

Terms of Reference

NATIONAL CONSULTANT TO ANALYZE COMPLAINT RESOLUTION MECHANISMS UNDER THE PUBLIC PROCUREMENT LAW OF MONGOLIA AND TO PROVIDE BACKSTOPPING SUPPORT TO STATE INSPECTORS IN PUBLIC PROCUREMENT

A. BACKGROUND

Since 2011, the Government of Mongolia has started to implement an electronic procurement system step by step, and during this time three different systems had been launched. In 2017, the current system was launched. Now more than 4,000 procuring entities organize 22,000 biddings through this system in these biddings around 17,000 companies participating annually. In accordance with the Action Plan of the Government of Mongolia for 2020-2024, the public procurement is being transformed in order to decrease direct human involvement in a bid selection process through application of artificial intelligence and state-of-the-art technology. On the other hand, the Parliament of Mongolia announced that the Public Procurement Law would be revised by 2024. Therefore, the Government of Mongolia submitted a revision of the law on December 14th, 2022. The Parliament of Mongolia approved the revision of the Public Procurement Law of Mongolia (PPLM) on June 16th, 2023, and it has come into effectiveness from January 1st, 2024.

According to the concept of the revision of the PPLM there are main five categories: (i) advancing bidding process through electronic transactions and decreasing direct human involvement in the bid evaluation process, (ii) ensuring procurement transparency through the electronic system, and revealing bidding data completely, contract implementation, (iii) enabling procurement process from planning to contracting and simplifying procurement methods, (iv) supporting domestic goods, (v) increasing sanctions for procuring entities and advancing the debarment lists for bidders. Therefore, the system is necessary to meet with newly adopted legislation.

The Revised PPLM has made many advances including but not limited to ensuring transparency in bid evaluation process, integrated registry on bidders, and contracts, and clarifying legal grounds to blacklist irresponsible bidders as an effort to decrease widely.

Following the Revised PPLM, the Government needs to revise and replace the Public Procurement State Inspector's Rule adopted by the Government Resolution # 274 of 2019 in line with the "Standard Rule to Conduct Inspection" that was adopted by the Government Resolution #479 of 2023 and the State Inspection Law. The Rule would replace and determine legal status of the state inspectors and their activities to inspect and blacklist legal entities and their beneficial owners.

In light of the situation where all of the procedures, guidelines, and standard bidding documents (SDBs) have been revised with effect from January 1st, 2024, the complaint resolution mechanisms under the PPLM should be regularly analysed to identify necessary developments to the public procurement regulations in Mongolia.

In addition, the Ministry of Finance, Mongolia (MOF) and its state inspectors are facing a challenging situation where their day-to-day decision-making will need to comply with the new procurement guidelines, procedures, and SDBs and where they will need to investigate and inspect breaches and violations of procurement rules and other relevant laws and regulations in Mongolia by the bidders and state officials. This situation entails the need for the Public Procurement Division and its public procurement state inspectors to have support from a legal professional who have broad experience in the area of Mongolian public procurement system.

B. OBJECTIVE OF THE ASSIGNMENT

The objective of this assignment is (i) to analyze complaint resolution mechanisms under the Public Procurement Law of Mongolia, including an assessment of the frequency of the justified complaints with similar grounds in the past 3 years; and (ii) to support the Procurement Policy

Division of the Legal Department of the MOF in its activities resolving public procurement-related complaints and to provide backstopping support to the state inspectors' inspection of breaches and violations of procurement rules by the bidders and state officials within the context of the newly established legal framework for public procurement and the law on State Inspection of Mongolia.

