

## Mongolia

### Legal and institutional framework

The Public Procurement Law of Mongolia (PPLM) came into force in May 2000. The law is based on the UNCITRAL model procurement law. The procedures stipulated in the PPLM apply only to contracts above a certain threshold. Procurement related to national defense or security is exempt. To complement the PPLM, Mongolia adopted the General Guidelines for Procurement of Goods and Works and General Guidelines for the Use of Consultant in June 2000. The Government recently reviewed the PPLM and drafted amendments to the law.

Mongolia has a decentralized public procurement system with some centralized supervision. The Procurement Policy and Co-ordination Department of the Ministry of Finance (PPCD) designs procurement policy and standards, provides professional services and training to procuring entities, and reviews complaints from bidders. Specific procurements, however, are administered by the procuring government entity. Evaluation and tender committees are set up for each procurement process. The former is responsible for administering the procurement and evaluating the bids. The latter receives and opens the tenders, approves any exceptional methods of procurement, and ensures that the evaluation committee follows the correct procedures. The head of the procuring entity makes the final decision to award a contract.

### Procurement methods and procedures

The PPLM provides for several means of procurement. Open competitive tendering is the main method. A procuring entity may resort to restricted tendering, comparison (price quotations), or direct contracting for contracts of lower value or under circumstances of urgency, which are not defined in the PPLM. Prequalification procedures can be used for large civil works, turnkey contracts, and contracts involving expensive and technically complex equipment. Procuring entities may keep registers of prequalified suppliers, contractors, and service providers for later use in a restricted tendering process, although unregistered entities may also be invited to participate. The PPLM lays down various measures to strengthen the transparency of the procedures, such as the use of model tender documents and form contracts. The PPLM and the procurement methods therein are published in paper form and on the Web sites of the Parliament and the Ministry of Justice and

Home Affairs. They will be added to the Web sites of the PPCD and the Ministry of Finance once those websites are created.

Wide participation in procurement reduces the risk of collusion or failure of tendering. To this end, Mongolian government entities must publish a list of goods and works to be procured in the mass media every fiscal year. They must advertise invitations to tender in a mass-circulation daily newspaper or other forms of mass media. In some cases, invitations must also be advertised in the international media. The minimum deadlines for submitting a tender are 30 days for open tendering and 15 days for restricted tendering. To further strengthen the transparency of the system, the Government is considering introducing some e-procurement principles, including publishing procurement notices and results on a Web site.

The PPLM and Guidelines also prescribe the handling of bids. Bids are opened publicly at the place stipulated in the tender documents within two hours after the bid closing time. Bidders have a right to attend. The procuring entity must evaluate all tenders that do not materially deviate from the selection criteria. In addition to price, the procuring entity may consider the date of completion or delivery, running costs and cost-effectiveness, after-sales service and technical assistance, supply and price of spare parts and supplies, the quality and technical merit of the works or supplies, and other supplementary objective and nondiscriminatory criteria. All unsuccessful bidders are notified of the decision but not the reasons for it. Post-award negotiations are not allowed and are in any event unnecessary since model contracts are used. In case of failure of tendering, two courses of action are available. The procuring entity may conduct an open or restricted tender after examining why there were no appropriate tenders. Alternatively, the procuring entity may proceed immediately to direct contracting. The availability of this latter option poses risks of corruption, since an official could deliberately cause a failure of tendering and then contract directly with a corrupt supplier.

### Safeguarding and enforcing integrity

In June 2000, Mongolia adopted the Code of Ethics for the Civil Servants Conducting Procurement. The Code contains procurement-specific conflict-of-interest provisions, which cover, among others, situations when a civil servant is a supplier or a shareholder of a supplier, or a member of his or her family works for a supplier. Procurement staff are also prohibited from accepting gifts or hospitality from a supplier.

The PPCD is currently drafting a procurement training strategy to create a national training network that will strengthen the training of procurement professionals.

A number of remedies are available when a procurement decision is tainted by corruption. If the contract has not yet been signed, the PPCD may make a declaration regarding the applicable legal rules or principles, annul or modify any act or decision of a tender committee, or instruct a tender committee to take remedial measures. Violations of the PPLM by a tender committee that do not amount to a criminal offense give rise to remedial action under the Civil Services Law. Sanctions against a bidder are also available. A civil action may be brought when a civil servant accepts or solicits a bribe. A contract is annulled if a court finds that the supplier or contractor has engaged in corrupt or fraudulent practices when competing for the contract. Furthermore, if a court finds that a supplier or contractor has engaged in corrupt or fraudulent practices, the procuring entity will declare the supplier or contractor ineligible for future procurements. The period of ineligibility may be indefinite or for a stated period of time. The procuring entity will also announce the ineligibility of the supplier or contractor to the public.

Administrative and judicial review is available. A bidder may complain to the tender committee and the PPCD before turning to the courts for redress. The Government is currently working on reforms for more effective monitoring of the procurement system.

The procurement system is subject to several audits. The Professional Supervision Agency conducts government internal financial auditing every two years. If the agency discovers a breach of procurement laws, it may apply sanctions under the Civil Services Law and other administrative legislation. Procurements are subject to audits by the State Audit Authority. Some large procuring entities are also subject to audits by the PPCD and other supervising agencies on the implementation of the PPLM.

The PPLM and the General Guidelines require procuring entities to keep all procurement files (including the reasons for a decision, notes, registers, and related documents) for three years after the completion of a contract. Other rules and regulations permit audit, legal, and supervisory authorities to access the information upon written request.

### A way forward

Mongolia is encouraged to pursue its efforts to reform its regulatory framework for public procurement. In this context, Mongolia might wish to consider whether the current period for which documents are kept is

sufficient to allow verifications or criminal proceedings if suspicions of corruption in the procurement process surface.

Mongolia is further encouraged to pursue its efforts to provide extensive training to staff involved in procurement procedures to ensure proper implementation of the regulatory framework.

#### Relevant documentation

Public Procurement Law of Mongolia (14 April 2000) [http://www.wto.org/english/tratop\\_e/gproc\\_e/monlaw\\_2000.doc](http://www.wto.org/english/tratop_e/gproc_e/monlaw_2000.doc)

World Bank Country procurement assessment report (September 2003)