

National Consultation Meeting
on
Need for a Public Procurement Policy of India

Executive summary

CUTS International is implementing a project entitled ‘National Public Procurement Policy in India’ with support from the British High Commission, New Delhi under the Prosperity Fund of the UK’s Foreign and Commonwealth Office. The term of implementation of the project is from July 01, 2013 – March 31, 2015. The project has been exploring the need for a public procurement policy to direct the management of procurement expenditure valued at approximately 30 per cent of India’s Gross Domestic Product.

The objectives of the project are to evolve a model National Procurement Policy of India so as to address implementation concerns of the Public Procurement Bill. It further aims at enabling governmental bodies to react to changes in pertinent macroeconomic indicators and their implications for public procurement so as to evolve a dynamic strategy which further the attainment of socio-economic developmental goals through the use of public expenditure. It thus seeks to explore necessary elements of a National Procurement Policy of India and their interfaces with other major macroeconomic policies. It is noteworthy that public procurement has multiplier effects and can be used as a tool to promote several socio-economic development objectives by looking into its linkages with other important macroeconomic policies

Following the inception meeting which was held on September 17, 2013, six policy briefs were conceptualised to explore the interfaces between public procurement and specific macroeconomic policies such as manufacturing policy, competition policy, fiscal policy, state level procurement policy, sustainable procurement and trade policy.

The national consultation meeting held in New Delhi has aided in identification of specific concerns pertaining to public procurement, as expressed by the stakeholders, which could find possible reflection in the policy instrument. The meeting was attended by variety of stakeholders such as the public and private sector, government officials, business associations and civil society organisations.

Background and Context

In India, the size of the public procurement market is approximately 29 per cent of its gross domestic product, which is almost US\$ 536 billion annually. There is no central law or policy to govern this market. In 2012, a Public Procurement Bill was tabled in the Parliament, which is yet to become a law.

Public procurement has multiplier effects and can be used as a tool to promote several socio-economic development objectives by looking into its linkages with other important macroeconomic policies such as trade policy, fiscal policy, competition manufacturing policy, etc. It can also be used to incentivise the adoption of green technologies or provide a fillip to manufacturing undertaken by micro, small and medium sized enterprises. Therefore, it is essential to assess the interaction between these policies in a mutually cumulative manner as facilitation of the creation of such a mechanism will result in harmonising the

impact of two seemingly distinct but related objectives: judicious use of public expenditure and the achievement of socio-economic developmental goals.

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 is expected to act as a model law to be adopted by state governments. However and in order to understand the relationship between the objectives of public procurement and those of other major macroeconomic policies, a National Public Procurement Policy should be in place.

Therefore, CUTS International 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.

Opening and Introduction

Pradeep S Mehta, Secretary General, CUTS International, in his opening remarks observed that public procurement can address multiple objectives - the achievement of strategic and socio-economic objectives such as increasing local manufacturing capacities, consequently increasing employment opportunities; and monitoring expenditure in an efficient manner in order to address the growing fiscal deficit. Owing to the need to reconcile these conflicting objectives, there is a pronounced need to evolve a public procurement policy instrument. He expressed that merely instituting a public procurement law does not obliterate the need for a policy instrument.

In fact, public procurement policy would have large ramifications than the legislation and is expected to provide an overarching guideline/vision on procurement from central to state to local government procurement. He also noted that OECD recounts a loss of 120 bn dollars a year on procurement, indicating that malpractices and corruption is not limited to developing countries but also exists in developed countries. Nonetheless, the public procurement system in the developing world needs to be improved by employing efficient policies and practices.

J M Garg, Vigilance Commissioner, from the Central Vigilance Commission (CVC), in the Consultation Meeting noted that the need for a procurement policy at the central level had become more pronounced, owing to diminishing faith in good-governance. He noted that in a country which is poverty-struck with as much as 300 mn people living below poverty line, owing to the absence of an architecture which ensures that benefits seep down to the masses, the disparity may only keep widening. This results in further disillusionment. He estimated that approximately ten million dollars of black money leaves the country every year which by sheer volume could be utilised for developmental work. He highlighted that the need of the day is to ensure a simple law which is understood by all stakeholders, and ensure that it can be implemented in totality. He also noted that anti-graft bills out of which one was the Public Procurement Bill, 2012, in the Indian parliament have not been passed.

