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Public Procurement in Infrastructure: The Case of Turkey

ABSTRACT

The Turkey Country Report was prepared as part of the requirements for the ANTICORRP project, WP8. The report employs national data to analyse recent developments in the construction sector. However, the contract-level procurement data have not been compiled as requests for the data were unanswered by the Turkish Public Procurement Agency. Therefore, aggregate data on public procurement have been used to trace developments in law and implementation. The post-2002 incumbent AKP government has to a large extent considered construction investments as an engine of economic growth which resulted in a substantial expansion of this sector. The Turkish Public Procurement Law (PPL) came into force in 2003 to bring Turkey into compliance with EU procurement standards. Although certain improvements have been achieved, frequently introduced exemptions distorted the rules and procedures for transparency, competition and non-discrimination. A considerable number of amendments have aimed at removing major public contracts from the scope of PPL. Recently, Public-Private Partnerships (PPPs) have been used principally to build up large-scale infrastructure projects. Due to the large capital requirements and the fact that the legal structure of PPPs is largely incompatible with the PPL and the EU regulations, only a smaller group of companies which have allegedly close connections with top level politicians win PPP projects worth billions of Euros. Thus, under the current framework, PPPs in the Turkish construction sector are significantly prone to corruption risks.

KEYWORDS

public procurement, construction sector, Turkey, EU compliance

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ACRONYMS

AKP Adalet ve Kalkınma Partisi (Justice and Development Party, the ruling party in Turkey since its founding in 2001)

ALB Abnormally Low Bids

BDP Barış ve Demokrasi Partisi (Peace and Democracy Party)

BOT Build, operate, and transfer

CHP Cumhuriyet Halk Partisi (Republican People's Party)

EC European Commission

EPPP Electronic Public Procurement Platform

EU European Union

GDP Gross Domestic Product

IPA Instrument for Pre-Accession Assistance

İBB Istanbul Büyükşehir Belediyesi (Istanbul Metropolitan Municipality)

İSKİ Istanbul Su ve Kanalizasyon İdaresi (Istanbul Water and Sewerage Administration)

MHP Milliyetçi Hareket Partisi (National Movement Party)

PPA Public Procurement Agency

PPB Public Procurement Board

PPL Public Procurement Law

PPP Public-Private Partnership

REB Report Evaluation Board

SEE State Economic Enterprise

TCA Turkish Court of Accounts

TGNA Turkish Grand National Assembly

TPC Turkish Penal Code Law

TRY Turkish Lira

TABLES

Table 5. Regulations for Delivery of Public Services in Turkey

I. INTRODUCTION

The perception of corruption or corruption risk is a serious concern for much of Turkish society, which is clearly observable in public opinion surveys. For instance, according to a 2013 Corruption Survey prepared by Ernst &Young (2013) Turkey performed relatively better than certain European countries in terms of public perception of bribery and irregularity, but failed in the area of public procurement. Some 39% of respondents think that bribery is a must in order to qualify for a public procurement contract. Transparency International (2013) identified public procurement as one of the sectors most susceptible to corruption, with many cases involving high-level figures. Similarly, the 2013 Enterprise Survey study by the World Bank and IFC (2013) singled out public procurement as the greatest source of corruption along with other activities such as getting a construction permit, and import and operating licenses. Not only international studies underlined corruption risks in public procurement but domestic studies also put emphasis on the issue. A nationwide survey conducted amongst firms (Adaman et al. 2009) pointed out the perceived favouritism in large scale public contracts such as highway and dam procurement increased between the years 2004 and 2008.

The existing AKP government, in power since 2002, has to a large extent considered construction investments an engine of economic growth, and has therefore paid special attention to expanding this sector. The share of construction expenditures as a percentage of GDP is about 9% of which approximately 5-6% comes from the private sector. The total amount of public procurement constitutes almost 6% of GDP the majority of which comes from central government agency projects, not local government projects. Public Procurement Law (PPL) also regulates certain expenditures of state economic enterprises (SEEs) whose share of procurement in GDP is 1%. Finally, the share of public works contracts in total has considerably increased from 38% in 2008 to 60% in 2013, a result of the construction-led growth strategy pursued in Turkey.

The PPL came into force in 2003 to bring Turkey in alignment with EU Public Procurement Directives. The PPL was largely in conformity with the EU *acquis* at the beginning although not fully. Consecutive AKP governments have repeatedly changed regulations by claiming to improve competition and transparency and ensure further alignment with the EU legislative framework. Although certain improvements have been achieved, the large part of amendments distorted the rules and procedures for transparency, competition and non-discrimination. A considerable number of amendments have aimed at removing major public contracts from the scope of the PPL. Therefore the official share of public procurement as a percentage of GDP (6%) is much lower than in the EU overall (15-16%). Potential share of exemptions in GDP has consistently continued to increase from 1.8 % in 2008 to 4% in 2013.

Unfortunately, PPL amendments have also enabled contracting agencies to make non-competitive procurement procedures easier. As a result, the use of open procedures has

decreased from 81% in 2008 to 73% at the end of 2013. Furthermore, a large part of public works procurement has been closed to foreign competition contrary to EU procurement philosophy and policy. The share of procurement open to foreign competition in total has only remained between 50-60%. Moreover, a price advantage up to 15% has been applied to domestic bidders in almost half of all international tenders.

Concerning the appeal of contracting agencies' tender decisions, the Public Procurement Board (PPB), financially and administratively independent and responsible for overseeing public tenders has been completely reshuffled in recent years. Along with new appointments, the Board decisions have apparently changed in favour of contracting agencies. In this respect, the cancelation rate of contested tender decisions has sharply decreased from 11.9% in 2008 to 2.2% in 2013, indicating that the Board has begun to significantly disregard complaints. Second, the capacity of the Turkish Court of Accounts that reports criminal acts in the area of public procurement was limited for effective external audit in 2012. Finally, with unprecedented solidarity, all political parties represented in the Turkish parliament reached an agreement to reduce sanctions for those involved in mischief during the public tenders in 2013. All of these developments may undermine the oversight structure and implementation of public procurement policies.

Regarding EU-funded projects, the tender results of 66 works contracts with a value of €867 million have been analysed for this report. Mean and median values of market shares are about 1-2% and do not suggest a systemic risk of collusion or corruption. However, when market shares are split according to the nationality of winning companies, the dominant position of Turkish companies in EU funded tenders is quite observable.

