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The Committed Changes within Public Procurement Law in Turkey (2003-2014): A Conceptual Analysis

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ABSTRACT

It is aimed to reach international standards at procurement of goods or services and works by the state with the law no. 4734 constituted for preventing mismanagement, waste and corruption in public procurements. However, activities and payments that are carried out within this extent are open fields for corruption. Thus, this situation enables law provisions and the power of Public Procurement Authority (PPA) to be rearranged for the purposes of interest groups when necessary. So, our study is trying to question the content of arrangements which were prepared with great expectations at first during the period of AKP government, but since 2003, when they were put into practice, they have been changed and criticized significantly. Besides, the impressions in public opinions about the idea that the Law forms a basis for the waste of resources have become the research subject. For this purpose, the featured titles regarding the regulations of law no 4734 have been listed and the legal changes made within the scope of Law have been analyzed in the light of official data. Thereafter, the practices applied in the public procurement procedures and the effectiveness of the grievance mechanism has been questioned. Finally, the risks that may arise in the process of public procurement have been analyzed and recommendations and identification of audit institutions are provided.

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1.0 INTRODUCTION

Favoritism is one of the basic concepts defining the limits of privileges in public sphere (Perry, 2006). One of the most popular mechanisms, which we confront during the distribution of privileges, is public expenditure. According to The State Supervisory Council, considering that nearly one fourth of public expenditures are spent through public procurement, it is obvious that to what extend this field is important in terms of defraudation, irregularity and public gain. In fact, according to the OECD, "the

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public procurement can be shown as the activities of the government that are exposed to corruption at most" (DDK, 2010; OECD, 2007).

The legal regulations prepared for PPL starting from 1925 with establishment of the Republic of Turkey and followed by the regulations carried out in 1934 and 1983 have been inadequate over time. Because of this necessity, the new PPA with law no 4734 was put into force based on international standards. Within the context of law, some basic principles were added into procurement system in parallel to international applications. These are:

1. Transparency and accountability
2. Efficient use of resources and professionalism
3. Open tender procedure
4. The principle of compliance to international applications

With the PPL numbered 4734, it was aimed to end mismanagement, waste and corruption in public tenders, and there was a struggle to accommodate the law to international standards. However, with the changes made in 2003-2014, most of these principles became unenforceable and unworkable. On the contrary, to the purpose of the law, they formed a basis for mismanagement and waste of resources (CHP, 2012). Since the activities and expenditures within this context are open fields for corruption, it leads officers of Public Procurement Authority (PPA) to stretch the law provisions in accordance with the purposes of interest groups when necessary, and to transfer a considerable amount of funds to previously mentioned groups.

At this point, supply and demand conditions come forth, and practices like public tenders are carried out as if they are made openly. Considering the fact that especially public purchase, sale, rental etc. activities increase considerably during pre-election periods, one can witness this case clearly through public tenders that are distributed to the supporters. There were many factors such as hundreds of thousands of contractual recruitments of officials, the poverty benefits at a scale that cannot be compared with the previous governments, green card applications, some eye staining activities like bringing Social Security Authority, Social Security Organization for Artisans and the Self-Employed and State Retirement Fund together under the very same roof, illegal sales, highway tenders, improper privatizations, allowing only some specific companies for imports of certain goods have helped AKP to be institutionalized, gain more power and receive votes in the elections. Small firms called tender barons, supporters and contractors have become powerful holdings and supported the ruling party in terms of both votes and money. The end-point of such practices of AKP was encountered in the bag law, in which tax amnesties were provided to the "tender banned firms" as long as they pay a fine. According to Wittman, "incumbents tend to be reelected for the same reason that the winner of the last footrace is likely to win the next one and the head of a corporation is likely to maintain his position tomorrow. They are the best. That is why they won in the first place and why they are likely to win again. If market monopoly worries you, then probably so should political monopoly" (Nar, 2013).

In the literature, this is called "iron triangle". A three-dimensional structure containing politics-bureaucracy-businessman is described; and it is uttered that politicians and bureaucrats create beneficial partnerships with pressure groups correlatively. One of the fields where one can witness this situation in the USA is "Department of Agriculture." Because there are agricultural committees trying to oppose allowance cuts in both the senate and House of Representatives, and public expenditures are shared on large amounts of money among significant interest groups within the context of iron triangle (Nar, 2013).

Consequently, it is possible to witness similar corruption cases even in the most developed countries and areas of the world as in the example of Turkey. However, the interesting point here is the fact that these kinds of activities that form a basis for corruption are practiced publicly, clearly, laxly and illegally and as if they are every day events by creating a problem of perception and illusion.

This study aims to evaluate the changes made within the scope of PPA No: 4734 between the years of 2003-2014. In other words, considering that the relevant law has been modified 170 times in the last 11 years, it has been questioned that the current changes made on the law play an important role to transfer the public rent to the interest groups.

For this purpose, the featured titles regarding the regulations of law no 4734 have been listed and the legal changes made within the scope of Law have been analyzed in the light of official data. Thereafter, the practices applied in the public procurement procedures and the effectiveness of the grievance mechanism has been questioned. Finally, the risks that may arise in the process of public procurement have been analyzed and recommendations and identification of audit institutions are provided.

2.0 THE CHANGES MADE WITHIN THE LAW NO 4734

After economic crisis of November 2000-February 2001, the economy of the country has faced higher interest rates, budget deficits, chronic inflation, and high debt burden. The coalition government of the period has put "Transition to Strong Economy Program" into force in order to restore economic stability and, in this context; they have created independent regulatory and supervisory agencies. The new government, come to the power in 2002, has benefited from the legacy of the previous period and continued these practices. For this purpose, PPL has been created in order to carry out the public procurements of good and services in accordance with the market conditions. These regulations allowed entry of IMF loans and foreign direct investments into the country and answered the demands of foreign actors in a way. In 2002, PPA has been established within the context of the letter of intent submitted to the IMF. However, in the following years, "the desire to protect the power of the ruling" has brought the country's economy vulnerable to corruption. The current changes made on PPL are the examples of this case, which is no longer for the benefit of the public anymore. The government has also aimed to guarantee to win the forthcoming elections by these regulations. Because of the current changes made on Laws, the tenders have been distributed to the supporters with or without holding a tender process. The previous practices used before the 2001 crises have been employed once again and the tenders are transferred to the supporters of ruling power. However, this practice is not unique for only AKP, but the main handicap of AKP is that they have come to power by promising to fight against this robbery system. In fact, the current situation that has been reached was briefly summarized by one of the thinkers of the period Niccolo Machiavelli five centuries ago (1469-1527): "If the laws are made for a particular purpose and an interest group rather than the society, the collapse of the countries will be that fast and absolute" (Münir, 2008; Nar, 2013, Redhead, 1995).

In fact, the intentions of the Law No. 4734 were making public procurements consistent with the practices of IMF, EU, WB and WTO. As a necessity of international agreements, specific regulations were put into force for public procurements including every kind of consultancy and credit rating services (a.3). In the procurements; it was intended to carry them out publicly via mechanisms that provide appropriate conditions to ensure transparency, competition, equal treatment, reliability, confidentiality, public control and needs (even for this purpose, it was considered as a precautionary mechanism to allocate a state-owned TV channel which would make live broadcast of procurements to this field). In order to ensure the principles mentioned above, open tender procedure principle was introduced in procurements. It was stated that in special or exceptional cases, restricted tender procedure would be appropriate. Furthermore, it was decreed that there would be no procurements for any kind of business without allowance (a.5). It was aimed not to stretch the conditions that were defined in the procurement by no means; before the tender of goods or services and works and it was intended to define approximate costs by the contract ingenuity and; thus, to prevent procurements with only having pre-project reports. Consequently, there was a transition from cost determination method based on estimates to realistic cost determination method (a.9). Willing participants of the tender were asked to fulfil important criteria regarding economic and financial competence and determination of professional and technical qualification; and by this way, an implementation against moral hazard began (a.10). Moreover, within the Law, in order to regulate and audit efficient pursue of procurements about public goods or services and works at international standards, administratively and financially autonomous

"Public Procurement Authority", which had a public legal entity, was established. In this law (a.53); the principles, procedures and proceedings that PPA was assigned and authorized were listed in detail (KIK, 2002; Mitchell & Randy 1994).

