1. **Basic Information**

1.1 Title: Strengthening the Public Procurement System in Turkey

1.2 Sector: Free Movement of Goods - Public Procurement

1.3 Location: Public Procurement Authority, Ankara, Turkey

2. **Objectives**

2.1 **Overall Objective**

To contribute to the development and strengthening of a sound, transparent and competitive public procurement system in the Republic of Turkey, promoting efficiency and effectiveness in the use of public funds and reducing the potential for fraud and corruption.

2.2 **Project Purpose**

Strengthening the legal, institutional and methodological framework of the Turkish public procurement system in accordance with the EU acquis; through improving professional skills and capacity among the staff of the Public Procurement Authority and of procuring entities and potential suppliers; and promoting awareness about the new public procurement system among potential suppliers, service providers and contractors.

2.3 **AP and NPAA Priority**

**AP Short term priority**

- Complete alignment of the public procurement legislation with the EU acquis.

Increase the capacity of the Public Procurement Authority to implement and monitor the new Public Procurement Law.

**AP Medium term priority**

- Ensure the proper functioning of the Public Procurement Authority.

Ensure effective implementation and control of the public procurement regime in line with the EU acquis.
The harmonisation of the relevant Turkish legislation and administrative structures with the EU acquis in the field of Public Procurement is covered in the NPAA, which was published in 2001 (below). New NPAA (2003) has not been published yet.

4.2.13.2 Public Procurement

I - Priority definition

a) Current status

Although Turkey has no obligations arising from Association Council Decision No 1/95 as regards harmonization with the EU acquis, studies have been initiated for harmonizing the public procurement legislation with the EU acquis and with international norms, within the perspective of full membership.

As for Turkish legislation for tendering, Law No 2886 on Public Procurement, which entered into force on 1 January 1984, is the main legislation. By-Laws, decrees and terms of reference enforced on the basis of the Law constitute the integral parts of the tendering legislation. Tenders announced by departments within the scope of the administration of the General Budget, administration of annexed budgets, local administrations and municipalities as regards purchasing, sales, services, construction, lending, exchange, establishment of incorporeal rights on property and transportation, are executed according to the provisions of Law No 2886.

SEEs and some autonomous administrations are excluded from the scope of this Law. These administrations put into force their own arrangements parallel to the Law on Public Procurement.

In the implementation of this Law the main principle is to meet the requirements under the most favourable and suitable conditions and in due time. Tender procedures are followed in line with the principles of competition and openness. There exist no provision prohibiting the participation of foreign real and legal entities in the tenders. The tenders are announced in the newspapers. Moreover, tenders, the estimated amounts of which are above the threshold levels stated and defined annually in the Budget Law have to be announced in the Official Gazette.

For harmonization with the EU Acquis, preparatory studies based on the principle of transparency, competition, predictability and public surveillance on a broad basis, have been initiated with a view to introducing a new Draft Law on public procurement to replace the existing Law on Public Procurement No 2886 of 8 September 1983. The related work is being carried out by the Ministry of Finance and the Ministry of Public Works and Settlement.

The amendments to be made in the Draft Law are summarised below:

- All public institutes and institutions utilising public resources will be included within the scope of the new Draft Law on Public Procurement. Public tender for the procurement of goods and services, construction, leasing and transportation works will be subject to a single arrangement so as to attain uniform implementations in the public sector.

- In order to participate in tenders, applicants are obliged to possess the qualifications and capacity necessary for the work concerned, and it will be sufficient to have a correspondence address in Turkey.
- Instead of using the method of making deductions over the estimated amount, the tenders will be decided upon in accordance with the current market prices.

- With a view to ensuring tendering practices in parallel with international practices and those of the EU, three tender methods have been defined; namely, the open tender procedure in which all the applicants possessing the required qualifications can participate, selective limited tendering, and negotiated tendering.

- In cases where selective limited tendering is applied, prior selection announcements will become obligatory. However, this tendering method is limited to work for which the cost exceeds a specific amount and work requiring high technology.