The government has frequently appealed to public-private partnerships (PPPs) in recent years for the delivery of large-scale infrastructure investments (e.g. airports, bridges, roads, electricity generation and distribution facilities etc.). PPPs are exempted from public procurement law. They are instead subject to their own procurement procedures which vary across different sectors and PPP methods (e.g. build-operate-transfer, long term lease, and transfer of operation rights). Due to the large capital requirements as well the necessity of significant experience in construction, there have only been a few players in the PPP projects, which makes the formation and maintenance of collusion easier. Seventy-two PPP contracts with an investment value of €53 billion have been put to tender in sectors such as airport and highway construction, and electricity distribution and generation since 2008. These contracts have been awarded to 62 companies, which submitted a bid individually or collectively. Eight companies control 82% of the market. The unique characteristic of these business groups is that they allegedly put capital into the so-called "pool media" which was established by the request of top-level government representatives of in order to secure control of a media giant, Sabah-ATV. Mega projects requiring billions of Euros failed to gain adequate funding; therefore, crucial elements of PPP contracts were renegotiated and revised in order to boost the project value after they had been signed. For instance, loan guarantees were introduced in order to increase the bankability of previously signed projects. In a similar manner, previously signed contracts benefited from tax

exemptions introduced after they had been signed, and the cost savings arising due to the contract revision. If the winning companies had strategically underbid (or overbid depending on the award specifications of the tender in question) with the advantage of being informed about the aforementioned changes before the tender, this would be a cause for concern.

Concerning contract-level data, a big challenge emerged. The Turkish Public Procurement Agency (PPA) publishes tender results in a non-standardised manner. As such, it does not allow us to properly evaluate the procurement sector according to the guidelines in WP8 (i.e., mean/median market share of the companies that participate in all (relevant) public mean/median share of public procurement income in total income of these companies). To this end, Hacettepe University officially demanded the standard data from the PPA in July 2014, but this request was not fulfilled. Furthermore, we have personally contacted representatives of the PPA for the same purpose; nevertheless they have been unwilling to share the requested data with us.

As far as the reporting data on all procurement winners in the construction sector and descriptive data analysis are concerned, there was still a big challenge to compile firm level procurement data. Furthermore, due to the constraints/restrictions stemming from business confidentiality, we were also unable to compile financial and institutional statistics of companies. We also cannot observe donations to electoral campaigns, or financial contributions to political parties, because there is almost no serious regulation and institution to track these donations and contributions, not to mention the lacklustre implementation and enforcement of the existing rules and regulations.

Recently, Public-Private Partnerships (PPPs) have been used principally to build up large- scale infrastructure projects (e.g. airports, bridges, roads, electricity generation and distribution facilities etc.). PPPs are exempted from public procurement law. They are instead subject to their own procurement procedures which vary across different sectors and PPP methods (e.g. build-operate-transfer, long term lease, and transfer of operation rights).

II. CONSTRUCTION AND PROCUREMENT MARKET DEVELOPMENTS

The share of public construction expenditures constituted around 17-20% of total public expenditures over the 2008-13 period. The sum of public and private construction expenditures accounts for roughly 8-9% of GDP in the same period. The private sector's share in the total construction expenditures (e.g. 5-6 % of GDP) is twice as much as corresponding public expenditures (e.g. 3 % of GDP). It is thus reasonable to suggest that the construction industry in the country offers considerable business opportunities to both domestic and foreign contractors (Column I in Table 1).

Table 1 Construction and Public Procurement Markets (%)

Years	Construction (I)			Share of public procurement in GDP (II)					
	Share of public construction in total expenditures	Public construction/ GDP	Private construction/ GDP	Central government (1)	Local government (2)	Sub-total of (1) and (2)	SEEs (3)	Total	Share of works contracts in total procurement
2008	19.0	3.2	6.3	3.3	2.7	6.0	1.1	7.2	38.2
2009	16.6	3.1	4.7	3.1	1.6	4.7	0.9	5.6	37.1
2010	18.3	3.3	5.1	2.6	1.7	4.2	0.7	4.9	34.5
2011	18.2	3.2	5.9	2.7	1.5	4.2	1.4	5.5	52.5
2012	16.9	3.2	5.8	2.6	1.9	4.5	1.3	5.8	57.2
2013	19.8	3.9	5.2	2.8	2.0	4.8	1.3	6.1	60.0

(1) general and special budgetary agencies and social security institutions

(2) municipalities, special provincial administration, local administrative unions and municipality-owned companies

(3) State Economic Enterprises

Source: *Ministry of Finance, Ministry of Development, and Public Procurement Agency*

The share of public procurement as a percentage of GDP remained within a range of 6-7 % in the investigation period with a declining tendency. Although its proportion of GDP is lower than the EU (which is about 15-16 %), it still makes up significant part of the Turkish economy. The share of central government procurement in GDP (about 3%) is higher than that of local governments (on average 2%), indicating that public expenditures are rather centralized in the country. Procurement of SEEs accounts for about 1% of GDP. Public works contracts constitute a larger part of total procurement with a growing tendency, and its share in total was 60 % in 2013 (Column II in Table 1).

III. LEGAL AND INSTITUTIONAL FRAMEWORK

1. Public procurement regulation

Public procurement in Turkey is regulated by Public Procurement Law N. 4734 enacted in 2002 and put into force in 2003. The stated objective of the PPL was to achieve alignment with EU procurement directives. Table 2 summarizes key features of the PPL. It is important to note here that the scope of public procurement was initially expanded in a substantive way compared with the repealed procurement law through removing/repealing dozens of regulations involving exemptions for a number of public contracts. In line with the basic principles of public procurement, the PPL requires procuring agencies to ensure transparency, competition, reliability, confidentiality, public supervision, and efficient use of public resources. Furthermore, a number of provisions were inserted into the new law setting and/or clarifying the rules determining technical specifications, tender call notices, tender commissions and selection criteria. Besides, competitive tender procedures were introduced and identified as a basic procurement procedure. The PPL also involves certain provisions regarding building integrity in public procurement. Last but not the least, as an administratively and financially autonomous oversight body the Public Procurement Agency was established and empowered to regulate and monitor procurement rules and procedures. The decision-making body of the PPA is the Public Procurement Board. Its nine members are required to have no past or present connection or affiliation which could conflict with their task, including relations with any political parties to ensure their impartiality and fairness.

Table 2 Turkish Public Procurement Reform in 2002

Reducing margin of discretion of procurement officials	**Increasing integrity**
Standards/Transparency ▪ scope of law was expanded ▪ basic principles involved transparency, competition, equal treatment, confidentially, public supervision and efficient use of resources ▪ minimum elements of technical specifications, qualifications, procurement notices, standard tender documents and contracts were specified ▪ mandatory publications of procurement	▪ all kind of corrupt practices were prohibited ▪ corrupt bidders were prohibited from participation in coming tenders and subject to criminal investigation ▪ corrupt officers were subject to a disciplinary punishment and criminal prosecution ▪ disclosure of confidential information was not allowed ▪ conflict of interest was prohibited

notices ▪ selection and evaluation criteria were objectively determined and pre-announced ▪ unsuccessful bidders to be informed about finalized tender results ▪ procurement proceeding should be recorded and kept for all procurements ▪ tenders commissions consisted of at least five members **Competition** ▪ open tender and restricted procedures were prioritized ▪ restrictions were introduced to limit non-competitive bidding procedure s (e.g. direct and negotiated procedures)	**Oversight** ▪ an independent regulatory agency was established ▪ agency was an administratively and financially independent entity at the central government level to monitor and supervise public procurement rules and procedures

Source: Authors' compilation

2. The differences between Turkish and EU procurement rules

Although the PPL has attempted to adopt main principals and procedures in line with EU procurement directives, certain contradictions still persist. For example, there are important variations between PPL and EU Directives concerning the exact scope and content of such concepts as concessions, public contracts, contracting agencies, and exemptions. The PPL includes a domestic price advantage up to 15% to support domestic bidders against foreign competitors. Additionally, tenders below certain thresholds may be closed to foreign involvement. Perhaps more importantly, the PPL has been amended mostly for the purpose of introducing new exemptions which are not allowed by the EU procurement directives. Therefore, not all public contracts are covered by the PPL. Especially, the political big-ticket projects or the procurement of public agencies in charge of mega projects have been excluded from the scope of PPL. Last but not least, Turkey has not yet taken the required steps for the alignment of the EU utilities directive, as well as the legislation for concession/PPP contracts.

