

# Public Procurement

*Need for a National Policy in India*



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## Abbreviations

BEE	Bureau of Energy Efficiency
BESCOM	Bangalore Electricity Supply Company
BIS	Bureau of Indian Standards
BRICS	Brazil, Russia, India, China and South Africa
BTIA	Bilateral Trade and Investment Agreement
CAG	Comptroller and Auditor General
CCI	Competition Commission of India
CPP	Central Procurement Portal
CSO	Central Statistical Organisation
CVC	Central Vigilance Commission
DGS&D	Directorate General of Supplies and Disposals
ECBC	Energy Conservation Building Codes
EFTA	India-European Free Trade Association
EMD	Earnest money deposit
EU	European Union
FC	Finance Commission
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTP	Foreign Trade Policy

GATT	General Agreement on Tariffs and Trade
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GFR	General Financial Rules
GHG	Greenhouse Gas
GoM	Group of Ministers
GPA	Government Procurement Agreement
GPON	Gigabit Passive Optical Network
GPP	Green Public Procurement
GSDP	Gross State Domestic Product
GST	Goods and Services Tax
IPRs	Intellectual Property Rights
LCC	Life Cycle Cost
LTE	Limited Tender Enquiry
MFN	Most Favoured Nation
MNCs	Multinational Corporations
MoEF	Ministry of Environment & Forests
MSMEs	Micro and Small Enterprises
NAFTA	North America Free Trade Agreement
NIMZ	National Investment & Manufacturing Zones
NMP	National Manufacturing Policy,
OECD	Organisation for Economic Cooperation and Development
OM	Office Memorandum
OTE	Open Tender Enquiry
PC	Prevention of Corruption

PSEs	Public Sector Enterprises
PSUs	Public Sector Undertakings
RBI	Reserve Bank of India
RFD	Results Framework Document
RTAs	Regional Trade Agreements
SDP	State Domestic Product
SEBI	Securities and Exchange Board of India
SMEs	Small and Medium Enterprises
SoEs	State-owned Enterprises
SPM	Suspended Particulate Matter
SPP	Sustainable Public Procurement
SPPI	Sustainable Public Procurement Initiative
TDAF	Technology Acquisition and Development Fund
TERI	The Energy & Resources Institute
UNCAC	UN Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
UPA	United Progressive Alliance
WTO	World Trade Organisation



## **Note on Contributors**

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Vinitha Johnson graduated from the National Law University, Jodhpur with a specialisation in Trade and Investment Law. Following graduation, she worked in law firms on international trade, investment and private equity. She was engaged with CUTS International as an Assistant Policy Analyst during the implementation of current study.

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- Atindra Sen, Senior Advisor of India Transnational Strategy Group LLC
- Bimal Arora, Chief Executive Office, Centre for Responsible Business



- Bernard Hoekman, Robert Schuman Centre for Advanced Studies European University, Institute Global Governance Programme
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Finally, any error that may have remained is solely ours.

**CUTS Centre for International  
Trade, Economics & Environment**

## Preface

Public procurement systems must be transparent and efficient to foster credibility of the democratic political system and efficiency of the market. The existing external environment created by regionalisation, globalisation and India's increasing commitment to liberalised trade has added new challenges to public procurement, which impose strict disciplines on this sector.

World over, public procurement is seen as an important tool for achieving socio-economic development and other objectives. There is, therefore, a need to comply with a myriad of legislation and guidelines and this presents a challenge particularly for a vast and developing country like India.

Till today, a major shortcoming of our public procurement system is its fragmented nature coupled with inadequacy of coverage. Now that the Public Procurement Bill 2012 has lapsed, it is expected that a comprehensive coverage of all regulatory aspects critical to public procurement would be taken care of when a new bill is introduced.

Therefore, we have make use of this moment to first adopt a National Public Procurement Policy of India, followed by the enactment of a modern law on this subject. This proposed policy should help us understanding the relationship between the objectives of public procurement and related macro-

economic policies. It should encourage the implementation of a coherent and cohesive plan of action for all procuring departments of the government including state governments and help achieve more and better transparency and competitiveness of the Indian economy. Moreover, its guiding principles and tenets should underscore and give direction to further development of the Indian procurement system.

In the absence of such guidance, lack of consistency in how public procurement work is carried out becomes likely. This inconsistency results in frustration within and outside the procurement systems and procurement actions may become arbitrary and unfair. It is critical that for an effective procurement system a comprehensive procurement policy should be in place.

Therefore, CUTS International has undertaken this project titled ‘National Public Procurement Policy of India’ in order to influence the development of an effective public procurement regime in the country. It analyses necessary elements of an effective public procurement policy and their interface with some major macroeconomic policies including but not limited to manufacturing, trade, competition, fiscal management, and also subjects such as sustainable procurement. Our findings are based on extensive literature review, stakeholder consultations and recommendations from the members of the Project Advisory Committee.

It is an ongoing work and the next stage of the project will focus on drafting a National Procurement Policy of India, which will outline areas of interaction between government’s expenditure and how they can be better used to achieve the objectives of other major macroeconomic policies.

However, while such a policy and act should be in place as they will bring a great deal of sanity into the Indian public procurement regime, we do understand that their adoption alone cannot address all its weaknesses in the Indian public procurement system. Hence, continuous efforts are required for effective implementation of this policy and laws and regulations associated with it.

This project has been undertaken with support from the British High Commission, New Delhi under the Prosperity Fund of the UK's Foreign and Commonwealth Office. I thank them for the support and look forward to strengthen our partnership.

Last but not the least, I thank my colleagues and associated who have made this study possible. I hope it will be read widely and generate more interest on this subject.

**Pradeep S Mehta**  
Secretary General  
CUTS International



## **Executive Summary**

### **The Project**

‘National Public Procurement Policy of India’ project is supported by the British High Commission, New Delhi under the Prosperity Fund of the UK’s Foreign and Commonwealth Office. It looks at:

- evolving a model National Procurement Policy of India and corroborate to address expected implementation concerns of the Public Procurement Bill of India
- enabling governmental bodies to respond to changes in pertinent macroeconomic indicators and their implications for public procurement so as to evolve a dynamic strategy which furthers the attainment of socio-economic developmental goals through the use of public expenditure
- increasing the level of awareness among the relevant stakeholder groups about the benefits which can be obtained through judicious use of public expenditure and the use of public procurement in the context of socio-economic development

### **Beneficiaries**

Project beneficiaries include:

- Indian citizens, who consume public services and public goods financed through their tax contribution and therefore are demandeurs for better “value for money” in public procurement



- Indian government including public sector undertakings, government policy makers and officials
- Indian industry associations and businesses, private policy makers and entrepreneurs
- Foreign stakeholders: those interested in a level playing field in the Indian government procurement market
- Statutory bodies like the Controller and Auditor General of India and the Central Vigilance Commission
- Regulatory bodies like the Competition Commission of India and the sectoral regulators
- Civil society organisations and experts/opinion-makers in the field

## **Background**

The size of the Indian public procurement market is approximately 29 per cent of its gross domestic product, which is almost US\$ 536 billion annually. Despite the enormous size of this market, there is no central law or policy to govern it. In 2012, in the wake of major public procurement scandals which were eroding confidence in government, a Group of Ministers was set up to deal with the menace of corruption in public procurement, resulting in the setting up of an expert committee, which recommended an overarching public procurement law for India. That resulted in the drafting of a Public Procurement Bill. It was put up for public consultation on the website of the Ministry of Finance and was finally tabled in the Lower House of the Indian Parliament in May, 2012.

After the dissolution of the House for the holding of General Elections, the Bill lapsed. It has to be reintroduced if it is to become a law. It is important to note that the introduction of this legislation to ensure probity in public procurement and other related anti-corruption measures are obligations which

India has undertaken through its membership of the UN Convention against Corruption which it signed in 2011. Therefore, a law on public procurement has to come sooner or later.

Other than this law, a policy is needed to enunciate the vision which informs the functional law or set of rules which is derived from it. A public procurement policy for India, for example, should examine the problems besetting the procurement scenario in India, the vision for its reform, broad directions in which to move to achieve those reforms, the limitations in regard to the options before the country and, finally, the best and most reasonable solutions out of an array of options. The law would then have more weightage as it would be having the support of a vision document through this policy.

The mere enactment of a Public Procurement Bill will be an unfinished business without the backing of an appropriate policy document. No doubt the vision part of the policy has been articulated through the objectives of the Bill, which is as follows:

“to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process and for matters connected therewith or incidental thereto”.

Neither the background, that is, the present chaotic state of rules governing public procurement, nor the whys and the wherefores for the selection of particular strategies which are

sought to be implemented through the law are given or can be given through only a law unsupported by a policy. For example, whether the degree of transparency and probity that is demanded of the public sector through this Bill (particularly through Section 38 thereof, which proposes the use of a Central Procurement Portal to lay bare the entire process of tendering, even the rates at which procurement is being done) is not justified without a policy articulation. Whether and why such a degree of transparency is required, which is likely to make the public sector enterprises uncompetitive *vis-à-vis* the private sector is not analysed. Whether the spirit of open competition espoused through the Bill should prevail to such an extent as to allow a foreign bidder equal opportunity on par with a domestic bidder is not justified.

Furthermore, although the specifications for the subject matter of procurement under the Bill allows environmental criteria as one of the allowable specifications, a policy articulation was needed to make it clear as to the extent to which India is willing to go along with the idea of ‘green procurement’. What is the justification for the offsets allowed under the Section 11(2) of the proposed Bill is yet another example of what needed to be articulated through a full-fledged policy.

Such justifications are sorely needed when one has to consider that the public procurement policy of many countries almost completely denies market access on equal footing with domestic players to foreign suppliers.

Therefore and as a first step towards formulation of a model public procurement policy, this study has explored its interfaces with other major macroeconomic policies so as to facilitate a framework to draft a holistic policy and advocate for its adoption and implementation. It has conceptualised such

interfaces and linkages by undertaking comprehensive desk research and consultations with stakeholders on best concepts and practices deployed within India and internationally.

## Goal

The primary goal of this project is to stimulate broad discussions towards adopting a transparent, fair and competitive public procurement system so as to achieve policy inclusiveness. It aims at addressing the need for better economic governance in India through the adoption of a National Public Procurement Policy which has coherence and is harmonised with other major macroeconomic policies such as trade, competition, fiscal management.

## Objectives

There is a concern that the Public Procurement Bill of India must accommodate other objectives than the primary one of obtaining best ‘value for money’ by promoting competition and probity. Therefore, there is a need to enunciate a policy to articulate how, without compromising its main objective of achieving best value for money for citizens and government in the procurement public goods, it can also:

- integrate some subsidiary objectives like stimulating national manufacturing or the greater use of environmentally sustainable products and services
- dovetail with other closely related macroeconomic policies of the government

The study has attempted to analyse these linkages. Also, the harmonisation of state level procurement policy with the national level policy has been examined.

The objective is to create awareness among the relevant stakeholders, such as citizens, government, industry in both public and private sectors, academia, civil society and the media on the above mentioned issues.

## **Methodology**

To achieve the above-stated goal and objectives, the study:

- analyses the need to have National Public Procurement Policy in India
- examines interfaces between the public procurement policy of India as emerging through analysis of the General Financial Rules, 2005 and the Public Procurement Bill 2012 and other major macroeconomic policies of India such as the National Manufacturing Policy, international trade policy, competition policy, fiscal federalism which India aspires to follow, sustainable public procurement concepts, and rules governing state level procurement

Except the National Manufacturing Policy and the Trade Policy, there is no concrete policy articulation in any of the other cases. A policy is, however, discernible through the strategies and practices in each of these sectors, which the study has made use of. In the case of sustainable public procurement, international concepts are used as a benchmark.

## **Key Findings**

Our comparative analyses of the Public Procurement Bill of India and the policy emerging therefrom with various related macroeconomic policies, including but not limited to trade, competition, manufacturing, fiscal federalism, sustainable procurement and state level legal frameworks, give rise to the following findings:

*Public Procurement and Competition*

This chapter derives from the interplay between competition and public procurement based on the rules and legislation on the respective subjects in the absence of national level policies in either field in India. Taking as a starting point, the Third BRICS International Competition Conference held at New Delhi in November, 2013, the chapter opens with the findings of the Conference that “competitive procurement markets can help save fiscal resources and release funds for development”.

The other important finding of the BRICS Conference that ironically, the main players in government procurement, the public sector enterprises, having long been exempted from competition by virtue of their State ownership and their enjoyment of captive markets, are mainly responsible for failing to foster the competitive spirit essential for any commercial enterprise to flourish.

The chapter then goes on to discuss the current status of the interface between competition and procurement policy by outlining the absence of competition-promoting procedures in public procurement regime in India and elaborating on the efforts taken by government of India in reforming the system, especially in the wake of large scale malpractices in public procurement.

It highlights the major thrust of Public Procurement Bill 2012 on improving competition and probity and elaborates on relevant *provisions*, which are vital for promoting competition issues in the procurement market. Non-discrimination amongst bidders, even irrespective of nationality, is one of the high points of competition provided for in the Bill, as it would make the Indian public procurement market more open and

competitive than those of its major trading partners, whose own public procurement markets are heavily protected.

The chapter justifies how the Bill, in many ways, even improves on the international benchmarks; for example, by empowering the government to make electronic procurement mandatory in certain circumstances and by providing for the setting up of a central e-procurement portal to make each stage of the procurement process transparent to the public. These provisions take the standards of transparency necessary for open competition to a level higher than that prescribed in the WTO's GPA. However it has to be matched by effective implementation.

The chapter concludes that unless the general business environment in India becomes more competitive, competitiveness in public procurement is also unlikely to pick up. In this context, it argued that the current drive against anticompetitive practices will only worth if there is a policy framework nurturing a culture of competition in the country. Given the cross-border nature of anti-competitive business practices of the multinational corporations, this culture has to be complemented by international cooperation amongst competition authorities of different countries.

#### *Interface between Public Procurement and the National Manufacturing Policy of India*

The chapter highlights how there is an apparent tension between the Public Procurement Bill (which more or less follows the GFR 2005 in this respect) and the National Manufacturing Policy announced in November, 2011 with the objective of enhancing India's share of manufacturing as percentage of gross domestic product to 25 per cent from the current level of 16 per cent within a decade and in the process

creating one hundred million jobs. The apparent tension lies in that the NMP's objective to leverage public procurement in achieving national capabilities implies stipulation of local value addition in critical technology areas, whereas the Public Procurement Bill (also the GFR 2005) do not establish "any requirement at limiting participation of bidders in the procurement process that discriminates against or amongst bidders of any category".

However and as the chapter underlines, the tensions, if any, between the two policies in the matter of non-discrimination between domestic and foreign manufacturing is resolved when Sub-Section 2 of Section 11 of the Public Procurement Bill is considered. It contains an exception to the general non-discrimination rule to the effect that procurement of any subject from any category of bidders or purchase preference for any category of bidders can be extended for the promotion of domestic industry, socio-economic policies of the central government or any other consideration in public interest.

The chapter further points to the difficulties in exploiting the exception from the non-discrimination provision of the Public Procurement Bill through the implementation of the National Manufacturing Policy by underlining the low competitiveness of Indian manufacturing, its low labour productivity, low expenditure on research and development and other such factors.

The plan to resolve these challenges is also outlined, such as through better projection of government demand to industry for items where there is domestic manufacturing capability; setting up of new units to meet government demand for goods not indigenously produced; effective preferential procurement policies for new technologies to effect localisation of super-



critical technologies; incentives to innovate; setting up of National Investment and Manufacturing Zones to be developed in the nature of green field industrial township; public sector reforms through rationalisation of business regulations; industrial training and skill up-gradation; setting up of Technology Acquisition and Development Fund; giving micro, small and medium enterprises access to the patent pool; encouraging foreign investment with technology transfer and so on.

The chapter exhorts better exploitation of the exception to the non-discrimination clause of the Public Procurement Bill and the GFR through effective implementation of the National Manufacturing Policy, which takes heed of ground realities to enhance domestic value addition in critical sectors of public procurement.

#### *Interplay between Public Procurement and Fiscal Federalism*

This chapter examines the means for undertaking public procurement at the level of state governments. It explores the devolution of resources in the federal structure of India, since resources are at the crux of the power to public procurement. It is focused on fiscal federalism, pointing to the asymmetry where the centre gets a little over 60 per cent of total tax revenue, although the states' share in revenue expenditure averages about 57 per cent.

The chapter also highlights, given that the differences in the income level between the richest and poorest states is in the ratio of four-to-one, there is uneven capacity and provision of public services across the states, even in the case of 'merit goods' like education, health services.

The major flaws in the system have been identified, such as the decline of formula-based transfers by the Finance Commission and the Planning Commission and the rise of discretionary transfers.

The way forward has also been identified, including reforms concerning both vertical and horizontal dimensions. The most important of these include: avoiding overlap in the roles of the Finance Commission and the Planning Commission; stabilising vertical transfers at an appropriate level (which assumes importance because of the likely impact of the proposed Goods and Services Tax); doing away with “gap-filling approach” in the assessment of the needs and resources by the Finance Commission because of its implicit adverse incentives; proper measurement of fiscal capacity of states; controls on borrowing by the states from the centre; reversing the trend of centralisation of expenditure on state subjects; adequate revenue generation powers to the states; the all-important issue of fiscal discipline by both the centre and the state in accordance with their obligations to reduce fiscal deficit under the Fiscal Responsibility and Budget Management Act, 2003.

As reforms in regard to vertical and horizontal imbalances are likely to impart more equity to public procurement at national and sub-national levels, this aspect must be taken into consideration while drafting a National Public Procurement Policy of India.

#### *Relationship between Public Procurement and Trade Policy*

Public procurement has attained crucial importance in recent times in the Indian policy on international trade, with India obtaining ‘Observer’ status in the WTO Plurilateral Agreement on Government Procurement and also because ‘public

procurement’ is part of many free trade agreements being negotiated by India (such as the EU-India free trade agreement).

This chapter explores as to whether public procurement matters in trade and the approach towards negotiating commitments pertaining to public procurement at the international level, especially in the context of WTO agreements as well as free trade agreements. It suggests that opening the national public procurement market to foreign players at par with domestic players increases the potential of competition, accessibility to products, services and works yielding better value for money to consumers and, thereby, improves the potential for improved access to foreign procurement markets for domestic producers.