- Since the administration announces tenders after only preliminary projects and without making the necessary examinations and feasibility studies on the construction work, the investment costs cannot be assessed realistically. Therefore, the work often requires a higher cost than anticipated and takes longer to complete. In order to prevent such situations, completion of the implementation projects for construction work will be a prerequisite for tender announcements.

- In order to attain consistency with international practices, it is planned to receive bids via one of the following bidding methods: “lump sum price”, “turnkey lump sum price” and “unit price”.

- In order to ensure concurrent comparisons of technical specifications and costs for works requiring technical assessment, technical and financial bids will be submitted at the same time and evaluated simultaneously.

- So as to provide a reasonable preparation period for applicants to submit realistic bids, tender methods and announcement periods have been redefined in accordance with the announcement periods stated in the relevant EU directives. Furthermore, with a view to ensuring more participation in tenders, tender announcements via current electronic communication means (internet), have been made available.

- With the aim of informing the public on the utilisation of public resources in a transparent way, not just before but also after the tender, the results of the tenders will be announced.

- Construction and control liabilities have been amended, so that public buildings are built according to civil and construction rules. Additionally, appropriate provisions are included for the prevention of possible damage which might arise from a lack of proper supervision.

- The security covering bid amounts and performance has been increased, so that only the applicants capable of fulfilling their commitments as regards the terms of the reference and the specifications can participate in the tender.

- For the efficient utilisation of public resources, penal sanctions will be applied to the contractors and authorities of the administrations not fulfilling their legal obligations.

b) EU acquis

The list of relevant EU acquis is provided in Volume II.

c) Implementing Institution

There is no single authority responsible for the control of public tenders. However, the Ministry of Finance renders orientation and control activities related to the implementation of Law No 2886 on Public Procurement. Furthermore, the Ministry of Public Works and Settlement carries out implementations concerning construction
works. Within the framework of harmonization with the EU, the new Draft Law on Public Procurement is being prepared by the Ministry of Finance and the Ministry of Public Works and Settlement.

d) Final Objective
Adoption and implementation of the said EU acquis.

II- Comparison of the EU acquis with the corresponding Turkish legislation and the measures to be taken for implementing the necessary amendments and modifications

a) Corresponding Turkish Legislation
Law No 2886 on Public Procurement of 8 September 1983 (Official Gazette No 18161 of 10 September 1983) *(It should be noted the new “Public Procurement Law” has entered into force as of 01.01.2003)*

b) Necessary Amendments and Modifications in the Corresponding Turkish Legislation
The work on the new Draft Law on Public Procurement, replacing Law No 2886 on Public Procurement will be finalised and enacted in the medium term. *(It should be noted the new “Public Procurement Law” has entered into force as of 01.01.2003)*

c) Necessary Institutional Changes
There is a need to establish an independent administrative institution for the orientation of the implementations related to public procurement and the settlement of complaints. *(It should be noted the newly established Public Procurement Authority has become operational within 2002)*

d) Additional Requirements Stemming From Entry Into Force of the New Legislation
Following the entry into force of the Draft Law on Public Procurement, complementary By-Laws regarding implementations, terms of specifications and contracts will be prepared. *(It should be noted a number of secondary legislation has already been prepared and put into force by the newly established Public Procurement Board)*

e) Additional Staffing and Training Requirement for the Implementation of Amendments and Modifications
To carry out the work required, within the framework of the Draft Law, there is a need for more qualified personnel, and additional training.

III. Time schedule
It is envisaged that in 2001, efforts concerning the Draft Law on Public Procurement replacing Public Procurement Law No 2886, will continue and studies will be finalized in the medium term.

2.4 Contribution to National Development Plan

Turkey has now begun preparation of its first national development Plan. This is likely to be ready by the end of 2003.

2.5 Cross Border Impact

N/A
3. **Description**

3.1 **Background and Justification**

The Helsinki European Council at the end of 1999 concluded, that, “Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms”.

