

Event report

Dissemination cum Training of Stakeholder's on Public Procurement experiences, RTPP Act, Rules and Way forward



IGPR & VS, J.L.N. Marg, Jaipur

Project under ‘Setting up a Public Procurement Observatory in Rajasthan’

Background:

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 System 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 with a slower pace but proactive disclosure of procurement related information of various stages need to be promoted in all the Procurement Entities (PEs) across the state.

To see the actual implementation of the RTPP Act, 2012 and RTPP Rules, 2013 in the selected procuring entities, CUTS International is implementing a project named as Setting up a Public Procurement Observatory in Rajasthan with the support of The World Bank. Under the project second Dissemination cum Training Workshop was organised on November 30, 2015 at Indira Gandhi Panchayati Raj & Grameen Vikas Institute, Jaipur. The workshop was organised in collaboration with State Procurement Facilitation Cell (SPFC), Finance Department, Government of Rajasthan.

Participation:

In the workshop, more than 135 procuring officials from various procuring entities and districts took part. Procuring entities were from departments like, Home Department, Electricity



Companies, PHED, PWD, NRHM, Health and Family Welfare, AYUSH Department, Agriculture, Animal Husbandry, Cooperative Department and many more. The districts from where procuring officials came were, *Jaipur, Dausa, Kota, Jhalawar, Ajmer, Tonk, Udaipur Bundi* and some more. The entire SPFC team not only taken part in the workshop very actively but also assisted the CUTS team in facilitating the inaugural and technical sessions as well during the day.

Inaugural Session:

Welcome:

Madhu Sudan Sharma, Senior Project Coordinator, CUTS along with Varidhi Singh, Project Officer extended warm welcome to all the participants and said that this a rare opportunity for the procuring officials to attend a daylong training on the very technical and complicated issues which is public procurement and Rajasthan Transparency in Public Procurement (RTPP) Act, 2012 and Rajasthan Transparency in Public Procurement (RTPP), Rules, 2013 by the able resource persons who are dealing these on a day to day basis. Madhu Sudan Sharma also urged the participants to take part actively and fully utilise the opportunity through interactions.

Introductory Remarks:

George Cheriyan, Director, CUTS welcome again the participants and talked about the importance of the public procurement sector in India and Rajasthan. He said that this is very crucial sector since it has interface of public and private sector and there are chances of



corruption. In India, there is not act so far to regulate the public procurement though some efforts were made in past and a Public Procurement bill, 2012 was passed but that has been abolished with the fall of the UPA-2 government in the centre. He further said that there are some states like Karnataka, Tamilnadu and Andhra Pradesh including Rajasthan which have gone ahead and passed the

legislations to regulate the public procurement sector. Rajasthan passed the RTPP Act in 2012 and made rules for the same in 2013. Not only this, Rajasthan has passed Swish Challenge System very recently so in total Rajasthan is the state which has very strong legal mechanism for public procurement. But the effective implementation of these Act, Rules and System becomes important.

He further added that, to see the level of actual implementation of this public procurement system at procurement entity level, CUTS set up a Public Procurement Observatory in Rajasthan with the support from The World Bank in association with CUTS Institute of Regulation and Competition (CIRC) and monitored the progress of actual compliance of the act and rules in the day to day procurement processes. He said that the project findings will also be disseminated

with the stakeholders in the forthcoming presentations the project team. He shared the key highlights of the project research findings with the participants.

Remarks of Guest of Honor:

Hiroyuki Maruyama, Principal Resident- Procurement Specialist, India Resident Mission, Asian Development Bank (ADB), New Delhi was the guest of honor in the event. He shared his procurement related experiences of working in ADB.

He said that the areas of public procurement has enormous importance attached with it since almost 25 to 30 of the GDP of India and Asian Countries involve procurement therefore reforming this area is need of the hour. ADB is working in the South Asia region to reform the public procurement scenario of all countries of this



region. He added that ADB is interest in this area since lots of ADB money is involved in this through Government lending and loans and it is ADB's fiduciary responsibility to spend its money judiciously and in a corruption free manner.

