

MONGOLIA

**Pilot Exercise
of the
OECD-DAC Joint Venture for Procurement**

Results of the Benchmarking and Assessment of the Mongolian Public Procurement System

August 2007

**Procurement Policy and Coordination Department
Ministry of Finance
Mongolia**

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A EXECUTIVE SUMMARY

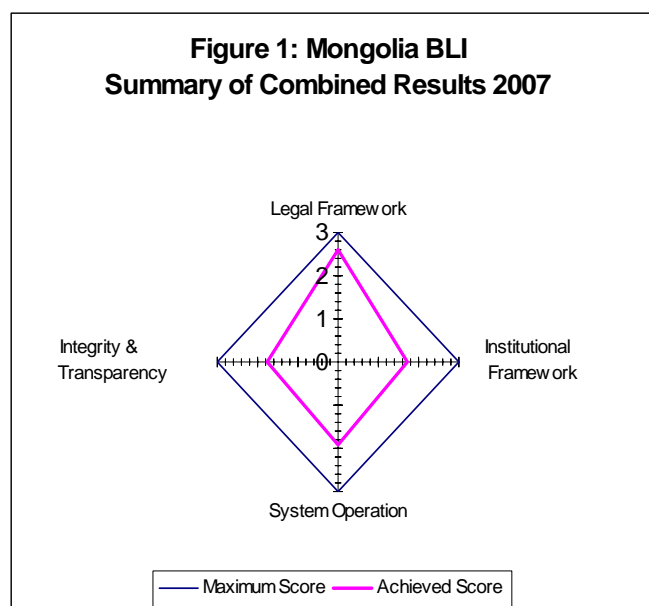
1. From June to August 2007, the Procurement Policy and Coordination Department (PPCD) of Mongolia's Ministry of Finance together with members of the Country Offices of the World Bank and the Asian Development Bank and two consultants (one domestic and one international) conducted a benchmarking exercise of the Mongolian public procurement system as part the Procurement Pilot Exercise of the OECD-DAC Joint Venture for Procurement.

Pilot Exercise

2. The pilot exercise was conducted in light of the 'Detailed Outline for the Monitoring and Reporting Mechanism' provided by the OECD-DAC Joint Venture for Procurement. The outcome of the exercise consists in two reports: (i) Results of the Benchmarking and Assessment of the Mongolian Public Procurement System (this report); and (ii) Results of the Monitoring and Reporting Mechanism (attached as Annex 1).

Key Findings

3. The benchmarking exercise was conducted on the basis of the OECD/DAC Base-Line Indicators (BLIs) which address four pillars: a) the existing legal framework that regulates procurement in the country; b) the institutional architecture of the system; c) the operation of the system and competitiveness of the national market; and d) the integrity of the procurement system. Figure 1 provides a schematic summary of the combined results of these BLIs as applied to the Mongolian system:



4. The figure is based on the following overall scores, whereby the first score represents the score attributed by the PPCD, the second the score attributed by the international consultant as external assessor and the third the combined score.

Pillar I	Standard Achieved	2.57	2.64	2.6
Pillar II	Standard Achieved	1.75	1.66	1.7
Pillar III	Standard Achieved	2	1.8	1.9
Pillar IV	Standard Achieved	1.72	1.77	1.75

5. The scores attributed by the PPCD and the external assessor are broadly very similar with the overall Pillar results being very close. Indeed, even in respect of the individual indicators, the scores were mostly the same and where there were differences, there was never more than a single point difference. The full scores are set out in Annex 3.
6. It will be seen that the legal and regulatory framework scores well, despite some room for improvement. This is not surprising given the time and effort invested in improving the legislative framework since 1999. However, there are significant weaknesses in the institutional environment and in the implementation of the Procurement Law. Whilst private markets in Mongolia appear to be relatively robust, the result of the institutional weaknesses identified is that they are not operating optimally and procurement outputs are adversely affected. Combined with the currently weak capacity of the external monitoring agencies (due partly to their newness), the integrity of the system is open to question and, indeed, there is much apocryphal evidence of widespread corruption.
7. As indicated below under the findings in respect of each Pillar, the results for the indicators under some of the Pillars are uneven so that the overall score for the Pillar does not necessarily convey the weakness of the results of some of the indicators. An attempt has been made in the main text, therefore, to identify where the indicator results are weakest in order to address them for the purposes of improvement. This is explained further in the report entitled 'Results of the Monitoring and Reporting Mechanism', attached as Annex 1.
8. The CPI exercise was less successful than the BLI exercise and the results are described in section F below. The level of information has been too low to provide any rationale for making generalizations of the system and where information has been gathered, it is incomplete.
9. The key findings of the benchmarking exercise are summarized below for each of the four pillars. The main weaknesses and recommended improvements are shown for each.

Pillar I: Legal and Regulatory Framework

10. The main weaknesses identified under Pillar I are:

- exclusion from scope of law of procurement of works and services related to the maintenance of the national roads and executed by the State-owned legal entity;
- lack of clarity in respect of turnkey contracts in new Article 8.10;

- the new Article 34.1.6 (together with the new Article 34.4) allows direct contracting to be used where open competition should be the preferred option;
 - the new upwardly revised threshold values for the advertising obligation in a foreign language may have the effect of excluding foreign bidders from those high value contracts where domestic financial and technical capacity is at its weakest and could result in poor quality and inefficient outcomes;
 - the possibility of opening negotiations where all tender prices exceed the estimate;
 - absence of a single user manual for the procurement rules notwithstanding a series of shorter specific guidelines.
11. The weaknesses in the legislative framework mainly arise in those indicators which are affected by the amendment brought about to the PPL in February 2007. Without those amendments, the scores would be consistently high.
12. The weakest (and most anomalous) score relates to the absence of a *single* user manual as required by Indicator 2(e). We question the usefulness/necessity of this indicator since there are a number of guidelines and manuals in use which address the needs of procuring officers operating in different sectors (e.g. works, goods or services and more specialized fields). The score only reflects the fact that these are not contained in *one* document.
13. Recommendations which could improve the scores include:
- (i) withdrawing the amendments of February 2007;
 - (ii) considering the preparation of a single user manual to regroup the existing guidelines and manuals into a single document, maybe through the use of volumes.

Pillar II: Institutional Framework and Management Capacity

14. The main weaknesses identified under Pillar II are:
- procurement plans are prepared *after* the approval of the budget and are thus not used as a means of calculating the budget required but as a means of spending what budget is made available;
 - there is no comprehensive system which marries the budget/financial procedures to the procurement function;
 - inadequate safeguards in the financial management system to ensure that procurement actions are not initiated without existing budget;
 - completion reports are available but not yet integrated into a financial management system;
 - need to improve reporting mechanisms (underway);
 - need to improve sustainable capacity development (underway);
 - no quality control and performance evaluation methods for procurement processes.
15. In respect of Pillar II, there will also be a need to monitor developments which have already been initiated:

- development and implementation of PMMIS and degree of integration with GFMIS
- introduction of the comprehensive capacity building programme funded by the World Bank.

16. Proposed recommendations include:

- (i) coordination with the budget department on how to address these weaknesses to mainstream procurement into the financial management system;
- (ii) introducing quality control and performance evaluation methods.

Pillar III: Procurement Operations and Market Practices

17. The main weaknesses identified under Pillar III are:

- there is no formal procurement cadre and no defined skill and knowledge profiles for specialized procurement jobs against which any matching of skills can be made by way of competitive recruitment;
- the content and regularity of public and private sector training could be improved (part of new capacity building programme);
- there are no formal mechanisms for dialogue between the public and private sectors in respect of procurement and no specific mechanisms for building private sector capacity.

18. In many cases, the formal procedures exist but implementation is weak and is not reflected in the scores, e.g. how the quality of demand affects the supply market, inspection and supervision, arbitration. The scores reflect the formal provisions rather than the reality of implementation. As indicated below in the context of the results of the Pillar III scores, this appears to be a general concern with the Pillar III indicators and is discussed further in the report entitled 'Results of the Monitoring and Reporting Mechanism', attached as Annex 1.

19. Proposed recommendations include:

- (i) coordination with the Civil Service Council (CSC) in an attempt to improve the recognition of the function of a procurement officer with a view to creating a specific civil service profile;
- (ii) ensuring the creation of appropriate qualifications which would match the skill profiles of the procurement officers recognized by the CSC;
- (iii) setting up mechanisms for dialogue between the public and private sectors and to obtain feedback.

Pillar IV: Integrity and Transparency

20. The main weaknesses identified under Pillar IV are:

- tendency of both State Inspection Agency and National Audit Office to confuse compliance, efficiency and performance audits with the result that they often appear to be second-guessing the decisions of the evaluation committees;

- anti-corruption authorities not yet operational;
- no widespread civil society engagement.

21. Proposed recommendations include:

- providing the State Inspection Agency and the National Audit Office with assistance in the preparation of manuals for the conduct of various audits (compliance, performance and efficiency audits) together with specialized training on procurement auditing;
- monitoring the operations of the Anti-Corruption Office and providing, where appropriate, assistance in terms of the procurement/corruption interface.
- considering further engagement with civil society and investigating the possibilities of introducing social accountability mechanisms.

Improvement Plan

22. The PPCD proposes the following draft improvement plan based on the recommendations made regarding each of the Pillars. The proposed activities are open to be discussed with all government and non-government agencies and the donor community.

Proposed Activities	Time frame	Funding Agency
<i>I. Legal and Regulatory Framework</i>		
Revision of the Public Procurement Law and other related procedures	2008-2009	
Preparation of a single user manual to regroup the existing guidelines and manuals into a single document (possibly in a number of volumes)	2008-2009	
<i>II. Institutional Framework and Management Capacity</i>		
Development and implementation of a comprehensive capacity development program	2008-2010	World Bank
Design and development of PMMIS and integration with the existing GFMIS	2008-2010	World Bank
Introduction of quality control and performance evaluation methods for procurement processes	2008	
<i>III. Procurement Operations and Market Practices</i>		
Creation of a specific civil services profile in collaboration with the Civil Service Council in order to improve the recognition of the function of procurement officers	2008	
Initiate public awareness and public relations programs to disseminate knowledge and information about the PPL	2008	

and procurement		
<i>IV. Integrity and Transparency</i>		
Specialized workshops/ seminars and manuals on procurement monitoring and audit for external monitoring agencies including the National Audit Office, the State Inspection Department, the Anti-Corruption Agency and Civil Society Organizations	2007-2008	
Introduction of collaboration mechanisms with external monitoring agencies	2009	
Introduction of social accountability mechanisms in collaboration with civil society	2010	

B INTRODUCTION

23. Mongolia has been selected as one of the pilot countries in Asia to participate in the Procurement Pilot Exercise of the OECD-DAC Joint Venture for Procurement.
24. A Working Group (WG) was formed to carry out the Pilot Exercise comprising the Director General and 3 other members of the Procurement Policy and Coordination Department (PPCD) of Mongolia's Ministry of Finance and two members of the Country Offices of the World Bank and the Asian Development Bank. Following the attendance of the WG at the Asia Regional Workshop on Procurement held in Jakarta, Indonesia in February 2007, Mongolia developed an Action Plan (reproduced in Annex 2) for the implementation of the pilot exercise. A domestic and an international consultant have been recruited with ADB funding to assist with the implementation of that Action Plan.
25. The conduct of the pilot study has resulted in two reports:
 - (i) Results of the Benchmarking and Assessment of the Mongolian Public Procurement System (this report);
 - (ii) Results of the Monitoring and Reporting Mechanism (attached as Annex 1).
26. This First Report contains the results of the benchmarking exercise and provides a detailed picture of the current state of the Mongolian public procurement system. The immediate purpose of this Report is to provide the Government of Mongolia with an indication of the system's strengths and weaknesses, point to areas in need of improvement and to provide a basis upon which to build an Improvement Plan to carry out those improvements in cooperation with its development partners. This is the first time a BLI system has been applied in Mongolia so that the results indicate the starting point against which future developments may be measured.
27. The Second Report represents the motivation for the pilot study which seeks to field test the new, common methodology developed by the OECD-DAC Joint Venture under different conditions in order to improve the quality and the usefulness of the methodology and to support an improved dialogue between partner countries and their development partners about procurement reforms and capacity development. It thus provides a commentary on the exercise carried out in preparing the First Report.
28. The Exercise was conducted by the assessors/evaluators between June and August 2007.