The chapter further analyses the openness of public procurement in India vis-à-vis the General Financial Rules, 2005 and the Public Procurement Bill, 2012. It highlights that as per Public Procurement Bill India unilaterally offers non-discrimination between domestic and foreign suppliers in participation criteria. It discusses the preferential treatment accorded in the Bill to safeguard domestic industries, which is justified because the WTO Plurilateral Agreement on Government Procurement has special carve-outs for developing countries to extend domestic preference for the development of small scale and cottage industries.

It discusses this aspect at length and concludes by suggesting that though India is attempting further liberalization of its public procurement market, there may not be an immediate need to undertake international commitments for reforming India’s public procurement regime. Prior to that, there is the need to conduct a thorough assessment of competitiveness of different sectors of the Indian economy and future policy goals.

In other words, broad as well as sector-specific cost-benefit analyses are needed before India commits its accession to the WTO Plurilateral Agreement on Government Procurement and commits “market access on public procurement” in its FTAs.

### *Sustainable Public Procurement*

The chapter begins with a historical perspective on the importance of ‘sustainability’ in the policy decisions of governments, commencing from the adoption of Agenda 21 at the Earth Summit, 1992 to the adoption, by the United Nations in 2012 at the UN Conference on Sustainable Development, of a 10-Year Framework of Programmes on Sustainable Consumption and Production. It was during this later phase that sustainable public procurement was categorised as one of the five initial sustainable consumption and production programmes for development.

The chapter goes on to discuss how the term sustainable public procurement was defined to cover the process whereby the need for good and services “achieves value for money on a whole life basis whilst minimizing damage to the environment”. It also discusses that since public procurement accounts for as much as 20 to 30 per cent of world GDP, it is an important driver to affect the state of domestic markets and build ‘sustainability’ criteria into them.

While the main economic argument for the introduction of sustainability in procurement is that it gives better value for money in the long run, by taking into account whole life costs, quality and functionality, this chapter traces the challenges that sustainable public procurement faces in India. They mainly centre around higher capital costs usually link to sustainable alternatives.

Other critical factors include preoccupation with the sole issue of removing corruption in procurement in India, which leaves little space for sustainability concerns; the failure to take off of eco-labels and other environmental standards in India; the inability of micro, small and medium enterprises, which are responsible for almost 70 per cent of the total industrial pollution load of the country, to comply with sustainability regulations; the slow pace of adoption of cleaner processes and technologies.

However, given that the need to introduce sustainable procurement practices is perhaps greatest in India, the chapter highlights, why they should be adopted and adapted in view of increasingly resource-intensive manufacturing practices.

The chapter notes the green shoots in sustainable procurement practices in India by highlighting the example of the Indian Railways, the sterling role played by Indian scientific and industrial development support institutions like the Bureau of Energy Efficiency, the Bureau of Indian Standards; the provision in the Public Procurement Bill that specifications for a product may include environmental specifications.

The chapter concludes that the Public Procurement Bill, if it becomes a law, can provide an opportunity to reframe the scope of strategic procurement and ensure that it is aligned with the country's commitment to sustainable development. Such a law should then be complemented and supported by a well framed policy that has clear strategic objectives, principles, goals and action programmes.

It further recommends the capacity building of a cross-section of stakeholders ranging from consumers to technical bodies such as BEE, BIS to oversight bodies, like the Central Vigilance

Commission, besides the procurement officials. Most importantly it suggests that there is a need for changed mindset of all stakeholders to obtain best value across the life cycle of products, which are subject to public procurement.

### *Public Procurement at the State Level*

This chapter explores the extent to which the objectives of public procurement can be realised by delegations of certain activities to state governments. In the light of global experience that a more focused consideration of the micro environment is supposed to serve the objectives of the delivery of many public services. This is especially relevant for serving specific needs at the local level, as opposed to procurement in sectors such as defense, where the policy needs to be set at the national level.

The chapter highlights that although the state level policy may have specific features suited to procurement needs of a state, it must conform to universal standards of public procurement, which entail ensuring transparency, promoting fair competition and probity, carrying adequate deterrence to non-adherence to norms. Another major parameter on which the state-level rules are assessed is the provision of ‘offsets’ for extending special preference to any category of bidders needing support for socio-economic reasons. Based on such parameters, the procurement regime of three States that have passed such necessary legislation, viz. Karnataka, Rajasthan and Tamil Nadu, are assessed.

From our analysis, it is evident that the Rajasthan legislation has closely followed the proposed central legislation and meets international benchmarks in public procurement. As regards Karnataka and Tamil Nadu, though they are by and large

aligned with the existing provisions of the national public procurement regime and international conventions, they are hardly as comprehensive as the Public Procurement Bill, 2012.

Hence, we argue that state governments should judiciously select the necessary provisions of the proposed central legislation so that it promotes universal standards of public procurement, while retaining the necessary policy space to meet their own socio-economic concerns.

# 1

## Public Procurement and Competition

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### Introduction: Challenges in Introducing Competition in Public Procurement

In India, as in other emerging economies, “there is an increasing need to recognise the complementarities between competition, law enforcement and liberalisation of markets for procurement,” observed India’s then Prime Minister when inaugurating the third BRICS International Competition Conference at New Delhi in November 2013. The aptness of this observation was more specifically felt because a substantial slice of State spending in most emerging economies is on Public Procurement.

Therefore, “Elimination of unnecessary restrictions and better tender design can...enhance possibilities for effective competition, thereby making bid rigging more difficult.”<sup>1</sup> As a result, it was concluded that “competitive procurement markets can help save valuable fiscal resources and release funds for development.”<sup>2</sup>

The other challenge faced in introducing competition in Public Procurement in emerging economies like India is that public sector undertakings (PSUs), the main players in government procurement, have long been shielded from competition by



virtue of their ownership and enjoyed captive markets. They have generally been exempted from market forces and accountability to shareholders, thereby failing to foster the competitive spirit essential for any commercial enterprise. Government ownership has inevitably brought with it a bureaucratic style of decision-making; the end result being that the enterprises cannot compete in a market populated by equals.

The tensions between competition policy and Public Procurement practices by PSUs and state-owned enterprises (SOEs) can be eased by the following measures: (a) Giving public sector firms greater functional autonomy, freeing them from bureaucratic control and not tolerating any slip in their competitiveness; (b) Practice of ‘competitive neutrality’ by the government, which requires that it does not use legislative and fiscal powers to give undue advantage to its own businesses over the private sector. “Going forward, our governments will, therefore, have to increasingly adopt competition neutral policies.”<sup>3</sup>

## **Legal Basis of Competition in Public Procurement**

The Supreme Court has observed in a number of cases that the government must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination in awarding contracts. This follows as a necessary corollary from the principle of equality enshrined in Article 14 of the Constitution, as held by the Supreme Court in *R.D. Shetty v. International Airports Authority*. Thus the promotion of competition in Procurement Policy has a constitutional base, and has to be discharged as a constitutional obligation.

In 1991, India embarked on a path of economic liberalisation, privatisation and globalisation. The erstwhile Monopolies and Restrictive Trade Practices Act (1969), enacted at a time when India had a ‘command and control’ economy, was inadequate to regulate the market and ensure competition therein. In tune with the new economic philosophy, a modern Competition Act, 2002 was enacted. Unlike the previous MRTP Act, the new competition law does not restrict the size of firms or the concentration of ownership. It is in within this legal framework that the Public Procurement set-up in India has to function.

### **Current Status: Absence of Competition-Promoting Procedures in Public Procurement**

Currently there is no single law or body explicitly governing procurement by the Central Government. Instead, Public Procurement is regulated by the General Financial Rules, 2005 (GFR), guidelines issued by the Central Vigilance Commission (CVC), the Comptroller and Auditor General (CAG) and respective ministries, departments and Public Sector Undertakings (PSUs).

Although Public Procurement accounts for 20-30 percent of GDP and although the GFR firmly favours open competition, the procurement process in India is marked by noteworthy departures from competitive bidding.

This is mainly because the GFRs are only rules and do not have the status of law. They are treated as generic guidelines on government expenditure. Violation of the aforesaid rules, particularly the GFR, seldom attracts penalties. Thus, though GFR rules have provisions for open tendering, effective advertisement, non-discriminatory tender conditions and technical specifications, public tender opening, bid evaluation

based on pre-disclosed criteria and award to the most advantageous bidder without any negotiations, they are often circumvented. The most noteworthy departures from competitive bidding are seen in the following malpractices:<sup>4</sup>

(i) **Absence of Standard Contracts and Tender document**

The World Bank India Procurement Report, 2003, estimates that more than 150 different contract formats are used by the public sector. The absence of standard documents and contracts presents scope for manipulation and favouritism.

(ii) **Absence of Public Access to Tender document**

When tenders are not adequately publicised, it prevents wide participation of vendors. The consequent lack of competition hampers the government from obtaining best value for money.

(iii) **Pre-Qualifying Criteria**

As noted by the CVC in its report titled ‘Common Irregularities/Lapses Observed in Stores Purchase’, public procurers tend to incorporate stringent qualification criteria to reduce the risk of failure on counts of quality and timely delivery. In many cases, however, these qualification criteria are manipulated to favour particular firms or restrict participation.

(iv) **Inadequate Timelines**

Often the response time granted for bid submission is unrealistically short. This is despite Rule 150(v) of GFR which prescribes that minimum time for submission of bids should not be less than three weeks. This leads to undue advantage to a small number of suppliers who are in the know of things.

(v) **No Compulsory Publishing of Tender Results**

At present, neither the winning price nor the winning bidders are publicly declared and the public has no way of knowing whether the conditions of the contract have not been modified during the processing of the tender.

(vi) **Restrictive Tendering Practices**

Reports of monitoring bodies like the CVC suggests that procuring agencies often fail to utilise the open channel provided by Open Tender Enquiry (OTE) and tend to depend on Limited Tender Enquiry (LTE), thereby limiting competition. This, in turn, leads to cartel formation, higher rates and ensures success to select firms.

(vii) **Registered Vendors**

A restrictive tendering practice is that of maintaining a list of ‘registered’ vendors, as pointed out by the Dhall Committee Report, 2011 and the report of The Energy and Resources Institute of India (TERI), 2011. Though the original purpose of such a list was to establish ‘reliable sources for procurement of goods commonly required for government use’ (vide Rule 142 of GFR), the system by and large is being implemented to limit competition. The Railways and Directorate General of Supplies and Disposals (DGS&D) under the Ministry of Commerce and Industry have been specially named by the CVC and other monitors for following these restrictive practices.

(viii) **Absence of an Independent Grievance Redressal Mechanism**

Under the present system, an aggrieved bidder has no option but to file his complaint with the procuring agency itself. Arbitration proceedings are possible under the Indian Arbitration and Conciliation Act, 1996 if the

tender documents so provide, against the decision of the procurement authority. Reference to the High Court under Article 226 of the Constitution against the decision of the procurement authority/arbitration order is also possible. However, both arbitration and reference to the High Court are lengthy and expensive procedures. The bidder aggrieved by malpractices, including anti-competitive practices, has no easy recourse to justice.

(ix) **Tedious Procedure**

Lack of easy availability of tender documents, lengthy and restrictive procedure in getting registered defects in contract management (such as delays in payment) and other such excessively tedious procedures have the effect of discouraging participation by big and efficient firms in the tendering process, thereby limiting competition.

(x) **Limitations of the Indian Competition Act, 2002 to deal with malpractices in Public Procurement**

The study by TERI, Delhi (2011) titled ‘Competition Issues in Public Procurement (India)’ highlighted that although Sections 3 or 4 of the Competition Act, 2002 would apply in the case of suppliers indulging in anti-competitive practices and abuse of dominant position, the orders of the Competition Commission of India (CCI) indicate that it would be difficult to bring the procurement agency within the coverage of the 2002 Act even though it may be indulging in competition-prohibiting actions.

The OECD, also in its report of 2010 titled ‘Policy Roundtables - Collusion and Corruption in Public Procurement’ highlights that when firms indulge in anti-competitive conduct in collusion with public officials, the CCI lacks the powers to investigate the indicted public officials.

On the other hand, Public Procurement in many parts of the world bestows a major role to competition law. Such laws directly limit the ability of government agencies to stifle competition. This is true of the Danish, the Swedish and the Norwegian competition authorities.

Japan is a classic example of a country where the competition authority has some enforcement powers against the public officials involved in anti-competitive practices. The Japanese Federal Trade Commission, which enforces the Anti-Monopoly Act against firms indulging in anti-competitive actions, is also authorised to take action against public officials involved in limiting competition. It can request the head of the department concerned to investigate the officials suspected of collusion. If the officials are found to be actually implicated in anti-competitive activity, compensation against loss can be imposed on them. Japan enacted the Act Concerning Elimination and Prevention of Involvement in Bid Rigging in 2002. The study by TERI suggests that investing the CCI with similar powers may be a welcome measure against collusion by procuring officials.

(xi) **Limitations in the role of other monitoring agencies**

The two other major institutions overseeing the procurement process are the CAG and the CVC. The main weakness in the monitoring role of the CAG is that its audits and investigation are conducted ex-post facto. The Action Taken Reports called for by the audit do not have a specific time limit for compliance and the consequent delayed response does not allow timely remedial action. The CVC supervises investigations under the Prevention of Corruption Act, 1988 and issues various

guidelines, but cannot deal with private parties indulging in fraud or anti-competitive activity.

## **Efforts for Reform of the System**

### **(i) Stock-taking by the government in the wake of large-scale malpractices in Public Procurement**

Given the unsatisfactory state of competition in the current procurement scenario in India, which inter alia were manifested in major incidents of irregularity in the Commonwealth Games procurement fiasco, the UPA government formed a Group of Ministers (GOM) on Corruption in 2010, with a wide-ranging mandate to look into anti-corruption issues, including Public Procurement.

The GOM, inter alia, recommended the establishment of a Committee on Public Procurement. The committee submitted its report in June 2011, which, inter alia, analysed the shortcomings in the system and recommended the enactment of an overarching Public Procurement law. Pursuant to these recommendations, which were accepted by the government, the Public Procurement Bill was formulated and after public consultation, was introduced in the Lower House of Parliament on May 14, 2012.

### **(ii) The Public Procurement Bill, 2012 and its thrust on improving competition and probity**

The major objectives of the Bill, inter alia, are to promote “fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy”.

The Bill comprehensively addresses competition issues by incorporating provisions that would pave the way for

broad-basing of bidders through adequate publicity on procurement opportunities/objective pre-qualifying criteria for bidders; framing of objective specifications for the items of supply; evaluation of bids based on pre-disclosed criteria; enshrining open competitive bidding as the norm and allowing restricted bidding only in exceptional circumstances; fixing timelines for processing the bids to obviate interference in the procurement process; compulsory publishing of tender results; promoting e-procurement, including procurement of standard items through Electronic Reverse Auction; allowing price negotiation only in exceptional circumstances, i.e., when ‘Single Source Procurement’ becomes necessary; restricting cartelisation; maintaining documentary record of procurement proceedings and retention of records for a fixed period after expiry of the procuring contract for the sake of transparency and, most importantly, provision for an independent review/grievance redressal mechanism.

Such provisions bring the Bill at par with best international practices, as reflected by the WTO Agreement on Government Procurement (GPA) and the UNCITRAL model law. Sometimes, the Bill even improves on the international benchmarks, for example, by empowering government to make electronic procurement mandatory in certain circumstances and by providing for the setting up of a central e-procurement portal. These provisions take the standards of transparency necessary for open competition to a level higher than that prescribed in the WTO’s GPA.

“However, the jewel-in-the-crown of any system of rules is its ability to address perceived transgressions. That is



where it is tested whether the rules have ‘bite’, i.e., enforceability or they are simply ‘best intention’ clauses. Unfortunately, it is in this critical area that the Bill falters.”<sup>5</sup> The procurement Redressal Committees or Tribunals to be set up by the Central Government under the provisions of the Bill would no doubt be completely independent from the procuring entity and would be composed of individuals of ‘proven integrity and experience in Public Procurement’ under the chairmanship of a retired Judge of a High Court.

But the Redressal Committees are simply empowered to make recommendations to the procuring entity. The latter may reject the recommendations, vide sub-section 15 of Section 41 of the Bill, although there are stipulations that reasons for non-acceptance would have to be communicated to the aggrieved bidder and the committee. As the procuring agency is itself indicted in the dispute, its willingness to accept the recommendations of the redressal authority would be doubtful.

In contrast, international instruments like the WTO’s Government Procurement Agreement empower the independent body functioning under the ‘Challenge Procedure’ with the authority to order the correction of an infraction of the agreement or order compensation for the damages suffered by a supplier. Pending the outcome of the challenge, the authority under the WTO GPA can call for rapid interim measures, including the suspension of the procurement process, with the objective of correcting departures from the agreement or preserve commercial opportunity for the supplier (Article XX:7 of the GPA).

The other major international instrument on Public Procurement, the UNCITRAL Model Law, vide its Chapter VIII dealing with ‘Challenge Proceedings’, also provides for an independent review authority whose decisions are binding. Moreover, the redressal procedure under the Public Procurement Bill lacks a next level of appeal, although a two-tier redressal mechanism had been recommended in the report of the expert committee set up by the government.

(iii) **Non-discrimination amongst bidders under the Public Procurement Bill: An encouragement to competition**

Some commentators have criticised the Bill on the ground that in its concern to promote competition, it treats domestic and foreign bidders on par. Section 11 (1) of the Bill states:

*“The procuring entity shall not establish any requirement at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or any category thereof, except when so authorised or required under the provisions of this Act or the Rules made thereunder, or under the provisions of any other law for the time being in force”.*

This provision of non-discrimination between foreigners and domestic players as a general rule goes against the rationale of Public Procurement in general. The WTO’s GPA is a plurilateral agreement which extends MFN and National Treatment only to those countries that have acceded to the Agreement.

