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REGULATION ON
THE CONSTRUCTION OF NEW HEALTHCARE PREMISES AGAINST LEASE
AND THE RENOVATION OF EXISTING HEALTHCARE PREMISES AGAINST
OPERATION OF NON-MEDICAL SERVICES AND FUNCTIONAL AREAS OF
ACTIVITY

CHAPTER ONE

Purpose, Scope, Rationale and Definitions

Purpose

ARTICLE 1 - (1) (Amendment: 30/04/2010-2010/403 Decision No.) The purpose of this Regulation is to regulate, in accordance with the Supplementary Article 7 of the Basic Act on Health Services No. 3359, the procedures and principles in regards with commissioning the real persons or private law legal entities to be selected via a tender for constructing the healthcare premises deemed necessary by the Higher Planning Board, on the lands owned by such persons/entities or owned by the Treasury, within the framework of the preliminary projects and designs and the fundamental standards to be prepared by the Ministry of Health for each healthcare premise, in consideration for the lease of such premises to the constructing persons/entities against a predetermined amount of lease and for a certain period which can not be more than forty-nine years; and transfer by the Ministry of Finance for this purpose of the real properties owned by the Treasury through establishing free of charge right of construction in favor of such real persons or private law legal entities for a period up to forty-nine years; and determining the amount and term of such lease; and renovation of the existing healthcare premises against operation of the non-medical services and functional areas of activity in the premises; and methods of the tender to be held for these purposes; and determination of the qualifications to be sought at the bidders; and the scope of the contracts and other pertinent issues.

Scope

ARTICLE 2 - (1) This Regulation covers and is applicable on the healthcare premises which are decided by the Higher Planning Board as needed to be constructed, and those existing healthcare premises which are decided by the Health Ministry as needed to be renovated, within the framework of the Supplementary Article 7 of the Basic Act on Health Services No. 3359.

Rationale

ARTICLE 3 - (1) This Regulation has been issued and enacted on grounds of the Supplementary Article 7 of the Basic Act on Health Services No. 3359.

Definitions

ARTICLE 4 - (1) Following terms shall have the following meanings ascribed to them hereunder:

- a) **"Ministry"** means the Ministry of Health;
- b) **"Other Contracts"** means other contracts which may be entered between the Contractor and the third parties in relation with the Contract, and which can not have stipulations that are in contradiction with the Contract provisions;
- c) **"Expenditure Controller"** means the Officer of the Administration who is authorized within the framework of the Public Finance Management and Control Law No. 5018;
- ç) **"Administration"** means the related unit of the Ministry's Central Organization and the health institutions and organizations operating under the Ministry;
- d) **"Tender Documents"** means the administrative specifications including instructions for the bidders and the technical specifications, Draft Contract and other required documents and information concerning the designing, construction, maintenance and operation works of the Healthcare Premise subject to the tender;
- e) **"Bidder"** means real persons or private law legal entities bidding at the tender of the Administration;
- f) **"Operation Period Management Plan"** means the mode of operation of the Non-Medical Services and Functional Areas of Activity by the Contractor, should such operation be left to the Contractor, and the organization model of the operation-management to be established between the Administration and the Contractor during the provision of these services;
- g) **"Final Project"** means the project which is prepared by the Contractor following the award of the tender to it and signing of the Contract, in accordance with the Preliminary Project provided by the Ministry for the subject Healthcare Premise, and which includes the land, soil and ground investigations, prescribes as best as possible the measures and dimensions of the construction elements, as well as the technical characteristics of the construction system and instruments to be applied in compliance with the Tender Documents and the Basic Standards Document;
- ğ) **"Lease Rate"** means the sum to be paid to the Contractor throughout the Contract period at the time intervals to be defined by the Contract in consideration for the construction works the Contractor has carried out under the Contract, which sum will be determined on the basis of the factors such as whether the land or the site is owned by the Treasury or by real persons or private law legal entities, and the cost and profitability of the investment, and whether the non-medical services and functional areas of activity are let to the Contractor, and the amount of the revenue to be obtained by the Contractor from the non-medical services and functional areas of activity, and whether the medical equipments will be procured by the Contractor or not;
- h) **"Joint Venture"** means business-partnerships or consortiums established by an agreement entered into by and between more than one real person or private law legal entity for the purpose of participating the tender;

i) **"Preliminary Project"** means a project which outlines the conceptual and basic design elements and factors of a particular healthcare premise, including the list of the required items and possible locations, which is prepared based on the ground, soil and land investigations as required by the final requirements program and by making use of the existing information on the maps, which also proposes one or more solutions incorporating the drawings, cross-sections, appearances and profiles prepared based on the information and data provided by the Environmental Impact Assessment (EIA) and feasibility report, as applicable;

i) **"Healthcare Premise"** means all healthcare plants and premises including the supplementary buildings thereof which the Ministry is obligated to construct itself and have others construct, including, but not limited to, the Integrated Health Campus, Education & Research Hospital, State Hospital, Specialized Branch Hospital, Day Hospital, State Healthcare Clinic, Clinic Hotel, Rehabilitation Center, Cancer Research Center, Vaccination Training Center, Vaccine Production Center, Vaccination Research-Development Center, Mother-Child Care and Family Planning Center, Social Health Center, Organ-Tissue Bank, Regional Blood Center, Blood Products Production Center, Mouth and Dental Health Center, 112 Emergency Service Command Control Center (including all land, airborne and seaborne equipments thereof), and all and any units and departments of the above mentioned premises including their support units;

j) **(Amendment: 30/04/2010-2010/403 Decision No.) "Contract"** means the contract, and its supplementary appendices, to be entered into by and between the Administration and the Contractor in accordance with the private law provisions regarding the subject construction, renovation works for the purpose of establishing in favor of the Contractor a free of charge right of construction on the real properties owned by the Treasury for a period up to forty-nine years, and which forms the basic and integral part of the Right of Construction Contract to be awarded in case the subject real properties are actually transferred to the subject Contractor;

k) **"Basic Standards"** means the standards to be identified by the Ministry in regards with the designing, construction works and maintenance of the subject Healthcare Premise, and also with the operation of the non-medical services and functional areas of activity in the Premises;

l) **"Non-Medical Functional Areas of Activity"** means the functional areas of activity in the healthcare premise, which are auxiliary and in harmony with the Healthcare Premise concept and which will be identified by the Preliminary Project in compliance with the conditions set forth by the Tender Documents; such as car park, hotel, bank branch, restaurant, conference and culture center, internet and communication center, asylum for the aged, day nursery, taxi services and similar other transportation services, fitness and diet center, etc.;

m) **"Non-Medical Services"** means the medical support services assumed by the Contractor under the Contract provisions, which may include data processing, patient consultancy, sterilization, laundry, cleaning, security, canteen, archiving, and any other pertinent services; as well as restoration, repair, maintenance and operation of the buildings, also including the lighting, elevator, heating, cooling, ventilation, medical gases, water and power supply, waste and waste water disposal services, and park and garden maintenance and land, airborne and seaborne ambulance services, morgue and dead body washing services, etc.;

n) **"Total Sum of Fixed Investments"** means the total sum identified under the Contract regarding the total costs of the Construction and Renovation works to be carried out by the Contractor in accordance with the Contract provisions, plus the costs of the land/site, if applicable;

o) "Application Project" means the project which is prepared by the Contractor and which identifies all kinds of details of the construction works in accordance with the Final Project of the subject Healthcare Premise as approved and authorized by the Ministry;

ö) (Amendment: 30/04/2010-2010/403 Decision No.) "Right of Construction Contract" means the contract, and its supplementary appendices, which is, based on the Contract defined in Paragraph (j) above, executed for the purpose of granting a free of charge right of construction in favor of the Contractor for a period up to forty-nine years on, and transfer to the Contractor of, the real properties owned by the Treasury, if the subject Healthcare Premises are to be constructed on real properties owned by the Treasury against their lease to the Contractor;

p) "Renovation or Construction Works" means the works and activities to be carried out by the Contractor for the purpose of renovation of the existing Healthcare Premises, should such renovation be judged to be required, within the framework of the project to be specified by the Ministry and in compliance with the standards to be identified by the Ministry; or for the purpose of construction of a new Healthcare Premise as resolved by the Higher Planning Board in accordance with the Contract provisions; and for the purpose of supply of the materials, equipments and hardware for the subject Healthcare Premise, including the medical equipments specified by the Tender Documents, if applicable; and

r) "Contractor" means real persons or private law legal entities that are awarded the tender and accordingly sign a contract with the Ministry at the end of the tender.

s) (Addition: 30/04/2010-2010/403 Decision No.) "Special Purpose of Vehicle" means the corporation established by real person or private law legal entity that is awarded the tender or joint venture composed of them or consortiums provided that to be a part of the contract signed under the Law numbered 3359 and this Regulation and to carry out the provision of the contract and the activity subject to be limited only with the subject of the contract.

