exempt procurement), which has been expanded to a total of 25 titles, has been the subject of much national and international criticism. The fact that the procurement not governed by the law is not carried out in accordance with the basic principles of Laws No. 4734 and 4735 is one of the areas that need to be improved in terms of the transparency and competitiveness of procurement. Likewise, the European Union has expressed that it “must remove exceptions that are incompatible with the EU acquis” (2024 Communication on EU Enlargement Policy, 2024 Türkiye Report).

1.4 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?

In the Constitution of the Republic of Türkiye and the Turkish Administrative Jurisdiction Procedures Law, the principle of equal treatment before the law is the basis of the transparency rule. In addition, the principle of legality of the contracting authority is also regulated in our legislation, and the principle of administrative stability has been accepted as a reference norm principle with precedent judicial decisions.

In public procurement, contracting authorities under central government publish tender notices on their websites and in national and local newspapers in addition to the EKAP. This indicates that the tradition of transparency in procurement is well established.

1.5 How does the regime relate to supra-national regimes including the GPA, EU rules and other international agreements?

Paragraph 3 of the General Justification of the Public Procurement Law No. 4734 stipulates that in order to align the Turkish Public Procurement system with the procurement legislation of international organisations such as the World Organization and the European Union, procurement of goods or services and construction works that require public expenditure are included within the scope of the relevant laws.

Many regulations and/or expressions in the relevant laws have been established in order to ensure parallelism with European Union practices. For example, regulations on the determination of tender notice periods and whether price advantage will be provided in favour of domestic tenderers, as well as practices regarding updated monetary limits, have been adopted from European Union regulations.

2 Application of the Law to Entities and Contracts

2.1 Which categories/types of entities are covered by the relevant legislation as purchasers?

Law No. 4734 on Public Procurement defines the contracting authorities in the capacity of purchaser (Article 1 of Law No. 4734). According to the relevant article, the following are governed by the provisions of this Law:

- Public administrations included in the general budget, administrations with special budget, special provincial administrations and municipalities and their related revolving funds organisations, associations (except those operating as professional organisations and their supreme institutions).
- State economic enterprises, consisting of public corporations and state economic establishments.
- Social security institutions, funds, institutions with legal personality that are established in accordance with special laws or Presidential Decrees and that are assigned with public duties (except for professional organisations and foundation institutions of higher education), and institutions with independent budgets.
- Any institutions, organisations, associations, enterprises and corporations where more than half of their capitals, directly or indirectly, together or separately, are owned by the above-mentioned administrations.

Tenders for the procurement of goods or services and construction works funded from any source.

2.2 Which types of contracts are covered?

Four types of procurement types have been determined under Law No. 4734 and Law No. 4735. These are the procurement of goods, services, construction and consultancy services. There are different types of contracts that can be concluded as a result of tenders according to Law No. 4734. These contract types are:

- Türkiye lump sum price contracts in construction works;
- lump sum price contracts for the purchase of goods or services;
- unit price contracts in construction, goods or service procurement works;
- mixed contracts in construction works; and
- individual contracts based on a framework agreement.

2.3 Are there financial thresholds for determining individual contract coverage?

According to Turkish procurement legislation, threshold values are monetary limits updated annually by the Public Procurement Authority to be used in: determining the duration and rules of notices and invitations, and the procurement procedure; determining the qualification criteria to be required in the procurement; evaluating excessively low bids; and applying the provisions on the participation of only domestic tenderers in procurements. The threshold values are regulated in order to ensure parallelism with the threshold values in the EU acquis.

While contracting authorities can determine that only domestic tenderers may participate in tenders with an approximate cost below the threshold value, no restrictions can be imposed on the participation of foreign tenderers in tenders exceeding the threshold value. In addition, public tenders cannot be divided into lots with the intention of falling below the threshold value.

2.4 Are there aggregation and/or anti-avoidance rules?

In the Turkish Public Procurement system, there is no equivalent for the concepts of aggregation and/or avoidance.

2.5 Are there special rules for concession contracts, and if so, how are such contracts defined?

Concession agreements are regulated out of the public procurement legislation and are not the subject of this chapter.

2.6 Are there special rules for the conclusion of framework agreements?

According to Turkish procurement law, a framework agreement is 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 (Article 4 of Law No. 4734).

Contracting authorities may conclude framework agreements for the procurement of required goods, services and works, provided that they use open or restricted procedures. However, framework agreements must not be used in a way that prevents, restricts or distorts competition (Additional Article 2 of Law No. 4734).

