

Annexure 1

Report on Consultation Meetings

National Public Procurement Policy

CUTS International is implementing a project entitled ‘National Public Procurement Policy of India’ with the support from the British High Commission, New Delhi under the Prosperity Fund of the United Kingdom’s Foreign and Commonwealth Office.

Under this project, five consultation meetings were held with a cross section of stakeholders, such as relevant government officials (state/centre), public and private sector companies, businesses big/medium/small scale, civil society organisations (CSOs). CUTS collaborated with a variety of local organisations/industry associations to conduct these consultation meetings in order to increase the interest and buy in of the project and its objectives. These meetings were conducted during December 2013-February, 2014 in Jaipur (10 December), Ranchi (08 January 2014), Mumbai (20 January 2014) Bangalore (25 February 2014) and New Delhi. The consultation meeting in New Delhi was merged with the National Consultation Meeting that was held on 07 December, 2014 considering the brevity of stakeholders/topic and to implement the project effectively.

Background & Context

Government across the world have numerous policy levers that they can use to stimulate positive socio-economic development in a country and public procurement is one such vital tool. Public procurement operates across a wide realm of governmental activities including those of the public sector enterprises. Governments around the world utilise procurement to:

- stimulate local manufacturing capacities and employment;
- promote competition in the marketplace;
- adhere to good fiscal practices; and
- promote sustainable production and consumption practices.

The significance of public procurement in India becomes more crucial because of it accounts for almost 30 percent of the total gross domestic product (GDP) worth US\$536bn annually. While Public Procurement is a vital contributor, it is noteworthy that there is no legislation at the Central government level nor there exists a National Public Procurement Policy. The Public Procurement Bill tabled in the Parliament, is yet to become a law. The implementation of the bill will benefit from a coherent National Public Procurement Policy which addresses interfaces between public procurement and related macroeconomic policies including, but not limited to trade policy, competition policy, sustainable procurement policy, fiscal policy and the new manufacturing policy, amongst others, in order to allow decision-makers to adapt to changes in specific macroeconomic indicators.

Such a policy will encourage the growth of a coherent and cohesive plan of action for all procuring departments of the government including state governments and will help in achieving more and better transparency and competitiveness of the Indian economy.

In view of the above, CUTS is currently implementing a project from August 2013, in order to propose and develop a cogent national public procurement policy entitled 'National Public Procurement Policy in India' with support from the British High Commission.

In this regard, consultation meetings in other cities of India including New Delhi, Mumbai, Bangalore, Jaipur and Bhopal will be organised to discuss the above mentioned issues.

Objectives

1. To generate awareness and sensitise relevant stakeholders on public procurement policies and practices especially the experiences of stakeholders following the tabling of Public Procurement Bill 2012 in general. Depending on the targeted city awareness and sensitisation was also aimed, for instance, on Rajasthan Transparency in Public Procurement Act, 2012, Jharkhand's (draft) Public Procurement Policy, Karnataka Transparency Act on Public Procurement etc.
2. To obtain stakeholder-inputs on policy briefs exploring interfaces between procurement policy and other macroeconomic policies, such as manufacturing policy, competition policy, sustainable procurement, trade policy, fiscal policy and state-government-level-procurement policy in order to devise a coherent and appropriate National Public Procurement Policy in India.

Proceedings

The interactive sessions in each of the consultations began by welcoming the resource persons and the participants. This was followed by introducing the subject of public procurement and highlighting its importance to the Indian economy. In the introductory remarks, an overview of the project was provided to the participants so as to make them familiar with the objectives of the interactive session. In the opening session, the invited resource persons then proceeded to share their experiences with the public procurement in their respective states as well as at the central government level. Overall, in all the meetings, the opening sessions' resource persons have articulated on the need for an effective public procurement policy at national level and its relevance to the economic development of the country.

This was followed by the substantive session where CUTS representatives presented the objective, methodology, major issues dealt and the preliminary findings thereof obtained from first year of the project, to stakeholders. Their presentation was based on the conceptualised six (draft) policy briefs on the interfaces between public procurement and other major macroeconomic policies, viz national manufacturing policy, competition policy, sustainable public procurement policy, trade policy, fiscal policy and the policy related to state governments. The presentation explored the linkages and interfaces between these policies and the public procurement by undertaking desk-research of good practices deployed within India, and in other countries. The meeting discussed following policy briefs and sought inputs from various stakeholders.

