

The Public Procurement Bill 2012

Public procurement is one of the core elements of government operation and that of its agencies. Having some significant impact on key stakeholders in society, it attains a place of importance in public life. Furthermore, public procurement is an important aspect of international trade, given the considerable size of the procurement market (often 20-25 percent of a country's national income) and the benefits for domestic and foreign stakeholders in terms of increased competition.

Public procurement has assumed greater importance in the current political economic scenario in India. A Bill "The Public Procurement Bill, 2012" has been drafted by the Department of Expenditure, Ministry of Finance, Government of India. The objectives of the Bill are to ensure transparency, fair and equitable treatment of bidders, promote competition and enhance efficiency and economy in the procurement process. The Bill contains broad principles and will be supplemented by rules.

Keeping this development in mind, CUTS International is implementing a project entitled "Government Procurement – An emerging tool of global integration and good governance in India" with an objective of exploring opportunities and challenges of a more efficient government procurement system in India with greater transparency, efficiency and good governance for both domestic as well as foreign enterprises.

The stakeholders in India and in major economies would like to see a transparent and efficient public procurement system and is rather more conscious on how procurement system needs to be working today's world. As part of this initiative, the following is a set of comments on The Public Procurement Bill, 2012.

1. In India, there is no overarching legislation governing public procurement by the central government and central public sector undertakings. The same is true at the sub-national level. The General Financial Rules, 2005 govern procurements made by the central government. Some ministries/departments have specific procedures/manuals to supplement these Rules. Procurements by public sector undertakings are governed by their own procedures/manuals. CUTS welcomes the new Bill as a progressive step and hopes that it will bring greater efficiency, transparency and value for money to the stakeholders in India and in other countries.
2. Section 18 provides details of successful bids, list of bidders excluded with reasons, particulars of debarred bidders and that cause of debarment action would be communicated through the Central Procurement Portal. However, there is a need to further strengthen transparency provisions by providing, on request, to an unsuccessful tenderer, the reasons why his tender was not selected, and the characteristics and relative advantages of the selected tender. Similarly, it should be considered to provide a supplier on request why her/his application to be considered as a registered bidder under Section 20 or a pre-qualified bidder under Section 19 was rejected. This is likely to inspire greater public confidence in the procurement process and lessen unnecessary challenges to the bid process.

3. Section 12 describes the subject matter of procurement with reference to national/international standards/building codes, etc. In order to further ensure that there is no ‘over-specification’ which would have the effect of limiting competition it will be useful to state that technical specifications, where appropriate, will be in terms of performance, rather than design or descriptive characteristics.
4. Section 29 (Methods of Procurement) provides that notwithstanding other modes of procurement being available, entities may make procurement by means of a rate contract concluded by a Central Purchase Organisation (Sub Section 3 of Section 29). In view of drawbacks of the rate contract system, it is suggested that rate contracts entered into by a Central Procurement Organisation only be opted for by procuring entities only where the per unit cost of the product is low and/or likely annual off-take is also low (thresholds may be prescribed in Rules to the Act) and subject to other safeguards for limited use of this mode of procurement, as recommended in many model laws on public procurement.
5. Section 6 provides well considered grounds (like promotion of domestic industry, considerations of public interest and other socio-economic considerations) on which the central government may base its preference policy, it is felt that even in this context the quality criteria should be in-built. The selected bidders in this category should possess the capacity to supply as per minimum specified standards/building codes, etc. This will ensure that proper quality in public procurement is met and that the categories of entities which are the subject matter of preference are encouraged to be competitive.
6. The procedure for procuring consultancy services has been relegated to be included in subordinate legislation. As consultancy services constitute a critical area of public procurement activities, it is necessary that the Bill applies the same objective criteria for this field of procurement.
7. While successful bidders are expected to perform as per targets/specifications in terms of cost, quality and timeline for execution, additional financial incentives for better performance vis-a-vis timeline, cost, etc are awarded by some countries under their government procurement rules. Such provisions may be considered for incentivising efficiency and enhancing consumer welfare.