

TURKEY

FINAL

COUNTRY PROCUREMENT
ASSESSMENT REPORT

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EUROPE AND CENTRAL ASIA REGION
THE WORLD BANK

TURKEY

FINAL COUNTRY PROCUREMENT ASSESSMENT REPORT

FINDINGS AND RECOMMENDATIONS

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ATTACHMENT

I

Action Plan

CURRENCY

Currency Unit = Turkish Lira (TL)
US\$ 1 = 623,507 (average for 2000)

ACRONYMS

BAFO	Best and Final Offers
CEN	European Committee for Standardization
CENELEC	European Committee for Electro-technical Standardization
COM	Council of Ministers
CPAR	Country Procurement Assessment Report
DDK	State Audit Board
EC	European Commission
EU	European Union
GOT	Government of Turkey
GPA	Agreement on Government Procurement of the WTO
GPL	Government Procurement Law
ICB	International Competitive Bidding
MBA	Masters of Business Administration
MOF	Ministry of Finance
MPWS	Ministry of Public Works and Settlement
MTI	Ministry of Trade and Industry
NCB	National Competitive Bidding
OCSPR	Operations Core Services - Procurement, World Bank
PEIR	Public Expenditure and Institutional Review
PFPSAL	Programmatic Financial and Public Sector Adjustment Loan
RPA	Regional Procurement Advisor
SBD	Standard Bidding Documents
SIS	State Institute of Statistics
SEEs	State Economic Enterprises
SPO	State Planning Organization
TCA	Turkish Court of Accounts
TGNA	Turkey Grand National Assembly
TL	Turkish Lira
TSI	Turkish Standard Institute
WTO	World Trade Organization
YDK	High Audit Board under the Prime Minister's Department

TURKEY
COUNTRY PROCUREMENT ASSESSMENT REPORT
(CPAR)

PREFACE

Date of the Report

This report was completed on June 29, 2001.

Basis of Report

This report is based on the findings of a Bank mission to Turkey from October 16 to November 3, 2000, and on the analyses of the materials and other information collected before and during the mission. The mission comprised Mr. Naushad Khan, Senior Procurement Specialist, (CPAR team leader); Mr. Shaun Moss, Senior Procurement Specialist, Ms. Elmas Arisoy, Procurement Specialist, World Bank Office, Ankara, and Mr. Yasar Mutlu (consultant). The Bank team conducted its assessment in close collaboration with the counterpart team appointed by the Government of Turkey (GOT). The Turkish team consisted of Messrs. Hakki Ustaomer, Mahmut Kucuk, Ismet Hatipoglu, High Technical Board, Ms. Yasemin Meric, General Directorate of Technical Research and Application, Ministry of Public Works and Settlement (MPWS); and Mr. Sami Kaplan, General Directorate of Budget and Fiscal Control, Ministry of Finance (MOF). The report follows the instructions issued by OCSPP on June 1, 1998.

Following submission of the Draft CPAR to the Government of Turkey on April 27, 2001, a further Bank mission comprising Mr. Shaun Moss (mission leader) and Mr. Robert Hunja, Senior Procurement Specialist, visited Ankara on June 11-12, 2001, discussed the draft report and agreed the findings and recommendations contained in this Final Report, as well as the Action Plan appended to it, with senior representatives of the Undersecretariat of Treasury, Ministry of Finance, Ministry of Public Works and Settlement, State Planning Organization and the Secretariat General of EU Affairs under the Prime Ministry. These meetings were held jointly with officials of the European Commission, namely Mr. Oskar Benedikt, Economic Counsellor at the Representation of the European Commission to Turkey, Ms. Anya Oram, Directorate General (D.G.) Trade and Ms. Paola Zanetti, D.G. Internal Market, and Mr. Peder Blomberg, Procurement Expert.

Therefore, this Final CPAR reflects these discussions and contains the recommendations agreed between the Government of Turkey, the World Bank and the European Commission.

Purpose of the Report

The World Bank undertakes assessments of the procurement environment, covering both public and private sectors, in borrowing member countries on a systematic basis. The objective of this assessment is to provide useful feedback to Borrowers regarding the strengths and weaknesses of their public procurement systems. This enables member countries of the Bank to improve the transparency of their procurement processes and to develop an Action Plan to enhance their capacity to conduct public procurement efficiently. A further important objective is to determine the compatibility of national procurement practices with the principles of economy and efficiency and with international procurement law and best practice. The findings and recommendations of such reports not only help the Bank to ensure that sound procurement practices are followed in projects which the Bank finances, but also enable Borrowers to enhance the efficiency of their public spending.

The Bank previously conducted an assessment of the public and private sector procurement environment in Turkey in 1997. At that time, a Country Procurement Assessment Report was prepared and finalized after discussion with the Government of Turkey. The report made numerous recommendations for improving the transparency, economy and efficiency of the Turkish public procurement system. However, its recommendations have not been implemented.

Acknowledgements

The Bank team is grateful to the Undersecretariat of Treasury, especially to Ms. Aysen Kulakoglu, Head of Department, General Directorate of Foreign Economic Relations, and the Turkish counterpart team for their full co-operation and valuable contributions to its work through participation in the assessment. The team also acknowledges the extensive cooperation and assistance received from officials and staff of the public and private agencies visited. Finally, the team is thankful to Ms. Hulya Bayramoglu of the World Bank Office in Ankara for the effective organization of its program in Turkey and for collecting relevant laws and other materials used for this assessment.

Executive Summary

Background

Public procurement in Turkey is regulated by the Government Procurement Law (GPL) No. 2886 of 1983 (as amended by Law No. 2990 of 1984), by a number of decrees passed by the Council of Ministers (COM) and by several administrative circulars issued by both the Ministry of Finance (MOF) and the Ministry of Public Works and Settlement (MPWS). Given the extended period of time which has passed since the GPL was last amended, it is evident that public procurement legislation in Turkey has not kept pace with the sweeping reforms undertaken in the national procurement systems of many other countries during the same period nor with the development of internationally recognized bodies of procurement legislation, such as those of United Nations Commission on International Trade Law (UNCITRAL), the European Union (EU) and the World Trade Organization (WTO).

Following Turkey's acceptance, in December 1999, as a candidate country for accession to the EU, the Government has committed itself to achieving approximation and, eventually, alignment with EU law in many areas, including public procurement. To that end, the MOF and MPWS have already begun the process of drafting a new public procurement law, a draft of which has already been promulgated within Government and on which both the World Bank and the European Commission have offered their comments. Clearly, it is essential that this new draft law should not only make up the ground lost in the 17 years since the GPL was last amended but also bring the Turkish law up to date with recognized models of best practice and achieve an appropriate degree of approximation with the EU Directives. However, it is unlikely that approximation, let alone full alignment, can be achieved with a single reform of the law. Rather, it is recommended that the Government should aim to develop a new public procurement law which meets the standards of transparency, accountability and competitiveness set by the UNCITRAL Model Law but which also balances the need to prepare a path towards increasing harmonization with the EU Procurement Directives. Indeed, the Government of Turkey has committed itself, in conditionalities linked to its lending from the International Monetary Fund (IMF) and to the World Bank-financed Programmatic Financial and Public Sector Adjustment Loan (PFPSAL), to present to the Turkish Grand National Assembly (TGNA) by October, 2001 a new draft law which will meet the UNCITRAL Model Law standards (see Section 1.6). Following the enactment of this new law, a planned, progressive program of legislative reform is likely to be needed in order to move Turkey's public procurement law towards alignment with the EU Directives in good time for Turkey's accession to the European Union.

Reform is also needed in areas of law and public-sector management which are related to public procurement, such as in Government auditing and in efforts to combat corruption. Based on a comprehensive assessment of the law and practice in these areas, this report makes a wide-ranging set of recommendations for the necessary reforms.

The Need for Legislative Development

The GPL is a rather one-dimensional piece of public procurement legislation, in that it is heavily slanted towards the procurement of civil works and, as a result, makes inadequate provision for

the procurement of goods and services, which also make up substantial elements of the public sector's procurement requirements. In addition, the law has many outdated provisions, which do not fit the requirements of a modern public procurement system for economy, efficiency, equal treatment and transparency. Most egregious among these are a pricing regime which requires bidders to express their bid prices as proposed percentage discounts from pre-defined unit rates and oral bidding. Furthermore, the impact of the GPL on the economic expenditure of public money is substantially reduced by the many exceptions to its application, including procurement undertaken by the State Economic Enterprises (SEEs), which spend some US\$3.9 billion annually on capital investments (see Section 5). To address these and other deficiencies, this report makes a series of detailed recommendations for the development of the public procurement legislation.

Key Recommendations:

- The Government should make it a top priority to draft a new national public procurement law and submit it to the Turkish Grand National Assembly by October 2001. This new law should meet the standards of transparency, accountability and competitiveness enshrined in the UNCITRAL Model Law. The new draft law should be developed with appropriate input from Turkey's key development partners, primarily the World Bank and the European Union, and should be discussed and agreed with them. The new law should also be underpinned by detailed implementing regulations, to be developed and issued shortly after the enactment of the new law.
- The scope of the law should cover all public procurement for which budgetary resources (such as the general and annexed budgets) and extra-budgetary resources are used, including the non-commercialized SEEs.
- In drafting and enacting the new public procurement law, the Government should ensure an adequate level of consultation with both the public and private sectors. To achieve this, an inter-ministerial Drafting Committee should be entrusted with responsibility for drafting the new public procurement law and should be supported by specialist international procurement law experts.
- To complement these measures, the Government should put in train a planned and progressive program of legislative reform in order to move Turkey's public procurement legislation, over the medium term, to alignment with the EU Procurement Directives by the time Turkey accedes to the European Union.

The Need to Improve Public Procurement Procedures and Practices

There are also many deficiencies in the detailed procedures and practices applied by procuring entities to the conduct of public procurement. Chief among these is the Contractor Certificate ("carnet") system operated by MPWS for certifying both contractors and individuals. There is ample evidence that this system is being routinely abused and that it frequently allows unqualified contractors to win contracts which they are unable to implement. There are also weaknesses in the procedures used for assessing bidders' qualifications, inadequate requirements for the advertising of bidding opportunities and excessive limitations on the participation of foreign bidders, which should be relaxed and, eventually, removed in readiness for EU accession.

