

Briefing Paper

1/2015

An Overview of Public Procurement Framework in Rajasthan

Public Procurement is an activity, which includes all functions that pertain to obtain any material, service, or construction for public goods. An effective procurement process is crucial to ensure optimum utilisation of scarce public resources. The institutional and legal framework for procurement in India is derived from the Constitution of India and being a signatory to the UN Convention against corruption, internationally, India has pledged its commitment to the zero tolerance of corruption. Rajasthan is one of those few states, which have 'Rajasthan Transparency in Public Procurement Act (RTPP Act), 2012. To get familiar with the Rajasthan's legislative framework, some of the key legal provisions like RTPP Rules 2013, Public Private Partnership (PPP) Guidelines, 2012 and Rajasthan PPP Policy, 2008 are important to be emphasised. The outcome of the Public Procurement observatory would be that Rajasthan would surely bring certain challenges at forefront, which might presently be impeding its effective implementation.

Public Procurement Framework in Rajasthan

An effective, efficient and honest procurement process is crucial to ensure that scarce public funds are well spent and that important public projects are carried out timely. Public Procurement is a key function of the Government; however, such processes are often saddled by corruption and inefficiency. Given the involvement of roughly one-third of public money being spent in procurements and the adverse effects of corruption on the quality of goods and services, deteriorating competition and increasing the cost of procurement, preventing corruption in Public Procurement is, therefore, of utmost importance.

As seen in early 2013, an Indian parliamentary investigation began into allegations of bribery and corruption involving several senior officials and helicopter manufacturer AgustaWestland surrounding the purchase of a new fleet of helicopters. Afterwards in June 2014, Indian Government recovered a total amount of ₹1,818 crore, which it had paid to AgustaWestland.¹

Again in the same year, the Government alleged that the exchequer incurred losses to the tune of ₹184 crore in the construction of the Ring Road bypass from Salimgarh Fort to Velodrome Road in Delhi². This was a result of a nexus between Public Works Department (PWD) officials, consultants and contractors and massive irregularities in the tendering process. In such times, there is a need for unoppressed and ethical procurement process.

Considering this state of affairs, the following note divulges on the existing framework and prevailing need for an effective procurement system in the State of Rajasthan.

Why an Efficient Public Procurement Matters?

In case of developing countries, including India, Public Procurement is used to attain social outcomes, accelerate the economic growth, steer the market and promote entrepreneurship and innovation apart from its fundamental functions. Procurement includes all functions that pertain to obtain any material, service, or construction. As per World Bank's (WB's) estimate, the average bribe to obtain a public contract is 15 percent of contract value³, so in such a situation having an 'effective' Public Procurement system is inevitable and its great importance could never be understated.

Public Procurement system offers an opportunity to save public money by controlling financial damage through unrealistically high cost of purchases. Avoiding practices of selecting projects not on the merit but by the amount of bribe payments etc. will also result in efficient utilisation of public fund. Furthermore, an effective procurement process can also promote investment opportunities and external development assistance resulting into good economic development and could prevent the governments from getting burdened with operational, maintenance and debt servicing liability. This system has an opportunity to avoid

making bad choices that have adverse environmental impact and resulting into non-compliance of the environmental laws of the land and International environmental standards.

Procurement Framework in India

The institutional and legal framework for procurement in India is derived from the Constitution of India. The Constitution vests the executive powers of the Union of India with the President of India. The President, by his order, and issuance of allocation rules of the Government of India, vested the financial powers of the Indian Government in the Ministry of Finance. These powers in turn are delegated to the subordinate authorities, under the 1947 General Financial Rules, which were revised in 2005.

- There is no central legislation governing procurement in India. Comprehensive rules and directives, in this regard, are included in the General Financial Rules, 2005 and Delegation of Financial Powers Rules (DFPR) and
- A broader framework is also provided by the Contract Act, 1872, the Sale of Goods Act, 1930, the Law on Arbitration and Limitation and the recent Right to Information Act, 2005.

The Institutions that are overseeing the process of procurement:

- Central Vigilance Commission (CVC), a statutory body founded as a result of the enactment of the CVC Act, 2003 investigates the complaints of corruption and the vigilance administration of the Central Government.
- Competition Commission of India (CCI), formed under Competition Act, 2002 is important as far as the *post-facto* role in ensuring fair competition in public procurement exercise is concerned.
- Central Bureau of Investigation (CBI) plays an important role in the governance of procurement process.
- The constitutionally appointed Comptroller and Auditor General (CAG) oversees the accounts of the Union and the States.
- At the State Legislative Assembly level there are certain committees like Public Accounts Committee (PAC), the Standing Committees and the Legislative Accounts Committees in the states overseeing the functioning of the executive power and
- To ensure transparency in the process at each level of the Indian Government, a local fund audit for local bodies has been established. Reports on the audits are presented to each State Legislative Assembly.