CHAPTER TWO

Basic Principles, Construction and Renovation, Preliminary Preparations

Basic Principles

ARTICLE 5 – (1) The following principles will be applicable for the purposes of this Regulation:

a) It is a fundamental principle to ensure transparency, competition, fair treatment to all, reliability, confidentiality, public supervision and efficient use of the resources in the tenders to be held hereunder.

b) The bid offering the highest benefit with the lowest cost depending on the nature of the work and on project-basis is accepted as economically the most advantageous bid of the tender.

c) The revenues of the revolving funds, including the shares transferred to the central administration, are also taken into consideration in tenders held hereunder.

Construction or Renovation of Healthcare Premises

ARTICLE 6 - (1) The Ministry, within the framework of the Preliminary Project, Feasibility Report, Basic Standards Document and Tender Documents, may, against the Lease Rates to be specified by the Contract, commission the Contractors to construct Healthcare Premises on the Treasury-owned or privately-owned lands/sites to be transferred by the Ministry of Finance to the Contractor free of charge.

(2) (**Amendment: 30/04/2010-2010/403 Decision No.**) Operation of the Non-Medical Services and Functional Areas of Activity in the Healthcare Premises may also be left to the Contractors. Thereupon, the Lease Rate to be paid to the Contractor is determined in consideration with the revenues to be obtained from Non-Medical Services and Functional Areas of Activities left to the Contractor. Tender documents and the Contract may stipulate that all medical equipments and furnishings to be deployed in the Healthcare Premises to be constructed thereunder should be procured by the Contractor; in which case the Lease Rate will also be calculated accordingly.

(3) The Ministry may, in line with the clauses to be inserted to the Feasibility Report, Renovation Project, Tender Documents and Contract, commission the Contractor to perform the renovation works of the existing Healthcare Premises and their annexes in exchange for allowing the Contractor to operate the Non-Medical Services and Functional Areas of Activity in the said Healthcare Premises.

(4) The Contractor is not paid any Lease Rate in and for the renovation works. However, the sums of the revenues raised from the Services/Functional Areas of Activity left to the Contractor in renovation projects are paid to the Contractor as the service fee in line with the Contract provisions.

(5) The Administration determines the Term of the Contract to be signed with the Contractor for the Construction or Renovation of the Healthcare Premises, according to the result of the Feasibility Report, previous to the holding of the tender, and announces this Contract Term to the Bidders via the Tender Documents. This Contract Term can, however, in no way exceed forty-nine years including the construction or renovation periods, as the case may be.

(6) The Ministry may, as deemed convenient and in its sole discretion, award the construction and renovation works of more than one Healthcare Premise via a single tender.

Preliminary Preparations and Authorization

ARTICLE 7 - (1) The Ministry, prior to submitting each of its Healthcare Premise projects to the Higher Planning Board, prepares, or commissions others to prepare, a "Preliminary Feasibility Report" about each of these projects.

(2) During the preparation of this Preliminary Feasibility Report, the Ministry receives the approval of the Ministry of Finance regarding whether there exist appropriate real properties for each of the subject projects, and whether it is possible to transfer such properties to the Contractor free of charge after establishing right of construction on these properties in favor of the Contract for a period up to forty-nine years.

(3) Privately-owned properties at the vicinity of the place where a Healthcare Premise has been decided to be constructed under this Regulation may also be considered for assigning to such projects, provided that no Treasury-owned land having the desired qualities are found at this place

or provided that privately-owned lands offer more favorable conditions for the sake of investment and public costs compared with the Treasury-owned lands.

(4) The Ministry submits to the Higher Planning Board the projects it has identified along with its plans, programs and policies and consequently selected based on certain criteria, together with the Preliminary Feasibility Reports and its suggestions for the acquisition of the appropriate lands/sites for such projects. The Higher Planning Board examines and concludes the project proposals of the Ministry. Renovation projects are not submitted to the approval of the Higher Planning Board.

(5) The Ministry prepares itself, or commissions others to prepare, the Preliminary Project, Feasibility Report, Basic Standards Document and Tender Documents for each of the projects approved by the Higher Planning Board for the purpose of using them in the works and procedures related with the tender.

(6) Financial resources of the Revolving Fund are made use of for the Ministry's preparing itself, or commissioning others to prepare, the Preliminary Project, Feasibility Report, Tender Documents and Basic Standards Report. Provisions of the laws and regulations governing the revolving fund enterprises apply to the commissioning procedure of the works under this Article.

(7) Besides using the Revolving Fund Resources, the tender procedures specified in this Regulation can also be applied for all reports and documents to be prepared or to be commissioned to others for such preparation within the framework of this Regulation.

(8) The Ministry may organize a project or design competition with a prize in conformance with the principles and procedures to be specified for this end or hold a preliminary project tender in conformance with the procedures and principles set down in this Regulation, for architectural, landscape architectural and engineering designs and projects for the purpose of awarding the work of preparation of a Preliminary Project regarding some certain Healthcare Premises. Copyrights of the winner project/design of the competition or the tender are passed to the Ministry. This provision should be made clear in the specifications of the tenders/competitions to be held for such outsourcing of the preliminary project.

(9) The Ministry will issue a circular on topics as to which units in its central organization shall be authorized in construction and renovation projects and as to whether any transfer of authorization shall be made to the Ministry's provincial organization units for construction and renovation projects.

CHAPTER THREE

Tender Procedures and Proceedings

Tender Announcement

ARTICLE 8- (1) Construction or renovation works intended to be commissioned by the Administration within the framework of this Regulation, and the relevant Prequalification Advertisements are to be announced to the public via the Official Gazette and in two nationwide papers with high circulation and via internet by publishing at least one advertisement in each of the above referred media at least ninety days before the specified last bidding date of the tender.

(2) In cases necessitated by the character of the work to be tendered, this announcement is also made in two foreign papers with high circulation via publishing at least one advertisement in each of these papers at least ninety days before the specified last bidding date of the tender.

(3) An invitation letter is sent to the potential bidders picked up as a result of the Prequalification Evaluation process at least sixty days prior to the specified last bidding date of the tender.

(4) These periods may be shortened by half in tenders where no Prequalification process is specified.

Essential Components of Tender Announcements

ARTICLE 9- (1) Tender advertisements are required to contain following information:

- a) The character and location of the work subject to the tender,
- b) Where and how the specifications and their attachments could be obtained,
- c) The place, date and time of bid opening session, and the procedure of the tender,
- ç) Prequalification criteria to be sought at and the submittals to be requested from the bidders,
- d) Deadline in date and time for submitting bids, and where they will be submitted, and
- e) Whether the consortiums will be allowed to bid or not.

