

Briefing Paper

2/2015

Monitoring the Implementation of RTPP Act, 2012 in Rajasthan *Need for Effective Monitoring and Addressing Challenges*

In India, states have been the laboratories of law and policy-making and some states are pioneer as compared to the Government of India for passing revolutionary legislations. Enacting Transparency in Public Procurement Act and rules by various states was one of them. Tamil Nadu was the first State to enact the 'Tamil Nadu Transparency in Tenders Act' 1998. The Tamil Nadu Transparency in Tenders Rules, 2000 and Tamil Nadu Transparency in Tenders (Public Private Partnership or PPP Procurement) Rules, 2012. Secondly Karnataka, passed the 'Karnataka Transparency in Public Procurement Act, 1999.' Followed by Kerala which passed the 'Kerala Transparency in Public Purchase Bill, 2002'. Rajasthan is one of the states which not only passed 'Rajasthan Transparency in Public Procurement Act, 2012 and framed Rajasthan Public Procurement Rules, 2013 but has its PPP Policy, 2008 and has recently been legislated Swish Challenge System as well. Therefore Rajasthan is the only State keeping in place the strongest legal procurement framework in India. An effective implementation of these legislations is required in the State on the ground through Finance department being nodal department and State Procurement Facilitation Cell (SPFC)¹ has already been established for that as per the Act.

Rajasthan: Strong Legal Framework for Public Procurement

Government Procurement in India represents a significant portion of its Gross Domestic Product or GDP (about 25 to 30 percent of GDP) and is also a key determinant of public expenditure. Therefore as an area of intervention, a great deal of importance is attached to it. Since the Public Procurement Bill 2012 has been lapsed and at the moment, Public Procurement in India has been governed by General Financial Rules (GFR), 2005, Delegation of Financial Power Rules (DFPR), 1978 and relevant guidelines of Chief Vigilance Commissioner (CVC) of India, High Court rulings and such diverse authorities have brought out directives on Public Procurement. So the matter is very chaotic and different central organisations

remain free to follow their own interpretation of various guidelines, leading to lack of transparency, accountability, efficiency, competition and professionalism.

Moreover, the legal framework of Rajasthan is very strong, since it has 'Rajasthan Transparency in Public Procurement' Act, 2012, 'Rajasthan Transparency in Public Procurement' Rules, 2013, Public-Private Partnership (PPP) Guidelines, 2008 and recently introduced Swish Challenge System² in force. Therefore, Rajasthan is one of the top most states, which has all these provisions in place. As far as implementation of these Acts, rules, guidelines and system is concerned it is going in the right direction, things are improving with time but proactive disclosure of procurement related information of various stages need to be promoted in all the Procurement Entities (PEs).

