Introduction

Procurement has always been one of the vital functions of Governments all over the world. India is no exception. Both the Central Government as well as state governments / PSUs have been spending huge amount of taxpayers' money into public procurement. However, procurements by Governments have always been controversial with allegations of favoritism, inefficiency, quantitative and qualitative compromises and above all, corruption and kickbacks. After the infamous Commonwealth Games and the 2G Spectrum case, the year 2010 was mockingly dubbed as India's 'year of scams'. With series of many scams tumbling out in 2011 as well, there seems to be no respite. In many ways, these scams are taking place since India's procurement system is not fool proof.

The Government's response has been swift. Procurement related corruption forms one of the action points for the high powered Group of Ministers (GoM) on Corruption formed under the leadership of Finance Minister Pranab Mukherjee in January 2011. The GoM has been asked to submit its report in two months. However, the Government has also initiated numerous steps to reform the procurement system that include a central procurement policy for the first time, supplemented by other policy reforms. While the initiatives will certainly plug the loopholes in the present procurement regime, they need to be discussed and debated in the light of malaises to see if they are sufficient or more needs to be done.

This paper, therefore, will start with discussing the concept of public procurement and their importance in overall Governance. It will also study, albeit in nutshell, the institutionalization of procurement rules by the Government through manuals and rule books. The paper will then seek to identify some of the common problems and shortcomings in the present procurement system. Finally, the paper will examine the recent initiatives to see if they are sufficient in having a healthy and transparent procurement regime. The scope of the paper would be limited to procurements under the Government of India and would exclude procurements being done by the state governments.

Public procurement: an important Governmental activity

According to Wikipedia, procurement is the acquisition of appropriate goods and / or services at the best possible 'total cost of ownership' to meet the needs of purchaser in terms of quality and quantity, time and location. When goods or services are purchased by a public sector, it is called public procurement. As has been rightly said, 'it is the process by which Governments and public sector institutions buy inputs for vital public sector investments in physical infrastructure and for strengthening institutional human capacities which lay the foundation for national development'. With 10 to 15 percent of the national budgets in developed countries, and upto 20 percent in developing countries, government procurement accounts for a substantial part of the economy. India is no exception where public procurement in India constitutes about 15% of the budget. Departments like defence, railways & telecom devote about 50% of their budget to procurement, which happens to be higher than the expenditure of most of the state governments. It is estimated that the annual expenditure on public procurement for the Union Government is in the range of Rs. 2.5 – 3 lakh crore.

In recent times, public procurement has been impacting the economy significantly by generating demand and consumption. Government, by virtue of its purchasing power can steer the market in a particular direction. Public procurement also serves as an instrument to attain social outcomes. By way

1 Unidentified author, 'Public procurement reforms to enhance value for money', 16th November 2009, http://saiindia.gov.in/sites/default/files/6publicprocurementreforms15_12_09pdf
of preferential treatment in procurement, it may be used to promote indigenization of foreign technology, development of backward regions or protection of small scale industry. Of late, procurement is also being leveraged to promote the causes of environment, human rights, protection of children and gender equality\(^3\). Following are some of the representative factors that highlight the academic importance of public procurement:

- Very large sum involved.
- Large size of contracts involved, particularly those relating to infrastructure and defence.
- Huge stakes: while the tax payers look for value for money, transparency and non-discrimination; the general public look for quality of goods / services and responsiveness / efficiency.
- Significant impact on domestic industry: through development, construction work, purchases and overall buoyancy in the economy.
- Significant impact on society: through provision for labour laws, minimum wages and health standards.
- Governance: the image of any Government is largely influenced by the quality of public procurement.

**Objectives in public procurements**

Following are some of the representative objectives in public procurement:

- Get the best value for money.
- Provide access to all eligible bidders.
- Promote competition.
- Ensure transparency and openness.
- Build in accountability.
- Reduce scope for corruption and abuse.
- Develop domestic economy.
- Compliment other public policies.
- Be a model purchaser and employer.