Apparently 51 of 70 articles in the law have been changed until now. The establishments spending excessively are excluded from this law because of the changes within the law. Firstly, with the change made in the 2nd article of the Law, many institutions and establishments such as undertakings, enterprises and corporations that operate in areas like "real estate investment trusts and energy, water, transportation and telecommunication sectors" are taken out of the scope of this Law; thus, tenders regarding main elements of spending have become in a way to be carried out or administered only by regulations in an almost lawless way. This situation allows previously mentioned institutions to redirect public tenders as they wished. While the procedures for tender processes are being put aside, some basic principles for the firms such as fair competition and equal treatment are ignored. Descriptions, in which productive and efficient use of public resources in maximum is the basis and applications for carrying tender processes in confidence, are put aside. There is a list of some determinations regarding institutions, sectors and operations that are excluded from the scope of the law by means of the changes in the Law no. 4734 are given below.

2.01 REVENUE SHARING MODEL IN RETURN FOR LAND (TOKI EXAMPLE)

Although it has to be subjected to the Provisions of Law no. 4734, "building construction works in return for floor or land of state-owned immovable property which don't require public expenditure and have the use of allowance from the budget" are not included in the scope of Law no. 4734.

However, it is not possible to accept construction works in return for land as one of the applications that does not require public expenditure and to exclude them from tenders; because, TOKI pays a price for construction works at a land in this practice. Thus, the activities done by TOKI as a part of "Revenue Partnership Model in Return for Land" should be within the scope of PPL no. 4734. Whereas, it is understood that by changing law articles systematically, the control mechanisms that are foreseen for preventing corruptions are transformed in order for better control of rent transfer traffic. So, it is clearly seen that "revenue partnership model in return for land" is excluded from the law with smart solutions (CHP, 2012).

2.02 THE EXPENDITURES OF STATE ECONOMIC ENTERPRISES (SEES)

First of all, it is important to know the size of the public sector and what to include in the concept of state definition, and in fact, it is necessary to look at the expenditures at a larger level for determining the extent of the state's impact (Hindriks & Myles, 2006). In today's economies, via public income and expenditure, countries gather a significant proportion of GDP and add it back to their economy again. The size of this proportion changes from one country to another with a rate of 40 % to70 % of GDP. In our country, the size of public expenditure reaches 50 % of the GDP including SEES; SEES purchases in such a big size are considered as an important value.

According to paragraph g of 3rd article of the Law no. 4734; in every kind of purchase of goods or service by state economic establishments, public corporations and other institutions in the Law, the proportion of the contract value not exceeding the amount of 7.264.940.000 Turkish Liras in 2014 is exempted. In this way, SEES managers have plenary flexibility in every purchase they make under the amount mentioned above. Consequently, this situation means that international standards are ignored in the purchases of goods and services by SEES (see. table 1).

In this way, SEES carried out a significant amount of the purchases, which they made for producing goods and services, beyond the scope of the procurement based on 3/g article of law no. 4374. While this situation is providing full independence to the mentioned institutions, exceptional purchase amounts (72

billion 640 millionTL) are shown in table 1. The exceptional purchases were around 3 billion TL in 2005; however, the amount of these purchases was tripled in 2008, 2010, 2011 and 2013. This amount has become a significant portion of the public procurement. The largest share of these procurement belongs to the SOE purchases within the context of 3/g. Accordingly, the amount of the SOE purchases has become 52 % of total exceptional purchases between the years of 2005-2013.

Table 1: Exceptional purchase amounts (1000.TL)

Exception	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
Article3/a	27,559	125,908	46,939	60,795	50,558	71,117	78,665	153,109	152,561	767,211
Article3/b	373,854	1,587,221	2,121,727	2,454,276	2,963,129	1,808,118	3,064,596	1,341,429	3,371,956	19,086,306
Article3/c	1,977	57,734	1,670,611	119,468	82,992	258,185	2,452,505	41,210	33,810	4,718,492
Article3/d	24	2,456	3,768	2,368	1,976	557	412	65		11,626
Article3/e	60,515	304,772	34,240	35,445	50,742	70,039	232,970	350,420	325,817	1,464,960
Article3/f	29,416	96,487	261,476	136,561	150,982	127,066	150,376	238,257	169,047	1,359,608
Article3/g	1,162,970	2,542,570	3,615,798	7,218,378	4,135,623	5,722,277	5,504,652	4,107,913	4,275,070	38,285,251
Article3/h	95	200					125	424	368	1,212
Article3/ı	3,948	207,747	302,377	571,321	397,184	1,186,523	324,080	671,792	601,496	4,266,468
Article3/j	454	3,116	3,535	6,202	1,107	470	1			14,885
Article3/k					52,698	96,803	43,463	40,529	48,432	281,925
Article3/l					58		143			201
Article3/m										
Article3/n								1,853	46,064	47,917
Article3/o						690	52			742
Article3/p								4,578	4,732	9,310
Article3/r								19,723	12,688	32,411
Article3/s										
Article3/t										
Other	2,288,665	11,131	92,796	141,444	68,925	10,385	18,157	150,422	171,429	2,953,354
TOTAL	3,288,526	4,939,347	8,153,266	10,746,259	7,955,974	9,352,169	11,870,195	7,121,725	9,213,471	72,640,932

Source: (PPA 2005-2013 data) compiled by us

In European Union, tender practices have been carried out within service procurement 92-50-EEC (Directive/50, 1992); goods procurement 93-36-EEC (Directive/36, 1993); construction works 93-37-EEC (Directive/37, 1993) until now. In order to gather all these processes in a single law, EU put Council Directive into force one 31.03.2004 with no 2004-18-EEC, which brings three different directives together. This law was considered as highly important in terms of its convenience to some basic principles such as not enabling unlimited freedom of choice, clear rules, its coherency with EU principles, responsiveness to the needs of procurement authorities and the public, the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency (Directive/18, 2004; Becker, 1983). However, coordinating the procurement procedures of entities operating in the water, energy, transportation and postal services sectors weren't unchecked as it was the case in Turkey and in these kinds of fields, procurements were regulated within the directive no 17.

In the 16th article of directive no 17, which was promulgated by EU regarding public purchases, thresholds were anticipated for (a) EUR 499 000 in the case of supply and service contracts; (b) EUR 6 242 000 in the case of Works contracts; and it was accepted as a main principle that there would be no procurements without notice. These thresholds are not the values created to remove control mechanisms, which were put into force bylaw as in Turkey. In EU countries, the limits of thresholds are drawn clearly, and apart from a few exceptions, it is aimed to carry out all the procurements with the broadest participation rate (Directive/17, 2004). (See, Official Journal of the European Union, Chapter II, Thresholds and exclusion provisions, Article 16, Contract thresholds).

According to the 63rd article of the Law no 4734, it was envisaged that only domestic tenderers would participate procurements, in which approximate cost was below the threshold (KIK, 2002). Since thresholds are much beyond EU standards, it can be simply interpreted that it aims to protect domestic

firms. However, the ratio of price advantage to the domestic bidders for the total contract values has been 34 % in 2011, whereas this ratio has been 41 % in 2012. It is known that in many countries, there are similar regulations to protect domestic firms. Moreover, it is stated that such practices aim to protect certain firms instead of protecting domestic firms in our country, and by this way, an environment is created which is in favor of the former one and against the latter one.

As it was stated in the 2013 development report about Turkey, there has been limited progress in the area of public procurement. Turkey needs to adopt an alignment strategy with a time-bound action plan and further align its legislation, particularly on derogations (regarding exceptional purchases of establishments that operate in water, energy, transportation and postal sectors) utilities, concessions and public-private partnerships (European Commission, 2013).

