

The Public Procurement Bill, 2012

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Background

- GoM on corruption appointed Committee on Public Procurement (CoPP)
- CoPP recommended, inter alia, enactment of Public Procurement Act to be supplemented by Rules. GoM referred CoPP report to CoS
- CoS recommended enacting a law which should contain broad principles and ensure that concerns regarding flexibility are addressed
- GoM decided that
 - Recommendations of CoPP be accepted in principle and recommendations of CoS be accepted.
 - Process of enactment of law be initiated immediately.

Objectives

- To regulate public procurement by all Ministries and Departments of the Central Government, Central Public Sector Enterprises, Autonomous and Statutory bodies controlled by the Central Government and other procuring entities;
- Ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process;

Highlights of the Bill

- Codifies basic norms for achieving economy, efficiency and quality as well as combating corruption
- Ensures that competition will be maximized
- Provides adequate flexibility for diversity of needs and types of procuring entities
- Provides strong framework of transparency and accountability through public procurement portal and grievance redressal system

Legislative Framework

- Bill based on broad principles and provides flexibility for the variety of procuring entities to be covered
- To be supplemented by Rules for procurement of Goods, Works and Services. Separate sets of Rules for:
 - Procurements for the purpose of national security and on strategic considerations
 - Entering into Public Private Partnerships
 - Procurement by Central Public Sector Enterprises
- The Bill also envisages:
 - Notifications and orders
 - Guidelines – to be issued by procuring entity
 - Model Bidding documents and standard terms and conditions of contract
- Bill enables mandatory procurement and purchase preference policies

Application of the Bill

- Bill to apply to procurements made by-
 - Ministries and Departments any unit, attached or subordinate office of the Central Government
 - Central Public Sector Enterprises
 - Companies in which more than 50% of paid up share capital held by Central Govt and/ or companies in which Central Govt holds more than 50% of paid up share capital
 - Constitutional Bodies whose expenditure met from CFI
 - Bodies constituted by an Act of Parliament; or owned or controlled by the Central Govt.
 - Any other entity, by notification, that receives substantial financial assistance from Central Govt.

Exemptions

- Provisions related to principles and methods of procurement, transparency mechanisms and grievance redressal not to apply to
 - procurements of value below Rs 50 lakh or higher values notified,
 - emergency procurements for the management of disasters, and
 - procurements for national security or on strategic considerations that Central Government may by general or special order, specify.
- However, rules consistent with basic norms and code of integrity to be made for such cases.

Exemptions (Contd)

- Central Government may -
 - by notification, permit procurement in terms of procedures stipulated in agreements with Multilateral Development Banks, foreign Governments and in inter-Governmental agreements if they are consistent with the basic norms specified in the Bill.
 - exempt, in public interest, any procurement, class of procurements or procurement by class of procuring entities from application of any of the provisions.

Basic norms of public procurement

- In relation to a public procurement, the procuring entity to have the responsibility and accountability to –
 - ensure efficiency, economy and transparency;
 - provide fair and equitable treatment to bidders;
 - promote competition;
 - ensure that the price of the successful bid is reasonable and consistent with the quality required;
and
 - evolve mechanisms to prevent corrupt practices.

Code of Integrity

- To prohibit –
 - Offer or receipt of any material benefit to influence the procurement process;
 - Omission or misrepresentation to obtain a benefit or avoid an obligation;
 - collusion, bid rigging or anti-competitive behaviour;
 - improper use of information provided by the procuring entity;
 - financial or business transactions between bidder and official of procuring entity;
 - Coercion to influence the procurement process;
 - obstruction of investigation or audit of a procurement process;
- To mandate -
 - disclosure of conflict of interest;
 - Disclosure of any previous transgressions during last three years or debarment.

Principles incorporated for

- Determination of need
- Obligations relating to value of procurement
- Description of subject matter of procurement
- Limitation to participation - only as per law or policy on mandatory or preferential purchase etc.
- Qualification, pre-qualification, registration of bidders
- Contents of bidding documents, modifications to bidding documents, pre-bid clarifications
- Time limit for processing, procedure for submission, opening and evaluation of bids
- Criteria for evaluation, award of contract, terms and conditions of contract, exclusion of bids

Principles incorporated for (contd)

- Offsets
- Confidentiality
- If lowest bidder withdraws -
 - Cancellation of procurement process; or
 - Where Procuring entity satisfied that integrity of procurement process maintained, provision to accept next lowest bidder where-
 - Bidder withdraws on account of force majeure; or
 - Where -
 - cancellation would result in insurmountable delay or substantial cost escalation, and
 - Procurement is of such critical nature that cancellation shall adversely impact public interest

