

Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Mongolia

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from Mongolia was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by Mongolia in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



A. General framework

Legal and organizational framework:

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements¹ that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

The Public Procurement Law of Mongolia (PPLM) became effective in May 2000. The law was drafted in 1999 with technical assistance of the ADB based on the UNCITRAL Model law on procurement. The Government with the assistance of World Bank has recently carried out a review of the law and prepared proposed amendments to the law and.

Following the PPLM approval, General Guidelines for procurement of Goods and Works, General Guidelines for the Use of Consultant and Code of Ethics for the Civil Servants conducting procurement was approved in June 2000 by the Government Ordinance #101.

The government has declared a list of works, goods and services related to national defence and security, procurement of which does not follow the standard procurement rules as stated in the provision 3.3 of PPLM.

Mongolia has an observer status of Government Procurement Agreement of WTO as its member

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

Public Procurement System of Mongolia has a decentralized nature with some centralization in terms of supervision. Government agencies and entities are responsible for their procurement implementation from advertising to contract awarding as a procuring entity.

However there are different levels of tender committees, created for each procurement cases to help the procuring entity to ensure compliance of the evaluation committee activities with the rules and requirements. Tender committee makes recommendation on award of the contract based on the evaluation report submitted by the evaluation committee and head of the procuring entity makes final decision to award the contract.

Under the PPLM and Government Ordinance #101 of 2001, Ministry of Finance (Procurement Policy and Coordination Department) has an authority to design procurement policy and standards and provide professional services and training to the procuring entity and receive the complaints regarding to the particular procurement process and review them before the court.

If the contract is already signed, only court will receive the complaint and control the procurement process and contract implementation issues.

¹ e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

If contractor or supplier declared by the court that he does not fulfill the contract obligations he will not be eligible to participate in the government tendering during 3 or more years in the future.

3. Is procurement of goods governed by the same procedures as procurement of services?

Yes in general if services are other than consulting services. However Procurement Policy and Coordination Department (PPCD) have prepared the Standard Tender Documents for services other than consultancy based on WB standard.

There are separate special procedures for the Consultancy services according to the PPLM (Chapter 5) and Guidelines and standard bidding documents and evaluation procedures in practice.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

As mentioned Public Procurement System in Mongolia is decentralized and there is no centralized procurement agency established by the law. However the law does not stop the government decision to create Centralized Purchasing Unit in certain area of government procurement, for examples for the procurement of common supply items for central budget agencies etc.

In other hand PPLM does not explicitly establish Procurement Office for overall public procurement policy and coordination. However Ministry of Finance is guaranteed to have a policy making and coordinating functions by the law. And then the Government has established Procurement Policy and Coordination Department under the internal structure of Ministry of Finance of Mongolia. Recently PPCD was upgraded its status from Division to the Department and staffed now with 7 people.

There is no precise statistics on number of procurement officers throughout the country as there is no clearly defined work position for them and adequately trained professionals in procurement.

If will be approximately 5000-10000 first line procurement staff in Mongolia considering there area least 1-2 people from about 5000 government entities and enterprises actively engaged in their procurement following the PPLM. First of all they are not adequately trained and monitored for the execution of their tasks. About the financial recourses, they receive normal government salary with not differentiated rate from other civil servants.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

PPLM sets the standard and common rules throughout the country despite the central and local government level as well as cross sectors.

Procurement policies and practices:

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

Yes, similarly with WB and ADB, Government issued (by order of Finance Minister and drafted by the PPCD) model tender documents including contract forms separate for procurement of goods, works and consultancy services and procedures for tender evaluation and procedures for consultants proposal.

Use of them is mandatory allowing small necessary project specific changes. All standard documents has an anti corruption clause as one of the eligibility criteria, which sounds like :

All bidders (including all members of a joint venture) shall be ineligible if the court or relevant authorities determined that the supplier or contractor recommended for award has engaged in corrupt or fraudulent practices in bidding, signing or implementing contracts in past 3 years

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

There is now consolidated and detailed statistics on annual procurement or contract values as we still developing the system for data collecting and monitoring the country procurement.

Very approximate annual number of total public procurement is about 400 USD of which 1/3 is financed by government budget, 1/3 by public enterprises resources and 1/3 from foreign assistance. This survey shows that public procurement has a big impact on national economy as it equals more than 25 percent of the total GDP and about 20 percent of total government expenditure is paid to the government contracts.

PPLM describes 4 types of procurement method including: open tendering, restrictive tendering, comparison (price quotations) and direct contracting.

And the main procurement method applicable to all procurement regardless to their value and sector is the open competitive tendering. However restrictive tendering, comparison and direct contracting as an special methods are allowed if the special conditions stated in the PPLM has occurred. The law provides some thresholds as a minimum criteria (except direct purchasing) and plus urgency or some other conditions to be met for use of these methods.