Key Performance Indicators (KPIs)³: Basis of Monitoring

A. Identified KPIs

S. No.	Type of Indicator	Name of Sub Indicator
1.	Transparency Standards	<ul style="list-style-type: none"> • Disclosure of contract award information with quantity and rates (Section 19.6) • Disclosure of grievance redressal results • Disclosure of the increase in the quantity of the procuring material (Rule 70) • Disclosure of contract status for oversight of users/civil society (Section 17)
2.	Quality of Contract Management	<ul style="list-style-type: none"> • Contract award on time • Contract completed on time and • Contract completed within original cost framework
3.	Registration of Vendors (Sec 07 and 19)	<ul style="list-style-type: none"> • System of periodic revision (inclusion, exclusion and blacklisting of vendors) • Online Registration Process • List of registered, deregistered and debarred vendors • Tracking mechanism of blacklisted, debarred and deregistered firms/ individuals getting business (Section 46) • System of promotion/demotion of contractors • Final check on bidder and • Comparison of registration process with the 'Rajasthan Transparency in Public Procurement Act, 2012 (RTPP)' Sections 07, 09 and 46 etc.
4.	Designing the Bid Document	<ul style="list-style-type: none"> • System of identifying the need of procurement (Section. 05) • System of forming bid document (Section 06 to 16) and • System of setting up Objectives and standards for bidding (Section 06 to 16)
5.	Bid Validity Period	<ul style="list-style-type: none"> • Basis of deciding the Bid Validity Period (BVP) • Time for responding to bids as per Request for Proposal (RFP) • Time taken in technical and financial evaluations (Section 09) • Time taken in awarding the final contract • Increase in bid validity period and • Following the Bid validity period as per Request for Proposal (RFP)
6.	Rajasthan Government Preferential Policy	<ul style="list-style-type: none"> • List of preferred items • Reservation of small scale industries/companies in RFPs and • International Competitive Bidding (ICB)
7.	Grievance Redressal Mechanism ⁴	<ul style="list-style-type: none"> • System of grievance redressal by Administrative authorities • Lodging the complaints at the level of procuring agency • System of complaint redressal by board • Role of First and Second Appellate Authorities and • Complaint registration through other constitutional and administrative channels
8.	Procurement Register ⁵	<ul style="list-style-type: none"> • Maintenance of the Procurement Register
9.	Performance of the Nodal Department for Public and State Public Procurement Portal (Henceforward SPPP)	<ul style="list-style-type: none"> • Concept of Nodal officer • Rules and Circulars • Training on Procurement Process and • Overall functioning of the State Procurement Facilitation Cell (henceforward SPFC) as per sections 17 and 50 of the 'Rajasthan Transparency in Public Procurement (RTPP Act), 2012 and RTPP Rules, 2013

B. KPIs chosen for first round of monitoring

Transparency Standards	<ul style="list-style-type: none"> • Disclosure of NIBs or NITs on SPPP, Departmental portal and local media. Disclosure of contract status for oversight of users/civil society (Section 17 of RTPP Act, 2012) • Disclosure of Participation of Bidders, Time taken in the procurement, contract award information with quality and rates (Section 19.6). Disclosure of the increase in the quantity of the procuring material (Rule 70) and • Disclosure of grievance redressal results
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Implementation Status in the Selected Departments

Brief analysis and key highlights

The analysis mentioned below was carried out based on the above mentioned transparency standards which aims to bring out the current status of the implementation of the RTPP Act and RTPP Rules in Rajasthan Medical Services Corporation (RMSC) and Public Works Department (PWD) and State Procurement Facilitation Cell, Department of Finance. Other primary aim was to make Procurement Process of the selected departments more transparent, accountable, and promoting fair competition among suppliers and contractors through advocacy so that it could enhance economy and efficiency in the procurement system.

About Rajasthan Medical Services Corporation

Rajasthan Medical Service Corporation is a Public undertaking of Government of Rajasthan, which will act as nodal agency for procurement of drugs, medicines, surgical and Sutures to various Health Institutions in the State. It should procure the items in generic names as per prescribed standard by finalising the rates and supplies through open tender process as per rules. The drugs, medicines, surgicals and sutures should be procured, based on the need and consumption pattern of the items by the medical institutions. Procurement orders are proposed to be places to meet four-month need and two-month pipeline stock likely to be in transit and under quarantine. Though the procurement would be centralised but the suppliers will be required to supply the items directly to the District Drug Warehouses (DDW).

Key Findings

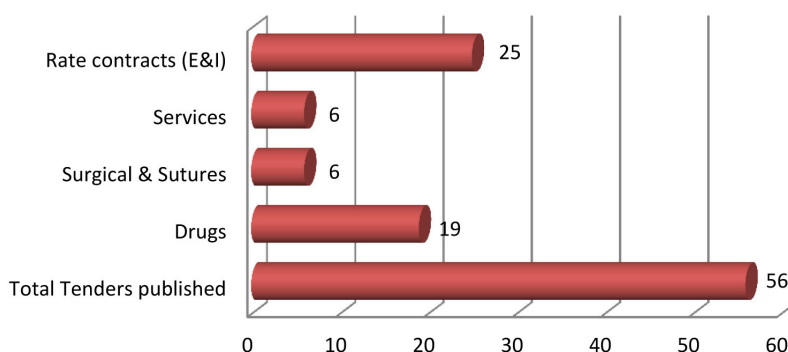
Annual Plan of Procurement⁶

RMSC is the agency, which has its annual procurement plan covering all required drugs, medicines, surgical and sutures for the entire state. As per this Annual Procurement Plan 2014-2015, it needs to procure 819 types of drugs, medicines, surgical and Sutures but was able to procure only 724 types of drugs, medicines, surgical and Sutures as per actual need. It is important to mention that required quantity and types of drugs, medicines, surgical and Sutures is also mentioned in this annual procurement plan and it is available on the RMSC web portal. This is also worthwhile to mention that as per the fundamental principles of the RTPP Act it is mandatory to have such plan for the department, which needs to be available in public domain.

