Chapter 5
An Assessment of the Public Procurement System in Turkey

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5.1 Introduction

Public administrations within the state organization are responsible for meeting social needs. The needs demanded by the society require public production and provision. In line with this requirement, administrations can both accomplish production and provision on their own and may also procure them from the market. The main reason behind this is that producers in the market economy can manage production and provision at lower costs compared to public producers. In this regard, producers in the public sector (public administrations) started to hold competitions (tenders) so as to choose the producer that can manage production and provision at the lowest cost. Public production and provision, which was also implemented in the period before 1980, became market-based in the post-1980 period with the "intensive free market economy understanding". In this scope, public sector producers initiate procurements to find the candidate that will carry out production and provision at the lowest cost for the public procurements they will make from the market.

One of the specially focused areas in the restructuring process of public finance management through good governance model is Public Procurement Law. Considering that a major part of the state budget is allocated for construction works and purchase of goods and services, the significance of procurement law is apparent for efficient and effective use of resources. Having a good procurement system increases

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H. Kıral and T. Akdemir (eds.), *Public Financial Management Reforms in Turkey: Progress and Challenges, Volume 1*, Accounting, Finance, Sustainability, Governance & Fraud: Theory and Application, https://doi.org/10.1007/978-981-15-1914-7_5

the efficiency and performance of public finance management and reduces prodigality. A good procurement system functions by arranging each and every stage starting from the inclusion of appropriations required for the needs into the budget and determining the tender procedure, going out to tender, making, approving, and concluding the tender to signing the contract harmoniously in a competitive and transparent manner.

The main motivation of this study is to evaluate the efficiency of the public procurement system in Turkey in the light of the Public Procurement Law numbered 4734 in terms of the results of implementation within the perspective of the process in question and suggestions are made for the improvement of defective aspects. To this end, the study is designed in three sections. The first section focuses on the legal basis and content of the public procurement system. In the second section, practical operation of the public procurement system is examined. The final section evaluates the public procurement system based on the shortcomings and defects in the present implementation in terms of the procurement law and administration and authorities as well as offering suggestions.

5.2 Legal Aspect and Content of Public Procurements

Public procurement system starts with the inclusion of the appropriation required for the needs into the budget and goes on with the processes of determining the tender procedure, going out to tender, implementation, approval, and conclusion of the tender and signing the contract. This system is built upon three pillars which include the procurement law, administrative procurement department, and candidates. The system will be able to operate well on condition that these three pillars are synchronized. However, if the law is poor or the procurement department is inadequate, in fact, if one of these three pillars is weak, a sound system operation cannot be possible. This was explained by the Chinese reformist Wang An Shih, who lived between 1020 and 1086 A.C., with two main reasons (Uğur 2012: 306). These are "Bad Laws and Bad Men". If the law is designed poorly, the result is bad even if men implemented it well, if the law is designed well, but implemented badly by men, the result will be bad in the same way. The literature concerning public procurements includes a great many studies showing that badly designed procurement laws cause corruption, bureaucratic degeneration, inefficient use of resources, borrowing, and even financial crises, while well-designed procurement laws contribute to the development of competitive market, efficient use of resources, increase in quality services, economic growth, and welfare (Schapper et al. 2006; Bovis 2005; Caldwell et al. 2005; Klun and Setnikar 2013; Edler and Georghiou 2007; McCrudden 2004).

The main issue in the implementation of public procurements is to have a well-designed law on tendering. To this end, all countries have been trying to carry out procurements on a good legal basis. Therefore, the operation of the procurements to be made by public administrations is an issue that depends on a legal basis in