C METHODOLOGY

29. In respect of this First Report, the results of the Report are based on version 4 of the Methodology for Benchmarking and Assessment of Public Procurement Systems which was developed under the auspices of the joint World Bank and OECD Development Assistance Committee (DAC) Procurement Round Table initiative. Under this initiative developing countries and bilateral and multilateral donors worked together to develop a set

- of tools and standards that provide guidance for improvements in procurement systems and the results they produce. The resulting methodological tool is intended to provide a common tool which developing countries and donors can use to assess the quality and effectiveness of public procurement systems.
30. There are two types of indicators, the Base-Line Indicators (BLIs) and the Compliance/Performance Indicators (CPIs). The BLIs present a “snapshot” comparison of the actual system against the international standards that the BLIs represent. They address four pillars: a) the existing legal framework that regulates procurement in the country; b) the institutional architecture of the system; c) the operation of the system and competitiveness of the national market; and d) the integrity of the procurement system. Each pillar has a number of indicators and sub-indicators to be assessed. The CPIs deal with how the system actually operates. They are more closely related to the application of the regulations and to the prevailing procurement practices in the country. Thus while the BLIs are more like a snapshot of the system design at a given time, the CPIs look at what is happening on the ground by examining a sample of procurements transactions and other relevant information that is deemed representative of the performance of the system.
 31. The application of the BLIs is based on a review of the existing regulatory framework and the institutional and operational arrangements, while the application of the CPIs relies on data obtained from a representative sample of contracts and information obtained through interviews or surveys with stakeholders in the procurement system. Interviews or surveys are required in matters for which hard statistical or factual information cannot be obtained or in cases where perceptions on how the system operates are critical to its competitiveness and transparency.
 32. The BLIs are assessed on the basis of a scoring system which ranges from 3 to 0 for each baseline sub-indicator. A score of 3 indicates full achievement of the stated standard. A score of 2 is given when the system exhibits less than full 3 achievement and needs some improvements in the area being assessed and a score of 1 is for those areas where substantive work is needed for the system to meet the standard. A rating of 0 is the residual indicating a failure to meet the proposed standard.
 33. These scores are based on an assessment made by those compiling the Report (the assessors) and the BLI scores form part of the narrative report that provides the information upon which the assessments have been made. Based on this information, the assessors decide, according to their findings, which of the four scenarios best describes the situation on the ground to determine the score that should be assigned to that sub-indicator. This is inevitably based on judgment to some extent.
 34. In order to provide as much objectivity as possible, a twofold assessment has been made. The system is assessed both by the PPCD itself and by the international consultant acting as external assessor. The PPCD scores were attributed by a majority decision of all PPCD staff in open meeting at which borderline scores were fully discussed leading to a consensus score.

35. In attributing scores for each of the indicators described, the scorecard reproduced under each indicator contains two scores. The first score is given by the internal assessors of the PPCD. The second score is given by the external assessor (consultant). These scores are given as whole numbers on the scale of 0-3. The BLI scores for each indicator are then aggregated at Pillar level to provide an overall picture of the state of play in respect of each pillar. These will provide the average overall score attributed by both the PPCD and the external assessor. The Pillar level score will also, however, contain a third score which represents the average of the combined scores of the PPCD and the external assessor. This represents the fairest and most objective score and has been used for the purposes of providing the summary results in the figure shown in paragraph 3. The scorecards used are as follows:

(iii) For the Pillars:

Standard Achieved			
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(iv) For the Indicators:

Standard Achieved		
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36. The scores attributed by the PPCD and the external assessor are broadly very similar with the overall Pillar results being very close. Indeed, even in respect of the individual indicators, the scores were mostly the same and where there were differences, there was never more than a single point difference. The full scores are set out in Annex 3.

37. The CPIs used are based on version 4 of the Methodology for Benchmarking and Assessment of Public Procurement Systems. The assessment team added some additional indicators as explained in the Results of the Monitoring and Reporting Mechanism (attached as Annex 1).

38. In respect of the Second Report (Annex 1), the methodology is based on the ‘Detailed Outline for the Monitoring and Reporting Mechanism’ provided by the OECD-DAC Joint Venture for Procurement.

D COUNTRY SYSTEM

39. Mongolia, a former socialist country, began its efforts to establish a modern procurement system in 1999 with the assistance of the Asian Development Bank. The almost complete absence of any provisions regulating government procurement was remedied on 14 April 2000 by the introduction of a new Public Procurement Law (PPL). A Central Procurement Monitoring Office was created under the Budget Department, Ministry of Finance by Government Decision No. 30 in June 2000 pursuant to the PPL becoming effective in May 2000. The office was restructured and renamed as the Procurement Policy and Coordination Department (PPCD) by Government Ordinance No. 75 in April 2001. This Department is under the Ministry of Finance (MOF) and responsible for all matters of

public procurement. The Head of Department is directly responsible to the State Secretary of Ministry of Finance.

40. Following the initial period of implementation during which time the adequacy of the PPL was monitored and with the assistance of the World Bank, the PPL was extensively revised and a new Law was adopted in December 2005. One of the major changes was the introduction of a complaints review mechanism which was then further refined by way of secondary legislation in 2005-6.
41. A further amendment was made to the PPL in February 2007. This made several substantive changes to the procedures to be applied under the Law and has attracted significant criticism from the donor community.
42. It has been very difficult to establish any accurate budget and procurement budget figures. The best estimate is that procurement expenditure accounts for somewhere between 10% and 15% of the total budget. The reason for this imprecision stems from the fact that, although we have the overall figure for the total State budget, the only detailed procurement budget figures available are those which relate to government departments. The figures we have for the procurement budget do not, therefore, cover the procurement of State owned enterprises and other entities not subject to direct government control. Thus, while we have a figure of Tg. 137,511,300,000 (from a total budget figure of Tg. 1,220,644,789,400, representing around 11.27% of the total budget) for 2006, the PPCD reporting mechanism for the same period reports planned procurement expenditure of Tg. 210, 200,000,000 against an actual spend of Tg. 154,900,000,000. This includes reports from State owned enterprises etc. who are subject to the reporting requirements. This represents more than the expected 11.27%. It is not clear whether all reports that should be made have been made, so the figure for the State procurement budget is probably higher than that. As this BLI exercise has shown, one of the weakest features of the Mongolian system is the lack of integration of procurement with financial management.

E MAIN FINDINGS BASED ON THE BLIs

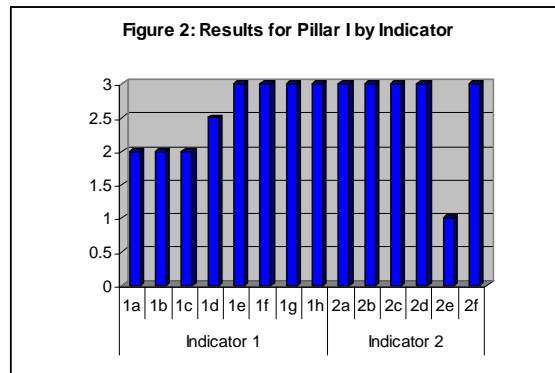
43. The findings of the benchmarking exercise are set out below for each of the four pillars.

44. Pillar I: The Legislative and Regulatory Framework

Standard Achieved	2.57	2.64	2.6
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The third numerical score represents the combined arithmetical average of the scores attributed to the individual indicators set out below. The first score is given by the internal assessors of the PPCD. The second score is given by the external assessor (consultant). Only these last two scores are attributed to the individual indicators set out below so that these scores remain as whole numbers. For the purposes of the pillar scores, the average is taken of each of scores and a combined score is attributed.

45. The results of the indicators (see figure 2) are fairly even, demonstrating the existence of a comprehensive and largely cohesive legal framework. The weaknesses appear to stem mostly from the changes brought about by the 2007 amendment to the Law. The weakest score relates to the absence of a *single* user manual as required by Indicator 2(e). We question the usefulness/necessity of this indicator since there are a number of guidelines and manuals in use which address the needs of procuring officers operating in different sectors (e.g. works, goods or services and more specialized fields). The score only reflects the fact that these are not contained in *one* document.



46. **Indicator 1: Public Procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.** The assessment is based on the following benchmarks:

47. a) *scope of application and coverage of the legislative and regulatory framework*

Standard Achieved	2	2
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48. The Law applies to procuring entities which are defined as any legal entity with State and local ownership and any legal entity with State and local ownership participation of more than 50% that engages in procurement of goods, works and services as specified in the PPL. The purpose of the Law, set out in Article 1, also states that the PPL covers procurement financed by State and local funds. It, therefore, covers both central and local government. The scope of this definition will also cover utilities where they are owned, as to at least 50%, by central or local government. It would not cover private utilities, to the extent that they exist.

49. There are exemptions for procurement involving national defense or security and for procurement financed by donor funds. In terms of procurement funded through foreign grants or loans, Article 3.2 states that the PPL will also apply unless the grantor expressly specifies use of its own procurement conditions.

50. The only obvious deficiency in coverage is contained in Article 3.4 which exempts from the PPL the procurement of works and services related to the maintenance of the national roads and executed by the State-owned legal entity. This has the potential to exclude a significant amount of procurement from the scope of the law.

51. The definitions of goods, works, services and consultancy services are largely consistent with international practice.

52. The Law is posted on the PPCD website and is available in both Mongolian and English:
<http://www.e-procurement.mn/>

53. b) *procurement methods*

Standard Achieved	2	2
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54. The PPL provides for the following procurement methods and allows for pre-qualification:

- (i) Open Tendering
- (ii) Two-stage open Tendering
- (iii) Selected Tendering (limited tendering)
- (iv) Comparison (RFQs) (also referred to as limited tendering)
- (v) Direct Contracting
- (vi) Procedure for consultancy services contracts

55. Negotiations are generally prohibited except in the case of the direct contracting procedure. However, Article 30.2 appears to provide a loophole. Article 30 applies to rejection of bids but paragraph 2 permits the procuring entity, where all tender prices in otherwise responsive bids exceed the estimated price, to enter into negotiations with the tenderer whose price exceeds the estimate by less than 5% with a view to reducing the price to the estimate. Whilst this is a precursor to the rejection of all bids, it does suggest that procuring entities will routinely be able to negotiate where the conditions are met. Given the way in which estimates are formulated (see paragraphs 104 and 105 below), this may be frequent and opens up an opportunity for abuse.

56. **Open Tendering:** This is the primary procurement procedure and must be used unless there are circumstances which justify the use of one of the exceptional procurement procedures. The Law prohibits artificial disaggregation but allows the use of lots provided that the total value of the lots is taken as the value for the purposes of determining the choice of appropriate procurement procedure.

57. **Two-stage Open Tendering:** this procedure may only be used in cases of (1) large and complex contracts where technically unequal proposals are likely to be encountered or where there are multiple acceptable technical solutions available on the market or (2) where the procuring entity is unable precisely to set the specifications in advance and needs to obtain the input of experienced tenderers. A new Article 8.10 introduced by the February 2007 Amendment requires the use of turnkey contracts in specific cases but does not specify any particular procedure other than open. This two-stage procedure would appear to be the most appropriate procedure although it would need to be supported by further implementing regulations.

58. **Limited Tendering** is used (1) where due to the complex or specialized nature of the goods, works or services, they are available only from a limited number of bidders; and (2)

where an open procedure failed due to the requested quantity and scope provided the necessary amendments are made.

59. **Comparison:** this is, in effect, a request for quotations procedure and applies only below the relevant thresholds. A minimum of three individuals must be invited and the award made on the same basis as other contracts.
60. **Direct Contracting:** this procedure may be used (1) in the absence of tenders or responsive tenders to an open or limited tendering procedure; (2) in case of sole source suppliers based on the existence of intellectual property rights; (3) for additional supplies (with appropriate conditions); (4) for additional works (with appropriate conditions) and (5) in cases of extreme urgency. Quotations may be invited from one or more potential suppliers and, except in cases of extreme urgency where the time limit may be fixed by mutual agreement, all should be given at least 10 days in which to respond. Quotations will be assessed for compatibility with the specifications and the contract awarded on the basis of the standard award criteria.
61. The February 2007 amendment has added a new possibility for using direct contracting and one which has drawn criticism from the donor community. In effect, the new Article 34.1.6 (together with the new Article 34.4) provides that direct contracting may be used whenever the volume of annual capital investment budget in respect of roads and energy projects equals or exceeds the capacity of local companies. This, it is argued, deprives the GoM of much needed international competition where there is no domestic capacity and raises the possibility of creating a monopoly for some individual companies.
62. **Consultancy Services:** the PPL establishes a specific procedure for the procurement of consultancy services largely based on comparable provisions of guidelines of donor organizations. The procedure is based on the compilation of a short list of at least 3 consultants taken from many sources: advertisement, registered list of service providers or suggestions from donor organizations. The procedure is flexible and allows the choice of three evaluation methods based on the nature and complexity of the services required: (1) a simple method, used for routine services contracts, in which consultants are required to attain a minimum technical score and where the contract is then awarded to the lowest priced bid from among those attaining the minimum score; (2) a quality based evaluation, used for highly technical and complex services, in which the bidder reaching the highest technical score (having submitted both technical and financial envelopes) is invited to negotiate with the procuring entity with a view to determining the financial and other terms of the contract and (3) a combined evaluation method, used for all other types of consultancy services, in which the bidders' technical and financial proposals (supplied in separate envelopes) are scored and where the successful bidder (from among those having attained the minimum technical score) is the one with the highest combined score and where no negotiation is permitted on unit prices but where negotiations may be commenced on the scope (ie. number of units) of the project.
63. c) *advertising rules and time limits*

