

REVIEW OF THE PUBLIC PROCUREMENT LEGAL FRAMEWORK OF MONGOLIA



MINISTRY OF
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TABLE OF CONTENTS

ABBREVIATIONS

I.	INTRODUCTION	
1.1.	Background.....	3
1.2.	Objectives of the study.....	4
1.3.	Methodology.....	4
II.	INTERNATIONAL FRAMEWORK	
2.1.	Environmental agreements.....	5
2.2.	Social and economic agreements.....	6
2.3.	Review on the conventions from SPP perspective.....	8
III.	PUBLIC PROCUREMENT AND SUSTAINABILITY REGULATIONS AND GOALS	
3.1.	Fiscal law overview.....	9
3.2.	Overview of the Public procurement law of Mongolia.....	11
	3.2.1. Principles of the law and general provisions.....	12
	3.2.2. Public procurement modalities and procedures.....	12
	3.2.3. Legal management and organization of public procurement.....	14
3.3.	National understanding of sustainability and sustainable development policy priorities.....	17
3.4.	Productive sector priorities in national development plans and other national policy documents.....	18
3.5.	Description of key environmental, social-labor regulations relevant for SPP.....	20
3.6.	Expressly defined criteria for sustainable/green procurement developed or in development in the national legislation.....	20
3.7.	Assessment to the implementation of SPP throughout the public procurement cycle.....	21
3.8.	Opportunities in the current legislation to practice SPP.....	23
3.9.	Key challenges to be considered in the existing legislation.....	23
3.10.	Suitability of eco-labelling schemes or other certifications as means of verification for SPP.....	25
IV.	PROPOSED CHANGES IN THE LEGAL FRAMEWORK	
4.1.	Necessary steps to propose changes to the current legislation.....	26
4.2.	Draft proposed amendments to the law.....	26
4.3.	Proposed changes in the related regulations and the standard bidding documents.....	26
V.	CONCLUSIONS	

REFERENCES

LIST OF ANNEXES

Annex 1	Terms of Reference
Annex 2	List of people interviewed

ABBREVIATIONS

ADB	Asian Development Bank
BDS	Bid data sheet
CSO	Civil society organization
EC	Evaluation committee
EU	European Union
GCC	General conditions of contract
GDP	Gross domestic product
GGGI	Global Green Growth Institution
GPA	Government procurement agency
GPAW	Government procurement agreement of WTO
HDF	Human development fund
ILO	International Labor Organization
ITB	Instructions to Bidders
LPPD	Legal and public procurement department
MDF	Mongolian development fund
MEGDT	Ministry of Environment, Green development and Tourism
MFA	Ministry of Foreign Affairs
MNCCI	Mongolian National Chamber of Commerce and Industry
MNT	Mongolian national currency (tugrik) (1USD-2263 MNT as of 21 August, 2016)
MOF	Ministry of Finance
PAGE	Partnership for Action on Green Economy
PPLM	Public procurement law of Mongolia
SBD	Standard bidding documents
SCC	Special conditions of contract
SME	Small and medium enterprises
SPP	Sustainable public procurement
TOR	Terms of Reference

UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNEP	United Nations Environment Programme
USA	United States of America
USD	United states dollar
WB	World Bank
WTO	World trade organization

I. INTRODUCTION

1.1. Background

Mongolia, with the assistance of the Partnership for Action on Green Economy (PAGE) and the United Nations Environment Programme - (UNEP), is currently undertaking a comprehensive legal review of its public procurement framework and procedures in the context of the first initiative to introduce SPP in the country.

This initiative towards introducing SPP is taking place while Mongolia is seeking to increase its infrastructure investments at an unprecedented pace in order for it to both develop and benefit from the huge Southern Gobi mines that provide the country with the rare opportunity of achieving sustained economic growth and poverty reduction. A significant proportion of this spending is publically funded and implemented, and publically guaranteed, placing great demands on the government to significantly enhance its systems for fiscal policy and public expenditure management. The government has recognized this need, with the passage of the Fiscal stability law to address macroeconomic volatility and Dutch disease effects. In addition, the integrated Budget law was adopted to greatly strengthen both the planning and budgeting processes. Several other initiatives were taken to strengthen the capacity of central finance agencies. Sound procurement systems will also be a key requirement for meeting these investment needs and for transforming mineral assets into the physical and human capital assets that will be needed for sustainable development.

To ensure sustainable and inclusive growth, Mongolia needs to strengthen institutional capacity to manage public revenues efficiently and limit the effects of Dutch Disease (Dutch disease is an economics term that refers to the negative consequences arising from large increases in the value of a country's

currency. It is primarily associated with a natural resource discovery but can result from any large influx of foreign currency into a country, including foreign direct investment, foreign aid or a substantial increase in natural resource prices. Source: www.investopedia.com); allocate its resources effectively among spending, investing, and saving; reduce poverty; and offer equal opportunities to all its citizens in urban and rural areas. It needs to do this in a manner that protects the environment and intergenerational equity.

In Mongolia, public procurement is a considerable tool for public budget expenditure and of considerable economic significance at both the domestic and international levels, accounting for a significant proportion of national GDP. The country spent 75 per cent¹ of the state budgets on procurement last year. At the domestic level, the procurement of goods and services by government agencies provides needed inputs that enable governments to deliver public services and fulfill other tasks. Procurement systems have a significant impact on the efficiency of the use of public funds and, more generally, on public confidence in government and on good governance.

The attainment of value for money, public access to information on government contracts, and fair opportunities for suppliers to compete for government contracts, are all essential requirements of an efficient government procurement system. If the government makes a coordinated effort to buy green and socially favored products and services, their substantial buying power will drive the delivery of sustainable development policies and stimulate the market for sustainable products and services.

¹ Source: Annual report on public procurement of 2014 developed by MOF.

Incorporation of environmental and social criteria into public procurement law, policies and practices in order to create

value for government, the economy, society and the environment is vital for proper implementation of SPP.

1.2. Objectives of the report

This legal review is one of the preliminary studies recommended by the UNEP Approach to SPP with a view to design and then implement an SPP Action Plan. The UNEP Approach to SPP stresses the need for national SPP Action Plans to take into account the legal and regulatory frameworks of each country. This report prepares the ground for eventually integrating sustainability concerns in the legislation and regulations dedicated to public procurement in Mongolia.

More specifically, the objectives of this report are:

- To have an understanding the legal process to amend public procurement regulations;
- To review the international agreements signed by Mongolia that have an impact on SPP and sustainable development;
- To identify opportunities and hurdles in the existing legislation for enabling SPP and eco-labeling schemes or other certifications as a means of verification in the country's public procurement legal framework;
- To clarify the necessary steps needed to propose changes to the current public procurement legislation in order to integrate SPP;
- To draft recommended amendments to existing articles in the legislation aiming at mainstreaming sustainability in the public procurement legal framework;
- To propose standard clauses, in the form of examples, on sustainable procurement to be incorporated in standard bidding documents and criteria to use.

The findings and recommendations resulting from the legal review will be incorporated at a later stage into a National SPP Action Plan, with the ultimate aim of creating a legal framework that supports and enables SPP in Mongolia.

1.3. Methodology

The research is based on a desk study and interviews with stakeholders across the public and private sectors as well as civil society organizations (a list of the interviewed officials can be found in Annex 2).

In order to conduct the desk study, the following documents were reviewed:

- Public Procurement Law of Mongolia (PPLM);
- Guidelines and procedures related to the PPLM;
- Standard bidding documents for works, goods and consultancy services;
- Annual report on public procurement of 2014 developed by MOF;
- International conventions and international treaties ratified by the country that have an impact on SPP;
- Legal systems of developed and emerging countries that are currently implementing sustainable public procurement policies;
- Government decrees on public procurement effective implementation as well as commercial/trade strategy;
- Legal documents on environment protection, social-labor and sustainable development;

- Comprehensive national development strategy;
- Green development policy;
- Other legal documents.

This report consists of 5 parts including an introduction, international framework, public procurement regulations and sustainability, proposed changes in legal frameworks and study conclusions.

II. INTERNATIONAL FRAMEWORK

The Government of Mongolia has ratified a number of basic international conventions on environmental and social sustainability.

This section of the report lists of a number of important international conventions focusing on environmental and social concerns. It also highlights how they could relate to SPP or foster its incorporation into national legislation.