In response to the macroeconomic developments in Turkey in 2001, and with support from the IMF, the World Bank and other international donors such as the European Union, the Republic of Turkey has been implementing a programme of economic reforms and restructuring, which extends to the procurement sector. Regulatory reforms have been recognised as crucial for economic recovery in Turkey.

Turkey’s status as a candidate country to the EU foresees harmonisation of legislation with the EU acquis, including in the field of public procurement. The Accession Partnership lists public procurement both as short and medium-term priority.

In July and September 2001, Sigma provided two EC-funded experts to the Turkish authorities, to assist with the drafting of a new public procurement legislation. On 4 January 2002, the new Public Procurement Law No. 4734 (PPL) was adopted by Parliament and ratified by the President on 21 January 2002.

The new PPL became effective as of 1 January 2003. A number of standard tendering documents and implementing rules have been prepared. The new law will provide for additional transparency accountability, competition and should at the same time ensure a more effective utilization of public funds.

An independent Public Procurement Authority (PPA) has been legally established and its Board Members were appointed in April 2002. The creation of a PPA as foreseen in the new PPL is seen as an important step towards accomplishing the above-mentioned objectives.

Since January 2003, some 5000 new tenders have been announced both in accordance with and using the procedures of the new PPL. The PPA has commenced to perform its functions, including the reviewing of complaints.

3.2 **Linked Activities**

There are some activities supported by the European Commission (see below), and the World Bank, planned or underway, the results of which need to be taken into account and with which close coordination is pertinent to capitalise on findings, to learn lessons and to avoid any overlapping or work in parallel. Among those linked national and regional activities the following have a direct or indirect link:
EU and other Donor Activities

In July and September 2001, Sigma provided two EC-funded experts to the Turkish authorities, to assist with the drafting of a new public procurement legislation.

The EC and the World Bank are currently providing technical assistance in the amount of EURO 130,000 and $ 350,000 to assist the PPA in their duties. The assistance is provided in the form of institution building, drafting of secondary legislation, and all kinds of tender documentation.

To avoid overlapping, the PPA will have to ensure close coordination between the training and advisory components of the proposed project with the corresponding components of the other projects.

3.3 Results

The activities which shall be carried out under the project and which are described in section 3.4 are expected to lead to the following results:

- **An EU conform legal framework** to support effective and transparent functioning of the Turkish public procurement system;

- **An effectively organised and equipped PPA** to perform its diverse functions with clear lines of authority and responsibility, with effective co-ordination within and among its units as well as with other stakeholders, in particular with other Ministries (i.e. Ministry of Finance, Ministry of Public Works & Settlement, Undersecretariat of Treasury, etc.).

- **A functional IT system** enabling the PPA to perform its duties;

- **Trained PPA staff** with adequate knowledge and skills and an elaborated and delivered **training of trainers – scheme**;

- **Wider awareness and knowledge** on public procurement procedures and new system amongst potential contracting suppliers and service providers as well as the general public;

- **Guidance-manuals** on regulations, good practice and tender management, and website.

3.4 Activities

To achieve the results mentioned above, the following actions should take place:

**Component 1:** Legislative alignment with EU acquis and good institutional practice
• Analysis of the legal and institutional framework and practice, and proposals for further developments towards alignment of Turkish legislation with EU acquis;

• Assessment and advice on roles and responsibilities within the PPA, and between the PPA and the procuring entities, the Ministries, Justice, and other stakeholders. This will include one or several workshops to analyse and clarify responsibilities among different public players to avoid overlapping and inefficiency.

Component 2: Strengthening professional skills and capacity; promoting public awareness about the new public procurement system

• Development and delivery of specific training modules for staff of the PPA (including study visits to Member States and candidate countries);

• Elaboration of a national training programme in public procurement and elaboration and delivery of a training of trainers–scheme;

• Conducting training for a wide range of procuring entities and suppliers;

• Seminar and public conferences for high-level political officials, representatives of the media and private sector entities on the new public procurement system;

• Preparation of manual(s) for procuring entities on tender preparation – including printing and dissemination, and preparation of manual(s) for prospective suppliers on how to prepare a bid - including printing and dissemination;

• Preparation of a monthly journal including printing and dissemination.