Standard Achieved	2	2
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64. All contracts subject to open tendering must be published in a mass circulation daily newspaper or other forms of mass media. In addition, all contracts above a value of approximately \$85,000 in the case of works and \$42,500 in the case of goods and services must be posted on the PPCD website.
65. All contracts above the following thresholds must be advertised (in the case of open tendering) through mass media that is published in a language widely used in international trade:
- Works : \$860,000 approx.
Goods and Services: \$86,000 approx.
66. These thresholds were revised in the February 2007 Amendment and represent a tenfold increase over the previous thresholds. This has the effect of excluding foreign bidders from those high value contracts where domestic financial and technical capacity is at its weakest and could result in poor quality and inefficient outcomes.
67. In addition, no foreign bidder may be excluded from any procedure above these thresholds. Unless otherwise specified, foreign bidders may participate in all contracts (even below these thresholds).
68. The PPL also contains an automatic threshold updating procedure: the thresholds (in local currency) will be updated whenever the consumer price index evidences an increase of 10% (the initially defined increase of 25% in the PPL of December 2005 was changed by the February 2007 Amendment).
69. Minimum time limits for submission of applications and tenders
- | | |
|--------------------------|-----------------------------------------------------------|
| Open Tendering | 30 days |
| Two Stage Open Tendering | 30 days |
| Pre-qualification | 30 days |
| Selected Tendering | 15 days |
| Comparison | 15 days |
| Direct Contracting | 10 days (by mutual agreement in cases of extreme urgency) |
| Consultancy Services | 30 days |
70. These minimum time periods are not automatically extended for international bidding. They are, however, reasonably long minimum periods given that contract notice in respect of contracts open for international bidding are posted on the PPCD website.
71. In the absence of an effective central procurement bulletin, all tenderers must be notified of the award of a contract at the same time as the winning bidder is notified. No contract may be awarded within 5 days following such notification. Though not yet fully operational, the PPCD website provides for the publication of contract awards.

72. d) *rules on participation*

Standard Achieved	2	3
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73. The rules and procedures to determine an applicant's or tenderer's qualifications and capacity to perform a contract and the reasons for exclusion are acceptable and conform, in principle, to international standards.
74. Article 51 of the PPL allows for the creation of registration systems. These must be set up in an open and transparent manner and do not constitute any barrier to participation.
75. Whilst foreign tenderers may not be excluded from participation above the relevant thresholds, there are provisions in the PPL relating to domestic preferences which may have an effect on their participation. These are not mandatory provisions but provisions which *may* be used by the procuring entity. Nevertheless, there are no conditions on its use, save that, where used, it must be stated clearly and explained in the tender documents. There are essentially 2 provisions: (1) a maximum 10% price preference for goods of domestic origin and (2) a maximum 7.5% price preference for domestic contractors (works). It is not clear (other than in the case of turnkey contracts) whether these preferences may be cumulative.

76. e) *tender documentation and technical specifications*

Standard Achieved	3	3
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77. The PPL sets out in broad terms what the tender documentation should contain. This is supplemented by standard form tender documentation. There are specific provisions relating to the neutrality of technical specifications and use of appropriate international standards.

78. f) *tender evaluation and award criteria*

Standard Achieved	3	3
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79. The award criteria of the PPL are based largely on the award criteria adopted by the IFIs, namely, the lowest evaluated substantially responsive tender. The provisions clearly define what is substantially responsive and sets out clearly the evaluation criteria other than price. These must also be set out in the tender documents. The list is not exhaustive and allows for "*supplementary objective and non-discriminatory criteria*" to be defined. Additional criteria must be quantified in monetary terms.
80. The PPL contains provisions maintaining the confidentiality of information related to the content of tenders, evaluation and qualifications of tenderers until contract award.

81. g) *submission, receipt and opening of tenders*

Standard Achieved	3	3
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82. The provisions relating to the submission, receipt and public opening of tenders are clear and transparent. Relevant information is read aloud and the proceedings are recorded and made available to interested parties. Tenders submitted later than the specified time are returned unopened. Following opening, clarifications which do not alter the substance or price of the tenders may be requested or accepted by the procuring entity.

83. Tender securities are not mandatory but may be applied by the procuring entity where that is determined necessary based on the cost estimate of the goods, works or (non-consultancy services). Any tender security will be between 1-2% of the tender price. It may also be fixed by the procuring entity at between 1-2% of the estimated price provided that neither the estimate nor the percentage value of the security is disclosed and that it is made clear that any estimate is hypothetical and does not reflect the expected tender prices.

84. h) *complaints*

Standard Achieved	3	3
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85. The 2005 version of the PPL introduced an independent complaints mechanism conducted by a panel of independent experts. This establishes the right to review, sets out the matters subject to review and provides tight timeframes for the conduct of the review. The basic procedural rules are set out in the PPL but these provisions are supplemented by specific rules of procedure adopted as secondary legislation.

86. **Indicator 2: Existence of Implementing Regulations and Documentation.** The assessment is based on the following benchmarks:

87. a) *implementing regulation that provide defined processes and procedures not included in higher-level legislation*

Standard Achieved	3	3
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88. The PPL itself is rather detailed and is supplemented by a number of other implementing regulations and documentation as necessary. In particular, there are specific procedural rules and facilitating forms for the purposes of the review mechanism and a number of additional guidelines for the evaluation of goods, works and services.

89. They are clear and their scope reflects the current needs of Mongolia. The responsibility for drafting and maintaining them lies with the PPCD and all documents are available on the PPCD website: <http://www.e-procurement.mn/>

90. b) *model tender documents for goods, works, and services*

Standard Achieved	3	3
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91. In addition, the PPCD has prepared a full suite of standard bidding and contract documents for goods, works and services, as well as for more specialized procurements such as textbooks, medical equipment and drugs and the supply and installation of information systems. These were originally drafted in 2000 but have been supplemented since then and last amended in 2005. The responsibility for drafting and maintaining them lies with the PPCD and they are all available on the PPCD website: <http://www.e-procurement.mn/>

92. c) *procedures for pre-qualification*

Standard Achieved	3	3
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93. The PPL provides for a pre-qualification procedure using the defined objective qualification criteria of the PPL and based on a pass/fail test. A model document for the pre-qualification procedure was adopted in June 2007.

94. d) *procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.*

Standard Achieved	3	3
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95. General services are covered by the PPL in the same way as goods and construction services and the qualification criteria may be used to assess the appropriate technical capacity of the bidders. In respect of consultancy services, the PPL contains a separate Chapter 4, based on the procedures of the IFIs, which enables evaluation to take place on the basis of technical capacity (quality) alone or in combination with cost, depending on the nature of the consultancy services to be provided.

96. e) *user's guide or manual for contracting entities*

Standard Achieved	1	1
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97. There is no *single* manual or requirement to have one. Nevertheless, the documents referred to in paragraphs 88 and 91 provide important guidance which serve as user guides in these respects. As a result, a score of above 0 is deemed appropriate, notwithstanding the absence of a single user manual.

98. f) *General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements*

Standard Achieved	3	3
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99. These are part of the standard form bidding and contracts documents, as above.

100. **Pillar II: Central Institutional Framework and Capacity**

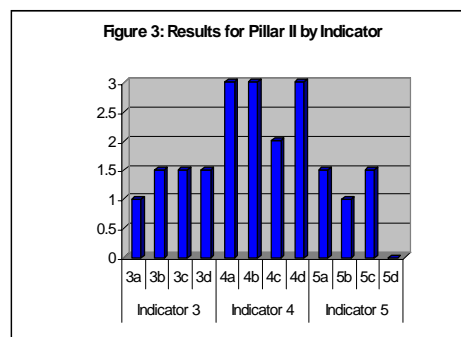
Standard Achieved	1.75	1.66	1.7
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The third numerical score represents the combined arithmetical average of the scores attributed to the individual indicators set out below. The first score is given by the internal assessors of the PPCD. The second score is given by the external assessor (consultant). Only these last two scores are attributed to the individual indicators set out below so that these scores remain as whole numbers. For the purposes of the pillar scores, the average is taken of each of scores and a combined score is attributed.

101. The greatest weakness appears to be the lack of integration of procurement into the financial management system (figure 3).

102. **Indicator 3: Mainstreaming Procedures into Public Financial Management.** The assessment is based on the following benchmarks:

103. a) *procurement planning and data on costing is part of the budget preparation.*



Standard Achieved	1	1
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104. Procurement planning is weak when considered as part of the financial management system. Under the PPL, procurement plans are prepared following the approval of the annual budget and the essential criterion is that the planned expenditure should not exceed the budget allocation. This is supplemented by a detailed procedure for reporting adopted by an Order of the Minister of Finance on 5 January 2007. This procedure includes instructions on how to prepare accurate and detailed procurement plans. The weakness, however, lies in the fact that these plans are required to be prepared *after* the approval of the budget. They are thus not used as a means of calculating the budget required but as a means of spending what budget is made available.

105. In preparing the budget, the Ministry of Finance receives general expenditure plans from each Ministry although in many cases these do not identify the purchases to be made, only the amount. Further, they are often drafted in the form of a ‘wish list’ rather than based on strategic thinking. Whilst the budget does provide for programmatic expenditure, there is no practice of coordinating procurement strategies across government or even necessarily within Ministries. The Order of 5 January 2007 attempts to encourage such coordination.

106. b) *budget law and financial procedures support timely procurement, contract execution and payment.*

Standard Achieved	2	1
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107. There is no comprehensive system which marries the budget/financial procedures to the procurement function. Under the cash based accounting system, following budget approval, funds are allocated in monthly instalments reflecting the estimated monthly expenditure. Withdrawals may be made by the Ministries against the relevant documentation (invoices etc.) and within the monthly ceiling.

108. c) *no initiation of procurement actions without existing budget.*

Standard Achieved	2	1
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109. The PPL provides that procurement procedures can be initiated only after funds have been allocated and become available. However, the only control on this appears to exist at the payment stage but is peremptory. The Treasury Department releases funds against the appropriate documentation such as utility bills or invoices and checks that the amount is below the monthly ceiling. In case of construction works, funds are released based on on-site supervision and inspection reports submitted by inspectors assigned either by ministries or local governments along with the necessary documentation. Furthermore, when necessary the MoF dispatches finance and/or procurement officers to local provinces to investigate the implementation of state budget funded activities against what's been planned and reported. However, this is not carried out on a regular basis.

110. d) *systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.*

Standard Achieved	1	2
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111. There is no comprehensive financial management system in place for reconciliation. However, the PPCD has developed a new reporting system which enables reconciliation to take place. The information is available to the Ministry of Finance and is reported internally. This is likely to be improved in future through the integration of the proposed Procurement Management, Monitoring and Information System (PMMIS) with the existing Government Financial Management Information System (GFMIS), described in paragraph 125 below.

112. **Indicator 4: The country has a functional normative/regulatory body.** The assessment is based on the following benchmarks:

113. a) *the status and basis for the functional normative/regulatory body is covered in the legislative and regulatory framework.*

Standard Achieved	3	3
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114. The PPCD is the functional normative body and is established by the PPL.

115. b) *the body has a defined set of responsibilities and functions.*

Standard Achieved	3	3
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116. The PPCD has clear responsibility for, among other things, the monitoring procurement, accepting and preparing procurement activity reports, assisting procuring entities, drafting guidelines and supporting documents, proposing new legislation, maintaining the procurement website and administering the independent review mechanism.

117. *c) the body's organization, funding, staffing and level of independence and authority (formal power) to exercise its duties is sufficient and consistent with its responsibilities.*

Standard Achieved	2	2
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118. The PPCD is a fully functioning department of the Ministry of Finance but does not operate independently of it. Its budget is dependent on the Ministry and not guaranteed by legislation.

119. *d) responsibilities of the body provide for sufficient separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.*

Standard Achieved	3	3
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120. The PPCD does not get involved in direct procurement other than by way of granting the appropriate approvals in those cases defined by law. In the case of the review mechanism as in other areas, the PPCD maintains a policy of avoiding conflicts of interest.

121. **Indicator 5: Existence of Institutional Development Capacity.** The assessment is based on the following benchmarks:

122. *a) the country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals and contract award results.*

Standard Achieved	1	2
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123. General information such as tender notices and contract award notices are routinely collected and published on the PPCD website. This website provides a 'one stop shop' for all procurement related information and includes the legislation, secondary legislation, details of the complaints mechanisms as well as notifying procurement opportunities and the results of contract award procedures for the higher value contracts. Since the beginning of 2007, general procurement plans are also placed on the website.