Key Recommendations:

- The procedures for assessing bidders' qualifications should be radically overhauled to separate the assessment of bidders' qualifications from evaluation of their bids, for example by introducing a formal pre-qualification procedure.
- The Contractor Certificate ("carnet") system should be fundamentally reformed to ensure that contractors' registrations correspond to their actual resources and capabilities. Abuse of a "carnet" should be treated as procurement fraud, addressed in the Criminal Law and sanctioned by disqualification.
- Above certain pre-defined financial thresholds, foreign bidders should be permitted to participate in public tenders, which should be subject to international advertising, and current bureaucratic obstacles to foreign bidder participation should be removed.
- The range of procurement methods available under the public procurement law should be revised to bolster the primacy of the Closed and Sealed Envelopes Bidding (or such other Open Bidding method as may be developed in future legislation) as the main method of procurement. New procurement methods should be introduced for small-value purchases and direct contracting, to be used only under conditions which should be clearly defined in a new public procurement law, as well as a dedicated method for the procurement of consultants' services.
- Transparency and access to information on public tenders should be enhanced by more rigorous requirements on procuring entities to advertise tenders and to publish announcements of contract awards.
- The public procurement law should include an improved bid protest mechanism, giving bidders the right to lodge a protest with the procuring entity in the first instance and, if necessary, to have administrative review of the protest undertaken by an independent, non-judicial body.

The Need to Strengthen Institutions for Public Procurement

Whilst the responsibility for conducting public procurement is fully decentralized to the procuring entities, there is no central organization responsible for monitoring compliance with the GPL. As a result, enforcement is weak and procuring entities routinely flaunt the provisions of the GPL with impunity. This situation is exacerbated by the absence of any provision, within the public sector, of specialist training in procurement for public officials, which results in misapplication of the legislation by untrained purchasers. It is not surprising that the business community in Turkey has little confidence in the ability of procuring entities to apply the GPL fairly and accurately.

Key Recommendations:

- The new public procurement law should provide for the creation of an independent, national public procurement office, with responsibility for procurement policy, development of the legislation, monitoring enforcement and conducting administrative review of bid protests.
- The Government should draw up a national strategy for training public officials at all levels in procurement and should make such training available to all levels of the public administration.
- In order to build a more constructive relationship with the business sector, the Government should initiate an outreach program, including consultation and dissemination of information on public procurement opportunities and bidding requirements.

The Need to Strengthen Audit and Anti-Corruption Measures

Whilst the Government has made encouraging progress in areas such as governance and public management, it has yet to draw up a comprehensive anti-corruption strategy. Equally, the current provisions for auditing procurement transactions by public organizations are in need of strengthening.

Key Recommendations:

- Both the resources and the investigative powers of the Turkish Court of Accounts should be strengthened to improve the auditing of public procurement. Its auditors should also receive specialist training in the application of the GPL. To increase transparency and accountability, audit reports on procurement should be published.
- The relationship of the GPL to the Criminal Law should be strengthened and stronger sanctions should be inserted into the GPL for breaches of it, including temporary disqualification and permanent debarment of bidders.

In summary, this report, including the many, more detailed recommendations presented in the main text, presents the Turkish Government with a comprehensive and challenging agenda for developing the legislative, regulatory and institutional aspects of its public procurement system and proposes an Action Plan by which key priorities may be achieved. Given Turkey's agreement to implement this agenda, the Government may count on the World Bank's support and long-term cooperation to achieve the essential objective of improving the country's public procurement system.

FINDINGS AND RECOMMENDATIONS
A – SUMMARY OF FINDINGS
STRENGTHS AND WEAKNESSES OF THE PRESENT PROCUREMENT SYSTEM

PUBLIC SECTOR

Section 1. Legal and Regulatory Framework

1.1 Sources of Law: Turkey is a civil law country. In 1926, Turkey adopted the Continental System, based on the Napoleonic Code with certain modifications. Other elements of its law were modeled on the laws of other countries: the civil code was taken from Switzerland, the administrative law from France, the penal code from Italy. Under to the 1982 Constitution, legislative power is vested in the Turkey Grand National Assembly (TGNA). New laws are required to be published in the Official Gazette and become effective only from the date indicated in the publication. The other main sources of law are decrees passed by the Council of Ministers (COM) and administrative regulations enacted by Ministries.

1.2 Legislative Framework: Whilst Turkey's legislative framework is already fairly comprehensive, the country's acceptance, in December 1999, as a candidate for accession to the European Union (EU) has precipitated a comprehensive program of legislative reform aimed at harmonization with EU law in several key areas. It may be expected that one of the effects of this harmonization will be further liberalization of Turkey's trade regime, building on the Customs Union with the EU of 1996. However, in the areas of public procurement, progress to date with legislative reform has been disappointing. The European Commission (EC)'s report on Turkey's progress towards harmonization during the year 2000 stated "In the field of public procurement, no progress can be reported new legislation is being prepared by the Ministry of Finance. The present public procurement system should be made more transparent and accountable."

1.3 Legislation on Public Procurement: The primary instrument in this area is the Government Procurement Law (GPL) No. 2886 of 1983, as amended by Law No. 2990 of 1984. In addition, the COM has passed a number of decrees which provide detailed treatment of several GPL provisions. Also, both the Ministry of Finance (MOF) and the Ministry of Public Works and Settlement (MPWS), the two ministries involved in the regulation of the public procurement system, have issued several administrative circulars on public procurement. However, all of this secondary legislation builds on a GPL which is now some 17 years old and whose deficiencies have become increasingly apparent in application. Turkey has not kept pace with the sweeping reforms undertaken in the national procurement systems of many other countries during the same period nor with the development of recognized bodies of international legislation, such as the UNCITRAL Model Law, the EU Procurement Directives and the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO).

1.4 Scope of the GPL: The scope of the GPL encompasses all purchases, sales and leasing of goods, works and services by procuring entities at the central government level, which are financed with the general and annexed budgets, municipalities and other local administrations. It also covers revolving funds established by these administrations and special funds established by other laws. The GPL specifically excludes procurement financed by international agreements, including those with the World Bank. Also excluded from the GPL is procurement undertaken by the State Economic Enterprises (SEEs), which conduct procurement in accordance with their internal procurement regulations. Although such regulations are based on the GPL, they are even more deficient than the GPL in terms of transparency, accountability and competitiveness. Given that the SEEs spend some US\$3.9 billion annually on capital investments (see Section 5), it is a source of great concern that such sizeable expenditures are subject to inadequate regulation.

1.5 Related Legislation: There are also several laws and decrees which regulate areas of economic activity which impact directly on public procurement. These include the Commercial Code, Law on Obligations, Civil Procedure Code, Law of Civil Servants, the Criminal Law, which includes provision on bribery and anti-corruption, Customs Law, Banking Law, Law on Standards and Accreditation, Law on International Arbitration and Council of Ministers' decrees on Import Regime and on Statistics.

1.6 Recent Legislative Developments: The Government of Turkey, specifically the MOF and MPWS, is currently drafting a new law on public procurement which, it is intended, will replace the GPL. The Government has committed itself, in conditionalities linked to its lending from the International Monetary Fund (IMF) and to the

World Bank-financed Programmatic Financial and Public Sector Adjustment Loan (PFPSAL), to present to the TGNA by October a new draft law which will meet the standards set by the UNCITRAL Model Law. The Bank has already reviewed and commented on two drafts of this law (October, 2000 and April, 2001) and the EC has also expressed its opinion on the first draft. Both have found the current draft law to be deficient in several indispensable elements of transparency, accountability and competitiveness. The process by which the Government is drafting the new law is also flawed, as the MOF and MPWS have not included other key stakeholders – other ministries, SEEs, the business community, NGOs interested in governance – in the drafting process. Several governmental institutions, interviewed for this assessment, were unaware that a new draft procurement law was being developed. The Government's intention appears to be that the new law, when enacted, will not only reflect international developments in public procurement law since the passage of the GPL but will also, crucially, move Turkey towards "approximation" of its public procurement law with the EU Procurement Directives and prepare the path for full alignment with the EU Procurement Directives, at the appropriate time. This is clearly an overarching objective. Also essential, however, is that the new law should establish a satisfactory legal basis for the conduct of national procurement which falls below the financial thresholds at which the EU Procurement Directives apply. As currently drafted, the new draft law will leave both these essential objectives unmet.

1.7 Recommendations on Legislative Development: Given the need to ensure that Turkey takes the maximum possible advantage of the opportunity presented by the drafting of the new public procurement law to bring its legislation up to date and into line with international standards, it is recommended that:

- i. The Government should proceed urgently with the drafting of a new national public procurement law, which meets the standards of the UNCITRAL Model Law. The Government should discuss and agree the new draft law with the Bank and the EC and accept such assistance as is made available by them, in order to have an acceptable draft law ready for submission to the Turkish Grand National Assembly by October 2001.
- ii. To ensure an appropriate level of consultation within the public sector in the preparation of the new public procurement law, the Government should establish a Drafting Committee and entrust it with responsibility for drafting the new public procurement law. This Drafting Committee should include key ministries and SEEs and have access to specialist international expertise on procurement law.
- iii. The Government should also consult widely with interested stakeholders, including the private sector, as represented by organizations such as Chambers of Commerce, professional and trade associations and NGOs active in the area of governance.
- iv. The scope of the law should cover all public procurement for which budgetary resources, such as the general and annexed budgets, and extra-budgetary resources are used, including the non-commercialized SEEs.
- v. Detailed implementing regulations should also be enacted to underpin the new public procurement law promptly after its enactment.
- vi. To complement these measures, a planned and progressive program of legislative reform will be needed in order to move Turkey's public procurement law, over the medium term, towards harmonization with the EU by the time that Turkey accedes to the European Union.

Section 2. Procurement Procedures and Practices

2.1 Procurement Planning: The State Planning Organization (SPO) screens and approves investment project proposals for the Government's annual investment program. Once approved by the High Planning Board and the COM, these investment programs become effective upon the enactment of the annual Budget Law. Procurement planning and execution for multi-year contracts is made uncertain by the fact that payments are not allowed beyond the fiscal year

covered by the budget. Whilst the Government has attempted to minimize irresponsible procurement action by requiring that a procuring entity should have secured at least 10% of the approved budgetary allocation before launching a new tender, in practice many procuring entities subvert this requirement by deliberately understating their cost estimates. This frequently causes poor contract performance, as funds are not available to pay contractors when payments fall due, and a large number of contract variations, adjustments and claims result. It is commonplace for Government-financed investment projects to run late, sometimes by several years (see Section 2.4.2 below).

2.2 Participation of Bidders

2.2.1 Qualification of Bidders: The Ministry of Public Works and Settlement operates a national system for registering qualified contractors for civil, mechanical and electrical works. The system is based on the issue by MPWS of Contractor Certificates, known locally as “carnets”, which certify both contractors and individuals (engineers, architects, technicians etc.) to perform different values of works, depending on the level of carnet they hold. There is ample evidence of the abuse of the carnet system, as otherwise unqualified contractors often qualify to perform high-value works by buying the carnets of certified individuals, whose carnets then count as part of the assessment of the contractor’s qualifications, even though the individual may never work for that contractor nor on the project for which the contractor is bidding. This flawed system of qualifying contractors is, among others, a contributing factor to the prevalence of poorly constructed buildings in Turkey, which was evidenced by the widespread collapse of public buildings, including schools and hospitals, during the recent earthquakes.

