

Annex of the Note Verbale No: 2018/68324910/13887946, dated 23 May 2018

***The legislative framework on preventing and managing conflict in interest in public procurement in Turkey***

1. Regarding preventing and managing conflict of interest in public procurement in Turkey, the relevant provisions in the Public Procurement Law (No: 4734) are as follows:

*“Ineligibility*

*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)*
- b)*
- 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), € (except for joint stock companies where they are not a member of the board of directors or do not hold more than 10 percent of the capital)*
- g) ...*

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

*Whatever their purposes of establishment are, the foundations, associations, unions, funds and other authorities included within the body of the contracting authority carrying out the procurement, or related with the contracting authority and the companies to which such authorities are partners, cannot participate in the procurement held by these contracting authorities.*

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

Furthermore, participating in procurement proceedings although prohibited pursuant to Article 11 is one of the prohibited acts and conducts according to the point € of Article 17 of the Public Procurement Law (PPL). It is prescribed in the said article that the provisions stated in Chapter

4 of PPL, which is about prohibition from participating in future procurements and criminal liability shall apply to those who have been involved in these prohibited acts and conducts.

In addition, the provision in Article 60 that regulates the penal liability of public officials in Chapter 4 of the PPL is as follows:

*“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 the contract, have committed acts or conducts specified in Article 17; have failed to fulfill their duties in accordance with the legal requirements or failed to act impartially; or have been involved in defaults or negligent acts which inflict loss upon one of the parties, these persons shall be given a disciplinary punishment in accordance with the related legislation. Criminal prosecution shall also apply for these persons depending on the nature of their acts or conducts, and in addition to the punishment rendered by the court, these persons shall compensate for all the loss and damage inflicted upon the parties in accordance with the general provisions. The persons who have been convicted for the acts and conducts contrary to this Law shall not be assigned to duties within the scope of this Law.*

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

Moreover, according to the Law No 2531 on Prohibited Activities of Former Public Servants, former public servants, no matter what the reason of leaving the job is, for three years starting from the date on which they left their job, cannot directly or indirectly get a job, duty or contract from or act as a broker and agent to the department, authority, institution or entity which they served in the last two years before leaving job, on subjects which are related to their former positions and the field of activity in that department, authority, institution or entity.

Besides, according to the Article 13 of the Regulation on Civil Servants Ethical Conduct Principles and Application Rules and Procedures, civil servants have a duty to avoid any conflict of interest situation and any benefits within that scope. The said article provides that those civil servants are personally responsible for a conflict of interest situation and requires them to report a conflict of interest situation to their supervisors immediately. Based on that article, conflict of interest refers to any benefit provided to civil servants, their relatives, friends or persons or organizations they have a relationship with, and financial or other obligations related to them and being in position to have a similar personal interest that affects or appears to affect performing their duties in an objective and impartial manner.

## **2. Council of Ethics for Public Officials:**

Council of Ethics for Public Officials (Council) was established under the Office of Prime Minister in 2004, by Law No. 5176

The Council is commissioned and authorized:

--to determine ethical principles to be abided by public officials while performing their duties,

--to conduct necessary investigation on the basis of applications claiming the violation of ethical principles by senior public officials, to convey relevant authorities the result of such investigation,

-- to perform trainings in order to establish ethical culture within the public administration and support the projects to be performed in this regard,

-- to examine, when necessary, the asset declarations of public officials given in accordance with Law no 3628,

to determine the scope of the gift prohibition for public officials. The Council can request the list of gifts received by senior public officials at the end of each year.