

Government Procurement: An Emerging Tool of Global Integration and Good Governance in India

Report of the National Consultation Meeting
31 January, 2013, Hotel Metropolitan, New Delhi

I. Executive Summary

CUTS is implementing a project entitled “Government Procurement – An emerging tool of global integration and good governance in India”, with support from the British High Commission, New Delhi under its Prosperity Fund of the Foreign & Commonwealth Office of the UK government since July 2011. In 2012, CUTS conducted the first phase of the study entitled ‘*Government Procurement in India – Domestic Regulations & Trade Prospects*’, the findings of which had been widely disseminated. The second part of the study continues to further understand the nuances of government procurement and undertakes an assessment of opportunities and challenges which India is expected to encounter if in case it decides to negotiate to accede to the WTO Plurilateral Agreement on Government Procurement. It focuses on the WTO Plurilateral Agreement on Government Procurement and Market Access Opportunities & Challenges for India. This project is expected to fill the knowledge gap and assess the impact of possible accession of the India to the GPA.

II. Background and Context

Following the publication of study entitled *Government Procurement in India – Domestic Regulations & Trade Prospects*; second phase of the study began its research and other activities. The second part of the study continues to further understand the nuances of government procurement and undertakes an assessment of opportunities and challenges which India is expected to encounter if in case it decides to negotiate to accede to the WTO Plurilateral Agreement on Government Procurement.

It is important to determine the amount of market access that India will be able to access both outside and within the framework of the WTO GPA accurately in order to aid decision-making by policy-makers and preparedness by domestic participants.

The WTO GPA framework contains levels and layers at which country-members undertake obligations and qualify market access based on social and economic motivations which renders the task of assessing opportunities and challenges a difficult one. It requires an understanding of procurement frameworks of different countries, public expenditure norms, and relationship between different tiers of government which may be based on devolution of financial power apart from insights into the actual operation of the WTO GPA which differs from other WTO agreements owing to being plurilateral.

This study provides a basis for commencing methodical preparation for India’s possible future accession to the WTO GPA. It categorises and undertakes an assessment of policies which have a social or economic purpose or motive ancillary to the core procurement itself which may be essential to a government to achieve welfare-oriented goals. Issues are examined in order to:

- collect information for modelling similar policies which could protect suppliers in a domestic policy space; and
- understand the impact of such policies on market access for Indian suppliers in international markets.

Economic analysis has been undertaken to determine the market access potentiality in government procurement of countries who are members of the WTO GPA and some other WTO Members who are not members of the WTO GPA.

An evaluation of the legal framework of the WTO GPA has been undertaken by studying the modalities of assessing the value of an offer by a country member through an analysis of entity coverage, thresholds offered and exclusions advanced by countries who are party to the WTO GPA.

III. Opening

Bipul Chatterjee welcomed the participants in the National Consultation for the second phase of the study on Government Procurement which focuses on WTO Plurilateral Agreement on Government Procurement and Market Access Opportunities & Challenges for India provided thereunder. The participants constituted a wide stakeholder base including research organisations, think-tanks and members from industry associations and companies, members from the EU delegation amongst others. Valuable insights and suggestions were received on improving the quality of both research and advocacy.

Pallavi Kalita, Senior Trade Policy Adviser, British High Commission briefed the audience about the British High Commission's Prosperity Fund which focuses on projects and had a low carbon, high growth basis. Amongst these, projects pertaining to economic growth were one category of projects which the British High Commission is particularly interested in. She said that the motivation behind supporting this project is to create a space for debates on this important subject of the Indian economy.

Ron Watermeyer, Director, Soderlund and Schutte and former President of the South African Institution of Civil Engineers, provided a large number of valuable inputs to detail how a new procurement system should be developed based on the objectives of procurement as a whole, particularly in a country where the alignment of horizontal policies (policies not directly related to the procurement objective) into the overall procurement process was critical.

Ron Watermeyer defined procurement as follows: "... process which creates manages and fulfils contracts. If procurement is a process, it can be documented as a succession of logically related actions occurring or performed in a definite manner which culminates in the completion of a major deliverable or the attainment of a milestone. Processes in turn are underpinned by methods and procedures, which are informed and shaped by the policy of an organisation." He also made reference to an ISO standard pertaining to construction procurement. ISO 10-845 defines procurement as "the process which creates, manages and fulfils contracts relating to the provision of goods, services and engineering and construction works of disposals or any combination thereof."