As a signatory to the UN Convention against Corruption, internationally, India has also pledged to

its commitment to zero tolerance of corruption. India will be compliant to Article 9 of the 'United Nations Convention against Corruption (UNCAC)' following the passage of the Public Procurement Bill, 2012. The Public Procurement Bill, 2012 was introduced by the Ministry of Finance in the Lok Sabha on May 14, 2012. The Bill got lapsed, since the change in Government but the new Government is set to introduce it soon again. Some of the key features of the Bill are provided in Box 1.

State Rules and Regulations on Public Procurement

State governments and Central Public Sector Units (CPSUs) have their own general financial rules, which are based on the broad principles outlined in the General Financial Rules (GFR), 2005, forming the main rules for procurement, which could be used by the central and the state governments. Many states have not laid down a specific legislation to regulate public procurement; instead they work on broader lines of GFR 2005; other few states to introduced legislation and policy for procurement are: Karnataka [Karnataka Transparency in Public Procurement (KTPP) Act, 1999], Tamil Nadu [Tamil Nadu Transparency in Tenders Act, 1998, Tamil Nadu Transparency in Tenders Rules, 2000, Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012], Kerala [Kerala Transparency in Public Purchase Bill, 2002] and Rajasthan [Rajasthan Transparency in Public Procurement Act, 2012, Rajasthan Public Procurement Rules 2013 and Public-Private Partnership Policy 2008].

The State of Rajasthan appears to be a forerunner in terms of legislation on transparency, accountability and civic engagement, with four different Acts in place:

1. Right to Information Act, 2002
2. Rajasthan Guaranteed Delivery of Public Services Act, 2011
3. Rajasthan Right to Hearing Act, 2012 and
4. Rajasthan Transparency in Public Procurement Act (RTPP), 2012

Rajasthan's Transparency in Public Procurement Act, 2012

RTPP Act, 2012 was the third Act of its kind in series after Tamil Nadu Transparency in Public Procurement Act, 1998 and Karnataka Transparency in Public Procurement Act, 1999. Rajasthan is the second State after Tamil Nadu, which has formed Rajasthan Transparency in Public Procurement Rules, 2013 and Rajasthan Public-Private Partnership Policy, 2008. It intended to safeguard integrity in the procurement process and for matters connected therewith or incidental thereto for enhancing public confidence in Public Procurement in pursuance of clause (3) of Article 348 of the Constitution of India. RTPP Act, 2012 has

Box 1: The Public Procurement Bill, 2012

- This Bill should apply to procurements of more than ₹50 lakh, exempting procurements for disasters and national security
- The basic norms that the procuring entity should adhere to comprise: (a) ensuring efficiency, economy and transparency; (b) provide fair and equitable treatment to bidders; (c) promote competitiveness; (d) ensure the quality is consistent with the price of the bid; and (e) prevent corruption and
- The Bill also defines a Code of Integrity for the procuring entity or Central Purchase Organisation (CPO) as well as the bidders. The Bill provides for Central Public Procurement Portal and independent procurement redressal committee(s) to ensure transparency in the procurement process as in India, the GFR, 2005; Public Procurement Bill and CVC Guidelines are applicable only to the Union Government (and not to the states).

Source: PRS, 2012⁴

five chapters and 59 sections in it and the key features of Rajasthan Transparency in Public Procurement Act, 2012 are presented below:

- **Transparency standards**

As the name of this Act itself includes the term transparency, which runs through in its several sections and clauses that mean that transparency is one of the core guiding principles. Section 10 of this Act bounds all the procuring entities for keeping documentary record of all its procurement proceedings and communications just to enable Right to Information Act, 2005, audit or other such reviews, which means public review as well. Section 11 spells out code of integrity for procuring entity and bidders. Clause III of this Act prohibits to procuring entities from any collusion, bid rigging or anti-competitive behaviour to impair the transparency of the procurement process. In addition, Section 17 makes a provision for setting up and maintaining a State Public Procurement Portal accessible to the public for posting matters relating to Public Procurement and providing information related to all the processes of procurement in all the procuring entities. Section 28 (2) is also important in the sense that it recommends for electronic procurement as compulsory and suggests open Competitive Bidding as most preferred method.