Qualifications to be Sought at the Bidders

ARTICLE 10 – (1) (Amendment: 30/04/2010-2010/403 Decision No.) Individual Bidders or each natural or legal person partner of Joint Venture Bidders willing to bid in the tenders to be held under this Regulation are required to prove by their financial statements approved by independent auditors or certified public accountants that they have a sound financial structure. The references, experience, and financial and technical qualifications requested from the Bidders are determined by the Ministry, and are announced to public by the tender advertisement and tender documents.

(2) Following information and documents may be requested from the Bidders of the tender for the purpose of determining their economical and financial qualifications and professional and technical qualifications:

- a) Submittals that may be requested from the potential Bidders for determining their economical and financial qualifications:
 - 1) Bank-issued documents showing the financial situation of the potential bidders,
 - 2) Potential Bidder's balance sheet which it is obliged to issue and publish in accordance with the related laws and regulations, or parts of the balance sheet as deemed required, and if not, comparable and equivalent documents, and
 - 3) Total turnover showing the business volume of the potential Bidder or documents showing the volume of the work related with the business subject of the tender as committed or completed by the potential Bidder in the past.

b) Submittals that may be requested from the potential Bidders for determining their professional and technical qualifications:

- 1) Documents attesting that the potential Bidder is registered to the chamber related with its business branch as mandated by the pertinent laws and regulations, and that it is legally authorized to bid in the tender,
- 2) Documents showing the potential Bidder's production and/or manufacturing capacity, its research & development activities and its efforts to maintain quality in its business,
- 3) Information and/or documents showing the organizational structure of the potential Bidder and assuring that the potential Bidder employs or will employ a sufficient number of employees with sufficient qualifications in order to fulfill its obligations under the tender,
- 4) Documents showing the educational and professional qualifications of the potential Bidder's technical personnel to be assigned for the service or construction works subject to the tender, as well as its managerial personnel,
- 5) Documents about the premises, machinery, equipments and other hardware which are deemed as prerequisite for the performance of the work subject to the tender,
- 6) Documents about the technical personnel or technical organizations in charge of quality control, regardless of whether such personnel or organizations are directly linked to the potential Bidder or not,
- 7) Certificates issued by quality control organizations duly accredited in accordance with the international rules, proving that the work subject to the tender is in accordance with the standards provided by the Tender Documents, and
- 8) Samples, catalogues and/or photographs of the goods to be procured, for subsequent confirmation of authenticity of these samples, catalogues and/or pictures upon the request of the Administration.

(3) Tender Documents and advertisements or invitations for the tender or for prequalification should, depending on the nature of the work subject to the tender, make it clear which of the above given information and documents will be requested and used in the prequalification evaluation process.

(4) Potential Bidders are deemed ineligible to participate to the tender in the following cases:

- a) If the potential Bidder has gone bankrupt, is in liquidation process, is under court administration, has entered into composition with its creditors, suspended its business activities, or is in a comparable situation in its home country according to the provisions of the laws and regulations of that country;
- b) If the potential Bidder is adjudged bankrupt, is subject to a non-voluntary court judgment for liquidation, is taken under court administration due to its unpaid debts to its creditors, or is in a comparable situation in its home country according to the provisions of the laws and regulations of that country;

- c) If the potential Bidder has outstanding and overdue social insurance premium debts finalized according to the provisions of the laws and regulations of Turkey or its home country;
- ç) If the potential Bidder has outstanding and overdue tax debts finalized according to the provisions of the laws and regulations of Turkey or its home country;
- d) If the potential Bidder has been convicted by a court judgment for an offence relating to its professional activities within five years preceding the advertisement date of the tender;
- e) If it is proven by the Administration holding the tender that the potential Bidder was involved in activities in contradiction with business and professional ethics during the course of the works performed for the Administration within five years preceding the advertisement date of the tender;
- f) If the potential Bidder has, as of the advertisement date of the tender, been banned from its professional activities by the Chamber it is registered in accordance with the pertinent laws and regulations;
- g) If the potential Bidder withholds the information and documents it is required to submit under this Article, or if it is proven later that it has submitted misleading information and/or forged documents;
- ğ) If the potential Bidder participates to the tender although Article 11 bans its participation; or
- h) If it is established that the potential Bidder has committed any of the illegal acts or behaviors listed under Article 17 of Public Procurement Law No. 4734.

Persons not Allowed to Bid

ARTICLE 11- (1) Below listed persons are not allowed to bid in the tenders directly or indirectly or in the capacity of a sub-contractor:

- a) Tender officers of the Tendering Administration;
- b) Tendering Administration's employees in charge of preparing, executing, concluding and supervising the tender proceedings;
- c) Spouses and relatives by affinity or consanguinity up to third degree (including the third degree) of the persons listed under Paragraphs (a) and (b) above;
- ç) Partnerships of the persons listed under Paragraphs (a), (b) and (c) (except for joint-stock companies where these persons are not a board member or where they hold shares less than ten percent of capital thereof); and
- d) Persons banned from bidding in public tenders on temporary or permanent basis in observance of the provisions of the Public Procurement Law No. 4734 and other pertinent laws.

Joint Ventures

ARTICLE 12 - (Amendment: 30/04/2010-2010/403 Decision No.) (1) Joint ventures can be established by more than one real or legal person as business partnership or consortium. Members of a business partnership found their partnership for performing the whole body of the contract works together by sharing all rights and responsibilities associated thereto in entirety, whereas members of a consortium segregate their rights and responsibilities and each of them assumes only those parts of the contract works within the borders of its own specialty.

(2) Rights and liabilities of the real or legal persons who come together to establish a special purpose of vehicle shall belong to each real or legal entity individually and after establishing the special purpose of vehicle, rights and liabilities shall belong to it.

(3) Business partnerships can bid in all kinds of tenders. Tendering Administrations clarify in their Tender Documents whether consortiums or real or legal persons who come together to establish a special purpose of vehicle will also be allowed to bid in their tenders, which decision is generally based on whether the contract work requires different specialties or not. At the tendering stage, members of the joint venture are requested to declare an agreement related to their joint venture or to provide a letter of undertaking. A “Pilot Partner” is nominated in business partnership agreements, while a “Coordinator Partner” is named in consortium agreements.

(4) The joint venture which is awarded the tender is requested to submit a notary-certified business partnership or consortium agreement prior to signing of the Contract. Business partnership agreements should provide that the real or legal person constituents of the partnership hold joint and several liability in performance of the undertaking, while consortium agreements should provide a list showing which part of the works was undertaken by which real or legal person members of the consortium, and that consortium members would ensure coordination between each other by the common means of the coordinator in realizing their undertaking.

(5) In case that the real or legal person who come together to establish joint venture or the special purpose of vehicle awards the tender, will provide the trade registry record of the special purpose of vehicle which is announced on the trade registry gazette, before signing the contract.

(6) A new separate special purpose of vehicle to be established for each contract signed under this regulation. Health facility project that to be made shall be stated as field of activity in the articles of association of this company.

Sub- Contractors

ARTICLE 13 - (1) If the nature of the work subject to the tender requires so, the Bidders may, at the stage of the tender, be requested to specify the works they think to outsource from sub-contractors, and to submit, before signing of the Contract, the list of these subcontractors to the approval of the Administration. However, the approval of this list by the Administration does not relieve the Contractor from its liability for the works performed by the sub-contractors.

Tender Procedures File

ARTICLE 14- (1) A file is kept for the works to be performed under the tender. This file contains the approval certificate, the forecasted amount of investment and the forecasted lease rate, a statement of account relating to the cost, the Tender Documents and its Appendices, the advertisement and the copies of the papers where these advertisements are published, as well as other documents related with the tender procedures.

(2) In case it is understood that the specifications include records and conditions which are technically-nonconforming or are impossible to be accomplished; the tender committees postpone the tender in order to meantime have the Administration correct the specifications. In this case, the tender process is continued according to the revised specification and advertisement.