2.7 Are there special rules on the division of contracts into lots?

In tenders where bids are received on unit price; partial bids may be submitted for one or more parts depending on the nature of the procurement if there are multiple items in the procurement, and partial bids may be submitted for one or more parts of the same goods determined in terms of quantities if the procurement subject to tender is related to a single type of goods.

However, as answered in question 2.3 of the chapter, tenders for the procurement of goods or services or construction works cannot be divided into lots to fall below the threshold value.

2.8 What obligations do purchasers owe to suppliers established outside your jurisdiction?

As mentioned above, pursuant to the principle of equal treatment, the contracting authority is obliged to treat domestic and foreign tenderers equally without discrimination and favouritism on the grounds of race, religion, sect, nationality, political opinion, geographical region, kinship relations, etc. in all works and transactions, evaluations and discretions it makes in the tender process.

In the Turkish procurement system, foreign tenderers cannot be prevented from participating in tenders and protective practices for domestic tenderers cannot be applied, except for the restriction that only domestic tenderers may participate in tenders below the threshold values and the application of price advantage in favour of domestic tenderers in tenders above the threshold values (Article 63 of Law No. 4734).

It is also important to mention that the procurement or pre-qualification document must be prepared in Turkish. However, in construction tenders open to foreign tenderers, it is permitted for all or part of the document to be prepared in other languages besides Turkish (Article 14 of the Construction Works Tender Implementation Regulation). Upon request, the document prepared in a foreign language may be provided together with the Turkish document.

3 Award Procedures

3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

Tenders subject to Turkish public procurement legislation are divided into three categories, namely:

- open procedure;
- restricted procedure; and
- negotiated procedure.

The negotiated procedure can also be divided into the following two categories:

- tenders for which a tender notice is mandatory; and
- tenders for which a tender notice is not mandatory.

An open procedure is a procedure in which all natural and legal persons who are qualified for the work subject to the tender may submit a tender. Tender notice is mandatory.

Evaluation is made on the offer submitted to the tender. The tender submitted cannot be withdrawn or changed (Article 19 of Law No. 4734).

A restricted procedure is a procedure in which tenderers who are invited following pre-qualification by the contracting authority can submit their tenders. This procedure may be used in the procurement of works where open procedure is not applicable due to the nature of the subject matter necessitating expertise and/or high technology. In addition, tenders for construction works whose approximate cost exceeds half of the threshold value may be made according to this procedure.

It is mandatory to notify the tenderers of the restricted procedure. This procurement procedure takes place in two stages. First, the tenderers participating in the tender are evaluated for pre-qualification. 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. Tenders submitted in the second stage are evaluated according to the evaluation criteria specified in the procurement document and the invitation letter. If 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 will be cancelled (Article 20 of Law No. 4734).

A negotiated procedure is a procedure that can be used when the special conditions set out in the procurement legislation are met (Article 21 of Law No. 4734).

In the case of negotiated procedures where a tender notice is mandatory, a two-stage tender procedure is adopted. In the first stage, the tenderers whose qualification is determined as specified in the procurement document first submit their initial tenders, which do not include the price, on issues such as technical details and methods of execution of the work subject to the tender. The procurement commission then discusses with each tenderer the best methods and solutions to meet the needs of the contracting authority. As a result of the technical discussions, the tenderers who can meet these conditions are asked to submit their tenders including the tender price. In the second stage, the tender is finalised by receiving the final written tender price offers from the tenderers, which will be the basis for the tender decision, not exceeding the initial tender price offers (Articles 21/a, 21/d, 21/e of Law No. 4734).

In negotiated procedures that do not require a tender notice, at least three tenderers are invited to submit their qualification documents and price offers together. The tenderers whose qualifications are confirmed as a result of the evaluation made by the procurement commission are asked to submit their final price offers in writing, which may not exceed their initial price and is the basis for the tender decision. The process is completed when the contracting authority makes a procurement decision.

3.2 What are the minimum timescales?

One of the principles that public administrations must comply with is to ensure that the tender is obtained in a timely manner and under the most favourable conditions. For this reason, Turkish procurement legislation does not set a separate standard for tender evaluation processes. However, in practice, the first session of the tender must be completed on the day of the tender and before the procurement commission is dismissed. The second session, in which the tenders are examined in detail, must be completed in a reasonable time based on the nature of the tender, as it requires the investigation of the tenders and their annexes.