- **Quality of contract management**

As far as contract management is concerned, this whole Act talks about this term only once in Section 55 (2) 26 and that is related to the power of State Government to make rules regarding contract management. Rest of the provisions are

related to procurement management *per se*, which starts from determination of need of procurement till award of the contract and further to this, instead of RTPP Act, Indian Contract Act is applied. As per the Section 27 of RTPP Rules, 2013 a procuring entity should collate a Management of Information System (MIS) in a query based format to track all the procurement processes regularly, which should allow for meaningful analysis of the ability of the procurement framework to deliver the desired outcomes. This should also ensure efficiency as well as transparency in the procurement system. As per section 28 procuring entity should also maintain a procurement register having all the relevant documents filed in sequence.

- **Registration of vendors**

The registration process for the vendors or bidders or suppliers has been spelt out in the section 19 of RTPP Act. It has a provision of registering bidders for the subject matter of procurement or a class of procurement, which might be commonly required across procuring entities or repeatedly required by a procuring entity. This process is open for new and potential bidders on time to time and as per Act the list has to be uploaded on the website of the procuring entity as well as on the State Public Procurement Portal (SPPP).

- **Designing of the Bid document and Bid validity period**

Bid document is considered to be the main document in any procurement process, therefore, the designing process is very crucial. Bid document has obligations related to value of procurement, description of the subject matter of procurement, criteria of evaluations, preferred methods of procurement, pre-qualification, qualifications, eligibility of bidders, timeframe, bid validity period and a clear cut mention of criteria about all the requisite steps and stages of the bidding process like opening, evaluations and acceptance or rejection of bids.

- **Rajasthan Government Preferential Policy**

In section 23 of RTPP Rules, Purchase and price preference and other concessions in procurement for cottage or small scale industries and industries situated in Rajasthan have been mentioned. The State Government, by notification, might declare purchase and price preference and conditions of their application in procurement from such industries but all these preferences have to be clearly mentioned in the request for proposal and bid document.

- **Grievance redressal mechanism**

In any public system, grievance redressal mechanism is very important and this mechanism has to be

robust as well as well laid. In RTPP Rules, chapter VII from section 82 to 88 is related to this. Subject to rule 85, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of the Act, he might file an appeal to the officer of the procuring entity. Besides, this chapter also talks about first and second appellate authorities, grounds of appeals and appeals not to lie in certain cases, fee for filing appeals, stay of the procurement process.

- **Performance of the Nodal Department for Public Procurement**

The role and performance of both the nodal department, which is state finance department and 'State Procurement Facilitation Cell (SPFC)' are crucial for effective implementation of the Act in state. As per section 50 of RTPP Act, the State Government will establish a SPFC headed by an officer not below the rank of a Secretary to the Government. The SPFC should discharge the functions of maintaining and updating the SPPP set up under section 17, arranging for training and certification specified in terms of section 48 and recommending to the State Government for taking effective measures for implementation of the provisions of this Act. The SPFC will have the power to require a procuring entity or any other person by notice in writing to furnish such information as might be necessary for performing its functions, under this Act.

While the RTPP follows the overall National Framework, it deviates on certain aspects from it. Firstly, it ignores the aftermath of the procurement procedures. The call for bids, evaluation and award of contracts etc. are under the purview of the law but, the major loops begin when this process ends, therefore, there needs to be some follow-up mechanism for tracking the performance of the contracted projects. Also, there is no provision of enhanced bid-design, along with a lack of a statutory body overseeing the accounts of the state.

In order to highlight the State Legislative framework, the following provisions are also important to be understood:

- **Rajasthan Transparency in Public Procurement Rules, 2013⁵**

In exercise of the powers conferred by section 55 of Rajasthan Transparency in Public Procurement Act (Rajasthan Act No. 21 of 2012), the Government of Rajasthan made the rules to give effect to the provisions of the aforesaid Act for Public Procurement in departments of the State Government. There are seven chapters and 90 sections in these rules, which are pivotal

in effective implementation of the RTPP Act, 2012.

- **Rajasthan Guaranteed Delivery of Public Services Act, 2011⁶**

This Rajasthan Guaranteed Delivery of Public Services Act, 2011 was enacted to provide for the delivery of certain services to the people of the State by public authority within stipulated time limit. So far more than 153 services have been notified from 18 departments and all the departments have appointed designated officers, first and second appellate authorities for implementing this Act.

- **Rajasthan Right to Hearing Act, 2012⁷**

Rajasthan State was in fact the first state to enact this Act to provide the right of hearing to the people. It provides an opportunity of hearing on complaint within the stipulated time limit. This Act has provisions of designating Right to Hearing Officers in all the departments and offices along with first and second appellate authority as well and also suggests establishing Information and Facilitation Centre. This Act also has provisions to impose a penalty on Public Hearing Officer in accordance with the provisions of section 7 if the compliance of the act is not ensured.