1. *Procurement Policy at the State Government Level:* This policy brief explored the extent to which the objectives of procurement can be better realised by downward delegation to state governments. The two individual state policies/legislations which have been covered are the (draft) Jharkhand Procurement Policy and the Rajasthan Public Procurement Rules besides other relevant legislations on public procurement in other states such as Karnataka Transparency in Public Procurement Act.
2. *Procurement Policy and Competition Policy:* This brief explored the extent to which anticompetitive practices in public procurement are addressed by existing laws and regulations, and offers suggestions to identify and address such anticompetitive practices in procurement.
3. *Sustainable Procurement:* Targeted procurement by the government can induce adoption of sustainable technologies in production, and facilitate gradual prioritisation of ‘sustainability’ as relevant criteria in procurement.
4. *Procurement Policy and Manufacturing:* Public Procurement can result in facilitating import substitution, encouraging innovation and ensuring the availability of strategically significant goods by inducing local production. This interface was explored in the brief.
5. *Procurement Policy and Fiscal Policy:* This brief engaged in finding the interface in terms of specific aspects of fiscal policy such as fiscal federalism and fiscal responsibility and its impact of developmental expenditure and taxation policy designed to incentivise manufacturing are addressed in this brief.
6. *Procurement Policy and Trade Policy:* The brief on procurement policy and trade policy address the approach towards negotiating commitments pertaining to government procurement in free trade agreements and the WTO Agreement on Government Procurement (GPA).

While the presentation made by CUTS laid a foundation for further discussion on the subject, the resource persons presented the participants with various perspectives, such as the effectiveness of coherency between major macroeconomic policies and public procurement. A pool of resource persons were engaged for the consultation meetings with the relevant stakeholders. The selection was dependent upon the targeted city and its participants. Nevertheless, these resource persons were a combination of experts on the subject, industry association members and also included some members from project advisory committee of this project. A consolidated list of the resource persons is attached herewith as *Annexure A*.

The need for a clear policy guideline on public procurement at national level was argued by many given that the multiple rules/guidelines at Central, state and departmental level. Such an overarching national public procurement policy, according them, is likely to help in achieving strategic goals of procurement so also to attain economic development of the country. They also elaborated on the using E-procurement as a tool for reducing the impact of corruption and that it needs to be reflected in the policy.

The concerns of small and medium sector enterprises *vis-à-vis* public procurement were also brought into discussion by some of the resource persons. It was pointed out that sustainable procurement standards, labelling for goods in sustainable procurement, moving up the value-chain and ensuring poverty alleviation, increasing the capacity to identify anti-competitive practices by bidders in procurement (through an analysis of bidding patterns which can reveal circling of bids), and to construct instruments which ensure payment to small and medium-sized enterprises.

Discussion

Since it was an interactive consultation meeting with stakeholders, participants in the meeting were a cross section of relevant stakeholders, such as public and private sector enterprises, industry, medium and small scale enterprises, CSOs, government officials from the targeted city and the local/sectoral industry associations. The discussion in the consultation meetings revolved around the following aspects:

Current Government Procurement System

- Given that India does not have a single public procurement law and multiple rules, such as the General Financial Rules (GFR), the Delegation of Financial Powers Rules (DFPR), although embody good global principles but lack force of law, in practice make the system inefficient and vulnerable to various malpractices. The Public Procurement Bill, 2012 although tabled in the Parliament is still pending for approval.
- It emerged from the discussion that participants found the extant institutional framework and regulations falling short in providing transparency, accountability, efficiency and professionalism in the procurement procedures/process. The most common feature of the current system is delay in procurement decisions leading up to additional expenses, delay in payments from government entities, collusive practises between authorities and some bidders resulting into anticompetitive conduct, insufficient enforceability of regulations to check conflict of interests and importantly lack of an effective independent grievance redressal mechanism.
- The meetings were attended by many medium small and micro enterprises across the targeted cities where consultation meetings were held. Various issues were raised from SMEs perspective such as lack of capital, inability to sustain in the business as public procurement for government means peculiarity of products otherwise non saleable in the market. This is of particular relevance to Jharkhand, given the focus of the Jharkhand Industrial Policy 2012 on safeguarding the interest of local Micro and Small Enterprises. It is of great interest to study how the envisaged objectives of reducing the burden of participating in the tender process by exempting earnest money deposit, and evolving solutions such as organising Annual Buyer and Seller Meets and developing Vendor Development Programmes which involve large and mega industries will be implemented.
- Some of the major concerns raised by this stakeholder are – that the requirement to procure 20 percent from MSMEs is frequently bypassed by procuring only one commodity/service, a company with a track record of supplying for long time like 15

years is required to prove that it has supplied to a procuring entity every time. The participants also observed that no comparative charts were provided to demonstrate where they stood in the bidding process.

One participant noted that the opposite was true in reverse auctions where everyone was required to bid downward. They suggest that this gap in the procurement system/policy needs to be addressed.