8. Please explain under which conditions pre-selection procedures are conducted.

The article 30 of the General Guidelines for the Procurement of Goods and Works stated that the pre-qualification of tenderers can be used for large civil works and turnkey contracts, and contracts for the supply of expensive and technically complex equipment, to ensure that only technically and financially capable firms will be invited to submit bids.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

The government is planning to strengthen legal framework of Public procurement by revising the PPLM focusing more on improvement of organizational and implementation mechanism of procurement.

The changes will include into the law also some e-procurement principles, that government will maintain Procurement website, where procurement notices and results will be published. This is a beginning of e-government procurement system development to bring more transparency and accountability and some data collecting.

At the same time we are planning to develop Procurement Management and Monitoring System with assistance of international experts, that will provide better procurement planning, implementation, reporting and monitoring tools for the procuring entities and will establish effective monitoring and data collecting system for PPCD as well.

PPCD is drafting a Procurement Training Strategy to establish sustainable national system for procurement professionals development and create National Training Network to meet demand for procurement knowledge and skills.

B. Transparency and Fairness

Transparency of general procurement policies and regulations:

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

PPLM is available in the state special publications of the law and regulations publications as a hard copy and in the websites of the relevant state organizations, like Parliament website, Ministry of Justice website as an electronic copy. (Ministry of Finance website is currently under construction)

PPCD is developing currently the Special procurement website with technical assistance of WB and planning to have online from April this year. Then PPCD will publish all procurement related information and update it.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

PPLM provides the procedure for the registration system, to guarantee an open, fair and effective principles if the government maintain it. Registers of suppliers, contractors or service providers may be created and maintained by State Administrative Bodies (line ministries) in accordance with the provisions of this Law and in accordance with the procedures issued by the Ministry of Finance (PPCD)

Where the limited tendering procedure is used, the certain number of tenderers invited to participate may be taken from among those tenderers appearing on the appropriate Register. But registration is not a precondition for participating in tendering and not a prequalification of any tenderer automatically. The registration will provide an additional information or support to the procuring entities if they needed. And it supports also supplier and contractor to be known to the government and to be improved in terms of professional qualification.

However there is no any Register in established and officially announced yet.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

PPLM allows the Procuring entity to determine necessity of tender security based on cost estimate of goods, works or services. However Guidelines determined the min threshold above which bid security must be required by the Procuring entity.

According to the General guidelines Procuring Entities shall inform the list of goods and works to be procured for the respective fiscal year in a mass media.

The advertisement of particular tendering process shall include reference to the identity of Procuring entity; a summary of the works, goods or services sought; address for bidding documents, further information and submission of tenders; cost of bidding documents; procedural requirements; final date for submission of tenders; date of tender opening and other necessary information.

Transparency of procurement opportunities:

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

The Procuring entity shall advertise the invitation to particular tender in a mass circulation daily newspaper, other forms of mass media and where appropriate, the invitation to tender must be advertised by displaying the details on the notice board of the Procuring entity concerned.

For works contracts whose value exceeds MNT 1'000'000'001 and goods contracts whose value exceeds MNT 100'000'001, the advertisement should be placed in a publication of wide international circulation or on international language.

The bidding documents shall be priced based on preparation costs and given without unreasonable delay to any interested contractor at the cost price. And there is no other fee to participate in tendering.

PPLM requires the Procuring entity to give an adequate and equal time to prepare and submit their tenders. And in the open tendering procedure, there shall be a minimum time limit of 30 days before the deadline for the submission of tenders and in limited tendering minimum of 15 days.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

Yes. PPLM states that the Procuring entity shall evaluate all responsive tenders and shall award the contract on the basis of the award criteria set out in the bidding documents in accordance with Articles of this Law. Responsive tenders are those which conform to the terms, conditions and specifications, including the qualification criteria set out in Chapter 6 of this Law, of the bidding documents without material deviation or reservation. The Procuring entity shall base the award of a contract on the best evaluated responsive tender.

In addition to price, the evaluation criteria may include other factors like date of completion of works and services and/or delivery of goods; running costs and cost-effectiveness; after-sales service and technical assistance; commitments with regard to spare parts, security of supplies and the price thereof; quality of the works, goods and services, and their technical merits; supplementary objective and non-discriminatory criteria.

And the Procuring entity shall state in the bidding documents all the criteria it intends to apply to the award, and the manner in which the criteria will be applied for the purpose of determining the best evaluated responsive bid.

Transparency of contract evaluation and award procedures:

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

In the absence of any responsive tender or if there is no suitable tender where there has been no competition or where all tender prices exceed the budget allocated/available the Procuring entity shall reject all tenders. After investigating the reason that leads to the un successful process taking measures to remedy the causes of the failure of the tendering the open tendering or limited tendering procedure may be taken. And new tenders shall not be invited on the same tender and contract documents solely for the purpose of obtaining lower prices; or direct contracting may be taken.