Tender Documents

ARTICLE 15 – (1) Tender Documents specifying the particulars and scope of the Construction or Renovation Works, Instructions for the Bidders, Specifications, and the Draft Contract are prepared by the Ministry itself or commissioned to others for such preparation prior to the start of the Tender process. Depending on the nature of the project; the Preliminary Project, Feasibility Report, Basic Standards Document and Renovation Projects prepared by the Ministry itself or commissioned to others for such preparation are delivered to the potential Bidders as Appendices to the Tender Documents.

(2) In addition to the special and technical conditions which may vary depending on the nature of the Healthcare Premise, the Tender Documents are generally also required to include the following information:

- a) Name, type, nature and content of the healthcare premise to be constructed or renovated, and the scope of the non-medical services and functional areas of activity that will be left to the operation of the Contractor;
- b) Tender procedure, last bidding date and time, and where the bids will be submitted;
- c) Instructions for the bidders;
- ç) Conditions, documents and prequalification criteria to be sought from the bidders;
- d) Methods of requesting and making clarifications about the contents of the Tender Documents;
- e) Validity (option) time of the bids;
- f) Whether Joint Ventures will be allowed to bid in the tender, and whether bidders will be allowed to bid for the tender works completely or partially;
- g) Procedures and principles set down in this Regulation for application on the acceptance, opening and evaluation of the Bids;
- ğ) Procedures and principles set down in this Regulation for application during the period between the date of award of the Contract and the date of signature of the Contract;

- h) Whether the tender is open only for the local Bidders or not;
- i) Bid bond and performance bond rates and conditions to apply on the bonds;
- j) A statement that the Tendering Administration will be free to cancel the tender at any time before the last bidding date;
- k) A statement that the Tendering Administration will be free to refuse all bids and cancel the tender;
- l) Commencement and completion dates of the Construction and Renovation Works subject to the tender, as well as the delivery conditions and the penalties to apply in case of delays;
- m) Methods of determining the Lease Rates, payment periods and conditions;
- n) The party liable to pay the taxes, duties and official charges, and other costs arising out of or in relation with the execution of the Contract;
- o) Conditions regarding the insurance of the works and workplace in the construction works, and the construction supervision responsibilities and liabilities;
- p) Conditions regarding the supervision, inspection and acceptance procedures;
- q) Resolution of the disputes;
- r) Submittals to be requested from the Bidders for evaluation purposes; namely Feasibility Report, Renovation or Construction Period Work Program, Finance and Cash Flow Tables for the Renovation/Construction and Operation Periods, Operation Period Management Plan, and similar reports prepared by the potential bidder about the Healthcare Premise that is subject to the tender;
- s) Means and conditions of handover and receipt of the land/site on which the Healthcare Premise will be constructed;
- t) Preliminary Project, Basic Standards Document, Feasibility Report and Renovation Project depending on the nature of the project;
- u) The list of the non-medical services and functional areas of activity to be left to the management of the Contractor against the renovation works in renovation projects, and the period of such operating rights to be licensed to the Contractor, and methods of calculation of the service fees payable, and other issues;
- v) Whether a list of ranking will, for the purposes of final bargaining negotiations, be made among the bidders based on criteria such as lease rate, etc. following the evaluation of the bids, and if so, the number of the bidders to be called for the final bargaining negotiations;
- w) Provisions concerning the features, procurement method, renovation and maintenance of the equipments in projects including medical equipments, and operation of the approved equipments; and

ü) Procedures and principles of preparation and approval of the Final and Application Projects.

Distribution of Tender Documents

ARTICLE 16 – (1) Specifications and Appendices of the Tender Documents may be seen by the potential bidders at the Ministry and the Tendering Administration free of charge, and may be obtained by the potential bidders against a price to be determined by the Ministry and the Tendering Administration proportionally with the costs thereof.

Prequalification

ARTICLE 17 - (1) It is essential to conduct a prequalification process for preliminary assessment of eligibility of the potential bidders to the construction and renovation tenders for Healthcare Premises to be held under this Regulation.

(2) “A Prequalification Committee” is formed by the Ministry for each tender. Foundation and working procedures of this Committee, and the qualifications to be sought at the bidders as a requirement of the work subject to the tender are determined by the Ministry based on the character of the work and in a way not to hinder competition. Advertisements can in no way contain any information or requirement that was not mentioned in the prequalification document.

(3) Prequalification advertisements should at least provide the following information:

- a) Name, nature and type of the tender;
- b) The location of the Healthcare Premise to be constructed or renovated;
- c) Conditions to be sought in the prequalification evaluation, and the documents requested;
- ç) Criteria to apply in the prequalification evaluation;
- d) The place the prequalification document can be seen and the purchase price of a copy of it; and
- e) The place the prequalification evaluation application will be submitted, and final date and time of application.

Tender Committee

ARTICLE 18- (1) The Expenditure Controller appoints the associate and alternate members of the Tender Committee which should be consisted of an odd number of, which can not be less than five, members – at least four members from among the employees of the Tendering Chairman, one of them as the Committee Chairman, and two of which should be specialists on the subject matter of the tender, and additionally one member in charge of accounting or financial affairs. The Committee may assign a sufficient number of administrative and technical personnel in addition to this minimum number as may be needed for assisting the Committee, on condition of their nonparticipation to the decision-making process of the Committee.

(2) A copy of the Tender Procedures File is given to each of the Tender Committee members within three days following publishing of the advertisement or sending of the invitation in order to let them make the required examinations on it.

(3) Tender Committee meetings should be held with the attendance of all its members. Any associate member who cannot attend a Committee meeting will be deputized by an alternate member. The Committee decisions are taken by simple majority. The Committee members can not abstain in voting for a decision. Chairman and members of the Committee are responsible for their

votes and the decisions taken. The Committee members using dissenting votes are obliged to write their reason for the dissenting vote on the Committee's decision, and sign it.

(4) Decisions taken by the Tender Committee and the reports prepared for these decisions are signed by the Chairman and members of the Committee under their names, surnames and positions.

Bidding Methods

ARTICLE 19 – (1) The tenders for renovation or construction works of the Healthcare Premises under this Regulation may be held based on either of the following bidding methods:

- a) Open bidding method; or
- b) Competitive bidding among certain chosen bidders; or
- c) Negotiation and bargaining procedure.

(2) The method to be adopted in each tender is decided by the Ministry on project-basis within the framework of this Regulation.

Open Bidding Method:

ARTICLE 20 – (1) Open bidding method is a process where all bidders are permitted to bid. In the open bidding method, the compliance of the potential bidders with the prequalification criteria which measure and indicate the capacity of the potential bidders to perform the subject works and are determined in accordance with the procedures and principles set down in this Regulation, as well as the compliance of the potential bidders with the conditions specified in the Tender Documents are checked, and the bids of the non-qualified bidders are excluded from the evaluation of bids.

Competitive Bidding Among Certain Chosen Bidders:

ARTICLE 21 – (1) In competitive bidding among certain chosen bidders method, only the bidders selected and invited by the Ministry as a result of the prequalification evaluation process are allowed to bid.

(2) Prequalification evaluation of the potential bidders is made according to the evaluation criteria declared in the prequalification document and prequalification advertisement prepared and published by the Ministry depending on the nature of the job and in a way not hindering the competition. Potential bidders falling short of the minimum prequalification conditions are deemed ineligible for the bidding. In tenders to be carried out in accordance with the provisions of this Article, the names of the bidders to be invited to the tender are presented to the Ministry in construction works, and to the Expenditure Controller in renovation works, and their prior approval is taken as applicable. Authorization of the Higher Planning Board is required to be taken for the finalization of the award decision if and when a total of less than three bids are taken due to inevitable reasons, or less than three bids are submitted to the Tender Committee although three or more bidders are invited to the bidding.

(3) In tenders approved by the Ministry, a certain number of bidders may be invited for the final bargaining negotiations as selected from a list of the bidders, prepared following evaluation of the

bids, according to criteria such as the lease rate, etc. on condition of announcement thereof in tender advertisement and in tender documents.