Frequency of Publication of Tenders

Tendering of the RMSC is quite frequent and goes on year round. On an average, 56 tenders were invited in the year 2014-2015 by the RMSC for all types of drugs/medicines, surgicals and sutures. RMSC is having rate contract in most of the cases therefore. In 25 tenders out of total, procurement was done with these enlisted bidders having rate contract with RMSC. Total drug related tenders were 19 and these were acquired through open

Figure 1: No. of Tenders Published by RMSCL (2014-15)

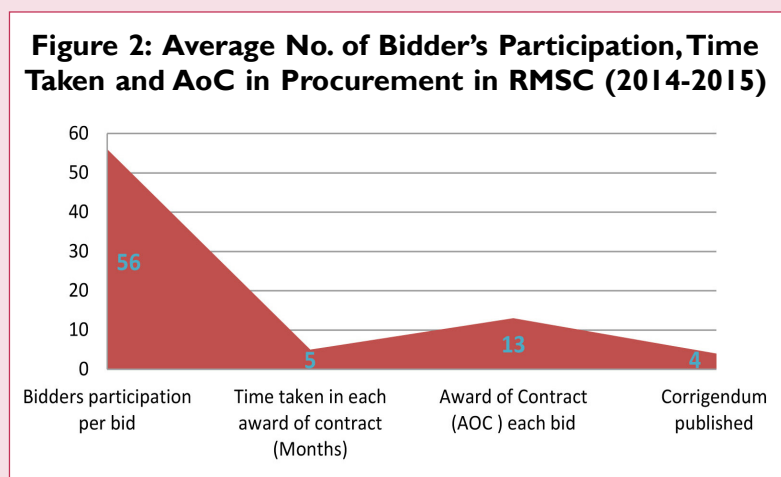


tenders. Rests of the tenders were either related to surgicals and sutures (six tenders) or services (six tenders).

Usually, RMSC does tendering for so many types of drugs, medicines, surgical and Sutures therefore it has to club more than one type of drugs, medicines, surgical and Sutures in any Notice for Inviting Tender (NIT) or Notice for Inviting Bids (NIB), which is some time also called as pooled tendering. In RMSC, on an average, 40 types of drugs/ medicines, surgical and sutures are called for bid. This is important to remember the fact that such all information is also available on the RMSC portal.

Findings of Bidders’ Participation⁷, Time Taken and Award of Contract information

Firstly, in any tendering having fair competition is one of the major components and prerequisites, which is mandated in the RTPP Act, 2012 as well.



Secondly, the time factor is very crucial, especially in the case of drugs and medicines. In the given analysis, the time taken in any procurement cycle of any particular procurement was analysed along with the transparency factor in showing information related to the final award of the contract and incidents in which any corrigendum was published with the increased or decreased quality to be procured or any change in the original bid document etc.

It was found that on an average, around 56 bidders participate in any single tender being floated by RMSC and average time taken in any bid was around five months or so. At this juncture, it is important to mention that in RMSC in some of the procurement cases time taken was even one full year and these were the matters in which decision had to be taken at the board-level. It was noticed

during the analysis that sometimes delay in having the meeting of board was the chief cause of delaying in whole of the procurement exercise. The very crucial information related to the final award of the each and every bid could be seen at the website of the RMSC, which is very appreciable. As far as frequency of the publication of the corrigendum is concerned it is published in every fourth bid of the RMSC, which is also available in its website.

Overall, it could be concluded that RMSC is one of those agencies in the state, which displays all the necessary information on its web portal, which need to be replicated in the other procuring entities as well.