Contrary to the trend, Indian procurement policy has traditionally made no distinction between domestic and foreign suppliers, a fact which is reflected in the heavy procurement of defence and scientific goods by India from abroad and by the acknowledgement of the non-discriminatory nature of government procurement in the WTO's annual trade policy reviews of India. The Government Procurement Manual, 2006, contains non-specific provisions against foreign participation. It allows that where a Ministry/Department feels that the goods of the required quality and specifications may not be available in the country and/or it is necessary to look for suitable competitive offers from abroad, the Ministry/Department may opt for foreign tendering. Thus, the conditions for opting for global tendering are so flexible as to constitute virtually no anti-competitive trade barrier.

However, certain commentators feel that the position as obtaining in the GP Manual, 2006 has been aggravated by Section 11 of the Public Procurement Bill, in that the Bill “does not seem to allow for nationality to be used as a basis for discrimination amongst bidders, implying foreign bidder participation in Indian Government contracts as a default legal right — a formulation that is contrary to the established law in most important foreign jurisdictions, where Indian entities are legally barred from bidding as prime contractors.”<sup>6</sup>

The second major point made by those who critique the non-discriminatory nature of the Public Procurement Bill is that it goes against recent policy developments in India. The National Manufacturing Policy (NMP) 2011 of the government of India, while recognising the need to raise the share of manufacturing in GDP to 25 percent as against 16 percent at present, has considered “the use of public procurement in specified sectors with stipulation of local value addition in areas of critical

technology and wherever necessary, such as solar energy equipment, electronic hardware, fuel-efficient transport equipment and IT-based security systems.”<sup>7</sup>

A valid concern has been voiced through a series of newspaper articles on promoting domestic preferences in Public Procurement. In promoting competition through non-discrimination, the Public Procurement Bill has gone beyond what is required under international legislation, such as WTO’s GPA.

But the concern for promoting domestic concerns wherever required in specified areas is taken care of through the wording of the Bill. Section 11(1), which, though upholding non-discrimination amongst different categories of bidders, is qualified by an exception which comes into effect “when so authorised or required under the provisions of this Act or the Rules made thereunder”, etc. Further, sub-section 2 of Section 11 goes on to stipulate that such exception may be made for mandatory procurement of any items from any category of bidders or extension of purchase preference to any category of bidders for the purpose of promoting domestic industry, the socio-economic policy of the government, or any other objective in the public interest.

In fact, these preferences, allowed by the GFR currently governing Public Procurement, are already being exploited, as would be evident in the small and medium enterprises (SME) policy of the government, including the new policy hiking up the reservation for the micro and small scale sector to 20 percent of government procurement from 2015; the newly enunciated National Electronics Policy and the Solar Power Equipment Policy of the government, with their emphasis on domestic inputs.

A balance has to be maintained in India's economy between open global competition and domestic preference. The liberalisation of the Indian economy since 1991 has helped Indian industry to become competitive, to modernise and become cost effective. "If India were to give a signal that it is once again going to revert to a protectionist, closed economy model as far as public procurement is concerned, by explicitly stating it in the Public Procurement Law, it is likely to be regarded as a step backwards."<sup>8</sup>

It is this balance between the global and national imperatives, between open global competition and domestic preference which the Public Procurement Bill seeks to reflect.

### **Other Mechanisms and Procedures to Promote Competition in Public Transactions, including Public Procurement**

Some of the existing mechanisms in India which encourage competition are procedures and laws which encourage transparency and hence curb anti-competitive practices, including in Public Procurement. These include the following:

i) **Right to Information Act, 2005**

It gives citizens the right to ask for information from government within a set timeframe on all matters of public interest, including, presumably, matters pertaining to procurement.

ii) **E-Governance and e-Procurement**

E-governance is a tool for achieving transparency in public administration, including the procurement activities of the government and suppliers. To facilitate implementation of e-procurement, the Government of

India has set up a Central Procurement Portal (CPP) with an e-publishing and e-procurement module. It is mandatory to publish tender inquiries, corrigenda and details of bid awards on the CPP Portal using the e-publishing module in respect of all procurements, irrespective of size. E-procurement is mandatory for all procurements greater than Rs 10,00,000 with effect from April 1, 2012 in a phased manner by different ministries and central public sector enterprises. “Although the CPP does not cover contracts of all values...it is a major step in reducing opacity in public procurement”, as noted in a Situation Analysis Paper of October 2013 by the Global Compact Network’s Delhi wing.

iii) **Companies Act, 2013**

The newly amended Companies Act contains certain features that provide for independent supervision of a company’s affairs and therefore, could be used to enhance safeguards against anti-competitive practices by public sector enterprises engaged in procurement. These new provisions include that at least 1/3rd of the total number of directors of every listed company and other public company must be independent directors (Section 149 (4)); every listed company and other prescribed public companies have to appoint internal auditors, with a period of interval of internal audit to be prescribed by rules (Section 138). However, it needs sensitisation of independent directors and internal auditors to concepts of competition policy if the potential of these provisions as safeguards against anti-competitive practices is to be fully realised.

iv) **Whistle-blowing mechanism**

The most extensive forms of fraud and anti-competitive practices are not detected as a result of internal controls, partly because perpetrators of such activities work in areas that are not tightly controlled or in areas they themselves control. Therefore, as concluded in the above cited paper of the Global Compact Network of the UN, “The most effective form of...detection is a tip, often received anonymously from an insider, often called a ‘whistle-blower’. However, whistle blowing requires tremendous individual courage to go against entrenched powerful elements within the system, particularly when there is little protection from harassment of such persons.”

Some steps have already been taken to curb corrupt and anti-competitive practices through a framework under which whistle-blowers can be protected. Clause 49 (the listing agreement) on corporate governance, revised by the Securities and Exchange Board of India (SEBI) in 2004, was the first legislation to recommend adoption by companies of a whistle-blowing mechanism.

The Companies Act, 2013 strengthened the whistle-blower mechanism by requiring every listed company to establish a vigil mechanism for directors and employees to report genuine concerns (Section 177).

As part of its initiatives to introduce greater transparency/eliminate corruption, including anti-competitive behaviour, the government introduced The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill in 2010. The Bill, passed by the Lok Sabha (Lower House of Parliament) in 2011, awaits passage by

the Upper House. Once the legislation is passed, it is expected to provide a much higher degree of protection to whistle blowers to enable greater probity and competition in Public Procurement by encouraging reporting of instances of misuse of power by government procuring agencies.

(v) **Amendment to the Prevention of Corruption (PC) Act, 1988 introduced in the Monsoon Session of Parliament, 2013.**

As highlighted in the paper, one of the weaknesses of the role of an important authority monitoring procurement in India, the Central Vigilance Commission (CVC) is that it cannot take action under the Prevention of Corruption Act against the bribe giver who is committing not only fraud but unfairly trying to claim an advantage in the procurement process which is not his due, thereby distorting competition. The amendment to the PC Act moved in the Monsoon Session of Parliament, 2013, seeks to address this problem through amendment of Section 8 of the original Act.

This kind of provision also exists in the Public Procurement Bill, 2012.

(vi) **Ratification of the UN Convention Against Corruption (UNCAC) by India and other measures for strengthening governance and effective delivery of public services.**

Ratification of the UNCAC by India in 2011 constitutes a landmark in that it is the first global legally binding international anti-corruption instrument. It requires that State parties implement several anti-corruption measures criminalising certain conducts, strengthen international law enforcement and judicial cooperation and provide



effective legal mechanisms for asset recovery, among other things.

Pursuant to signing this Convention, India has introduced a raft of anti-corruption measures in Parliament. These include The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill in 2010 (discussed above under Whistle-blowing mechanism); The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011; the Public Procurement Bill, 2012; the 2013 amendment of the Prevention of Corruption Act, 1988, to address the supply side of corruption; The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011. The Lokpal and Lokayuktas Act, passed by Parliament in the Monsoon Session of 2013 is one more important attempt to address corruption by creating a process for receiving and investigating corruption complaints against public officials, including elected officials.

The entire gamut of anti-corruption measures, if passed, will have far-reaching effects in addressing corrupt practices, including those which seek to limit and distort competition, including in the field of Public Procurement.

### **Ranking of India in the Global Competitiveness Index (GCI) 2013-14 of the World Economic Forum**

‘Competition’ can be viewed in broader terms by interpreting it as the positive business ambience in a country. The World Economic Forum, while ranking countries on competitiveness in their Global Competitiveness Index (GCI), ranks India on

the index of Property Rights, on average, with a rank of 58; for 'Irregular payments and bribery', India ranks very low at 110 among 148 countries; in enforcement of contracts through settlement of disputes by judiciary, India's rank on average is at 62; on 'Protection of shareholder interest' and 'Strength of investor protection' India is once again on average at 52 and 41 respectively.

It cannot but be concluded that unless the general business environment in India becomes more competitive, competitiveness in Public Procurement is also unlikely to pick up.

## **Recommendations**

It would be seen from the above that India's current drive against anti-competitive, corrupt practices through legislation holds great promise. But it has to be matched by effective implementation. For this, as highlighted by Secretary General, CUTS, at the 3rd BRICS International Conference on Competition, the most important key is the creation of a culture of competition.

As the integration of the world economy increases, cross-border anti-competitive conduct makes international cooperation amongst competition authorities another crucial necessity in promoting competition, including in Public Procurement.

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## 2

# Interface between Public Procurement and the National Manufacturing Policy of India

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The National Manufacturing Policy (NMP) was announced on November 4, 2011<sup>9</sup> with the objective of enhancing India's share of manufacturing as percentage of GDP to 25 percent within a decade (it currently stands at about 16 percent) and, in the process, creating 100 million jobs by 2022; enhancing India's global competitiveness, domestic value addition, technological depth with environmental sustainability of growth. To achieve these objectives, inter alia it is planned to build national capabilities in strategic areas such as aerospace, shipping, IT hardware and electronics, telecommunication equipment, defence equipment and solar energy.

It is also the objective to leverage government procurement in achieving national capabilities/ domestic value addition. The major rationale for this policy is that strategic goods are mostly imported, which exacerbates the current account deficit and renders India's demand for strategic goods vulnerable to supply conditions abroad.

Government procurement, as envisaged under the NMP, will stipulate local value addition in areas where government procurement needs can be clubbed over a number of years to create volume and scale that enable development of manufacturing capabilities. Special focus for local content in government procurement will be in critical technology areas like solar energy equipment, LED, IT hardware and IT-based security systems, fuel-efficient transport equipment.

While there is no doubt that the NMP is well conceived, some critics feel that the emphasis on local content in government procurement goes against the tenor of the Public Procurement Bill, 2012 which does not discriminate between domestic and foreign suppliers, vide Section 11 (1) thereof: *“The procuring entity shall not establish any requirement at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or any category thereof, except when so authorised or required under the provisions of this Act or Rules made thereunder, or under the provisions of any other law for the time being in force”*.

Public Sector Enterprises (PSEs) also feel that the transparency requirements of the Public Procurement Bill, 2012 puts them at a disadvantage with the private sector, on whom such requirements are not applicable. The Public Procurement Bill will force PSEs to disclose their purchase prices for equipment and materials, putting them at disadvantage with the private sector.<sup>10</sup> Therefore, according to the PSEs, the requirements of the Public Procurement Bill interfere with the thrust of the NMP to jumpstart investment in manufacturing.

However, any tensions between the thrust of the NMP with the Public Procurement Bill are resolved regarding the main point of non-discrimination between domestic and foreign

manufacturing through sub-section 2 of Section 11 of the Bill, which contains an exception to the general non-discrimination between different categories of bidders, to the effect that procurement of any subject from any category of bidders or purchase preference from any category of bidders for the promotion of domestic industry, socio-economic policy of the Central Government and any other consideration in public interest in furtherance of a duly notified policy.

### **Challenges in Exploiting the Exception from the Non-Discrimination Clause of the PPB 2012 through the NMP**

The Public Procurement Bill 2012 has introduced scope through sub-section 2 of Section 11 for favouring domestic industry for reasons of national importance; vide the text of the provision as follows:

*“The Central Government may, by notification, provide for mandatory procurement of any subject matter of procurement from any category of bidders, or purchase preference in procurement from any category of bidders on any of the following grounds, namely:*

- (a) the promotion of domestic industry;*
- (b) socio-economic policy of the Central Government;*
- (c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government:*

*Provided that the reason and justification for such mandatory or preferential procurement, the category of bidders chosen and the nature of preference given shall be specified in that notification”*



However, in effectively tapping into this exception from the general non-discrimination provisions of the Bill, industry faces a number of challenges due to critical lacunae in India's current manufacturing practices. The main amongst these are as follows:

- i. Low competitiveness of Indian manufacturing and low labour productivity
- ii. Low expenditure on research and development
- iii. Lack of domestic supply due to inadequate physical infrastructure; complex regulatory environment; inadequate availability of skilled manpower; non-availability of high-end technology; discouragement by domestic PSEs for domestic input through tender specifications favouring MNCs. For instance, there is the case of BSNL submitting a tender for an NSF project despite specifications which rule out participation by SMEs.

### **How NMP Plans to Resolve Challenges Faced by Indian Manufacturing Industry?**

The NMP tries to resolve the challenges facing Indian manufacturing industry through policy interventions, inter alia

- the setting up of National Investment & Manufacturing Zones (NIMZ), which will be developed in the nature of greenfield industrial townships benchmarked with best global practices;
- digitisation of land and resource maps, creation of land banks, water zoning;
- fiscal and exchange rate measures;
- public sector reform through, inter alia, rationalisation and simplification of business regulations, simple and expeditious exit mechanism for closure of sick units;
- incentives in the form of tax concession and government subsidy for indigenous development of technology;

- industrial training and skill upgradation, including ‘Farm to work’, and ‘School to Work’ programmes targeted at the minimally educated workforce entering the non-agricultural sector for the first time, incentives for setting up specialised polytechnics and new ITIs;
- technology acquisition through setting up of a Technology Acquisition and Development Fund (TADF) for acquisition of appropriate technology, including environment-friendly technologies, creation of patent pool, development of domestic manufacturing of equipment used for controlling pollution and reducing energy consumption;
- encouragement to SMEs through tax incentives; giving SMEs access to the patent pool/part reimbursement of technology acquisition cost by SMEs, liberalisation of RBI norms for banks investing in Venture Capital Funds with focus on SMEs, easier access to bank finance, setting up of a service entity for helping SMEs to comply with payment of statutory dues, etc.;
- sector-specific intervention in priority sectors where India can be cost competitive, which would generate maximum employment or which are strategic industries;
- encouraging foreign investment and technologies to induce the building of more domestic manufacturing capabilities;
- rationalisation and simplification of business regulations;
- labour management to encourage unions and employers to develop better institutional arrangements, rationalisation in employment laws and shop floor practices;
- Leveraging government procurement for growth of manufacturing.

## Ground Position faced in Implementing NMP & Availing of Flexibility in the Public Procurement Bill

Some of the ground-level problems in implementing the NMP which need to be solved through proper planning include the following:

*i. Future demand for product needed by government is not communicated sufficiently to the industry in certain cases*

Table 1: Import Content in Domestic Production for Strategic Goods				
Product	Market Size 2010-11 (In crores)	Production 2010-11 (In crores)	Import 2010-11 (In crores)	Import Content in Domestic Production
Machine Tools	10,236	3,624	7,245	30% in standard machine tool (medium technology) 40% in high technology machine tools
Earth Moving and Mining Equipment	14,500	7,333	7,395	35% in standard machine tool (medium technology) 78% in high technology machine tools
Engineering Goods	116,449	106,820	28,155	
<i>Source: Adapted from the Report of the Working Group on Capital Goods &amp; Engineering Sector for the 12<sup>th</sup> Five Year Plan (2012-17), Department of Heavy Industry Ministry of Heavy Industries &amp; Public Enterprises, Capital Goods &amp; Engineering Sector (October 2011), available at <a href="http://dhi.nic.in/WG_CGES_rep_2011-17.pdf">http://dhi.nic.in/WG_CGES_rep_2011-17.pdf</a>, accessed on 28.10.2012).</i>				

Even in cases where a product may be domestically manufactured, it may still register high import content because of such lack of planning. The point can be illustrated through some examples in equipment manufactured and engineering goods in the see table page 28:

ii) *Government demand for goods which are not indigenously produced could be solved by setting up new units to supply these items:* An idea of the gap between demand in India and gap in the domestic supply can be seen in the table which follows:

Table 2: Gap Between Demand and Domestic Supply in India	
<i>Product</i>	<i>Factors Motivating Demand, Supply and Import</i>
<i>Semiconductor units</i>	<i>90% of domestic demand is met through imports.</i>
<i>GPON<sup>11</sup></i>	<i>The Bharat Broadband Network, an SPV which implements the Ministry of Communications and has a corpus of ₹1,000 crore, is seeking to buy broadband equipment worth ₹2,500—3,000 crore.</i>
<i>Smart meters</i>	<i>Bangalore Electricity Supply Company (BESCOM) will be importing one million ‘smart’ meters. These meters are not manufactured in India.</i>

The demand-supply gap in these types of goods is best illustrated through the situation in the electronics industry. Currently, India imports \$33 billion worth of electronic goods. The level of import of electronics equipment is currently at 50 percent and expected to rise to 75 percent because of

growing demand in automobile, aviation, health equipment, media, broadcasting and defence armaments.

That the gap in this regard is set to be covered can be seen in the fact that even though there was no electronic chip manufacturing or semiconductor wafer fabrication plant in India until now, the Hindustan Semiconductor Manufacturing Corporation has obtained an in-principle nod for setting up an electronic chip-making unit.<sup>12</sup>

*iii) Preferential market access policies should be structured better*

A targeted preferential procurement policy can impact the interface between manufacturing and procurement in a profound manner. Preferential market access schemes in India cover the telecom sector, ICT sector and solar equipment which use elements like the clustering, tax benefits, R&D subsidies to encourage domestic growth of the industry.

However, these PMAs need to be designed carefully, keeping in view of factors like India's WTO obligations. For example, the PMA policy notified in the electronics sector through Notification No. 8(78)/2010-IPHW dated 10<sup>th</sup> February, 2012, of DOE & IT, which cited security reasons for giving preference to domestically manufactured electronic products, had to be replaced by the new Notification No. 33(3)/2013/IPHW dated December 23, 2013. The first Notification, by invoking security reasons, was probably imposing restrictions on procurement even by private sector, whereas they do not come under the coverage of Government Procurement and therefore, GATT rules on national treatment would have been violated. The new circular has been carefully designed, so as to cover procurement only by central ministries and

departments (except Ministry of Defence) and for electronic products procured under centrally sponsored schemes and grants made by central government.