Negotiation and Bargaining Bidding

ARTICLE 22- (1) The Ministry may decide for holding a competitive bidding by the bargaining method in cases where the contract cannot be awarded by the open bidding method or the competitive bidding among certain chosen bidders method, or in the following cases:

- a) If urgent award of the contract becomes obligatory due to emergence of abrupt and unpredicted events such as natural disasters, epidemic diseases or events posing risks on the safety of life or safety of property;
- b) If the technical and financial aspects of the healthcare premise subject to the tender can not be determined clearly and appropriately because of its unique character and complexity; and
- c) Projects for renovation or restoration of an existing building, if the predicted cost of this project is below five million New Turkish Liras.

(2) Making an advertisement is not compulsory in tenders to be held under sub-paragraph (a) of the first paragraph above; however, at least three bidders are required to be invited to the competitive biddings to be held by this method. The threshold provided under sub-paragraph (c) of the first paragraph above is updated every year with effect from February 1st by the Ministry according to the annual Producers Prices Index (PPI) figure published by the Turkish Statistics Institution.

(3) The bids have to be received in writing in the negotiation and bargaining bidding procedure. The bids are evaluated in accordance with the principle of determination of the Lease Rate to be paid for the subject Healthcare Premise and/or the royalties to be paid for the non-medical services and functional areas of activity and the operating period for which these services and functional areas of activity will be let to the Contractor, as stated in the Tender Documents. This evaluation also takes into consideration other factors that have been provided by the specifications.

(4) The contract is awarded by bargaining negotiations. Final tender award decision explains the process of the negotiations held with the bidders, the bids submitted by all bidders, and the factors that influenced the award of the contract to the Contractor.

Preparation and Submission of Bids

ARTICLE 23 - (1) All documents and submittals requested for participating to the tender, including the letter of bid, are placed in an envelope. The name, surname or corporate name, and notification address of the bidder, the works the bid is placed for, and open address of the Tendering Administration are written on the envelope. The flap of the envelope is signed and sealed by the bidder.

(2) Letters of bid are submitted in writing and should be signed. The letter of bid has to declare in writing that the Tender Documents have been read and accepted entirely; it should bear on it the bid price clearly in numbers and in words as identical to each other; it should not contain any scratch, deletion or correction on it; and it should be signed by the duly authorized officers of the bidder with their names and surnames or the corporate name of the bidder written thereon.

(3) Bids are submitted and delivered to the Tendering Administration until the last bidding date and time shown in the Tender Documents against serially numbered acknowledgements of receipt. Bids submitted after this time are not accepted and are returned to the bidders without being opened. It is also possible to send the bids by registered mail. However, letters of bids sent by mail have to reach to the Tendering Administration by the last bidding date and time specified in the Tender Documents. Mailed bids which will not be evaluated in the tender process because of their late receipt by the Administration due to delays in mail shall be identified by a written and signed statement.

(4) Bids which are submitted to the Administration can not be taken back or amended by the bidders except for the addenda that may be issued by the Administration in the tendering process.

Receipt and Opening of Bids

ARTICLE 24- (1) Bids are submitted to the Tendering Administration until the last bidding date and time set forth by the Tender Documents. The number of the bids submitted to the Tendering Administration as of the last bidding date and time specified in the Tender Documents is determined by the Tender Committee by a written and signed statement and announced to those attending the bid opening session, whereupon the tender process is started immediately. The envelopes containing the bids are opened according to the order of their receipt before the bidders and others in presence.

(2) It is controlled whether the submittals and documents of the bidders are complete and whether the letters of bid have been prepared in accordance with the procedures. Those bidders whose submittals and documents are not complete or whose letters of bid have not been prepared in compliance with the procedures are identified by a written and signed statement. The bidders and their bid prices are announced. Official statement prepared regarding these procedures is signed by the members of the Tender Committee. At this stage, neither any decision for the approval or refusal of any bid is taken, nor is any document making up the bid package allowed to be corrected or completed. Then the bid opening session is closed for an immediate evaluation of the bids by the Tender Committee.

Evaluation of Bids

ARTICLE 25- (1) Tendering Administration may, upon demand of the Tender Committee, request the bidders to clarify the obscure parts of their bids in writing in order to use such clarification for better examination, comparison and evaluation of their bids. However, this clarification request is in no way aimed at a change in the bid price or for ensuring the conformance of the bids which originally do not conform to the conditions set forth by the Tender Documents.

(2) During the bid evaluation process, the bids of the bidders which are determined to have missing documents or whose letter of bid is understood to be nonconforming with the procedures in the first bid opening session are first of all disqualified.

(3) However, if the documents contained in the files are incomplete or if they are understood to have minor missing information, the bidders of such files are requested by the Tendering Administration in writing to complete such deficiencies or lacking information within a time period specified by the Administration. The bidders who fail to complete their deficient

documents or information within such specified time periods are also disqualified from the tender process.

(4) Following these initial evaluations and procedures, the bids of the bidders which have submitted complete submittals and documents and whose letters of bid are in compliance with the procedures are taken into evaluation. At this stage, the compliance of the bidders to the prequalification criteria measuring and indicating their capacity to perform the works subject to the tender, and the compliance of the bids to the conditions set forth by the Tender Documents are evaluated. Bids of the bidders which are determined not to comply with such criteria are disqualified.

Refusal of All Bids and Cancellation of Tender

ARTICLE 26- (1) Tendering Administration may, upon a decision of the Tender Committee, refuse and turn down all bids and cancel the tender. Such cancellation of the tender is immediately notified to all bidders. Non-award decision bears no liability on the part of the Tendering Administration. However, Tendering Administration provides its justifications for the cancellation of the tender to the bidders upon demand of the latter.

Award of Contract and Approval of Award

ARTICLE 27- (1) After evaluating the bids according to Article 25 hereof, the Tender Committee gives its reasoned decision within the framework of sub-paragraph (b) of first paragraph of Article 5 hereof, and submits this decision to the Expenditure Controller for approval. This decision provides the names or corporate names of the bidders, the lease rate or operation period offered, date of the tender, the successful bidder and the reasons for this award, and the reasons for non-award of the contract, if so.

(2) The Expenditure Controller, within a maximum of five business days following the date of decision, approves the award of contract or cancels it by clearly expressing the reasons for such cancellation.

(3) The award of contract is deemed to be ratified if approved by the Expenditure Controller, and void if not.

(4) Tendering Administration, prior to the approval of the tender decisions by the Expenditure Controller, is required to confirm whether the successful bidder is banned from bidding in public competitive biddings or not, and to attach such confirmation document to the tender decision.

Notification of the Ratified Awards

ARTICLE 28- (1) Tender decisions ratified by the Expenditure Controller are notified to the successful bidder or its representative or attorney against a signed acknowledgement of receipt, or mailed by registered mail to the notification address of the same, within no later than 5 business days following such ratification. The seventh day following the mailing of the notification letter to the notification address of the successful bidder is accepted as the notification date in notifications sent by registered mail.

(2) Cancellation decisions of the Expenditure Controller are also notified to the successful bidder in the same way.

CHAPTER FOUR

Preparation and Execution of Contract; and Contents of Contract

Signing of Contract

ARTICLE 29- (1) All awarded tenders are concluded with a contract. Expenditure Controller signs this contract in the name of the Tendering Administration.

(2) The Ministry decides whether the contracts signed accordingly should be notary-certified or not in consideration with the significance and particularity of the work, and the points regarding such significance and particulars are presented in the tender documents.

