

## **Final Dissemination cum Advocacy Workshop**

**On**

### **Journey of Public Procurement in Rajasthan: Current Status, New Initiatives and Challenges**

#### **1. Background:**

Under the Project named as 'Asia Pacific Public Electronic Procurement Network' supported by the Asian Development Bank, a final dissemination cum advocacy workshop was organised dated April 11, 2017 in Jaipur. In the workshop Mr. Sandeep Verma, Principal Secretary, PHED, Mr. Ashutosh Vajpai, Joint Secretary (EAD-FCC), Finance Department, Smt. Savita, Joint Secretary, Rural Development, Finance Advisers, Chief Accounts Officers, Accounts and several other procuring officials who were around 54 in number participated in the workshop. In the workshop, Mr. Verma, Mr. SS Vaishnav and Mr. Arvind Deewan, Chief Accounts Officer of State Public Procurement Facilitation Cell (SPFC) in Finance Department, Govt. of Rajasthan was the resource persons other than the Project Management Team.

#### **2. Inaugural Session:**

##### **2.1 Welcome and Introductory Remarks:**

The workshop was started with a warm welcome of Mr. George Cheriyan, Director, CUTS to all the participants. He delivered introductory remarks and talked about CUTS and its operations in India and overseas in brief. He also touched upon the CUTS work in the area of governance viz; social accountability, access to information and the latest addition of public procurement. While talking on the public procurement, he underlined its importance and said that around 25 to 30 percent of the state's GDP goes in this which is done to support fiscal discipline on large scale government acquisitions including tendering, e-procurement, contract and spend management. But it is seen that often the area of public procurement becomes pray of corruption since procuring officials deals with tenderers and contactors and in the eyes and opinion of majority of the common men the domain of public procurement has been considered as one of the government activity vulnerable to high corruption.

He briefly talked about the purpose of the 'Asia Pacific Public Electronic Procurement Network' project and its objectives and key activities. He also touched upon the legal framework of the public procurement which is strong and emphasized the need of ensuring greater transparency, accountability and efficiency and efficacy in the public procurement system and also advocated for promoting electronic tendering and monitoring of the entire procurement processes in all the procuring entities in the state. He also touched upon the good work done by the Rajasthan public procurement observatory out of the other three observatories and chance of sharing its experiences at South Asia Level as well with the larger community of practice on public

procurement. He requested all the participants to participated in the workshop actively and clarify all the doubts and misunderstanding about the processes related to the procurement.

## **2.2 About the project and Rajasthan Public Procurement Observatory Experiences:**

Madhu Sudan Sharma (MSS), Senior Project Coordinator, CUTS shared about the project in detail and also shared the findings of the research done under the project at difference point of time and also shared the approaches and methodologies adopted to carry out the project activities in last three years or so. He introduced with the audience with CUTS in detail and said that it is a leading Indian origin, international consumer organisation, established in 1983 and headquartered in Jaipur. CUTS' Vision: Consumer sovereignty in the framework of social justice and economic equality, within and across borders. CUTS is working on Consumer Issues, Trade, Investment, Competition, Regulation and Governance issues for last 34 years. CUTS is working on Public Procurement for last 15 Years. It works on it from various angles of Trades, Governance and academics (Offers PDPP). CIRC, New Delhi is maintaining National Observatory on Public Procurement. He also shared the RAN (Research, advocacy and Networking) approach adopted by CUTS in it all the operations and said that it Works in close collaboration with Central, State and Local Govt. Details can be seen at: [www.cuts-international.org/cart](http://www.cuts-international.org/cart)

While talking about the institutional set related to public procurement he said that, In State, 180 Departments, 400 HoDs, 671 procuring Entities, 22,580 procuring officials but could be much more and all these agencies do procurement at large scale.

He said that during the project implementation process, project team did most of its interactions with Finance Department, SPFC officials, selected Procuring officials, vendors and common consumers.

MSS also talked about the legal framework related to Public Procurement and said that its very strong since here the following legal provisions are existing and in force.

Rajasthan Transparency in Public Procurement (RTPP) Act, 2012, Rajasthan Transparency in Public Procurement (RTPP) Rules, 2013, Public Private Partnership Guidelines, 2012, Rajasthan P.P.P. Policy, 2008, E-Procurement Portal: <https://eproc.rajasthan.gov.in/nicgep/app> etc.

The government of Rajasthan has legalized the Swish Challenge Method, 2015 and there is a Nodal Department, State Public Procurement Facilitation Cell (SPFC) which comes under the Finance Department, to implement the Act/Rules: Finance Department is the nodal department and is the dedicated cell with 10 dedicated officials. (Sec. 50). There is Centralised web platform: 'State Public Procurement Portal for disclosure of procurement information of the state. (Sec. 17) and details of the same can be seen at: <http://sppp.rajasthan.gov.in/bidsearch.php> He further added that Rajasthan Government is in the process of launching the 'Government E-market Place (GeM)' Portal soon on the lines of central government.

He briefed about the project 'Setting up a Public Procurement Observatory in Rajasthan (ProOb)' and said that it was initially started with the support of The World Bank (Nov.

