

# Transparent Public Procurement Rating

## Sector Assessment Questionnaire

### ROADS SECTOR IN MONGOLIA (2018) (CPV - 45233000)

#### Introduction

**Overview of the aim of the sector assessment and how it fits in the overall TPPR project.**

Sector assessment aimed to examine the quality of the procurement practice in the road sector against Mongolian public procurement legislation to discover if sector's procurement policies ensure transparent and efficient procurement for public projects of varied scale and value, to encourage, influence for on-going public procurement policy across the Mongolian road sector.

In addition, the assessment sought to identifying actual problems and laying ground for procurement regulatory framework and provide the possibility to compare target public procurement legislations according to principal values of a well-functioning, transparent and accountable public procurement system in Mongolia.

#### **Description of the sector selected for the assessment and reasons behind it.**

Mongolia has three main sectors (mining, building construction, road construction) that take majority of budget spending and lead behind a lot of procurement and corruption related problems according to mass media and social networks.

The institutions of road sector are the following (by 2018):

- Ministry of road and transport development;
- Road, transport policy development center;
- 2 project implementation units,
- 28 road maintenance state owned company,
- 45 road supervision consulting company,
- 400 road construction company, and
- 8 non-government organizations.

The function of these organizations and legal entities is to oversight the national road network (112414,2 km), bridge construction (more than 300).

Every year public procurement related massive information and facts has been broadcasted through mass media and demonstrated social networks that non-compliance of procurement process, lack of integrity in the procurement operations,

less transparency in delivering government policy, unfair competition, unreasonable timeframe for performance etc., are still in place. It is not surprising to reveal the news on unfinished school buildings and broken walls after completion of maintenance work etc., without proper remedial actions taken from the government so far.

### **Description of the structure, methodology and limitations of the sector assessment.**

PPrP assessment combined a desk study and review of the extensiveness of the national public procurement legal framework, with a survey of the effectiveness of sector's procurement practice. The assessment also included legal analysis of typical review on variety of the report presents and analyses findings on an official statistical data and questionnaires reviewing national public procurement legislation, local contracting entities' procurement practice in the sector's procurement and the utilities road procurement sectors to identify major regulatory and implementation problems

### **Quantitative Questions**

#### **Amount of public funds spent in target sector in 2018 (source of information – Annual procurement plan 2018, MOF).**

488.6 billion MNT- (average yearly rate against dollar-2450) 199.4 million USD

#### **Breakdown of procurement spending in the target sector by source of funding.**

State budget 121.2 billion MNT/49.5USD out of Capital city budget 51.6 billion MNT /21.1 million USD, Routine maintenance-20.0 billion MNT/8.2 million USD, Foreign grant, soft loan-347.1 billion /141.7 million USD

#### **Share of procurement in target sector in the total volume of procurement in 2018**

7.1 % (except foreign grant and loan)of total volume of procurement-1989.5 billion/821.1

#### **Target sector share in GDP of the country.**

0.4% of GDP (32165.9 billion)

#### **Ratio of direct procurement to tender (competitive procedures) in target sector in 2018.**

14.1% by state owned maintenance company

#### **Share of contracts in the target sector that are won by state-owned enterprises.**

14.1% (8.2 million USD which is mainly state maintenance companies)

#### **Average number of bidders in target sector.**

Total special licensed 483 company (450 - road and bridge construction company, 33 - road design and supervision consulting company). 59.8% of construction work had been contracted with Chinese companies whilst the rest of 40.2% was with national 8 companies only.

**Percentage of failed tenders in the total number of procurements in target sector suspended.**

4.4km by department of state owned policy regulating agency, suspended bidding of 1.7 km by MOF due complaint submitted by bidders, rejection of all bids due to overestimated financial proposals exceeding the endorsed budget by more than 5 %; these are the slightest percentage of all of them.

**Top 5 contracting authorities in the target sector and their primary contractors (top 3 for each) – highlight any suspicious trends – for example : recurrent tender participants on same tenders, unusually high share of one or two companies winning most contracts, winners of direct contracts etc.**

25 contracting authority, and 3 of them are primary, Ministry of road and transportation development, Department of City road development and National development.

