



National Public Procurement Policy in India

Project Advisory Committee Meeting

Tuesday, New Delhi, September 17, 2013

Event Report



British
High Commission
New Delhi

I. Introduction

CUTS 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 project is the second in series which is being supported by the British High Commission, New Delhi. While the first project entitled 'Government Procurement – An emerging tool of global integration and good governance in India', had an objective of adopting necessary policy changes towards a more transparent & open public procurement system that may be essential for India to become a part of international trading agreement. The first project has underlined the need to strategically utilise public procurement as a potent tool to achieve various objectives.

Consequently, the current project has an objective to conduct applied research and advocate for a comprehensive and balanced National Procurement Policy of India which will allow governmental bodies to determine their approach to public expenditure after assessing the macroeconomic climate under which such they are to be made and by taking into account their impact on major socio-economic development objectives. It will be implemented from July 01, 2013-March 31, 2015.

For this purpose, a Project Advisory Committee (PAC) has been constituted under the project. The PAC will play an integral role in guiding and monitoring the research process from their rich experiences and diverse backgrounds. Their expertise will help further the implementation, research and advocacy in the project. The PAC will meet bi-annually to discuss the progress of the project and to evaluate the quality of research/advocacy so undertaken.

The meeting was conducted to formally instate the advisory committee and discuss the project objective, scope and methodology to obtain appropriate suggestions from the advisory committee members. Please refer to Annexure I (Programme Agenda) and Annexure II (List of Participants).

II. Opening

Bipul Chatterjee introduced the current project intended to formulate a National Public Procurement Policy of India by noting that procurement could well be a channel through which multiple socio-economic objectives can be achieved together with efficient public financial management.

He provided a basis on the importance of the first study which dealt with government procurement in two phases to provide insights on how these studies resulted in the inception of the current study.

He also highlighted the need for a procurement policy that has been felt over the past few years. For instance, this has been manifested in the formulation of the Jharkhand Public Procurement Policy, 2013 (which is currently in a draft stage).

However, Chatterjee noted that it was important to be prescient about imminent change in the political scene in the country which may impact the level of acceptance for the policy. He expressed that the proceedings in the project were of interest to the pertinent ministries in the Central Government.

Aurodeep Nandi, Senior Economic Adviser, British High Commission in his opening remarks said that the British High Commission under its Prosperity Fund seeks to promote Rules Based International Economic Systems which might further the objective of sustainable development and public procurement is an essential component to further this objective. He further spoke on the value of having a public procurement policy and provided an overview of how the National Public Procurement Policy of India could further the objectives of a rules-based international economic systems. He highlighted that public procurement could be used to incentivise the transition to sustainable procurement practices in the country.

III. Presentation

The Presentation made by CUTS International provided the research design drawn up to explore interfaces between procurement policy and other macroeconomic issues, such as competition policy, manufacturing policy, sustainable procurement, fiscal policy, trade policy and procurement practices by state governments. The cross-cutting issues which would be considered within the scope of the project will deal with the attainment of multiple objectives such as attainment of socio-economic objectives, incentivising small and medium enterprises, strategic sourcing, collaborative buying, public-private partnerships, post-contract management, e-Procurement and eliminating corrupt practices in tendering. The methodology and intended final output for the interfaces between procurement and various macroeconomic policies was presented to the PAC. Following the presentation, discussion was held to solicit comments on a few important issues such as:

1. Which sectors/ministries should be prioritised for case studies in order to attain insights on procurement
2. Sources of information on procurement
3. An effective stakeholder engagement strategy
4. An overall opinion on the feasibility of implementing the project

IV. Discussion

Two key concerns were raised during the course of the discussion amongst the members of the PAC besides a discussion on the specifics of the content and research methodology:

1. Political economy issues in facilitating acceptability for the project in the country
2. The scope of the project was wide-reaching extending over a plethora of objectives which may often conflict

It was noted that the project design may be ambitious for a two year time period because of the complexities in the subject given the current political scenario because the central and state governments are currently entering elections. The project will explore interfaces between procurement and various related macroeconomic policies while utilising eProcurement as a channel through which monitoring and evaluation can be undertaken. The policy would consider reciprocity in international dealings, and training and capacity building means while considering how best to stimulate local production. The policy document would be structured as to contain a preamble, background and context, rationale, objectives. While background research pertaining to subjects discussed in the meeting would be undertaken independently, they would not be included into the body of the policy itself.