But there are certain other observations as well, which need to be taken care off by the RMSC so that the overall compliance of the RTPP Act, 2012 could be improved. It was noticed that as per the Act RMSC has to be enrolled with the SPPP for publication of all its information related to any procurement activity on SPPP as well as it is publicised on its own web site but this has not been done so far. Other important aspect is complaint redressal mechanism and information related to this has to be put on its portal, so that complainants can know about its progress.

Public Works Department

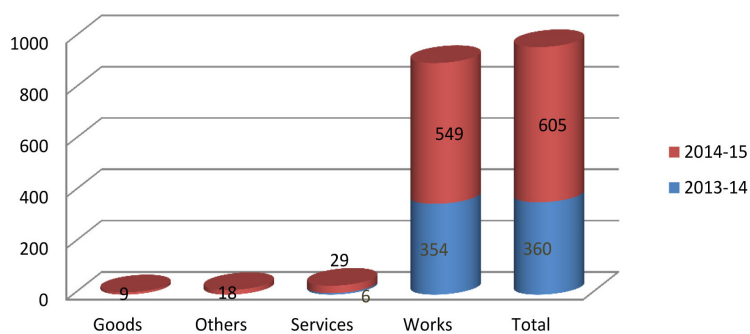
The Public Works Department (PWD) has a glorious history in the development of the State since pre-independence. The Department is mainly entrusted with construction and maintenance of Roads, Bridges and Government buildings etc.

Key Findings

Tenders Published on SPPP

One of the ways to ensure transparency in any process is to put on the related information in the public domain and ensuring its access to the common people. Regarding putting on the procurement related information by the PWD in public domain, it was noticed that it puts on all the Notice Inviting Bids (NIBS)/Notice Inviting Tenders (NITs) and corrigendum of these NIT/NIBs, if any, on its official website as well as on SPPP. But any

Figure 3: SPPP Tenders Published by PWD



other information related to bidder's participation, time taken in the procurement and Award of the Contract information is not available either on its official website or SPPP or anywhere else which shows opaqueness in the system. Moreover, PWD does not have any consolidated Annual Procurement Plan as such for given current financial year, since no such plan is available on its website.

The information displayed in the graph given above was acquired from SPPP and it was noticed that tenders related to works, goods, services and others have been published on the portal and frequency of publication such tenders are increasing year after year showing that the department is trying to put on maximum NITs/NIBs on SPPP as well along with its own website.

Tenders Published through E-Procurement

PWD is the Department, which ensures E-Procurement⁸ if the tender is of the worth of ₹25 lakh or above and it was found that maximum

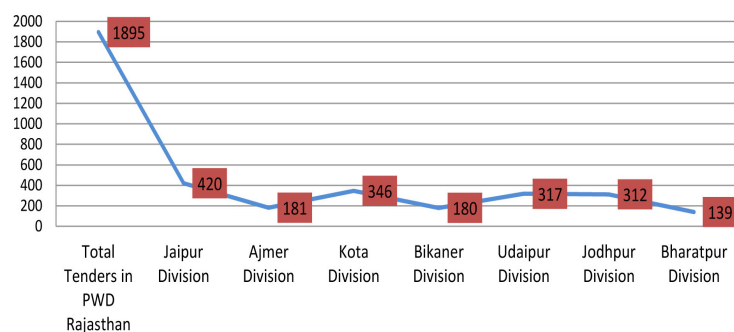
tenders are executed through E-Procurement only. In the year 2014-2015, total 1895 tenders were accomplished through E-Procurement and maximum 420 tenders were ensured by Jaipur division, which comprised five districts (*Alwar, Dausa, Jaipur, Jhunjhunu and Sikar*). It was realised that *Bharatpur* Division comprising four districts (*Bharatpur Dhaulpur, Sawaimadhapur and Karauli*) does least number (139) of E-Procurement among all the divisions of the Rajasthan.

It has been observed that to implement the RTPPP Act 2012 and its rules in true spirit, PWD need to display all the required information related to whole of the procurement cycle on its official website and also on SPPP.