2.1. Environmental agreements

Mongolia has adopted and signed several international conventions that aim to protect the environment, prevent water, air and soil pollution, maintain atmospheric pollution at a low and prevent desertification, as per the following:

#	Name of the Agreement	Date of establishment	Date of entry into force	Accession/ Ratification	Effective date
1	Convention on biological diversity	1992.06.05	1993.12.19	1993.09.24	1993.09.30
2	UN Framework Convention on Climate Change	1992.05.09	1993.03.21	1994.09.24	1994.03.21
3	Convention on the conservation of migratory species of wild animals	1979.06.23	1983.11.01	1996.01.05	1999
4	Convention on International trade in endangered species of wild fauna and flora	1973.03.03	1975.07.01	1995.05.04	1996.04.04
5	Vienna convention for the protection of the ozone layer	1985.03.22	1988.09.22	1995.10.16	1996.03.07
6	Montreal protocol on substances that deplete the ozone layer	1987.09.16	1989.01.01	1995.10.16	1996.03.07
7	Amendment to the Montreal protocol on substances that deplete the ozone layer (London)	1990.06.29	1992.08.10	1996.03.07	1996.03.07
8	Amendment to the Montreal protocol on substances that deplete the ozone layer (Copenhagen)	1992.11.25	1994.06.14	1996.03.07	1996.03.07
9	UN Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa	1994.10.14	1996.12.26	1996	1996.09.03
10	Ramsar convention on Wetlands of International importance especially as waterfowl habitat	1971.02.02	1975.12.21	1997	1997
11	The Basel convention on the control of trans boundary movements of hazardous wastes and their disposal	1989.03.22	1992.05.05	1996.12.05	1997.04.15
12	Rotterdam convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in International	1998.09.10	2004.02.24	-	2001.03.08

	trade				
13	Tampere convention on the provision of telecommunication resources for disaster mitigation and relief operations	1998.06.18	2005.01.08	1998	1998.06.18
14	Kyoto protocol to the UN framework convention on climate change	1997.12.11	2005.02.16	1999.07.08	1999.12.15
15	International convention on the regulation of whaling	1946.12.02	1948.11.10	2002.05.16	2002.05.16
16	Cartagena protocol on bio safety to the convention on biological diversity	2000.01.29	2003.09.11	2003.07.22	2003.07.22
17	Additional of 9 th conference of Montreal protocol on substances that deplete the ozone layer	1997.09.17	1999.11.10	2002.03.18	2002.03.28
18	The Beijing amendment (1999) to the Montreal protocol agreed by the eleventh meeting of the parties	1999.12.03	2001.01.01	2007.10.18	2008.06.24
19	Stockholm convention on persistent organic pollutants	2001.05.22	2004.05.17	-	2004.04.30
20	International plant protection convention	1951.12.06	1952.04.03	2008.10.09	2009.05.26
21	The Antarctic treaty	1959.12.01	1961.06.23	2015.03.23	2015.03.23
22	International convention for the prevention of pollution from ships	1973.11.02	1983.10.02	2003.10.15	2004.01.15
23	Protocol of 1992 to amend the international convention on civil liability for oil pollution damage, 1969 (CLC PROT 1992)	1992.11.27	1996.05.30	2006.06.09	2006.06.09
24	International convention on civil liability for oil pollution damage, as amend 1992 (CLC)	1992.11.27	1996.05.30	2007.05.04	2007.05.04
25	Energy charter treaty, energy charter protocol on energy efficiency and related environmental aspects	1998.04.16	1998.04.16	1999.07.21	1999.07.21

Source: Department of international law of MFA.

2.2. Social and economic agreements

In addition to international agreements on environment, the following international conventions regarding the labor and economy matters have been ratified by Mongolia.

#	Name of the Agreement	Date of establishment	Date of entry into force	Accession/ Ratification	Effective date
1	Charter of International Labor organization	1919.04.04	1919.06.28	1968	1968.05.24
2	C.59 Minimum age (industry) convention (revised)	1937.06.22	1941.02.21	1969.05.10	1969.06.03
3	Freedom of Association and protection of the right to organize convention 1948 (87)	1948.07.29	1950.07.04	1969	1969.06.03
4	Right of organize and collective	1949.07.01	1951.07.18	1969.05.10	1969.06.03

	bargaining convention 1949 (98)				
5	Equal remuneration convention 1951 (100)	1951	2000.06.15	1969	1969
6	Discrimination (employment and occupation) convention 1958 (111)	1958.06.25	1960.06.15	1969.05.10	1969.06.03
7	International convention on the elimination of all forms of racial discrimination	1966.03.07	1969.01.04	1969.03.31	1969.08.06
8	International covenant on economic, social and cultural rights	1966.12.16	1976.01.03	1974.11.18	1974.11.18
9	Optional protocol to the International covenant on economic, social and cultural rights	2008.12.10	2013.05.05	2010.04.23	2010.07.01
10	C 122 employment policy convention	1964.07.09	1966.07.15	1976.11.24	1976.11.24
11	Convention on the elimination of all forms of discrimination against women	1979.12.18	1981.09.03	1981.07.20	1981.07.20
12	The tripartite consultation (international labor standards) convention 1976 (144)	1976.06.21	1978.05.16	1997.10.23	1998.08.10
13	Convention 159, vocational rehabilitation and employment of disabled persons	1983.06.20	1985.06.20	1997.11.20	1998.02.03
14	Minimum age convention 1973 (138)	1973.06.26	1976.06.19	2002.10.31	2002.12.16
15	ILO convention concerning forced for compulsory labor 29	1930.06.28	1932.05.01	2005.02.24	2005.03.15
16	ILO convention on abolition of forced labor 105	1957.06.25	1959.01.17	2005.02.24	2005.03.15
17	Convention on the rights of persons with disabilities	2006.12.13	2008.05.03	2008	2009
18	Optional protocol to the convention on the rights of persons with disabilities	2006.12.13	2008.05.03	2008.12.19	2009
19	Employment service convention (88)	1948.07.09	1950.08.10	2015.04.17	2016.04.17
20	Private employment agencies convention (181)	1997.06.19	2000.05.10	2015.01.30	2016.04.17
21	UN convention against corruption	2003.10.31	2005.12.14	2005.10.27	2006.01.11
22	Convention on transit trade of land-locked states	1965.07.08	1967.06.09	1966.05.11	1966.07.26
23	UN conventions on contracts for the international sale of goods (Vienna, 1980)	1980.04.11	1988.01.01	1997.12.31	1999.01.01
24	General agreement on tariffs and trade	1947.10.30	1948.01.01	1996.12.05	1997.01.29
25	Agreement of the harmonized commodity description and coding system, Brussels	1988	1988.01.01	1993	1993
26	Convention on nomenclature for	1955.07.01	-	-	-

	the classification of goods in customs tariffs and protocol of amendment thereto				
27	Customs convention on the international transport of goods under cover of TIR Carnets (TIR convention)	1975.11.14	1978.03.20	2002.10.01	2002.10.01

Source: Department of international law of MFA.

2.3. Review of conventions from a SPP perspective

The above tables show that Mongolia has ratified most of the international core conventions such as UN Framework Convention on Climate Change, Kyoto protocol to the UN framework convention on climate change, Charter of International Labor organization on environmental, labor and social justice. International law became part of the Mongolian legal system with the ratification of the Constitution in 1992. The clause 10.2 and 10.3 of the Constitution state that international treaties to which Mongolia is a party shall become effective as domestic legislation, although Mongolia shall not abide by international treaties, which are not compatible with its Constitution. It means that these conventions have a beneficial effect on domestic legislation and general guidelines.

According to the Montreal protocol on substances that deplete the ozone layer, the country shall cooperate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:

- best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions;
- possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them.

By the Energy charter treaty, energy charter protocol on energy efficiency and related environmental aspects, the contracting party (Mongolia) has to follow the following principles in order to implement the treaty. /Source: <http://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf/>

- efficient functioning of market mechanisms including market-oriented price
- formation and a fuller reflection of environmental costs and benefits;
- reduction of barriers to energy efficiency, thus stimulating investments;
- mechanisms for financing energy efficiency initiatives;
- education and awareness;
- dissemination and transfer of technologies;
- transparency of legal and regulatory frameworks.

For the persons with disabilities, the convention on the rights of persons with disabilities enables to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business and promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures. /Source: <http://www.un.org/disabilities/convention/conventionfull.shtml/>

Mongolia, along with other countries and international organizations⁷, has been an observer country under Government Procurement Agreement (GPA) of WTO since 1999. The GPA is the main instrument in the WTO that provides a framework for the conduct of international trade in government procurement markets among the participating countries. Additionally, it can be considered to serve broader purposes relating to good governance and the attainment of value for money in national procurement systems.