Another example of a PMA measure which lies in a grey area in the context of India's WTO obligations is that mandating domestic content requirements under the Jawaharlal Nehru National Solar Mission (JNNSM) for solar cells and solar modules. The US claims that the measures appeared to nullify or impair the benefits accruing to them under Article III.4 of GATT 1994 (guaranteeing that the products of the territory of any WTO Member imported into the territory of any other Member shall be accorded treatment no less favourable than that accorded to products of national origin) and Article 2.1 of the TRIMS Agreement of WTO (guaranteeing that a WTO Member shall not apply any measures that discriminate against foreign products).<sup>13</sup>

These arguments are based on the premise that the developers of solar power are private developers, not covered by the scope of the Government Procurement Agreement of WTO and hence are covered by the usual GATT and WTO regime guaranteeing National and Most Favoured Nation Treatment. The US has been joined by Brazil, Canada, China, the EU, Japan, Korea, Malaysia, Norway, the Russian Federation and Turkey as third parties to the dispute in WTO. India insists that its policy is WTO-compliant: the import restrictions on solar equipment are justified as Phase II of the JNNSM programme includes major government subsidies and public money should not be used to pay for imports.<sup>14</sup> Thus the PMA for solar equipment appears to be in a grey area with reference to India's commitments under WTO.

It would be in India's interest if the design of PMAs by any line Ministry/Department was done in consultation with the Ministry of Commerce, in order to ensure that the WTO compatibility of a policy could be checked out before roll out of the policy.

The targets set in these sectoral policies are envisaged to increase annually. For example, in the case of Preferential Market Access Scheme for Telecom Products,<sup>15</sup> preferential market access will increase gradually annually and the amount of value addition is expected to increase concomitantly (30 percent in 2012-13, with a value addition of 25 percent; 45 percent in 2014-15 with a value addition of 35; 60 percent with a value addition of 50 percent in 2016-17). However, an assessment of current production capacities and the potential to progress in the value chain is not taken into consideration. This renders the actual achievement of the targets set in these policies suspect. This issue could be further clarified by a careful survey of current production capacities and a careful definition of the term “domestic value addition”.<sup>16</sup>

*iv) Inadequate technology transfer*

Effective Preferential Procurement Policies can provide ‘lead markets’ for new technologies, particularly, when the government engages in procuring products that are not in the mainstream market currently. Public Procurement can be used to impact the technology life-cycle and to promote clusters and innovation systems.<sup>17</sup>

In India, a positive example is that of Ministry of Power which has succeeded in achieving ‘localisation of supercritical technology’ by permitting only players with domestic manufacturing facilities to participate in a tender for bulk orders of national and state utilities owing to which multiple

JVs were created (examples include L&T and Mitsubishi, Bharat Forge and Alstom). Similarly, a good practice worthy of mention at this juncture is Korea's aggressive approach to technology acquisition through technology transfer agreements, technology licensing, capital goods imports, reverse engineering, adaptation and product development.

The Harbajan Singh Committee report (2011) of the Department of Heavy Industry, while considering how best to encourage technology transfer in machine tools, notes that Integrated Machine Tool parks in Taiwan China and Korea have facilitated them to turn into machine-tool producing countries.<sup>18</sup>

*v) Lack of incentives to innovate in strategic goods*

It has been asserted that the current rules on expenditure control do not encourage much innovation.<sup>19</sup> As per the provisions of the Science, Technology and Innovation Policy which states that “General rules of expenditure control of publicly funded institutions do not suit non-linear growth sectors like science and technology, and more so the innovation sector. Auditing principles should be more aligned to “performance” than “compliance to procedure. The system should be able to differentiate between genuine failures and process deficits”.

Currently, procurement practices by ministries and departments do not incentivise innovation. For instance, in the case of procurement of power equipment, it is worth mentioning that while Indian companies which produce power equipment spend only two percent of their sales on R&D, foreign companies which enter into joint ventures/ technical collaboration agreements spend as much as 12 percent. The current contracting procedure which does not reward



innovations is one of the reasons for low spending by Indian companies that could result in a better product. This clearly reflects that existing procedures do not provide incentive to improve innovative product offering. Ironically, a product with enhanced facilities may be considered a deviation from the contract specifications.<sup>20</sup> Sinha further suggests that assurance of purchase is critical because of the small size of the industry and the extent to which capital has been invested to engage in the manufacture of such products – however, this aspect is not addressed in the norms governing expenditure control of ministries/departments undertaking procurement.<sup>21</sup>

The solution to this would be to rationalise the rules on expenditure control with regard to science and technology innovative sectors so that they are more aligned to ‘performance’ rather than to “compliance to procedure”.<sup>22</sup>

*(vi) Some other solutions to encourage domestic value addition*

- For better projection of demand to suppliers, inter-Ministry consultations should be regularly held between strategically significant ministries like the Ministry of Heavy Industry and Ministry of Petrochemical/Chemicals. Ministry of Finance, Ministry of Defence, Ministry of Railways, Ministry of Power, Ministry of Oil & Natural Gas, Ministry of Steel, Ministry of Fertiliser and Ministry of Mines.
- Invite investment in research and development. For instance: The Republic of Korea accounts for about 53 percent of total private sector research and development in the developing world. India may like to adapt and take lessons from such policies to meet its own requirements.
- Enhance indigenous production base by offering tax holidays, “component manufacture agreements”, and power at a fixed rate for a specified period of time to invite investments.

- Make India the next ‘attractive manufacturing destination’ by use of developing neutral standards. A distinct example, in this context, where standardisation can be used to incentivise production in India is to note that while the EU uses IEC standards for electrical engineering goods, the US has started using different standards owing to which capital goods companies are relocating their manufacturing. Similarly, the Department of Telecom is engaged in setting up of Telecommunication Standard and Development Organisation and creation of a fund for promoting R&D and Manufacturing, as anticipated in the results framework document (RFD). This could present an opportunity for India to establish itself as a technology-neutral manufacturing hub to invite foreign players.

## Green Shoots

Green Shoots can be seen in India in the initiatives to opt for carefully designed Preferential Market Access policy in areas of critical technology, like electronics and a spate of promotional measures<sup>23</sup> to encourage growth of domestic industry in these fields. Some examples are as follows:

- a) **The new PMA policy dated December 23, 2013**, vide Notification No. 33(3)/2013-IPHW of the Department of Electronics & Information Technology (DOE & IT), Ministry of Communications & IT is applicable only to central ministries/departments (except Ministry of Defence) and their agencies for electronic products. The PMA also covers electronic items made under centrally sponsored schemes and grants made by central government. Each ministry/department would notify the sector - specific electronic products for PMA and generic products would be notified by the DOE & IT under the scheme. The percentage of procurement to be made from

domestically manufactured electronic products would not be less than 30% of the total procurement value of that electronic product/total procurement of electronic products by the Ministry. The electronic products to be notified would meet the graded domestic value- addition in terms of Bill of Material (BOM) from domestic manufacturers, commencing from 25% in Year 1 and reaching 45% by Year 5.

- b) **Schemes of Department of Electronics and IT (Government of India) to promote growth of domestic manufacturing capacity in electronics** includes the following:
  - i) **Semiconductor wafer fab:** The long cherished hope of getting semiconductor wafer fabs in India has come closer to reality with the Government giving a green signal to two consortia for setting up semiconductor wafer fab in the country and approving an attractive incentive package for FABs. These two FABs would have capacity of 40,000 wafer starts per month, with technology nodes ranging from 90 to 22 nm and involve investment of USD 5 billion in each.
  - ii) **Investment proposals:** Proposals involving investment of INR. 13,200 crores were received during the year 2013. The first set of investments has been made and they are by the global majors as well as small scale companies.
  - iii) **Electronic Manufacturing Clusters:** ‘In principle’ approval to 7 new Greenfield Electronic Manufacturing Clusters have been granted, involving investment of INR 2,237 crores. Two of these clusters are being promoted by private industry while five are being implemented by state government entities.
  - iv) **State Policies:** The governments of Karnataka, Andhra Pradesh, Maharashtra, Madhya Pradesh and West Bengal have come out with incentives for the electronics sector

over and above those being given by the central government.

- v) **Venture Funds for R&D and Innovation:** Three venture funds to support start-ups in electronics are under approval and the funds to be released are likely to stimulate new product development and generate IP in the area of electronics.
- vi) **Skill Development in Electronics:** INR 114 crores has been approved for providing skill development in electronics, involving 75% assistance of the training fee for training in electronics manufacturing related skills. Nearly 90,000 persons will be supported under the scheme in six states.
- vii) **International Collaboration:** A joint working group has been set up between India and Japan to foster greater collaboration between the two countries. A sub group for promoting manufacturing in high tech sector has been constituted as part of the Joint Working Group between India and the US. An MOU has been signed between TEEMA of Taiwan and STPI of India to promote the electronics sector.
- viii) **Incubators:** The proposal for setting up an incubator for start-ups in electronics is being sanctioned in Delhi. This is one of the four incubators to be set up in India.
- ix) **National Centre of Excellence in Large Area Electronics:** This is to be under a joint incentive of industry and academia and will focus research on problems of the industry in areas like flexible electronics, print electronics, LEDs etc.
- x) **Export Benefits Expanded to More Electronic Products:** The list of items has been expanded to encourage export of electronic products by domestic manufacturers.
- xi) **Compulsory Registration of Electronic Goods:** Mandatory requirement of meeting safety standards for

15 sets of electronic products came into effect from July 2013, with issue of nearly 450 registrations till the beginning of January, 2014.

- xii) **Scheme for Expansion of PhDs in Electronics Sector:** A scheme to enhance the number of PhDs in this sector to 1500 per annum by 2017-18 is under approval by the Government.

Also comprising what can be described as ‘green shoots’ is the **policy of Preferential Market Access for MSME products**. The policy of government in India announced in December, 2012 mandating that each central ministry and department source at least 20% of their annual procurement requirements from the MSME sector by 2015 has been fruitful, as data gathered from the biggest Central Public Sector Enterprises (CPSEs) numbering 108 show that the percentage of procurement from this sector, which used to be on average at 5% only has risen to 15.29% in the financial year 2012-13 and further to 19.65%© in the year 2013-14.<sup>24</sup>

## Conclusion

There is no mismatch between the goals set out in the policy emerging through the disciplines of the Public Procurement Bill, 2012 and the National Manufacturing Policy of 2011, if the goals of the two are read together and skillfully interwoven. However, the opportunity allowed through the exception clauses to the normal non-discrimination rules of the Public Procurement Bill need to be fully exploited through a policy which takes heed of ground realities to enhance domestic value addition in critical sectors of government procurement.

### 3

## Public Procurement and Interface between Fiscal Federalism

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While the other chapters on National Public Procurement Policy for India have looked at the **ways** in which Public Procurement is being carried out or should be done, this chapter examines the **means** for undertaking Public Procurement. It takes a look at the devolution of resources to the Centre and the States in India, which has a federal structure, since resources are at the crux of the power to procure of governments.

While federal Constitutions everywhere are marked by an asymmetry between the functional responsibilities and the financial powers at different levels of government, the Indian Constitution, while expressly vesting the Centre with greater powers of taxation than the States, also provides for an institutional mechanism, i.e. the Finance Commission, to determine the share of States in the Central tax revenues for correcting this asymmetry. While deciding on the devolution of taxes and provision of grants, the Finance Commission addresses the vertical imbalance (between the Centre and States) as also the horizontal imbalance, i.e. between the States

with varying fiscal capacities but similar responsibilities in the provision of public services and Public Procurement for the same.

While the Centre gets a little over 60 percent of total tax of total revenue, the States are left with less than 40 percent of revenue, although their share in revenue expenditure averages about 57 percent.<sup>24</sup> To address the lacuna, about 40 percent of Central revenue (tax and non-tax) is transferred to the States and this includes the grants they get from the Planning Commission and the Central Ministries.<sup>25</sup>

Although the shareable pool of resources has been enlarged through the 80<sup>th</sup> Constitution Amendment to include all Central taxes, the relative revenue accruals of the Centre and the States has not seen any major change over the years. As noted by Rangarajan and Srivastav “*there has been a long-term stability in the shares of the Centre and States in the combined tax revenues*”.

The fiscal capacities of the States, as measured by per capita income, continue to vary widely, even after six decades of economic planning and federal financial devolution. The difference in income levels between the richest and the poorest States is in the ratio 4:1. Consequently, there is uneven provision of public services and uneven capacity for Public Procurement to provide such public services across the States, even in the case of ‘merit goods’ like education and health services.

The inter-State inequality on account of differences in fiscal capacity for Public Procurement is further compounded by two factors. States with low income levels have large populations. This implies that they have to transfer huge

additional resources if there has to be any impact at all. Moreover, some States have some kind of “cost disabilities” because of the vastness of the area or other geographical and climatic factors. A cleared equalisation methodology has yet to be developed to address these systemic problems.

### **How Transfers are Determined: The Root Cause of Fiscal Imbalance**

A notable feature of the transfer system in India is the existence of multiple channels.<sup>26</sup> The Constitution of India provides for the appointment of the Finance Commission to make an assessment of the fiscal resources and needs of the Centre and individual States and make recommendations for sharing of revenues and grants-in-aid to the States. However, with development planning gaining emphasis, the scope of the Finance Commission is restricted to cover the States’ non-plan requirement in the current account.

The Planning Commission has become a major dispenser of funds to the States by way of both grants and loans. In addition to these two channels, various Central ministries give specific purpose transfers with or without matching requirements. The trends in the relative shares of the three channels of Central transfers to States show that “*the proportion of formula based transfers given by the Finance Commission and the Planning Commission has declined and that of discretionary transfers has increased in recent years*”.<sup>27</sup>

The approach of the Finance Commission to determining transfers consists of (i) assessing the overall budgetary requirements of the Centre and States to determine the volume of resources that can be transferred during the period of their recommendations; (ii) forecasting States’ own current revenues



and non-plan current expenditures; (iii) determining the States' share in Central tax revenues and distributing them between the States based on a formula; (iv) filling the post-devolution projected gaps between non-plan current expenditures and revenues with the grants in aid. This is known as the 'gap-filling' approach.

Tax devolution is recommended mainly on the basis of general economic indicators. The system of assigning weights to contradictory factors like 'backwardness' and 'contribution' in the same formula has rendered the achievement of the overall objective of offsetting revenue and cost disability difficult. Over the years, attempts have been made to improve the degree of equalisation in the transfer scheme by assigning higher rate to per capita State Domestic Product (SDP). Yet, population has continued to receive the largest weight.

The unreliability of measuring some of the criteria for deciding the allocation of resources, like 'tax effort' and index of 'fiscal discipline' by the State concerned, also makes the equalisation exercise complex. In a tax system which is predominately origin based, there would be significant inter-state tax exportation, but the 'tax effort' indicator used in the criteria for tax devolution ignores this phenomenon. Equalisation has been further blunted by the fact that the devolution policy does not take into account situations where States have high population growth not because of high fertility rate but due to migration. The 'gap-filling' approach has faced severe criticism as it disincentivises fiscal management by the States.

Shortcomings of intergovernmental transfers in India can be summed up as follows:

- Multiple agencies with overlapping jurisdictions have blurred the overall objectives of transfer.

- Accommodating different interest has unduly complicated the transfer formula.
- The design of the transfer system is not well targeted to achieve equalisation and to ensure minimum service levels in the States.
- The design also has disincentive effect on fiscal management in the States.
- While there is certainly a role for specific-purpose transfers in the Indian federation, the design and implementation of the centrally sponsored schemes has tended to multiply State-level bureaucracy and distort States' own allocations.

## The Way Forward

The transfer system should offset the fiscal imbalances. However, despite achieving a measure of equalisation and attempts to impart objectivity to the system, it has left a lot of room for improvement. It is therefore necessary to redesign the transfer system to improve accountability, incentive and equity.

Reforms concerning both vertical and horizontal dimensions primarily revolve around the following main questions:<sup>28</sup>

- i) **Redefining the Scope of Planning and Finance Commission:** This is to avoid overlap in their roles. Preferably, the entire transfer should be the responsibility of the Finance Commission and the Planning Commission should focus on physical infrastructure.
- ii) **Stability in Vertical Transfers:** Vertical transfers should be stabilised around an appropriate level. These should not continuously be changed in favour of one side or the other. The question assumes importance also because of

likely impact of the proposed Goods and Services Tax (GST) on vertical imbalance in India.

- iii) **Composition of Transfers:** The composition of transfers should be changed towards grants as compared to tax devolution and within grants, larger emphasis should be on grants on statutory basis as recommended by the Finance Commission (FC) rather than grants at the discretion of the Centre.
- iv) *Gap-filling Approach to Determining Transfers:* In the case of horizontal transfers, the long-term criticism of the Indian approach has been the so-called gap-filling approach in the assessment of needs and resources by the Finance Commission because of the implicit adverse incentives.
- v) *Measurement of Fiscal Capacity:* In applying the equalisation principle, measurement of fiscal capacity of states is a key requirement. The measurement of state-level fiscal capacity in India is proxied by estimates of the Gross State Domestic Product (GSDP) at factor cost. This provides an incomplete indicator of fiscal capacity, although Central Statistical Organisation (CSO) prepares comparable estimates of GSDP. A more comprehensive indicator of fiscal capacity is needed.
- vi) *Determination of Relative Weights of Sharing Criteria:* The largest share of transfers is accounted for by the Finance Commission, using revenue-sharing criteria. The relative weights assigned to different criteria remain, by and large, ad hoc. There is need to develop an objective framework for determining suitable weights for the alternative revenue-sharing criteria.