124. *b) systems and procedures exist for collection and monitoring of national procurement statistics.*

Standard Achieved	1	1
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125. The PPCD has consistently been collecting procurement information. By an Order of the Minister of Finance dated 5 January 2007, there is now a comprehensive procedure in place for the planning and reporting of the procurement activities of procuring entities. In addition, the Government is currently in the process of developing the integrated PMMIS which is expected to provide central and local government with procurement management and monitoring tools at project and contract level in order to enhance the quality and efficiency of project administration. The PMMIS is also expected to enhance the Ministry of Finance's capacity for overall monitoring and evaluation of public procurement performance. It is further anticipated that the PMMIS will ultimately be integrated into the existing GFMIS.

126. The current system is relatively recent and the preliminary analysis suggests that the information collected is incomplete. This current pilot exercise provides the first opportunity to conduct a full analysis of the results. As is made clear from the CPI results (see Section F), less information was received than expected.

127. *c) there is a sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.*

Standard Achieved	2	1
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128. Training has been carried out consistently by the PPCD throughout the country and substantive permanent training is being provided through the Procurement Development Centre (PDC), an independent NGO. The PDC works closely with the PPCD and the training content is approved by the PPCD. Training is provided by both PPCD and the PDC to procuring entities throughout the country. In addition, an extensive new capacity development programme is being funded by the World Bank which will concentrate on expanding the provision of national and sustainable procurement capacity development structures. This is likely to provide for consistent evaluation and improvement of the system. Ongoing advice is provided by the PPCD which are frequently called upon to provide assistance although there is no dedicated helpdesk.

129. *d) quality control standards are disseminated and used to evaluate performance of staff and address capacity development issues.*

Standard Achieved	0	0
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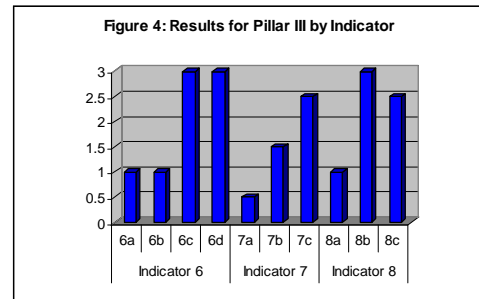
130. The system does not have any specific quality assurance or staff evaluation systems. However, the reporting procedures contained in the Order of the Minister of Finance dated 5 January 2007 does provide a matrix by which the performance of the procuring entity can be partially measured on a contract by contract basis.

131. Pillar III: Procurement Operations and Market Performance

Standard Achieved	2	1.8	1.9
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The third numerical score represents the combined arithmetical average of the scores attributed to the individual indicators set out below. The first score is given by the internal assessors of the PPCD. The second score is given by the external assessor (consultant). Only these last two scores are attributed to the individual indicators set out below so that these scores remain as whole numbers. For the purposes of the pillar scores, the average is taken of each of scores and a combined score is attributed.

132. The results for this Pillar were rather uneven (see figure 4). This appears to be a consequence of the requirements of the benchmark indicators which seem to alternate between the assessment of formal and operational aspects. The Mongolian system scores higher in respect of the formal requirements than it does in respect of the operational requirements. This suggests that it is implementation and broader operational problems which should be a cause for concern rather than the applicable rules and procedures. The Indicators do not allow a comprehensive analysis to be made of this mismatch.



133. **Indicator 6: Efficient Procurement Operations and Practice.** The assessment is based on the following benchmarks:

134. a) *the level of procurement competence among procurement officials is consistent with their responsibilities.*

Standard Achieved	1	1
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135. There is no formal procurement cadre and no defined skill and knowledge profiles for specialized procurement jobs against which any matching of skills can be made by way of competitive recruitment. Within procurement entities, the consistent message is that, notwithstanding the requirements of the PPL, those with the technical ability in any particular field are rarely relied upon either for the purpose of designing specifications or in the evaluation process of the tender committees.

136. Nevertheless, those who deal with procurement matters are provided with training programmes provided by the PPCD and others. This cannot be comprehensive given the resources available but knowledge of the applicable procurement rules is being disseminated on a regular basis.

137. b) *the training and information programmes implemented for procurement officials, as well as for private sector participants are consistent with demand.*

Standard Achieved	1	1
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138. Currently, the majority of the training is carried out by the PPCD in respect of the procurement rules. Additional training is provided by the PDC. This is described in paragraph 128 above. Whilst the PPCD has a regular programme, the efforts are currently concentrated on providing a knowledge based in respect of the applicable rules and bidding documents. There is no regular training offered to the private sector.

139. Little work has yet been done on preparing a gap analysis based on the specialized skills required by different procuring entities. This will form part of the World Bank funded capacity development programme which has just been launched and is presently in the inception phase.

140. *c) there are established norms for the safekeeping of records and documents related to transactions and contract management.*

Standard Achieved	3	3
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141. The PPL together with the more detailed Order of the Minister of Finance dated 5 January 2007 establish satisfactory recordkeeping and reporting requirements under which relevant documents and information are archived for a period of at least 5 years and made available to the appropriate authorities (and tenderers where relevant) on request.

142. *d) there are provisions for delegating authority to others who have the capacity to exercise responsibilities.*

Standard Achieved	3	3
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143. The PPL sets out in detail the delegated spending authority of the various central and local government entities. In addition, it sets out the rights and duties of the identified accountable officers and establishes their relationship with the evaluation committees.

144. ***Indicator 7: Functionality of the Public Procurement Market.*** The assessment is based on the following benchmarks:

145. *a) there are effective mechanisms for partnerships between the public and private sector.*

Standard Achieved	1	0
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146. There are no formal mechanisms for dialogue between the public and private sectors in respect of procurement and no specific mechanisms for building private sector capacity. This pilot exercise has, however, started the process of dialogue.

147. *b) private sector institutions are well organized and able to facilitate access to the market.*

Standard Achieved	1	2
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148. In broad terms, the private sector appears to be relatively well organized and competitive. They are also represented by trade associations. In the sectors that were studied as part of this exercise (construction, engineering consulting, IT, printing, pharmaceuticals), there appeared to be a sufficient number of companies (SMEs and larger companies) to guarantee healthy competition.

149. Evidence provided by private sector companies suggests that the deficiencies in competition are brought about by the weakness of the procuring entities in terms of poor planning, unrealistic budgeting and lack of technical expertise making effective competition unworkable. The result appears to be emergence of suitcase contractors able to meet the inadequate requirements of the public authorities, often benefiting from close relationships with the responsible officers and forming part of a cartelized system of mutual dependency. The problems appear more acute in the provinces.

150. *c) there are no major systemic constraints (e.g. inadequate access to credit, contracting practices etc.) inhibiting the private sector's capacity to access the procurement market.*

Standard Achieved	3	2
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151. No such constraints were raised by those interviewed although some disquiet was voiced over the systematic requirement to provide tender securities for all contracts, whatever the circumstances, and of the costs of providing them. This inhibits competition to some extent, notably in the construction sector.

152. ***Indicator 8: Existence of Contract Administration and Dispute Resolution Provisions.***
The assessment is based on the following benchmarks:

153. *a) procedures are clearly defined for undertaking contract administration responsibilities to include inspection and acceptance procedures, quality control procedures and methods to review and issue contract amendments in a timely manner*

Standard Achieved	1	1
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154. Appropriate clauses are contained in the standard bidding documents but there are no further established procedures for the acceptance of final products. In practice, inspection and supervision appear weak.

155. *b) contracts include dispute resolution procedures which provide for an efficient and fair process to resolve disputes arising during the performance of the contract*

Standard Achieved	3	3
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156. Mongolia has an arbitration system which complies with this indicator and the SBDs contain the appropriate clauses.

157. *c) procedures exist to enforce the outcome of the dispute resolution process*

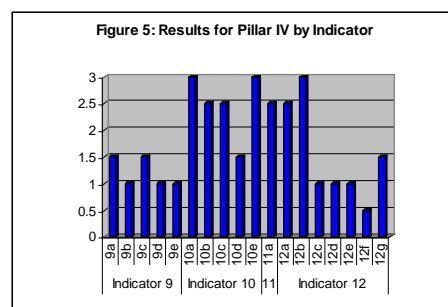
Standard Achieved	3	2
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158. Mongolia meets these requirements, although there is a question of effective implementation.

159. **Pillar IV: Integrity and Transparency of the Public Procurement System**

Standard Achieved	1.72	1.77	1.75
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The third numerical score represents the combined arithmetical average of the scores attributed to the individual indicators set out below. The first score is given by the internal assessors of the PPCD. The second score is given by the external assessor (consultant). Only these last two scores are attributed to the individual indicators set out below so that these scores remain as whole numbers. For the purposes of the pillar scores, the average is taken of each of scores and a combined score is attributed.



160. The overall result for this Pillar is relatively respectable. However, the scores in relation to the 4 indicators (figure 5) vary significantly thus concealing to some extent the weakest areas. For example, the results indicate that there is a robust review mechanism but also shows that other control mechanisms are rather weak.

161. **Indicator 9: Effective Control and Audit System.** The assessment is based on the following benchmarks:

162. a) *a legal framework, organization, policy and procedures for internal and external control and audit of public procurement operations exist and operate to provide a functioning control framework;*

Standard Achieved	1	2
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163. Mongolia has both internal and external control and audit. The State Inspection Agency is responsible for internal control and is adequately staffed. Those responsible for procurement participate in the PPCD training. It appears to have significant powers which are exercised in all spending departments over a two year period. On average, audits are carried out over a 20 day period. When it is not possible to inspect all contracts, preference is given to the larger contracts. In terms of procurement, checks are carried out to ensure that expenditure has been made within the financial limits and general compliance inspections are also carried out to ensure the consistency of the procedures with the PPL. There appears to be a tendency, however, for the inspectors to second-guess the evaluation

committee whenever the contract is awarded to a tender which offers other than the lowest price.

164. External audit is carried out by the National Audit Office. It is answerable to the Parliament and plans its audits based on its own plans and the direction of a standing committee of the Parliament. The choice of agencies to audit is based on likely risk where it is not possible to audit all. As with the State Inspection Agency, there is a tendency to confuse various types of audits with the result that none appears to be carried out properly.

165. Both organizations operate by way of reports and recommendations although both also have the power to issue small fines, where appropriate.

166. *b) enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.*

Standard Achieved	1	1
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167. Inspections and audits are carried out annually and systematically. It would appear that the reports of the State Inspection Agency are acted upon in a timely fashion but that this is not yet the case for the reports of the National Audit Office. The staffing levels and governmental support are unbalanced in favor of the State Inspection Agency.

168. *c) the internal control system provides timely information on compliance to enable management action*

Standard Achieved	2	1
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169. There is no indication that there is regular reporting following internal controls in a way which would enable management action to be taken in a timely fashion. Reporting is annual although status and powers of the State Inspection Agency suggest that any urgent matters would be conveyed to management.

170. *d) the internal control systems are sufficiently defined to allow performance audits to be conducted*

Standard Achieved	1	1
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171. Procedures exist but are not defined sufficiently to allow appropriate performance audits to be conducted. There appears to be confusion about the various types of audit and their relevance.

172. *e) auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.*

Standard Achieved	1	1
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173. It appears that inspectors and auditors do participate in PPCD training but there is no formal training requirement, no mechanism for ensuring that any of them are specialists and no provision for the support of procurement experts where required.

174. **Indicator 10: Efficiency of Appeals Mechanism.** The assessment is based on the following benchmarks:

175. a) *decisions are deliberated on the basis of available information and the final decision can be ruled by a body with enforcement capacity under the law.*

Standard Achieved	3	3
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176. The review mechanism of Chapter 7 of the PPL meets the required criteria. In addition, implementing regulations specify the procedural rules that apply to the process.

177. b) *the complaint review system has the capacity to handle lodged complaints efficiently and a means to enforce the remedy imposed.*

Standard Achieved	3	2
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178. The implementing regulations specify conditions and timeframes within which the procedures may be completed. The only issue of reasonableness is the time given for the completion of the process which in complicated cases may be too short. The outcome of the procedure will be an enforceable administrative decision.

179. c) *the system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.*

Standard Achieved	2	3
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180. Though the review mechanism is a recent addition to the Law, the procedures governing the decision making process are based on relevant information; provide for a balanced and unbiased consideration of that information; are subject to judicial review and result in appropriate remedies.

181. d) *decisions are published and made available to the public.*

Standard Achieved	1	2
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182. All decisions will be posted on the procurement website maintained by the PPCD. This has not happened yet given that the system has only just become operational.

183. e) *the system ensures that the complaint review body has full authority and independence for resolution of complaints.*

Standard Achieved	3	3
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184. Whilst the decision of the review mechanism is formally made by the Ministry of Finance, it is based entirely on an opinion given by an independent body of experts who are expert in the field, are selected on objective grounds, are not employed by the government and are not subject to arbitrary removal.

185. **Indicator 11: Degree of Access to Information.** The assessment is based on the following benchmarks:

186. a) *information is published and distributed through available media with support from information technology when feasible*

Standard Achieved	2	3
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187. All general information regarding procurement is available in a timely manner on the PPCD website. This includes information concerning the legal and regulatory framework, the standard bidding documents and information concerning the review mechanisms. Information regarding the publication of tenders is available in hard copy mass media and, for contracts above the relevant threshold, must also be published on the PPCD website.