State Public Procurement Portal (SPPP⁹)

The Rajasthan State Public Procurement Portal (SPPP) of Government of Rajasthan has been set up in pursuance of provisions of Section 17 of Rajasthan Transparency in Public Procurement Act, 2012. It has to be accessible to general public so as to enable them to know about the activities of public procurement of goods, works and services by Department of State Government, State Public Sector Enterprises, anybody covered under the ambit of the Act. The portal has provisions for such bodies to publish their bid enquiries, pre-qualification documents, bidder registration documents, bidding documents, corrigendum, clarifications including those pursuant to pre-bid conference, and corrigenda thereto, list of pre-qualified and registered bidders, list of bidders excluded under Section 25. This should be given along with reasons, decisions under Section 38 and 39, Award of Contract and details of successful bids, their prices and bidders, particulars of bidders who have been debarred. The primary objective of this portal is to provide a single point to various state government departments/Organisations for posting matters relating to Public Procurement, so that they are accessible to the public.

Figure 4: Total E-Tenders Published by PWD, Rajasthan (2014-2015)



Tenders Published on SPPP by Various Departments

As per the mandate of the RTPP Act and Rules it is mandatory for all the departments to publish all the tender related activities on this portal without fail. In due course of time more departments are publishing more and more their NIT/NIBs on it. A clear cut upward trend can be observed, in the number of tenders published by various departments like Rajasthan Housing Board, Urban Development Department, Water Resources Department, Department of Medical and Health, Rural Development and the Finance Department itself which is in fact the nodal department for implementing the RTPP Act and RTPP rules and also accountable for managing SPFC functions & activities.

Information Disclosure on SPPP

From the analysis of the available information related to the enlisted departments, designating the procuring and nodal officials for the procurement and other such things on SPPP, it was found that so far 180 procuring entities are registered with the SPPP for publishing their procurement related information on it but still there are several unlisted procuring entities, which need to be enlisted with, so that they could also publicise their information on the same and follow the Act and rules for the same. So far, about 671 procuring entities are registered, 408 procuring entities have designated their Procuring entities and 556 have designated nodal officers for procurement work. But still there are 112 procuring entities that have neither designated any procurement entity nor any nodal officer, which means that these entities are not following the Act and rules as a result their compliance-level of both the Act and the rules are

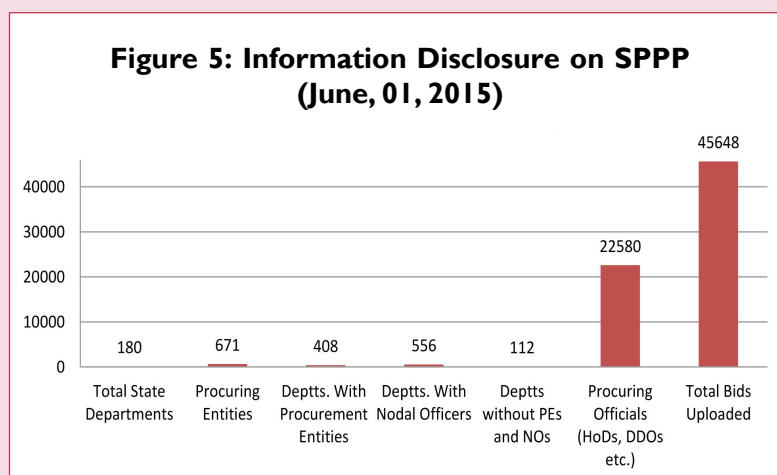
quite low. As per the SPPP there are around 22,580 procuring officials who have been identified by the SPFC for their Capacity Building and further Training on Procurement¹⁰. These officials comprise head of the procuring entities, all Drawing and Disbursement Officers and accounts officials etc.