Overall Take on the Project

- It was noted that the scope of objectives were wider than the changes proposed by the Dhall Committee. The PAC seemed to be convinced that the achievement of these multiple objectives through an impactful policy bundling exercise may prove effective. However, it was cautioned that areas covered under the project seemed to be wide and ‘ambitious’.
- Shankarnarayan Rao, President, Global Procurement Corporation limited (GPCL) was curious to understand the genesis of the project and as to who sets the terms of reference (ToR) for the project. He said that this is important to understand in view of the future activities to be undertaken under the project. He also insisted that in order to increase the acceptability of the research on the subject in India, it is important to discuss these points in the meeting.
- Pradeep S Mehta, Secretary General, CUTS then explained that the ToR for the project are set by CUTS and is implemented independently so far as its research and advocacy are concerned. The project, he said, will also provide recommendations and suggestions and that the British High Commission plays no role in influencing the substance of the project. He also explained that advocacy is an important component of the project. Although the research would come out in the stipulated period, advocacy is a continuous process and adoption of recommendation may take longer period as is common in the policy space.
- Mehta further highlighted the need to first have a policy and then a law and noted that in many cases, a law is a *part of a policy* and merely having a law in place does not render a policy redundant.
- M P Gupta, Former Additional Secretary, Department of Expenditure who was also a part of Dhall Committee on Public procurement noted the objectives and liked the idea of the project. He commended the effort by CUTS and said that good thing about the project is that it goes beyond what has been set out in the Public Procurement Bill and will also help industry by bringing out parameters of quality to be imbibed in the proposed policy. He suggested the need to include health sector in the case study and stated that there are several good manufacturing practices that are followed by Indian pharmaceutical companies for export market however, this is absent for the domestic market.
- Atindra Sen, Former Principal Secretary of Madhya Pradesh, and now Independent Consultant noted that the amount expended for Defence Procurement may be quite substantial in comparison to the amount which is spent on civil procurement. He further suggested that given the period and objectives of the project, the public private partnerships could be left out of the project as they are completely different from what is required to be dealt under the project.

- ParthaGuha Patra, Vice President, Corporate Affairs, WIPRO cautioned that the policy should have enough space to function effectively despite the checks and balances which were put in place. He also suggested that an analysis of how lucrative accession into the WTO GPA should be undertaken by studying the impact of accession on developing countries.
- D G Shah, Secretary General, Indian Pharmaceutical Alliance (IPA), mentioned that this is a valuable project and could bring about change in the policy space with CUTS being the change agent. He advocated including pharmaceutical as a case study as procurement practices and processes are relatively established, such as the Tamil Nadu Medical Services Corporation Limited (TNMC) model etc. He also suggested retaining several ancillary objectives of the project as public procurement policy should be dynamic in nature. He further suggested that civil works will be difficult area to venture into in respect of public procurement policy and access to credible information could be an issue.