3. Impartiality of tender commissions

The contracting officers authorized for spending and carrying out public procurement in the contracting agencies are in charge of appointing members of tender commissions which consist of at least five commissioners and in odd numbers. A tender commission shall include two specialists on the subject matter of tender, and one expert responsible for accounting and finance. For instance, when a tender involves a works procurement contract, the tender commission must include at least two civil engineers and one financial officer. At least four of the

commissioners are supposed to work as full-time employees for the contracting agency. A tender commission should convene with the participation of all members and make its decisions by majority voting. The PPL does not allow members to remain noncommittal. Dissenting members are required to submit written statements.

Although the PPL contains explicit provisions for the establishment and working conditions of tender commissions, it remains silent on how to ensure commissioners' autonomy against improper influences which can manipulate and distort tender outcomes. For a start, commissioners who disobey improper requests may be unseated for any reason (e.g. she/he can be assigned/re-assigned to different positions) before the procurement process concerned is completed. There appears to be no mechanism to block such potential improper actions related to the commissioners' tenures. Second, the tender commissions may consist of members who have a superior-subordinate relationship in the workplace independently of responsibilities in the tender commissions. Thus, the former might force the later to meet improper demands in order to support a favoured bidder by exercising their superiority over subordinate(s) through threats to block promotion in their careers[1]. Furthermore, asymmetric information and transaction cost problems may arise, because tender commissions are required to be separately composed/appointed for every single tender. On the positive side, the replacement of members of previous commissions by new ones may make it difficult for interest groups to capture commissioners, because the time and monetary cost of engaging in corrupt activities would increase as long as the rate of commissioners' substitution is high, engendering information asymmetry between new commissioners and interest groups. On the other hand, frequently unseating commissioners may impose transaction cost on public contracts, because each new commissioner needs to spend extra time and effort to ascertain how to efficiently carry out procurement procedures[2].

4. Evolution of procurement law

This PPL has been in force since 2003, being initiated by and implemented over the years during the ruling of consecutive Justice and Development Party governments (*Adalet ve Kalkınma Partisi*, AKP, post-2002 incumbent), with much help from the bureaucrats mostly appointed by the same party. In other words, the PPL and its implementation have not passed the test of being audited and managed by another government party. The AKP government has made amendments in the PPL over time, claiming to increase competition and transparency, and to achieve further alignment with the EU procurement rules and procedures. The PPL has been repeatedly amended over the same party rule to the point that it has significantly deviated

[1] In the workshop held by Hacettepe University on the subject matter of WP4 and WP8 in September 2014, one participant stated that the president of one of state universities entrusted himself in the tender commission so as to allegedly manipulate the outcome of tender.

[2] Note that it is still possible to assign the same officials for different commissions.

from its original structure over the years[3]. Some amendments might have really improved competitive conditions and increased value for money in public procurement. However, it seems that a large part of the changes enacted to date has imposed much higher costs to the public by actually restricting competition and transparency.

5. Eliminating Corruption Risks

1.1 Electronic Public Procurement Platform

Amendments of 2008 introduced provisions in order to enable the PPA to establish an electronic platform with the hope of increasing transparency and competition so as to ensure integrity in public procurement. The E-procurement platform (Electronic Public Procurement Platform-EPPP hereafter) officially started operation on 10 September 2010 and has successfully evolved up until now. All tender documents from contract notices towards tender results are required to be published in the EPPP[4]. It has eventually engendered two crucial outcomes. First, the preparation and publication of tender documents have been standardized so that procurement officials are no longer allowed to misinterpret them. Second, although the EPPP hardly allows online bidding except for the framework agreements in the health sector, tender call notices above the threshold value of €67,600 are required to be published through its electronic bulletin. Therefore, it is possible to say that transparency and competitive conditions have been improved in public tenders, although to a limited extent, because more candidates have been enabled to get electronic information about tender calls across the country, perhaps resulting in more participation in public procurement.

1.2 Abnormally low tenders

The PPL initially introduced a new concept, the rejection of abnormally low bids (ALB) in line with EU directives. Within this concept, tender commissions are required to identify the ALBs compared with other bids and estimated cost calculated by the contracting agency which is also required to keep it confidential. The owners of ALBs submitted are required to explain the economic and technical nature of bids in writing, and to verify how they would fulfil their offers. As a result of this evaluation process, the bids whose written explanations are found insufficient or the bidders who fail to make a written explanation are rejected. Remaining bids are accepted as valid.

Tender commissions enjoyed broad discretion to evaluate and reject ALBs, likely resulting in the rejection of lower bids and the selection of a favoured-bidder with a relatively higher bid. The trick to discriminate between bidders, and to support a favoured one was working as follows: in

[3] The 35 amendments having been made for 11 years have changed 135 sub(provisions) of the PPL. In this context, ex-president of Turkish Contractors Association Eren (2010) declared by going a further step that the PPL would be needed to be comprehensively revised to get a well-structured legislation in order to improve value for money in public procurement.

[4] Transactions that can be performed in EPPP involve publication of contract notices, preparation of the contract document, downloading the contract document, verification of tax liability, balance sheet and income statement information, social security premium debt information of the economic operators.

suspected cases, the contracting agencies were artificially calculating estimated cost much higher than real market conditions that bidders should normally take into account while preparing bids. Therefore, a high number of bids were likely becoming abnormally low except for risk averse bidder(s) with higher bids. A contracting agency with broad discretionary power was able to accept only the expression of the single (favoured) bidder whose bid's status would then move up from the ALB towards the lowest bid enough to win the tender concerned[5]. In other cases, a contracting agency was able to directly identify all bids as abnormally low only lower than the bid of a favoured bidder who would become the winner of the tender[6].

Eventually, an amendment in 2008 improved evaluation process and considerably limited the discretionary power of tender commissions by introducing an objective criteria set for the evaluation of tenders. The PPA has been also authorized to prepare detailed guidelines regarding how to deal with ALBs, it has also published a larger set of rules and procedures.

6. Emerging Risks

6.1 Exemptions

A growing number of public contracts seem over the years to have been left out of the PPL. We have estimated the size of exemptions by calculating the difference between the actual volume of expenditures of central and local governments on goods, services and works contracts and total public procurement of said procurement agencies on the same areas. The difference between two figures indicates the potential amount of public procurement exempted from the PPL which is about 4% of GDP in 2013. In monetary terms, representative amount of exemptions have jumped from €9.1 billion in 2008 up to €24.8 billion in 2013, indicating a growing tendency (Table 3).