III. PUBLIC PROCUREMENT AND SUSTAINABILITY REGULATIONS AND GOALS

3.1. Overview of National Fiscal & Monetary Law

⁷ Albania, Argentina, Australia, Bahrain, Cameroon, Chile, China, Colombia, Croatia, Georgia, India, Jordan, the Kyrgyz Republic, Moldova, Mongolia, New Zealand, Oman, Panama, Kingdom of Saudi Arabia, Sri Lanka, Turkey, Ukraine, International Monetary Fund (IMF), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the United Nations Conference on Trade and Development (UNCTAD)

In recent years, Mongolia has gone through an impressive economic growth which is mostly linked to the mining industry boom. Budget revenue accounts for 30-40 percent² of GDP over the years and there was a tendency to increase spending more on social welfare as budget revenue increased during 2005-2009. Due to the political promises made during parliamentary elections, the Government has been spent heavily to increase salaries and to distribute cash-handouts for citizens. As of 2013, revenue from the mining sector accounts for 1/3³ of total budget revenue.

Source: Public expenditure division of Budget policy and planning department of MOF.

Since 2007, the Government has tried to establish a fund that accumulates revenue from the mining sector and can be used for the development of the country.

- The Mongolian Development Fund (MDF) was set up in 2007.
- The Human Development Fund (HDF) was established and replaced the MDF in 2009.

The main purposes of these funds were to accumulate revenues from mining sector and to target them for economic and human development of the country.

The Fiscal Stability law was approved in 2010, which sets principles on macro-fiscal management framework and establishes Fiscal stability fund and puts certain limits on power of the parliament in regard to budget approval.

And integrated Budget law was approved in 2011, which establishes principles, systems, composition and classification of the budget, carries out special fiscal requirements, defines authorities, roles, and responsibilities of bodies that participate in the budget process, and regulates relations that rise in connection with budget preparation, budget approval, spending, accounting, reporting and auditing.

The Budget Law consists of 11 chapters and 71 articles and applies to budget entities and their officials, government and local special funds, fully and partly state and locally owned bodies that provide works and services related to the functions of the state on a contractual basis, which are obliged to collect revenues to the budget in accordance with legislation.

The law shall follow the following principles⁴ in the budget planning, approval, implementation and reporting process.

- To ensure fiscal stability;
- To ensure comprehensiveness and accuracy of the budget;
- To ensure efficient financial and budget management;
- To ensure fiscal transparency
- To ensure accountability

² Source: Public expenditure division of Budget policy and planning department of MOF.

³ Source: State budget execution report of 2013 issued from MOF.

⁴ Source: Law on Fiscal, Article 5.

By the law, a fiscal year starts on January 1, ends on December 31 and is divided into months, quarters, half year and full year. Budgets are approved and reported on annual basis and approved budgets are allotted and implemented on a monthly and quarterly basis.

The unified budget of Mongolia consists of the state budget, local budgets, the budget of the social insurance fund and the budget of the Human development fund.

By the law, each general budget governor has to establish an internal audit unit and employ an internal auditor aimed at controlling enforcement of legislation, conducting financial inspection of budgetary assets and liabilities, revenues and expenditures, programs and activities and investment, and making assessments, evaluations and recommendations and proposing risk management measures. MOF provides general budget governors' internal audit units with standards of activities and methodological guidance.

As well as, according to the budget law, if procurement of goods and services with budget fund is not organized in accordance with the respective legislation (PPLM and its related procedures, guidelines, SDBs etc.,) it is prohibited to make financing from the state budget.

3.2. Overview of the Public Procurement Law of Mongolia

The Public Procurement Law of Mongolia (PPLM) became effective in May 2000 was amended in 2007, 2009, 2011, 2013, 2015 and 2016. The law was drafted in 1999 with technical assistance of the ADB based on the UNCITRAL Model law on procurement. It complies with international best procurement practices and shares the common objectives of public procurement systems.

The law regulates public procurement of goods, works⁸ and services (consultancy and non-consultancy) and covers the majority of public procurement activity. The PPLM does not regulate the following:

- procurement of special purpose equipment and facilities, works, services, and weapons in connection with national security and state secrets;⁹
- procurement of works and services related to maintenance of national roads, executed by the state owned legal entity;
- procurement of works, goods and services related to activity of the Development Bank of Mongolia.

3.2.1. Principles of the law and general provisions

The key criterion in evaluating responsive tenders is the tender price¹⁰. Responsive tender means a tender that is evaluated on technical and financial criteria at the same time. The tendering is carried out and completed within 45 days from the date of its opening and a tender is valid during this period. It applies to procurement of works, goods and services.

By the PPLM, the following principles¹¹ have to be pursued in public procurement.

⁸ According to the PPLM, "works" is defined as construction works, assembly, installation, and configuration and trial operation of construction equipment, and procurement of goods required for execution of those works.

⁹ Central Intelligence Agency shall administer and define the state secrets by the law on Central Intelligence Agency.

¹⁰ It means that the lowest price is not only criterion for bidders. At first they qualify against technical and financial requirements and if they qualify, they to be ranked by price.

¹¹ Source: PPLM, Article 6.

- Transparency;
- Equal opportunity to compete;
- Economy;
- Efficiency;
- Responsibility.

For the purpose of providing equal opportunities to bidders (also known as suppliers and tenderers) and securing fair competition overall, financial, and technical qualification and expertise of bidders shall be examined and evaluated by the criteria and requirements for qualification necessary.

In evaluating responsive tenders and qualifying the “best” tender, the procuring entity uses the criteria pursuant to the procedures specified in the bidding documents.

The law defines “procuring entity” as a legal entity with state and local ownership and a legal entity with partial state and local ownership of 50% or more as well as the law determines bidder as a sole bidder and several entities who submitted one tender on the basis of a cooperation contract.

As well as the law enables foreign bidders to participate in tenders for works with cost estimates of more than MNT 10,000,000.001 (about 50 mil. USD by official exchange rate from Central Bank of Mongolia) and goods and/or services with cost estimates of more than MNT 100,000.001 (about 50,000 USD).

The procuring entity can grant a margin of preference¹² to a bidder tendering to supply goods of Mongolian origin in evaluating tendering proposals.

The general objective of a margin of preference is to provide an opportunity for domestic enterprises to have competitive edge in procurement (works and goods). The specific objectives are to ensure greater and enhanced participation of Mongolian Businesses in the national economy; to encourage domestic businesses to engage in manufacturing and production of essential goods locally, thereby reducing procurement/ importation of foreign manufactured goods.

3.2.2. Public procurement modalities and procedures

According to the law, the following procurement procedures in procurement of goods, works or services have to be selected.

- open procurement procedure; /77.5 percent of overall public procurement in 2015/ /Source: Annual report on public procurement of 2015 developed by MOF./
- exceptional procurement procedure;
 - limited tendering /0.1 percent of overall public procurement in 2015//Source: Annual report on public procurement of 2015 developed by MOF./
 - comparison /4.6 percent of overall public procurement in 2015//Source: Annual report on public procurement of 2015 developed by MOF./
 - direct contracting /16.1 percent of overall public procurement in 2015//Source: Annual report on public procurement of 2015 developed by MOF./
- selection of a contractor of consulting services;

¹² The tendering price shall be discounted by 10 percent for goods of Mongolian origin.

- procurement procedure based on community participation.

Each of these general procedures is described in more detail within the table below.