**Status of procurement system in India**

Despite the professed importance and desirability of a sound procurement system, India is yet to have a perfect and institutionalised system of procurements. The Ministry of Finance in the Central Government is responsible for issuing basic guidelines that are supposed to establish the 'canons of financial behaviour'. Central agencies like the Central Vigilance Commission (CVC) supplement this effort by laying down vigilance benchmarks in the procurement system. Yet, some ministries come out with their own rules and regulations that are supposed to be followed by all ministries while implementing their procurement policies. These manuals provide for preferential treatment to earmarked sectors such as micro, small and medium enterprises (MSME)\(^4\), khadi and village industries (KVIs), Kendriya Bhandar, co-operative sectors etc. Apart from that, the individual ministries and departments in the Government of India also are increasingly having their own procurement policy. However, many state governments are yet to institutionalise a procurement system that is transparent, flawless and laced with the three Cs i.e. economy, efficiency and effectiveness. In fact, at state level, procurement is a mosaic – multiple system running at the same time. Procurement procedures are not available, financial advice system is not established and audit mechanism is questionable. The initiative

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\(^3\) Ibid.

\(^4\) In fact, the Ministry of Micro, Small and Medium Enterprises (MSME) is in final stages of issuing a public procurement policy that is likely to make it mandatory for all ministries and public sector undertakings to procure 20% of their total annual purchase volume from the micro and small enterprises.
and the desire to respond to procurement challenges on the part of state governments is quite slow and rather questionable. The end results are often in the form of big scams.

**Government guidelines on procurements**

Detailed rules and instructions relating to procurement by the Union Government are contained in General Financial Rules (GFR), Delegation of Financial Powers (DFPR) and Manual on Policies and Procedures for Purchase of Goods. These rule books are revised from time to time. The rules and decisions in these books have to be followed in common by all departments under the Central Government with the exceptions as provided therein. In addition, major ministries such as Defence, Railways, Public Works, Central Purchase Organisation (Directorate General of Supplies and Disposal) etc have their own purchase procedures. These purchase procedures also draw very heavily upon the guidelines contained in the GFR and DFPR. The basic guiding principles of public procurement, *inter alia*, include the following:

- Maximising economy, efficiency and effectiveness in procurement. This would mean purchasing of goods / services of required specifications for the intended purpose in a required time frame at the most economical price.
- Fairness i.e. providing fair and equitable treatment to all prospective suppliers / bidders.
- Competition among suppliers for supply of goods / services to be procured so that efficiency can be rewarded and procurement can be made at the most economical price.
- Achieving transparency in the procedures relating to procurement.

The procurement system being followed in our country has the following general features:

- **Centralised procurement** by clubbing of demand. At one point of demand, the theory of centralised procurement led us to the establishment of DGS&D, which made procurements on behalf of almost all Central Government ministries and departments. Too much centralisation of procurement often leads to generation of very large demands, indifferent approach particularly towards quality, associated delays and unhealthy practices.
- **Provision for various modes of procurement** such as open tendering, limited tendering, rate contracts, purchases by purchase committee and purchase from market.
- **Checks and balances** to ensure that the entire procurement system is not misused at any stage by any stakeholder.
- **Transparency** through adherence to rules / regulations and instructions issued by various departments of the Government such as CVC.

**Importance of the procurement manuals**

The procurement activity in Government has been characterised by significant developments in recent times. *First*, there has been tremendous increase in the volume of procurements being done by the government. *Second*, the procurement environment itself is in a flux, partly because of the influence of liberalization, privatization and globalization (LPG). While many items were being produced by different Government production departments/ PSUs etc, the Government is no longer a 'willing producer' in many areas and making the procurements from market. Also, the impact of information technology is also quite visible with many procurement procedure undergoing concurrent changes. *Third*, while there is no dearth of rules regulations guiding Government procurement, the same are not available as 'ready reckoner' when needed. Hence, many departments have started having dedicated procurement manuals for their use. Some of the representative benefits of manuals are as follows:

- **Caters to the exclusive needs**: Government of India documents like GFR and DFPR are generic and meant for all departments. While they contain sound canons / principles for procurement, they are not comprehensive by themselves and, therefore, fail to cater to exclusive requirements
of individual departments. Even otherwise, the Central Vigilance Commission (CVC) has been encouraging all ministries / departments to come out with their own procurement manuals. As the CVC has said in one of the papers, 'the cardinal principle of any public buying is to procure the materials / services of the specified quality, at the most competitive prices and, in a fair, just, and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines in the organization so that this vital activity is executed in a well co-ordinated manner with least time and cost overruns..... A codified purchase manual containing the detailed purchase procedures, guidelines and also proper delegation of powers, wherever required needs to be made by all the organizations so that there is systematic and uniform approach in the decision making'.