Table 1 Potential Size of Exemptions in GDP (%)

Years	Total expenditures	Total procurement of	Exemptions/GDP	Amount of Potential

[5]For instance, Istanbul Water and Sewerage Administration (İstanbul Su ve Kanalizasyon İdaresi, İSKİ) a subsidiary of Istanbul Metropolitan Municipality (İstanbul Büyükşehir Belediyesi, İBB) called tenders for the construction of a water distribution network with an estimated cost of TRY 21.2 million in the past. 43 out of 57 bids were considered as abnormally low. İSKİ approved the viability of only single bid among the rejected bids with an amount of TRY12.2 million the owners of which have allegedly maintained close connections with top level politicians for years. Note that, the bid envelopes submitted were opened in front of all bidders participated in the tender in order to secure transparency. Most probably with an advantage of being informed about the value of other failed bids, the winning company authorized one of failed companies with a bid value of TRY9.6 million as a sub-contractor. Interestingly, before the award, the contracting agency had not been convinced with the explanation of sub-contractor which then successfully completed the awarded network construction. Thus, wining company presumably gained an easy-profit not less than the difference between its own bid and the sub-contractor's bid submitted earlier -i.e. TRY2.6-(Gürek, 2011; pp. 56-7). We are unaware of whether the winning bidder incurred any other cost paid covertly. Winning bidders of such tenders are called as 'bag-man', because they transfer works contracts to a sub-constructor shortly after winning tenders without engaging in the construction work.

[6] In another tender carried out again by the İSKİ for the construction of wastewater network and collector, the threshold value for the identification of ALB was calculated as TRY10 522 350.00. The difference between the threshold value and winning bid (TRY10 522 350.01) was only TRY1 cent. Allegedly the winning bidder was a close friend of top managers of İSKİ (the PPA Decision Date Jan. 11, 2006 and N.2006/UY.Z-3143).

	of central and local government/GDP	central and local governments/GDP		Exceptions (Billion €)
2008	7.9	6.0	1.8	9.1
2009	8.5	4.7	3.7	16.6
2010	8.2	4.2	3.9	21.6
2011	8.1	4.2	4.0	22.2
2012	8.2	4.5	3.7	23.0
2013	8.8	4.8	4.0	24.8

Source: *Ministry of Finance, Ministry of Development, Public Procurement Agency, and authors' calculations*

Exclusions seem to have been introduced on an ad hoc basis. Many public officials seem willing to avoid PPL procedures and the review mechanism of the PPA. Therefore, individual ministries have frequently introduced new exemptions on an ad hoc basis. In that sense, they have attempted to convince parliamentarians keen to please the constituents to get support by promising that the large part of society would get easier and quicker access to the public services such as coal aid, the supply of electricity and railway services, and provision of certain health services, when the exceptions are enacted. Thus the public contracts in such areas have been removed from the PPL. Besides, big-ticket projects[7] and/or agencies responsible for these kinds of projects are also excluded from the scope of the PPL. The procurement procedures of exempted contracts are quite flexible compared with the PPL[8] making them more susceptible to corruption. Although the expenditures of public institutions are finally audited by Turkish Court of Accounts, flexible procurement rules may still reduce the efficiency and effectiveness of audit. Accordingly, one should need to be aware of those flexible and uncontrolled procurement principles and procedures are usually prone to the abuse[9].

[7] For instance, 2011 Winter Universiade Olympics with a cost of €225 million; IMF-World Bank İstanbul Summit with a cost of €107 million (Ironically, IMF-World Bank along with the EU as external anchor forced Turkey to undertake the EU procurement directives with an objective to remove exemptions among others in public procurement in the wake of 2000-01 financial crisis); Fatih project aiming at putting a tablet computer on the table of every student in elementary schools with a cost of € 2.8 billion in total; organization of G-20 meeting to be held in 2015 with a cost of €365 million.

[8] While defending the exemption of G20 meeting from the PPL, an AKP's deputy said that "we would need to become flexible against unexpected developments, because it is a huge organization. For instance, if we rented 50 luxury automobiles and used just 10, we would be held accountable for the unused 40 cars under the PPL provisions" (Kuvel, 2014).

[9] Regarding outcomes of tenders of exempted public contracts, the narrative of 2011 Winter Universiade is really noteworthy. Three of five ski-jump towers, built in for the 2011 Winter Olympics collapsed in July 2014 and two other towers became almost useless. The tender of ski-jump tower was awarded to a Turkish construction company. The winning company was required to sink between 25-50-meter-long steel piles into the ground to support the towers of ski-jump. Instead, it first poured concrete into the tower foundation then sank only a one-meter-long pile in it, according to experts (Alagöz, 2014). The company had long been a sub-contractor before the AKP governments, and then has allegedly become one of the fast growing companies in the country over the AKP era, undertaking 40 tenders with an average value of € 3.5 billion due to close connections with high level decision-makers according to Özay (2014).

6.2 The use of non-competitive procurement procedures

The scope of special conditions enabling the use of non-competitive tender procedures (direct and negotiated procedures) has been enlarged. Therefore their use has significantly increased overtime. Table 3 corroborates this suggestion. For instance, the use of restricted procedure has grown from 2% in 2008 to 10 % in 2013. Moreover, the share of direct procurement[10] in total has increased from 7% in 2008 to 21% and 12% respectively in 2011 and 2012, and backed to its initial value of 7% in 2013. Conversely, the proportion of competitive open procedure in total has sharply dropped by 8%, from 81% in 2008 to 73% in 2013 (Row I in Table 4).

One of main goals of the EU procurement directives is to improve competitive conditions in the single market. Conversely, Turkey appears not keen to benefit from international competition in procurement markets. The PPL involves a specific provision which enables contracting agencies to apply a price advantage up to 15% for domestic bidders[11] in works procurement. Furthermore, the procuring administrations may[12] enable only domestic bidders to participate in public tenders in cases when the estimated costs fall below the threshold values[13].

Row II in Table 4 again provides information with respect to international participation in total public procurement. The share of internationally competitive procurement in total has dropped from 68% in 2008 to 63% in 2013. In other words, 37% of total procurement is closed to international competition in 2013. Furthermore, the domestic price advantage has been extensively used. The proportion of public procurement with domestic price advantage in international tenders has significantly risen from 15% in 2008 to about 40% in recent years. On the other hand, the international competition for works contracts has traditionally been far lower, and its share in total works procurement has remained within a range of 55-58%, except 39% in 2010 (Raw III in Table 4). Domestic price advantage in international tenders has been more extensively used in works contracts as well. Some 50-60 % of works contracts open to foreign participation have recently used domestic preference. Turkey's growing interest to protect domestic bidders against international players may however backfire in the common market while helping consolidation of some domestic actors[14]. Moreover, the lack of foreign competition

[10] Direct procurement enables the contracting agencies to purchase their needs directly from the sole supplier through negotiating about technical terms and price under certain conditions.