every country. For example, having a significant role in the economy of the European Union (EU), public procurements are not included under a separate title in any of the European Union Treaties (Prime Ministry 2011). However, it can be understood that sufficient legal basis has been formed to harmonize the legislation to the field particularly from the articles of "*The Treaty on European Union and Treaty on the Functioning of the European Union*" concerning the free movement of labor, services, and capital as well as the freedom of establishment (Ünay 2004: 1). In this regard, it can be seen that regulations and main principles on public procurements are included in the "*EU directives*" within the EU legislation. Directives and regulations numbered 2004/17/EC and 2004/18/EC include the issues of tendering procedures as well as the procurement of goods and services and construction works. In the directive 2004/18 of the European Parliament and Council published in the Official Journal of the EU dated 30.4.2004, tendering procedures to be employed in public procurements are stated as open tendering procedure, tendering among certain preselected candidates (restricted procedure), negotiated procedure with or without notice and competitive dialogue, and it is also stated that procurements can be held under framework contracts. Procurements carried out as a softened form of these implementations apart from the tendering procedures included in the directives are addressed in the individual legal regulations of the member countries. These procurements are those carried out under threshold values or under a given limit (Strand et al. 2011: 5). Generally called direct procurements, these procurements vary in amount and the way they are carried out by country (Bianchi and Guidi 2010: 1–227). Procurements carried out in the form of direct procurements within the scope of negotiated or restricted tendering procedures are implemented in different ways. Thus, direct procurements appear as a practice implemented in negotiated procurements or those held among certain candidates. This practice may vary by country. For instance, among the procurements carried out this way, the share of procurements without notice in the total is 5% (Strand, et al. 2011: 16). It is similar for procurements among certain candidates, which is also around 5%.

As a nonmember country, Turkey formed the legal basis for public procurements with the "*Public Procurement Law numbered 4734 and dated 2002*". This law, at the same, depends on UNCITRAL (The United Nations Commission on International Trade Law, the model law of the World Bank. In order for the tenders made on the basis of this law to be completed, "*The Law on Public Procurement Contracts numbered 4735 and dated 2002"* was enacted. Hence, these two main laws set the legal infrastructure of public procurements. In the same way, regulations issued in accordance with these two laws support the legal infrastructure of tendering procedures. The regulations that were issued for procurement of goods, services, and construction works and are included in the scope of the procurement law are as follows: *"Framework Regulation on Procurement of Goods*, *Framework Regulation on Procurement of Services, Framework Regulation on Procurement of Work and Framework Regulation on Procurement of Consultancy Services."* In addition to the Laws numbered 4734 and 4735 as well as the related regulations, communiqués issued are also important arrangements for the smooth functioning of the system. With the updates completed on it, "General Communiqué of Public Procurement"

dated 2009 is the main communiqué in the system. Hence, in line with the content of their needs, public administrations carry out public procurements applying to the Public Procurement Law (PPL) and Law on Public Procurement contracts within the general frame and to the related regulations and communiqués announced as the secondary legislation in the sub-framework.

Main arrangements have been made concerning tenders in the content of Public Procurement Law which is included in the legal basis of public procurements. These main arrangements concern the coverage of administrations by the law, procurements excluded by the law, main principles, exceptions, tender procedures, rules on participation, procurement proceedings dossier, tender conditions and noticing principles, submission and conclusion of applications, and conclusion of the tender and complaint application.

5.3 Operation of the Public Procurement System

Public administrations are liable to carry out the procurements they need pursuant to the Public Procurement Law. Administrators cannot supply the procurement of goods and services and needs concerning construction works of their administrations from the market on their own will. Administrations are obliged to carry out procurements in accordance with the Public Procurement Law. The law brings together procurements from the lowest to the highest amount by separating them as with or without notice to form a system. Procurement departments of administrations can initiate their procurement proceedings by opening the procurement dossier in accordance with the appropriation allocated and depending on the content of goods, services, or works to be procured.

The law pays attention to the procurement procedures to be applied in procurements and specifies open and restricted procedures as the main procedures. In addition to the "*open procurement procedure*" and "*restricted procurement procedure*", "*negotiated procedure*" is included as the third and last procedure. Considering these procedures, open procedure appears to be the most competitive procurement when any tenderer is expected to submit a tender (PPL; a; 19). Since the use of the restricted procedure requires specific conditions, it also provides a competitive proceeding as those who fulfill the specified conditions submit tenders. As for the negotiated procedure, the last procurement procedure stated, procurement proceedings are carried out with or without notice in cases specified in the Law. Procurements carried out with this procedure have a less competitive characteristic in comparison with the other two procedures. This is because some of the procurements are ensured to be held without notice in the negotiated procedure. Apart from these procedures, there is another way of procurement included in the Law, but not stated as a tendering procedure, which is called "direct supply" method. the Law lays down the conditions for the purchases to be made through direct supply method. The most frequently used condition is that in procurements not exceeding a certain amount of a monetary limit for needs of contraction authorities within the boundaries of metropolitan municipalities and

procurements not exceeding a certain amount of another monetary limit for needs of other contracting authorities can be made by direct supply method (PPL, a; 22/d). These amounts are updated annually by the Public Procurement Authority.

