

# Analysis of the Conditions for Issuing Work Experience Documents in Construction Work Tenders

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## INTRODUCTION

In our country, the State Procurement Law No. 2886 and the Public Procurement Law No. 4734 are in force in order to eliminate the construction and major maintenance and repair needs of public institutions. Of these, the State Procurement Law No. 2886 has not been repealed since the Public Procurement Law No. 4734 began to be applied as of 01.01.2003, but its scope has been limited. according to Law No. 4734; public administrations within the scope of general budget, special budget administrations, special provincial administrations, municipalities and revolving affiliated organizations, associations (except in the form of higher professional organization involved with their bodies), legal persons; economic institutions of state economic enterprises public enterprises public; social security institutions, funds, or private law was established by Presidential Decree, and the public entities with legal personality has been given the task themselves (professional organizations, and higher education institutions (excluding foundations) with the-budget, independent organizations, directly or indirectly, separately or together with the above-mentioned authorities given to the capital, where

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more than half of any kind of organization, institution, community, business and companies; 4603 within the scope of the law is more than half of the banks with the banks directly or indirectly, separately or together, while companies where capital construction procurement is being done; according to Law No. 2886, apartments with annexed included in the general budget, special provincial administrations and municipalities can make you tender. In other words, Law No. 4734 provides for the provision of services directly from the source, while Law No. 2886 provides for the sale, leasing, exchange, etc. it is preferred in service procurement works as it is applied in mutual exchange-based and transportation education. For example; works such as building construction, choosing canteens and small businesses of schools and dormitories in exchange for the land of municipalities are also tendered in accordance with Law No. 2886. dec.

## **MATERIALS AND METHODS**

The law constituting the tender legislation, the relevant implementing regulations, as well as the building inspection implementing regulation, using the old and new regulations published by the Ministry of Environment and Urbanization, formerly the Ministry of Public Works and Housing, have been tried to be examined through different approaches. Also the Metropolitan law, the resulting numbers to 30, but of our country's population is 78% of the cities, which constitutes 22/D, and it ceased to be made pursuant to execution of construction works procurement and tender through direct individual experience with the contractor or legal persons that do not have to be opened were asked to show the way. In addition, the types of work experience documents, which are one of the most important documents in the construction works tenders, and the conditions for their issuance were also mentioned.

## **FINDINGS**

18 of the Public Procurement Law No. 4734. According to the article, the types of tenders are listed as follows.

- a) Open Tender
- b) Negotiable Tender
- c) Decommissioning Between Certain Bidders

The conditions for the implementation of all three types of tenders have been explained in the Law, but it has also been stated that it is an open tender that is aslolan; other procedures can be applied if special conditions such as

urgency, technological products occur. Also, with Article 22/d, known as the direct procurement procedure, the method that allows administrations to meet their needs up to a certain limit has been jul-tered from being a tender procedure by law No. 4964.

An open tender is a tender procedure in which all bidders can bid (Law Art.19).The tender procedure among certain bidders is that as a result of preliminary evaluation, those invited by the decommissioning administration can submit an offer (Art. Law).20), if it is a bargaining procedure; 21 of the Law. According to paragraphs (a), (b), (c), (d) and (e) of the article, it is decomposed according to the formation of different conditions.

In all construction work tenders, bidders are asked to determine their professional qualifications in addition to their financial and economic qualifications, and a work experience certificate requirement is required for this purpose. There are different types of work experience certificate under the names of completion of work, job status, job supervision and job management. Of these, the certificate of completion of work is issued to individuals or legal entities that have completed construction work before, but their subcontractors can also use this document, albeit at a different rate. Certificate of completion of work; it must be regulated by the administration performing the work at the request of the contractor. The governor also for construction of private individuals or legal entities on the environment, urbanization and climate change after applying to this institution designated by the Provincial Directorate of review, depending on the commission can be given. A certificate of employment status can be issued for work that has completed at least 80% of the commitment and is ongoing, but there is a condition that it will be issued within fifteen years from the date of the first announcement or invitation. Business management and business audit documents are; work experience institution or organization authorized to edit document who served in an Engineer, Architect, Project Manager, Construction Manager, Control Engineer, District Manager, Regional Director at the entities in positions such as those in the private sector commitments in again, Engineer, Architect, Project Manager, Construction Manager, Field Engineer, as well as to employees are provided. Details such as how to take into account the labor regulations and labor inspection documents and how much of the amount of the work is explained in the construction works implementation regulation.