Within the context of harmony with acquis, also in our country; enterprises, businesses and companies operating in energy, water, transportation and telecommunication sectors were excluded from the scope of procurement law no. 4734, but a secondary regulation has not been done. Unlike Turkey, EU countries have regulated such urgent or special fields with other directives (directive no 17). European Commission mentions this situation in its development report; and often emphasizes that there is an urgent necessity to prepare a different legislation regarding purchase processes of establishments operating in water, energy, transportation and postal sectors. In addition, the rules about these sectors are highly strict (European Commission, 2013; Semple, 2014).

Furthermore, European Commission expressed that "the legal framework for public procurement continued to comprise various exemptions and is still not in line with the EU acquis. Overall, there has been very limited progress in enhancing the transparency of State aid" (European Commission, 2012).

It was demanded by the European Commission to prepare and apply an action plan towards making all state aids harmonized with acquis. It was aimed to minimize the influence of state on competitiveness. The things that should be done are listed one by one in order to minimize intervention on functioning of market mechanism. However, despite all these warnings, purchases within the scope of exception have not decreased; on the contrary, they have increased. Exceptional public purchases within 3rd article included fields regarding only defense, security and intelligence at first. As it can be seen in Table 1, in the following years, the scope of these purchases has been expanded systematically and it has reached letter "T". However, (Article3/T) defines the purchases regarding goods and services for exam activities (for example, purchases of pencil, eraser, paper that would be used in an exam for public staff procurement). Therefore, it is considered as an extremely important and worth stressing subject to exclude even such irrelevant subjects from the Law no 4734 by accepting them as exceptional.

According to the calculations, public purchase with an amount of 73 billion Turkish Liras was made out of the scope of Law no 4734 between 2005 and 2013. The amount of 38 billion and 285 million TL of this purchase was made by SEES only within Article 3/g. Although there is an expression at the 2nd paragraph of 5th article in the fundamental principles of the Law no 4734 stating that "it is not possible to divide procurement of goods, services, and works in order to stay below the threshold values". It has been seen that this rule is not valid in practice and especially the operations above exceptional amounts are divided into pieces by paying special attention to leave them in the limits of exceptional values. As it can be seen in Table 1, SEES achieved to stay out of law provisions between 2005 and 2013 by making purchase of goods and services below exceptional amounts in general.

Consequently, the article of exception has provided SEES with the opportunity to make purchases according to the regulations they have determined themselves. This situation is against the principle of "segregation of duties" which constitutes the basis of international management and inspection principles; because, the fact that the individuals and institutions making, governing, confirming, controlling and regulating tenders are the same is an important risk of corruption. Considering SEES tenders, it is possible to witness this situation where there is not a competition environment and the tenders are given to the same firms in shipping tenders by SEES such as General Directorate of Tea

Authority, Soil Products Office and General Directorate of Turkish Coal Enterprises. Other exploitation is carried out on Municipality Owned Enterprises (MOES). Some municipalities spend public resources in an unsupervised and uncontrolled way through tender winning MOES by making exceptional MOES to participate in the tenders they initiate (CHP, 2012).

At this point, corruption emerges as one of the biggest problems needs to be solved in Turkey. According to current studies, corruption is widespread across the country at both central and local levels. In particular, privatization programs and public procurements are the most intense areas to have such concerns (Greco, 2006). The current sanctions and regulations remain weak, nepotism and corruption trends are increasingly felt. There are still ongoing legal restrictions on freedom of expression; and the media, controlled by the government, is still being used as an effective tool (BTI, 2012). Although there are recommendations to monitor the income and expenditures of political parties, MPs and candidates by an independent income and expenditure, the desired monitoring system could not reached the intended level (Greco, 2012). In February of 2010, although the national anti-corruption strategy and action plan (2010-2014) was put into force, the current regulations could not have an institutional framework. In the procedures relating to the fight against corruption, concerns about the impartiality continue (Business Anti-Corruption Portal, 2014).In the light of all these data, Turkey is the 53rd country among 177 countries in terms of perception of corruption index and even lags behind the countries such as Rwanda, Latvia and Costa Rica in corruption ranking (Transparency International, 20013).

On the other hand, as a result of an extensive study started developed by the European Bank for Reconstruction and Development (EBRD) in June of 2010, in the Regional Public Procurement Assessment Report; it is understandable up to a certain point that Turkey is the leading country among Eastern Bloc countries, Central Asia, the Balkans, the Caucasus countries in the field of public procurement. However, when compared with developed European countries, this result is misleading, which is explained in detail in the article. Furthermore, the results regarding the subject of public procurement in the report of "Strategy of Turkey in 2012" report prepared by the Bank is full of contradictions. In the report, it has been claimed that there were only a couple of changes in the PPL since 2002; which seem very meaningless when consider a total of 170 changes made on the Law. In addition, according the report, "the framework of the law has been well-governed", which makes the report more controversial. As it has been stated in "Turkey - Business Anti-Corruption Portal" comprehensive commitments and regulations of a law do not mean that it will be implemented. The statement of "Turkey's procurement authorities raised the procurement capacity" ignores that these tenders have become questionable in terms of quality and this fact has been demonstrated by the audit reports as well. In addition, although it has been stated that such new procurement techniques such as e-Procurement system is in use, it is still not possible to reach all the data related to the tender via e-procurement portal and inadequate staffing and supervision difficulties still continue (see EBRD, 2012).

3.0 THE OTHER CHANGES MADE WITHIN PPLNO. 4734

According to the 3/b article of the Law no 4734; "public procurements" which should be carried out confidentially in fields such as defense, security or intelligence are extremely important and they need state seriousness (aircraft, helicopters, ships, weapons, supplies and ammunition procurement, system purchases, etc.). However, along with the change in the 1st article of the law no. 5812 in PPL in 2008, "confidentiality" concept is left only to the initiative of relevant minister in the aforesaid purchases and only the relevant minister has the right to decide on which ones are confidential and which ones are not. On the other hand, threshold rates in tenders are created and these rates have become flexible as soon as possible. This situation has aroused anxiety about creating a suitable environment for favoritism scheme. Actually, in restricted tender procedure, the period of 25 days for candidates to apply a tender is cut in half, which has caused people to express loudly that the participants are already chosen.

In negotiated tender procedure, the expression saying that "the ones who run business in relevant fields" has been removed. Therefore, even an irrelevant person is given the chance to make a tender offer. Thus, it has become possible for even a food wholesaler to make an offer in tender regarding space

systems. Furthermore, in direct supply procedure, there has been an obligation or restriction such as "obtaining/buying goods and services from natural or legal persons providing the first purchases with contracts not more than three years." Nonetheless, there was an expression in the first version of the law saying that "in this case, price survey is mandatory in markets" and this expression has been removed from the law. This situation supports determinations and discourses stating that changes on the article are full of regulations enabling rent-seeking activities. Again, an important part of explanations and procedures about participation into a tender has been removed from the law. In spite of the declarations by the government saying that such regulations cause simplicity and monotony in practice, this situation makes tender process open to interpretation. With the recent legal changes, the risk of seizing temporary guarantee has increased and this situation is considered as another reason for unhealthy tender process.

On the other hand, with the last legal changes, according to the 47th article, the expression saying that works and purchases of administrations enter into force after publication is included in Public Procurement Bulletin of the Authority. On the contrary, according to the invalidated law provision, registration by Court of Account is necessary for procurement works over 1 trillion and construction works over 2 trillion; when this registration is not necessary, the contract needs to be approved by a notary and published in Official Gazette. Thus, it can be clearly seen that along with the new regulations, control mechanisms regarding tender process have been degraded and degenerated.

Then, the government put another application into force, which attracted a great deal of attention and became almost a habit in state administration. In 2008 with 20th article of the law no. 5812, the government removed the article stating that "provisions with no. 4438 about prosecution of civil servants and other public officials" are applied to the PPA staff; and the personnel working in this field are armed in a way. For this purpose, criminal and civil liability of the personnel has been replaced by 104th article of Banking Law with no 5411 and date 19/10/2005. According to this article, conducting an investigation regarding the crimes committed by the chairman and members of the board and corporate staff related to their duties has become possible by receiving the permission of the Minister. Consequently, there have been no obstacles in front of safe transfer of unlawful actions for the benefit of interest groups.