- vii) *Bail-outs and Controls on Borrowing:* In a system where States borrow heavily from the Centre, there is an expectation that the Centre will provide a bailout from time to time. This leads to negative incentives for the States to finance current expenditure through borrowing from the Centre and other sources and expect that either a gap-filling grant or a debt-service write-off will bail them out in future.
- viii) *Growing Centralisation of Expenditure on State Subjects:* There is clearly a trend of Central Government getting involved in spending more and more on subjects that are under the Concurrent List or the State List in the Constitution — sometimes through State governments and sometimes bypassing them. In the past, this had the effect of squeezing the economic policy space of the States and also the room for private enterprise which, combined with other policies that severely restricted competition both external and internal, ultimately retarded growth. Thus this trend needs to be reversed.
- ix) *Adequate Revenue Powers to the States:* An important feature of a successful system of fiscal federalism is the assignment of adequate revenue powers to sub-national governments to forge a strong link between revenue and expenditures at the margin. This is necessary for both efficiency and accountability reasons. Assignment of revenue powers is also necessary to ensure a hard budget constraint. This is important to ensure that the transfer system does not provide the incentive to “raid the fiscal commons”.

- x) *Specific Purpose Transfers:* There is an urgent need to consolidate the prevailing schemes numbering in hundreds to just about 10-15, provide greater flexibility in their design and administration and have lowered matching ratio requirement for poorer States.
- xi) *Lack of Incentive for Growth of a Common Market:* One can identify at least two ways in which the operation of federalism impacted negatively on the economy in the two decades following the initial years of good growth. One is the inefficiencies created by the Centre's attempt to take on too much and manage the economy at the micro level; the other was the failure of the federal system to ensure the smooth functioning of a common market in the country. The job at hand is to reverse the trend to segment markets through controls and tax and other disincentives on the inter-state movement of goods.
- xi) *The Issue of Fiscal Discipline:* The Fiscal Responsibility and Budget Management Act, 2003, aims to eliminate revenue deficit of the country (building revenue surplus thereafter) and bring down the fiscal deficit to a manageable 3 percent of the GDP. But despite resource asymmetry, most States achieved the statutorily envisaged fiscal consolidation by 2006 itself, by bringing down fiscal deficit to less than 3 percent of GDP and wiped out the revenue deficit as mandated. However, the Centre has not complied with the FRBM mandate. It has not been able to control its revenue expenditure, particularly the outgo by way of subsidy. The Central Government should provide a clear lead in fiscal consolidation and only then can it motivate the states to follow disciplined calibration of fiscal policy.

- xii) Possible impact of the proposed Goods & Services Tax: What will be the impact of the proposed GST on the vertical imbalance? This will depend on the pattern and the rate of the GST that will be put in place. Rangarajan & Srivastav favour a dual rate, with the Central and State levies applying concurrently to all goods and services. The GST rates should be determined, they recommend, taking into account the present level of revenue of the two tiers from the concerned taxes, so as to ensure that the fiscal imbalance does not increase.

## **Conclusion**

Reform of vertical and horizontal imbalances is likely to lead to a better distribution of resources between the Centre and States and between the States per se, which would inevitably impart more equity to Public Procurement and thereby impart a more even quality of delivery of public services by the national and sub-national levels of government in the Indian federation. Hence this interface of fiscal policy with Public Procurement is vital and needs to be taken into consideration while drafting a Public Procurement policy.



## 4

# Relationship between Public Procurement and Trade Policy

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India attained ‘observer status’ in the WTO Government Procurement Agreement (GPA) in 2010. Since then there has been speculation about its ascension to full member status in the agreement. The discussion was further accelerated with the slowdown in world trade and increase in current account deficits of several major economies, including of India.

The literature on Public Procurement suggests that usually countries acceding to any agreement in regards to Public Procurement, whether at the WTO or in free trade agreements (FTAs), have two key objectives – first, to improve their export market accessibility as provided by GPA or partner member-countries in an FTA; second, to embrace reform of internal market and administration so as to benefit from good governance aspects of the respective agreements.

In this context, the potential size of the Indian market for Public Procurement, estimated at \$1.6 trillion, is therefore of vital importance for its trading partners so also for India itself. In India, the need for principles of good governance has also aided the discussion on reforming the Public Procurement system in these difficult economic times.



While a country can employ a combination of objectives, its strategy of accession to the GPA would need to be considered on its own merit, based on an assessment of potential benefits and costs. Industrialised countries have shown keen interest in market access to the significant government purchases and procurement market of India, as is evident from the ongoing EU-India FTA negotiations and in the India-Japan FTA. It is noteworthy that once a government gives market access to its Public Procurement market, it is legally bound to treat foreign companies in the same way as it deals with domestic companies under the ‘national treatment’ clause when they apply for contracts. If not well prepared, this might result in small firms losing out in terms of market share for their products.

Although it’s an encouraging step, apprehension persists on how far a developing country like India with a huge market potential would benefit from opening up its procurement market without any safety nets. Before it decides on further opening up its market, procurement experts and officials will need to carefully assess the cost implications and the benefits to be accrued. This chapter thus is an attempt to explore the interface of Public Procurement with trade policy of India and whether the policies are compatible with each other. The chapter, while focusing on trade policy interface of Public Procurement, utilises the WTO GPA as a template against which to compare the effectiveness of the proposed Indian Procurement Policy/legislation, in terms of its capacity to nurture transparency, competition and fair play in Public Procurement; to find out as to wherever there are broad departures from the principles and procedures of the GPA, how well they are suited to serve India’s own specific needs.

## **Why Public Procurement Matters in Trade?**

Public Procurement affects a substantial share of world trade flows, amounting to Euro 1,000 billion per year. It is a significant part of national economies, representing 10-25 percent of gross domestic product (GDP). In India, the Public Procurement of goods and services has been estimated to account for 20-30 percent of GDP.<sup>29</sup>

Recognising the role of Public Procurement policies acting as non-tariff barriers to trade, the General Agreement on Tariffs and Trade (GATT) in 1981 came up with an Agreement on Government Procurement (GPA). The Government Procurement Code negotiated during the Tokyo Round sought to reduce, if not eliminate, the domestic bias underlying such practices by improving transparency and equity in national procurement practices and by ensuring effective recourse to dispute settlement procedures. GPA sets out rules on how government purchases should be tendered and designed, to ensure that governments' procurement practices do not protect domestic suppliers and do not discriminate among different foreign suppliers.

Opening of Public Procurement markets means more potential suppliers and this would be beneficial for the following reasons:

- obtain better value for money and increase efficient use of public resources
- more competition and hence a powerful tool to fight corrupt practices
- increase transparency and legal certainty
- better quality of goods and services
- can access wider pool of talent and technology
- improved access to foreign markets by domestic producers

To a considerable extent, the objectives of opening up procurement to trade and value for money in acquiring goods, works and services are complementary. Opening up markets facilitates access to cheaper and better value purchases by government, including an incentive to domestic suppliers to improve their performance. However, there is also a potential for conflict between the two. For example, international regimes may require that information is made available in foreign languages in order to promote international trade, even though the direct financial benefits of increased participation in terms of better value-for-money for procuring entity do not justify the increased costs involved.

Various studies observe that Public Procurement agreements constitute considerable international business opportunities in sectors where Indian industry is highly competitive, like information technology and pharmaceuticals. This would stimulate a competitive Indian industry, creating employment and sustainable economic growth.

## **Openness of the Procurement Market in India**

The Public Procurement policies of the government provide preference to various categories of companies based on size and location to achieve certain socio-economic objectives. Such practices are based on the view that government procurement is an important instrument for investment to desirable sectors, less privileged social groups, creating jobs and underdeveloped regions of the country. For that reason, the central government has set reservations and price preferences as part of the procurement system.

However, India has always stood for an open, equitable, predictable, non-discriminatory and rule based international

trading system. Its openness in trading regime has been recognised by the world, vide India's latest Trade Policy Review in WTO (2011). Imports regularly outpace exports and the country's merchandise trade deficit in terms of percentage of GDP is one of the world's highest. The simple average MFN tariff rate declined from 15.1 percent in 2006-07 to 12 percent in 2010-11 and tariff on 71 percent of tariff lines between five and 10 percent. Besides, Foreign Direct Investment (FDI) policy is gradually opening up new sectors to foreign investment, e.g., retail trade, civil aviation, etc.

In addition, India has taken steps to strengthen its Intellectual Property Rights (IPR) regime. There is a well-established statutory, administrative and judicial framework to safeguard IPRs, whether they relate to patents, trademarks, copyright or industrial designs. Various important measures are constantly taken to upgrade IPR and comply with the international IPR regime; more steps have to be taken.

Despite lack of formal commitment, till date, the Indian government procurement market is sufficiently open though it also has the right to place restrictions on foreign companies.<sup>30</sup> In all high value procurement such as power, telecom, civil aviation, railways and defence, global tendering is the norm in India. For instance, in the Railways, foreign firms are free to participate in tenders advertised in India. Global tendering is frequently used in procurement of rolling stock, wheels, machinery and plant equipment, including technology transfer.<sup>31</sup>

If procurement is restricted to domestic suppliers, then it is clearly indicated in the tender notification. On the other hand, the country has never really got reciprocity from other

countries. Many countries are reluctant to open their procurement markets to international competition. This creates an uneven playing field for Indian companies and limits business opportunities in these markets.

The Government Procurement Manual, 2005 also provides that ‘Where the Ministry or Department feels that the goods of the required quality, specifications etc., may not be available in the country and /or it is also necessary to look for suitable competitive offers from abroad, the Ministry or Department may send copies of the tender notice to Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries’.<sup>32</sup>

At the same time, India’s competence and competitiveness in most other sectors have to grow for it to become a sufficiently influential player in the global government procurement markets. Only when such a level of competitiveness is reached, will India be able to effectively negotiate its own offensive and defensive interests to achieve benefits out of its accession to the WTO GPA.

## **The Public Procurement Bill and Market Access**

Given that the chapter explores interface of trade policy with Public Procurement policy and the Public Procurement Bill is the latest instrument on the subject, this section benchmarks the interface vis-à-vis the Public Procurement Bill. The Public Procurement Bill, 2012 introduced in the Parliament aims to regulate Public Procurement in order to ensure transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promote competition, enhance efficiency and economy, maintain integrity and public

confidence in the process and for matters connected therewith or incidental thereto.

Once it becomes an Act, the legislation would certainly be an initial step taken by India, which has an observer status at the WTO on government procurement, to test the waters for becoming a part of the plurilateral agreement. Without acceding to GPA, India continues unilaterally to offer non-discrimination between domestic and foreign suppliers in participation criteria under the new Public Procurement Bill, 2012. Clause 11 (1) states *“the procuring entity shall not establish any requirement at limiting participation of bidders....that discriminates against or amongst bidders or any category thereof, except when so authorised or required under provisions of this Act or Rules made there under...”*

Under the WTO regime, government procurement is excluded from most-favoured-nation (MFN) and National Treatment principles of the WTO, except amongst members of the plurilateral GPA.

However, the Bill maintains India's emphasis on its core concerns of using procurement as an instrument of socio-economic upliftment, protecting national security, by highlighting the national security interest clause and the purchase preference for promoting domestic industry and central public sector enterprises clause as reasons for procuring from a 'single source' if so required. For instance, clause 11(2) of the bill allows the Central Government to provide for mandatory procurement of any subject matter of procurement from any category of bidders, or purchase preference in procurement from any category of bidders on any of the following grounds, namely, (a) the promotion of domestic industry; (b) socio-economic policy of the Central Government;

(c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government.

Likewise, given the significant contribution of the Micro and Small Enterprises (MSE) sector to manufacturing output, employment and exports, a Central Government order<sup>33</sup> advised every central ministry, department or public sector undertaking to set an annual goal of procurement from MSEs from the year 2012 onwards, with the objective of achieving an overall procurement of minimum 20 percent of total annual purchases of products produced and services rendered by MSEs in a period of three years. After a period of three years, i.e. from April 2015, such procurement shall be made mandatory.

Preferential treatments accorded in the Bill to safeguard domestic industries are globally justified since the GPA has a special provision for developing countries to extend preference for development of domestic small-scale & cottage industries.

Thus, in general, the Bill appears to have internalised some of the best international practices and presented them in a way suited to India's current needs. If properly implemented, the legislation would do a great deal to bring transparency, competition and probity to the Indian procurement process. Nonetheless, it is noteworthy that it is applicable to Central Government ministries and departments to which powers of procurement have been delegated; to central public sector enterprises or undertakings owned and controlled by the Central Government; and to a wide range of other Central entities.

## **WTO Agreement on Government Procurement**

From the beginning in 1947, GATT had incorporated specific provision for exempting the national treatment obligation with regard to Public Procurement. This was because in general, member-countries were unwilling to subject their national procurement regimes to international discipline. This left the GATT parties and WTO members free to favour local firms and products.

However, gradually since the 1980s, some kind of regulation began to evolve in this area and in 1981 the Tokyo Round Code on Government Procurement came into force. The Code had 12 signatories and they agreed to provide non-discriminatory treatment in the purchase of goods of other signatories. Since then, progress was achieved in expanding the scope and coverage of the Tokyo Round Agreement and in 1996, the GPA came into force under the auspices of WTO.

A parallel development in this regard was the inclusion of Public Procurement in FTAs and regional trade agreements (RTAs) such as the European Union (EU) and the North America Free Trade Agreement (NAFTA). These regional agreements brought government procurement under specific disciplines for their member-countries. Such commitments opened the door towards transparency and non-discrimination in government procurement activities.

Currently, 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.



**Box 1: India and WTO GPA  
Membership – Opportunities**

- India gets MFN and National Treatment in GP markets of member countries;
- Good governance principles reflected in GPA are internalised;
- Helps India benchmark its laws & procedures against global good practices;
- Provides predictability to international & domestic suppliers, thereby attracting FDI;
- Provides India possibility to influence development within GPA;
- New work programmes in GPA on increasing access to GP by SMEs & making Public Procurement environment friendly, i.e., issues in which India has a stake.

Currently, 43 WTO members are covered by the GPA and 27 other WTO members have observer status under it. Till date, India is not a party to the GPA and in the past has firmly rejected the idea of such participation. However, the government is giving further consideration to accession to the GPA and from 2010 the country attained observer status in the GPA.

However, CUTS 2012 study states that even WTO GPA members, in their respective internal reports, like the Trade and Investment Barriers Report, 2011 of the EU, appear to admit helplessness against the growing tide of protectionist measures in the markets of WTO GPA countries and potential member countries. This current scenario hardly inspires confidence in non-WTO GPA members like India, that accession to the WTO GPA is likely to assure them market access in the member countries.

## **Bilateral/Regional Trade Agreements on Government Procurement**

Considering that regional and bilateral trade and economic cooperation agreements serve as a building block towards achieving the multilateral trade liberalisation objective, India is actively engaging in regional and bilateral negotiations with her trading partner countries to diversify and expand the markets for its exports.

This is in line with the objectives of the Foreign Trade Policy (FTP), 2009-14 which has the following aims: to arrest and reverse the declining trend of exports; double India's exports of goods and services by 2014; double India's share in global merchandise trade by 2020; simplify application procedure for availing various benefits; set in motion the strategies and policy measures which catalyse the growth of exports; and encourage exports through a 'mix of measures including fiscal incentives, institutional changes, procedural rationalisation and efforts for enhance market access across the world and diversification of export markets.

Since multilateral trade negotiations progress slowly, India is constrained to pursue regional and bilateral trade negotiations with vigour. India has signed nearly 27 RTAs with several countries under which they promised to give the other country's products lower tariffs. Of these agreements, India has included obligations on government procurement in its free trade agreement (FTA) with Japan. Even there it has agreed only to transparency and information sharing and not to market access as such.

With regards to India-EU FTA, negotiations on government procurement are underway and the final agreement may have

transparency as well as market access provisions on government procurement. According to reports, the EU wants access to India's government procurement market for contracts above a certain cut-off (called the threshold) value. This seems to be a core mandate for the EU negotiators in most of its FTAs.<sup>34</sup>

Similar is the case with the 12 rounds of negotiation on India-European Free Trade Association (EFTA) Bilateral Trade and Investment Agreement (BTIA). Both the parties have recognised the need to develop a mutual understanding on

<p align="center"><i>Opening up procurement market without safety nets – Some concerns</i></p>
<ul style="list-style-type: none"> <li>- Government procurement market of India can be accessed by a huge number of foreign countries, thus limiting the opportunity of domestic industries.</li> <li>- Some stakeholders are apprehensive that sectors like railways, energy, telecommunications, construction, health may wipe out domestic industry especially the SMEs for whom tough competition may prove life threatening due to increased number of foreign players</li> <li>- Legally allowing market access will certainly create an impact on the future growth of India's manufacturing and service sectors and on their linkages with the Indian economy. Once legally bound, country cannot go back in any situation.</li> <li>- Procurement market of countries like US and EU, though technically open to many countries, is virtually inaccessible. Very high standards of such developed countries cannot usually be met by Indian producers, while producers from those countries could easily comply with the Indian standard requirements.</li> </ul>

- No more preferential treatment to any desirable sectors, less privileged social groups and underdeveloped regions of the country, resulting in reduction in production and employment.
- Administrative cost of implementation may be high

government procurement policies and systems through exchange of information, including establishment of contact points.<sup>35</sup>

## Conclusion

For past few years, developed countries especially the US & EU have been eager to press the developing world including India into signing the GPA though the point of disagreement is the issue of market access into developing countries.

Currently, even without any commitments or legislations, India's market is relatively open as compared to others that are internationally bound. Studies show that very little is actually opened up by the developed countries for foreign suppliers as the bidding process and other qualification procedures in most countries may not be transparent and favour domestic suppliers in practice. For instance, various recent studies have highlighted that government procurement in the EU from foreign countries was as low as 0.3-1 percent during some years.

Hence, at the moment there is no need for India to agree to anything more than transparency and information sharing under any of the international agreements under negotiation or observation. As is the practice, India can always invite global tenders based on requirements without making and legal

commitments to do so. At the same time, success of the new policies supporting small-scale industries has to be observed to see whether these policies are worth continuing.