[11] Domestic bidder means Turkish citizens and legal persons established in accordance with the Laws of Republic of Turkey.

[12] The threshold value of works procurement was about €11 million in 2014.

[13] The law amendment of 2013 made optional domestic price advantage of up to 15 % compulsory for medium and high-technology industrial goods. The amendment introduced offsets which allow the contracting agencies to request compensating measures if goods are not produced domestically. The change contradicts the EU *acquis* (European Commission, 2014).

[14] In this respect, in its Country Assessment Report of 2012, SIGMA (2012: pp. 30) informs that "[i]n the absence of any agreement, the use of domestic preference by Turkey is mirrored by the exclusion of Turkish economic operators from some of EU procurement markets". If so, restricting international competition to support domestic bidders in Turkish procurement markets may apparently harm the wealth of domestic constructors who qualify for participation in the European procurement markets.

may mitigate efficiency in public procurement, facilitating opportunistic behaviours between domestic bidders and procurement officials[15].

6.3 Reducing sanctions

Corruption in public procurement requires collusion among politicians, bureaucrats and businessmen. In 2013, the country witnessed unprecedented solidarity between ruling AKP on the centre-right and the main opposition Republican People's Party (*Cumhuriyet Halk Partisi*, CHP) on the centre-left. Under this solidarity initiative, two parties along with the support of other smaller parties, National Movement Party, (*Milliyetçi Hareket Partisi*, MHP) and Peace and Democracy Party (*Barış ve Demokrasi Partisi*, BDP) unanimously amended Turkish Penal Code Law N. 5237 (TPC) in the Turkish Grand National Assembly (TGNA) in order to reduce the term of imprisonments imposed on the those engaging in bid-riggings in public tenders. Interestingly, the two major political parties have seldom reached such an important agreement in the past[16].

In fact, the statement of the Interior Minister made at the beginning of the year 2014 provides a good insight to help us better understand the very *raison d'être* of this amendment. Between the year 2009 and the year 2013 the ministry authorized 3,861 investigations for mayors across the country (Cihan News Agency, 2014). The breakdown of this figure according to the political parties is as follows: AKP (1,682), CHP (1,181), MHP (481), BDP (199), and others (318). Allegations against mayors basically involve bid-rigging in public tenders as well as forgery of official documents and membership in a terrorist organization. Apparently, all of the political parties represented in the TGNA were not sure whether their mayors would remain clean. The relief introduced by the amendment would also be exploited by the procurement officers of central government as well as that of local administrations. On the other hand, the data provided by the Ministry of Justice upon request of a parliamentary inquiry submitted by a deputy of the MHP (Topçu, 2014) show that the number of bid-rigging convictions has increased by 75% from 1,115 in 2009 to 1,947 at the end of 2012. When taking into account the message signalled by the solidarity of political parties represented in the TGNA in the amendment process, it is reasonable to suggest that launching an investigation for the bid-rigging allegations would hereupon be hampered, while mischief in public tenders would be implicitly tolerated.

[15]For instance, in the third lot of tender of tablet computers within the scope of Fatih project cited in footnote 7, Apple Inc. failed to qualify for financial requirements of specifications which require candidates to have certain level of revenue realised within borders of the country. Apple's Turkey operations were not enough to produce the annual turnover required by the tender specification. According to the authorities, Turkey aims at becoming a major producer and exporter of tablets and other devices in the region in coming years, due to technology and know-how transfers as a result of the Project. Therefore, they applied such a domestic preference provision to restrict participation of international giants in the tender. Eventually, a Turkish Company, Telpa Telekom won the tender with a contract value of €142 million for 675,000 tablets. Interestingly, its production centre is based in the Far East. The company imports parts such as motherboards, displays and electronic circuits and then only assemble them in Turkey.

[16] Interestingly, the title of the law enacting the amendment is "Law Regarding Changes to Some Laws with Respect to Human Rights and Freedom of Expression". A journalist characterized the expression of this change as follows: "[p]ut another way, politicians are saying that the right to rig tenders and squander the taxpayer's money should be listed as a fundamental human right" (Bozkurt, 2013).

6.4 Appeal mechanism

An important particularity of the PPL was the establishment of the Public Procurement Agency and the introduction of appeal mechanism for bidders who claim that they have suffered from a loss of a right or damage. The PPL requires unsatisfied bidders should first submit a complaint to the contracting agency concerned. If they are still disappointed from the agency's decision, they are thereafter able to appeal to the PPA.

The first members of the PPB were appointed before the AKP had taken office in 2002. The AKP governments completely reshuffled formerly appointed board members in 2007. The appointment criteria of board members are allegedly the relations to the AKP's cadres rather than merit. As a result of such political appointments, the PPB has allegedly begun not to consider some award decisions as a violation of law in recent years, which were regarded as infringement by ex-members of the Board. The policy shift of the PPB regarding appeal decisions are explained as an attempt to ignore or tolerate irregular procurement decisions of the central government and the AKP municipalities[17]. Raw IV in Table 4 depicts cancelation rates of tender decisions complained in works procurement. While the PPB was cancelling 11.9% of tenders appealed in 2008, it invalidated just 2.8% in 2013. Note that the cancellation rate was 22.9% in 2006 which was the very last year of tenure of board members appointed before the AKP. These figures apparently translate how the decisions of PPB have shifted from protecting complainants towards safeguarding accused contracting agencies.

6.5 The role of the Turkish Court of Accounts

Concerning the external audit of public procurement, the Turkish Court of Accounts (TCA) was authorized to check, among others, regularity[18] and performance audits[19] in accordance with international audit standards. The Law N. 6085 which initiated to modernize the structure and functions of the TCA according to international audit standards was enacted in 2010 and amended in 2012. The amending law changed the audit remit and particularly operating process of the TCA. As suggested by SIGMA (2013), the amendment (i) limits the authority of the TCA to conduct performance audits[20], (ii) re-affirms the priority of regularity audit, (iii) most importantly institutes a mediation committee for the finalization of audit reports in cases where the TCA and relative public agency disagree on the matter. The mediation committee is composed of three members from the TCA and two representatives from the audited agency.

[17] After reviewing tender decisions of the AKP's metropolitan municipalities and corresponding decisions of PPA on them, Gürek (2011: p. 90) suggests that the decisions of the PPB have begun to markedly change along with appointment of new board members. After the Board was completely reshuffled, in certain cases the PPB has moved away from its previous decisions which would, if applicable, have invalidated certain tender decisions of the AKP's mayors.

[18] The regularity audit intends to ensure the reliability and accuracy of financial reports in accordance with financial management and control systems, and the compliance of administrative transactions and spending with the relative legislations.

[19] Performance audit aims at ensuring that public agencies function effectively, economically, efficiently.

[20] The president of Association of Auditors of Turkish Court of Accounts (Özsemerci, 2011) argued that, without performance audit, it would be difficult to check inefficiencies occurred because of corrupt transactions.