Foreign contractors are not required to obtain a carnet to participate in bidding but must include in their bids documents which certify that they have completed comparable works.

Outside of the carnet system, bidders’ qualifications are usually assessed as part of bidding, using a merit points assessment system and a two-envelope procedure (see “Closed and Sealed Envelopes Bidding” in Box 1 below). In all such cases, the documentary requirements placed on bidders are extremely onerous: in many cases, 20 or more documents are requested from bidders, many of them irrelevant to the qualification process.

2.2.2 Participation by Foreign Bidders: Legislative restrictions on the participation of foreign bidders in the Turkish public procurement market are imposed by Regulation No. 18293 (January 26, 1984) which allows individual procuring entities the discretion to decide when foreign bidders may be invited to bid on their tenders. When a procuring entity makes such a decision, which is usually only when the goods required are not manufactured or available in Turkey, it does so not by allowing open participation by foreign bidders but by selecting in which country(ies) the tender should be advertised, based on its knowledge of foreign sources of supply. In this way, even tenders which appear to be international are highly restricted and are not open to participation by all interested foreign bidders.

Further restrictions are imposed by COM Decree No. 85/9342 (March 27, 1985) which stipulates that the solicitation of foreign bids for public contracts shall be subject to the following authorizations:

Table 2.1: Required Authorizations for International Tenders

Contract Value	Required Authorization
<TL 2 billion (<US\$3,200)	Head of Procuring Entity
<TL 20 billion (<US\$32,000)	Minister
>TL 20 billion (>US\$32,000)	Council of Ministers

The low levels at which these authorization thresholds are set and the fact that they have remained unchanged since 1985 give ample indication that Turkey's public procurement market remains largely closed to foreign bidders, unless they are specifically invited in.

In addition, there are administrative barriers for foreign bidder participation, including a requirement that all bidders must have a registered address in Turkey for receiving notices and a requirement that all bidders must submit a certificate of membership from a Turkish chamber of commerce or industry.

2.2.3 Application of Domestic Preference: For international tenders, COM Decree No. 85/9342 permits the application of a margin of preference of up to 15% to local firms (rather than goods or inputs) during the evaluation of bids.

2.3 Conduct of Procurement Proceedings

2.3.1 Procurement Methods: The GPL provides for the following methods of procurement:

Box 1: Procurement Methods under the Government Procurement Law

Closed and Sealed Envelopes Bidding is the main open tendering procurement method. The procedure is single-stage for goods and services without a threshold; for works, it is single-stage below a threshold of TL160 billion (US\$256,000) and two-stage above. Procuring entities may also choose to use two-stage bidding for works below the threshold or for services. Below the same threshold, publication of an invitation to bid is required and the procuring entity must publish formal bidding documents. Bids are required to be submitted in sealed envelopes, using an envelope-within-an-envelope system by a defined bid submission deadline. A public bid opening is held, at which the outer envelopes are opened first, bidders whose qualification or administrative documents are assessed as being deficient are rejected, the price envelopes of the remaining bidders are opened and read out and award of contract is made to the lowest priced bid. For works above the TL160 billion threshold, bidders' qualification are assessed at the first stage then, at the second stage, the qualified bidders are announced at a public bid opening and only their bids are opened. Bid prices, which are expressed as a percentage discount offered from a pre-disclosed cost estimate, are announced at the bid opening. Contract award is based on an evaluation methodology which combines bidders' qualification scores with their bid prices to arrive at a "suitable price" using a form of bracketing.

Selective Restricted Bidding may be used for the procurement of specified categories of goods: aircraft, warships, war ammunition, military installation and supplies, dams, power stations, harbors, docks, railways, highways and bridges. The procuring entity has the discretion to advertise or may directly invite a minimum 3 bidders whom it considers qualified. Again, contract award for works is to the lowest-priced bid for contracts estimated to cost less than TL160 billion (US\$256,000) and on a "suitable price" basis above that threshold. No threshold applies to goods and services, for which contract award is to the lowest-priced bid for goods and either lowest or suitable price for services. No upper financial limit applies to the method and, with the approval of both the MOF and COM, the procuring entity may invite fewer than 3 bidders. In this way, the Restricted Bidding method may also be used as a form of direct contracting.

Public Bidding may be used for contracts estimated to cost less than an annually-defined threshold; for 2000, the threshold is TL120 billion (US\$192,000). Firstly, written offers are submitted, announced at a public bid opening attended by the bidders, then the bidding committee invites bidders to make verbal offers to undercut the lowest read-out bid price. This verbal bidding procedure continues until the lowest bid price is reached.

Negotiated Procedure may be used for 15 applications, specified in the GPL, without any upper financial limit. In addition, contracts estimated to cost less than TL6 billion (US\$9,600) may be procured through this procedure. For some items, including consulting services, there is no requirement to prepare a cost estimate, issue formal bidding documents or even sign a written contract. Under this method, either verbal or written bids may be invited from several bidders and the procuring entity may negotiate freely with all bidders. There are no written rules for the conduct of such negotiations.

Competition is used for specialized services, such as architectural competitions and studies. The procedure involves the judging of unique designs on the basis of a competition, with the winning design and the subsequent procedure following the Negotiated Procedure.

Other Procedures: The GPL also allows several other informal procedures, which have to be approved by the COM upon proposal by the relevant Minister. These include (i) procurement from other public entities (ii) purchasing off-the-shelf goods from the State Supply Office, an SEE not governed by the GPL

(iii) construction of works using the entity's own direct labor force (iv) exceptions to the GPL granted by the COM, including cases where its application is considered infeasible, procurement for national security and procurement of strategic goods and services for the Turkish Armed Forces.

2.3.2 Forms of Communication: Given that it was enacted in 1983 and has not been regularly amended since, it is not surprising that the law makes no provision for the use of electronic forms of communication in public procurement, such as electronic bidding. Providing a legal basis for electronic procurement should be an essential future feature of public procurement in Turkey.

2.3.3 Advertisement: Except for procurement conducted by Negotiated Procedure, the GPL requires that all tenders, regardless of their value, should be advertised in local newspapers twice: first at least 10, then at least 5 days before the bid opening. In small towns, where there may be no local newspaper, the advertisement has to be placed on the procuring entity's notice board. In addition, all procurement notices for tenders whose values exceed limits determined by the annual budget law, must be advertised in a daily newspaper published in a major city at least 10 days prior to the bid submission deadline. Contracts whose estimated value exceeds three times this annually published amount must be published in the daily Official Gazette at least 10 days prior to the bid submission deadline. In cases where the procuring entity elects to invite foreign bidders to bid (see 2.2.2 above), tenders must also be advertised in foreign countries, with a minimum bidding period of 45 days. The GPL does not require the publication of contract award notices.

2.3.4 Bidding Documents: Standard bidding documents exist for the procurement of works by the Closed and Sealed Bidding and Selective Restricted Bidding methods. These are used with the "General Conditions Applicable to Works and Services Contracts" attached to COM Decree No. 84/8520 (October 9, 1984). A similar document is also available for goods contracts. Whilst these bidding documents are not suitable for the procurement of consulting services, they are nevertheless used for this application. At least at the level of State administrations, bidding documents typically include the evaluation criteria to be used for award of contract.

Technical specifications are generally of poor quality for all types of procurement, which leads to considerable variability in evaluation and award. In the procurement of civil works, bidding documents and, therefore, contracts include only preliminary designs, rather than detailed designs and drawings. This deficiency contributes to a large number of contract variations and contractors' claims during contract performance. Exorbitant increases in contract prices are the norm in public sector works contracts. It must also be realized that Turkey's very particular practice of inviting bidders to express their bid prices as a percentage discount from a set of pre-disclosed unit rates invites such wild price increases. It is commonplace for a bidder to win a contract by offering a discount of 50-60%. Therefore, when the contract is signed at this price, the contractor has a strong economic incentive to provoke change orders to the contract, in order to drive up the price and extricate himself from having to perform the contract at such high rates of discount.

2.3.5 Bid and Contract Price and Currency: For international tenders, the provisions of the GPL on bid and contract currencies are quite in line with good practice in other countries. All bidders, both local and foreign and including local-foreign partnerships, are required to submit their bids in the currency specified in the bidding documents, showing separately the Turkish Lira (TL) and foreign currency components of the bid price. For evaluation purposes, bid prices expressed in foreign currencies are converted to TL using the buying rate of exchange in effect on the date of bid opening, as established by the Turkish Central Bank. Contract payments are made in the currency(ies) of the bid. Under local tenders, bidders may bid only in Turkish Lira.

2.3.6 Bid Submission: The GPL provides for a minimum of 10 days notification period for domestic tenders, regardless of the procurement method or of the value of the contract. This period is measured from the required date of publication of the tender notice, either in a local newspaper or in the Official Gazette, depending on the value of the contract, and the deadline for submission of bids. There is little doubt that this bidding period is too short to allow bidders sufficient time to prepare their bids, particularly for high-value tenders and those conducted by

the Closed and Sealed Envelopes Bidding procedure. For international tenders, the GPL requires a minimum notification period of 45 days, which seems adequate.

2.3.7 Bid and Performance Securities: Both bid and performance securities are provided for in the GPL, in the amount of 3% and 6% respectively. The acceptable forms of security are Turkish currency, unconditional bank guarantees issued by banks specified by MOF, as well as government bonds and bonds guaranteed by the Treasury. Such securities are widely required for all types of procurement – goods, civil works, technical services and consulting services – conducted by procurement methods other than the Negotiated Procedure. Under the latter procedure, the GPL provides various exemptions to security requirements, including all types of services, such as engineering, consulting and supervision services.

2.3.8 Bid Validity Period: Because bidders' qualifications are generally assessed at the time of bid opening (see Box 1 above) and because the GPL requires that, in all cases, the Bidding Commission's decision on the award of contract should be approved or rejected within 15 days by the authorized official, bid validities are generally limited to 15 days. This is a very short period for the evaluation of complex bids and is out of line with the provisions of procurement laws in most other countries. Also because of this fifteen-day deadline, there is no concept of the extension of bid validity periods.

2.3.9. Bid Opening: The GPL makes public bid opening mandatory for all procurement methods except the Negotiated Procedure. Although it is not specifically required by the GPL, the common practice appears to be that procuring entities open bids promptly after the deadline for their submission. As described in Box 1 above, the procedure involves a two-envelope system comprising first the assessment of bidders' qualifications, then, after unqualified bidders have withdrawn their price bids and left the bid opening ceremony, the financial bids of only the qualified bidders are opened and the "prices" (i.e. percentage discounts offered) are read out. In most cases, the decision on the award of contract is made at the public bid opening. The GPL does require the rejection of late bids. However, there is no provision allowing bidders voluntarily to modify or withdraw their bids after submission.