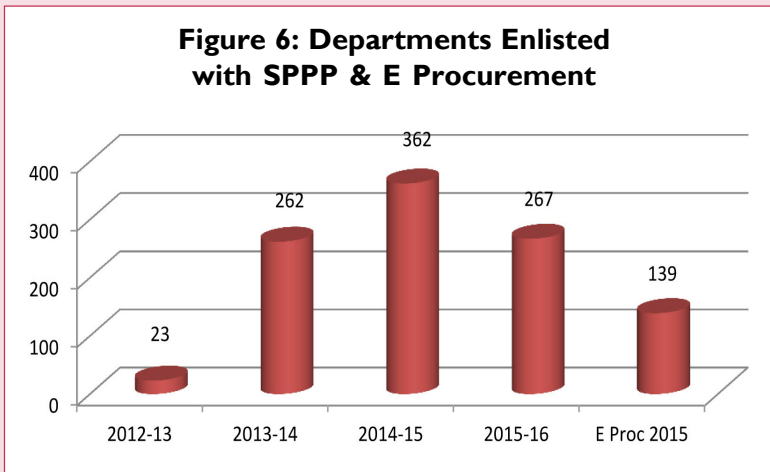
Procuring Entities Enlisted with SPPP and E-Procurement

An analysis of the yearwise number of departments or procuring entities show that it is going upward but varies year by year. It was also observed that in some of the years the number of the enlisted procuring entities are more but suddenly the number goes down instead of remaining the same or rather going up in the following year. In the first two months of the first year, 2012-2013 around 23 procuring entities were got registered, which reached to 262 in 2013-14. While in the year of 2014-2015 around 362 procuring entities were registered with the SPPP declined to 267 in the year 2015-16. As far as the number of enlisted procuring entities on the E-Procurement Site is concerned total 139 are registered with it. Here again the fact has to be reiterated that there are certain entities, which are registered with the E-Procurement. The site also has to be necessarily registered with the SPPP.

Average Report Card of Published Tenders on SPPP

As per the analysis of the daily average report about published, active and closing bids, it was noticed that around 1680 tenders were always active on the SPPP in which all the potential bidders can take part and can apply for the same. On daily basis, about 90 NIT/NIBs were being published by various procuring entities for tendering and around 120 NITs/NIBs are approaching their deadline and closing on daily basis. This shows that there were many tenders available on the portal but as per act this much information is not sufficient. Rather information related to the bidders participation, time taken in the procurement, award of the contract information, entire MIS related to procurement and other necessary information has to be displayed on their respective departmental websites as well





publication of the NITs/NIBs to bidder's participation level, evaluation process, award of the contract and work orders and put on it regularly.

- Management of Information System (MIS), covering entire procurement cycle, needs to be developed and put on SPPP so that things are transparent and required information is in public domain and
- All the procuring entities must be enlisted on the SPPP.

as on SPPP on time to time, then only the true spirit of the RTPP is followed and actual purpose of the centralized portal is achieved. The role of the SPFC was also briefly analysed and was noticed that SPFC need to increase its monitoring and supervisory role in all the departments at every state of the Procurement. SPFC also need to have all required resources to carry out required capacity building programmes for all the nodal officials and procurement entities, so that overall implementation of the RTPP Act and RTPP rules could be strengthened and ensured precisely.

Recommendations

The overall implementation of the RTPP Act, 2012 and RTPP Rules, 2013 has been satisfactory, so far and several initiatives have been executed by SPFC in the past two-years or so but lot more still need to be done as mentioned below for ensuring the implementation of the Act and rules more effective.

Recommendations for SPPP

SPPP being the focal point for disclosure and dissemination of all the procurement related information of the state, need to be reformed drastically.

- SPPP Portal needs to have more built in interactive features so that a common man and potential bidders can also take part in the process by interacting on the portal if they intend to do so out of their curiosity.
- The SPPP web portal can be made much more interactive and informative by capturing all the procurements related happening right from establishment of need of the procurement to

Recommendations for SPFC

- Role of SPFC (as per Section 50 of RTPP Act) has to be made more effective in terms of monitoring the procurement taking place in various Procurement Entities in the State.
- Role of SPFC in terms of providing online support to the procuring officials, common man and prospective bidders for their clarifications, queries, references and enquiries has to be strengthened.
- The standard bids are the documents which are good to refer by most of the departments to keep the bids at a certain standard therefore more and more standard bids have to be developed by the nodal department for wider usage and
- More and more training and capacity building programmes have to be organised for all the procuring entities, procuring officials and nodal officers for procurement.