On the other hand, the expression stating that administrations "declare tender results by means of domestic and foreign newspapers or other media organs, data processing network, electronic communication tools (internet) in terms of the importance and characteristic of the work" has been completely invalidated with the changes in law. Instead of this, with the change made on 20/11/2008 in 17th article of the law no. 5812, the expression saying "which one of the tender results to be declared is decided by the Authority through consulting relevant administration" has been added. Therefore, interest relationships have been enabled at a certain line and removal of the previously mentioned processes from the perception of society has become possible. In a similar way, the structure of PPA has been changed. In the invalidated law provision, there was an expression stating that the staff members would be chosen among "the experienced people that are experts in the field"; however, with the change in law, it has been decreed that staff members would be chosen by the Council of Ministers through only the offer of the minister. This situation has enabled even irrelevant persons to be employed within the Authority. Therefore, it is so obvious that instead of a rational staff system based on "merit principle", an understanding based on favoritism is dominant on all the state staffs. These circumstances are the result of an understanding, which is still dominant in our country as it was in the past; and in public administration, it means "job for the man instead of man for the job". However, providing qualified staff for the public economy is the assurance of effective use of limited public resources.

However, providing quality personnel is also assurance of effective use of limited public resources. Consequently:

- While the main purpose of public funds, resources, assets, and authority is to ensure common good, using these resources for different purposes;
- Corruption including bribery, "kickbacks", nepotism, cronyism and clientelism;

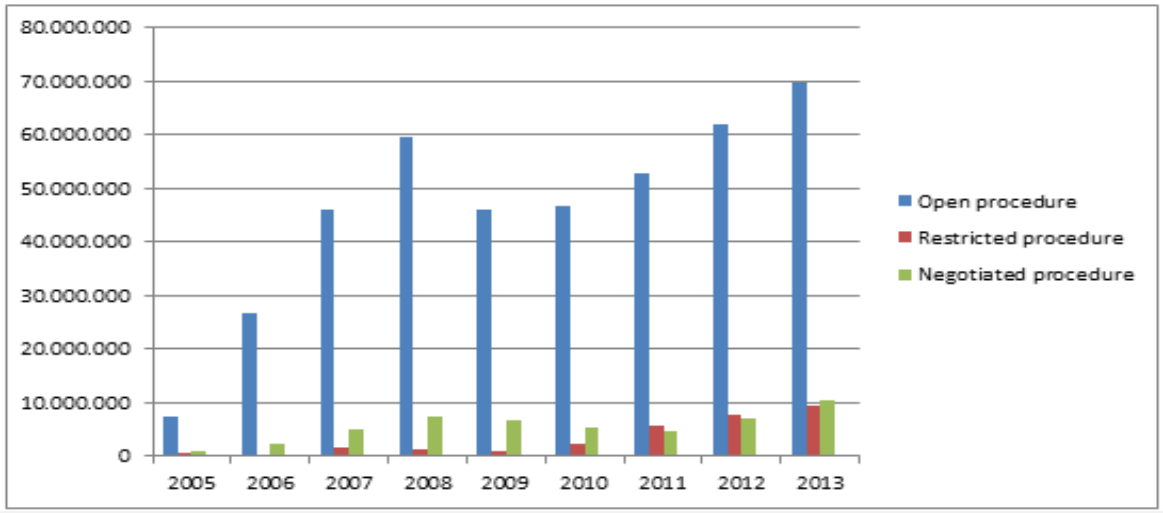
- Fraud and stealing the resources; for example, through product substitution in the delivery which results in lower quality materials;
- Conflict of interest in the public service and in post-public employment;
- Collusion;
- Abuse and manipulation of information;
- Discriminatory treatment in the public procurement process; and the waste and abuse of organizational resources.

Such illegal activities are dominant in the field of public procurement; and this situation results in decrease of social welfare and the gathering of common good in the hands of a small minority rather than spreading throughout the country (James & Alec, 1983; Nar, 2013; OECD, 2009).

4.0 GENERAL FRAMEWORK OF PUBLIC PROCUREMENTS

The main principle that should be obeyed primarily in public tenders is carrying them out through open tender procedure. Besides, the law with no 4734 accepts restricted tender procedure and open tender procedure as the main tender methods (i) Open tender procedure means the procedure, in which all tenderers can bid. (ii) Restricted tender procedure refers to the procedure, in which the tenderers who are invited by the administration can bid after pre-qualification evaluation. (iii) Negotiated tender procedure is the procedure that can be used in compulsory situations. It is the procedure, in which the administration discusses the price with tenderers in certain circumstances. (iv) Indirect supply procedure, by discussing technical requirements and price with the invited tenderers by the administration, the needs can be supplied directly in certain circumstances that are defined in the Law (KIK; m.4). However, in practice, it is seen that many tenders that have to be carried out with open tender procedure have been stretched and become subject to bargaining method as a result of the changes in law.

Figure 1: Distribution of public procurements within the law numbered 4734 according to tender procedures



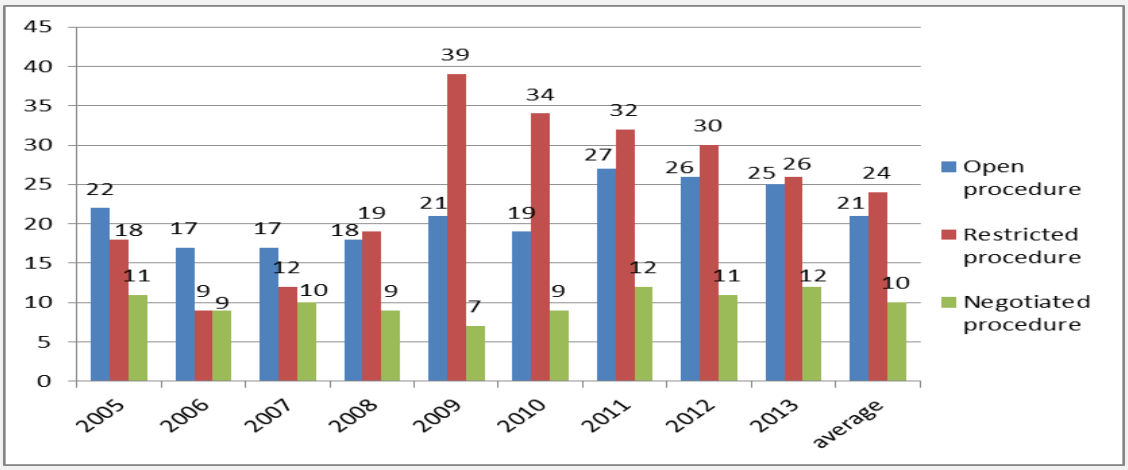
Source: (PPA2005-2013 data) compiled by us

It is announced that according to the official figures, average amount of the tenders carried out between 2005 and 2013 within the law no. 4734 is 500 billion Turkish Liras. It is stated that the amount of 400 billion TL of this number was carried out with open tender procedure; on the other hand, 20 % of this amount that was worth 100 billion TL was carried out with exception methods under conditions of imperfect competition. As it can be seen in Figure 1, public procurements were extremely low until 2005. The main reason of this situation was that the institutions had not reported public procurements to PPA until 2005. In addition, some institutions make purchases without the knowledge of PPA because of an old habit, but these can be monitored via audit reports.

For example, this case is valid for Turkish Coal Enterprise in terms of coal prices, which are bought in order to use in thermal power plants and distribute to poor families. Once again, it is known that establishments such as Defense Industry, Housing Development Administration (HAD), and Municipalities did not report a significant amount of construction works, and also most of the expenditure made within special laws was not reported to PPA. Additionally, energy investments made through international financing have not been reported to PPA. Municipalities have to carry out their tenders according to general provisions of the Law no. 4734, as they cannot benefit from exceptional provisions. However, by giving tenders to the firms, which they established on MOES, some municipalities spend public resources in an unrestrained and uncontrolled way through the tender winning firms. By listing this and many similar examples, it is already not possible to get clear and healthy information about how much of the public resources in Turkey is spent for "purchase of goods, service and works" (CHP, 2012).