2.3.10 Evaluation and Comparison of Bids: The methodology used in the evaluation of bids invariably combines a merit points system for assessing bidders' qualifications (see 2.2.1 above) with the evaluation of price. In the treatment of price, the award of contract may be either to the lowest-priced bid from among qualified bidders or to the bid offering the "suitable price," determined by using a bracketing formula (see Box 1 above). The "price" of a bid is neither set freely and competitively in market terms nor is it expressed as a monetary value; rather, it is usually expressed as a percentage discount offered on pre-disclosed unit rates, published annually by MPWS and other public entities. Below a threshold of TL160 billion (US\$256,000) for works contracts, the lowest bid is the main method for evaluating price whilst, above this threshold, the "suitable price" methodology generally applies.

Because the award of contract is normally made at the public bid opening, procuring entities seldom take the time to conduct a thorough examination and comparative evaluation of bids. Rather, the contract is summarily awarded by a mechanistic qualification/discounted suitable price methodology, often without due regard to the specific commercial conditions or technical features of the bids.

2.3.11 Award, Conclusion and Entry into Effect of Contract: The bid committee's decision on the award of contract is subject to review within 15 days by the head of the procuring entity, who may either approve or cancel it. If approved, the award decision is notified within a further 5 days to the successful bidder, who then has an additional 15 days in which to submit the notarized contract and performance security to the procuring entity. In cases where MOF clearance or "visa" for the contract is required, the bidder has 15 days from receipt of such clearance to submit the contract and performance security. The contract comes into effect immediately after notification of its registration by the TCA. If the head of the procuring entity overturns award decision, the bidder is likewise notified.

2.3.12 Records of Procurement Proceedings: It is mandatory for procuring entities to keep written records of all stages of procurement, including minutes of public bid openings and correspondence with bidders. Government

regulations on record-keeping require that important records, such as procurement and financial documents, be maintained for 10 years.

2.4 Contract Implementation

2.4.1 Regulations on Contract Administration: The regulations for supervision of works, goods and services contracts, contained in MPWS Regulations dated May 9, 1979, define the duties and responsibilities of supervisory staff, as well as the documents which are to be prepared on site. Whilst these regulations are prepared primarily for works contracts, they apply equally to all types of contracts. The regulations on preliminary and final acceptance of contracts, defined in COM Regulations issued on June 10, 1985, define how contractors' requests for preliminary, temporary and final acceptance are to be processed. These regulations also define the formation and responsibilities of acceptance committees and the approval of certificates. Interviews conducted for this assessment revealed weaknesses in contract implementation and supervision practices, especially in the case of works contracts at local administration level.

2.4.2 Implementation: The Public Expenditure and Institutional Review (PEIR), recently conducted by the World Bank, has identified over-programming as a recurrent feature of public investment projects in Turkey. Common problems include initiating an excessive number of projects relative to the financial resources available, inadequate prioritization relative to plan objectives, inefficiencies due to the lack of integration between investment and recurrent budgets and the fragmentation of investment budgets due to earmarking revenues for specific purposes. These problems are reflected, in part, in the rapid growth in the time-to-completion for ongoing projects. In 1994, with a remaining balance of 60 percent of the value of the total public investment portfolio and an annual allocation equal to about 10 percent of the same value, it could have been expected that the portfolio would be completed in 6 years. However, as at the end of 1999, the public investment program consisted of 5,321 projects with an estimated cost of US\$150 billion and an unfinished balance of US\$105 billion (equal to 70% of the estimated total cost of projects in the public investment portfolio). Based on the approximately US\$10 billion allocated in total to all public investment in 2000, SPO estimates suggest that the current portfolio will take, on average, 10.5 years to complete. In effect, therefore, the efficiency of public investment measured by the time to completion, has worsened markedly over the past six years.

Whilst ineffective planning and resource allocation may be the main drivers of this situation, bad procurement and contracting practices also play their part. Those identified during this assessment include the absence of detailed surveys, technical investigations, designs and cost estimates at project start-up, which in turn facilitates frequent design changes and a large number of contract variation orders during contract implementation. All of these contribute to extended project completion times. It was also noted that the tendering system, which requires bidders to express their bid prices as a percentage discount off pre-disclosed unit rates, encourages bidders towards bad practice, often signing contracts which contain unsustainably high discounts and, therefore, giving the contractor a strong economic incentive to seek variations to the contract, in order to establish new unit rates without competition. Furthermore, because MPWS revises unit rates for works annually and the new, higher rates automatically apply to all ongoing works contracts at the beginning of each year, contractors are encouraged to slow their performance towards year-end, in anticipation of the higher unit rates applying in the new year. It is evident, therefore, that the unit rate system is fuelling both implementation delays and cost escalation.

2.5 Bid Protest: The bid protest mechanism under the GPL provides that a bidder may complain in the first instance to the procuring entity, to the MOF (which exercises control over the procuring entities' contracting procedures and issues "visas" to procuring entities before contract signature) or to the Court of Accounts. If the bidder remains dissatisfied with the response given by the procuring entity, MOF or the Court of Accounts, he may file a suit in a court of law. The court may decide to suspend the procurement process, otherwise the administration may continue with the contract award and implementation.

If the court decides in favor of the appealing party in the course of the contract performance, different consequences may arise, such as cancellation of the contract, with the remaining works being awarded to the appealing party or the administration may pay the losses of the appealing party according to the decision of the court. Should the court

make such a decision after the contract performance has been completed, the appealing party may receive compensation, as decided by the court.

The GPL, therefore, lacks a well-structured procedure for the administrative review of bid protests by an independent administrative body. Such a procedure is an essential element of transparency in all good national public procurement systems. Furthermore, based on the interviews conducted for this assessment, it is evident that even the current procedure is seldom put to the test, as Turkish bidders hardly ever register protests against contract award decisions, so worried are they about damaging their future business prospects with public-sector clients.

2.6 Recommendations on Procurement Procedures and Practices

Whilst there are numerous specific changes which need to be made to procurement procedures and practices, as part of the overall process of reforming the public procurement law, it is recommended that the Government pay priority attention to the following areas:

- i. The Government should take the measures necessary to improve the interface between, on the one hand, budget planning and execution and, on the other, the planning of projects and procurement. Specific improvements should include:
 - ensure that the budget preparation process and the agreed schedule of release of budgetary appropriations incorporate the realistic costs of programs and their related procurement;
 - make budgetary resources available as scheduled so that procurement entities can initiate efficient procurement processes.
 - over the medium term, in order to enable procuring entities to ensure economic and efficient procurement for multi-year contracts, include in the budget law assurances of budgetary approval for later years, as an element of broader progress towards a medium-term expenditure framework.
- ii. The procedures for assessing bidders' qualifications should be radically overhauled. Changes should include separating the assessment of bidders' qualifications from evaluation of their bids by introducing a formal pre-qualification procedure, for large or complex contracts, and post-qualification in all other cases. Also, the Contractor Certificate ("carnet") system should be fundamentally reformed to ensure that contractors' registrations correspond to their actual resources and capabilities. Abuse of a "carnet" should be treated as procurement fraud, addressed in the Criminal Law and sanctioned by disqualification.
- iii. In order to increase the competitiveness of the public procurement system and in preparation for Turkey's accession to the EU, the current excessive restrictions on the participation of foreign bidders in public tenders should be relaxed. Foreign bidders should be permitted to participate in tenders above defined financial thresholds, which should be subject to international advertising. Bureaucratic obstacles to foreign bidder participation, such as the requirement that foreign bidders must have a registered address in Turkey and be registered with a local chamber of commerce, should also be removed.
- iv. The range of procurement methods available under the public procurement law should be revised. The primacy of the Closed and Sealed Envelopes Bidding (or other Open Bidding method as may be developed in future legislation) as the main method of procurement should be reinforced, with other, less competitive procurement methods usable only under strictly-defined conditions. New procurement methods should be introduced for small-value purchases and direct contracting, to be used under strictly-defined conditions, as well as a dedicated method for the procurement of consultants' services.
- v. Many of the procedural aspects of the various procurement methods should be reformed in order to improve transparency and fairness. Primary among these should be lengthening the period allowed to bidders for preparing their bids, more transparent bid opening procedures and the use of objective, pre-disclosed criteria in bid evaluation. Outdated practices, such as verbal bidding, requiring bidders to offer percentage discounts off pre-defined unit prices and bracketing in bid evaluation should be abolished. Bidders should be permitted to quote their bids prices in open, market-based competition.

- vi. Transparency and access to information on public tenders should be enhanced by more rigorous requirements on procuring entities to advertise tenders and to publish announcements of contract awards. Once established, a new central public procurement office should be charged with publishing a national bulletin on public procurement, as well as with establishing and maintaining a website carrying nationwide information on public procurement, as has already been done successfully in other countries, such as Poland (www.uzp.gov.pl) and the Russian Federation (www.bob.ru).
- vii. Quality and consistency of application of the procurement legislation should be increased by the introduction of a set of standard pre-qualification and bidding documents, incorporating standard conditions of contract for all major applications – civil works, goods, technical services and consultants' services.
- viii. The public procurement law should include an improved bid protest mechanism, which should establish the right of all bidders to lodge a protest with the procuring entity in the first instance and, if necessary, to have administrative review of their protest undertaken by an independent, non-judicial body.

3. Organization and Resources

3.1 Roles and Responsibilities: The GPL establishes a decentralized procurement system under which procurement of goods, works and services is the responsibility of government entities at national and local levels. The procuring entity is required by the GPL to establish a procurement committee comprising at least two of the entity's own staff plus one MOF representative, with the committee chairman always being an employee of the entity itself. The procuring entity designates the number and functions of the committee members, whilst the MOF representative is designated according to MOF's own procedures.

The rules of procedure of procurement committees include that meetings require full attendance for quorum and that decisions are made by majority vote. To become effective, the decisions of such committees are subject to approval by the head of the procuring entity. In addition, for contracts exceeding certain thresholds (excluding the contracts awarded by the special provincial administrations and municipalities), which are defined in the annual budget law, MOF clearance is mandatory.

There is no single entity with oversight responsibility for public procurement at the national level. Whilst MPWS and MOF are responsible for preparation and harmonization of rules, they do not monitor the procuring entities' compliance with the GPL. MOF does clear procurement contracts, albeit only from a budgetary viewpoint, and signed contracts are required to be sent to the TCA for registration. The absence of a central oversight body is an important factor facilitating non-compliance by procuring entities with the provisions of the GPL.