- **Everything put in one place**: Perhaps the most valuable aspect of manuals is the availability of all Government document and papers issued by the concerned ministry / department in one place. The shaping of manual is within the overall framework of broad policy guidelines set by Ministry of Finance guidelines (such as GFR, DFPR) and CVC guidelines. Moreover, even the prescribed formats are available or ready reference. One doesn't have to hunt old files and records to look for relevant orders / instructions.

- **Updated from time to time**: The manuals are updated from time and time in response to changes in external environment and feedback received from different stakeholders. For example, the now famous defence procurement procedure (DPP) and the defence procurement manual (DPM) have been updated from time to time, the latest being in 2011 and 2010 respectively.

- **Procedural simplicity**: All the manuals have an inbuilt objective towards procedural simplicity. Existing rules / regulations / orders are put into laymen terms along with clarifications, wherever warranted.

- **No scope for ambiguities**: Many a times, the GFR / DFPR and other rules and regulations are subject to multiple interpretations or misinterpretations. Manuals do not leave any space for such interpretations. For example, the DPM 2009 (as supplemented by 2010 edition) defines most terms and phrases that are used in day to day contract management in defence sector.

### Major concerns in the procurement regime

The Indian procurement system as institutionalised in the Government rules / regulations and exclusive manuals is prone with certain concerns. Some of the representative concerns are discussed below:

- **Existence of multiple procurement guidelines & procedures**: A major problem expressed by the procurement officials is the confusion created by the existence of multiple procurement guidelines and procedures established by multiple agencies. There is neither a single comprehensive public procurement standard nor a single nodal agency to deal with public procurement policy. In the US, the Federal Acquisition Regulation is the public procurement standard which codifies a uniform policy for acquisition of supplies and services by executive agencies. The procedures issued by the various other organizations are only supplementary to these regulations. Office of the Federal Procurement Policy which operates these regulations is centrally responsible for all policy matters relating to public procurement. This office is headed by a committee consisting of the heads of the major procuring organizations. There is an urgent need to put in place a (similar) comprehensive public procurement standard in India with a single authority to handle public procurement issues. The office of the DGS&D can be reconfigured to serve as the nodal agency for all public procurement issues. It should also operate a help desk to provide clarifications and guide the procurement officials.

- **Overt emphasis on procurement procedures and guidelines**: Another anomaly in our public procurement system is the overt emphasis on rules and regulations. While it is true that rules and regulations are an essential component of any public procurement system, it is equally important that they are not overemphasized to the point of becoming a hindrance to the smooth functioning of the procurement process. Manuals should be kept updated and relevant to the current environment, and there should be a mechanism in place to address any ambiguities or misinterpretations that arise.

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procurement regime is that there is an attempt to apply the procurement procedures and guidelines in the letter without an appreciation of the spirit behind these stipulations. These procedures and guidelines have been framed to uphold the values of competition, transparency, fairplay, integrity and value for money while undertaking procurement. The ultimate test of any procedure is its ability to promote these values. Therefore, a good manual of procedures should explain the underlying principles.

- **Poor quality of manpower**: The quality of manpower which operates the procurement system is equally crucial. In India, public procurement has never been treated as a specialized activity requiring specialized knowledge and skills. Even the most critical and complex procurements are handled in a non-professional manner. Except for the Railways and the DGS&D, no other organization has created a specialised cadre for this purpose. In most of the developed countries and international organisations, occupying a procurement desk requires some professional qualification. There is a need to either have qualified staff handling procurement or to provide adequate professional training to convert the procurement officials into procurement managers.

- **The fear of vigilance**: The lurking fear of landing in vigilance cases, even amongst honest employees, withholds them from giving off their to the organisation. This fear arises out of the uncertainties about the view that would be taken by vigilance organisation in case of an inadvertent mistake without any mala-fide intention. The numerous and ever-changing rules also give rise to such fear.

- **Frequent updates of manuals**: In some cases, overemphasis on swift updates of manuals also creates a problem. Those responsible for procurements are not aware of immediate changes and thus are at variance with latest guidelines or instructions.

- **Multiple interpretations of manuals**: There has been cases where the same procurement manual has been subjected to multiple interpretations by different set of people. A glaring example would be the issue of 'negotiations with L1' where notwithstanding the clarifications by the CVC, different officers have been making subjective interpretations.