The importance of addressing corruption in public procurement owing to it eroding financial resources and faith in good-governance and probity was discussed in light of introducing the policy to precede the passing and the implementation of the Public Procurement Bill, 2012. He expressed that there is a need for public procurement policy. It will aid not only in good implementation of legislation but will also provide to counter the fiscal deficit that India is facing today.

He then shared that the CVC has evolved Standard Operating Guidelines to guide public sector utilities on how best to undertake procurement and to go about procurement for PSUs. He urged both public and private sector to come together in order to evolve a transparent and fair public procurement policy which ensures better access to essential food articles and medicine. He also suggested that if a draft model public procurement policy is prepared in next two to three months, CVC could take this up with the government.

In response to comments and deliberations by participants, J M Garg, shared that a Global Project Management System is being evolved in CVC in order to monitor the implementation of tenders evaluated at level worth rupees 5 crore and above. The Central Vigilance Commission (which does not have jurisdiction over the state governments) and has the resources to assess approximately 50-60 projects in a year, albeit extremely effective, still addresses only a fraction of government expenditure as a whole.

Claire Tynte-Irvine, First Secretary, Economic and Trade Policy, British High Commission, New Delhi noted that for countries which battle a fiscal deficit such as India, it is essential to ensure that the policy guiding public procurement is strategically designed. She highlighted that though the Public Procurement Bill was not passed in the last Parliament session, it is essential to pass it as soon as possible owing to it being a law which could have a potent impact. She underlined that three T's were essential to revive the global economy – Tax, Trade and Transparency and in this context emphasized the role of Prosperity Fund under which the project is supported.

This was especially true in light of mega FTAs creating newer shades in upcoming negotiations, trading relations of the WTO Agreement on Government Procurement and the EU-India Free Trade Agreement, and the impact on domestic manufacturers.

Christina Albertin, Regional Head, United Nations Office on Drugs and Crime (UNODC), identified that malpractices and corruption is insidious in its impact – besides interfering with the delivery of public service to its citizens, it also inhibits the implementation of internationally and domestically agreed-upon developmental goals. In 2003, the United Nation Convention against Corruption (UNCAC) was adopted in view of growing need to address the threat posed by corruption to the security and stability of society. In this context she mentioned that India has ratified this Convention and has started to take steps in the direction of addressing issue of transparency, fairness and corruption in public procurement.

Ms Albertin noted the engagement of civil society organisations in India in this regard and expressed that the CSOs have progressed in structured advocacy attempts to evolve laws, regulations, and mechanisms, which in turn have been adopted well by the government. She acknowledged that India has made progress with drafting the law on public procurement. She further elucidated that a study on public procurement scenario and challenges at central and state level in India, undertaken by the UNODC would provide valuable inputs to the formulation of the National Public Procurement Policy of India. She also expressed the importance of Public Private Partnerships in the context of public procurement and said that the definition of public service officials should be expanded so also the disconnect between law and enforcement agencies.

The opening session clearly laid down the foundation for the substantive sessions and the speakers vehemently affirmed the need for a Public Procurement Policy which should be adopted prior to the passing of the Public Procurement Bill.

Panel Discussion: Need for Policy Coherence between Public Procurement and Other Macroeconomic Policies

The Chair, **Somi Hazari**, Managing Director, Shosova Properties Pvt Ltd, articulated that given the size of the public procurement market which is about 20-25 per cent of its gross domestic product of India, a policy envisaging greater goods for the citizen of the country is imperative. He also expressed that it is matter of great consequence if there is no central law or policy to govern this market. In 2012, a Public Procurement Bill was tabled in the Parliament, which is yet to become a law and there exists no national policy as yet to provide guideline on the subject, which is a matter of concern. He indicated that governments worldwide had begun to use 'Buy Local' policies – special reference was made to Chinese and American Buy American policies. He elucidated this by citing examples of various items which were supplied to the local players.