#	Procedure	Usage conditions	Submission timeframe	Standard bidding documents
1	Open bidding	It is the default method used for all public procurements for goods and works.	30 days or more from the day of initial announcement of the tender	Standard bidding documents for goods and works which is approved by the Minister of Finance in 2012.
2	Limited tendering	<ul style="list-style-type: none"> • When the number of bodies capable of executing complicated goods, works or services requiring high qualification, expertise, equipment, and technology is limited. • Tendering prices of all responsive tenders exceeded the procuring entity's cost estimate by more than 5%. 	15 days or more from the day of initial announcement of the tender	Standard bidding documents for goods and works which is approved by the Minister of Finance in 2012.
3	Comparison	Where the cost estimate of the goods, works or services does not exceed the threshold values of 50 mil. MNT, 80 mil. MNT and 50 mil. MNT respectively.	no less than 5 working days from the day the invitation was delivered	Standard bidding documents of request for quotation
4	Direct contracting	<ul style="list-style-type: none"> ▪ Single source (to protect copyright); ▪ When it results unsuccessful tendering after the procuring entity had conducted open bidding 2 times; ▪ given additional supplies do not exceed 20% of the value of the initial contract, and there is a need of replacing, repairing and making additional supplies of some parts of the goods and equipment provided under the initial agreement; ▪ when the cost of additional works does not exceed the least of 15% of the lowest value of the initial contract or comparison threshold price specified in 8.1.1 of the law, it was considered that repeating the competitive tendering would not result in better proposals for repeating the additional and/or similar works for the works procured through the tendering; ▪ some special medicines, medical equipment relating to 	-	Procuring entity uses GCC and SCC for signing the contract.

		the ensuring public health security; ▪ as a result of unforeseeable and force major circumstances; (it is determined by the Civil Code)		
5	Consulting service	An individual and/or legal entity may provide consulting services. After preparing the TOR and making cost estimations, the procuring entity posts an invitation to submit proposals to be listed as potential consultants through daily and other mass media and then draws up a shortlist from the general list consisting of three or more consultants that satisfy the requirements. The consultant prepares technical and financial proposals separately. The procuring entity negotiates with the consultant who scores the highest.	more than 30 days for a legal entity and more than 7 days for an individual	Standard bidding documents for consultancy services which is approved by the Minister of Finance in 2012.
6	Procurement procedure based on community participation	Within a local budget framework, procurement of goods, works and services with value of up to 20 million tugrik shall be undertaken with community participation.	no less than 5 working days from the day the invitation was delivered	Standard bidding documents for procurement procedure based on community participation which is approved by the Minister of Finance in 2012.

As for the procurement procedure based on community participation, procurement of goods, works and services with value of up to 20 million MNT can be undertaken with community participation in accordance with the clause 15 of the Budget Law.

MOF is responsible for approval and enforcement of guidelines and standard bidding documents in relation to public participation in procurement.

3.2.3. Legal management and roles within public procurement

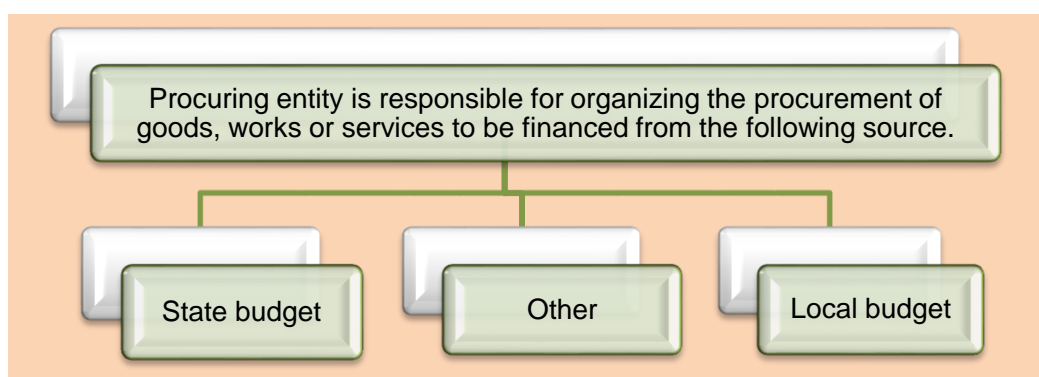
Public procurement system of Mongolia is **semi-decentralized** and most high value procurements are **conducted by the GPA** (Government procurement agency, established in 2012), line ministries and other public institutions. The following are the key stakeholders who participate in the system:

- Procuring entities (GPA, ministries, public administrative institutions and agencies)
- Bidders/Suppliers(private sectors)
- MOF (overseeing and policy making body)
- National audit office (a role of supervision of contracts)
- Public (citizens, CSOs for monitoring)

Procuring entities are the key stakeholder who uses the PPLM and other legislative procedures and actions. By the law, procuring entities have the following rights:

- to set up an evaluation committee;

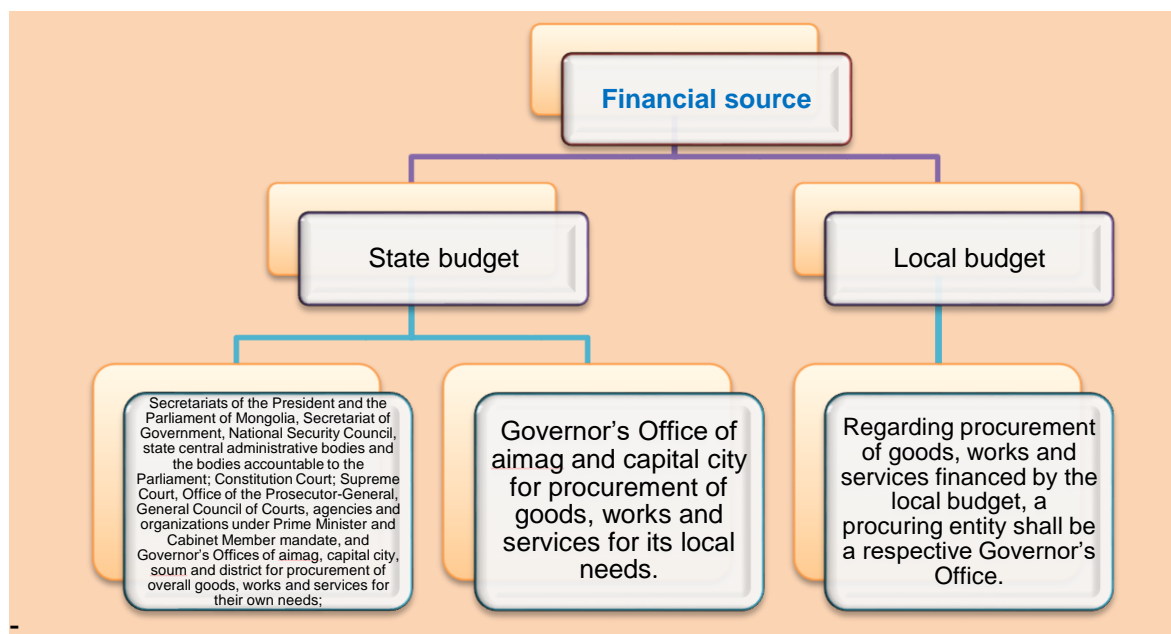
- to oversee the respective compliance of the evaluation committee's operations and evaluation reports and take measures to remove violations;
- to issue a decision to authorize a contract subject to a decision from the evaluation committee;
- to effectively plan and organize the procurement of goods, works or services within the estimated budget;
- to initiate the procurement when funds for financing given goods, works, and services are allocated;
- to review the performance of contractual obligations, immediately initiate the procurement of goods, services or works with specific characteristics and executed in particular seasons such as construction, road, and engineering network following the state budget approval of a given year and require establishment of an information board in a visible public area for the duration of works and service guarantee period, that contains information on contractor's brief introduction; contact details; contract amount; finance schedule; work starting and finishing date; and routine map for road and engineering pipelines.



GPA is in charge of procurement of large works, goods and services to be financed from the central state budget and of establishing framework agreements for common use items (such as office supplies etc.) that are purchased by line ministries as well as e-procurement. The government of Mongolia, with the assistance of KOICA /Korean International Cooperation Agency/ has been working since 2008 to introduce international best practice in public procurement by improving its laws and regulations. As part of this plan, it has also established an electronic procurement (eProcurement) system, which facilitates the purchase and sale of supplies, work and services through the internet and other information systems. Mongolian electronic public procurement system /MONEPS/ consists of e-bidding system /electronic version of normal bidding procedure/ and e-catalogue /framework agreements to be conducted through this system and it will be launched by the end of this year/

The list of national and regional projects and activities to be undertaken by the procurement professional organization (GPA) shall be approved by the Cabinet within 5 working days since approval of the state budget.

MOF is responsible for overseeing and assessing the procuring entity's compliance to relevant procurement procedures, providing professional and practical advice to the procuring entity on procurement matters, drafting and adopting policies and procedures, guidelines, instructions, manuals and standard documents pertaining to procurement and reporting annually to the Government on implementation of procurement legislation.



Regarding the setting up of mechanisms to provide transparency and accountability, citizens and CSOs can be selected through competitive bidding of consultancy service of the law and conduct the progress or performance monitoring, evaluation and auditing on the activity of procuring entity, the contract execution and quality.