- **Poor quality of training**: Proper institutionalised training can help develop the skills of those responsible for procurement. Unfortunately, India still doesn't have any dedicated institutional arrangement for training on procurement related issues, despite a huge chunk of tax payer's money going for public procurement. That results in poor quality of training since a large proportion of procurement training is done in-house in various departments of the Government. The international experience is totally different. The United States has, for example, a dedicated 'Defense Acquisition University ([www.dau.mil](http://www.dau.mil))' for training on defence related procurements.

- **Procurement postings not linked to qualifications**: Unlike many countries, procurement postings in India are not linked to functional qualifications. So many a times, the procurement officers/managers are often at variance with their job requirements and therefore do not stand up to expectations.

- **Frequent inter-change with other assignments**: One can always pick up the threads of the job provided he is there for a stable period. The bureaucratic system in India, however, does not allow for this leeway. As a result, incumbents face frequent transfers due to which they cannot do complete justice to their professional expectations. To cite just one example, the delegation of financial powers in the Ministry of Defence has been supplemented by posting of dedicated IFAs at all levels. However, the dedicated IFA may return to the Defence Accounts Department to work in audit, payment or even pension. This tendency discourages job specialization in the department with a result that the dedicated IFA may still think / behave as auditor / paymaster.

- **Lack of avenues / interest in knowledge building**: While procurement managers at top level do

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6 'A common sense approach to public procurement in Government departments and PSUs', [http://www.mecigov.in/pdf/VigArticles.pdf](http://www.mecigov.in/pdf/VigArticles.pdf)
take interest in knowledge building and keep themselves updated about various facets of procurement including market trends, the same is not true for all levels. In fact, many procurement managers are not even aware about the basic tenets of procurement manuals applicable to their domain area.

- **Lack of centralised data sharing facility**: Broadly speaking, data sharing is the practice of making data used for scholarly research 'available' to other investigators. The role and utility of data sharing is quite well known. Whether it is decision making, crisis management, operational issues, negotiations or training and capacity building exercises, the availability of updated data induces elements of rationality and objectivity into decisions that are likely to be effective and sustainable. In the organised sectors such as Government, the role of data sharing cannot be undermined since it brings a lot of uniformity and cost-effectiveness into the hitherto vast and complex bureaucratic organisation. However, while the Government is working on a national 'data sharing policy', lack of data sharing facility obstructs procurement managers to take informed and enlightened decisions.

- **Absence of a central authority to oversee procurement related issues**: Presently, there is no central authority that is exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures. The ministries or departments have been delegated full powers to make their own arrangements for procurement of goods. In case however, a ministry or department does not have the required expertise, it may procure goods through the Central Purchase Organization (DGS&D).

- **Absence of an exclusive law governing public procurement**: In the absence of an exclusive law governing public procurement, the conditions governing the contract contain provisions for settlement of disputes and differences binding on both parties. Thus, there may be problems related to uniformity of contractual conditions, or the interpretation / implementation of the same.

**Public procurement and competition concerns**

Most of the time, public procurement is carried out through competitive bidding or tendering process with the intention of achieving maximum economic efficiency through competitive process. Any anti-competitive practices in a procurement process, such as collusion, bid-rigging, fraud and corruption, could lead to artificially raise prices, or compromise on the parameters and consequently adversely impact public expenditure and the precious national resources. Ensuring effective functioning of public procurement markets is also part of good governance and necessitates two distinct but inter-related challenges: (i) ensuring integrity in the procurement process (i.e. preventing corruption on the part of public officials) ; and (ii) promoting effective competition among suppliers, including preventing collusion among potential bidders.

The Competition Commission of India, that has been striving to address the competition concerns in the public procurements, has studied the issue in detail and identified following anti-competitive behavior in the procurement process:

- **Collusive bidding**: Collusive bidding can take form of an agreement among firms to divide the market, set prices, or limit production. It can involve 'wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

- **Bid rotation**: In bid-rotation schemes, conspiring firms continue to bid, but they agree to take turns being the winning (i.e. lowest qualifying) bidder. The way in which bid-rotation agreements are implemented can vary.

- **Cover bidding**: Cover (also called complementary, courtesy, token or symbolic) bidding occurs

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when individuals or firms agree to submit bids that involve at least one of the following: (1) a competitor agrees to submit a bid that is higher than the bid of the designated winner, (2) a competitor submits a bid that is known to be too high to be accepted, or (3) a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser.

- **Bid suppression**: Bid suppression schemes involve agreements among competitors in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted.

- **Market allocation**: Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas. Competing firms may, for example, allocate specific customers or types of customers to different firms, so that competitors will not bid (or will submit only a cover bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm.