Setting aside which tender procedure to choose depending on the conditions for public procurements, the condition that adequate appropriation for the related procurement shall be allocated in the budget is among the significant conditions of the Law. Procurement proceedings with adequate appropriation which are determined according to the conditions laid down by the Procurement Law are fulfilled within the time limits stated by the Law. For instance, notices of procurements to be conducted by open procedure are published 40 (forty) days prior to the procurement date on the EPPP (Electronic Public Procurement Platform) and the procurement is held on the date and at the hour specified. Following the procurement, the contracting officer approves or cancels the tender decision within 5 (five) working days. In this example, it is assumed that the process continues uninterruptedly. Even assuming that all the stages of the procurement go on without any interruptions, completion of the procurement shall be realized within 60 (sixty) days. However, any possible problem to come up in the procurement process extends the time, which causes administrations to avoid procurements with notice. In this regard, direct supply procurements (PPL, a; 22) and those carried out in the negotiated procedure without notice (PPL, a; 21/b, c, f) are included in the procurement methods that can be defined as without notice in the law.

The contracting officer[1] is obliged to give the certificate of approval for the procurements needed for spending the appropriation allocated to him. Procurement proceedings are initiated upon the certificate of approval. The procurement department conducts market research for prices and ensures that the administration can specify the highest procurement price (estimated cost). The highest value that the administration wishes to purchase is found among market prices. Tender is submitted with this value which is called the estimated cost. Offers to be received must be as high as this value or lower. The candidate offering the minimum price wins the tender.

What is important in the operation of the procurement system is that administrations shall carry out procurement proceedings pursuant to Public Procurement Law. If administrations conduct procurement proceedings as stated by the Law, an important part of the system operation is fulfilled. The rest is concerned with the candidates. Ensuring that all tenderers have equal opportunities and conditions constitutes the other significant aspect of the system operation.

[1]Contracting Officer means authorized and liable persons or boards as well as those persons to whom the required authority and liability has been transferred properly in the contracting authority to spend and to carry out procurement proceedings.

5.4 Evaluation of the Public Procurement System

Public procurements shall be carried out in line with the principle of competition in choosing procurement procedures and preparing the procurement dossier as well as concluding the proceedings. By complying with this principle, it is assumed that the law makes procurements at the most economical prices and the procurement system functions well. As mentioned before, the content of the procurement law (good law) and the opinions and acts of candidates (good men) are two very important factors in attaining this functioning. In this regard (good law, good men), it is possible to evaluate the public procurement system in Turkey as follows.

(a) **Evaluation of the System in terms of the Procurement Law**

When evaluating the public procurement system, it is important to analyze whether the Public Procurement Law can be qualified as "good law". The Public Procurement Law is dated 2002. As of 2018, it can be seen that the Law has gone through amendments for many times over the past sixteen years. The Law has been amended nearly two hundred times in many of its articles with approximately fifty-five legal arrangements (see: PPL). While keeping laws up-to-date and making necessary amendments to this end is acceptable, such many changes on a sixteen-year-old law should be considered as a practice beyond the need for updating the law. When the amendments are examined, it is seen that they have been made in order to carry out proceedings faster rather than improving procurements or promoting competitiveness, and it is possible to state that they have brought about conditions which weaken competition, damage transparency, and impede equal treatment. The best example to be given concerning the issue is that about twenty of these amendments are on exceptions.