As it is explained above, it is possible to talk about different tender procedures in public procurements. Among these procedures, maybe the most reacted and abused one is negotiated tender procedure. Moreover, various methods are used to evaluate the efficiency of such procedures. The existence of proportional relation between "contract price and approximate cost" is the most basic calculation method. The rates that come up as a result of the calculations are the main indicators that are used to evaluate competition environment in tenders. The given rate is expressed also as low bid rate or decimation ratio. For example, we should make the calculation below in order to find decimation ratio in open tender procedure regarding 2006. Considering (CP/AC) data, the approximate cost of the tender is 31.897.821 TL. As a result of open tender, the tender cost regressed to contract price 26.616.827 TL. CP/AC ratio is detected as 83 %. 100-83 = 17 % is decimation ratio.

Figure 2: Contract price/approximate cost rates according to tender procedure and tender type (Decimation ratio in tenders %)



Source: (PPA2005-2013 data) compiled by us

As it can be seen in Figure2, the average decimation ratio in tender type among certain tenderers is respectively 21 % and 14 % with open tender procedure in tenders carried out between 2005 and 2013. On the other hand, in negotiated tender procedures this ratio is 10 % in average. In short, in negotiated tenders, decimation ratio shows approximately a 10 point difference compared to open tenders.

Furthermore, approximate costs are deliberately shown higher than their real values in most of the tenders with negotiated procedure and this situation has become definite by the control reports. In other words, by tendering low cost procurement and construction works on extremely high prices, they provided a resource flow for their interest groups. The most obvious samples can be seen in the procurements of Ministry of Health. International experiences have shown that open tender procedure is better than all other tender procedures. This situation is proven by scientific studies. The most striking one among these studies is the one done by Turkish Union of Chambers and Commodity Exchanges

(TUCCE). Apparently, when competition increases (higher number of the participants) in tenders, the price drops down. On the other hand, in tenders carried out with negotiated tender procedure or direct supply procedure, which is much less competitive than this procedure or exception procedure, a significant amount of rent can be transferred to certain sectors. Thus, because of wrong tender procedure choice, it is estimated that public loss has reached an amount of 15 billion TL almost in a decade (CHP, 2012).

Furthermore, it is envisaged in paragraph (b) of 21st article that defines tender application with negotiated procedure that "in situations which are sudden and unexpected or unpredictable by the administration and compulsory such as natural disasters, epidemics, danger of loss of life and property" negotiated tender procedure can be used. However, within the scope of the article; it is questionable what to understand from concepts like compulsory, unexpected and unpredictable. For example, it is a well-known fact that some of the residences built by HDA are reported as resistant against earthquakes, which makes them benefiting from exceptional provisions. Conversely, in European Union Law, this circumstance is regulated in 31/c article of the directive no 18. Here, by defining the circumstances, in which negotiated procedure is necessary; for urgent, unexpected, unpredictable situations, there are unquestionable regulations such as "emergency case should not arise from the contracting authority" and "emergency case should be so urgent that there will be no time to waste" (Directive/18, 2004).

As it is stated in article 5th, administrations are responsible for providing transparency, competition, equal treatment, credibility, confidentiality, public audit in the tenders they conduct; also, they are responsible for fulfilling the needs in time and under favorable conditions. Besides, first, it is an inadequacy not to include law provisions into the article for ensuring effective information exchange. Because according to Baskoy (2008), the main principle in the tenders made by the state is increasing the level of participation. When adequate information exchange is not provided, the level of participation will be low and thus, public interest expected from the tender will be limited.

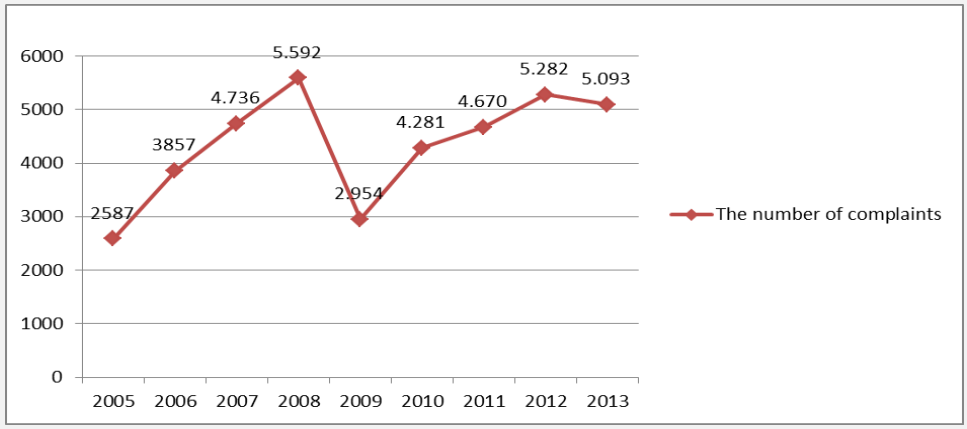
This situation causes the emergence of a circumstance that can be called as "the cost of making ignorant". In other words, the more the rent or benefit from the tender is, the bigger "the cost of making ignorant" will be. The "cost of making ignorant" means the cost of creating information pollution, providing false and misleading information and preventing the flow of information. Because, limited information in such circumstances where terms of imperfect competition are dominant can be shadowed and made inefficient by some people (interest groups). The ones holding the power own the information, and the others are left with the remaining information or asymmetric information that is imposed to them (Nar, 2013).

Within this respect, by saving PPA staff from the provisions of Law No. 4836 and making them subject to Banking Regulation and Supervision Agency 104, the cost of making ignorant has been almost set to zero. In other words, criminal sanctions, which the staff can be imposed, are removed. Collusive tendering is not accepted as a crime in Turkey anymore.

Since one of the most important necessities of equality principle is equality of information and confidential information about bids of other firms, approximate cost of tenders and appraiser's reports should not be leaked out to any firms. In tenders, where this information is leaked out, the bids of the firms are generally close to each other. What is more serious than misinformation is false or misleading informing. The most common method in public tenders is that the same company partners establish companies with different names in order for not showing so many tenders on one company. Different companies seem to win tenders and by this way, the perception regarding equal distribution of tenders is created easily. Another method is concealment of available data in PPA, which is the only address where you can find all the information about tenders. For example, a firm whose real title is ARTES is recorded into the system as ATES, ARTAS and KARTES. Therefore, it is possible to conceal tender information with three different names of a firm (CHP, 2012).

On the other hand, the Law is problematic in terms of accountability. Within this scope, restrictions that are brought for complaining processes as one of the control mechanisms are important. Complaint and appeal applications are considered as administrative application ways, which are obligatory before the litigation. So, the process of applying directly to the court is obstructed consciously. As it is mentioned at the second part of the law no 4734, complaints can be made only as signed and written. By this way, it is so obvious that an oral denouncement regarding the crime of collusive tendering carries no value for the Authority. Thus, as they are not the subject of any complaint, it is seen that a large number of tenders that have obvious infraction are put into practice. Again, there is an obligation of paying money to the relevant authority at different amounts according to the tender price in order to make a complaint. This obligation is aggravated considerably with the recent legal changes and the practices regarding public procurement authority are discussed.