PPLM is a standalone piece of legislation on public procurement and has been implemented in conjunction with other laws such as the Constitution of Mongolia, the Civil Code, the Law on Transparency of Information and Right to Obtain Information and other legislative acts issued in conformity with law itself.

According to the PPLM, MOF is taking care of legal management of public procurement, has to work out proposals to enhance procurement legislation and submit the draft of proposal to the Government (Cabinet) for further actions. And then the Government will submit the draft of proposal to the State Great Khural for discussion and approval. Thus, MOF has a considerable role for proposing changes in the law.

3.3. National understanding of sustainability and sustainable development policy priorities

Mongolia developed its national sustainable development strategy which was approved by the government in 1998. The strategy implementation resulted in the establishment of national and domestic sustainable development committees, national system of core indicators to monitor the implementation of sustainable development and sustainable development education system.

Over the past 10 years, considerable actions have been taken to foster the implementation of sustainability including:

- updated the national and sectorial legal environment integrating sustainable development concept and principles;
- updated its national forest policy and strategy;
- formulated long-term water policy;
- formulated the government policies on climate change;
- established “Clean Air Fund” for abatement of urban air pollution;
- sustainable tourism became a priority economic sector;
- adopted a legislation on environment for soil conservation and combating desertification.

The key sustainable development policy priorities are within the energy, food and agriculture, environment and infrastructure sectors.

3.4. Productive sector priorities in national development plans and other national policy documents

In 2013, Resolution #239 on enhancing exports growth and Resolution #141 on promoting local production were passed by the Government of Mongolia.

By the Resolution #239 on enhancing exports growth, the following products are considered to be priority and involved in long-term investment preference¹³ discount.

- Milk and dairy products;
- Green-house facilities;
- Woolen products;
- Textile products;

There are not any targets or goals specific to SPP noted within the Resolutions.

However, a number of other strategic documents and laws highlight priorities and objectives for the productive sector which provide a favorable ground for sustainable public purchases. These include the Comprehensive National Development Strategy approved by the State Great Khural in 2008. The document sets a 14-year development path: the first phase (2007-2015) will focus on achieving the Millennium Development Goals and actively developing the country's economy; the second phase (2016-2021) will be dedicated to transitioning to a knowledge-based economy.

The following objectives are reflected in the strategy.

- to reduce poverty by intensifying Mongolia's economic growth, reducing unemployment, strengthening families, developing livelihood capacities, fundamentally modernizing the employment, social security and social welfare system;
- to provide economic incentives to business entities and institutions that create new jobs;
- to reflect the issue of ensuring gender equality in the state policy and legislation, and enforce a law on gender equality;
- to create favorable conditions for protection of the rights of disabled people and their active participation in social life;

¹³ preference for investment given by the Government for domestic business enterprises in the long term

- to create and introduce incentives for mines that produce minimum waste and introduce advanced machinery and technologies;
- to introduce advanced, sophisticated technologies that maximize the utilization of mineral resources, produce minimum waste and are environmentally friendly

Likewise, the **law on SMEs**, adopted in 2007, could also be used to foster the implementation of SPP:

- 14.2.4. to support transfer of skills and technology and innovation that contributes to environment and health;
- 14.2.5. to promote local production strategy and exports growth strategy;
- 17.6. to assist SMEs on participation in public procurement.

Following the approval of the State Policy on Industrialization in June 2015, Parliament approved the Law on Supporting Production in an effort to support export-oriented domestic production of goods that are competitive, add value and are environmentally friendly.

Under the Law, the Government will support production in the following manner: (a) subsidizes the difference between commercial interest rates on loans for technological updates and capital investment, to producers that export more than 30 per cent of their output; (b) provide one-time payments equal to 75 per cent of the research and development costs incurred by producers of exports that created or brought to Mongolia highly efficient or cutting edge technology; and (c) support export-oriented production by various export financing arrangements. Importantly, the Law provides that foreign-invested business entities (as defined in the Investment Law) and those investors that have entered into an investment agreement with the Government, will not be eligible to receive such support, and that the minerals sector will be excluded.

In relation to the approval of the law, the PPLM was amended to include a provision (Article 10¹) **prohibiting the selection of foreign suppliers in the event that goods can be supplied through domestic production**, provided that those goods meet relevant quality and other standards. The Government approved the list of goods that may be purchased from domestic entities.

Under the Law on Supporting Production, the **Government must report to Parliament** in respect of implementation of the support provided as well as the **procurement of goods, work and services from domestic producers**. In connection with it, Parliament also increased **customs duty rates** for certain imported goods by amending its Resolution #27 dated 3 June 2009, which established customs duty rates for imported goods.

Accordingly, customs duty of up to 20 per cent (as opposed to 5 or 15 per cent) will be imposed on nearly 370 goods that can be produced domestically but are imported into Mongolia. Depending on the specifics of each sector and the products concerned, the Government will determine the exact customs duty rate.

The following is the **list of the products to be mandatorily purchased from domestic entities** which is approved by the Government Decree #336 of 2015 regarding the **clause 10^{1.2} of PPLM**.

- All types of printing products (books for kindergarten children and school pupils, calendar, training materials to be used by public institutions, magazine, daily news etc.,)
- Leather products (shoes, bags, clothes, belt, souvenir, and clothing etc.,)
- Felt, felt products (shoes, building materials, mattress, souvenirs, etc.,)
- Textiles (national flag, uniform for civil servants and school pupils, packing, bags, mattress, and safety uniforms etc.,)
- Furry clothes
- Wool, cashmere products
- Wood, wooden products (all types of furniture, doors for buildings etc.,)
- Roads and building materials (armature, chalk, paving, all types of building blocks, plastic pipelines, bricks, frames for windows and doors etc.,)
- Iron products (steel balls, standard and non-standard steel designs, bus and trolleybus for public transportation etc.,)
- Foods (meat, fish, all types of cookies, sea buckthorn oils and juices, bottled water, dairy products, noodles, honey, potatoes and all types of grocery, forage for cattle, salts, eggs, teas, supplement for babies and infants etc.,)
- Packing products
- Other (soil fertilizer, medicines, cleaning products such as toilet paper, washing powder, soaps, disposable syringes, etc.)

3.5. Description of key domestic environmental, social-labor regulations relevant for SPP

The following legal acts were reviewed:

- Law on environment protection /adopted in 1995/
- Law on water /adopted in 2012/
- Law on air /adopted in 2012/
- Law on meteorology /adopted in 1997/
- Law on toxic chemicals /adopted in 2006/
- Law on labor /adopted in 1999/
- Law on gender equity /adopted in 2011/
- Law on waste. /adopted in 2012/

Law on labor (recently amended in 2014) and law on environment protection were approved by the State Great Khural and have been effective since 1999 and 1995 respectively. Those laws are the main legal documents addressing the environmental, social and economic aspects of development.

According to the law and related regulations, SPP is not specifically included in clauses and provisions. Right now the government is not yet actively promoting SPP.

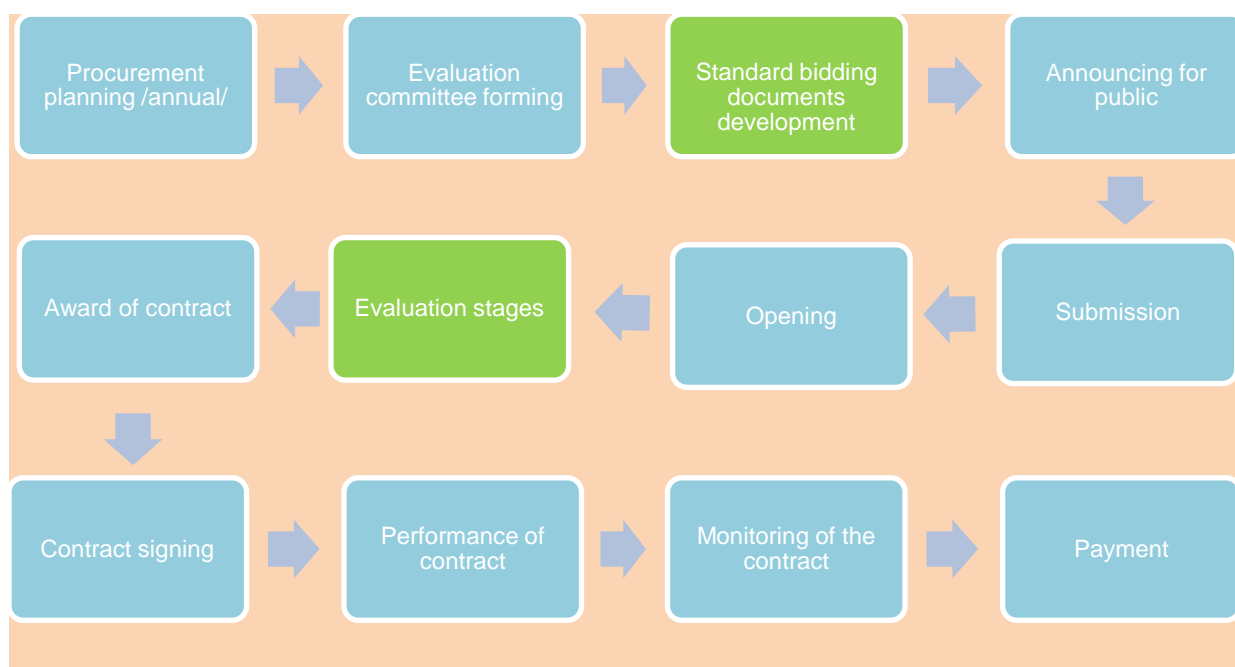
3.6. Guidelines and criteria for sustainable/green procurement in National Legislation