Adequate guidelines and principles exist for Public Procurement in India. The need is to ensure more effective implementation, along with ensuring checks and balances as well as disciplinary measures. The extant Bill attempts at addressing pertinent issues like corruption and inconsistency that have marred the procurement process in India and which is likely to be retained in case it becomes law. Though India is attempting a further liberalising of its Public Procurement market, there may not be an immediate need to undertake international commitments for improving India's Public Procurement regime. Prior to that there is the need to do a thorough assessment of competitiveness of different sectors of the Indian

Nonetheless, from a long-term perspective and as an emerging economy with global potential, India would need to continue to assess, in a dynamic context and taking due account of its own ongoing internal initiatives to improve its governance of Public Procurement, its growing market competitiveness and related factors, the pros and cons of its such international trade commitments. In this context, the immediate step that needs to be taken is to develop a Public Procurement policy which will be a strategic document that would not only lay down the current work programme and the future roadmap of Public Procurement policy in India but will also provide clear guideline to stimulate the growth of a coherent and cohesive plan of action for all procuring departments of the government and the Indian industry as a whole. The policy so brought out would complement the current initiative to formulate the legislation on Public Procurement.

Moreover, India's own competencies and competitiveness in manufacturing, services and trade, have to grow for it to become a sufficiently influential player in the global government procurement market. Such a move would certainly pave the way for India to effectively negotiate its own offensive and defensive interest and accede to international commitments in future without compromising socio-economic goals.

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# 5

## Sustainable Public Procurement

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### Introduction

The importance of environmental sustainability started surfacing in the mid-1990s ignited to a large extent by the adoption of Agenda 21 at Rio Earth Conference, 1992.<sup>36</sup> Many countries took initial steps towards adopting Sustainable Public Procurement (SPP)/Green Public Procurement (GPP) policies. By the year 2000, several of the OECD countries had developed or were developing SPP/GPP guidelines.

The activity was partly in response to Chapter III of the Johannesburg Plan of Implementation adopted at the World Summit on Sustainable Development 2002. A 10-year Framework of Programmes on Sustainable Consumption and Production was the outcome of the 2012 UN Conference on Sustainable Development (Rio+20). SPP was categorised as one of the five initial sustainable consumption and production programmes proposed for development. This renewal of the commitment continues to drive governments to adopt SPP/GPP policies and practices.



## What is Sustainable Public Procurement?

The Marrakech Task Force on SPP has defined SPP as:

*“A process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for the organisations, but also to society and the economy, whilst minimising damage to the environment”.*<sup>37</sup>

However, under the umbrella term SPP/GPP, governments focus not only on green aspects. As many as 63 percent of the countries covered by the UN survey for formulating the 2013 UNEP report on sustainability<sup>38</sup> informed that in addition to sustainability, they also focused on social and developmental aspects in their SPP programmes.

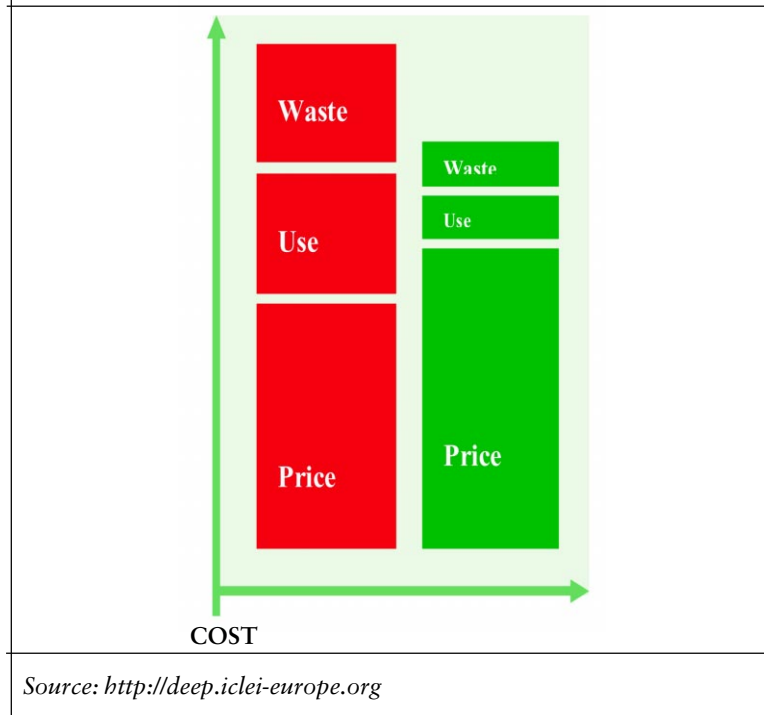
Amongst the environmental aspects to be covered by SPP/GPP, national governments cited the following priorities in the course of the UNEP survey of 2012-13, on which the report is based:

- i) Energy-saving concerns were cited by 59 percent respondents of the survey.
- ii) Reduction of CO<sub>2</sub> and methane emissions cited by 44 percent.
- iii) Waste reduction concerns cited by 37 percent.
- iv) Reduction of water usage concerns cited by 35 percent
- v) Reduction of hazardous substances cited by 31 percent.
- vi) Reduction of materials consumption cited by 31 percent.
- vii) Improvement of local environment, enhancement of biodiversity, reduction of emissions to water, conservation of other natural resources, reduction of other air emissions were cited by 28 percent, 25 percent, 24 percent, 22 percent and 16 percent respectively.

## Why Sustainable Practice in Public Procurement?

Expenditure on Public Procurement, that accounts for a significant proportion of world GDP (and in India's case estimated at 20 – 30 percent share of GDP), is certainly an important driver of the domestic market.. From other countries' experiences, it has been seen that what and how governments acquire goods and services makes a big difference both to their ability to deliver sustainable development and to their credibility with those they seek to influence.

**Figure 1: Influence of use and disposal costs on overall cost**



*Value for Money in long run*

Procuring sustainable goods and services helps ensure the best value for money as SPP takes into account whole life costs, quality and functionality. Most of the environmental concerns mentioned in the earlier part of this paper are also served by SPP.

*Not Always Costly*

The belief that the price of sustainable products and services are exorbitant is not true. This can be justified if all costs related to the product or service throughout its lifetime, including purchase price, usage, maintenance and disposal costs are considered.

The City of Kolding in Denmark, which has ‘greened’ virtually 100 percent of its tenders has found that overall this strategy has been cost-neutral.

*Source: <http://deep.iclei-europe.org>*

In Hong Kong, replacing incandescent traffic lights with LED generated savings of US\$240,000 over the lifespan of LED modules, which also allow for projected annual savings of 7.88 million KWh of electricity and a reduction of 5,500 tonnes of CO<sub>2</sub> emissions.

*Source: <http://www.unep.org/Documents/Multilingual/Default.asp?DocumentID=2688&ArticleID=9188&I=en>*

*Instigates Private Sector*

Through SPP, government sets an example for the general public and the private sector, thereby influencing the market place and leading to positive outcomes. SPP also acts as a means to stimulate corporate social responsibility in the private sector.

If rightly motivated, private sector firms can start greening their supply chain, the overall outcome of which would be much greater than practice of SPP only by the public sector.

*According to UNEP, Japan's Green Purchasing Policy has contributed to the growth of the country's eco-industries, estimated to be worth about •430 billion in 2010*

#### *Addresses Social Issues?*

SPP in different countries have several other connotations besides sustainability, vide the table below:

<b>Table 1: Practices other than sustainability covered by SPP across countries/regions</b>	
UK	<ul style="list-style-type: none"> <li>- Purchasing from small and local suppliers,</li> <li>- asking suppliers to pay a living wage,</li> <li>- ensuring suppliers' premises are safe,</li> <li>- ensuring that suppliers comply with child labour laws</li> </ul>
Western Europe	<ul style="list-style-type: none"> <li>- ask suppliers to commit to waste reduction goals</li> <li>- ask suppliers to reduce use of packaging materials</li> </ul>
Eastern Europe	<ul style="list-style-type: none"> <li>- ask suppliers to participate in the design of products for disassembly</li> </ul>
Scandinavia	<ul style="list-style-type: none"> <li>- ask suppliers to commit to waste reduction goals</li> </ul>
US	<ul style="list-style-type: none"> <li>- purchase from small business, minority and women-owned businesses</li> </ul>
<i>Source: Adapted from material in <a href="http://opus.bath.ac.uk/281/1/2007-16.pdf">http://opus.bath.ac.uk/281/1/2007-16.pdf</a></i>	

Thus, it would be seen that in certain countries SPP is practised to also address issues of social concern like inclusiveness, equality and diversity.

*Aligns countries in their approach to Public Procurement*

Most of the OECD countries now have a national SPP/GPP policy or programme in place.<sup>39</sup> Brazil and China have developed national legal frameworks on SPP/GPP. However, Russia is yet to develop such a programme. It currently focuses on timber production and the implementation of the regional product standard “GOST R”.<sup>40</sup>

Until recently, there have been few national SPP/GPP policies and programmes in developing and emerging countries.<sup>41</sup> In South Africa, procurement is used as an environmental policy tool to contributed to sustainable development while also addressing past discriminatory policies and practices.<sup>42</sup> But in the last five years, a number of emerging countries have espoused SPP/GPP policies, like Bulgaria, Chile, Costa Rica, Colombia, Israel, Lebanon, Mauritius, Romania, Tunisia and Slovenia.<sup>43</sup> In India’s case, Public Procurement legislation is being revised and includes a provision for GPP, while a number of green guidelines exist in a scattered way.

At the international level, there are various sustainable procurement initiatives, aimed at public authorities that support this drive:<sup>44</sup> CARPE project,<sup>45</sup> Procura+,<sup>46</sup> LEAP project,<sup>47</sup> the International Green Purchasing Network, Marrakech Task Force on SPP led by Switzerland and the recently established Sustainable Public Procurement Initiative (SPPI).

India, if it were to join the SPP initiative, would be aligning itself with the SPP initiative launched by the UNEP in 2012

and being followed by the developed world. Its strategy to establish sustainable consumption and production patterns would be aligned with those of forward-looking countries.

#### *Stimulates Export*

SPP encourage suppliers to make their products and services more sustainable. This in turn can act as a stimulant to long-term export success, as many developed importing countries now demand that the products they import are produced in a sustainable manner.

### **SPP Practices in India**

“The use of public procurement as an instrument to influence market trends in favour of environmentally and socially responsible products and services is relatively a new concept in India”.<sup>48</sup> For example, the National Environment Policy, 2006, encourages adoption of purchase preference of ISO 14000 goods and services and an approach paper to the 12<sup>th</sup> Five Year Plan (Report of the Working Group on ‘Effectively Integrating Industrial Growth & Environmental Sustainability’) recommends introducing frameworks/guidelines and setting up of an autonomous body to promote and encourage shift in demand towards greener products and services. The 12<sup>th</sup> Five Year Plan (2012-17)<sup>49</sup> vision for India is ‘Faster, More Inclusive & Sustainable Growth’. Therefore, as the UNEP Report of 2013 infers, “The setting is conducive for adopting sustainable purchasing as an environmental policy instrument in a more structured way”.

So far, India does not have a Public Procurement policy and not even an overarching law governing Public Procurement. Some states like Tamil Nadu and Karnataka have framed state-level legislation. The existing rules governing Public

Procurement, the General Financial Rules, 2005 and the Delegation of Financial Powers Rules, 1978, lay down basic principles of efficiency, economy, transparency, equity and promotion of competition in procurement to be followed by central government departments and agencies.

### **Recent Policy Developments**

The Public Procurement Bill, 2012 that is under active consideration of Parliament, however, introduces an important element that can be instrumental in leveraging SPP. Its clause that the environmental criteria of a product may be adopted as one of the criteria for evaluation of tender has the potential for revolutionising Public Procurement policy by introducing sustainability concepts in government procurement.<sup>50</sup>

### **Urgent Need to Introduce SPP as a Part of the Sustainability Initiative in India**

India has experienced rapid population and industrial growth in recent years. The rise in growth in the resource intensive manufacturing sector is enabled by an ever-increasing rate of material used leading to manifold impacts on the environment. Monitoring studies show that suspended particulate matter (SPM) levels in most urban areas are considerably higher than the acceptable level. India is also faced with decreasing water availability and increasing water pollution in groundwater and surface resources. MSMEs have a significant impact on the environment, as they are generally equipped with obsolete, inefficient and polluting technologies and processes. 70 percent of the total industrial pollution load of India is attributed to MSMEs. Regulatory mechanisms to ensure compliance are ill-suited towards MSMEs, as they are tailored for larger industries. This creates a situation where MSMEs are unable

to comply with regulations and regulatory authorities face constraints in closing such industries as that would impact livelihoods. New technologies leading to cleaner processes and operations are not proceeding at a fast enough pace to address the urgent need for environmental protection India has recognised. The problems are likely to be aggravated through the implementation of the National Manufacturing Policy, which aspires to raise the share of manufacturing in the GDP from the current level of 16 percent to 25 percent by 2025.

This alarming situation as highlighted in the Report of the Working Group on “Effectively Integrating Industrial Growth and Environment Sustainability”, an approach paper to the 12th Five Year Plan (2012-2017) is one of the main reasons to believe that all modes for encouraging sustainable development in India, including SPP, should be espoused.

## Challenges in Introducing SPP in India

These have been succinctly summarised in the 2007 report of TERI, New Delhi, which identifies the challenges as follows:

Box 1: Introducing SPP in India
<ul style="list-style-type: none"> <li>• The higher capital costs usually linked to sustainable alternatives are perhaps the most critical obstacle in SPP.</li> <li>• Obtaining the “best value for money” is an important principle in Public Procurement, and unless there is explicit provision for considering the financial gains of environmental alternatives (though improved durability and lower operating costs) over the lifetime of a product, service or development, decisions will continue to be based on upfront costs and immediate benefits.</li> </ul>



- National laws and policies are a prerequisite for SPP. Without such a framework, SPP has no legitimacy in strategies and action plans rolled out across the entire public sector.
- There is also the issue of split responsibilities for capital and operating costs. It is not uncommon that procurement contracting is the responsibility of one agency, budgets are controlled by another agency, and the use and maintenance of the product/service/development belongs to yet another agency. As the benefits of environmentally- and socially-preferable alternatives usually accrue during the user-phase and end-of-life-disposal of a product/service/development, those bearing capital costs may not be the first to realise the benefits of sustainable alternatives.
- Sustainable alternative technologies are not available on a large scale to public procurers in developing countries like India.

\* Indebted to 2007 Report of Institute for Sustainable Development, Canada and TERI, New Delhi. Accessible at <[www.iisd.org/pdf/2007/state\\_procurement.pdf](http://www.iisd.org/pdf/2007/state_procurement.pdf)>

The UNEP Report of 2013 has identified additional challenges, including limited political motivation; a lack of knowledge regarding avoiding legal and technical problems during the green procurement process (including evaluation and monitoring); limited knowledge of experience in using SPP tools such as LCC and LCA; dependency on experts to define specifications; demand of vendors for SPP/GPP to be implemented in a transparent way, with sufficient time for them to react, for their Intellectual Property Rights to be respected and their product quality to be guaranteed by third party certification.

Nonetheless, so far as the current work on Public Procurement in India is concerned, at present, the sole focus is on removing corruption in the procurement process. The Group of Ministers on Corruption set up in 2010, in the wake of major irregularities in Public Procurement, set up a commission which in turn recommended formulation of an overarching procurement law (to replace the existing General Financial Rules) whose main focus would be to introduce fair play and competition in the procurement regime. As a result of this historical background, SPP concerns do not feature prominently in the draft Bill. Also, the novelty of the concept in India has been, perhaps, one of the factors why the Bill has not been as oriented to SPP concerns as it could have been, vide the subsequent discussion in this paper regarding enhancing sustainability elements in the Bill.

Besides, the status of eco-labels and eco-standards is not yet very encouraging in India. Since its release in 1996, ISO 14001 has emerged as the leading voluntary system for certifying a firm's commitment to environmental management. However, the use of eco-label and environmental standards in procurement of products, works and services is rather uncommon. Ecomark, the Indian eco-label for products was introduced in 1991. But the label has not found acceptability from both manufacturers and buyers.

### **Green Shoots in Indian SPP**

The Ministry of Environment and Forests, Government of India in 2011 nominated a committee to formulate guidelines on Green Public Procurement. The committee has recommended legislation to establish the necessary provisions and institutional arrangement for encouraging the Central Government to procure greener products and services.<sup>51</sup>

Though informal and periodic, the country has witnessed few instances of smart and efficient SPP in departments like the railways. However, according to the study by TERI, such initiatives to promote SPP in selective cases, with a major focus on procurement of energy conserving equipment, have been undertaken in isolation and have to be replicated or scaled up across organisations, sectors, and levels of governments for them to be really effective. But certainly such initiatives can be considered as an initial transition towards a more sustainable India.

#### **Box 2: SPP in Indian Railways**

The Indian Railways has integrated environment concerns into decision-making, though sustainable procurement is not within the ambit of the policymakers. Some of the environmental sustainable actions taken by the railways are:

- Phasing out of incandescent lamps in 2009
- Purchasing only BEE 3-star or higher rated products from 2007
- Developing green toilet technology in 2010
- Transiting from CFC refrigerants to HFC in 2008, thus reducing greenhouse gas emissions
- Generating employment in rural areas by purchasing from Khadi & Village Industries Commission, association of co-operatives and apex society of handlooms. Nearly 300 items reserved for purchase exclusively from Small Scale Industries.

*Source: Sanjay Kumar, Sustainable Procurement in Indian Railways – ‘The Track Ahead’, accessible at <[www.gpnindia.org/images/stories/spp\\_in\\_indian\\_railways.pdf](http://www.gpnindia.org/images/stories/spp_in_indian_railways.pdf)>*

## **More Recent Initiatives**

A major role is being played by Indian scientific and industrial support institutions, like the Bureau of Energy Efficiency (BEE) and Bureau of Indian Standards (BIS) in promoting green procurement in certain crucial areas. The BEE's role of branding and the BIS's role of setting standards are very effective in Public Procurement and also consumer choice, as otherwise there is no easy guide for Public Procurement agencies/private consumers to choose standard products, specially energy-efficient products.

A key challenge for government in India for popularising SPP in terms of energy efficient products was that it involved a complex methodology in arriving at L-1 price when calculating Life Cycle costs. There are too many 'moving parts' or variables to make calculation of L-1 in a Life Cycle Cost Procurement System.<sup>52</sup> The BEE's Star Labelling scheme for products, therefore, comes handy for government to introduce SPP in energy-efficient products, as government procurers can avoid the complex process of LCC evaluation and immediately go in for a guaranteed energy-efficient and sustainable BEE labelled product. The BEE sent a Life Cycle Cost (LCC) analysis of various star ratings on important office equipment to the Department of Expenditure recently, which resulted in the first ever office memorandum (OM) based on SPP principles by the Department of Expenditure, Ministry of Finance, Government of India, viz. OM No. 26/6/12-PPD dated 21 January 2013.