- **Rajasthan Public Private Partnership Policy, 2008⁸**

To better regulate PPP Sector, State Government had put in black and white the Rajasthan PPP Policy in 2008. Since the Government recognises that constraint-free infrastructure provisioning fosters economic and industrial activities conducive to sustainable development and inclusive growth, as envisioned by the same for the State. To leverage the large pool of private capital as well as to introduce private sector based efficiencies, PPP mode is evidently emerging as the preferred route. A closer partnership between the public and private sectors can support sustainable development, reduce poverty, and ultimately achieve greater prosperity.

- **Public Private Partnership Guidelines, 2012⁹**

To facilitate the role for PPP in creating new infrastructure assets as well as in managing assets already created, Government of Rajasthan issued Guidelines for PPPs in May 2012. These guidelines aim at a transparent, consistent, and effective mechanism for PPP project development and procurement and to stimulate PPP project identification and development. The PPP Guidelines defines the PPP as an arrangement between a government or statutory entity or

government-owned entity on one side and a private sector entity on the other. This is for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified period of time. This is in case where there is a substantial risk sharing with the private sector and the private sector receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.

Information Disclosure by the State Public Procurement Portal¹⁰

As per the section 17, State Government has set and maintained a Information Disclosure by the State Public Procurement Portal (SPPP), which is accessible to the general public as well as procuring entity for posting matters relating to public procurement without prejudice. As per section 50 mentioned in chapter 5, the State Government has established a 'State Procurement Facilitation Cell (SPFC)' in Finance Department at Secretariat building, Jaipur, having functions to maintain and update the SPPP with the information related to: arranging for training and certification specified in terms of section 48, recommending to the State Government measures for effective implementation of this Act, providing guidance to the procuring entities, studying different methods of Public Procurement and preparation and recommendation of standard documents and encouraging procuring entities to adopt electronic procurement and asking in writing through notice to furnish such information as might be necessary for performing its functions under this Act. Presently, SPFC is dealing with 631 departments and out of this only 269 are active. So far 516 departments have been able to appoint nodal officers and 376 departments have designated Procuring Entity and still 112 departments have designated neither nodal officer nor procuring entity.

Need for the Information

The information put on this SPPP portal is very important since all the bids, request for proposals, tenders and notice for inviting bids or notice for inviting tenders are available at one place only in a consolidated manner. On the portal, information like key web links and e-procurement site, resources related to procurement are also available. This portal also has real time information about training programmes of procuring entities and provides a platform to contact the SPFC team for any grievance or help to write them online. It also

enhances the ease of accessibility of all the interested stakeholders and avoids the burden of visiting on various departmental portals, which is a time taking process. But this portal has scope of further improvement in terms of making it more interactive by opening up windows of online consultations, asking queries, getting any required online help for better execution of the Act in its letter and spirit.

Objectives of SPPP

The portal has the following objectives:

- Providing free and open access to general public to make them available all procurement related information
- To educate, encourage and thus facilitate Departments of the State Government and State Public Sector Enterprise for ensuring transparency and moving towards adoption of electronic Procurement solution(s) for their procurement needs and
- To achieve efficient and cost-effective procurement, shortened procurement cycles, avoidance of human discretion/interference to the extent possible, easy availability of complete audit trail and to enable access to widest reach of bids and unhindered secured bid submission facility for all, from any corner of the country or outside the country in case of International Competitive Bidding.

Achievements

So far, this portal has successfully been doing its functions of publishing pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference and corrigenda thereto. The departmental portals and SPPP also publish bid and bid award details with clear link to corresponding NIB (Notice of Inviting Bid), list of bidders that presented bids including during pre-qualification or bidder registration as the case might be, Particulars of the bidders who have been debarred and bid categorisation, according to types and methods of bidding, product categories, types of organisations and organisation name on the other.

Though the SPPP is proving instrumental in achieving its overall goal but it needs to enhance its scope and required to publish details even after award of contracts about any increment in the quantity or change in the terms or conditions, if any. Moreover, it should also put on detailed information related to the compliant redressal, actual compliance of the terms and conditions and overall procurement management till end of the

procurement process as categorised above, so that overall contract management is ensured.

Way Forward

Overall, the RTPP Act provides an opportunity to ensure all its objectives are fulfilled but the outcomes that the observatory would provide would certainly bring certain challenges to the forefront, which might be presently impeding the effective implementation of the RTPP Act, 2012 and, therefore, forming a well-targeted procurement process. This is because the present framework seems lacking on many grounds, a Procurement Observatory set-up is the need of the hour that ensures contribution to the given outlay.

