

# **Government Procurement – An emerging tool of global integration and good governance in India**

## **Report of the Launch Meeting**

*New Delhi, India, August 31, 2011*

### **Executive Summary**

CUTS is implementing a project entitled ‘Government Procurement – An emerging tool of global integration and good governance’, in India with the support of British High Commission under the Prosperity Fund Programme. Though government procurement is a relatively new topic of research in India it has become vital especially with India’s observer status in WTO Plurilateral Agreement on Government Procurement (GPA) and other recent steps taken by India in this regard. This project is expected to fill the knowledge gap and assess the impact of possible accession of the India to the GPA.

### **Brief Background & Context**

The market for government procurement (only at the Central Government level) is estimated to be US\$5.5bn, therefore there is a clear external demand on the part of India’s major trading partners to liberalise this market as they see an opportunity, similarly Indian entrepreneur see an opportunity in the foreign markets, the health sector in EU, Japan and US is estimated to be US\$95.5bn per year and that of information technology (IT) and IT-enabled services in EU and Japan: US\$50bn per year, It can be argued that even at five percent success rate, the above would translate into over US\$7bn potential annual market access gains for India.

Due to lack of data and literature on the Indian government procurement market, there is an urgent need for conducting research in this area. This project will examine various aspects of the government procurement market of India; analysis would be carried out in three sectors – pharmaceuticals including medical equipment, IT and IT-enabled services, and rail transport, to study the impact of India’s possible accession to the WTO GPA on these important markets and otherwise.

The launch meeting was held to mark the opening of the project. During the meeting the project and its methodology was discussed and the participants provided valuable suggestions to enhance the effectiveness of the probable outcomes from the project.

### **Opening**

*Pradeep S Mehta, Secretary General, CUTS International*

*Andrew Jackson, Counsellor (Knowledge Economy), British High Commission*

Pradeep S Mehta warmly welcomed the participants. In his opening remarks, Mehta highlighted the political atmosphere of the country in the wake of rampant scams and recent protests by civil society organisations that have brought the issue of governance deficit to the forefront of affairs. He opined that it was the right time to discuss the issue of government procurement and launch this project.

While there is a clear demand on the part of India's major trading partners (all are either members or in the process of accession to the WTO Plurilateral Agreement on Government Procurement) as its market for government procurement (only at the Central government level) is estimated to be Rs 250 billion, there is an internal demand too – mainly to address transparency aspects of government procurement. This was even mentioned by the President of India in her address to the nation on eve of the Republic Day in 2011, apprised Mehta.

He further underlined that India's intention to become an active player in the government procurement market became clear when it agreed to negotiate the subject as a part of EU-India free trade agreement and India-Japan free trade agreement. Thus, he laid down the background for the project and mentioned that CUTS seeks to implement this project and focuses on three intrinsically strategic sectors of the Indian economy in terms of improving their efficiency. They are health (including pharmaceutical and medical equipment), IT and IT-enabled services and railways.

The project will examine issues and challenges and the impact of India's possible accession to the WTO GPA on those markets. Research will seek to understand the views and concerns of expected market access opportunities of foreign stakeholders in the Indian government procurement market and will further look into the negotiating options available to India in case of its accession to the WTO GPA.

**Andrew Jackson** introduced the Prosperity Fund Programme under which the project is funded. The Prosperity Fund programme seeks to promote action on global issues in areas of strategic importance to the UK as has been mentioned in the UK's White Paper released in April 2011. The Prosperity Fund India programme, he informed, will focus on promoting sustainable global growth and, in particular, will be consistent with the UK's development objectives of promoting sustainable development and improving welfare. He further highlighted the UK's experience gained from a more transparent and open system of government procurement and importance of foreign competition in fostering innovation. He stated that this project will add to knowledge which is genuinely helpful to stakeholders and the government and to be more focused on outcomes rather than outputs.

### **Project Overview**

*K P Varma, President, Public Procurement Group*

*Bipul Chatterjee, Deputy Executive Director, CUTS International*

*Ron Watermeyer, Director, Soderlund and Schutte*

*N N Mathur, Vice Chancellor, National Law University, Jodhpur*

K P Varma chaired the discussion and welcomed participants to the thematic session on the subject. He then requested Bipul Chatterjee to present the methodology and direction of the project.