According to the General Guidelines the Procuring entity shall keep the procurement file including all notes and registers and related documents.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

Procurement file mentioned in 16 shall be kept for 3 years as an archive unit by the Procuring entity. Access to this information is not specified in the PPLM and Guidelines. However audit, legal and supervision authorities can access to these information upon written request and permission to review according to the relevant rules and regulations.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

Under PPLM award decision shall be notified to the successful tenderer and the unsuccessful tenderers shall be notified within 5 working days after signing of the contract.

It is not specified or not necessary to give reasons for the selection of the winning bidder when the result is notified.

Post-awarding negotiations are not allowed except for selection of consultants

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

Not specified.

C. Integrity

Integrity of procurement personnel:

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

Yes, Government by its Ordinance issued the Code of Ethics for Civil Servants conducting the procurement.

There is mandatory declaration of Conflict of Interest provision: Civil servants must declare to his/her director by letter any personal interest like he/she own supplier or is shareholder of supplier or his/her family member work for supplier, which may affect or could be perceived to affect, their impartiality in carrying out any aspect of their work.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

Not really. Two Guidelines and Code of Ethics mentioned in the section 1 of this questionnaire includes some related provisions not in detail.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

The Code of Ethics for Civil Servants conducting the procurement has an provision on gifts and hospitality: Civil servants should not accept any gifts and hospitality from supplier and should not take part in any tours and journeys organized by suppliers are likely to be perceived by others as being an influence on a business decision. Civil servants must declare to the superior directly when they receive such offer. If superior charge a task in writing then civil servant will not be responsible for the following negative results.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

Anti Corruption Law says that civil servant shall be given a rise to remedial action under the Civil Law for accepting or soliciting bribes.

Anti Corruption Law says that civil servant must inform any gifts, benefits, hospitality received as an appreciation or other purpose to the financial administration of the organization for registration and if value of such item exceeds his/her monthly salary, must submit it.

Integrity of bidders and suppliers:

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

Not clearly stated

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

General Guidelines requires that if the court determines that the supplier or contractor recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question Procuring Entities will reject a proposal for award or will annul the contract in case the contract has been already awarded or signed.

Procuring Entities will declare supplier or contractor ineligible, either indefinitely or for a stated period of time, to be awarded a contract and should announce it to the public.

But there is no case declared by the court and blacklisting practice is not used yet.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

No requirements to such declaration by bidder.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

No requirements to such declaration by bidder.

D. Accountability

Separation of responsibilities and independent scrutiny:

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

Final decision on contract award is separated from tender evaluation. Evaluation committee is responsible for preparing the tender documents and evaluating the proposals, where as Tender committee is approving the documents and evaluation report if they followed the rules properly. Both committees are established in case by case comprising more than two concerning contract related experts.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

Professional Supervision Agency conducts regular government internal financial auditing once in a two years and if they found the Procurement law was breached they may apply penal sanctions according to the Civil Servants Law and other administrative legislation.

Also State Audit Authority is conducting some auditing by request or by their plan.

PPCD of Ministry of Finance together with other supervising agencies may conduct comprehensive auditing of some large procuring entities on the implementation of the PPLM

Review and complaint mechanisms:

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

Yes, there is three level for review of complaints from tenderer, two administrative and one judicial. First of all tenderer may submit complaint to the Tender Committee, then PPCD of MoF and lastly to the court. If award decision is already made by the Procuring entity, the Tender committee will not receive the complaint. And if contract is already signed, only the court will receive the complaint. An administrative review must complete within 14 days.

PPCD receives about 100 complaints per year. There is no statistics on other level yet. It may be more if consolidated in the Tender committee level and less in the court level compare with PPCD level.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

PPLM just says tender may submit a complaint, and there is no specific clauses related to the any other citizens complaints and therefore any clauses about the issue of potential informants protected against retaliation

If a complaint is proven valid PPCD make a declaration with regard to the legal rules or principles, which apply, to the subject matter of the proceedings; annul or modify any act or decision of the Tender Committee in whole or in part, which inconsistent with this Law; instruct the Tender Committee to correct any breaches and to proceed with the procurement procedure following correction.

A breach of any of the obligations contained in this Law by the Tender Committee or its members in the conduct of a procurement procedure that does not constitute criminal offence, shall give rise to remedial action under the Civil Services Law.

The Court has the right to make a decision according to the Civil Case Court Processing Law in the case if decision or activity of the Tender Committee was declared as a breach of this Law and award damages to a tenderer who has suffered loss or damage as a result of a breach of this Law.