2014 to Nov. 2015) and later it was supported by the Asian Development Bank, New Delhi (April, 2016 to April 2017)

Purpose of the project was as follows. Monitor the legal framework, implementation of Act/policies/rules and procurement practices in Rajasthan, Collection and analyses of public procurement related quantitative/quantitative data, Share the findings of the mentioned analyses and its outcome with State Govt./Departments/PEs through seminars/website/Publications. Documenting best practices, Facilitate public access to information/current happenings/practices, in order to ensure transparency, Enable learnings from past experiences and good practices and provide guidance for future reforms and innovations, Consequently, making procurement process cost effective by advocating good practices for betterment, Producing knowledge products.

Under the project following activities were under taken. Analysis of legal & institutional framework and procurement practices of the state, Setting up and launch of project website (<http://procurementobservatoryraj.in/>), Developing Key Performance Indicators (KPIs), Observing /researching the actual implementation of RTPPP Act and Rules in selected Procuring Entities (Health, Education, PWD, Urban Local Bodies, PHED, RMSC, Jaipur Metro Rail Corporation, Electricity Companies, Rural Development etc. Providing research support to the SPFC, Finance Department, GoR, Facilitating cross learning, exposure visits cum practice documentation. Trainings, dissemination meetings, Published four briefing papers, engaged with Media, registering or taking up cases/issues of Pub. Proc. in the State up to nodal department and capacity building programmes for procuring officials and Community awareness generation.

To assess the RTPPP act and rules, following Key Performance Indicators were developed.

- Disclosure of NIT/NIBs with quantity and rates at departmental Website and at SPPP.
- Bidders participation.
- Award of Contract information.
- Time taken in the procurement.
- Increase in the quantity of the procuring material after publishing NIB/NIT. Disclosure
- Disclosure of grievance redressal results at departmental website and SPPP.

#### Assessment of registration of Procuring Entities on SPPP:

##### Registration of Procuring Entities on SPPP

2012-13	23
2013-14	262
2014-15	326
2015-16	261
2016-17	419
Target (Imd)	671

Total Target 32956

##### Main Reasons:

- \* Lack of awareness among procuring entities about RTPPP Act, Rules and SPPP.
- \* Confusion among procuring officials about SPPP and E-Proc websites.
- \* Want of Human Resource at SPFC level.
- \* Delay in appointing nodal officers and registration on SPPP.

\* Design of the SPPP itself was limiting factor for some departments. Duplication of uploading on various platforms like Departmental website, SPPP, E-Proc, Directorate of Public Relations etc.

\* Frequent transfers of concerned officials.

\* Observatory given list of 56 unregistered PEs to SPFC for registration. Later all registered.

**Proactive Disclosure of NIB, Bids and Award of Contract information:**

Proactive Disclosure of NIB-Bids/Award Contract Info.					Key findings:
<b>Year</b>	PWD	PHED	Health	Education	* Most of the registered procuring entities are uploading NIB-Bids, corrigendum and cancellation of Bids on SPPP.
<b>2014-15</b>	3474/123	431/0	297/53	12/0	* Most of the registered procuring entities are uploading very few AoC information.
<b>2015-16</b>	6405/142	2313/10	537/37	39/8	* None of the Procuring Entities are uploading information related to pre-bid meetings, technical and financial evaluations and comparison charts.
<b>2016-17 (Till Jan.)</b>	4075/134	4076/58	601/61	54/9	
<b>Appeals (2016)</b>	20	5	24	2	* There is a difference in number of NIBs uploaded on departmental site and SPPP.

MSS also shared the following key findings of a desk review of the sample bids (25 in number) from Public Works Department:

- \* The Notice Inviting Bids and bidding documents for the subject procurement are same whereas the bidding documents should have been in the sections and with details as required by Rule 36 of RTPP Rules. No reference of RTPP Act and Rules (Its applicability) at all in entire document.
- \* The estimated cost of supply shown in the Notice Inviting Bids is Rupees 26.44 lakh whereas the total amount of Bill of Quantities (BOQ) is Rupees 21.21 lakh. It suggests that the BOQ was prepared after uploading the Notice Inviting Bids on State Public Procurement Portal (SPPP) and the BOQ was uploaded on SPPP at a later date which is against the legal requirement of Rule 45 of RTPP Rules: Sale of bidding documents.
- \* The date of start uploading the bids on State Public Procurement Portal is given as 14/06/2016 i.e. after about one month of the date of issue of Notice Inviting Bids (NIB). It should have been allowed from the date of publication of NIB on the SPPP.
- \* In the Notice Inviting Bids, date of NIB and name of work has not been given.
- \* Type of consultancy contract, i.e. whether it is a lump sum contract or a time based contract should be indicated in the Notice Inviting Bids. There are no clear evaluation and qualification criteria spelt out in the EOI.