He also said that lots of initiatives has been taken in the South Asia region to regulate this area of public spending and some of the countries like Bangladesh and Nepal had Public Procurement act on 2006 and 2007 respectively. He said that there are lots of good practices within and across South Asian countries which can be replicated across the nations as per the local conditions and lot more cross learning can be done. He also said that ADB is facilitating such cross learning across the region.

He added that the initiatives live State Observatories taken up by various agencies in different agencies with the support of The Works Bank is really good and ADB is very keen and interest to collaborate with such initiatives. He also said that Rajasthan observatory is doing good work and initiatives like this as of capacity building are really required for the procuring entities. He wished for the successful conclusion of the workshop and such initiatives and thanked CUTS for inviting ADB.

Dissemination of the Procurement Research Findings:

Madhu Sudan Sharma, Senior Project Coordinator, CUTS shared the procurement observatory research findings. In the second phase of the project some of the departments like Public Health and Engineering Department (PHED), Home department (Both Prosecution and Jail), all the

three electricity companies related to electricity generation, transmission and distribution were taken for observation. Besides all these, Jaipur Metro Rail Corporation and IGPRS were also selected for procurement observation against the pre decided indicators. Findings of the procurement are as follows.

Transparency standards in Electricity Companies:

Rajasthan Rajya Vidyut Utpadan Nigam Limited (RRVUNL):

It was noticed that most of the departments including *Rajasthan Rajya Vidyut Utpadan Nigam Limited (RRVUNL)* just publish the Notice Inviting Bids (NIBs)/Notice Inviting Tenders (NITs)



on their official web portal and same on State Public Procurement Portal (SPPP) as well. But other than the NIBs/NITs no other information related to participation of the bidders, time taken in the complete procurement cycle, award of the contract information, work orders and complaints related to procurement etc. are not

uploaded at all neither on the concerned departmental web portal nor on the SPPP. But as per the mandated of the RTPP Act and Rules it is mandatory to do so.

As per the observations made in the procurement process of the RRVUNL, it was noticed that partial information on AoC us uploaded on the SPPP in the year 2013 and 2014 but in the year of

Year	RRVUNL/AoC	RRVUNL/AoC	JVVNL/AoC
2013-14	447/19	438/234	0
2014-15	561/26	316/73	0
2015-16	487/01	552/70	02/Zero

2015 the same information has drastically been reduced and only in 01 case out of 487 NITs AoC information has been put on the SPPP which show the lack of interest among the Procuring Entities and Procuring Officials towards compliance of the norms and on the

other hand making it no binding upon the Procuring Entities and Procuring Officials by the State Procurement Facilitation Cell (SPFC) to follow the same strictly.

It was observed that the same trend as mentioned above was prevailing in the other electricity companies like *Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVUNL)* and *Jaipur Vidyut Vitrana Nigam Limited (JVVNL)* as well.

In *Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)* in year 2013 almost 50 percent of the AoCs of the total NIBs/NITs were uploaded on the SPPP but in the very next year in 2014 this percentage drastically came down to 23 percent or so in the year 2015 it was further down.

In the case of *Jaipur Vidyut Vitran Nigam Limited (JVVNL)* till the year 2015, it was not uploaded even a single NIT on SPPP while it was mandatory since February 2013 onwards. During the year of 2015 only 2 NITs have been uploaded so far but not any AoC as yet.

Transparency standards in Chief Engineer (Special Projects), PHED, Jaipur, Rajasthan

The situation of the compliance of the disclosure norms of the procurement related information on the official website of the concerned department as well as on the SPPP by the office of the Chief Engineer (Special Projects), PHED, Rajasthan is no difference than the Rajasthan Electricity Companies. As per the given table below, all the NIBs/NITs have been uploaded on the departmental website as well as on SPPP but no other information related to public procurement have been uploaded. Out of total 5014 only 07 AoCs were uploaded in three years. This shows the non-compliance of the proactive disclosure related norms by the procuring officials and procuring entities and poor follow-up and weak enforcement by the nodal department.