The fact that the law included five exceptions in the first year it was enacted while today there are twenty exceptional conditions; that is there are so many exceptions implies that there is a tendency to move related procurements beyond the law and conduct them freely. Some evaluations have been presented in the "*European Commission 2010 Progress Report of Turkey*" (Günal 2011: 108) and later in the "*European Commission 2016 Progress Report of Turkey"* which pointed out the increase in the amendments made on the Law from the time it was enacted up to today. According to the 2017 Procurement Monitoring Report, 19 billion (8%) TL of the total public procurements of 232 billion TL was made within the scope of exceptions. Exceptional procurements (12 billion TL) of municipal companies and state economic enterprises are particularly noticeable. Especially procurements by municipal companies from municipalities in the scope of exceptions impair competitiveness, equal treatment, and transparency with regard to market. After all, works to be conducted by municipal companies may as well be carried out by other companies on the market. This is specifically stated by the European Union Directives (2004/17 and 2004/18), which emphasize the importance of ensuring nondiscrimination among companies, equal treatment, and transparency[2]. We are in the opinion

[2]Directive 2014/24/Eu of the European Parliament and of the Council of 26 February 2014, On Public Procurement and Repealing Directive 2004/18/Ec.

that the figures pertaining to procurements given to publicly owned companies have reached a level that should be considered in terms of competition and equal treatment. In this regard, it is possible to assert that this law has moved away from being a "good law". What should be done concerning the problem is to downsize the scope of exceptions so that it is transformed back into the framework it had when the Law was first enacted.

Another issue concerning the evaluation of the Law is the ratio of the amount of direct supply procurements and negotiated procurements without notice which also include exceptions within the total procurements in order to ensure competition, transparency, and equal treatment. In the data of the Public Procurement Authority, it is seen that this ratio is rather high. For example, according to the figures pertaining to 2017, around 29% of the total procurements are comprised of procurements carried out through negotiated procedure without notice, direct supply, and exceptions (Public Procurement Monitoring Report 2017: 4). Although the practice of "Direct procurements", which is called "direct supply" in Turkey, is indispensable for European Union countries as well, it is important to ensure competition and transparency. In the European Union, this procurement procedure is employed when carrying out emergent, priority, and special works, and firms are provided with information flow (notice) and a satisfactory environment. While Germany, Spain, Denmark can be given as examples of countries where a competitive environment is established, Slovakia, Estonia, and Poland can be referred as those where competitiveness is poor (Strand et al. 2011: 96). In the decisions it makes, the Council of the European Union pays attention particularly to the core principles which can be defined as competition, transparency, equal treatment, and nondiscrimination (OECD 2011: 4). Attaching importance to these key principles in the tender procedures that member countries use in their procurements is considered critical to eliminate unlawful acts between member states and candidates.

As for the evaluation in the context of Turkey, in terms of competition and equal treatment principles, it is necessary to eliminate procurements held both through "direct supply" without notice and "negotiated procedure" without notice, to publish notices on the EPPP by shortening notice periods and not to conduct procurements without notice by reducing exceptions. Such actions to be taken to this end would enhance the good law characteristic of the Law.

Another point concerning the evaluation of the Law is about the valid time periods in the procurements particularly in open tenders and those among certain candidates (restricted tenders). Basically, these periods are close to those implemented by the European Union. However, in Turkey, both problems coming up in the preparation process for tenders and the fact that complaint applications are made quite frequently negatively affect administrations' conclusion of tender proceedings as well as causing them to turn to negotiated procedure or direct supply in the event that procurement is not realized. Concerning tendering periods the Law includes the provision that notices shall be published at least 40 (forty) days prior to the date of the tender for open procedures (it can be shortened 7 (seven) days if the notice is published via electronic media) (PPL, a; 13). Considering such time periods requiring that the tender decision shall be approved in 5 (five) days, the tenderers shall

be acknowledged in 3 (three) days, the contract shall not be signed unless 10 (ten) days pass, responses shall be made in 10 (ten) days before signing the contract in case of a complaint, complainants shall apply to the Public Procurement Authority in 10 (ten days) for appealing complaints and the Authority shall make a decision in 20 (twenty) days, the Authority shall make a notification in 5 (five) days, and the concerning Administration shall implement the decision urgently upon notification; a tender shall be concluded in 2 (two) months without any complaints and in a period exceeding 3 (three) months in case of complaints. Such extended periods conflict with the understanding of running works faster held by the administrators in Turkey. Moreover, in the event that the tender is canceled at the end of the tender proceedings, administrations get into a problematic process particularly in service and construction works. This seems significant especially for municipalities. Since municipalities are the closest service units to the community, when a work fails to be tendered, they come up against the community. Hence, although notice periods are similar to those in the European Union, as the understanding of the management is to run works faster in Turkey, it should be considered that the periods are, to our opinion, long, preparation periods should be shortened seriously together with the EPPP and complaint and contract periods should be shortened similarly. Shortening notice periods for tenders would also move this Law closer to being a good law.