3.3 What are the rules on excluding/short-listing tenderers?

In tenders governed by Turkish public procurement legislation, participating companies must meet the qualifications required by contracting authorities. Contracting authorities may demand economic and financial qualifications and professional and technical qualifications as determined by the procurement legislation (Article 10 of Law No. 4734). Candidates and tenderers who do not meet these qualifications are excluded from the evaluation.

On the other hand, if persons who are prohibited from participating in the tender attempt to participate, they shall also be excluded from the evaluation. In addition, those who are prevented from participating in the tenders within the scope of the provisions of Law No. 4734 are also excluded from the evaluation if they participate in the tenders. For example, relatives and kin of the procurement commission and contracting officer, and tenderer(s) who have committed offences specified in the legislation are excluded from the evaluation if they participate in tenders.

In addition, candidates and tenderers who engage in what Law No. 4734 defines as “prohibited conducts and actions” during the procurement process are excluded from the evaluation and penal action is taken against them based on the nature of the offence. For example, a criminal complaint is also filed against the person who is found to have conspired to rig the tender.

As a result of the evaluation made in the tender, if it is stated in the procurement document that tenderers who submit tenders “below the limit value” according to the “approximate cost” shall be excluded from the evaluation, such offers shall be excluded from the evaluation. In addition, tenderers who submit offers above the approximate cost may also be excluded at the discretion of the contracting authority.

3.4 What are the rules on the evaluation of tenders? In particular, to what extent are factors other than price taken into account (e.g. social value)?

In the Turkish procurement system, the evaluation of tenders is carried out by procurement commissions consisting of at least five persons. Tender evaluation is carried out in at least two separate sessions.

In the first session, the procurement commission checks whether the tenderer’s documents are complete and whether the tender letter and tender securities are in accordance with the procedures. Tenderers with incomplete documents or improper tender letters and tender securities shall be recorded in the minutes. The identity of the tenderers, their tender prices and the “approximate cost amount” are disclosed. At this stage, no decision is made to reject or accept an offer. The documents constituting the tender cannot be changed or completed. The first session is adjourned so that the procurement commission can start to evaluate the tenders immediately.

At the second session, the sufficiency criteria of the tenderers and whether the offers comply with the conditions specified in the procurement document are examined. The relevant explanation is requested from the tenderers who are determined to have submitted an excessively low offer. Offers that do not comply with the procurement documents or are too low and cannot be explained are excluded from the evaluation.

In the Turkish procurement system, offers may also be evaluated on the basis of “non-price factors”, provided that these are

specified in the procurement document. In this case, an assessment can be made by considering factors other than price, such as operation and maintenance cost, cost effectiveness, productivity, quality and technical value. In tenders evaluated by considering factors other than price, the monetary values or relative weights of these factors shall be specified in procurement documents (Articles 36, 37, 40 of Law No. 4734).

3.5 What are the rules on the evaluation of abnormally low tenders?

Evaluation of tenders subject to Turkish public procurement legislation must be based on the “most economically advantageous tender” and not on the “lowest price”. For this reason, tenders that do not reflect real market prices are excluded from evaluation.

The identification and evaluation of abnormally low tenders is covered in secondary legislation. In service and construction tenders, tenders that are below the limit value calculated according to the tenders submitted and the approximate cost of the work are subject to an extreme low tender inquiry. However, where permitted by secondary legislation, it is also possible to directly exclude tenders below the threshold value (Implementing Regulation on Construction and Service Works Tenders).

The secondary procurement legislation does not specify any methodology for setting a limit value for procurement of goods tenders. For this reason, in determining the abnormally low tenders, the method of detecting the contracting authority according to the tenders submitted and the approximate cost is used (Implementing Regulation on Procurement of Goods Tenders).

3.6 What are the rules on awarding the contract?

In the Turkish procurement system, the final act in the procurement process under Law No. 4734 is the awarding of the contract. Likewise, once the contract is awarded, the implementation of this contract takes place within the scope of Law No. 4735.

Contracting authorities are obliged to notify the finalised decisions of the tenders to all tenderers participating in the tender. If the tender has not been cancelled, the finalised tender decision determines the tender prices, the approximate cost and the most economically advantageous and, if applicable, the second most advantageous tenderer. The tenderers excluded from the evaluation and their reasons are stated with justification.