Watermeyer suggested that a country which is engaged in revamping its procurement policies should consider assuming a portfolio approach, and focus on the different supply chains which are involved in procurement in order to make the most out of the procurement policies which it develops. He divided the objectives which should be incorporated into the process of procurement into two categories:

- primary objectives, and
- secondary objectives of which the former related to good governance, and the latter to the promoting secondary and non-commercial objectives which are interlinked to welfare.

The procedures which constitute the formal steps into which social objectives can be incorporated as follows:

- Project identification, planning and design
- Finance and procurement strategy
- Tender and selection
- Contract agreement documents
- Monitoring, enforcement and evaluation

Watermeyer further noted that India was already in the process of assembling a national procurement law, and evolving a national procurement policy. He also acknowledged that the area of 'post contract management' was an important area, and would have to be dealt with. He suggested that the contracts which were used in procurement had immense potential to subsume within their terms social objectives related to growth. He also highly recommended identifying independent supply chains in order to better the process of procurement, by mapping demand and supply chains.

In conclusion he opined that there is a need to build a good procurement regime at systemic level than through just rules and procedures. He also underlined that putting process and procedures for a quality management system is the beginning and not the end of a good procurement regime. He further stated that strategies need to be built at portfolio level for devising a win-win situation by forging public-private partnerships, building an enabling support system, and an effective and enforceable monitoring system to create an efficient procurement system. He said that huge socio-economic development opportunities exist for any country if it understands dynamics and totality of its procurement system.

IV. Presentation of the Draft Report

Bipul Chatterjee commenced his presentation by providing an overview of the research which had been undertaken as part of the second phase study. The second phase study focuses on 'WTO Plurilateral Agreement on Government Procurement: Market Access Opportunities & Challenges for India' dealt with two facets:

- a) The market access opportunities available for India in member-countries of the WTO GPA, and in non-member countries of the WTO GPA; and
- b) The qualifications to market access opportunities created by WTO GPA members both within the realm of the agreement and through their domestic policies.

Chatterjee presented the methodology and the findings of the study on government procurement. He mentioned that the methodology deployed to calculate market access was one which had been utilised in a study by Anirudh Shingal of the World Trade Institute, Bern, after making suitable modifications. It was conveyed that statistics pertaining to which ministries of the Indian Government procurement which commodity were unavailable (as they were being collected since 2012, with relation to the national e-procurement website). Hence, the analysis undertaken in the second portion of the study has some limitations in this regard.

The market access opportunities present in WTO GPA and non-GPA markets presented followed by a few insights on the ways and means by which the current WTO GPA members have used flexibilities in the agreement, and even outside of the agreement to preserve market access for their domestic suppliers which concomitantly whittled away market access opportunities for suppliers from markets abroad.

It was noteworthy that despite the represented market access opportunities, the actual number of contracts which had been awarded to foreign suppliers had been limited. Developed countries frequently procured from only developed countries. A few opportunities were identified for Indian suppliers in WTO GPA markets.

Bipul Chatterjee noted that as per the research, a few areas which had been identified as presenting market access opportunities for India where the pharmaceuticals sectors in the US, minerals in Canada, semi-finished goods of copper, nickel, aluminium, lead and gas generators in Chinese Taipei, ships, boats and floating structures in Japan, collector's pieces and antiques, plastic, machinery and electrical equipment in Korea.

It was conveyed that statistics pertaining to which ministries of the Indian Government procurement which commodity were unavailable (as they were being collected since 2012, with relation to the national e-procurement website. Hence, the analysis undertaken in the second portion of the study was disadvantaged in certain senses.

It was noted that only about five percent of the total contracts awarded by developed country governments are awarded to international suppliers. Of these the proportion of contracts awarded to developing country suppliers was minimal.

The potential for market access opportunities in certain markets were also highlighted: for example, government expenditure in the US amounted to 42.2 percent of the GDP (US\$6369668mn), and alternatively in Singapore it was 17 percent of the GDP (US\$40749mn).

Some of the findings of the study such as those which dealt with entities submitted by the different country members, the exemptions/exclusions pleaded by different country members, and the horizontal policies such as Buy Local laws, green procurement initiatives and the carve-outs maintained for small and medium-sized enterprises.

The presentation was concluded by providing a host of options to defend market access and create new opportunities for opening up markets through concluding bilateral agreements. Another option which was explored was to defend against the proliferation of non-tariff barriers which operated to further erode market access opportunities.

V. Discussion on the Draft Report

Bipul Chatterjee, towards the end of the presentation, solicited suggestions and comments from the stakeholder participants to evolve a strategy to determine how India should approach government procurement in the event it decides to commence negotiations into the WTO GPA. The sectors which received specific attention were the pharmaceutical and the manufacturing industry, the former for offensive interests and the latter for defensive. Questions were also raised pertaining to the defence sector, specially relating to the treatment of defence goods and services under the WTO GPA.