188. This indicator appears to concern the system for ensuring access to information and does not explicitly refer to the adequacy of the information posted. If this indicator did concern the quality and amount of contract information available, then the scores would probably be lower.

189. **Indicator 12: Ethics and Anti-corruption Measures.** The assessment is based on the following benchmarks:

190. a) *the legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing the issue of corruption, fraud, conflict of interest and unethical behavior and states actions which can be taken with regard to such behavior (either directly or by reference to other laws).*

Standard Achieved	3	2
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191. The Law itself provides for dealing with acts of fraud and corruption through the use of qualification criteria which will be reflected in the tender documents. Instances of corruption will lead to disqualification in respect of bidders and to disciplinary action, fines and/or criminal prosecution in respect of procurement officers. Conflicts of interest of the evaluation committee members are also dealt with in the Law and similar consequences (disciplinary action and fines) are provided for in the event of a breach of the provisions.

192. b) *the system defines responsibilities, accountabilities and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.*

Standard Achieved	3	3
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193. As above.

194. c) *evidence of enforcement of rulings and penalties exists.*

Standard Achieved	1	1
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195. Whilst there is some evidence that the police authorities have been involved in prosecuting corruption cases, the anti-corruption authorities are not yet operational and there is no evidence of enforcement by them.

196. d) *special measures exist to prevent and detect fraud and corruption in public procurement.*

Standard Achieved	1	1
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197. The government does have an anti-corruption programme but it is very recent and enshrined in a Law of 2006. The Anti-Corruption Department is an independent body answerable to the Parliament but it has barely begun its operations. The investigation division is powerless until implementing regulations are adopted.

198. Although procurement will come within its remit, there is no specific programme in relation to procurement and no wider programme involving a broader range of stakeholders.

199. e) *stakeholders (private sector, civil society and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.*

Standard Achieved	1	1
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200. There is no question that tenderers would like to see a system known for its integrity but they have not mobilized in any way to make that happen. Transparency International does not have a chapter in Mongolia and few other civil society organizations appear to be involved. The former Soros Foundation, now known as the Open Society Forum, has demonstrated an interest but has not yet become seriously involved. It has, however, funded university research into the subject.

201. f) *the country should have in place a secure mechanism for reporting fraudulent, corrupt or unethical behavior.*

Standard Achieved	0	1
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202. A system is in place but is in its infancy. There is no information yet concerning the degree to which security and confidentiality can and will be guaranteed.

203. *g) existence of codes of conduct/codes of ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.*

Standard Achieved	2	1
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204. There is no single code of conduct fulfilling the required conditions. However, there are requirements in the Law which must be adhered to and the breach of which can lead to disciplinary action. There is a code of ethics which applies to the expert panel members, for example.

F MAIN FINDINGS BASED ON THE CPIs

205. To a large extent, the CPIs proposed by OECD/DAC were adopted since they also appeared to be the most appropriate to the Mongolian context. They reflect the issues that the PPCD, as the entity responsible for monitoring, is keen to investigate. However, given the need to obtain various approvals during the course of a procurement procedure, it was also felt important to determine how long such approvals take in practice in order to see whether they have any effect on any delays. In order to ensure that the cause of any delay is properly identified, additional CPIs were included, as follows:

- Average number of days between bid opening and completing a bid evaluation report;
- Average number of days between completing a bid evaluation report and approval of contract award;
- Average number of days between approval of contract award and signing a contract;
- Average number of days for getting no-objection from the Ministry of Finance for procurement transactions above certain thresholds (Average number of days for PPCD prior review of draft bidding document and contract award).

206. The result of the CPI assessment was less successful than that for the BLIs. Whilst the completed tables which were compiled from those departments who responded were more or less accurate (as compared to the results achieved from our more general monitoring activities), they were incomplete in most cases. Also in some cases where the assessors conducted a review of procurement files in collaboration with the procurement officers at the target departments and *aimags* some important documents such as bid evaluation reports, final signed contracts, contract administration evidences, completion reports or payment related documents which are the key sources for gathering data under the relevant CPIs were missing or kept separately at another department (for example, finance department) thus making the tables incomplete. In addition, only around half of the target departments actually responded.

207. Whilst the lack of information demonstrates that the necessary information has not been made available, it does not mean that compliance and performance is inadequate. It merely indicates that there is no information upon which to make that assessment. Indeed, the information that has been made available suggests, on the contrary, a high level of compliance and performance with the indicators for which there is information. As a result,

it is inappropriate to seek to provide any generalisations with respect to the performance of the system as a whole.

208. There has been insufficient time to provide CPI scores for those indicators which seek to determine a percentage score in respect of public opinion. That would require a broader and more sophisticated data collection methodology.

209. A total number of 6 ministries, 7 provinces including the Capital Ulaan Baatar, and 7 projects funded by the ADB or the WB were included in the CPI data collection exercise. Their current practices were reviewed for a sample of 218 contracts procured by them in 2006. Table 1 below provides a list of procuring entities submitted data on CPIs and Table 2 provides a total number of contracts reviewed while the remaining tables are intended to provide some key data by ministries, provinces and projects grouped at some extent followed by some minor analysis.

Table 1. A List of Procuring Entities Submitted Data on CPIs

I. <u>Ministries</u>	II. <u>Provinces</u>	III. <u>Projects</u>
1. Ministry of Education, Culture and Science	1. Uvs	1. Second Education Development Project
2. Ministry of Road, Transpor and Tourism	2. Khentii,	2. Health Sector Development Project
3. Ministry of Health	3. Sukhbaatar	3. Governance Assistance Project
4. Ministry of Foods and Agriculture	4. Arhangai	4. Information and Communication Infrastructure Development Project
5. Ministry of Construction and Urban Planning	5. Huvsgul	5. Regional Road Development Project
6. Ministry of Defence	6. Bayan-Ulgii	6. Integrated Development of Basic Urban Services in Provincial Towns project
	7. Ulaanbaatar City	7. Capacity Building for Governance Renewal Project

Table 2. Total Number of Contracts Reviewed

Procuring entity	Goods	Works	Services	Total
6 Ministries	45	28	5	78
7 Provinces	8	78	-	86
7 Projects	23	19	12	54
Total	76	125	17	218

Key data from survey:

Table 3. Data Expressed in Percentage

Indicators	Ministries	Provinces	Projects	Average
Percentage of invitations for open tenders publicly advertised	99.25 (one tender was advertised only on the website)	92.9	100	97.4
Percentage of open tender documents that include provisions limiting participation for reasons other than qualifications or acceptable exclusions	0	0	0	0
Percentage of tenders including non quantifiable or subjective evaluation	0	0	0	0
Percentage of tenders opened publicly and recorded	100	84.4	100	94.8
Percentage of tenders that use model tender documents or clauses	100	85.3	100	95.1
Percentage of tenders that use the GCC, standard clauses or templates as applicable	100	91.5	100	97.2
Percentage of contracts containing provisions defining procedures for undertaking contract administration responsibilities	100	93.3	100	97.8
Percentage of payments made late /eg. exceeding the contractually specified payment schedule/	0	30.5	0	10.2
Percentage of major contracts without completion reports	0	0	0	0
Percentage of contracts found with incomplete records retained	16.7	94.4	0	37.02
Percentage of contract files that have evidence showing contract administration was timely	100	64.3	100	88.1
Percentage of contracts that include ADR provisions	100	91.7	100	97.2

From the data submitted by the sample of 6 ministries, 7 provinces and 7 projects according to the 13 indicators described in Table 3, it can be concluded that the specific requirements within these indicators are almost fully complied with the ministries and the projects. Regarding the provinces, the compliance with some of the requirements is less successful compared to compliance by the ministries and the projects particularly in regard to recordkeeping and compliance with formal provisions indicated in the PPL such as the publication of open tender invitations, public opening and recording of open tenders, use of model tender documents, GCC, standard clauses or templates as applicable.

Table 4. Duration of Process

Indicators	Duration in Days			
	Ministries	Provinces	Projects	Overall Average
Average number of days between tender advertisement and tender opening	30.3	28.3	38.8	32.5
Average number of days between bid opening and completing bid evaluation report	16.4	4.1	25.6	15.4
Average number of days between completing bid evaluation report and approval of contract award	7.1	5.5	17.7	10.1
Average number of days between contract award approval and contract signing	6.6	5.4	29..2	12.7
Average number of days for getting no-objection for draft bidding document from MoF for procurement transactions above certain thresholds	7.5	-	7	7.3
Average number of days for getting no-objection for draft bidding document from funding agency /eg. ADB, WB.../	-	-	7.4	7.4
Average number of days for getting no-objection for contract award from MoF for procurement transactions above certain thresholds	10	-	17.2	13.6
Average number of days for getting no-objection for contract award from funding agency /eg.	-	-	11.7	11.7

ADB, WB.../				
Average number of days for procurement cycle from tender advertisement to contract award	63.14	70.3	116	83.1

Duration of Process: The procurement cycle averaged 83.1 days including bidding period of 32.5 days, bid evaluation of 15.4 days, internal approval of 10.1 days, PPCD approval of 7.3 days and 13.6 days where required, funding agency approval of 7.4 days and 11.7 days in case of projects, and contract signing of 12.7 days. Those durations seem to be quite efficient; however, more close investigations need to be made for further exercises under the CPIs.

Table 5. Number of Bids Submitted and Percentage of Bids Rejected

Indicators	Ministries	Provinces	Projects	Overall Average
Average number of tenders submitted in each process	12.3 (44.3 bids for pharmaceuticals, MoH*. The average for the remaining 5 ministries is 5.9)	3.9	5.7	7.3
Percentage of tenders rejected in each process	41.3	40.3	29.1	36.9

* MoH –Ministry of Health

Number of Bidders and Percentage of Bids Rejected: Table 5 shows that, on average, ministries had a higher number of bidders per bidding exercise which resulted in higher percentage of bids rejected. However, the key reasons of rejections were an overly legalistic application of the tender requirements, inability by the market to respond to the requirements (mostly the experiences of firms in preparing bids or technical and/or financial capacity of firms) or the restrictive specifications to a certain extent. However, more close investigations need to be made for further exercises under the CPIs.

210. The full available CPI results are nevertheless reproduced in Annex 4.

Annex 1

MONGOLIA

**Pilot Exercise
of the
OECD-DAC Joint Venture for Procurement**

MONITORING AND REPORTING MECHANISM

August 2007

**Procurement Policy and Coordination Department
Ministry of Finance
Mongolia**

REPORT

This Report is based on the 'Detailed Outline for the Monitoring and Reporting Mechanism' provided by the OECD-DAC Joint Venture for Procurement and is provided to the OECD-DAC Joint Venture by Mongolia as part of the Pilot Exercise.

A INTRODUCTION

2. Mongolia has been selected as one of the pilot countries in Asia to participate in the Procurement Pilot Exercise of the OECD-DAC Joint Venture for Procurement. The purpose of the exercise is to field test the new, common methodology developed by the OECD-DAC Joint Venture under different conditions in order to improve the quality and the usefulness of the methodology and to support an improved dialogue between partner countries and their development partners about procurement reforms and capacity development.
3. A Working Group (WG) has been formed to carry out the Pilot Exercise comprising the Director General and 3 other members of the Procurement Policy and Coordination Department (PPCD) of Mongolia's Ministry of Finance and two members of the Country Offices of the World Bank and the Asian Development Bank. Following the attendance of the WG at the Asia Regional Workshop on Procurement held in Jakarta, Indonesia in February 2007, Mongolia developed an Action Plan for the implementation of the pilot exercise. A domestic and an international consultant have been recruited with ADB funding to assist with the implementation of that Action Plan.
4. In preparation for the data collection and assessment exercise, the PPCD and WG carried out two fundamental activities:

(i) High-Level Political Support

The 'Methodology for the Benchmarking and Assessment of Public Procurement Systems' was translated into the Mongolian language and presented to senior officials of the Government for their approval of the exercise. As a result:

- The State Secretary of the Ministry of Finance has expressly stated his support for the exercise;
- The Minister of Finance has signed a letter introducing the BLI and CPI exercise to the public entities that have been selected to participate in the assessment and inviting their active participation.

The Pilot Exercise thus has the endorsement and support of the Government through the Ministry of Finance.

(ii) Stakeholder Support

On 12 and 13 June 2007, the PPCD conducted two workshops introducing the Pilot Exercise to (i) the PIU/PMUs of ADB and WB financed projects and (ii) for representatives of the 13 Ministries, government agencies and *aimags* (provinces) chosen to participate in the exercise, respectively. There were a number of issues/outcomes:

- the organization of first workshop was assisted by the country offices of the ADB and the WB which provided both the professional and financial support needed for the successful conclusion of the workshop;
- the second workshop included not only most of the public entities participating in the assessment but also invited public agencies, NGOs and civil society organizations. These included the State Inspection Department, the National Audit Agency, the Anti-Corruption Agency, the Procurement Development Center and UNDP. The Open Society Forum was invited but did not attend;
- the participants in the workshops made a number of suggestions regarding additional indicators to be included in the CPI exercise; these have since been added.