After the finalised tender decision is published, no invitation to award a contract is made until 10 days have elapsed in all other tenders, except for “negotiated procedures without notice” (Articles 21/b and 21/c of Law No. 4734). Likewise, this is the application period granted to tenderers within the scope of the complaint application to the contracting authority. Likewise, if an application has been made to the Public Procurement Authority regarding the tender, the invitation to award a contract may be made after the decision of the contracting authority.

The contracting authority is required to award a contract with the tenderer who submits the most economically advantageous offer. However, if this tenderer refuses to award a contract, a contract may be signed with the second most advantageous tenderer. If the contracting authority does not award a contract with the second most advantageous tenderer, it may cancel the procurement.

The contracting authority must first invite the tenderer to the contract by granting 10 days (12 days are added to this period for foreign tenderers) and request the documents required by Law No. 4734. The tenderer invited to the contract must sign the contract by submitting these documents within the time limit (Articles 40, 46 of Law No. 4734).

3.7 What are the rules on debriefing unsuccessful bidders?

In Turkish public procurement, the evaluation of candidates and tenderers is based on the qualification criteria set out in the “administrative specifications”. Administrative specifications are prepared by the contracting authorities by filling in the printed “Standard Administrative Specifications” published by the Public Procurement Authority. However, Contracting Authorities cannot include any provisions contrary to the legislation in these specifications.

Tenderers who submit tenders contrary to the administrative specifications, submit incomplete or false documents, are not qualified, or engage in prohibited acts or conduct are excluded from the evaluation in the tenders.

3.8 What methods are available for joint procurements?

Turkish procurement legislation regulates joint procurements and their methods. According to the relevant article, a single tender can be made for the procurement of goods and services, and maintenance and repair works to meet the common needs of more than one contracting authority (purchaser) (Additional Article 7 of Law No. 4734). For example, a single tender can be made for catering services for two separate contracting authorities on the same campus. The aim of this legislation is to ensure savings in the public sector through joint procurement, to reduce the costs in the procurement process and to save time for contracting authorities by conducting fewer procurement procedures within the framework of these regulations.

Contracting authorities wishing to carry out joint procurements must assign one of their own contracting authorities to carry out the procurement procedures on behalf of the other contracting authorities through a protocol to be drawn up.

Separate contracts are signed between the contracting authorities and the tenderers who have signed a protocol between themselves by performing the joint procurement.

3.9 What are the rules on alternative/variant bids?

In procurement of goods tenders, whether alternative bids can be submitted is determined in the procurement document. In tenders where alternative bids are allowed, the maximum number of alternative bids and the submission of a separate letter of offer for each bid is specified in the administrative specifications.

In tenders where alternative bids are allowed, the procurement commission shall evaluate whether the tenderer meets the qualification criteria stipulated in the procurement document, separately for each tender.

In addition, if the bid prices of the tenderers submitting alternative bids are different from each other, it is possible for the tenderer to submit only one provisional guarantee based on the bid with the higher amount.

3.10 What are the rules on conflicts of interest?

Article 11 of the Public Procurement Law titled “Those who cannot participate in the tender” regulates those who cannot participate in the tender, and the relevant article identifies the persons who are not allowed to participate in the tender in order to prevent conflicts of interest and to ensure impartiality and transparency. According to the legislation, the following persons cannot bid for tenders with which they are associated:

- The contracting officers of the contracting authority carrying out the procurement process, and the persons assigned in boards having the same authority.
- 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.
- The spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those specified above.
- The partners and companies of those specified above.
- Contractors rendering consultancy services for the work subject to the tender.

Tenderers who participate in the tender despite such prohibitions shall be excluded from the procurement and their tender securities shall be registered as revenue. Moreover, if the contract is awarded to one of those tenderers due to failure in detecting such situation during evaluation stage, the procurement procedure is cancelled, and tender security is registered as revenue.

3.11 What are the rules on market engagement and the involvement of potential bidders in the preparation of a procurement procedure?

In Turkish procurement legislation, the determination of the procurement procedure is the duty of the “contracting officer” on behalf of the contracting authority. In order to increase competition and participation in tendering, one of the “basic tender procedure”, namely the “open procedure” and the “restricted procedure”, should be selected.