Recommendations for all the Procuring Entities

- It is obligatory for all the procuring entities to be registered with SPPP.
- All the Procuring Entities must have such provisions in the website of their department that all the required information as required for the SPPP must be uploaded on its web site regularly.
- Most of the departments must proactively display all information related to the Bidders' Participation, Award of the Contract, total time taken in nay procurement, grievance redressal

- and its procurement MIS (as per Section 27 of RTPP rules) on their official website.
- PEs which are registered for E Procurement like RMSC, Civil Defence and Home Guards, IEC department and Rajasthan State Judicial Academy etc. shall be registered with SPPP as well.
 - E-procurement site must be easily accessible by all.
 - Method of 'Electronic Reverse Auction' has not been tried out by any of the procuring entity in the state at present so it is good if this method is also adopted.

ENDNOTES

- 1 *State Procurement Facilitation Cell (SPFC): As per Section 50 of the RTPP Act, 2012, The State Government should establish a SPFC (a) to maintain and update the SPPP; (b) to arrange for training & capacity building of officials; (c) to recommend to the State Government to take measures for effective implementation of the provisions of this Act; (d) to provide guidance, (e) to study different methods of public procurement and prepare & recommend standard bidding documents, pre-qualification documents or bidder registration documents; (f) subject to the provisions of sub-section (2) of section 28, encourage procuring entities to adopt electronic procurement; and (g) to discharge such other functions as might be assigned to it. (3) The SPFC should have the authority to have a procuring entity or any person by notice in writing to furnish such information as might be necessary under this Act.*
- 2 *Swish Challenge System: The Swiss Challenge Method is a method in which an unsolicited proposal for a government project is received and allows third party to challenge the original proposal through open bidding, and then lets the original proponent counter-match the most advantageous/most competitive offer.*
- 3 *Key Performance Indicators (KPIs): For the purpose of focused monitoring of the procurement processes, these KPIs were identified in consultation with the stakeholders. Initially eight such indicators were identified but later it was realized that it was difficult to move forward with a large number so these were cut short up three only and based on three indicators entire monitoring was done under the project.*
- 4 *Complaint Redressal mechanism: It was monitored that in the RMSC any aggrieved or common man can lodge there complaint online but not in PWD.*
- 5 *Procurement Register: As per the Act all the procuring entities have to maintain a procurement register with the details of all the procurements done right from determination of the need of any procurement (Section 05) till award of the contract (Section 27) and signing of the contract and giving work order of the same. It was observed that both RMSC and PWD maintain such register but the furnished details were incomplete.*
- 6 *Annual Procurement Plan: It is desired from all the procuring entities that they make an annual procurement plan and put on the departmental website and share the same with the nodal department but only few departments prepare and upload on the website. It was observed that RMSC is having such annual plan and has exhibited on its official website but not the PWD.*
- 7 *Bidder's Participation: As per the section 06 of the RTPP Act, 2012, procurement process has to be competitive and transparent therefore there has to maximum level of bidder's participation in free and fair manner. Any of the potential bidders has to deny any chance in any manner to take part in the procurement process.*
- 8 *E Procurement: As per the procurement rules and regulation any procuring entity can procure things up to certain specified limits which vary from department to department and beyond this limit they have to procure it through electronically. In PWD this limit is ₹25 lakh, which will be coming down further, In JDA and JMC this limit is ₹10 Lakh. There is a separate department, which is responsible of E-procurement in the State. For more please refer the given web link <https://eproc.rajasthan.gov.in>*
- 9 *State Public Procurement Portal: As per section 17 of the RTPP Act, SPFC maintains and updates this portal regularly and makes it a single stop destination for state procurement activities. All the procuring entities have to be enlisted with this portal for publication of their information but it was observed that several Procuring Entities were not registered even after two years or more. This portal should develop and publish the Procurement Management Information System (PMIS) also. For more please refer this web link. <http://sppp.rajasthan.gov.in/>*
- 10 *Training of the Procuring Officers and Nodal Officers: As per Section 48 of the RTPP Act it is the responsibility of the RPFC to arrange the training and certification specified in terms of requirement of professional standards to carry out the procurement efficiently and smoothly*

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

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