Following the amendment of 2012, the presidency of the TCA decided not to submit regular reports of auditors to the TGNA. Instead, it has begun to present its own reports which are basically prepared by the Report Evaluation Board (REB)[21] for the Turkish parliament. As an auditor, Arslan (2013) affirms that the content of short REB reports are not clear and easily understandable, furthermore they may manipulate the findings of audit reports so as to conceal potential accusations. Therefore, the author suggests that the detailed audit reports should be presented to the TGNA along with the reports of REB[22].

Upon complaint of the main opposition party CHP, the Constitutional Court has overturned the aforementioned amendment[23], and then a crucial uncertainty regarding the TCA's audit function has emerged for the time being, because a new arrangement has not been promulgated to substitute for the rescinded provision yet. This uncertainty being occurred by the decision the Court as well as the TCA's approach not to send auditor reports to the TGNA would limit the capacity of TCA to carry out regularity and performance audit. Therefore, it is plausible to offer the approach to avoid the TCA's audit authority may represent a cause of concern.

Table 4 Selected Procurement Statistics (%)

Years		2008	2009	2010	2011	2012	2013
I. Use of procurement procedures (as share in total)	open procedure	81.0	79.0	78.0	66.0	71.0	73.0
	restricted procedure	2.0	2.0	4.0	7.0	9.0	9.0
	negotiated procedure	10.0	11.0	9.0	6.0	8.0	11.0
	direct procurement	7.0	8.0	10.0	21.0	12.0	7.0
II. Foreign participation in total procurement	share of procurement open to foreign participation	68.0	66.0	67.0	61.0	64.0	63.0
	share of procurements with domestic preference in procurement open to foreign participation	15.0	21.0	21.0	34.0	42.0	38.0
III. Foreign participation in works procurement	share of procurement open to foreign participation	58.0	53.0	39.0	50.0	57.0	55.0
	share of procurements with domestic preference in procurement open to foreign	26.0	46.0	50.0	58.0	63.0	55.0

[21]The audit reports are prepared by headships of audit groups as a result of regularity and performance audit of public administrations, while the REB is composed of the members of TCA and two chairmen of chambers and evaluates the audit reports with a critical perspective and prepare its own -shorter- reports.

[22] Criminal acts which are reported by the TCA to the public mostly involve the procurement issues among others (SIGMA, 2013).

[23] The Court's decision: 27/12/2012 date and 2012/102 E., 2012/207K.

	participation						
IV. Cancelation rate of tenders complained	cancelation rate of tenders complained	11.9	6.2	4.1	3.5	3.7	2.2

Source: *Public Procurement Agency*

IV. EU FUNDS

For the 2007-2013 period, the amount of EU funds provided to Turkey under the Instrument for Pre-Accession Assistance (IPA) is about €4.8 billion of which almost €3 billion has been spent for the time being. The EC and the Turkish agencies work together to evaluate the needs and select the projects which are included in the annual national programme. Procurement procedures are regulated by the "European Commission's Practical Guide to Contract Procedures for EC External Actions."

In order to evaluate the EU funded tenders, we compiled the results of works tenders from the websites of the contracting agencies[24]. 66 works contracts with a contract value of €867.1 million have been put out to tender over the 2005-2014 period. The average number of bids submitted in tenders is about 6.4, while the mean value of market shares of bidders is about 2%. When the two largest tenders are excluded, the average market share falls to 1%, because the market share of the top two contracts with a value of €366.8 million constitutes 42% of total. Both are railway projects, and the biggest one with a contract value of 220 million Euros was awarded to a Turkish consortium, while the smaller one which is worth about €146.8 million was allocated to a joint venture involving one Turkish and two European companies. Two European companies and two consortiums including European and Turkish companies have been involved in the top ten contracts. Six European companies individually won tenders with contract values of €77.7 million Euros and with a market share of 9%, while three joint ventures including European and Turkish companies won tenders worth about €187.3 million with a market share of 22%. The distribution of market shares do not necessarily represent a cause of concern however, it is plausible to say that Turkish companies apparently dominate in works tenders financed by the EU funds.

V. Detecting Risks in Public-Private Partnerships

Public-private partnerships/concessions have been extensively used in Turkey as well as European countries for the delivery of infrastructure investments over the last two decades. As already mentioned, unlike EU procurement directives, the PPL does not involve rules and procedures for the procurement of PPPs/concessions. Almost every contracting agency and/or every PPP model has different procurement legislations (Table 5) which are in conformity neither

[24] Central Finance & Contracts Unit of Turkey: <http://www.cfcu.gov.tr/tender.php?lng=en&action=tender_search>;
Ministry of Environment and Urbanization: <http://www.ipa.gov.tr/TenderSearch/?Page=2>;
Ministry of Science, Industry and Technology: <http://ipa.sanayi.gov.tr/en/default>

with the provisions of PPL nor with the EU procurement directives. Furthermore, they may create confusion and uncertainty especially for foreign bidders in PPP markets due to their different rules and procedures. On the other hand, the PPA is not in charge of exercising *ex post* control mechanism on PPP procurement, implying that the decisions taken in bidding process by the contracting agencies are appealed only to the courts where the time period of final decisions may last for years which may again reduce the effectiveness of the appeal.

Table 5 Regulations for Delivery of Public Services in Turkey

Conventional Public Procurement	**Means of Private Participation**	**Outright Privatization Private Market Activities**
▪ Procurement of works, services and goods of public institutions, using public resources (2002/4734)	**A) Concessions** ▪ The law dated 1910 regulates general characteristics of concessions ▪ Public services provided by local governments (2005/5302 for special provincial administrations and 2005/5393 for municipalities) ▪ Telecommunication services (2000/4502)* ▪ Privatization Act (1994/ 4046) **B) PPPs** ▪ Built-Operate-Transfer (1994/3996 for sectors in need of high capital resources or advanced technology; 1984/3096 for electricity generation and integrated facilities; 1993/3465 for highways; for public services provided by local governments 2005/5302 for special provincial administrations and 2005/5393 for municipalities) ▪ Built-Own-Operate (1988/4283 for thermal power plants; for public services provided by local governments 2005/5302 for special provincial administrations and 2005/5393 for municipalities) ▪ Transfer of Operation Rights (1994/ 4046 for public monopolies; 1984/3096 for electricity; 2005/5335for airports) ▪ Built-Lease-Transfer (2005/ 3359 and 2013/6428 for health care facilities; 2010/ 351 for university dormitories; decree by Cabinet 2001/ 652 for schools)	▪ Privatization Act (1994/ 4046) ▪ Turkish Commercial Code for corporate governance of companies (2011/6762) ▪ Protection of competition (1995/4054) ▪ Capital markets law (2012/6312) ▪ Sectoral regulations (e.g. regulations for electricity, natural gas, transport, telecommunications, and banking)
Note: The numbers in parentheses demonstrate the enactment years and numbers of laws concerned respectively		

BOT: Build, operate, and transfer; TOOR: Transfer of operation rights; BOO: build, own, and operate; BLT: built-lease-transfer

*The name and characteristic of licensing regime in the telecom sector was changed from the concession to the authorised operator in 2008 through the Law N.5809

Source: *Authors' compilation*

Concerning implementation, 72 contracts with a project value of €52.8 billion have been signed since the beginning of 2008 to the end of 2013. These contracts constitute 41% of those PPP contracts which had been delivered between early 1990s and 2013, while the value of 2008-13 period contracts accounts for 67% of the total, indicating that the government has tended to deliver larger-scale investment projects through PPPs in recent years. The project value includes two components: (i) investment value and (ii) payment commitments to the government to get an authorisation to exploit PPP/concession assets and collect usage fees that the government would have otherwise collected. Within this taxonomy, investment value and payment commitments to the government involve respectively €18 billion and €34.8 billion over the 2008-2013 period.