39 of the Construction Works Implementation Regulation. In the article, the conditions for issuing a work experience certificate and institutions with regulatory authority are mentioned. Accordingly, at

least 80% of the jobs that individuals or legal entities have completed with temporary or final acceptance in the last fifteen years or again with temporary acceptance in the last fifteen years can be arranged for completed jobs. In business partnerships; pilot partner work experience desired minimum rate of at least 80% of each of the other partners at least 20%, at terms that are required to provide when positioned on the other hand, if the minimum desired rate of work experience to meet all of the pilot partner, the other partners work experience desired minimum rate is 40% less than similar non-construction work is allowed to provide documentation of work experience in the case that contractors also gain a lot of similar work finished. For example, in a building construction tender, if the pilot partner provides the required work experience amount alone, the other partner can bid if they provide at least 40% of the required work experience document amount, regardless of whether they have done installation work. Moreover, after the winning of the tender and the completion of the work, the small partner who has not built a building before gets the right to participate in other building construction tenders with a new work experience certificate. Another method of participation in tenders is to ensure that more than one legal entity participates by creating a business partnership. All legal entities can be companies, as well as individuals. Here; Those who have a work experience certificate in different fields are given the opportunity to obtain a new work experience certificate at the rate of their shares in the established business partnership. Administrations will decide which works will be considered as similar works depending on the relevant communiqué. In addition, those who perform duties such as building supervision officer, control supervisor, related directorate in the public sector may also issue work supervision or work management documents on their behalf for the construction works for which they have been personally assigned. Meanwhile, engineers and architects, graduation and job if construction work has been completed the certificate of completion documents as if fifteen years more than fifteen years will be able to use to be able to use if desired if within fifteen years after graduation is the condition of construction work being completed. The corresponding figure for each year is updated on February 1 of each year and has been determined as TL 808,172.00 for 2022.

Again, legal entities have been granted the right to use the graduation certificates of technical personnel as a work experience certificate by Law, provided that at least 51% of the shareholders are engineers and architects. By taking advantage of this, companies that do not have a lot of experience can participate in construction work tenders, win the tender and have a new

completion certificate after finishing the job. There is also a requirement in the Law that the share of the technical staff in such legal entities be protected for at least 5 years. However, even if the technical staff transfers the report card to a legal entity in the contracting documents replacing the work experience issued before the Law No. 4734, it is mandatory to work in that company, and if the employment contract expires, the validity of the contractor report card disappears.

A similar situation, 28/3/1981 17293 published in the Official Gazette numbered, dated, construction, installation and repair works in accordance with the regulation on technical engineers and architects to participate in tenders for the amount of technicians who study outside being limited to, technical officers, technicians and even the right to have work experience, which can be transmitted to the contracting document instead of stamps are given. In fact, the unrealized report cards of those who do construction work using the aforementioned contracting report card are updated every year with a communique published in the Official Gazette in March. But; these rights of technicians, science officers and technicians are not valid for tenders conducted in accordance with Law No. 4734. However, with the communiqué published in the Official Gazette dated March 2, 1995 and numbered 22215, the contracting report cards were divided into six groups as A, B, C, D, G and H, and depending on their branches, technicians were provided with the opportunity to receive a report card from a subgroup of engineers or architects. For example, if a civil engineer, a higher engineer or an architect can receive a group B contracting certificate, a construction technician, a science officer, a higher technician, and graduates of technical teaching have been granted this right from group C.