MSS also shared the following key findings of a desk review of the sample bids (25 in number) from Urban Local Bodies:

- \* Developed their own forms of NITs and Bid documents without considering requirements of RTTP Rule 36. Without containing sections like 'Instructions to Bidders', Contract Forms etc.
- \* No reference of Relevant item Standards of Bureau of Indian Standards, as required by section 12 of RTTP Act While purchasing Goods.
- \* No mention as the bid is an open competitive bidding or limited bidding.
- \* No mention about Bid Security, its amount and applicable form.
- \* The date of issuing the NIB and Receipt of Bids is same (11/07/2016). Minimum Period of publicity has to be 7 days even in Limited biddings.
- \* Appendices A,B,C and D for Code of Integrity, Appeals etc. as required by Govt. of Rajasthan's circular No. 3/ 2013 have not been appended.
- \* NIBs Number and Date have not been given in Bids which is a serious lapse.
- \* Estimated quantity and value of purchase has not been given.
- \* The bidding documents contain only Bill of Quantities (BOQ). Other sections of bidding documents like Evaluation and Qualification Criteria, Procuring Entity's requirements, Terms and Conditions of Contract, Contract Forms are missing.
- \* The opening of bids is taking place after 7 days of deadline for submission bids. Rather it should take place on same day/next day of the last date.
- \* The evaluation criterion is very ambiguous.
- \* Pre-bid Conferences just after two days of publication of NITs:
- \* Changing the Type of Procurement from service to works: Appended the Appendix XI of PWF&AR used for procurement of works.

MSS shared the following key Achievements of the project which are as under.

- \* So far oriented around 500 Procuring officials of various departments. Especially ULBs.
- \* Created a new set of data on Consumer Awareness, assessment of procurement practices against the KPIs.
- \* Gap Analysis in the selected procuring entities.
- \* Developed a Web portal uploading all the above stuff on it <http://procurementobservatoryraj.in/>.
- \* Recently invited by World Bank and ADB for sharing Observatory model in Sri Lanka.
- \* Out of Four such observatories only Rajasthan Observatory is still active and involving multi stakeholders of procurement.
- \* We could see lots of key initiatives by SFPC, Finance Department for which we were also advocating hard: like Annual calendar of training at OTS level, re-designing of the SPPP.

MSS also shared the key lessons learnt during implementation of the project activities which are as follows.

- \* Critical Success factors for us: Timing of the Observatory in Rajasthan (1.5 Yrs after Rules came in force). Then Finance Departments' cooperation (SPFC) and CUTS experiences in the area. Continued support by ADB.
- \* Only the information which is available online can be gathered otherwise getting any information from departments is very difficult and tedious process. Using Right to Information as a tool creates suspicion.

- \* Only one or two CSOs and four or Five good consultants are available in the areas of Public Procurement in Rajasthan.
- \* Complaint redressal is an area of concern.
- \* Lack of collective voice, lack of civic watch on Public Procurement of State due to lack of General awareness among the common consumers.
- \* Due to lack of human resource at SPFC level strict monitoring of entire Rajasthan state is almost impossible (Far-flung districts). More and more trainings on RTPP Act and Rules, need to be done to remove confusions and old practices.

In last MSS talked about the following key advocacy issues for taking up by the nodal department and procuring entities.

- \* All the procuring entities must be registered with SPPP asap.
- \* Centralised State Public Procurement Portal integrated with E-Proc, Departments, and Directorate of Public Relations asap.
- \* Start of E-payment in all the e-procurement and other procurements asap. So that manual payments system can be avoided.
- \* More and more capacity building programmes at district level especially, ULBs and PRIS.
- \* Robust complaint redressal system (Preferably online) which seems to be weak at the moment.
- \* Initiatives for public procurement certificate shall be taken by affiliating with some university and developing curriculum for same.
- \* More and more competition among the bidders has to be promoted. At present it seems limited. (Especially in SCM and high value bids.)
- \* Standard Bid Documents need to be developed and made mandatory to use thereafter.

### **2.3 Dissemination of the Procurement Assessment findings of round second:**

The following assessment took up the task of studying and analyzing the gaps existing in the procurement processes being practiced by selected public procuring entities of Rajasthan in comparison to the provisions of the Rajasthan Transparency in Public Procurement Act, 2012 (RTPP Act) and the Rajasthan Transparency in Public Procurement Rules, 2013 (RTPP Rules). Following PEs were selected for the assessment. Urban Local Bodies (ULBs), Public Works Department (PWD), Panchayati Raj Institutions (PRIs), Jaipur Vidyut Vitran Nigam Limited (JVVNL), and Education.

Some randomly selected recent procurement processes of these PEs were studied and analysed in light of the functions and responsibilities of PEs as envisaged in the RTPP Act and the RTPP Rules. The findings of the analysis were also discussed with some top level officers of the selected PEs. The functions and responsibilities of the Bidders as envisaged in the RTPP Act and the RTPP Rules were also analysed and these were discussed with the representatives of the Contractors Association of PWD regarding status of their compliance. The State Government in Finance (G&T) Department has done a lot in facilitating the implementation of the provisions of the RTPP Act and the RTPP Rules and carrying out its responsibilities as envisaged in the Act and the Rules but some responsibilities still remain to be discharged. These were briefly discussed with the top officers of the Finance (G&T) Department.