Chief Engineer (Special Projects), PHED, Rajasthan		
Year	Tenders on SPPP	AoC on SPPP
2013-14	519	3
2014-15	2298	0
2015-16	2197	4

MSS also shared the findings of a survey done on the awareness of the common consumers about the RTPP Act, Rules, Principles, procurement processes, nodal department, complaint redressal mechanism etc. It was observed that most of the respondents understand well about the meaning of the procurement, purpose of the procurement and procuring entities. But have little awareness about the nodal department, full meaning of the RTPP Act and rules and complaint redressal processes.

In the last, some of the recommendations like need of redesigning the SPPP to accommodate full disclosure of information related to all the procurement processes, Strict monitoring by SPFC of the procuring processes in all the public entities need to be ensured, More and more trainings or capacity building programmes on RTPP Act and Rules for all the Procuring Officials need to be conducted, More public engagement as a civic watch need to be introduced at all levels, All the procuring entities must be registered with SPPP. It is noticed that number of PES are still not on SPPP and Formal MoU with Rajasthan Observatory to support and assist to the SPFC where ever required.

Technical Sessions:

The technical session on RTPP Act, 2012 and RTPP Rules, 2013 was facilitated by Mr. Arvind Deewan, Chief Accounts Officer, SPFC, Finance Department, Govt. of Rajasthan. Mr. Deewan is the person who directly monitors implementation of the act in various procuring entities 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.

Mr. Deewan started to talk about the meaning of the act and clarified its definition. He said that this act is applicable to all the govt. agencies which are owned, controlled, managed and financed by the state government. He described the determination of need of the procurement and told about the fair competition of the bidders and their required qualifications. In between facilitator answered lots of

queries related to the issues discussed above, by the participants related to the practical aspects of the implementation of the act and rules.

He also detailed out the nitty-gritty of code of integrity for procuring officials and bidders, description of the subject matter of the procurement, single and two part bids, criteria for evaluations and price negotiations and shared his day to day examples of the procurement process. He also talked on pre-qualifications and registration of the bidders, content of the bidding documents and standard bid documents, time frame, pre-bid clarifications, changes in the bidding documents, bid submission, opening and exclusion criteria of the bids in detail. Participants asked lots of queries on these issues and resource person clarified all these very efficiently and satisfactorily.

Resource person also shed light on methods of procurement like open, limited, single, two stage bidding and electronic reverse auction which has not taken off yet in the state. He also described the process of establishing rate contract etc. Later to this he clarified the appeal and punishment processes and said that these provisions are very good in the act and deters the procuring officials to do anything wrong. Finally he requested all the participants and said that if any of the

procuring officials is having any difficulty or problem at any stage of the procurement, SPFC is always ready and welcome queries, clarifications, references, phone calls or face to face interactions on RTPP Act, and RTPP Rules.

Orientation on SPPP:

Mr. Yogendra Bagda, SPPP In charge, SPFC, Finance Department, Govt. of Rajasthan taken a session on how to enhance the efficient engagement on SPPP?

He talked about the section 17 of the RTPP Act which makes it compulsory to have a centralised public procurement portal and SPPP is made in compliance of same. He said that it is very easy to use and furnish and upload the required procurement related information on it but at first any



procuring entity need to be registered on it and take log ID and password. After getting log in ID and password procuring entity is free to use the portal on end number of times and if one nodal officer who is appointed by the concerned procuring entity can share the log in details with other fellow colleagues so that there are more than one users at a time.

He detailed out the registration process, getting ID and Password, log in process, how to upload the procurement related documents like NITs/NIBs, Award of the Contract and other documents. He also explained about the process of putting procurement documents in advance as well to avoid the workload but in that case as well the NIB will reflect only on the mentioned date as well. Participants asked lots of queries during the presentation and explanation and facilitator replied all the queries very patiently and satisfactorily.

Session on Competition Issues and Remedies: Experience and case studies from Competition Commission of India

Ms. Jyoti Jindgar, Advisor (Economic) Competition Commission of India (CCI), New Delhi facilitated a session on Competition Issues and Remedies: Experience and case studies from Competition Commission of India. She said that there are several forms of bid rigging and few of them are as follows.