(b) **Evaluation of the System in terms of the Administration and Authorities**

It can be said that public procurements have a systematic operation and this systematic operation is well/badly affected by the good/bad design of the law as well as the good/bad acts of the administrations and authorities implementing this law. In this framework, administrations and authorities implementing Public Procurement Law may carry out procurement proceedings both by interpreting the articles of the Law in their personal way and by opposing to these articles. However, such acts violate competition, transparency, and equal treatment principles in public procurements and cause the system to be damaged. Therefore, as mentioned at the beginning of the present study, in addition to "good law", the acts of administrators and contracting officers for the functioning of the motto of "good men" are also important in order for the system to operate well. Concerning people's operating the Law correctly; it is possible to define the situations faced in Turkey and to assess the precautions to be taken in such situations as follows:

The first issue to be covered concerns the tender procedures employed in procurements. The law specifies the principal tender procedures as open procurements and procurements among certain candidates. When the implementation is concerned, data pertaining to the year 2017 show that procurements of 165 billion TL out of the total 232.8 billion TL were made using these procedures. The rest of them were carried out through direct supply (3.2 billion TL), negotiated procedure (45.3 billion TL) and in the scope of exceptions (19.3 billion TL). According to these figures, 70% of the procurements were made using main tender procedures, while negotiated procedure, direct supply, and the scope of exceptions were employed in the remaining 30%. Considering the fact that a majority of the tenders conducted with these procurement procedures are made without necessitating notices, it should be

asserted that their preference by administrations violates competition and equality, which may in turn bring about the risk of corruption (Çetinkaya 2014: 103). It was also stated in the European Commission 2016 Progress Report of Turkey that the Procurement Law is open to corruptions from this aspect. Comparing the negotiated procedures implemented with and without notice, procurements made without notice constitute over 90% of the total negotiated procedure. The considerable extent of application to the article 22/d of the Law for direct supplies and 21/b for negotiated procedures (Public Procurement Monitoring Report 2017: 4–5) indicate how much competition and equality principles are violated. Court of Accounts reports indicate that administrations make procurements which are not included within the scope of the article 22/d (direct supply) of the Law referring to it particularly because they interpret the article in their own perspectives. Moreover, it is also included in the Court of Accounts reports that administrations do not comply with the provision that *"the annual total of expenses to be made within the monetary limits specified in the articles on negotiation (a: 21) and direct supply (a: 22) of this Law cannot exceed 10% of the appropriations to be allocated in administrations' budgets for this purpose."* The Law aims to state clearly that "*accordingly, the administration can make procurements from the persons they wish through direct supply up to 10% of the appropriations, but any amount exceeding this would not be in compliance with the competitive and equal treatment characteristics of the Law,*" which, however, is not considered by administrations. Approaching the issue from the administrations' side, they regard this fact as fulfilling works fast through facilitating procurements. However, bringing a competitive and equal treatment oriented understanding to tenders is favored by all parties. What should be done in this respect is to carry out any procurement, small or big, with notice and it should be seen as an important change to extend EPPP practices and to remove publishing newspaper notices from the legislation.

Another issue concerning administrations is the estimated cost. The Law states that estimated costs shall be determined by the administration and shall not be explained under any circumstances. During the tender process, the administration determines the estimated cost, candidates submit their offers, candidates' offers are compared to the administration's estimated cost, and the winner is announced. However, in this process, some non-visible situations may come up. For instance, the fact that the offers of some candidates are very close to each other in some tenders[3], some firms had been informed of the estimated cost or in some cases that offers remain much lower than the estimated cost and eliminated in the offer evaluation, but the offer of the winning firm is seen to be suitable may indicate that the estimated cost had been learnt or determined incorrectly. Hence, keeping estimated costs confidential is not beneficial to the administration, but it even brings about a disadvantageous situation for the administration. This may cause either extremely low valuation for