Bulbul Sen, Consultant, CUTS International, made a consolidated presentation of the six briefs on the interface between public procurement and the six macroeconomic policy viz national manufacturing policy, competition policy, trade policy, sustainable public procurement policy, fiscal policy and the interface between state public procurement laws. She argued that there should be a public procurement policy for better regulation of the system making it coherent with other major macroeconomic objectives. She expressed that this is lacking in India at the policy making as well as institutional level to implement that policy.

Such a linkage between national public procurement policy with other macroeconomic policies is essential in order to enhance efficiency in allocation of resources and to bring down the economic costs for carrying out commercial and developmental activities in India. Therefore the effort under this project is laudable and on time to address this need for better economic governance in India through the adoption of a national public procurement policy.

She also informed the audience that the relation between these interfaces has been further explored through stakeholder consultations held in Bangalore, Mumbai, Ranchi, Bhopal and Jaipur. These insights enrich and inform the development of the policy on public procurement.

D G Shah, Secretary General, Indian Pharmaceutical Alliance, in his presentation highlighted five key factors in order for National Public Procurement Policy to be successful and effective. First and foremost key factor according to him is to create a climate for collaboration of stakeholders and stressed on the need to have good relations between procuring entity and vendor side viz the PSUs, SMEs & private sector etc. Secondly, he emphasized on need for capacity building for procuring entity in order to promote institutionalisation on the subject so as to be effective.

He further argued that it is highly desirable that the procuring entity focuses on key deliverables i.e. should focus on the quality of procuring item and check if it suits the purpose. One of way of effectively implementing this is to ensure standards of good manufacturing practice especially in the context of pharmaceutical sector. He also suggested that efforts should be taken to bring the vendor on board and cited example of Clinton Foundation who successfully followed and implemented the vendor development programme which helps both the supplier & the procuring entity and articulated the need for improvised Tamil Nadu Medical Services Corporation model of procurement in health sector in India. Lastly, he argued the need to creating a encouraging business environment which will instill confidence in the stakeholders.

Stakeholder Perspectives on Public Procurement Policy of India

Atindra Sen, Senior Advisor for India, Transnational Strategy Group LLC, chaired this session and posed question in relation to need for coherency in the public procurement and other policy areas vis –a –vis how it is perceived by various sectors. **T S Vishwanath**, Principal Advisor, Trade Policy, APJ-SLG Law Offices, expressed that it is essential to have a public procurement policy of India in current scenario and it will be a step forward if such a policy is formulated. He emphasised on the need to observe standards in procurement process and also argued that the public procurement policy to be formulated should contain clear definition of public procurement. He further elaborated on the subject to suggest that public procurement policy needs to consider and recognise preferential purchase policy in case of developing countries so to provide level playing field for all players.

Arijit Sen, Corporate Affairs, India, Hewlett Packard in his presentation stressed on the importance of public procurement to stimulate innovation and articulated on single vendor procurement system. He highlighted the importance of transparency and accountability and noted that India's Public Procurement Bill 2012 does incorporates this practice and improves on them by empowering the government to make electronic procurement mandatory or providing for the setting up of a central e-procurement portal which raises the level of standards of transparency to higher than WTO GPA specifications. However, when it comes to enforceability, the PPB rules are simply 'best endeavour' clauses and it is this critical area that needs to be further strengthened as per him.

Anubhuti Bharyan, Vice President & Head, Corporate Affairs, Wipro Limited, in her presentation focused on the need to have a National Public Procurement Policy and elucidated on the challenges relating to model RFP and said that the RFP/Tender processes followed by government authorities and more particularly the contract terms and conditions are consistently maintaining inflexible approach. She shared some of the key suggestives on model RFP and emphasised that the suggestive need to be reflected in the bill. Also, expressed that Department of Electronics & Information Technology, being the nodal agency for the model RFP is not serving purpose due to lack of coordination within and across other the departments. Therefore, she suggested on making the model RFP to be made a part of Ministry of Finance website so that it can be taken as one of the bench marks in procurement.

