

Assessing Public Procurement Practice in Mongolia - 2017

General Description of the Public Procurement System

X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Comment:

In charge of,

- (i) Policy and coordination, the Ministry of Finance (MOF) Mongolia (Public procurement policy and coordination division, <https://mof.gov.mn/en>), Article 52, Public procurement law of Mongolia (PPLM);
- (ii) Implementation of high volume projects and system administration of e-procurement portal, the Government agency for policy coordination for state property (GAPCSP), Article 53, PPLM; (<http://www.pcsp.gov.mn/en>; <https://tender.gov.mn/mn/index/>); and
- (iii) other procuring entities as stated in Article 4, PPLM.

Implementing agency and procuring entities are fully independent from policy making body which has a right to inspect the implementation and take enforcement activities when necessary as stated in Article 55 and 57, PPLM.

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Comment:

Bid invitations should be advertised and bids should be submitted electronically. As for paper based tendering, it applies for community participatory (projects with small amount of budget) procedures as stated in Provision 7.1.4, PPLM. In terms of enforcement of PPLM, there is a separate implementing rule for electronic advertisement of procurement plan, invitation for bids and result of bidding, issued by MOF.

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

Comment:

Public procurement is conducted through a centralized, single website <https://tender.gov.mn/mn/index/> as well as it includes e-Shopping portal and e-Catalogue for framework agreement (so far, for some essential medicines only).

X. If there is a register of suppliers, what is the number of registered suppliers in it?

If possible, please provide a comparison with several (at least 5) previous years?

Comment:

There is an Article 51, regulates the registration of potential bidders in the e-procurement portal, 10147 available at <https://tender.gov.mn/en/bidder/list>;
As for the number of bidders, which is available at <http://www.pcsp.gov.mn/en/companies?page=84> and total 1676 listed companies have been participated in bidding processes, by January 10, 2019.

X. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

Comment:

According to Article 7, PPLM, there are 4 procedures for competition, namely;
(i) Open competitive bidding procedure, (ii) Special bidding procedure (limited competitive, comparison and direct contracting), (iii) Procedure on selection of consultant and (iv) Community participatory procurement procedures (added in 2011).

X. What is share of public procurement in the country's GDP?

Comment: There are information, annual procurement report (MOF) and annual budget performance report (National Audit Office) publicly available, only for 2017. (<https://www.audit.mn/wp-content/uploads/2018/06/MU-NEGDSN-TUSUV-GUITSETGEL.pdf>)

GDP: MNT 27,167bn

Procurement: MNT1,137bn

Share: 4.2%

X. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

Comment:

Goods: 10,000,000 MNT (MNT - Mongol tugrug, appr. 3750USD; X.rate: 1\$=2666MNT)
Works: 10,000,000 MNT

Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? 61% (MNT753.2 bn)

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is information, annual procurement report (MOF) publicly available, only for 2017.
(https://mof.gov.mn/files/uploads/article/Тайлан-2017_.pdf)

X. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? 12% (MNT148.8 bn)

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

Comment: There is information, annual procurement report (MOF) publicly available, only for 2017.
(https://mof.gov.mn/files/uploads/article/Тайлан-2017_.pdf)

X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? 5% (MNT65.8 bn)

Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Comment: There is information, annual procurement report (MOF) publicly available, only for 2017.
(https://mof.gov.mn/files/uploads/article/Тайлан-2017_.pdf)

X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : share: N/A

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: No such information is available publicly.
Indeed, according to clause 3.4, 3.5, 3.6, 3.7, 3.8 and 45.7, there are several exemptions have been introduced or added from time to time (in 2011 and 2016). It is unable to estimate the amount of such spending out of PPLM, since the relevant data is unavailable for public.
For instance, as for one of unreasonable exemptions, the fund to be spent through Development Bank has been exempted since the commencement of its operation (2011) and the amount of high volume and strategically significant (some roads etc.,) projects are not part of PPLM at all.

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: __N/A__ share: ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: N/A (No such information is available publicly)

Competitiveness

X. What is the average number of bidders? __N/A__

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

Comment: This data is not publicly available...

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? _N/A__

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

Comment: This data is not publicly available...

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? _N/A__

If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

Comment: This data is not publicly available...

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? __N/A__

Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

Comment: This data is not publicly available...

X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? __N/A__

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This data is not publicly available...
Instead, there is data about procured products that are domestically produced, in annual procurement report, page 8, figure 9.

X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? __N/A__

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This data is not publicly available...

Efficiency

X. What is the share (%) of failed tenders in the total number of tenders? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.

Comment: This data is not publicly available...

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? _7.56_ (total saving only)

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is information, annual procurement report (MOF) publicly available, only for 2017. (https://mof.gov.mn/files/uploads/article/Тайлан-2017_.pdf)

Saving: MNT93,148 bn

Budget: MNT1,230,600 bn

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? _N/A_

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.

Comment: This data is not publicly available...

X. What is the share (%) of non-executed contracts in the total number of contracts? _N/A_

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Comment: This data is not publicly available... No contract performance evaluation is conducted in the country (never).

Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment: Dispute settlement mechanism is regulated in Article 54, 55, 56 and 57 of PPLM and as a policy making body, MOF is in charge of resolving the complaint at administrative level, before court. e.g. steps to complain works as follow:

(i) Article 54: Complaint to procuring entity;

(ii) Article 55: a) Complaint to Authority for fair competition and consumer protection before bid submission and b) Complaint to MOF after bid submission and before contract signing;

(iii) Article 56: Complaint to Court (for public interest contract, to Administrative court).