Component 3: Strengthening of the implementation and monitoring capacity of the PPA through the specification, procurement and implementation of an integrated software system

Four integrated IT systems with related analysis and design tasks shall be realized. A brief description of the systems and main objectives are as follows.

Analysis and Design

• To make a functional analysis of work flow processes in 4 projected systems, to draw flowcharts and to make logical process optimization when necessary and documenting them appropriately.

• To design an integrated and normalized relational database system in order to form data infrastructure of 4 projected systems and to document it in compliance with IT standards.

• To design functional user interfaces commensurate with user needs and priorities and documenting them appropriately.
To choose the best platform and environment for implementing 4 projected systems and to develop a reusable and maintainable coding systematic.

1 - Public Procurements Tracking and Query System (see Annex)

- To ensure handling the entire procurement process from tender notices to result notices as a whole and in a systematic way so as to form a robust infrastructure and to pave the way to e-procurement.
- To publish planned procurements, open tenders, result notices on line and in interrelated manner and to establish an infrastructure for Public Procurements Bulletin.
- To establish a feedback mechanism for procurement regulations, to make budget forecasts, to control PPA revenues, to make procurement analysis and to compose management reports.
- To extract categorized price indices (CPV based), and to build supplier catalogues.
- To facilitate tracking and publishing of those banned from tenders and to check tenderers against blacklist.
- To establish a data entry subsystem to input data from existing and to be developed standard procurement forms both manually and automatically.

2 - PPA Workflow Management and Document Archive System

- To support PPA workflow processes by Information Technologies and put a standard on PPA workflow.
- To track time critical and obligatory works (especially complaints) by making use of IT and to keep record of preparation, transfer and approval phases
- To derive statistical reports of works from various aspects and to control assigned work load distribution and to evaluate PPA work performance.

3 - PP Board Agenda Management and Decision Archive System

- To make board activities more effective and productive and to bring speed, control, standardization on the process.

4 - Administrative-Financial Affairs and Personnel Operations Automation System

- To make PPA administrative and financial affairs more effective and productive. To support budgeting, accounting, stock management, procurement, service management, payroll affairs with Information Technologies. To bring speed, control and standardization on the affairs.
- To keep records of personal information, performance grading, appointment, promotion and relevant data and to process them appropriately. To derive statistical reports and to establish an infrastructure for personnel performance evaluation.

View annex for further details.
Necessary Inputs

Component 1 and 2 will be implemented through a twinning covenant.

Twinning

A PAA on public procurement will provide advice and technical assistance to the PPA President, coordinated through the Department of International Relations and EU Coordination, on clarifying, defining and helping implement those requirements of the EU internal market, which are relevant for PPA to comply with the *acquis communautaire* and in its best regulatory practice. The PAA will ensure that best European regulatory know-how will be fed into the decision making process at PPA. Part of the work shall consist of preparing case studies and comparative analyses.

The adviser, who at the same time will act as the team leader, will be assisted by a pool of short-term experts, who will be called in on an ad hoc basis whenever a need arises, as well as for providing more planned and targeted advice. The PAA coordinates their deployment. The PAA also coordinates all the training activities, including the setting up of the training and study visits. Both the PAA and STE shall be responsible for conducting all the training activities, be it for senior or junior staff.

Pre-Accession Adviser (PAA) for 18 man/months

The PAA must be highly qualified in all subject matters covered by the twinning agreement, and must possess good management skills. S/he must be well acquainted with the enforcement of the EU *acquis* on public procurement. Experience in organising training programmes is an advantage. The PAA will act as senior adviser to the President of the PPA.