Contents of Contract

ARTICLE 30- (1) The Contract covers the following subjects:

- a) Parties,
- b) Subject matter and term of the Contract,
- c) Procedures and principles for preparation and approval of the Final and Application Projects,
- ç) Standards and quality of the Construction / Renovation Works and Services,
- d) Scope and general principles of the Construction or Renovation Works or the non-medical services and functional areas of activity to be let to the Contractor,
- e) Terms and conditions for start and completion of the Construction and Renovation Works, and sanctions to be imposed on delays,
- f) Means and conditions of handover and receipt of the land/site on which the Healthcare Premise is to be constructed,
- g) Rules concerning the payment of the Lease Rates, and provisions concerning the payment of the “service fees” for the non-medical services to be let to the Contractor in Renovation projects,
- ğ) Terms and conditions concerning the use of the non-medical services by the Contractor,
- h) Procedures and principles concerning the performance of the services stipulated to be performed by the Contractor,
- ı) Procedures and principles regarding the consideration of the non-medical services and functional areas of activity let to the Contractor, in the pricing criteria and in the calculation of the Lease Rate,

- i) The features, procurement, renewal and maintenance of the equipments in the projects covering supply of medical equipments, and provisions on the operation of the approved equipments,
- j) Financing for the investment and operation periods of the Healthcare Premises;
- k) Procedures and principles concerning the commissioning and acceptance of the Healthcare Premises,
- l) Delays in completion and changes in the cost of the works during the investment period,
- m) Conditions concerning the amount and release of the Performance Bond,
- n) Monthly and annual activity reports,
- o) Safety, security, and environmental precautions,
- ö) Conditions concerning the insurance of the works and workplace in the construction works, and the construction supervision and liability,
- p) Maintenance and repair,
- r) Procedures and principles concerning the transfer of the Healthcare Premise at the end of the term of the Contract, and procedures and principles concerning the transfer of the Healthcare Premise prior to the end of the term of the Contract,
- s) Provisions on the other agreements,
- ş) Loans,
- t) Force majeure events; liabilities and indemnities; supervision; resolution of disputes;
- u) Provisions on transfer or assignment and termination of the Contract,
- ü) Taxes, duties and other charges concerning the Contract,
- v) Provisions on the notices; language of the Contract; amendments in the Contract; and effective date of the Contract;
- y) Other provisions that may be included by the Administration.

Transfer and Delivery of the Land or Site to the Contractor

ARTICLE 31 – (1) (Amendment: 30/04/2010-2010/403 Decision No.) Upon demand of the Ministry, the Ministry of Finance may establish a free of charge right of construction in favor of the Contractor for a period up to forty-nine years on:

- a) the real properties that are owned by the Treasury and are chosen by the Ministry for construction of Healthcare Premises in accordance with this Regulation, or

- b) the real properties that are under administration and possession of the Government and are allowed to be registered for the intended purposes,

providing that they are found acceptable also by the Ministry of Finance.

(2) The real properties referred to in the first paragraph above are transferred and delivered to the Contractor by issuing an official deed containing a clause stipulating that the subject real properties and the premises thereon can not be used outside the intended purposes at any time during the validity of the contract for the right of construction, as well as other conditions regarding the right of construction.

(3) (**Amendment: 30/04/2010-2010/403 Decision No.**) All authorizations that should be taken according to the applicable laws and regulations for the lands or sites to be transferred to the Contractor and the reports that should be prepared in relation therewith are under the responsibility of the Ministry. Within thirty days following the completion of the procedures referred to in the preceding paragraphs and signing of the Contract with the Contractor, these real properties on which a free of charge right of construction is established by the Ministry of Finance in favor of the Contractor for a period up to forty-nine years are transferred to the Contractor. In addition, an annotation will be inserted in the land registry files in order to stipulate that these real properties cannot be used outside the intended purposes at any time during the validity of the underlying contract and cannot be transferred or assigned to third parties without a prior consent of both the Ministry and the Ministry of Finance.

(4) (**Amendment: 30/04/2010-2010/403 Decision No.**) In the event of construction of the Healthcare Premises on the lands or sites owned by real persons or private law legal entities, delivery of the subject lands and sites to the Contractor is deemed to have taken place in the sixtieth day following the execution of the contract. In addition, an annotation will be inserted in the land registry files in order to stipulate that these real properties cannot be used outside the intended purposes at any time during the validity of the underlying contract and the right of contract established in favor of the Contractor cannot be transferred or assigned to third parties without a prior consent of both the Ministry and the Ministry of Finance.

Term of Contract

ARTICLE 32- (1) Term of the contract is determined by the Tendering Administration based on the characteristics of the healthcare premise and the results of the feasibility report, and included to the Tender Documents.

(2) Term of the contract includes the investment period (including the designing and construction periods) and the operation period starting from the date of site delivery as specified in the Contract.

(3) Designing and construction period for the healthcare premises other than the integrated health campuses is not allowed to be more than four years.

Financing and Guarantee

ARTICLE 33 – (1) The Contractor is obligated to provide all financing as required for the investment of the Construction and Renovation Works of the subject Healthcare Premise and the Services to be provided by the Contractor. The ratio of the equity capital to be provided by the

Contractors for their investments under this Regulation can not be less than twenty percent of the Total Fixed Investment Amount stipulated by the Contract.

(2) The Ministry takes all actions and measures in the budget items of its Revolving Funds in order to ensure allocation of sufficient funds as required for the payment of the periodical Lease Rates of the pertinent Healthcare Premise to the Contractor throughout the term of the Contract. The Contracts also contain provisions confirming that the timely and full payment of the Lease Rates is under the guarantee of the Ministry, and delineating the penal sanctions to apply to the delays in payments of such Lease Rates.

Calculation of Payments to the Contractor and Payment Methods

ARTICLE 34- (1) Procedures and principles to govern the calculation and payment of the Lease Rates payable to the Contractor regarding the construction works are provided both in Tender Documents and in the Contract. The values of the non-medical services and functional areas of activity let to the Contractor are also taken into consideration in calculation of the Lease Rates to be paid to the Contractor in construction projects.

(2) In the case of renovation projects, the proceeds of the non-medical services and functional areas of activity let to the Contractor are paid to the Contractor as the Service Fee. The value of the non-medical services and functional areas of activity let to the Contractor in renovation projects is taken into consideration in calculation of the cost of the renovation investment made by the Contractor. In renovation projects, the main criterion taken into consideration in calculation of the cost of the renovation project is the periods for which non-medical services and functional areas of activity are let to the Contractor.

(3) The factors to be considered in determination of the Lease Rate in construction works are:

- a) whether the land or site is owned by the Treasury or by private persons,
- b) Total Fixed Investment Amount,
- c) medical equipments and furnishings supplied by the Contractor,
- ç) term of the Contract,
- d) non-medical services and functional areas of activity let to the Contractor, and
- e) profit margin of the Contractor.

(4) Various different lease periods may be determined and included to the Tender Documents and to the Contract. Advance payments and interim progress payments are taken into consideration in the calculation of the total Lease Rate.

(5) (**Amendment: 30/04/2010-2010/403 Decision No.**) Lease period and lease increase rates are also stated in Tender Documents and in the Contract. Lease increase rates are determined based on the annual Producer Prices Index (PPI) and Consumer Prices Index (PCI) belonging to the previous year announced by the Turkish Statistics Institution in January and calculated by using the formulate of $PPI + PCI / 2$.

(6) Lease payments to be made to the Contractor within the lease periods identified by the Contract following the takeover of the Healthcare Premise are paid from the budget of the Healthcare Premise if a revolving fund management is established within the Premise, and from the share transferred to the account of the Ministry's Central Revolving Fund Accounting Department if a revolving fund management is not established within the Premise or if the financial situation of such management can not afford such payments.

(7) Procedures and principles concerning the calculation and payment of the fees to be paid to the Contractor as a part of the Lease Rate in consideration for the Services to be provided by the Contractor are included to the Tender Documents and to the Contract.

(8) The Ministry may commission the works of appraisal of the value of non-medical services and functional areas of activity to be operated by the Contractor, and of public cost analysis thereof, to specialized organizations and institutions with the costs of such commissioning covered from the budget of the revolving fund. The provisions of the laws and regulations which govern the revolving fund managements apply to the commissioning works referred to in this Article.