1. Relations between government and businessmen

Having presented aggregate data regarding PPP contracts in Turkey, we focus on PPP contracts tendered since 2008. In this context, 17 out of 72 PPP contracts were awarded to eight companies which won contracts individually in some tenders or jointly in others. The value of contracts awarded to these companies is worth about €43.2 billion and accounts for 82% of total projects[25]. The main characteristic of these companies among others is that they are key participants of the so called 'pool media' which was allegedly formed by the request from top level government officials according to the corruption prosecution reports which targeted ministers' relatives and a group of businessmen and voice recordings leaked on 17 and 25 December 2013. According to Bloomberg (Srivastava et al. 2014) and many other sources[26], an attempt was made by business allies of government to secure control of Sabah-ATV media group in order to serve as the government's mouthpiece. The eight aforementioned companies were allegedly required to put US$630 million in the pool in return for the promises to award them major government tenders including a multibillion-euro third airport in Istanbul and some other major transport and energy projects[27]. Furthermore, it was allegedly promised by some members of government to provide loans from public banks for those who claim lack of cash money to contribute to the pool. Accordingly, the Sabah-ATV media group was purchased by one of members of the pool allegedly with the pooled funds.

[25] We concentrated on 17 contracts and 8 companies, because these contracts account for more than four-fifths of the total and thus can explain a very large part of game even not at all.

[26] See among others, Cengiz (2013), Freedom House (2014), Rethink Institute (2014) and sources cited therein.

[27] Besides, the members of 'the pool media' also allegedly made donations, upon request of top level decision-makers, in the form of both cash and real estate to the Turkey Youth and Education Services Foundation (Türkiye Gençlik ve Eğitime Hizmet Vakfı) whose executive board is composed of relatives and close friends of the then Prime Minister (Gürsel, 2014).

All of those alleged to have participated in the pool denied any wrongdoing (Dombey, 2014). The Turkish government has described the bribery and corruption accusations as “a judicial coup attempt”, launching a strong fight against investigators at police and judiciary through sacking and relocating hundreds of officials who had initiated the graft probe. The government got strong support from voters in municipal and presidential elections held respectively in March and in August 2014 as proof of renewed legitimacy, but concerns remain. In September 2014, the newly-appointed chief prosecutor dropped the corruption prosecution against all suspects including ministers, their relatives and businessmen. The reasoning behind the decision was that previous prosecutors in the probe breached judicial procedures, and conducted unlawful wiretaps and physical surveillance in order to attempt to overthrow the government (Gürsel, 2014)[28]. Last of all, although the government has survived, the four cabinet ministers whose sons and relatives were linked to the investigation were forced to resign (Arango, 2014). Furthermore, the then Minister for Environment and Urban Planning, one of ministers alleged to have been involved in the scheme, announced his resignation from Cabinet and Parliament, further calling on the then Prime Minister Erdoğan to resign because most of the amendments on construction plans mentioned in the investigation had been made with the then Prime Minister's knowledge (Hürriyet Daily News, 2013)[29]. Finally, a parliamentary investigation commission established to examine the graft allegations decided not to commit for trial four former ministers accused in a corruption investigation on January 5, 2015, and TGNA subsequently approved the Commission's decision.[30]

Indeed, in the end, the companies alleged to have participated in the scheme won the new airport tender of Istanbul as well as some other major tenders in the transport and energy sectors. Furthermore, they stand out as the winners of large-scale public tenders over the last decade. Although the establishment of these companies goes back years, their growth has gained great momentum in recent years. As stated by Buğra and Savaşkan (2014: p. 89), privatization, public tenders and PPPs have been important means of business development for certain companies including those involved in the alleged media pool. Furthermore, the authors generalize their argument by claiming that the government's role in shaping the areas of lucrative business has become more significant in recent years.

VI. RISKS IN PPP CONTRACTS

Having surveyed more than 1,000 PPP/concession contracts granted in Latin America and Caribbean Region, Guasch (2004) offers that the extent of corruption matters in designing and

[28] Incidentally, the then Prime Minister Mr. Erdoğan publicly confirmed at least one of wiretaps in which he was asking the manager of a broadcasting firm to remove an opposition politician’s speech on TV (Freedom House, 2014). Note that, the relations between top level politicians and top level managers of private companies as long as revealed by the leaked recordings represent a clear conflict of interest and a cause of concern.

[29] Soon after, the Minister took back his resignation and apologized to the then Prime Minister.

[30] In the meantime, a deputy of the main opposition party, CHP, directed a parliamentary inquiry (Oran, 2013) to the then Prime Minister in order to ask whether a minister on behalf of him had asked millions of US dollars in bribes from a group of businessmen known to be close to the government for the acquisition of the Sabah-ATV Media Group. As of this writing, the inquiry has been yet unanswered.

implementing PPP contracts. If the bidders believe that the government counterpart is subject to influence, and then the renegotiation and capture of additional rents are possible, they will be more likely to strategically overbid (or underbid depending on the award criteria). If the expected renegotiations and revisions emerge, they would undermine the integrity of a PPP contract, reduce efficiency and distort social welfare. The study demonstrates that the contract renegotiations in the surveyed countries are common and mostly profitable for private companies rather than for the government partner. This is to certain extent true in Turkish experience as well.

PPP contracts give the private operator the right only to collect revenues. Since PPP assets are still owned by the government, they cannot be pledged against loans which are expected to finance the project concerned. The only asset to be used as collateral is the revenue stream of the project[31]. Besides, the governments generally retain a right to early termination of the contracts under certain conditions. If the government terminates a PPP contract before it expires, the creditors have no right to the revenue generated in the remaining period of the original contract. These limitations inherent in part of the PPP/concession contracts increase re-payment risks, raise capital costs and affect overall financing conditions. Therefore, the private partners are keen to maintain a friendly relationship with the government during the contract design and implementation, implying that both parties may be prone to engage in an opportunistic behaviour.

