A Brief Summary of Public procurement in India[*]

Public procurement may be defined as procurement made by a public authority utilizing public funds, to obtain goods and services, in order to run its own business/undertakings. In other words public procurement means how the public authorities– the Central and State governments, ministries/departments, public sector undertakings or state-owned enterprises— spend public money buying goods and services to undertake their own business. For example, a department purchasing vehicles, office equipment, computers, stationary, air-conditioners, refrigerators, buildings, etc for internal use is public procurement.

Interestingly, it is not as simple as it may sound; public procurement is not purchasing goods/services over the counter. Public procurement is a rather complex activity, considering the nature, the Constitution has endowed to the Union of India.

Framework:

Considering its complexity, it is rather intriguing to note that there is no central or state legislation to govern public procurement in India. Public procurement in India is supported by the General Financial Rules, 1947, revised in 2005 (GFR)and Delegation of Financial powers Rules (DFPR) which are a set of comprehensive principles/rules developed by the Ministry of Finance, for the management of government procurement. Then it is an obligation cast on the public authorities/government, including state governments that all their procurement must happen within the boundaries of these rules and principles.

With the opening of the economy, various funding agencies like the World Bank, The Asian Development Bank etc have also taken up the task to assist the government in procurement of goods and services. It is noteworthy to point out here that every such organization has it own set of rules/principles/guidelines for procurement of goods/services, which are stringent and thereby to be followed in letter and spirit.

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Legally speaking, public procurement is governed by a gamut of legislations, including but not limited to the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Law on Arbitration and Limitation, Competition Act, 2002, the recent Right to Information act, 2005, to mention.

The Comptroller and Auditor General (CAG) of India has been vested with the powers to oversee the accounts of the Union and states, which also include the accounts of procurement.

The Central Vigilance Commission (CVC), which is a statutory body founded as a result of the enactment of the Central Vigilance Commission Act, 2003.has been vested with the power and authority to investigate into complaints of corruption and vigilance administration relating to such procurement.

Procedure:

The cardinal objective of all public procurement principles/policies, under the framework contained in the GFR and applicable guidelines/rules is to ensure responsibility, accountability, efficiency and economy and also to ensure transparency, fair and equitable treatment of suppliers and promotion of competition in public procurement. The end, of all public procurement, as public money is at stake, is to procure materials and/or services of a specified quality, at the most competitive prices, in a fair, just and transparent manner, within the rules and principles laid down for the purpose.

The competent authority invites tenders, usually the 2 bid system is followed, viz a bid containing the technical specifications of the goods/services to be procured, known as Technical bid and the other bid containing the price quoted for the goods/services, known as Price Bid, with a view to purchase goods and services. All suppliers, including foreign suppliers, who meet the tender specifications, submit their bid. At this juncture it may not be out of place to mention here that there are certain suppliers, based upon certain credentials, as may be specified from time to time, who are registered with the Director General of Supplies and Disposal (DGS&D), the competent authority vested with the powers to make purchases on behalf for the Government of India, get some exemptions at the time of submission of bids, owing to their genuineness, financial capacityetc.

After all bids are received, evaluation starts. Evaluation of tenders is one of the most significant areas of purchase management. The entire process of evaluation and contract awarding must be transparent. An evaluation committee is constituted for the purpose and they prepare a comparative statement of quotations received, in the order in which the tenders were received. All tenders must be evaluated solely on the terms and conditions incorporated in the tender document. No new conditionmay be relied upon or be added at the evaluation stage, so as to give a bidder an unfair advantage over others.

If a minor infirmity/irregularity is found while scrutinizing the proposals, there are provisions for clarifications from the respective the bidder. In case of a major flaw, the bid is summarily rejected, the reasons of which are recorded.

The technical bids are opened first and the bidders qualifying the laid down specifications/criteria in the tender document, without deviations, qualify. Upon completion of scrutiny, the qualifying tenders are consolidated into a statement, and their price bids are opened. A comparative statement is prepared, in ascending order of the evaluated prices, so as to get a clear picture of their standing as well as comparative financial impact.

Upon the basis of the above comparative, the lowest responsive bid is selected and the authority must then ensure that the price being paid is reasonable. This may be determined by comparing the contract price with the price last paid for such item, the current market price, the price of raw materials, receipt of competitive offers from different sources, and the quantity of materials involved. After completion of this exercise, which may include negotiations with the bidder, the bidder is selected. In case of the negotiations diluting, the second lowest bidder is called upon for negotiations.

However, before placing an order with the successful bidder, the latter is informed in writing of the acceptance of his proposal and the time within which he is required to furnish performance security.

Upon the bidder’s acceptance and furnishing of the required securities, a contract is signed and the bidder is required to perform his part of the contract, in a given period of time.

Way Forward:

Due to the volume of procurement and rampant corruption in its process, bottlenecks in the procedure, absence of a central legislation to govern the process, difficulty in entry for foreign suppliers, to mention a few, the Ministry of Finance, Government of India introduced the Public Procurement Bill, 2012 in the LokSabha.

The Public Procurement Bills endeavours to make the procurement process transparent and corruption free.

Applicability of the Bill

The said Bill would apply for procurement done by:

- Any central department, ministry, PSU or Company where Government has more than 50% stakes.
- For purchases about 50 lakh rupees.

However, the provisions of the Bills would not apply to procurement done during emergencies or for disaster management or in the interest of national security.

Salient Features of the Bill

The following are the salient features of the Bill:

- The procuring entity (ministry/department) shall first determine the need for procurement and estimate the cost of the procurement based on certain specified criteria's. It may publish information regarding planned procurements.
- Bill provides for setting up a Central Public Procurement Portal.
- This website will ensure transparency in the procurement process. Information such as pre-qualification document and details of bidders shall be displayed on the Portal.
- Ministry/Department shall not limit discriminate against bidder, except for the protection of public order and morality, animal or plant life, intellectual, national security. *(means foreign companies can also fill up tenders without trouble.*
- Central government may make procurement mandatory from certain bidders for promotion of domestic industry, socio economic policy, or other considerations in public interest. *(which means Government can prevent foreign companies from bidding, in special cases)*
- Government shall constitute one or more independent procurement redressal committees *[under the chairmanship of a retired High Court Judge]*.

- In case a prospective bidder (seller) feels that a particular ministry/department etc. did not consider his product/services for any foul reasons (e.g. if he feels that since he did not give bribe so his tender was rejected) -so in that case he may file an application with such a committee.

Punishment:

- The Bill seeks to provide different penalties for offences such as taking bribes in respect of procurement, interference with the process, making vexation, frivolous or malicious complaints, and abetment of offences.
- Imprisonment from 6 months upto 5 years, for bureaucrats caught taking bribes or creating obstacles in fair bidding.
- Government shall debar a bidder (seller) if he has been convicted of an offence under Prevention of Corruption Act, 1998 or the provisions of the Indian Penal Code or for playing mischief in the bidding process.