Delays in Completion of Works, Changes in Costs during Investment Period, and Penalties

ARTICLE 35 – (1) Provisions concerning the sanctions to be imposed in cases of delays in completion of the Construction or Renovation Works, and concerning the changes in the costs are provided by the Tender Documents and by the Contract.

(2) (**Amendment: 30/04/2010-2010/403 Decision No.**) The Ministry is vested with the right to impose penal sanctions on the Contractor due to mistakes or failures attributable to the Contractor during the construction or operation of the Healthcare Premise. When and how such penalties and sanctions will be applied shall be delineated in the Contract. In case that the Contract is terminated by the Ministry or the Contractor without any fault of the Contractor or by the Contractor due to the fault of the Ministry, the Ministry takes all measures in the budget items of its Revolving Funds in order to ensure allocation of sufficient funds as required for the payment for compensation of the losses of the Contractor. The way and the extent of the compensation of the mentioned losses shall be provided in the Contract.

Bonds

ARTICLE 36- (1) A bid bond at a rate of three percent of the bid price or the total fixed investment amount is taken from the bidders.

(2) (**Amendment: 30/04/2010-2010/403 Decision No.**) A performance bond at a rate of three percent of the total fixed investment amount is taken from the Contractor prior to signing of the contract, and an explanation relating thereto is added to the tender documents as required.

Instruments Acceptable as Bonds

ARTICLE 37 - (1) Instruments acceptable as bonds are as follows:

- a) Turkish currency in circulation,
- b) letters of guarantee issued by banks and participation banks, and
- c) the state internal borrowing securities issued by Treasury Undersecretariat, and documents issued against these securities,

(2) Letters of guarantee issued by foreign banks which are granted license for having operations in Turkey in accordance with the pertinent laws and regulations governing thereof, and letters of guarantee issued by banks or participation banks active and operating in Turkey against a contra-

guarantee received from banks or similar credit organizations having operations outside Turkey are also accepted as bonds.

(3) Securities mentioned in sub-paragraph (c) of first paragraph above and the documents issued against these securities with a value computed by addition of interest to their nominal values are accepted as bond only over their issue price corresponding to the principal sum thereof.

(4) Bonds can only be replaced with other instruments which are also acceptable as bonds.

(5) No attachment or injunction can be levied for whatsoever reason on the instruments accepted as bond by the Tendering Administration.

(6) Letters of guarantee prepared or issued in contradiction with the pertinent laws and regulations are not accepted as bond.

Supervision

ARTICLE 38 – (1) The Ministry supervises, or commissions others to supervise, all activities of the Contractor under the Contract at all phases. The Ministry may found a supervision and management mechanism for the purpose of performance supervision and management. It can make arrangements to this end as and when it deems required.

Force Majeure Events

ARTICLE 39 - (1) The events that will be accepted as force majeure conditions are as follows:

- a) Natural disasters,
- b) Legal strikes,
- c) General outbreak of epidemic diseases, and
- ç) Partial or general mobilization declarations.

(2) In order for the above referred events to be accepted as force majeure conditions by the Tendering Administration with the resulting effects thereof, including granting of a time extension and cancellation of the Contract; such events should not have been caused by a fault of the Contractor, and they should be of a nature to impede the performance of the Contractor's obligations under the Contract, and the Contractor should be unable to avoid and remove such impedances, and the Contractor should notify the Tendering Administration in writing within twenty days following the date of occurrence of the force majeure event, and the events should be documented by the competent authorities.

Transfer of Contract

ARTICLE 40 – (1) The Contractor may, with a prior consent of the Ministry, transfer and assign under the same conditions all its rights and obligations arising out of the Contract during the investment and operation periods, to other real persons or private law legal entities providing that they satisfy the conditions of eligibility specified in this Regulation. In this case, the Right of Construction Contract which the Contractor has signed with the Ministry will also be separately transferred to the name of the real person or private law legal entity taking over the rights and obligations of the Contractor. In case of such transfer of the Contract; other contracts the

Contractor has signed with the Ministry are also deemed to have been transferred to the real persons or private law legal entities taking over the Contract.

(2) Similarly, the Ministry is also entitled to transfer the contracts by specifying the conditions of such transfer on condition of existence of clear-cut provisions in the related laws and regulations to this end. In the event of the Ministry's transfer of the Contract to another party; provisions of the Contract such as the term, lease rate, and the scope of the services assumed by the Contractor can not be changed without the consent of the other party of the Contract, i.e. the Contractor.

CHAPTER FIVE

Termination of Contract

Termination of Contract

ARTICLE 41- (1) (**Amendment: 30/04/2010-2010/403 Decision No.**) If, after signature of the Contract, the Contractor decides to abandon its undertaking under the Contract or it fails to perform its obligations in compliance with the Tender Documents and Contract provisions; except the events which are provided in the contract and determines the termination, the Contractor will be given a certain period of time for remedy of its failure by a written notice, delineating the reasons thereof, sent by the Tendering Administration to the Contractor through a notary public. This period of time the Tendering Administration will give to the Contractor can not be, except for the urgent cases, less than ten days starting from the date of communication of the written notice to it by the Tendering Administration. This time period shall not extend, or affect otherwise, the term of the Contract, or shall not prevent the application of the penal clause due to the delay.

(2) Tendering Administration shall be entitled and authorized to terminate the Contract without any separate protest or court judgment, if the Contractor fails to comply with the instructions given in the written notification by the end of the period of time granted by the Administration.

(3) In the event of termination of the Contract, performance bond of the Contractor shall be cashed and retained by and credited to the Treasury and will not be set off or deducted against the outstanding and unpaid debts of the Contractor. Contractors can in no way claim any right, money or compensation in exchange for the performance bonds thus cashed and retained upon termination of the Contract.

(4) If a real property has been transferred by the Treasury by establishing and registering a free of charge independent and uninterrupted right of construction in favor of the Contractor for a period up to forty-nine years; this right of construction is withdrawn and annulled and is deleted from the land registry, and this real property, together with the buildings and plants including the fixtures and accessories thereon, is passed to the Treasury free of charge. The costs of any and all damages caused by the Contractors on the real property or on buildings, plants and fixtures and accessories thereon are also separately recovered from the Contractors.

(5) The breakdown and accounting of the works subject to the terminated Contract are carried out in accordance with the general law provisions, and the relations of the Contractor with the Tendering Administration have thus been severed. For this purpose, current state of the works as of the approval date of the termination of the Contract is determined and an "Onsite Determination Memorandum" is prepared by a committee assigned by the Tendering Administration, with

presence of the Contractor or its representative. If the Contractor or its representative is not present during this determination; this is also stated in the memorandum.

(6) In case of termination of the Contract where the real property of the Healthcare Premise is owned by the Contractor; the Ministry may purchase this real property and the buildings and plants, installations, work items and other materials, machinery, instruments and spare parts located on this real property with a prior consent of the Contractor. Such work items for the plumbing installations, electrical installations, heating, cooling and ventilation systems, laundry and cooking installations, and hospital installations, and other such systems and installations will be purchased over the naked price of each work item which is found after subtraction of the installation fee plus the profit margin and the overhead costs of the Contractor from the unit price of the installed material including all necessary auxiliary materials and only after all possible examinations and tests have been made on them. The materials that are used in installations and which have no specific unit price may also be purchased in consideration with their market prices and after reaching a consensus with the Contractor. Existing plants on such real estates such as buildings, construction site structures and other similar plants are purchased over their unit prices and/or the price found by an assessment based on market prices applicable in the year of termination of the Contract; while the machinery, vehicles and spare parts are purchased over their equivalent market prices by also considering the wear and tear and amortization and the differences in the quality of the labor and material.