3.2 Public Procurement Training: Since its first involvement in implementing projects in Turkey, the Bank has regularly delivered procurement training courses for implementing agency staff. While these courses have focused on the Bank's procurement guidelines, they have also enhanced the skills of Turkish procurement personnel in competitive procurement and international best practice. In addition, there have been training initiatives in procurement undertaken by other organizations. However, the GPL and the body of related laws and regulations underpinning it have created a situation in which increasingly complex legal and administrative requirements are applied by large numbers of mostly untrained public officials, at both the national and local levels of administration. The training requirement for public procurement is, therefore, huge and still largely unmet.

3.3 Development of the Procurement Profession: To date, procurement is not recognized as a function in its own right in Turkey; rather, it is a task which public officials generally perform as an adjunct to their regular civil service jobs. Promoting the development of procurement as a profession within government service will not only raise the level of professionalism within the function but will also help attract and retain high-caliber staff to form a cadre of professional Government Supplies Officers, such as forms an essential element of a modern civil service in most other countries.

3.4 Relations between the Government and the Business Community: The World Bank has previously held seminars to raise the awareness of the Turkish business community of bidding opportunities financed by Bank loans. Similar efforts are also essential for the Government to establish constructive relationships between procuring entities and suppliers of goods, works and services throughout the country and overseas. Interviews conducted for

this assessment revealed a low level of confidence among business leaders in the public sector's ability to operate the public tendering system fairly and professionally. It is also evident that the quality of bids submitted by many bidders is low, making evaluation difficult and contract implementation unpredictable. There is, therefore, a pressing need to ensure that the business community is appropriately consulted in the future development of Turkey's public procurement system, to inform bidders of the opportunities which the system presents and to train them in the preparation of responsive technical and price bids.

3.5 Recommendations Related to Organization and Resources

It is recommended that:

- i. The Government should provide in the public procurement law for the creation of a central public procurement office, adequately staffed with experienced procurement, technical and legal professionals. This agency should not serve as a central tender board – that is, it should not take decisions on the award of contract - but should be responsible for procurement policy, drafting procurement legislation, regulations and standard procurement documents and for collecting and disseminating information on the performance of the public procurement system. In addition, this office should be responsible for conducting administrative review of complaints submitted by bidders against procurement entities' actions or omissions.
- ii. The Government should draw up a national procurement training strategy for public officials at all levels of administration. This strategy should have among its objectives self sustainability over the medium- to long-term, identification of education and training institutes, such as universities, which could deliver procurement training and accreditation of the courses offered by an appropriate national authority. Such developments might include the establishment in a national technical university of an MBA program in procurement, an initiative which has proven successful in other countries faced with the challenge of building up a cadre of procurement professionals from a narrow base.
- iii. A national training program for public officials responsible for procurement, at both national and local levels, should be prepared and implemented as soon as possible. In the short term, the Government may consider using the services of institutions such as the Turkey and Middle East Public Administration Institute for this purpose. Over the longer term, the training function might be coordinated or discharged by a newly-created central public procurement office (see i. above).
- iv. The Government should establish procurement as a profession within the civil service. Such a move would encourage civil servants to develop the specialist skills needed to conduct procurement effectively and to follow a graduated career path within procurement.
- v. The Government should implement a scheme to accredit public officials as procurement professionals.
- vi. To build a more constructive relationship with the business sector, the Government should initiate a program of dissemination of information, including short seminars, on public procurement opportunities and bidding requirements.

4. Audit and Anti-Corruption Measures

4.1 Audit: The main audit bodies are the Turkish Court of Accounts (TCA), the High Audit Board (YDK), under the Prime Minister's Department, both of which report to Parliament, and the State Audit Board (DDK) under the Presidency. The TCA reports on the general and annexed budgets, revolving funds, special funds, municipalities and special provincial administrations, whilst the YDK reports on the SEEs. However, there are many laws which exclude the general and annexed budget administrations and funds from TCA audit.

The TCA, which, as the Supreme Audit Institution, operates under the Constitution independently of both the legislative and executive branches, audits government accounts relating to revenues, expenditures and property financed by the general and annexed budgets on behalf of the Turkish Grand National Assembly (TGNA). It combines two main functions: judicial and audit. The judicial work is carried out by specialized chambers in which some 56 court members try accounts and either acquit or hold liable those responsible for them. The audit work is carried out by some 600 auditors. The TCA aims at promoting improved public-sector accountability, control and management by reporting on the economy, efficiency and effectiveness of selected government activities.

4.2 Current Anti-Corruption Measures: Current legislation on anti-corruption include provisions relating to bribery, conflict of interest and fraud in the procurement process in both the Commercial Law and the Criminal Law. Section 4, Articles 26-31 of the Civil Servants Law (No. 657) govern the conduct of public officials, including the definition of prohibited acts. Penalties for violation of these provisions are defined in Section 3, Articles 202-281 of the Criminal Law (No.765), which also contains articles directly related to fraudulent actions in tendering and to bribes (Articles 205-219, 366, 367 and 369). In addition, the GPL lists a series of "prohibited acts and dealings" by bidders and provides that such activities should lead to blacklisting for up to one year. However, the provisions are entirely silent about acts of fraud (including misrepresentation), collusion and corruption, both during the bidding process and during contract execution. Although these matters are dealt with in the Criminal Code, the absence of a cross-reference in the GPL weakens their application to public procurement.

4.3 Current Initiatives: Whilst the Government has yet to draw up a comprehensive anti-corruption strategy, it has opened a positive dialog with the World Bank and the country's other development partners in several important areas such as transparency, good governance and improved public management. Ongoing initiatives include the current Public Expenditure and Institutional Review (PEIR). In addition, the Prime Minister recently requested the Bank's assistance with anti-corruption efforts. Furthermore, Turkey has ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which became law in February 2000, but has yet to sign the Council of Europe Conventions on the same subject.

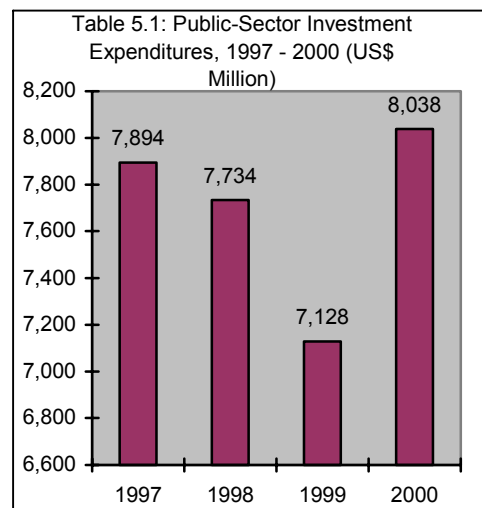
4.4 Recommendations Related to Audit and Anti-Corruption Measures: Current audit and anti-corruption provisions may be improved by the following measures:

- i. Both the resources and the investigative powers of the TCA should be increased.
- ii. In order to improve the accuracy and reliability of audit findings on procurement, TCA auditors should receive periodic training in the application of the public procurement law.
- iii. The TCA should regularly publish the results of its procurement audits.
- iv. The internal audit functions of procuring entities should be strengthened specifically to audit procurement transactions.
- v. Whilst it is appropriate that corruption should be addressed in the Criminal Law, its provisions in respect of procurement-related corruption should be reinforced.
- vi. Allied with this, a direct reference should be made in the GPL to the Criminal Law and stronger sanctions should be inserted into the GPL, including disqualification and debarment, both temporary and permanent.
- vii. Bidding and contract documents should contain specific prohibitions against fraudulent and corrupt activities by bidders, built on the strengthened provisions of the GPL and Criminal Law.
- viii. The Government should put in place facilities to make it easier for public officials, bidders and the general public to report allegations of corruption.
- ix. Clear and comprehensive conflict of interest rules, specifically tailored to public procurement, should be introduced.

5. Public Sector Management Performance

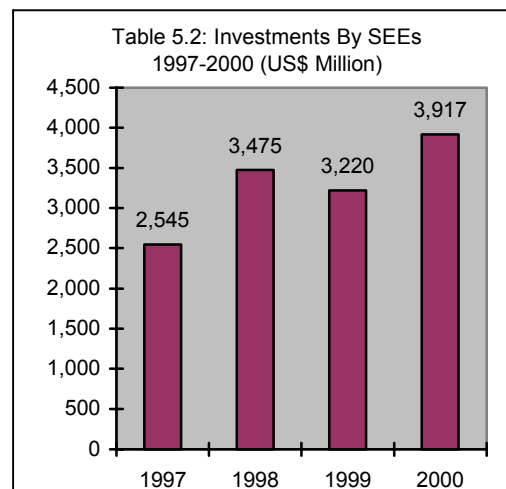
5.1 Performance of the Public Procurement System. Because the MOF does not collect and publish data on the performance of the public procurement system, a reliable estimate of the value of expenditure on public procurement in Turkey is difficult to make. One proxy measure of this expenditure, taken from Government accounting records, is provided by figures on investments by the public sector, as presented in Table 5.1 below. Such investments are generally capital investments in public-sector projects. Whilst informative, the figures no doubt underestimate the total value of public procurement, as they exclude recurrent expenditures.

Based on these figures, public-sector investment expenditures accounted for approximately 4% of GDP in 1999. The recurrent expenditures of general and annexed budget administrations (excluding revolving funds, special funds and local administrations) in 1999 were US\$ 4.78 billion or approximately 2.5% of GDP. Investments by SEEs accounted for 1.9% of GDP and recurrent expenditures 7.3%. These add up to 15.6% of GDP and, considering the recurrent expenditures of revolving and other funds and local administrations, the figures amount to 16-18% of GDP. By way of comparison, public procurement in the European Union accounts for some 11-12% of GDP. Turkey, therefore, is a major spender on public procurement, primarily because so much of the nation's economic activity remains in the public sector, in the absence of a comprehensive privatization program.

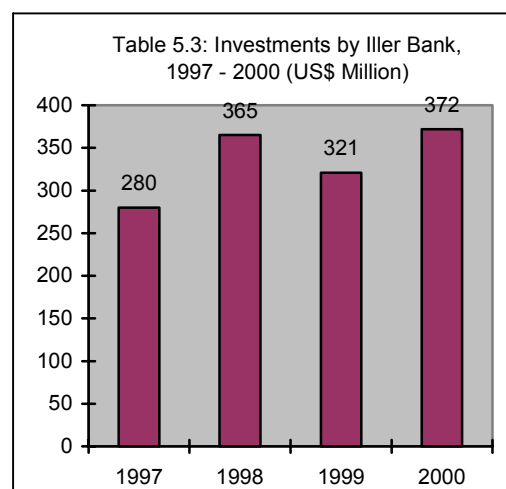


In addition to procurement undertaken by Government ministries and institutions which are governed by the GPL, there are substantial volumes of procurement undertaken by public-sector organizations and State Economic Enterprises which, although public-sector in status, operate outside the GPL. Table 5.2 below presents figures for investment expenditures by these institutions during the period 1997-2000.