Top 5 winning economic operators are playing actively in the target sector and the substantial share of total contracts won by them.

Top 5 winning economic operators take 48% share of the total road sector in the country.

**Narrative Questions**

**Do any unreasonable legal exemptions apply to the target sector?**

Local taxation income from most popular mineral resource such as sand, gravel, materials for embankments goes for construction or maintenance of local paved road itself.

**Does access to procurement documentation meet the requirements of the national legislation?**

It depends on the which phase of procurement process is covered. For instance, in terms of

- planning phase: the annual procurement plan can be published for public after 10 days of budget approval by the parliament;
- bidding phase: there was no major fault observed and recognized during bid advertisement and distribution of bidding document etc;

- contract award: it is disclosed in public e-procurement portal, the winning bidder, name of bidding and contract price etc.,
- complaint resolution (within standstill period): it is less transparent and no one can have an access to the ongoing or closed complaint cases until the MOF makes the decision on relevant case;
- contracting: disclosure of information and access to procurement information can stop by here due to less requirement on national legislation on this phase;
- performance: there is very limited information and database due to lack of track recording on performance of both ongoing and completed contracts, as there are very limited requirements on building up the procurement related database and documentation (in paper) reflected in the national legislation;
- archiving: contracting authority is obliged to keep the procurement related documents at least for 5 years and afterwards to send to National Archive Office, but it is not clear whether this requirement has been obeyed accordingly in all contracting authorities.

PS: In terms of source of procurement related documents, the Public procurement law of Mongolia (PPLM) is based of UNCITRAL (United nations commission on International trade) model law and all Sample bidding documents are developed in accordance with World bank Standard bidding documents.

**How do the above data points compare to the country's overall results indicated in the TPPR Questionnaire on PP Performance.**

The above data point could ensure the road sector's overall results indicated in the TPPR Questionnaire on PP Performance

**Have there been any prominent cases that illustrate existing challenges (inefficiency, corruption or other forms of misspending) in recent years?**

The following cases that broadcasted through mass media and social networks:

- Conflict of interest (decision makers all know each other)
- Corruption of 10% of total value (according social media)
- Political influence and interference
- Few rich entity influence (most likely the collusion)
- Participation of foreign companies (mainly Chinese)
- Delay in bidding, in particular for evaluation process (extension of bid validity period without a significant excuse)
- Inadequate claim
- Lack of control on bid evaluation process
- Capacity of procurement staff (no single position for procurement staff is in place)
- Insufficient contractual obligation and contract management method
- Insufficient quality control and monitoring

- Lack of database and track recording for contract implementation
- Lack of law enforcement due to inefficient functional distribution among state organizations (mainly for quality assurance and controlling functions)
- No voice from local community or citizens from the perspective of end users' satisfaction
- Poor quality for feasibility study and slower/none of update on cost estimation
- Too much involvement of policy institution such as Ministry itself etc.,

**Is there any indication that suppliers fail to fulfill contractual obligations? Any prominent cases in recent years?**

Using the cost estimation made in 2016 caused inadequacy of budget for procurement conducted in 2018, and led to rejection of all bids due to inflation and increase of exchange rates for raw material cost.

**What are the major strengths and weaknesses of public procurement in the target sector? (minimum of 2 each; personal deliberation of the author)**

**Strengths:**

- E-procurement portal
- Introduction of Framework agreement arrangements in procurement of health sector goods
- Advance bidding (contract award)
- Requirements to submit procurement data on the implementation (for half year) to e-procurement portal
- The amendment law to the PPLM has been endorsed on 22 March 2019 by parliament of Mongolia.

**Weaknesses:**

- Most valued bidding has been taking by Chinese company
- Difficult to find Mongolian origin construction material
- Political involvement
- Lack of control on bid evaluation process
- Conflict of interest
- Delay in tendering

**Conclusion**

- **Overview of the main findings of the assessment**
- **Recommendations of the author (optional)**

**References**

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- Report of Ministry road and transport development, 2018
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- Report of procurement law enforcement assessment on budget controlling body in 2018.
- Road sector policy documents 2018
- National statistics 2018
- National budget law 2018
- procurement report in 2018 of Minister's procurement package