[3] In a decision made by PPL on the issue, it was stated that the incidence of two candidates submitting the same amounts of offer and the third candidate submitting an offer only different in the kuruş part is too low in the ordinary course of events and in the bounds of possibility and the tender was canceled.

tenderers or administrations' making procurements at high costs (Serdar 2010: 38). Confronting extremely low offers puts both the administration and the candidates into difficulty. Therefore, extremely low offers constitute a critical problem particularly in construction works (Eren 2010: 72–73). Incorrect determination and violation of confidentiality of estimated costs has been a noticeable result obtained from questionnaires conducted with administration personnel (Kömürcü 2006: 93–94).

The fact or the impression that the estimated cost was already known causes everybody to come under suspicion (Serdar 2010: 34). Hence, problems stated concerning the estimated cost appear to be practices that impair competition and equal treatment principles. In the Public Procurement Authority data concerning the farfetched determination of estimated costs, it is seen that a 20% difference occurred in the open procurements for 2017 between estimated costs and the contract amounts in reality (Public Procurement Monitoring Report 2017: 8). It is a well-known fact that tender prices come out high as a result of the lack of qualified personnel in the administration and failure to conduct market research effectively, particularly in construction works (Doğanyiğit 2010: 98–99). This fact is also stated in the European Commission 2018 Progress Report of Turkey. The report expresses that preparation of procurement documents has some defects, methodological and organizational shortcomings, and that personnel change occurs frequently. Although there is an effort to observe the provision that estimated costs shall be kept confidential in the Law today, it has become possible for market actors to be able to predict these costs with no big differences considering that administrations determine pricing by asking market actors. In addition, since market actors know each other by the sector, they are able to predict the offer each may give. Therefore, the meaning of keeping the estimated cost confidential seems extremely important. If the estimated cost was determined and announced by the administration, it would mean the administration stated that "*We would like to purchase under this specific value*" and market actors would base their offers on this value. Such an arrangement would eliminate many troubles (extremely low offers, incorrect cost determination, malicious agreements of firms, etc.) within the system. Hence, tenders could be concluded in a fast and complaint-free way.

For a smooth operation of the procurement system, another important issue to be covered is the personnel responsible in system operation. The ordinary status of the officers working in the procurement departments of public administrations remains insufficient as far as the significance of the task they undertake. Moreover, although these officers get to know the work better in time, their position changes within the institution and the fact that they work with continuously changing managers affect the smooth sustainability of procurement proceedings negatively. In this respect, considering the material and nonmaterial responsibilities of the personnel conducting procurement proceedings within the framework of the provisions included in several laws (State Personnel Law, Public Procurement Law), it would be important to add the title "procurement personnel" to the related law (when the efficiency of spending public revenues also covers this point is taken into consideration). In the context of professionalization of the procurement department, physical opportunities and working conditions of the personnel should be provided at the highest level. It is

extremely important to increase the quality and number of the personnel working in the procurement department. Persons to be recruited in the procurement department must be subjected to training on procurement legislation and it should be ensured that they receive continuous training to refresh themselves as well. In the European Commission 2015 Progress Report of Turkey, the issue is stated as "*The Public Procurement Authority should direct its educational and operational support onto institutions with more limited capacities such as municipalities*." In addition to the personnel carrying out regular procurement proceedings, it must be ensured that payments are made in the form of risk payment or daily allowances to the persons to be included in the tender commission (Karatoprak 2011: 422). Persons assigned to take part in the commission feel the commission membership as forced labor, so additional payments to be made to these individuals may lead to relieve their minds at least.

The emphasis that human factor is important in the operation of public procurements has been made at some points and the biggest step to be taken is to adopt an operational and professional understanding. In order to have a system that can be sustained in a professional understanding together with the managers and officers of administrations, it is important to establish a professional personnel network at the central level and to put effort for its maintenance at the rural level as well.