### Procurement reforms: initiatives by the Government

The Union Government has launched a series of initiatives to streamline the public procurement system. Some of them are as follows:

- **Formation of Group of Ministers on corruption**: The Government has formed a high powered Group of Ministers (GoM) under Finance Minister Pranab Mukherjee in January 2011. The GoM, in its meeting on 14th February 2011 decided to recommend among others, discretionary quota of ministers that will have monetary impact (38 out of 84 ministries have accepted to have discretionary quotas), permission for prosecution to be given within three months, and fast track procedure for processing corruption cases against guilty bureaucrats. Meanwhile, The Cabinet Secretary has set up a special committee headed by former Competition Commission of India (CCI) Chairman Vinod Dhall to give recommendations on a comprehensive public procurement law. The Committee will give its report to the GoM on corruption as soon as possible.

- **Public procurement policy in the offing**: The Government is also working towards a central public procurement policy to bring transparency, curb irregularities and corruption. The new procurement policy is intended to plug inconsistencies in government procurement arising due to multiplicity of guidelines. The new policy will also include procurement of services with a focus on engaging experts on contractual basis instead of permanent employment. A draft procurement policy, prepared by Shri M Raman, Secretary (Chemicals) is under the consideration of a committee of secretaries. Shri Raman was earlier Director General of Supplies & Disposal (DGS&D). The draft suggests a central procurement law to cover purchases by all government departments and organisations and lay down rules for different type of procurements. The drafty document also envisages the creation of an independent national nodal authority for public procurement. It will be a law making and regulatory body, with an advisory role overseeing the procurement activities.

- **Single portal to streamline procurement on cards**: In the coming days, all government procurements would be streamlined and every vital information related to such procurements may be posted on a 'single procurement portal'. The Vinod Dhall Committee is likely to propose (as hinted by him) that a single procurement portal should be developed on the lines of e-governance programme MCA21, and all the procurement related details should be posted on the portal for all the suppliers to see. This will enable the supplier to see who has won the bid, on what grounds etc. This will maximise the competition.

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9 'Public procurement policy in the offing, could help check graft', [www.governancenow.com](http://www.governancenow.com) 19th October 2010.
Towards an efficient and transparent procurement regime

The procurement system in India is plagued with issues on behalf of all stakeholders. The rules and regulations are not clear; there is also the problem of 'plenty of them' competing for primary interpretation; above all, the people who are in charge of implementing these rules / regulations / manuals are themselves not very confident. The reforms proposal notwithstanding, India's procurement regime is yet to come to terms with existing international standards. Therefore, in addition to what is being considered by the Government to reform the procurement system, following additional points must be considered for an efficient and transparent procurement regime:

• **A national institute dedicated to public procurement**: While there are sporadic courses in some IIMs on contract management / procurement; India still does not have a dedicated national institute that would offer required courses. This would be the first step in meeting the 'knowledge gap' as far as the latest developments in procurements are concerned.

• **Compulsory course on public procurement**: Pending the formation of a dedicated cadre on procurement, all public procurement officers should be encouraged to have a minimum level of understanding on public procurement. Requisite level of courses could be identified and officers should be encouraged to attend the same before assuming their charge of procurement officers.

• **Institutionalisation of IFA system**: The institutionalisation of IFA system has proved to be a good experiment in Defence sector where there has been a substantial delegation of power since the mid nineties. The system could be gradually expanded to other ministries / departments, both laterally and vertically. The system can bring a lot of financial prudence in the procurement processing.

• **Strengthening of audit**: With the procurement system being on the verge of going on line in most cases, the audit mechanism needs to be reconsidered in the new system so as to be effective. In fact, the Vinod Dhall Committee is also considering recommending concurrent audit for all high-value procurements as well as involve independent team from outside the purchasing department so as leave little space for 'post-facto scam reporting'.

• **Facilities for data sharing**: Non-sensitive data sharing related to commodity prices, market trends, base pricing, and L1 rates could be made available for better and enlightened decision making by procurement managers.

• **Frequent sharing of experiences**: Despite very high volumes of procurements in India, there is little space for exchange of views either amongst various departments / ministries of the Government or with the private sector. The Competition Commission of India has been organising regular seminars on procurement since last couple of years, but the mandate is largely focused on institutionalizing 'anti-monopoly practices'. The Government procurement system must be fine tuned based on the experiences of the private sector as well as from the experiences of other countries.