More specifically, the PAA shall have:

- University degree in a relevant discipline;
- Minimum 5 years professional experience in public administration in a Ministry or Agency responsible for public procurement;
- Profound and updated knowledge on the evolution of the EU public procurement market, relevant EU legislation and management and corporate culture in public administrations;
- Fluency in both written and spoken English;
- Experience of leading international teams;
- Experience in IT projects would be an advantage;
- Experience in developing, coordinating and conducting training programmes.

Tasks of the PAA include:

- To co-ordinate the programme;
- To mobilise short-term experts;
- To ensure proper quality of outputs;
To provide detailed report on the impact of the programme.

Short to Medium Term Senior Expert Facility for 30 man/months

Areas not directly covered by the PAA can be taken over by short-term experts within the limits of the budget. Short-term experts are expected to cover, among others, the tasks listed below:

- Procurement policies and practice;
- Developing and conducting training programs;
- Legal advice on harmonisation of Turkish procurement legislation with the EU acquis.

Study Tours

Study tours can be organised for a limited number of the PPA staff within the limit of the budget to similar bodies in selected EU Member State(s) / candidate states, specified in consultation with the PAA.

Organisation of training seminars

To train the staff of the PPA, training seminars can be repeated periodically, in particular on the EU acquis, as well as monitoring and implementation techniques of the PPL. Furthermore, it is expected to have a training-of-trainers scheme for a limited number of PPA staff. In addition, seminars and public conferences can be held for a wide range of procuring entities and suppliers, high-level political officials, representatives of the media and private sector entities on the new public procurement system.

Supply

- Equipment for training activities (including the trainer of trainers scheme);
- Books, academic materials;
- Printing services for publication in paper and electronic forms of developed manuals.

Component 3 will be carried out by a supply contract. (The technical specifications will be prepared and finalised by the PPA’s IT department by end-May 2003).

- Supply, delivery, installation, and training of the application of the software required and the provision of a hotline for explanations.

3.5 Lessons Learned

Previous experience with international assistance work to the PPA has shown that the PPA shall inform its staff, especially key experts and heads of departments, on the purpose and benefits of similar future projects, prior to their start. Each department shall be aware of how it can actively participate in, benefit from, and contribute to the success
of the project. Also, the PPA shall appoint English-speaking key experts as active counterparts and reference points to the incoming experts throughout the project duration.

4. Institutional Framework

The main institution involved in the project is the PPA.

4.1 Steering and monitoring

A project management unit established by the PPA will be responsible for management and co-ordination of the programme at national level.

4.2 Implementation

The implementation of the project will be secured by the PPA in Turkey.

4.3 Beneficiaries

The main beneficiary of this project is the PPA.

5. Detailed Budget (thousand €)

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<th>EU Support</th>
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<tr>
<td></td>
<td>Investment Support</td>
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<tr>
<td>Twinning Contract</td>
<td>--</td>
<td>1,300</td>
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<tr>
<td>Supply Contract</td>
<td>390</td>
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<td>130</td>
</tr>
<tr>
<td>Total</td>
<td>390</td>
<td>1,300</td>
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Co-financing will be jointly provided by the EU and Turkey. Turkish contribution to the Twinning will cover e.g. provision of office equipment and space for the PAA, organizational costs of training (rental fees, accommodation catering as well as local and international travel of trainees) and other costs non-eligible for funding as specified in the "Reference Manual on Twinning Projects".

6. Implementing Arrangements

6.1 Implementing Agency
The Implementing Agency for the proposed project will be the Central Finance and Contracts Unit (CFCU).

Responsibility for the administration related to the procedural aspects of procurement, contracting and accountancy will rest upon the CFCU. The tendering and contracting will be carried out by the CFCU and shall follow standard rules and provisions of the Twinning manual.

6.2 Twinning

Components 1 and 2 will be implemented in form of a Twinning covenant between Turkey and an EU Member State, and a supply contract. The twinning partner will manage all aspects of execution in close cooperation with the PPA. The twinning partner will provide a PAA and secure a pool of international experts for the purpose of advisory services and training according to the work plan that will be prepared for the covenant.