The lapses in functions of the procuring entities in the field offices were searched in which following facts came to the light:-

- ▶ Determination of need is generally not done and annual plan of procurement is generally not prepared as envisaged in Section 5 of the RTPP Act and Rule 7 of RTPP Rules.
- ▶ The task of Management Information System (MIS) of procurement under Rule 9 of the RTPP Rules is not done. It may be taken up in hand by the State Government as this has to be integrated with the State Public Procurement Portal (SPPP) which is run and maintained by the State Government.
- ▶ The Procurement Register required to be maintained under Rule 10 of RTPP Rules is generally not maintained. The State Government may prescribe the format of Procurement Register so that uniformity may be maintained.
- ▶ A procurement committee must have minimum three members as required under Rule 3 of RTPP Rules but it has been observed where most of the procurements are done electronically, the opening of bids is performed by two members only.
- ▶ The formats of Standard Bidding Documents (SBDs) to be used for procurement of goods, works and services in accordance with requirements of various provisions of the RTPP Act and the RTPP Rules have not been notified by the State Government. Due to this different procuring entities are using different types of bidding documents and in this process it cannot be ensured that a procuring entity has committed no lapses in complying with the requirements of the provisions of the Act and the Rules.
- ▶ Even the Annexures A, B, C, & D for attachment with the existing bidding documents prescribed by the Finance Department of the State Government by Circular No. 3 of 2013 issued on 04 February, 2013 have not been attached with the bidding documents in most of the cases under review. It has been observed in the procurements taken up for review that none of the procuring entities related to them have prepared their bidding documents as per the requirements of Rule 36 of the RTPP Rules.
- ▶ In many cases even bidding documents have not been uploaded on the State Public Procurement Portal (SPPP), instead of the bidding documents the Notice Inviting Bids (NIB) was uploaded again in the section on SPPP for bidding documents.
- ▶ In many other cases it was seen that in the section for bidding documents on the SPPP only financial bid form/ G-Schedule was uploaded.
- ▶ In case of e-procurement in PWD they upload the bidding document on e-procurement portal. However, it was legally incumbent upon the procuring entities under Section 17 of the RTPP Act to publish the bidding document on the SPPP irrespective of its publication on e-procurement portal.
- ▶ In case of JVVNL also they mostly do e-procurements and publish the bidding documents on e-procurement portal. On SPPP they publish only NIB both in the sections of NIB and that of bidding documents with addition of 'Section III – Details of Standards' on the SPPP.
- ▶ In review of the bidding documents of the procuring entities included in the Study it was observed that in most of the cases the undertaking regarding qualifications of bidders which was required to be obtained by the concerned procuring entities as per Section 7 of the RTPP Act were not obtained.

- ▶ The bidding documents prepared by the procuring entity should contain the provisions regarding Code of Integrity and Conflict of Interest and a declaration from the bidder should have been taken that he is bound by and shall comply with the provisions of Code of Integrity and Conflict of Interest but it was observed that in almost all the cases of procurement under review such declaration was not taken.
- ▶ The description of the subject matter of procurement should be in accordance with the provisions of Section 12 of the RTPP Act according to which its specifications should be mentioned as per national standards etc. and no brand names should be used but in some cases brand names were used in specifications. JVVNL described specifications as required under Section 12.
- ▶ In Table given in Rule 40(1) it is mentioned that technical bid opening should take place within one day of the last day of submission of bids but in some cases of procurement taken up for review the technical bids were opened after more than one day of the last day of submission of bids.
- ▶ The publicity period for Notice Inviting Bids for procurement of goods and services has been prescribed in Rule 43(6) of RTPP Rules and that for procurement of works in Rule 43(7). In some cases of procurement under review, it was observed that the minimum period of publicity was not given to the respective Notice Inviting Bids.
- ▶ The time allowed for taking decision on a procurement process as stated in Rule 40(2) of the RTPP Rules has not been followed in some cases due to which the decision making had to be referred to the higher authorities.
- ▶ There are no sections on the State Public Procurement Portal for uploading by the procuring entities the information about:- clarifications given by the procuring entity on the bidding document, minutes of pre-bid conference, the list of bidders that presented the bids including during pre-qualification or bidder registration, outcome of comparison of technical bids, comparative statement of financial or price bids, list of bidders excluded under Section 25 of the Act, particulars of bidders who have been debarred by the State Government or a particular procuring entity, exclusion of bids under Section 25(4)(b) etc.
- ▶ In most of the procurements reviewed in the Study the respective procuring entities seemed confused on Two Stage Bidding and Two Part Bidding and they mistook the Two Part Bidding with Two Stage Bidding method and picked the option of Two Stage Bidding for their procurement on the SPPP instead of Single Stage procurement.
- ▶ In almost all the cases under review, the information about their right to appeal was not given to the bidders, nor was the formats for appeal appended with the bidding documents.
- ▶ The Appellate Authorities were not designated in the bidding documents or if designated, their status was not as per the directions of the Finance Department, so much so that in some cases the Second Appellate Authority designated was even lower in rank to the First Appellate Authority.
- ▶ Certain new terms pertaining to procurement have been used and defined in the RTPP Act but still old terms are being used by the procuring entities on the SPPP and the bidding documents such as earnest money, tender, security deposit, stores, purchase etc.
- ▶ The Chief Engineer and Additional Secretary to the Government, PWD in discussions with him pointed out that in their department most of the



procurements are done through e-procurement but this system is also not fully confidential in its present form because the instruments of bid security etc. are still required to be deposited in physical form also in which the bidders come in contact with each other and can share their bid prices.