Few areas of concern that need to be addressed by the Procurement Observatory as a part of its plan are given as following:

- SPFCs to be equipped with required resources and manpower having subject expertise and not just function as mere toothless bodies.
- Starting online payment gateway, initiating the Electronic Reverse Auction, which has not taken

off as yet, developing Procurement Management Information System by all procuring entities and putting on all required documents on SPPP.

- Details of post-tendering process to be put on the portal to ensure more transparency along with expediting a streamlined grievance redressal procedure (which is already a feature of Public Procurement Bill 2012) and
- Provisions of lodging online complaints.

There are certain other areas of concerns in the implementation process of Public Procurement in Rajasthan. There could be some attempts of change in scope of work after award of contract, accepting revision in specification/payment conditions after award of work, allowing extra items at inflated rates, permitting alternative makes without adequate cost adjustments, acceptance of substandard work, delay in completion and commissioning of various projects (Cost overrun/ Time overrun) and sometimes doubting the need/ purpose of procurement itself. Therefore, for effective implementation of RTPP Act in the State these areas of concerns need to be better monitored and managed.

ENDNOTES

- 1 India cancelled the ₹3,600 crore deal with AgustaWestland in January 2014. The Government cancelled the contract “on grounds of breach of the Pre-contract Integrity Pact and the agreement by AWIL (AgustaWestland International Ltd)”. The contract was frozen in February 2013 after allegations surfaced that ₹360 crore was paid as bribe. Available at: http://articles.economictimes.indiatimes.com/2014-01-02/news/45765254_1_pre-contract-integrity-pact-agustawestland-indian-air-force (Times of India, January 02, 2014, last accessed on February 23, 2015)
- 2 It was alleged that the previous Government had incurred a loss to the tune of ₹184 crore due to cartel formation by private contractors, consultants and their nexus with officials in preparing the estimated cost and justification of rates in execution of the ₹407-crore Ring Road bypass from Salimgarh Fort to Velodrome Road. The project was executed by Simplex Infra Ltd – the company that was awarded both the Phase I and II of the project in 2008. Available at: http://articles.economictimes.indiatimes.com/2014-02-07/news/47126746_1_acb-probe-cwg-project-delhi-government (The Economic Times, February 07, 2014, last accessed on February 23, 2015)
- 3 Campos E and Pradhan Sanjay, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, The World Bank, Washington D.C., available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/68481399850REPLACEMENT101OFFICIAL0USE0ONLY1.pdf?sequence=1> (Last accessed on March 31, 2015)
- 4 PRS Legislative Research, *Bill Summary-The Public Procurement Bill, 2012*, May 16, 2012, New Delhi, available at: <http://www.prsindia.org/uploads/media/Public%20Procurement/Bill%20Summary%20%20Public%20Procurement%20Bill%202012.pdf> (Last accessed on February 23, 2015)
- 5 *Rajasthan Transparency in Public Procurement Rules, 2013*: http://sppp.rajasthan.gov.in/sppp/upload/documents/3_1369391344.pdf
- 6 *RGDPS Act, 2011*: <http://www.rajswashya.nic.in/Rajasthan%20Guaranteed%20Delivery%20of%20Public%20Services%20Act,%202011/2.pdf>
- 7 *Right to Hearing Act, 2012*: http://www.ard.rajasthan.gov.in/Act_Hindi_2012.pdf
- 8 *Public Private Partnership Policy, 2008*: http://www.indiawaterportal.org/sites/indiawaterportal.org/files/Public-Private%20Partnership%20Policy_GOR_Planning%20Department_2008.pdf
- 9 *Introduction of Public Private Partnership Policy, 2008*: <http://statistics.rajasthan.gov.in/English2013/chapters/CI1f%202012-13.pdf>
- 10 *Rajasthan State Public Procurement Portal*: <http://sppp.rajasthan.gov.in/index.php#>

This Briefing Paper has been prepared by Madhu Sudan Sharma, Senior Project Coordinator, CUTS Centre for Consumer Action, Research & Training (CUTS CART) and Ira Sharma, Research Assistant, CUTS Institute for Regulation & Competition (CIRC) as part of the CIRC-CUTS project entitled, ‘Setting up a Public Procurement Observatory in Rajasthan’ with support from the World Bank.

CUTS Briefing Papers are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, but CUTS International requests due acknowledgement and a copy of the publication.

© CUTS International 2015. CUTS International, D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India. Ph: +91.141.2282821, Fx: +91.141.2282485, E-mail: cart@cuts.org, Website: <http://www.cuts-international.org/CART/index.htm>