Research and Methodology

- Aurodeep Nandi, British High Commission proposed the following value additions to the research, advocacy and policy implications for the project:
 - i. Impact of foreign direct investment (FDI) policy on procurement
 - ii. Clarifying as to which government authority is empowered to 'audit' public procurement: Comptroller and Auditor General (CAG), Central Vigilance Commission (CVC) or the Central Bureau of Investigation (CBI).
 - iii. Which entity would undertake monitoring of the system
 - iv. Anti-competitive nature of including empaneled vendors
 - v. The implications of low cost procurement on quality requirements
 - vi. Determining if Indian firms are not competitive to cater to markets abroad
 - vii. Need for specialised training of procurement officials
- Bimal Arora, Centre for Responsible Business noted the importance of considering procurement practices of private players (like Walmart) which successfully tie together achievement of socio-economic objectives with efficacious expenditure. He suggested that a 'continuous improvement' approach be undertaken in order and also that incentivisation through ranking should be undertaken to track procurement practices.
- Shankar Rao, President, GPCL noted that procurement aspects of the CVC and the World Bank could be covered.
- Shraddha Bhandari, Senior Consultant highlighted good practices undertaken by some South Indian states and local governments. An example was the Chakku project in Thiruvallur district where farmers are incentivised by collectives to grow these herbs. The corporatised supply chains collect it and supply it to tribal areas to develop small manufacturing needs met owing to which both social objectives and effective procurement were both met simultaneously. She raised the question of whether these projects can be replicated at the State and the Central level.
- Pratap Ranjan Jena noted that Competitiveness and obtaining value for money should be focussed on in the section on Public Financial Management in the Fiscal Policy briefs. He also suggested that including fiscal federalism within the scope of the project should be reconsidered because state governments deal with procurement independently.

- Vinitha Johnson of CUTS International responded that the individual analysis for every procuring entity will have to be undertaken by an independent body either at the state government level (like Rajasthan's State Procurement Facilitation Cell). She also noted that it was critical that the base analysis and work for enabling negotiating capacity for negotiating future trade agreements on government procurement be undertaken by including trade policy within the scope of the National Public Procurement Policy.
- Bulbul Sen highlighted that despite the project design seeking to cover multiple macroeconomic policies, the challenge in the project is to develop a policy which is not inchoate. The ultimate objective is to imbue cohesion into the different macroeconomic policies which have interfaces with procurement. Sen highlighted the need to study use of standards (goods, procurement, civil works) into procurement legislation and policy in order to maintain quality standards.
- Pranav Kumar, Head, Trade & International Policy, CII pointed out that the timing of the project is crucial as many Indian states and centre will have elections in the coming months. In view of this, it may be difficult to propagate and advocate for public procurement policy. He also suggested that it is good if the trade policy can be kept out of the purview of the project as it is more trade-oriented and may not necessarily deal with domestic environment. Instead, he mentioned that emphasis be given on developing incentive mechanisms which will outline good manufacturing practices and there by provide an efficient and clean procurement processed/practices.
- Rameesh Kailasam, Senior Director, APCO Worldwide, emphasised on the need to do an intended impact analyses of the procurement policy. He mentioned that procurement processes are important in terms that whenever there is an element of discretion in the process, enforceability is impacted. He went on to cite examples from IT industry in this regard and said that the Department of Information Technology, Government of India, in order to bring certainty in the process, has initiated a process to come out with separate T&Cs for procurement, such as Model RFP for Software and Hardware procurement, Model RFP for System Integrators, Model RFP for implementation agencies etc.

Suggestions to Improve Procurement

- M P Gupta noted that the Public Procurement Bill has certain gaps, one which is the lack of a provision which guarantees minimum procurement has to be assured for suppliers for railways and defence which have a specific market. He suggested that assurance of minimum procurement for suppliers of specific products in order to incentivise procurement may prove effective.
- Quality management of roads: The quality norms for roads in Colorado State are three times stringent than India.

Terms and Conditions in Contract

- Partha Guha Patra noted that terms and conditions (T&Cs) in tenders come from a British time when there was an element of distrust between the procurer and supplier: limitation of liability, termination at convenience

Increasing Market Access for Indian Suppliers in Foreign Markets

- Shankar Rao, Chairman, Global Public Procurement Consultants Limited noted that Indian companies have to create joint ventures (with support from the EXIM bank) in order to compete in foreign evaluation.
- Bulbul Sen noted that despite popular notions that Indian companies are unable of supplying to foreign markets owing to their being less competitive than their counterparts, the first study had highlighted cases where Indian firms have the capacity to supply and were being blocked by foreign markets. This was particularly true of the pharmaceuticals and manufacturing sectors.