The recurrent expenditures of SEEs in 1999 were approximately US\$14.43 billion. This figure includes all procurement of SEEs including raw materials, energy, fuel and all other similar expenditures. For example, TUPRAS procures petrol for the country and its share in the total is nearly US\$3.5 billion. Given the scale of these investments and recurrent expenditures (approximately 10% of GDP), the fact that procurement for them is conducted not within the national public procurement law but under these institutions' own procurement procedures, the degree of economy and efficiency which is achieved in this procurement is a matter of grave concern.



Whilst there are also no data available to measure the performance of public procurement directly, there is evidence of substantial delays in the implementation of major investment projects. According to information published in the Official Gazette, of a total investment budget of TL86,219 trillion allocated to 5,321 public-sector investment projects in the period 1985 (and before) - 2000, only TL26,125 trillion or 30% (at constant 2000 prices) had been expended by the end of 1999. In 2000, out of a total annual public-sector investment budget of TL5,905 trillion, approximately 30% had been expended by the end of the first six months of the year, indicating the likelihood of a continuing substantial shortfall in planned investment expenditure.



Whilst there are undoubtedly several causes of such delays, including cuts in public spending during the investment period, it is also evident, from the information gathered during this assessment, that poor procurement and contracting practices are a contributing factor to these delays.

6. Performance on Bank-assisted Projects

6.1 Procurement and Portfolio Performance: Turkey became a member of the World Bank in 1947. There are currently 22 effective loans in the Turkey portfolio. The distribution of investment projects between sectors is as follows:

Table 6.1: Current Composition of the World Bank's Loan Portfolio by Sector

Sector	Procurement Supervised from Bank Headquarters			Procurement Decentralized to Ankara Office		
	No. of Projects	Loan Amount US\$m	Amount Disbursed US\$m	No. of Projects	Loan Amount US\$m	Amount Disbursed US\$m
EG	2	310.0	7.5	0	0	0
HD	3	263.2	101.4	1	300.0	121.9
IN	1	184.9	38.6	4	238.0	134.7
PE	2	821.6	399.8	1	252.5	252.5
PF	0	0	0	2	407.5	55.0
SD	0	0	0	6	1,024.0	274.9
Total	8	1,579.7	547.7	14	2,222.0	839.0

EG = Energy; HD = Human Development; IN = Infrastructure; PE = Poverty Reduction & Economic Management; PF = Private & Financial Sectors Development; SD = Sustainable Development.

6.2 Decentralization of Procurement Functions: In November 1999, the Bank approved the decentralization of the procurement fiduciary function to the Bank's Ankara Office in respect of 15 of the 22 loans, two of which have since closed. The approval established thresholds of \$2.5m for Goods, \$5.0m for Works and \$1.0m for Consultants' Services below which procurement clearances may be given by the two accredited procurement staff in the Ankara Office. Above these thresholds and up to the mandatory Regional Procurement Adviser (RPA)

thresholds (\$7.5m for Goods, \$15.0m for Works; \$2.0m for Consultants' Services), procurement staff in the Ankara Office review the procurement but must obtain clearances from the RPA Office in Washington.

Based on discussions with implementing agencies during the assessment, the experience of procurement decentralization to date has been positive, delivering benefits which include continuous procurement support to clients at source, ease of clarification of procurement matters, improved responsiveness and faster processing of procurement decisions. The Bank's Regional Procurement Adviser undertakes periodic reviews of the performance of these decentralized procurement functions and, subject to continuing satisfactory findings, the Bank may in the future decide further delegation of the procurement fiduciary functions for the projects in the portfolio to the Country Office, subject to an overall assessment of resources and business needs.

6.3 Organization of Procurement in Bank-financed Projects: Implementation of procurement on Bank-financed projects has been conducted by more than 40 organizations at different levels of the Turkish administration: Ministries and their General Directorates, Undersecretariats of the Prime Ministry, State Economic Enterprises (SEEs), universities and research institutions, banks, municipalities, metropolitan municipalities and municipal associations. As a result, there is some experience of Bank procurement at all levels of the administration and a growing cadre of public officials - numbering perhaps 300-400 - who have some knowledge of the Bank's procurement guidelines. The Bank periodically conducts training in Bank procurement for the staff of implementing agencies. The most recent course was staged in November, 2000 and attracted some 160 delegates.

Procurement is usually implemented by Project Implementation Units (PIUs) or Project Management Units (PMUs), located in the implementing agencies, which have dedicated procurement staff - usually at least one Procurement Specialist - and reasonable autonomy in making procurement decisions.

6.4 Strengths and Weaknesses of Procurement under Bank-Financed Projects

6.4.1 Strengths

- i. The frequent use of dedicated PIUs to implement procurement on Bank-financed projects facilitates the acquisition of the specialized experience needed to conduct procurement effectively.
- ii. Experience of conducting procurement under Bank guidelines has been diffused among a large number of public-sector institutions at all levels of Government.
- iii. PIUs and their Directors generally have the autonomy they need to make procurement decisions.
- iv. The level of technical and engineering expertise in implementing agencies is generally high, thus facilitating the preparing of detailed technical specifications and the conduct of the technical aspects of bid evaluation.

6.4.2 Weaknesses

- i. During project preparation, the Government often does not dedicate sufficient qualified staff to consider procurement planning, costing and packaging. This leads to a disconnect between procurement planning and implementation and gives rise to frequent requests from the Borrower's side during implementation to change the procurement arrangements already specified in the loan agreement. In many cases, the changes requested are contrary to Bank procurement policy, thus causing delays to project implementation.
- ii. Most implementing agencies do not draw up procurement plans and, even for those where such plans do exist, they are seldom updated or current.
- iii. Delays to procurement frequently arise because implementing agencies send procurement documents for Bank review on a piecemeal basis, thus inhibiting the Bank's ability to respond in a timely and comprehensive manner.
- iv. There have been many cases of implementing agencies drafting restrictive, inadequate technical specifications for goods. This practice contributes to: delays in Bank prior review clearances of bidding documents and/or bid evaluation reports; narrow competition, with a low number of bids received; uneconomic procurement, as many low-priced bids are rejected due to technical non-compliance.
- v. Some implementing agencies have attempted to apply national procurement regulations to procurement on Bank-assisted projects by inserting into the bidding documents provisions which, whilst in accordance with the national legislation, are inconsistent with the Bank's guidelines. Such practices not only lead to delays in procurement but also inhibit agreement between the Borrower and the Bank on the responsiveness of contract awards.
- vi. The requirement, in the State Account Law No. 1050 of 1927, that implementing agencies on all Bank-financed projects should submit all procurement documents - bidding documents, bids and evaluation recommendation - in Turkish to the Ministry of Finance (MOF) for the issue of an approval "visa" is causing repeated delays to the implementation of procurement. Also, the practice, followed by many implementing agencies, of requiring bidders to submit their bids in two languages, is inconsistent with the Bank's procedures.
- vii. Ineffective organizational structures in implementing agencies often leads to unclear demarcation between decision-makers, poor budgetary provisioning and delays in procurement.
- viii. There is often poor coordination between multiple implementing agencies on the same project.
- ix. Record-keeping and document management have often been found to be inadequate.
- xi. Poor cost estimating for goods leads to selection of inappropriate procurement methods – for example, Shopping contracts exceeding the relevant threshold - and poor sequencing and packaging of civil works contracts.
- xii. Implementing agencies sometimes fail to incorporate the Bank's comments into bidding documents on procurements which are subject to prior review.
- xiii. Bid Evaluation Reports are often poor in quality and fail to justify the recommended award of contract.
- xiv. On Shopping contracts, implementing agencies have sometimes failed to obtain the minimum 3 quotations required by the loan agreement and have awarded contracts on the basis of 2 or even 1 quotation.
- xv. Contract packaging is sometimes inadequate and may appear intended to make it difficult for foreign bidders to bid.

- xvii. Weak contract management, particularly in respect of construction supervision, leads to cost and time overruns on many works contracts, liberal price adjustment provisions without any rigid control on cost, quality, quantity and progress, which seems to have been taken advantage of by contractors' willful delays and forced slow-down of contracts.
- xviii. In a significant number of cases, the time allowed for submission of bids has been less than that required by the procurement guidelines.
- xix. Some implementing agencies have followed the local practice of inviting bidders to offer a percentage discount on the Employer's estimated price, in clear breach of the Bank's guidelines.

7. General Risk Assessment

7.1 Procurement of goods, works and services for public projects represent 16-18% of Turkey's GDP (see 5.1 above). This includes all categories of institutions, including those not covered by the GPL. It is, therefore, essential to ensure that the system maximizes economy and efficiency in public spending by promoting transparency, non-discrimination and the confidence of bidders.

7.2 The GPL provides for the Closed and Sealed Envelopes Bidding procedure as the main form of open tendering. However, it does not mandate the application of this procedure to all public procurement, except in cases where less transparent and less competitive methods may be used. Even for the Closed and Sealed Envelopes Bidding procedure, certain requirements of the GPL, listed below, reduce the economy, efficiency and transparency of its operation, resulting in uneconomic prices in public contracts. Chief among these requirements are:

- i. a two-stage bidding procedure where, at the first stage, bidders are qualified in an untransparent manner
- ii. short bid preparation time (10 days);
- iii. evaluation of bidders' qualification to determine whether a bidder is qualified to submit a priced bid;
- iv. disclosure of estimated values and mandating the use of government-established unit rates;
- v. for works contracts, widespread use of preliminary designs which, during contract implementation, result in a large number of contract variations and price adjustments;
- vi. the absence of objective, pre-disclosed criteria in the evaluation of bids;
- vii. slow payment to contractors; and
- viii. inadequate supervision during contract implementation.

7.3 Bidders have very little confidence in the fairness of the public procurement system in Turkey, a situation which is exacerbated by the absence of a well-structured and expedient bid protest mechanism. Bidders sometimes complain to procuring entities and other authorities but reportedly such complaints, rather than resulting in acceptable solutions, lead to worsened relations with procuring entities. As a result, many bidders, even if they feel that their bid has not received a fair treatment, hesitate to complain for fear of affecting their business through bad relationship with those responsible for public procurement. The CPAR mission learned that bidders find other ways and means, such as connections with public officials which is evidenced by public officials' interference in the procurement process, and even use "facilitation payments" for such favors.

7.4 Turkey's current public procurement system discriminates heavily against foreign bidders, who are required to have an address in Turkey and to have membership of a Turkish chamber of commerce or industry. It is not surprising, therefore, that most public tenders in Turkey are limited to domestic bidders. Even in those cases where public purchasers make recourse to foreign bidders, such invitations are not open to all bidders; rather, procuring entities invite only bidders in a particular country or restricted group of countries and only when the required goods or services are not available locally.