In this context, some large scale PPP projects had been long unable to qualify for the needed project finance. Therefore, the Law on Regulating Public Finance and Debt Management N. 4749 and the Law on Build Operate and Transfer N.3996 were amended with an objective to provide loan guarantees for PPP projects in 2013. Within the framework of the new guarantee scheme, the government will undertake the relative debt in the events in which PPP contracts are terminated before their expiration date, and then take over PPP assets in question. The maximum percentage of guarantee is 85% of remaining debts, if the contract is terminated for the reasons arising from the failure of the operator, 100% otherwise. Furthermore, the newly introduced guarantee scheme has been also granted to previously signed contracts which had been still unable to put altogether the needed private finance. In this context, a consortium including companies involved in the pool media alleged entered a BOT (Build, operate, and transfer) contract with the government for Gebze-Izmir Motorway & Izmit Bay Crossing Project with an investment value of €4.9 billion in 2010. It had been long unable to attain the level of funding needed in international markets to fund the road construction. Therefore, the council of ministers granted to it a debt assumption guarantee backed by the Turkish Treasury in 2013 years after the contract signed.

This is not the only legal change which affects financial conditions of PPP contracts after they signed in favour of the private operators. For instance, the Law N. 3065 was amended in 2012 to introduce value-added tax exemptions for PPP projects. The stated reasoning of amendments

[31] Indeed, the net present value of a PPP project cannot truly be estimated at the beginning in certain cases, because demand and corresponding revenue may largely fluctuate overtime.

was to improve the bankability of PPP contracts, accelerate their realization, and deliver public services in question on time. Even if these arguments are valid, it is still plausible to claim that the expected benefit of competitive tender being executed long before the amendments took place would have been significantly reduced if the winning bidder had strategically overbid or underbid to enter a PPP contract with an expectation or assurance of revising it at a later stage[32].

It is a well-known fact that PPP/concession contracts have frequently been revised in Turkey, but their nature of confidentiality seldom enables the third parties to evaluate financial consequences of the amendments. Fortunately, we still have open sources which may signal risks regarding the contract revisions. In this respect, the new multi-billion Euro airport tender of İstanbul, which was won by a consortium including companies involved in the "pool media" in 2013, represents an interesting case. The tendered airport's estimated cost is about €28.9 billion of which €6.7 billion is investment value and the rest €22.2 billion will be paid to government by the consortium as annual rents over 25 years starting when the airport is set to open. The airport project has long suffered from lack of funding like many other PPP projects, and will likely benefit from debt assumption guarantee as well. Most strikingly, the BOT contract of the airport was allegedly revised to reduce investment cost. According to the news reported by Boyacıoğlu (2014) reaching the desired elevation level for the airport, which is planned to be built on an area with many old open-pit coal mines that must be filled, requires around 2.5 billion cubic meters of filling material. After the contract was signed, the elevation level of the airport has been allegedly reduced to lower the amount of filling material needed[33]. A deputy of the main opposition party CHP submitted a parliamentary inquiry (Acar, 2014) to the Minister of Transport, Maritime Affairs, and Communications in order to request (i) whether the elevation level was reduced by 30 meters which may carry out cost savings amounted to 2 to 3 billion Euros, (ii) why the revision of elevation was made shortly after the tender, and (iii) what else changed other than identification of winners after the tender[34].

Last but not the least, the Turkish Court of Accounts (2012: pp. 22-4) reported that while transferring operation rights of electricity distribution companies, millions of Euros were left in the bank accounts of the companies on the transfer day. During transfer of operation rights of distribution networks, the cash accounts of distribution companies were underreported, and non-reported accounts were not taken into account in the valuations, and eventually transferred to

[32] Şimşek (2012) informed that some of failing bidders had claimed that they would have submitted higher bid, had they been told that technical and financial specifications would be changed in this manner.

[33] In fact, in a newspaper interview, one of the members of the consortium said, "we would build up the airport much cheaper than its estimated cost, that's why we did not get nervous in the tender. If we had had a foreign partner, we would seldom have submitted a bid at such a high level" (Güngör, 2013). This member's tax debt of €151.6 million was allegedly cleared through reconciliation in 2010 as well (Today's Zaman, 2014).

[34] As of this writing, the inquiry has been still unanswered within required period of time. However, the Minister of Transport, Maritime Affairs, and Communications informally asserted in the press that all bidders before the tender were informed about that a change can be made in the elevation level of airport project through an addendum, if needed at further stages of investment. Moreover, he noted if a cost saving emerges from a change in the elevation level, it will certainly enter into the state's finance (Hürriyet Daily News, 2014).

acquiring firms. On the other hand, the report stated that compared with previous months, electricity usage was also significantly underreported in the bills a month before the contract date, then the non-reported usage was then billed by new private-operators, causing a wealth transfer from public to private party.

VII. Concluding remarks

In this report, we have first quantitatively explored construction and procurement markets of the country through nationwide data. We have then moved on to investigate and document legal and institutional structure of public procurement and its evolvement. Although the PPL was initially to some extent in line with the EU *acquis*, its structure has been significantly altered from the original due to frequent amendments. The EU-funded tenders have also been generally reviewed. According to the tender results of 66 EU-funded works contracts reviewed, it is not possible to suggest that there are systemic irregularities to rig bids. Despite this, it is still observable that Turkish companies maintain a dominant position in the EU-funded tenders. Lastly, we have dealt with public-private partnership (PPP)/concession contracts which have been used with an objective to deliver large scale infrastructure investments, and are significantly prone to corruption risks.

The Public Procurement Law was put in force in 2003 with an objective to improve competition, transparency and integrity. Although it had some limitations compared with the EU directives, its enactment was really a positive step in a country where irregularities in public tenders were frequently encountered. It has been implemented under single party -the AKP- rule for years, and been repeatedly changed so that its shape has significantly deviated from the original structure.

The most striking feature of amendments is the frequently introduced exemptions. Dozens of public contracts have been taken outside the scope of it over time. Therefore the share of Turkish public procurement in GDP (e.g. % 5-6) is much lower than the EU equivalent (% 15-16). The exemptions are frequently introduced in order to avoid tight regulations of the PPL and oversight authority of the Public Procurement Agency. The exempted public contracts have been procured through relatively flexible rules and procedures. Note that even though the flexible procurement rules and procedures may expedite procurement process, they are still prone to opportunistic behaviour. Furthermore the use of non-competitive tender procedures such as direct procurement and restricted procedure has been on rise while the use of competitive open procedure is declining. In the meantime, the foreign participation in public tenders has decreased and the price advantage to domestic bidders in international tenders has been extensively and increasingly used in recent years.

Unlike the EU regulations, the PPL does not include procedures and provisions for the delivery of PPP contracts/concessions. However, one of the crucial policy objectives of the government is to deliver especially large scale infrastructure investments through PPPs. The legal structure of PPPs is very fragmented, implying that almost every sector and model has its own procurement law which is largely incompatible with the PPL and the EU regulations. Not

surprisingly, smaller group of companies which have allegedly close connections with top level politicians win PPP projects worth billions of Euros. In other words, the public procurement and PPPs have likely become significant means of business development for particular enterprises developing close relations and affiliations with high level representatives of the government.

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Project profile

ANTICORRP is a large-scale research project funded by the European Commission's Seventh Framework Programme. The full name of the project is "Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption". The project started in March 2012 and will last for five years. The research is conducted by 20 research groups in fifteen countries.

The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

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