However, in the following cases specified in the legislation, a negotiated procedure may be used:

- In the cases of sudden and unexpected events such as natural disasters and epidemics, or properties or 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.
- If it is impossible to conduct the procurement procedure immediately due to the occurrence of events which could not be foreseen by the contracting authority.
- If it is impossible to conduct the procurement procedure immediately due to occurrence of special incidents relating to defence and security.
- Purchases of manufactured goods, materials or services that are urgently needed by the contracting authority, not exceeding the amount determined by the Public Procurement Authority each year.
- Inviting at least three tenderers and asking them to submit their qualification documents and price offers together, without the obligation to make a notice (Articles 21/b, 21/c, 21/f of Law No. 4734).

In the event of the above exceptions, negotiated procedures have potential tenderers before the contracting authority.

For example, in the event of a natural disaster in City X, the purchase of food that will be needed urgently can be realised by inviting at least three catering companies in the same city.

4 Exclusions and Exemptions (including in-house arrangements)

4.1 What are the principal exclusions/exemptions?

Law No. 4734 exempts the tenders of many contracting authorities with respect to the execution of their actual duties (Article 3 of Law No. 4734). Tenders for defence, energy, or foreign procurement requiring high security are excluded from the scope of Law No. 4734 and are governed by their own special regulations.

4.2 How does the law apply to “in-house” arrangements, including contracts awarded within a single entity, within groups and between public bodies?

The procurements not governed by the law are applicable for the procurements that are deemed inconvenient to make the tender notice, tender and contract. Moreover, the procurement not governed by the law is not under the supervision of the Public Procurement Authority. Therefore, security, energy and foreign-related purchases are covered by the exception.

The procurement not governed by the law is governed by specific Regulations for different ministries or specially authorised administrations. For example, the Regulation for the Ministry of Foreign Affairs applies to all units of the same ministry abroad.

In addition, the procurement required for all units can be performed centrally by the Ministry itself and made available to all units. For example, software service procurement can be performed from a single centre and as a procurement not governed by the law.

5 Remedies

5.1 Does the legislation provide for remedies, and if so, what is the general outline of this?

Before pursuing legal action, candidates or tenderer(s) who have lost rights as a result of an illegal transaction or action during the procurement process must exhaust the two administrative remedies of complaint and appeal, as long as they adhere to the format and procedural guidelines outlined in Public Procurement Law No. 4734.

Complaints must be submitted in writing to the contracting authority within five days of becoming aware of the unlawful act, for tenders made in accordance with subparagraphs (b) and (c) of Article 21 of the Public Procurement Law, and within 10 days for other tenders, in any event prior to the contract being signed, in accordance with Article 55 of the Public Procurement Law.

The contracting authority must conduct the necessary review upon the complaint application and take a reasoned decision within 10 days. The decision is then notified to the complainant and the other candidates, tenderers or potential tenderers within three days after the date of the decision.

If no decision is taken in the specified period, the complainant may appeal to the Public Procurement Authority (the Authority) within 10 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 10 days following notification of the decision of the contracting authority.

The procedure for filing an objection to the Authority is regulated under Article 56 of the Public Procurement Law. The Authority is obliged to make the final decision on the appeal within 20 days following the date on which the required documents, information and the procurement process dossier of the procurement under review are registered. This period shall apply as 10 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. Contracting authorities must immediately take action as required by Board decisions which change the legal situation.

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

5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

The regulations in the legislation are described in Article 5.1. Apart from these, a remedy not mentioned in the legislation is not included in the Turkish public procurement legislation.

5.3 Before which body or bodies can remedies be sought?

As mentioned in question 5.1 above, judicial remedies are not taken (although there are some exceptions) until the application to the contracting authority and appeal procedures have been exhausted.

5.4 What are the limitation periods for applying for remedies?

At every stage of the procurement process, candidates and tenderers have the right to take the issues they deem unlawful first to the contracting authority and then to the Public Procurement Authority.

Applications must be submitted to the contracting authority within 10 days as of the time when the unlawfulness was, or should have been noticed, unless there are negotiated procedures without notice. An application may be submitted to the Public Procurement Authority within 10 days after the application to the contracting authority, if the contracting authority does not reply or if the response is deemed inappropriate.

Candidates and tenderers who have exhausted administrative remedies may file a lawsuit before the administrative courts within 30 days. However, Public Procurement Authority supervision is not regulated by law in the procurement not governed by the law. Therefore, disputes arising from the procurement not governed by the law are resolved directly before the courts.

5.5 What measures can be taken to shorten limitation periods?

Turkish public procurement legislation regulates the strict application of limitation periods and the execution of

procurement within the time period. Therefore, no measures to shorten their time period are included in our legislation.