In addition, all documents related to the Pilot Exercise, including updated versions following the workshops, have been placed on the PPCD's procurement website for the purpose of sharing the exercise with all interested parties.

5. A further stakeholder workshop was held on 14 August to report on the conclusions of the pilot exercise and to solicit feedback from the stakeholders. All of those who had participated in the original workshop were invited as well as all of those who participated in the exercise itself, including the private sector. Due to the timing of the workshop (summer vacation in Mongolia), though the workshop was well attended, the representation was not as broad as it might have been. Whilst there was a greater participation from the private sector (some civil society representation and trade associations) and from governmental organisations involved in anti-corruption, inspection and audit, fewer procuring entities attended.
6. As indicated in 3(i) above, the 'Methodology for the Benchmarking and Assessment of Public Procurement Systems' was translated into the Mongolian language. This has since been distributed to the participating public entities under cover of the Finance Minister's letter. It was accompanied by a short introductory notice on the application of the BLIs and CPIs, together with the CPI table which included 25 indicators, following the additions made during the workshops (see 3(ii) above). These were accompanied by guidelines for the evaluators on how to complete the CPI table. In addition, the evaluators were provided with an additional questionnaire to assist them with completion of the BLIs.

7. The Exercise was conducted by the assessors/evaluators between June and August 2007. The results of the assessment are presented in the ‘Results of the Benchmarking and Assessment of the Mongolian Public Procurement System’. This Report contains the results of the use of the monitoring and reporting mechanism itself.

B RESULTS OF THE MONITORING AND REPORTING MECHANISM

This Section B closely follows the headings provided in the ‘Detailed Outline for the Monitoring and Reporting Mechanism’ provided by the OECD-DAC Joint Venture for Procurement

1 Experiences and recommendations on the relevance and the ‘useability’ of the version 4 Indicators (BLI and CPI)

In general terms, we found the CPI indicators conceptually easier to deal with and apply than the BLI indicators. They are based on the collection and analysis of hard data which does not require immediate assessment. Clearly, the results require analysis and assessment but not the collection of the data. Data collection for the BLI, on the other hand, requires a certain amount of assessment from the outset which demands that the indicators be clear in order to allow the correct data and, therefore, analysis to be made. In practical terms, however, we were rather disappointed with the amount of information collected with respect to the CPIs compared to the more comprehensive results obtained in applying the BLIs.

For the most part, we find the indicators clear although some of them, such as indicator 3, were less clear than others because the Mongolian financial system operates in a fundamentally different way to that envisaged in the indicator. This does have the benefit of indicating the main weaknesses of the national financial system but did not help us to assess the procurement component. The procurement procedures we have developed have had to work with the existing financial system and we are seeking to achieve the results suggested in the indicator working within the existing constraints.

We identified a number of difficulties with the indicators:

- The indicators set out various degrees or levels of attainment but without always giving the assessors the means of deciding which level has been attained. Many of the indicators assume a significant level of knowledge or experience in making such assessments but the reality is that the pilot exercise may be the first time that the assessors are conducting such an assessment. A comment that was made by two participants in the final stakeholder workshop was that, notwithstanding the detailed requirements of the indicators, they did not understand what methodology was applied in making the assessment.
- To address this difficulty, we provided the assessors with an additional questionnaire which helped them make broader enquiries enabling them to understand not only the

broad objectives of the questions but also the significance of the replies. The intention was not that the assessors should ask each of the questions set out in the additional questionnaire but to indicate the sorts of questions they should have in mind when collecting data and conducting interviews. The use of this additional questionnaire was explained in a series of presentations and practical exercises.

- In the end, however, we could not use all of the information gained because of the indicators themselves. The indicators are very precise and call for specific answers or scores based on specific answers. For the most part, the levels of attainment are based on formal considerations linked to legislative provisions and established procedures. They rarely relate *explicitly* to the actual practice. As a result, we have been obliged to respond to the indicators by addressing the levels of attainment requested without, at the same time, being able to raise the implementation problems which we discovered in the field. If this is a misunderstanding on our part, then it is at least partly the result of the way in which the indicators are drafted (and these must be made clearer). The result could be that Mongolia (or any country) scores a high mark for having provided an appropriate legal framework and simultaneously provides low CPI results but that the reasons are unknown because there is no room to identify the problems which occur in the implementation of the system. The best that can be said is that the system is apparently good but compliance indicators suggest that it is not. That begs the question of why there is such a mismatch, a question which the BLIs as they stand do not fully answer. Version 3 enabled more information regarding implementation to be included.
- This is a problem which arises not only in respect of each indicator but also among the indicators used under each pillar. Although the legislative and regulatory framework is ostensibly covered under Pillar 1, there are many indicators under Pillars II-IV which also refer to legal provisions, albeit not necessarily those relating directly to the procurement law. In the case of Mongolia, generally high scores are obtained for the formal requirements but, where there are questions relating to implementation, the scores are much lower. However, since the Pillar scores are a combination of both, the average overall score for the Pillar is higher than the state of implementation would suggest.
- In the opinion of all assessors, the Pillar scores do not reflect the reality of the situation in Mongolia. They are too high and do not reflect the state of implementation. This was also an opinion expressed several times in the final stakeholder meeting where some surprise was evident at the relatively high pillar scores. The averages suggest a better situation than exists.
- For example, the procedures for the review mechanism are relatively strong (this is covered partly by indicator 1(h) and again in indicator 10). The requirements in indicator refer largely to the system in terms of both the legal framework and capacity of the system. The results for indicator 1(h) are consistent with the other results for Pillar I and provide a reasonable picture of the legal and regulatory framework. However, in Pillar IV, it is clear that the other control mechanisms are weak

(although the legal framework is stronger in all cases that capacity, implementation and/or performance). Whilst we believe as a result that the control environment is weak outside the review mechanism, the relatively high score obtained in respect of indicator 10 has the effect of raising the overall score for Pillar IV which does not reflect what we believe is the reality.

- This also raises the issue of duplication. Whilst these indicators (1(h) and 10) as well as others (e.g. 1(c), 5(a) and 5(b)) seek slightly different answers (in rather subtle ways), they concern the same or similar issues but do not at the same time separate form from substance. As above, Mongolia tends to score higher in terms of legal requirements and system existence but less well on implementation. By mixing the requirements at indicator level, the resulting scores (based on the precise requirements) are less than accurate (even though we know where the weakness lies). By duplicating the indicator (to some extent), the inaccuracy is spread further.
- A further example is indicator 6(c). Although it is found under Pillar III concerning procurement *operations*, the specific requirements relate only to the formal provisions of the law (this should perhaps be covered in Pillar I?) and Mongolia scores highly given the detailed provisions that exist. However, in conducting the CPI exercise, it became clear that these requirements are not being properly implemented with the result that we cannot complete the CPI exercise to our satisfaction. Whilst this is inconvenient for the scoring of pilot exercise, the main problem we face is that the BLI do not permit us to demonstrate that there is a weakness in recording and reporting at an operational level. The recording indicator for operations is in fact an indicator relating to the legal requirement for recording. Mongolia therefore scores highly for operations whereas the reality is quite the opposite.
- We would prefer to see some way of assessing all procurement-specific legal or regulatory provisions in one section and of assessing these provisions separately from any assessment of the system operation. We feel that this would provide a more accurate snapshot of our system (separating formality from operation) and allow us to identify where, in the operation of the system, the main weaknesses lie.
- The CPI results, even assuming they are comprehensive (which in Mongolia's case they are not) will only show us where compliance or performance is weak but will not tell us why. Since the BLIs do not either always provide an explanation, it means we will have to carry out a further problem identification exercise. This can of course be done but it is somewhat disappointing that, after all the time and effort expended on the current exercise, the results do not provide all the answers.
- Of course, the pilot exercise has enabled us to ask many questions relating to implementation and we now do have a fair understanding of what the major problems of implementation are. It is just a pity that the indicators do not permit us to demonstrate these in the benchmarking report.

- Finally, we question the importance given in indicator 2(e) of the existence of a *single* user manual. We have a number of general and specialist manuals in Mongolia for different issues. Whilst these may not be adequate, that is a different question from having them all in a single document. Surely, if manuals and guidelines are available to cover the appropriate issues, that is enough? Indeed, in many cases, procurement officers would only need a portion of such a comprehensive manual and may feel intimidated by a manual that covers everything.

2 Experiences and recommendations/lessons to be shared related to the process of applying the version 4 Methodology

This is covered by the following sub-headings:

2.1 Planning and Implementing the Pilot Exercise

(a) *Planning*

In terms of planning for both BLIs and CPIs, all 13 central Ministries in Ulaan Baatar were targeted. At provincial level, 9 *aimags* (provincial administrations) out of 21 were chosen together with the capital city. Initially, the choice was made on the basis of the PPCD's ongoing provincial intervention. The PPCD regularly visits *aimags* to provide training and advice. Some were visited in the spring of this year and so the initial choice was based on the identification of those *aimags* which had not yet been visited this year. This was done partly for reasons of efficiency and consistency, so that all *aimags* receive regular and 'equal' visits but partly also for reasons of economy. The costs of conducting the assessment in the various and far-flung *aimags* solely for the purpose of this assessment were felt to be high and it was considered more appropriate to combine the assessment visits with those already scheduled for existing purposes. Nevertheless, the 9 *aimags* are geographically representative with three in the West (Bayan-Ulgii; Khovd; Uvs), two in the East (Khentii; Sukhbaatar), one in the South (Dornogobi), one in the North (Huvsgul) and three in the centre, including the capital city (Ulaan Baatar; Arhangai; Ovorhangai).

In terms of the CPIs, samples were initially intended to be based on a basic proposed sample of 30% of the total number of contracts let with an attempt to concentrate on the larger value contracts. It was expected that assessors would also consider some medium and small value contracts although the larger value contracts above the threshold for open competition would represent the primary target samples. Where the number of contracts let by a particular authority (notably *aimags*) is small, then the samples were expected to extend over 50% or even 100% of the contracts let. It was to depend on the circumstances which are found to exist on site.

The assessments were conducted largely by staff of the PPCD. However, this requires some explanation. A number of the current staff of the PPCD are in fact consultants funded by the World Bank. This gives them one advantage over and above the regular staff which also serves to overcome one of the difficulties that we perceive with the assessment process. The PPCD is the policy and control body of the Ministry of Finance in respect of

procurement. This means that we are sometimes seen by procuring entities as ‘the other side’. In some cases, this leads to confrontation, especially when the PPCD is required to correct or suggest corrections to procurements conducted in breach of the Law. The situation is less confrontational with respect to the private sector although, there, we are at a different disadvantage since we are seen as being part of the Government. In both cases, we are concerned that we may not be in the best position, as the PPCD, to obtain complete and accurate information. This does not appear to have been a significant obstacle to the collection of data although it cannot be excluded that some departments have not disclosed all of their concerns. In order to minimise the risk, we gave the greatest information gathering responsibility to the ‘consultants’ and recommended to them that they introduce themselves as consultants rather than as regular staff of the PPCD.

In preparation for the assessment, the staff including the consultants were given translated versions of both the BLI and CPI tools and the PPCD conducted a half day workshop on how to complete them. Further, the international consultant also prepared an additional questionnaire for the purposes of conducting the BLI analysis and used this as the basis for two further presentations on the objectives of the BLIs and on interview techniques. Different consultants/PPCD staff accompanied the international consultant to interviews he conducted in Ulaan Baatar with Ministries and the private sector. This was both in order to gain some experience of the interviewing techniques needed to elicit the relevant information and to compare that information against the information they had obtained during their own interviews.

Use of these consultants also goes some way to guaranteeing independence and objectivity in the reporting. In addition, the international consultant also conducted a number of the critical interviews in Ulaan Baatar with Ministries and the private sector. Further, both the ADB and WB members of the WG also participated in one provincial visit to Dornogobi.

(b) Consistency

Two methods of data verification were envisaged. In terms of the CPIs, the Law requires procuring entities to produce annual procurement plans at the beginning of the financial year. They are also required to produce annual procurement reports. 2006 is the first year where these legal requirements have been imposed and the resulting figures will be the first point of reconciliation between the planned and concluded contracts and the main method for verifying the figures obtained during the data collection exercise. The second method of verification used notably in the context of the BLIs consists in an assessment of the consistency of the information provided by the various interlocutors. Thus, information provided by, for example, the Ministry of Health was checked for consistency against information on similar issues provided by private suppliers of pharmaceuticals and medical devices. In the case of the health sector, the message from both the demand and supply side appears consistent so that we are fairly confident that the information reflects the reality. There was a similar consistency in the construction sector.