Bipul provided a detailed background of the subject and mentioned that the topic of government procurement is new and there is not much awareness in India. Post reforms in 1991, the industrial and commercial environment in India has gone through a complete change, at the present juncture there is a pressing need for economic governance. There are various new developments at the international front such as India attaining an observer status in the GPA negotiations, the Planning Commission of India working on adopting the United Nations Commission on International Trade Law (UNCITRAL) model law of Procurement

for India procurement, emergence of World Bank's procurement guidelines, which has been practiced by the Bank since their initial projects in India post-independence; government procurement is a part of Indo-Japan Free Trade Agreement (FTA) and in negotiation in EU-India FTA. Given the current scenario, the perspective of the project is to moot for a more liberalised procurement regime which would aid India's holistic development goals, through a more transparent, competitive and efficient system. The project aims to create awareness among relevant stakeholders of the issues of government procurement in India and the opportunities which a more liberalised system offer and also to provide negotiation inputs, if India decides to accede to the GPA.

He then briefly discussed the implementation of the project which is spanned across 18 months and reasons for selecting the three sectors of health, including pharmaceutical and medical equipment, information technology (IT) & IT-enabled services and railways for research and analysis. The research will be conducted in two stages. In Stage I, desk and field research will be carried out to better understand the market size and challenges in the procurement market in India in consultation with relevant government officials, entrepreneurs, civil societies and academicians. In Stage II, through desk and field research, the project would focus on implementation issues and provide inputs for negotiations in case of India's possible accession to the GPA.

He highlighted that the project will be steered and managed by a Project Advisory Committee and the project team, comprising senior and junior researchers. He concluded by discussing ultimate motive of the project, i.e. to have a more holistic understanding of government procurement and in general the political economy of multilateral negotiations.

Varma in his brief deliberation mentioned two important points of the GPA agreement. Firstly, about 50 percent of members to the agreement are developed countries with large market and technological supremacy, which are both an opportunity for greater market access and a threat for Indian entrepreneurs, if not properly equipped to compete. Secondly, the majority of norms in the agreement are for increasing transparency and in the self-interest of making entry possible.

He also highlighted the deficiency of a uniform code of law for procurement at the Central government level in India, and only the states of Tamil Nadu and Karnataka have a state law on the subject. He discussed that more than model law of UNCITRAL and those mentioned in the GPA, the World Bank procurement guidelines are much more pragmatic and must be used. The mechanism for after contract dispute resolution is not laid down in the GPA, which is needed to be included in the drafting of the legal framework, like European Union framework. He opined that the Ministry of Commerce and the Centre for WTO Studies, Indian Institute of Foreign Trade have carried out a lot of work in the area of government procurement which are not made public and during the research phase. CUTS should consult these authorities to avoid duplication of work.

While deliberating on the subject, Ronald Watermeyer pointed out that the current project should start off from the findings of the CUTS study on Transparency in Government Procurement in 2004. He discussed that the GPA has three broad aspects - first, to open up the government procurement market; second, to make it transparent to increase market access for foreign players and thirdly, a dispute mechanism system to ensure the foreign players are not discriminated against. Therefore, the GPA as it stands does not take into account the socio-economic development agenda which is a concern for the developing world, as the

government procurement is the biggest level available to the policy maker to leverage the goals of development, this needs to be brought to the table.

He pointed out the importance of setting of a single standard which would make procurement systematic and transparent to increase the efficiency of the procurement as a tool for fostering development.

He highlighted that simply acceding to the GPA does not guarantee reforms in practice or increase in market access, but the government procurement system needs to evolve from a master-servant relationship to collaboration between government and private enterprise to innovation. There is also a pressing need to build capacities of domestic producers before opening the market and use trade as a mechanism for technology transfer and skill enhancement.

Justice N.N Mathur pointed out that the mammoth size of the total government procurement market in India is around 20 percent India's domestic product and further discussed the pressing need for legislation in government procurement in India, as the present system is clearly not sufficient. He highlighted the importance of fostering competition into the procurement system to deal with corruption and political patronage.

He discussed the importance of members of the legal fraternity and academia to be sensitised about the development in the sphere of government procurement and suggested for a more dynamic relationship between NLUJ and CUTS to catalyse the process of dissemination of knowledge.

K P Varma then opened the floor for discussion.

Moana Bhagabati, Assistant Professor, Lal Bahadur Shastri National Academy of Administration, from her experience of working with Indian Administrative Service trainees and officer at various stages of her careers, found the anecdotes of the officers to be very rich case studies, these could be used to enhance the understanding the ground realities of the process of procurement. Also suggested CUTS and the Academy could work together to enhance the government procurement training programmes at the Academy.

J C Srivastava, Consultant, Indian Merchants' Chamber, pointed out the importance of government procurement in the current global and national context can be used as a tool to boost up the development process.

There was also a suggestion on the importance of integrating industrial and trade policy into the government procurement policy to address the goal of development through open market.

## **Conclusion**

Bipul Chatterjee then concluded the meeting and thanked the discussants and participants for their valuable inputs.