The said OM directs all Ministries/Departments and their attached and subordinate offices, while procuring appliances to ensure that they carry the threshold Bureau of Energy Efficiency (BEE) Star Rating indicated against them, or higher

standards. (E.g. for split air conditioners – 5-star rating is required under normal conditions, where annual usages are expected to be more than 1,000 hours and 3-star rating, where usage of A.C. is limited, as in conference rooms etc.; for refrigerators, – 4-star rating; for ceiling fans, 5-star rating; for water heaters 5-star rating etc.). The OM ends by confirming that the Ministry of Power and BEE have informed that adequate number of manufacturers/models of the prescribed Star rating are available to enable competitive procurement. Thus, this OM is one of the first directives of government in India which specifically keeps in view both sustainability and competition concerns in Public Procurement.

The BEE is now moving to assess the energy efficiency of larger products, like automobiles. The elements of the study include the use of water in the production process, fuel efficiency concerns, etc.<sup>53</sup>

The BEE cooperates with BIS in formulating National Building Codes, in so far as sustainability features as one of the parameters in the appendix on these Codes. The BEE has formulated Energy Conservation Building Codes (ECBC), which are being incorporated by several municipalities as part of their building codes. The Department of Expenditure, Ministry of Finance, the Government of India has also issued directions that whenever sanction for buildings is to be given by Central Government agencies, the plans should comply with BEE norms. The state of Rajasthan's State Building Bye-Laws has accepted the ECBC Code of BEE and Karnataka Government is also very close to adopting ECBC.<sup>54</sup>

The BEE, amongst its comments on the Public Procurement Bill, 2012, when it was put out in the public domain for comments, had recommended that the ECBC norms should

be mandatory for all public works. Other important amendments recommended by BEE, if broadened to cover SPP as a whole, would be ideal for enhancing the sustainability component in Public Procurement. These are as follows:

- In its objectives, the Bill should include promotion of Sustainable Public Procurement.
- The commitment of the government in introducing the Bill should not only be to ensure the highest standards of transparency, accountability and probity in the Public Procurement process, but should also include a commitment “to achieve National Goals of Energy Security and Environment”.
- In the clause providing for Central Government to frame separate rules for the purpose of national security etc., “energy security and environmental sustainability” should also find mention.
- In the clause through which the Bill seeks to provide for Central Government to make mandatory procurement of certain items from any category of bidders/ extend purchase preference to any category of bidders on grounds such as promotion of domestic industry, socio-economic policy, etc., the ground of “promoting energy efficiency in case of high energy consuming products/ promoting environmental sustainability” should also be added. In the provision for Criteria for Evaluation of Bids (Section 13(1) of the Bill) the criteria of cost of consumption throughout life cycle of the goods and services should be included.

It is felt that inclusion of such-like provisions as mentioned above is likely to make the Public Procurement Bill more geared towards sustainability.

## Conclusion

The Report of the Working Group of the 12<sup>th</sup> Plan on “Effectively Integrating Industrial Growth and Environment Sustainability” has noted key priority areas on which their recommendations are as follows:

- i) promotion of green products, where requirement for a product to be deemed as “green” will be mandated through National Standards;
- ii) promoting green buildings;
- iii) sustainable environment management in MSMEs;
- iv) environmental regulatory reforms and market based instruments;
- v) organised waste management and recycling industry;
- vi) setting up a green and clean Technology Fund;
- vii) promoting disclosure of the environmental performance of a company, in line with national benchmarks for resource usage and waste generation.

It would be evident from the above that SPP would be a crucial instrument for achieving the goals set out in these recommendations. SPP, therefore, should be adopted as one of the crucial strategies in the way ahead for a national programme on sustainability in the backdrop of a scenario where India is to expect higher industrial growth and higher population in the coming years.

The introduction of Public Procurement Bill, which will be debated in the Parliament any time soon, is an opportunity to reframe the scope of strategic procurement and ensure that it is aligned with the country’s commitment to sustainable development. The new legislation should include sustainability as an important criterion in the Public Procurement process.

Such a law should be complemented and supported by a well-framed policy that has clear strategic objectives, principles, goals and action programmes.

This should be complemented by related actions, such as defining roles and responsibilities for agents at each stage of the implementation process of SPP. Central guidelines set by the Central Vigilance Commission, the GFR 2005 etc. have to be made flexible to allow public entities to move towards a Sustainable Public Procurement regime.<sup>55</sup> Priority areas for running awareness campaigns have to be identified. Meanwhile, entities in India should strive to develop, design and manufacture products that contribute to the environment and have low environmental impact.

Most importantly, the capacity-building needs should not be confined to procurement staff, but extended to consumers, technical bodies like the Bureau of Energy Efficiency & Bureau of Indian Standards, audit and oversight bodies like the C&AG, the Central Vigilance Commission, the Competition Commission of India, etc., all of whom require sensitisation, appropriate to their role in the procurement process. There is a need for change of mindset by all stakeholders to ‘Best value across the project/product /service life cycle’ from ‘Best value for money’ concept. Last but not the least, a national monitoring system should accompany these efforts and ensure a consistent track record of SPP.



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## 6

# Public Procurement at the State Level

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### Introduction

In jurisdictions having a federal structure, it is generally believed that greater delegation of procurement authority to the state-government level allows for effective Procurement Policy, as it affords a more focused consideration of the micro-environment it is supposed to serve. This has been quite successfully implemented in certain cases all over the world (United States, Canada, etc). This view is especially germane to procurement of goods and services meant to serve the specific needs of the state, as opposed to procurement of goods, services and IPR relevant to fields such as defence, space, exploitation of natural resources, etc., where the policy needs to be set at the national level.

Decentralised procurement allows the state government, or an individual public sector utility to study the extent to which local production capacity is available, and even develop local production capacity in certain cases. Furthermore, it allows the state government/public sector utility to focus on the interests of SMEs, the strengthening of which is a major socio-economic objective in India in view of their major role in provision of employment.

In India, the oldest state-level policies on procurement were enacted in Tamil Nadu (The Tamil Nadu Transparency in Tenders Act, 1998) and Karnataka (The Karnataka Transparency in Public Procurements Act, 1999). These dealt with aspects pertaining to transparency and good governance in state government procurement. However, legislations on Public Procurement at the state government level which have been recently enacted, including the Rajasthan Transparency in Public Procurement Act have started to encompass a wider range of issues pertaining to developing an analytical approach to procurement in order to subsume the achievement of multiple objectives.

It must at the same time be highlighted that although the state-level policymaking may have some specific features suited to the procurement needs of the state, it must, however, conform to the universal golden standards of Public Procurement which entail ensuring transparency, promoting fair competition and probity, and carrying adequate deterrents for non-adherence to norms. The global benchmarks in this regard have been set, on the one hand, by the UNCITRAL's Model Law on Public Procurement and the WTO's plurilateral Government Procurement Agreement, both of which mainly highlight best practices in terms of transparency and competition, and, on the other hand, by the United Nations Convention Against Corruption (UNCAC, ratified by India in 2011), whose main focus is on probity and transparency issues. In India, landmark legislation, which incorporated the key features of international best practices as indicated in these three instruments, the Public Procurement Bill, 2012, was introduced in the Lok Sabha in May 2012. The Bill maintains certain India-specific concerns, such as exception to the general rule of non-discrimination between bidders by reserving the right of government to extend special preference to any category of

bidders for the purpose of promoting domestic industry, the government's socio-economic policy, any other consideration in the public interest. The Public Procurement Bill 2012 has been analysed in depth by CUTS in its first study on government procurement<sup>56</sup> as also by the UNODC in its study title 'India: Probity in Public Procurement' 2013 and the findings in these two studies support the proposition that the Bill incorporates the most significant features of global best practices in procurement.

In the current study, the state-level legislation on procurement in the case of the only three States that have passed such legislation, namely Karnataka, Tamil Nadu and Rajasthan, has been benchmarked with the Public Procurement Bill on the major parameters of their provisions in respect of promoting transparency, competition, probity and deterrence for non-compliance with laid down norms. The comparison as regards catering to local needs by providing special preference to any categories of bidders needing support for socio-economic reasons has also been examined.

Comparison of State Legislations on GP with the Centre's Public Procurement Bill, 2012				
Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
Promoting Transparency	1. The procuring entity to maintain a record of its procurement proceedings including (a) documents pertaining to determination of need for procurement; (b) description of the subject matter of the procurement; (c) statement of the reason for choice of a procurement method other than open competitive bidding; (d) documents relating to pre-qualification and	1. It's the duty of every Tender Inviting Authority (a) to issue notice inviting tenders at the behest of the Procurement Entity; (b) to communicate the notice inviting tenders through Tender Bulletin Officer; (c) to cause publication of notice inviting tenders in the district Tender Bulletin, and in state Bulletin (if one crore and above) and in the Indian Trade Journal in all cases	1. The Procuring Entity should maintain a record of the Tender Proceedings containing information like - subject matter of the procurement; basic information of the authorized representatives of those responding to tenders; submissions made by the tenderers at each stage of the process; report or reports of the Tender Scrutiny and Evaluation Committee; Statement of the reasons and circumstances relied upon	1. Documentary record of procurement proceedings and of communications including information like (a) documents pertaining to determination of need for procurement; (b) description of the subject matter of the procurement; (c) statement of the reason for choice of a procurement method other than open competitive bidding; (d) particulars of the participating bidders; (e) requests for clarifications and any responses thereto including during pre-bid

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	registration of bidders, if applicable; (e) particulars of the participating bidders at each stage; (f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences; (g) bids evaluated, and documents relating to their evaluation; (h) details of any grievance redressal proceedings, and the related decisions; (i) any other information or record as may be prescribed.	where the value of procurement exceeds Rs 10 crore. The Notice inviting Tenders should contain the following details, viz., (a) The name and address of the procuring entity and the designation and address of the tender inviting authority; (b) Name of the scheme, project or programme for which the procurement is to be effected; (c) The date upto which and places from where the tender	by the Tender Inviting Authority and Tender Accepting Authority for decisions as part of the procurement process; requests for clarification and the responses thereof; Statement of reasons for rejection of tender; Principal terms of the Concession Agreement; and deviations, if any from the model tender documents.  2. The Notice Inviting Tenders shall contain the following details, namely - (a) The name and address	conferences; (f) bid prices and other financial terms; (g) summary of the evaluation of bids; (h) details of any appeal, and the related decisions; (i) any other information or record as may be prescribed.  2. Empowers government to make electronic procurement mandatory/providing for the setting up of state Public Procurement Portal.  3. The State Public Procurement Portal must provide access to information relating to pre-

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	<p>2. Empowers the Central Government to make rules relating to electronic procurement and to declare adoption of electronic procurement as compulsory for different stages and types of procurement.</p> <p>3. The Bill provides for setting up and maintenance of a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to Public Procurement. It lays down that each procuring entity</p>	<p>documents can be obtained; (d) The amount of earnest money deposit payable; (e) The last date and time for receipt of tenders; (f) The date, time and place for opening of tenders received; and (g) any other information which the tender inviting authority considers relevant.</p> <p>2. Tender Accepting Authority to constitute a Tender Scrutiny Committee consisting of</p>	<p>of the Procuring Entity and the designation and address of the Tender Inviting Authority; (b) Name of the scheme, project or programme for which the procurement is to be effected; (c) The date upto which and places from where the tender documents can be obtained; (d) The amount of Earnest Money Deposit (EMD) payable; (e) The last date and time for receipt of tenders; (f) The date, time and place for opening of tenders received; and (g) Any</p>	<p>qualification documents, bidder registration documents, bidding documents any modification or clarification including those pursuant to pre-bid conference; list of bidders that presented bids and of bidders who were pre-qualified and registered, as the case may be; decisions taken during the process of grievance redressal; details of successful bids, their prices and bidders; and names and particulars of bidders debarred by government or a procuring entity, together with the name of the procuring entity, cause for the</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	shall place on the portal procurement related information as required under the proposed legislation and the rules. It also specifies the information relating to procurements that is required to be provided on the portal such as, pre-qualification document, bidder registration document, bidding document and any modification or clarification thereto; list of bidders that presented bids; list of bidders excluded with the reasons	such persons as it deems fit to scrutinise tenders above Rs 5crore in the case of the Public Works, Irrigation and Minor Irrigation Departments of the government and above Rs 1 crore in other cases.  3. In order to secure and maintain transparency, the government can give appropriate directions/ call for information/ records from the procuring entity at any	other information the Tender Inviting Authority considers relevant.  3.Tender Inviting Authority should publish the notice inviting tenders in Indian Trade Journal when the tender value is greater than INR Ten crores  4. In order to secure and maintain transparency, the government can give appropriate directions/ call for information/records from the procuring entity at any stage of the procurement process.	debarment action and period of debarment.

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	thereof; decisions taken during the process of grievance redressal; details of successful bids, their prices and bidders; names and the particulars of bidders who have been debarred together with the name of the procuring entity, cause for the debarment action and the period of debarment.	stage of the procurement process.	5. On receipt of intimation relating to details of notice of invitation of Tender (from the Tender Inviting Authority) and information relating to acceptance of tender, together with a comparative analysis and reasons for acceptance of tenders (from the Tender Accepting Authority), the State or as the case may be, the District Tender Bulletin Officer shall, publish the same in the State or District Tender Bulletin.	

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
Promoting Competition	<p>1. Ensures broad-basing of bidders through adequate publicity on procurement opportunities/ objective pre-qualifying criteria for bidders;</p> <p>2. Framing of objective specifications for the items of supply in the pre-qualification document, bidder registration document and the bidding document, as the case may be, and lays down the manner in which the description shall be formulated. It further provides that the technical</p>	<p>1. Competitive tendering is a general rule in Public Procurement.</p> <p>2. Reasonable minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin and last date for submission of tenders. Tenders upto Rs 2 crore – 30 days and tenders more than this – 60 days</p> <p>2. Objective specifications of the subject matter of</p>	<p>1. Competitive tendering is a general rule in Public Procurement.</p> <p>2. Reasonable minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin and last date for Submission of tenders. Tenders upto Rs 2 crore – 15 days and tenders more than this – 30 days</p>	<p>1. Requirement of professional standards, training and certification of officials dealing with procurement</p> <p>2. Government to establish a State Procurement Facilitation Cell that would discharge functions, like maintaining and update of the State Public Procurement Portal; arrange for training and certification of procurement officials; recommend to the State Government measures for effective implementation of the provisions of the Act; provide guidance consistent with the provisions of this Act and the rules; study different methods of</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act,
	specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes and in their absence, be based on relevant international standards. However, it provides that a procuring entity may for reasons to be recorded in writing, base the technical specification on the equivalent international standards even where national technical regulations or recognised national standards exists.	procurement is not mentioned in the Act, but finds place in the Rules.  3. Evaluation of tenders carried out in accordance with evaluation criteria indicated in tender documents.  3. Tenderer aggrieved by an order passed by the tendering authority (except government) can appeal to the prescribed authority within 30 days from the	2. Time specified for opening of tenders shall be immediately after the closing time specified for the receipt of tenders allowing a reasonable period, not exceeding one hour, for the transportation of the tenders received to the place they are to be opened.  3. Evaluation of tenders carried out in accordance with evaluation criteria indicated in tender documents.	Public Procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration document; encourage procuring entities to adopt electronic procurement;  3. Evaluation of bids based on pre-disclosed criteria laid down in the bidding document;  4. Enshrining open competitive bidding as the norm and allowing limited bidding only in exceptional circumstances like if (a) the subject matter of procurement can be supplied only by a limited number of bidders; or

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	<p>3. Evaluation of bids based on pre-disclosed criteria laid down in the bidding document.</p> <p>4. Enshrining open competitive bidding as the norm and allowing limited bidding only in exceptional circumstances like where (a) only a limited number of bidders can supply; or (b) the time and cost for open competitive bidding is high; or (c) there is an urgent need for procurement.</p>	<p>date of receipt of the order.</p>	<p>4. When two or more tenderers quote the same price, Tender Accepting Authority shall split the procurement among such tenderers taking into consideration the experience &amp; credentials of such tenderers.</p> <p>5. At any time before the acceptance of tender, the Tender Accepting Authority receives information that a tenderer who has submitted tender has</p>	<p>(b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or (c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or (d) procurement from a category of prospective bidders is necessary as per the Act.</p> <p>5. Fixing reasonable pre-determined timelines by</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	<p>5. Fixing reasonable pre-determined timelines for processing the bids to obviate interference in the procurement process;</p> <p>6. Compulsorily communicate the selection of successful bid to all participating bidders and also exhibit the decision on the Central Public Procurement Portal;</p> <p>7. Empowers the Central Government to make rules relating to electronic procurement and to</p>		<p>been banned by any Procuring Entity, then he shall not accept the tender of that tenderer even if it may be the lowest tender.</p> <p>7. Tenderer aggrieved by the order passed by the Tender Accepting Authority(except government) can appeal to the Government within ten days from the date of receipt of order and the</p>	<p>procuring entity for processing the bids to obviate interference in the procurement process. The same should be indicated in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.</p> <p>6. Compulsory publishing of tender results in the State Public Procurement Portal;</p> <p>7. Promoting e-procurement</p> <p>8. Bidder or prospective bidder aggrieved by any decision, action or omission of the procuring entity can file an appeal to such</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	<p>declare adoption of electronic procurement as compulsory for different stages and types of procurement.</p> <p>8. Provides for constitution of independent procurement redressal committees to consider the grievances of bidders or prospective bidders who are aggrieved by any decision of the procuring entity.</p>		<p>Government shall dispose the appeal within 15days from the date of receipt.</p>	<p>officer of the procuring entity, as may be designated by it for the purpose, within a period of ten days or such other period as may be specified in the prequalification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission, as the case may be.</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
<b>Probity issues</b>	Proviso providing Code of integrity for Procuring entity and bidders. Violation of the code invites appropriate action and penalties. It strikes a new note in anti-corruption in India as it punishes both bribe giving and bribe taking.	–	If at any time before the acceptance of tender, the Tender Accepting Authority receives information that a tenderer who has submitted tender has been banned by any procuring entity, the said authority shall not accept the tender of that tenderer even if it may be the lowest tender.	Proviso providing Code of integrity for procuring entity and Bidders. Violation of the code invites appropriate action and penalties.