The responsibilities and functions of the bidders under the RTPP Act and RTPP Rules were identified and following facts were found:-

- ▶ In a process of procurement there are two parties, one is the procuring entity and another is the bidder. The procuring entity and the bidder, both have their respective duties and responsibilities to make a procurement successful. Their relationship is based on mutual respect for each other and not that of a master and servant, as is observed in reality.
- ▶ While discussing about the knowledge of procedure of procurement under the RTPP Act and the RTPP Rules with the contractors of the Public Works Department, it was given to understand that they do not know much about it.
- ▶ The traditional bidders possess the required technical skills and knowledge to execute a work perfectly as per design, drawing and specifications given to them but they do not know as to how to use computer and internet to upload their bids on the e-procurement portal. Therefore, they have to hire professionals for this and have to depend entirely on them about the correctness of their bids.
- ▶ The entire bidding document for procurement of works is in English, therefore, the ordinary bidder has always been dependent on either the departmental officers or the persons hired by him for its meaning and interpretation.
- ▶ The contractors and suppliers, except some bigger companies, are generally not aware of the detailed provision of Code of Integrity and Conflict of Interest in the RTPP Act and RTPP Rules.
- ▶ The main reason of unawareness of the contractors about the provisions Code of Integrity and Conflict of Interest is that the procuring entities generally do not take declaration from the contractors/ suppliers relating to it.
- ▶ The bidders have been empowered with the legal right to appeal against any wrongful decision, action or omission of the procuring entity in contravention to the provisions of the RTPP Act and RTPP Rules.
- ▶ The ordinary contractor is not aware of his legal right to appeal, or even if they know about it, they do not want to indulge in conflict with the departmental officers under whom they have to execute the work.
- ▶ In most of the cases of procurement reviewed in the Study, annexure regarding provision of appeals in the RTPP Act and RTPP Rules including names of the Appellate Authorities was not enclosed with the bidding documents. Thus, these bidders were deprived of their legal right to file an appeal, of which generally they are ignorant of.
- ▶ The aspect of training of bidders in the provisions of RTPP Act and RTPP Rules was equally important but it has been most neglected so far.
- ▶ The Department of Information Technology and Communications is, however, arranging training of bidders on use of e-Procurement Portal.
- ▶ The State Government may consider taking appropriate steps for training of bidders.
- ▶ The State Government has been empowered under Section 55 of the RTPP Act to make Rules for carrying out the provisions of the Act. The State Government has framed the Rules exercising its powers under Section 55 of the Act, named as the

Rajasthan Transparency and Public Procurement Rules, 2013. The Rules framed in 2013 which have been amended and modified from time to time afterwards, covered almost all the areas specified in Sub-section (2) of Section 55 above.

- ▶ However, Rules on some subjects are yet to be made which are pointed out in next some slides.
- ▶ The procuring entities have been empowered under Section 56 of the Act to issue Guidelines within the framework of the Act and the Rules for specifying procedure and manuals for giving effect to the provisions of the Act and the Rules. Though the responsibility of issuing Guidelines is that of the concerned procuring entity but the State Government may consider to publish general Guidelines for Procurement for departments of the State Government like applicability of erstwhile common rules of GF&AR and PWF&AR which may also be used as a model by other procuring entities while framing their Guidelines.
- ▶ The formats of bidding documents for procurement of goods, works and services in accordance with the requirements of the provisions of the Act and the Rules, especially Rule 36 have not been notified by the State Government under Section 16(2) and 20(3) as yet. This may be considered for early action (Section 55(2)(xviii)).
- ▶ The State Government has very nicely constructed the State Public Procurement Portal (SPPP) with the help of National Informatics Centre in the initial days of the Act and the Rules coming into force. It has been further reconstructed on 29 September, 2016 incorporating certain new features. However, on examination of the website of SPPP it has been found that certain more features are yet required to be introduced in the portal as mentioned in Section 17 itself and at some other places in the RTPP Act.
  - Fields (Sections) for uploading information on following subjects are required to be created on SPPP:- Clarifications issued on bidding documents (Section 22(3))
  - Minutes of Pre-bid conference (Section 22(4)), List of bidders that presented the bids including during pre-qualification or bidder registration (Section 17(3)(b)), Details of financial or price bids of the bidders (Section 17(3)(b)), List of pre-qualified bidders (Section 17(3)(c)), List of registered bidders (Section 17(3)(c))
  - List of bidders excluded under Section 25 of the Act, Particulars of bidders who have been debarred by the State Government or a particular procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment (Section 17(3)(g)), Exclusion of bids under Section 25(4)(b) of the Act, etc.
  - Section 19 of the RTPP Act provides for registration of bidders. At present there are no registration rules prepared by the State Government for registration of suppliers of goods or services. The State Government may consider to frame model e-registration rules for registration of suppliers, service providers and consultants (Section 55(2)(xvi)) and revise the existing registration rules of contractors in Public Works Department, Water Resources Department and Public Health Engineering Department for execution of works to e-registration.
  - Section 48 of the RTPP Act requires that the State Government prescribes professional standards to be achieved by officials dealing with procurement matters by imparting training and award certificates for that. The State Government may consider framing rules (Section 55(2)(xxv)) for achievement of professional standards by various categories of officials dealing with procurement matters in a department/ organization.

