

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY TURKEY**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

TURKEY (THIRTEENTH MEETING)

-Means by which procurement invitations are published are laid down in Article 13 and Additional Article 1 of the Public Procurement Law (PPL). All notices are published electronically in Public Procurement Bulletin via Electronic Public Procurement Platform (EPPP) (<https://ekap.kik.gov.tr/EKAP/Plan/BultenIndirme.aspx>). For public contracts below the thresholds, publication in local newspapers is required in addition to Electronic Public Procurement Platform.

-Also our EPPP, one can reach a lot of information on each tender, including contract notice, tender document, award decision, estimated value, contract value, number of bids, highest and lowest bids, contractors name, term of contract etc (<https://ekap.kik.gov.tr/EKAP/Ortak/IhaleArama/index.html>).

-Regarding standard bidding documents used to submit a tender, for every type of procurement (goods, works, services and consultancy services) and for different procedure (open, restricted, negotiated) there are standard bidding documents in the annexes of secondary legislation which was drafted by the PPA and published on the website of the PPA (<https://www.ihale.gov.tr/Mevzuat.aspx>).

-On the EPPP, there are useful help videos, flow charts and other guidance materials aimed at helping contracting authorities and tenderers in procurement process (<https://ekap.kik.gov.tr/EKAP/Yardim/Default.aspx>). Also, General Communique on Public Procurement which is drafted and published by the PPA provides detailed information about application of the Public Procurement Law (<https://www.ihale.gov.tr/Mevzuat.aspx>).

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY TURKEY

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

TURKEY (SIXTH MEETING)

Public Procurement Authority is assigned and authorized for the accurate implementation of the principles, procedures and proceedings specified in Public Procurement Law (PPL) which is numbered as 4734.

Most deterrent part of PPL in terms of anti-corruption is Article 17 which regulates the prohibited acts or conducts. According to Article 17 of PPL, prohibited acts or conducts are as follows;

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

Moreover, Article 17 prohibits the acts which are expressed in Article 11.

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

- a) those who have been temporarily or permanently prohibited from participating in public procurements; and those who have been convicted of the crimes under the scope of Prevention of Terrorism Law No:3713, or of organized crimes, or of bribing crimes in their own country or in a foreign country.
- b) those whom the relevant authorities have been decided that they have been involved in fraudulent bankruptcy,
- c) the contracting officers of the contracting authority carrying out the procurement proceedings, and the persons assigned in boards having the same authority,
- d) those who are assigned to prepare, execute, complete and approve all procurement proceedings relating to the subject matter of the procurement held by the contracting 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).

Additionally, Article 58 and 59 of PPL regulate sanctions against prohibited acts and conducts. According to aforementioned article, those who are established to be involved in acts and conducts set forth in Article 17, shall be prohibited from participation in any tender carried out by all public institutions and authorities, for at least one year and up to two years depending on the nature of the said acts and conducts; and those who do not sign a contract in accordance with the procedures, except for force majeure, although the tender has been awarded to them, shall be prohibited likewise from participation in any tender for at least six months and up to one year.

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

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

Moreover, contracting officers are also responsible for their illegal acts. In case it is established that the contracting officer, the chairperson and the members of the tender commissions and other related persons assigned at any stage of the procurement proceedings 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 defaults or negligent acts which inflict loss upon one of the parties, these persons shall be given a disciplinary punishment in accordance with the related legislation. Criminal prosecution shall also apply for these persons depending on the nature of their acts or conducts, and in addition to the punishment rendered by the court, these persons shall compensate for all the loss and damage inflicted upon the parties in accordance with the general provisions. The persons who have been convicted for the acts and conducts contrary to PPL shall not be assigned to duties within the scope of PPL.

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

Public Procurement Authority keeps the records of those who are prohibited from participating in tenders. According to procurement statistics which were published by Public Procurement Authority, the number of companies which are profhibited from participating in tenders, are shown in Table 1. Additionally, Table 2 shows the number of prohibited companies in year 2014 in terms of types of entities.

Table 1: Number of Prohibited Companies in 2014

Year	Prohibited Companies
2011	8190
2012	9697
2013	8697
2014	7845

Table 2: Number of Prohibited Companies in 2014

Type of Entity	Number of Prohibited Companies in year 2014	Percentage
Natural Entity	6424	81,89
Legal Entity	1421	18,11
Total	7845	100

Strategy For Enhancing Transparency and Strengthening the Fight Against Corruption:

The Prime Ministry’s Circular No: 2009/19 published in the Official Gazette dated 05/12/2009 has provided for the creation of:

- A “Commission of Enhancing the Transparency and Strengthening the Fight against Corruption in Turkey” (the “Commission”) headed by the Deputy Prime Minister and comprising the Minister of Justice, the Minister of Finance and the Minister of Labor and Social Security and
- -A “Steering Committee for Enhancing Transparency and Strengthening the Fight against Corruption in Turkey” (the “Steering Committee”) headed by the Deputy Undersecretary of the Prime Ministry and comprising the representatives of the Union of Chambers and Commodity Exchanges of Turkey and Türk-İş Labor Union.

“The Strategy for Enhancing Transparency and Strengthening the Fight against Corruption” adopted by the Decree of the Council of Ministers numbered 2010/56 has been published in the Official Gazette number 27501 dated 22 February 2010

“The Action Plan for Enhancing Transparency and Strengthening the Fight against Corruption”, has been adopted by the Commission’s Decision dated 12 April 2010 and numbered 2010/1

On 21 April 2010, the Steering Committee requested the establishment of a working group on 23 measures.