Institutions and Systems to Monitor and Evaluate the Practice of Procurement

- Training of public procurement officials which is included in the Public Procurement Bill and Dhall committee should be prioritised.
- Vipin Singh, Project Director, eProcurement, Karnataka noted that the absence of Standard item codes interference with drawing up meaningful comparisons between procuring entities. A technical evaluation needs to be undertaken to assess the performance of some suppliers across procuring entities in order to identify blacklisted suppliers which may reach procurers in other states. Procurement agencies and systems should be evaluated and rated by a national agency and e-procurement would be a viable tools to affect this.
- SPS Bakshi, Chairman, SCOPE cautioned that despite any changes which may sought to be implemented through an overarching policy, actual T&Cs which form a part of tendering contracts may result in circumventing such policy changes. Some examples of such T&Cs include the following:
 1. Arbitration clause where the government is the sole arbitrator. Owing to this biased practice, companies refuse to bid, at least in the technology sector. He also noted that GFR rules are silent on this.
 2. The requirement to undertake unlimited liability which may directly contradict the obligations of listed companies.
 3. Requiring the provision of the IP and Source Code for standard off-the-shelf product is useless.
 4. 'Jointly and severally liable': even if a product is bought off the shelf, everyone is jointly liable owing to the usage.
- He further mentioned that anomalies in Standard procurement clauses as listed by CII had been compiled by DEITY. There are independent T&Cs for software procurement, hardware procurement and PPPS. Unfortunately use of these terms is not mandatory and they have been provided only for reference. He also highlighted cases where 'Bypassing the tender' occurred despite the existing CVC guidelines.
- He also cautioned that even though Integrity Pacts were heralded as a solution for removing corruption, it was possible to amend the Pact to include blacklisted bidders. The practice of using empanelled bidders could result in encouraging the practice of cartelisation amongst empanelled bidders
- Illustrating a case where procurement did not function effectively was where the department in South India went through a transparent process. However, despite transparent implementation, the pesticide was useless because the procurement process

was undertaken in May 2013 when the temperature was very high and this resulted in wastage. One of the state governments decided to include 'time-bound release'.

- *National offset policy*: Mehta while dealing with offsets noted that in many cases, offsets were sought in a sector different from the one in which the transaction occurred. He informed the gathering that a proposal to implement a National Offset Policy was pending before the central government.
- MP Gupta highlighted that money for Central Assistant Schemes would no longer reach the entity prior to being channelled through the State Consolidated Fund. This policy change will be effected from April 2014.

Including women entrepreneurship within the scope of social objectives

- Amit Bansal, CEO, Mitra Capital made certain important observations about women entrepreneurship in the US. He suggested that public procurement policy in India could also look into developing women entrepreneurship. In India, while there are set asides for procurement for medium and small industries or for disadvantaged classes. However, so far, disadvantage class has not extended to viewing 'women' as a minority or disadvantaged class. He cited an example of the US, the concept of preference for women has been developed to give boost to bringing women into mainstream businesses, which ultimately affect the economic growth of the country.

V. Conclusion

The need for a national level procurement policy was clearly acknowledged in the meeting. Following extensive discussions on the feasibility of incorporating multiple socio-economic objectives in the policy on procurement, it was concluded that the essence of the project was in bringing together seemingly contradictory objectives to be rendered operational through the use of cohesive policy instruments.

The policy document would be structured as to contain a preamble, background and context, rationale, objectives. While background research pertaining to the subjects discussed in the meeting would be undertaken independently, they would not be included into the body of the policy itself.