- State Procurement Facilitation Cell is discharging some of its functions very well like operation and maintenance of State Public Procurement Portal, recommending the State Government measures for effective implementation of provisions of the RTPP Act, provide guidance to the procuring entities in the matters relating to procurement but other functions like studying different methods of public procurement and preparing and recommending standard bidding documents, pre-qualification documents and bidder registration documents are yet to be speeded up (Section 50(2)(e)).
- Section 14(2) of the RTPP Act provides that a procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid and the proviso to this Sub-section requires maintenance of record of such trials and testing in the manner as may be prescribed by the State Government. The State Government may consider making suitable rules for maintenance of record of trials and testing (Section 55(2)(xi)).
- Section 55(2)(xxvi) of the RTPP Act envisages framing of rules for contract management process. The State Government may consider making suitable rules for contract management.
- Section 55(xxvi) of the RTPP Act also envisages framing of rules for inspection of works, goods and services. Therefore, the State Government may consider making comprehensive and combined rules for inspection of works, goods and services for guidance of all procuring entities.
- The method of Electronic Reverse Auction has been included in the methods of procurement in Section 28 of the RTPP Act and it has been described in Section 33 of the Act and further amplified in Rules 19 to 23 of the RTPP Rules. The State Government may consider devising a suitable electronic portal to bring into operation the method of Electronic Reverse Auction.
- Chapter IV of the RTPP Act deals with the offences and penalties relating to offences committed by procuring entities and bidders. However, the procedure of imposing penalties, except that of debarment has not been prescribed either in the RTPP Act or in the RTPP Rules. The State Government may consider clarifying the situation by issuing a notification in this regard.
- Sub-rule (2) of Rule 40 of the RTPP Rules provides that the competent authority authorized by the State Government may relax the limit of time period prescribed for Administrative Department etc. for taking decision on acceptance or rejection of a bid. The State Government may consider to name and authorise the competent authorities under Rule 40(2) of the RTPP Rules for various procuring entities.
- Sub-rules (6) and (7) of Rule 43 of RTPP Rules mentions that the procuring entity with the approval of the competent authority authorized by the State Government for this purpose may relax the period of publication of Notice Inviting Bids as envisaged in the Rules 43(6) and 43(7). The State Government may consider to name and authorize the competent authorities.
- Rule 10 of the RTPP Rules provides for maintenance of procurement register by procuring entities but it is not provided as to what will be the form of procurement register. The State Government may consider prescribing the form of procurement register so that there may be uniformity in the maintenance of procurement register across the procuring entities.

All the gaps found out in the assessment were further validated by the participants and a need of taking new initiatives was established.

#### **2.4 Address of the Chief Guest:**

Mr. Sandeep Verma, Principal Secretary, PHED was the chief guest in the workshop. He mainly talked about the Knowledge Management in Public Procurement in Rajasthan—Balancing Theory with Reality.

First of all he congratulated CUTS for this very good initiative which is much required. He well appreciated the idea of setting up such observatories. He thanked CUTS for such a wonderful and effective initiative. He also acknowledged the presence of all the major procuring entities and a very good panel of the resource persons.

He underlined that fact the views expressed herein by him are the personal and academic views of the Author alone; and do not reflect the official position or policy of the Governments of Rajasthan/ India, or any of their Departments or Agencies.

His presentation was based on the following points, facts and realities:

- While We may never have THE PERFECT RfP,
- But We Can Always Ensure That
- A New RfP is BETTER than the Previous One!
- Knowledge Creation, Knowledge Sharing and Updation
- “Knowledge” Abandonment
- Knowledge and Practice (K-P)

While touching upon the above mentioned key points he also talked about the Range; Depth and Efficiency Aspects of K-P Interactions, Barriers to Public Procurement (PP) Specialisation, The CVC Bar to Public Procurement Specialisation, The Political Funding Bar to PP Specialisation—The Good Politics Versus Knowledge Debate, The Boss is Never Wrong Problem with public policy makers—Lateral Thinking Versus Unilateral Thinking.