That is not to say that we obtained the same answers but that the answers given and the reasons provided, though different, led to a similar conclusion. For example, the consistent

message from the procuring entities is that bidders do not provide products that meet the needs of the purchasers. The bidders respond that the technical specifications are poorly drafted and that the technical evaluation is also poorly carried out, so they are unable properly to determine the technical needs (aside from the fact that the budget is not in any event based on technical needs but on available funds). In response to other questions, the purchasers confirm that they do not have the resources to provide the necessary technical expertise for either the drafting of their technical specifications or for evaluation purposes. The Law of course requires technical experts to be appointed. Some of those interviewed also point to the sometimes ‘political’ nature of the appointments to the evaluation committee. As a result, we are confident that there is a general problem with technical specifications although the process of reaching this conclusion is based on various answers to different questions. This process provides us with a means of verifying consistency in the results. As discussed above, however, none of this is really apparent from the BLI scoring which, in this respect, merely seeks to ascertain (in indicator (1e)) that the Law requires technical specifications to be properly drafted (which it does).

(c) Results

The data collection plan was successfully completed in terms of the BLI. We were able to collect the relevant data and conduct interviews with many of our target departments and the results have enabled us to provide what we believe is a comprehensive and detailed set of scores for the BLI. As explained above, we are not convinced that the scores actually reflect the reality of the health of the procurement system in Mongolia but we are convinced that the scores represent an accurate assessment of the level of attainment of Mongolia in respect of the detailed and precise requirements of the individual indicators.

The result of the CPI exercise was less successful. Whilst the completed tables we compiled from those departments who responded were more or less accurate (as compared to the results achieved from our more general monitoring activities), they were incomplete in most cases, so that we were unable to paint a full picture of their activities. Also in some cases where the assessors conducted a review of procurement files in collaboration with the procurement officers at the target departments and aimags some important documents such as bid evaluation reports, final signed contracts, contract administration evidences, completion reports or payment related documents which are the key sources for gathering data under the relevant CPIs were missing or kept separately at another department (for example, finance department) thus making the tables incomplete. In addition, only around half of the target departments and projects actually responded.

We believe there were a number of reasons for this. The exercise has been conducted during the summer months which are when many government officials are on holiday. This has had a noticeable effect on the people we have been able to interview although it has not made the exercise impossible by any means. It simply goes some way to explaining the difficulty in some of the remoter *aimags* which have fewer staff.

We may also have been too optimistic in seeking to obtain so much information in such a short space of time. We chose at the outset to conduct the BLI and CPI exercises at the

same time. We also decided to apply all the CPI indicators and to add a few more, as discussed above. With hindsight, this may have been too much to ask of both the assessors and the target departments who have not participated in such intensive surveys before.

2.2 Compliance and Performance Measurement

To a large extent, we adopted the CPIs proposed by OECD/DAC since they also appeared to be the most appropriate in our context. They reflect the issues that the PPCD, as the entity responsible for monitoring, is keen to investigate. However, given the need to obtain various approvals during the course of a procurement procedure, we also felt it was important to determine how long such approvals take in practice in order to see whether they have any effect on any delays. We believe this is an important issue of more general relevance also. Procurement officers are often blamed for imposing complicated or lengthy administrative procedures but we have noticed that it is not necessarily the procurement process that is slow but often the subsequent approval process. Thus, in order to ensure that the cause of any delay is properly identified, we have included some additional CPIs, as follows:

- Average number of days between bid opening and completing a bid evaluation report;
- Average number of days between completing a bid evaluation report and approval of contract award;
- Average number of days between approval of contract award and signing a contract;
- Average number of days for getting no-objection from the Ministry of Finance for procurement transactions above certain thresholds (Average number of days for PPCD prior review of draft bidding document and contract award).

One of the stakeholder workshops held at the beginning of this exercise (described in Paragraph A.3 above), was conducted for the benefit of the PIUs/PMUs of ADB and WB financed projects. Their expenditure represents a significant amount of procurement spend in Mongolia. These participants suggested that we also take into account the approval procedures of these financing organisations. We believe this is a good idea since, as well as providing the participants with information which is relevant to them, it will also provide us with a benchmark against which to measure the speed of our own approval processes.

As stated above (2.1), the Law requires procuring entities to produce annual procurement plans at the beginning of the financial year and to produce annual procurement reports. These will be the first point of reconciliation between the planned and concluded contracts and the main method for verifying the figures obtained during the data collection exercise.

2.3 The Validation Process

The validation process has been conducted in various ways.

The most obvious mechanism has been to hold a series of stakeholder workshops. Two such workshops were held at the beginning of the process and these are described in paragraph A.3(ii) above. A concluding stakeholder workshop, described in paragraph A.4

above, was held on 14 August in order to provide broader opinions on the scoring applied to the BLIs. Whilst this workshop gave rise to a few objections on the level of scores obtained in individual cases (i.e. the entity receiving the low score wanted a higher score), there was broad agreement with the scores given. However, there was a general feeling that the scores were too high given the participants' knowledge of the conditions in the field. Some felt that the scores were wholly unrepresentative even though, during the discussion, they were unable to disagree with the scores given to the specific requirements of each indicator.

The result of this stakeholder validation process, therefore, is consistent with the opinion of the assessors, namely that whilst Mongolia achieves reasonably high scores in response to the precise requirements of each of the BL indicators, the results of the scores (which are arithmetically correct) appear to provide an overly optimistic picture of the reality and health of the Mongolian system. The lack of complete CPI information means that there is no way of demonstrating poor performance since the problem is one of incomplete information and not necessarily of poor performance. Those results which have been obtained appear to demonstrate acceptable performance levels. As discussed above in section 1, the BLI scores/results do not allow us to identify the operational weaknesses even though we are well aware that they exist and of what they are.

2.4 Planning and implementing a capacity development Action Plan

The exercise has been useful in identifying and assessing the potential weaknesses of the system. It also gave us an opportunity to ask questions beyond those that are stated in the indicators in order to get a better feel for the operational weaknesses. It has been a valuable experience and one which will inform our development plans. Procurement reform has been taking place independently of this pilot exercise so there is no evidence as yet of any actual contribution to the reform process. However, as already stated, it will inform our future actions and, with this in mind, we have also included in the Benchmark Report some recommendations for improvement and have provided an Improvement Plan for further consideration.

2.5 Strengthening local ownership and leadership of procurement reform

The exercise has been conducted by the PPCD. It received the initial support of the Minister of Finance and of the State Secretary of the Ministry of Finance who will also be informed of the results. We trust that the results of the exercise will be felt at Ministerial level.

2.6 Improvements to coordination and harmonization amongst development partners

We are content with the involvement of our development partners, notably the ADB and the WB. They have always maintained, as we have, that this exercise would be a demonstration of local ownership and, in this, we believe we have been successful. Nevertheless, both the WB and the ADB have been participating in the working group, attended the stakeholder workshops and have also accompanied us on a fact finding

mission to one of the *aimags*. They have also provided input into the draft documents that have been prepared. We are also grateful to the ADB for funding the exercise.

2.7 **Linkages with public financial management**

This has proved to be by the far the weakest link in the procurement system. There are a few links at present and we have been unable to establish a full dialogue with our financial management colleagues. This is not due to any ill-will but is explained by the fact that we had not until now realised how important the link is or should be and how far away from the idea our system is. From this point of view, the whole exercise has been extremely beneficial and we will begin to investigate how this link should be improved in future.

3 **Results of the application of the version 4 Methodology**

We have taken the opportunity of the exercise to prepare a BLI Report which provides more detailed information than could be contained in the Scoring Sheet appended to the 'Detailed Outline for the Monitoring and Reporting Mechanism' provided by the OECD-DAC Joint Venture for Procurement. We have thus used the exercise to promote our own development agenda rather than simply as an exercise in completing the pilot questionnaire. We attach this Report.

However, we have also sought to complete the Scoring Sheet using information contained in the full report. It is also attached to this report.

3. Results of the application of the version 4 Methodology

BENCHMARKING AND ASSESSMENT METHODOLOGY FOR PUBLIC PROCUREMENT SYSTEMS -

MONITORING REPORT SPREADSHEET

Baseline Indicator	Indicator Applicability (Indicate if there is a lack of clarity, relevance, effectiveness, applicability, measurability)	Suggestion for improvement	Compliance and Performance Indicator	Indicator Applicability (Indicate if there is a lack of clarity, relevance, effectiveness, applicability, measurability)	Suggestions for improvement and/or additional compliance/performance indicators
Pillar I – Legislative and Regulatory Framework					
1) The public procurement legislative and regulatory framework.					
a) - Scope of application and coverage of the regulatory framework and public access to legislation..	<i>No comment</i>	No comment	NA		
b) - Procurement methods.	<i>No comment</i>	No comment	Percentage of procurement (in volume and in number of contracts) carried out through open tendering.	No comment	No comment
c) - Advertising rules and time limits.	No comment	No comment	(a) Percentage of invitations for open tenders publicly advertised	No comment	No comment

			(b) - Average number of days between invitation to tender advertisement and tender opening by type of procurement.		
d) - Rules on participation and qualitative selection	No comment	No comment	Percentage of open tender documents that include provisions barring groups of bidders from participating for reasons other than qualifications or acceptable exclusions.	No comment	No comment
e) - Tender documentation and technical specifications.	No comment	No comment	Percentage of tenders rejected in each process.	No comment	No comment
f) - Tender evaluation and award criteria	No comment	No comment	(a) Percentage of tenders including non quantifiable or subjective evaluation or post qualification criteria.	No comment	No comment
			(b) Public perception of confidentiality of tender evaluation process.		
g) – Submission, receipt and opening of tenders	No comment	No comment	Percentage of open tenders opened publicly and recorded.	No comment	No comment
h) – Complaints system structure and sequence			Percentage of cases resolved within the terms established in the legal framework.	No comment	No comment
2) Implementing Regulations and Documentation					
a) – Implementing regulation that provides defined processes and procedures.	No comment	No comment	NA		
b) – Model tender documents for goods, works, and services.	No comment	No comment	Percentage of open tenders that use model tender documents or	No comment	No comment

			clauses.		
c) – Procedures for pre-qualification.	No comment	No comment	a) Percentage of cases for which prequalification was used appropriately as prescribed in the legal framework. b) Percentage of cases that used objective pass/fail prequalification criteria as opposed to subjective qualitative ones.	No comment	
d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	No comment	No comment	NA		
e) – User’s guide or manual for contracting entities.	Question need for <i>unique</i> manual	Allow multiple manuals, even if lower score	NA		
f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	No comment	No comment	Percentage of tenders that use the GCC, standard clauses or templates as applicable.	No comment	No comment
Pillar II. Institutional Framework and Management Capacity					
3) Integration and mainstreaming of the public procurement system into the public sector governance system.	Assumes one perfect system	Is there room for incorporating other financial systems?			
a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	No comment	No comment	NA		
b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	No comment	No comment	(a) Percentage of late payments (e.g. exceeding the contractually specified payment schedule).	No comment	No comment

			(b) Average number of days in arrears.		
c) – Procurement actions not initiated without budget appropriations.	No comment	No comment	NA		
f) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	No comment	No comment	a) Percentage of major contracts with completion reports. b) Average time after final contract liquidation within which completion reports are finalized.	No comment	No comment
4) Normative and regulatory functions.					
a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	No comment	No comment	NA		
b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	No comment	No comment	NA		
c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	No comment	No comment	Percentage of surveyed actors that perceive the function being performed as competently and timely.	Unable to measure at present	No comment
d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	No comment	No comment	Percentage of surveyed actors that perceive the regulatory function being independent from procurement operations.	Unable to measure at present	No comment
5. Institutional development capacity.					
a) – System for collecting and disseminating procurement information and accessibility.	Appears to refer to system rather than quality of information.	Possible to separate form from substance?	NA.		
b) – Systems and procedures for collecting and monitoring national procurement statistics.	ibid.	ibid.	Number of days by which the information is outdated.	No comment	No comment

c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	No comment	No comment	(a) Number of procurement officers in the central government that receives formal training in the year. (b) Average waiting time to get in a formal training event.	No comment	No comment
d) – Quality control standards and staff performance evaluation for capacity development.			NA		
Pillar III. Procurement Operations and Market Practices					
6. Efficiency of procurement operations and practices.			Average number of days for procurement cycle from tender advertisement to contract award	No comment	No comment
a) – Adequacy of procurement competence among government officials.	No comment	No comment	NA		
b) – Procurement training and information programs	No comment	No comment	NA		
c) – Norms for the safekeeping of records and documents related to transactions and contract management.	Appears to refer to system rather than quality of information.	Possible to separate form from substance?	Percentage of contracts found with incomplete records as per the list given for this sub indicator keeping.	No comment	No comment
d) – Provisions for delegation of authority.	No comment	No comment	NA		
7. Functionality of the public procurement market.					
a) – Effective mechanisms for partnerships between the public and private sector	No comment	No comment	Percentage of favorable opinion on effectiveness of mechanisms by relevant organizations or agencies.	Unable to measure at present	
b) – Private sector institutions are well organized and able to facilitate access to the market.	No comment	No comment	Average number of tenders submitted in each process	No comment	
c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market.	No comment	No comment	NA		