Figure 3: Number of complaints



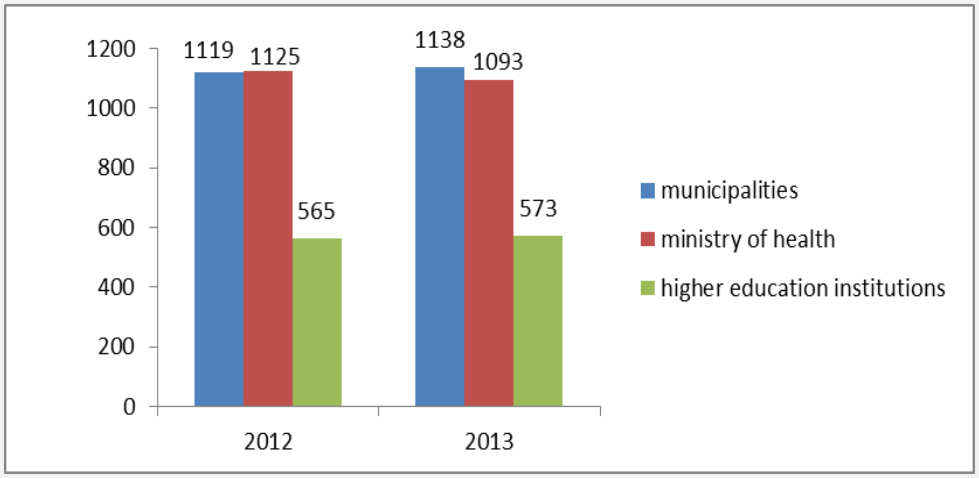
Source: (PPA2005-2013 data) compiled by us

As a result of the investigation of PPA annual reports for the years of 2005-2013, the values regarding the complaints made are shown in the graphic (Figure 3). According to this graphic, as parallel to the increasing number of tenders from 2005 to 2009, the number of the complaints also increased. The number of complaints had increased until 2009 and suddenly dropped down in 2009. The main reason for this situation is legal restrictions and inhibitions imposed within the law. Especially in 2009, 1914 complaints were rejected without even being discussed, because they were not written in the right form. In 2010, as parallel to the rent of distributed resources, there was an increase in the number of complaints. In 2013, as a result of the new regulations in law provisions, the number of the complaint appeals decreased. In addition, with the most recent changes in the law, the price of objection to tender was tripled. The objection prices, which were between 1.500 and 3.000 TL, were increased to an amount between 4.000 and 12.000 TL with the recent regulations. The total number of complaints has been 2,400 during the first six months of 2013. In contrast, during the first six months of 2014, the total number of complaints has been 2,044. Thus, the number of the complaints has reduced by 15 %, with the recent changes in the law. Consequently, the struggles for claiming right has been obstructed by the law. Moreover, even if defraudation in a tender is revealed because of a complaint, the objection price will not be paid back. The amount of money coming by this way is recorded as an income for PPA.

Especially in recent years Municipalities, Ministry of Health and Higher Education Institutions have been top three institutions that are subject of complaints. For example, in 2013, Municipalities (1138 complaint appeals), Ministry of Health (1093 complaint appeals) and Higher Education Institutions (573 complaint appeals) broke a record in terms of the number of complaints with the rates 23%, 21% and 11%, respectively. The previously mentioned institutions, which use important resources about public procurement, present a clear picture of rent struggle in terms of the frequency of complaints (Figure 4). Furthermore, the structure of PPA is highly controversial. Public Procurement Board is consisted of 10 members: 2 members are chosen from State Council and Court of Accountants, 2 members from the candidates

appointed by TUCCE (Turkish Union of Chambers and Commodity Exchanges) and Confederation of Employers' Unions of Turkey, and 6 members are appointed by the political power directly. This situation is reflected in the decisions made and communiques published by the Board. The most concrete example of this situation is that the Board excluded "Revenue Sharing Model in Return for Land" out of the PPL, and by this means, nearly 18 billion TL of resources were spent in an uncontrolled and unrestrained way. In addition, there is no corporation investigation in the records of PPA. On the other hand, the Authority has concealed available data and has not shared them with the public (CHP, 2012).

Figure 4: The most complained Institutions



Source: (PPA2012-2013 data) compiled by us

However, it is an indisputable fact that independent media is a highly important tool in terms of effective use of the right to access information in the name of the society. Because it is possible to get most of the social facts from media at first hand (Wilkin, 2001). However, ideological nature of capitalist media systems does not always allow this case or it allows on a limited scale (Bettig, 1996). As McChesney states, considering the fact that a group of companies and global oligarchy have dominance on the world's communication markets, governments can hold this oligarchic structure at national terms (Wilkin, 2001). This situation is an obstacle for communities for their right to information and makes countries vulnerable to corruption.

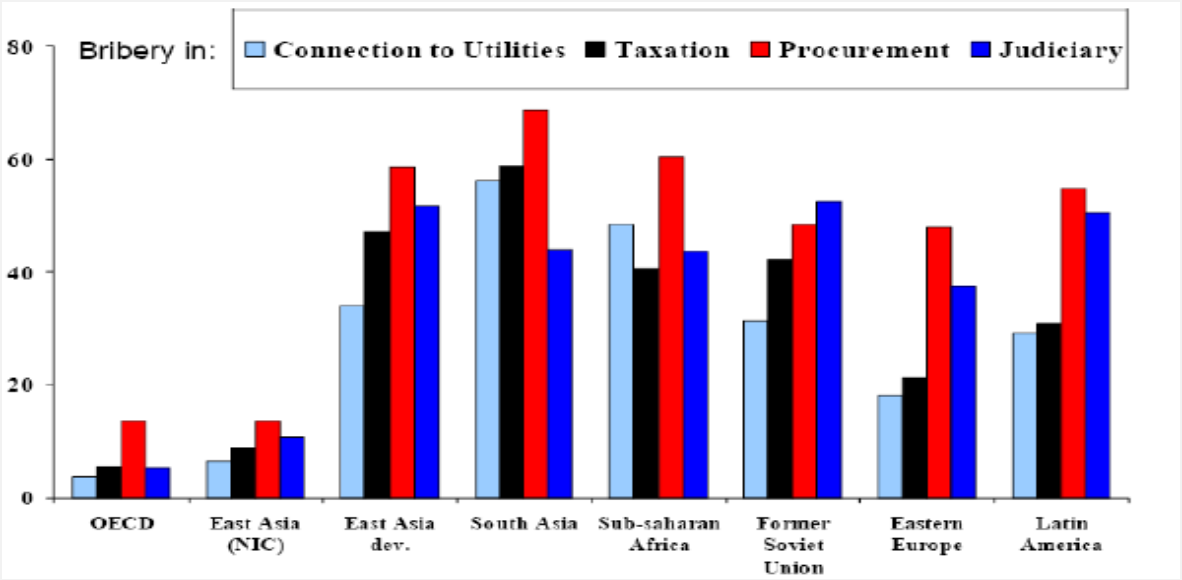
On the other hand, the IMF has been a strong supporter of reforms carried out in Turkey. In the 17th, 18th and 19thSmall Business Acts, the Turkish Government was asked to make procurement legislation consistent with the acquis of EU, and IMF loans were given in return. However, Turkey has not signed any IMF agreement after the 19thSmall Business Act. It is very clear that the agreements that are not signed with the IMF affect the government decisions negatively. Turkey has lost an important control mechanism for itself. Because the agreements signed with the IMF are important in terms of fiscal discipline and ensuring confidence to the outside world. On the other hand, the government has paid the debts back to the IMF by privatization of many businesses and factories in the sectors such as the harbors, telecom and steel. Unlike the appearance, there is a country that is not producing, but importing goods with increasing current account deficit. As a result, the loans not received from the IMF have become to be received from the international bond markets as uncontrolled with higher interest rates. A similar situation is experienced in terms of the EU. Naturally, the Turkish Government has given less importance to EU accession process in parallel with the problems caused by the Greek Cypriot after 2007. Turkish people have turned away from the EU. In 2004, 73percent of the population supports Turkey's EU membership, whereas this rate has been dropped down to 34%-48% in the last seven years. By mid of 2013, the negotiations between the EU and Turkey, which was interrupted after a period of three years, has resumed under the title of "regional policies" by the Council in November 2013. However, Turkey's EU membership negotiations has started with the founding members of the period Germany, France, Italy, Belgium, Netherlands and Luxemburg and the first relationship with these countries for full

membership was established by Turkey and Greece. After this start, different countries have joined the EU, despite Turkey has not achieved its goal on this issue. Therefore, according to some, the EU has lost its credibility at the point of orientating Turkey for conducting reforms after 2007 (BTK, 2014; Nar, 2013).