Liquidation of Contract

ARTICLE 42- (1) The Contract may be liquidated and hence terminated automatically upon emergence of force majeure events or upon mutual agreement of the Contractor and the Tendering Administration for such liquidation within the framework of the provisions of the Code of Obligations no. 818.

(2) The Contractor, upon liquidation of the Contract, is not allowed to claim any right or compensation, nor is any compensation paid to the Contractor, in respect of the parts of the buildings, plants and fixtures and accessories that should normally be passed to the Treasury, as located on the real properties transferred (if transferred) to the Contractor by the Treasury by establishing a free of charge independent and uninterrupted right of construction for a period up to forty-nine years.

(3) In case of liquidation of a Contract where the real property of the Healthcare Premise is owned by the Contractor; the Ministry may purchase this real property and the buildings and plants, installations, work items and other materials, machinery, instruments and spare parts located on this real property with a prior consent of the Contractor. Such work items for the plumbing installations, electrical installations, heating, cooling and ventilation systems, laundry and cooking installations, and hospital installations, and other such systems and installations will be purchased over the naked price of each work item which is found after subtraction of the installation fee plus the profit margin and the overhead costs of the Contractor from the unit price of the installed material including all necessary auxiliary materials and only after all possible examinations and tests have been made on them. The materials that are used in installations and which have no specific unit price may also be purchased in consideration with their market prices and after reaching a consensus with the Contractor. Existing plants on such real estates such as buildings, construction site structures and other similar plants are purchased over their unit prices and/or the price found by an assessment based on market prices applicable in the year of liquidation of the Contract; while the machinery, vehicles and spare parts are purchased over their equivalent market

prices by also considering the wear and tear and amortization and the differences in the quality of the labor and material.

(4) In case of liquidation of the Contract, performance bond previously taken from the Contractor is released and returned and the breakdown and accounting of the works subject to the Contract are carried out in accordance with the general law provisions.

Post-Termination and Post-Liquidation Procedures

ARTICLE 43- (1) Upon termination or liquidation of the Contract, the Contractor is in no way entitled or allowed to disassemble and remove from its existing position any of the utilities in the workplace and of the installations related therewith, or take away or relocate any of the work items and other materials, equipments and machinery, or make any changes in the workplace in the Healthcare Premises without a prior consent and approval of the Administration. The Administration, in order to prevent any action of the Contractor to such ends as outlined in the preceding paragraph, shall be entitled to seize and confiscate the workplace and dismiss the existing organization of the Contractor from the workplace as it deems required.

Transfer of Healthcare Premises to the Ministry at the end of the Contract Term

ARTICLE 44 - (1) Real properties, and the healthcare premises constructed thereon, which have been transferred by the Treasury to the Contractor by establishing a free of charge independent and uninterrupted right of construction, are freely passed to the ownership of the Treasury at the end of the term of Contract for the right of construction, free from all and any encumbrances, liabilities, annotations and restrictive clauses in land registry, debts or any commitments whatsoever, and in a well-maintained and working order and usable condition except for normal wear and tear. Whether the Healthcare Premises satisfies the conditions stipulated by the Contract as of the time of the transfer is checked and determined by a Transfer/Takeover Committee to be set up for this purpose. The Contract provides clauses for foundation and working procedures and principles of this Committee, and elimination of the deficiencies and faults and performance of the required restorations and repairs as detected by this Committee.

(2) Independent and uninterrupted right of construction established by the Finance Ministry in favor of the Contractor is cancelled at the Land Registry, and the restrictions, encumbrances and statements are removed from the logbook at the Land Registry upon termination of the right of construction contract regarding the transfer of the real properties to the Contractor by the Treasury by establishing a free of charge independent and uninterrupted right of construction in favor of the Constructor for a period up to forty-nine years.

(3) In the case of use of lands or fields owned by real persons or private law legal entities, the conditions of transfer of the land or field and all real properties built thereon are specified in the Contract, depending on the characteristics of the project.

(4) In the case of all types of transfer of the Healthcare Premises, where the non-medical services and functional areas of activity have been let to the Contractor, the contracts for such services and areas are also deemed to have been terminated and these areas also pass to the possession and control of the Ministry as of the date of transfer.

Transfers Prior to End of Term of Contract

ARTICLE 45– (1) The Contract also includes clauses regarding the takeover of the Healthcare Premise and Other Contracts before the end of the term of the Contract due to force majeure events or upon unilateral termination of the Contract by the Ministry.

CHAPTER SIX

Miscellaneous and Final Provisions

Liability and Indemnity

ARTICLE 46 – (1) The Contractor is obliged:

- a) to prepare the designs and drawings and provide the required finance for the investment for Renovation or Construction Works of the Healthcare Premise within the specified time period and in accordance with the provisions of the Contract;
- b) to complete the Healthcare Premise;
- c) to offer the non-medical services and operate the non-medical functional areas of activity;
- ç) to maintain, repair and restore the entire Healthcare Premise in line with the provisions of the Contract and for the duration stipulated by the Contract;
- d) to notify the Ministry immediately if and when third parties claim any right on the real property which is transferred by the Treasury to the Contractor by establishing a free of charge independent and uninterrupted right of construction in favor of the Contractor for a period up to forty-nine years; and
- e) to redeliver and handover the Healthcare Premise to the Ministry free from all and any obligations, debts, encumbrances and commitments, and in a well-maintained and working order and usable condition at the end of the term of the Contract.

(2) The Contractor is held liable for all and damages it may cause to third parties during the investment and operation periods.

(3) Provisions regarding the Contractor's liability and accountability and its indemnity obligations as well as the penal sanctions to apply are provided under the Contract.

Resolution of Disputes

ARTICLE 47 – (1) All legal disputes that may arise in relation with or out of implementation of the Contract are governed by and subject to the laws and regulations of the Republic of Turkey, and the competent courts of the Republic of Turkey shall have jurisdiction in venue and in subject matter in resolution of such disputes. The parties may also agree in the Contract for resolution of the disputes through arbitration in Turkey and in accordance with the pertinent Turkish laws.

Language of Contract

ARTICLE 48 – (1) The Contract to be signed between the Ministry and the Contractor will be in Turkish language.

(2) (**Amendment: 30/04/2010-2010/403 Decision No.**) The Contract may be prepared bilingually in Turkish and English in case of the Contractor's request and with the approval of the Administration. However, the Turkish version will prevail if and when there is a contradiction or conflict between the Turkish text and English text.

Other Contracts

ARTICLE 49 – (1) Other Contracts required to be executed between the Contractor and the third parties depending on the type and character of the investments and services covered by this Regulation are also enumerated by the Contract.

Conditions of Effectiveness of Contract

ARTICLE 50 – (1) Conditions of effectiveness of the Contract are also specified in the Contract.

Exemptions

ARTICLE 51- (1) All transactions and procedures to be carried out between the Ministry and the real or private law legal entities, and all documents to be prepared, in relation with the investments to be realized under this Regulation on condition of not exceeding a period of thirty-six months and being limited to the construction and renovation periods specified by the Contract are exempt from the stamp tax imposed under the Stamp Tax Act No. 488 and from all official charges that are imposed under the Official Charges Act No. 492.

Legal Provisions

ARTICLE 52- (1) All and any matters on which this Regulation remains silent shall, by analogy, be governed by and subject to the provisions of the State Bid Tenders Law no. 2886 and the Public Procurement Law No. 4734 and the Public Contracts Law No. 4735, as the case may be.

Work in progress

PROVISIONAL ARTICLE 1- (**Addition: 30/04/2010-2010/403 Decision No.**) (1) These amendments in the Regulation shall be used for the tenders and the projects which get started and are going on before enforcing this Regulation.

Effective Date

ARTICLE 53 - (1) This Regulation prepared and adopted with prior consultation to the Supreme Court of Public Accounting, will become effective as of the date of promulgation.

Enforcement

ARTICLE 54- (1) The provisions of this Regulation will be enforced and executed by the Minister of Health.