Mr. Verma explained the Barriers to Open Stakeholder Communications in PP especially During Regulation-Making, During RfP-Drafting and During Contract Administration. He mentioned about the Barriers to Acceptance of Need for Improvement, Standard? Bidding Documents, Model Procurement Laws?, When in Doubt, Ask an Assembly/ Parliamentary Question? An Adversarial Acct Gen-PP Relationship etc. and said that public procurement is an attitudinal issue as well. He also discussed about the Barriers to Efficiency in K-P Cycle and touched upon the following points: The Annual GFR Show!, Lets-Put-It-In-An-Act as The Solution?,

He also acknowledged the public procurement issues related to Rajasthan and talked about the problems related to RTPP Act/ Rules/ GF&AR/ PWF&AR ≠ Collection of Best Practices and said that They Need to be Read Together, RTPP Act/ Rules are only a part of the Problem, and therefore only a part of the Solution. It is necessary to Understand that How We Got Here, The Optics of Procurement Reform, The Copy-Paste Problem with Legal Drafting, Accepting the Need for Change, Shortened Political Life Cycles vis-à-vis Contract Life Cycles, Delivery- and Outcome-Based Financing Arrangements.

Finally he talked about the Outlining Potential Solutions and Ways Forward for public procurement and suggested for the following. Bringing Users and Owners together, Opening-Up Discussions to Non-State Actors, Quick-Response Mechanisms for Doubt-Clearing, Consistency in Handling of Appeals, Efficiency, Transparency and Consistency in Dispute-Handling, Ensuring Political and Bureaucratic Maturity, Mistakes in Procurement ≠ ACB Enquiries, Mistakes/ Sins in Procurement ≠ Contracting Freeze and he said that the list Goes On...He thanked the CUTS and all the participants.

## **2.5 Key note address:**

Mr. Ashotosh Vajpai, Joint Secretary, Finance Department, Government of Rajasthan talked in brief as a key note speaker and thanked CUTS for taking such initiatives and procuring very good research reports. He also appreciated CUTS for publishing very good briefing papers and survey results on public procurement scenario in Rajasthan which proved helpful to the Finance Department in planning process for the state capacity building plan on public procurement. He also mentioned that in Rajasthan there is serious shortage of good resource persons and civic societies which are working on the subject of public procurement but he please to note the good work done by CUTS on this subject. He further mentioned that he has heard a lot about CUTS' interventions on Public Procurement that's why out of his own curiosity he is present in the workshop today.

He talked about the on-going new initiatives taken up by the Finance Department, Govt. of Rajasthan which are as follows; Preparation of an exhaustive capacity building plan for the Procuring Entities and Procuring Officials, SPFC strengthening programme under which human resource, technological support, appointment of consultants which are highly qualified and experiences with SPFC, upgradation of the infrastructural facilities for effective monitoring of the procuring processes in entire Rajasthan, introducing latest technological equipments, machines and other required things for enhancing the transparency, accountability and efficacy in procurement domain in the state etc.

He also underlined that fact of public perception of the common man about the public procurement which says that most of the public procurement domain is full of corruption so he said that present government is trying to change this perception towards positive image. He also highlighted the fact that there is hardly in civic and community engagement in the area of procurement which needs to be enhanced. He assured all the participants and said that in future more and more innovative initiatives will be taken to implement the RTTP Act and Rules as per its spirit of the act an rules and more and more national and international best practices will be adopted or optimum utilisation of the public money and effective development of the state.

## **3. First Technical Session:**

The technical session on New Initiatives related to Public Procurement in Rajasthan; RTTP Act, issues and challenges was facilitated by Mr. Arvind Deewan, Chief Accounts Officer, SPFC, Finance Department, Govt. of Rajasthan. Mr. Deewan is the only resource person in the entire state of Rajasthan who has developed his mastery and authority on RTTP Act and Rules and all the procurement experts calls him their Guru or Teacher. Mr. Deewan also

responsible for directly monitors the implementation of the RTPP Act and Rules in various procuring entities in Rajasthan and also deals with the references, queries and clarifications come from various procuring officials on day to day basis and provides solutions and answers along with his team so he is the most resourceful person on the subject and has excellent presentation skills. He is the regular visitor of State Officers Training School as a faculty and trainer on RTPP Act and Rules so it's a privilege to have Mr. Deewan as resource person in the workshop.

Mr. Deewan thanked CUTS for organising such a good workshop which is in fact job of the his own and of SPFC in general. He started to take the operations issues of the act and challenges faced by the procuring officials for his expert suggestions so the entire session was fully interactive and remedial in nature in which what act and rules suggest to do in a particular situation was came out very effectively. In his session participants asked numerous questions related to clauses related to emergency procurement, provisions for small scale industries, publication of NIBs and Bids on SPPP, how to fix the penalty under various sections of the Act and Rules for violation of the bid conditions by the bidders, penalty provisions for the bidders in case of any illegality as per RTPP Act and Rules, provisions for single bidding, submission of the bid documents in hard copies as well at the level of bid opening which makes the life of procuring officials easy by tallying with other bids otherwise it's a bid hard in comparing the bids in soft copies etc. Mr. Deewan satisfactorily replied all the queries one by one and given his suggestions in detail. Most of the participants asked his something which he gave very good reply in reference of the RTPP Act and RTPP Rules.