5.5 Conclusion

The present study focusing on a brief description and evaluation of the public procurement system in Turkey is based on the motto "good law, good men". Most of the time, many well-prepared and well-constructed laws have been deviated from their man goals and targets due to poor implementation. As a natural result of the rapid changes taking place today, amendments are inevitable. Such flexibility is also significant in terms of the efficiency of laws. However, it is essential that laws are designed well and the spirit of the law should not be violated by the amendments made thereafter. In addition, it is also necessary that the administrators implementing the law and related parties have good intentions and qualifications complying with the rules. In this regard, Public Procurement Law numbered 4734, which sets the basis for public procurements, has some defects in terms of sound operation and conclusion of procurements as also stated in the study. These defects concern the issues of exceptions, the choice of tender procedures, ways of procurement other than procurement procedures and estimated costs.

For an effective process in the public procurement system, establishing competition is rather critical in each and every step from determining tender procedures to preparing the procurement dossier to concluding the tender. This principle ensures effective and efficient use of the resources. Competition in the public procurement system defines a transparent process in all aspects and equal treatment. Examined as of 2018, the law dated 2002 appears to have gone through many amendments and a great number of exceptions have been included within the scope of the Law.

Making amendments is an ordinary practice considering the necessity for updating the Law. However, amendments seem to be made in order to carry out works in a faster pace rather than implementing public procurements in a more correct and sound manner or increasing competition. In this respect, it could be said that the Law has been through a change that weakens competition, impairs transparency, and impedes equal treatment. For instance, the share of procurements particularly made in the scope of exceptions within the total amount is 8% (19 billion TL) as stated in the evaluation section. Considering the fact that a majority of exceptions are included in the procurements made by municipal companies and state economic enterprises, how much market competition is negatively affected is observed. Another important point we have spotted concerns the time periods that are valid particularly in open procedures and procedures among certain candidates. Our opinion that tendering processes should be shortened is based on the necessity for the periods of preparation, complaint, and contract to be influent in procedure within the scope of the Law. Otherwise, bringing more exceptions for a faster procurement is against the nature of a competitive procurement. Another issue we addressed in the study is high costs. Inaccurate determination of estimated costs and violation of confidentiality are indicators that resources are not used effectively and efficiently in the first place. According to Procurement Monitoring Report values, there is a 20% difference between estimated costs and contract amounts. On the other hand, in procurements especially participated by municipality-owned enterprises, this difference is almost zero. These facts are concerning. Finally, the issue we see necessary for a good procurement system is about the personnel employed in the operation of the system. Our main suggestion in this respect is that administrators, like those in all other public institutions and organizations, should have sufficient expertise, technical competence, and experience regarding the cost of the work. In other words, it is the necessity for them to be professional. In this respect, as also mentioned in the evaluation section, the personnel conducting the procurement proceedings should be reassessed with the tile of "procurement personnel" by considering their material and nonmaterial responsibilities.

While they seem to be low in quantity considering the whole body of the Law, these aspects are very influential in terms of quality. The evaluations made concerning these aspects throughout the article may help the procurement law to be sounder. The issue of administrators and related officers, which is dealt with as another point in addition to the content of the Law, brings about results as significant as the Law itself. After all, in the case that these persons as the implementers of the Law have bad intentions, inefficient use of appropriations (resources) comes into question. As the final say; considering both in the context of Turkey and other countries, the motto "good law, good men" is a critical expression that can be accepted as a universal slogan.

References

Bianchi, T., & Guidi, V. (2010). The Comparative Survey on the National Public Procurement Systems across the PPN. Authority for the Supervision of Public Contracts, Department for the Co-ordination of European Union Policies, PPN Presidency.

Bovis, C. (2005). *Public Procurement in the European Union*. Houndmills, Basingstoke, Hampshire: Palgrave Macmıllan.

Caldwell, N., Walker, H., Harland, C., Knight, L., Zheng, J., & Wakeley, T. (2005). Promoting Competitive Markets: The Role of Public Procurement. *Journal of Purchasing and Supply Management*, 11(5–6), 242-251.

Çetinkaya, Ö (2014). "*Kamu İhale Kanunu ve Yolsuzluk Riskler*i". Bursa: Ekin Yayınevi.

Doğanyiğit, S. (2010). İhalenin Ruhu. Yaklaşık Maliyetin Gizliliği. *Dış Denetim Dergisi*, Ekim-Aralık 98–99.