According to the regulation mentioned, ended up in the hands of contractors and contractor who will participate in the tender validity report cards, 24 March 2021 Updated at the date and 31433 published in the official gazette the rates as indicated in Table 1 and the following was published by the group, it was stated that it would be adopted and transferred on the condition that stay the same.

**Table 1. Coefficients of updating contractor report cards (2021)**

Years	coefficients to be applied in 2021	Years	coefficients to be applied in 2021	Years	coefficients to be applied in 2021
1953 and before	4.958.008,970	1981	69,823,255	2002	7,646
1954	4.472.152,496	1982	58.056,744	2003	5,870
1955	3.960.681,315	1983	50.467,385	2004	5,064
1956	3.244.849,040	1984	40.375,518	2005	4,536
1957	2.838.643,484	1985	27.833,207	2006	4,279
1958	2.596.570,816	1986	20.158,969	2007	3,817
1959-1966	2.205.707,322	1987	15.537,993	2008	3,583
1967	2.001.100,153	1988	10.329,896	2009	3,273
1968	1.836.894,921	1989	6.266,785	2010	3,193
1969	1.749.814,136	1990	3.801,181	2011	2,964
1970	1.633.055,267	1991	2.439,124	2012	3,016
1971	1.469.244,367	1992	1.464,708	2013	2,869
1972	1.245.187,938	1993	883,562	2014	2,626
1973	1.101.499,522	1994	529,371	2015	2,448
1974	817.538,191	1995	240,620	2016	2,277
1975	651.940,676	1996	133,316	2017	2,069
1976	556.068,442	1997	68,480	2018	1,797
1977	407.882,142	1998	39,683	2019	1,461
1978	291.672,175	1999	25,613	2020	1,241
1979	215.955,513	2000	15,490	2021	1,000
1980	100.876,963	2001	12,653		

### **Direct Procurement Procedure (22/d)**

The first metropolitan cities in Turkey were Istanbul, Ankara and Izmir with the law issued in 1984, while in 1988 this number increased to 8 (eight), in 1993 to 15 and in 2000 to 16 with Sakarya. At the time of the entry into force of the Public Procurement Law, there were a total of 16 metropolitan municipalities, but there were several first-tier municipalities in each of them, and these first-tier municipalities were transformed into district municipalities by the law passed in 2008. On November 12, 2012, with the Metropolitan Law No. 6360, this number increased to 30 with the addition of provinces with a total population exceeding 750,000. moreover, the metropolitan municipality borders have been extended to the property

administration borders by transferring the villages to the neighborhood status and including the districts.

**Table 2. Some monetary limits in the Public Procurement Law (excluding VAT)**

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Some monetary limits set by Law No. 4734
Article 22 / d of the Law No. 4734
Administrations within the boundaries of the Metropolitan Municipality amount to 218.395 TL*
Administrations in other provinces 72.752 TL*
Article 62 (h) of Law No. 4734
Certificate of work experience for Engineers and Architects in the account 808.172 TL*

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\* Limits for the topics mentioned in the content of this article

the population residing within the boundaries of 30 metropolitan municipalities is 66,092,128. In other words, the population residing within the boundaries of the metropolitan municipality is about 78.05% of the total population of the country. In comparison, the ratio of the population in the other 51 provinces to the total population is about 21.95%. (TUIK, 2021)

Public institutions within the metropolitan borders can be built up to JUL 218,395.00, excluding VAT, in accordance with Article 22 / d, by direct procurement procedure. This figure, which is updated every year as of February 1, is one third in the provinces other than the metropolitan ones. Although it has ceased to be a tender procedure, a completion certificate for this work can be issued after the completion of the work recorded on the Electronic Public Procurement Platform (EKAP). In addition, individuals or legal entities with this completion certificate can participate in another construction work tender and bid up to twice the amount of the document. In this way, the amount of completion documents increases. However, due to the lack of tender type, the lack of a work experience certificate in the direct procurement procedure and the subsequent issuance of a work completion certificate at the end of the work to individuals or legal entities who have not completed the construction work before may cause a decrease in the qualification as a contractor. jul. In a total of 51 provinces other than metropolitan cities, this is unlikely to be possible due to the low limit. Because it is mandatory to tender for construction works exceeding 72.752,00 TL excluding VAT with the figures of 2022.