Research and Methodology

1. The impact of FDI policy vis-à-vis procurement will be considered.
2. Sectoral studies on the procurement of pharmaceuticals, food, services, civil works will be undertaken on a case-study basis in order to determine the specific models of procurement.
3. Amongst socio-economic objectives which are to be considered within the scope of the project, the feasibility of effectively including women entrepreneurship amongst other schemes encouraging public procurement within the scope of the policy will be studied.
4. World bank best practices on procurement will be considered in the course of the project
5. Post-contract management, considering the impact of use of antiquated tendering conditions
6. *The National Offset policy* (draft) will be studied as it is evolved. In the meantime, existing provisions pertaining to offsets will be considered.
7. The role of eProcurement in monitoring, evaluation and identifying corrupt practices in procurements needs to be studied in further detail. The importance of every procuring

entity undertaking its own analysis of items commonly procurement, strategic items can provide valuable insights on supplier behaviour patterns etc.

The meeting concluded noting the need for increased synergy between interacting macroeconomic policies despite them seeming to operate in disparate spheres. Chatterjee concluded the meeting by stating that we will be able to successfully persuade and convince the government that there is a need for a public procurement policy at the executive and political level.



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Project Advisory Committee Meeting
Seminar Hall III, India International Centre,
New Extension Building, Lodi Road, New Delhi
- 17 September, 2013



British
High Commission
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List of Participants

S. No.	Name	Details
1.	Aarti Kapoor	Prosperity Fund Programme Manager Economic Reforms Economic Section British High Commission
2.	Anil Bhardwaj	Secretary General Federation of Indian Micro and Small & Medium Enterprises
3.	Amit Bansal	Founder and CEO Mitra Capital
4.	Atindra Sen	Senior Advisor of India Transnational Strategy Group LLC Mumbai
5.	Aurodeep Nandi	Senior Economic Adviser British High Commission
6.	Bimal Arora	Senior Technical Adviser, Scaling UP Indian CSR Initiatives (GIZ) GMBH New Delhi
7.	Bulbul Sen	Former Chief Commissioner of Income Tax
8.	Dilip G. Shah	Secretary General- Indian Pharmaceutical Alliance (IPA)
9.	Vipin Singh	IFS, Project Director, e Procurement Government of Karnataka
10.	M. P. Gupta	IA & AS (Retd.)
11.	Partha Sarathi Guha Patra	Vice President & Head Corporate Affairs Wipro Limited
12.	Pradeep S. Mehta	Secretary General, CUTS International, and Chairman, Managing Committee, CUTS Institute for Regulation & Competition

13. Pranav Kumar Head – Trade and International Policy
Confederation of Indian Industry
14. Pratap Ranjan Jena Associate Professor
National Institute of Public Finance & Policy
15. Rameesh Kailasam Senior Director
APCO Worldwide
16. Shraddha Bhandari Senior Consultant
New Delhi
17. Shankarnarayan R Rao President
Global Procurement Consultants Limited
18. S.P.S. Bakshi Chairman & Managing Director
Engineering Projects (India) Limited
Core-3, SCOPE Complex
19. Pronab Sen Country Director
IGC India-Central
International Growth Centre
20. Nilanjan Email:- nilbanik@gmail.com
21. Bipul Chatterjee Deputy Executive Director
CUTS International , Jaipur
22. Archana Jatkar Centre Coordinator
CUTS International, Jaipur
23. Vinitha Johnson Assistant Policy Analyst
CUTS International, Jaipur



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Seminar Hall 3, India International Centre, New Extension Building, Lodi Road, New Delhi

- Tuesday 17 September, 2013

- **AGENDA**

0930 – 1000	Registration
1000 – 1015	Opening Remarks by CUTS International and British High Commission, New Delhi
1015 – 1030	Break
1030 – 1100	Project Overview by CUTS International
1100 – 1300	Discussion
	Lunch

1300	
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