Methods of Procurement

- Open Competitive Bidding to be preferred method. Reasons to be recorded for using any other method
- Other Methods and conditions for use :
 - Limited Competitive Bidding;
 - Two-stage Bidding;
 - Single Source Procurement;
 - Electronic Reverse Auctions;
 - Request for Quotations & Spot Purchase;
 - any other method by notification, satisfying principles in the Bill.
- Procurement through Rate Contracts and framework agreements

Institutional Mechanisms

- Central Public Procurement Portal
- Documentary record of procurement proceedings and communications
- 3-tier Grievance Redressal mechanism envisaged
 - Review by procuring entity
 - Consideration by independent Procurement Redressal Committee
 - 3 member headed by retired High Court Judge to meet when required
 - No permanent infrastructure. Facilities by procuring entity.
 - To make recommendations.
 - Courts
- Professional Standards, training and certification for officials handling procurement

Offences Penalties & Debarment

- Punishment for taking gratification or valuable thing in respect of public procurement on par with PC Act
- Punishment for interference with procurement process – imprisonment upto 5 years and fine upto 10% of value of procurement
- Punishment for vexatious complaints – fine upto 5% of value of procurement
- Abetment of offences under the Act punishable with punishment for the offence
- Previous sanction necessary for prosecution of public servants in line with PC Act

Offences Penalties & Debarment

(Contd)

- Central Govt shall debar a bidder for upto 3 years on conviction for offences under PC Act and certain other offences
- Procuring entity may debar a bidder for upto 2 years –
 - For breach of code of integrity
 - For withdrawing from procurement process or failing to enter into procurement contract after being declared a successful bidder
 - If entire performance security forfeited for breach of contract
- Reasonable opportunity to be given to bidder to represent, prior to debarment

Important miscellaneous provisions

- Power of Central Govt
 - To make Rules
 - To Remove difficulties
- Procuring entity may issue administrative guidelines or instructions consistent with Act and Rules.

Competition related provisions

- The long title of the PP Bill envisages 'Promoting competition' as one of the objectives.
- Procuring entities made responsible and accountable under clause 5 (Basic norms of public procurement) to ensure transparency, promote competition.
- The Code of Integrity for procuring entities and bidders [clause 6(2)] prohibits any collusion, bid rigging or anti-competitive behaviour that may impair the transparency, fairness and the progress of the procurement process.
- For breach of the Code of Integrity, procuring entity may take appropriate measures including debarring the bidder for a period not exceeding two years.

Competition related provisions (Contd.)

- Clause 45 prescribes penalty for those who engage in any form of bid-rigging, collusive bidding or anti-competitive behavior - imprisonment for a term up to five years and fine up to 10% of the assessed value of procurement.
- ‘Open competitive bidding’ to be the preferred method of procurement. For choosing any other method of procurement, reasons and circumstances thereof would need to be recorded (Clause 30 of the Bill).
- Clause 38 of the Bill mandates setting up and maintaining of a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement.

Competition related provisions (Contd.)

- The portal shall provide access to the following information, namely:—
 - Pre-qualification document, bidder registration document, bidding document including any modification or clarification thereto.
 - List of bidders that presented bids including for pre-qualification or bidder registration, and of those bidders which were pre-qualified and registered.
 - List of bidders excluded from the bid process.
 - Details of successful bids, their prices and bidders.
 - Names and particulars of bidders who have been debarred by the Central Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment.

Recent steps to promote competition

- Central Public Procurement Portal (CPP Portal) set up (www.eprocure.gov.in).
 - Mandatory for Ministries/ Departments, CPSEs and autonomous/ statutory bodies to publish tender enquiries, corrigenda thereto and details of contracts awarded thereon, on the Portal in a phased manner w.e.f 1st January 2012.
- Implementation of e-procurement in respect of all procurements with estimated value of Rs.10 lakh or more by all Ministries/Departments in a phased manner.

Thank You

Procurement Redressal Committees

- Central Government to constitute one or more independent procurement redressal committees (PRC)
- Different PRCs may be constituted for group of procuring entities or for different subject matters of procurement or for different geographical areas
- Members to be of proven integrity, experience in public procurement and experience at senior levels in public administration/ public finance/ management of engineering or scientific projects/ management of CPSEs.
- PRC may recommend suspension of procurement process pending disposal of application.
- PRC to recommend corrective measures where provisions of Act, Rules not complied with.
- Recommendation to be made within 30 days of application. Additional 15 days could be taken for sufficient reasons.
- Procuring entity to communicate its decision on PRC recommendation within 15 days or receipt of recommendation.