### Construction Supervision Officer (Control Officer)

4.4 of the Regulation on the Control of Public Works published in the Official Gazette No. 16745 dated September 5, 1979, entitled “control organization”. in its article, when defining a control officer, it mentions that this task can also be assigned to engineers, architects and technicians in mandatory cases. This regulation remained in force until 2018.

4. The regulation issued by the Ministry of Environment and Urbanization published in the Official Gazette No. 30442 dated March 5, 2018 is entitled audit service. Item (C) in accordance with the engineer’s control, depending on the control of the technician as an engineer’s assistant (D) in paragraph depending on the nature of the work and the property control under the responsibility of more than one Engineer, Technician, Technician, Laboratory Assistant, it is stated that can be assigned [5].

4 of the Regulation published in the Official Gazette by the Ministry of Environment and Urbanization. Article (e) of the subparagraph “Construction site supervisor: Technical personnel with a diploma of an engineer, architect or technical teacher or technician related to them who manages and implements construction works on behalf of a building contractor in accordance with its subject and nature” contains the phrase. 6 Of the same regulation. article 2 / c also says that the construction site supervisor ”must be a construction, mechanical, electrical, construction supervision technician or technical teacher related to them”.

According to the regulation published in the Official Gazette dated 29.12.2018 and numbered 30640 in the Building Inspection Application Regulation, technicians can also be assigned as auxiliary control personnel.

***Table 3. Limits of authority of technical personnel in building inspection companies***

Technical personnel	Inspection authority limit (m <sup>2</sup> )
Civil Engineer or Architect	30.000
Mechanical Engineer	60.000
Electrical Engineer	120.000
Technical Teacher (Construction, Machinery, Electricity)	13.500
Technician (Construction, Machinery, Electricity, Building Inspection)	8.500
Technicians (Construction, Machinery, Electricity)	3.500

Technical personnel are a member of the commission for construction work tenders, they perform an audit role during construction, and all members of the inspection and acceptance commissions are required to be technical



personnel. Technicians and Technicians can also take part in temporary and final admissions. In the same way, the contractor company also needs to have engineers and technicians who should be employed in such positions as field officer and construction site chief in the construction business. If members of the committee of inspection and acceptance of construction work with building control officials to the detriment of one of the parties will be subjected to disciplinary action if it is found that neglect will lead to the criminal prosecution will be in accordance with the legislation also stated that it is entitled to compensation of material damage(Construction ISL. Examination and Admission Regulations, 2009).

As can be seen, other technical personnel, especially technicians, perform almost the same tasks as engineers and architects, but, like them, they do not have the right to use graduation certificates as a certificate of work experience.

## **RESULTS**

The lack of a work experience certificate in construction works commissioned by the administrations within the Metropolitan Municipalities in accordance with Article 22 / d of the Law may seem like a method in terms of the emergence of new contractors, but it may also lead to a shift away from a professional quality qualification.

Jul construction works that can be carried out with direct procurement in 30 metropolitan cities where 78.05% of the population of our country lives cannot be carried out due to the fact that the limit in other provinces has been reduced to one third. Raising this rate in other provinces will make it easier to meet the needs of institutions.

The granting of the right to use the graduation certificates as a work experience certificate to technical personnel who have graduated from associate degree, as well as engineers and architects, will contribute to the improvement of qualifications in the contracting profession. Although the limit is not as high as engineers and architects - as in the previous contracting report card - granting rights will allow more technical staff to do work related to their field in the sector.

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