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
Preferential Treatment to Special Categories	The Central Government through notification can provide for mandatory procurement of any subject matter of procurement from any category of bidders, or purchase preference in procurement from any category of bidders on any of the following grounds, namely: (a) the promotion of domestic industry; (b) socio-economic policy of the central government; (c) any other consideration in public interest in furtherance of a duly	While it provides for exceptions to the applicability of the Act to procurements from government departments, public sector undertakings, statutory boards and such other institutions specified by the government, there is no such exception for promoting domestic industry/ for preference based on socio-economic reasons etc. as provided in the Central Bill. However, Sub-clause G of Section 4 of the Act	The Act has provision for price preference as a criteria for evaluation and comparison of tenders (a) not exceeding 15 percent for the domestic small scale industrial units; (b) not exceeding ten percent for public sector undertakings of the government in respect of products and quantities manufactured by them.	The State Government through notification can provide for mandatory procurement of any subject matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds, namely: (a) the promotion of domestic industry; (b) socio-economic policy of the central government or the State government; (c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government or the State Government:

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	notified policy of the Central Government.	states that exceptions to applicability will be available “in respect of specific procurements as may be notified by the Government from time to time”.		
Penalty	1. Penalises acceptance of a bribe by a public servant in connection with a procurement process with imprisonment between six months and five years and a fine. It also penalises bribing or undue influencing of the process with	1. Whoever contravenes the provisions of the Act or the rules made there under are punished with imprisonment for a term that can extend to three years and with fine extending to Rs 5,000.	1. No proviso for penalty. 2. Tender documents and contract shall include a clause for payment of liquidated damages and penalty payable by the tenderer in the event of non-fulfillment of	1. Punishment for taking gratification or valuable thing in respect of Public Procurement — imprisonment not less than six months but which may extend to five years and shall also be liable to fine. 2. Punishment for unlawful interference with procurement process; vexatious, frivolous or malicious complaint with the

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	<p>imprisonment up to five years and a fine up to 10 percent of the value of procurement.</p> <p>2. Government can debar a bidder from all Public Procurements for three years, if he is convicted under the Prevention of Corruption Act, 1988, Indian Penal Code or any other law. The procuring entity may debar a bidder for two years for violating the code of integrity, unapproved withdrawal</p>		any or whole of the contract.	<p>intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder; for abetment of offences - imprisonment for a term which may extend to five years and liable to fine which may extend to Rs 50 lakh or 10 percent of the assessed value of procurement, whichever is less.</p> <p>3. Punishment for withdrawing from the procurement process after opening of financial bids; after being declared the successful bidder; fails to enter into procurement contract after being declared the successful bidder; fails to provide performance security or any other document or security required in terms of the</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
	from the process, failure to sign a contract or poor performance.			<p>bidding documents after being declared the successful bidder, without valid grounds - shall, in addition to the recourse available in the bidding documents or the contract, be punished with fine which can extend to Rs 50 lakh or ten percent of the assessed value of procurement, whichever is less.</p> <p>4. In case of any breach of the code of integrity by a bidder or prospective bidder, the procuring entity may take appropriate measures including - (a) exclusion of the bidder from the procurement process; (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security; (c) forfeiture or encashment</p>

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Issue	Central Legislation Public Procurement Bill, 2012	Karnataka Transparency in Public Procurements Act, 1999	Tamil Nadu Transparency in Tenders Act, 1998	Rajasthan Transparency in Public Procurement Act, 2012
				of any other security or bond relating to the procurement; (d) recovery of payments made by the procuring entity along with interest thereon at bank rate; (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity; (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years.

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From the above analysis, it is evident that the Rajasthan legislation has closely followed the Central legislation and hence meets the international benchmarks in Public Procurement policy. Therefore, it has not been discussed in further detail in the study.

As regards the Karnataka Transparency in Public Procurements Act, 1999 and the Tamil Nadu Transparency in Tenders Act, 1998 though they are by and large aligned with national policy/the international conventions, they are hardly as comprehensive as the Public Procurement Bill, 2012, on the major parameters of transparency, competition, probity, deterrence for non-compliance with norms and providing space to governments to accord preferences to deserving categories of bidders.

#### *Regarding Transparency Norms*

There are no comprehensive provisions to promote transparency, such as maintenance of full record of procurement proceedings as in the Central Act. Neither there are provisions empowering the government to make rules relating to electronic procurement nor provision for any government Public Procurement portal accessible to the public for posting and exhibiting matters relating to Public Procurement. The stress on transparency to the general public and not just to bidders is missing in the Karnataka and Tamil Nadu Acts.

Moreover, too much confidence is placed in the powers of the government in both the Tamil Nadu and Karnataka Acts. In both these legislations, in the name of ensuring transparency, the government can give appropriate directions and call for information and records from the procuring entity at any stage of the procuring process. There is no safeguard

against government bias, which is achieved in the central legislation (the Public Procurement Bill, 2012) by laying open all actions of the procurement process to public scrutiny and by the establishment of an independent grievance redress mechanism.

***Regarding Competition Promoting Norms***

The broadbasing of competition is to some extent achieved in both the State Acts by not permitting any procurement except through tendering; allowing reasonable time to respond to invitation to tender; evaluation of tenders in accordance with criteria indicated in the tender document and by creation of an Appellate Authority to hear appeals, except where government is a tenderer. However, the finer points like framing of objective specifications for items of supply based on national/international technical regulations, standards and building codes are missing. Also missing are the provisions empowering government to declare adoption of electronic procurement as compulsory for different stages of procurement. Even the grievance redress mechanism is to some extent flawed, as the “prescribed authority” under the two State Acts can hear appeals against procuring entities except the government. In the central Bill, the grievance redress mechanism’s award is applicable to all procuring entities, including, presumably, government. Nor is there any indication in the said State Acts as regards the independence and autonomy of the grievance redress mechanism called “the prescribed authority”, whereas the central Bill has provisions for selecting persons of eminence and probity, totally independent from the Procuring Entity, to man the Grievance Redressal Committees.



***Regarding Probity Promoting and Deterrence Provisions***

There is no strong probity-promoting mechanism in the Tamil Nadu and Karnataka State Acts which are on par with the provision for a Code of Integrity in the Central Bill, which binds both bidders and the procuring entity from offering or receiving bribes, along with penalties for breaching the Code.

In the TN Act, there are no provisions at all containing penalties for breach of procedure prescribed in the said Act. Even in the Karnataka Act, which has some penal provisions, there are lacunae like the absence of explicit proviso for penalty in case of unwarranted interference with the procurement process; vexatious, frivolous or malicious complaint with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder; for abetment of offences and so on.

***Regarding Preferential Treatment to Certain Categories of Bidders***

Both the Acts fail to provide for comprehensive powers to government to invoke socio-economic reasons and reasons like promotion of domestic industry to accord preferences to certain sectors which may need State support. There are specific provisions for providing preferences to the small-scale sector and public enterprises. But the scope and sweep of the central Bill, which gives flexibility to the government to cite socio-economic reasons to promote any category of bidders at any time is missing in these State legislations.

Thus, as concluded in the UNODC study<sup>57</sup> with regard to the Karnataka legislation, “Upon review, it was found that this Act contains relevant stipulations that address many of the requirements of UNCAC”. The same is by and large applicable to the Tamil Nadu Act. However, as would be seen in the

reservations contained in the UNODC appraisal, the two legislations are by no means as comprehensive as the central Bill, which follows the benchmark of international norms on Public Procurement.

A comprehensive legislation at the Centre and State levels is essential in ensuring transparent and objective rules and procedures for procurement. Equally important is the need for strong and consistent implementation of legislation. Many practices followed on the ground may be divergent from what is legally prescribed, due to limited governance and accountability, process and monitoring inefficiencies, limited awareness and the mindsets of organisational cultures.<sup>58</sup>

### **State Level Draft Legislations Pertaining to Procurement**

Major thrust of draft legislation and policies in the three other States which have deliberated on Public Procurement are discussed as follows:

**Draft Jharkhand Procurement Policy 2013:** The Jharkhand Procurement Policy 2013 which is still in draft stage, is the first state-wide procurement policy in India whose objective is to encourage local Micro and Small Enterprises (MSMEs) by according preferential treatment to them, in comparison with the units located outside the state. Specific procurement practices intended to increase participation by MSMEs are as follows:

- a. In a tender, the participating MSMEs are allowed the leeway to participate in the tender even if the price at which they have tendered is L1+15 percent. They are required to bring their price down to L1 and provide upto 20 percent of the requirement. In cases where the MSMEs are not

from Jharkhand, they are still eligible for L1+5 price preference<sup>59</sup>

- b. Tender forms for bidding are made available free of cost.
- c. Earnest money deposit (EMD) and Security Deposit are exempted<sup>60</sup>
- d. Marketing Support to MSEs is provided by the Directorate of Industries (the Nodal Agency for administering marketing support to local MSMEs). The policy also seeks to encourage large industries to fulfill their store purchase requirements from local MSEs. This will be undertaken at the level of Central Public Sector Undertakings through a Plant Level Advisory Committee.
- e. Communicating needs of the government to manufacturers: The (draft) Jharkhand Procurement Policy envisages buyer and seller meets and vendor development programmes, organised by the Directorate of MSMEs.

*The lapsed Andhra Pradesh Public Procurement Bill, 2010* envisaged greater transparency, efficiency, cost-effectiveness, grievance redressal mechanism in Public Procurement. The bill aimed at streamlining the procedures and bringing in transparency in procurement of machinery by government departments. It proposes the setting up of a three-member Procurement Regulatory Authority which will serve as an appellate authority with powers to suspend any action of the government procurement agencies. The chairman and members of the Regulatory Authority will be selected by a collegium comprising retired High Court Chief Justice and Chief Secretary.

*The main objective of the Kerala Public Procurement Bill 2014* is to ensure transparency, fair and equitable treatment of bidders, promote competition, enhance efficiency and economy, maintain integrity and public confidence in the Public

Procurement process. The category of procurement includes goods, works and services. The proposed bill will form the basis for the procurement system of government departments, public sector undertakings, local self-government institutions, universities and autonomous bodies. It has become necessary to frame the Bill incorporating all amendments and orders issued so far to take care of the latest technological and procedural advancements in making purchase decisions.

Careful scrutiny of this Bill shows it is an exact replica of the central procurement Bill in its entirety, including the phrase “national security”, notwithstanding that security of India is not exactly a state function under our Constitution.<sup>61</sup>

## **Observations and Recommendations for Future Study**

Some commentators have posed the question as to whether State legislation on procurement should follow the model of the Centre’s Public Procurement Bill. This view is held by those who feel that “the drafting issues in India were not fully addressed in the PP Bill... as nationality of bidders is not explicitly listed as the permissible criterion for discrimination.”<sup>62</sup> Such commentators feel that the position taken in the Public Procurement Bill departs from the National Manufacturing Policy that requires minimum domestic content for hi-tech government supply as well as from the Policy for Preference to Domestically Manufactured Electronic Products that requires mandatory preferences to domestic bidders/ domestically manufactured electronic goods in government procurement. It also appears that the Bill takes a contrasting position from that taken by the major global players in international trade, such as the US and the EU. The US prohibits participation of Indian bidders in its Public Procurement

markets and the EU places a number of de facto barriers discriminating against Indian supplies and services. Australia, New Zealand, the US and many other countries grant price preference to domestic bidders based on domestic content. The Public Procurement Law of the People's Republic of China by default requires procurement of domestic goods, works and services, that too from its own entities.

Similar views had earlier been expressed by the same commentator in his earlier publications.<sup>63</sup> However, this appears to be a shortsighted view of the issues. As discussed in the first CUTS study on Public Procurement,<sup>64</sup> it is felt that the concern for promoting domestic preferences, wherever required in specified areas, is already taken care of through the present wording of the Bill. The flexibility to extent preferences to domestic industry is very much available, for example in Section 11 of the Bill. Whereas Section 11(1) reflects an assurance regarding non-discrimination among bidders by nationality or by any other criteria, it is immediately qualified by Section 11 (2), through an exception which runs thus:

*“The Central Government may, by notification, provide for mandatory procurement of any subject matter of procurement from any category of bidders, or purchase preference in procurement from any category of bidders on any of the following grounds, namely:—*

- (a) the promotion of domestic industry;*
- (b) socio-economic policy of the central government;*
- (c) any other consideration in public interest in furtherance of a duly notified policy of the central government:*

*Provided that the reason and justification for such mandatory or preferential procurement, the category of bidders chosen*

*and the nature of preference given shall be specified in that notification.”*

This crucial provision in the Public Procurement Bill, 2012 allows India to safeguard its own domestic interest as provided for in the specific areas mentioned under the National Manufacturing Policy, the Electronic Policy, the MSME Policy and other policies of the government.

In the light of the above, the warning to state governments not to emulate the central Bill in the core areas of promotion of transparency, competition, probity, deterrence while maintaining adequate space for government to bring in provisions to protect domestic industry where necessary, seems to be misplaced. The fear expressed by commentators who take the opposite view that “adoption of domestic laws by non-GPA member-state that treat foreign bidders on a par with domestic bidders would obviously make their accession unlikely, since existing GPA member-states would enjoy unfettered access to developing-country PP markets under such regimes” is entirely misplaced. India, despite its present policy as per the GFR of posing no serious barriers to foreign suppliers, and despite its new Public Procurement Bill, 2012 being in the public domain for quite a while, is still wooed by major trading partners and multilateral organisations like the WTO to join the GPA/make bilateral provisions for entering into a GPA-like agreement. The reason behind this is that foreign governments are fully aware that both the present rules framework and the future framework envisaged in the Bill give adequate powers to government in India to reserve crucial areas of the economy for domestic players as and when considered necessary.

Thus, it is important that state governments judiciously select the necessary provisions of the central Bill on which to update their own legislation so that it promotes the golden norms of transparency, probity and fair competition in Public Procurement, while preserving space for government to reserve certain areas for certain categories of domestic producers to meet its own socio-economic concerns.

## Endnotes

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- 1 Inaugural address of Dr Manmohan Singh, Prime Minister of India from May 2009 to May 2014, at the 3rd BRICS International Conference, New Delhi, November 2013.
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- 4 Derived from TERI's study 'Competition Issues in Public Procurement (India)', 2011.
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- 16 Value addition is measured through local components in the Bill of Material. Another example is where a 50% preference is accorded to domestically manufactured Laptop PCs and Tablet PCs in Public Procurement. This is if the Laptop PCs and Tablet PCs meet domestic value addition in terms of Bill of Material of 25% and 30% to qualify as domestically manufactured. [Notifications for Providing Preference to Domestically Manufactured Laptop PCs and Tablet PCs in Government Procurement, 31<sup>st</sup> January 2012 (with Errata mentioned in 2013), available online at <http://pib.nic.in/newsite/erelease.aspx?relid=91915>, last accessed on 12.07.2012 (with Errata mentioned in 2013)] However, in the Defence Procurement Policy 2012 (with Errata mentioned in 2013), the cost of the equipment should be reduced by the cost of imported materials and the cost of services which have been received from non-Indian entities at all tiers throughout the supply chain.
- 17 EC (2005), Public Procurement for Research and Innovation: Developing Procurement Practices Favourable to R&D and Innovation, available at [http://ec.europa.eu/invest-in-research/pdf/download\\_en/edited\\_report\\_18112005\\_on\\_public\\_procurement\\_for\\_research\\_and\\_innovation.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/edited_report_18112005_on_public_procurement_for_research_and_innovation.pdf), accessed on 30.10.2012 (with Errata mentioned in 2013).
- 18 Harbhajan Singh (2011), Department of Heavy Industry, 'Strategy Paper on Galvanising Machine Tools Industry in India Through Technology Development', accessed at [http://dhi.nic.in/strategy\\_paperon\\_galvanizing\\_MT\\_industry.pdf](http://dhi.nic.in/strategy_paperon_galvanizing_MT_industry.pdf) on 25.10.2012

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- 29 <http://pib.nic.in/archieve/others/2011/jul/d2011072904.pdf> . CUTS Study estimates this to be around 29 percent of GDP in India. For details please refer the study titled Government Procurement in India : Domestic Regulation & Trade Prospects accessible at [http://www.cuts-citee.org/pdf/Government-Procurement-in-India\\_Domestic-Regulations-Trade-Prospects.pdf](http://www.cuts-citee.org/pdf/Government-Procurement-in-India_Domestic-Regulations-Trade-Prospects.pdf)

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## About the Project

In India, the size of the public procurement market is approximately 29 per cent of its gross domestic product, which is almost US\$536bn annually. There is no central law or policy to govern this market. In 2012, a Public Procurement Bill was tabled in the lower house of Parliament under the previous government, however this Bill has lapsed with dissolution of the House for holding General Elections. It needs to be reintroduced if it is to become a law. The possibility of it getting re-introduced in the Parliament is high given India's inclination for carrying out domestic reforms in several areas so also at international commitment under the UN Convention against Corruption which was signed in 2011. Nonetheless, the Public Procurement Bill has been framed to regulate the process and outcomes of public expenditure as undertaken by government bodies at the Central level. It still can act as a model law to be adopted by state governments.

Other than this law, a National Public Procurement Policy is needed to enunciate the vision which informs the functional law or set of rules which is derived from it. In order to formulate the public procurement policy of India, it is crucial to understand the relationship between the objectives of public procurement and those of other major macroeconomic policies.

Therefore, CUTS International with the support of British High Commission, New Delhi has undertaken this project to explore necessary elements of a National Procurement Policy of India and their interfaces with other major macroeconomic policies so as to frame a draft Policy and advocate for its adoption and implementation.

## About CUTS

With its headquarter in Jaipur, India; Regional Centres, in Lusaka, Nairobi, Accra and Hanoi; and an International Centre in Geneva, CUTS International has three verticals: Trade, Regulations and Governance. Through policy- and action-research, advocacy, networking and capacity building, it has established its relevance and impact in several policy-making areas and among the larger development community.



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