She further elucidated that the pre-qualification criteria are becoming more and more stringent in the form of Integrity Pact. This coupled with onerous clauses whereby government customers retain rights to blacklist/debar an organisation from future tender process. This imbalance in contracting terms whereby all onerous terms are loaded against the vendor according to her needs to be addressed.

She highlighted on the need to include services in the public procurement system and suggested of keeping it at par with product procurement. She went on to elaborate on the challenges faced in the context of services as the basic nature of service is different than product. For example, software becomes obsolete in a short span of time and there is always a scope of expecting more or change in the format. She further stated that there is a need for defining a separate chapter for services where basic terms and conditions can remain same but the technical aspect can be redefined. This should be coupled with inclusion of delivery guidelines so as to be clear and effective when it comes to procurement of services. She then concluded by saying that the big question that needs to be seen is that - once the Procurement Act is adopted by the Central, whether it would be only a guidance for the states or will it be

implemented through a directive thereby highlighting the need for putting in place the National Public Procurement Policy.

Sanjay Kumar, Deputy Chief Materials Manager, Northern Railway, expressed that there is a high possibility that huge public expenditure on procurement in India can be a catalyst for sustainable production & consumption, creating environmental & economic benefits.

He also articulated that an umbrella term of sustainable public procurement is used not only to focus on environmental sustainability but is also to cover social & development aspects by countries.

He emphasised on adopting a life cycle approach in implementing the sustainable public procurement programme (SPP) and underlined the benefits of ensuring best value for money in calculating lifecycle. He shared experiences from Indian Railways which has currently adopted SPP programme and is also using it to incentivise SMEs and setting an example for general public & private sector on the subject. He also highlighted that when the Railways engages in procurement, they frequently deal with a cartel.

Discussion

The participants were active and discussions in the session occurred around the importance of having a public procurement policy before legislation. They also discussed on the lack of coordination and coherency between various policies and public procurement and posed questions on how to achieve this policy coherency. The need to formulate cogent but simple worded policy which is understandable to relevant stakeholders was emphasised.

A participant, M P Gupta, Former Secretary, Department of Expenditure, government India, noted that while Madhya Pradesh has upgraded the version of the General Financial Rules that it uses (GFR 2005). He opined that the GFR 2005 is the most comprehensive attempt so far, taken together with the Public Procurement Bill. In order to deal with public procurement at a state government level, he suggests that there is a greater role for Public Procurement Policy Division under the Ministry of Finance, to play in this regard to formulate a legal instrument which is modelled along the same lines of a Public Procurement Bill (grievance redressal, etc and other functional instruments). He also recommended that state laws on procurement should be judged against the OECD criterion on a successful procuring policy.

Discussion also occurred on pertinent issues such as the limited bids occurring from there being limited suppliers in the market. Many suppliers (where one has shortlisted only a few of them), and further, cartels are endemic throughout the world. After discovering there is a cartel, they have to be blacklisted only with help from the competition commission while some of the participants also opined that blacklisting may not be the best solution. The session was concluded by suggesting that such type of discussion in the meeting is commendable and is a positive indication that discourse, such as this one on public procurement, can result in more active policing.

Way Forward

The discussions in the meeting were fruitful and provided many useful insights on the need and formulation of public procurement policy. First and foremost, in this context, are the Standard-Operating Procedures by CVC, which may act as a good instrument to start with. It was well argued and suggested that once the draft standard-operating procedures on undertaking public procurement are released for public comments by the Central Vigilance Commission, CUTS International could contribute by advocating on adoption of a forensic

approach to scrutinising bid-related analytics which can be mined from e-procurement portals.