They also argued that e-procurement works well in theory but there are several loopholes which need to be fixed in order to make the system effective. In certain cases, a Public Sector Undertaking (PSU) might outsource e-procurement to an outside company. An example was cited that in one case, a PSU outsourced its procurement function to another company which puts in ghost bids every time the bidders pause their bidding.

That way the bids spiral downward until the participating companies incur heavy losses and thus make the system ineffective by eroding its efficient suppliers. For this the participants have suggested that a two-way check should be incorporated for companies which bid at very low prices. One is a quality check which is undertaken at the plant, and the second is a quality check which is undertaken in the place of operation.

What is the policy coherence of Public Procurement with other macroeconomic policies?

- While need to revamp the existing public procurement system was discussed widely across each of the consultations through legislation, policy and practise, the majority of the participants feel that there is a need to also have a uniform or overarching policy guideline which could provide the vision for moving forward more strategically in case of public procurement as multiplicity of rules and policies makes it difficult to navigate in the system and creates inefficiencies in the public procurement system. The participants welcomed the idea of exploring the interfaces of major macroeconomic policies with public procurement policy and expressed this as a useful exercise.
- The stakeholders also discussed the importance of Public procurement in terms of everyday life as well as its relationship with country's growth. In other words, they discussed that Public procurement amounts to about 25-30 percent of India's GDP and has multiplier effects & can be used as a tool to promote socio-economic objectives. They also suggested that many governments all over the world use procurement to create local manufacturing capacities and to promote competition in the market. Invariably example of the US came to fore especially in regards to creating level playing field for MSEs and woman entrepreneurs. They also argued that India can very well promote sustainable production and consumption although it is expensive but such a step can induce innovation which is the first step of moving towards pricelessness. It was also noted in the meetings that to attain the socio-economic objectives and also to harness commercial interest, it is crucial that the relevant policies should be cogent and coherent with each other, thereby lauded the efforts by CUTS on the project initiative.
- Much discussion revolved on the subject of anticompetitive conduct of firms in the public procurement market and stakeholders expressed that there is a need to create culture of

competition. It was also resonated that as the world market is increasingly getting integrated, importance of cross-border anti-competitive conduct is also assuming greater importance and therefore international cooperation amongst competition authorities is a crucial necessity in promoting competition, including in public procurement.

- In regards to interface between manufacturing policy, the meeting argued that there is a need to identify government demand and to encourage innovation through procurement in order to boost manufacturing activity in India. For this to happen, the current practice of mandatory requirements of prior experience needs to be diluted appropriately and also vigorously act to enhance usage of standards in domestic market so as to make India an attractive manufacturing destination.
- The stakeholders especially the state government officials actively discussed on fiscal federalism and expressed that imbalance in favour of Centre impacts States' ability to procure necessary public goods and services. One way according to them is states need to explore innovative ideas for maximising revenues/increasing GDP and act towards further rationalisation to lessen vertical and horizontal imbalances.
- He stakeholders were glad that government of India has taken cognizance of contribution of MSEs in public procurement by carving out 20 percent procurement from them however, according to them much needs to be done to make this carve out effective as MSEs face a large number of supply side constraints and although they would like to supply not only to domestic procurement market but also in other countries public procurement markets, currently they are unable to do so due to lack of resources and competition in the market. The Trade Policy of India should therefore take into consideration the trading needs of businesses particularly of MSEs which is a vibrant sector in India.

Awareness and sensitisation

The consultation meetings revealed that the awareness level of majority of stakeholders is low especially when it comes to discuss policy coherence with other major economic policies. This was evident when they were asked in the beginning of the meeting if they are aware of India's major macroeconomic policy and their linkage with public procurement. Only a few stakeholders were aware of India's initiating steps at global/regional level trade agreements on government procurement liberalisation.

While the industry and other stakeholders are well versed with the procurement practises and process followed in India they have not been sensitised enough on the major macroeconomic policies and on the new Public Procurement Bill 2012, and more so in regards to the trade agreements or WTO GPA and its implications in case of possible accession of India to this agreement. It is also found that majority of stakeholders seek not only National Public Procurement Policy to be put in place but also suggested the need for greater coherency between them. They seek India to progress and achieve its socio-economic goals so also the economic growth via public procurement in a more strategic and from long term gains by increasing not only profitability of Indian businesses but also by looking to increase the manufacturing base of industries and innovation.

To create an informed stakeholder base, which can give inputs on best procurement policies and practices both at home and in the international arena, a more rigorous consultation needs to be carried out.

Way Forward

Creating awareness and sensitisation among relevant stakeholders on major issues regarding public procurement legislation and policy in India is a vital step in order to avail the benefits of an efficient, transparent and competitive public procurement system which delivers ‘value for money.’