7.5 Enforcement of the procurement legislation is particularly weak. Although several agencies are involved in checking different aspects of public procurement, there is no independent procurement agency to ensure effective implementation of the GPL through supervision and monitoring.

7.6 The human resources to undertake public procurement are patently inadequate to meet the task. Procurement is not a recognized profession in Turkey. Rather, public officials undertake procurement as one among many tasks they are required to fulfill.

7.7 Relations between the procuring entities and the business community are characterized by mistrust. There is a pressing need to inform the providers of goods, works and services of opportunities to bid on government contracts, to train them in the preparation of responsive bids.

7.8 In light of these many shortcomings, this report ranks Turkey as a high risk country in terms of its public procurement system.

PRIVATE SECTOR

8. Commercial Regulations

8.1 The **Commercial Code** (Law No. 6762 dated July, 1956 as amended), which forms part of the Civil Code, sets forth the legal basis of many commercial transactions. The Commercial Code also defines the various forms of commercial undertaking which may be established in Turkey: commercial partnership, general (unlimited) partnership, special partnership, limited liability company (partnership), cooperative societies and companies limited by shares (stock corporations). For stock corporations, the requirements for incorporation, powers and obligations of directors, general meetings and the treatment of shares are all stipulated in the Code. For the various forms of commercial undertaking, the Commercial Code also defines the minimum requirements for accounting and auditing. The Code also covers agency law, defines and regulates insurance and lays down the requirement for the establishment and maintenance of a Trade Register by the Ministry of Industry and Trade.

8.2 The **Law on Obligations** (Law No. 818 dated April 1926 as amended) contains the basic law of contract. It recognizes both fixed and variable price contracts and includes basic provisions on product and defects liability, acceptance of works and provisions for termination and damages.

8.3 The **Civil Procedure Code** (Law No. 1086), in its Articles 516-536, provides for domestic arbitration, which applies only to contracts where the two parties to the contract have provided for arbitration at the time of contract signature. The Civil Procedure Code also defines the procedure for arbitration, including the appointment of three arbiters, their duties, the duration of the investigation and time limit of award decisions (six months), notification of arbitral award and the circumstances under which an arbitral award may be appealed to the courts. Arbitration is not a common practice in Turkey. In cases of contractual dispute, the parties to the contract generally proceed to settlement through the courts, in the absence of an amicable settlement.

8.4 The **Dispute Resolution** process in public contracts is generally defined in the contract itself. The available alternatives are civil, rather than administrative, courts, local arbitration and international arbitration. In the great majority of contracts, public administrations prefer to define the civil courts as the locus of dispute resolution. Local arbitration is used very rarely, mainly in contracts signed by municipalities. The use of the civil courts, rather than administrative courts, in dispute resolution springs from the nature of the contractual relationship between the public administration and the contractor, which is considered to be a private relationship and therefore governed by private law. Both the administration and the contractor are required to obey the same rules and, in case of any deviation from contract, the appropriate clauses of Law on Commerce and/or the Law on Obligations apply

In January 2000, Turkey adopted a new **Law on International Arbitration** (Law No: 4501) applicable to disputes between the State and private companies concerning concession agreements in the provision of services by private companies. As the adoption of this law also necessitated an amendment to Turkey's constitution, its successful passage may be seen as an indication of the Government's desire to attract foreign companies to invest in Turkish infrastructure projects on a build to operate basis

8.5 **Price Indices:** COM Decree No. 357 (dated March 1989) authorizes the State Statistics Institute (SIS) to act as the central authority of the statistical system, responsible for data collection, production and publication of statistics. SIS publishes indices for producer and consumer prices, as well as for construction sector costs. The indices, now published monthly, are widely used and considered reliable. Further reform of the state statistics system is being undertaken as part of the EU accession process. Up-to-date information on prices indices is available at www.die.govt.tr.

8.6 **Standards and Accreditation:** Law No. 132 on the Establishment of the Turkish Standards Institute (TSI) governs the areas of standards; there is no specific standards law. To date, some 1,200 standards have been adopted. The Customs Union between Turkey and the EU foresees the alignment of Turkish technical regulations before the end of 2000. As of March 2001, 90% of the Turkish standards are aligned with the EU standards. At present 80% of Turkish standards are aligned to CEN standards and 80% to CENELEC standards, primarily by the transposition of EU standards into Turkish standards. TSI is a full member of ISO and an associate member of CEN and CENELEC. In the area of accreditation, a new Law on the Organisation and Functions of the Turkish Accreditation Council (TURKAK), which entered into force on 4 November 1999, authorises TURKAK to accredit national and foreign organisations to conduct laboratory services, certification and inspection.

8.7 **The Customs Law:** (Law No. 4458 dated November 1999 as amended) describes the rights and responsibilities of people within customs legislation, custom tariffs, origin of goods, value of goods, the arrival, disposal, storage. Inspection of goods, custom regime, free zones, border trade, customs on post affairs, the sale of goods left to customs, the determination of custom tax and payment, the responsibilities of port and storage managers, the working hours of customs personnel, their uniforms and flag of customs, customs consultants and fines. In February 2000, Turkey adopted Customs Law 4458 on the defense of **Intellectual Property Rights**, aimed at fighting counterfeiting trademarks and pirated copyrights.

8.8 **Banking Law (Law No. 4389 dated June 1999 as amended):** The Law defines the Banking Regulation and Supervision Agency, the sworn bank auditors, conditions to establish a bank and structure, deposits, accounting and recording system, measures to be taken as a result of supervision, saving deposits insurance fund, merger, liquidation and consolidation of banks, Banks Association of Turkey, administrative and judicial offence and punishments.

8.9 **Tax Laws:** There is a long list of tax laws and amendments thereto, including Law No. 193 dated January 6, 1961, Income Tax Law; Law No. 5422, dated June 10, 1949, Corporate Tax Law Law No. 3065, dated October 25, 1985, Value Added Tax Law; Law No. 213, January 10, 1961, Tax Procedures Law, etc.). The tax obligations are summarized as follows.

- i. **For works contracts:** Taxes on construction projects are assessed on completion of the project. However, tax returns have to be filed annually. If the works are to be completed within a year, no tax is withheld from the contractor. If the works are to be continued in the next calendar year, a withholding income tax rate of 5% of the invoice value applies, plus stamp duty 0.75%, applicable to both local and foreign contractors.
- ii. **For goods contracts:** No tax is withheld.
- iii. **For consultants contracts:** No tax is withheld by the client if the contract is with a local company. In case of a foreign company and foreign individual, the taxes are withheld as follows: income tax, 20% of the invoice value. For local individual consultants, the tax application is the same as for foreign individual consultants.

9. Commercial Practices

9.1 Turkey's private sector enjoys enormous potential, based on the country's strategic location, its highly developed entrepreneurial culture and large domestic market. The further opening of the market, which was occasioned by the 1996 Customs Union with the EU, has boosted foreign trade and the total value of imports and exports now exceeds 50% of GDP. Overall, the private sector accounted for about 68% of GDP in 2000. The main sub-sectors are manufacturing, including construction (27% of GDP), services (53% of GDP), agriculture and agribusiness (17% of GDP), financial services, tourism, mining and minerals. Turkish industry is characterized by very large privately-owned conglomerates, whose business activities range from manufacturing to construction and banking, as well as a large number of small enterprises.

Turkey's privatization program has proceeded more slowly than expected and in certain sectors, notably infrastructure and energy, the regulatory environment has not been conducive to private investment. However, the Government has committed itself to making greater progress with privatization, setting a target of approximately US\$7.8 billion in revenues from privatization in 2000. For a country of its size and large population, foreign direct investment (FDI) into Turkey is low at some US\$1 bn. per year.

9.2 Construction Sector: Turkey has a strong and well-developed construction sector which, in 1999, contributed 5.5% of gross value added in the economy. Given the strength of the domestic construction sector, the level of participation by foreign bidders in public contracts for civil works is very low. Where foreign contractors do involve themselves, it tends to be in sectors requiring specialized technology and invariably in joint venture with local contractors. Turkish contractors also bid successfully on government- and IFI-financed civil works tenders in neighboring countries, particularly Russia.

In the second half of the 1990s, the growth of construction sector slowed, finally turning negative in 1998, primarily due to high interest rates, which triggered a fall in private investment, and a slowdown in major investment projects. In 1999, the sector saw a 12.7% decline in output in real terms. The reputation of the construction sector was dented following the earthquakes of 1999, as the large number of buildings - particularly public buildings, such as schools and hospitals - which collapsed during the earthquakes prompted accusations that contractors had flouted building standards and skimmed on construction materials. Legislation has since been passed tightening the requirements for independent inspection of private buildings.

9.3 Manufacturing and Consulting Industries in Turkey: The Turkish manufacturing industry is quite developed and Turkey's exports are mainly industrial goods. The textile and food industry is well developed as well. The consulting industry is also developed especially for design works. Construction supervision assignments are mainly executed by public administrations on state investments and, until recently, there was no concept for private supervision construction companies.

9.4 Private Sector Procurement Practices: Private sector procurement and other operations are subject to Commercial Law. According to State Planning Organization (SPO) data, the value of investments made by the private sector varies between USD 32 to 40 billion per year (excluding SEEs) or 16-20 % of GNP.

Private-sector purchasers generally issue well-developed technical specifications for goods and works which they intend to purchase. However, bidding documents are normally simple "Invitation to Bid" documents, which do not include detailed terms and conditions of contract. For goods procurement especially, many purchasers simply accept the terms and conditions of contract which are offered by the bidder though some conditions, such as payment schedule and warranty period, may be amended by negotiation. Generally, Invitation to Bid documents issued by private-sector purchasers do not pre-disclose the criteria to be used in evaluating the bids received.

In general, bids are invited from short lists of qualified bidders, who are invited either directly or in response to an advertisement. Those private-sector firms who use standing lists of qualified bidders generally update these lists every 1 or 2 years.

Most private-sector companies prepare an annual procurement plans, based on a predefined budget; monitor the competitiveness of prices for commonly-purchased items; prepare detailed designs and technical specifications and drawing up and detailed, itemized Bills of Quantity for works procurements; use a form of pre-qualification for large civil works contracts; invite competitive quotations or bids from at least 3 bidders, especially for high-value requirements; in the great majority of cases, negotiate on price. In competitively bid procurement, the most widely-used criteria in bid evaluation are: familiarity / previous satisfactory performance by the bidder; technical compliance / quality of goods; price; and warranty.

As there are no provisions against direct contracting in the Commercial Law, many private-sector purchasers use this procurement method, typically for small-value, repeat purchases and purchasing additional quantities from a supplier previously appointed by a competitive procedure.