The **Green Development Policy of Mongolia**, adopted in 2014, defines that **green procurement** means purchasing goods and services that are designed or designated toward ensuring the efficient use of energy and natural resources, the sustainability of ecosystem services, climate change adaptation and the creation of a green living environment. Regarding

the Strategic objective #3 of the Green Development Policy, the **government shall increase the purchasing of environmentally sound, effective, and resource efficient goods, works, and services** up to 20% of total public procurement by 2020 and 30% of total public procurement by 2030. Regarding implementation of the Green Development Policy, the Ministry of Environment, Green Development and Tourism has finished developing the Action plan 2015-2030 to carry out the policy and it will be discussed and approved by the Government by the end of this year.

3.7. Assessment for the implementation of SPP throughout the public procurement cycle

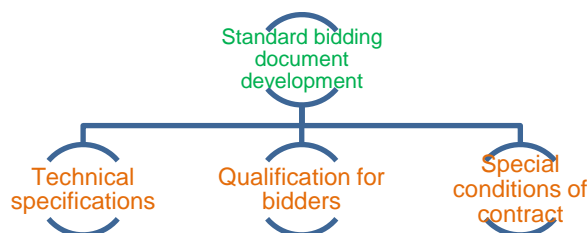
The following chart shows the stages of public procurement in Mongolia; each stage is briefly explained; those marked in green require amendment.



Procurement planning: By the PPLM, procuring entities prepare a draft of the procurement plan including technical and economic feasibility study and submit the plan with year budget proposal to the respective budget general governor and budget general governors prepare a combined draft of the procurement plans along with budget proposal and submit it to MOF. Budget general governor has to approve the general procurement plan within 10 working days since the state budget approval and submit the plan to MOF and publish it to the public through mass media.

Evaluation committee (EC) forming: An evaluation committee has to be set up by the procuring entity if the cost of goods, works and services exceed the threshold values of 50 mil. MNT, 80 mil. MNT and 50 mil. MNT respectively. EC consists of civil servants specialized in procurement or related sectors of given goods, services or works and not less than two members representing related sectorial professional associations; private sector; or non-governmental organization; a citizen appointed by the respective People's Representative Khural; and an official from the respective Governor's Office to ensure transparency in the

procurement process. Members of the evaluation committee have to be specialized in procurement and it means that they must participate in the 3 days training and pass the exam.



Regarding the development of the standard bidding documents, EC has to prepare technical specifications, to determine qualifications for bidders and to draft special conditions of contract.

Technical specifications

In accordance with PPLM, **procuring entity has to prepare technical specifications** in line with the following requirements.

- it shall define given goods, works or services not in terms of their design or descriptive characteristics but in terms of their **purpose, application, use, quality, and technical merits**;
- it shall define its terms subject to **international standards** accepted in Mongolia; if such standards do not exist, subject to national standards, technical requirements, regulations, and instructions;
- **it shall not specify particular requirements and conditions indicating a trademark, name, design, type, origin, manufacturing method, and manufacturer and/or supplier**;
- if it is required to specify the requirements and conditions, **the requirements and conditions shall be followed by "or its equivalent."**

Qualification for bidders

General	<ul style="list-style-type: none"> • The tenderer becomes insolvent, in receivership, enters into an arrangement with creditors to escape bankruptcy; business operations are suspended, or is in an analogous situation as mentioned above pursuant to the legislation of the country of establishment; • The tenderer has not fulfilled its tax, fee, and payment liabilities pursuant to the legislation of Mongolia or the country of establishment; • Operations of a legal entity with whole or partial state ownership are dependent on the procuring entity; • The tenderer has common interests with a body who prepared the design, technical specifications, and other documents of goods, works or services or who was nominated to supervise the contract execution and provide consulting services;
Technical	<ul style="list-style-type: none"> • education and professional qualifications of management, supervision, and execution staff of the tenderer; • a list of works carried out over the last 5 years, cost, timeframe, and location of similar works, references on complete execution issued by previous clients; • a list of goods and services delivered over the last 5 years, their total cost, timeframe, and buyers; if required, a reference on execution of goods and services by previous buyers; • specifications of tenderer's instruments and technical facilities, list of plants and equipment; • quality control measures to be carried out directly or under a sub-contract; • samples, descriptions and/or photographs of the goods to be supplied, and certificates of authenticity; • in case of goods, quality certificates issued by competent authorities and producer's proxy.
Financial	<ul style="list-style-type: none"> • statements by a correspondent bank; • tenderer's self-confirmed financial statements, if required, along with an audit opinion; • tables of consulting staff, remuneration, and other cost estimations; • reports on tenderer's annual sales of works, goods or services similar to a given contract executed during the past five years.

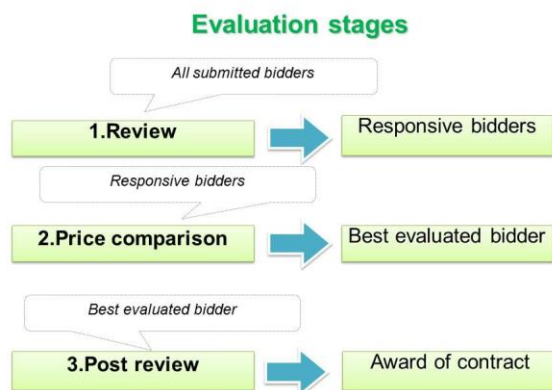
Special conditions of contract

The special conditions of contract contain detailed clauses that are part of the general conditions of the overall contract. For example: Packing, transportation, insurance, date of delivery, payment, performance guarantee, advance payment guarantee, testing etc.,

Public announcement: The procuring entity **posts the tender invitation** for public through nationwide daily newspapers and other forms of mass media. The invitation indicates identity of the procuring entity, a brief summary of the works, goods or services to be procured, the address at which tender documents and other information are available and to which tenders should be submitted, cost of tender documents, special requirements for tender selection, deadline for tender submission, time of commencing the tendering, whether participation of foreign tenderers is allowed or not, granting a margin of preference.

Submission: Tenders has to be submitted within the fixed deadline, to the specified address, and in the form specified in the tender documents. Bidders may submit their amendments and withdrawal request during this period. Any bidding received after the deadline or in a form not consistent with that specified in the bidding documents must be returned to the bidder at their address.

Opening: The procuring entity has to open all biddings it has received publicly at the place and time stipulated in the bidding documents. The time for opening biddings is scheduled to be within 1 hour after the deadline for submission of biddings and bidders or their representatives and other interested bodies may participate in the bid opening.



Award of contract: The procuring entity authorizes the bidder, who has satisfied the legal requirements and submitted the “best” evaluated bid to enter into a contract. The bidder is informed of this decision and other bidders are informed simultaneously in writing as to the reasons their biddings were not selected.

Contract signing: The contract is signed after at least 5 working days following the notification of the authorization to contracting and within the bid validity period (45 calendar days).

Performance of contract: The contract signed between procuring entity and best evaluated bidder is regulated by the Civil Law. MOF shall approve standard contractual conditions to be followed in procurement.

Monitoring of contract: Procuring entity has to review the performance of contractual obligations as well as private and specialized non-government organizations can be selected through competitive bidding of consultancy service to conduct the progress or performance monitoring, evaluation and auditing on the activity of procuring entity, the contract execution and quality in accordance with PPLM.