Bid suppression occurs where some of the conspirators agree not to submit a bid so that another



conspirator can win the contract. Complementary bidding, also known as cover bidding or courtesy bidding, occurs where some of the bidders agree to submit bids that are intended not to be successful, so that another conspirator can win the contract. Bid rotation occurs where the bidders take turns being the designated successful bidder. Phantom Bids are false bids taken by an auctioneer for the purpose of tricking a legitimate bidder into bidding more than he would have bid otherwise. The auctioneer hires Shills to call out the phantom bids. If the

phantom bid is the winner, either the lot is hidden and comes back around for a second auction, or the 2nd-highest legitimate bidder is informed that the first bidder was unable to make payment.

Buy-Back is the strategy whereby the auctioneer or seller bids on a lot and buys it back to protect it from being sold to the highest bidder for an insufficient price. This is fraud if the auction is advertised as an "Absolute Auction", meaning there are no reserve bids. These forms of bid rigging are not mutually exclusive of one another, and two or more of these practices could occur at the same time.

The typical objective of bid rigging is to enable the "winning" party to obtain contracts at uncompetitive prices (i.e., at higher prices if they are sellers, or lower prices if they are buyers). The other parties are compensated in various ways, for example, by cash payments, or by being designated to be the "winning" bidder on other contracts, or by an arrangement where some parts of the successful bidder's contract will be subcontracted to them. In this way, they "share the spoils" among themselves. She added that all efforts shall be made to stop bid rigging since it openly mis-utilizes the national resources. He also talked that RTPP Act is a very good act and it has a strong integrity code for both procuring officials and bidders and finance department shall enforce the same in its letter and spirit.

Session on Interactive Session on ‘General Issues Related to Implementation of RTPP Act and Rule’

Mr. S.S. Vaishnav, Consultant with Finance Department, Govt. of Rajasthan also facilitated an Interactive Session on ‘General Issues Related to Implementation of RTPP Act and Rule’. It is to mention that Mr. Vaishnav was the person who was part of the drafting committee of the RTPP Act, 2012. He shared his experiences of witnessing pre and post RTPP Act scenario and practices and said that post RTPP scenario is completely changes in a positive manner. The RTPP Act categorically defines so many new areas of the procurement like integrity and



punishment aspects related to any irregularity in the procurement.

He also mentioned that after RTPP Act, 2012 being come in to force, other related acts, rules, manuals and local guidelines have been automatically repealed. Therefore now it is illogical to refer the ‘General Financial & Accounts Rules’ for any procurement. The RTPP Act has so many discriminatory provisions as well for the MSME industries and for government enterprises. He also talked about the

multilateral appeal system which is unique in procurement related acts in India. He replied so many queries related to the Standard Bidding Document, Integrity pact, Punishment process etc. asked by the participants. The session was very interactive.

Summing up and vote of thanks:

Varidhi Singh, Project Officer, CUTS CART summed up the day long proceedings and said that today’s sessions were quite fruitful and lots of new insights were shared by the facilitators. She also mentioned that participants were also very interactive and attentive during all the sessions



starting from inaugural to last session.

She thanked entire SPFC team for their full cooperation throughout the process of organising this workshop and sending out invitation and ensuring participation of more than 125 procuring officials. She also thanked World Bank and CIRC for their valuable inputs and association. He

conveyed her thanks to the ADB team members who came down to Jaipur and shared their

experience including Ms. Jyoti Jindgar from CII and Mr. Vaishnav for sharing their valuable experiences. In the last but not least she thanked all the delegates for taking part in the workshop and made all the sessions' very interactive and raising very relevant and practical questions.

Outcome:

- First of its kind training programme on RTPP Act, 2012 ever in which more than 135 procuring entities taken part. All the participants were benefited and level of understanding gone up through the discussions happened during the technical sessions as per their feedback.
- Need of the capacity building workshops were put forward by all the procuring entities before the nodal department.

Highlights:

- Best available resource persons were engaged in the workshop in various sessions.
- The participation was more than expected and importantly majority of the participants came and gone on time.
- It was felt that one day training on the RTPP Act is not sufficient and it needs around 3 to 4 days training schedule to cover all the aspects of the RTPP Act and Rules.

Low Lights:

- Going for some government facility for such an important workshops is not a good idea since the services of such government facilities are not up the satisfaction level.