However, due to *force majeure*, if the candidates and tenderers are delayed in the procurement process and prove this with official documents, the period may be extended.

5.6 What remedies are available after contract signature?

After the public procurement contracts are signed, the resolution of disputes arising from the contract are settled within the scope of the Public Procurement Contracts Law No. 4735 and the provisions of the Turkish Code of Obligations in the absence of provisions in the relevant Law. Therefore, it is not possible to file an application before the Public Procurement Authority after the contract. The contractor signing the contract must resolve any disputes with the contracting authority in the jurisdiction.

5.7 What is the likely timescale if an application for remedies is made?

The application process of candidates or tenderers to the contracting authority starts as of the date when the violation of the law is or should have been noticed in the procurement process. If the tenderer makes an application to the contracting authority and subsequently to the Authority within the periods granted to the tenderer as of this date, the contracting authority may respond to the application within an average of 10 days and the Public Procurement Authority within 20 days.

Candidates and tenderers who have exhausted administrative remedies may apply to the administrative jurisdiction within 30 days if the answer is not deemed appropriate. Cases before Administrative Courts are heard and concluded within the scope of the “summary procedure”.

5.8 What are the leading examples of cases in which remedies measures have been obtained?

Disputes that arise during the procurement process generally result from unlawful procurement cancellations and procurement evaluations that are not conducted in accordance with the legislation. It is understood that the unfair practices of the contracting authorities are in the majority when the reasoned decisions published by the Public Procurement Authority are examined. It appears that in such cases, the Authority has taken corrective action or cancelled the procurement.

In addition, decisions taken by the Public Procurement Authority are frequently in dispute. It is observed that the reason for the stay of execution of the Board’s decisions by the courts is generally due to the interpretation of the procurement legislation and procurement documents in various aspects from the Authority.

5.9 What mitigation measures, if any, are available to contracting authorities?

Turkish public procurement law is a branch of law in which duration, form and procedural rules are strictly enforced. Likewise, public procurement contracts are included in the scope of private law contracts based on the mutual rights and responsibilities of the contracting authority and the

contractor. It is therefore not possible for contracting authorities to take any initiative in the procurement and awarding process, other than the exceptions granted to them.

6 Changes During a Procedure and After a Procedure

6.1 Does the legislation govern changes to contract specifications, changes to the timetable, changes to contract conditions (including extensions) and changes to the membership of bidding consortia pre-contract award? If not, what are the underlying principles governing these issues?

Any unlawfulness discovered through the EKAP after the procurement notification can be applied first to the contracting authority and then to the Public Procurement Authority. If the application is approved by the Contracting Authority or the Public Procurement Authority, the Contracting Authority may proceed with the procurement procedures by issuing an addendum (amendment to the procurement document).

Changes to the procurement document must be made at least 10 days before the procurement takes place. If this deadline is missed, the procurement date is postponed to a later date or the procurement is cancelled.

Once the contract is awarded, no changes can be made to the procurement document, although there may be some exceptions. These exceptions are limited to matters related to the place and duration of the contract. However, the consent (approval) of the contractor must be obtained in order to change the contract (Article 15 of Law No. 4735).

6.2 What is the scope for negotiation with the preferred bidder following the submission of a final tender?

There is no practice in Turkish public procurement legislation of negotiating with the bidder after the submission of the final tender.

6.3 To what extent are changes permitted post-contract signature?

Once the contract is awarded, no changes can be made to the procurement document, although there may be some exceptions. These exceptions include only matters related to the place and duration of the contract. The consent (approval) of the contractor must be obtained in order to change them (Article 15 of Law No. 4735).

It is important to note at this point that a “work increase” or “work decrease” in the work subject to the contract, to the extent permitted by the Law, does not constitute an amendment to the contract. Likewise, this is clearly stated in the “Standard Contracts” that must be implemented by the contracting authorities.

6.4 To what extent does the legislation permit the transfer of a contract to another entity post-contract signature?

It is regulated that the contract may be assigned to others with the written permission of the contracting officer in mandatory cases (Article 16 of Law No. 4735).

The contractor to be assigned must meet the conditions in the procurement for the contract in question. In addition, except for assignments made pursuant to name and status change, the regulations state that a contractor cannot assign or take over another contract within three years following the date of assignment of a contract.

7 Privatisations and PPPs

7.1 Are there special rules in relation to privatisations and what are the principal issues that arise in relation to them?