The monitoring of contract implementation is more efficient and effective compared to public sector.

10. Strategic Approach

Following the introduction of the GPL in 1983, the Government of Turkey (GOT) has prepared and passed several decrees and regulations, pursuant to the stipulations of the GPL. These decrees and regulations provide a more detailed and comprehensive treatment of various provisions of the GPL which help procuring entities in conducting procurement in accordance with its provisions. Consequently, from the several interviews held with the public officials from different government agencies, it appeared that more or less the public officials comply with the provisions of the GPL in conducting procurement of goods, works and services for their respective agencies. Obviously, most officials seemed complacent with the public procurement system.

However, some public officials did raise substantive issues which related to a general lack of clarity of the procedures; lack of transparency in the procurement methods provided for by the GPL; excessive discretionary authority given to public officials; negative political influences on public procurement; the absence of a regulatory and supervisory body to ensure effective implementation of the GPL through supervision, guidance and training; lack of a public procurement profession in the country. The interviews with the representative of the private sector enterprises (construction, consultants, manufacturing, chambers of commerce and industry) confirmed the existence of these issues and their deep impact on the economy and efficiency of public procurement in Turkey.

The Turkish public procurement system has an immediate need of improvement in its clarity, transparency and competitiveness so that the public funds can be spent with economy and efficiency. This should be the main objective of the new GPL, while at the same time progress towards the harmonization of the GPL with the EU directives, etc should also be made.

11. Measures to be Taken by the Government

The action plan proposed to be implemented by the Government to address the issues in Section 10 above are listed in Attachment 1.

12. Measures to be Taken by the Bank

It is recommended that the Bank continues its procurement dialogue with the Government on the weaknesses of the existing system. The Bank's technical assistance to the GOT may be needed in support of its efforts to prepare a new draft law on public procurement. The Bank has already assured the Government that its technical assistance, including review of the draft law by the Bank's legal and procurement staff is available.

The Bank should continue holding procurement seminars and workshops for the staff of implementation agencies responsible for Bank-financed projects. These seminars have been successful in making public officials aware of the benefits of a transparent and competitive procurement system and in increasing familiarity with international procurement practices.

13. Technical Assistance

The Government of Turkey will need to call on substantial resources to implement the Action Plan appended to this report at Attachment 1. In addition to drawing on its own resources, the EU and the World Bank are possible sources of assistance to the Turkish Government is meeting the cost of these necessary reforms. The World Bank will sympathetically consider any application from the Government for Technical Assistance to support the implementation of the Action Plan. Also, it is understood that the EU may have funding available, from its global and administrative cooperation budgets, to assist Turkey with this effort. A further important assistance which the EU can offer is its "twinning" facility, whereby it can provide public procurement experts from the governments of its Member States on long-term attachment to the Turkish Government. The Government should draw on all these sources to help bring about its public procurement reform and strengthen its capacity.

The costs will be significant. For example, hiring qualified legal experts, both foreign and national, to help draft a new law is likely to cost in the region of US\$300,000 equivalent, assuming some 20 staff-months of input and that this assistance is not grant-financed by another source. Developing a comprehensive training curriculum, based on the new law, as well as training materials and delivering a limited program of training courses for key public officials is likely to cost in the region of US\$400,000, assuming some 30 staff-months of both international and local expert assistance. Finally, establishing, staffing and equipping a new central public procurement office is likely to cost in the region of US\$500,000-US\$750,000, with significant annual operating costs thereafter. It is clear, therefore, that the costs of undertaking the recommended reform program are substantial. Yet, the financial savings which will accrue to Turkey from achieving increased value for money from an annual procurement spend which exceeds US\$30 billion, or 16% of GDP, will give the Government a return equal to many times its initial outlay.

14. Timetable

The Action Plan presented at Attachment 1 proposes a timetable for the implementation of the key recommendations contained in this report. The most pressing need is for the Government to draft a new public procurement law and present it to the Turkish Grand National Assembly by October 2001. The new law should be quickly followed up by detailed implementing regulations to make more specific the provisions of the law. Other key reforms, linked to the passage of the

new public procurement law, should be commenced simultaneously, including the reform of the Contractor Certificate or “carnet” system. Equally urgent is the establishment of an independent central procurement office, which should be entrusted with the key task of overseeing the enforcement of the new law. These steps, if taken in the first year of the implementation period of this report, will assure the Government of substantial gains in the effort to set up a transparent, competitive and fair national procurement system. Over the medium term, the Government may then pursue the goal of approximation and, later, full alignment with the EU Procurement Directives by undertaking a progressive series of reforms of the law over the next, say, five years. Starting with the UNCITRAL Model Law as a base and pursuing EU harmonization by planned, progressive reform is a path which has proven successful for other EU accession candidate countries, such as Poland.

15. Recommended Bank Approach for Supervision

The closed and sealed bidding procedure described under GPL would be acceptable under NCB to the Bank for works and goods contracts provided that the following issues are addressed by the GOT: (i) bid preparation time should be at least 30 days; the pre-qualification procedure, if applied, should be acceptable to the Bank; pre-qualification documents should be drafted and submitted to the Bank for its acceptance before use; estimated contract price shall not be disclosed to bidders; only those Government-owned enterprises which are financially and legally autonomous and operate under the commercial law shall be allowed to participate; bids will be opened immediately after the bid submission deadline; the award shall be made to the lowest evaluated bidder, post-qualification is also acceptable under this method.

In case of acceptance of the sealed and closed bidding procedure as NCB in Bank-financed projects, it is recommended that the Bank should pay special attention to the supervision of this procurement method, especially in the early stages of project implementation.

The following financial thresholds for procurement methods are recommended for Turkey:

Table 15.1: Applicable Thresholds by Procurement Method for Turkey

Procurement Method	Threshold
ICB: Works	>US\$5 million
NCB: Works	<US\$5 million
Minor Works	<US\$100,000
ICB: Goods	>US\$100,000
International Shopping: Goods	<US\$100,000
National Shopping: Goods	<US\$50,000

For the future, in regard to goods for which a sufficiently competitive supply market exists in Turkey and for which foreign firms would not be interested in bidding, the Bank may consider, on a project-by-project basis, the procurement of goods by NCB below a threshold of US\$300,000; above this threshold, ICB would apply for such goods.

Where Bank financing is routed through financial intermediaries, ICB should be used >US\$500,00; commercial practices may be used below this threshold.

The Bank should conduct **Prior Review** for every project on:

- i. all contracts for Goods and Works procured by ICB;
- ii. the first 2 contracts for Goods and Works procured by NCB (may be modified depending on the nature, number and size of contracts);
- iii. contracts with consulting firms >US\$100,000; and
- iv. contracts with individual consultants >US\$50,000.

The Bank should also conduct **Post Review** on at least 1 in 5 of contracts which are subject to post review.

The current mandatory requirement to assess the capacity of a project implementation agency to conduct procurement should be initiated early in the project cycle. During this assessment, the procurement specialist for the project should spend sufficient time informing all those likely to be involved in project implementation of the Bank's procurement requirements.

Project launch workshops for every new project are proving to be useful both to implementation agency staff, as these create a better understanding of the Bank procurement requirements and to the Bank, as this better understanding results in less staff time spent on project procurement issues. Ex-post reviews should also be conducted regularly.

ACTION PLAN

Actions	Responsibility	Year 1	Year 2	Year 3
I. Legislative Development				
1. Establish inter-ministerial Drafting Committee to draft a new public procurement law. Consult interested stakeholders. Hire international legal experts to assist the Drafting Committee. Present a new public procurement law to the TGNA by October 2001.	GOT	X		
2. Apply public procurement law to all agencies, at central and local levels, using budgetary or extra-budgetary public funds, and to SEEs.	GOT	X		
3. Draft and enact implementing regulations.	GOT	X	X	
4. Prepare and enact a medium-term plan for progressive reform of the public procurement legislation to achieve full alignment with EU Procurement Directives.	GOT	X	X	X
II. Reform of Public Procurement Procedures and Practices				
5. Undertake a review of public investment programming, budget planning and procurement planning. <i>(coordinate with the PEIR)</i>	GOT MOF	X	X	
6. Introduce pre-qualification procedure, for large or complex contracts <i>(include pre-qualification provisions in new public procurement law)</i>	GOT	X		
7. Reform the Contractor Certificate system	GOT, MPWS	X		
8. Improve market access by graduated reform and relaxation of legal and administrative obstacles to participation by foreign bidders	GOT	X	X	X
9. Revise the range of procurement methods: reinforce Open Bidding as main procurement method; introduce methods for small-value purchases, direct contracting and consultants' services. <i>(include methods and their conditions for use in new public procurement law)</i>	GOT	X		
10. Increase transparency and fairness: lengthen bidding periods, reform bid opening procedures, use objective bid evaluation criteria; introduce more rigorous requirements for advertising tenders and announcing contract awards; abolish verbal bidding, bracketing and expression of bids as percentage discounts off unit prices. <i>(include in new public procurement law)</i>	GOT	X		
11. Introduce standard pre-qualification and bidding documents for civil works, goods and services.	GOT		X	X
12. Improve the bid protest mechanism; provide a legal basis and institutional arrangements for administrative review <i>(link to establishment of central public procurement office)</i>	GOT	X		
III. Reform of Organization and Resources				
13. Establish a new central public procurement office <i>(establish and define its function in new public procurement law)</i>	GOT	X		

14. Draw up a national training strategy for public procurement	GOT		X	
15. Develop a national training program for public procurement and deliver through identified training institutions.	GOT Training institutions		X	X
16. Establish procurement as a profession within the civil service.	GOT		X	
17. Establish a professional accreditation scheme for Government procurement officers.	GOT		X	
18. Develop a more constructive relationship with the business sector through outreach programs	GOT		X	X
IV. Strengthening Audit and Anti-Corruption Measures				
19. Increase resources and investigative powers of TCA.	TGNA		X	
20. Train TCA auditors in the application of the public procurement law	GOT		X	X
21. Publish results of procurement audits.	TCA	X	X	X
22. Strengthen internal audit functions of procuring entities to audit procurement.	GOT Procuring entities		X	X
23. Strengthen provisions in the Criminal Law on procurement-related corruption and reinforce more rigorously (<i>include reference to Criminal Law provisions in new public procurement law</i>)	GOT	X	X	X
24. Insert specific prohibitions against fraudulent and corrupt activities by bidders in bidding and contract documents (<i>coordinate with development of standard bidding documents</i>)	GOT Procuring entities		X	X
25. Put in place facilities for reporting allegations of fraud and corruption.	GOT		X	
26. Introduce clear conflict of interest rules. (<i>include in new public procurement law and standard bidding documents</i>)	GOT	X	X	