

US-Turkey Business Council, Session III

Topic 5.c.

Government Procurement

Introduction

Effective public government procurement practices reduce contracting costs, improve value, and support economic development. Public procurement is time-consuming and can require complex procedures. There are risks of errors and of deliberate abuse of the process for personal gain by officials or by contractors and suppliers. Issues in procurement can lead to delays, poor quality or lack of value-for-money and can undermine the trust of citizens in their government.

Good procurement practices include many of the same themes as good governance, especially transparency and accountability. Good governance in procurement brings immediate benefits in resource savings and improved quality of works and services. In turn, establishing and demonstrating the benefits of good procurement practice results in improved administrative capacity and better understanding of the essential building blocks of good governance.

For countries with developing economies like Turkey, effective public procurement can help build important national capacity, spur technological development, generate local employment and create opportunities for vulnerable members of society or disadvantaged demographic or geographical sectors. On the contrary, failure to institute and adhere to effective government procurement practices can sap overall trust in government and undermine a country's economy.

The following are considered to be key principles of any procurement policy or system: transparency, integrity, economic viability, openness, fairness, competition and accountability.

Comparing the US and Turkey

United States Public Procurement - Public procurement in the US is governed by the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget which plays the central role in instituting US federal policies and practices. The OFPP shapes the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. Two statutes are the foundation for modern federal procurement: Federal Property and Administrative Services Act of 1949 (41 USC.) (FPASA) and the Armed Services Procurement Act of 1949 (10 USC.) (ASPA). The Federal Acquisition Regulation (FAR) establishes public procurement procedures.

With few exceptions, US public tenders are publicly listed on the Federal Business Opportunities website. Aside from a few common business registration requirements, foreign companies are eligible to compete for almost all contracts on an even playing field with US companies. The US federal procurement system is also subject to numerous statutes and international agreements. For example, the US became a party to the World Trade Organization Government Procurement Agreement on 1 January 1996 (this agreement seeks to ensure open, fair and transparent conditions of competition in the government procurement markets).

Turkey Public Procurement - Public procurements in Turkey play a large role in the overall Turkish economy, making up an estimated 10% of GDP. Public procurement law in Turkey is set forth in the Public Procurement Law of Turkey dated January 2012. Turkey is an *observer* to the WTO Government Procurement Agreement. Turkey signed a customs union with the EU in 1995, but the agreement does not address government procurement.

The Public Procurement Authority of Turkey is the responsible agency for administering government procurement procedures. The Public Procurement Authority openly announces most public tenders and has a website in both Turkish and English (contract announcements are made in Turkish). The Public Procurement Authority's e-Procurement system allows interested parties to download and view tender documents free of charge. The Public Procurement Authority also offers a tender award appeals process. Turkey's procurement law generally requires competitive bidding procedures in the public sector. It also

sets minimum bidding thresholds under which foreign companies are prohibited from bidding and stipulates a price advantage of up to 15% for domestic companies. The Public Procurement law stipulates “the economically most advantageous tender shall be awarded with the contract,” but also states that “In cases where it is not possible to determine the economically most advantageous tender on the basis of the lowest price only, the economically most advantageous tender shall be determined by taking into account the factors other than price such as operation and maintenance costs, cost-effectiveness, productivity, quality and technical merit. In tender proceedings where the economically most advantageous tenders shall be determined by taking into account the other factors in addition to the price, these factors must be stated in the tender documents and where possible, must be expressed in monetary values. Relative weights shall be determined in tender documents for the factors which cannot be expressed in monetary values.” Thus Turkey’s Public Procurement Law seems to have the benefit of avoiding the trap of having to award a contract solely on lowest cost criteria.

Recommendations:

Support global best practices in public contracting—seeding innovation. While attempting to ensure stringent and transparent application of government procurements laws and procedures, government agencies charged with implementing contracting also run the risk of choking off competition, innovation, and quality.

- **Seek to avoid overly rigorous pre-bidding qualification requirements that tend to create roadblocks that limit competitiveness and prevent Small and Medium Enterprises (which often offer the most innovative solutions).**
- Excessively large projects result in only a few contractors being cable of submitting tenders, thus stymieing competition and innovation. This is especially true in the information services arena. **Even though it requires more work on the part of government contracting authorities, breaking down projects into smaller work packages can create a level playing field and broaden the number of companies that can take part in a project and foster more innovative solutions.**

- Government laws and procedures have a hard time keeping up with the pace of technology. **To seek more agile solutions, governments can engage in expanded pre-bid dialogue with prospective solution providers to learn more about the state of technology and help contractors design the best possible product or solution. Public tenders can be a way of attracting international technology that can then be made part of local solutions, thus spurring potential development.**