5.0 RISKS IN PUBLIC PROCUREMENT

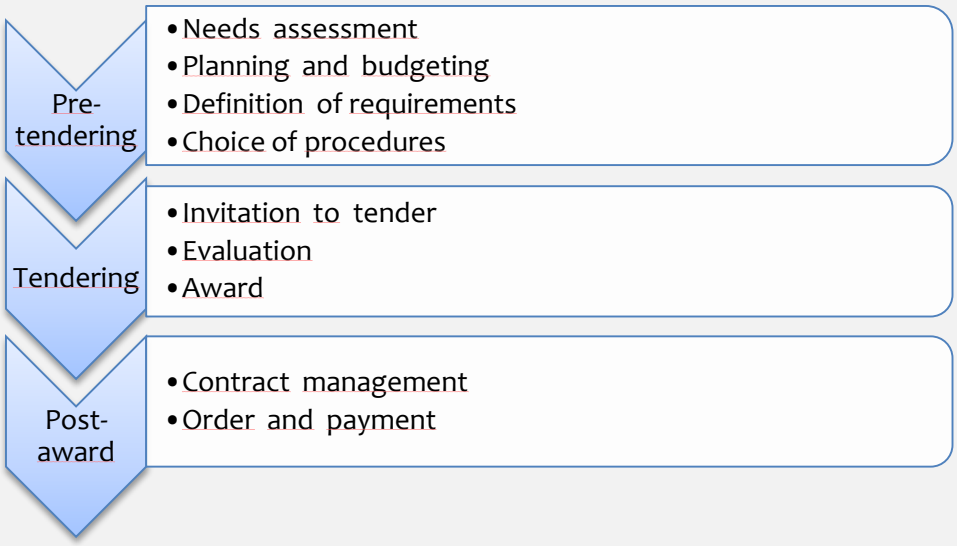
When the Law no. 4734 was put into force for the first time, it was aimed to maximize common good by using public resources effectively. However, because of numerous regulations made within the Law, this field has become more vulnerable for corruptions. This situation also increased the risk that public resources can be transferred for the benefit of private firms, persons or groups. According to Thai (2009), in order to minimize the risk, it is important to increase the number of participants by maximizing competition, but also the wise methods that the bidding firms in public procurements use may disenable precautionary measures.

Figure 5: Frequency of bribery in procurement



Source: (OECD, 2007)

Figure 6: Public procurement cycle



Source: OECD data compiled by us

As a major interface between the public and the private sectors, public procurement provides multiple opportunities for both public and private actors to divert public funds for private gain. For example (Figure 5), it is seen that bribery by international firms in OECD countries is more pervasive in public procurement than in utilities, taxation, judiciary, and takeover of the state (OECD, 2007).

Therefore, it is extremely important to ensure more openness and transparency in the fields regarding public procurement processes (Figure 6). This situation necessitates the definition of the risks about tender processes. Tender processes and the risks regarding these are discussed at three levels (OECD, 2009).

5.01 PRE-TENDER RISKS

Government has to identify necessities correctly before the tender. Planning must be done and payments have to be determined within the concept of priority action plan. However, some risks occur due to some cases such as incorrect identification of the necessities by the government, not completing the planning process in time, unrealistic budget estimation, collusions, hindering some parties to participant the tender, creating asymmetric information (Ladipo, Sánchez & Sopher 2009; OECD, 2009).

It is possible to look at a road construction work by İstanbul Metropolitan Municipality in 2009 as an example of preventing competition before the tender. X firm completed 80 % of the road construction work and then 8.5 billion TL progress payment was made. Then, a tender was carried for the same work and the firm was informed about the tender (CHP, 2012).

5.02 RISKS REGARDING THE TENDER EVALUATION PROCESS

The facts that the organizations, which are invited to a tender, are not aligned with the tender; the costs and benefits of the projects are not decided in a realistic way; making evaluations without paying attention to the views involve independent oversight bodies, specialized public agencies, panel of experts or representatives from civil societies, academic institutes or think tanks. Therefore, making subjective decisions are the risks in this field. In addition, it is also risky to use exceptional purchase methods such as bargaining and tendering as direct supply method (OECD, 2009; Yulek & Taylor, 2012).

5.03 PRO-TENDER RISKS

It is the most sophisticated and demanding field in public procurements (Eliasson, 2010). Rendering of fictitious work, inflating the work volume, changing orders, using lower-quality materials than specified in the contract, supplying goods of a lower price and quality than quoted, and rendering contracted services in an improper way are some of the most common ways of defrauding the public budget. In addition, flaws in the technical and administrative supervision of the works may be exploited. Interventions by the public service to control the quality of the materials, the completion of deadlines, the quality of the services, the financial accuracy and the full execution of a contract may be insufficient. Moreover, making illegal payment is one of the most important risks during pro-tender process (OECD, 2007b).

It is possible to come across pro-tender corruptions mostly in TOKİ projects. Within the housing projects in Sakarya, which went through two big earthquakes, it was decided to construct buildings on bored pile systems. However, since it was much cheaper, the firm preferred spread footing method that had the risk of collapse in an earthquake. The payments were made on bored pile application, which was expensive and steady, but the building contractors constructed their buildings on spread footing bases, which were much cheaper (CHP, 2012).

However, even in countries like Costa Rica, Panama, Chile and Colombia, it is mandatory for supreme audit institution to participate in the processes of preparing and practicing procurements (Lapido, 2009).

In EU within Public Sector Directive, the limits and conditions of the procurements are determined in the first place. A business contract must have all these conditions such as quality, technical merit, aesthetic and functional properties, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery time or time of completion as well as being economically advantageous or offering the lowest price; (Bovis, 2012). Besides, the origin of all procurement policy is political. In fact, this situation is in a form of trade off. A common trade-off in public procurement occurs between quality and cost. Although it is possible to come across the examples of this mentioned trade off also in the USA, the federal procurement system in the USA is consisted of very tight and burdensome audits. The federal constitution supersedes all other laws regarding the procurement. In addition, there is a very little discretion for procurement officials, procedures and processes (Mitchell & Randy, 1994; Thai, 2009).

As a result, considering the fact that in OECD countries, public procurement is estimated to account for 15 % of GDP and in many non-OECD countries, this ratio is even higher. In terms of economy, law and society, it is not an acceptable circumstance to waste such a resource in an uncontrolled and unrestrained way and to make it vulnerable to corruptions (OECD, 2007b). As an overall evaluation, it can be observed that this situation is caused by not creating the institutional structures. At this point, apparently, the reforms encouraged by some external actors such as EU may not give the desired outcomes expected by the actors on the target countries. Considering the situation on the basis of Europeanization, according to Börzel (2003), the adaptation process of member or candidate countries to EU processes and policies depends on especially socio-economic and political, and finally the cultural differences. Addressing Europeanization in three main dimensions will make it much easier to understand. In this regard, the dimensions can be classified as Policies, Politics and Polity. (i) Policies: This concept refers to the effect of common policies such as environment and agriculture in the European Union on the current policies of member and candidate countries. This type of European-based changes may affect the overall understanding of problem solving, policy instruments used and standards. (ii) Politics: The concept of politics refers to the effect of EU policies on the policy-making process of the countries, the activities of interest groups, elections and political parties. (iii) Institutional structure or polity means creating formal and informal institutional structures. Having established the institutional structures of the EU is the basis of the concept of Europeanization. The institutional structures of the EU influence the international relations perspective of the countries, intergovernmental relations, bureaucracy, administrative and judicial structures, supervisory and regulatory mechanisms, macro-economic structures. Therefore, the EU has a multi-faceted effect on candidate and member countries (Börzel & Risse, 2000; DuGay, 2000; Scott, 2001). However, it is not always possible to have the expected outcomes from the counties, where especially the institutional structures as well as the establishment of these beliefs and understanding have not been created yet. Because in such countries; it is difficult to express “good governance"-oriented concepts, which was developed as an alternative to control mechanisms, such as including all segments of the society in the decision-making process by the public authority, participation of citizens in government, enabling auditing, values such as efficiency, rule of law, accountability and transparency (Börzel & Risse, 2010; North, 2005).