Payment: The payment shall be given to the contractor based on Bill of Quantity¹⁴.

3.8. Opportunities in the current legislation to practice SPP

This part is about possibilities provided by the current legislation to practice SPP in PPLM. Several clauses regarding the socio-economic aspects have been included in PPLM.

Social aspects: (to encourage domestic employment, business and to promote local production and innovation)

1. Domestic preferences (Clause 10 of PPLM)

¹⁴ Bill of Quantity- An itemized list of materials, parts, and labor (with their costs) required constructing, maintaining, or repairing a specific structure.

10.1. The procuring entity may grant **a margin of preference** to the following bodies in evaluating bidding proposals:

- 10.1.1. A bidder tendering to supply **goods of Mongolian origin**;
- 10.1.2. The following bodies tendering to execute at least 50% of works independently:
 - 10.1.2. a. a citizen or legal entity of Mongolia;
 - 10.1.2. b. a foreign investment legal entity registered in Mongolia at least 50% of whose equity is owned by a Mongolian citizen and/or legal entity;
- 10.1.3. an entity that makes the largest use of **locally produced** goods, materials and services;
- 10.1.4. an entity that employs the largest share of **local labor**;
- 10.1.5. not less than 90 percent of the workforce of a legal entity consists of Mongolian citizens;
- 10.1.6 domestic entity that produces **innovative products**;
- 10.1.7 more than 50 percent of the workforce of a legal entity consists of disabled persons and more the 25 employee of a legal entity.

Discount:

Goods- 10 percent for goods of Mongolian origin

Works- 7.5 percent for works executed by domestic tenderers

2. Community participation in public procurement (Clause 7¹ of PPLM)

Within a local budget framework, procurement of goods, works and services with value of up to 20 million tugrik shall be undertaken with community participation.

3. Procurement of domestic products (Clause 10¹ of PPLM)

- 4. This article has been added to the Law as an amendment regarding the approval of the Law on Supporting Production. The list of the products was mentioned in the Section '3.4 Productive sector priorities in national development plans and other national policy documents. **Selection of procurement procedure (Clause 8 of PPLM)** (In order to **ensure the widest competition** and allow the participation of **Small and Medium Enterprises**)

8.6. For the purpose of promoting competition, the procuring entity may split the goods, works or services into a series of lots and conduct a number of tendering by type and similarity subject to their purpose, types, and geographical locations.

Economic aspects:

- 1. Article 6.1. Transparency, equal opportunity to compete, *economy and efficiency*, and responsibility are the principles which shall be pursued in Public Procurement.
- 2. Article 28.3. *The key criterion* in evaluating responsive tenders shall be *the tendering price*.
- 3. Article 28.4. The procuring entity may select appropriate factors that affect its *economic efficiency* mentioned below taking into account the feature of goods, works or services to be procured except consultant services. The factors shall be shown in monetary terms

and included in the tendering price: *current expenses or cost and efficiency estimations; after-sales service and technical assistance; commitments to supply spare parts* and the price thereof.

Economic and environmental aspects: (to reduce office paper usage of both public institutions and private sector)

1. Article 53.7. The professional organization in charge of the procurement process shall have a certain percentage of its activities executed by private and/or professional nongovernment organizations and shall organize not less than 20 percent of total tenders to be announced through an electronic procurement method.

3.9. Key challenges to be considered in the existing legislation

The main obstacles of the implementation of SPP, taking into account the legislation and the results of interview with officials from MOF, GPA and other procuring entities, include the following.

- The PPLM does not allow to use environmental criteria when preparing technical specifications;
- Difficulty to include all aspects of sustainability into one bid, especially gender equity, disabled people etc.,

We consider the change to be considered in the existing legal framework is *preparation of technical specification* and it is necessary to amend the Article 11 of PPLM in order to implement SPP in accordance with international best practices.

Changes to be made in:



3.10. Suitability of eco-labelling schemes or other certifications as means of verification for SPP

Mongolian National Chamber of Commerce and Industry (MNCCI) initiated a national program for shifting from regular economy to “Green economy”. MNCCI is planning to promote the concept of green development and policies to businesses. Plus, MNCCI is renewing a memorandum of cooperation with Ministry of Environment, Green Development and Tourism to promote Green Development policies and work out a plan to achieve it. The focus is to develop a closer and more precise co-operation.

MNCCI has developed two kinds of eco-labels: “Green Hotel” and “Organic Product”, for enterprises that operate environmentally friendly hotels and tourist camps and for natural products respectively.



Source: <http://www.mongolchamber.mn/>

1. Without policies and standards there is a common practice of arbitrary placement of signs saying bio, eco, clean, green, organic, natural, ecological etc. on products sold on the market. In order to address this issue MNCCI has voluntarily established a “Made in organic Mongolia” label in order to promote the development of eco/green Mongolian brands. This label was developed to benefit the product’s market competitiveness whilst increasing the social responsibility awareness among consumers. MNCCI has developed the criteria and procedures for “Made in organic Mongolia” labeling rules. Currently, there are 25 products that were granted “Made in organic Mongolia” label.



Source: <http://www.mongolchamber.mn/>

2. “Green Hotel” eco-label was introduced to enterprises engaged in environmentally-friendly hotel services and management. This eco-label was created in line with global initiatives to address global warming and reduce environmental pollution. It is granted to hotels and tourist camps that have implemented environmentally friendly management practices such as energy and water efficiency, waste sorting and recycling, saving natural resources. Panel of experts evaluate the premises in accordance with the criteria adopted by MNCCI. Qualifying standards contain of a total of 12 groups, consisting of 56 criteria. Applicants provided eco-label green leaves according the following scoring method: 85-100 percent: five leaves, 70-85 percent: four leaves, 55-70 percent: three leaves, 40-55 percent: 2 leaves and 25-40 percent receives a single green leaf rating.

IV. PROPOSED CHANGES IN THE LEGAL FRAMEWORK

4.1. Necessary steps to propose changes to the current legislation

As explained earlier, MOF is responsible for proposing the draft of PPLM and submitting to the Cabinet and the Cabinet is in charge of presenting the draft to the State Great Khural for approval. Hence, the State Great Khural will play a big role in amending the law for integrating SPP in PPLM.

The steps needed to integrate SPP into the national public procurement legislation appear as follows:

1. Amendments to Public Procurement Law of Mongolia (PPLM);
2. Amendments to the Standard Bidding Documents (SBDs);
3. Amendments to the Procedure for Framework Agreement

4.2. Draft proposed amendment to the law

To add the “Clause 11.1.5” in Clause 11 (Technical specifications) of PPLM:

“The procuring entity shall include the criterion that minimizes damage to the environment and health or represents an opportunity to showcase environmentally preferable products and technologies in the technical specifications of goods and works.”

Article 27.1 Following the opening of tenders, individual tenders shall be reviewed to check whether they satisfy the following requirements: technical specifications;

As well as, according to the General conditions of contract, technical specifications shall be a part of the contract to be signed with bidders.

4.3. Proposed changes in the related regulations and standard bidding documents

Regarding the amendment of the PPLM, the changes related to the technical specifications will be made in the Section of Technical specifications of Standard bidding documents for goods and works.

“The procuring entity shall define given goods, works or services not just in terms of their design or descriptive characteristics but in terms of their purpose, application, use, quality, technical merits, and environmental and health impacts.”

As for the consultant service, the changes will be made in Standard bidding document for consultancy services:

“The procuring entity shall prepare the TOR in a manner that considers the relevant social, health and environmental aspects that may have high risk or represent significant opportunity.”

In the list of goods to be purchased by the Procedure for Framework Agreement, the following should be reflected:

Among the factors considered in the procurement of goods and services consideration will be given to appropriate economic, environmental and social factors;

V. CONCLUSIONS

The assessment of the Mongolian legal framework shows that Mongolia has a suitable legislation to support the implementation of SPP which means the PPLM includes some articles for regulating SMEs, community participation, domestic products and preferences for disabled persons, although it requires some amendments, particularly with regard to the key Mongolian law on public procurement entitled 'Public procurement law of Mongolia /PPLM/'. According to the law, procuring, contracting authorities currently don't have opportunity to include in the tender documents the environmental and social requirements for the product or services to be procured. . In most cases, economic criteria are considered as more important than social and environmental criteria. The main barrier, however, for the implementation of SPP, is the lack of inclusion of environmental criteria when evaluating proposals. It can be noted that even when buyers include environmental and social requirements in the tender documents, the evaluation of proposals is carried out by assessing primarily the "price" criteria. To ensure SPP implementation in Mongolia, some changes in the main law on public procurement are needed.