C. SCOPE OF WORK

The consultant will perform the following tasks under direct supervision of the Procurement Policy Division of the Legal Department of the MOF:

1. Advise on drafting renewed Public Procurement State Inspector's Rule under the Revised PPLM and the State Inspection Law;
2. Provide methodological assistance and advices to the state inspectors and officers of the Ministry to resolve public procurement-related complaints in accordance with Revised PPLM and related rules, regulations, guidance and standard bidding documents;
3. Provide methodological assistance and advices to the public procurement state inspectors at the Ministry in its activities to investigate and inspect the violations and breaches of the procurement rules and procurement contracts by the bidders and state officials;
4. To attend court hearings related to the abovementioned activities of the officials and state inspectors where and when legal assistance is needed;
5. Having basis on the complaint resolution statistics presented to the consultant, identify necessary developments to the public procurement regulations in Mongolia;
6. Prepare recommendations to improve and update the procurement procedures and guidelines based on the analysis and an assessment of the frequency of the justified complaints with similar grounds that were submitted in the past 3 years; and
7. Provide technical assistance to the MOF in organizing consultative meetings with stakeholders to introduce the newly adopted and to-be-adopted standard bidding documents and procedures, rules and guidance;
8. Carry out any other relevant tasks as reasonably assigned by the MOF.

D. DELIVERABLES

1. Draft proposal to revise Public Procurement State Inspector's Rule in line with the Revised PPLM;
2. Reports on analysis of the complaint resolution mechanisms under the Revised PPLM;
3. Reports on inspection activities of the state inspectors;
4. Periodic reports on the court cases attended, consultative meetings organized, methodological assistance provided to the Division on complaints and inspection activities;
5. Policy recommendations to improve and update the procurement procedures and guidelines based on the analysis; and
6. Monthly progress report and final report on completion of all tasks.

E. SUPERVISION AND REPORTING

As part of the contracting process, the parties shall develop a measurable, time-bound, and output-oriented work plan to be approved by the MOF. While developing the working plan, the contract parties shall ensure a high level of cooperation among the national consultants. The agreed work plan will be an integral part of the signed contract. In accordance with this work plan, the consultants will work on a day-to-day basis with the staff of the MOF under the direct supervision of the Head of the Procurement Policy Division of the Legal Department, MOF, or a specialist designated by the Head.

The Head of the Procurement Policy Division of the Legal Department, MOF or his designated specialist will meet regularly with the consultant to review progress of the assignment and to

resolve any outstanding issues.

All information provided to the consultant will be regarded as confidential and information shall not be shared with any outside individuals or organizations.

F. CONTRACT DURATION

The assignment is expected to commence in April 2024. The total duration of the consultancy service rendered is estimated to be 18 months. If any task is not completed within the agreed-upon timeline, the consultant should complete the tasks without any additional cost.

The payment will be released upon Client's approval of the Deliverable Acceptance Form submitted by the Consultant based on monthly reports covering progress made on the specified deliverables as well as the actual completed deliverables as per the work plan agreed and endorsed at the outset of the assignment.

G. INSTITUTIONAL ARRANGEMENTS

The Ministry of Finance will provide an office space and make available all the required information and reports in public procurement to the consultant. The consultant is expected to communicate and coordinate his/her work with Head of the Procurement Policy Division of the Legal Department, MOF or his designated specialist.

H. CONSULTANT'S QUALIFICATIONS

To be considered eligible, candidates should meet all the eligibility criteria listed below:

- **Education:** a master's degree in law, procurement or a related field;
- **Experience:** A licensed lawyer with at least 8 years of relevant work experience in legal practice and public procurement, with preferably at least 4 years of relevant experience in developing legal documents and regulations in public procurement;
- **Language skills:** Mongolian citizen with fluent written and spoken skills in both English and Mongolian;
- **Other skills:**
 - a. Legal expertise and certification in public procurement system of Mongolia;
 - b. A licensed attorney-at-law would have an advantage;
 - c. Be proficient in PC-based applications such as Word, Excel, Power Point and have excellent web research and navigation skills;
 - d. Demonstrated professionalism, good judgment, and willingness to work beyond the regular office hours to meet the deadlines and the needs of the position, if necessary;
 - e. Proven ability to work in national and international contexts;
 - f. Ability to work with multidisciplinary teams and institutes;
 - g. Capacity to manage a variety of tasks with minimal supervision.