6.0 AUDIT RESULTS OF THE STATE AUDIT COUNCIL

The report prepared by Presidential State Audit Council on public procurements and tenders has been reviewed and it has been seen that determinations and recommendations in the report completely support our concerns and opinions. Accordingly (DDK, 2010):

> *Changes made in other Laws destroy integrity and control of the system. In addition, frequent changes in law make it difficult to follow legislations for practitioners. In this respect, the legislative changes should be prepared by considering its influence on the legislations, social, economic and commercial life. Unnecessary exception provisions should be removed immediately from the Law. Therefore, preparing a general Law that is consistent with EU acquis is necessary.*

The companies owned by municipalities should be open to audit of the Court of Accountants, and the relations between company and municipality need to be reconsidered. After the investigation on assembly resolutions, it is determined that some decisions are made without obeying procedural rules; at the same time, since there are different decisions that contradict with each other, such practices must be stopped immediately.

Data collection method is inadequate and weak. The system cannot fulfil its duties accurately that has to keep records and monitor the prohibited. While making data entry to the system, false or fictitious entries (records) are monitored. Therefore, the audits must be more frequent.

Assignments and assignment procedures, which are realized in contravention of the rules, should be ceased as soon as possible. The declarations of property by the President and the members of the Board should be investigated regularly every year by the Ministry of Finance. There should be a regulation regarding that application fees collected before complaint appeals to the Authority should be remanded to the applicant when the final decision is in favor of the applicant.

A similar negativity can be obviously observed in that the reports of the Court of Auditors have not been sent to the parliament by the political authority. This situation caused the opinions to be uttered loudly in the general assembly towards regarding that the control on public expenditures is prevented on purpose. The government has not presented the reports to the parliament by making up some excuses for this delay. In addition, this case is interpreted as the audit process of the Court of Accountants whose mission is to "audit revenues, expenditures and property of institutions with general and the annexed budget in the name of Turkish Grand National Assembly" is obstructed and by this way, political gain created by the public is distributed among interest groups.

Again, with changes in the 35th article of Law on the Court of Accounts no. 6085, the Court of Accounts cannot prepare audit reports against the regulations and opinions presented by public administrations. However, it is expressed that if it as agreed by PPA that the regulations are against the relevant law and also the Presidency of PPA accepts this point, the reports prepared are sent to the relevant authorities (Resmi Gazete, 2012). With this article, audit mandate of the Court of Accountants on public procurements is almost completely removed. This case converts PPA into an institution, which regulates, supervises and judges from a legal point. The views/ideas of the Chairperson of PPA have become above law provisions.

Similarly, PPA was a strong institution in terms of autonomy; at this point, this autonomy has been overshadowed because of the negative changes. In this context, the government adopted a decree-law concerning the Independent Regulatory Agencies (IRAs) including the PPA in June 2011 with Law no. 643. According to this decree-law in June 2011, the IRAs may be directly attached to the respective ministries, based on order of the PM and the President's approval. This was followed by a more definite step towards limiting the IRAs' independence bay adoption of a decree-law (Law no. 649) in August 2011. Accordingly, the (respective) minister has given the authority over all transactions and activities of the related, attached and affiliated agencies, which include the IRAs (Article 45). This clearly reveals that the AKP governments are becoming uncomfortable with the institutions autonomously acting beyond executive's discretion. Therefore, this power struggle between the PPA and the incumbent elites has an immense importance to understand recently adopted changes in the PPL. The field of activities has been narrowed within the context of the PPA; the government has aimed major projects to be unnoticed by the supervision of the agency by this way. This situation has made the autonomy of the PPA questionable, since the Agency is responsible of monitoring the compliance of the transactions made by the administration to the laws during the tender process from the beginning until signing the agreement. In this issue, the confession of the President of the Agency "we are able to examine and decide only 4 of 100 tenders" is extremely significant. Therefore, the organizational autonomy of the Independent Audit Agencies including PPA continues to be a matter of concern.

With the PPL that has been entered into force since the early 2003, it is aimed to ensure an environment where there is transparency, efficiency, accountability, control and competition in public procurements in real terms. However, at this point, numerous changes in the law have narrowed the aforesaid field. The Law has enhanced the environment for rent-seeking activities, corruption and irregularities. Participation to tenders has been limited; the extent of exceptional purchase methods has been expanded. It has been revealed with the audit reports that goods, service procurements and construction works are incomplete, and the audits are inadequate. Moreover, cost calculations in some specifications do not reflect the real data and by this way, certain firms and products are prioritized; incomplete assurances are accepted, and the participants are not informed evenly. This case is reflected in EU progress reports and it is emphasized that public procurement system in Turkey is one of the biggest obstacles for the membership of Turkey. Consequently, the expressions under the title of "public procurement" within the 5th Section in EU progress report have been an object of criticism since then.

At this point, it is very important to achieve realization of fair and equitable treatment for all potential suppliers by ensuring transparency in all purchases in terms of a competitive tender process. Good management, using the public funds for necessary purchases, procurement officials in accordance with high professional standards of knowledge and skill are required. It is also necessary to strengthen the enforcement mechanisms, provide clear definition of the tender process chain and fair and timely evaluation of complaints in order to eliminate the abuses. The media and the wider public involvement in public procurement should be provided by strengthening the civil society organizations (Business Anti-Corruption Portal, 2014; OECD, 2009).

In addition, the Action Plan for the development of the procurement system should be finalized with clear indicators and deadlines for achieving the various objectives, especially concerning exemptions and domestic preference. The public procurement provisions should be consistent with the EU by benefiting the pre-drafts. The necessary regulations must be done in order to adapt the new legislation regarding concessions and public private partnerships. The initial work on transposing the new EC Directive on defense procurement should be conducted. The training capacity of the institutions regarding public procurement must be developed; however, the contribution of other educational institutions must be received since all training programs needed by the administrations cannot be provided by PPA only (SIGMA; 2012).

7.0 CONCLUSION

Considering the public procurement law in general, it seems to be full of contradictions. "National Public Procurement Strategy and Action Plan" which has located in draft form for three years has not been accepted yet. The criticism by the European Commission about the preference of domestic products in exceptions and tenders continues to be a problem. While international competition is becoming clearer, it is also seen that the practice towards providing price advantage in favor of the local bidders is more common. However, these practices are for protecting certain firms rather than domestic firms. Besides, it is witnessed that the practices in total contract values that provide price advantage to local bidders are increasing. Thus, in order to enable the consistency of legal framework, there is a need to make the content of PPL harmonious with EU acquis and to design it in a way that limits rent transmission.

Although it is stated that there is a decrease in the number and value of tenders, which are accomplished out of the extent of Public Procurement Law, the content of Electronic Public Procurement Platform enabling to publish all procurement notices should be expanded. However, there are still inconsistencies between procurement legislation and EU acquis. Additionally, a different legislation should be re-prepared for the procurements of institutions that operate in water, energy, transportation and postal sectors by taking the notice of the warnings given by EU into account.

Besides, in order to increase transparency and efficiency, there is a need for more efforts to reinforce harmony with EU acquis. Lack of order by the administration in terms of evaluating complaints continues. Complaints about all the tenders continue to remain at a low level as they used to be in the previous

years. The main reason for this is that the legislation regarding complaints and examination mechanisms is limited on purpose. Consequently, it is so obvious that there is a little improvement regarding Public procurements in Turkey. It is possible to say that legal legislation concerning public procurements has been changed in based on the needs of interest groups in private. However, the most striking point is that harmonization efforts made by reasoning EU acquis have in fact become a tool in terms of transferring resources to certain rent groups by means of wise practices.

Consequently, it should be noted that clean understanding of governing and politics should be provided within the framework of ethics and social cooperation. Therefore, awareness of people regarding possible problems caused by erosion of some values such as responsibility, virtue and honesty should be increased. However, it is quite optimism or nothing more than an illusion to expect "legislators and law enforcement personnel" to behave ethically without coercion or without establishing an effective sense of justice.

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