Member States may form a consortium, which will result in a wide range of qualified senior experts gathered from procurement regulatory authorities, different national administrations, universities, major specialised consulting and engineering firms or renowned independent experts from more than one Member State, provided that national approaches can be harmonised within the consortium.

The beneficiary institution for the Twinning arrangement will be the PPA, which will also assume responsibility for the administration related to the preparation, technical control and implementation.

The contact person for the Twinning covenant will be:

Kamu İhale Kurumu
Head of Department on International Relations and Coordination With EU
Mr. Kadir Akın Gözel
Atatürk Bulvari No 211, Kavaklıdere, Ankara - TURKEY
Tel: +90 312 468 16 57,
Fax: +90 312 466 73 64,
E-mail: kadirakingozel@kik.gov.tr

6.3 Non-standard aspect

The manual on Twinning projects will be governing components 1 and 2. The DIS Manual provisions will strictly be followed for the supply component.

6.4 Contracts

1 Twinning Covenant: € 1,300,000
1 Supply Contract: € 520,000

7. Implementation schedule

<table>
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<th>Start of</th>
<th>Start of</th>
<th>Project</th>
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12
8. **Equal opportunity**

Equal opportunity principles and practices in ensuring equitable gender participation in the project will be guaranteed. Male and female participation in the project will be based on the relevant standards of the EU and will be assured by official announcements published to recruit staff needed for the project. The main criteria for staff recruitment will be appropriate qualifications and experience in similar projects, not sex or age. Both men and women will have equal opportunities and salaries.

9. **Environment**

N/A

10. **Rates of return**

N/A

11. **Investment criteria**

N/A

12. **Conditionality and sequencing**

1. The signature of the twinning covenant is conditional upon prior submission of draft amendments to the PPL by the PPA to the Prime Ministry. These amendments will further align the PPL to the EU acquis.
2. The signature of the twinning covenant is conditional upon the adoption by the Turkish Government of a timetable for full alignment of the PPL with the EU acquis.
3. The project is conditional upon a properly functioning PPA, which continues to exercise its duties and responsibilities given to it by the Law No. 4734 on Public Procurement and Law No. 4761 on the Amendment of Certain Laws.
4. The project is conditional upon the national co-financing for the equipment part to be ensured.

<table>
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<th>tendering</th>
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<td>II Quarter 2004</td>
</tr>
<tr>
<td>Supply</td>
<td>II Quarter 2004</td>
<td>III Quarter 2004</td>
</tr>
</tbody>
</table>
ANNEXES TO THE PROJECT FICHE

1. Logical framework matrix in standard format
2. Detailed implementation chart
3. Contracting and disbursement schedule by quarter for full duration of programme (including disbursement period)
4. List of relevant laws and regulations
5. Organisational structure of the PPA
List of relevant laws and regulations

Laws
4734 - Public Procurement Law (O.J. No: 24648, O.J. Date: 22.01.2002)
4735 - Public Procurement Contracts Law (O.J. No: 24648, O.J. Date: 22.01.2002)
4761 - Law Concerning Amendments Of Some Laws (O.J. No: 24793, O.J. Date: 22.06.2002)

Regulations
Regulation On The Implementation Of Construction Works Procurements (O.J. No: 24942, O.J. Date: 20.11.2002)
Regulation On The Implementation Of Goods Procurements (O.J. No: 24942, O.J. Date: 20.11.2002)
Regulation On The Implementation Of Service Procurements (O.J. No: 24942, O.J. Date: 20.11.2002)
Regulation On The Implementation Of Consulting Service Procurements (O.J. No: 24948, O.J. Date: 26.11.2002)
Inspection And Acceptance Regulation For Service Procurements (O.J. No: 24968 O.J. Date: 19.12.2002)
Inspection And Acceptance Regulation For Consultancy Service Procurements (O.J. No: 24968 O.J. Date: 19.12.2002)
Regulation on Complaint Procedures (O.J. 24996, Date: 17.01.2003)