#### **4. Second Technical Session:**

The second session of the workshop was on Swiss Challenge Method (SCM), provisions, related issues and challenges. The session covered the following topics and points related to SCM. Public Service Delivery Options, What is a PPP and what is not PPP?, Essential Features, What is not PPP? What is SCM (79A), Eligible Sectors under SCM (79B), Projects, not acceptable under Swiss Challenge (79C), Procedure (79D), Pre-feasibility Analysis: Purpose, Amenability of a project as a PPP, PPP Project Structuring: Key Issues, Analytical Framework for structuring a achievable PPP project, How to define the optimal structure? Important Steps under PPP Life Cycle Process, Preparation and Submission of detailed proposal (79E), Earnest Security (79F), DPR Preparation Cost (79G), Bid Parameters and final Bid Value (79I), Competent Authority for approval of Projects under SCM (79J), Bid Process (79K), Eligibility Criteria for Project Proponent (79N), Important things to do during Project Development, Important things to do during Project Procurement and Issues and Challenges

He talked in detail PPP the Project Structuring and following Key Issues: Does the PPP involve building new assets to provide the service (capital expenditure), or does it require the private partner for operations and management of the service only? Which roles would the private sector carry out? For example, who would provide the finance? Who would design and construct? Who would own the assets? What would be the duration of the PPP contract? How are the various project risks allocated between the private and public partners? What would be the major revenue sources for the project – whether from charges to users (direct fees), or payment from Government for the

services (shadow fees or annuity)? Is the demand for the infrastructure service expected to be stable over the period of the contract?

He also talked in detail about the Important Steps PPP Life Cycle Process which are as follows. Identification of the Project, Pre-feasibility Assessment, PPP Project Development, Engaging Transaction Advisor(s)/ Consultant(s), Method for Procurement of Private Developer, Request for Qualification, Request for Proposal and Draft Concession Agreement, Award of Concession to Successful Bidder, Signing of Concession/Contract Agreement, Appointment of Independent Consultant, Fulfillment of Conditions Precedent, Financial Closure by the Concessionaire, Execution of the Project, Handover of Assets Back to the Government and Bid Security/Performance Guarantee etc.

He also talked about the important things to do during Project Development which are as follows. Ensure robust feasibility study – including revenue/demand estimates, cost estimates, expected profitability and key risks/sensitivity analysis, Assess project affordability for government, Examine project suitability & value for money, and recommend if project should be taken up as a PPP, Decide project structure for procurement – based on preferred risk sharing options and expected interest of developers for alternative project structures, Assess and take measures to ensure project bankability, Ensure that majority of approvals needed for project development are in place, Ensure compliance of RTPP Rules as amended till date, Address preparatory areas of land acquisition, environment clearance and R&R also.

Finally he also touched upon the following issues and challenges in the smooth implementation of the SCM in Rajasthan. Need to have a strong legal and regulatory framework to award projects under the Swiss Challenge method, Projects may be challenged in case of a lack of transparency or poor disclosures, Financing has not been a challenge – “finance-ability” is the issue, Justifying uniqueness, public need and part of departmental plan, Well-structured projects find financing – finding such projects has been challenging, Adequate Project Development, Equitable Risk Allocation for PPP arrangements, Willingness to pay user charges, Reliable Revenue Sources: Capacity to yield adequate Internal Rate of Return and Return on Equity Investment, with or without Government support to be amenable a project on PPP modality, Need to have a strong legal and regulatory framework to award projects under the Swiss Challenge method, Projects may be challenged in case of a lack of transparency or poor disclosures, Financing has not been a challenge – “finance-ability” is the issue, Justifying uniqueness, public need and part of departmental plan, Well-structured projects find financing – finding such projects has been challenging, Adequate Project Development, Equitable Risk Allocation for PPP arrangements, Willingness to pay user charges, Reliable Revenue Sources: Capacity to yield adequate Internal Rate of Return and Return on Equity Investment, with or without Government support to be amenable a project on PPP modality. During the session participants asked numerous questions which were replied by the Resource person satisfactorily.

## **5. Summing up and Vote of Thanks:**

Madhu Sudan Sharma (MSS) summed up the day long proceedings and said that today's workshop was very good in terms of having quality resource person and the new data and findings which were shared related to the gaps existing in the effective implementation of the RPPP Act and Rules in the state of Rajasthan. During the workshop the issues, challenges, and advocacy points which need to be addressed by the State Government, SPFC, Finance Department, procuring entities and procuring officials themselves were discussed and put forward for immediate consideration and action.

MSS conveyed heartfelt thanks to all the resource persons during the day. Mr. Sandeep Verma for being the chief guest of the event and sharing his valuable experiences and views, Mr. Ashutosh Vajpai, Mr. Arvind Deewan, Mr. CP Mandawaria, Mr. SS Vaishnava and all the distinguished participants across the procuring entities for their active participation and making all the sessions highly interactive and information by their day to day experiences and examples as well. He also conveyed a word of Thanks to Mr. Hiroyuki Maruyama from ADB whose support and guidance had been instrumental during implementation of the project.