In addition, SPP implementation requires the organization of trainings and increased information and awareness among relevant officials. Officials and staff involved in procurement frequently have very little expertise in sustainability or environmentally preferable products. Therefore they need support and training when developing bid document specifications or when evaluating proposals.

As a result, training sessions on public procurement are carried out in order to prevent violations of procurement rules and ensure they are sensitized and have an increased capacity to carry out procurement processes in accordance with the law. The training topics are organized in line with the structure of the procurement law. They target in particular members of tendering committees that are set up by the contracting authorities and composed of officials who joined on a voluntary basis.

In order to avoid lobbying in the process of green public procurement **clear and unique criteria for sustainable procurement must be developed**. However, the development of criteria requires specific knowledge in various branches of technology, manufacturing and services. Therefore there is a need for **creation of inter-ministerial working group or group of experts** on various sectors of the economy and the environment, which could develop/review **recommendations on green procurement**. Regarding the phasing of the procurement process and place of SPP criteria in it the best stage is **preparation of tender documents, technical specifications and calculation of the cost**. That is what must provide a reflection of the conditions of the tender and qualification requirements for tenderers during the contract award and further in the provisions of contracts with suppliers. Control over the reflection of the requirements and criteria of the tender documents in the texts of treaties and their implementation is also an important element of procurement stages.

Creation of a **database of products** that meet internationally standardized environmental requirements is necessary to begin successful implementation of green procurement. The Type 1 eco-label is known in the market as a transparent, anti-discriminatory system, which could be used, both by small and large businesses to help assess the impact of products on the environment. However, the most important factor that can contribute to the successful implementation of green procurement is the availability of the necessary political will and support of the Government and the State Great Khural.

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Annex 1-Terms of Reference



Terms of Reference for the Legal Review Expert

Objective of Work

UNEP provides support to countries to develop and implement Sustainable Public Procurement (SPP) policies by increasing awareness and building the capacities of policy makers and procurement managers.

The methodology applied at country- level is the “UNEP SPP Approach” which is conceived as a series of steps that must be followed by governments to first design and then implement an action plan (see below graph).

The SPP Approach stresses the need for SPP implementation plans to take into account the legal and regulatory frameworks of each country. The **integration of sustainability in the legislation and regulations dedicated to public procurement** is a major step towards the development of an SPP National Action plan in the target countries and the implementation of SPP.

The SPP Approach also highlights the need to reinforce the use of ecolabelling and combined SPP with ecolabels to create a dynamic framework for improving the performance of products throughout their lifecycle and stimulating demand and supply of better products. As such, in countries with no national ecolabelling scheme, the project will also focus on the development and implementation of SPP policies, together with awareness-raising activities about the opportunities that ecolabels represent for the strengthening of the national SPP programme.

In countries with national ecolabelling scheme in place (hereby referred to as “core countries”) the project also focuses on the implementation of UNEP's SPP Approach combined with a proactive use of the national ecolabeling scheme and reinforcement of the national scheme.



Steps of the UNEP SPP Approach



Tasks & Expected Output

Specific objectives

- Undertake an **analysis** of the country's public procurement legal framework;
- Identify the **legal possibilities and legal barriers** in relation with the incorporation of social and environmental concerns in public procurement;
- **Draft recommended amendments** to existing articles in the legislation aiming at mainstreaming sustainability in the public procurement legal framework.
- **Feed the SPP policy and National Action Plan** - from the legal perspective.

Required tasks

The expert will conduct a Legal Review covering the aspects highlighted below. The report produced will be in line with the following structure:

A. Introduction

- Background
- Objectives of the study
- Methodology

B. International Framework

- Description of the **international agreements** signed by the country that have an impact on SPP.

C. Public procurement and sustainability regulations and goals

- An **overview of finance and budgetary regulation** – as far as relevant.
- Overview of the **general regulation on public procurement**, its primary goals (such as “best value for money”, “transparency”, “equal treatment of bidders”, etc.).
- Investigation on **possible public procurement modalities** (set of rules) to procure different goods, services, construction works, which are relevant for SPP (public bidding, direct purchasing, etc.).
- Description of the **public procurement organisation and national labelling schemes organisation in core countries** (centralized, decentralized, if it depends from a certain Ministry or if it is independent) and their relevance for SPP from a legal perspective.
- Identification of the legal management of public procurement: Who decides on the legislation? Who proposes changes to the current legislation?
- **Comparative analysis** with the legal systems of developed or emerging countries implementing sustainable/green public procurement.
- Describe the national understanding of sustainability (according to the national constitution or national development plans) and identify **sustainable development policy priorities**.
- Identify **productive sector priorities** in national development plans and other national policy documents (e.g. promoting local production strategy, productive diversification strategy, exports growth strategy, etc).
- Description of current **environmental/social-labour regulations** in the country as well as other SPP-relevant legislation, goals, main characteristics and key points. *In core countries, it will also include a description of ecolabelling-relevant aspects.*
- Expressly **defined criteria for sustainable/ green procurement** developed or in development in the respective national legislation.



D. Analysis

- **Suitability of the different stages of public procurement** (technical specifications, conditions for participation in tendering, selection criteria, award criteria, conditions for performance of contracts etc.) with regard to the implementation of SPP according to the legal framework in place.
- **Opportunities** provided by the current legislation to practice Sustainable Procurement and *for core countries opportunities to align SPP with ecolabels*.
- **Key challenges** or changes to be considered in the existing legislation, so the concept of SPP is implemented in the best way, according to the national/international experience, *and for core countries, SPP is well aligned with the existing ecolabelling scheme in place*.
- **Suitability of eco-labelling schemes** or other certifications as means of verification for SPP.

E. Proposed changes in the legal frameworks

- **Clarify the necessary steps needed to propose changes** to the current legislation in order to integrate SPP in the country legislation, specifying the responsible entities which can propose these changes. Also, propose recommendations on specific SPP legal instruments which may need to be developed to implement SPP on the ground (such as an SPP policy, a pillar/goal within an existing umbrella SCP or public procurement policy, an SPP technical document attached to a norm, etc).
- Identify the legal texts, decrees and/or decisions that need modification and **draft proposed amendments** to be made into relevant legislation, including use of ecolabelling scheme in meeting legal requirements or more ambitious standards.
- Propose standard clauses (in form of examples) on sustainable procurement to be incorporated in standard bidding documents and criteria to use. E.g. Provide specific clause examples for each type of public procurement modality, with different goods, services and construction works, in key parts of the public procurement tender document.

F. Conclusions

- Conclusions on how supportive the legal framework is from a SPP-perspective.

Deliverables

- **A summary of contents submitted to UNEP** for initial review.
- **A detailed report** as per the above structure (approx. **25 to 30 pages** including appendices). The report must be sent to UNEP in English.
- All material prepared must be in line with the graphic identity of the PAGE project (logos will be provided by UNEP).

Annex 2-List of interviewees

No.	Organization	Name	Method	In-depth
1	Legal and <u>Public</u> Procurement Policy Department (MOF)	L.Amgalan /Senior officer/	Meeting	Yes
2	Legal and <u>Public</u> Procurement Policy Department (MOF)	Ch.Bayarmaa /Senior officer/	Meeting	Yes
3	Mongolian National University	J.Batsukh /Coordinator/	Meeting	Yes
4.	Legal and <u>Public</u> Procurement Policy Department (MOF)	Ts.Batzul /Officer/	Meeting	Yes
5.	Legal and <u>Public</u> Procurement Policy Department (MOF)	Z.Enkhbold /Officer/	Meeting	Yes
6.	Legal and <u>Public</u> Procurement Policy Department (MOF)	E.Khangai /Director General/	Meeting	Yes
7.	Government Procurement Agency	N.Tserensambuu /Senior officer/	Meeting	Yes
8.	Government Procurement Agency	O.Odbaatar /Senior officer/	Meeting	Yes
9.	Procurement Development Center	Kh.Khurelbaatar /Director/	Meeting	Yes
10.	Procurement Training Center	E.Javkhlan /Director/	Meeting	Yes
11.	Mongolian National University	O.Narangerel /Coordinator/	Meeting	Yes
<u>12.</u>	Legal and <u>Public</u> Procurement Policy Department (MOF)	<u>Ts.Tselmuun</u> /Officer/	Meeting	Yes