Edler, J., and Georghiou, L. (2007). Public Procurement and Innovation-Resurrecting the Demand Side. *Research Policy*, 36(7); 949–963.

Eren, M., E. (2010). 4734 Sayılı Kamu İhale Kanunu ve Yeni Bir Kanun İhtiyacı, *Dış Denetim Dergisi*, Ekim-Aralık, 71–75.

Günal, C. (2011). "İdarelerin Mal ve Hizmet Edinme Usullerinden Biri Olarak Kamu İhaleleri". *İstanbul Üniversitesi Sosyal Bilimler Enstitüsü*. Yayınlanmamış Yüksek Lisans Tezi.

Karatoprak, E. (2011). Kamu İhalelerinde ve Sözleşme Yönetimi Süreçlerinde görevlendirilen Kamu Personelinin Sorumlulukları, *Maliye Dergisi*, 160; 411–422.

Klun, M., & Setnikar, C., S. (2013). Better Regulation and Public Procurement in Slovenian Municipalities. *Transylvanian Review of Administrative Sciences*, (38), 96–106.

Kömürcü, G. (2006). "4734 Sayılı Kamu İhale Kanununun Uygulamasında Karşılaşılan Sorunlar". *İstanbul Teknik Üniversitesi Fen bilimleri Enstitüsü*. Yayınlanmamış Yüksek Lisans Tezi.

McCrudden, C. (2004). Using Public Procurement to Achieve Social Outcomes. *Natural Resources Forum*, 28(4); 257–267.

OECD, (2011). *Public Procurement in the EU: Legislative Framework, Basic Principles and Institutions, Brief 1*, Retrieved from http://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-1-200117.pdf.

Olgun, B. (2006). "4734 Sayılı Kamu İhale Kanunu'nun Uygulanmasında Karşılaşılan Sorunlar İçin Çözüm Önerileri". *İstanbul Teknik Üniversitesi Fen Bilimleri Enstitüsü*, Yayımlanmamış Yüksek Lisans Tezi.

Schapper, J., Malta, N. J., and Gilbert, L. D. (2006). An Analytical Framework for the Management and Reform of Public Procurement. *Journal of Public Procurement*, 6(1/3); 1–26.

Serdar, A. (2010). Kamu İhale Mevzuatı Hakkında Genel Değerlendirme, *Dış Denetim Dergisi*, Ekim-Aralık, 34–43.

Strand, I., Ramada, P., Canton, E., Muller, P., Devnani, S., Bas, P. D., & Dvergsdal, K. (2011). Public procurement in Europe. Cost and effectiveness. Bruss. PwC Lond. Econ. Ecorys.

T.C. BAŞBAKANLIK Avrupa Birliği Genel Sekreterliği (2011), Avrupa Birliği Antlaşması ve Avrupa Birliği'nin İşleyişi Hakkında Antlaşma, Ankara, Retrieved from https://www.ab.gov.tr/files/pub/antlasmalar.pdf.

Uğur, H. (2012). Türkiye'nin Yolsuzlukla Mücadele Enstrümanları, *Türkiye Barolar Birliği Dergisi*, 98; 301–344.

Ünay, N. (2004). Türk Kamu İhaleleri Sisteminin Avrupa Birliği Kamu İhaleleri Sistemi İle Uyumlaştırılması, Retrieved from http://www.escrc.com/article/1449/turk-kamu-ihaleleri.

Internet References

Avrupa Komisyonu Türkiye 2010 Yılı İlerleme Raporu, Retrieved from https://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/turkiye_ilerleme_rap_2010.pdf.

Avrupa Komisyonu Türkiye 2016 Yılı İlerleme Raporu, Retrieved from https://Www.Ab.Gov.Tr/Files/Pub/2016_Ilerleme_Raporu_Tr.Pdf.

Avrupa Komisyonu Türkiye 2015 Yılı İlerleme Raporu Retrieved from https://www.ab.gov.tr/files/5%20Ekim/2015_ilerleme_raporu_tr.pdf.

Public Procurement Authority, Public Procurement Law numbered 4734, Retrieved from http://www2.ihale.gov.tr/english/4734_English.pdf.

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