A large number of systemic concerns which could impact procurement were highlighted such as government expenditure, misuse of public-private partnerships, use of unsecured loans etc.

Queries raised by participants

- Questions were raised about the expectations that existing member countries had from India keeping in mind when India may commence negotiations on accession into the WTO GPA, in the event it does. Concerns were also raised pertaining to the conditionalities posed to a new entrant.
- Queries were raised regarding which exemptions could be maintained at a state-government level, and the treatment of services under the GPA, how open the EU market really was, and the flexibilities which would be granted to a country like India,
- Multiple queries were made pertaining to the status of the Public Procurement Bill and the alignment of the Public Procurement Bill to the WTO GPA.
- Queries with respect to ancillary aspects of procurement, such as corporate social responsibility, and environmental standards, were also a part of discussion.
- A stakeholder representing Associated Chambers of Commerce & Industry of India enquired about the preference granted for local producers both in India, and as per general practice, by the countries which had committed to the WTO GPA

Comments and Observations made by participants

- In response to the statistics which were presented noting that in the European Union, only five percent of contracts were given to foreign suppliers, Peter Young from the European Commission noted that there may be a discrepancy in the statistics reported- multiple foreign suppliers establish a base in the EU, or partner with other EU suppliers – these would not have been captured by the statistical databases which categorise foreign suppliers depending on their base, owing to which the statistics may well be skewed. This observation will be included in the study.
- Though some participants said that India was not ready to join the WTO GPA, a few members from the industry further raised concerns on whether India could potentially lose out if it does not accede to the WTO GPA. This marks a shift from the earlier stance of the stakeholders where they vehemently opposed India contemplating accession to the WTO GPA.
- Another participant made an observation that India is not ready to commence accession to the WTO GPA because its manufacturing sector is weak. He also highlighted the often overlooked importance of municipal procurement.
- The stakeholder participant noted that even if India were to commit to the WTO GPA, it should do so only after negotiating to commit extremely high thresholds. This aspect has been considered in the study in its current draft form.
- An Assocham representative noted the Ecomark (the Indian labelling system for eco-friendly goods) “had not really picked up”, and there were not many takers for the certification. He suggested that the Indian government should start reserving a portion of its procurement for the purpose of green procurement similar to governments abroad. This suggestion will be incorporated into the study.
- A participant from private sector industry agreed that India may not have the capacity to mirror the same/similar market access barriers in order to defend market access options available to domestic suppliers. This aspect will be added to the study.

Suggestions

- After evolving a few horizontal policies which could be effectively integrated into our procurement policies, the next step as suggested by Bipul Chatterjee would be to conduct perception surveys with the pertinent stakeholders to identify as to whether they are effective.
- It was further noted that certain countries (such as Japan) frequently used Trade Remedies (antidumping measures) in order to ensure that their domestic industries continued to remain competitive.
- The use of construction procurement standards in order to increase predictability and to promote harmonisation is a suggestion which will be explored.
- Further areas of research pertaining to grey areas in the Public Procurement regime, horizontal policies and possible exclusions and exemptions were identified as having to be undertaken.

VI. Conclusion

Bipul Chatterjee, Archana Jatkar and Vinitha Johnson responded to the queries raised by the participants in the National Consultation during the course of the discussion. Specific issues were identified as being central to the second phase study. Bipul Chatterjee concluded the meeting after noting that a lot of preparation needs to be undertaken in order to negotiate to enter the WTO GPA. He also noted that evolution of horizontal policies needed to be explored in order to integrate social objectives within the overall framework for procurement. The suggestions of all the participants were greatly appreciated. The National Consultation was concluded after thanking everyone present.

National Meeting
Indian Government Procurement – Opportunities and Challenges

Crest Hall, Hotel Metropolitan, New Delhi, Thursday, January 31, 2013

Agenda

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| 10.00 – 10.30 | Registration |
| 10.30 – 11.30 | Opening and Presentation on Government Procurement – Opportunities and Challenges for India within the WTO GPA Framework

Bipul Chatterjee, Deputy Executive Director, CUTS

Pallavi Kalita, Senior Trade Policy Advisor, British High Commission New Delhi

Ronald Watermeyer, Director, Soderlund and Schutte |
| 11.30 – 11.45 | Break |
| 11.45 – 13.00 | Discussion and Conclusion |
| 13.00 onwards | Lunch |