The provisions on privatisation are regulated under the Law on Privatisation Implementations, and are not covered in this chapter.

7.2 Are there special rules in relation to PPPs and what are the principal issues that arise in relation to them?

PPPs are regulated under a separate Law No. 3996 in Türkiye and are not covered in this chapter.

8 The Future

8.1 Are there any proposals to change the law, and if so, what is the timescale for these and what is their likely impact?

Changes to the Public Procurement Law and secondary legislation have been made on a frequent basis in recent years.

The EU has criticised in particular the inclusion of certain contracting authorities and procurements to the scope of the exception, thus excluding them from the supervision of the Public Procurement Authority (2024 Communication on EU Enlargement Policy, 2024 Türkiye Report). There is no proposal in the Grand National Assembly of Türkiye to change the current law as of the date of this chapter.

8.2 If there are any proposals to change the law, what are the details of some of the most significant changes?

There is no proposal before the Grand National Assembly of Türkiye at the time of writing (January 2025).

8.3 Have there been any regulatory developments which are expected to impact the law, and if so, what is the timescale for these and what is their likely impact?

Changes can also be made within the scope of high judicial decisions in the second legislation on public procurement. In this respect, practical changes have been made in procurements.



İlyas Kılıç is the founder and Board Chairman of Kılıç Law & Consulting Office and Kılıç Corporate Consultancy Incorporated Company. He is a Public Procurement Specialist with a Master's degree in Public Procurement Legislation and Public Administration, and he has many academic studies. He has given numerous lectures and seminars to Public Institutions and private sector in the field of public procurement. İlyas Kılıç has published books named *Public Procurement Board Precedent (2012)*, *1000 Questions and 1000 Answers in Public Procurement Law (2014)*, *2300 Questions and 2300 Answers in Public Procurement Law (2015)*, *400 Questions and 400 Answers in Works Contracts (2017)*, and *Inspection and Acceptance Procedures in Public Procurement (2019)*.

Kılıç Law & Consultancy Office

Mustafa Kemal Mahallesi
2079. sokak Via Green İş Merkezi
B Blok No:11 Çankaya, Ankara
Turkey/Türkiye

Tel: +90 545 285 96 00
Email: ilyaskilic@kilichukuk.org
LinkedIn: www.linkedin.com/in/ilyas-kilic-505416163



Işıl Kılıç is a board member and coordinating lawyer at Kılıç Law & Consulting Office and is one of the leading lawyers in Türkiye in Public Procurement Law, NATO tenders, German Public Procurement Law and Law of Obligations. She completed her Master's degree on inspection and acceptance procedures of works contracts in public tenders. Işıl Kılıç has six published books named *German Public Procurement Law, Determination, Inquiry and Disclosure of Abnormally Low Bids in Public Procurement, Prohibition Procedures in the Public Procurement Process, Inspection and Acceptance Procedures for Goods Purchases in Public Procurement Contracts and Documents Evidencing Work Experience in Public Procurement*. She provides advocacy and legal consulting services to highly prestigious national and international companies. She also trains many companies and institutions in the field of public procurement law.

Kılıç Law & Consultancy Office

Mustafa Kemal Mahallesi
2079. sokak Via Green İş Merkezi
B Blok No:11 Çankaya, Ankara
Turkey/Türkiye

Tel: +90 545 285 96 00
Email: isilkilic@kilichukuk.org
LinkedIn: www.linkedin.com/in/isil-kilic-erol-35a7061b6

Kılıç Law & Consulting Office is staffed by a team of specialised lawyers, public procurement specialists, academicians and a principal auditor from the Court of Accounts. It has achieved both national and international success with 30 years of knowledge and experience. Kılıç Law & Consulting Office resolves disputes within the scope of Public Procurement Law No. 4734, Public Procurement Contracts Law No. 4735, State Procurement Law No. 2886, Turkish Code of Obligations No. 6098 and Tax Law, NATO Tenders and German Tenders; professionally monitors lawsuit processes, and provides legal consultancy.

www.kilichukuk.org



The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Public Procurement 2025 features one expert analysis chapter and 15 Q&A jurisdiction chapters covering key issues, including:

- Relevant Legislation
- Application of the Law to Entities and Contracts
- Award Procedures
- Exclusions and Exemptions (including in-house arrangements)
- Remedies
- Changes During a Procedure and After a Procedure
- Privatisations and PPPs
- The Future of Public Procurement