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)?
984

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment:
(i) Article 54: Complaint to procuring entity – N/A
(ii) Article 55:
a) Complaint to Authority for fair competition and consumer protection before bid submission – 133 (13%)
b) Complaint to MOF after bid submission and before contract signing – 813 (83%)
(iii) Article 56: Complaint to Court (for public interest contract, to Administrative court) – 38 (4%)

X. What is the share (%) of disputed tenders in the total number of tenders? __N/A__

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: This data is not publicly available...

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? _55.3%__

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: Data for 2017.
Total at MOF: 813 complaints
Won by initiator: 453 disputes
In most cases, decisions issued by procuring entities are improper and irrelevant to PPLM.

X. What share of decisions of the Dispute Resolution Board have been taken to courts? __N/A__

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: This data is not publicly available...

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? __N/A__

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: This data is not publicly available and it is not acceptable to receive any private donation except the concession contracts.

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? __N/A__

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?

Comment: This data is not publicly available and it is not acceptable to receive any private donation except the concession contracts.

Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Some of annual procurement plan for some procuring entities and annual report on dispute resolutions can be downloaded in xlsx format, but not in regular timely manner.

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

Yes, in terms of disclosure manner, the data looks to row and thus the quality is poor or not user friendly.

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

| Data Transparency Table - Access to Public Procurement Related Documents | | | | | | | |
|--|---|---|---------------------------|------------|--------------------|----------------|--------------|
| Type of document | Is this information required to be public by law? | Is this information publicly available? | Is the database complete? | Electronic | Machine-readable * | Free of charge | Exact format |
| PPL documents | Yes | Yes | Yes | Yes | Yes | Yes | Docx & pdf |
| Annual public procurement plans | Yes | Yes/No (Sometimes) | No | Yes | Yes | Yes | Xlsx |

| | | | | | | | |
|--|--------------------|-----|-----|-----|-----|------------------|------------|
| Notices of intended procurement | Yes | Yes | Yes | Yes | Yes | Yes | XML |
| Amendments to tender documentation | N/A | N/A | Yes | Yes | Yes | Yes ¹ | Docx & pdf |
| Tender candidate applications | N/A | N/A | Yes | Yes | Yes | No | N/A |
| Bids | No | No | Yes | Yes | Yes | N/A | Pdf |
| Tender commission decisions | Yes | Yes | Yes | Yes | Yes | Yes | N/A |
| Information on subcontractors | No | No | N/A | Yes | Yes | N/A | Pdf |
| Procurement contracts | No | No | N/A | No | N/A | N/A | N/A |
| Contract amendments | No | No | N/A | No | N/A | N/A | N/A |
| Contract performance information | Yes/No (OCDS) | No | No | No | No | No | N/A |
| Payment receipts | No | No | No | No | No | No | N/A |
| Inspection and quality control reports | No | No | No | No | No | No | N/A |
| Complaints | No | No | Yes | No | No | No | N/A |
| Dispute resolutions | No | No | Yes | No | No | No | N/A |
| Internal and external audit reports | No (just starting) | No | Yes | No | No | No | N/A |

¹ Bidding document is not free of charge.

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment: a) Additional information on availability and cost of bidding document could be included;
b) PPL documents may contain law, implementing rules and sample bidding documents that could also be separately asked accordingly...

X. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

Delays in payment process could be counted. Because, the duration between invoicing and payment receipt takes too long in Mongolia, thus, in some cases it could cause the delay in contract performance or burden for contractors/suppliers extra costs to wait for extra days).

Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap:
Lack of capacity in MOF to deal with hundreds of complaints submitted by bidders of entire country. MOF has been reducing the status of body in charge of public procurement policy and coordination, therefore the reform in the field has been too slow in last 5 years.

Recommendation:
Recover the independent dispute settlement panel as introduced during 2006 – 2011;

2.

Gap:
Framework agreement regulation has not been developed properly. Because the rights and functions of procuring entities are not fully designed properly, in other words, the functions of GAPCSP in the framework agreement arrangement (FAA) are overwhelmed compare to well known "classic" FAA regulations.

Recommendation:
Renew/elaborate the regulation on FAA;

3.

Gap:
Lack of data disclosure after contract signing and no independent monitoring mechanism. From above table, there is big gap for the performance of the contract and lack of reporting to analyze the necessary data for proper policy making. Mongolia has been expressed its willingness to be part of OCDS in 2014, unfortunately the contract performance data couldn't be found publicly as there is any procuring entity to have a track recording requirements in any of PPL documents.

Recommendation:
make all data publicly available in accordance with OCDS.

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge:
Poor quality in contract performance

Recommendation:
Bring the voice of end users – beneficiaries on the quality and let them accept the performance for payment.
Implement independent monitoring/auditing mechanism (as stated in Clause 52.3) in public procurement. MOF should adopt the regulation on this matter in accordance with Provision 52.1.15, PPLM, but omitted this function since 2011.

2.

Challenge:
Lack of capacity in MOF and risk of conflict of interest where few people are dealing with too many complaints.

Recommendation:
See recommendation 1 for Gap 1, above.

3.

Challenge:
Slow progress in terms of procurement reform

Recommendation:
Build a capacity not only for MOF level but at Cabinet level, in order to elaborate necessary rules and regulations to solve above problems.
There should be a sound assessment/monitoring for entire operations including exemptions and concession issues which are not part of PPLM at all.

X. What are the 3 major strengths / successes of the country's public procurement system as a whole?
Please provide a brief description of each in a maximum of 4-5 sentences.

1.

PPLM itself...

2.

e-Procurement portal...

3.

Clause 52.3, which allows independent monitoring/auditing in procurement operations including contract performance.