Further, it was conveyed that the public procurement policy will be framed after considering specific themes which have resonated through the six stakeholder consultations, and the final national level consultation on the formation of a National Public Procurement Policy of India. The discussion in the meeting articulated that the policy to be prepared may seek to address the following overarching concerns and objectives that were highlighted by the stakeholders in the meeting:

- As identified by the Public Procurement Bill, the need to accommodate different public interests, be it to promote employment, or to protect environment;
- The impact of corruption in exacerbating the fiscal and revenue deficit;
- The unique strategic and systemic significance of the procurement of goods and services undertaken by individual government entities which requires them to analytically formulate their own entity-specific procurement policy based on procurement statistics;
- From international trade perspective and in the event of India negotiating a possible accession into the WTO Agreement on Government Procurement, or undertakes obligations pertaining to government procurement under any other bilateral and multilateral trade agreement, it is important to develop institutions which can enable achievement of socio-economic objectives, apart from being able to undertake procurement.
- Institutional mechanisms/instruments (such as tender documents, state level and central level institutions) have to be formulated after undertaking a thorough analysis on specific aspects of procurement. The use of e-procurement in this regard should be explored.

The specific tenets which are sought to be further developed in the policy instrument itself are as follows:

- The opportunity to actively involve SSIs on sourcing and subcontracting after undertaking specific studies on enabling them to progress in the value chain.
- Explore the possibility of undertaking collaborative buying in order to ensure financial gains to the government while dealing with suppliers.
- The need for trained professionals in procurement, both to draft tenders, to implement and maintain buyer-supplier relations and to forensically monitor corruption in procurement.
- While in certain cases, it is essential to maintain a relationship between buyers and sellers (especially in capital goods of strategic significance), in other cases (such as goods for consumption with relatively limited strategic significance), it may be possible to put in place mechanisms which encourages the government to purchase from a range of diverse suppliers.
- While developing domestic capacity it may be essential to consider if the risk factor in singularly supplying to the government can be absolved by ensuring access to other markets through measures like export promotion and building in standards which are uniform across the board.
- Technical experts need to be consulted on using E-procurement as a tool for reducing the impact of corruption, 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.

Annexure 1



National Consultation Meeting

Need for a Public Procurement Policy of India

Friday, 07 March, 2014

Crest Hall, Hotel Metropolitan, New Delhi

Agenda

0930 - 1000	Registration
1000 - 1045	Opening
	<p>Introductory Session</p> <p>Pradeep S Mehta, Secretary General, CUTS International</p> <p>Claire Tynte-Irvine, First Secretary, Economic and Trade Policy, British High Commission New Delhi</p> <p>Cristina Albertin, Regional Head, United Nations Office on Drugs and Crime Regional Office for South Asia, New Delhi</p> <p>J M Garg, Vigilance Commissioner, Central Vigilance Commission</p>
1045 - 1100	Tea/Coffee
1100 - 1300	Panel Discussion: Need for Policy Coherence between Public Procurement and other Major Macro-economic Policies
	<p>Chair Somi Hazari, Managing Director Shosova, Shosova Properties P Ltd</p> <p>Discussants</p>

	Bulbul Sen, Consultant, CUTS International Dilip G. Shah, Secretary General, Indian Pharmaceutical Alliance
1300-1400	Lunch
1400-1600	Panel Discussion: Stakeholder Perspectives on Public Procurement Policy of India
	<p>Chair Atindra Sen, Senior Advisor for India, Transnational Strategy Group LLC</p> <p>Discussants</p> <p>T S Vishwanath, Principal Advisor-Trade Policy, APJ-SLG Law Offices</p> <p>Anubhuti Bhrany , Head-Government Affairs, Wipro Technologies</p> <p>Arijit Sen, Lead, Corporate Affairs, India, Hewlett Packard</p> <p>Sanjay Kumar, Deputy Chief Materials Manager, Northern Railway</p>
1600-1630	Concluding Remarks
	Bipul Chatterjee, Deputy Executive director, CUTS International