The Steering Committee discussed the reports prepared by the working groups, including their findings, between 18 October 2010 and 10 May 2011 and submitted them to the Commission.

On 19 August 2011, the findings submitted to the Commission by the Steering Committee were ratified and working groups were entrusted to propose solutions.

The Steering Committee discussed the reports prepared by the working groups, including their findings, between 13 June 2012 and 26 November 2013 and submitted them to the Commission.

The solution proposals were approved by the Commission’s Decision number 2014/1, dated 14 January 2014.

Transparency Package Announced by Prime Ministry

Prime Minister Mr. Ahmet Davutoğlu publicized the strategy outputs on 14 January 2015, namely ‘Transparency Package in Public Administration’. In this regard, the work planned within the framework of “The Strategy for Enhancing Transparency and Strengthening the Fight against Corruption in Turkey” covering the period 2010-2014 was completed and the strategy has been concluded. By this package, the following legal amendments were proposed:

Amendments to the Law No. 298 on Fundamental Provisions on Elections and Electoral Registers and Law No. 2820 on Political Parties with reference to the transparency of the financing of political parties and election campaigns;

- Depositing contribution in cash into bank accounts held in the names of parliamentary and mayoral candidates for their election campaigns, and ensuring the transparency of these accounts;
- Imposing certain limits on contribution, either in cash or in kind, provided to the candidates and political parties;
- Ensuring that the amount granted to the political parties is announced in the electronic environment;
- Auditing election accounts and election expenditures and announcing the audit results in the electronic environment;
- Imposing an administrative fine for failure to comply with the obligations introduced by the draft law;
- Ensuring that all political parties participating in the elections will inform the public on their financial resources as of the beginning of the election campaigns;

- Ensuring the announcement of accounts regarding the elections in the electronic environment upon publicizing of election results;

Amendments to the Law No. 3628 on Declaration of Property and Fight against Bribery and Corruption;

- Introducing the obligation for deputy chairmen of political parties with a group in the TGNA (The Turkish Grand National Assembly), administrators of the party central organisation, provincial and district chairmen, managers of radio and television channels broadcasting at the regional or local levels to submit a declaration of their property; ensuring that the president and members of the high courts and heads of chambers submit a declaration of property to the TGNA;
- Decreasing the interval for renewing declarations of property from five years to two years and removing the obligation to submit additional declarations;
- Ensuring that ethics committees set up in public institutions have an effective role in the control and assessment of declarations of property; also ensuring the assessment of such declarations of high-level administrators (specified in the Law No. 5018) by the "Public Servants Board of Ethics";
- Setting-up of an IT infrastructure that enables submission and assessment of declarations of property in the electronic environment.

Amendments to the Law No. 2531 on the jobs prohibited to those who quit a position in the public service

- Ensuring that the public servants who are no longer employed in public service cannot provide services or undertake commitments nor act as contractor, broker, representative, consultant or handler vis a vis their former employer and neither can they attend negotiations involving their former employer for a period of two or three years, depending on the nature of their former position.
- Introducing the obligation for natural and legal persons who will be contracted by administrations to submit a written declaration that they do not employ persons with such restrictions in accordance with this law.

Amendments to the Law No. 657 on Public Servants;

- Ensuring a permanent or temporary transfer to a different department or paid leave of absence for up to three months or appointment in another public institution or organization for public servants who have notified the relevant authorities about an irregularity;
- Ensuring that any superior who is related with the subject matter is prevented from preparing the employment records or performance evaluation of the public servant who has notified the authorities about an irregularity;
- Rewarding the public servants notifying the relevant authorities, provided that the allegation is well founded; however, applying serious sanctions without delay in cases of unfair incrimination and slander;

Amendments to the Law on Zoning include the following arrangements:

- Ensuring that the preparation of zoning plans is carried out with greater transparency and accountability;

- Ensuring the fair and swift implementation of zoning practices;
- Ensuring that municipalities also benefit from the value increases stemming from the changes in the master zoning plan; publication of draft and finalized zoning plans and changes to these plans on the websites of municipalities, on bulletin boards accessible to all and at the offices of the district authorities, as well as providing summarized versions of these plans in a local newspaper;
- Ensuring that all public administrations authorized to prepare and change zoning plans publish all stages of planning on their websites and the website of the Ministry of Environment and Urbanization specifically set up for this purpose;
- Ensuring that changes to the plans are to the extent allowed by social and technical limitations and they preserve the history, culture, environment, as well as the city skyline; ensuring that plans are no longer routinely changed;
- Allowing for overall changes that involve the master zoning plan, rather than an incremental change to one minor section; with reference to changes to the master zoning plan which are not made upon a request by an individual, allowing the municipality to make changes in the overall plan or in one section of this plan, or one street, road or entire neighborhood regardless of whether a request has been made;

The Law on Members of Parliament will be prepared by taking into consideration the Political Ethics study agreed on by four political parties with groups in the TGNA.

The Next Period;

- In addition to the amendments, which have been realized in 2010-2014 period, work will continue to increase transparency within the scope of a new action plan on the fight against corruption covering 2015-2018 period.
- Draft topics are about ‘Transparency in NGOs and private sectors’ and ‘Review of the Public Procurement System’.

Additional Information;

- ‘Political Ethical Principles’ are included in the draft law on Members of Parliament.

2. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

N/A

3. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

N/A