d) – Clarity and transparency of rules for determining whether to engage international or national markets.	No such indicator in version 4		NA		
8. Existence of contract administration and dispute resolution provisions.					
a) – Procedures are clearly defined for undertaking contract administration responsibilities	No comment	No comment	Percentage of satisfactory opinions on performance of the system.	Unable to measure at present	No comment
b) – Contracts include adequate dispute resolution procedures.	No comment	No comment	Percentage of contracts that include ADR provisions.	No comment	No comment
c) – Procedures exist to enforce the outcome of the dispute resolution process.	No comment	No comment	NA		
Pillar IV. Integrity and Transparency of the Public Procurement System					
9. Effectiveness of control and audit systems	Confuses legal provisions with quality of function.	Separate?			
a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement..	No comment	No comment	NA		
b) – Enforcement and follow-up on findings and recommendations of the control.	No comment	No comment	NA		
c) – The internal control system provides timely information on compliance to enable management action.	No comment	No comment	NA		
d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	No comment	No comment	NA		
e) – Auditors are sufficiently informed about procurement requirements.	No comment	No comment	NA		
10. Efficiency of appeals mechanism.					
a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	No comment	No comment	NA		

b) – Capacity of the complaint review system and enforcement of decisions.	No comment	No comment	a) Percentage of complaints processed within the time limits posted or set out in the legal framework. b) Percentage of decisions taken that have been actually enforced.	No comment	No comment
c) – Fairness of the complaints system.	No comment	No comment	Percentage of favorable opinions by the participants in the system on the fairness of the process	Unable to measure at present	No comment
d) – Public access to decisions.	No comment	No comment			
(e) – Independence of the administrative review body.	No comment	No comment	NA		
11. Accessibility to information.					
Publication and distribution of information.	Confuses legal provisions with quality of activity	Separate?	NA		
12. Ethics and anticorruption policy and measures.					
a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behavior.	No comment	No comment	NA		
b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	No comment	No comment	NA		
c) – Enforcement of rulings and penalties.	No comment	No comment	(a) Percentage of corruption accusations that go to trial. (b) Percentage of those that actually result in application of sanctions or penalties.	Unable to measure at present	No comment
d) – Measures exist to prevent and detect fraud and corruption in public procurement.	No comment	No comment	Percentage of favorable opinions by the public on the effectiveness of the anticorruption measures.	Unable to measure at present	No comment

e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	No comment	No comment			
f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior.	No comment	No comment	.		
g) - Codes of Conduct/Codes of Ethics for participants and provision for disclosure for those in decision making positions.	No comment	No comment			

Annex 2

Action Plan for the implementation of the pilot exercise

No.	Activities	Duration	Responsible party	Remarks/Note
1.	Establish a working group responsible for the coordination of the pilot exercise	March 2007	PPCD*	It is proposed that the working group consists of representatives of PPCD and WB and ADB Resident Missions
2.	Translate “Methodology for Assessment of National Procurement Systems Version 4” into Mongolian and distribute the translated material to relevant authorities/parties	March – April 2007 April – May 2007	PPCD	An experienced translator to be hired to translate about 65 pages material
3.	Select pilot agencies as targets of the exercise	March 2007 May 2007	PPCD, WB and ADB Resident Missions	Selection of 13 ministries, 3-4 main agencies, 5-10 local provinces proposed
4.	Identify appropriate approaches for dealing with different stakeholders and develop questionnaires and survey materials	April 2007 May – June 2007	PPCD, WB and ADB Resident Missions	Stationary costs needed for making copies and distribution of questionnaires/survey materials
5.	Prepare terms of reference and carry out selection of an international consultant to assist in the preparation of survey reports	April – May 2007	PPCD	International consultant is expected to assist in the preparation of a report on the application of BLIs while in home office and a final validated report of the application of the Version 4 Methodology while on field for about 1 month
6.	Conduct training on methodology of the pilot exercise for stakeholders including the representatives of the selected organizations	May 2007 June 2007	PPCD, WB and ADB Resident Missions	Training for about 30-50 participants proposed
7.	Prepare a report on the			Inputs by three experts from

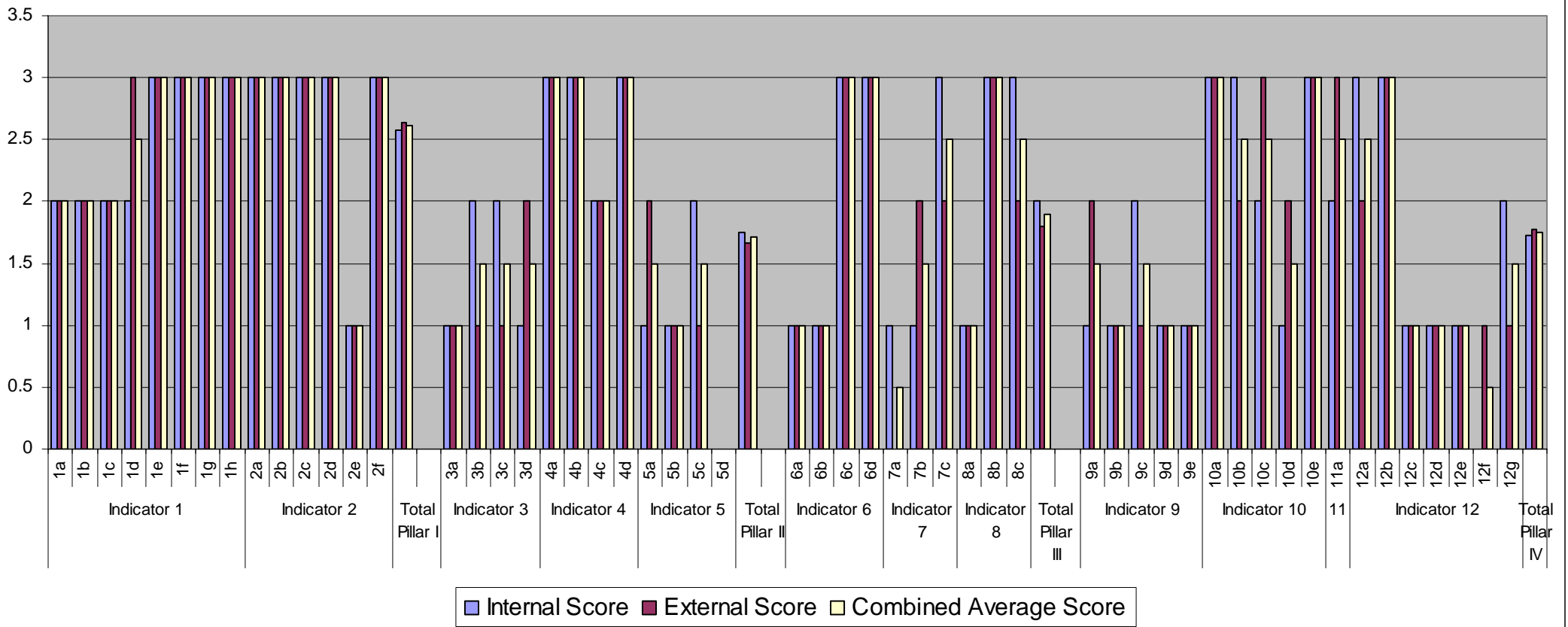
	application of BLIs and validate the report by submitting it to senior authorities and relevant stakeholders/parties	June 2007	PPCD	PPCD will be used
8.	Prepare and submit written inputs on experiences and recommendations 1) on the relevance and the usability of the Version 4 indicators 2) to be shared related to the process of applying the Version 4 Methodology	Mid-June 2007 (as suggested by OECD/DAC Secretariat)	PPCD, WB and ADB Resident Missions	Inputs by three experts from PPCD will be used
9.	Submit a validated report on the results of the application of BLIs to OECD/DAC Secretariat	July 2007	PPCD	
10.	Conduct the assessment of the national procurement system according to CPIs	May-July 2007 June – August 2007	Selected organizations	
11.	Compile the results of the assessment and prepare a report on the application of CPIs and validate the report by submitting it to senior authorities and relevant stakeholders/parties	August 2007	PPCD International consultant	Inputs by three experts from PPCD will be used
12.	Submit a final validated report of the application of the Version 4 Methodology to OECD/DAC Secretariat	August 2007	PPCD International consultant	Inputs by three experts from PPCD will be used
13.	Participate in Copenhagen workshop	September 19-21 2007	PPCD, WB and ADB Resident Missions representatives	

*PPCD – Procurement Policy and Coordination Department

Annex 3

Detailed BLI Scores by Indicator

Detailed Scores by Indicator



Annex 4

Results of the CPI Exercise

№	Compliance/Performance Indicator	6 Ministries	7 Provinces	7 Projects	Average/Total
1	Percentage of procurement carried out through open tendering	89%			
3	Percentage of invitations for open tenders publicly advertised	99.25%	92.9%	100%	97.4
4	Average number of days between tender advertisement and tender opening	30.3 days	28.3 days	38.8 days	32.5
5	Average number of days between bid opening and completing bid evaluation report	16.4 days	4.1 days	25.6 days	15.4
6	Average number of days between completing bid evaluation report and approval of contract award	7.1 days	5.5 days	17.7 days	10.1
7	Average number of days between contract award approval and contract signing	6.6 days	5.4 days	29.2 days	12.7
8	Average number of days for getting no-objection for draft bidding document from MoF for procurement transactions above certain thresholds	7.5 days	-	7 days	7.25
9	Average number of days for getting no-objection for draft bidding document from funding agency /eg. ADB, WB.../	-	-	7.4 days	7.4
10	Average number of days for getting no-objection for contract award from MoF for procurement transactions above certain thresholds	10 days	-	17.2 days	13.6
11	Average number of days for getting no-objection for contract award from funding agency /eg. ADB, WB.../		-	11.7 days	11.7

12	Percentage of open tender documents that include provisions limiting participation for reasons other than qualifications or acceptable exclusions	0	0	0	0
13	Percentage of tenders including non quantifiable or subjective evaluation	0	0	0	0
14	Average number of tenders submitted in each process	12.3 bids	3.9 bids	5.7 bids	7.3
15	Percentage of tenders rejected in each process	41.3%	40.30%	29.1%	36.9
16	Percentage of tenders opened publicly and recorded	100%	84.4%	100%	94.8
17	Percentage of tenders that use model tender documents or clauses	100%	85.3%	100%	95.1
18	Percentage of cases where prequalification was used appropriately as prescribed in the legal framework	No-prequalification was conducted in 2006 nationwide.			
19	Percentage of cases that used objective pass/fail prequalification criteria used as opposed to subjective qualitative ones	No-prequalification was conducted in 2006 nationwide.			
20	Percentage of tender that use the GCC, standard clauses or templates as applicable	100%	91.5%	100%	97.2
21	Percentage of payments made late /eg. exceeding the contractually specified payment schedule/	0	30.5%	0	10.2
22	Percentage of major contracts without completion reports	0	0	0	0
23	Average time after contract completion for preparation of a completion report	10.23%	16.3 days	7 days	11.2
24	Average number of days for procurement cycle from tender advertisement to contract award	63.14%	70.3 days	116 days	83.1
25	Percentage of contracts found with incomplete records retained	16.7%	94.4%	0	37.02

26	Percentage of contracts containing provisions defining procedures for undertaking contract administration responsibilities	100%	93.3%	100%	97.8
27	Percentage of contract files that have evidence showing contract administration was timely	100%	64.3	100%	88.1
28	Percentage of contracts that include ADR provisions	100%	91.7%	100%	97.2
29	Percentage of cases resolved within the terms established in the legal framework	No data available			
30	Percentage of complaints processed within the time limits in the legal framework	100%			
31	Percentage of decisions enforced	No data available			
32	Percentage of favourable opinions	No data available			
33	Percentage of cases that result in sanctions or penalties	No data available			
34	Percentage of favourable opinions by the public on the effectiveness of the anticorruption measures	No data available			
35	Public perception of confidentiality of tender evaluation process	No data available			
36	Opinion on effectiveness of mechanisms to engage with relevant organizations or agencies	No data available			
37	Percentage of those surveyed that perceive procurement as being performed competently and independently	No data available			
38	Percentage of those surveyed that perceive the regulatory function to be free of conflict	No data available			
39	Number of staff involved in procurement in the central government that receives formal training in the year	over 4000 in 2006			

40	Average waiting time to get in a formal training	No data available
41	Level of freshness and accuracy of information posted /Age of information/	No data available
42	Number of recommendations pending after one year	No data available
43	Number of qualified opinions from external auditors due to critical internal control weaknesses and recommendations referring to internal controls that remain outstanding	No data available
44	Percentage of agencies reviewed with written internal control and procedures	No data available