The consultation meetings were useful and helped in understanding the main concerns and how they can be address cogently in the proposed National Public Procurement Policy. The inputs of the stakeholders with respect to data-sources, feasibility of inclusion of certain tenets in the policy, and other aspects of the features of the project will be taken on board while finalising the policy briefs containing interfaces between major macroeconomic policies and public procurement. The feedback and comments from stakeholders are important and will further help us refine our efforts to suggest a means to achieve a mechanism.

Annexure A

Consultation Meeting on National Public Procurement Policy of India

Consolidated list of resource persons

- Vandana Dadel IAS, Secretary Industries, Department of Industry, Government of Jharkhand
- Dr. S. S. Vaishnava, Consultant, (Retd.) Financial Advisor, Government of Rajasthan
- Sushil Kumar Kedia, Chief Coordinator, Federation of Madhya Pradesh Chambers of Commerce and Industry
- Rakesh Tiwari, Chief General Manager (Raw material), Madhya Pradesh Laghu Udyog Nigam Limited
- Sanjeev Gupta, General Manager, Bharat Heavy Electrical Limited, Madhya Pradesh
- Sharad Kumar Poddar, Vice President, Jharkhand Small Industries Association
- Arun Kumar Khemka, President, Jharkhand Small Industries Association
- Vikas Gadre, Director General, Bombay Chamber of Commerce and Industry
- Usha Maheshwari, Joint Director, Bombay Chamber of Commerce and Industry
- Norma Tregurtha, Senior Policy Manager, ISEAL Alliance
- Shivakumar, President, Federation of Karnatake Chamber of Commerce & Industry
- S. N. Rangaprasad Director, MSME Development Institute, Bangalore
- M C Dinesh Chairman, Industry Committee, Federation of Karnatake Chamber of Commerce & Industry
- S. Sampathraman, Senior Vice-President, Federation of Karnatake Chamber of Commerce & Industry
- Dilip G. Shah, Secretary General, Indian Pharmaceutical Alliance
- T S Vishwanath, Principal Advisor-Trade Policy, APJ-SLG Law Offices

- Anubhuti Bhrany , Head-Government Affairs, Wipro Technologies
- Arijit Sen, Lead, Corporate Affairs, India, Hewlett Packard
- Sanjay Kumar, Deputy Chief Materials Manager, Northern Railway
- Somi Hazari, Managing Director Shosova, Shosova Properties P Ltd
- Atindra Sen, Senior Advisor for India, Transnational Strategy Group LLC
- Bulbul Sen, Consultant, CUTS International
- Archana Jatkar, Coordinator & Deputy Head, CUTS Centre for International Trade, Economics & Environment
- Vinitha Johnson, CUTS Centre for International Trade, Economics & Environment

Annexure B
Sample Agenda for the Consultation Meeting¹



British
High Commission
New Delhi

Stakeholder Consultation Meeting on
National Public Procurement Policy in India
&
Seminar on Sustainability in Public Procurement

AGENDA

9:30 to 10:00 a.m.	Registration & Tea/ Coffee	
10:00 to 10:10 a.m.	Welcome Address	<p>Mr. R. Shivakumar President, FKCCI</p> <p>Ms. Archana Jatkar Coordinator & Deputy Head, CUTS Centre for International Trade, Economics & Environment</p>
10:20 to 10:40 a.m.	Observations on the National Public Procurement Policy	<p>Mr. M. N. Vidyashankar IAS (Retd.) Former Additional Chief Secretary, Commerce and Industry Department, GoK</p> <p>Mr. S. N. Rangaprasad Director, MSME Development Institute, Bangalore</p> <p>Mr. M C Dinesh Chairman, Industry Committee, FKCCI</p> <p>Ms Bulbul Sen Consultant, CUTS</p>
10:40 to 11:00 a.m.	Overview of the Project	<p>Ms. Bulbul Sen Consultant, CUTS</p> <p>Ms. Archana Jatkar CUTS</p>

¹ The detailed information including the agenda of other consultation meetings is available at <http://www.cuts-citee.org/NPPPI/Events.htm>

11:00 a.m. – 12:00 p.m.	Presentation on Interface between Public Procurement Policy of India with major macro-economic policies	Ms. Bulbul Sen Consultant, CUTS Ms. Simi T.B Assistant Policy Analyst, CUTS International
12:00 to 1:00 p.m.	Interactive Session & Discussions	
1:00 – 1:05 p.m.	Vote of Thanks	Mr. S. Sampathraman Senior Vice-President, FKCCI
1:05 p.m. onwards	Lunch	